SPECIAL ISSUES AFFECTING
PRIVATE COLLEGES AND UNIVERSITIES

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Stetson University College of Law:

17th ANNUAL LAW & HIGHER EDUCATION CONFERENCE
Clearwater Beach, Florida
February 11-13, 1996
SPECIAL ISSUES AFFECTING PRIVATE COLLEGES AND UNIVERSITIES

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II. PREPARING TO MEET A CAMPUS CRISIS
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Law and Higher Education
Stetson University College of Law
February 11-13, 1996
Clearwater Beach, Florida
INTERVIEW AND PERFORMANCE APPRAISAL SKILLS
FOR ALL SUPERVISORS

I. Federal Statutes that apply to private colleges.

A) Title VI of the Civil Rights Act of 1964 precludes discrimination (for the entire college) on grounds of race, color or national origin in any program or activity receiving federal financial assistance including financial aid sent directly to students. Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d.

B) Title VII of the Civil Rights Act of 1964 offers protection to employees, making it an unfair employment practice for any employer to discriminate against any individual with respect to hiring or the terms and conditions of employment because of such individual's race, color, religion, sex, or national origin; affects any employer (including colleges as of 1972) with 15 or more employees. 42 U.S.C. §2000e-2(a).

C) The Age Discrimination in Employment Act protects people forty years of age and over making it unlawful for an employer to fail or refuse to hire or to discharge any individual with respect to compensation, terms, conditions, or privileges of employment, because of such individual's age; any employer with 20 or more employees is controlled by the ADEA, 29 U.S.C. §621.

D) The Rehabilitation Act of 1973 (Section 504) and its amendments protect handicapped employees stating: No qualified handicapped person shall, on the basis of handicap, be subject to discrimination in employment under any program or activity ...; requires affirmative action; applies to the entire institution if it participates in student financial aid programs. Rehabilitation Act of 1973, as amended by the Rehabilitation Act Amendments of 1974, 29 U.S.C. §794.

E) Title IX of the Education Amendments of 1972 prohibits the use of sex as a criterion for admissions in any program or activity receiving federal financial assistance including financial aid sent directly to students; applies to entire campus; exemptions for private single-sex undergraduate colleges, military academies and religious affiliates. Title IX of the Education Amendments of 1972, 20 U.S.C. §1681.

F) Section 1981, which is also a civil rights protective
statute, states "all persons within the jurisdiction of the United States shall have the same right in every state and territory to make and enforce contracts, to sue, to be parties, give evidence, and to the full and equal benefits of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other". 42 U.S.C. §1981.

G) See also:

1. The Equal Pay Act of 1963: prohibits gender discrimination in pay differentials; affects all colleges under the rubric of interstate commerce.

2. a. Americans with Disabilities Act of 1990; (affects all employees)

b. Some ADA recent cases:
   i) Miller v. National Casualty, 61 F. 3d 627 (8th Cir. 1995). Federal appeals court ruled that the employer did not violate ADA when it discharged an employee for excessive absenteeism that was caused by manic depression. The employee did not tell the employer of the mental condition until after she had been discharged and the employer otherwise did not have reason to know of the condition.

   ii) Milton v. Scrivner, Inc., 53 F. 3d 1118 (10th Cir. 1995). Federal appeals court affirms district court's grant of summary judgment on the ADA claim. When a grocery warehouse implemented a new production schedule to increase efficiency and productivity, the ability to meet the new production schedule becomes an essential function of those serving in production positions. An ADA plaintiff who worked as an order selector was therefore required to show his ability to meet that new schedule with or without reasonable accommodation.

   iii) VanDeZande v. Wisconsin Dept. of Admin., 44 F. 3d 538 (7th Cir. 1995). Federal district court decision denying employee's ADA claim is affirmed by appellate court. In doing so, the court said that financial considerations can be considered as part of the "reasonable accommodation" process and are not limited to the "undue hardship" defense.
An employer generally cannot be required to accommodate a disability by allowing the disabled worker to work at home, without supervision. While the use of a desktop computer might make such possible, the "inevitable" reduction in productivity that would result renders such an accommodation unreasonable. Employer also was not required to spend $150 to lower a kitchenette sink in work area where a lower sink was available in bathroom on same floor. ADA does not require an "absolute identity in working conditions between disabled and nondisabled workers."

iv) Bolton v. Scrivner, Inc., 36 F. 3d 939 (10th Cir. 1994). Federal district court's grant of summary judgment on an ADA claim is affirmed. Where an employee claims that an impairment "substantially limits" the major life activity of working, he must show "significant restriction in the ability to perform either a class of jobs or a broad range of jobs in a variety of classes." Not being able to perform a single, particular job does not amount to a substantial limitation in the major life activity of working.


3. Rehabilitation Act of 1973, Section 503; affects any recipient of government contract in excess of $2,500.00; requires affirmative action.

4. Vietnam Era Veteran Readjustment Act of 1974; affects any recipient of government contract in excess of $10,000.00; requires affirmative action.

5. Executive Order 11246 (affirmative action required of institutions receiving government contracts totalling $10,000 or more in any one year not including grants or loans);

6. Pregnancy Discrimination Act (amends Title VII) prohibits employment discrimination based upon pregnancy, childbirth, and related medical conditions.
7. Immigration Reform Control Act - creates an affirmative duty to police the eligibility status of your own work force.

H) Federal Procurement Regulations (FARS)

II. State Law [New York Law to be used as an example] See also Appendix I for other states' references.

A) New York State Constitution Article 1, Section 11

"No person shall be denied the equal protection of the laws of this state or any subdivision thereof. No person shall, because of race, color, creed or religion, be subjected to any discrimination in his civil rights by any other person or by any firm, corporation, or institution, or by the state or any agency or subdivision of the state."

B) New York State Executive Law (Article 15 of the Executive Law is known as the New York State Human Rights Law*)

Sec. 291. Equality of Opportunity
The opportunity to obtain employment without discrimination because of age, race, creed, color, national origin, sex or marital status is hereby recognized as and declared to be a civil right.

Sec. 296. Unlawful discriminatory practices
It shall be an unlawful discriminatory practice:

§1(a) For an employer or licensing agency, because of the age, race, creed, color, national origin, sex or disability, or marital status of any individual, to refuse to hire or employ or to bar or to discharge from employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment.

