

Away at College: Young, Drunk, and Busted
College and University Parental Notification Policies

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Abstract

Alcohol has been, and continues to be, a huge problem on college campuses across the United States. Congress tried to help alleviate the problem in 1998 by amending FERPA to allow for parental notification of alcohol violations by underage students. Many schools chose to implement the policies shortly after the amendment, while others have taken their time. This article will focus on the use and construction parental notification policies, especially the new policy at the University of Georgia that goes into effect in July 2005.

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INTRODUCTION

It is August in Athens, Georgia; Madison, Wisconsin; State College, Pennsylvania; Oxford, Mississippi; or any other college town in the United States. John is a new freshman and decides that tonight would be a good night to have a few drinks in the dormitory before he and Buddy go out on the town. The resident advisor gets some complaints of loud and rowdy behavior coming from John’s room and goes to check it out.

A few drinks turns into a twelve-pack and John and Buddy are inebriated. There is quite a bit of damage to the room. John hears a knock at the door and sobers up quickly when he realizes it is the resident advisor. Tons of thoughts are running through his mind: Dad will take the car away from me; I will have to move back home and attend community college; I will have a curfew for the rest of his life.

Then, John remembers a story that one of his sophomore friends had told him. His friend said that his Mom called the school one day to check on his financial aid status and to see how he was doing in his classes. The school would not disclose any information. They told her

something about his friend being an adult student and they would need his consent before they could disclose any information. John tells Buddy not to worry—their parents will never hear about this.

Is John right? Will the school be able to disclose this to his parents? Sadly for John, many colleges and universities have adopted or are adopting parental notification policies. Is this an appropriate method of policing and deterring irresponsible behavior by students under the age of twenty-one?

FERPA AND FPCO GENERALLY

In order to fully understand the effect of the Family Educational Rights and Privacy Act (FERPA) on alcohol and drug violations, FERPA as a whole must be investigated. Congress passed the Family Educational Rights and Privacy Act of 1974 to protect the privacy of student education records.¹ The U.S. Department of Education implements FERPA through its Family Policy Compliance Office (FPCO).²

FERPA is a spending clause statute that grants certain basic rights to the parents of students. First, FERPA gives parents the right to access the student's records³ and in the event that they are incorrect the parent has the right to correct the records.⁴ One of the most important components of FERPA is the clause that restricts the release of students' education records without the consent of the parents.⁵ Generally the rights under FERPA belong to the parent of the student until the child has reached the age of eighteen or is "attending an institution of postsecondary education."⁶

¹ Family Educational Rights and Privacy Act (FERPA) of 1974, 20 U.S.C. § 1232g (2005). FERPA is also known as the Buckley Amendment or Buckley/Pell Amendment.

² "The mission of the FPCO is to meet the needs of the Department's primary customers—learners of all ages—by effectively implementing two laws that seek to ensure student and parental rights in education: the Family Educational Rights and Privacy Act (FERPA) and the Protection of Pupil Rights Amendment (PPRA)." Family Policy Compliance Office; About the Family Policy Compliance Office, *available at* <http://www.ed.gov/policy/gen/guid/fpc/index.html> (last viewed April 26, 2005).

This article will focus only on the aspects of FERPA, specifically the portion regarding parental notification of alcohol violations.

³ § 1232g(a)(1)

⁴ § 1232g(a)(2)

⁵ § 1232g(b)(2)

⁶ § 1232g(d)

Exactly what records are covered by FERPA? FERPA defines “education records” as “records, files, documents, and other materials which—(i) contain information directly related to a student; and (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.”⁷ This is a broad definition.

The definition above obviously includes academic records, but it also encompasses much more than that. Psychological evaluations of students have been held to be educational records under FERPA.⁸ Videotapes of a teacher’s classroom are considered educational records.⁹

Disciplinary Records

Student disciplinary records are also education records according to *U.S. v. Miami University*.¹⁰ In *Miami*, the Sixth Circuit affirmed the District Court’s conclusion that “the student disciplinary records of Defendants Ohio State University and Miami University are education records as defined in FERPA, 20 U.S.C. § 1232g(a)(4)(A).”¹¹ The facts giving rise to *Miami* began with the student newspaper requesting records of the University’s student disciplinary proceedings, which the University denied.¹² The newspaper then requested the records under the Ohio Public Records Act and the University released some redacted records.¹³ The Ohio Supreme Court ultimately compelled Miami University to release the records saying that student disciplinary records are not “education records” under FERPA.¹⁴

When Miami University was denied certiorari by the United States Supreme Court,¹⁵ it released the disciplinary records with only the social security numbers redacted.¹⁶ The

⁷ § 1232g(a)(4)(A)

⁸ See *Parents Against Abuse in Sch. v. Williamsport Area Sch. Dist.*, 594 A2d 796 (Pa. Commw. Ct. 1991).

