



Embracing Change: FERPA Amendments, Social Media and Student Misconduct, Safety Exception to the Open Door Policy

SDAA Meeting – 29 March 2012

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FERPA Amendments

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FERPA Amendments

Effective January 3, 2012, the Department of Education amended the Code of Federal Regulations that govern FERPA. Below are selected amendments relevant to community colleges.

FERPA Amendments

Rationale for Amendment

The purpose of these amendments are to ensure that the Department of Education continues to implement FERPA in a way that protects the privacy of education records while allowing for the effective use of data.

FERPA Amendments

Rationale for Amendment

“Improved access to data will facilitate States’ ability to evaluate education programs, to ensure limited resources are invested effectively, to build upon what works and discard what does not, to increase accountability and transparency, and to contribute to a culture of innovation and continuous improvement in education.”

FERPA Amendments

34 CFR 99.3 - Definitions

Change: Added definition for “authorized representative” - any entity or individual designated by a State or local educational authority or an agency headed by an official listed in § 99.31(a)(3) to conduct – with respect to Federal- or State-supported education programs – any audit or evaluation, or any compliance or enforcement activity in connection with Federal legal requirements that relate to these programs.

FERPA Amendments

34 CFR 99.3 - Definitions

Rationale for adding definition of “authorized representative:” Greater flexibility for governmental entities and discretion to designate authorized representatives who may access PII from education records to conduct an audit, evaluation, or enforcement or compliance activity and ultimately to evaluate the effectiveness of education programs.

FERPA Amendments

34 CFR 99.3 - Definitions

Change: Amended definition for “directory information”

Rationale for amendment: To clarify that FERPA permits educational agencies and institutions to designate student ID numbers as directory information in the public notice

FERPA Amendments

34 CFR 99.3 - Definitions

Rationale for amended definition for “directory information” cont’d:

Including student ID numbers as directory information allow schools to disclose as directory information a student ID number on a student ID card or badge if the student ID number cannot be used to gain access to education records except when used in conjunction with one or more factors that authenticate the user’s identity.

FERPA Amendments

34 CFR 99.31(a)(6)(ii)

Change: FERPA does not prevent a State or local educational authority or agency headed by a State or local educational authority (amongst others) from entering into agreements with organizations conducting studies and redisclosing PII from education records on behalf of educational agencies and institutions that disclosed the information to the State or local educational authority.

FERPA Amendments

34 CFR 99.31(a)(6)(ii)

Rationale for Change: These changes clarify that while FERPA does not confer legal authority on the State entity, for example, to enter into agreements and act as representatives of postsecondary institutions, nothing in FERPA prevents them from entering into agreements and redisclosing PII from education records related to studies conducted on behalf postsecondary institutions

FERPA Amendments

34 CFR 99.31(a)(6)(ii)

Impact of Change: State entities may disclose PII under this provision **notwithstanding the objection of the postsecondary institution** so long as the disclosing State entity has the express or **implied legal authority** to have the study conducted, and makes the disclosure on behalf of the postsecondary institution. **State entities may make the determination that a study is for the benefit of the original disclosing educational agency or institution.**

FERPA Amendments

34 CFR 99.31(a)(6)(iii)(C)(4)

Change: Eliminated the option for entities to agree to return PII when it's no longer needed for a study

Rationale for change: This change was made to ensure that PII from education records is destroyed as required by statute.

FERPA Amendments

34 CFR 99.37

Change: Added provision that students cannot use the directory opt-out option to prevent an educational agency or institution from requiring a student to wear, to display publicly, or to disclose a student ID card or badge that exhibits information that may be designated as directory information

FERPA Amendments

34 CFR 99.37

Rationale for change: Some colleges require students to wear and openly display a student ID badge for safety and security reasons. **The need for schools and college campuses to implement measures to ensure the safety and security of students is of the utmost importance and FERPA should not be used as an impediment to achieving student safety.**

FERPA Amendments

34 CFR 99.37

Change: A college may specify that disclosure of directory information will be limited to specific parties, for specific purposes, or both.

Rationale for change: To address school officials' who, alarmed about the increase in identity theft, expressed a need to protect the privacy of students' directory information.

FERPA Amendments

34 CFR 99.37

Rationale for change cont'd: Schools have the option of limiting directory information disclosures without being subject to enforcement proceedings by the Family Policy Compliance Office (FPCO) if the school elects not to limit disclosure to specific parties or for specific purposes, or both.

