



APR 09 2013

Sister Mary Eileen O'Brien, O.P.
President
Dominican College of Blauvelt
470 Western Highway
Orangeburg, NY 10962-1210

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Dear Sister O'Brien:

This letter is to inform you that the U.S. Department of Education (Department) intends to fine Dominican College of Blauvelt (Dominican College) a total of \$262,500 based on the violations of statutory and regulatory requirements outlined below. This fine action is taken in accordance with the procedures that the Secretary of Education (Secretary) has established for assessing fines against institutions participating in any or all of the programs authorized under Title IV of the Higher Education Act of 1965, as amended, 20 U.S.C. § 1070 *et seq.* (Title IV, HEA programs). Under the Department's regulations, the Department may impose a fine of up to \$27,500 for each violation. 34 C.F.R. § 668.84. As detailed below, this fine action is based on Dominican College's failure to comply with the requirements of the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (the Clery Act) in Section 485(f) of the HEA, 20 U.S.C. § 1092(f), and the Department's regulations in 34 C.F.R. §§ 668.41 and 668.46.

Under the Clery Act, institutions participating in the Title IV, HEA programs must prepare, publish and distribute an Annual Security Report (ASR) by October 1 of each year. 34 C.F.R. § 668.41(e). The ASR must include a description of the institution's campus security policies in specific areas. 34 C.F.R. § 668.46(b). Specifically, the ASR must include a statement of current campus policies for making timely warning reports to members of the campus community regarding crimes, such as forcible sex offenses; a statement of policy regarding the institution's campus sexual assault programs to prevent sex offenses, and procedures to follow when a sex offense occurs; a notification to students of existing on and off-campus counseling, mental health, or other student services for victims of sexual offenses; and notification to students that the institution will change a victim's academic and living situation after an alleged sex offense and of the options for those changes, if those changes are requested by the victim and are reasonably available. 34 C.F.R. § 668.46(b)(2). In addition, the ASR must report statistics for the three most recent calendar years concerning the occurrence of certain crimes on campus, in or on certain non-campus buildings or property, and on public property. 34 C.F.R. § 668.46(c). An institution must compile and publish crime statistics for each separate campus. 34 C.F.R. § 668.46(d). The crimes that must be reported include: criminal homicide (murder and manslaughter); sex offenses (forcible and non-forcible); robbery; aggravated assault; burglary; motor vehicle theft; arson; and arrests for liquor law violations, drug law violations and illegal

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Administrative Actions and Appeals Service Group
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weapons possession. The ASR must be distributed to current students and employees and must be made available to applicants for admission and employment to provide them with accurate, complete and timely information about crime and safety on campus. 34 C.F.R. § 668.41(e). Institutions must submit the crime statistics annually to the Department, which makes them publicly available. 34 C.F.R. § 668.41(e)(5).

The Department conducted a program review at Dominican College from June 17, 2009 to June 19, 2009. The focus of the review was Dominican College's compliance with the Clery Act. The review consisted of an examination of Dominican College's security incident reports and disciplinary files as well as the institution's policies and procedures related to the Clery Act. The reviewers also interviewed the College's officials with Clery Act responsibilities.

The Department became aware of possible Clery Act violations at Dominican College when it learned that the estate of a former student had filed a lawsuit against the College. A decision by the United States District Court in that case indicates that the College did not effectively comply with various requirements of the Clery Act, including providing information to students about crimes on campus and providing information to victims of sex offenses of appropriate procedures to follow and of opportunities to make changes to their academic and living situations. *McGrath v. Dominican College of Blauvelt*, 672 F.Supp.2d 477 (SDNY, 2009). The College also paid a fine to the State of New York for failing to comply with the Clery Act. In light of these other actions, the Department's review did not focus on matters relating to the specific crime involved in those cases.

On January 5, 2011, the Department issued a Program Review Report (PRR) to Dominican College. The review found that Dominican College had not complied with the Clery Act and the Department's implementing regulations. Dominican College responded to the report on February 22, 2011. After reviewing Dominican College's responses, the Department issued its Final Program Review Determination (FPRD) letter to Dominican College on April 3, 2012. The FPRD is incorporated by reference into this fine action. (Enclosure 1).

