



November 3, 2008

John T. Casteen, III, Ph.D.
President
University of Virginia
1847 University Avenue
Charlottesville, VA 22904-4224

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Dear Dr. Casteen:

As you know, Security on Campus, Inc, a non-profit campus safety advocate, filed a complaint against the University of Virginia (the University; UVA) alleging violations of the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act). The complaint was filed on behalf of (b)(6) student and was subsequently joined by (b)(6), (b)(6). Specifically, the complainant accused UVA of violating 34 C.F.R. § 668.46 (b)(11)(vi), a set of Clery Act provisions often referred to as the Campus Sexual Assault Victim's Bill of Rights (CSAVBR).

The CSAVBR provisions require schools to develop and implement policies and programs intended to prevent or reduce sexual assaults and to provide appropriate assistance and services to survivors. The provision at issue in this case requires institutions to advise students of procedures to be following in campus disciplinary proceedings. Federal regulations further require that both the accuser and the accused be informed of determinations regarding culpability and any sanctions imposed as a result of a judicial proceeding.

The complainants alleged that the University placed impermissible conditions on their ability and that of other survivors of sexual assault to access information to which they are entitled under the Clery Act. At UVA, these records were generated and maintained by the Office of the Vice President for Student Affairs and Chief Student Affairs Officer. (b)(6) was seeking information about UVA's adjudication of her sexual assault that occurred in (b)(6). (b)(6) was seeking similar information about her (b)(6) attack.

Both women decided to pursue cases against their alleged assailants through UVA's Sexual Assault Board. (b)(6) attacker was found in violation but was permitted to continue his enrollment in good standing. The accused in (b)(6) case was found not responsible. According to the complaint, University officials repeatedly admonished accusers that all aspects of the proceedings were to remain completely confidential. It is

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further alleged that accusers were advised that infractions of this policy could result in penalties being imposed against them. Such violations could even be viewed as breaches of the UVA Honor Code and penalties as serious as suspension or expulsion could be imposed. Accusers were required to state their concurrence with this policy before receiving information of verdicts and sanctions, which were often not announced until a subsequent meeting on the Sexual Assault Board.

The U.S. Department of Education (the Department; ED) has conducted an extensive review of the complaint and UVA's official responses. The Final Determinations in this case are based information developed during the review as well as previous guidance provided by our colleagues in the Office of Postsecondary Education, Office of General Counsel, and the Family Policy Compliance Office. Based on our review, we have determined the following:

- 1) Neither (b)(6) [redacted] violated any provision of the Federal Education Rights and Privacy Act (FERPA) or the Clery Act as a result of their actions after being informed of the outcomes reached or sanctions imposed by the Sexual Assault Board.
- 2) The University cannot require an accuser to agree to abide by its non-disclosure policy, in writing or otherwise, as a pre-condition to accessing judicial proceeding outcomes and sanction information under the Clery Act.
- 3) The Clery Act does require access to outcomes and sanctions information without condition. Specifically, Federal regulations at 34 CFR § 668.46 (b)(11)(vi)(B) specifically cited by the complainants states in part that,"

"Both the accuser and the accused must be informed of the outcome of any institutional disciplinary proceeding brought alleging a sex offense. Compliance with this paragraph does not constitute a violation of the Family Educational Rights and Privacy Act (20 USC § 1232g)." We note the use of mandatory language and the absence of any words of condition or limitation. Under the University policy in place during the review period, a student who refused to adhere to the confidentiality policy would have be precluded from receiving this vital information and in so doing, a key aim of the Clery Act would have been defeated – namely, providing information to the principals in a proceeding. Access to such information could be essential as survivors go through the recovery process. Similarly, such information may be of high value to an accused person who is exonerated through a judicial process.

Based on your responses, it is clear that UVA does not agree that it violated the Clery Act. However, it is equally clear that several UVA students were persuaded that failure to adhere to the confidentiality policy could have resulted in serious consequences ranging from disciplinary action to not being granted a hearing before the Sexual Assault Board in the first place. Certain press statements by University officials suggest internal

confusion even within the University about what actual policies and practices were in place during the time period under review.

The Department is aware that UVA has undertaken a number of initiatives aimed at improving the Sexual Assault Board process and evaluating the effectiveness of its policies and procedures. It is our understanding that UVA designated groups of officials and students to examine and improve operations in this regard and that ensuring compliance with the Clery Act was a major aim of this exercise. Nevertheless, based on the determinations and guidance above, the University is required to conduct a comprehensive review of its Clery Act policies and procedures to identify and address violations or weaknesses in its Clery Act program. UVA must specifically address how it will ensure the unconditional communication of judicial proceeding outcomes and sanctions to accusers and the accused in cases of alleged sex offenses.

UVA must submit a copy of its policies and procedures governing the conduct of the Sexual Assault Board for our review. The University also must provide a brief narrative summarizing the changes between the current policy (and any modifications made as a result of this Final Determination) and the policy that was in place at the time of the complainant's hearings. Lastly, please provide a copy of your most recent Campus Security Report. The requested items must be submitted to the attention of Mr. James Moore at the following address:

U.S. Department of Education
The Wanamaker Building
100 Penn Square East, Suite 511
Philadelphia, PA 19107

Please provide these materials no later than 30 days following your receipt of this letter.

This determination finds that the University violated the Clery Act. However, as was noted in our July 2004 Final Determination in another case, there was apparent confusion in the higher education community regarding the intersection of the disclosure requirement under the Clery Act and the strictures of FERPA. For this reason, the Department will not impose any fines or other sanctions at this time. However, UVA is advised that any subsequent violations of the Clery Act will result in a referral for the imposition of a civil penalty of up to \$27,500 per infraction.

Dr. John T. Casteen, III
President
University of Virginia
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We thank you for your cooperation and patience throughout our examination of this matter. If you have additional questions, please contact Mr. James Moore on (215) 656-6495.

Sincerely,



Nancy Paula Gifford
Area Case Director

Patricia M. Lampkin, Ed.D., VP of Student Affairs & Chief Student Affairs Officer
Mr. Paul J. Forch, Esq., General Counsel