§1(d) For an employer to make inquiries about the age, race, etc.

§3-a(a) For an employer or licensing agency to refuse to hire or employ or license or to bar or to terminate from employment an individual eighteen years of age or older, or to discriminate against such individual in promotion, compensation or in terms, conditions, or privileges of

*NB - know about Article 15-A also if you're going to contract with the State of New York
employment because of such individual's age.

§12 Notwithstanding the provisions of these subdivisions, it shall not be an unlawful discriminatory practice for an employer, employment agency, labor organization or joint labor-management committee to carry out a plan, approved by the division, to increase the employment of members of a minority group (as may be defined pursuant to the regulations of the division) which has a statewide unemployment rate that is disproportionately high in comparison with the statewide unemployment rate of the general population. Any plan approved under this subdivision shall be for a limited period and may be rescinded at any time by the division.

§16 It shall be an unlawful discriminatory practice, unless specifically required or permitted by statute, for any person to make any inquiry about, whether in any form of application or otherwise, or to act upon adversely to the individual involved, any arrest or criminal accusation ...

§296(11) Nothing contained in this section shall be construed to bar any religious or denominational institution or organization or any organization organized for charitable purposes, which is operated, supervised or controlled by or in connection with a religious organization, from limiting employment or sales or rental of housing accommodations or admission to or giving preference to persons of the same religion or denomination or from making such selection as is calculated by such organization to promote the religious principles for which it is established or maintained.

C) Disparate Impact Inquiries

Selection criteria which are facially neutral in their treatment of different groups but which impact more severely on one protected group and cannot be justified by business necessity are unlawful. [See Griggs v. Duke Power Company, 441 U.S. 424 (1971)]
D) Bona Fide Occupational Qualification

The statutory prohibitions against making discriminatory pre-employment inquiries is subject to one general exception: It is permissible to make pre-employment inquiries relating to the applicant's age, race, creed, color, national origin, sex, marital status or disability, where such inquiries are based upon a bona fide occupational qualification.

E) Disability

a) General Rule: The Executive Law §292.21 prohibits discrimination based on disability in employment, training programs, public accommodations, housing, credit and non-sectarian, tax-exempt education.

b) The Law defines disability as:

i) a physical, mental or medical impairment resulting from anatomical, physiological or neurological conditions which prevents the exercise of a normal bodily function or is demonstrable by medically accepted clinical or laboratory diagnostic techniques;

ii) a record of such an impairment or

iii) a condition regarded by others as such an impairment, provided, however, that in all provisions of this article dealing with employment, the terms shall be limited to disabilities which do not prevent the complainant from performing in a reasonable manner the activities involved in the job or occupation sought or held.

F) Pregnancy - Executive Law §296.1(g)

a) An employment policy or practice which excludes employees because of pregnancy is an unlawful discriminatory practice based on sex.


a) Fringe Benefits: It is unlawful for an employer or labor organization to discriminate on the basis of race, creed, color, national origin, age or sex with regard to fringe benefits.

III. Campus Policy.

A. Trustees policy statement
B. Affirmative action plan
C. Faculty/staff handbooks  
D. Tenure system  
E. Union Contract  
F. Civil service rules  

IV. A Rule of Thumb  
Remember, the only time all this becomes critically relevant is when your institution's process and your personal judgment are being challenged in an administrative or judicial proceeding. Therefore, your interview interrogatories or evaluation memoranda are the evidence that will be used for or against you. You are in the unique position of creating your own evidence.  

V. Pre-employment Interview Inquiries  
A) Lawful inquiries permitted:  

<table>
<thead>
<tr>
<th>Citizenship</th>
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</table>
| **Lawful** | Are you a citizen of the United States?  
Do you intend to become a citizen of the United States?  
Do you have the legal right to remain permanently in the United States?  
Do you intend to remain permanently in the United States?  

| **Unlawful** | Of what country are you a citizen?  
Production of naturalization papers  
Inquiries whether parents or spouse are naturalized or native born  

<table>
<thead>
<tr>
<th><strong>Language:</strong></th>
</tr>
</thead>
</table>
| **Lawful** | What languages do you speak or write fluently?  

| **Unlawful** | How did you learn to speak, read or write such language?  

<table>
<thead>
<tr>
<th><strong>Name:</strong></th>
</tr>
</thead>
</table>
| **Lawful** | Have you ever worked for the college under a different name?  

| **Unlawful** | Inquiry into the original name of an applicant whose name has been changed by court order or otherwise.  

<table>
<thead>
<tr>
<th><strong>Arrest Record:</strong></th>
</tr>
</thead>
</table>
Lawful Have you ever been convicted of a crime?

Unlawful Have you ever been arrested?

5. Birth Control: There are no permitted inquiries; in fact, you cannot inquire as to whether applicant advocates any form of birth control or family planning.

6. Birthplace: There are no permitted inquiries.

7. Notice in Case of Emergency: There are no permitted inquiries.

8. Organizations: You may inquire only as to the organizations which applicant considers relevant to his or her ability to perform the job.

9. Relatives: You may inquire as to relatives already employed by the College.

10. Age:
    Lawful Are you 18 years of age or older? If not, state your age.
    Unlawful Inquiries regarding the applicant's age, birth date, graduation dates, or production of drivers license or other documentation revealing age.

11. Race:
    Lawful None.

12. Religion:
    Lawful None.

13. Sex/Marital Status:
    Lawful None.

14. Prohibited Inquiries Under the ADA
    a. An employer may ask applicants:
       - about their ability to perform specific job functions;
       - to describe or demonstrate how they would
perform job tasks;
-whether they can perform the job;
-to describe or demonstrate how they would perform the job; or
-whether they will need reasonable accommodations for the hiring process.

b. An employer may not ask:

-whether applicants will need a reasonable accommodation to perform the functions of the job unless there is an obvious disability, the applicant has voluntarily disclosed a hidden disability, or the applicant has voluntarily disclosed that he or she needs a reasonable accommodation to perform the job; or

-about workers' compensation history or the use of lawful drugs.

c. Under the ADA, an employer may not conduct pre offer medical examinations or make inquiries of a job applicant or employee about the existence, nature or severity of a disability.

VI. Appraisals are important evidence; therefore, they must be precise and understandable. You need an internal policy with your appraisal guidelines in it.

