

AGENDA ITEM: C.2.f.

AGENDA TOPIC: Internal Audit Report on Compliance

CONTACT(S): Representatives from Packer Thomas

BACKGROUND: An internal audit report on Compliance was recently completed by Packer Thomas.

SUMMARY AND ANALYSIS: During our audit of Compliance, we focused our audit efforts on select compliance areas, specifically on The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (“Clery Act”), and select areas of the Higher Education Opportunity Act of 2008 (“HEOA”).

A murder was omitted from the 2011 crime statistics reported in the 2013-2014 and 2014-2015 Annual Safety and Fire Report (ASFR). It was noted that the murder was properly reported to the Department of Education (DOE) and on the 2012-2013 ASFR; however, it was inadvertently omitted from future reports. The University is required to disclose crime statistics for the most recent three calendar years. When counting multiple offenses, the FBI UCR Rule is used, which requires that only the most serious offense be counted when more than one offense was committed during a single incident. The 2011 murder stemmed from one incident with multiple offenses. It appears the murder was omitted in the mentioned reports when correcting the other offenses associated with this incident. The error appears to have resulted from a lack of review of reported crime statistics before the ASFR is published. The risk of submitting an incomplete or inaccurate ASFR may result in an examination from the Department of Education which may result in the imposition of fines up to \$35,000 per violation. We recommend that the ASFR be reviewed by someone in the legal department for accuracy and to ensure all disclosures required by law are properly included prior to it being published or submitted to the DOE. In addition, the crime and fire statistics presented in the ASFR should be reviewed by an independent person from the preparer to ensure accuracy.

The University is not properly distributing the ASFR to active students and employees. It has been past practice to post the ASFR on the University website and hardcopies were published and placed throughout the University and made available via other distribution. The Clery Act requires that the ASFR be prepared and “actively” distributed to all currently enrolled students (including those attending less than full time) and employees by October 1st of each year. In addition, the individual notice about the ASFR must also be provided to prospective students and prospective employees. There are 2 ways to distribute the report to students and employees:

- 1) By providing a copy personally to each employee and student or by mailing through US post, campus mail, email, or a combination of these methods or,
- 2) By posting the ASFR on the University website and made reasonably accessible to students and employees. This method may only be used if the University distributes an individual notice with required disclosures and a direct link to the ASFR to each student and employee by October 1st. The notice is not permitted to be buried within another document.

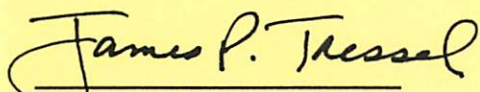
We recommend that when distributing the ASFR by posting it to the University website, that an individual notice disclosing the required information mentioned above, including a direct link to the report, be emailed to each student and employee by October 1st. One email should be retained to show proof of compliance with the October 1st deadline.

Formal training of Campus Security Authorities (CSAs) regarding the Clery Act has not been performed since November 2012. If someone has significant responsibility for student and campus activities, he or she is a CSA. CSAs play an important part of the Clery Act. A crime is "reported" when it is reported to a CSA or local enforcement personnel. If a CSA receives criminal information and believes it is provided in good faith, it is required to be documented in a crime report. Lack of training increases the risk that a CSA will not understand their responsibilities and therefore, unknowingly not comply with the Clery Act. Training is imperative to proper compliance programs. We recommend that individuals be notified annually of their responsibility as a CSA and annual training should be provided. In addition, CSAs should be informed of whom to contact regarding any questions they may have.

The ASFR does not fully disclose the missing person notification policy and procedures, descriptions of policies regarding fire safety and education and training, procedures used to test the emergency response system and evacuation procedures, security considerations used in the maintenance of campus facilities, and a full description of legal sanctions under local, state, and federal law and the University sanctions for unlawful possessions, use, or distribution of drugs and alcohol. We recommend the required disclosures be properly included, and or expanded upon, in the ASFR as soon as possible.

RESOLUTION: N/A – DISCUSSION ITEM ONLY

REVIEWED AS TO FORM AND CONTENT:


James P. Tressel, President



**COMPLIANCE AUDIT
INTERNAL AUDIT REPORT**

October 5, 2015

DISTRIBUTION

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YOUNGSTOWN STATE UNIVERSITY

COMPLIANCE AUDIT INTERNAL AUDIT REPORT

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Youngstown State University
One University Plaza
Youngstown, Ohio 44555

This report summarizes the results of our internal audit of selected compliance areas. Please review this report. If you have any questions, please call us at (330) 533-9777.

