

Beyond Foundations: Developing as a Master Advisor

Chapter 8 - Advanced Legal Issues and the Master Advisor

Reader Learning Outcomes

Readers will use knowledge gained about student success to

- Distinguish between federal law, state law, and institutional policies relevant to academic advising;
- Apply laws and policies to case studies that illustrate the nuanced legal relationships among students, advisors, and the institution of higher education; and
- Anticipate emerging legal issues relevant to academic advising, particularly as they relate to ubiquitous technology and increased legislative scrutiny of higher education.

Aiming for Excellence discussion questions and activities

- If you advise in a country outside of the United States, the guidance in this chapter may not apply to your situation. Consult with your institution's legal counsel to determine the applicable laws regarding
 - confidentiality and privacy of student information,
 - liabilities created by advisors as agents of the institution, and
 - equal rights and due process for students.
- For Canadian advisors, in particular, consult the Office of the Information Commissioner of Canada (2014), which hosts a helpful web directory of the provincial and territorial offices that enforce the various Canadian privacy laws, typically known as Freedom of Information and Protection of Privacy Acts of 1990.
- Which employees in your office (faculty, professional, or peer advisors; clerical staff; graduate interns) have access to education records? Encourage them to attend FERPA and related privacy law training available at your institution. Make known web pages maintained by the registrar's office regarding FERPA compliance policies. Refresh your own training in this area every few years as well.
- Research the materials provided by your institution to students regarding FERPA rights and procedures and distinguish between the following three documents or processes:
 - The institution's annual FERPA notification to students (which explains the students' rights and the institutional policies in place to abide by FERPA);
 - The mechanism or form by which students opt out of the disclosure of directory information (and how advisors can see whether a student has opted out of directory information disclosures); and
 - the form(s) for FERPA consent to release information.
- Never purchase vended software (e.g., appointment scheduling, advising notes, predictive analytics, etc.) without following institutional guidelines for procuring products that will store or

receive student data. Most institutions require that purchase contracts be vetted by institutional counsel, specifically to ensure compliance with FERPA and state privacy laws.

- Examine the third party software currently used on your campus. How does it protect student privacy? Do students consent to disclosure of their information (and specify to whom it may be given) when they opt into using the campus job-posting system? What consents protect the students included in early alert systems that also notify parties outside of the institution (e.g., parents)?
- Research the policies related to the Clery Act of 1990, Sexual Violence Elimination Act of 2013, and Title IX of the Civil Rights Act on your campus. Determine whether you, as an advisor, are expected to report instances of sexual misconduct that students disclose to you. Identify the steps to take in such a situation. Specifically, to which office or which official should you report the alleged misconduct? How should you disclose your reporting obligation to your advisees? Frequently update the list of resources for victims of sexual misconduct. Furthermore, ensure that your office's advisors and peer academic advisors (if applicable under your institution's policy) are regularly trained in the expectations for handling disclosures of any criminal or threatening activity.
- Mentor less-experienced colleagues on the final authority on degree requirements so that they know the documents to use when conflicts of information arise between the bulletin, online degree requirements listings, paper checklists, electronic degree audits, and any other institutional publications. Anticipate such conflicts might arise and work to resolve them before students and colleagues become confused.
- In addition to complying with any new state-imposed mandates affecting academic advising, seek out opportunities to speak on behalf of the advising profession to lawmakers. Find your representative's contact information online and initiate contact; alternatively, seek out meetings of any state-level agencies that have governing authority over higher education and attend them. Ensure these legislators and policy shapers understand the nature of your work as an educator; help them understand how proposed laws could help or hinder student success. Some institutions have policies regarding whether employees can lobby government officials in their capacities as institutional employees, and those that allow advocacy may impose rules or offer guidelines for conduct. Consult your employee handbook or human resource publications to find policies on political activity.
- Work with institutional general counsel to determine whether race-conscious advising practices comprise an appropriate strategy; that is, do they elevate the achievement levels of all students on campus.
- Read the policies and procedures for academic dismissals as written in the institutional bulletin or handbook. Then consider carefully the last five students that you know have been dismissed. Did the dismissal process each experienced match the written description? If not, consult with administrators to help ensure that future dismissals more faithfully comply with the process described in the written bulletin or handbook.
- Organize a professional development session for advisors featuring a panel discussion among the on-campus legal counsel, campus police, and the threat assessment team. Clarify the circumstances under which an employee should contact the police or the threat assessment team during interactions with troubled students and produce a web-based guide with the answers.
- Work with a campus advising organization or committee to organize an annual meeting with the institution's general counsel. Use the following legal audit checklist to determine any recent legal updates that might necessitate the development of new advising policies or procedures: