



**FSA**  
**FEDERAL**  
**STUDENT AID**

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MAY 19 2004

Richard Ferrin, Ph.D.  
President  
Salem International University  
223 West Main Street  
Salem, WV 26426-0500

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**  
7099 3400 0008 0801 2847

OPE ID: 00382000

Dear Dr. Ferrin:

This letter is to inform you that the U. S. Department of Education (Department) intends to fine Salem International University (Institution) \$250,000 based on the violations of statutory and regulatory requirements outlined in Part I below. This fine action, as outlined in Part II below, is taken in accordance with the procedures that the Secretary of Education (Secretary) has established for assessing fines against institutions participating in any or all programs authorized under Title IV of the Higher Education Act of 1965, as amended, 20 U.S.C. 1070 et seq. (Title IV, HEA programs). Title IV, HEA program regulations permit a maximum fine amount of \$25,000 for each violation. 34 C.F.R. §668.84. As detailed in Part I of this notice, this fine action is based on the Institution's failure to comply with the requirements of the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (the Clery Act) in Section 485(f) of the HEA and the Department's regulations in 34 C.F.R. §668.46.

The Clery Act requires institutions participating in the Title IV, HEA programs to prepare an annual campus security report that contains statistics concerning the occurrence of certain crimes on campus, in or on certain non-campus buildings or property and on public property. The institution's report must also include statements of the institution's policies and procedures for campus security and the reporting of crimes. The campus crime statistics must be submitted to the Department each year. The campus crime report and the institution's policies on crime must also be provided to current students and employees and available to applicants for admission and employment. However, as detailed below, the Institution failed to submit an adequate campus security report. The report submitted by the Institution and provided to students and employees did not include accurate campus crime statistics and did not include all required campus security policy statements. Accordingly, the Institution failed to distribute an accurate and complete report to the campus community in accordance with the Clery Act and its implementing regulations; and, therefore, imposition of a fine is warranted. 34 CFR §668.72(I).

**I.**

From June 11-22, 2001 and from August 21-24, 2001, the Department's Philadelphia Case Management Team (the Case Team) conducted a campus security review at the Institution. The purpose of the review was to determine the accuracy and completeness of campus security policy statements and crime statistics in the campus security report submitted by the Institution to the Department for the calendar years 1997, 1998, and 1999. On December 17, 2001, the Department issued its Program Review Report to the Institution. The report contained ten findings of non-compliance with the Clery Act; and the Institution responded to the findings. Subsequently, the Department issued its Final Program Review Determination (FPRD) letter to the Institution on April 14, 2004. (A copy of the April 14, 2004 FPRD is enclosed.) The Department is taking this fine action based on findings in the FPRD which determined that the Institution failed to compile, publish, and submit an adequate campus security report for the years examined.

**A. The Institution Failed to Include Required Campus Security Policy Statements in Its Annual Security Report.**

The Clery Act requires that institutions include a statement in their campus security reports informing the campus community of current campus policies and procedures for the reporting of criminal activities or other emergencies occurring on campus. The statement must encourage accurate and prompt reporting of all crimes to campus authorities and appropriate police agencies. In addition, the statement must include policies governing the institution's response to those reports, including policies for issuing timely warnings to the campus community on the occurrence of crimes. The statement must also include policies on the enforcement authority of campus security personnel, including their relationship with local police agencies. Moreover, the statement must include policies and procedures to be followed when campus sex offenses occur.

**1. The Institution Failed to Include in its Report an Adequate Policy Statement on the Timely Warning Requirement and Failed to Implement Procedures to Timely Warn.**

The Clery Act requires institutions to include in their campus security reports, a statement of their policies and procedures for responding to reports of crime to campus security authorities or local police agencies. The procedures must include a process for providing timely warnings that will aid in the prevention of similar crimes when the crimes reported present a threat to the campus community. §485(f)(3) of the HEA; 34 C.F.R. §668.46(e). However, for the years examined, the Institution did not have a policy on the issuance of timely warnings to the campus community.

The Case Team evaluated the Institution's implementation of the requirement for providing timely warnings in appropriate cases. The Case Team reviewed the Institution's incident reports detailing serious crimes against persons and property that should have resulted in timely warnings. However, the Institution's records did not show that a warning was issued. Campus security personnel acknowledged that timely warnings were not typically disseminated, and the Institution could not explain its lack of action. The omission of timely warnings supports the conclusion that the Institution is not committed to full compliance with its statutory and regulatory obligations in this area. Failure to issue timely warnings of serious and continuing threats amounted to a substantial misrepresentation to the campus community, thus depriving it of vital security information and denying it the opportunity to take adequate steps for provision of its safety and security. Consequently, by failing to establish procedures for and to issue timely warnings, the Institution violated the Clery Act and the regulations.

## **2. The Institution Failed to Include in its Report an Adequate Policy Statement on Campus Sex Offense Procedures.**

The Clery Act and the Department's regulations require institutions to include a statement in the campus security report on policies explaining the procedures students should follow if a sex offense occurs. The statement must identify who should be contacted, the importance of preserving evidence needed to prove a criminal offense and to whom the offense should be reported. See §485(f)(8)(B)(iii) of the HEA and 34 C.F.R. §668.46(b)(11)(ii). In addition, the statement must provide information on a victim's option to notify appropriate law enforcement authorities, including on-campus security personnel and local police agencies, and inform students that institutional personnel will assist in notification of those authorities, if requested by the victim. See §485(f)(8)(B)(v) of the HEA and 34 C.F.R. §668.46(b)(11)(iii). The institution's statement must notify students that the institution will make accommodations to change a victim's academic and living arrangements after an alleged sex offense if requested by the victim and if the options for those changes are reasonably available. See §485(f)(8)(B)(vii) of the HEA and 34 C.F.R. §668.46(b)(11)(v).

The reviewers found that the Institution failed to satisfy these requirements and failed to notify students on the rights and options of sex offense victims. Although the Institution's statement alludes to these areas of concern, the information presented is exceedingly vague and fails to provide the campus community with information sufficient to make meaningful choices regarding resources or options. Although the Institution's Student Handbook contains some information, its cross-reference to policies provided elsewhere fails to satisfy the obligation of the Institution.

**B. The Institution Failed to Accurately Report Crime Statistics in its Campus Security Report.**

**1. The Institution Failed to Collect and Include Information from All Sources When Gathering Crime Statistics.**

An institution's annual security report must include statistics for the three most recent calendar years on specific crimes that are reported to campus security authorities and local police agencies. This information must be included in the security report provided to enrolled students and current employees and made available to prospective students and employees. See §485(f)(1) and (f)(1)(F) of the HEA and 34 C.F.R. §§668.41(e)(3) and (4) and 668.46(c). The statistics must be separately reported to the Department. See §485(f)(5) of the HEA and 34 C.F.R. §668.41(e)(5). In gathering data for these reports, an institution must make a reasonable, good faith effort to obtain the required crime statistics and may rely on information provided by local police agencies. 34 C.F.R. §668.46(c)(9). The program review determined, however, that the Institution failed to collect statistics on incidents of reportable crimes from both campus security authorities and local police agencies and, as a result, filed inaccurate reports.

The Institution did not collect crime statistics from all possible sources at the Institution itself. According to campus security personnel, including the Director of Campus Security for the years examined, the Institution only obtained statistics from incident reports at the offices of campus security and student affairs. Thus, for example, the Institution failed to gather information for incidents handled by the campus judicial system.

The Institution also failed to make a reasonable, good faith effort to obtain statistics of criminal incidents reported to local police agencies. The Case Team found that the relationship of the Institution with local police agencies was virtually non-existent. Thus, for the years examined, the Institution failed to request information on crime statistics from the City of Salem police department or to provide information to that department. Indeed, the Case Team was unable to find any evidence of any occasion during the period reviewed when the Institution shared information, requested guidance, submitted evidence timely, or assisted in criminal investigations with local police agencies unless the Institution was the victim.

The Case Team's review of the Institution's records supports strongly the conclusion that the Institution failed to meet the regulatory requirement that it make a good faith effort to obtain required information from the local police department and from campus sources. Consequently, the Institution published a campus security report that did not include accurate campus crime statistics as required by the Clery Act.

## **2. The Institution Failed to Use the Correct Standard for Crime Statistics Included in the Report.**

Institutions must compile and assemble crime statistics for their campus security reports in accordance with definitions of crimes utilized by the Uniform Crime Reporting (UCR) system of the Federal Bureau of Investigation, Department of Justice, and modifications to the definitions implemented by the Hate Crime Statistics Act, Pub L. No. 101-275, 104 Stat. 140 (1990). See §485(f)(7) of the HEA and 34 C.F.R. §668.46(c)(7). The UCR is a national report of crime based on information provided by municipal, county, and state law enforcement agencies and provides a nationwide view of crime based on the submission of statistics by law enforcement agencies throughout the country.

Decisions by institutions when compiling the campus security report must be guided by the fact that it is, first and foremost, intended to be an accurate source of consumer, safety, and security information. Accurate and complete information helps to ensure that the campus community is fully informed about crime and security issues and allows individuals to make informed provisions for their own safety.

The Case Team found that the Institution chose not to include certain crimes in its campus security report statistics. In its response to the Case Team report, the Institution said it omitted the reporting of crime statistics for incidents to avoid duplicative disclosure because it believed local police agencies would include those incidents, if valid, in their UCR reporting. The Institution had no basis for its conclusion that the UCR reporting of a local law enforcement agency had any relevance to its own reporting obligation under the Clery Act. The Department's regulations do not tell institutions to exclude crimes from the crime statistics based on this ground and the Institution did not cite any other support for its actions. The Institution's failure to include crimes resulted in inaccurate campus security statistics in violation of the Clery Act reporting requirements.

## **3. The Institution Failed to Include Reported Incidents In Its Crime Statistics.**

When reporting crime statistics, institutions must include all reported crimes within stated categories. See §485(f)(1)(F) of the HEA; 34 C.F.R. §668.46(c)(1). Accordingly, institutions must generate and maintain accurate, complete, and well-organized records for reporting incidents.

The Institution did not satisfy this requirement. Instead, the Institution attempted consistently to find a basis for not including reported crimes in its campus security report. This approach resulted in the Institution publishing inaccurate campus security reports and providing inaccurate information to

the campus community. During its review, the Case Team identified various factors that contributed to failure by the Institution in this area, including lack of internal and quality controls over crime-reporting data and failure to provide proper training to its staff. Evidence also suggested that the Institution withheld or manipulated the relevant data deliberately and willfully.

Consequently, the Institution failed to include or did not appropriately include in the statistics 76 incidents listed in Appendix A to the FPRD.<sup>1</sup> For example, many incident reports contained information that showed that the incident clearly met the UCR definition of "burglary" and the incident should have been included in the statistics for that category. However, instead of using this definition, the Institution identified the incidents as "stolen property," "theft," or "breaking and entering," which are not included in the statistics. In other instances, the Institution identified incidents with little or no adherence to the crime definitions set forth in the UCR; in other instances, the Institution failed to identify incidents at all. In every case, the Institution's action resulted in the exclusion of the incident from the campus security report and the result is that the report understated the amount of crime on the campus.

#### **4. The Institution Failed to Report Forcible Sex Offense Incidents.**

In its campus crime report, an institution must report crime statistics on forcible sex offenses reported to campus security authorities and local police agencies for the three most recent calendar years. See §485(f)(1)(F)(i)(II) of the HEA; 34 C.F.R. §668.46(c)(i)(A). The Institution did not comply with this requirement. The Case Team found evidence that campus security authorities at the Institution were aware of five forcible sex offenses that were reported during the years covered by the review. However, the Institution did not include these incidents in the crime statistics for the years examined. By excluding these incidents from the campus crime reports, the Institution substantially misrepresented its crime statistics for forcible sex offenses.

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<sup>1</sup> Although the Institution has disputed reclassification by the Case Team of 15 of the 76 incidents, the reclassification process, an already complex and time-consuming enterprise, was complicated by rampant mismanagement in the recordkeeping process by the Institution. Coordination, analysis, and quality control, to the extent that they existed at all at the Institution, were completely ineffective for the years examined. Therefore, even conceding the 15 incidents, failure to identify 61 incidents is not in dispute.

In particular, officials at the Institution were unable to explain adequately omission of the following five specific reports of forcible sex offense that should have been included in the campus security report.

**Incident Not Reported: October 30, 1997 Forcible Sex Offense**

The Institution failed to include in its report a forcible sex offense that occurred on October 30, 1997, although the offense was reported to campus security authorities, specifically, the office of the president, the dean of students, and the office of campus security. Documentation reviewed by the Case Team included an extensive incident report, an extensive statement from the victim, police files, and medical records. Indeed, the Institution acknowledged in its response to the FPRD that an extensive incident report was filed and an extensive statement was taken from the victim.

Although federal regulations require that institutions include all reported incidents in their crime statistics without any consideration of later action by a prosecutor or court, the Institution justified its omission of the incident because the Salem Police Department had concluded that the reported incident was not a sexual assault. However, the Institution was unable to provide documentation on that conclusion. Moreover, the Department's regulations require institutions to include in their statistics all reported incidents without regard to any subsequent law enforcement action. 34 C.F.R. §668.46(c)(1). The Case Team found that the Institution's Director of Campus Security, who was in charge of compiling crime statistics for the years examined, had knowledge of the requirement that all reported incidents be included without regard to later police action as early as 1992. The Director of Campus Security also claimed to be unaware of this incident when interviewed by the Case Team, but records available to the Case Team showed that the Institution had knowledge of the incident since it provided counseling and a special accommodation to the victim.

The regulations state clearly that all reported incidents must be included in the crime statistics and subsequent action will not change the obligation to report. An incident is considered reported for purposes of inclusion when a victim or witness brings it to the attention of campus security authorities or local police agencies. No requirement exists that a criminal report be made to, or investigated by, the police or a security officer or that a finding of guilt or responsibility result. Therefore, the Institution should have included this incident in its crime statistics as a forcible sex offense.

**Incident Not Reported: November 1, 1997 Forcible Sex Offense**

The Institution failed to include in its campus crime statistics a forcible sex offense that occurred on November 1, 1997. The Case Team reviewed the incident report and other relevant documentation in the Institution's records

and determined that the incident had been reported to campus security authorities and should have been included in the campus security report statistics.

The Institution claims that it omitted the incident to avoid duplicate reporting of this incident with the UCR. The Institution argues that since the incident was reported to the Salem Police Department, it would be included in its UCR Report.

However, as discussed previously, the campus security report is first and foremost intended to be an accurate source of consumer, safety, and security information and is not connected with the UCR. Nothing in the HEA or the regulations support the Institution's alleged justification for not including this incident in the campus crime report.

**Incident Not Reported: May 7, 1998 Forcible Sex Offense**

The Case Team found that the Institution failed to include in the campus security report a forcible sex offense that occurred on May 7, 1998. According to the Institution, it did not include the incident in the report based on a statement by the victim. However, in a subsequent letter to the Institution's president, the victim characterized the incident as a sex offense. The Case Team reviewed other documentation at the Institution showing that the president, dean, assistant dean, and the office of campus security had knowledge of the incident and, thus, the victim communicated clearly the sex offense to officials at the Institution. In addition, the Institution provided counseling to the victim and, consequently, had knowledge that the incident occurred. On August 19, 1998, the victim reported the incident to local police. According to the police report, the victim indicated that a sex offense had occurred. Therefore, the Institution should have included the incident in its crime statistics as a forcible sex offense.

**Incident Not Reported: September 2, 1998 Forcible Sex Offense**

The Case Team determined that the Institution failed to include a forcible sex offense that occurred on September 2, 1998 in its campus crime statistics. The Case Team reviewed the incident report and supporting documentation maintained in the Institution's records. According to the documentation, the incident was reported to campus security authorities. The president, dean, the office of campus security, the director of housing and residence life, and the office of the provost were informed of the incident.

The Institution, however, identified the incident as sexual harassment, not sexual assault, and did not include it in its crime statistics. According to the Institution, the victim reported the incident as sexual harassment and not

sexual assault. However, the Institution's claim is not supported by anything in the record. In fact, a statement from the victim on September 8, 1998, indicates that this incident would be appropriately characterized as a sexual assault. The institution, not the victim, is responsible for characterizing incidents in accordance with the regulatory requirements and the Institution has not provided any support for its decision not to include this incident in the statistics.

The Case Team also found documentation indicating that on September 18, 1998, the Institution was notified by one of its counselors, who met with the victim, that a sexual assault had occurred. In a memorandum to the Dean of Students and the Assistant Dean of Students, the counselor expressed concern that the incident had been treated as sexual harassment and that the Institution had not followed procedures for reporting a sexual assault. Therefore, the evidence strongly indicates that the Institution should have included the incident in its crime statistics as a forcible sex offense.

