



January 21, 2022

Sent via Electronic Mail

Mr. Humberto Aristizabal
Associate Vice President, Institutional Equity
Fair Practices Officer and Title IX Coordinator
Salisbury University
Email: hxaristizabal@salisbury.edu

Dear AVP Aristizabal,

I hope all continues to be well with you and your team. As you know, on March 25, 2021, Ms. Cari Simon of the Fierberg National Law Group filed a Complaint with the Clery Group, an office of the U.S. Department of Education (the Department). The complaint was filed on behalf of her client, (b)(6), alleging that Salisbury University (Salisbury; the University) violated key provisions of the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (*Clery Act*) and the Department's implementing regulations, specifically 34 C.F.R. §§ 668.46(b)(11) and (k). These regulations incorporate the amendments to the *Clery Act* included in Section 304 of the Violence Against Women Reauthorization Act of 2013 (VAWA).

The Department's involvement in this matter began in earnest in February 2021 with a request from the (b)(6) family to review the disciplinary procedures that apply in cases of alleged sexual violence and VAWA offenses and to provide technical assistance to Salisbury as needed. On March 3, 2021, a virtual meeting of Department and University officials was held to discuss the Salisbury's policies and procedures. On March 25, 2021, our office notified the University that that the (b)(6) family formally asked that the documentation and information that they submitted previously be construed as a complaint. The Complaint raised serious concerns about Salisbury's handling of several aspects of a disciplinary matter involving (b)(6). Among other allegations, the Complaint claimed that the University violated the *Clery Act* by denying (b)(6) the opportunity to participate in all phases of the conduct process, including an appeal filed by the Respondent. Through her attorney advisor, (b)(6), and her family asserted that this action resulted in a failure on the part of the institution to provide a prompt, fair, and impartial disciplinary process in response to a report of alleged sexual violence. The purpose of this letter is to inform your office that the Clery Group has completed its assessment and to advise you of the outcome.

Normally, when the Department receives a complaint of this type, we carefully consider the allegations, gather documentary evidence, and utilize other investigative and research methods to evaluate case facts and determine an appropriate course of action. In this case, the Complainant submitted a large number of documents and other information for our consideration. We also requested documents from Salisbury and held several meetings with University officials to supplement our independent assessment and ensure that we understood the applicable policies, procedures, and practices of the institution.

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Based on that review, the Department was able to quickly determine that the University's procedures violated the *Clery Act* because the complainant (b)(6) was not permitted to participate in the Respondent's appeal of the original hearing official's finding. While we expressed some concerns about aspects of the case that predated our involvement, our primary focus was on the investigative and adjudicative processes. In support of our determination that a violation had occurred, we noted that the *Clery Act*, at 20 U.S.C. §1092(f)(8)(B)(iv) and the Department's regulations at 34 C.F.R. §668.46(k)(2), specifically require that all parties be able to fully participate in the disciplinary process from its initial stages until a final decision is reached. Both parties must have equal access and be afforded the opportunity to participate in a meaningful manner, even if some aspects of the process are less formal. Here, we noted that it is relatively common for certain types of appeals to be carried out as a "papers only" process. The specifications of the process are not nearly as important as the fact that an appellate process of some type was, in fact, in place. The existence of an appeals process requires that both sides be able to access it equally and that such access may be achieved simply by permitting both sides to file a narrative response and supporting documents with assurance from the institution that their materials will be considered by the appeals official.

In our discussions, we also explained that the Department's implementing regulations define a "proceeding" as "all activities related to a non-criminal resolution of an institutional disciplinary complaint, including, but not limited to, fact-finding investigations, formal or informal meetings, and hearings." The only type of case activity that is specifically exempted from this general rule covers "communications and meetings between officials and victims concerning accommodations or protective measures to be provided to a victim." Again, the participation rules apply throughout the process from initial report to final result. For clarity, the regulations define a "result" as "any initial, interim, and final decision by any official or entity authorized to resolve disciplinary matters within the institution." This would include decisions rendered via an appellate process. Any failure to adhere to these requirements would result in a serious violation of the *Clery Act*.

