

UNIVERSITY OF NORTH ALABAMA

LEGAL BRIEFING:

LEGAL ISSUES FOR FACULTY

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University of North Alabama
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¹ 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 represents UNA as an institutional client, the institution acting through its authorized officials, including the President, the Provost and Vice Presidents, deans and directors, and other persons responsible for the management of academic and administrative units.

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Can faculty members be sued in their capacity as employees of UNA?

Yes

Will the University help?

YES, if:

- The conduct occurred within the scope of University employment; AND
- The conduct or actions were taken in good faith (a manner reasonably believed to be lawful and without gross negligence)

Matters Outside the Scope of Representation

- The Office does not provide personal legal advice or representation to UNA administrators, faculty, staff, or students.

- The Offices does not resolve employee disputes or other related employment matters/concerns. For employment related questions and concerns, please refer to the UNA University Employee Policy Manual & Handbook
<https://www.una.edu/employee-policy-manual/University%20Employee%20Policy%20Manual%20and%20Handbook.pdf>
Or contact Human resources:
Bibb Graves
256.765.4291

Hot Topic #2: Business Conduct, Contracts & Ethics

Conflicts of Interest and Commitment

A conflict of interest arises with respect to activities that compromise or appear to compromise, an employee's judgement in performing his or her University duties. These conflicts can arise when an employee, or a member of his/her family has an existing or potential personal, financial, or other interest that:

- Impairs or may reasonably appear to impair his/her independence of judgment in the discharge of responsibilities to the University; or
- May result in personal gain or advancement at the expense of the University

A conflict of commitment occurs when external activities undertaken by a UNA employee will or reasonably can be expected to significantly interfere with his or her ability to perform obligations to University duties fully or effectively.

All conflicts of interest or potential conflicts of interest must be disclosed to your immediate supervisor and Human Resources.

Conflict of Interest. Whereas public employees are concerned, Ala. Code § 36-25-1(8)(2015) defines conflict of interest as:

“A conflict of interest on the part of a public official or public employee between his or her private interests and the official responsibilities inherent in an office of public trust. A conflict of interest involves any action, inaction, or decision by a public official or public employee in the discharge of his or her official duties which would materially affect his or her financial interest or those of his or her family members or any business with which the person is associated in a manner different from the manner it affects the other members of the class to which he or she belongs.”

Public Employee Defined. Ala. Code § 36-25-1(26)(2015) defines a public employee as “Any person employed at the state, county, or municipal level of government or their instrumentalities, including governmental corporations and authorities, but excluding employees of hospitals or other health care corporations including contract employees of those hospitals or other health care corporations, who is paid in whole or in part from state, county, or municipal funds. For purposes of this chapter, a public employee does not include a person employed on a part-time

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

Legal Duty to File Statement of Economic Interest. Alabama Code, Section 36-25-14 requires all full-time public employees who make a salary of \$75,000 or higher to file a Statement of Economic Interests no later than April 30. Each person who meets the necessary criteria, regardless of whether they retired the previous year or served/worked in the public position for any time (even a portion of one day) during the previous year, is required to file. The duty of an employee to comply with the Ethics Act, including the duty to file the Statement of Economic Interests, rests with the employee, not UNA. Employees who are required to file, but fail to timely file a Statement of Economic Interests with the Ethics Commission may be fined \$10.00 per day not to exceed \$1,000.00 or be charged with a Class A misdemeanor for intentional failure to file (see Alabama Code, Section 36-25-14(d) & (e)). More information about this requirement and the Statement of Economic Interests is available at <http://ethics.alabama.gov/forms-ecint2.aspx>.

Proof of Mandatory On-Line Ethics Training within 90 Days of Date of Hire. Under the December 2010 Amendments to the Alabama Ethics Act, all public employees required to file Statements of Economic Interest forms were required to participate in an online educational review of the Alabama Ethics Law provided by the Ethics Commission by April 30, 2011. Employees hired after January 1, 2011 have 90 days to comply with the law. For example, if you are hired effective August 16 you must complete this training no later than November 14. Per the law, you must provide evidence of completion of the educational review to the Ethics Commission via an electronic reporting system provided on the State Ethics Commission website. The on-line training may be located at: <http://ethics.alabama.gov/info-training.aspx>.

