



Emerging Legal Issues in Enrollment Management



Recruitment Issues
John Baworowsky

Civil Rights Issues for Admissions
and Financial Aid
Jose Padilla



Recruitment Issues

John Baworowsky

The Letter...

U.S. Department of Education
P.O. Box 23800
L'Enfant Plaza Station
Washington, D.C. 20026

Office of Case Management and Oversight

CERTIFIED MAIL

Dear (YOUR NAME) :

Our office has determined that (YOUR INSTITUTION) has violated Section §487(a)(20) of the Higher Education Act of 1965, as amended (HEA), 20 U.S.C. §1094(a)(20).

The liabilities (YOUR INSTITUTION) must remit to the Department of Education based on this final program review determination, total \$187,497,434.

You must make this payment within forty-five (45) days of the date of this letter.

The Act...

The Higher Education Act of 1965, as amended (HEA),
20 U.S.C. §1094(a)(20)

(20) The institution will not provide 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 award of student financial assistance...

The Act...

The Higher Education Act of 1965, as amended (HEA),
20 U.S.C. §1094(a)(20)

(20) The institution will not provide 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 award of student financial assistance...



The Intent...

The intent of the measure was to prevent recruiters, motivated by a commission they would receive, from signing up students for programs that might not be appropriate for them.

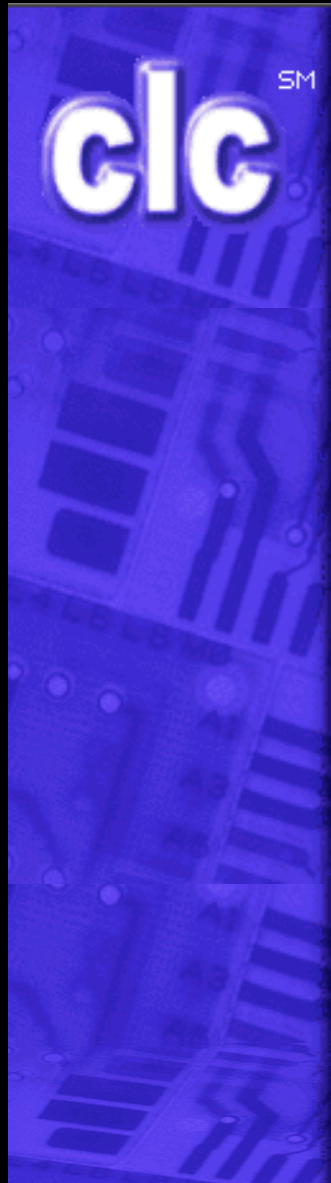
The Exceptions...

- Recruitment of foreign students residing in foreign countries who are not eligible to receive Federal student assistance.
- The giving of token gifts to students or alumni for referring students for admission to the institution, provided:
 - The gift is not in the form of money, check, or money order;
 - The gift has a value of not more than \$25; and
 - No more than one such gift is given to any student or alumnus.

What about Job Performance?

- A school may base annual compensation decisions for employees in part on consideration of their success in recruiting, (or) enrolling...students
- PROVIDED that the school at the same time takes into consideration factors carried out in conjunction with—and not to the exclusion of—other meaningful performance factors that are not related to recruiting, (or) enrolling...

The Accused...



Computer Learning Centers, Inc.

- Headquartered in Manassas, Virginia
- CLC is a nation-wide chain of proprietary schools consisting of nine main locations
- CLC hosts classes at 14 additional locations

The Impressive Measurements

CLC evaluates recruiters' performance on the number of

- outbound phone calls made to prospective students,
- appointments set with prospects,
- prospects whom the recruiter interviewed,
- prospects who took the entrance tests,
- prospects who passed their tests,
- prospects whom the recruiter enrolled,
- enrolled students who never actually attended classes
- students who started but withdrew early

The Performance Standards...

