

RECEIVED
AUG 1 2008

July 30, 2008

David A. Armstrong, Esq.
Legal Counsel
Notre Dame College
4545 College Road
South Euclid, OH 44121-4293

Earl Flurkey
Team Leader
Chicago School Participation Team
500 W. Madison St, Room 1576
Chicago, IL 60661

RE: Program Review Report Response
PRCN: 200720525814

Dear Mr. Flurkey,

From February 27 - March 2, 2007 your team visited Notre Dame College to review its compliance with the Clery Act. On May 1, 2008 the team issued its report. This letter is in response to that report. The Report's Findings are each addressed separately.

Notre Dame College deeply regrets the events that led to your investigation and is committed to ensuring the safety of our College community. We would also like to express our appreciation for your understanding and granting us additional time to complete this Response. We requested the additional time because the former Dean of Student Development ("the Dean") was scheduled for a deposition in a related civil matter where we hoped to gather more information concerning the events. That deposition was cancelled after our request for an extension. Therefore, in order to make a timely filing, the college bases this Response on the information obtained from the investigation and its application to the law.

FINDING NO. 1: FAILURE TO PROPERLY ISSUE TIMELY WARNINGS

1. No Timely Warning was Required

For the purposes of this response only, Notre Dame College makes no dispute of the conclusion that the Dean was a campus security authority.

Other than the fact that the Dean reported the incidents to the Notre Dame College Police on November 22, and not November 23, for the purposes of this response, Notre Dame College makes no material dispute of the facts as listed in the background section.

A. Student No. 1

First, it is the contention of Notre Dame College that according to the common interpretation of the Clery Act among colleges in 2005, no timely warning was required for the incident reported to the Dean by Student No.1. Student No.1 contacted the Dean on October 10 by sending a letter to the Dean stating that some time in mid-September an incident had occurred in her dorm room. After receiving that letter, the Dean promptly met with Student No.1. According to the letter and the subsequent meeting, the Dean gathered the following facts:

- 1) the incident was personal in nature, between two individuals with some relationship,
- 2) no further incidents had occurred between the time of the incident and the reporting,
- 3) Student No.1's friends and teammates made fun of her for having a boyfriend prior to her report to the Dean,
- 4) Student No.1 did not name the other person involved, and
- 5) during the incident, the male student stopped when Student No.1 told him to stop,
- 6) Student No.1 did not report the incident until almost one month after it had occurred

According to 34 C.F.R. §668.46(e), a timely warning is required when a crime is reported that the institution considers to be a threat to students and employees. After reviewing the facts the Dean made the determination that the incident did not represent a threat to students or employees. This determination was reasonable because: 1) the incident was personal in nature and between two people with a relationship, thus there seemed little danger to those students and employees outside of that relationship, especially since no further incidents had occurred between the two during the time between the alleged incident and the initial report to the Dean; 2) the fact that the student reported the incident after being made fun of created suspicion that the incident may not have occurred as reported; 3) without the name of the individual involved, no further assessment of the risk could be conducted, nor could a warning identify the individual theoretically posing a threat; 4) the male involved stopped when Student No.1 told him to stop which seemed to indicate that this was probably not a sexual predator; and 5) if any threat existed it had long passed because of the delay between the incident and the reporting. Therefore, the incident was not considered by the institution, acting by its Dean, to represent a threat to students and employees, and thus no timely warning was required.

B) Student No. 2

Second, it is the contention of Notre Dame College that no timely warning was required for the incident reported to the Dean by Student No.2. Again, 34 C.F.R. §668.46(e) requires timely warnings where an incident is reported to campus security authorities and the incident is considered by the institution to represent a threat to students and employees.

Student No.2 contacted the Dean on October 31, and told the Dean that an incident had occurred with a named male student in a dorm room. Upon investigation, the Dean learned that the male student had not been in town or on campus on the date of the alleged incident. Later, Student No.2 changed the date of the alleged incident. Student No.2 also changed the location of the alleged incident to a public residence hall lounge. The male student maintains that he was out of

town even on the changed date. According to the meeting and subsequent investigation, the Dean found the following:

- 1) Student No.2 has a long and documented reputation for perpetuating falsehoods,
- 2) the male student was not present on campus during at least the first alleged date,
- 3) Student No.2 reported conflicting dates of the alleged incident,
- 4) Student No.2 reported conflicting locations of the alleged incident, and
- 5) the alleged incident was personal in nature, between two individuals with some relationship.

Based on these findings and in accordance with the regulation, the Dean made the determination that the incident likely did not occur as alleged, and thus did not represent a threat to students or employees. This determination was reasonable because: 1) Student No.2's reputation created a reasonable suspicion that the incident may not have occurred; 2) this suspicion was further supported when the Dean learned that the male student was not in the area at the time of the alleged incident; 3) Student No.2's changing of the location and date of the alleged incident further supported this suspicion; and 4) that this incident was personal in nature led to a natural conclusion that even if the events had actually occurred, which was far from certain, they did not pose a threat to the students or employees at large. Therefore, the incident was not considered by the institution, acting by its Dean of Students, to represent a threat to students and employees, and thus no timely warning was required.

