

# UNIVERSITY OF NORTH ALABAMA

## LEGAL BRIEFING:

### LEGAL ISSUES FOR FACULTY

August 2, 2017  
University of North Alabama  
Amber M. Fite-Morgan<sup>1</sup>, General Counsel

---

<sup>1</sup> The opinions expressed in this paper and at the presentation of the same are those of the author and are not necessarily the position of the University of North Alabama; nor has there been any effort to obtain or express those positions. The author further reserves the right to argue a different position depending on the then current interests of her client.

# Legal Basics

## [Introduction](#)

This document is designed to assist the University of North Alabama concerning certain types of legal information and issues.

*The University of North Alabama's General Counsel publishes this document for general information only, and this document is not intended to provide legal advice for any specific situation. Such advice can only be provided in the course of an attorney-client relationship with reference to all applicable facts. This information is not a substitute for obtaining legal advice from a licensed attorney.*

## [Hot Topic #1: What is the Office of General Counsel and what does it have to do with me?](#)

Office of the General Counsel

The Office of the General Counsel



basis whose employment is limited to providing professional services other than lobbying, the compensation for which constitutes less than 50 percent of the part-time employee's income."

### Contracts

The only University Officials with actual authority to enter into legally binding contracts are the President and Vice President for Business and Financial Affairs. The Vice President for Academic Affairs and Provost and Vice President for Student Affairs have limited signatory authority only.

If you have a contract that needs signed, please consult with your dean regarding who will ensure the appropriate review and signature. If there are questions regarding whom should sign the contract, please contact my office.

*Ethics Law Pertaining to UNA Employees Selling Textbooks.* UNA employees who consider selling instructor editions or complimentary copies of textbooks provided by textbook publishing companies should be aware of their obligations as state employees under the state ethics law. This law says that state employees cannot receive personal gain for themselves or members of their families as a result of their state employment. Violations of the state ethics law occur if a UNA employee sells his or her instructor edition or a complimentary copy of a textbook or any related materials (study guides, test banks, supplementary CDs, etc.) to anyone, including a student, bookstore or online textbook reseller, unless the proceeds of that sale are retained by the University rather than the employee. For example, the sale proceeds can be deposited into a departmental account to purchase office supplies or used for similar institutional purposes. See Alabama Code, Section 36-25-5, Use of Official Position or Office for Personal Gain

*Ethics Laws Pertaining to Use of Official Position or Officer for Personal Gain.* Ala. Code § 36-25-5(a) provides that “No public official or public employee shall use or cause to be used his or her official position or office to obtain personal gain for himself or herself, or family member of the public employee or family member of the public official, or any business with which the person is associated unless the use and gain are otherwise specifically authorized by law. Personal gain is achieved when the public official, public employee, or a family member thereof receives, obtains, exerts control over, or otherwise converts to personal use the object constituting such personal gain.”

*Criminal Act to Use Property/Human Labor for Personal Reasons.* It is a violation of the State Ethics Code (felony or misdemeanor, depending on facts) for a UNA employee to use or cause to be used equipment, facilities, time, materials, human labor, or other UNA property under his/her discretion or control for the private benefit or business benefit of that employee, except as otherwise provided by law or pursuant to a lawful employment agreement. It is also illegal for a person to solicit a UNA employee to do these things for that person’s private or business benefit, except as otherwise provided by law. This includes using students and/or employees to perform personal errands or favors for non-work related purposes. See Alabama Code, Section 36-25-5.

*Criminal Act to Use Position for Financial Gain/Rules for Contracts with UNA.* It is a violation of the State Ethics Code (felony or misdemeanor, depending on facts) for a UNA employee to use his/her position with UNA to obtain personal gain for themselves, a family member or any business with which the employee is associated. Section 36-25-11 of the Code of Alabama 1975, as amended, prevents any public official or public employee, or members of their households, or any businesses associated with these people from entering into a contract that will be paid for using government funds unless the contract has been awarded through the state’s competitive-bidding process. The contract must then be filed with the appropriate state official within 10 days of its execution. See Alabama Code, Section 36-35-5 and Section 36-25-11.

*Employment of Members of the Same Family.* Alabama law (Section 41-1-5 of the Alabama Code 1975) prohibits an employee of UNA from appointing (hiring) any person related to him within the fourth degree of affinity or consanguinity to any job with UNA. If this law is violated, the

appointment is deemed void and the person can be charged with a misdemeanor and fined up to \$500 and imprisoned for up to one year. In compliance with this law and the UNA Employee Policy Manual and Handbook, limited excep

A student's FERPA rights begin with his or her registered enrollment at UNA. Attendance need not be physical, such as in cases of distance learning courses. Applicants who are denied admission or who are admitted but never attend are not covered under FERPA. There is no end point for FERPA rights—as long as the student is living.

A student has a right to inspect and review any education record to which he or she is permitted pursuant to UNA policy. Education records are maintained in a number of University offices. Requests to review records must be made in writing to the responsible official of each office which maintains the records who shall comply with the request within 45 days upon receipt.