1. Define the job and its requirements.

2. Make sure the person's performance of the job is what's being appraised; judge the work, not the person.

3. Use objective measurements; remember, the material is to be read by strangers if you are challenged. Judges and juries understand numerical systems.

4. Identify strengths and weaknesses.

5. Define the factors to be used.

6. Consider logging in critical incidents; (you won't remember later on).

7. If improvement is needed, set objectives and measure their attainment.

8. Be able to prove you're commenting on observable behavior.
9. Be sure employees can review their ratings and comment on them.

10. Avoid defamatory statements.

11. Appraise your people on their general appraisal skills as a matter of policy.

12. Consider endorsing all appraisals.
APPENDIX I

Fair Employment Practices Laws

<table>
<thead>
<tr>
<th>State</th>
<th>Reference</th>
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</thead>
<tbody>
<tr>
<td>Alabama</td>
<td>Ala C §21-7-8</td>
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<tr>
<td>Alaska</td>
<td>Alas S 18.80.220</td>
</tr>
<tr>
<td>Arizona</td>
<td>Ariz RS §41-1463</td>
</tr>
<tr>
<td>Arkansas</td>
<td>Ark L 1993 No. 962; Ark C 16-123-102</td>
</tr>
<tr>
<td>California</td>
<td>Cal Deering's Gov C §12940</td>
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<tr>
<td>Colorado</td>
<td>Colo RS 24-34-402</td>
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<tr>
<td>Connecticut</td>
<td>Conn GS §§46a-56</td>
</tr>
<tr>
<td>Delaware</td>
<td>19 Del C §711</td>
</tr>
<tr>
<td>District of Columbia</td>
<td>DC CA §1-2512</td>
</tr>
<tr>
<td>Florida</td>
<td>Fla S §760.10</td>
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<tr>
<td>Georgia</td>
<td>Ga C (1981) 34-6A-2</td>
</tr>
<tr>
<td>Hawaii</td>
<td>Haw RS §§378-2</td>
</tr>
<tr>
<td>Idaho</td>
<td>Ida C §§67-5909</td>
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<tr>
<td>Illinois</td>
<td>775 Ill CS §5/2-102</td>
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<tr>
<td>Indiana</td>
<td>Ind C 22-9-1-2</td>
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<tr>
<td>Iowa</td>
<td>Iowa CA §215.6.1</td>
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<tr>
<td>Kansas</td>
<td>Kan SA 44-1009</td>
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<tr>
<td>Kentucky</td>
<td>Ky RS 344.040</td>
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<tr>
<td>Louisiana</td>
<td>LA RS 23:1006; 51:2242</td>
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<tr>
<td>Maine</td>
<td>5 Me RSA §4572.1</td>
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<tr>
<td>Maryland</td>
<td>Md AC Art 49B</td>
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<tr>
<td>Massachusetts</td>
<td>Mass ALMC 151B</td>
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<tr>
<td>Michigan</td>
<td>Mich LA §§37.1202</td>
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<tr>
<td>Minnesota</td>
<td>Minn SA §363.03; §§181.59</td>
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<tr>
<td>Mississippi</td>
<td>Miss C. §43-6-15</td>
</tr>
<tr>
<td>Missouri</td>
<td>RS MO §213.055</td>
</tr>
<tr>
<td>Montana</td>
<td>Mont CA 49-2-303</td>
</tr>
<tr>
<td>Nebraska</td>
<td>Neb RS §§48-1104</td>
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<tr>
<td>Nevada</td>
<td>Nev RS §§613.330</td>
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<tr>
<td>New Hampshire</td>
<td>NH RSA 354-A:7</td>
</tr>
<tr>
<td>New Jersey</td>
<td>NJ SA 10:5-12</td>
</tr>
<tr>
<td>New Mexico</td>
<td>NM SA §28-1-7</td>
</tr>
<tr>
<td>New York</td>
<td>NY Exec Law §296; Labor Law §220</td>
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<tr>
<td>North Carolina</td>
<td>NC GS 143-422; 168A-5</td>
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<tr>
<td>North Dakota</td>
<td>ND CC 14-02-4</td>
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<tr>
<td>Ohio</td>
<td>Ohio RC §4112-02</td>
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<td>Oklahoma</td>
<td>25 Okal S §§1302</td>
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<td>Oregon</td>
<td>Ore RS 659.030; Ore RS 659.440</td>
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<tr>
<td>Pennsylvania</td>
<td>43 P Pa SA §§955</td>
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<tr>
<td>Puerto Rico</td>
<td>29 PR LA §§146</td>
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<tr>
<td>Rhode Island</td>
<td>RI GS §28-5-7</td>
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<tr>
<td>South Carolina</td>
<td>30 SC C §§1-13-80; 43-33-580</td>
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<tr>
<td>South Dakota</td>
<td>SD CL 20-13-10</td>
</tr>
<tr>
<td>Tennessee</td>
<td>Tenn CA §§4-21-401</td>
</tr>
<tr>
<td>Texas</td>
<td>Tex CA Labor §§21.051</td>
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<tr>
<td>Utah</td>
<td>Utah CA 34-35-6</td>
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</tbody>
</table>

This Appendix is designed only as a general reference work to enable the user to commence more detailed research.
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**RESOURCES**

Bickel, Robert. *The College Administrator and the Courts.* (Published by College Administration Publications, Inc.).

CUPA News; published semimonthly by the College and University Personnel Association. Washington, D.C.

The Employment Co-ordinator, prepared by the Thomson Publishing/Clark Boardman Callaghan; see Volume 7.


Pavela, Gary, *SYNTHESIS. Law and Policy in Higher Education* (College Administration Publications, Inc.).

Vander Waerdt, Lois, *FORUM* (Published by the Employment Partnership)

For a lucid, usable explanation of the applicability of the federal legislation, see: WEEKS, Kent M. *Complying With Federal Law (a Manual for College Decision Makers).* College Legal Information, Inc.: Nashville, Tennessee, 1992.
ATHLETICS

Primary Contact:

Director of Athletics (name)
(title)
Work: Home: (phone numbers)

GENERAL INFORMATION

To promote a healthy lifestyle, the College encourages students to take part in sports. Athletics are conducted under the same general rules and regulations as other phases of education at the College. The intercollegiate athletic program conforms to policies of the National Collegiate Athletic Conference and the Eastern College Athletic Association.

