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July 2015

Mr. Nicholas Laino, Officer in Charge  
Members of the Board of Trustees  
Herkimer County Community College  
100 Reservoir Road  
Herkimer, New York 13350

Report Number: S9-15-24

Dear Mr. Laino and Members of the Board of Trustees:

The Office of the State Comptroller works to help community college officials manage their resources efficiently and effectively and, by so doing, provide accountability for tax dollars spent to support community college operations. The Comptroller oversees the fiscal affairs of local governments statewide, as well as compliance with relevant statutes and observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations and Board of Trustees' governance. Audits also can identify strategies to reduce costs and to strengthen controls intended to safeguard assets.

In accordance with these goals, we conducted an audit of five community colleges throughout New York State. We included the Herkimer County Community College (College) in this audit. The objective of our audit was to determine if the College was accurately reporting crime statistics and publishing relevant security and safety-related information in accordance with the Clery Act. The audit period was from January 1, 2013 through December 31, 2013. Following is a report of our audit of the College. This audit was conducted pursuant to Article V, Section 1 of the State Constitution and the State Comptroller's authority as set forth in Article 3 of the New York State General Municipal Law.

This report of examination letter contains our findings and recommendations specific to the College. We discussed the findings and recommendations with College officials and considered their comments, which appear in Appendix A, in preparing this report. College officials agreed with our audit recommendations and indicated they have taken or plan to take corrective action. At the completion of our audit of the five colleges, we prepared a global report that summarizes the significant issues we identified at all of the units audited.

## **Summary of Findings**

The College has taken steps to report crime statistics and publish other relevant security and safety-related information. However, the College could do more to ensure the information is complete, accurately reported, and made available to enrolled students and employees.

We found the College's Annual Security Report (ASR) does not comply with the Clery Act. It has nine missing or incomplete policy and procedure statements.<sup>1</sup> College officials also did not properly report the geographic location of the crimes in the ASR. The College reported all crimes as on-campus. However, if the crime was committed in on-campus housing, it must be reported as an on-campus crime and as an on-campus housing crime subset. Therefore, the College's ASR incorrectly reported 91 alcohol referrals, 64 drug referrals, 41 alcohol arrests, 18 drug arrests and one sex offense.

The United States Department of Education (DOE) directs colleges to report offenses that are violations of the law, not violations of school policy. Although the College's policy prohibits on-campus alcohol consumption, if the person consuming the alcohol is at least 21 years of age, it is not a violation of law. However, the College reports all violations of its alcohol consumption policy, even when the person consuming the alcohol is of legal age. In 2013, the College reported 96 alcohol violations. We determined that 24 of the violations were not a violation of law and the College should not have reported them as a crime. We could not determine if 12 additional violations were a violation of law because the College did not document the violator's age.

We also found that the crime statistics the College reported to DOE are not consistent with the College's published ASR, when they should agree.

## **Background and Methodology**

The College is located in Herkimer County. The College is a part of the State University of New York (SUNY) system, and is governed by a nine-member Board of Trustees (Board) which comprises eight appointed members and a student trustee. The Board is responsible for the general management and control of the College's financial and educational affairs. The President of the College is the College's chief executive officer and, along with other administrative staff, is responsible for the day-to-day management of the College. The College, in the 2014 fall season, had 3,258 enrolled students. The College has 625 beds in its on-campus apartments<sup>2</sup> that are available to enrolled students.

Campus security has long been an important issue for students and their families. To address this concern, in 1990, Congress enacted the Crime Awareness and Campus Security Act (Clery Act) requiring colleges to maintain and disclose crime statistics and security policies. The federal statute is named for Jeanne Clery, a 19-year-old Lehigh University freshman who was raped and murdered in her campus residence hall in 1986. As a result of the Clery Act, information about the safety

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<sup>1</sup> Four were missing and five were incomplete.

<sup>2</sup> On-campus housing is managed by Herkimer Community College Housing Corporation, which is an affiliated entity of the College. This group manages all auxiliary functions at the College and offers College students various living arrangements.

and security of college communities, including both crime and fire data, is readily available to the public to help people make informed decisions when choosing a college for educational or employment purposes.

The Clery Act requires all public and private colleges participating in Federal Title IV student financial aid programs to prepare, publish and distribute an ASR disclosing information about college safety policies, procedures and crime statistics.<sup>3</sup> The statistics include criminal homicide, sexual offenses, robbery, aggravated assault, burglary, arson, motor vehicle theft, liquor law and drug violations, illegal weapons possession and hate crimes. Colleges must disclose statistics for reported Clery Act crimes that occur on campus, on public property within or immediately adjacent to the campus, and in or on non-campus buildings or property that the college owns or controls.

