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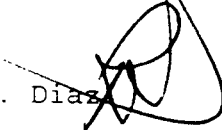
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ADMINISTRATIVE ADVISORY MEMORANDUM NO. 97-2

May 27, 1997

TO: College Presidents

FROM: Vice Chancellor Robert E. Diaz 

RE: Insurance Needs of Separately Incorporated Entities

A number of legally incorporated, nonprofit entities exist at our College campuses. Some of them perform functions clearly and exclusively related to the operations of the College (for example, bookstores and food service centers), while others engage in activities or perform services which are available to the public (such as performing arts centers and auxiliary enterprises).

On occasion, questions arise concerning the risk of exposure and liability incurred by these organizations, and whether they and/or their employees will be protected by virtue of their "affiliation" with CUNY. The determination of coverage is governed by Section 6205 of the State Education Law which provides that the State and City will indemnify and hold harmless CUNY employees for acts occurring in the discharge of their duties and within the scope of their employment.

Separately incorporated organizations under the State Not for Profit Corporation Law are governed by their own boards of directors and particular corporate bylaws and other regulations. The act of incorporation itself is a formal acknowledgment of a separate and distinct existence. Some of these corporations have further asserted their independence by securing tax exempt status under Section 501(c)3 of the Internal Revenue Code. A corporation protects (and shields) its officers and directors in their corporate decision-making capacities. Corporate bylaws usually address indemnification of

corporate officers and directors in the discharge of their duties. Normally, the corporation purchases directors and officers liability insurance, which guards against loss arising from wrongful acts (usually mismanagement).

Often, the organizations in question are not subject to oversight by the Colleges and are not part of the facilities managed by the College, nor are the operations and business of the groups considered the ordinary business of the College. For example, sometimes College facilities are used for events not sponsored by the College and without review or approval of the Office of Legal Affairs. On such occasions, private insurance coverage is required and is purchased under an umbrella special events policy issued by a private insurer.

There is no blanket indemnification provided under the Education Law to all such organizations and their employees. Employees of separately incorporated entities may not necessarily be considered CUNY employees entitled to indemnification pursuant to the State Education Law, even though the corporation may exist primarily to provide services to the Colleges and those working at the Colleges. In some instances, employees in the same organization may be carried on various employers' payrolls; thus, the "employer" may vary - it may be CUNY, the CUNY Research Foundation, the entity itself, etc. (A staff member carried on the Research Foundation's payroll would not be covered since Research Foundation employees do not receive the benefit of protection under the Education Law.) Whether the employee of a particular entity will be considered a state or city employee is a legal determination that may only be made by the Office of the Attorney General for such entities at the senior colleges and the Office of the Corporation Counsel for such entities at the community colleges.

Claims are sometimes made against CUNY and these entities relating to claims arising out of the acts of the entities. In appropriate cases, the Attorney General and Corporation Counsel may take the necessary legal steps to have CUNY removed as a party to the lawsuit, which may leave the entities fending for themselves. Since the risk involved in the operations of some of these entities is potentially great, if the entity has no insurance protection, the result may be devastating.

Accordingly, I strongly recommend that you communicate to the entities referred to above and their employees that coverage under the state law should not be assumed, because such reliance may be misplaced and costly. Although these separately incorporated entities and their employees may appear to be part of CUNY, thereby raising the implication that protection is conferred by reason of that

association, that is not necessarily the case. Therefore, unless the organization has received a written legal opinion from the Office of the Attorney General or the Office of Corporation Counsel, as applicable, indicating that the organization is entitled to representation and indemnification, the organization should purchase appropriate insurance policies.

c: Vice President for Administration
Legal Affairs Designees

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