There are about 4,400 undergraduates at the College. Approximately 70 percent of them participate in intramural sports. About 10 percent are members of an intercollegiate team. There are 22 varsity teams at the College—ten are women's teams. The College intercollegiate athletes compete at the NCAA Division III level except for men's soccer, in which the College competes in Division I.

INTRAMURALS

The College's very extensive intramural program involves thousands of students, as well as some faculty and staff. There are literally hundreds of teams fielded each year for indoor and outdoor sports. Any group of students or faculty and staff members is welcome to pull together a team and register to compete. Games are scheduled and records are kept by the intramural director, a paid College staff member. The contests are refereed by the players.

ACADEMIC EXPECTATIONS OF STUDENT-ATHLETES

Academics are stressed as the first priority of all College students. The registrar provides grade point averages of varsity athletes to the athletic department each year. If a student-athlete is having academic difficulty, his or her coach works with the College's Office of Academic Advising to try to improve the situation. Occasionally, an athlete will sit out a year in his or her sport so he or she can focus on studying.

Sanctions against student-athletes: Student-athletes who are involved in an incident requiring adjudication or discipline are referred to the College's Dean of Students' Office just as any other students are. They have no special privileges and face no special punishments. A coach has the discretion to decide if a member of his or her team who has been found to have committed some infraction off the field or court may remain on the team.

OTHER REQUIREMENTS FOR INTERCOLLEGIATE ATHLETES

Coaches in each intercollegiate sport are responsible for giving each of the athletes on their team a copy of the "College Intercollegiate Athletic Handbook" and for reviewing it with the team. The College was one of the first Division III schools to adopt such a policy and the handbook has been used as a model by several other schools.

The 25-page handbook sets out the College's basic philosophy of intercollegiate competition (which appears in the first paragraph of this backgrounder) as well as medical, alcohol, and drug policies for athletes. Also included are NCAA principles, NCAA Division III rules and regulations, and a statement regarding student aid. Excerpts from the handbook appear below.
INJURIES

All intercollegiate athletes must pass a medical history program administered by the athletic training staff before they are allowed to report for team practice or play in any game. Entering freshmen may substitute their health service physical exam by submitting their entrance physical prior to admittance. Some teams are subject to campus physical exams administered by the college health service.

It is the College policy that all injuries, no matter how trivial, must be reported to the trainer or to the coach if the trainer is not available. Athletes treated for an injury are instructed to follow the doctor’s or trainer’s directions exactly. High-risk intercollegiate contests, such as football and hockey, have a team physician in attendance.

ALCOHOL AND DRUG POLICIES

Alcohol: College students are bound by State law and College regulations regarding alcohol consumption. In addition, each College coach sets his or her own rules pertaining to the use of alcohol and has the authority to suspend or drop from the team any athlete who violates the rules set by the coach. Alcohol is considered a drug and athletes are encouraged not to use it.

Cases of continued abuse or chronic use are handled by a committee made up of the athletic director, the medical director, and the coach. A rehabilitation program is initiated. Athletes are urged to confide in their coach, athletic director, dean, or medical director about problems of chronic use.

Drugs: The use of banned substances and performance-enhancing drugs is prohibited for student-athletes who are members of the College intercollegiate teams. Use of banned substances may result in suspension from participation (practice and games) on a team. Reinstatement may be made upon agreement by the coach, athletic director, and medical director that the athlete is not a user or is rehabilitated.

To implement this policy, the athletic department has established a substance abuse program consisting of information and educational activities, counseling services, and a testing procedure. The testing procedure is administered by the student health service to determine whether student-athletes have used banned substances.

RECRUITING

There are no athletic scholarships available to students participating in Division III sports, and Division III regulations prohibit communication between coaches and the financial aid office on behalf of their athletes. Division III coaches do recruit athletes, but since they are not able to offer them financial aid, recruiting abuses are rare.

The men’s soccer team, which competes in Division I, follows the much more stringent guidelines for recruiting that are established by the NCAA. The College has never had any sanctions leveled against it by the NCAA or been investigated for any violations of recruiting rules.

BOOSTERS

Donations to the university’s athletic booster club are treated in the same way as other university income. All income and expenses are monitored and subject to audit. The College controls the activities for the booster club.

The College’s booster club was established in 1980 by the athletic department. In recent years, it has generated about $$$$$$$ annually for the College’s athletic programs.
MEDIA RELATIONS DURING A CONFLICT SITUATION

1. Only one person from the College should deal with the media during the crisis and settlement stages. Having more than one spokesperson, especially in situations where vested interests are being pushed, is likely to create conflict, confusion, and could prove to be detrimental to a settlement of the crisis. This single person should be the same individual who is in charge of the rumor control center.

2. The spokesperson should avoid being:
   a. hassled by reporters,
   b. baited by a negative press, and
   c. fooled by the hypothetical question.

3. Casual interviews are the friendly but tricky kind. These are usually the type in which people make admissions they shouldn't make. Especially during the crisis and settlement stages, reporters will try to engage in casual conversation. The spokesperson should avoid it. Only talk to reporters about the crisis and settlement during the time set aside for it, that is, a press briefing.

4. The spokesperson should insure that he or she doesn't brief newsmen in close proximity of any dissidents. It is best to meet with the press in a closed room.

5. Listed below are some of the categories of statements that a spokesperson might make to a reporter:
   a. On The Record--These are statements that may be quoted verbatim and attributed by name and title to the specific person who makes the statement.
   b. Off The Record--This is a statement which is to be held in complete confidence. Off the record information is disseminated to give trusted reporters special information which they need to grasp the significance of complicated events which will require special handling by a thoroughly informed press. It is an effective means of allaying undue press alarm over particular developments.
   c. Background--This term is used to describe information which may be used by a reporter entirely on his or her own responsibility. Background information, then, is that information which a reporter may use as thought it were a product of his or her own original research.
   d. No Comment--This is self-explanatory.
STUDENT AFFAIRS ISSUES IN MANAGING
A RESIDENCE HALL FIRE

A. Addressing student issues immediately
   1. Importance of response from duty staff
   2. Gathering the affected community (once all are accounted for)
   3. Addressing the most immediate concerns, in this case
      - Tonight's housing and transportation
      - Final examinations - "NE" grade option
      - Study materials (books, notes, etc.)
      - Roommates returning to an empty, burned building