1. "Inquiry Effectiveness"

- Telephone Effectiveness (Outbound Calls) 5 Pts.
- Appointment: (Lead to Appointment %) 5 Pts.
- Test Success (Lead to Test %) 5 Pts.
- Pre-Class Withdrawals/Early Withdrawals) Rate 5 Pts.
- Conversion Rate (Lead to Start Percentage) 5 Pts.
- Contract Completions (NPS) Calc.

2. Graduation Rate 5 Pts.

3. Teamwork and Attitude 5 Pts.

4. Regulatory Compliance 5 Pts.

+2 Pts. (for conservatism)

CLC Performance Standards...

1. "Inquiry Effectiveness"

- Telephone Effectiveness (Outbound Calls) 5 Pts.
- Appointment: (Lead to Appointment %) 5 Pts.
- Test Success (Lead to Test %) 5 Pts.
- Pre-Class Withdrawals/Early Withdrawals) Rate 5 Pts.
- Conversion Rate (Lead to Start Percentage) 5 Pts.
- Contract Completions (NPS) Calc.

2. Graduation Rate 5 Pts.

3. Teamwork and Attitude 5 Pts.

4. Regulatory Compliance 5 Pts.

The only criteria
not related to
enrollment

+2 Pts. (for conservatism)

The Problem...

- Each of CLC's recruiters received the full five points each for "Teamwork and Attitude" and "Regulatory Compliance."
- Thus, in no case did a recruiter receive an increase in compensation for anything other than success in securing enrollments.
- Since these two measurements are not meaningful in distinguishing the performance of the recruiters, their "...contribution to the compensation plan is illusory."



The Result...

Computer Learning Centers, Inc. was ordered to pay...

\$187 million

in liabilities to the U. S. Department of Education

Indiana Wesleyan University

- Indiana Wesleyan hired the Apollo institute to perform several tasks for its adult- and professional-studies division.
- Apollo assisted in recruiting students, collecting tuition and fees, and maintaining records.
- The fees collected were split (75% and 25%).
- This financial arrangement was deemed illegal because the fee structure based payments on the number of students enrolled.



The Result...

Indiana Wesleyan was ordered to pay...

\$37.3 million

in liabilities to the U. S. Department of Education.

Two More Recent Apollo Clients

William Penn University

was ordered to pay...

\$5-million

Olivet Nazarene Univ.

was ordered to pay...

\$3.1-million

The Bill...

- Georgia Rep. Johnny Isakson introduced a bill in Congress in May 2001 to amend the ban on incentive compensation.
- The change would remove the words "or indirectly."
- The new language would exempt "any third-party service provider that has no control over eligibility for admission..."
- Could make the Institute for Professional Development contracts legal.
- The bill was passed by the House on October 11, 2001 and was then referred to a Senate committee.
- It died in the Senate.

The Rest of the Story...

OFFICE OF THE BANKRUPTCY TRUSTEE
Computer Learning Centers, Inc.
c/o GOLD MORRISON & LAUGHLIN
1660 International Drive, Suite 450
McLean, Virginia 22102-4848

On Thursday, January 25, 2001, Computer Learning Center, Inc. ("CLC") filed a chapter 7 petition in bankruptcy which effectively halted all of its operations. On that same date, H. Jason Gold was appointed CLC's chapter 7 Trustee ("Trustee"). We have provided the following information regarding some major areas of concern:

- 1) W-2 Forms. The Trustee is making every effort to obtain the W-2 forms for all employees and see to it that the forms are mailed to all employees. We are aware of the importance of getting this accomplished as quickly as possible.
- 2) Dishonored checks and back pay. People who have had their checks dishonored must file a proof of claim in the bankruptcy case. You will be notified in the near future as to the procedure for filing claims. Generally speaking, unpaid wages are given a priority for repayment over most other types of claims. Once again, it will be necessary for all former employees who are owed money in the form of earnings, bonuses or expenses, to file a proof of claim. Unfortunately, it may be some time before the Bankruptcy Court authorizes the Trustee to make payment on wage claims. The Trustee is committed to expediting this process if at all possible. Again, we

Implications for Managers

- Make certain compensation adjustments are made in conjunction with other meaningful performance factors unrelated to enrolling students.
- Document the variance in compensation that results from the non-enrollment related performance measures.

