Index Sheet

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September 4, 2009

James P. Clements, Ph.D.
President
West Virginia University
P.O. Box 6201, Stewart Hall
Morgantown, WV 26506-6201

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RE: **Final Program Review Determination**
OPE ID: 00382700
PRCN: 200430323647

Dear President Clements:

The Philadelphia School Participation Team issued a program review report on July 30, 2008 regarding West Virginia University's (WVU; the University) administration of programs authorized pursuant to Title IV of the Higher Education Act of 1965, as amended, 20 U.S.C. §§ 1070 et seq. (Title IV, HEA programs). This program review focused on the University's compliance with the requirements of the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act. WVU's final response was received on November 3, 2008.

Purpose:

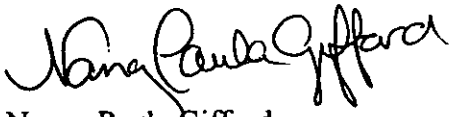
Final determinations have been made concerning all of the outstanding findings of the program review report and are detailed in the attached Final Program Review Determination (FPRD) letter. The purpose of this letter is to: 1) advise the University of the Department's final determinations regarding the findings identified in the program review report and 2) to notify WVU of a possible adverse administrative action. Due to the serious nature of the violations identified during the program review, we have referred this FPRD to the Department's Administrative Actions and Appeals Division (AAAD). Please see page # 15 of the FPRD for more information regarding possible adverse administrative actions and appeal procedures. Upon completion of the "Supplemental Corrective Measures" outlined in Section E of this FPRD, the program review will be closed.

Record Retention:
Program records relating to the period covered by the program review must be retained until the later of: resolution of the loans, claims or expenditures questioned in the program review; or the

end of the retention period otherwise applicable to the record under 34 C.F.R. § 668.24(e)(1), (e)(2), and (e)(3).

We would like to express our appreciation for the courtesy, cooperation and patience shown to us throughout the program review process. If you have any questions about this FPRD or the program review process, please contact Mr. James Moore on (215) 656-6495.

Sincerely,



Nancy Paula Gifford
Area Case Director

Attachment as Stated

cc: Mr. Bobby E. Roberts, Chief, Department of Public Safety, WVU
Ms. Faye Caplinger-Widney, Director of Financial Aid & Scholarships, WVU
Dr. Sylvia Manning, President, North Central Assoc. of Colleges and Schools HLC
Dr. Brian Noland, Chancellor, WV Higher Education Policy Commission
Ms. Cindy Davis, Director, Guaranty Compliance Services, AES/PHEAA

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Prepared for

West Virginia University

OPE ID 00382700
PRCN 200430323647

Prepared by
U.S. Department of Education
Federal Student Aid
School Participation Team – Philadelphia

Final Program Review Determination

September 4, 2009

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Appendix A: Program Review Report dated July 30, 2008
Appendix B: Institution's Response dated October 30, 2008

A. Institutional Information

West Virginia University
University at College Ave
Morgantown, WV 26506- 6201

Type: Public

Highest Level of Offering: Master's Degree or Doctor's Degree

Accrediting Agency: North Central Association of Colleges and Schools

Current Student Enrollment: 29,000 (Approx. Fall 2008)

% Of Students Receiving Title IV: 65% (Approx.)

Title IV Participation (data from the Postsecondary Education Participants System):

	2005-2006	2006-2007	2007-2008
Federal Pell Grant Program	$ 12,554,516	$ 13,506,637	$ 15,240,224
Federal Direct Loan Program	$126,963,696	$135,767,289	$148,985,466
Federal SEOG	$ 1,474,927	$ 1,496,471	$ 1,344,231
Federal Work Study Program (FWS)	$ 1,670,806	$ 1,435,651	$ 1,396,470
Federal Perkins Loan Program	$ 6,329,152	$ 6,752,215	$ 3,574,895
.Total	$148,993,647	$158,958,263	$ 170,541,286

Federal Direct Loan Program Default Rate:

Cohort Year	Rate
2006	4.5%
2005	3.7%
2004	4.2%

Federal Perkins Loan Program Default Rate:

Year	Rate
2007	10.1%
2006	10.6%
2005	10.3%

B. The University

In 1961, West Virginia University, originally founded in 1867 as the Agricultural College of West Virginia, established a Department of Public Safety (DPS) to provide police protection for the campus community. In Fall 2008, enrollment at West Virginia University (WVU; the University) exceeded 28,500 students with approximately 65% of students living on-campus.

