

ATTORNEY GENERAL OF THE STATE OF NEW YORK
CIVIL RIGHTS BUREAU

AOD No. 09-039

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In the Matter of:

DOMINICAN COLLEGE OF BLAUVELT

ASSURANCE OF
DISCONTINUANCE
PURSUANT TO
EXECUTIVE LAW
63(15)

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WHEREAS, pursuant to the provisions of § 63(12) of the New York State Executive Law, Andrew M. Cuomo, Attorney General of the State of New York (“OAG”) has commenced an investigation into the policies, procedures, and practices regarding the campus crime reporting requirements of Dominican College of Blauvelt (“Dominican College”) within the State of New York;

WHEREAS, Dominican College is an accredited post-secondary educational institution in the State of New York, which served 1,963 students in the Fall 2008 semester, of which 1,347 were female and 616 male;

WHEREAS, New York State Executive Law § 63(12) prohibits repeated or persistent fraudulent or illegal acts in the transaction of business;

WHEREAS, New York State Executive Law § 296(2)(a) provides that it is unlawful discrimination for any place of public accommodation to engage in conduct which directly or indirectly withholds any accommodations, advantages, facilities or privileges based on sex;

WHEREAS, 20 U.S.C. § 1092(f), the Crime Awareness and Campus Security Act (“Clery Act”), requires annual reporting of the number of enumerated crimes, including forcible sex offenses reported in campus residence halls and on campus;

WHEREAS, Dominican College is subject to New York State Executive Law §§ 63(12) and 296(2)(a) and 20 U.S.C. § 1092(f) and its implementing regulations, and;

WHEREAS, the parties herein desire to obviate further investigation or potential litigation, and it is expressly understood, with respect to the investigation of the OAG, that this is a compromise settlement entered into solely for the purposes of avoiding the expense and inconvenience of further investigation and in lieu of commencing a judicial proceeding pursuant to Executive Law §63(12);

IT NOW APPEARING THAT Dominican College desires to settle and resolve the investigation without admitting or denying the OAG's findings, the OAG and Dominican College, in consideration of the covenants and understandings set forth herein and intending to be legally bound thereby, hereby enter into this Assurance of Discontinuance pursuant to Executive Law §63(15) and agree as follows:

I.
DEFINITIONS

1. Throughout this Assurance of Discontinuance, the following terms shall have the following meanings:
 - (a) "Assurance" means this Assurance of Discontinuance.
 - (b) "Dominican College" means Dominican College, a post-secondary educational institution receiving federal and state funding located at 470 Western Highway, Orangeburg, New York, and any of its employees, agents, independent contractors, and assignees.
 - (c) "Campus Security Authority" means any member of the campus security department; any individual who has any responsibility for campus security whether or not a member of the security department; any individual or

organization specified in any campus policy as an individual or organization to which students and employees should report criminal offenses; or any official, which may include a student, who has significant responsibility for student and campus activities, including but not limited to student housing, student discipline and campus judicial proceedings, but shall not include pastoral or professional counselors acting as confidential counselors.

- (d) "Effective Date" means the date this Assurance is executed by the parties hereto.
- (e) "Including" means including but not limited to.
- (f) The use of the singular form of any word includes the plural and vice versa.

II.

ATTORNEY GENERAL'S INVESTIGATION AND CONCLUSIONS

2. In August 2008, the OAG received allegations that Dominican College falsely reported its campus crime statistics, particularly with regard to on-campus sexual assaults.
3. In response, the OAG conducted an investigation into Dominican College's policies, procedures and practices for compiling and reporting crime statistics.
4. Campus crime statistics represent alleged criminal offenses reported to campus security authorities, as well as some offenses reported to local law enforcement agencies. These alleged crimes are broken down by type of crime and by

geographic categories. Campus crime statistics are disclosed each year for the previous three years.