B. Academics
   1. Dimensioning the impact (Registrar, deans of schools)
   2. Follow-through with faculty
      - Explain options - "NE" grade
      - Recognize possible impact on students
   3. Close the loop at the beginning of the next term

C. Communication
   1. Separate fact from supposition - student "rumor mill"
   2. Communication with parents and students at home
      - What happened
      - What is happening now
      - What will happen next
      - Where things will be when the next term begins
   3. Updates during the recess - printed and personal
   4. Meeting students/families on their return

C. Follow-through
   1. What are students/families key issues and how do we best respond?
      - Damage and loss
      - Property insurance counsel
      - Cleaning and odor
      - Room moves
      - Fears
   2. Keeping the response "student-centered"

Presented by:  David S. Haviland
                Vice President for Student Life
                Professor of Architecture
                Rensselaer Polytechnic Institute
                Troy, New York 12180

at a convention sponsored by the Hudson Mohawk Association of Colleges and Universities, 91 Fiddlers Lane, Latham, New York 12110; August 10, 1995
REFERENCES


Donnell v. California Western School of Law, 245 Cal. Rptr. 199 (App. Div. 4th Dist. 1988)


ACKNOWLEDGEMENTS

1. Matthew Maguire of Albany, New York conceived and helped prepare the original Crisis Communications Plan presented as a model.

2. The Office of News and Communications at Rensselaer Polytechnic Institute in Troy, New York has consistently been helpful, informative and generous with its materials.

3. David S. Haviland, Vice President for Student Life, Professor of Architecture, Rensselaer Polytechnic Institute, Troy, New York.

4. James A. True, Waltham, Massachusetts
The college is a four year college for women located in a residential section adjacent to a major metropolitan area. Approximately 400 students attend the school. The campus is surrounded on all sides by a six foot high chain link fence except for an area on either side of the main entrance to the campus where the fence stands four feet tall. The college's dormitories are clustered together in three villages, each village is comprised of a commons building and a number of separate dormitory buildings. The buildings are arranged in the form of a square. To gain access to a dormitory, a student must enter an enclosed courtyard through either the commons building or one of three exterior gates between 5:00 P.M. and 7:00 A.M. these gates and the door to the commons building are locked. Students enter their dormitory through locked doors which open directly into the courtyard. Each student has one key which unlocks the doors to her commons building, her dormitory building and her individual room.

After 8:00 P.M. all visitors are admitted by a security guard at the main entrance to the campus. The guard directs them to the appropriate commons building. At the entrance to the commons building, visitors are stopped by a student on duty and registered. The student hostess would be notified and would be required to come to the commons building to act as the visitors' escort. No visitors are permitted anywhere on campus unescorted after 1:00 A.M. on weekends.

The college normally has two guards on duty after midnight, one at the observation post at the main entrance and the second to patrol the campus. The second guard's patrol causes rounds to be made every 15 to 30 minutes to each of the villages to check the doors and gates to see that they are locked. The college has no formal system of supervising the guards; rather, the director of security at the college makes random checks on their work.

Student victim is a first year student and required by the college to live on campus. Her dormitory houses 30 women. Under college regulations male visitors are permitted to stay overnight. Her room is a single room at the end of a corridor with another student single room adjacent to hers. The doors to these two rooms are at right angles to each other. The college has three plans regarding parietal rules.

On a cold winter night in December our student returns to her dormitory at approximately 3:00 A.M. with two friends. They enter the village through one of the exterior gates to the courtyard which was unlocked. They open the door to their dormitory and proceed to their rooms. After changing into night clothes our student leaves the door to her room open and goes to talk with a friend who resided in the room next door. After speaking for a few minutes, apparently near the open door to the friend's room, our student returns to her room, locks her door and goes to sleep.

Between 4:00 A.M. and 4:30 A.M. she is awakened by an intruder. It is a male who asks her where her car is located and she responds that she does not have one. The intruder threatens her, places a pillowcase over her head, and leads her out of the

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building and across the courtyard. They exit the courtyard by proceeding under the chains of one of the exterior gates which was not secured tightly. They walk down a bicycle path towards the college's dining hall. After marching about in front of the dining hall, they enter it through an unlocked door and spend several minutes inside. They then proceed out of the dining hall and march around in front. They go back inside and the assailant rapes our student. The entire incident lasts 60 to 90 minutes, of which at least 20 minutes were outdoors.

The College is located in an area with relatively few reports of violent crime, in fact, prior to this attack, there had been no incidents of violent crime on the campus. However, there is testimony that one year before the attack, a burglary had occurred in one of the dormitory buildings. Additionally, the evening before the incident in question, a young man scaled the outer fence around the campus and walked into the commons building of our student's village, which was the first building he saw. The door to that building was open at that time. The college is also located a short distance from bus and subway lines which lead directly to a major metropolitan area.

Issues:

A. Duty to protect against criminal acts
   - voluntarily assumed
   - arising out of relationship between the parties
   - parental expectations
   - experts will testify as to community consensus

   "Adequate security is an indispensable part of the bundle of services which colleges--afford their students"

B. Failure to exercise due care
   - students reliance on the activity of the college
   - students prohibited from furnishing their own security

C. Standards
   - expert testimony

D. Proximate cause
   - no adequate locking system permitting intruder to gain access to more than one building and their rooms
   - no adequate security protocol permitting intruder access to and about the campus (even with a hostage)
LIMITING LIABILITY IN THE CAMPUS
DEPARTMENT OF PUBLIC SAFETY

OUTLINE OF CAMPUS SECURITY STANDARDS

1. **Level of Security**
   -for students and staff to enjoy that average degree of security that is similar for citizens of the community.

2. **Administrative Responsibility**
   -security assigned by table of organization, designing authority.

3. **Building Access**
   -restrict, monitor or control access based on risks in the neighborhood, academic values and costs of enforcement.

4. **Grounds of Access**
   -is it feasible and advisable to restrict, monitor or control access to the campus grounds including outside visitors?

5. **Grounds Maintenance**
   -grounds-keeping standards viewed from security point of view.

6. **Adequacy of Outdoor Lighting**
   -outdoor lighting from a security point of view.

7. **Monitoring of Outdoor Lighting**
   -systematic report on lighting outage.