#### **Incident Not Reported: September 18, 1999 Forcible Sex Offense**

The Case Team concluded that the Institution failed to include a forcible sex offense that occurred on September 18, 1999 in its campus crime statistics. The Case Team reviewed the incident report and other documentation in the Institution's records. The records show that the dean, the office of campus security, and the director of housing and residence life had knowledge of the offense. According to the Institution, it omitted the incident from the campus crime report because the Director of Campus Security had not yet been trained on the Clery Act and, thus, had no knowledge of what to include. However, the Clery Act requirements had been in place since 1991 and the Institution did not explain why it failed to seek guidance or obtain employee training on the requirements of the Act until Fall 2000.

There does not appear to be any dispute that this incident should have been included in the campus crime statistics. The incident report completed by the Institution includes a clear notation stating, "She was sexual[ly] assaulted." Also, according to documentation, the victim was taken to an area hospital shortly after the police arrived and began their investigation. Thus, the Institution had knowledge that the incident had occurred and that it was a forcible sex offense. Therefore, the Institution should have included the incident in its crime statistics as a forcible sex offense.

#### **C. The Institution Failed to Distribute the Campus Security Report in Accordance with the HEA.**

The Clery Act requires that participating institutions distribute the campus security report to current students and employees through appropriate publications or mailings and notify prospective students and employees that

it is available, a description of its contents, and an opportunity to request a copy. See §485(f)(1) of the HEA; 34 C.F.R. §668.41(e). Institutions must also provide a copy, upon request, to prospective students or employees. See §485(f)(1) of the HEA; 34 C.F.R. §668.41(e). Distribution may include direct mailing through the U. S. Postal Service, direct hand or campus-mail distribution, or posting on the institution's Internet site. If distribution is made by posting to an internet or intranet site, then, by October 1 of each year, institutions must distribute a notice to all students and employees, including a statement that it is available, its exact electronic address, a description of its contents, and notice that a paper copy is available upon request. 34 C.F.R. §668.41(e).

The Institution failed to distribute the campus security report in accordance with the Clery Act and the Department's regulations. Instead, a brief note in the Student Handbook of the Institution states, ". . . University is in compliance with the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act. This report is published annually and [is] available to every student, faculty, and staff. Copies of this report may be found in the Office of Security, the Office of Student Affairs, and the Admissions Office." However, according to officials from the Institution, active distribution was not made. Instead, copies were only available on campus, at the offices listed in the Student Handbook. A cross-section of students and employees interviewed by the Case Team had never received a copy of the campus security report through direct action by the Institution. In addition, the campus security report is available only to enrolled students and not to prospective students, in violation of the HEA. The Case Team reviewed publications provided to applicants for admission and the official Internet site of the Institution and did not find any statements indicating that the campus security report was available to prospective students.

The Institution's failure to distribute accurate and complete crime statistics to current and prospective students and employees deprived the campus community of important security information and, thus, constituted a substantial misrepresentation of safety and security on campus. Therefore, the campus community was not fully informed, in accordance with Clery Act requirements, to adequately provide for its own safety and security and that of others.

## II.

In determining the amount of a fine, the Department considers both the gravity of the offense and the size of the institution. 34 CFR 668.92. Pursuant to the Secretary's decision In the Matter of Bnai Arugath Habosem, Docket No. 92-131-ST (August 24, 1993), the size of an institution is based on whether it is above or below the median funding levels for the Title IV, HEA programs in which it participates.

The latest year for which complete funding data is available for the Institution is the 2002-03 award year. According to Department records, the Institution received approximately \$473,752 in Federal Pell Grant funds; approximately \$1,194,141 in Federal Direct Loan (FDL) funds; and approximately \$830,113 in Campus-Based funds. The amount of Title IV, HEA program funds received by or on behalf of students attending the Institution is set forth in detail in an enclosure to this letter. The latest information available to the Department indicates that the median funding level for institutions participating in the Federal Pell Grant program is \$802,748; for institutions participating in the FDL program, the median funding level is \$1,537,665; and for institutions participating in Campus-Based programs, the median funding level is \$236,990. Accordingly, the Department will consider the Institution a large institution because its overall funding level exceeds the median funding levels.

The Institution failed to comply with the Clery Act. In particular:

1. The Institution failed to include required policy statements in its campus security report.
  - The Institution failed to include a policy statement on timely warnings and failed to timely warn the campus community; and
  - The Institution failed to include a policy statement on campus sex offense programs and procedures.
2. The Institution failed to provide accurate and complete crime statistics in its campus security report.
  - The Institution failed to include crime statistics for specific incidents from all sources;
  - The Institution failed to use the correct standard for reporting incidents in its crime statistics;
  - The Institution failed to identify incidents properly, resulting in the underreporting of crime statistics for incidents; and
  - The Institution failed to report crime statistics for incidents of forcible sex offense.
3. The Institution failed to distribute the campus security report as required.

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The inaccurate information presented by the Institution as a result of its failure to comply with the HEA and the Department's regulations deprived the campus community of vital information on campus security and denied individuals the opportunity to take adequate steps to provide for their own security and that of others. Therefore, the Institution's failure to comply with the Clery Act amounts to a substantial misrepresentation under 34 C.F.R. §668.72 and warrants the imposition of a fine as described below.

After considering the gravity of the violations and the size of the Institution, I have set the fine amount at \$250,000. I have assessed \$25,000 for failure to include a policy statement on timely warnings and failure to timely warn; \$25,000 for failure to include a policy statement on campus sex offense procedures; \$15,000 for failure to include crime statistics for specific incidents from all sources; \$10,000 for failure to use the correct standard for reporting incidents in the crime statistics; \$25,000 for failure to identify incidents adequately, thus underreporting crime statistics; \$125,000 for failure to report crime statistics for five incidents of forcible sex offense; and \$25,000 for failure to distribute the campus security report as required.

The fine of \$250,000 will be imposed on June 14, 2004, unless I receive, by that date, a request for a hearing or written material indicating why the fine should not be imposed. The Institution may submit both a written request for a hearing and written material indicating why a fine should not be imposed. If the Institution chooses to request a hearing or submit written material, you must write to me at:

Administrative Actions and Appeals Division  
U. S. Department of Education  
School Eligibility Channel, ASEDS/FSA  
830 First Street, NE - UCP3, Room 83E1  
Washington, DC 20002-8019

Upon receipt of such a request, the case will be referred to the Office of Hearings and Appeals, which is a separate entity within the Department. That office will arrange for assignment of the Institution's case to a hearing official who will conduct an independent hearing. The institution is entitled to be represented by counsel at the hearing and otherwise during the proceedings. If the Institution does not request a hearing but submits written material instead, I will consider that material and notify the Institution of the amount of fine, if any, that will be imposed.

**ANY REQUEST FOR A HEARING OR WRITTEN MATERIAL THAT THE INSTITUTION SUBMITS MUST BE RECEIVED BY JUNE 14, 2004; OTHERWISE, THE FINE WILL BE EFFECTIVE ON THAT DATE.**

Page 13 - Richard Ferrin, Ph.D.

If you have any questions or desire any additional explanation of the Institution's rights with respect to these actions, please contact Bonnie Gibbons of my staff at (202)377-4284.

Sincerely,

A handwritten signature in black ink, appearing to read "Mary E. Gust". The signature is fluid and cursive, with a large initial "M" and "G".

Mary E. Gust, Director  
Administrative Actions and Appeals Division

Enclosure

cc: Brian Siegel, Office of General Counsel  
Geneva Coombs, Director, Case Management Division - Northeast  
Nancy P. Klingler, Area Case Director, Philadelphia Case Team  
John Loreng, Co-Team Leader, Philadelphia Case Team  
Douglas Laine, Co-Team Leader, Philadelphia Case Team  
James Moore, Philadelphia Case Team  
Fred Wynn, Philadelphia Case Team

## SETTLEMENT AGREEMENT

This agreement is made by and between Salem International University (Salem) (OPE ID 00382000), located in Salem, West Virginia and United States Department of Education (Department), Federal Student Aid (FSA). The agreement is effective the latest date opposite the signatures below.

A. On May 19, 2004, the Department's Administrative Actions and Appeals Division (AAAD) issued a notice of its intent to fine Salem \$250,000 for violations of the Clery Disclosure of Campus Security Policy and Crime Statistics Act (Clery Act) provisions of Title IV of the Higher Education Act of 1965, as amended, 20 U.S.C. §§ 1070 et seq. and its implementing regulations. The violations were discovered during a program review conducted at the school by the Department's Philadelphia Case Management Team on June 11-22, 2003 and August 21-24, 2001.

B. On June 1, 2004, Salem filed a timely appeal of the fine action pursuant to 34 C.F.R. § 668.91.

C. The appeal has given rise to the Federal Student Aid Proceeding entitled In the Matter of Salem International University, Docket No. 04-28-SF.

D. Salem and the Department now desire to resolve the outstanding fine and terminate the current administrative proceeding.

In consideration of the mutual covenants and conditions herein contained, the parties agree as follows:

1. Salem agrees to pay the Department a fine in the amount of \$200,000 in resolution of the fine action initiated on May 19, 2004. The fine shall be paid in 5 equal installments of \$40,000. The initial payment of \$40,000 shall be made by certified or cashier's check made payable to the U.S. Department of Education and should be sent with the signed settlement agreement. The remaining fine will be paid pursuant to the provisions of the repayment agreement to be executed between Salem and the Department's Debt Management Group. There will be no interest payments assessed under this repayment agreement.

2. Salem admits that as to years 1997, 1998, and 1999, it was in violation of the Clery Act. Salem certifies that it will continue to take whatever steps are necessary to ensure continual compliance with the provisions of the Clery Act.

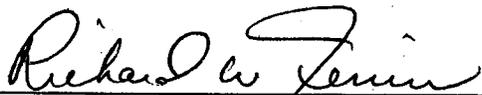
3. Salem acknowledges that future violations of the Clery Act will result in additional fines and/or other administrative actions initiated by the Department.

4. Within 5 days of the date on which this agreement and the repayment agreement are fully executed, the parties agree to submit to the hearing official a joint motion to dismiss with prejudice the administrative proceeding, cited above, relating to the subject matter of this agreement. Only the motion, and not the settlement agreement or repayment agreement, will be filed.

5. This Agreement constitutes a settlement and full accord and satisfaction of the fine action issued on May 19, 2004. This Agreement fully and finally resolves any and all possible administrative claims, obligations and/or fines for Clery Act violations by Salem in 1997, 1998, and 1999.

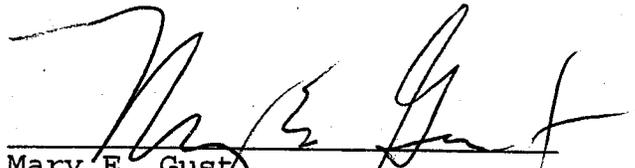
6. This Agreement does not waive, compromise, restrict or settle any past, present or future violations by Salem of the criminal laws of the United States or any action initiated against Salem for civil fraud against the United States.

Each of the parties warrants that its undersigned representative is fully authorized to sign this agreement on its behalf.



Richard Ferrin, Ph.D.  
President & CEO  
Salem International University  
Salem, WV

2/23/05  
Date



Mary E. Gust  
Director  
Administrative Actions  
and Appeals Division  
Federal Student Aid  
U.S. Department of Education

4/7/05  
Date



**F E D E R A L  
S T U D E N T A I D**

*We Help Put America Through School*

*Wyn*  
**Case Management Division Northeast  
The Wanamaker Building  
100 Penn Square East, Suite 511  
Philadelphia, PA 19107-3322**

April 14, 2004

Richard Ferrin, Ph.D.  
President  
Salem International University  
223 West Main Street  
Salem, WV 26426-0500

**CERTIFIED MAIL  
Return Receipt Requested  
7003 1680 0000 0643 7711  
OPEID: 00382000  
PRCN: 200130318804**

Dear Dr. Ferrin:

This letter provides the U.S. Department of Education's (the Department's) Final Program Review Determinations (FPRD) assessing Salem International University's (SIU; the University; the institution) compliance with the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (the Clery Act) included in Section 485 of the Higher Education Act of 1965, as amended (HEA).

This FPRD is the result of a program review conducted by the Department's Philadelphia Case Management Team (the Team). The Case Management Team issued its program review report on December 17, 2001. SIU submitted its response on March 5, 2002. The December 17, 2001 program review report is incorporated by reference in its entirety into and made part of this FPRD letter and is attached hereto as Attachment A. This FPRD provides the Department's analysis of SIU's response and its Final Determinations on the findings identified in the program review report.

During the program review, several serious violations were identified. The findings and other information detailed in the program review report were based on a thorough analysis of several hundred hardcopy incident reports, judicial board referrals, and other supporting documentation from calendar years 1997, 1998, and 1999. Numerous interviews also were conducted with current and former employees, students, and law enforcement officials. The review team also spoke to a number of crime victims as well as their parents, and advocates. The University's campus security policies and procedures were also reviewed. From the commencement of this project, the review team continued to monitor campus security matters for many months through a variety of means.

On March 8, 2002, the Philadelphia Case Management Team received the University's program review response following a brief extension to the original due date. The response included a proposed corrective action plan, "Clery Act Compliance Manual" (the Manual), responses to each finding, and other supporting documentation and exhibits. Although the response answers many concerns and sets forth a plan for

continued reforms, serious concerns remain. Notwithstanding other subsequent actions that might be needed to bring operations into compliance, such as follow-up site visits and/or technical assistance, the institution is advised that the findings identified in the December 17, 2001 program review report are closed.

Based on the University's response, findings #6, #9, and #10 have been adequately addressed and will not be elaborated upon here.

The purpose of this document is to advise the University of these determinations and their consequences. Final Determinations are presented for findings #1, #2, #3, #4, #5, #7, and #8. Because of the sensitive nature of the subject matter, many names, dates, and certain other identifying material that could identify specific crime victims has been omitted. Specific details on crimes and other relevant events are contained herein only where deemed to be absolutely necessary. **Because our final determinations have not resulted in institutional liabilities per se, the University may not appeal this Final Program Review Determination letter.**

Please note that, as part of these final determinations, the Philadelphia Case Management Team has referred this FPRD to the Department's Administrative Actions and Appeals Division (AAAD) for its consideration of possible administrative action against the University. Such action may include the imposition of a formal fine and/or the limitation, suspension, or termination of the eligibility of the institution pursuant to 34 CFR Part 668, Subpart G, of the Department's regulations. If AAAD initiates any action, its notification will include information regarding institutional appeal rights. The notification will include procedures on how to file an appeal of the administrative action as well.

**A. FINDINGS AND PROGRAM DETERMINATIONS**

The original program review report included the following findings, references, and requirements. The Final Determination for each finding below is detailed at the conclusion of the original text. The original text is italicized. Supplemental information regarding the program review methodology and other matters, especially with regard to Finding #1, are included in the Appendices to this FPRD.