At present, the WVU DPS employs approximately 52 sworn officers and patrols more than 170 buildings on some 950 acres that comprise the University's Downtown, Evansdale, and Health Sciences campuses throughout the City of Morgantown.

C. Scope of Review

The on-site phase of the program review was conducted from March 23-26, April 5-9, 12-16, May 24-28, and July 19-23, 2004. Specifically, the objective was to determine the accuracy and completeness of campus crime statistics and policy disclosures as published in the University's Campus Security Reports and to investigate allegations of a complaint received. Institutional records were gathered and reviewed for six calendar years 1997 through 2002 to fully evaluate the 1997 incident alleged in the complaint and to verify the crime statistics reported to the Department of Education.

Although approximately 10,000 records were acquired and reviewed, our program review report focused on WVU's Clery Act compliance during calendar years 2001 and 2002, which were the two most recent completed calendar years reported to the Department in October 2003. The Department reviewed selected WVU DPS incident reports, arrest data, and related documents for those years, which included documents from student and judicial affairs, student organizations, fraternity relations, and athletics.

During 2001 and 2002, WVU DPS generated approximately 1,500 incident reports a year. Given that volume of documentation, the review team employed sampling methodologies to test the accuracy and completeness of the statistical disclosures in WVU's campus security reports. The review team selected random and judgmental samples from various categories of Part I and Part II Offenses as defined by the Uniform Crime Reporting System. The number of incident reports selected in a particular category was based on several factors including the likelihood of miscoding occurring in a given category.

The review team also interviewed approximately 30 individuals with knowledge of the WVU DPS and WVU campus safety and security programs. These interviews helped the team obtain a more complete picture of the University's approach to campus safety and Clery Act compliance.

The program review report (PRR) was issued July 30, 2008 and a copy of that report is attached to this Final Program Review Determination (FPRD) letter.

Disclaimer:

Although the review was thorough, it cannot be assumed to be all-inclusive. The absence of statements in the report concerning the University's specific practices and procedures must not be construed as acceptance, approval, or endorsement of those specific practices and procedures. Furthermore, it does not relieve West Virginia University of its obligation to comply with all of the statutory or regulatory provisions governing the Title IV, HEA programs.

D. Findings and Final Determinations

The violations, as presented in the Department's July 30, 2008 program review report, are quoted below in italics. At the conclusion of each part of the finding, the review team has summarized WVU's response and stated the Department's final determination. The purpose of this letter is to: (1) advise the University of the Secretary's final determinations regarding violations of the Clery Act and (2) provide instructions about additional corrective measures needed to bring operations into compliance with the Clery Act.

Finding: ***Failure to Properly Disclose Crime Statistics in Campus Security Reports***

Citation:

Federal regulations require that participating institutions compile and publish statistics concerning the occurrence on campus of the following Part I Offenses: criminal homicide: murder and manslaughter, forcible and non-forcible sex offenses, robbery, aggravated assault, burglary, motor vehicle theft, and arson. In addition, the institution is required to disclose statistics of arrest and disciplinary referrals for violations of certain Part II Offenses involving liquor, drug, and weapons laws. 34 C.F.R. § 668.46(c)(1). To comply with these requirements, institutions also must develop a system that allows for the collection of incidents of crime reported to any campus security authority or external law enforcement. 34 CFR § 668.46 (c) (1)(B).

Noncompliance:

WVU failed to disclose accurate and complete statistics of all incidents of crimes on campus that were reported to WVU DPS and/or other campus security authorities in its Campus Security Reports. Sections A-E identify and explain specific elements of WVU's failure to comply in this regard. The chart in Section A provides additional detail on the violation as it applies to under-reporting and miscoding in selected crime classifications of the Part I Offenses covered by the Clery Act.