The Department is taking this fine action based on the findings in the FPRD, which concluded that Dominican College did not properly classify and disclose crime statistics for calendar years 2006 and 2007; failed to properly define the campus geographic boundaries for the purposes of reporting crime statistics; failed to distribute its 2007 ASR; failed to include required policy statements in its 2007 ASR; and failed to maintain an accurate and complete daily crime log for calendar years 2006 and 2007.¹

¹ The FPRD included Finding #3 regarding the institution's lack of an adequate system for collecting all crimes from all required sources. The Department has decided not to impose a fine relating to that Finding.

DOMINICAN COLLEGE FAILED TO PROPERLY CLASSIFY AND DISCLOSE CRIME STATISTICS

Under the Clery Act and the Department's regulations, institutions participating in the Title IV, HEA programs must make available statistical information related to certain reported crimes and arrest/campus disciplinary referrals for alcohol, drug and illegal weapons possession violations. The statistical information must be disclosed by location – on campus (dormitories vs. residential facilities), in or on non-campus buildings or property, and on public property – and must be provided for the three most recent calendar years. C.F.R §§ 668.46(a), 668.46(c)(1) – (c)(4).

The statistical reporting must be disclosed and made available as part of the institution's ASR by October 1 of each year, and it must be electronically submitted to the Department for its inclusion in the Campus Crime and Security Website. The Department has established timeframes within which institutions must electronically submit information. C.F.R § 668.41(e)(1)-(e)(5).

Dominican College did not provide accurate crime statistics to its students and employees in the ASRs for calendar years 2006 and 2007. Statistical data provided to the Department for those years was also inaccurate. Specifically, Dominican College acknowledged that it did not report two (2) burglaries, one (1) weapons law violation, and three (3) drug law violations in its calendar year 2006 crime statistics, as well as three (3) burglaries in its calendar year 2007 crime statistics.

The 2006 crime statistics originally published in the College's 2007/2008 Student Handbook were not accurate. The total numbers in the On Campus category under-reported the number of Forcible Sexual Assaults. The statistics did include the correct crime totals for On-Campus Residence Halls. Although, the category of On-Campus Residence Halls is a subset of the On Campus total, Dominican did not include the Residence Hall crime statistics in the total for the broader On Campus category. Institutional officials stated that this error was discovered soon after the ASR was printed and that a revised Handbook including the correct ASR was distributed to the campus community after the students returned from the Christmas break in January 2008. The Department notes that the Attorney General of the State of New York levied a fine against the institution for violations of the Clery Act that was, in part, due to the inaccurate statistics published in the original Handbook.

The Clery Act and the Department's regulations require that institutions ensure the accuracy of the crime data when it is presented to students and employees who can use the data to make decisions affecting their personal safety. Students and employees must be able to rely on the institution's reported statistics.

Dominican College's correction of its ASR and crime statistical data to the Department only after the Department alerted the College of its obligations does not excuse its earlier failure to

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comply with its legal obligations. The correction of violations does not diminish the seriousness of not correctly reporting these incidents at the time they occurred.

DOMINICAN COLLEGE FAILED TO PROPELY DEFINE THE CAMPUS AND REPORT CRIME STATISTICS FOR NON-CAMPUS PROPERTY

The Clery Act and the Department's regulations require an institution participating in the Title IV, HEA programs to include in the crime statistics in its ASR, reported crimes that occur in areas defined as "Campus" and "Non-campus Buildings or Property," 34 C.F.R §§ 668.46(a), 668.46(c), (c)(4), (c)(8). Specifically, an institution must include crime statistics from any building or property owned or controlled by the institution within the same reasonably contiguous geographic area and used by the institution in direct support of, or in a manner related to, the institution's educational purposes, including residence halls. 34 C.F.R § 668.46(a)(1). An institution must include the crime statistics in its ASR for each separate campus. 34 C.F.R § 668.46(d).

In complying with the statistical reporting requirements, an institution may provide a map to current and prospective students and employees that depicts its campus, noncampus buildings or property, and public property areas if the map accurately depicts its campus, noncampus buildings or property, and public property areas. 34 C.F.R. § 668.46(c)(8).