**FINDING # 1: LACK OF ADMINISTRATIVE CAPABILITY**

*The General Provision Regulations that govern the Title IV, Student Financial Assistance Programs establish certain standards that all participating institutions must maintain if they are to be deemed administratively capable. During the campus security program review, several significant exceptions were identified that call the University's ability or willingness to comply with the Act into serious question. This finding reinforces and supplements a similar determination regarding our review of the University's administration of the Title IV, HEA, Student Financial Assistance Programs (see our August 13, 2001 report – PRCN: 200130318775). The following serious findings detail multiple indications that the University lacks an adequate system of internal controls and administrative capability:*

2. *Failure to Report Specific Incidents;*
3. *Miscoding of Specific Incidents;*
4. *Failure to Coordinate Information from All Sources;*
5. *Failure to Issue Timely Warnings;*
6. *Failure to Report Hate Crimes in Prior Reports;*
7. *Failure to Distribute the Campus Security Report in Accordance with Federal Regulations; and,*
8. *Required Policy Statements Omitted or Incomplete.*

*In addition to these specific findings of non-compliance, the review team identified numerous conditions that cause special concern with regard to the University's commitment to an effective campus security operation and compliance with the Act. The program review team feels strongly that the following concerns have directly contributed to the findings identified in this program review report:*

1. *The annual budget for the Office of Campus Security is insufficient to meet the security needs of the University. Specifically, the Office of Campus Security's annual budget for Fiscal Year 2000 was \$2,075. Total enrollment during fiscal year 2000 was approximately 625 students. Therefore, the budgetary appropriation for the Office of Campus Security amounted to less than \$4.00 per student. With the exception of employee wages, this amount is intended to fund all Office of Campus Security operations including equipment, uniforms, supplies, and repairs. During the site visit, the Director of Campus Security stated that his budget was nearly exhausted as of June 2001. The review team found no*

*variance in expenditures for this fiscal year that might account for the shortfall. Therefore, the review team is forced to conclude that the Office of Campus Security operates with few resources as a matter of course.*

- 2. The annual salaries of the Office of Campus Security staff are exceedingly low and are not sufficient to attract and retain high quality personnel. The University has been fortunate to retain 3 experienced staff members. However, the Director has been authorized to only offer newer hires full-time temporary positions at or near the minimum wage. As such, turnover and low morale have become a serious issue. Currently, only the Director receives an annual salary of over \$20,000.*
- 3. As of the time of this program review report, the Security Department consists of four officers, and only three of these officers are routinely involved in regular security patrols. This makes it very difficult for the Security Department to provide effective 24-hour, 7-day coverage. All relevant University publications clearly state that the Office of Campus Security is on duty around the clock.*
- 4. Campus Security personnel are frequently required to perform tasks unrelated to campus security. Such requirements reduce the amount of security coverage on campus and hinder the Security Department's ability to carry out their required duties. For the years under review, additional duties of campus security personnel included:*
  - Delivering mail to the main post office;*
  - Installing telephone and Internet cables;*
  - Answering telephones;*
  - Picking up items for the Business Office;*
  - Picking up money for the Snack Bar;*
  - Assisting the Physical Plant;*
  - Working on the SIU cooling system if needed; and*
  - Picking up newspapers and watering the lawn for the university president while the president is out of town.*

*Impaired administrative capability increases the likelihood that the applicable statutes and regulations that govern the Title IV Programs will not be followed. With regard to the Act, such an impairment may result in the campus community being deprived of important security information. Impaired administrative capability and weak internal controls are an indication that an institution lacks the ability or willingness to comply with Federal regulations.*

**REFERENCE:**

- 34 CFR § 668.14, General Provision Regulations, as amended, June 22, 2000  
34 CFR § 668.16, General Provision Regulations, as amended, November 1, 1999  
34 CFR § 668.46, General Provision Regulations, as amended, November 1, 1999

**REQUIREMENT:**

*To continue participation in any Title IV, Higher Education Amendment (HEA) program, an institution must demonstrate that it is capable of adequately administering the program under the standards established by the Secretary. The Secretary considers an institution to have administrative capability if it: administers the Title IV, HEA programs in accordance with all statutory provisions of, or applicable to, Title IV of the HEA, and all applicable regulatory provisions prescribed under the statutory provisions; has written procedures for or written information indicating the responsibilities of the various offices. These standards apply to all aspects of the Title IV Program regulations including the provisions of the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act at 34 CFR § 668.46.*

*As a result of this finding, the University is required to take all necessary corrective actions to cure the exceptions identified in this program review report. In addition, the University must develop and implement a comprehensive system of policies and procedures to ensure that these findings do not recur. Additional instructions on this comprehensive review are outlined in the requirement for finding #2.*

*Based on our evaluation of all available information, the Philadelphia Case Management Team will determine appropriate additional actions and advise the University of these in our Final Program Review Determination letter.*

**FINAL DETERMINATION – FINDING #1**

[Supplemental information regarding Finding #1 is included in Appendices C-1 and C-2 of this document.]

Finding #1 of the program review report cited the University for its failure to properly administer the Title IV, HEA Programs. In our report, we identified several serious violations of the Clery Act and the Department's implementing regulations at 34 CFR § 668.46. Concurrent with the campus security program review, this office also conducted a survey program review of the University's administration of the Federal Student Aid Programs authorized by Title IV of the HEA. As detailed in the August 13, 2001 program review report and the April 19, 2002 Final Program Review Determination (FPRD) letter, several violations were also identified during that examination. Taken together, the violations identified during these program reviews call the University's

ability and/or willingness to properly administer the Title IV Programs into serious question. As a result of these violations, the University was transferred to the reimbursement system of payment effective July 18, 2001.

As part of its required corrective action plan in response to the campus security program review report, the University developed a "Clery Act Compliance Manual." This document contains a revised system of policies and procedures for campus security operations and for compiling, publishing and distributing the Campus Security Report. Full implementation of this plan could result in better compliance with the Clery Act. However, the University has not shown a commitment to full implementation of these changes. For example, the University's plan relies heavily on the leadership of the Director of Security position. However, that position was not permanently filled until January 2003. In the interim, the Assistant Dean of Students, who along with the previous Director was principally responsible for compliance with the Act for the years under review, served as the Director. In addition to these duties, this individual also served as an instructor, continued his graduate studies, and worked as a lifeguard at the municipal swimming pool. The previous Director was dismissed in March 2002.

As a result of this and the other findings identified during the program review, the Philadelphia Case Management Team has referred this matter to the Administrative Actions and Appeals Division with a recommendation for the imposition of a fine as authorized by 34 CFR Part 668, Subpart G.

**FINDING # 2:      FAILURE TO REPORT SPECIFIC INCIDENTS**

**A:      Incidents not Reported**

*The institution failed to report all required incidents in its 2000 Campus Security Report. For the crime category of Forcible Sex Offenses, the University reported "0" incidents for all years under review. It should be noted that, since the inception of the Act, the University has never reported a sex offense in its Campus Security Reports. The review team acquired documentation that clearly shows that the University knew about the incidents in the chart below. Based on information developed by the review team, we have determined that there exists a high likelihood that additional incidents of this type occurred and that appropriate documentation was not provided for our review or was never generated in the first place.*

<i>DATE OF INCIDENT</i>	<i>TYPE OF INCIDENT</i>	<i>INCIDENT REPORTED</i>
10/30/1997	Forcible Sex Offense	Yes; 10/30/1997
11/01/1997	Forcible Sex Offense	Yes; 11/01/1997
05/07/1998	Forcible Sex Offense	Yes; 05/07/1998
09/02/1998	Forcible Sex Offense	Yes; 09/02/1998
09/18/1999	Forcible Sex Offense	Yes; 09/18/1999

Documents acquired by the review team clearly illustrate that University officials were aware of these incidents. These documents support the review team's determination that the following offices that have responsibility for reporting under the Act were aware of the above referenced incidents:

<u><i>Date of Offense</i></u>	<u><i>Individuals/Offices Aware of Offense</i></u>
10/30/97	Campus Security; President's Office; Dean of Students
11/01/97	Campus Security
05/07/98	Campus Security; President's Office; Dean of Students; Director of Housing and Residence Life
09/02/98	Campus Security; President's Office; Dean of Students; Director of Housing and Residence Life; Provost's Office
09/18/99	Campus Security; Dean of Students; Director of Housing and Residence Life

The institution was unable to fully explain why none of these incidents was included in the Campus Security Report. During an interview on June 13, 2001, the SIU Director of Campus Security said no sexual assaults were reported to his office for "the past few years". He explained that, four years ago, there was an incident where the student "may have gone directly to the Salem Police Department." He said he was not aware of any incidents of sexual assaults on campus since then. On October 16, 1998, the Director of Campus Security told Special Agents Robert G. Koehler and Lawson B. Allen of the Federal Bureau of Investigation that there were two sexual assaults at the institution "over the last two years". Specifically, he mentioned that he heard that there had been a rape on campus on October 2, 1998. The review team found no evidence that the Office of Campus Security or any other University office did any follow-up work, made any inquiries, offered any assistance to the alleged victim, or made any contacts to ascertain the details of the incident. However, the review team was unable to locate any documents regarding this case and so no details are included herein. During an August 21, 2001 interview, the Director of Campus Security told the review team that he did not recall making the above statement to Special Agents Koehler and Allen.

After seeing copies of incident reports for some of the incidents listed above, the Director of Campus Security offered the following explanations:

- The November 1, 1997 incident was left off the report because, since the incident was reported to the Salem Police Department, it would be included on their UCR report if valid. It was not on the SIU Annual Campus Security Report because it would then be reported twice.
- The September 18, 1999 incident was left off the report because the alleged perpetrator was later found not guilty.

With respect to the November 1, 1997 incident, it is important to note that the Director of Campus Security is a former Chief of Police for the City of Salem. As a former chief, the Director should be familiar with the Uniform Crime Reporting System requirements. Moreover, as Director of Campus Security and as the official principally responsible for Clery Act reporting, the Director should be aware that the inclusion of this incident on both reports would not result in duplicative disclosure. With regard to the September 18, 1999 incident, the Director, once again as the designated official for Clery Act reporting, should have known that statistics in the Campus Security Report represent "incidents of crimes reported" to a campus security authority or law enforcement. In our interviews, the Director did not claim to be unaware of these incidents. In addition, the review team is aware that University personnel with Clery Act reporting responsibilities attended a training session that covered these requirements. Indeed, the review team has acquired copies of the training materials from this session that clearly set forth the Act's reporting requirements.

In each of the five forcible sex offenses listed in this finding, the review team located documentation of these incidents in the files maintained by the Office of Campus Security. These files are one of the main sources of information used to compile the Campus Security Report. During the program review, several current and former employees of the University's Office of Campus Security stated that it was not possible for the Director to not be aware of incidents where an incident report was generated. Moreover, given the inconsistent and at times contradictory reasons given as to why the incidents were not included in the Campus Security Report, the review team must consider the possibility that the omission of these incidents may have resulted from the deliberate and/or willful acts of one or more University officials. The review team will make that assessment based on our review of the University's response and other available information.

Please be advised that the review team will carefully analyze the University's response to this finding of non-compliance and initiate appropriate action. Such action may include an additional referral for violations of the Campus Sexual Assault Victims' Bill of Rights Act of 1992.

**B. Under-Reporting of Incidents**

*In addition to the failure to report certain categories of crime, the University also under-reported certain incidents of crime. Due to systemic weaknesses in the record keeping used by the relevant offices, it is impossible to determine which incidents were used to arrive at the statistics in the Campus Security Report and which were omitted. During our site visit, the review team requested that the Director of Campus Security provide the specific documentation that served as the basis for all statistics as published in the Campus Security Report. The Director was unable to document a substantial audit trail for these statistics. The following chart details the under-reporting problem with respect to the crime category of burglary:*

Year	Category	Reported	Total
1997	Burglary	0*	16
1998	Burglary	5	14
1999	Burglary	11	26

*\* No burglaries were reported for 1997. This category is included here and not in Part A of this finding because some of these incidents may have included on the report as larcenies (which are not required to be reported).*

*It appears that several factors contributed to this case of under-reporting. These factors include but are not limited to the following:*

- Poorly Written and/or Incomplete Incident Reports;*
- No Systematic Compilation or Maintenance of Incident Reports and other records;*
- Inclusion of Categories of Crime, such as Larcenies, not Required by the Act;*
- Poor Training of Security Staff; and,*
- Lack of Adequate Administrative Oversight.*

*Within the crime category of burglary, many incident reports contain information that clearly meets the UCR definition of a burglary but were coded as "stolen property," "theft," "Cubes" (a reference to a specific residence hall), or were simply not coded at all. Additionally, incident reports are not stored in any routinized manner that provides for adequate custody, control, or easy reference of relevant documents. It is also clear that security officers have not been given adequate training on report writing or incident classification. Additionally, it is clear that the Director of Campus Security has not been given the administrative authority and resources necessary to develop and implement a comprehensive system of quality controls.*

*Failure to include all required statistics in the Campus Security Report deprives the campus community of important safety and security information and effectively negates the intent of the Act. Such failure may cause readers of the report to have an incomplete perspective of campus security, which may result in persons not taking all necessary steps to provide for their own safety.*

**REFERENCE:**

*Disclosure of Campus Security Policy and Campus Crime Statistics Act,  
20 USC § 1092 (f), as amended  
Section 485 (f), Higher Education Act, as amended  
34 CFR § 668.46(b), General Provision Regulations, as amended, November 1, 1999  
34 CFR § 668.46(c), General Provision Regulations, as amended, November 1, 1999  
Appendix E to Part 668 – Crime Definitions in Accordance With the Federal Bureau of  
Investigation's Uniform Crime Reporting Program*

**REQUIREMENT:**

*Federal regulations require that participating institutions compile and publish accurate and complete statistics concerning the occurrence on campus of the following incidents: criminal homicide (including murder and nonnegligent manslaughter), sex offenses (forcible and nonforcible), robbery, aggravated assault, burglary, motor vehicle theft, and arson. Institutions also must report statistics of arrests and campus disciplinary actions related to violation of certain Federal or state drug, liquor, and weapons laws. Certain policies and procedures are required to be published in the Campus Security Report as well. The Act also requires the Campus Security Report be distributed to all current students and employees and that prospective students and employees are advised of its availability. To comply with these requirements, it is absolutely essential that all incidents of crimes on campus in the aforementioned categories that are reported to a campus security authority or law enforcement agency are included in the institution's Campus Security Report.*

*In response to this finding, the University must conduct a comprehensive review of its campus security policies and procedures with specific attention to the coding of incidents, the collection and compilation of data, the production of the report, and its distribution. This assessment must be used as the basis for the development of a substantive corrective action plan. This corrective action plan must state with particularity the causes of non-compliance in past reports, the specific steps that will be taken to address these weaknesses, and all new processes and procedures. This plan must also provide for an adequate audit trail for all published statistics as well as proper custody and control of data. Additionally, the corrective action plan must also delineate all responsible parties with regard to data collection and analysis, production, publishing, and distribution of the Campus Security Report.*

*This plan must accompany the University's response to this program review report. Once the corrective action plan is reviewed and approved by the review team, the University will be required to prepare and distribute a supplemental Campus Security Report for calendar years 1997, 1998, 1999, and 2000.*

*In our Final Program Review Determination letter, the Philadelphia Case Management Team will advise the University of additional actions that will be pursued as a result of the non-compliance identified in this finding.*

## **FINAL DETERMINATION - FINDING #2**

Finding #2 of the program review report cited the University for its failure to include statistics for specific incidents reported to campus security authorities. This finding included two (2) sections. Section A detailed five (5) specific reports of sexual assault that should have been included in the campus crime report. Section B detailed specific instances of under-reporting of certain crimes with an emphasis on burglaries. In this finding, the program review team also identified various factors that it determined had contributed to the University's failures in this area. The program review team found that the University lacked essential internal and quality controls for crime reporting and data management. Additionally, the University failed to provide adequate training for its security staff. The program review team also found evidence that suggested that the University deliberately and willfully withheld or manipulated relevant data. Because of the complexity and incident-specific detail regarding each incident noted in this finding, this Final Determination will address the institution's responses separately, by incident, for each of these five (5) forcible sex offenses noted in Section A. The University's response to Section B and our Final Determinations will follow. Additional information on Section B is detailed in our Final Determination to Finding #3.

In its response, the University offered an explanation as to why in its view each of these five (5) forcible sex offenses was not included in the annual Campus Security Report.

### **A. Incidents not Reported**

#### **Forcible Sex Offense - 10/30/1997**

In the program review report, the review team stated that this incident was required to be included in the annual Campus Security Report. This initial determination was made based on our review of relevant documentation of the offense and clear indication that it was reported to a campus security authority. SIU's incident report and police and medical records in its possession, and other records support our finding. Indeed, the institution acknowledged in its response that an extensive incident report was filed on this matter, and an extensive statement was taken from the alleged victim. Moreover, the University eventually provided some type of counseling and belatedly provided a special

accommodation that permitted the victim to move off-campus and to be removed from the institution's meal plan. Based on these facts, it is clear that the institution was in fact aware that the incident had occurred.

In its response, the University asserted that there were three (3) explanations as to why this incident was omitted from the Report:

1. "SIU relied on the conclusion of the Salem Police Department when it concluded that this matter was not a sexual assault."

The review team could not find any indication that the police made such a finding; any subsequent actions by the Harrison County Prosecutor notwithstanding. More importantly, the regulations require that all reported incidents must be included in the statistics without any consideration of subsequent action by a prosecutor or a court. 34 CFR § 668.46 (c). The previous Director of Campus Security was in charge of compiling the statistics at the time, and he told the review team that he knew all reported incidents had to go on the report without regard to later police action as early as 1992.<sup>1</sup> He also claimed to be unaware of this incident when the review team interviewed him on June 13, 2001.<sup>2</sup>

2. "On her statement, the student said, 'I guess we had sex.'"

The University is responsible for including any incident of crime, no matter what words a victim or witness uses in describing an incident because students and witnesses are not responsible for the coding of incidents. Even if a student fails to use the proper terminology when reporting an incident to the relevant authorities, it does not preclude that a sexual assault occurred. From this statement, it could be concluded that the University intended to assert that if a student who was assaulted fails to use the words 'rape' or 'sexual assault,' then an institution is freed from the responsibility to include the matter in its crime statistics. Moreover, if the institution is suggesting that the victim indicated that the incident was one of consensual sex, the following excerpt from the victim's October 31, 1997 statement to the Salem Police Department makes it clear that the institution was taking the sentence out of context:

"He got on top of me and asked if I would hook him up – meaning if I would satisfy him orally. I said No! he [sic] then asked if he could take my pants off – I said no but he did it anyway. He then got on top of me and proceeded, I guess, to have sex with me. This probably occurred around 11:20 p.m....I...ran to [names deleted] room. [Name deleted] answered the door and I fell into him and told him that *I was raped* by [name deleted]"<sup>3</sup>

<sup>1</sup> Refer to Exhibit A, written statement prepared by John Folsom on September 4, 2001.

<sup>2</sup> Refer to Exhibit B, transcript of excerpt from interview with John Folsom, June 13, 2001.

<sup>3</sup> Refer to Exhibit C, copy of victim's statement to the Salem Police Department, October 31, 1997.

