



Student transcripts notations: What do you say? Considerations for private institutions in Ohio

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As required by the 2011 Dear Colleague Letter,¹ colleges and universities across the country are investigating instances of sexual violence and handling them as sexual misconduct under their newly revised, Clery-compliant Title IX policies. The increased focus on training on these policies has, anecdotally, resulted in an increase in the number of reports, and institutions are seeing a similar increase in the number of students being suspended or dismissed under those policies.

At many institutions, the longstanding policy has been to notate suspensions or dismissals on the student's transcript, and this is the recommended best practice of both the Association for Student Conduct Administration and, as of June 7, 2017, the American Association of Collegiate Registrars and Admissions Officers. The notation, along with the self-disclosure of discipline required of students through the typical transfer application process, ensures that the student's next institution understands the situation and has the opportunity to make an informed decision as to whether to admit the student and, if so, under what conditions.

But as more students are dismissed for sexual misconduct, a backlash is rising against the notation for fear that they will be unable to find an institution willing to admit them. Here in Ohio, a [bill](#) has been introduced in the House to prohibit colleges from asking about K-12 discipline on their applications. These concerns are causing some college officials to revisit their practices on transcript notations and the process that should be followed when considering the admission of a transfer student whose transcript is notated with disciplinary action. To this end, we will review the primary legal considerations as they apply to private colleges and universities here in Ohio and offer some suggestions on the questions each institution should be asking as it examines its policies and procedures.

What the law says about notations

Here in Ohio, there is currently no law that either requires or prohibits disciplinary notations on college transcripts. The federal law that governs student records, the Family Educational Rights and Privacy Act, 20 U.S.C. 1232g, [34 C.F.R. Part 99](#), is likewise silent on such notations. The Family Educational Rights and Privacy Act (FERPA) requires only that student records (including transcripts) are accurate and that each institution establish in its policies an administrative review process to allow students to request an amendment of their records if the content is inaccurate, misleading or in violation of the privacy rights of the student. [34 C.F.R. Subpart C](#). Presuming that the notation is accurate, then, FERPA is unconcerned with its inclusion or lack thereof.

A student seeking the removal of a disciplinary notation through the courts might find an equally unconcerned judiciary. Such cases are often brought under a defamation theory, but as the plaintiff discovered in [Doe v. Amherst College](#) (D.Mass. Feb. 28, 2017), where the notation is true at the time it is printed, no defamation will be found.² Other students have attempted to argue that the inclusion of a notation is a breach of contract—the student handbook—and of the school’s duty of good faith and fair dealing, but, provided that the institution follows its policies, these arguments have not been well-taken by the court either.

What should your notations say?

Many colleges and universities have policies that are specific as to what disciplinary notations must say. Many notations indicate whether a student has been suspended or dismissed, along with the effective date. Some notations provide more information, such as whether the suspension or dismissal was academic or non-academic. At some institutions, violations of the Title IX policy are marked with a special notation, while at others, the hearing panel is given some ability to craft an appropriate transcript notation.

It can be difficult to strike an appropriate balance between providing enough information to be helpful and ensuring that the information provided does not lead to assumptions about the nature of the conduct that may inadvertently discourage a transfer institution from seeking more information and clarification. For example, while marking a transcript with a notation such as “dismissed for Title IX violation” may seem to be accurate and helpful, one might question whether this notation distinguishes between the student conduct “frequent flier” whose final straw happens to be a drunken flashing incident—perhaps sexual exploitation under your policy—and a violent sexual predator. The risks imposed by the two are likely very different in nature, but does the reader make assumptions on the basis of the notation that are inappropriate? Will it be considered more or less serious than a student who is “dismissed for conduct” for multiple alcohol charges or a violent incident involving another student?

When deciding how to draft your disciplinary notations, consider the following:

- As an institution that receives transfer students, what transcript information is helpful to ensure that the right questions are asked of student conduct professionals at the other institution?
- As an institution that disciplines students, what transcript information will give a potential transfer institution the ability to ask for information and make an informed admissions decision?
- Is the considered notation a true and accurate indication of the student’s status?
- Is the manner of notation uniform in nature so that potential biases are not involved?

Colleges and universities would be well advised to review their policies and procedures to ensure that they reflect the institution’s current practices, that they include any aspects of best practices that the institution wishes to adopt, and that they reflect the culture and beliefs of the institution itself.

Considerations for protecting the institution

Once the transcript notations are in place, there are two remaining considerations that the institution must face. First, when a transfer institution receives a transcript that includes a disciplinary notation and requests more information, how will the institution handle the request? Second, when the institution receives a transcript with such a notation, how will it determine how to proceed with regards to that particular student?

With regard to the first situation, institutions should consider establishing procedures for ensuring that requests for information are forwarded to the student conduct office or civil rights office as appropriate. The receiving office might consider reviewing its release forms and requiring a specific release from the student prior to communicating with another institution. The release form could specify what is and is not permitted to be shared so that the student and the transfer institution understand the limitations of consent. Having good procedures in place will help ensure that disclosures are done in a way that is fair to the student, protective of the confidentiality of other students and consistent with the institution's disclosure policy, all while ensuring that the receiving institution has accurate information upon which to make its decision.

With regard to the second situation, colleges and universities might consider ahead of time the sorts of factors it will consider when determining whether to admit an individual who has been suspended or dismissed from another institution. For example, institutions might consider:

- Status of disciplinary case and any related criminal proceedings
- Severity of the incident
- Time since infraction
- Student's insight into the infraction and willingness to accept responsibility
- Student's honesty regarding the incident
- Work done by student to address issues underlying the infraction, such as counseling or rehabilitation
- Pattern or history of infractions
- Presence of conditions suggesting potential for repeat misconduct
- Whether conditions can be imposed on admission to reduce risk of repeat misconduct

By gathering information on a defined set of factors, it may help the institution to make better decisions about whom to admit and under what circumstances, which ultimately helps to reduce risk and increase safety for the campus community while supporting the institution's educational mission.

Conclusion

Institutions of higher education must, by their very nature, balance both the safety of their community with the opportunity to allow for second chances and personal growth. Finding where that balance lies for your institution will help you make decisions that reflect the character of your campus while staying true to your educational mission. And in the face of a legal challenge, that is ultimately what will help you sleep at night.

¹ The U.S. Department of Education recently [filed a request for a 90-day stay](#) in a lawsuit on the basis that it is currently reviewing the 2011 Dear Colleague Letter.

² See also *Morrison v. Chatham University* (W.D. Penn. Sept. 8, 2016) in which the court dismissed a defamation claim because the plaintiff's complaint on its face indicated that she had in fact been dismissed from the university as indicated on the transcript.

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