Dominican College acknowledged that it did not properly define and report crime statistics separately for non-contiguous locations. Specifically, the College did not properly define and report crime statistics separately for the Candlewood Suites hotel, where it housed students, approximately six (6) miles from the main campus. The reported crimes and violations of liquor, drug and weapons laws at that location should have been reported separately in a separate Non-Campus Property category since this property was controlled by the College and was used in a manner to support the College's educational purpose. Additionally, Dominican College acknowledged that it did not attempt to obtain statistics from the Clarkstown Police Department, for any incidents of crime that may have been reported to the police of the township where the Candlewood Suites is located.

In its response, Dominican College stated that the crime statistics for the Candlewood Suites property were originally included in the College's crime statistics. The Department notes that Dominican College only reported cumulative statistics to the Department for all On Campus locations and failed to report total statistics for the sub-category of On-Campus Residence Halls. In its response, the College provided a listing of its current buildings and properties and stated that it no longer uses the hotel, so that going forward, the buildings would all be considered On-Campus property. Additionally, the College provided a copy of a letter dated February 2, 2010 which requested crime statistics from the Orangetown Police Department. The letter sought to obtain statistics for the 2009 crime data and was timely dated so that any responsive statistics could be included in the data required to be reported by the College on October 1, 2010.

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The correction of this violation does not diminish the seriousness of not properly defining the campus, and correctly reporting crime statistics at the time they were due.

DOMINICAN COLLEGE DID NOT DISTRIBUTE ITS ASR FOR CALANDER YEAR 2007

Under the Clery Act and the Department's regulations, institutions participating in the Title IV, HEA programs must distribute, to all enrolled students and current employees, an ASR, through appropriate publications and mailings. The distributions must occur by October 1 of each year and must include direct mailing to each individual through the U.S. Postal Service, campus mail, or electronic mail; a publication or publications provided directly to each individual; or posting on an Internet website or an Intranet website. 34 C.F.R. § 668.41(e). If an institution chooses to distribute its ASR to enrolled students by posting the disclosure on an Internet website or an Intranet website, the institution must, by October 1 of the each year, distribute to all current employees a notice that includes a statement of the report's availability, the exact electronic address at which the report is posted, a brief description of the report's contents, and a statement that the institution will provide a paper copy of the report upon request. 34 C.F.R. § 668.41(c)(2) and (e)(2).

If an institution chooses to distribute its ASR to current employees by posting the disclosure on an Internet website or an Intranet website, the institution must, by October 1 of each year, distribute to all current employees a notice that includes a statement of the report's availability, the exact electronic address at which the report is posted, a brief description of the report's contents, and a statement that the institution will provide a paper copy of the report upon request. 34 C.F.R. § 668.41(e)(3).

If the institution chooses to provide its ASR to prospective students and prospective employees by posting the disclosure on an Internet website, the notice must include the exact electronic address at which the report is posted, a brief description of the report, and a statement that the institution will provide a paper copy of the report upon request. 34 C.F.R. § 668.41(e)(4).

Dominican College did not properly and timely distribute its calendar year 2007 ASR to its current students and employees. Dominican College acknowledged that its complete and accurate 2007 ASR, that should have been distributed by October 1, 2007, was distributed in January 2008 under the title 2007/08 Handbook. Crime statistics included in the 2007 ASR were available on the College's website; however, the complete ASR was not made available to students. Additionally, Dominican College acknowledged that it did not provide proper notification of the ASR's availability to prospective students and employees.

Dominican College explained that it provided accurate crime statistics to prospective students and employees on either the website or in the Handbook.

Dominican College's response provided revised procedures to ensure that its ASR is timely prepared and distributed. However, the revision of procedures after the Department alerted the College of its obligations does not excuse its earlier failure to comply with its legal obligations. Dominican College's current and prospective students/employees must be provided with timely and accurate crime statistics to make informed decisions about their personal safety. Failure to actively distribute an accurate and complete campus security report to current students and employees in accordance with the Department's regulations deprives the campus community of important security information.

