



NORTH CAROLINA COMMUNITY COLLEGE SYSTEM

Dr. R. Scott Ralls, President

12 April 2010

IMPORTANT INFORMATION

MEMORANDUM

TO: Members of the State Board of Community Colleges
Community College Presidents
Chief Academic Officers
Chief Student Development Officers
Other Interested Parties

FROM: Q. Shanté Martin, General Counsel

RE: **CRIMINAL BACKGROUND CHECKS AND DRUG TESTING OF
COMMUNITY COLLEGE STUDENTS**

Various community colleges have inquired about the ability to conduct criminal background checks and drug screening tests for community college students in licensure programs that require a clinical experience. The following information addresses this inquiry and reaffirms past advice from the Attorney General's office and past advice from the System Office.

I. North Carolina Attorney General's Advice

Attached is a May 30, 1997 Numbered Memo (CC97-131) and an August 31, 2001 Numbered Memo (CC01-184) citing advice the Attorney General's Office provided relating to all North Carolina community colleges. Both of these numbered memos and the information therein are currently applicable. To summarize, the North Carolina Attorney General's Office advised the following:

- 1) Community colleges do not have the authority to "impose nonacademic requirements on admissions to its programs."
- 2) Community colleges "may not propagate an admissions policy which places nonacademic requirements on admissions to its programs for minors *or any other applicants*."

**CC10-014
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- 3) "Insofar as past criminal convictions or disruptive behavior is not an academic qualification, those conditions may not be used as a basis to exclude students from *admission to or completion of programs* at individual community colleges."
- 4) Community colleges do not have the authority under the open-door policy to "impose nonacademic requirements on *admissions to its programs*."
- 5) The proposal to allow local community college boards of trustees to adopt policies that required criminal background checks and drug screening as an enrollment condition in selective admission programs is not consistent with the State Board of Community College's open-door policy.

Because the results of a criminal background check or a drug screening test would be used to impose nonacademic requirements on a student, **community colleges do not have the legal authority to conduct criminal background checks or drug screening tests as a prerequisite to admission to the college or any licensure program.**

II. NCCCS General Counsel's Advice

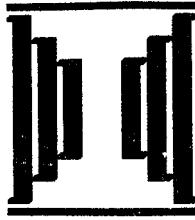
My legal recommendation is that community colleges do not solicit or obtain access to the results of criminal background checks or drug screening results for admission or completion purposes. Since a past criminal conviction and results of a drug screening test are nonacademic factors that could not be used for admission or completion purposes, colleges should not have access to the information so as to potentially taint any later admission or completion decisions.

Moreover, my legal opinion is that it is permissible for a college to use a third-party vendor to conduct a background check or drug test on behalf of a clinical site that requires it for their clinical programs only if the college simply serves as a conduit for the transfer of information. In other words, if the clinical site did not conduct the background and drug screening tests themselves, I think that it is legally permissible for the college to arrange the testing and send sealed results directly to the clinical site with the college having no information about the nature or the cause of the student not being eligible to participate in the clinical site. If a college ensured that it was insulated from the results of the background check or drug screening test, no person could reasonably make the argument that the college used the results to dismiss. If an institution obtained the results of the drug screening or background check from the third-party vendor and decided not to accept the student into its clinical program, the college would have a basis upon which to potentially dismiss a student from a particular program because of the student's failure to progress through the program. The potential dismissal would not be based upon the college's reliance on a background check or drug test results; it would be based upon the student's inability to complete the program due to their failure to meet the standards required by the clinical program.