Colleges must make the ASR available to current students and employees by October 1 of each year. Colleges must also inform current and prospective students and employees of the availability of the report and provide the ASR upon request. Additionally, colleges must maintain and make publicly available a daily crime log and must submit crime statistics to the DOE annually. The DOE's Handbook for Campus Safety and Security Reporting (Handbook) assists colleges in complying with Clery Act requirements.

SUNY includes 30 community colleges that are located throughout the State.<sup>4</sup> Each SUNY college is primarily responsible for its compliance with applicable safety and security laws, including the Clery Act. The College's Campus Safety Director and his security team are responsible for responding to, addressing and reporting incidents that occur on campus, as well as incidents that involve enrolled students off campus.

We conducted our audit in accordance with generally accepted government auditing standards (GAGAS). Such standards require that we plan and conduct our audit to adequately assess College operations within our audit scope. Further, those standards require that we understand the College's management controls and those laws, rules and regulations that are relevant to College operations included in our scope. An audit includes examining, on a test basis, evidence supporting financial activities and applying such other auditing procedures we consider necessary in the circumstances. We believe that our audit provides a reasonable basis for the findings, conclusions and recommendations contained in this report. More information on such standards and the methodology used in performing this audit are included in Appendix B of this report.

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<sup>3</sup> For Clery Act-reporting purposes, crime statistics can include certain violations of law that are not routinely considered "crimes" for traditional law enforcement purposes, such as violations for possession of marijuana.

<sup>4</sup> <http://www.suny.edu/hr/cc/>

## **Audit Results**

### **Annual Security Report Errors**

Incomplete Annual Security Report – The Clery Act requires the College to disclose its policy and procedure statements and reporting requirements in the ASR. The report should be written in language that will be understood by the public and accurately reflect the College’s current procedures and practices. The Handbook states the failure to have a required policy or to disclose all of the required policy statements means the College does not comply with the law. The Clery Act requires 62 disclosures in the ASR, which we categorized into 14 policy and procedure statements and five reporting requirements.

We examined the College’s most recent ASR to determine whether the required statements had been included and the reporting requirements had been met.<sup>5</sup> We found a total of nine missing or incomplete policy and procedure statements.<sup>6</sup> For example, the College’s disclosure of its Crime Reporting Policy does not meet the minimum reporting standards. As a result, the College has not met the Clery Act’s minimum campus safety and security policy requirements and, therefore, has not complied with the law. Appendix A details the required policy and procedure statements and reporting requirements and whether the College complied with them.

Violations of School Policy – The DOE directs colleges to report offenses that are violations of the law, not violations of school policy. Although the College’s policy prohibits on-campus alcohol consumption, if the person consuming the alcohol is at least 21 years of age, it is not a violation of law. However, the College reports all violations of its alcohol consumption policy, even when the person consuming the alcohol is of legal age.

In 2013, the College reported 96 alcohol violations. The College’s incident reports generally included the violator’s date of birth or age; therefore, we were able to determine that 60 violations were properly reported. However, 24 violations were not a violation of law because the violator was at least 21 years old; therefore, these violations should not have been reported. We could not determine if the remaining 12 violations were a violation of law because the College did not document the violator’s age. In contrast to DOE’s written direction, College officials told us that DOE verbally directed them to report all violations of law and school policy. College officials also said they believe it is better to over-report because DOE can issue civil fines of up to \$27,500 per violation for a substantial misrepresentation of the number, location or nature of the crimes they are required to report.

### **Inconsistent ASR and DOE Crime Statistics**

Community colleges are required to publish an ASR containing safety- and security-related policy statements and crime statistics and distribute it to all current students and employees. Although the College is not required to send its ASR to DOE, it must send DOE the crime statistics from the report. DOE posts the data on its public website for use by higher education consumers.

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<sup>5</sup> Our audit did not include assessments of the programmatic effectiveness of the security policies and procedures submitted.

<sup>6</sup> Four were missing and five were incomplete.

To confirm the College's 2013 ASR crime statistics were consistent with the crime statistics the College submitted to DOE, we compared the 2013 ASR crime statistics to the statistics DOE published online. We found the statistics do not match. Specifically, we found the 2013 ASR reports:

- One campus housing sex offense and one on-campus sex offense; however, DOE statistics report two on-campus sex offenses.
- 18 campus housing drug arrests and five on-campus drug arrests; however, DOE statistics report 23 on-campus drug arrests.
- 64 campus housing drug referrals and five on-campus drug referrals; however, DOE statistics report 69 on-campus drug referrals.
- 41 campus housing alcohol arrests and three on-campus alcohol arrests; however, DOE statistics report 44 on-campus alcohol arrests.
- 91 campus housing alcohol referrals and five on-campus alcohol referrals; however, DOE statistics report 96 on-campus alcohol referrals.
- Three on-campus weapons violations; however, DOE statistics report three on-campus housing weapons violations.

