Spring 2010

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TELLING YOUR PARENTS YOU’RE DRINKING TOO MUCH—FERPA’S PARENTAL NOTIFICATION EXCEPTIO

by

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BACKGROUND

It is perhaps a parent’s worst nightmare: their child is away at a college or university, presumably completing courses and participating in a social life when the telephone rings. University officials inform the parents that their child is dead from a drug overdose or binge drinking. The parents were completely unaware of any problem with their child, or thought that any problems were under control. The University, on the other hand, has been aware of a problem with the student, but has not informed the parents until it is too late. Or, perhaps the parents did contact the school and were refused information about their son or daughter.

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The authors wish to express their appreciation to John O’Hara, a senior at Ithaca College, for his assistance in the research of this paper.
As farfetched as such a story might sound, this was the actual scenario in a case involving a 19-year-old named Jason Wren, a student at the University of Oklahoma. According to newspaper reports, Jason was removed from campus for violating drinking rules on campus and placed in an apartment. Upon learning of the move, the student’s father, Jay Wren, tried in vain to find out what had happened to his son but University officials told him the information was protected under the Family Educational Rights and Privacy Act, known as FERPA.\(^1\) After moving to the off-campus apartment, Jason died from what has been described as a “night of binge drinking.” Following their son’s death, the parents subsequently learned that their son had suffered from previous drinking incidents of which the university was aware. Jay Wren told Kansas City Star reporter Marla Rose Williams. “I would have pulled him out to get him back home where we could keep an eye on him.”\(^2\)

In a more recent case, in 2007 the dean of students and the associate vice president for student affairs at Rider University, along with three student officers of a campus fraternity were charged with aggravated hazing in the drinking death of a freshman pledge at a fraternity initiation.\(^3\) Though the criminal charges against the university administrators were dropped, the civil suit is currently in litigation. Claims were filed against the University, national and local fraternity chapter, school officials and local fraternity officers.\(^4\) The tragedy triggered university President Rozanski to establish a task force to review Rider’s alcohol policies, enforcement, education, outreach and Greek life. Those recommendations have now been implemented, including the requirement of parental notification for all alcohol policy violations as allowed pursuant to FERPA.\(^5\)

FERPA is a Federal law that protects the privacy of student education records. The law is administered by the U.S. Department of Education’s Family Compliance Office and applies to all schools that receive funds under an applicable program of the U.S. Department of Education.\(^6\) Originally entitled the Buckley Amendment, the law was first passed in 1974 as a sweeping revision of student privacy protections. Generally FERPA provides students and parents a right to inspect and to "correct" educational records or face a penalty of having federal funds cut off.\(^7\) With that said, there are numerous records covered by the Act that are not available for disclosure ranging from letters of recommendation to financial records to disciplinary reports.\(^8\)

In 1998, FERPA was amended to allow institutions of higher education the option to notify parents of students under the age of 21 if their son or daughter violated any alcohol or drug provisions at their respective institution. FERPA provides that:

Nothing in the Act or the Higher Education Act of 1965 shall be construed to prohibit an institution of higher education from disclosing to a parent or legal guardian any information regarding any violation of any Federal, State or local law, or of any rule or policy of the institution, governing the use or possession of alcohol or a controlled substance regardless of whether that information is contained in the students’ education records if (A) the student is under the age of 21 and (B) the institution determines that the student has committed a disciplinary violation with respect to such use or possession.\(^9\)
Further amendments to the Act were proposed in 2008 to clarify this provision regarding notifying parents of alcohol and drug violations. The wording of the statute gives colleges and universities the choice to institute a parental notification policy, but they are not required to do so. Moreover, since the statute does not define “disciplinary violation,” the institution may have considerable latitude regarding both what constitutes a disciplinary matter and what information is disclosed.

**DECISION TO DISCLOSE**

Since FERPA now makes it clear that institutions of higher education may disclose information about alcohol and drug indiscretions, the next question then becomes, should such disclosure take place? The law seems well settled that there is no affirmative duty on behalf of the institution to inform; yet statistics reveal that drug and alcohol use on college and university campuses is rampant. A study published by the National Center on Addiction and Substance Abuse at Columbia University found that in 2001 there were more than 1,700 deaths from unintentional alcohol-related injuries among college students, up 6% from 1998. Also in 2001, 97,000 students were victims of alcohol-related date rape or sexual assault, and almost 700,000 students were assaulted by a student who had been binge drinking.

In a peculiar irony, many argue that the well intentioned movement in the 1980’s to reduce teenage drunk driving by imposing a nationwide minimum drinking age of 21 has actually had the contrary effect of encouraging heavy drinking by those under 21. Recent surveys and the Harvard School of Public Health’s College Alcohol Study confirm what has been called the “college effect,” where

...every fall college administrators witness a significant change for the worse in students’ alcohol consumption immediately after they arrive on a campus as first-year students...binge drinking almost doubles (to about 45 percent) and abstention decreases by nearly half in just six weeks—and those numbers will change very little over the course of the next four years.