⁹ See *Medley v. Bd. of Educ., Shelby County*, 2004 WL 2367229 (Ky. Ct. App. 2004).

¹⁰ *U.S. v. Miami Univ.*, 294 F.3d 797 (6th Cir. 2002).

¹¹ *U.S. v. Miami Univ.*, 91 F. Supp. 2d 1132, 1160 (S.D. Ohio 2000).

¹² *Id.* at 1135.

¹³ “Relying on FERPA, it deleted the name, sex and age of the accused students, as well as the date, time and location of the incidents giving rise to the disciplinary charges.” *Id.*

¹⁴ *Miami Student v. Miami Univ.*, 680 N.E.2d 956, 959 (Ohio 1997). The Ohio Supreme Court based its decision on the reasoning of the Georgia Supreme Court in *Red & Black Publ’g Co. v. Bd. of Regents*, 427 S.E. 2d 257 (Ga. 1993).

¹⁵ *Miami Univ. v. The Miami Student*, 522 U.S. 1022 (1997) (*Cert. denied*).

¹⁶ *Miami*, 91 F. Supp. 2d 1132, 1136.

Department of Education filed a motion for preliminary injunction to block the release of such records which was granted.¹⁷

On appeal, the Sixth Circuit reasoned that “Congress places the privacy interests of students and parents above the federal government’s interest in obtaining necessary data and records.”¹⁸ Although it has been held that student disciplinary records are “education records” and therefore protected by FERPA, there are, as with almost every statute, exceptions.

Exceptions

There are records that can be released without prior consent. Some of these exceptions are obvious for several reasons. For instance, disclosure to an institution where the student is trying to enroll does not require prior disclosure.¹⁹ Also, if the disclosure is in connection with financial aid that the student has applied for or has received, there is no need to prior consent.²⁰ Both of these exceptions make sense. If the student is applying to another school or applying for financial aid, then he must have already provided personal information on those applications. His intent to apply for the school or financial aid acts as a waiver of his right to privacy in this circumstance. However, there are some exceptions that cannot be rationalized with this type of analysis.

Parental Notification Exception

One such exception is the alcohol exception. In 1998, Congress amended FERPA to add a section on “drug and alcohol violation disclosures.”²¹ This section is also noted in the Code

¹⁷ *Id.*

¹⁸ *Miami*, 294 F.3d 797, 807.

¹⁹ 34 C.F.R. § 99.31(a)(2) (2005).

²⁰ 34 C.F.R. § 99.31(a)(4) (2005).

²¹ (i) Drug and alcohol violation disclosures.

(1) In general. Nothing in this 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 of a student, information regarding any violations 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 student’s 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.

(2) State law regarding disclosure. Nothing in paragraph (1) shall be construed to supersede any provision of State law that prohibits an institution of higher education from making the disclosure described in subsection (a).

20 U.S.C. § 1232g(i) (2005).

of Federal Regulations.²² There is not a good argument that the student has waived his right of privacy in this context. This seems to be a paternalistic move by Congress to combat the widespread problem of alcohol on college campuses. Is this a proper use of Congress authority though?²³

ALCOHOL ON COLLEGE CAMPUSES

Almost everyone who went to college has a story about one night where he, his roommate, or friend had one too many drinks. These stories usually don't have pretty endings as someone usually ends up cleaning up and taking care of someone else. It is not just this generation of college students, either. If a student were to talk to his parents or even professors, he would hear familiar stories. Even though the age of majority is generally eighteen, a person must be twenty-one years of age in order to purchase or consume an alcoholic beverage.²⁴

The author's first dormitory at Georgia Southern University—a first tier party school in and of itself—was an “alcohol-free” residence hall. The catch was that the resident advisors were not allowed to move anything when they inspected a room. They only could look at what was in plain view. In the rooms, there were mini-fridges and closets that anyone could keep his alcohol in. This was common knowledge and was in fact passed on to many freshmen by some resident advisors. The question then became how to procure the alcohol.