Information on Amendments to Ethics Act & Gifts to Public Employees. Public employees may not solicit or receive anything for the purpose of corruptly influencing official action, regardless of whether or not the thing solicited or received is a thing of value. Family members of public employees may not receive anything given to them for the purpose of corruptly influencing official action. No public employee shall, other than in the ordinary course of business, solicit a thing of value from a subordinate or person or business with whom he or she directly inspects, regulates, or supervises in his or her official capacity. Excluded from the definition of "thing of value" are meals at educational functions/workshops/widely attended functions or items or services of de minimis value, or meals under \$25 (maximum of \$50 per year).

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 exceptions may be made by the President's Executive Council.

For more information, please visit the following sites:

Alabama Ethics Training Video at:

<http://ethics.alabama.gov/training/Intro.aspx>

State of Alabama Ethics Commission Top Ten List of Ways to Avoid Violating the Alabama Ethics Law:

http://images.pcmac.org/Uploads/BaldwinCounty/BaldwinCounty/Divisions/DocumentsCategories/Documents/Top%20Ten%20List%20in%20Word%20for%20E-Mail%20_2_.pdf

Guidelines for Public Officials and Employees

<http://ethics.alabama.gov/docs/GuidelinesPublicOfficialsEmployees7-2012.pdf>

How to Report Ethical Violations

Employees are encouraged to report all ethical violations or concerns to their immediate supervisor and/or Human Resources.

Hot Topic #3: FERPA

What is FERPA?

FERPA is the Family Educational Rights and Privacy Act of 1974. The essence of FERPA is to give a student the right to inspect his or her education records and to protect the privacy of these records. The statute applies to any educational agency or institution that receives funding under any program administered by the Secretary of Education.

What are educational records?

Education records are defined as records which contain information directly related to a student and are maintained by an educational institution or by a party acting for the institution. Examples are enrollment and grade records, applications for university scholarships, financial aid records, paper files, computer records, photographs and other documents.

Education records do NOT include: sole possession documents (such as personal notes or "memory joggers" created and maintained by individual faculty/staff); law enforcement records; employment records where employment is not tied to student status; medical records; and records containing information about an individual that are created after he/she is no longer a student at that institution (i.e., alumni records).

When do FERPA rights begin?

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.

Student rights under FERPA

Right to inspect/review

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.

Right to challenge the content 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.

Right to file a complaint

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 complaint should be sent to: Family Policy Compliance Office, U.S. Department of Education, 400 Maryland Avenue, SW, Washington, D.C. 20202-5920.

Access to student education records

FERPA protects the privacy of education records. School officials may not disclose personally identifiable information about students or permit inspection of their records without written

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

When can records be released without student consent?

Directory Information may be released without the written consent of the student, unless the student has filed a Request to Withhold Directory Information. An institution may not disclose or confirm directory information without the student's written consent if the student's social security number or other non-directory information is used alone or combined with other data 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:
 - Person employed by the University in an administrative, supervisory, academic or research, or support staff position (including law enforcement unit personnel and health staff);
 - Person or company with whom the University has contracted as its agent to provide a service instead of using University employees or officials (such as an attorney, auditor, or collection agent);
 - Person serving on the Board of Trustees; and/or
 - Student serving on an official committee, such as a disciplinary or grievance committee, or assisting another school official in performing his or her tasks
- In general, a school official has a "legitimate educational interest" if the official needs to review an education record in order to fulfill his or her professional responsibility to the University. Records should be used only in the context of official educational business.
- To another institution to which a student seeks or intends to enroll.
- To federal, state, and local authorities involving an audit or evaluation of compliance with education programs.
- In connection with financial aid (such as the administration or continuation of aid).
- To individuals or organizations conducting studies for or on behalf of an educational institution.

- 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.***

UNA Directory Information

The following items are considered "directory information" at UNA. Directory information may be released without the written consent of the student, unless the student has filed a Request to Withhold Directory Information. An institution may not disclose or confirm directory information without the student's written consent if the student's social security number or other non-directory information is used alone or combined with other data elements to identify the student.

1. Name
2. Permanent and local addresses
3. Telephone listing
4. Major fields of study
5. Dates of attendance at UNA
6. Degrees and awards received
7. High school and other colleges and universities attended
8. Participation in officially recognized organizations, activities and sports
9. Weight and height of members of athletic teams
10. Photographs
11. E-mail addresses

Restricting the release of directory information

Students may complete and submit to the Office of the Registrar a Request to Withhold Directory Information. Such a hold is called a confidentiality indicator. Students should consider all aspects of a directory information hold prior to filing such a request. This request will prevent UNA from releasing any directory information, and any requests for such information from non-institutional

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.

