

Legal Issues Affecting Student Services Personnel

12 April 2010



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North Carolina Community College System

Admission to Colleges

23 NCAC 02C .0301

- »» Each college shall maintain an open-door admission policy to all applicants who are high school graduates or who are at least 18 years of age...

UPDATE ON STATUS OF ADMISSION OF UNDOCUMENTED STUDENTS

- ▶ The State Board of Community Colleges has completed the amendment process for 23 NCAC 02C. 0301 Admission to Colleges rule
- ▶ The rule will be submitted to the Rules Review Commission for consideration at their 15 April 2010 meeting
- ▶ 1 May 2010 – Earliest possible effective date of the rule

SEX OFFENDERS ON CAMPUS

- ▶ **QUESTION:** A parent came to campus to register her son and has informed the administration that he was a registered sex offender. The campus houses a daycare and 7th and 8th graders for **early college**. The parent received confirmation from law enforcement that the student could attend school, however does the Jessica Lunsford Act prohibit the registered sex offender from attending the college?
- ▶ **RESPONSE:** I have advised community colleges to follow the instruction of their local sheriff's department regarding a sex offender's ability to come onto the campus. I have advise this partly because 1) there are potentially contradictory provisions in the Jessica Lunsford Act; 2) the phrase, "at any place," in G.S. 14-208.18(a)(3) is unclear in the Jessica Lunsford Act; 3) and community college personnel do not have the ability/capacity/authority to make determinations about the types of sex offenders that fall within the prohibitions in the Jessica Lunsford Act.

SEX OFFENDERS ON CAMPUS

- ▶ **QUESTION:** The local school system wants my college to enter into an MOU for an Early College Program on the community college campus. In the MOU, the local school system wants the college to agree to comply with the criminal history check provisions in G.S. 115C-332 and G.S. 115C-332.1. Is my college permitted to do so if we do not normally conduct criminal history checks?
- ▶ **RESPONSE:** If the college is going to actually comply with the criminal history check provisions in G.S. 115C-332 and G.S. 115C-332.1, then the college is permitted to agree to it in the MOU.

THREATS ON CAMPUS

- ▶ **QUESTION:** A student who has been banned from another Community College due to stalking and threatening behaviors has applied for admission to another community college. The student has been diagnosed as being bipolar as well. Since the community college operates on an open door policy, and due to the incident at Virginia Tech., are we still bound by the open door rules for any student who wants to attend a community college in North Carolina? Or do we have some leniency when it comes to the safety and well being of our students?
- ▶ **RESPONSE:** If the student has been suspended or expelled from a college, then another college has the authority pursuant to 23 N.C.A.C. 2C.0301(c) to refuse to admit the student if that college has adopted a policy allowing the college to refuse to admit a student who has been "suspended or expelled from any other educational entity."
- ▶ If the new college doesn't have a policy permitting it to refuse to admit a student who has been "suspended or expelled from any other educational entity," then under the open door policy, the new college would be obligated by NCAC to admit the student.

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- ▶ If the new college doesn't have a policy permitting it to refuse to admit a student who has been "suspended or expelled from any other educational entity," then under the open door policy, the new college would be obligated by law to admit the student because there is not currently an exception to the open door policy for health and safety.

CAMPUS DISCIPLINARY ISSUES

- ▶ **QUESTION:** Can one community college receive a student's records from another college concerning discipline without the student's consent and without violating FERPA.? Is a student's previous suspension and admission considered an educational record?
- ▶ **RESPONSE:** Regarding whether a college has the authority under FERPA to release the student's disciplinary record without the student's consent, they do have the authority to release the disciplinary record without the student's consent pursuant to 34 CFR 99.31(a)(2), so long as
 - 1) the information is relevant to the student's enrollment or transfer to another college;
 - 2) the transferring college makes a reasonable attempt to notify that student at the last known address, unless the student initiates the request to release the records or unless the transferring community college lists in its annual FERPA notification that the transferring community college will release information to other educational agencies that request it for enrollment or transfer purposes;
 - 3) the new community college gives the student a copy of the disclosed record, if the student requests; and
 - 4) the new community college gives the student the right to a hearing to challenge the accuracy of information or privacy of the student, if requested. (These statements presume that the student is an eligible student.)
- ▶ The disciplinary record is an education record because it is directly related to a student and is maintained by the transferring community college, pursuant to 34 CFR 99.3.