DOMINICAN COLLEGE'S CALENDAR YEAR 2007 ASR OMITTED REQUIRED POLICY STATEMENTS

Institutions participating in the federal student financial aid programs must have an ASR that, among other things, contains a statement that includes a statement of current campus policies regarding procedures for students and others to report criminal actions or other emergencies occurring on campus. This statement must include the institution's policies concerning its response to these reports, including a list of the titles of each person or organization to whom students and employees should report criminal offenses for the purposes of making timely warning reports. This statement must also disclose whether the institution has any policies or procedures that allow victims or witnesses to report crimes on a voluntary, confidential basis for inclusion in the annual disclosure of crime statistics, and, if so, a description of those policies and procedures.

The ASR must also include a statement of current policies concerning campus law enforcement that addresses the enforcement authority of security personnel, including their relationship with State and local police agencies and whether those security personnel have the authority to arrest individuals. The ASR must also contain a statement of policy regarding the institution's campus sexual assault programs to prevent sex offenses, and procedures to follow when a sex offense occurs. The statement must include sanctions the institution may impose following a final determination of an institutional disciplinary proceeding regarding rape, acquaintance rape, or other forcible or non-forcible sex offenses.

A complete ASR must also contain a statement advising the campus community where law enforcement agency information provided by the State under section 170101(j) of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. § 14071(j)), concerning registered sex offenders may be obtained, such as the law enforcement office of the institution, a local law enforcement agency with jurisdiction for the campus, or a computer network address. 34 C.F.R. § 668.46(b)(2).

In its response, Dominican College acknowledged that its Calendar year 2007 ASR did not have the following required policy statements and information:

1. A statement of current campus policies regarding procedures for students and others to report criminal actions or other emergencies occurring on campus. This statement must include the institution's policies concerning its response to these reports, including, a list of the titles of each person or organization to whom students and employees should report criminal offenses for the purposes of making timely warning reports. This statement must also disclose whether the institution has any policies or procedures that allow victims or witnesses to report crimes on a voluntary, confidential basis for inclusion in the annual disclosure of crime statistics, and, if so, a description of those policies and procedures;
2. A statement of current policies concerning campus law enforcement that:
 - a. Addresses the enforcement authority of security personnel, including their relationship with State and local police agencies and whether those security personnel have the authority to arrest individuals;
 - b. Encourages accurate and prompt reporting of all crimes to the campus police (if any) and the appropriate police agencies;
 - c. Describes procedures, if any, that encourage pastoral counselors and professional counselors, if and when they deem it appropriate, to inform the persons they are counseling of any procedures to report crimes on a voluntary, confidential basis for inclusion in the annual disclosure of crime statistics;
3. A statement of policy regarding the institution's campus sexual assault programs to prevent sex offenses, and procedures to follow when a sex offense occurs. The statement must include sanctions the institution may impose following a final determination of an institutional disciplinary proceeding regarding rape, acquaintance rape, or other forcible or non-forcible sex offenses;
4. A statement advising the campus community where law enforcement agency information provided by the State under section 170101(j) of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. § 14071(j)), concerning registered sex offenders may be obtained, such as the law enforcement office of the institution, a local law enforcement agency with jurisdiction for the campus, or a computer network address.

Dominican College stated that it has since revised its policies and its statements to include all the policy statements that were missing in its original 2007 ASR. However, the efforts do not excuse Dominican College's failure to have the required policy statements at the time of review, as required by the Clery Act and the Department's regulations.

DOMINICAN COLLEGE DID NOT MAINTAIN AN ACCURATE AND COMPLETE DAILY CRIME LOG FOR CALENDAR YEARS 2006 AND 2007

The Department's regulations require that institutions participating in Title IV, HEA programs that maintain a campus police or a campus security department maintain a written, easily understood daily crime log that records, by the date the crime was reported, any crime that occurred on campus, on a noncampus building or property, on public property, or within the patrol jurisdiction of the campus police or the campus security department and is reported to the campus police or the campus security department. This log must include the nature, date, time, and general location of each crime; and the disposition of the complaint, if known. The institution must make an entry or an addition to an entry to the log within two business days of the report of the information to the campus police or the campus security department, unless that disclosure is prohibited by law or would jeopardize the confidentiality of the victim. An institution may withhold information if there is clear and convincing evidence that the release of the information would jeopardize an ongoing criminal investigation or the safety of an individual; cause a suspect to flee or evade detection; or result in the destruction of evidence. 34 C.F.R. § 668.46(f). The institution must make the crime log for the most recent 60-day period open to public inspection during normal business hours. The institution must make any portion of the log older than 60 days available within two business days of a request for public inspection. 34 C.F.R. § 668.46(f)(5).