The review team is deeply concerned by this part of the University's response. While the University rightly states that "there was an extensive statement taken from the alleged victim on this matter," it chose to reference only a brief passage, "I guess we had sex," with no context, and notwithstanding the above excerpt, as a partial justification for its conclusion that the incident was not a sexual assault. Equally disturbing is that the Assistant Dean of Students, who also served as the Interim Director of Campus Security, and Clery Act Compliance Coordinator, referenced this same limited passage in a sworn statement taken on March 7, 2002, as justification for the decision to omit this incident from the annual Campus Security Report.

Our review of the entire file relating to this incident and an interview with the victim's mother does not support the University's after-the-fact characterization of this crime. Finally, we note the University also has supported its claim by referring to a statement by another student who suggested that the alleged victim and alleged perpetrator had a previous sexual relationship. This student does not claim to have witnessed or have any knowledge of the incident and the student's statement is irrelevant to any determination for our purposes. The review team trusts that the statement, "the alleged victim and the alleged perpetrator previously spent time together and that the time spent together was strictly sexual" is not to suggest that it was not possible for this victim to be sexually assaulted by the identified perpetrator based on some alleged prior relationship. This unsupported claim is totally irrelevant to the institution's legal obligation to include any reported incident of a criminal offence on its Campus Security Report.

3. "No intentional omission was made and the reason for omission has always remained the same. Simply stated, those charged with including this incident as a statistic in the Campus Crime Report did not know any better. Training on the Clery Act had not yet occurred."

The review team interviewed the Assistant Dean of Students on June 15, 2001. During this interview, the subject told the review team that he and his staff had heard only rumors of sexual assaults, and that when his office tried to confirm the reports, they found that either the reports were false or that no report was ever written down. He said the last sexual assault he remembered (prior to a 2000 incident) was one that occurred in 1995 or 1996.<sup>4</sup>

Subsequent to this interview, the review team learned that the sexual assault victim in the October 30, 1997 case communicated directly with the Assistant Dean immediately after the assault, and that he had reported to a Security Officer that the student had reported that she had been sexually assaulted.<sup>5</sup> When the review team asked the Assistant Dean about this inconsistency, he explained that he had attended a Clery Act seminar and, in a round-robin discussion, it was discussed that incidents where the alleged assailants were found not guilty did not have to be included in the report. Thus, the Assistant Dean of

<sup>4</sup> Refer to Exhibit D, transcript of excerpt from interview with Jerry Schearer, June 15, 2001.

<sup>5</sup> Refer to Exhibit E, copy of October 30, 1997 Incident Report written by SIU Security.

found not guilty did not have to be included in the report. Thus, the Assistant Dean of Students used this claimed statement as justification for the omission of this incident. In the University's response, the Assistant Dean, in his role as Clery Act Compliance Officer, responded that one reason for the omission was the lack of Clery Act training as of the time that the incident should have been included in the statistical disclosure.

The University's explanation makes no sense. The regulations clearly state that any reported incident has to be included in the statistics unless unfounded by the police. 34 CFR § 668.46 (c). Nothing in the regulations or any Departmental publication supports the claim that subsequent action changes the University's obligation to report. Moreover, the program review team also acquired the training materials from the session that institutional officials ultimately attended. In part, these materials state, "it is not [original emphasis] required that a crime report be made to, or be investigated by, the police or a "security officer" – or that a finding of guilt or "responsibility" be made." Thus, the University has no basis for claiming that it was not required to include this incident in its crime statistics.

In light of the above, the review team's final determination is that this incident was required to be included in the annual Campus Security Report. The institution's response does not provide any justification for not including the incident in the Campus Security Report. As such, it is also the final determination of the review team that these failures constitute a serious violation of the Clery Act and could indicate a deliberate, willful, and/or grossly negligent omission of required data from the University's annual Campus Security Report.

#### **Forcible Sex Offense - 11/01/1997**

In the program review report, the review team stated that this incident was required to be included in the University's annual Campus Security Report. This initial determination was made based on our review of relevant documentation of the offense and clear indication that it was reported to a campus security authority. Once again, a copy of the incident report and supporting documentation was found in campus security files maintained by the Office of Campus Security thereby negating any claim that the incident should not be included in the annual Campus Security Report.

In its response, the University asserted that there were four (4) explanations as to why this incident was omitted from its Report:

1. "It was left off the report because the incident was reported to the Salem Police Department and it would be included on their UCR report if valid. It was not included on the SIU Annual Campus Security Report...because it would have been reported twice."

It must be noted that the annual Campus Security Report is, first and foremost, intended to be an accurate source of consumer, safety, and security information as required by the Clery Act and the Department's regulations at 34 CFR § 668.46, of all institutions that participate in the Title IV, HEA Programs. The Uniform Crime Report (UCR), on the other hand, is a national report of crime based on information provided by municipal, county, and state law enforcement agencies. This report provides a nationwide view of crime based on the submission of statistics by law enforcement agencies throughout the country. The Federal Bureau of Investigation administers the Uniform Crime Reporting program. While the Clery Act uses some UCR incident definitions, there is no reporting relationship between UCR and the Clery Act. The institution has cited no basis for its conclusion that the UCR reporting a local law enforcement agency had any relevance to the institution's reporting obligation under the Clery Act.

As the previous Director of Campus Security pointed out during the June 13, 2001 interview, the University does not have law enforcement status and thus is not eligible to participate in the UCR program. UCR reporting by a local law enforcement agency does not satisfy or obviate the institution's campus security reporting requirements under 34 CFR § 668.46. Furthermore, the University's apparent assertion of a reasonable misunderstanding is not credible in light of our review of documents and interviews with the previous Director. Indeed, during our interviews and in written responses to our questions, the previous Director evidenced a preoccupation with the fact that his office did not have law enforcement powers and had worked to effect a change in that regard over many years. Moreover, this individual previously served as the Chief of Police for the City of Salem. As a former chief, this subject was certainly aware of UCR reporting requirements separate and apart from the University's Clery Act responsibilities.

2. "During the investigation, the alleged perpetrator stated that the semen was from 'nocturnal emissions' while they were sleeping. This was not disputed."

In its response to the program review report, the institution claimed "the parties to this incident worked things out between them with the male going to counseling." If indeed this incident was simply the result of an involuntary nocturnal emission of semen, no counseling would have been necessary. The institution did not elaborate on why this counseling was needed.

3. "He [Folsom] simply did not know how to properly report the matter in November of 1997."

Again, in an interview on August 22, 2001, the previous Director of Campus Security told the review team that he knew as early as 1992, when he was compiling the first annual Campus Security Report, that criminal incidents reported to the institution, not merely those that resulted in criminal convictions or judicial sanctions, were required to be included in the Report. He later reiterated this in a written statement dated September

4, 2001.<sup>1</sup> This is inconsistent with other statements by the University that assert that its failure to report could be traced to a lack of Clery Act training. Furthermore, the institution does not claim that it ever sought any type of guidance or secured any employee training on the Clery Act from the Act's inception to the Fall of 2000. This condition, at the same time, could be indicative of deliberate and willful efforts to under-report incidents and also supports our finding of impaired administrative capability noted in Finding #1.

4. "No charges were filed and efforts to obtain the documentation from [Salem Police Department] Chief Howell have been unsuccessful."

Based on our analysis of records maintained by the Office of Campus Security, the University would not have needed further documentation to determine that this incident should have been included in the annual Campus Security Report. The Department has clearly and consistently stated that a reported crime can only be removed from the statistics if it is formally "unfounded" by the police. Once again, institutional records obtained during the program review show that the Clery Act training attended by Assistant Dean and former Director of Campus Security in Fall 2000 clearly stated as follows:

"A crime is 'reported' when a victim or witness brings it to the attention of the local police or a campus security authority. It is not required that a crime report be made to, or be investigated by, the police or a 'security officer' - or that a finding of guilt or 'responsibility' be made." [all emphasis is in the original presentation.]

In light of the above, the review team's final determination is that this incident was required to be included in the annual Campus Security Report. The institution's response does not satisfactorily address the review team's concerns that it has received inconsistent explanations for the omission of this incident for the reasons detailed above. Furthermore, this Final Determination finds that these inconsistencies could indicate a deliberate, willful, and/or grossly negligent omission of required information from the annual Campus Security Report.

#### **Forcible Sex Offense - May 7, 1998**

In the program review report, the review team stated that this incident was required to be included in the institution's annual Campus Security Report. This initial determination was made based on our review of relevant documentation of the offense and clear evidence that it was reported to a campus security authority. Once again, a copy of the incident report and supporting documentation was found in campus security files maintained by the Office of Campus Security thereby negating any claim that a report was not made. Moreover, the University's records show that some type of counseling was provided to the victim and in so doing demonstrated that it was in fact aware that the incident had occurred.

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In its response, the institution asserted that there were three (3) explanations as to why this incident was omitted from its Report:

1. "In a statement taken by the alleged victim on the date of the alleged rape, she stated as follows: '[Name deleted] did not make me do anything that didn't want to do. I danced with [names deleted]. I didn't do anything that I didn't want to do. Nobody forced me. I danced with everybody more than I wanted to or probably should have.'"

This statement was taken at 4:30AM on May 7, 1998, while the victim was still clearly intoxicated. Indeed, the victim was so intoxicated that she had no recollection of giving this statement until the following day when a counselor employed by the University made her aware of the statement. When she found out the circumstances under which the statement was taken, she expressed anger at institutional officials for the manner in which this incident was handled. In an e-mail sent by the Dean of Students to the past President, the Dean stated, "[name deleted] is not pleased with the school because we took a statement from her when she was intoxicated and we did not offer to take her to the police station that night."<sup>6</sup> There can be no question that a statement taken under these circumstances does not provide sufficient grounds to determine that this incident need not be included on the Report. Given the fact that the University knew, all the way up to the President, that the victim was angered over the way this statement was taken, it is disturbing that it is used here to suggest that no sexual assault occurred.

2. "Security was called, not because of a rape, but because of a broken window."

Indeed, a Security Officer responded to a call from the Resident Director (RD) regarding vandalism at the Cubes (residence hall). The May 7, 1998 incident report indicates that while the Security Officer was talking to the RD, he heard glass breaking, then discovered the assailant "standing in the hallway putting his pants on" and the victim sitting on the bed with no pants on." In the same report, the Security Officer also stated, "I then asked [name deleted] what was going on? He told me that he found [assailant name deleted] on top of [victim's name deleted] having sex."<sup>7</sup>

3. "Neither Security nor the alleged victim reported this as a sexual assault. Given the alleged victim's statement, this was not a forcible sex offense, but was consensual sex, was never reported as anything else and should, therefore, not have been reported as part of the campus statistics."

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<sup>6</sup> Refer to Exhibit F, copy of June 10, 1998 e-mail correspondence between President Ronald Ohl and Catherine Phee, Dean of Students.

<sup>7</sup> Refer to Exhibit G, copy of May 7, 1998 incident report prepared by the SIU Campus Security Office.

In a letter written by the student to the University President shortly after the sexual assault occurred, the victim wrote:

"I am sure you were informed of the recent sexual assault that took place on campus, in which I was involved. I wanted to discuss this incident with the school because I felt that the school did not fulfill its responsibility to me when the incident occurred. There were many factors involved, but the ultimate result was no immediate police involvement."<sup>8</sup>

Thus, this incident was reported as a sexual assault to the President, who, in an e-mail sent on June 10, 1998, indicated that he sent a copy of this letter to the Dean.<sup>6</sup> The institution's assertion in its response that this incident was never reported as anything other than consensual sex is troublesome because documentation generated at the University shows that the President, Dean, Assistant Dean, and Office of Campus Security all knew about the incident. In her letter, the victim wrote, "I am writing to inform you of a meeting that I held last week with [the Dean] and [the Assistant Dean]"<sup>8</sup>. Finally, in a sworn affidavit taken on March 7, 2002, the Assistant Dean stated: "...Neither security nor the alleged victim reported this as a sexual assault." The brief passage from the victim's initial statement and the above quote from the Assistant Dean's affidavit present an inaccurate and incomplete view of this case. Our determination is based on an examination of all available records in the possession of the University.

In characterizing the incident, the University relied exclusively on a small passage of the victim's initial statement taken while she was intoxicated, exhausted, and distraught as a result of the traumatic events of May 7, 1998. Our concern was heightened as the result of an interview with the victim conducted during our research. Notwithstanding anything in her initial statement, the victim clearly communicated to University officials and the local police that she was sexually assaulted on May 7, 1998.

Moreover, if the University had maintained better communications with the City of Salem Police Department then it would have known that the student reported this matter on August 19, 1998. In fact, the "Salem City Police Department Daily Activity Report" for August 19, 1998 states in part "Request to John Folsom ref [name deleted], claims she was raped & nothing was done." Little could be done to pursue a criminal investigation or prosecution due to the passage of time. It is generally accepted that such reporting delays by victims are common. Most importantly, none of the University's claims outlined above are relevant to the essential point that the incident should have been included in the statistics.

In light of the above, the review team's final determination is that this incident was required to be included in the annual Campus Security Report. The institution's response does not satisfactorily address the review team's concerns that it has received inconsistent explanations for the omission of this incident for reasons detailed above. Therefore, it is

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<sup>8</sup> Refer to Exhibit H, copy of student's letter to SIU President Ronald Ohl.

also the final determination of the review team that these inconsistencies constitute a serious violation of the Clery Act and could indicate a deliberate, willful, and/or grossly negligent omission of required information from the annual Campus Security Report.

### **Forcible Sex Offense - September 2, 1998**

In the program review report, the review team stated that this incident was required to be included in the institution's annual Campus Security Report. This initial determination was made based on our review of relevant documentation of the offense and clear evidence that it was reported to a campus security authority. Once again, a copy of the incident report and supporting documentation was found in campus security files maintained by the Office of Campus Security thereby negating any claim that the incident was not supported by adequate information. Indeed, events related to this incident, although identified by SIU as sexual harassment, became the basis for a campus judicial proceeding that culminated in a report written by the University's Provost.

In its response, the University asserted that there were two (2) explanations as to why this incident was omitted from its Report:

1. "She reported the incident to SIU authorities as sexual harassment and disturbing the peace, not as a sexual assault."

Per the record, the victim never described this incident as sexual harassment. The coding of this incident as sexual harassment comes directly from the University's conduct code. In the statement the victim wrote on September 8, 1998, she stated,

"...he started caressing me and I was telling him to stop and he would still not obey. He kept on forcing himself on me in a sexual way...He still wouldn't stop and I'm very scared. What bothers [me] is that I kept saying no..."

Once again, it must be pointed out that students are not responsible for coding incident reports. It is an institution's responsibility to apply UCR definitions to all incident reports to determine what needs to be included in the annual Campus Security Report.

2. "The violation was handled appropriately under the policy and no further incidents by this perpetrator occurred."

The University's soccer coach, despite his lack of official capacity to do so, ordered the two students to come to his office and settle the matter there. The victim told institutional officials this procedure made her feel uncomfortable and made her feel she was responsible for the assault.

In a memo secured by the review team to the Dean of Students and the Assistant Dean of Students dated September 18, 1998, a University counselor expressed the following concerns:

"I am writing to report on my meeting with [name deleted] today... [Name deleted] expressed anger and frustration at the way her incident report was handled, and a great deal of dissatisfaction with the University... I believe that [the student's] rights were violated in several instances. To that end, I am writing to document my concerns over the way [the student's] complaint was handled... Although this complaint has been treated as sexual harassment, because there was physical contact, it should have been handled as an assault or an attempted assault... The procedure for reporting a sexual assault was not followed."<sup>9</sup>

The University's counselor's memo also refers to the common complaint that the University tended to take a "blame the victim" approach to sexual assault cases. To this point, the counselor stated

"the Provost's recommendation that [the victim] "take counseling in regards to what is sexual harassment and the kinds of behavior that encourage this behavior" appears to substantiate her feeling that she is being blamed and/or punished for what happened.

...The effect of this type of response is to punish the victim for reporting. The overall effect of such incidents is to reduce the number of students willing to report such incidents which, of course, makes them more likely to occur.

Many students I have spoken with have shared with me their belief that the University is not interested in protecting the rights of students who have been assaulted. There is widespread sentiment among students that, particularly in the case where the alleged assailant is an athlete, sexual assaults and attempted sexual assaults go unpunished on our campus. Women students have told me that they (and their friends) do not report such incidents because they do not feel that they will get justice, but they do fear that they will be further victimized. I do not think this incident or its handling have done anything to alter these perception[s] on the part of students."

Moreover, in an investigative memo acquired by the review team, the Dean of Student wrote in part

"a very intoxicated [name deleted] pushed her aside...grabbed her, pulled her on to the bed, and began sexually fondling her...she fled back to her room and locked herself in...she spent the day in her room crying. That evening, she called her parents and asked to come home, that she was afraid this boy was going to rape her."