It is relatively simple for underage students to acquire alcohol. A friend can purchase the drinks and pass them on to the minor, or the minor can use fake identification. Whether in a bar or at a liquor store, fake identification use is rampant.²⁵ In fact many freshmen consider it a priority to obtain a fake ID once they arrive on campus. The author once had a roommate who made from \$200 to \$300 per week making fake licenses for freshmen during the fall semester.

²² See 34 C.F.R. § 99.31 (a)(15) (2005).

²³ There is little to no litigation challenging parental notification policies. Therefore, this article will focus more on the contents of certain policies, whether this is an appropriate sanction for universities to place on its adult students, and why certain universities have not adopted a policy as quickly as others.

²⁴ See National Minimum Drinking Age Act 23 U.S.C. § 158 (2005) (authorizing the federal government to withhold transportation funds for any state with a minimum drinking age of less than twenty-one).

²⁵ A small study of Columbia University freshmen living in dorms showed that 70% of them owned fake identification. See W1111 Statistics Projected, available at <http://www.columbia.edu/itc/statistics/w1111/maintext/fakeid.html> (last visited April 26, 2005).

It is almost a rite of passage to imbibe at college. Movies such as *Animal House*²⁶ and *Old School*²⁷ show just how commonplace alcohol is on college campuses. Surprisingly to some, these movies are not much of an exaggeration. Most young students are away from home for the first time in their lives. Their parents are not there to set a curfew or smell their breath when they get home. Students take this as an invitation to lose control.²⁸

Aside from the embarrassment that generally comes with drinking too much, it can become dangerous. One official from the University of Delaware aptly described the effect of alcohol on campus life as the three Vs: vandalism, violence and vomit.²⁹ Many college bars are the scenes of arrests, fights, injuries and in some cases death.

The National Institute on Alcohol Abuse and Alcoholism (NIAAA) reports that 1,400 college students between the age of 18 and 24 die each year from alcohol-related injuries including automobile crashes; 500,000 students suffer unintentional alcohol-related injuries per year; 600,000 students have been assaulted by a student who has been drinking; 70,000 college students per year are victims of sexual assault; more than 100,000 college students per year have been too intoxicated to know if they consented to sex.³⁰ In addition to these staggering numbers, excessive alcohol use is a large factor in suicide attempts by students, academic failures, vandalism, and property damage on campus.³¹ From these numbers, it is easy to see that the person doing the drinking is not the only one at risk.

Although any amount of alcohol can result in these problems, usually excessive drinking, known as binge drinking, is to blame.³² Many people in college towns are considered binge

²⁶ *National Lampoon's Animal House* (Universal Studios, 1978).

²⁷ *Old School* (DreamWorks Pictures, 2003).

²⁸ One only need to walk through downtown Athens, Georgia, shortly after midnight any night during the first few weeks of fall semester or walk through campus before the first football game to see numerous new freshman celebrating this newfound freedom.

²⁹ James C. Garland, *Should Mom and Dad Be Told About Underage Drinking?*, Higher Education Center: Miami University, available at <http://www.edc.org/hec/parents/miamiuniv.html> (last updated October 14, 1999).

³⁰ See College students: Alcohol Facts at College Drinking Just the Facts, available at <http://www.collegedrinkingprevention.gov/students/alcoholfacts/> (last viewed April 26, 2005).

³¹ *Id.*

³² "On February 5, 2004, the NIAA National Advisory Council approved the following definition/statement:

A "binge" is a pattern of drinking alcohol that brings blood alcohol concentration (BAC) to 0.08 gram percent or above. For the typical adult, this pattern corresponds to consuming 5 or more drinks (male), or 4 or more drinks (female), in about 2 hours. Binge drinking is clearly dangerous for the drinker and for society."

drinkers. One of the reasons for this is that the bars and restaurants in college towns are known for their drink specials. “Happy Hour,” “Ladies Night,” and “Two-for-One Special” are all commonly seen signs around a college town.³³

It is clear that alcohol is a problem for many underage students. There are many different ways that colleges and universities have attempted to alleviate the problem including: education, early intervention, treatment, health protection and promotion, and environmental management.³⁴ Included in these various methods of policing the problem is a parental notification policy that was made available by FERPA³⁵ and has been implemented by many colleges and universities.