Management has provided their responses to our findings and those responses are included within this report.

We wish to thank the various University staff that assisted us with this audit specifically the staff of the Police department for the cooperation that was extended to us during the course of this audit.

PACKER THOMAS
October 5, 2015

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OVERVIEW

An audit of select compliance areas was recently completed by Packer Thomas. Our procedures were performed as a result of the internal audit scope which was approved by the Audit Subcommittee. This audit focussed on The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (“Clery Act”), and select areas of the Higher Education Opportunity Act of 2008 (“HEOA”).

Our consideration of internal controls involved assessing the effectiveness and existence of proper internal controls for the following:

- Management oversight
- Safeguarding of assets
- Authorizations
- Monitoring

The procedures performed during our internal audit included interviews with various staff of the Legal department, Police department, and University Relations. We reviewed policies and procedures disclosed in the Annual Safety and Fire Report (ASFR) for compliance with required regulations, as well as, inspecting the method of disclosures required by various regulations. In addition, we performed testing by tracing a sample of crime statistics reported in the ASFR and to the Department of Education, to supporting documentation. Our procedures did not include evaluating if a crime was correctly categorized in accordance with the Federal Bureau of Investigation’s (FBI) Uniform Crime Reporting (UCR) Rules. Our consideration of internal control would not necessarily identify all deficiencies in internal control. However, we have listed below the summary of our findings in three separate categories (as applicable): those that we consider to be issues that require immediate action by management, those that need a timely remedy, and those items for consideration by management based on best practices.

BACKGROUND

The Clery Act¹

The Clery Act, which originated in 1990, requires all colleges and universities who receive federal funding to disclose information about crime on and near their respective campuses and their efforts to improve campus safety. This information is made publicly accessible through the University’s annual security report which must be distributed annually by October 1st to students and employees. The fines imposed for a Clery Act violation is \$35,000 per violation. Colleges and universities must outline specific policies and procedures within their annual security report, including, but not limited to, those related to disseminating timely warnings and emergency notifications, options for survivors of sexual assault, domestic violence, dating violence, and stalking and campus crime reporting processes. In addition, crime statistics must be disclosed for the three most recent calendar years. The Clery Act has been amended numerous times throughout the years with the most recent amendments including the Campus Sexual Violence Elimination Act in 2013, Violence Against Women Reauthorization Act of 2013, and the Higher Education Opportunity Act of 2008.

The Higher Education Opportunity Act (HEOA) of 2008

The HEOA is a reauthorization of the Higher Education Act of 1965, which was previously reauthorized eight times. The primary purpose of the Higher Education Act was to allocate federal student loans and grants to ease the cost of college. The HEOA imposes a substantial number of new reporting and disclosure obligations on universities that participate in Title IV federal student financial aid programs. Some of the new key reporting and disclosure requirements imposed by HEOA include drug and alcohol abuse prevention reporting, fire safety disclosures, missing person disclosures, disclosures on policies on response and evacuation procedures, disclosure of hate crimes, costs and consumer information, textbook information, etc.



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AUDIT FINDINGS & RECOMMENDATIONS - REQUIRING IMMEDIATE ACTION

- 1) A murder was omitted from the 2011 crime statistics reported in the 2013-2014 and 2014-2015 Annual Safety and Fire Report (ASFR). It was noted that the murder was properly reported to the Department of Education (DOE) and on the 2012-2013 ASFR; however, it was inadvertently omitted from future reports. The ASFR discloses University policy statements, procedures and programs related to safety, security and fire as required by various regulations, including, but not limited to, the ones examined during our internal audit. In addition, the University is required to disclose crime statistics for the most recent three calendar years. When counting multiple offenses, the FBI UCR Rule is used, which requires that only the most serious offense be counted when more than one offense was committed during a single incident. The 2011 murder stemmed from one incident with multiple offenses. It appears the murder was omitted in the mentioned reports when correcting the other offenses associated with this incident. The error appears to have resulted from a lack of secondary review of reported crime statistics before the ASFR is published. The risk of submitting an incomplete or inaccurate ASFR may result in an examination from the Department of Education which may result in the imposition of fines up to \$35,000 per violation.