Dominican College did not maintain an accurate and complete crime log for calendar years 2006 and 2007. Specifically, the crime logs for both 2006 and 2007 did not accurately reflect any incidences of burglaries or larceny, but referred to both categories of offenses as "Thefts." In addition, none of the crime log entries listed the time that the incidents occurred and none listed a disposition for any of the offenses. Further, the crime logs did not contain any entries for drug law violations or alcohol violations. The reviewers noted one instance where the narrative in a student disciplinary document mentioned that the incident had been reported to the Campus Security Director, but this incident was not detailed on the crime log.

Dominican College corrected its crime log after the Department notified the College of the violations. However, the College's modification of its daily crime log to include all crime categories does not excuse its earlier failure to comply with its legal obligations. The review and modification does not diminish the seriousness of the fact that Dominican did not maintain an accurate and complete crime log. The crime log is especially important because it provides the campus community and the general public the most recent crime information before its inclusion in the long-view trend data in the campus security report's statistical disclosures. Failure to comply with the daily crime log requirements deprives the campus community of this vital security information. Incorrect identification of crimes in a crime log may deprive the campus community and the general public of vital crime information necessary for personal safety decisions. Further, an inaccurate or incomplete crime log may lead to the underreporting of

crimes, resulting in the reporting of inaccurate crime statistics in the ASR and the Department's Campus Crime and Security Website.

In determining the amount of a fine, the Department considers both the gravity of the offense and the size of the institution. 34 C.F.R. § 668.92. Pursuant to the Secretary's decision In the Matter of Bnai Arugath Habosem, Docket No. 92-131-ST (August 24, 1993), the size of an institution is based on whether it is above or below the median funding levels for the Title IV, HEA programs in which it participates. The latest year for which complete funding data is available for Dominican College is 2010-2011 award year. According to the Department records, Dominican College received approximately \$2,979,341 in Federal Pell Grant (Pell) funds, \$16,931,334 in Federal Direct Loan funds and \$500,900 in Campus-Based funds. The latest information available to the Department indicates that the median funding level for institutions participating in the Federal Pell Grant program is \$1,831,456, for institutions participating in the Federal Direct Loan programs, the median funding level is \$3,415,923, and for institutions participating in the Campus-Based programs, the median funding level is \$272,450. Accordingly, Dominican College is a large institution because its funding levels for Federal Pell Grant, Federal Direct Loan, and Campus-Based funds exceeds the median funding levels for those Title IV, HEA programs.

As detailed in this letter, Dominican College's violations of the Clery Act are very serious and numerous. These failures endangered Dominican College's students and employees who must be able to rely on the disclosures of campus crime statistics, policies and statements, and the accurate reporting of crimes and statistics to take precautions for their safety. Moreover, the Department considers an institution's compliance with the Clery Act requirements to be part of its administrative capability, and Dominican College's failure to comply with those requirements constitutes an inability to administer properly the Title IV programs.

After considering the gravity of the violations and size of the institution, I have assessed a fine of \$70,000 for Dominican College's failure to properly classify and disclose crime statistics. Specifically, I have attributed the fine amount as follows:

1. \$10,000 each for the two (2) burglaries not reported in 2006.
2. \$10,000 each for the three (3) Burglaries not reported in 2007.
3. \$5,000 each for the three (3) drug violation not reported in 2006.
4. \$5,000 for the one (1) weapons law violation not reported in 2006

This is a serious violation because Dominican College's failure to disclose the above mentioned crime statistics for two separate years deprived the campus community and the public accurate information to actively provide for their safety and the safety of their property. Dominican

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College's current students and employees, and prospective students and employees relied on an inaccurate ASR. Additionally, statistical data submitted to the Department and the public was also inaccurate and misleading. An institution's campus community and members of the public must be able to rely on complete and accurate statistical data.

I have assessed a fine of \$27,500 for Dominican College's failure to properly define the campus geographic boundaries and compile the crime statistics for non-campus property. This is a serious violation because current and prospective students and employees must be able to rely on accurate and complete campus crime information.