In addition, the College improperly reported its crime statistics in its ASR. The Clery Act requires an institution that has on-campus housing facilities to separately disclose two sets of on-campus statistics:<sup>7</sup> the total number of crimes that occurred on campus, including crimes that occurred in student housing facilities, and the number of crimes that occurred in on-campus student housing facilities as a subset of the total. The College did not do so; therefore, its crime statistics reporting is inconsistent with the Clery Act.

While the College distributed a copy of its ASR to the student body and employees, it also posted the ASR on the College's Internet homepage. However, the College's ASR homepage link provided access to an old ASR and not the 2013 report. In addition, we found that, although the 2013 ASR could be found on the College's website, the College erroneously labeled the report as a "Fire Safety Report" and not the 2013 ASR.<sup>8</sup>

The Clery Act requires colleges and universities to disclose their security policies, keep a public crime log, publish an annual crime report and provide timely warning to students and campus employees. When an educational institution provides inaccurate or incomplete information, current and prospective students and employees may not have the information they need to make informed enrollment or employment decisions to ensure their safety.

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<sup>7</sup> 34 Code of Federal Regulations 668-46(c)(4)(ii)

<sup>8</sup> After bringing this to College officials' attention, they promptly updated the website.

## Recommendations

College officials should:

1. Include all required policy and procedure statements and reporting requirements in the College's ASR.
2. Include only Clery Act reportable crimes in the College's ASR.
3. Develop the College's ASR in accordance with the Clery Act. Specifically, College officials should properly report the geographic classification of crime statistics.
4. Ensure crime statistics reported to DOE are consistent with the College's ASR.
5. Ensure the College's Internet page link to the ASR brings the user to the most recent ASR and the webpage clearly identifies the title of the ASR.

Good management practices dictate that the Board has the responsibility to initiate corrective action. As such, the Board should prepare a corrective action plan (CAP) that addresses the recommendations in this report and forward the plan to our office. For more information on preparing and filing your CAP, please refer to our brochure, *Responding to an OSC Audit Report*, which you received with the draft audit report. The Board should make the CAP available for public review in the College's administrative offices.

We thank the officials and staff of the Herkimer County Community College for the courtesies and cooperation extended to our auditors during this audit.

Sincerely,

Gabriel F. Deyo  
Deputy Comptroller

## APPENDIX A

### CLERY POLICY AND PROCEDURE STATEMENTS AND REPORTING REQUIREMENTS

<b>Figure 1: Missing or Incomplete Information</b>		
<b>Count</b>	<b>Policy and Procedure Statement</b>	<b>Missing (M) or Incomplete (I)</b>
1	Crime Reporting Policy	I
2	Campus Facility Security Policy	M
3	Campus Law Enforcement/Authority Policy	I
4	Program to Inform of Security Procedures and Practices for Students and Employees	M
5	Program on Crime Prevention	
6	Monitoring and Recording Criminal Activity at Off Campus Locations	
7	Alcohol Policy	
8	Drug Policy	
9	Drug or Alcohol Abuse Programs	M
10	Disclosure of Disciplinary Proceeding Results	M
11	Emergency Response and Evacuation Procedures	I
12	Sexual Assault Prevention Programs and Procedures	I
13	Registered Sex Offender	
14	Missing Student	I
<b>Count</b>	<b>Reporting Requirement</b>	<b>Missing (M) or Incomplete (I)</b>
1	Crime Statistics Reporting	
2	Crime Location Reporting	
3	Hate Crime Reporting	
4	Disciplinary Referral Reporting	
5	Annual Security Reporting	

## **APPENDIX B**

### **RESPONSE FROM COLLEGE OFFICIALS**

The College officials' response to this audit can be found on the following pages.



June 3, 2015

Ms. Ann Singer  
Chief Examiner  
State Office Building, Suite 1702  
44 Hawley Street  
Binghamton NY 13901-4417

Report Number S9-15-24

Dear Ms. Singer:

The Senior Vice President for Administration & Finance, Mr. Nick Laino, Director of Campus Safety, Tim Rogers, and the Board of Trustees Chairperson, Isabella Crandall, have reviewed the Comptroller's draft audit in reference to Herkimer College's Clery report for the calendar year 2013. As we continue to identify opportunities for improving the safety and security operations within our college, we have and will continue to make the corrective actions as identified in this draft audit, especially as it relates to any incorrectly reported and/or missing information.