By any standard, this incident goes beyond the boundaries of sexual harassment. The level of physical contact and the fear and apprehension created place this incident in the assault category. More appropriately, it seems that this incident fits squarely into the crime classification of forcible fondling as defined at 34 CFR, § 668, Subpart D, Appendix A. Forcible fondling is defined as "the touching of the private body parts of another person for the purpose of sexual gratification forcibly, and/or against the person's will."

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<sup>9</sup> Refer to Exhibit I, copy of September 18, 1998 memorandum from SIU Counselor Dee Quaranto to Dean of Students Jonathan Jobe and Director of Residence Life Jerry Schearer.

In addition to our review of records, the review team also conducted multiple interviews with the victim and her mother. Their current recollections generally were consistent with written records generated at the time of the incident.

In light of the above, the review team's final determination is that this incident was required to be included in the Annual Campus Security Report. The institution's response does not satisfactorily address the review team's concerns that it has received inconsistent explanations for the omission of this incident, for reasons detailed above. Therefore, it is also the final determination of the review team that these inconsistencies constitute a serious violation of the Clery Act and could indicate a deliberate, willful, and/or grossly negligent omission of required information from the annual Campus Security Report.

### **Forcible Sex Offense - September 18, 1999**

In the program review report, the review team stated that this incident was required to be included in the institution's annual Campus Security Report. This initial determination was made based on our review of relevant documentation of the offense and clear evidence that it was reported to a campus security authority. Once again, a copy of the incident report and supporting documentation was found in campus security files maintained by the Office of Campus Security that clearly indicate that the institution was in fact aware that the incident had occurred.

In response to this incident, the institution once again offered the following explanation in support of its decision to omit this incident from the report:

1. "The Director of Campus Security had not yet had any training on the Clery Act at that time and there is no evidence to suggest that the omission was either deliberate or willful. He simply did not know any better."

As mentioned previously, the previous Director of Campus Security explained to the review team that he knew as early as 1992, when he compiled the institution's first annual Campus Security Report, that all incidents reported to local law enforcement or campus security authorities needed to be included in the Report. He also claimed to have no knowledge of this incident when the review team interviewed him on June 13, 2001. However, the program review team is not persuaded that the exclusion of this incident or any other resulted from a unilateral decision of the previous Director of Campus Security.

In item #17A, the University's incident report includes a clear notation stating, "She was sexual[ly] assaulted." The record also indicates that the victim was taken to an area hospital shortly after the police arrived and started their investigation. Subsequent to the on-site program review, Special Agent George Blissman, of the U.S. Department of

Education's Office of the Inspector General conducted a telephone interview with the victim.

Based on his research and the information above, the review team's final determination is that this incident was required to be included in the annual Campus Security Report. The institution's response does not satisfactorily address the review team's concerns that it has received inconsistent explanations for the omission of this incident for reasons detailed above. Therefore, it is also our final determination of the review team that these inconsistencies constitute a serious violation of the Clery Act, and could indicate a deliberate, willful, and/or grossly negligent omission of required information from the annual Campus Security Report.

The program review team takes note of the University's proposed reforms detailed in its response to part A of this finding as well as the revised policies and procedures presented in the "Clery Act Compliance Manual." If fully implemented, the changes detailed therein should significantly improve campus security operations and Clery Act compliance going forward. However, as noted throughout, these proposed improvements do not diminish the seriousness of the violations identified throughout the program review.

**As a result of this final determination for this finding, the Philadelphia Case Management Team has referred this matter to the Administrative Actions and Appeals Division with a recommendation for a fine as authorized by the Clery Act and 34 CFR Part 668, Subpart G.**

**This referral also includes a recommendation for the imposition of additional civil penalties as a result of the University's failure to report these five (5) specific incidents and to otherwise comply with the requirements of §485(f) of the HEA, 20 USC Part 1092 (f)(8) and 34 CFR § 668.46 (b)(11) with regard to the five (5) specific cases detailed in this finding.**

**The goal of these statutory and regulatory provisions is to provide information on available services and accommodations and to help prevent the re-victimization of sexual assault survivors by 1) ensuring equal treatment in campus judicial proceedings; 2) requiring access to information regarding judicial outcomes and sanctions; 3) informing survivors of their legal rights including the right to contact local law enforcement agencies; 4) providing information on counseling options, and 5) mandating notification to survivors of their options for changes to their academic and living arrangements.**

**In each of the five (5) specific incidents detailed in this finding, the University failed to comply with one or more of the five requirements outlined in the previous paragraph.**

## **B. Under-Reporting of Incidents**

In Finding #2, Section B, the University was cited for its failure to properly code the incidents listed on Appendix A of the program review report. As a result of miscoding these incidents, the statistical disclosures in the Campus Security Reports were not accurate or complete. The essence of Finding #2, Section B, is the resultant under-reporting whereas the essence of Finding #3 is the miscoding itself. The finding also noted a number of conditions that contributed to this violation.

In its response, the University disputed our reclassifications with regard to 15 specific incidents. In several of these cases, the review team has determined that the University's assessment is inaccurate. In other cases, the review team concedes that differing interpretations are possible. This ambiguity is a direct result of the exceedingly poor quality of documentation generated and maintained by the Office of Campus Security. In all material respects, the Office of Campus Security's record keeping, coordination, analysis, and quality control apparatus, to the extent that they existed at all, were completely ineffective during the years under review. The University's responses did not specifically address the causes or the impact of these failures on Section B of this violation.

However, in light of additional information contained in the University's response, the review team has determined that a very small number of these 15 incidents were not required to be included in the University's Campus Security Reports. However, as detailed on in our Final Determination to Finding #3, the essence of this violation is that the University substantially misrepresented its crime statistics. Indeed, the University only specifically disputed 15 of 76 incidents or 19.7% of those identified on Appendix A of the program review report. For this reason, it is not necessary to elaborate further on these disputed incidents. For these reasons, this finding is sustained. It is also the final determination of the review team that these violations constitute a serious violation of the Clery Act and could indicate a deliberate, willful, and/or grossly negligent omission of required information from the annual Campus Security Report.

The program review team takes note of the University's proposed reforms detailed in its response and its commitment that "changes will be made" and that SIU "does intend to develop and implement a comprehensive system of quality controls and will commit to give the Director of Campus Security the administrative authority necessary to be sure that correct coding and reporting of incidents occurs." We have also reviewed the improved policies and procedures detailed in the "Clery Act Compliance Manual." If fully implemented, the changes detailed therein should significantly improve campus security operations and Clery Act compliance going forward.

To fully satisfy this requirement, the University must prepare and distribute, in the prescribed manner, an accurate and complete supplemental Campus Security Report for calendar years 1999, 2000, 2001, and 2002. This requirement must be accomplished within 90 days and a copy must be forwarded to this office within 10 days of its distribution to the campus community.

As a result of this violation, the Philadelphia Case Management Team has referred this matter to the Office of Administrative Actions and Appeals with a recommendation for a formal fine as authorized by the Clery Act as well as 34 CFR Part 668, Subpart G.

**FINDING # 3:**      **MISCODING OF SPECIFIC INCIDENTS**

*The University did not properly code the incidents listed on Appendix A. As a result, the statistics for certain crime categories were not accurately disclosed in the University's Campus Security Report. The causes and effects of this finding relate closely to those identified in finding # 2B. In many cases, incident reports were not filed out in an accurate and complete manner. In other cases, incident reports were coded with little or no adherence to the crime definitions set forth in the Uniform Crime Reporting (UCR) System. And in still other cases, the incidents were not coded at all. The task of writing and reviewing incident reports is often delegated to students or employees with no training. Many of these reports are written in the form of first-hand or eyewitness accounts, with no coding or addenda by the Campus Security Office. This is true even though the stated policy of the Office of Campus Security is that an actual incident report should be generated for all cases. Moreover, the review team was forced to make an independent determination of which incident reports were used to compile the statistics in the Annual Campus Security Report. The institution was unable to demonstrate how it calculated the report's statistics.*

*Because the University's approach to compiling Campus Security Reports relies so heavily on the quality of hardcopy, hand-written incident reports, it is essential that these records be completed, maintained, and reviewed with the utmost care. Based on our review, it is clear that this has not been happening in this case. This failure led to inaccurate and incomplete data being disseminated to the campus community in Campus Security Reports.*

*This condition deprives the campus community of important safety and security information and may inhibit the reader's ability to make informed security decisions, and thus negates the intent of the Act itself.*

**REFERENCE:**

*Disclosure of Campus Security Policy and Campus Crime Statistics Act,  
20 USC § 1092 (f), as amended  
Section 485 (f), Higher Education Act, as amended  
34 CFR § 668.46(b), General Provision Regulations, as amended, November 1, 1999  
34 CFR § 668.46(c), General Provision Regulations, as amended, November 1, 1999*

**REQUIREMENT:**

*Federal regulations require that participating institutions compile and publish accurate and complete statistics concerning the occurrence on campus of the following incidents: murder, manslaughter, sex offenses, robbery, aggravated assault, burglary, motor vehicle theft, and arson. Statistical disclosure of arrests and disciplinary actions related to violation of Federal or state drug, liquor, and weapons laws are also required. Certain policies and procedures are required to be published in the Campus Security Report as well. The Act also requires the Campus Security Report be distributed to all current students and employees and that prospective students and employees are advised of its availability. To comply with these requirements, it is absolutely essential that incident reports are properly coded according to the Uniform Crime Reporting (UCR) Systems definitions.*

*In response to this finding, the University must conduct a comprehensive review of campus security policies and procedures and develop a substantive corrective action plan in the manner described in the requirement of finding #2.*

*In our Final Program Review Determination letter, the Philadelphia Case Management Team will advise the University of additional actions that will be pursued as a result of the non-compliance identified in this finding.*

**FINAL DETERMINATION – FINDING # 3**

*Finding #3 of the program review report cited the University for its failure to properly code incidents in accordance with definitions set forth in the UCR System. Several serious and persistent causes were also noted including poor training, overly decentralized incident report production, weak internal and quality controls, insufficient managerial review, and inadequate maintenance and custody of incident reports and supporting documentation. As a result, the University published Campus Security Reports with significant material errors and omissions. Crime statistics in many categories were significantly underreported in the University's Campus Security Reports at least in part due to the coding errors and/or improprieties. As noted in our program review report, it is not possible to determine the exact scope of underreporting and/or miscoding of criminal incidents because of the rampant mismanagement involved in the record keeping process at the University. Nothing provided in the University's response or in our subsequent research has changed this initial finding.*

In its response, the University offered explanations as to why 15 of the incidents identified on Appendix A should not have been included in Finding #3. The University also took issue with what it characterized as the "default methodology" and "liberal construction" utilized by the review team during the reclassification process. The University's response also disputed our assertion that the Director of Campus Security did not have the requisite administrative authority and resources to properly implement a comprehensive system of internal controls. An Affidavit from the Assistant Dean of Students also accompanied the response. In this Affidavit, the Assistant Dean attested to his education and professional experience and training, his appointment as Interim Director of Campus Security as well as his official position on certain incidents and issues detailed in our program review report. The "Clery Act Compliance Manual" also included new policies and procedures on coding and reporting standards.

After reviewing the University's response and further review of available records, we have determined that some of the 15 disputed incidents could be classified differently for purposes of campus crime reporting. However, it also must be noted that the reclassification process, an already complex and time-consuming enterprise, was complicated by the extremely poor quality of records available from the institution. As noted in the program review report, many incident reports did not contain any clear indication of the time, place, or manner of the incident. The review team did not include other potential violations in its report precisely due to a lack of reliable data upon which to base a decision. Indeed, as to the poor quality of records, the University conceded in their response that, "the report writing was not always adequate to be able to substantiate the crime." This point directly answers the University's assertion that some "default methodology" was employed by the review team. There was none.

An institution is required to generate and maintain accurate, complete, and well-organized records in connection with its campus crime reporting responsibilities. A failure to do so never creates a "safe harbor" from appropriate enforcement actions. It appears, in this case, that the University consistently tried to find a basis for excluding reported crimes in its campus crime reports, thereby employing a "default" methodology of its own. This strategy is well evidenced by this violation as well as Findings #2, #4, and #5. This approach resulted in the University filing inaccurate campus crime reports with the Department and in disseminating inaccurate and misleading information to its students, employees, and other interested parties. We note that the University's adoption and continued adherence to this approach is in conflict with the advice of its own campus security consultant as received by the University verbally and in print.

The consultant's materials state in part, "a crime is reported" when a victim or witness brings it to the attention of the local police or a campus security authority." These materials also admonish that schools should, "be prepared to explain any decision to classify a crime as unfounded." (See slide entitled "Crime Statistic Specifics"). Although the consultant's materials do not constitute binding guidance, the materials are referenced

here because the University claimed to be relying upon them. Based on our analysis, it is clear that the consultant's guidance was never integrated into the University's campus security and crime reporting policies and procedures.

The Clery Act and the Department's regulations require institutions to publish statistics for all reported crimes in certain categories. 34 CFR § 668.46 (c). The standard for Clery Act disclosure is separate and distinct from the standard required for filing criminal charges or pursuing prosecution. In all cases, the University's decisions in this regard must be guided by the fact that the Clery Act is first and foremost a means of providing consumer information. Accurate and complete information helps to ensure that the campus community is fully informed about crime and security issues and allows them to make informed provisions for their own safety.

In the Final Determination for Finding #1 and the Appendices, we have addressed the institution's impaired administrative capability. See these sections for additional information. Here, we simply note that the general failure of the University's crime reporting and Clery Act compliance apparatus coupled with the lack of organizational support for the Office of Campus Security clearly contributed to the violations identified in this finding.

Notwithstanding any of the preceding, the essential point of this Final Determination is that this violation can be and is sustained on the basis of the 61 violations on Appendix A that are not in dispute.

The program review team takes note of the revised policies and procedures detailed in the affidavit and the Manual. If fully implemented, these reforms to the University's campus security operation should help facilitate better incident report coding and better custody and control of incident reports and supporting documentation going forward. However, these new policies are short on specificity and will require additional and consistent modification to bring about needed reforms.

As noted throughout, these proposed improvements do not diminish the seriousness of the violations identified throughout the program review.

As a result of the final determination for this finding, the Philadelphia Case Management Team has referred this matter to the Administrative Actions and Appeals Division with a recommendation for a fine as authorized by the Clery Act as well as 34 CFR Part 668, Subpart G.

This referral also includes a recommendation for the imposition of additional civil penalties as a result of the University's failure to comply with the requirements of the HEA, 20 USC Part 1092 and Federal regulations at 34 CFR § 668.46.

**FINDING #4: FAILURE TO COORDINATE INFORMATION FROM ALL SOURCES**

*For the years covered by the program review, Salem International University did not gather statistics for incidents of reportable crimes from certain institutional and non-institutional sources in a manner sufficient to produce its Campus Security Report in accordance with the Act. While the review team is still evaluating the possibility that certain errors and omissions noted in this finding and elsewhere in this program review report were the result of deliberate and/or willful acts, it is clear that the institution's procedures for collecting, documenting, compiling, and publishing the Campus Security Report are inadequate.*

*The effect of this condition is that the institution has failed to comply with significant provisions of the Act. Based on a thorough analysis of the institution's Campus Security Reports and a series of interviews conducted with relevant parties, the review team has determined that the institution's failure to coordinate information from all required sources has resulted in substantial miscoding and underreporting of incident statistics. Details of this condition are as follows:*

**A. The Miscoding of Specific Incidents**

*The review team has determined that the incidents listed on Appendix A were miscoded and therefore, may not have been included in the institution's Campus Security Reports. Because institutional officials cannot state with particularity which incident reports support specific statistics, the full impact of miscoding on underreporting cannot be ascertained. Based on our analysis, the institution's failure to coordinate with internal and external sources as well as the lack of a formal record keeping, incident classification, and Campus Security Report methodology contributed to this condition.*

*Although the issues of miscoding and under-reporting are noted elsewhere, it cannot be ignored that the University's failure to coordinate with and rely upon local law enforcement authorities contributed to the violations noted in this program review report and to the general inefficiency and ineffectiveness of campus security operations. A training session, held at West Virginia University and attended by the Director of Campus Security and the Assistant Dean of Students emphasized the importance of coordinating information with local law enforcement and "defer[ing] to the judgment of law enforcement professionals" when reporting questions arise.*

**B. Omission of Arrest and Judicial Board Referral Data**

*The review team has determined that Salem International University did not include required arrest data in its Campus Security Reports. This determination is based on information developed by the program review through document analysis and interviews. On June 14, 2001, the review team interviewed the Chief of Police and the City Manager*

for the City of Salem, WV. Based on these interviews and a cursory review of City of Salem Police Department records, the review team has determined that the institution has neither requested information from nor provided information to local law enforcement on a regular basis. In recent years, relations between the University and the City have been tenuous at best. As a result, official communication between these organizations occurs very infrequently. As mentioned in the Background section of this program review report, City officials believe that the University questions their right to conduct investigations or other activities on the campus. This position seems to be validated by an internal memorandum that was acquired by the review team. The June 5, 1995 memorandum from Mr. Terry Miller, former Director of Personnel, states in part,

*“Effective immediately – 6/5/95 – If anyone calls or asks in person for information regarding any student, staff, or faculty member of the Salem-Teikyo University community you are not\* allowed to give out any information. You are to tell them that they will have to file a formal, written request with Terry Miller. This request must contain the information they are seeking and the reason they need this information. This order is per Terry Miller and applies to absolutely everyone, including Salem PD. If any information is released, it could result in termination of the person who released the information.” [\* Original Emphasis]*

It is important to note that this memorandum predates the tenure of the current Chief of Police, whom the past President of the University blames for the lack of effective communication. Several current and former University officials have substantially corroborated the assertions of the City officials referenced above. Furthermore, several members of the security staff have affirmed that they are not permitted to contact law enforcement without prior permission and that information is not routinely shared or solicited from the Salem Police Department. In fact, the Director of Campus Security stated in a June 13, 2001 interview that the only sources for statistics are incident reports from the Offices of Campus Security and Student Affairs. This is a concern for the institution's campus security operation in general and for compliance with the Act in particular for the following reasons:

- 1) Campus Security personnel have not received adequate training and are burdened with a variety of non-security-related tasks.
- 2) The Office of Campus Security does not have the legal authority or resources to conduct adequate follow-up investigations or otherwise provide appropriate recourse for victims.
- 3) The Office of Campus Security does not have the authority to seize and maintain contraband, evidence, or other instrumentality of crime.
- 4) Campus Security personnel do not have the power to arrest, cite, or detain criminal suspects.