We recommend that the ASFR be reviewed by someone in the legal department for accuracy and to ensure all disclosures required by law are properly included prior to it being published or submitted to the DOE. In addition, the crime and fire statistics presented in the ASFR should be reviewed by an independent person from the preparer to ensure accuracy.

MANAGEMENT RESPONSE

The University shall designate a Clery Act Compliance Officer. This person will receive continuing and inclusive training on the Clery Act.

- 2) The University is not properly distributing the ASFR to active students and employees. It has been past practice to post the ASFR on the University website and hardcopies were published and placed throughout the University and made available via other distribution. In addition, we could not verify that the 2014-2015 ASFR was made available by the October 1, 2014 deadline. The Clery Act requires that the ASFR be prepared and “actively” distributed to all currently enrolled students (including those attending less than full time) and employees by October 1st of each year. The Clery Act also states that if a printed ASFR is requested, one must be provided.

There are 2 ways to distribute the report to students and employees²:

- 1) By providing a copy personally to each employee and student or by mailing through US post, campus mail, email, or a combination of these methods or,
- 2) By posting the ASFR on the University website and made reasonably accessible to students and employees. This method may only be used if the University distributes an individual notice about the ASFR to each student and employee by October 1st. The notice is not permitted to be buried within another document. The individual notice should include the following:
 - a) The notice of the ASFR’s availability.
 - b) A list and brief description of the information contained in the report.
 - c) The exact address (URL) of the Internet website at which the report is posted. A direct link to the ASFR must be provided.
 - d) A statement that a paper copy of the report will be provided upon request. (Request does not have to be in writing, and you are not permitted to charge for copies).

In addition, the individual notice about the ASFR must also be provided to prospective students and prospective employees. For example, the notice can be provided to prospective employees at the



time of a job interview, or the notice can be provided to prospective students in a separate email when the student requests information about the University. As stated earlier, the risk of noncompliance with this Act is a \$35,000 penalty per violation.

We recommend that when distributing the ASFR by posting it to the University website, that an individual notice disclosing the required information mentioned above, including a direct link to the report, be emailed to each student and employee by October 1st. One email should be retained to show proof of compliance with the October 1st deadline.

MANAGEMENT RESPONSE

- a) The recommended process to distribute the ASFR to students and employees was implemented this year. Each student and employee received an email (this year the report was emailed out on Sept 29th) prior to October 1st. The email provided a description of what's included in the ASFR as well the exact address (URL) of the internet website and a direct link. Prior to this year and since 2007, students and employees received an email with a description of what was included in the ASFR, prior to October 1st, informing them that the ASFR was available, however, a direct link to the report was not included. In addition, the University has been, and will continue to provide a printed copy of the ASFR to any requesting party.

- 3) Formal training of the Clery Act has not been performed since November 2012. Campus Security Authorities (CSAs) play an important part of the Clery Act. A crime is "reported" when it is reported to a CSA or local enforcement personnel. If a CSA receives criminal information and believes it is provided in good faith, it is required to be documented in a crime report. In identifying CSAs, the function of that individual or office should be considered. If someone has significant responsibility for student and campus activities, he or she is a CSA.² Lack of training increases the risk that a CSA will not understand their responsibilities and therefore, unknowingly not comply with the Clery Act.

Training is imperative to proper compliance programs. We recommend that individuals be notified annually of their responsibility as a CSA and annual training should be provided. In addition, CSAs should be informed of whom to contact regarding any questions they may have.

MANAGEMENT RESPONSE

The YSUPD will annually identify and notify CSAs as to who they are. The YSUPD will develop and work with the Human Resource department to administer and monitor training. CSA's are informed in training who they can contact regarding any questions.

- 4) The ASFR does not fully disclose the Missing Person Notification Policy and Procedures. The HEOA of 2008 requires universities with on campus student housing facilities to include in their ASFR a statement of policy regarding missing student notification procedures for students who reside in on-campus student housing facilities. In addition to the risk of being assessed penalties for noncompliance, this issue results in the campus community being uninformed of what procedures to implement in the event of a missing person situation where timely notification is critical.