8. **Security Rules or Guidelines**
   -written rules for personal security should be realistic.

9. **Instructing Campus Community about Security Procedures**
   -ensure that all campus members are informed about security risks, procedure for summoning aid and reporting of all criminal incidents immediately.

10. **Information about Criminal Incidents**
    -systematic reports of criminal incidents should be made to administrators outside the campus security organization.

11. **Responsibility to Respond to Security Emergencies**
    -one or more persons, on duty, to respond to security emergencies at all times with responsibility for discretionary decisions.

12. **Security Personnel**
    -provide some campus or contract security personnel to patrol and safeguard institution; document alternative and recognize the administration has ultimate responsibility for number and quality of personnel provided.

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13. Administrative Oversight of Security Department
   - chief of security should report to senior administrator.

14. Supplemental Security for Special Events
   - duties should be defined and all functions covered.

15. Training Security Officers
   - training should be commensurate with the functions to be performed and maintained on a current basis.

16. Probationary Period for Security Officers
   - period of six weeks or longer.

17. Monitoring Performance of Security Officers
   - document procedures to monitor performance.

18. Discipline of Security Officers
   - document procedures for disciplining officers.

19. Arrest Powers
   - if officers lack authority to make criminal arrests, ensure a back-up or local police.

20. Relations with Local Police
   - establish communications and relations with local police.

21. Incident Reports
   - have report forms.

22. Security Vehicles
   - security transport as necessary for security coverage, patrol, escort and emergency aid.

23. Equipment for Security Personnel
   - patrol officers should have two-way radios, uniforms, flashlight, and handcuffs (if authorized to make arrests). Other equipment should be issued as necessary.

24. Guns and Mace
   - if security officers are authorized to carry guns or mace, the institution should ensure that all legal requirements are satisfied, officers are qualified for such weapons, written policy governs use of such weapons, all subject to at least annual review.

25. Student Security Patrols
   - must be supervised by security department and should not engage in confrontation with suspected wrong-doers.

26. Escort or Shuttle Service
   - as necessary for risky areas or students alone after dark.

27. Coeducation Student Housing
   - may be appropriate from a social and security point of view.
28. Student Housing Security Rules
   - assess the feasibility and desirability of having and enforcing rules controlling access of non-residents to student housing, based on security standpoint.

29. Supervision in Student Housing
   - on-campus or institution run off-campus housing for undergraduates should ensure responsible supervision for security of the residents; and provide adequate training.

30. Locking Outer Doors to Student Housing
   - at least during nighttime hours unless access is directly monitored at student housing entrance.

31. Room Door Locks in Student Housing
   - individual room doors should be equipped with locks that are reasonably secure against tampering.

32. Master Key Control
   - maintain and document procedures to ensure key control.

33. Security of Windows in Student Housing
   - provide security hardware as necessary and have a system to monitor security of easily accessible windows.

34. Instructing Resident Students about Security Procedures
   - make reasonable efforts to ensure that all resident students are adequately informed about security procedures and rules, and how to react and seek aid if unauthorized person obtains access.

35. Obtaining Emergency Aid in Student Housing
   - ensure rapid and effective communication between student housing buildings and the security force.

NOTE: These "Standards" are based on CURRENT SECURITY PRACTICES AND POLICIES AMONG AICUM INSTITUTIONS, June 1984; a report prepared by the Community Security Standards Committee of the Association of Independent Colleges and Universities in Massachusetts. This summary was prepared by Committee member, James A. True.
PROGRAM PARTICIPATION AGREEMENT

Effective Date of Approval: The date on which this Agreement is signed on behalf of
the Secretary of Education
Approval Expiration Date: 07/31/1999

Name of Institution:

Address of Institution:

Office of Postsecondary Education Identification Number:
U.S. Department of Education Central Registry Service Number:

The execution of this Agreement by the Institution and
the Secretary is a prerequisite to the Institution's initial
or continued participation in any Title IV, HEA Program.

The postsecondary educational institution (Institution) listed above, referred to hereafter as the "Institution," and
the United States Secretary of Education, referred to hereafter as the "Secretary," agree that the Institution may
participate in those student financial assistance programs authorized by Title IV of the Higher Education Act of
1965, as amended (Title IV, HEA Programs) indicated under this Agreement and further agrees that such
participation is subject to the terms and conditions set forth in this Agreement. As used in this Agreement, the
term "Department" refers to the U.S. Department of Education.

SCOPE OF COVERAGE

This Agreement applies to all locations of the Institution as stated on the most current ELIGIBILITY AND
CERTIFICATION APPROVAL REPORT issued by the Department. This Agreement covers the Institution's
eligibility to participate in each of the following listed Title IV, HEA programs, and incorporates by reference
the regulations cited.

- FEDERAL SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT PROGRAM, 20 U.S.C. 1070b
et seq.; 34 CFR Part 676.
GENERAL TERMS AND CONDITIONS

1. The Institution understands and agrees that it is subject to and will comply with the program statutes and implementing regulations for institutional eligibility as set forth in 34 CFR Part 600 and for each Title IV, HEA Program in which it participates, as well as the general provisions set forth in Part F and Part G of Title IV of the HEA, and the Student Assistance General Provisions regulations set forth in 34 CFR Part 668. The recitation of any portion of the statute or regulations in this Agreement does not limit the Institution's obligation to comply with other applicable statutes and regulations.

2. a. The Institution certifies that on the date it signs this Agreement, it has a drug abuse prevention program in operation that it has determined is accessible to any officer, employee, or student at the Institution.
   b. The Institution certifies that on the date it signs this agreement, it is in compliance with the disclosure requirements of Section 485(f) of the HEA (Campus Security Policy and Crime Statistics).

3. The Institution agrees to comply with
   a. Title VI of the Civil Rights Act of 1964, as amended, and the implementing regulations, 34 CFR Parts 100 and 101 (barring discrimination on the basis of race, color or national origin);
   b. Title IX of the Education Amendments of 1972 and the implementing regulations, 34 CFR Part 106 (barring discrimination on the basis of sex);
   d. Section 504 of the Rehabilitation Act of 1973 and the implementing regulations, 34 CFR Part 104 (barring discrimination on the basis of physical handicap); and

4. The Institution acknowledges that 34 CFR Parts 602 and 667 require accrediting agencies, and State Postsecondary Review Entities (SPREs), and the Secretary to share information about institutions. The Institution agrees that the Secretary, any accrediting agency recognized by the Secretary, or SPRE may share or report information to one another about the Institution without limitation.