5. Dominican College publishes campus crime statistics annually in the Student Handbook. The Student Handbook for each school year is distributed annually to all current students. Dominican College also submits annual public filings of its crime statistics to the United States Department of Education, which are available online to the general public including current and prospective students.
6. The Dominican College Student Handbook for 2006-2007, which contains crime statistics from the years 2003, 2004, and 2005, initially published and distributed to students in September 2006, contained several errors in relation to reported crime statistics, and did not match the statistical data Dominican College provided in its public filing with the Department of Education.
7. The Dominican College Student Handbook for 2007-2008, which contains crime statistics from the years 2004, 2005 and 2006, initially published and distributed to students in September 2007, contained several errors in relation to reported crime statistics, and did not match the statistical data Dominican College provided in its public filing with the Department of Education. In January 2008, Dominican College reprinted, republished and redistributed the 2007-2008 Student Handbook.
8. The Dominican College Student Handbook for 2008-2009, which contains crime statistics from the years 2005, 2006, and 2007, initially published and distributed to students in September 2008, contained several errors in relation to reported crime statistics, and did not match the statistical data Dominican College provided

in its public filing with the Department of Education. In September 2008, Dominican College reprinted, republished and redistributed the 2008-2009 Student Handbook.

9. Based on the evidence obtained during the investigation, the OAG has determined that Dominican College published information about crime statistics in its original 2006-2007, 2007-2008 and 2008-2009 Student Handbooks that was false.

III.
COMPLIANCE WITH THE LAW

10. Dominican College agrees to fully comply with the obligations and conditions of New York State Executive Law §§ 63(12) and 296(2)(a) and 20 U.S.C. § 2092(f) and its implementing regulations.

IV.
CRIME REPORTING TRAINING

11. Within twenty (20) days of the Effective Date, Dominican College shall compile a list of the names and positions of all Campus Security Authorities, as defined in Part I above, and as defined in 34 C.F.R. 668.46(a). This list shall be provided to the OAG within ten (10) days of its compilation.
12. Within thirty (30) days of the Effective Date, Dominican College shall provide all employees who fall within the definition of Campus Security Authority with a copy of this Assurance and its attachment. Each Campus Security Authority shall acknowledge in writing, using the Acknowledgment Form annexed as Exhibit A, that they have received, read, and agree to comply with this Assurance and understand that a violation of this Assurance may result in discipline of the employee by Dominican College.

13. Within ninety (90) days of the Effective Date, all Campus Security Authorities shall attend a training program regarding crime reporting at Dominican College's expense, to be conducted by a qualified person or organization. The selection of the qualified person or organization shall be subject to OAG's approval, which shall not be unreasonably withheld. The training program shall cover the requirements of the Clery Act, including but not limited to:
 - (a) Classification and definition of crimes;
 - (b) The reporting obligations of Campus Security Authorities;
 - (c) Collection of crime reports;
 - (d) Timely warning requirements;
 - (e) The required daily crime log; and
 - (f) Annual disclosure requirements
14. All Campus Security Authorities who attend the training program shall acknowledge in writing that they have done so, using the Training Acknowledgment Form, annexed as Exhibit B.
15. All new Employees who fall within the definition of a Campus Security Authority shall attend the training program within ninety (90) days from the date of hire as a condition of employment.
16. Any Campus Security Authority who fails to fulfill his or her responsibilities shall be subject to disciplinary action by Dominican College, up to and including termination.