- 5) *The Office of Campus Security is not a law enforcement agency and therefore is not required or permitted to report statistics under the Uniform Crime Reporting System (UCR)/National Incident-Based Reporting System (NIBRS).*

*The University also failed to compile and publish accurate and complete statistics regarding persons referred to the campus judicial system as a result of violations of Federal and State laws and University policies. The following chart illustrates reporting errors identified by comparing the University's referral statistics to a sample of incident reports and judicial files that resulted in or should have resulted in a disciplinary response based on available information:*

	<i>SIU</i>	<i>Review Team</i>	<i>SIU</i>	<i>Review Team</i>
	<i>0</i>	<i>19</i>	<i>1</i>	<i>13</i>
	<i>0</i>	<i>3</i>	<i>2</i>	<i>6</i>
	<i>0</i>	<i>0</i>	<i>2</i>	<i>3</i>
	<i>0</i>	<i>Not a Required Category</i>	<i>3</i>	<i>Not a Required Category</i>

*In response to the high volume of cases heard by judicial boards at institutions across the Nation, the 1998 Amendments to the Higher Education Act added judicial referrals as a required reporting category. Although these statistics were not required for previous years, the University has chosen to include them in their report. Therefore, the review team must apply the same level of scrutiny to these disclosures as would be applied to required reporting under the 1998 Amendments even for prior years. This approach is necessary in light of the Act's intent to provide important consumer information of the highest possible quality.*

### **C. Omission of Incidents Reported to Health Services**

*During the on-site program review, the review team conducted extensive interviews with the Director of Campus Security and the Assistant Dean of Students. These two officials were principally responsible for producing the Campus Security Report. Both officials stated that the only sources of data used for the compilation are incident reports from the Office of Campus Security and the Office of Student Affairs. When specifically asked if incident statistics are received from the Office of Health Services or from any counselors, both respondents stated that they were not. The respondents also stated that this was true even for the all years prior to the 1998 Amendments.*

*For 1997 and 1998, institutional officials with significant counseling responsibilities were required to report statistics to be included in the Campus Security Report. However, these officials were not required to provide any other information to law enforcement or institutional officials. Under the 1998 Amendments to the Higher Education Act, professional and pastoral counselors are exempt from all reporting requirements. However, institutions are encouraged to voluntarily implement procedures that will result in the inclusion of these statistics in their Campus Security Reports.*

*The Director of Health Services was interviewed during the on-site program review. A follow-up letter was also sent to the Office of Health Services. In her response, the Director stated that, "because this office did not keep separate files of incident reports or other matters pertinent to the reporting of crime statistics during the three (3) calendar years being examined, I have been unable to locate any documents responsive to your request." Her letter also states that, "both my predecessor and I had the practice of referring any individual who came to our office for assistance to the school counselor for follow-up treatment. All such visits that would have been pertinent to the campus security reports would have been shared with either Security or the Dean of Students. The usual way that this office receives referrals is from Security."*

*It is important to note that information developed by the review team refutes these assertions in several respects. Firstly, we are aware that certain documents from the Office of Health Services are currently stored in the attic of the Administration Building. During our interview with the Director of Health Services, we were also advised that health records for 1998 to the present are currently stored in the office. However, no documents were made available for our review. Moreover, a member of the Campus Security staff has stated that little or no information is provided to them by Health Services. As noted previously, the Director of Health Services stated in an interview that no data has ever been solicited or volunteered for inclusion in the Campus Security Report.*

*Additionally, during interviews with certain sexual assault victims and their families, the review team learned that counseling and victim support services were not routinely provided to survivors. Indeed, several interviewees including former employees stated that students are actively discouraged from reporting crimes to law enforcement or*

*seeking relief through the campus judicial system. These individuals also stated that complainants and their advocates often met with threats, reprisals, or both. It should also be noted that the position of School Counselor is currently vacant and has only been sporadically filled for the years under review. Based on information developed by the review team, it appears that at least 3 or 4 sexual assaults are reported to institutional officials each year.*

*Failure to coordinate information from all relevant sources and to compile, publish, and distribute accurate and complete crime data deprives the campus community of important security information.*

**REFERENCE:**

*Disclosure of Campus Security Policy and Campus Crime Statistics Act,  
20 USC § 1092(f), as amended  
Section 485 (f), Higher Education Act, as amended,  
34 CFR § 668.46(c)(9), General Provision Regulations, as amended, November 1, 1999*

**REQUIREMENT:**

*Federal regulations require that participating institutions compile and publish accurate and complete statistics concerning the occurrence on campus of the following incidents: murder, manslaughter, sex offenses, robbery, aggravated assault, burglary, motor vehicle theft, and arson. Statistical disclosure of arrests and disciplinary actions related to violation of Federal or state drug, liquor, and weapons laws are also required. The Act also requires that certain policies and procedures be published in the Campus Security Report as well. Institutions also must distribute the report to all current students and employees and notify prospective students and employees of its availability. To comply with these requirements, it is absolutely essential that institutions have a mechanism to coordinate information and statistics from all sources to include institutional officials and outside agencies.*

*In response to this finding, the University must conduct a comprehensive review of campus security policies and procedures and develop a substantive corrective action plan in the manner described in the requirement of finding #2. As part of the corrective action plan, the institution is required to work local law enforcement agencies to ensure that all statistics published in the Campus Security Report are accurate and complete. The corrective action plan must also provide for an information sharing and feedback mechanism to ensure that information is requested and received from all relevant University offices.*

*In our Final Program Review Determination letter, the Philadelphia Case Management Team will advise the University of any additional actions that will be pursued as a result of the non-compliance identified in this finding.*

#### **FINAL DETERMINATION – FINDING # 4**

Finding #4 of the program review report cited the University for its failure to properly gather statistics of incidents of reportable crimes from all relevant institutional and non-institutional sources for inclusion in its annual Campus Security Report as required by Federal regulations. This violation was caused by: 1) the miscoding of specific incidents; 2) omissions of incidents reported to the Office of Health Services; and, most importantly 3) omission of arrest and judicial board referral data. This finding also noted that the University had not solicited crime statistic information from, nor provided information to the City of Salem Police Department for the years under review. The finding also detailed the basis for our conclusion that senior University officials took specific actions to limit the ability of local law enforcement to gather information and conduct investigations. The strict limitations placed on the Office of Campus Security's ability to contact outside law enforcement were also noted. Finally, a number of additional problems caused by this condition were summarized.

In its official response, the University did not comment further on the miscoding of crimes except to refer to their response to findings #2B and #3. On the specific issue of coordination, the University conceded that the relationship between SIU and certain municipal officials has been problematic. The response also noted that this condition contributed to poor communication and information sharing. The University also asserted that because, "the relationship requires an equal commitment by both parties...the blame goes both ways." With regard to the University's policies on contacting outside law enforcement, the University asserted that these policies were developed to comply with certain Federal and state confidentiality and privacy statutes.

On the topic of relevant data in the custody and/or control of the Office of Health Services, the University's response stated that the Director of Health Services did not provide data for our review because all information was already in the possession of the Office of Campus Security, was not relevant to our inquiry, or was protected from disclosure by various confidentiality and privacy statutes. The University also took issue with our reliance on assertions made by several interviewees that they were discouraged from reporting crimes or seeking their redress through the criminal justice or campus judicial processes.

Finally, the University's response mentioned certain initiatives aimed at improved "town and gown" relations and expresses a willingness to work collaboratively with the City of Salem going forward. The "Clery Act Compliance Manual" also contains revised policies, procedures, and new forms for requesting and utilizing crime statistics from appropriate sources for Clery Act compliance purposes.

We have already commented on the miscoding of certain incidents in the Final Determinations under findings #2B and #3. However, we must point out that the University's reliance on the practice of "defer[ing] to the judgment of law enforcement"

on complex matters of coding, investigation, or other purposes referenced in findings #2B and #3 noted throughout its response simply never occurred as documented in finding #4. Based on our in-depth review, the program review team was unable to find any examples where the University shared information, sought guidance, turned over evidence in a timely manner, or assisted in criminal investigations in any official way except where the institution was the actual victim during the years under review.

As to the tenuous relationship between the University and the municipality, we note that there may have been communication and coordination problems on both sides especially in recent years. However, it is the University's obligation to comply with the Clery Act and the Department's regulations and not the municipalities. Our review of the record strongly supports the conclusion that the University did not meet the regulatory standard that requires a good faith effort to obtain required information from the municipality. The University failed to "coordinate information from all sources" and to satisfy the requirement of 34 CFR § 668.46 (c)(9) that, "an institution must make a reasonable, good faith effort to obtain the required statistics." In interviews conducted by the review team, the former Director of Campus Security and the Assistant Dean of Students stated that no statistics were requested from any external agency or from any internal offices other than their own offices.

During interviews, current and former campus security staff members confirmed that they were repeatedly told that unapproved contacts with police agencies would result in termination. The June 5, 1995 memo from former Personnel Director Terry Miller quoted above says nothing about compliance with confidentiality or privacy statutes and there is no evidence that the University's failure to collect information was based on concerns about maintaining student confidentiality or privacy. Our analysis also indicates that this policy that purported to be institution-wide seems to have principally been enforced against the Office of Campus Security. For example, the Housing and Residential Life Office was not typically required to seek permission before contacting local law enforcement agencies.

In response to our request for information, the previous Director of Campus Security wrote the following in a September 4, 2001 letter:

"Dr. Ohl always wanted to be contacted anytime the police were on campus and to know for what reason. He also wanted to know if other people...had been involved or contacted. If security called the police, he wanted to know which officer and why. ...All the past and present security officers know how Dr. Ohl felt about police on campus and were hesitant in calling for fear that their jobs would be in jeopardy."

...The Salem Police Department also knows that Dr. Ohl doesn't want police on campus. When I was Chief of Police from 1983-1989, to Chiefs Meathrell, Carder, Lejune, Howell, and their officers this has been a known fact. Many times during the tenures of myself and C. Meathrell as Chief, students would come down to sign complaints or report thefts. Incident reports would be filled out and investigations started only to have the students return a day or two later to say they wanted to drop the charges. While I was not at the College then, we felt that they were asked to withdraw charges."

While we are aware that Dr. Ohl is no longer serving as President, he presided over the years under review and several of his senior leadership team continued in the University's employ until recently. A few still remain including the Assistant Dean of Students who took over as the Interim Director of Campus Security after the previous Director was terminated on March 5, 2002. A permanent Director was hired in January 2003. However, there does not appear to have been any significant change in the University's insular approach to the gathering, analysis, and dissemination of crime-related information.

On the topic of omissions by the Office of Health Services, the program review team is not persuaded by the University's responses. There are several points here. First, while the University claimed that Health Services did not have any relevant records, we determined that some relevant Health Service's records did exist including those stored in the attic of the Administration Building. In an October 10, 2001 letter, we requested access to:

"Any and all campus security-related records currently maintained or controlled by the Office of Health Services for calendar years 1997, 1998, and 1999. This request should be interpreted broadly to include any incident report, judicial, disciplinary, or other record, report, memoranda, or note that may be relevant to our inquiry into the accuracy and completeness of crime statistics as enumerated in SIU's annual campus security reports. This request applies to all records for current and former students, faculty, and staff for calendar years 1997, 1998, and 1999. We are especially interested in any record pertaining to sex offences, aggravated assaults, alcohol, drug, and/or weapons issues."

Our letter clearly spelled out the nature and extent of the request. Despite the broad scope of the request, the Director responded that she had nothing to report. Secondly, all current and former campus security staff members interviewed thus far have corroborated their previous Director on his assertion that his office neither routinely made referrals to nor received information from the Office of Health Services. Furthermore, the University's reliance on confidentiality and privacy statutes is unavailing since those statutes allow governmental entities to gain access to otherwise protected material for the conduct of authorized audits, investigations, and reviews in the public interest. Confidentiality and privacy statutes are not intended to permit institutions to deny affected parties and/or government agencies from accessing information even for compelling reasons. One example with regard to a victim's right to information is the specific exceptions to the Federal Educational Rights and Privacy Act (FERPA) contained in the Clery Act at 34 CFR 668.46 (b)(11)(vi)(B). This regulation permits disclosure of disciplinary proceeding outcomes (findings and sanctions) to the accuser and the accused.

As to the University's challenges to the veracity of information gathered during our interviews, we note that we were able to substantiate many of the statements made by three (3) sexual assault victims, four (4) former employees, and the parents of two (2) sexual assault victims, often with documentation acquired at the University. Indeed, our decision to initially contact these parties was based on our review of their case files. At

the very least then, the university should have disclosed the incidents involving these students as they were clearly reported to campus security authorities. In these cases, the University did not have to rely on any outside entity for crime data because it was already in its possession. It should also be noted that the review team was able to acquire significantly more data on many of these cases than was presented in the University's response.

The program review team takes note of the University's proposed reforms noted in its response to this finding and of revised policies and procedures detailed in the "Clery Act Compliance Manual." If fully implemented, the changes detailed therein should significantly improve the University's ability to coordinate information from all required sources and thereby improve its compliance with the Clery Act going forward. However, as noted throughout, these proposed improvements do not diminish the seriousness of the violations identified throughout the program review.

As a result of the final determination for this finding, the Philadelphia Case Management Team has referred this matter to the Administrative Actions and Appeals Division with a recommendation for a fine as authorized by the HEA and 34 CFR Part 668, Subpart G.

**FINDING # 5:**                    **FAILURE TO COMPLY WITH THE "TIMELY WARNING" REQUIREMENT**

*For the years under review, the University did not issue timely warnings regarding serious or on-going threats to the safety and security of the campus community. During the site visit, the program review team requested copies of all such warnings prepared and distributed to University students and employees. Additionally, the review team presented certain incident reports that detailed crimes that should have resulted in such a warning and requested copies of the warnings or an explanation as to why none was given. These incident reports detailed serious crimes against persons and property including assaults, multiple burglaries, and multiple indecent exposures. Neither the Director of Campus Security nor the Assistant Dean of Student Affairs could specifically explain these omissions. The Director of Campus Security also stated that timely warnings were not typically disseminated.*

*Although University officials were unable to provide substantive documentation that timely warnings were issued for the years under review, the Director of Campus Security was able to provide more recent examples of bulletins sent to the security officers. The examples provided to the review team detail an apparent bias-related assault and vandalism of a student's car. It is important to note these "memorandum" are addressed only to "All Officers" and the Director acknowledges that their distribution was limited to only those individuals.*

*Through our analysis of Campus Security Reports and interviews, we also determined that the University does not have a substantive policy on the issuance of these warnings as required by the Act. In addition to supporting a finding that the University lacked the*

*administrative capability to effectively administer the Title IV Programs, this exception also supports the contention of many informed respondents that the University has taken specific actions with the intended effect of under-reporting criminal incidents.*

*Failure to issue timely warnings of serious and/or on-going threats deprives the campus community of vital security information, denies them the opportunity to take adequate steps to provide for their own security, and effectively negates the Act's intent.*

**REFERENCE:**

*Disclosure of Campus Security Policy and Campus Crimes Statistics Act,  
20 USC § 1092 (f), as amended  
Section 485 (f), as amended  
34 CFR § 668.46 (b)(i), General Provision Regulations, as amended, November 1, 1999  
34 CFR § 668.46 (e), General Provision Regulations, as amended, November 1, 1999*

**REQUIREMENT:**

*Federal regulations require that participating institutions must develop and implement all necessary policies, procedures, and systems to ensure compliance with all statutes and regulations that govern the Title IV programs including the provisions of the Jeanne Clery Disclosure of Campus Security Policy and Campus Security Statistics Act. With respect to the Act, Federal regulations require that participating institutions compile and publish accurate and complete statistics concerning the occurrence on campus of the following incidents: murder, manslaughter, sex offenses, robbery, aggravated assault, burglary, motor vehicle theft, and arson. Statistical disclosure of arrests and disciplinary actions related to violation of Federal or state drug, liquor, and weapons laws are also required.*

*The Act also requires that certain policies and procedures be published in the Campus Security Report as well. In addition, institutions must distribute the report to current students and employees and notify prospective students and employees of its availability. Additionally, Title IV institutions must take steps to keep the campus community informed about safety and security concerns on an on-going basis by maintaining a open crime log and issuing timely warnings when appropriate. To comply with the timely warning requirement, it is absolutely essential that institutions develop and implement policies and procedures that detail specific circumstances and/or categories of events that will trigger a warning. The policy should also detail the parties that will be charged with writing, publishing, and distributing these warnings. Lastly, of course, the University must ensure that these policies are effectively executed in appropriate cases.*

*In response to this finding, the University must conduct a comprehensive review of campus security policies and procedures and develop a substantive corrective action plan in the manner described in the requirement of finding #2. The corrective action plan must incorporate the elements described above.*

*In our Final Program Review Determination letter, the Philadelphia Case Management Team will advise the University of any additional actions that will be pursued as a result of the non-compliance identified in this finding.*

### **FINAL DETERMINATION – FINDING # 5**

Finding #5 of the program review report cited the University for its failure to issue “timely warnings” of threats to the safety and security of the campus community. The finding also cited the lack of any substantive policy of the issuance of such warnings as required by the Act. Finally, the finding notes that this violation supports the review team’s other findings as well as our general conclusion, based on extensive research and analysis, that the University is not committed to full compliance with the statutory and regulatory obligations in this area.