5. The Institution acknowledges that the HEA prohibits the Secretary from recognizing the accreditation of any institution of higher education unless that institution agrees to submit any dispute involving the denial, withdrawal, or termination of accreditation to initial arbitration prior to any other legal action.

Selected Provisions From
GENERAL PROVISIONS REGULATIONS, 34 CFR PART 668

By entering into this Program Participation Agreement, the Institution agrees that:

(1) It will comply with all statutory provisions of or applicable to Title IV of the HEA, all applicable regulatory provisions prescribed under that statutory authority, and all applicable special arrangements, agreements, and limitations entered into under the authority of statutes applicable to Title IV of the HEA, including the requirement that the institution will use funds it receives under any Title IV, HEA program and any interest or other earnings thereon, solely for the purposes specified in and in accordance with that program;

(2) As a fiduciary responsible for administering Federal funds, if the institution is permitted to request funds under a Title IV, HEA program advance payment method, the institution will time its requests for funds under the program to meet the institution's immediate Title IV, HEA program needs;

(3) It will not request from or charge any student a fee for processing or handling any application, form, or data required to determine a student's eligibility for, and amount of, Title IV, HEA program assistance;

(4) It will establish and maintain such administrative and fiscal procedures and records as may be necessary to ensure proper and efficient administration of funds received from the Secretary or from students under the Title IV, HEA programs, together with assurances that the Institution will provide, upon request and in a timely manner, information relating to the administrative capability and financial responsibility of the institution to—

(i) The Secretary.
(ii) The State postsecondary review entity designated under 34 CFR part 667 for the State or States in which the institution or any of the institution's branch campuses or other locations are located;

(iii) A guaranty agency, as defined in 34 CFR part 682, that guarantees loans made under the Federal Stafford Loan, and Federal PLUS programs for attendance at the institution or any of the institution's branch campuses or other locations;

(iv) The nationally recognized accrediting agency that accredits or preaccredits the institution or any of the institution's branch campuses, other locations, or educational programs;

(v) The State agency that legally authorizes the institution and any branch campus or other location of the institution to provide postsecondary education; and

(vi) In the case of a public postsecondary vocational educational institution that is approved by a State agency recognized for the approval of public postsecondary vocational education, that State agency;

(5) It will comply with the provisions of §668.15 relating to factors of financial responsibility;

(6) It will comply with the provisions of §668.16 relating to standards of administrative capability;

(7) It will submit reports to the Secretary and, in the case of an institution participating in the Federal Stafford Loan, Federal PLUS, or the Federal Perkins Loan Program, to holders of loans made to the institution's students under that program at such times and containing such information as the Secretary may reasonably require to carry out the purpose of the Title IV, HEA programs;

(8) It will not provide any statement to any student or certification to any lender under the Federal Stafford Loan, Federal or PLUS, Program that qualifies the student for a loan or loans in excess of the amount that the student is eligible to borrow in accordance with sections 425(a), 428(a)(2), 428(b)(1)(A) and (B), and 428H of the HEA;

(9) It will comply with the requirements of Subpart D of 34 CFR part 668 concerning institutional and financial assistance information for students and prospective students;

(10) In the case of an institution that advertises job placement rates to attract students to enroll in the institution, it will make available to prospective students, at or before the time that those students apply for enrollment—

(i) The most recent available data concerning employment statistics, graduation statistics, and any other information necessary to substantiate the truthfulness of the advertisements; and

(ii) Relevant State licensing requirements of the State in which the institution is located for any job for which an educational program offered by the institution is designed to prepare those prospective students;

(11) In the case of an institution participating in the Federal Stafford Loan, or Federal PLUS Program, the institution will inform all eligible borrowers, as defined in 34 CFR part 682, enrolled in the institution about the availability and eligibility of those borrowers for State grant assistance from the State in which the institution is located, and will inform borrowers from another State of the source for further information concerning State grant assistance from that State;

(12) It will provide the certifications described in paragraph (c) of this section;

(13) In the case of an institution whose students receive financial assistance pursuant to section 484(d) of the HEA, the institution will make available to those students a program proven successful in assisting students in obtaining the recognized equivalent of a high school diploma;

(14) It will not deny any form of Federal financial aid to any eligible student solely on the grounds that the student is participating in a program of study abroad approved for credit by the institution;

(15) In the case of an institution seeking to participate for the first time in the Federal Stafford Loan and Federal PLUS programs, the institution has included a default management plan as part of its application under §668.12 for participation in those programs and will use the plan for at least two years from the date of that application. The Secretary considers the requirements of this paragraph to be satisfied by a default management plan developed in accordance with the default reduction measures described in Appendix D to 34 CFR part 668;

(16) In the case of an institution that changes ownership that results in a change of control, or that changes its status as a main campus, branch campus, or an additional location, the institution will, to participate in the Federal Stafford Loan and Federal PLUS programs, develop a default management plan for approval by the Secretary and implement the plan for at least two years after the change in control or status. The Secretary considers the requirements of this paragraph to be satisfied by a default management plan developed in accordance with the default reduction measures described in Appendix D to 34 CFR part 668;

(17) The Secretary, guaranty agencies and lenders as defined in 34 CFR part 682, nationally recognized accrediting agencies, the Secretary of Veterans Affairs, State postsecondary review entities designated under 34 CFR part 667, State agencies recognized under 34 CFR part 603 for the approval of public postsecondary vocational education, and State agencies that legally authorize institutions and branch campuses or other
locations of institutions to provide postsecondary education, have the authority to share with each other any
information pertaining to the institution's eligibility for or participation in the Title IV, HEA programs or any
information on fraud and abuse;

(18) It will not knowingly—

(i) Employ in a capacity that involves the administration of the Title IV, HEA programs or the receipt of
funds under those programs, an individual who has been convicted of, or has pled nolo contendere or guilty to,
a crime involving the acquisition, use, or expenditure of Federal, State, or local government funds, or has been
administratively or judicially determined to have committed fraud or any other material violation of law
involving Federal, State, or local government funds;