Location of education records

The Office of the Registrar is the official office of the University for maintaining and releasing information pertaining to students' academic records. Additional academic records exist in other campus offices, such as college advising offices, faculty offices, Student Affairs, Financial Aid, etc.

Parental access to student education records

At the elementary and secondary school level, FERPA gives parents the right to access education records. When a student reaches 18 years of age or is attending an institution of post-secondary education, FERPA rights transfer from parent to student. Therefore, at the postsecondary level, parents have no inherent rights to inspect their son's or daughter's education records.

Information regarding education records is best obtained by direct communication between the parent and the student. If desired, students can obtain grades, class schedule, billing, and other information online and provide a copy to their parents. Students may review their personal record by logging in to their portal account. Students may consent to release their education records to parents, legal guardians, or other individuals by completing the Student Release of Information form, https://www.una.edu/education/docs-forms/form_FERPA.pdf. Such consent should be given in a non-coercive environment. The Student Release of Information form is used on a case by case basis for each request.

Parents of a dependent student may challenge denial of access to educational records by providing to the Registrar's Office evidence that they declare the student as a dependent on their most recent Federal Income Tax form (Form 1040).

FERPA grants current and former students the right to access their own educational records, while limiting, for privacy reasons, the release of those same records to anyone other than the student and/or their designee

Additional information is available at the web page of the Family Policy Compliance Office (FPCO) of the U.S. Department of Education, which is the federal agency charged with enforcing FERPA. <http://www.ed.gov/policy/gen/guid/fpc/index.html>

When it comes to requests for information, when in doubt, do not give out!

Hot Topic #4: Copyright & Fair Use

Copyright: Pursuant to Federal law, for a limited period of time, the owner of a copyright has the exclusive right to reproduce a protected work; to prepare derivative works that only slightly change the protected work; to sell or lend copies of the protected work to the public; to perform protected works in public for profit; and to display copyrighted works publicly (including via the Web). The term "work" used in copyright law refers to any original creation of authorship produced in a tangible medium

Permission to Use Copyrighted Works

- Individual faculty members are responsible for adhering to standard copyright laws and policies.
- Written consent from the copyright owner is required in order to use or serve copyrighted works. Documentation of consent must be kept in your records and made available to University officials upon request

The Fair Use "Exception" to Consent

- Fair use is a subsection of U.S. copyright laws that allows for the use of a portion of copyrighted material in a way that does not infringe the owner's rights without the need to obtain written consent from the copyright owner.
- Four factors must be considered when determining whether one's use is considered fair use:
 1. The purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
 2. The nature of the copyrighted work;
 3. The amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
 4. The effect of the use upon the potential market for, or value of the copyrighted work.

UNA Copyright and Fair Use – Links & Resources

<https://www.una.edu/library/copyright-information.html>

Hot Topic #5: ADA

Accommodation of Disability

Some faculty may be inclined to have a natural suspicion of students claiming disability. However, do not ignore the obvious disability or claims of disability. Faculty should work with the Office of Disability Support Services to verify the disability and need for accommodation.

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 their K-12 school years are surprised and dismayed at the differences in services between ADAAA and IDEA. Primarily, the responsibility is on the student to request what they need, etc.
- To successfully defend against a claim of discrimination, we must be able to demonstrate that the university gave careful consideration to the disability and reached decision on academic grounds.
- Faculty are not required to change academic criteria; may need to change format of tests, provide extra time, provide readers or aides, change minor aspects of course requirements.
- Faculty are not required to lower or effect substantial modifications of standards to accommodate students.
- Students with disabilities are held to the same standard of conduct as all other students. If the disability directly impacts the student's ability, a case by case assessment should be made.

Note: Congress says that we are spending too much time trying to figure out if something is a disability and not enough time accommodating the individual.

Reasonable Accommodations in Higher Ed include:

- Accommodations both inside and outside the classroom
- Additional time to take exams, complete assignments, finish courses, and/or complete degree requirements
- Course substitutions
- Enlarged fonts/Braille
- Tape recorders
- Guide dogs
- Translators
- Note takers
- Sign language interpreter

- Readers

Reasonable Accommodations in Higher Ed do not include:

- Disabilities which the school has no knowledge or is unsupported by factual documentation
- Retroactive accommodation of extra time
- Excusing conduct issues when based on behavior rather than disability
- Accommodating current drug and/or alcohol use
- Excusing plagiarism despite contention that learning disability prevented student from mastering skill
- Accommodations for an unlimited period of time
- Attendants, individually prescribed devices, readers for personal use or study, or other devices or services of a personal nature
- Extra time for a group project if one of the members is entitled to extra time

Tip: Do not try to make an accommodation decision on your own. Seek advice and assistance from the student affairs officer, disability compliance officer and/or the General Counsel.