V.
POLICIES AND PROCEDURES

17. Dominican College shall continue to ensure that the Director of Safety and Security oversees and coordinates the collection of all campus crime reports from all authorities on campus that collect student complaints, to ensure that these records are properly categorized and maintained to create the campus crime report.
18. Dominican College shall combine its current procedures, also including any additional procedures it has created or is creating, into one document outlining the steps to be followed by the Director of Safety and Security, the Director of Institutional Research and the Vice President and Dean of Students in classifying crimes and compiling the campus crime report. Upon final approval by the OAG, this memo shall be distributed to these three individuals with instructions that all steps be completed annually.
19. Dominican College shall charge the Director of Institutional Research with ensuring that the campus crime statistics are accurately published in the Student Handbook. Tasks for the Director of Institutional Research include certifying that statistics match reports made to the U.S. Department of Education and those published in previous years' Student Handbooks, and proofing the draft campus crime report prior to publication for inconsistencies and errors.
20. Dominican College shall designate an employee, if not already designated, as a Title IX coordinator, subject to OAG approval , pursuant to 34 C.F.R. § 106.8(a), who is responsible for ensuring compliance with Title IX obligations, including

the implementation and management of grievance procedures for complaints of sex discrimination.

VI.
RECORD KEEPING AND MONITORING

21. For the duration of this Assurance, Dominican College shall maintain:
 - (a) all complaints or incident reports of alleged forcible sex offenses submitted to any campus official, including the resolution, if any, and any action taken by Dominican College in response to the complaint or report;
 - (b) an updated list of all Campus Security Authorities;
 - (c) annual crime reports published pursuant to the Clery Act; and
 - (d) the executed acknowledgments described in paragraphs 12 and 14.
22. The OAG, upon reasonable notice to Dominican College, shall have access at a reasonable time and place to any documents Dominican College is required to maintain under the terms and conditions of this Assurance and any documents the OAG believes relate to Dominican College's compliance with this Assurance. This Assurance does not in any way impair or affect the right of the OAG to obtain documents from Dominican College pursuant to subpoena.
23. If Dominican College and the OAG disagree on the proper classification of a reported crime for purposes of the annual crime report, Dominican College shall consult the United States Department of Education with regard to the appropriate classification.

VII.
MONETARY RELIEF

24. Dominican College will pay the sum of \$20,000 to the State of New York.
25. Payment shall be shall be made within 30 days of the Effective Date in the form of a certified check or official bank check made out to the New York State Department of Law and forwarded to the Office of the Attorney General Civil Rights Bureau, 120 Broadway, New York, New York 10271, Attention: Alphonso David. The payment shall reference the OAG Assurance Number 09-039.

VIII.
SCOPE OF THE ASSURANCE, JURISDICTION, AND ENFORCEMENT PROVISIONS

26. This Assurance shall expire three years after the Effective Date.
27. Notwithstanding any provisions of this Assurance to the contrary, the OAG may, in its sole discretion, grant written extensions of time for Dominican College to comply with any provision of this Assurance. The OAG will grant reasonable extensions of time where good cause is shown.
28. The signatories to this Assurance warrant and represent that they are duly authorized to execute this Assurance and that they have the authority to take all appropriate action required or permitted to be taken pursuant to the Assurance to effectuate its terms.
29. The parties may seek to enforce this Assurance through administrative or judicial enforcement proceedings, including a civil action in federal or state court, as appropriate, seeking specific performance of the provisions of this Assurance. Pursuant to New York State Executive Law § 63(15), evidence of a violation of

this Assurance will constitute prima facie proof of a violation of New York State Executive Law §§ 63(12), 296(2)(a) and/or 20 U.S.C. § 2092(f) in any civil action or proceeding hereafter commenced by the OAG in connection with this Assurance. However, in the event of a dispute among the parties regarding any issue arising hereunder, the parties shall attempt in good faith to resolve the dispute before seeking administrative or judicial intervention.

30. The failure by the OAG to enforce this entire Assurance or any provision thereof with respect to any deadline or any other provision herein shall not be construed as a waiver of the OAG's right to enforce other deadlines and provisions of this Assurance.
31. If any provisions, terms, or clauses of this Assurance are declared illegal, unenforceable, or ineffective in a legal forum, those provisions, terms, and clauses shall be deemed severable, such that all other provisions, terms, and clauses of this Assurance shall remain valid and binding on the parties.
32. This Assurance constitutes the entire agreement between Dominican College and the OAG on the matters raised herein, and no other statement, promise or agreement, either written or oral, made by either party or agents of either party that is not contained in this Assurance shall be enforceable.
33. Nothing in this Assurance is intended to confer any right, remedy, obligation, or liability upon any person or entity other than the parties hereto.
34. Nothing in this Assurance is intended to, nor shall, limit the OAG's investigatory compliance review powers otherwise provided by law or this Assurance.