The ease of obtaining fake identification exacerbates the problem, as does the fact that students frequently party off campus to avoid being caught drinking illegally. With less oversight from adults, heavy drinking, brawling, and sexual misconduct are more likely to occur. In addition to the prevailing misuse of drugs and alcohol, some colleges and universities are seeing a shift in the traditional parent-student relationship. Today, more parents want to be involved in the lives of their sons and daughters, and that may include being informed of their children’s’ transgressions. Cell phones, instant messaging and texting seem to have delayed or permanently changed the separation that earlier generations experienced upon leaving home for the independent world of college.

The University of Delaware was the first college to implement a parental notification policy in the early 1990s, before FERPA was amended. President Roselle viewed parents as the key to stopping alcohol abuse since they controlled the purse strings. Moreover, he did not want to be in the position of ever having to tell a parent, “We knew there was a problem but we didn’t tell you.” President Roselle correctly identified the box that colleges and universities find themselves in—students who formerly went through the drinking age rite of passage at the end of high school now
spend approximately three years on the college’s time waiting to make that transition to legal age of consumption. Institutions of higher education are now expected to engage in education, early intervention, treatment, health protection and promotion and environmental management of drinking related problems. Given the widening net for potential college liability, it is not surprising that with the enactment of the FERPA parental notification amendments, many institutions followed the University of Delaware’s lead.

While current statistics are difficult to find, Bowling Green University conducted a survey of judicial affairs officers at 189 institutions a decade ago. "As of January 2000, 58.7 percent indicated they had parental notification policies or practices in effect (77.6 percent of private institutions, 43.3 percent of public), and 24.9 percent were actively considering adopting such a policy. Most campuses chose to notify parents by letter (59 percent), though a significant number utilized both telephone and letter (25.3 percent). Although 63.9 percent of policies allow for notification after a first violation, in practice notifications are about evenly divided between first and second violations.

In contrast, a few schools have received negative comments from parents when attempting to implement such a system. Some parents objected to the University of Missouri’s parental notification policy as a violation of their children’s’ right to privacy, and the university responded by sending out a form to parents of students under 21 to allow them to opt out of notification. In 2007, 37 parents opted out.

Setting policy remains a difficult balancing act. Administrators worry that immediate notification of parents prevents students from learning how to cope with their own problems. There is also the potentially serious and life-threatening concern that the threat of parental notification will deter students from seeking help for alcohol-related illnesses. To address this criticism, some schools such as Emory University, Duke University and Dartmouth have adopted "medical amnesty" policies to shield individuals and organizations (such as fraternities and sororities) from disciplinary action when medical assistance for alcohol and drug related emergencies is sought. Also known as "good Samaritan" policies, the amnesty applies to students who seek assistance for themselves and for others, and for the student receiving medical attention. While studies show that amnesty policies lead to substantial increases in the number of students seeking medical assistance, most colleges have not adopted such an approach, believing it condones excessive and underage drinking.

**EFFECTIVENESS OF PARENTAL NOTIFICATION**

Does disclosure work? "Initial research, albeit preliminary, shows that parental notification policies, as permitted under the FERPA amendment, have produced a reduction in repeat violations of institutional drug and alcohol policies." Whether to disclose such violations to parents is a matter of intense debate. On the one hand, some statistics are emerging that parental involvement results in decreased alcohol and drug problems on campus. "The Bowling Green research provides preliminary data indicating that parental notification policies work in terms of reducing alcohol-related problems. Of the judicial affairs officers utilizing parental notification, more than half reported positive results, with 39.7 percent indicating slight and 12.7 percent indicating significant reductions in the number of alcohol violations following implementation of the policy."
“Another indicator of effectiveness is the number of repeat violations among students whose parents were notified of a violation. Several institutions, including the University of Delaware, Texas A&M, Radford University, Utah State, Ohio University in Athens, and the Pennsylvania State University (Penn State), have noted reduced rates of recidivism after they began notifying parents of violations as part of their overall alcohol and other drug prevention efforts.” 29

Many of these campuses, and others that have instituted parental notification within a comprehensive approach to prevention, have reported additional positive results, including fewer suspensions, less vandalism, higher retention rates, fewer hospitalizations, and increased upper class student interest in living in residence halls.” 30

Frostburg State officials credit those policies with an 89 percent plunge in second offenses after the rules were implemented in 1998-99. Off-campus citations dropped 39 percent after Gibraltar extended the policies to off-campus arrests last year. "Clearly, working with parents gets the message out," Gibraltar said. "If your mom or dad calls you up and says, 'If I hear another word that you're out of line, you're out of school,' I think that probably has an impact." 31

CONCLUSION AND RECOMMENDATIONS

Clearly, colleges and universities have to be concerned about their liability if they fail to notify parents of a student’s alcohol problem. While the current law does not find a duty to do so, the recent amendments in FERPA facilitate disclosure. The stage is set for courts to begin finding that if colleges and universities can send out scores of admissions, catalogues and promotional materials to families, then institutions certainly should communicate with families when the student is at risk, exactly the time when families would be most interested in hearing from them.