Background Checks and Drug Testing



BACKGROUND CHECKS and DRUG TESTING

- ▶ **QUESTION:** Can a college conduct a criminal background check and drug test on applicants to programs with a clinical component?
- ▶ **RESPONSE:** No. Based upon advice from the North Carolina Attorney General's Office, the System Office directed that community colleges are not permitted to conduct criminal background checks or drug testing on applicants to programs in Numbered Memos CC97-131 and CC01-184. I have reiterated the information from those numbered memos in Numbered Memo CC10-014 (12 April 2010).

BACKGROUND CHECKS and DRUG TESTING

The Attorney General's Office advised the following:

- ▶ Community colleges do not have the authority to "impose nonacademic requirements on admissions to its programs."
- ▶ Community colleges "may not propagate an admissions policy which places nonacademic requirements on admissions to its programs for minors *or any other applicants*."
- ▶ "Insofar as past criminal convictions or disruptive behavior is not an academic qualification, those conditions may not be used as a basis to exclude students from *admission to or completion of programs* at individual community colleges."

BACKGROUND CHECKS and DRUG TESTING

The Attorney General's Office advice cont'd:

- ▶ Community colleges do not have the authority under the open-door policy to “impose nonacademic requirements on *admissions to its programs.*”
- ▶ The proposal to allow local community college boards of trustees to adopt policies that required criminal background checks and drug screening as an enrollment condition in selective admission programs **is not consistent with the State Board of Community College's open-door policy.**

BACKGROUND CHECKS and DRUG TESTING

- ▶ Because the results of a criminal background check or a drug screening test would be used to impose nonacademic requirements on a student, **community colleges do not have the legal authority to conduct criminal background checks or drug screening tests as a prerequisite to admission to the college or any licensure program.**

BACKGROUND CHECKS and DRUG TESTING

NCCCS General Counsel's Advice based upon the advice of the Attorney General:

- ▶ Community colleges should not solicit or obtain access to the results of criminal background checks or drug screening results for admission or completion purposes. Since a past criminal conviction and results of a drug screening test are nonacademic factors that could not be used for admission or completion purposes, colleges should not have access to the information so as to potentially taint any later admission or completion decisions.

BACKGROUND CHECKS and DRUG TESTING

NCCCS General Counsel's Advice based upon the advice of the Attorney General cont'd:

- ▶ It is permissible for a college to use a third-party vendor to conduct a background check or drug test on behalf of a clinical site that requires it for their clinical programs only if the college simply serves as a conduit for the transfer of information.

BACKGROUND CHECKS and DRUG TESTING

NCCCS General Counsel's Advice cont'd:

- ▶ Since it is the responsibility of the clinical site to protect its clients from harm, it is my legal opinion that it is the clinical site's responsibility to ensure that students working at the site comply with the site's safety policies and regulations. As such, I do not think there is an ethical issue for our community colleges to allow clinical sites to determine for themselves what is acceptable for site placement and what is not.

BACKGROUND CHECKS and DRUG TESTING

- ▶ Given the regulatory (open-door) requirements imposed upon community colleges, I think the community college's role in clinical placements should be limited to being responsible for the academic qualifications of the student. Thus, I think that it is ethically permissible for community colleges to allow individual clinical sites to implement its own safety policies and procedures and exercise its own duty of care to its clients, especially when community colleges do not have knowledge of the results of a criminal background check or drug screening exam.

BACKGROUND CHECKS

- ▶ **QUESTION:** Can a college that conducts criminal background checks on its employees conduct a criminal background checks for students that are also college employees?
- ▶ **RESPONSE:** It is clear that community college employees are subject to criminal background checks. It is my legal opinion that the fact that the hybrid status of a community college student being a community college employee does not eliminate the rationale behind conducting criminal background checks for employees. In other words, it is my legal opinion that community colleges are permitted to conduct criminal background checks on students who are employed by the college. HOWEVER, to address the concern about community college students' criminal background information being used to adversely affect them in some way as a student, I recommend campuses create a Chinese wall between the human resources/personnel division and the academic side so that the academic side has no way of knowing or accessing the results of a criminal background check conducted on a student who happens to be a community college employee.

Q & A Session