



THE STATE UNIVERSITY *of* NEW YORK


MEMORANDUM

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June 24, 2010

To: Presidents, State University of New York

From: David Lavalley, Provost and Senior Vice Chancellor
Marti Ellermann, Interim University Counsel 

Subject: Textbook Access and Affordability Laws

Recently enacted state and federal laws aimed at improving textbook access and affordability will impose new requirements on State University of New York ("SUNY") campuses. Provisions of the Higher Education Opportunity Act [Federal College Textbook Affordability Act, 2008 (20 U.S.C. 1015b)] (copy attached) will come into effect on July 1, 2010 and the New York State Textbook Access Act (Education Law § 720 *et seq.*) has been in effect since July 1, 2009. This memo summarizes the key provisions of both the federal and state laws.

A. Meeting Federal Requirements for College Textbook Affordability:

- Campuses must to the maximum extent practical, disclose on their online course schedules, the International Standard Book Number (ISBN) and retail price for each required or recommended textbook or supplemental materials for the listed courses. If the ISBN is unavailable, campuses must list the author, title and publisher of the textbook or supplement or indicate that the required information has yet to be determined.
- Campuses must as soon as practicable, make available to the campus bookstore upon its request, the most accurate information regarding the number of students enrolled in a course or class and the maximum student enrollment for such course or class.
- Publishers are required to give faculty textbook pricing information and let them know if the book is available as a bundle or in alternate formats.

- Campuses must inform students about how to save money on textbooks (including used books, cash back programs, etc).
- Campuses, faculty, booksellers, and publishers are encouraged to collaborate on cost reduction strategies.

The information that campuses are required by this law to provide can be placed either on the campus's own online course schedule or could be linked from the course schedule to the campus bookstore website.

B. Meeting the Requirements of the New York State Textbook Access Law:

- Upon request, publishers must provide faculty members or purchasing entities with the price the publisher is charging stores for textbooks and supplemental materials;
- Textbooks shall be sold in the same manner as ordered by a faculty member. Publishers or campus stores are not permitted to bundle books by adding software or computer discs or other technological devices to a textbook, unless ordered as a bundle by the faculty member;
- If a textbook or course material is unavailable, the bookstore, faculty member, and publisher must work together to find a substitute. The publisher will make the prices of substitutes readily available;
- Campuses are required to institute policies that encourage faculty to place their orders with sufficient lead time to confirm availability of the requested materials and, when appropriate, the availability of used texts or alternate digital formats.
- Employees of campuses are prohibited from benefiting financially by adopting specific course materials required for coursework. Employees, however, may receive sample copies, instructor's copies, or instructional materials that are not to be sold. Such employees may receive royalties or other compensation from sales of textbooks that include their own work. Employees may receive honoraria for academic peer review of course materials and may receive training in the use of course materials and learning technologies.

To assist your campus to implement both laws, the Office of University Counsel has developed the attached sample Guidelines that you may customize for your campus.

Please distribute this memorandum to all Deans and Department Chairs for sharing with faculty and staff.

Attachments

cc: Chancellor Zimpher
Executive Committee
Chief Academic Officers
Chief Business Officers
Chief Student Affairs Officers

SEC. 112. TEXTBOOK INFORMATION.

(a) Amendment- Part C of title I (20 U.S.C. 1015) is further amended by adding after section 132 (as added by section 111 of this Act) the following new section:

‘SEC. 133. TEXTBOOK INFORMATION.

‘(a) Purpose and Intent- The purpose of this section is to ensure that students have access to affordable course materials by decreasing costs to students and enhancing transparency and disclosure with respect to the selection, purchase, sale, and use of course materials. It is the intent of this section to encourage all of the involved parties, including faculty, students, administrators, institutions of higher education, bookstores, distributors, and publishers, to work together to identify ways to decrease the cost of college textbooks and supplemental materials for students while supporting the academic freedom of faculty members to select high quality course materials for students.

‘(b) Definitions- In this section:

‘(1) BUNDLE- The term ‘bundle’ means one or more college textbooks or other supplemental materials that may be packaged together to be sold as course materials for one price.

‘(2) COLLEGE TEXTBOOK- The term ‘college textbook’ means a textbook or a set of textbooks, used for, or in conjunction with, a course in postsecondary education at an institution of higher education.

‘(3) COURSE SCHEDULE- The term ‘course schedule’ means a listing of the courses or classes offered by an institution of higher education for an academic period, as defined by the institution.

‘(4) CUSTOM TEXTBOOK- The term ‘custom textbook’--

‘(A) means a college textbook that is compiled by a publisher at the direction of a faculty member or other person or adopting entity in charge of selecting course materials at an institution of higher education; and

‘(B) may include, alone or in combination, items such as selections from original instructor materials, previously copyrighted publisher materials, copyrighted third-party works, and elements unique

to a specific institution, such as commemorative editions.

'(5) INSTITUTION OF HIGHER EDUCATION- The term 'institution of higher education' has the meaning given the term in section 102.

'(6) INTEGRATED TEXTBOOK- The term 'integrated textbook' means a college textbook that is--

'(A) combined with materials developed by a third party and that, by third-party contractual agreement, may not be offered by publishers separately from the college textbook with which the materials are combined; or

'(B) combined with other materials that are so interrelated with the content of the college textbook that the separation of the college textbook from the other materials would render the college textbook unusable for its intended purpose.