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QSM/caa

Attachments



NORTH CAROLINA COMMUNITY COLLEGE SYSTEM

LLOYD V. HACKLEY
PRESIDENT

May 30, 1997

ALAMANCE COMMUNITY COLLEGE
ANSON COMMUNITY COLLEGE
ASHEVILLE-BUNCOMBE
TECHNICAL COMMUNITY COLLEGE
BEAUFORT COUNTY
COMMUNITY COLLEGE
BLADEN COMMUNITY COLLEGE
BLUE RIDGE COMMUNITY COLLEGE
BRUNSWICK COMMUNITY COLLEGE
CALDWELL COMMUNITY COLLEGE
& TECHNICAL INSTITUTE
CAPE FEAR COMMUNITY COLLEGE
CARTERET COMMUNITY COLLEGE
CATAWBA VALLEY
COMMUNITY COLLEGE
CENTRAL CAROLINA
COMMUNITY COLLEGE
CENTRAL PIEDMONT
COMMUNITY COLLEGE
CLEVELAND COMMUNITY COLLEGE
COASTAL CAROLINA
COMMUNITY COLLEGE
COLLEGE OF THE ALBEMARLE
CRAVEN COMMUNITY COLLEGE
DAVIDSON COUNTY
COMMUNITY COLLEGE
DURHAM TECHNICAL
COMMUNITY COLLEGE
DUGCOMBE COMMUNITY COLLEGE
AYE FLEWELL TECHNICAL
COMMUNITY COLLEGE
FOURTH TECHNICAL
COMMUNITY COLLEGE
GASTON COLLEGE
GUILFORD TECHNICAL
COMMUNITY COLLEGE
HALIFAX COMMUNITY COLLEGE
HAYWOOD COMMUNITY COLLEGE
ISOTHERMAL COMMUNITY COLLEGE
JAMES SPRUNT COMMUNITY COLLEGE
JOHNSTON COMMUNITY COLLEGE
LENOIR COMMUNITY COLLEGE
MARTIN COMMUNITY COLLEGE
MAYLAND COMMUNITY COLLEGE
MCDOWELL TECHNICAL
COMMUNITY COLLEGE
MITCHELL COMMUNITY COLLEGE
MONTGOMERY COMMUNITY COLLEGE
NASH COMMUNITY COLLEGE
PAMLICO COMMUNITY COLLEGE
PIEDMONT COMMUNITY COLLEGE
PITT COMMUNITY COLLEGE
RANDOLPH COMMUNITY COLLEGE
RICHMOND COMMUNITY COLLEGE
ROANOKE-CHOWAN
COMMUNITY COLLEGE
ROBESON COMMUNITY COLLEGE
ROCKINGHAM COMMUNITY COLLEGE
ROWAN-CABARRUS
COMMUNITY COLLEGE
SAMPSON COMMUNITY COLLEGE
SANDHILLS COMMUNITY COLLEGE
SOUTHEASTERN COMMUNITY COLLEGE
SOUTHWESTERN COMMUNITY COLLEGE
STANLY COMMUNITY COLLEGE
SURRY COMMUNITY COLLEGE
TRI-COUNTY COMMUNITY COLLEGE
VANCE GRANVILLE
COMMUNITY COLLEGE
WAKE TECHNICAL
COMMUNITY COLLEGE
WAYNE COMMUNITY COLLEGE
WESTERN PIEDMONT
COMMUNITY COLLEGE
WILKES COMMUNITY COLLEGE
WILSON TECHNICAL
COMMUNITY COLLEGE
NC CENTER FOR APPLIED
TEXTILE TECHNOLOGY

MEMO TO: Presidents
Community College System

FROM: Clay Tee Hines, Assistant to the *A.*
President for Legal Affairs

SUBJECT: Admission Criteria Advisory Opinion

Attached for your information is a May 9, 1997 advisory letter from the Attorney General's Office which indicates that community colleges do not have authority, under Chapter 115D of the North Carolina General Statutes or rules of the State Board of Community Colleges, to impose non-academic requirements on applicants for admission to programs.

/bw

Attachment

c: Deans of Student Services
Dr. Bill Strickland

CC-97-131
Paper Copy



State of North Carolina

Michael F. Easley
ATTORNEY GENERAL

Department of Justice
P.O. BOX 629
RALEIGH
27602-0629

REPLY TO:
Sylvia Thibaut
Education Section
TEL: (919) 733-7387
FAX: (919) 715-0288
edsthib@mail.jus.state.nc.us

May 9, 1997

Ms. Patricia A. Montgomery
V.P. Personnel & General Counsel
Wake Technical Community College
9101 Fayetteville Road
Raleigh, North Carolina 27603-5696

RE: Community College Admission Criteria Inquiry

Dear Ms. Montgomery:

You have inquired as to whether Wake Technical Community College may propagate an admission policy which would take into consideration whether an applicant has a criminal conviction or other disruptive behavior in his or her past and would automatically result in denial of admission if such circumstances had occurred within the year preceding application for admission. In particular, you are concerned with the large numbers of students who enroll as a condition of court-ordered probation, many of whom have serious criminal records. Accordingly, you have requested an opinion as to: (1) whether admission criteria, other than that established by the State Board of Community Colleges, may be established by Wake Technical Community College and, if so, (2) can this criteria apply specifically to probationers. The answers to these questions depend upon the interpretation and application of the State Board of Community Colleges' authority under Chapter 115D and the regulations it has adopted pursuant to that authority.

N.C. Gen. Stat. § 115D-1 provides, in pertinent part:

The major purpose of each and every institution operating under the provisions of this Chapter shall be and shall continue to be the offering of vocational and technical education and training, and of basic, high school level, academic education needed in order to profit from vocational and technical education, for students who are high school graduates or who are beyond the compulsory age limit of the public school system and who have left the public schools

N.C. Gen. Stat. § 115D-5(a) further provides that:

Patricia A. Montgomery
May 9, 1997
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The State Board shall have authority with respect to individual institutions:
. . . to establish and administer standards for professional personnel, curricula,
admissions, and graduation; to regulate the awarding of degrees, diplomas, and
certificates. . . .

Pursuant to its authority under N.C. Gen. Stat. §§ 115D-1 and -5, the State Board has enacted
23 N.C.A.C. 2C .0301, which provides:

Each college shall maintain an open-door admission policy to all applicants
who are high school graduates or who are at least 18 years of age. Student admission
and placement shall be determined by the officials of each college.