While college administrators may lament Congress’ paternalistic approach, it is also fair to note that over the last two decades many colleges have marketed themselves as caring, nurturing, "home away from home" environments. As the tuition has increased, so have parental expectations. As long as the drinking age remains at 21, colleges will be in the position of monitoring and policing student growing pains. Given the statistics on binge drinking on college campuses, it is unrealistic to assume that prohibition will work. Colleges should devise pragmatic approaches that incorporate both medical amnesty programs to get immediate help to students in need and close communication with parents as allowed under FERPA.

ENDNOTES

7. "No funds under any applicable program shall be made available to any State educational agency (whethe r or not that agency is an educational agency or institution under this section) that has a policy of denying, or effectively prevents, the parents of students the right to inspect and review the education records maintained by the State educational agency on their children who are or have been in attendance at any school of an educational agency or institution that is subject to the provisions of this section." 20 USC §1232 g (a) (1) (B) (Jan. 8, 2008).

8. "The first sentence of subparagraph (A) shall not operate to make available to students in institutions of postsecondary education the following materials:

(i) financial records of the parents of the student or any information contained therein;

(ii) confidential letters and statements of recommendation, which were placed in the education records prior to January 1, 1975, if such letters or statements are not used for purposes other than those for which they were specifically intended;

(iii) if the student has signed a waiver of the student's right of access under this subsection in accordance with subparagraph (D), confidential recommendations—

(I) respecting admission to any educational agency or institution,

(II) respecting an application for employment, and

(III) respecting the receipt of an honor or honorary recognition. 20 USC §1232 g (b) (1) (c) (Jan. 8, 2008).

9. 20 USCA § 1232 (g.) (1) (Jan. 8, 2008).

10. "The proposed regulations are also needed to clarify that colleges and other institutions may disclose information from education records to an eligible student's parents, without consent, under §99.31(a.)15 if the institution has determined that the student has violated Federal, State, or local law or an institution's rules or policies governing alcohol or substance abuse (provided the student is under 21 years of age), and in connection with a health or safety emergency under §§ 99.31(a.)10 and 99.36 (regardless of the student's age) if the information is needed to protect the health or safety of the student or other individuals. These exceptions apply whether or not the student is a dependent of a parent for tax purposes. These proposed regulations would clarify the Department's policy with respect to an agency's or institution's disclosure of information from education records to parents under the health and safety emergency exception and do not represent a change in the Department's interpretation of who may qualify as an appropriate party under the health or safety emergency exception to the consent requirement. While institutions may choose to follow a policy of disclosing education records to parents of eligible students in these circumstances, FERPA does not mandate such a policy." 20 USCA §1232 g (b) (1) (B) (Jan. 8, 2008).


12. "Courts have not yet held that colleges or universities have an affirmative duty to notify parents of a distressed student." Prevention Updates, The Higher Education Center for Alcohol and Other Drug Abuse and Violence Prevention at http://www.higheredcenter.org/files/product/notification.fax. (June 2001)


such policies. Only approximately 16% of the respondent institutions had no policy and were not considering one. Certainly, additional future research is needed to assist the higher education community in responding to this difficult issue. Working report from the Inter-Association Task Force on Alcohol & Other Substance Abuse Issues Members at http://www.iatf.org/parental.htm.


24. Id. Note supra at note 11, page 17.


28. Id. Note supra at note 11, page 17.


INTRODUCTION

Congress has passed provisions intended to limit the shopping for net operating losses and other attributes. Primary among such provisions is Internal Revenue Code section 382. This section provides that when a corporation undergoes a sufficient change in its stock ownership, use of losses and credits from before the change in ownership are limited in periods after the change. In essence, the corporation is limited in the amount of losses to an amount that, at least theoretically, approximates the losses and credits the corporation would have naturally used if the ownership change did not occur.

The rationale for these limitations has long been recognized if not accepted. We have long lived with rules that frowned upon the purchase of another taxpayer’s tax attributes. But these are unusual times. The financial health of most of our largest financial institutions has deteriorated significantly. The U.S. government has been called upon to assist in preventing further meltdown of our financial system. The very financial

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