'(7) PUBLISHER- The term 'publisher' means a publisher of college textbooks or supplemental materials involved in or affecting interstate commerce.

'(8) SUBSTANTIAL CONTENT- The term 'substantial content' means parts of a college textbook such as new chapters, new material covering additional eras of time, new themes, or new subject matter.

'(9) SUPPLEMENTAL MATERIAL- The term 'supplemental material' means educational material developed to accompany a college textbook that--

'(A) may include printed materials, computer disks, website access, and electronically distributed materials; and

'(B) is not being used as a component of an integrated textbook.

'(c) Publisher Requirements-

'(1) COLLEGE TEXTBOOK PRICING INFORMATION- When a publisher provides a faculty member or other person or adopting entity in charge of selecting course materials at an institution of

higher education receiving Federal financial assistance with information regarding a college textbook or supplemental material, the publisher shall include, with any such information and in writing (which may include electronic communications), the following:

‘(A) The price at which the publisher would make the college textbook or supplemental material available to the bookstore on the campus of, or otherwise associated with, such institution of higher education and, if available, the price at which the publisher makes the college textbook or supplemental material available to the public.

‘(B) The copyright dates of the three previous editions of such college textbook, if any.

‘(C) A description of the substantial content revisions made between the current edition of the college textbook or supplemental material and the previous edition, if any.

‘(D)(i) Whether the college textbook or supplemental material is available in any other format, including paperback and unbound; and

‘(ii) for each other format of the college textbook or supplemental material, the price at which the publisher would make the college textbook or supplemental material in the other format available to the bookstore on the campus of, or otherwise associated with, such institution of higher education and, if available, the price at which the publisher makes such other format of the college textbook or supplemental material available to the public.

‘(2) UNBUNDLING OF COLLEGE TEXTBOOKS FROM SUPPLEMENTAL MATERIALS- A publisher that sells a college textbook and any supplemental material accompanying such college textbook as a single bundle shall also make available the college textbook and each supplemental material as separate and unbundled items, each separately priced.

‘(3) CUSTOM TEXTBOOKS- To the maximum extent practicable, a publisher shall provide the information

required under this subsection with respect to the development and provision of custom textbooks.

‘(d) Provision of ISBN College Textbook Information in Course Schedules- To the maximum extent practicable, each institution of higher education receiving Federal financial assistance shall--

‘(1) disclose, on the institution’s Internet course schedule and in a manner of the institution’s choosing, the International Standard Book Number and retail price information of required and recommended college textbooks and supplemental materials for each course listed in the institution’s course schedule used for preregistration and registration purposes, except that--

‘(A) if the International Standard Book Number is not available for such college textbook or supplemental material, then the institution shall include in the Internet course schedule the author, title, publisher, and copyright date for such college textbook or supplemental material; and

‘(B) if the institution determines that the disclosure of the information described in this subsection is not practicable for a college textbook or supplemental material, then the institution shall so indicate by placing the designation ‘To Be Determined’ in lieu of the information required under this subsection; and

‘(2) if applicable, include on the institution’s written course schedule a notice that textbook information is available on the institution’s Internet course schedule, and the Internet address for such schedule.

‘(e) Availability of Information for College Bookstores- An institution of higher education receiving Federal financial assistance shall make available to a college bookstore that is operated by, or in a contractual relationship or otherwise affiliated with, the institution, as soon as is practicable upon the request of such college bookstore, the most accurate information available regarding--

‘(1) the institution’s course schedule for the subsequent academic period; and

‘(2) for each course or class offered by the institution for the subsequent academic period--

‘(A) the information required by subsection (d)(1) for each college textbook or supplemental material required or recommended for such course or class;

‘(B) the number of students enrolled in such course or class; and

‘(C) the maximum student enrollment for such course or class.

‘(f) Additional Information- An institution disclosing the information required by subsection (d)(1) is encouraged to disseminate to students information regarding--

‘(1) available institutional programs for renting textbooks or for purchasing used textbooks;

‘(2) available institutional guaranteed textbook buy-back programs;

‘(3) available institutional alternative content delivery programs; or

‘(4) other available institutional cost-saving strategies.

‘(g) GAO Report- Not later than July 1, 2013, the Comptroller General of the United States shall report to the authorizing committees on the implementation of this section by institutions of higher education, college bookstores, and publishers. The report shall particularly examine--

‘(1) the availability of college textbook information on course schedules;

‘(2) the provision of pricing information to faculty of institutions of higher education by publishers;

‘(3) the use of bundled and unbundled material in the college textbook marketplace, including the adoption of unbundled materials by faculty and the use of integrated textbooks by publishers; and

‘(4) the implementation of this section by institutions of higher education, including the costs and benefits to such institutions and to students.

‘(h) Rule of Construction- Nothing in this section shall be construed to supercede the institutional autonomy or academic freedom of instructors involved in the selection of college textbooks, supplemental materials, and other classroom materials.

‘(i) No Regulatory Authority- The Secretary shall not promulgate regulations with respect to this section.’.

(b) Effective Date- The amendment made by subsection (a) shall take effect on July 1, 2010.