A.

Crime Classification	WVU Reported 2001	ED Determination 2001	WVU Reported 2002	ED Determination 2002
Forcible Sex Offenses	*3*	*5*	*2*	*2*
Robbery	*1*	*2*	*4*	*5*
Aggravated Assault	*2**	*5*	*4*	*8*
Burglary	*14*	*39*	*29*	*57*
Motor Vehicle Theft	*3*	*3*	*3*	*4*
Arson	*4*	*4*	*7*	*9*

**** - WVU disclosed two aggravated assaults in the CSR for 2001. However, the University's supporting documentation (audit sheets) only listed one such offense.***

Chart B provides additional detail on the violation as it applies to arrest data for selected Part II Offenses covered by the Clery Act.

B.

Arrests*	WVU Reported 2001	ED Determination 2001	WVU Reported 2002	ED Determination 2002
Liquor Law Violations	*88*	*94*	*133*	*191*
Drug Law Violations	*25*	*32*	*34*	*44*

The primary causes of these reporting violations are two-fold: 1) some incidents were classified improperly and 2) some incidents were coded correctly but were not included in the statistical disclosures (resulting in "Under-Reports"). The most common coding error involved burglaries (a Part I offense against the habitation) being labeled as various types of Part II larceny/theft offenses. For Chart A above, the revised statistics labeled "ED Determination" are the sum of incidents disclosed by WVU in its campus security reports for a given classification plus the additional incidents identified on Appendices A for 2001 and B for 2002.

The revised statistics labeled "ED Determination" in Chart B were arrived at by reviewing the incident reports noted in WVU's supporting documentation (audit sheets) for the statistics published in its campus security reports and then including the additional arrests identified in our samples. Often, multiple arrests were documented in a single report. For more information, please see Appendices C for 2001 and D for 2002.

C. Personal Traumatic Event (PTI) Process

WVU failed to include certain incidents of crimes reported to the Office of Student Life. Since at least the fall of 1989, WVU has had a policy that permits students who have experienced serious emotional or physical trauma to seek academic and other accommodations through the Office of Student Life. Students requesting assistance are required to be interviewed by Student Life officials and explain the circumstances justifying assistance. During these interviews, students often report being a victim or witness of serious crimes. If the interviewer finds the student's presentation is persuasive, a PTI letter is written and provided to faculty members or other institutional officials to facilitate the accommodation.

Records secured by the review team do show that PTI letters were issued in many difficult situations including cases of poor mental and physical health of a student or family member for example. However, many of these records also contain reports of sexual assault or other violent crime. Because Student Life officials are designated as campus security authorities under the Clery Act the information related by victims or witnesses must be treated as an incident of crime reported. The only exceptions would be if the incident did not occur on campus or if the incident was disclosed only to a professional or pastoral counselor, who is exempted from the generally applicable reporting requirement.

In some cases, the PTI letters specifically identify an off-campus location as the crime scene. However, many other state that the incident occurred on-campus or do not mention location at all. In a few cases, a counselor is mentioned although in other cases the PTI letter and attachments demonstrate that the PTI interview was the initial report. Specific reports of sexual assault, usually coded "S.A." and a number of incidents involving fraternity violence that may rise to the level of aggravated assault trigger a special concern. There is no indication that reportable incidents are always communicated to WVU DPS for inclusion in the campus security report statistics.

D. Fraternity Incidents

WVU failed to include certain incidents of crimes reported to the Morgantown Police Department and/or the Office of Greek Organizations, division of the Campus Organization Services Office (COSO). COSO is responsible for providing programming for and oversight of recognized student organizations. WVU has over 300 such organizations including several Greek letter social fraternities. One of the office's responsibilities is to adjudicate discipline cases involving these organizations. This is one of at least four distinct conduct/judicial systems at WVU.