The Department advised Salisbury of the need to immediately terminate the violative practice and to revise its policies, procedures, and publications, as needed, to ensure that all parties in a disciplinary case involving an alleged act of sexual violence or VAWA offense can access the appellate process. Additionally, we directed the University to immediately advise all parties in new or continuing cases about these changes in writing. Because the parties in the instant case were still under the jurisdiction of the University, we asked Salisbury officials to consider reopening the case to address the procedural defects by providing the Complainant with an opportunity to participate in the appeals process. On April 16, 2021, you informed our office that Salisbury was willing to take remedial action to address the Department's primary concerns. In summary, the University agreed to vacate the decision of the prior Appeal Officer and reopen this case. The agreement called for the case to be returned to the point where the Respondent filed his appeal of the original finding of responsibility, but before the Appeal Officer's decision was reached. From there, the Complainant would be afforded an opportunity to address the Respondent's appeal. Your office also agreed to appoint a new Appeal Officer to examine the materials submitted by the parties and to issue a decision based on her independent review. The estimated date for the Appeal Officer's decision was June 1, 2021. Salisbury also agreed that it would not confer a degree or issue a final transcript to the Respondent during the pendency of

the current appeals process. The Respondent was permitted to participate in Commencement and other associated activities.

On April 19, 2021, our office agreed to the proposed plan and emphasized the importance of ensuring that both parties had a reasonable period of time to respond to the notice advising that the case was being reopened. The proposed schedule was found to be adequate given the significant time that the parties had already committed to the preparation of their arguments. Based on this agreement, the Department's pending request for document production was vacated. On June 7, 2021 the Appeal Officer issued her decision in the case. The process used to review the appeals materials and the manner of notification appeared to comply with *Clery Act* requirements.

Finally, the Department directed Salisbury to include the revised policies and procedures that govern the investigative and adjudication practices used in cases of alleged sexual violence or VAWA offenses in its 2021 Annual Security Report (ASR). The Clery Group opted to hold the assessment open until our office was able to review the University's 2021 ASR and related policies, procedures, and publications. The Department reviewed the relevant sections of the 2021 ASR and found the report to be in generally good order with regard to these specific disclosures, meaning that these materials appeared to be in conformity with Federal requirements and accurately reflected current institutional policy. Our team also reviewed Salisbury University's Policy Prohibiting Sexual Misconduct and Other Sex and Gender-based Discrimination and the USM Policy on Sexual Misconduct posted on its website. We also read the statement by the University Regents posted at <http://www.usmd.edu/regents/bylaws/SectionVI/VII160.pdf>. Again, these materials appear to conform to the requirements of the *Clery Act* and the Department's implementing regulations.

For the reasons stated above, the Department considers this matter to now be closed. As we close this assessment, the Clery Group must emphasize that our work on this matter was focused narrowly on the allegation that parties were not able to fully participate in the appeals process. We advised the University of our determinations in this matter without comment concerning certain other matters raised in the Complaint so that the University could initiate immediate remedial measures. The absence of statements in this correspondence or elsewhere concerning any specific policies, procedures, or practices cannot and must not be construed as acceptance, approval, or endorsement of those specific policies, procedures, or practices. We further note that this action to close the current assessment does not, in any regard, relieve Salisbury of its obligation to take all necessary action to ensure compliance with all statutory or regulatory provisions governing the Title IV, HEA programs, including the *Clery Act*, the Department's implementing regulations, and/or the terms and conditions of the University's Program Participation Agreement. Finally, the University is reminded that the Department may initiate other compliance assessments, reviews, or investigations at any time to assess the institution's compliance and enforce applicable statutes and regulations.

Our office stands ready to answer questions and provide appropriate assistance to University officials as they continue to enhance the institution's campus safety and crime prevention policies and procedures and its *Clery Act* compliance program.

Because of the consequences of a serious compliance failure, the Department strongly recommends that Salisbury officials re-examine the University's campus safety policies and procedures on a regular basis to ensure that they continue to reflect current institutional practices and are compliant with Federal requirements. The Department provides a number of *Clery Act* training resources. Salisbury officials can access these materials at <http://www2.ed.gov/admins/lead/safety/campus.html> and <https://fsatraining.ed.gov/>. The *Clery Act* regulations can be found at 34 C.F.R. §§ 668.14, 668.41, and 668.46. The Department thanks you and your colleagues for your prompt action on this important matter. Please let me know if you have any questions.

Sincerely,

(b)(6)

James L. Moore, III
Senior Advisor, Clery Act Compliance and Campus Safety Operations
U.S. Department of Education