(ii) Contract with an institution or third-party servicer that has been terminated under section 432 of the
HEA for a reason involving the acquisition, use, or expenditure of Federal, State, or local government funds, or
that has been administratively or judicially determined to have committed fraud or any other material violation
of law involving Federal, State, or local government funds; or

(iii) Contract with or employ any individual, agency, or organization that has been, or whose officers or
employees have been—

(A) Convicted of, or pled nolo contendere or guilty to, a crime involving the acquisition, use, or
expenditure of Federal, State, or local government funds; or

(B) Administratively or judicially determined to have committed fraud or any other material violation of
law involving Federal, State, or local government funds;

(19) It will complete, in a timely manner and to the satisfaction of the Secretary, surveys conducted as a
part of the Integrated Postsecondary Education Data System (IPEDS) or any other Federal collection effort, as
designated by the Secretary, regarding data on postsecondary institutions;

(20) In the case of an institution that offers athletically related student aid, it will comply with the
provisions of paragraph (d) of this section;

(21) It will not impose any penalty, including, but not limited to, the assessment of late fees, the denial of
access to classes, libraries, or other institutional facilities, or the requirement that the student borrow additional
funds for which interest or other charges are assessed, on any student because of the student's inability to meet
his or her financial obligations to the institution as a result of the delayed disbursement of the proceeds of a
Title IV, HEA program loan due to compliance with statutory and regulatory requirements of or applicable to
the Title IV, HEA programs, or delays attributable to the institution;

(22) It will not provide, nor contract with any entity that provides, any commission, bonus, or other
incentive payment based directly or indirectly on success in securing enrollments or financial aid to any persons
or entities engaged in any student recruiting or admission activities or in making decisions regarding the
awarding of student financial assistance, except that this requirement shall not apply to the recruitment of
foreign students residing in foreign countries who are not eligible to receive Federal student assistance. This
provision does not apply to the giving of token gifts to students or alumni for referring students for admission to
the institution as long as: the gift is not in the form of money, check, or money order; no more than one such
gift is given to any student or alumnus; and the gift has a value of not more than $25;

(23) It will meet the requirements established pursuant to part H of Title IV of the HEA by the Secretary,
State postsecondary review entities designated under 34 CFR part 667, and nationally recognized accrediting
agencies;

(24) It will comply with the refund provisions established in 668.32;

(25) It is liable for all improperly administered funds received or refunded under the Title IV, HEA
programs, including any funds administered by a third-party servicer; and

(26) If the stated objectives of an educational program of the institution are to prepare a student for gainful
employment in a recognized occupation, the institution will—

(i) Demonstrate a reasonable relationship between the length of the program and entry level requirements
for the recognized occupation for which the program prepares the student. The Secretary considers the
relationship to be reasonable if the number of clock hours provided in the program does not exceed by more
than 50 percent the minimum number of clock hours required for training in the recognized occupation for
which the program prepares the student, as established by the State in which the program is offered, if the State
has established such a requirement, or as established by any Federal agency; and

(ii) Establish the need for the training for the student to obtain employment in the recognized occupation
for which the program prepares the student.

(c) In order to participate in any Title IV, HEA program (other than the SSIG and NEISP programs), the
institution must certify that it—
(1) Has in operation a drug abuse prevention program that the institution has determined to be accessible to any officer, employee, or student at the institution; and

(2)(i) Has established a campus security policy in accordance with section 485(f) of the HEA; and

(ii) Has complied with the disclosure requirements of §668.47 as required by section 485(f) of the HEA.

(d) In order to participate in any Title IV, HEA program (other than the SSIG and NEISP programs), an institution that offers athletically related student aid must—

(1) Cause an annual compilation, independently audited not less often than every 3 years, to be prepared within 6 months after the end of the institution’s fiscal year, of—

(i) The revenues derived by the institution from the institution’s intercollegiate athletics activities, according to the following categories:

(A) Total revenues.

(B) Revenues from football.

(C) Revenues from men’s basketball.

(D) Revenues from women’s basketball.

(E) Revenues from all other men’s sports combined.

(F) Revenues from all other women’s sports combined.

(ii) Expenses made by the institution for the institution’s intercollegiate athletics activities, according to the following categories:

(A) Total expenses.

(B) Expenses attributable to football.

(C) Expenses attributable to men’s basketball.

(D) Expenses attributable to women’s basketball.

(E) Expenses attributable to all other men’s sports combined.

(F) Expenses attributable to all other women’s sports combined; and

(iii) The total revenues and operating expenses of the institution; and

(2) Make the compilation and, where allowable by State law, the results of the audits required by paragraph (d)(1) of this section available for inspection by the Secretary and the public.

(c) For the purposes of paragraph (d) of this section—

(1) Revenues from intercollegiate athletics activities allocable to a sport shall include without limitation gate receipts, broadcast revenues and other conference distributions, appearance guarantees and options, concessions, and advertising;

(2) Revenues such as student activities fees, alumni contributions, and investment interest income that are not allocable to a sport shall be included in the calculation of total revenues only;

(3) Expenses for intercollegiate athletics activities allocable to a sport shall include without limitation grants-in-aid, salaries, travel, equipment, and supplies; and

(4) Expenses such as general and administrative overhead that are not allocable to a sport shall be included in the calculation of total expenses only.

(f) A program participation agreement becomes effective on the date that the Secretary signs the agreement.

(2) A new program participation agreement supersedes any prior program participation agreement between the Secretary and the institution.

(g)(1)(i) With respect to an institution that has been certified other than under a provisional certification—

(A) Except as provided in paragraphs (b) and (i) of this section, the Secretary terminates a program participation agreement through the proceedings in subpart G of this part.

(B) An institution may terminate a program participation agreement.

(C) If the Secretary or the institution terminates a program participation agreement under paragraph (g) of this section, the Secretary establishes the termination date.

(2) With respect to an institution that has been provisionally certified, the Secretary revokes a provisional certification through the proceedings in §668.13(f).

(h) An institution’s program participation agreement automatically expires on the date that—

(1) The institution changes ownership that results in a change in control as determined by the Secretary under 34 CFR part 600; or

(2) The institution’s participation ends under the provisions of §668.26(a)(1), (2), (4), or (7).

(i) An institution’s program participation agreement no longer applies to or covers a location of the institution as of the date on which that location ceases to be a part of the participating institution.