Hypothetical

Steel University has a recruiter based in London. His job is to recruit foreign students. He receives a bonus based on students enrolled. His 2001-02 bonus was based on enrollment of 25 foreign students and 4 students who are U.S. citizens and dependants of U.S. military personnel stationed in Europe. Is the bonus legal?



Civil Rights Issues for Admissions and Financial Aid

Jose Padilla

Civil Rights Laws

- Title IX of the Education Amendments of 1972 (prohibits sex discrimination);
- Section 504 of the Rehabilitation Act of 1973 (prohibits disability discrimination);
- Title VI of the Civil Rights Act of 1964 (prohibits race, color, and national origin discrimination);
- Title II of the Americans with Disabilities Act of 1990 (prohibits disability discrimination by public entities);
- Age Discrimination Act of 1975 (prohibits age discrimination).



Civil Rights Laws

Private institutions like IT are bound by these provisions because they receive federal funding.

Title IX - Gender

at 34 C.F. R. Section 106.21 (b)(2)(c)

- Provides that a College shall not make pre-admission inquiry as to the marital status of an applicant for admission, including whether such applicant is “Miss” or “Mrs.”
- A College may make pre-admission inquiry as to the sex of an applicant for admission, but only if such inquiry is made equally of such applicants of both sexes and if the results of such inquiry are not used to discriminate.
- Includes hard copy applications, on-line applications, and any other type of application.

This pre-admission inquiry as to the marital status of the student is a violation of Title IX Regulation



Inquiry Card

Mr. Miss Mrs. _____ Graduation Year _____

Address _____ Home Phone () _____

City, State, Zip _____ High School _____

E-Mail address _____

Parent(s) or guardian(s) which whom you reside _____

1. My present interest is: Very strong Somewhat strong Uncertain No longer interested

2. I am interested in the following major career interest areas: Undecided

(1) _____ (2) _____ (3) _____

3. My college extracurricular interests include:

(1) _____ (2) _____ (3) _____

Rehabilitation Act of 1973-Disabilities

Section 504 regulation, at C.F. R. Section 104.42(c)

- Prohibits discrimination on the basis of disability in all programs or activities that receive Federal financial assistance.
- Provide that a college may not make pre-admission inquiry as to whether an applicant for admission has a disability.
- After an admission decision has been made, the college may inquire and offer assistance to students with disabilities.



Rehabilitation Act of 1973

Section 504 regulation, at C.F. R. Section 104.42(c)

If an applicant voluntarily discloses his or her disability in the application, you face this threshold issue: is the disabled applicant “otherwise qualified” for admission? Two subsidiary questions will resolve this issue.

Rehabilitation Act of 1973

Section 504 regulation, at C.F. R. Section 104.42(c)

Otherwise qualified—two questions:

- 1) Does the applicant meet the academic and technical requirements for admission?
- 2) If the applicant cannot meet the requirements because of the disability, would a reasonable accommodation enable the applicant to meet the requirements?

Implications for Managers

- Be mindful to remove any questions on the application that would elicit the student's marital status or disabilities.
- Ensure all inquiry and application vehicles (paper, on-line, etc.) are consistent and meet the requirements of the law.

Hypothetical

An applicant applies for admission to the department of applied mathematics. The applicant received very low math grades that are not competitive with other applicants. However, the applicant's SAT scores, including the math area, are consistent with other applicants. You learn from the SAT that the applicant took the test under "non standard conditions" and with "accommodations." Can you call the applicant, the testing service or the applicant's high school to find out why the applicant needed accommodations?

Hypothetical

The applicant in the preceding hypothetical voluntarily discloses a learning disability that was diagnosed when the applicant was a junior in high school. A psychological evaluation shows that the applicant has difficulty processing large amounts of information and complex mathematical equations. Can you consider the learning disability in making your admission decision?