Although the ASFR does include disclosures regarding missing persons, such disclosures should be expanded to include the following:

- A) The Missing Person Notification Policy must³:
 - 1) inform each such student that they have the option to identify an individual to be contacted by the University not later than 24 hours after the time that the student is determined missing.



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- 2) provide each such student a means to register confidential contact information in the event that the student is determined to be missing for a period of more than 24 hours;
 - 3) advise each student who is under 18 years of age, and not an emancipated individual, that the University is required to notify a custodial parent or guardian not later than 24 hours after the time that the student is determined to be missing; and
 - 4) inform each residing student that the University will notify the appropriate law enforcement agency not later than 24 hours after the time that the student is determined missing; and requires, if the campus security or law enforcement personnel has been notified and makes a determination that a student who is the subject of a missing person report has been missing for more than 24 hours and has not returned to the campus, the University to initiate the emergency contact procedures in accordance with the student's designation.
- B) The Missing Person procedures must include³:
- 1) procedures for official notification of appropriate individuals at the institution that such student has been missing for more than 24 hours;
 - 2) requires any official missing person report relating to such student be referred immediately to the institution's police or campus security department; and
 - 3) if, on investigation of the official report, such department determines that the missing student has been missing for more than 24 hours, requires—
 - a) such department to contact the individual identified by such student;
 - b) if such student is under 18 years of age, and not an emancipated individual, the institution to immediately contact the custodial parent or legal guardian of such student; and
 - c) if 3a or 3b do not apply, inform the appropriate law enforcement agency.

The required disclosures should be properly included in the ASFR as soon as possible.

MANAGEMENT RESPONSE

The following information is already included on the YSUPD website but will also be included in the ASFR:

Missing-student notification policies and procedures

When resident students move into their residence halls, they are given the opportunity to identify a person that the University shall notify within twenty-four hours of a determination by the YSUPD that the student is missing. (Unless another law enforcement agency is the entity that determines that a student is missing, YSUPD will cooperate with that agency in their investigation as soon as the YSUPD is made aware that a student is missing.)

Student contact information will be kept confidential. Unless otherwise required by law, contact information will only be accessible to authorized campus officials and law enforcement personnel as part of a missing person investigation. However, should an unemancipated student under the age of eighteen be determined as missing, in addition to notifying the designated contact person, the University is required by law to notify the custodial parent or guardian within twenty-four (24) hours of such determination.



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Should anyone believe that a student has been missing for more than twenty-four (24) hours, s/he immediately should contact YSUPD or a Student Experience staff member, who will immediately contact YSUPD. YSUPD will investigate the missing student report, and or forward and cooperate with any law enforcement agency that is responsible for investigating the missing person's report. If the student is not located during the ensuing twenty-four (24) hours, or sooner as conditions may dictate, the University will notify the student's confidential contact person (and/or parent as necessary.)

- 5) The following required disclosures are not included in the ASFR: :
- a) A description of policies regarding fire safety education and training programs provided to students and employees. The HEOA of 2008 requires that each university that maintains on-campus student housing facilities include in the ASFR policies regarding fire safety education and training programs provided to students, faculty, and staff. In addition, the policies must describe the procedures that students, faculty and staff follow in the case of fire. The description of in-person and online education and training programs should also be included.
 - b) The procedures used to test the emergency response system and evacuation procedures and how often the system and procedures are tested. The HEOA of 2008 requires that the University disclose in its ASFR policies and procedures to test its emergency response and evacuation procedures on an annual basis.
 - c) Security considerations used in the maintenance of campus facilities which is required by the Clery Act. Examples of this are routine meetings held between applicable departments to discuss issues of concern; taking and reviewing security surveys; someone who makes sure pathways, hallways and stairways have sufficient lighting.
 - d) The legal sanctions under local, state and federal law or the University's sanctions for unlawful possessions, use, or distribution of drugs and alcohol. Although the University's current ASFR does disclose "Students found to be in violation of the Student Code of Conduct in regard to Alcohol and Drug Abuse may face both Criminal and University Sanctions", the ASFR does not fully describe the University sanctions or the applicable legal sanctions under local, state, or federal law for the unlawful possession or distribution of illicit drugs and alcohol.