C) Incidents Reported for Clery Statistics

Third, even though the Dean concluded that the incidents did not constitute a threat to students and employees, she did report them for the purposes of the College's crime statistics. In October 2005, the College provided the Dean with training on the Clery Act. Then, on November 22, the Dean informed the NDCPD Chief that two incidents had been reported to her. 34 C.F.R. 668.46(b) requires institutions to issue an annual report stating the number of Clery crimes reported to campus security authorities. While this issue does not bear directly on the issue of timely warnings, it demonstrates that the Dean was both aware of and complying with the law. By reporting these two incidents to the campus police for the annual Clery crime report, the Dean demonstrated that as a general matter the institution was dedicated to complying with the Clery Act. In fact, the Dean reported the incidents in spite of requests from both Student No.1 and No.2 that the Dean keep the incidents confidential. Furthermore, but for the Dean's reporting of the two incidents, neither the administration nor the police would have known that anything had occurred.

D) Incidents with Student No.1 and No.2 Involved the Same Male

Fourth, although in the end, evidence surfaced that the same male was involved in both incidents, there was NO reason for the Dean to believe that the two incidents were related in any way at the time the incidents were reported. Once it was discovered that the same male student was involved in both cases, on December 12, the College immediately issued a warning to the College community. Therefore, since the evidence that the same male was involved did not

surface at the time the incidents were reported to the Dean, that fact has no bearing on the analysis in section 1(A) and 1(B).

E) Final Disposition of the Incidents

Finally, long after the fact, the Dean's decisions were somewhat vindicated. The male student was never convicted of a Clery crime. The Dean was acquitted under Ohio law of failure to report a felony and those charges were expunged. The Clery Act only requires warnings for those crimes listed in 34 C.F.R. 668.46 (c), those crimes include: murder and non-negligent manslaughter, negligent manslaughter, forcible sex offenses, non-forcible sex offenses, robbery, aggravated assault, burglary, motor vehicle theft, arson, and arrests for liquor law violations, drug law violations, and illegal weapons possession. After an initial trial of the male student resulted in no convictions, the prosecution prepared for a second trial on charges that were either severed from the first trial or resulted in a hung jury at the first trial. Before this second trial, the male involved plead guilty to attempted abduction and attempted felonious assault. Neither of these crimes is listed in 34 C.F.R. 668.46(c).

2. Remedial Measures

In response to these events and your review of our policies, the College has taken many steps to improve its process for reporting events. First, those personnel at the College who were directly involved in these incidents are no longer employed by the College.

Second, the Police Department has been restructured to allow for a better working relationship with the Administration as well as a more effective role for campus security. The new department consists of campus security personnel and police officers and has a stronger alignment with the local police department for the prompt reporting of crimes. Additionally, College personnel at all levels now have clear reporting channels.

Third, those individuals in administration at the College who could be considered campus safety authorities are now clearly informed that: 1) the discretion in determining whether or not a possible crime constitutes a direct threat should be given serious weight, and close calls should be decided in favor of issuing a warning, and 2) according to the current practice, the need to issue timely warnings trumps any student concerns for privacy when an incident is reported to them (except for pastoral and professional counselors).

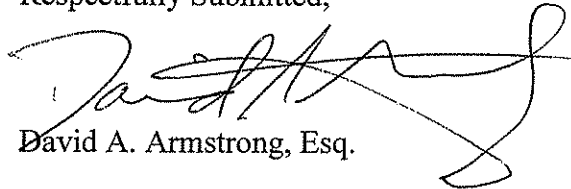
Fourth, although at the time of the incidents, the College did provide Clery training to many administrators, including the Dean, the College now provides rigorous supplemental Clery training on an annual basis. Furthermore, the College has created a Threat Assessment Task Force that meets on a weekly basis to discuss any issues that effect or could affect the safety of the College Community. It is the College's hope that this Task Force will increase communication and collaboration among the College's campus security authorities.

After the events that lead to the investigation, the College has reaffirmed its commitment to the safety of the College community. The College believes that all of the steps taken since that time have helped to create a safe environment for all of its students and employees.

FINDING NO.2: INACCURATE STATISTICAL INFORMATION IN ANNUAL CRIME REPORT

Notre Dame College does not dispute Finding No.2. Rather, it would like to reiterate that the correct crime statistics were reported to the campus community via the Notre Dame College website; thus, the policy underlying the reporting was served as the College community had access to accurate statistics. The only error in the reporting was on the Department of Education report. When that error was brought to our attention, it was promptly corrected.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'David A. Armstrong', with a large, stylized flourish extending from the end of the signature.

David A. Armstrong, Esq.