The University reserves the right to refuse to permit a student to inspect the following records:

- Records that contain information on more than one student. A student may inspect only that information which relates to him/her.

- Financial records of the student's parents.

- Confidential letters and statements of recommendation for which the student has waived his or her right of inspection and review.

- Records connected with an application to attend the University or a component unit of the University if that application was denied.

- Those records which are excluded from the FERPA definition of education records.

A student who wishes to challenge the content of the educational record may do so by submitting a written request to the official responsible for maintaining the record, with such request specifying the content being challenged, the grounds for the challenge, and the exact action being sought. If the official grants the request, the change(s) will be made. If the request is denied, the student will be informed and will be given the opportunity to add an explanation to the record and/or appeal the official's decision.

Students have the right to file a complaint with the U.S. Department of Education if the student believes that the University has failed to comply with the requirements of FERPA. The complaint must be made within 180 days of when the infraction was discovered, and there must be sufficient evidence to prove the violation. The written c

permission from the student, unless such action is covered by certain exceptions permitted by FERPA.

Examples of record release with written permission from students are:

- Request to send a transcript to a third party (through the Registrar's Office)

- One-Time Authorization to Release Educational Information via signed Consent to Release Student Records form (i.e. letters of recommendation)

  - Faculty and staff are often asked to write recommendations for students or former students. Best practice is to obtain, in writing, consent from the student to give the reference. However, a court is likely to find that if the student requests the letter, the student has impliedly consented to the disclosure.

- Student Consent for Parental Access to Educational Records

Directory Information may be released without the written consent of the student, unless the

elements to identify the student.

Prior consent is not required to disclose personally identifiable information:

- To "school officials" who have a "legitimate educational interest" in the student. "School official" is defined as:

  - research, or support staff position (including law enforcement unit personnel and



To regional or professional accreditation organizations.

To parents of a dependent student, if the parent has provided to the Registrar's Office evidence that they declare the student as a dependent on their most recent Federal Income Tax form (Form 1040).

In response to a lawfully issued court order or subpoena (normally handled by the Registrar, , other official record custodian and/or Legal Counsel)

In the event that the release of information is necessary to protect the health or safety of the student or other individuals.

If the disclosure is the result of a disciplinary hearing where the student is the perpetrator for a crime of violence or a non-forcible sex offense. Under this exception, information may be released to anyone, including the media. No information on the victim or witnesses may be released.

To parents of a student under the age of 21 who has committed a drug or alcohol related offense.

*\*Prior to a release under one of these exceptions you should seek guidance from the UNA General Counsel.*

persons or organizations will be refused (i.e., your name will not appear in the commencement program, we will not be able to confirm your degree to a prospective employer, your name will not be provided to honor societies that wish to invite you to join, etc.).

Requests for non-disclosure that were made while a student was in attendance continue to be honored, even after the student leaves the University, unless the request is revoked by the student (or former student). To revoke a directory hold, students must make a written request to the office of the registrar.

The Office of the Registrar is the official office of the University for maintaining and releasing information pertaining to



## Individuals with Disabilities in Education Act of 1975 (IDEA) versus the Americans with Disability Act Amendments Act (ADAAA) & the Rehabilitation Act §504.

ADAAA only requires policy modifications and/or auxiliary aids that enable the student to perform to the extent of their abilities.

- Two main aspects found in the IDEA but not the ADAAA
  - Requires Individual Education Plans (IEP's)
  - Provides Federal funds to assist.
- Many entering freshman with disabilities who have received IDEA services during







## Hot Topic #7: Consensual Relationship Policy

The consensual relationship policy is directed to faculty-student relationships, to staff-student relationships and to employee-employee relationships. Where an individual exercises direct supervision to coerce another person to enter into a non-consensual relationship, the harm to that person and to the institution is evident. Even where the relationship is consensual, there is significant potential for harm when there is a power difference between the parties involved - - for example, between a supervisor and an employee or between a faculty or staff member and a student. Any evaluation or supervision provided may be suspect in view of such relationship. While the University normally has no interest in private romantic







Compliance  
Purchasing  
Contracting  
Retaliation and Whistleblowing  
Title IX

#### *#4 Keep Records*

Keep records of any situation that causes you concern or raises a red flag  
More than a mental note  
Keep a confidential file relating the facts (names, dates, quotes) and in a separate section address emotions (tensions, feelings, anger, etc.)

#### *#5 Take Advantage of Campus Opportunities*

Take advantage of campus opportunities to expand your awareness of today's issues  
Expands your pool of knowledge  
Active participation in on-going education is an excellent defense

#### *#6 Call for Help – suffering silently won't work*

Some people operate on the theory that it's easier to ask for forgiveness than it is to get permission. However, after an adverse jury verdict, forgiveness may involve you having to get out your own personal checkbook

If in doubt, talk to the administrative chain of command  
Begin with department chair and if necessary, work your way up the administrative structure  
Always go through your dean to contact my office

#### Caveat:

Following these tips will not guarantee you will never be sued, that no grievance will be upheld against you, or that you won't turn grey