FERPA Amendments

34 CFR 99.37

Rationale for the change cont'd: The

Department believes that schools are in the best position to determine who should receive directory information and, should they choose, implement a limited directory information policy.

Social Media and Student Misconduct

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Social Media and Student Misconduct Roadmap

- Applicable Law
- Potential Language
- Concerns/Emerging Issues



Social Media and Student Misconduct Applicable Law

- **First Amendment**

- “Congress shall make no law . . . abridging the freedom of speech”

- Citizenship grants each person the right to express themselves as they deem appropriate

Social Media and Student Misconduct Applicable Law

- ***Tinker v. Des Moines***

- Students at an Iowa high school protested Vietnam War, wore black armbands
- School officials declared the students' act a disturbance of school activities
- Students maintain fundamental rights during matriculation **as long as engaging those rights does not interfere with the learning environment or the rights of others**

Social Media and Student Misconduct Applicable Law

- ***Healy v. James***

- Student political-interest group at a state college denied recognition by the school
- School claimed fear of violence and disruption
- Extended *Tinker* to students beyond K-12 education
- First Amendment protections should not be pursued less vigorously on college campuses
- “marketplace of ideas”

Social Media and Student Misconduct Applicable Law

- ***Papish v. Board of Curators***
 - Student expelled for violating bylaw prohibiting “indecent speech or conduct”
 - Distributed school sponsored newspaper containing indecent cartoon and story
 - State colleges have the discretion to define acceptable student conduct
 - May not prohibit speech based on “conventions of decency”

Social Media and Student Misconduct Applicable Law

- ***College Republicans v. Reed***
 - Student-group held an anti-terrorism rally
 - Depictions of political flags were disrespected
 - Students sought an injunction claiming code of conduct overbroad and vague

 - Overbroad when too much protected speech is chilled
 - **Vague when students unable to ascertain what is prohibited and consequences**

Social Media and Student Misconduct

Sample language

“Postings by students to, by, and through their personal social media accounts are subject to the same regulations as other means of communicating.”

This language can be included in multiple provisions of the Student Code of Conduct including, but not limited to, disruption of safety, harassment, stalking, hazing, and other misconduct.

Social Media and Student Misconduct

Sample language

- Incorporate social media usage into specific sections of Code of Conduct
- “Harassment. Engaging in verbal, electronic, visual, written or physical behavior directed at an individual or group, which in the view of a person of reasonable sensibilities, is likely to provoke or otherwise result in, a negative or injurious response, mental, or emotional distress, or related consequence.”
(Adapted from language of Howard University.)

Social Media and Student Misconduct

Sample language

“Similar to comments made in person, College will not tolerate disrespectful comments and behavior online, such as: Derogatory or defamatory language; comments that create a serious danger to the safety of another person or that constitute a credible threat of serious physical or emotional injury to another person; comments or photos that describe or depict unlawful assault, abuse, hazing, harassment, or discrimination; selling, possessing, or using controlled substances; or any other illegal or prohibited conduct, including violating the College’s Policy on Prohibited Harassment and Discrimination.”

(Adapted from NCAA student-athlete policy)

Social Media and Student Misconduct Concerns/Emerging Issues

- Are the current policies applicable to social media?
- Will new policies, specific to social media, be incorporated into the student code of conduct?
- Are the student code of conduct considered guidelines or strict regulations?
 - Can affect strength and method of college's response
- Are designated consequences appropriate for the offense?
- Has risk for backlash been minimized?
- Is creating policy worth it?

Social Media and Student Misconduct

Key Points

- Colleges may address student misconduct occurring via social media
- Policies may not unnecessarily restrict students' freedom of speech
- Students must know in advance what is prohibited and the related consequences
- No “foolproof” language exists



Safety Exception to the Admission to Colleges rule

Admission to Colleges – Safety Exception - 23 SBCCC 02C .0301

Background

To give community colleges a mechanism by which they could protect their community college patrons while simultaneously protecting the integrity of the open door, the State Board of Community Colleges (SBCC) adopted the “health and safety” exception to the open door policy on January 21, 2011.

Written objections at the Rules Review Commission (RRC) caused the effective date of the adopted rule to be delayed pending legislative review in the short session beginning May 2012.