We recommend that the above requirements be disclosed and included the ASFR as soon as possible.

MANAGEMENT RESPONSE

- a) A description of policies regarding fire safety education and training programs provided to students and employees will be included in the ASFR. An example of such policies and training are as follows: Fire Safety Communication Bulletins are sent out to the campus community; Fire Emergency Procedures are contained in a flip chart and online as part of a Campus Emergency Procedure document; all Facilities and Support Services employees have been through various forms of fire safety training, and all new employees of this group are given hazard awareness training by EOHS, including the portable fire extinguisher policy; Chemistry graduate students are given online training provided by Dow Chemical, along with a quiz and they are also given hands on training in the use of portable fire extinguishers; and Warren Fire Equipment, our service provider for extinguishers, provides classroom training at no charge.



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- b) The procedures used to test the emergency response system and evacuation procedures and how often the system and procedures are tested will be included in the ASFR.
 - c) Security considerations used in the maintenance of campus facilities will be included in the ASFR. Examples of these considerations are as follows: Routine meetings are held between Facilities and Support Services and EOHS; outdoor illumination solution discussions are held between Parking Services and Maintenance representatives; night maintenance personnel, along with YSUPD, ensure pathways have sufficient lighting and building maintenance personnel are responsible for hallways and stairwells; taking and reviewing surveys will be an agenda item to consider at future Facilities and Support Services meetings; adequate lighting levels are regulated by Ohio Building Code and the Facilities department ensures that buildings are in compliance.
 - d) The applicable University sanctions and the applicable legal sanctions under local, state and or federal law for the unlawful possession or distribution of illicit drugs and alcohol will be included in the ASFR.
- 6) The definition of sexual assault as required by the Clery Act, as amended by the Violence Against Women Act (VAWA), is not properly disclosed. It is currently disclosed as a form of sexual misconduct in the ASFR.

We recommend that sexual assault be separately defined in accordance with the applicable jurisdiction and disclosed in the ASFR.

MANAGEMENT RESPONSE

The Ohio Revised Code definition of sexual assault will be added within the Campus Security Data section of the ASFR. Additionally, please see management’s response to 7) a) and b) below for further information and clarification regarding this section.

- 7) The disclosures in the ASFR related to the policies and procedures prevent stalking, sexual, domestic and dating violence are incomplete. Some of the required disclosures are as follows⁴:
- a) The definition of dating violence, domestic violence, sexual assault, and stalking in the applicable jurisdiction;
 - b) The definition of consent in reference to sexual activity, in the applicable jurisdiction;
 - c) A description of safe and positive options for bystander intervention; and
 - d) Information on risk reduction.

The required disclosures should be properly included in the ASFR as soon as possible.

MANAGEMENT RESPONSE

- a) The “jurisdictional” definitions of dating violence, domestic violence, sexual assault and stalking refer to applicable criminal code definitions within Ohio. Therefore, these definitions are more appropriately placed and will be placed within the Campus Security Data section of the ASFR. Additionally, a new section titled *Definitions of Sex-Based Offenses* will be added and will include the definitions of dating violence, domestic violence, sexual assault, and stalking. Where the Ohio Revised Code does not have a jurisdictional definition, the definition contained within Section 3 of VAWA, 42 USC §13925 will be used.



In contrast, the ASFR section titled *Discrimination, Harassment, Sexual Misconduct and Sexual Violence* deals with the University's internal policies and is directed at Title IX compliance requirement and not the VAWA and Clery statistics and jurisdictional criminal code definitions.

- b) The definition of consent will be added per the paragraph above.
- c) and d) A paragraph will be added *Discrimination, Harassment, Sexual Misconduct and Sexual Violence* Section and will be titled: *Education and Prevention*. This new section will contain a description of safe and positive options for bystander intervention, information on risk reduction (which is part of the University's Title IX website) as well as an overview of the education and prevention programming offered to incoming students and employees and ongoing training and prevention.

¹ Information obtained from the Clery Center for Security on Campus

² U.S. Department of Education, Office of Postsecondary Education, *The Handbook for Campus Safety and Security Reporting*, Washington, D.C., 2011

³ Higher Education Opportunity Act of 2008

⁴ Violence Against Women Act



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