In its response, the University generally admitted that it did not comply with the requirement to provide timely warnings in the manner prescribed by Federal regulations. As part of its required corrective action plan, The University developed a “Clery Act Compliance Manual.” This document contains new policies and procedures for generating and disseminating proper advisories to the campus. The response also states that, “Mr. Schearer, in conjunction with the Director of Campus Security, will be responsible for writing, publishing, and distributing these warnings.” It should be noted that the Assistant Dean of Students, in addition to his numerous other duties, served as the Acting Director of Campus Security until a permanent replacement was appointed in January 2003. Mr. John Folsom previously held this position until his termination on March 5, 2002.

Based on a thorough review of the University’s response, “the Clery Act Compliance Manual,” and attachments, the review team has determined that the corrective actions specifically designed to address this finding may adequately address this violation going forward. However, we remain concerned in light of the University’s demonstrated inclination to tightly control access to crime information in violation of the Clery Act and the regulations. This tendency was noted throughout our program review report especially with regard to the “Background” section as well as Findings #2, #4, and #5, #7, and #8.

The proposed corrective action plan presents a reasonable starting point for needed reforms. However, as noted throughout, these proposed improvements do not diminish the seriousness of the violations identified throughout the program review.

As a result of the final determination for this finding, the Philadelphia Case Management Team has referred this matter to the Administrative Actions and Appeals Division with a recommendation for a fine as authorized by the Clery Act as well as 34 CFR Part 668, Subpart G.

**FINDING # 7:**      **FAILURE TO DISTRIBUTE THE CAMPUS SECURITY REPORT IN ACCORDANCE WITH FEDERAL REGULATIONS**

*The University did not distribute its Campus Security Report to all current students and employees. In addition, the University did not adequately inform all prospective students and employees of the Report's availability.*

*With regard to current students and employees, our finding is based on representations by institutional officials that no active distribution was ever undertaken. Moreover, the review team asked a cross-section of interviewees whether or not they ever directly received a copy of the report from the University. All respondents stated that they have never received a copy of the report by any direct action of the University. The Assistant Dean of Students and the Director of Campus Security advised the review team that copies of the report were usually available at certain sites on campus including the Admissions and Student Affairs Offices but that they were not actively distributed.*

*With regard to notification of prospective students and employees, our finding is based on a thorough review of publications typically provided to applicants as well as the University's official Internet site. No reference to the report's availability was found. A brief note on page 54 of the 2000-01 Student Handbook does state that, "...University is in compliance with the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act. This report is published annually and [is] available to every student, faculty, and staff. Copies of this report may be found in the Office of Security, the Office of Student Affairs, and the Admissions Office." However, it is important to note that this publication is only provided to enrolled students.*

*Failure to distribute accurate and complete campus security statistics to current and prospective students and employees in accordance with Federal regulations deprives the campus community of important security information.*

**REFERENCE:**

*Disclosure of Campus Security Policy and Campus Crime Statistics Act,  
20 USC § 1092 (f), as amended  
Section 485 (f), Higher Education Act of 1965, as amended  
34 CFR § 668.46 (e), General Provision Regulations, as amended, November 1, 1999*

**REQUIREMENT:**

*Federal regulations require participating institutions to provide the report to all current students and employees through appropriate publications and mailing. This includes direct mailing to each individual through the U.S. Postal Service, by direct hand or campus mail distribution to the individual, or posting on the institution's Internet site. If an institution chooses to distribute its report by posting to an internet or intranet site, the*

*institution must, by October 1 of each year, distribute a notice to all students and employees that includes a statement of the report's availability and its exact electronic address, a description of its contents, as well as an advisement that a paper copy will be provided upon request.*

*Federal regulations also require participating institutions to provide a notice to all prospective students and employees that gives a statement of the report's availability, its contents, and its exact electronic address if posted to an Internet site. This notice must also advise interested parties of their right to request a paper copy of the report and have it furnished upon request. In response to this finding, the University must take all necessary steps to ensure that all current students and employees receive an accurate and complete copy of the supplemental Campus Security Report as required in finding #2, when published.*

*In addition, the University is required to add a notification statement to its admissions and employment materials that are normally provided to prospective students and employees. This statement may take whatever form deemed appropriate but must be conspicuous, clear, and complete. Additionally, the University's response must include a progress report of its corrective actions and a revised policy that states with particularity all steps that will be taken to ensure the University's compliance with these regulations.*

*In our Final Program Review Determination letter, the Philadelphia Case Management Team will advise the University of any additional actions that will be pursued as a result of the non-compliance identified in this finding.*

#### **FINAL DETERMINATION – FINDING #7**

Finding #7 of the program review report cited the University for its failure to properly distribute its annual Campus Security Report to all current students and employees as required by the Clery Act and the regulations. The finding also cited the University's failure to adequately inform all prospective students and employees of its availability.

In its response, the University admitted that the annual Campus Security Report was not actively distributed to current students and employees and that prospective students and employees were not actively notified of its availability in the manner prescribed by the Clery Act. However, the University asserted that the Report was available through certain offices and was provided to persons that requested a copy.

As part of its required corrective action plan, The University developed a "Clery Act Compliance Manual." This document contains new policies and procedures for publishing and distributing the Campus Security Report to current and prospective students and employees in accordance with Federal regulations. The response asserted that the University would rely mainly on electronic mail and internet postings to meet this requirement. The response also stated that notifications of the Report's availability would be added to materials provided to applicants for admission or employment.

Based on a thorough review of the University's response, "the Clery Act Compliance Manual," and other information, the review team has determined that the corrective actions specifically designed to address this finding may adequately address this violation going forward. However, the University's past failures to disclose information and its inclination to tightly control access to crime information as noted throughout the program review raises doubts about the University's commitment to compliance with these statutory and regulatory requirements. These past failures are identified throughout our program review report especially with regard to the "Background" section as well as Findings #2, #4, #5, #7, and #8.

The proposed corrective action plan presents a reasonable starting point for needed reforms. As noted throughout, these proposed improvements do not diminish the seriousness of the violations identified throughout the program review.

Based on our analysis including in-depth interviews with current and former students and employees, the review team has determined that this violation directly affected the ability of the campus community to be more fully informed and to adequately provide for their own safety and security. By any standard, the omission of required information coupled with a failure to distribute required information in accordance with the Clery Act constituted and resulted in "substantial misrepresentations."

As a result of the final determination for this finding, the Philadelphia Case Management Team has referred this matter to the Administrative Actions and Appeals Division with a recommendation for a fine as authorized by the Clery Act as well as 34 CFR Part 668, Subpart G.

**FINDING #8:**                    **REQUIRED POLICY STATEMENTS OMITTED OR INCOMPLETE**

*In the years covered by the program review, the University failed to include certain required policy statements in its Campus Security Reports. These policy statements are intended to allow students and parents to make informed decisions and be aware of available resources and channels for recourse. The inclusion of these policies in the Campus Security Report gives interested parties a single reference point for security information.*

*The review team noted several policy deficiencies including the lack of a required notification to students that they have a right to have their academic and/or living situations changed following an alleged sexual assault. Another example is the lack of disclosure regarding procedures for campus disciplinary action in alleged sexual assault cases. Although the other required policy areas are at least alluded to in the University's Campus Security Reports, the information as presented is exceedingly vague and as such does not provide readers with enough information to make meaningful choices about resources or options.*

*The lack of an adequate policy disclosure regarding the rights and options of alleged sexual assault victims triggers a special concern as a result of our contacts with sexual assault survivors. Specifically, on August 31, 2001, the review team and Special Agent George Blissman conducted a telephone interview with a survivor's mother. Among other serious allegations, the interviewee described her interactions with University officials and her difficulty in securing their cooperation following the incident. The parent requested that her daughter be taken off the University's meal plan because the victim was afraid to eat in the cafeteria because the alleged perpetrator and his friends were taunting her during meals. The Assistant Dean of Students told the parent that University policy did not provide for such requests. The student was eventually released from her meal plan only after the family threatened legal action.*

*This event illustrates not only the omission of a required policy but the actual failure to provide a reasonable accommodation. Finally, this event provides further evidence that University officials were made aware of at least one sexual assault for the years under review. This incident took place on October 30, 1997 and is included in finding 2A.*

*Failure to publish all required policy disclosures deprives the campus community of important security information and effectively negates the intent of the Act.*

**REFERENCE:**

*Disclosure of Campus Security Policy and Campus Crime Statistics Act,  
20 USC § 1092(f), as amended  
Section 485 (f), Higher Education Act of 1965, as amended  
34 CFR § 668.46 (b)(11)(v) and (b)(11)(vi), General Provision Regulations, as amended,  
November 1, 1999*

**REQUIREMENT:**

*Federal regulations require that institutions include certain policy statements in their Campus Security Reports. These disclosures are intended to more fully inform the campus community about the institution's security policies and programs. In general, these policies cover topics such as the law enforcement authority and practices of the institution police or security force, reporting procedures for students and employees, and policies that govern the preparation of the report itself. Institutions are also required to disclose alcohol and drug policies and educational programs. Policies pertaining to sexual assault education, prevention and adjudication must also be disclosed. A notification to students must also be included in the report that advises the campus community that victims of sexual assaults may change their academic or living arrangements.*

*In response to this finding, the University must take all necessary steps to ensure that all necessary policy disclosures are included in the revised Campus Security Report required under finding #2. In addition, the University must review and revise all existing policies to ensure that they provide sufficient information to allow students to make informed security decisions.*

*In our Final Program Review Determination letter, the Philadelphia Case Management Team will advise the University of any additional actions that will be pursued as a result of the non-compliance identified in this finding.*

### **FINAL DETERMINATION – FINDING #8**

Finding #8 of the program review report cited the University for its failure to publish accurate and complete policy disclosures in its annual Campus Security Report in accordance with the requirements of the Clery Act. The finding detailed specific required policy statements that were not disclosed, including a notification of a student's right to have their academic and/or living situations changed following an alleged sexual assault. Our report also detailed a case involving a student that was denied a timely accommodation. This event illustrated not only the omission of a required policy but the actual failure to provide a reasonable and timely accommodation. This finding also noted the University's failure to publish procedures for campus disciplinary action in sexual assault cases. Finally, the finding noted that the University's policies as published in the Campus Security Report were exceedingly vague and lacked the requisite specificity to actually give notice and provide useful consumer information to the campus community. In its response, the University stated that it "had a proper sexual assault policy in place and this is not a matter of dispute." In support of this claim, the University referred the review team to various sections of Student Handbook and other publications. On the subject of accommodations, the response challenged the veracity of statements made by the victim's parent in an interview with the review team. The University also submitted documentation in support of its claim that a reasonable accommodation was provided. The University also alleged that the review team reached its conclusions based on these interviews, "with no apparent interview of the Assistant Dean of Students to obtain his side of the story." Finally, the University's response stated its' intention to comply with the Clery Act requirements with regard to policy disclosures going forward. The "Clery Act Compliance Manual" submitted with the response included some revised policies and procedures for the development and implementation of adequate policies and procedures.

With regard to the University's response, the review team notes that at least one other University publication, specifically the Student Handbook, does contain some information on sexual assault policies. However, as stated in our December 17, 2001 program review report, the University's annual campus security report did not include the required notifications and policy statements regarding a sexual assault victim's right to reasonable changes to academic and living situations. In addition, it did not explain procedures for campus disciplinary action in cases of an alleged sex offense and the various rights afforded to the accuser and the accused. These notifications are required

per 34 CFR § 668.46 (b)(11)(v) and (vi). This is the basis of the program review finding and constitutes a clear violation. Contrary to the University's argument, a cross-reference to policies provided elsewhere does not satisfy the institution's obligation. With the exception of 34 CFR § 668 (b)(10), institutions cannot meet policy disclosure requirements by cross-referencing other publications.

The annual Campus Security Report is intended to provide students, parents, and employees, in a single publication, with important information so that they can make informed decisions, be aware of available resources and channels for recourse, and to take an active role in their own safety and security. The inclusion of these policies in the Campus Security Report gives interested parties a single reference point for security information. Conversely, their omission deprives the campus community and prospective students of important security and safety information and effectively negates the intent of the Clery Act.

The Title IV, HEA Programs and especially the Clery Act and its regulations emphasize the importance of accurate, complete, and conspicuous consumer information. Accordingly, analysis of the development and implementation of policies and procedures are a normal and essential part of the program review process. In this case, the University failed to establish required policies while, in other cases, the policy statements were clearly insufficient to inform or give clear notice of rights or protocol. In still other cases, it became evident that policies, whether or not they actually were published in the Campus Security Report or elsewhere, were nonetheless nonexistent or at least inadequate as applied. This was the case with regard to the case noted in this finding and was further substantiated by three (3) former faculty members who acted as advocates for sexual assault victims during the years under review.

In response to review team concerns that the institution failed to provide a special accommodation in a timely manner to a sexual assault survivor until the student's mother threatened legal action, the institution stated the following:

*"The Assistant Dean of Students specifically denies that it required a threat of legal action in order to release the student from her meal plan. In fact, she was released from this obligation ten (10) days after the student sent her written request to Mr. Schearer."*

In its response, the University provided a copy of an "Off-Campus Housing Request Form" that the student completed on December 17, 1997. On December 18, 1997, the student was approved to live off-campus and to not participate in the institution's meal plan. However, the student's written request to specifically be removed from the meal plan while living on-campus was dated and postmarked July 14, 1998. It is this written request that was approved ten (10) days after the student sent this request to the Assistant Dean of Students. In it, the student wrote as follows:

"Dear Jerry-

Here is my formal statement as requested:

Due to the unfortunate event which took place in Montgomery Hall in October 97, I am extremely uncomfortable using the dining facilities at Salem Teikyo. I plan to live on campus (the Cubes) but will not be on the meal plan.

This occurrence can be verified by the Salem police force and hospital records at United Hospital in Clarksburg.

Thank you for your assistance in this matter."

This written request was presented to the review team in the University's response as documentation of the institution's prompt consideration of the student's request. The review team is concerned by the fact that, while the institution maintains that it responded timely to the student's July 14, 1998 written request, the matter of having the student released from her campus meal plan clearly appears to have been first raised with Assistant Dean of Students well before this time. Indeed, the student's mother contacted the Assistant Dean of Students by telephone as early as November 1997 regarding this matter. This telephone conversation took place shortly after the October 30, 1997 incident. It was during this conversation, the victim's mother alleged, that the Assistant Dean of Students expressed doubt that it would be possible to remove the victim from the institution's meal plan. The victim's mother further alleged that the mention of possible attorney involvement prompted the Assistant Dean of Students to initiate the student's removal from the meal plan.<sup>10</sup>

Additionally, we note that the review team spent three (3) weeks on-site, conducted numerous interviews, and requested and analyzed voluminous documentation over many months. Simply put, the University's assertion that the institution or any of its officials were not given an adequate opportunity to tell their "side of the story" is not supported by the facts. It must also be noted that we observed that the University is very small and generally operated in an environment of "flexibility" regarding adherence to policy. As such, any assertion that the accommodation was not granted in a timely manner simply because a victim failed to file a form, in spite of numerous contacts from the victim and her parents, does not stand up to any reasonable scrutiny.