I have assessed a fine of \$27,500 for Dominican College's failure to properly distribute its ASR for calendar year 2007 to students and employees, and prospective students and employees. This is a serious violation because the campus community and the public were deprived of important information to help them make important safety decisions.

I have assessed a fine of \$27,500 for Dominican College's failure to include in its calendar year 2007 ASR, a statement of current campus policies regarding procedures for students and others to report criminal actions or other emergencies occurring on campus. This is a serious violation because current students and employees cannot be expected to follow procedures that have not been provided to them.

I have assessed a fine of \$27,500 for Dominican College's failure to include in its calendar year 2007 ASR, a statement of current policies concerning campus law enforcement, including procedures that encourage pastoral and professional counselors to inform the persons they are counseling of any procedures to report crimes on a voluntary, confidential basis, for inclusion in the annual disclosure of crime statistics. This is a serious violation because the campus community cannot be expected to follow procedures that have not been communicated to them. A maximum fine amount for each of the missing policy statements is appropriate in this case.

I have assessed a fine of \$27,500 for Dominican College's failure to include in its 2007 ASR, a statement of policy regarding the institution's campus sexual assault programs to prevent sex offenses, and procedures to follow when a sex offense occurs. The statement must include sanctions the institution may impose following a final determination of an institutional disciplinary proceeding regarding rape, acquaintance rape, or other forcible or non-forcible sex offenses. This is a serious violation because current students and employees, and prospective students and employees were denied important information necessary for their personal safety and due process.

I have assessed a fine of \$27,500 for Dominican College's failure to include in its 2007 ASR, a statement, advising the campus community where law enforcement agency information provided by the State under section 170101(j) of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. § 14071(j)), concerning registered sex offenders may be obtained, such as the

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law enforcement office of the institution, a local law enforcement agency with jurisdiction for the campus, or a computer network address. This is a serious violation because current students and employees, and prospective students and employees cannot be expected to take advantage of information when they have not been given clear direction and procedures to get that information.

I have assessed a fine of \$27,500 for Dominican College's failure to maintain an accurate and complete crime log for Calendar years 2006 and 2007. This is a serious violation because the crime log is the basis for the crime statistics reported by the institution in its ASR, and to the public through the Department's Office of Postsecondary Education's online campus crime statistics database.

The fine of \$262,500 will be imposed on **April 29, 2013**, unless I receive, by that date, a request for a hearing or written material indicating why the fine should not be imposed. Dominican College may submit both a written request for a hearing and written material indicating why a fine should not be imposed. If Dominican College chooses to request a hearing or submit written material, you must write to me at:

Administrative Actions and Appeals Service Group
U.S. Department of Education
Federal Student Aid/Program Compliance
830 First Street, NE – UCP-3, Room 84F2
Washington, DC 20002-8019

Upon receipt of such a request, the case will be referred to the Office of Hearings and Appeals, which is a separate entity within the Department. That office will arrange for assignment of Dominican College's case to a hearing official who will conduct an independent hearing. Dominican College is entitled to be represented by counsel at the hearing and otherwise during the proceedings. If Dominican College does not request a hearing but submits written material instead, I will consider that material and notify Dominican College of the amount of fine, if any, that will be imposed.

ANY REQUEST FOR A HEARING OR WRITTEN MATERIAL THAT DOMINICAN COLLEGE SUBMITS MUST BE RECEIVED BY APRIL 29, 2013; OTHERWISE, THE \$262,500 FINE WILL BE EFFECTIVE ON THAT DATE.

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If you have any questions or desire any additional explanation of Dominican College's rights with respect to this action, please contact Lawrence Mwethuku of my staff at 202/377-3684.

Sincerely,

A handwritten signature in blue ink, appearing to read "Mary E. Gust". The signature is fluid and cursive, with the first name "Mary" being particularly prominent.

Mary E. Gust, Director
Administrative Actions and Appeals Service Group
Federal Student Aid/Program Compliance
U.S. Department of Education

Enclosure

cc: Dr. Elizabeth H. Sibolski, Middle States Commission on Higher Education, via
info@msche.org
Barbara Meinert, Coordinator, NY State Education Department, via
ocueinfo@mail.nysed.gov