Hot Topic #6: Title IX

What does Title IX mean?

- Universities must make every effort to prevent hostile environments on the basis of sex, prohibit sexual harassment and sexual violence, protect from retaliation and remedy the effects of other gender-based forms of discrimination.
- Bans discrimination on the basis of sex in programs or activities in any federally funded educational activity or program (fair and equitable)
- Applies to all faculty, staff, students and third parties (i.e. vendors on campus)

Title IX address . . .

- Sexual violence: rape, sexual assault, sexual battery, sexual abuse
- Sexual harassment
- Domestic and intimate partner violence
- Stalking
- Gender-based discrimination
- Discrimination against pregnant and parenting students (UNA must excuse absences due to pregnancy or childbirth for as long as the doctor says it is necessary. All professors are required to give a reasonable amount of time, after the conclusion of those absences, to make up the work missed)
- Gender based bullying and hazing

Mandatory reporters

- Faculty are mandatory reporters (must report see above)
- Must report to the Title IX Coordinator all incidents within 24 hours of hearing/learning the information
- University is considered on notice when employees (including faculty) receive/learn the information
- Applies to adjunct professors as well

UNA's responsibilities:

- Take immediate and appropriate steps to investigate
- Take prompt action to end the sexual violence and eliminate hostile environment
- Remedy effects on victim and community
- Protect complainant from hostile environment and retaliation
- Ensure complainant is aware of resources both on campus and in community
- As employees, your main responsibility is to report any disclosure of an incident to the Title IX Coordinator

Formal Reporting

- Title IX Coordinator
- Office of Student Conduct
- University Police
- Deputy Title IX Coordinators
- NOTE: Faculty and staff are required by federal law to report any observations of harassment (including online harassment) as well as any notice given by students or colleagues of any of the behaviors explained earlier

Confidential Reporting

- Those who wish to seek confidential resources without University action may contact the following:
 - Student Counseling Services
 - University Health Services
 - Women's Center
 - Safe Place (domestic violence)
 - Rape Response
 - All of the above-listed individuals will maintain confidentiality except in extreme cases of immediacy of threat or danger or abuse of a minor.

Local Reporting

One Place of the Shoals (One stop shop location to meet with a counselor, seek legal counsel, determine legal action options, or it can remain confidential)

Investigation Process

- Determine remedies throughout the process
- Two investigators assigned to the case
- Meet with complainant, respondent and any witnesses as necessary
- Complainant can choose to participate to the level he/she is comfortable with, but it may limit investigation process
- Use preponderance of evidence as standard of proof
- Determine outcome
- Sanctions

Who is the Title IX Coordinator?

- Tammy Jacques-responsible for all UNA Title IX Compliance
- Title IX Deputy Coordinators
 - Catherine White, Human Resources
 - Debbie Williams, Athletics
 - Dr. Kimberly Greenway, Student Conduct
- www.una.edu/titleix
- www.una.edu/police

What happens if I don't report

- Your non-reporting will put UNA in noncompliance with Title IX (which could ultimately cost UNA its federal funding from the US-DOE)
- You could be subjecting a student to an unsafe learning environment
- You could subject UNA to major legal liability
- You could face possible employment sanctions
- You could also be personally subject to legal action for failure to report such conduct against a minor.
- Every report of title IX violation must be taken seriously, and reported immediately to stop the unwanted behavior and prevent further unwanted behavior and mitigate potential claims

Consequences for the University:

- Time spent responding to the complaint, investigators and attorneys
- Costs that may be substantial, including back pay, lost benefits, attorney's fees and expert witness fees
- Compensatory and punitive damages

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 or sexual relationships between individuals, the University has adopted a consensual relationship policy to avoid the potential for harm when there is power difference between the parties involved and to protect individuals from the type of injury that either a subordinate or superior individual to such relationship can incur, to protect the integrity of the learning and work environment and evaluation process, and to provide information and guidance to members of the University community. This Policy addresses consensual relations only.