Notwithstanding any of the preceding, once again, the essence of this violation is that the required policy disclosures were not published in the University's Campus Security Reports during the years under review.

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<sup>10</sup> We note that the university's own statements about this incident undercuts the statements by the Assistant Dean of Students to the review team in his June 15, 2001 interview, when he said that he had heard only rumors of sexual assaults, and that the last sexual assault that he could recall happened in 1995 or 1996.

The review team notes that the University's sexual assault policy, as posted to the institution's website, now includes the required policy statements. We also take notice of the revised and improved policies and procedures developed pursuant to this finding. If properly implemented, these and other initiatives detailed in the "Clery Act Compliance Manual" should improve the University's compliance with the Clery Act in the future. However, as noted throughout, these improvements, whether already enacted or proposed for future implementation, do not diminish the seriousness of the violations that existed throughout the program review period and were only corrected with the publication of the 2002 Campus Security Report. Whether caused by error, incompetence, or purposeful action of the University and its officials, these violations of the Clery Act constitute a "substantial misrepresentation" and must be addressed by appropriate sanctions.

As a result of the final determination for this finding, the Philadelphia Case Management Team has referred this matter to the Administrative Actions and Appeals Division with a recommendation for a fine as authorized by the Clery Act and 34 CFR Part 668, Subpart G.

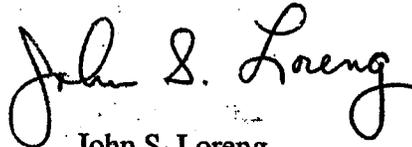
This referral will also include a recommendation for the imposition of an additional civil penalty as a result of the University's failure to develop, implement, and publish appropriate policies and provide timely and reasonable accommodations in accordance with the requirements of the HEA, 20 USC Part 1092 (f)(8) and Federal regulations at 34 CFR Part 668.46 (b)(11).

In conclusion, the University is once again advised to take all necessary actions to ensure these violations do not recur. Furthermore, the University is advised that repeat findings in future program reviews or failure to satisfactorily resolve the violations of this program review may lead to the Department initiating additional administrative actions. An administrative action may include the imposition of a formal fine and/or the limitation, suspension, and/or termination of the institution's eligibility pursuant to 34 CFR § 668, Subpart G, of the Federal Student Aid General Provision Regulations.

Lastly, the University also is reminded that all pertinent program records relating to the period covered by this program review are subject to the normal record retention requirements outlined at 34 CFR § 668.24(e).

The Philadelphia Case Management Team is well aware that you and much of your management team were not at the University at the time of the program review. Of course, the University is still responsible for these violations and the associated sanctions. We look forward to working with you to ensure that the serious violations identified throughout the program review process are corrected. If you have any questions, please contact Mr. James L. Moore, III on (215) 656-6495 or Mr. Fred A. Wynn on (202) 377-4215.

Sincerely,



John S. Loreng  
Team Leader

cc: Mr. James Mayfield, CPA, Vice President for Business Affairs  
Mr. Donald Appiarius, Vice President of Student Affairs  
Mr. Jerry Schearer, Assistant Dean of Students  
North Central Association of Colleges and Schools  
West Virginia Department of Education  
Document Receipt and Control Center

**Appendix B  
Salem International University**

**A NOTE REGARDING THESE FINAL DETERMINATIONS**

As noted in the December 17, 2001 program review report, our objective throughout has been to evaluate the University's compliance with the Jeanne Clery Disclosure of Campus Security and Campus Crimes Statistics Act. More specifically, the review team endeavored to determine the accuracy and completeness of campus crime statistics and policy disclosures for calendar years 1997, 1998, and 1999. Our review included the analysis of thousands of pages of documentation from many institutional and non-institutional sources. These records included incident reports, police reports, medical records, memoranda, notes, and other documents maintained by the University, local law enforcement, and other sources.

In addition to the document examination, the review team also conducted numerous interviews with current and former employees, students, government officials, and other informed parties. During the interview process, we were able to talk with a number of sexual assault victims and their families. In our judgment, the interviewees presented a balanced view of the institution even while detailing very difficult events in their lives.

The review team reminds all readers that any and all information acquired, analyzed, and included in our documents was done in furtherance of our stated objective. To the greatest extent possible, we have endeavored to be sensitive to the needs and privacy rights of all concerned including the University. The review team also endeavored to conduct its work within a framework of adequate due diligence and quality control. For these reasons, some information developed by the review team was not included in the program review report or this Final Program Review Determination letter.

The review team endeavored to protect any and all confidentiality and privacy rights arising under Federal law as they relate both to alleged perpetrators and victims. Little or no identifying information is included here toward that goal. Our main emphasis with regard to the various confidentiality/privacy rights was on avoiding further harm to victims and their families. We must remind that these protections exist principally to protect the student/victim, not the University. In this case, a number of victims provided us with information that is used here with their permission.

Once again, this program review was conducted to evaluate compliance and appropriately enforce the Clery Act. In doing so, the review team must document its findings and determinations with an adequate amount of detail. In some instances, supplemental information, while not evidence of direct violation per se, is included to give context or explain a condition.

In the program review report, several serious violations were noted. In addition, we identified many campus security weaknesses that contributed to these findings. To address these weaknesses, several recommendations were attached to the program review report. These recommendations suggested ways in which the institution could improve campus security operations on several fronts.

Although not covered by the recommendations, our continuing analysis suggests that the University also should substantively reform its judicial board process, improve counseling services, and must do more to confront the problem of alcohol and drug-related violent crime on its campus.

However, as reiterated throughout the program review report and this FPRD, the findings, requirements, and final determinations are based on the applicable statutes and regulations, and nothing herein should be construed as requiring any specific policy, procedure or other action that may constitute a standard of care. Rather, the University is required to take all necessary action to bring its operations into compliance with Title IV program requirements and to ensure that these violations do not recur.

As detailed in these Final Determinations, our ongoing analyses of all available information including the University's response has resulted in a referral to the Administrative Actions and Appeals Division (AAAD) for the imposition of a very significant civil penalty. For direct substantive violations of the Clery Act, a separate civil penalty is recommended for each of the following Findings: #1, #2, #3, #4, #5, #7, and #8. As authorized by the HEA, 20 USC § 1092 (f)(8), an additional civil penalty is recommended for each of five (5) sexual assaults identified in Finding #2. Also pursuant to 20 USC § 1092 (f)(8), an additional civil penalty is recommended for each of two (2) omissions of required sexual assault-related policies noted in Finding #8.

No civil penalties are recommended for Findings #6, #9, and #10. The determination to not seek additional civil penalties for these violations was based on the following: 1) the violations were mainly procedural in nature; 2) the University took corrective actions to address these violations prior to the publication of the 2000 Campus Security Report (CSR; the Report); and, 3) the violations did not result in a "substantial misrepresentation" in the 2000 Campus Security Report. Please note that the determination to not pursue penalties for these violations is based on the specific factors of this case. As such, the reader should not infer that sanctions would not be pursued for these violations in other cases.

The review team has determined that these serious violations warrant a significant civil penalty. These sanctions are authorized by the Clery Act and 34 CFR § 668, Subpart G and are based on a clear indication that the University, regardless of its intent, "substantially misrepresented the number, location, and nature of the crimes" included in its campus security statistical disclosures and policy statements in its annual Campus Security Reports.

Section 485 (f)(13) of the HEA, 20 USC § 1092 (f)(13) and Federal regulations specifically authorize the Secretary to impose civil penalties up to \$27,500 for each violation of the Clery Act.

Based on an intensive on-site review, careful consideration of the University's response and subsequent research, there is a strong indication that the violations identified throughout the program review process and the circumstances under which they arose cannot be solely attributed to unintentional misapplication of the Act or human error. Although our procedures are designed to identify indications of fraud or other criminal violations, it must be emphasized that a program review is principally a device of administrative, regulatory, and statutory monitoring, not an audit or criminal investigation.

In this case and always, our expertise and focus is in conducting oversight, compliance enforcement, and technical assistance regarding the Title IV, FSA Program regulations including the Clery Act. As such, our findings and the resultant referral for administrative action are based on a showing of non-compliance with Federal regulations. Our review process and procedures were not designed primarily to detect evidence of criminal intent or criminal negligence. However, any information indicating deliberate, willful, and/or criminally negligent acts may become the subject of additional referrals to the Office of the Inspector General – Investigations and/or The Office of the United States Attorney, or other appropriate law enforcement entities.

As noted previously, the review team has carefully considered the University's response with particular attention paid to the proposed corrective actions and revised policies and procedures outlined in the "Clery Act Compliance Manual" submitted with the response. If carefully and consistently implemented, these proposed improvements and reforms should serve a good start toward meaningful reform. However, lasting success will require a durable commitment to specific reforms as well as the investment of adequate resources and administrative support.

Although the proposed improvements noted in the response portend better compliance going forward, this plan cannot cure past violations; notwithstanding any corrective actions and reforms undertaken since the site visit and analysis phase of the program review. The Philadelphia Case Management Team takes seriously its mission to ensure the integrity of the Title IV, FSA Programs on an ongoing basis. This goal is achieved through an appropriate mix of monitoring and enforcement on one hand and technical assistance on the other. We are hopeful that significant improvements will be evident as we continue to monitor the University's progress toward full compliance through the case management process. Full compliance with the Clery Act and the larger goal of ensuring that our campus communities are truly safe and secure must be a priority for all of our Nation's educational institutions.

**Appendix C – 1  
Salem International University  
Supplemental Information on Final Determination for Finding #1**

The following information provides useful supplemental information on our Final Determination regarding certain factors that contributed to the violations but were not, in and of themselves, findings per se.

In addition to enumerating the several serious violations that indicated impaired administrative capability, the program review report also identified numerous conditions that contributed to these findings. Although many such conditions were noted during the site visit, two specific categories were detailed in the program review report. They were 1) insufficient budgetary resources and 2) inadequate security officer pay, benefits, and training. Item #2 also addressed various collateral duties of the Office of Campus Security that were not in furtherance of safety, security, and order maintenance. In its March 8, 2002 response, the University asserted that the Security Department's budgets were considerably higher, \$10,562 and \$11,259 for 2000-01 and 1999-00 respectively, than the amounts noted in our program review report. However, based on available records and staff inquiries, we have determined that our statistics are correct.<sup>11</sup> As of the date that we concluded our research, this office was also unable to confirm that a replacement Security Department vehicle was acquired even though the University's response states that one is, "currently being purchased."

Regarding item #2, the program review team takes notice of the University's admission that Security Department pay and benefits are low but are in line with similarly situated institutions. We also take notice of certain training initiatives undertaken since the site visit. However, it is very likely that poor compensation, low morale, and high turnover may compromise any benefits realized from improved training. We also take notice that officers continued to be burdened with collateral duties in spite of intentions to the contrary expressed in the University's correspondence. For example, security officers have been observed delivering mail and performing other non-security related tasks as recently as summer 2002. Nevertheless, we note once again that the essence of this finding of impaired administrative capability does not ultimately rest on these contributing conditions. Rather, our finding is based on the serious and systemic violations noted in our December 17, 2001 program review report and other information developed throughout the program review process.

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<sup>11</sup> Please see attached copies of "Salem-Teikyo University Approved Budget 2000-2001" and "Salem-Teikyo University Approved Budget for 1999-2000."

**Appendix C - 2**  
**Salem International University**  
**Finding # 1**  
**Selected Student Comments**

The following comments were excerpted from the University's "1998 Fall Student Opinion Survey Report." The comments are included for (3) three distinct reasons: 1) they are contemporaneous in time and place to the period covered by the program review; 2) they offer a countervailing view to the general assertions of University officials and their contention that the University was safe, free of pervasive crime; and, 3) because of their striking similarity to comments made by current and former students and employees during interviews with the review team.

We also note that the mean survey scores for areas including "College response for victims of crime/harassment," "Residence hall facilities," "I received accurate information about the university," "Freedom from harassment," "Rules governing conduct," and "Campus security services" are listed in the report section entitled, "Least Satisfied Areas." For this reason, we are persuaded that these comments are in fact representative of the student body's opinions and perspectives. Indeed, a narrative section of the survey on page 6 states in part, "written comments of the respondents corresponded closely with opinions expressed above (statistical analysis) ...and written comments indicated that security's respon[se] to crimes [is] also [a] major concern."

**Student Comments**

"People are too afraid to report anything [be]cause security never files any of the complaints and higher ups won't believe... victims. They would rather believe the athletes..[be]cause they don't want those programs affected."

"There needs to be more focus on student safety. There needs to be proper lighting and more security around the school. There needs to be more support for rape victims."

"At night I do not feel safe on this campus..."

"The health service is a complete joke and needs to be more established... And as far as response to victims, it is "what victims?" I don't think some victims are helped at all. It is not like you report them in the packets of stats."

"You need to address the sexual harassment problems on campus. The President needs to realize that he has a problem on his hands, and if he doesn't solve them, then he is going to have more problems than he has ever imagined."

**Appendix C - 2**  
**Salem International University**  
**Finding # 1**  
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The following comments were excerpted from the University's "1998 Fall Student Opinion Survey Report." The comments are included for (3) three distinct reasons: 1) they are contemporaneous in time and place to the period covered by the program review; 2) they offer a countervailing view to the general assertions of University officials and their contention that the University was safe, free of pervasive crime; and that they were unaware of security concerns among the campus community; and, 3) because of their striking similarity to comments made by current and former students and employees during interviews with the review team.

We also note that the mean survey scores for areas including "College response for victims of crime/harassment," "Residence hall facilities," "I received accurate information about the university" "Freedom from harassment," "Rules governing conduct," and "Campus security services" are listed in the report section entitled, "Least Satisfied Areas." For this reason, we are persuaded that these comments are in fact representative of the student body's opinions and perspectives. Indeed, a narrative section of the survey on page 6 states in part, "written comments of the respondents corresponded closely with opinions expressed above (statistical analysis) ...and written comments indicated that security's respon[se] to crimes [is] also [a] major concern."

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"You need to address the sexual harassment problems on campus. The President needs to realize that he has a problem on his hands, and if he doesn't solve them, then he is going to have more problems than he has ever imagined."

"It has been my experience that campus security and rules are extremely insufficient when dealing with real crime or serious problems. I feel many problems are overlooked or pushed under the rug."

"I am very displeased with the way this school handles violent crimes and sexual crimes. More steps should be taken by the University to bring these problems to light so all students are notified when a crime has occurred and the proper authorities (non-school related) are notified as well."

"I am disappointed at the number of crimes that happen where the victim is made out to be a liar to protect ATHLETES. I also am an athlete and I find it disgraceful."

"The school's policy regarding sexual assaults and rape is to shut the girl up before she makes any trouble. The school has a perfect crime record because nothing is ever officially reported. I am sure this is illegal but no one seems to care."

"Guns on campus as well as rapes on campus (as well as thefts) MUST be addressed by the police in spite of the reputation of the school. I do not feel safe on this campus knowing that such predators are not punished..."

"We need more lights on campus... also better dorm entrance policies, and better rooms with better screens...and door locks."

"I think the security at this college is horrible."

"I think the students on campus should be more aware of the crimes on campus (such as the rapes and gun issues) and what the authorities did about it."

"The problem of rape should not be overlooked by the security or the deans."

"More needs to be done for victims of crime and harassment—this problem needs to be controlled more."

"If you are on a sports team you can do just about anything, including violating others, and get away with it. This makes me sick."

"I know about the cover-ups. Crime is under-reported, and no action is taken..."

"Victims of crime are grossly neglected, and those of certain groups... are given special treatment."

"Security needs to be improved to help with theft and destruction of vehicles."

"Crime on campus is not being dealt with by the proper authorities. The school would rather cover up an issue than let the right law enforcer take care of the problem."

"The University keeps the campus crime hush hush. There is a huge problem with crime and harassment...but nobody calls the police...the campus isn't safe."

"University responses for victims of crime and harassment? Please. I think STU wants to forget about this one."

"[STU] needs to respond more for victims of crime and harassment. I am ashamed of this school in this area."

"Many people have had their personal belongings stolen and security has failed to do anything. I think more street lights need to be put on campus...[be]cause anyone could be hiding to attack anyone."

"I am harassed everyday, so are many other people on campus."

"Student conduct is governed by the sports teams."

"Students need to be reprimanded when a crime is committed."

"This school is way too dark. There are hardly any lights on this campus, anything could happen when you can't see what you'r[e] doing."

"Basketball and soccer teams cause many crimes and are not punished. Women are raped and nothing is done. The Dean tries to punish those responsible, and persons higher up stop him..."

"Personal security/safety on campus? HELLO! Can you say Cubes? Not too safe!"

"The rules governing student conduct never are applied or enforced."

"The rules are good but the enforcement has a lot to be desired."

"I don't feel that the student's opinion matters and I wish there was better communication... about... [guns, rapes, thefts on campus]... WHAT IS REALLY GOING ON HERE?"

"The campus needs more light...This is very dangerous, especially for females who have to walk home alone. Please do something about this. Thank you."