Effective July 1, 2011, the General Assembly granted the SBCC an exemption from the rule-making process in Chapter 150B of the North Carolina General Statutes. Because that exemption was effective July 1, 2011, the SBCC is no longer subject to the legislative review that was to take place in the upcoming regular session of the General Assembly in May 2012. As such, the “health and safety” rule that the SBCC adopted on January 21, 2011 was properly adopted, but was not made effective due to legislative review that was to take place.

Admission to Colleges – Safety Exception - 23 SBCCC 02C .0301

Current Status

On March 16, 2012, the SBCC initiated the process to amend the “health and safety” exception pursuant to the rule-making process that the SBCC adopted on August 19, 2011.

To address concerns that colleges would discriminate against persons with disabilities, the SBCC has proposed striking the references to “health” in the “health and safety” exception and just leave “safety.” **The proposed amendment would continue to allow colleges to deny admission to any person who posed a safety risk consistent with the provisions allowing denial of admission.**

The public comment period expires on **April 18, 2012**.

Admission to Colleges – Safety Exception - 23 SBCCC 02C .0301

PROPOSED AMENDMENT

23 SBCCC 02C .0301 ADMISSION TO COLLEGES

(a) Each college shall maintain an open-door admission policy to all applicants who are legal residents of the United States and who are either high school graduates or are at least 18 years of age. Student admission processing and placement determination shall be performed by the officials of each college. Admission requirements for an emancipated minor shall be the same as for an applicant 18 years old or older. Provisions with respect to admission of minors are set forth in Rule .0305 of this Section.

(b) For the purposes of this Section, "undocumented immigrant" means any immigrant who is not lawfully present in the United States. Community colleges shall admit undocumented immigrants under the following conditions:

- (1) Community colleges shall admit an undocumented immigrant only if he or she attended and graduated from a United States public high school, private high school, or home school that operates in compliance with State or local law;
- (2) When determining who is an undocumented immigrant, community colleges shall use federal immigration classifications;
- (3) Undocumented immigrants admitted under Subparagraph (b)(1) of this Rule must comply with all federal and state laws concerning financial aid;
- (4) An undocumented immigrant admitted under Subparagraph (b)(1) of this Rule shall not be considered a North Carolina resident for tuition purposes. All undocumented immigrants admitted under Subparagraph (b)(1) of this Rule must be charged out of state tuition whether or not they reside in North Carolina;
- (5) When considering whether to admit an undocumented immigrant into a specific program of study, community colleges shall take into account that federal law prohibits states from granting professional licenses to undocumented immigrants; and
- (6) Students lawfully present in the United States shall have priority over any undocumented immigrant in any class or program of study when capacity limitations exist.

Admission to Colleges – Safety Exception - 23 SBCCC 02C .0301

(c) Boards of trustees may adopt policies regulating admission and graduation of students enrolled in courses mandated under G.S. 17C, North Carolina Criminal Justice Education and Training Standards Commission, or G.S. 17E, North Carolina Sheriffs' Education and Training Standards Commission. These policies may limit enrollment to law enforcement officers or persons sponsored by law enforcement agencies and may require a student to maintain sponsorship by a law enforcement agency until completion of the program. Policies adopted pursuant to this Paragraph shall be published and made available to students and prospective students.

(d) Any college suspending or expelling a student for non-academic disciplinary purposes shall record the suspension or expulsion in the student's educational record. Upon receipt of a written request signed by the student and subject to all applicable privacy laws, each college shall, in accordance with the student's request, inform other colleges and universities of the term and circumstances of the student's non-academic disciplinary suspension or expulsion, if any. Boards of trustees may adopt policies refusing admission to any applicant during any period of time that the student is suspended or expelled from any other educational entity.

(e) Boards of trustees may adopt policies refusing admission to any applicant if it is necessary to protect the ~~health or~~ safety of the applicant or other individuals. When making a ~~health and~~ safety determination, colleges may refuse admission to an applicant when there is an articulable, imminent, and significant threat to the applicant or other individuals. Colleges refusing admission on the basis of a ~~health or~~ safety threat shall document the following:

- (1) Detailed facts supporting the rationale for denying admission;
- (2) The time period within which the refusal to admit shall be applicable and the supporting rationale for the designated time period; and
- (3) The conditions upon which the applicant that is refused would be eligible to be admitted.

(f) Boards of trustees shall implement an appeals process for applicants denied admission pursuant to Subsection (e) of this Section.

*History Note: Authority G.S. 115D-1; 115D-5; 115D-20;
SBCC Adoption January 21, 2011;
Amended June 1, 2012.*

Questions?