Documents secured by the review team indicate a number of ongoing violent episodes involving fraternities during the review period. For example in 2001, Phi Kappa Psi Fraternity was found in violation and sanctioned for several incidents that included breaking into another fraternity house and beating a student with a rock. The student experienced serious injuries and required significant medical attention. The documents

indicate clearly that this incident should have been coded as an aggravated assault under the UCR hierarchy rule.

The Morgantown Police Department (MPD) responds to most criminal cases reported at fraternity houses. However, fraternity houses and other property owned or controlled by student organizations clearly fall within the Clery Act's campus definition. A few WVU DPS reports documenting fraternity violence were identified in our program review samples. However, these reports were classified as "calls for service" or "information." The review team did not find any entries on WVU's audit sheets that referenced an MPD report as the source document for a reportable incident at a fraternity house. For example, WVU DPS incident report 01-1284 lists 11 separate fights at or around fraternity houses between September and December 2001. The report also states "six students from separate fraternities needed medical attention for injuries." However, no such incidents could be traced to the campus security report.

E. Arson/Intentional Fires

WVU failed to include certain incidents of arson reported to the Morgantown Fire Department. A special concern was raised by the prevalence of highly publicized street fires during the review period. Couch burnings and intentionally set street fires have been commonplace often coinciding with WVU athletic events. Following a football victory in November 2002, Morgantown Fire Department officials were forced to respond to 32 separate fires while many more were set throughout the city. The review team discussed the issue of intentional fires with Chief of the Morgantown Fire Department. The Chief provided background on his work on and around the WVU campus and important information about state fire laws.

We note that intentional burning continues to be a problem in Morgantown, which led the nation in street fires from 1997 to 2003. Notwithstanding this fact, WVU reports a very small number of arsons. The small number of reported arsons cannot be reconciled easily with the documented accounts of malicious burning on and around the campus and suggests possible defects in WVU's Clery Act compliance program in the areas of coordination of information from public agencies or the University's application of the campus definition provisions. The Clery Act campus definition includes property owned or controlled by student organizations, non-contiguous locations, and certain public property.

Final Determinations

This finding cited WVU for its failure to accurately and completely disclose crime statistics in its Campus Security Reports (CSR). The violation was divided into five parts, presented as A-E.

A. Part A identified underreporting and miscoding of certain Part I Offenses[1] in an expanded sample of WVU DPS incident reports. As a result of this violation, WVU was required to conduct an internal review that included a re-examination of its crime statistics for the review period. In its response, WVU acknowledged that crimes had been coded incorrectly and required Clery crimes had not been properly included in the CSR thereby resulting in under-reporting. The following chart summarizes the corrections identified through WVU's own internal review in selected crime categories:

Crime Classification	WVU Original Statistics	WVU Revised Statistics
Forcible Sex Offenses - 2001	3	**5**
Robbery - 2001	1	**2**
Aggravated Assault - 2001	2	**5**
Aggravated Assault - 2002	4	**5**
Motor Vehicle Theft - 2002	3	**5**
Arson - 2002	7	**9**

On the basis of the results of the University's own internal review, this portion of the finding is sustained.

WVU did challenge the Department's finding relating to most of the miscoded burglaries. However, WVU did concur that one burglary in 2001 and six burglaries in 2002 were miscoded. There were however, 46 additional burglaries that the Department has determined were miscoded. In each case, a burglary[2] was incorrectly coded as the larceny/theft offense. Larcenies are not reportable under the Clery Act.