In review of this draft audit, we agree that the summary of findings are generally correct, with some exceptions. The draft audit stated that there were 10 missing or incomplete policy and procedure statements and one incomplete reporting requirement. The reporting requirement was removed upon our request, as was one of the reported missing policy and procedure statements, noted as number six in Appendix A of the report.

Upon finalizing the missing or incomplete information within our Annual Security Report (ASR), we ended up having four (4) missing policy statements and five (5) incomplete policy statements that needed to be corrected. These issues have all been addressed and corrected in the current ASR as of May 29, 2015 and are part of our corrective action plan response. The ASR has been changed on our website and is available for viewing at this time.

In response to the below listed Draft Audit recommendations:

1. Include all required policy and procedure statements and reporting requirements in the College's ASR.
2. Include only Clery Act reportable crimes in the College's ASR.
3. Develop the College's ASR in accordance with the Clery Act. Specifically, College officials should properly report the geographic classification of crime statistics.
4. Ensure crime statistics reported to DOE are consistent with the College's ASR.
5. Ensure the College's Internet page link to the ASR brings the user to the most recent ASR and the webpage clearly identifies the title of the ASR.

Relative to recommendations one through four, we agree with the findings and have immediately taken the appropriate action to correct these issues:

June 3, 2015  
Ms. Ann Singer  
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- 1) All Policy and procedure statements have been addressed and added to the current ASR.
- 2) We over-reported 24 alcohol violations that should not have been counted. We are training our staff on the appropriate reporting for those violations so that we will not over-report those types of violations in the future. For example, persons age 21 and over cannot be counted as an alcohol violation even though college policy states that it is a violation to possess alcohol on campus.
- 3) The proper geographic reporting within the ASR for crime statistics was corrected. We made a human error and failed to carry-over (double count) six categories from the housing area to the campus area. It should be noted that the statistics were correctly reported to the DOE site.
- 4) Six categories in the ASR statistics were not the same as reported to the DOE. The statistics in the ASR have been corrected to match those reported to the DOE. We will make it a priority to double check these numbers in the future to make sure the statistics are the same in both locations.

In response to Number five (5) of the recommendations, the college underwent a rebranding initiative in January of 2014, thus resulting in the website for the college being changed. The ASR links are located on the Home Page, Campus Safety page and the Admissions page of the new website to make it easier to find. The link on the home page had a technology problem that we were not aware of and took viewers to the prior year's ASR rather than the current year. We would like to note that this was corrected the same day that the auditors on campus made us aware of the problem (it is also noted in the draft audit).

Additionally, we have changed the home page link to correctly show the 2014 Annual Security Report, of which will change each calendar year prior to October 1 of the current year. The DOE Help Desk advised that this link can be labeled however we choose, but it should be easily identifiable for the 2014 ASR and Fire Safety Report, since we combine both reports. The draft audit report refers to this as the 2013 ASR, but the DOE refers to the current report as 2014 ASR and should have information from 2013, 2012, and 2011 contained within according to the DOE 2014 Campus Safety and Security Survey on-line reporting system. Therefore, prior to October 1, 2015 we will complete the 2015 ASR/Fire Safety Report that has 2015 policy information and 2014, 2013 and 2011 data collections. In the future when the reports are changed, each link will be checked for accuracy by the Director of Campus Safety after the website is updated with the latest ASR.

If you have any questions or concerns relative to this response, please do not hesitate to contact Mr. Tim Rogers, Director of Campus Safety.

Sincerely,

Nicholas F. Laino  
Senior Vice President for Administration and Finance

NFL/

Cc: Mr. Tim Rogers – Director of Campus Safety  
Dr. Matthew Hawes – Dean of Students

## **APPENDIX C**

### **AUDIT METHODOLOGY AND STANDARDS**

The objective of our audit was to determine if the College was accurately reporting crime statistics and publishing relevant security and safety-related information from January 1, 2013 through December 31, 2013. To complete the audit objective, we:

- Reviewed the Handbook distributed by DOE to assist colleges in complying with Clery Act requirements.
- Interviewed appropriate College officials.
- Reviewed internal reports, crime statistics documentation provided by local law enforcement agencies and crime logs, and reports generated by the local police agencies.
- Reviewed campus policies and procedures.
- Assessed the completeness and accuracy of the College's ASR by comparing the crime statistics listed in the College's 2013 ASR with those listed on DOE's Office of Postsecondary Education website.

We conducted this performance audit in accordance with GAGAS. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.