Race and Ethnicity

- Regents of the University of California vs. Bakke allows public and private universities to pursue diverse student bodies.
- In pursuing diversity, university admissions officers may consider applicants' race and ethnicity as "plus" factors but not exclusive ones. They must be considered along with other factors.



Race and Ethnicity

This consideration of race and ethnicity applies to financial aid and other support programs.



Race and Ethnicity

The U.S. Department of Education's Office of Civil Rights allows universities to use financial aid to achieve and maintain diverse student bodies.

Principle Four of February 23, 1994 Policy Guidance.



Race and Ethnicity

Universities may use their own resources or use or administer funds provided by private third parties. However, the means of financial aid must be “narrowly tailored” to achieve the goal of more diverse student bodies.

Race and Ethnicity

Factors constituting “narrowly tailored:”

- Race-neutral financial aid has been or would be ineffective in achieving diversity;
- A less extensive use of race has been ineffective in achieving diversity;
- The use of race and duration of the scholarship are flexible;

Race and Ethnicity

Factors constituting “narrowly tailored:”

- The university regularly reevaluates the continued necessity of the race-based program and will modify it based on outcomes; and
- The race-based program does not impose an undue burden on White students.



Race and Ethnicity

Financial aid programs targeted at women should follow the preceding “narrowly tailored” factors. However, the courts would probably give more deference to gender-based programs.

Race and Ethnicity

The United States Supreme Court may change the preceding law on the use of race and ethnicity when it hears the cases of Grutter vs. The University of Michigan Law School and Gratz vs. The University of Michigan.

Race and Ethnicity

“At their core, the Michigan policies amount to a quota system that unfairly rewards or penalizes perspective students, based solely on their race.

“In the programs under review by the Supreme Court, the University of Michigan has established an admissions process based on race. At the undergraduate level, African American students and some Hispanic students and Native American students receive 20 points out of a maximum of 150, not because of any academic achievement or life experience, but solely because they are African American, Hispanic or Native American.”

January 15, 2003 Statement of President George Bush.

Race and Ethnicity

“We should not be satisfied with the current numbers of minorities on American college campuses. Much progress has been made; much more is needed. University officials have the responsibility and the obligation to make a serious, effective effort to reach out to students from all walks of life, without falling back on unconstitutional quotas. Schools should seek diversity by considering a broad range of factors in admissions, including a student's potential and life experiences.

January 15, 2003 Statement of President George Bush.

Race and Ethnicity

“We do not have, and have never had, quotas or numerical targets in either the undergraduate or Law School admissions programs. Academic qualifications are the overwhelming consideration for admission to both programs.”

January 15, 2003 Statement by University of Michigan President, Mary Sue Coleman.

Race and Ethnicity

“In our undergraduate admissions system, fully 110 points out of 150 are given for academic factors including grades, test scores and curriculum. We only count 12 points for test scores, but that is because we value high school grades to a much greater extent---they can earn up to 80 points. We consider many other factors as well. Race is one of those, but a student who is socioeconomically disadvantaged also can earn 20 points (students cannot earn 20 points for both factors, however). Geographic diversity is also important, and a student from Michigan’s upper peninsula, for example, earns 16 points. We also consider leadership, service, and life experiences, among other elements.”

January 15, 2003 Statement by University of Michigan President, Mary Sue Coleman.



Race and Ethnicity

The Supreme Court will hear oral arguments on April 1, 2003. A decision is expected by July of this year.



Hypothetical

A group of Hispanic alumni from the Chicago-Kent Law School want to award scholarships only to Hispanic law students. Can they?



Hypothetical

In the preceding hypothetical, could Chicago-Kent administer the program?

Hypothetical

Assume that the Supreme Court strikes down the University of Michigan affirmative action programs and prohibits further consideration of race and ethnicity in admissions and financial aid programs. What kind of program would you develop to achieve student diversity under those circumstances?



Questions???