A burglary is defined as an unlawful entry (without permission) to commit a felony or theft regardless if that unlawful entry was forcible or not. If lawful entry cannot be determined then the crime must be classified as a burglary. The *Clery Act* does not require a breakdown of crime statistics into subcategories (e.g., Burglary–Forcible Entry, Burglary–No Force, Burglary–Attempt). However, statistics for all incidents meeting any of these criteria must be included in the Burglary field of the CSR. Therefore, the improper coding of the identified incidents as larceny/theft offenses also resulted in under-reporting. The following incident reports are **examples** of burglaries that were

[1] Part 1 Offenses that must be reported include: criminal homicide; forcible and nonforcible sex offences; robbery; aggravated assault; burglary; motor vehicle theft; arson.
[2] Burglary: the unlawful entry of a structure to commit a felony or a theft. For reporting purposes this definition includes: unlawful entry with intent to commit a larceny or felony; breaking and entering with intent to commit a larceny; housebreaking; safecracking; and all attempts to commit any of the aforementioned. From: the *Uniform Crime Reporting Handbook.*

improperly coded as larceny/thefts by WVU (2001-cases # 119, 135, 190, 217[3], 297, 356, and 561; 2002-cases # 188, 189, 306, 351, 420, 430, 435, 484, and 1130.)

Theft from a dormitory room where there is no record that a roommate, guest, or other such person had permission to be in the room must be coded as a burglary under the Clery Act. However, more public areas such as foyers, T.V. lounges, and laundry facilities in residence halls can be construed as common areas because that are more freely open to residents, licensees, invitees, and visitors subject to laws and policies that may limit legal access. The review team omitted cases that may have taken place in such open areas. Additionally, the review team did not count cases where the complainant indicated that they were not certain from where their property was taken. These incidents were not reclassified as burglaries because the theft could have happened in a public place or the item could have been lost (see case #02-978).

The information provided by WVU in its response does not change the Department's finding of miscoding and under-reporting of burglaries. The institution may wish to review ED's Handbook for Campus Crime Reporting (please see pages 34-36) for further clarification on the Department's standard for burglaries.

Officers must be trained to evaluate and code incidents in accordance with the Clery Act and UCR guidelines. In cases where the personal property of another is stolen from a dormitory room the proper code is burglary unless there is clear and convincing evidence that no trespassing occurred. In fact, the review team excluded from consideration any incident report where a victim or witness accused or even suspected a roommate, invitee or other non-trespasser of committing the crime.

In conclusion, we have determined that WVU originally published and distributed inaccurate crime statistics for calendar years 2001 and 2002. WVU own internal audit confirmed that omissions and miscodings occurred. This violation clearly resulted in a substantial misrepresentation of the occurrence of serious crimes on campus during the review period.

B. Part B identified underreporting of Part II Offense[4] data regarding the number of arrests for violations of certain liquor and drug laws in a sample of WVU DPS incident reports. As a result of this violation, WVU was required to conduct an internal review that included a re-examination of its arrest statistics for the review period. In its response, WVU acknowledged that arrest statistics were not compiled correctly thereby resulting in under-reporting in the CSR.

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[3] This incident report was originally coded as a burglary and was subsequently changed to petit larceny using correction fluid. A main allegation of the complaint and a focus of the lawsuit brought by former WVU DPS officers was that reports were improperly altered by supervisors.

[4] For Clery purposes, Part II Offenses include arrests and disciplinary referrals for drug law, liquor law, and weapons violations.

The following chart summarizes the corrections identified through WVU's own internal review in selected offense categories:

Arrests	WVU Original Statistics - 2001	WVU Revised Statistics - 2001	WVU Original Statistics - 2002	WVU Revised Statistics - 2002
Liquor Law Violations	88	**98**	133	**195**
Drug Law Violations	25	**32**	34	**50**

WVU responded that human error was the primary cause of reporting exceptions. The internal review found that some liquor and drug law arrests that were incidental to police responses to non-Clery incidents were not identified in the CSR. In other cases, multiple arrests associated with one incident report were not tabulated correctly. In other cases, arrests made after the completion of the incident report were not recorded accurately, and therefore were excluded from the statistics compiled for Clery purposes.

These reporting errors also contributed to WVU's inaccurate reporting of crime statistics for calendar years 2001 and 2002. As stated previously, WVU's own internal audit confirmed the omitted and miscoded incidents. This violation clearly resulted in a substantial misrepresentation of the occurrence of serious crimes on campus during the review period.

