

THE CITY UNIVERSITY OF NEW YORK

Office of the General Counsel and Vice Chancellor for Legal Affairs

535 East 80 Street, New York, N.Y. 10021

212/794-5382



**Administrative Advisory
Memorandum No. 2**

September 20, 1990

Memorandum To: Cabinet
College Presidents

From: Robert E. Diaz 

Re: Drug-Free Schools and Campuses Regulations

On December 12, 1989, the President signed the Drug-Free Schools and Communities Act of 1989. Section 22 of this law is entitled "Drug-Free Schools and Campuses" and requires, inter alia, institutions of higher education to certify that it has adopted and implemented a program to prevent the illicit use of drugs and the abuse of alcohol by students and employees.

On September 7, 1990, a member of my staff attended a meeting in Washington, D.C. at which the United States Department of Education provided additional guidance concerning the requirements of the Drug-Free Schools and Campuses amendment. Representing the Department of Education was Mr. Jerry Whitlock, a member of the Department's Drug-Free Schools and Campuses Task Force.

The Department of Education, through its representative as well as in its Final Regulations (34 CFR part 86), has indicated that the Secretary of Education believes that Congress intended the drug prevention programs and policies required by the Act to be in effect for school year 1990-91 to the extent feasible. Therefore, an institution's October 1, 1990 certification is a representation that the institution has taken significant steps and is making a good faith effort to implement the required programs and policies as quickly as feasible during school year 1990-91. The Department of Education further indicated that dissemination of drug-free policies and programs material to students and employees need not be done by October 1, 1990, for certification purposes, but should be accomplished as soon as possible thereafter.

Additionally, the Department indicated that institutions are not required to develop student or employee assistance plans of counseling, treatment, rehabilitation or re-entry, but is required to list those programs available on-campus. An institution may provide a description of off-campus programs but is required to do so only if no-campus programs are available.

In light of the amendment to the Henderson Rules and the adoption of a drug and alcohol policy by the Board of Trustees' resolution of June 25, 1990, I believe the "good faith effort" and "significant steps" requirements for certification have been met.

Based on this assessment, the Deputy Chancellor has sent to the U.S. Department of Education a certification on behalf of The City University of New York.

My office, in consultation with the Office of the Vice Chancellor for Student Affairs, will provide the colleges with a statement that contains a description of the legal sanctions and health risks attendant to the unlawful use, possession, or distribution of illicit drugs and alcohol by students and employees on its property or as part of any of its activities. You may expect to receive these materials shortly.

Distribution of policy and program materials to students and staff should be completed by the colleges by January, 1991.

A question was raised at the September 10, 1990 Council of Presidents' meeting concerning the applicability of the Drug Free Schools and Campuses Regulation to the Research Foundation. By memorandum dated September 13, 1990, the President of the Research Foundation, Matthew Goldstein, addressed this question. I have reviewed that memorandum and concur with the conclusion that the Drug Free School and Communities Act (and its implementing regulations 34 CFR Part 86, Drug-Free Schools and Campuses Regulations) does not apply to the Research Foundation. Unlike the Drug-Free Workplace Act, which applies to institutions of higher education and to all recipients of federal grants, the Drug Free School and Communities Act applies only to institutions of higher education, state education agencies and local education agencies. Accordingly, the Research Foundation will not need to file a certification similar to that filed by the University.