35. This Assurance may be executed in multiple counterparts, each of which shall be deemed a duplicate original.
36. This Assurance is final and binding on the parties, including principals, agents, representatives, successors in interest, assigns, and legal representatives thereof. No assignment by any party hereto shall operate to relieve such party of its obligations herewith.
37. All communications and notices regarding this Assurance shall be sent by first class mail and facsimile, if twenty-five (25) pages or less in length, to:

Office of the Attorney General

Alphonso B. David
Civil Rights Bureau
Office of the New York State Attorney General
120 Broadway, 3rd Floor
New York, NY 10271
Tel. (212) 416-8250
Fax (212) 416-8074

Dominican College

William Stegmayer
Director of Institutional Research
Dominican College
470 Western Highway
Orangeburg, New York 10962
Tel. (845) 848-7822
Fax (845) 359-2313

With a copy to:

Philip C. Semprevivo
Biedermann, Reif, Hoenig & Ruff
570 Lexington Avenue
New York New York 10022
Tel. (212) 634-5066
Fax (212) 986-3509

IN WITNESS THEREOF, the undersigned subscribe their names:

Dated: New York, New York
May 28, 2009

DOMINICAN COLLEGE OF BLAUVELT

By: Mary Eileen O'Brien, Ph.D.
Mary Eileen O'Brien
President

CONSENTED TO:

Dated: New York, New York
June 12, 2009

ANDREW M. CUOMO
Attorney General of the State of New York

By: [Signature]
Alphonso B. David
Bureau Chief

[Signature]
Spencer Freedman
Counsel for Civil Rights

Darsana Srinivasan
Assistant Attorney General

Kayla Gassmann
Assistant Attorney General

Office of the New York State Attorney General
Civil Rights Bureau
120 Broadway, 3rd Floor
New York, New York 10271
Tel. (212) 416-8250
Fax (212) 416-8074

EXHIBIT A

ACKNOWLEDGMENT FORM

On _____, 20___, I have received copies of and have read the Assurance of Discontinuance entered into between the Office of the New York State Attorney General and Dominican College, as the result of an investigation into the policies, procedures, and practices regarding the campus crime reporting requirements of the College. I understand my legal responsibilities as a Campus Security Authority and will comply with those responsibilities. I understand that should I fail to comply with the terms of this Assurance of Discontinuance that I may face discipline from my employer.

I have been informed by my employer that I will not be retaliated against by my employer for providing information to any law enforcement agency (including the New York State Office of the Attorney General, Civil Rights Bureau, 120 Broadway, 3rd Floor, New York, NY 10271, telephone (800) 771-7755 or (212) 416-8250) or official regarding my employer's compliance with the Assurance of Discontinuance.

Print Name: _____

Signature: _____ Date: _____

EXHIBIT B

TRAINING ACKNOWLEDGMENT FORM

Dominican College of Blauvelt

On _____, 200_, I attended a training seminar with respect to my responsibilities under the Crime Awareness and Campus Security Act ("Clery Act"), 20 U.S.C. § 1092(f). I was instructed as to the following:

- (a) Classification and definition of crimes;
- (b) The reporting obligations of Campus Security Authorities;
- (c) Collection of crime reports;
- (d) Timely warning requirements;
- (e) The required daily crime log; and
- (f) Annual disclosure requirements.

I understand my legal responsibilities and will comply with those responsibilities.

Print Name: _____

Signature: _____ Date: _____