C. Part C cited the Department's concerns that Clery-reportable crimes (sexual offenses and aggravated assaults) identified through the Personal Traumatic Incident (PTI) process administered by the Office of Student Life (OSL) may not have been reported to the Department of Public Safety. The review team examined 100 PTI records. The PTI policy allows for academic leniency and other accommodations to students following an emotional or physical trauma. Students requesting assistance must explain their circumstances and needs to an OSL official. The OSL official evaluates the student's circumstances and documents the conversation. If warranted, a PTI letter is written and provided to faculty members or other institutional officials to facilitate the student's accommodation. Because Student Life officials are designated as campus security authorities under the Clery Act, the information related by victims or witnesses must be treated as an incident of crime reported.

WVU was required to re-examine the PTI process as part of its internal review and items 1, 2, 3, 4, 5, and 7 of the corrective action program were designed to address the weaknesses identified in PTI process. In its response, WVU asserted that it reviewed PTI records and found no reportable incidents that were not already known to DPS. The Department is pleased that WVU has implemented an annual audit program to review the collection and reporting done by all of WVU's Campus Security Officials. WVU also responded that it has trained all Campus Security Authorities on Clery reporting

requirements and will provide annual training to reaffirm the importance of Clery compliance.

Based on the commitment to auditing records and training staff, the Department accepts the University's response in this regard. However, the Department would also like WVU to respond on improvements made to OSL official's written documentation to ensure the location of the incident is properly identified and a clear recitation of facts to aid in proper crime classification is captured. This documentation issue must be addressed in accordance with the requirements of Section E of this FPRD.

D. Part D cited the University for failing to include statistics in the CSR for certain crimes reported to the Morgantown Police Department (MPD). The crimes in question occurred in buildings or on property owned or controlled by recognized student organizations, specifically Greek letter social fraternities. The program review report referenced eleven (11) specific incidents of crimes that were identified in WVU DPS reports and/or the records of the Office of Greek Organizations, a division of the Campus Organization Services Office. During the site visit, WVU police officials stated that information reports were often used to document criminal incidents being worked by other law enforcement agencies that involved University students or employees in some way. The most common reason that a case would be handled by another law enforcement agency was that the crime occurred "off-campus." These information reports also were provided to WVU officials with responsibilities for student discipline.

In response to this part of the finding, WVU was required to conduct an internal review as set out in the "Required Actions" section of the program review report. Focus items 1, 2, 3, 4, and 5 of the corrective action program were designed to address the fraternity house issue. In its response, WVU asserted that no incidents of crime occurring at fraternity houses were improperly omitted from the 2001 and 2002 crime statistics published in its CSR's. The University has taken the position that no crimes occurring at fraternity houses are to be counted unless the University owns the property. The response stated in part,

> "In 2001 and 2002 the Fraternity Houses were not "owned or controlled" by student organizations; rather, they were owned by a myriad of House Corporations, Greek Alumni, investors, and other entities, not affiliated with WVU. For this reason, incidents occurring on these properties were under the jurisdiction of the City of Morgantown for Clery reporting."

For the purpose of determining whether a fraternity or sorority house is on-campus under the Clery Act, institutions must only include those houses located on the campus proper and that are owned or controlled by the institution. In cases where the institution owns the property, but the fraternity or sorority controls the building, the house is considered on campus. The institution's ownership of the property takes precedence over the student organization's control. Please see 34 CFR 668.46(a) for clarification of definitions of ownership and control of buildings and property for Clery purposes.

However, institutions must also disclose incidents of crimes reported as occurring in a building or on property owned or controlled by a recognized student organization such as a fraternity or sorority. The Clery Act defines such buildings and properties as non-campus property. Non-campus property includes any building or property that is:

- owned/controlled by the institution and is located off campus
- owned/controlled by a recognized student organization (RSO) and is located off campus
- owned/controlled by an RSO and is located within the confines of the campus
- owned by the institution but is controlled by a recognized student organization and is located off campus.