In contrast to the State Board's broad powers, N.C. Gen. Stat. § 115-20 grants the trustees
of the community colleges *only* the power "[t]o apply the standards and requirements for admission
and graduation of students and other standards established by the State Board of Community
Colleges."

Finally, in N.C. Gen. Stat. § 15A-1343, the Legislature specified that one of the regular
conditions of probation, which conditions apply to *all* probationers unless specifically exempted by
the trial judge, is that a probationer:

(7) Remain gainfully and suitably employed or faithfully pursue a course of study or
of vocational training that will equip him for suitable employment. A defendant
pursuing a course of study or of vocational training shall abide by all of the rules of
the institution providing the education or training, and the probation officer shall
forward a copy of the probation judgment to that institution and request to be notified
of any violations of institutional rules by the defendant.

It is our opinion that, when considered in their entirety, these statutes and regulations
are indicative of the General Assembly's intent to permit all qualified students to benefit from the
opportunities for vocational and technical education offered and training offered through the
community college system subject only to the State Board's authority to establish standards for
admission, graduation and the conferring of degrees, diplomas and certificates, including
probationers. Consistent with that intent and its authority, the State Board has adopted 23 N.C.A.C.
2C .0301, which requires each college in the system to maintain an open-door admission policy.
While that regulation allows each college to determine student admissions and placements, it is our
opinion that the State Board intended the colleges' authority in these areas to be limited to

Patricia A. Montgomery

May 9, 1997

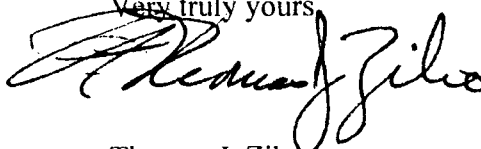
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considerations such as academic qualifications and available space. We do not believe that the colleges' authority under 23 N.C.A.C. 2d .0301 includes the power to impose nonacademic requirements on admissions to its programs.

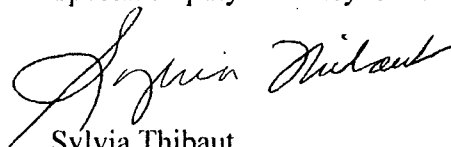
In light of this interpretation of the applicable statutes and regulations, it is our opinion that a community college may not propagate an admissions policy which places nonacademic requirements on admissions to its programs for minors or any other applicants, including probationers. Further, it is our opinion that only the State Board of Community Colleges may impose nonacademic requirements on admission or the awarding of degrees, diplomas and certificates. The authority of the local community colleges is limited to enforcing academic requirements for admission and certifying that students have met the requirements for the award of degrees, diplomas and certificates. Insofar as past criminal convictions or disruptive behavior is not an academic qualification, those conditions may not be used as a basis to exclude students from admission to or completion of programs at individual community colleges.

This is an advisory letter. It has not been reviewed and approved in accordance with procedures for issuing an Attorney General's opinion.

Very truly yours,



Thomas J. Ziko
Special Deputy Attorney General



Sylvia Thibaut
Assistant Attorney General

cc: Dr. Lloyd V. Hackley
Clay Hines



MEMORANDUM

DATE: August 31, 2001

TO: Presidents
Carla Lewis, Pitt Community College
Mary Pat Omer, College of the Albemarle
Cindy Archie, Wayne Community College
Suzanne Mintz, Alamance Community College
Susan Monday, Isothermal Community College
Ronnie Hinson, Stanly Community College
Denise Sessoms, Wilson Technical Community College
Matlynn Yeoman, Brunswick Community College
Ray Harrington, NC Community College System Office
Carolyn Snell, NC Community College System Office
Judith Mann, NC Community College System Office

FROM: Stephen C. Scott
Executive Vice President

Delores A. Parker
Vice President for Academic and Student Services

SUBJECT: Special Admissions Criteria for Community College Students

This memo concludes the taskforce discussions that proposed language for adoption by the State Board of Community Colleges to allow local boards of trustees to adopt policies requiring criminal background checks and drug testing prior to enrollment in selective admissions programs. The System Office staff requested a review of the proposed language by the North Carolina Attorney General's office. While the response has been somewhat delayed in coming, we now have verbal confirmation that the proposed activities are contrary to the open-door admission policy adopted by the State Board. Further the Advisory Letter from the Attorney General's office referenced in CC-97-131 indicates the General Assembly's intent "to permit all qualified students to benefit from the opportunities for vocational and technical education...." This letter is still valid and refers to statutes as well as regulations. Thus, any change to permit criminal background checks and/or drug testing of community college students would likely require action of the NC General Assembly and is not permitted under current statutes or administrative rules. It is the recommendation of the System Office that colleges notify students upon admission to a program with a clinical component that a criminal background check and/or drug testing may be required prior to participation in the clinical component by the clinical site. Further, they should be aware that their progress to graduation might be limited by any inability to complete the clinical portion of the program.

If you have additional questions, feel free to contact us at (919) 733-7051.

cc: Chief Instructional Administrators
Chief Student Services Administrators
Clay T. Hines, Assistant to the President for Legal Affairs

CC01-184
E-mail