UNA's Consensual Relationship Policy can be found here:

<https://www.una.edu/employee-policy-manual/policies/consensual-relationships-policy.html>

Hot Topic #8: CARE Team

The CARE Team at the University of North Alabama is the **C**ampus **A**ssistance, **R**eferral and **E**valuation Team. The CARE Team was created in response to growing concerns and increased awareness on college and university campuses regarding students' emotional well-being, safety and other obstacles to academic success.

The CARE Team's purpose is to enable the University to provide early intervention and support to students who display varying levels of distressed behavior. Early response to the needs of students who may be at-risk and/or in-crisis and then providing appropriate assistance can prevent an escalation of the situation and retain the success of the student as well as keep the student and campus community safe.

Please be aware that this work relies on referrals from the entire campus community and can only be effective with your support. Be assured that the CARE Team observes [FERPA](#) restrictions, adhering to more stringent [HIPAA](#) requirements, to protect student privacy.

If you observe behavior that is of concern, please take action to get help for the student by referring the student to the CARE Team or other resource service.

More information on UNA's CARE Team can be found here:

<https://www.una.edu/studentaffairs/care-team/index.html>

Hot Topic #8: Social Media

The Risks of (Cyber) Friendship

- Title IX/VAWA
- Violation of University Policy (most likely Employee Policy Manual and Handbook or Faculty Handbook)
- What to like?
- What does it mean to like?
- Not like?
- Thumbs up to photo at the beach- what does that mean?
- The appearance of impropriety
- The Legal Perils of Too Much Information
 - Discrimination claims (e.g. would a faculty member interact differently with a student whom he/she knows is a registered sex offender? Or react differently towards a student who has engaged in a rally against gay marriage?)
 - Privacy Claims (e.g. if an institution takes action against a student using information which the student believes should have been private or confidential, the student might allege violation of his or her rights to privacy via Fourth and Fourteenth Amendment)
 - Free Speech Claims (e.g. Valdosta State University student sued university after being expelled on the basis of a collage he posted on Facebook)
 - Due Process Claims (e.g. A community college expelled a nursing student for posting on Facebook a picture of herself and other students holding a human placenta in a class laboratory session)

What does the AAUP say?

The Report on Academic Freedom and Electronic Communications (2014)

- Friending is ok
 - All subsequent contacts might be appropriate
- Policies aimed at restricting this is problematic to AAUP
 - University of Kansas policy, for example

Best Practices

- Maintain both a professional and personal page/site. Use the professional page while interacting with students
- Be professional in all Internet conduct. Remember, you represent UNA at all times. Be honest, ethical, accepting, and mindful.
- Use good judgment with all posts and interactions. Do not say anything that you would not say or do in front of a classroom of students.
- Do not actively seek out and request your students to be “friends” or followers on any site. Let them find you and request you.

- Do not interact with current students on social media. However, if this is necessary for student engagement and/or classroom content then do so by following appropriate practices (listed above and below). Social media can be a great tool for connecting prospective, current and former students and/or helping students to network in their fields.
- Have an open door policy with accepting students on social media platforms. Do not engage in “favoritism”, and add any students and/or accept requests consistently.
- Do not use social media sites as replacements for email communication. Many interactions between students and faculty/staff warrant email discussions and should be completed using your university email address.
- Do not post confidential classroom information (grades, student conduct issues, etc.) on social media sites.
- Be friendly and encouraging when students interact with you through social media. Keep in mind that things such as tone, sarcasm, intent, etc. get lost in translation.
- Remember, engaging with students in a more informal setting such as through social media often promotes better student engagement, motivation, and connectedness between faculty/staff and students. However, you are NOT their friend. Behaviors and interactions should comply with all University policy.

Tips

#1 Find the rules and follow them

- Most successful lawsuits allege that we failed to follow our own rules and policies
- Where are the rules?
 - State and federal laws and regulations
 - Ethics Commission
 - Board policies
 - University Policy and Procedure
 - Faculty, staff and student handbooks
 - Department Policies

#2 The modified Miranda Warning

- Everything that you say (and write) can (and will) be used against you (in and out of) a court of law
- Anything you put in writing has the potential (usually very highly likely) to fall into the wrong hands.
- UNA employee emails are subject to disclosure under the Alabama Open Records Act

#3 Learn to Issue Spot

Familiarize yourself with hot issues:

- Discrimination and/or harassment

- 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