Title IV institutions are responsible for requesting and compiling crime statistics from local law enforcement agencies. This requirement is driven by the Clery Act's definition of campus not jurisdictional boundaries. WVU's determination appears to rely on the fact that the Morgantown Police Department is the primary law enforcement agency of jurisdiction for a number of the fraternity houses at issue. The response indicates that WVU has improperly interpreted the components of the Clery Act's definition of campus.

In this case, the issue of control is the key factor that requires WVU to disclose incidents of crime reported at these locations. Fraternity houses at WVU are well-established and are clearly associated with the Greek letter social organizations that occupy and control them. Additionally, the Department has determined that each of the ownership structures described in WVU's response result in ownership and/or control by the recognized student organization and therefore incidents or crime reported there must be disclosed. Therefore, WVU is required to request crime data from the MPD for these locations and include incidents of crime occurring there in the CSR statistics.

The Department has observed from other reviews that most fraternity houses are not owned by the <u>current</u> occupants or the organization's <u>current</u> membership. More often, these homes are owned by the national organization, a group of alumni, who normally establish a corporation to manage liability and costs, or a variety of other arrangements. None of these ownership structures, however, are exempt from Clery Act reporting requirements.

Therefore, the Department has determined that WVU did not apply the definition of campus correctly because it excluded fraternity houses and the property where they are situated, which resulted in excluding reportable incidents of crime from its annual statistics.

To isolate the full effect of this violation and to ensure adequate corrective actions are taken before the publication of the next CSR due October 1, 2009, WVU is required to undertake the "Supplemental Corrective Measures" set forth in Section E of this FPRD.

E. Part E cited the University for failing to include statistics in the CSR for certain fire-related crimes that meet the Clery Act's definition of arson. Most of these fires were

reported to the Morgantown Fire Department (MFD). The program review report noted that there were a large number of highly publicized street fires that occurred in Morgantown during the review period, often coinciding with major WVU athletic events. However, WVU reported a very small number of arsons; raising the possibility that not all arson statistics were included in the CSR. As previously noted all off-campus fraternity housing as defined under the Clery Act were not properly included in WVU crime statistics. In response to this part of the finding, WVU was required to re-examine its arson statistics as part of the Internal Review. Focus items 1, 2, 3, 4, and 5 of the corrective action program were designed to address the issue of arson crimes. The University responded to this finding by stating in part,

> "Notwithstanding the statistics cited in the program review report, WVU maintains that it appropriately reports all Arsons as required by the Clery Act. Intentional fires occurring in and around Morgantown rarely occur on WVU property or on public property adjacent to the WVU campus...Nevertheless, the local fire department(s) are not contacted for Clery reporting purposes, as there is no such requirement under the Clery Act."

The Clery Act requires that statistics be disclosed for all Clery crimes reported to any agency with jurisdiction over any part of its campus, including arson. The following definitions summarize the geographical areas for which the University must report incidents of crime reported:

1) On Campus I: any building or property owned or controlled by the institution within the same reasonably contiguous geographical area and used by the institution in direct support of, or in a manner related to, the institution's educational purposes, including residence halls;

2) On Campus II: a subset of On Campus I that includes any building or property that is within or reasonably contiguous to the area defined in #1 above that is controlled by another person or entity, is frequently used by students, and supports institutional purposes;

3) Non-Campus Building or Property: any building or property owned or controlled by a recognized student organization; or any building or property owned and controlled by the institution as described in 1 above and is frequently used by students, but is not within the same reasonably contiguous area; and,

4) Public Property: all public property that is within the boundaries of the campus or that is immediately adjacent to or accessible from the campus.

To assist in resolving this finding, the Department requested copies of MFD incident reports and citations issued regarding fire-related crimes occurring on any building or property covered by the Clery Act's definition of campus including Greek letter organizations. Documents pertaining to all intentionally-set fires within these geographical parameters were requested. The request covered acts such as setting bulletin boards on fire, burning of furniture, or other personal or discarded flammable property.

The Morgantown Fire Department's provided approximately 200 reports of fires that occurred on WVU property, property owned or controlled by recognized student organizations, or on public property within a three-block area. The Department has

determined that some but not all of the public property covered by the data request does constitute lands that fall within the boundaries of the campus and therefore, must be reported for Clery purposes.

The failure to properly report arsons was caused by an inadequate solicitation of crime statistics from local agencies as well as an improper application of the definition of campus. As a result of this final determination, WVU must conduct the additional analysis as set forth in Section E of this FPRD.

E. Supplemental Corrective Measures

The Department has carefully considered the University's response and supporting documentation submitted pursuant to our July 30, 2008 program review report. The response is accepted and the program review will be closed subject to WVU's completion of the additional requirements noted in this section.

The review team is aware of many of the policing and safety improvements that have been implemented since the beginning of the program review. The improved recordkeeping procedures, active shooter scenario training, and the WVU Alert system are positive developments. However, some aspects of the response necessitate that the Department gather additional information pertaining to past, current, and proposed policies and practices.

The University must designate a capable individual to conduct a thorough review of its compliance with Clery Act requirements focusing on the violations and weaknesses identified in this FPRD. The official must prepare a report of his or her findings and additional corrective actions and provide a copy to the Department for our review. WVU must also use this information to modify its policies, procedures, systems, and training to ensure that the violations identified during the program review do not recur. WVU's response must include the following:

- For Part A: An explanation of the policy and procedural changes that were or will be initiated to ensure that burglaries are identified and coded in accordance with Clery Act requirements. Please also explain what training was or will be provided to DPS staff to reinforcement these changes.

- For Part A and B: A detailed description of the steps WVU will follow to ensure that all reportable incidents are identified and included in the CSR. Please state exactly what aspects of the incident report and statistical tracking processes will remain manual and those that were or will be automated. Please also explain who is responsible for carrying out each step in these processes. WVU must explain its protocols, beginning with the receipt of a call for service by the police or other campus security authority through the compilation and final approval of the crime statistics published in the CSR. Please also indicate the individual or office that has or will have supervisory responsibilities over each step in the process (by position title). The response to this item may take the form of a flow chart, narrative or other appropriate format.

- For Part C: A detailed description of how WVU has improved its recordkeeping system for the PTI process. The record-keeping system may take whatever form the University deems appropriate, but it must provide for clear documentation and a discernible audit trail. Also, WVU must provide a detailed explanation of the auditing process that was developed in response to this part of the finding.

- For Part D: A comprehensive review of WVU's application of the Clery Act's definition of "campus" with special attention to non-campus property including fraternity houses and public property that is adjacent to or accessible from the campus. WVU must explain with particularity the process that was employed to evaluate buildings and properties to determine if they fall within the definition and if so, which part of the definition applies to said building or property. Additionally, a campus map (with a color-coded legend) must be prepared and submitted with WVU's report. WVU must also describe the processes for requesting and compiling crime statistics from all campus security authorities and external agencies with jurisdiction over any buildings or properties that fall under any part of the definition of campus.

- For Part E, the University must request incident reports from the MFD and develop an evaluation process to identify any arson that must be included in the October 1, 2009 CSR.

The Department recognizes that WVU has initiated several corrective actions and improvements since the commencement of the program review. We also understand and appreciate the significant commitment that has gone into conducting the internal review and to maintaining and improving WVU's campus safety programs. Once the supplemental report is submitted and reviewed, the program review will be closed. However, the University is reminded that corrective actions, whether already enacted or proposed for the future, do not diminish the seriousness of the violations identified during the program review.

Therefore, please be advised that this FPRD is being referred to the Administrative Actions and Appeals Division (AAAD) for consideration of possible adverse administrative action. Such action may include a fine, or the limitation, suspension or termination of the eligibility of the University pursuant to 34 C.F.R. Part 668, Subpart G. If AAAD initiates any action, a separate notification will be provided which will include information on the University's appeal rights and procedures to file an appeal.

While the University may not appeal this Final Determination, WVU will have full appeal rights in the event that AAAD initiates an adverse administrative action as a result of the violations of the Clery Act identified in this FPRD.