UNIVERSITIES WITH PARENTAL NOTIFICATION

The University of Delaware, under president David Roselle, was the first college to implement a parental notification policy in the early 1990s.³⁶ At that time FERPA was not yet amended to add the parental notification clause. Roselle says that even though many presidents hid behind FERPA as an excuse for not telling the parents, the parents are the key in stopping alcohol abuse: “Parents have the checkbook, car keys, and the inheritance.”³⁷ With this much influence over their children, it makes sense that the parents are in a good position to apply pressure to stop the abuse of alcohol.

There is another reason that many colleges support the parental notification policies. Roselle explains that having the policy in place keeps a president from ever having to tell a parent, “We knew there was a problem but we didn’t tell you.”³⁸ Although there is no doubt that many college presidents are adamant about curtailing the alcohol problem on their campuses due

The report defines a “drink” as half an ounce of alcohol which corresponds to one 12-ounce beer, one 5-ounce glass of wine, or one 1.5-ounce shot of distilled spirits.

Binge Drinking Defined, NIAA Newsletter Winter 2004 Number 3, available at <http://www.svsu.edu/emplibary/Binge%20Drinking%20Defined.pdf> (last viewed April 26, 2005).

³³ In Athens, Georgia, many bars are one crosswalk away from the campus. Happy Hour at many of these bars runs from 4:00 to 7:00 p.m. which corresponds with the time that many students are getting out of class.

³⁴ See *What Campuses and Communities Are Doing*, Higher Education Center, available at <http://www.edc.org/hec/ideasamplers/> (last updated October 6, 2004).

³⁵ § 1232g(i) *supra* at note 21.

³⁶ See Jean Marie Angelo, *The Wasted Years*, University Business, available at <http://www.universitybusiness.com/page.cfm?p=549> (June 1, 2004).

³⁷ *Id.*

³⁸ *Id.*

to concerns for the safety of the students, many of their lawyers and insurers have an interest in preventing liability.³⁹

The three V's: violence, vandalism, and vomiting⁴⁰ are all important to university and college presidents and they would like to prevent all of them. However, when things go too far the violence gets more violent, the vandalism becomes directed at people instead of property and the vomiting becomes serious injury and death.

In a recent 2004 Associated Press article four recent alcohol-related deaths were mentioned, and three of the four occurred in fraternity houses or as a part of fraternity sponsored activities.⁴¹ These student organizations are clearly part of the college and university life. In many locations, the houses are on campus and the college actually owns them.⁴² Just recently, Colgate University, where forty percent of its students are in a fraternity or sorority, announced a plan to force all Greek organizations to sell their houses to the school.⁴³ This move was made by Colgate after a fraternity served drinks to the driver in a drunk-driving accident that claimed the life of four individuals in 2001.⁴⁴

The problem is that in a university that is much bigger than Colgate, a smaller percentage of students will be in the Greek system. Something else has to be done to regulate students and their alcohol use. That is why many colleges are turning to parental notification policies.⁴⁵

FERPA gives colleges and universities the ability to notify a parent by wording the statute to say that "nothing in this Act...shall be construed to prohibit an institution of higher education

³⁹ Janice M. Abraham, president and CEO of United Educators Insurance, asks, "Which case would you rather defend—one of privacy violation or one of wrongful death?" Sara Lipka, *Retaliation Claims Against Colleges Are on the Rise, Insurance Expert Says*, *The Chronicle of Higher Education*, February 25, 2005, at 26.

⁴⁰ See Garland, *supra* at note 29.

⁴¹ To get a further view of the effect of binge drinking, the article goes on to say that Samantha Spady died after consuming forty drinks; Lynn Gordon Bailey, Jr. died after he was forced to drink "several" bottles of whiskey. Blake Hammontree was found dead with a blood-alcohol content (BAC) of more than five times the legal limit; and Bradley Barrett Kemp had at least a dozen beers along with "possibly" other drugs prior to his death. See Associated Press, *College Students Drinking Themselves to Death*, (November 8, 2004) available at <http://msnbc.msn.com/id/6437176/>.

⁴² As the author worked his way through his undergraduate degree as a title abstractor in Statesboro, Georgia, he discovered that Georgia Southern University actually held title to several of the houses on the new "Greek Row" and would lease them for a nominal consideration.

⁴³ Associated Press, *Colgate University buying Greek Houses*, CNN.com Education, (April 12, 2005), available at <http://www.cnn.com/2005/EDUCATION/04/12/colgate.greeks.ap/index.html>.

⁴⁴ *Id.*

⁴⁵ Keep in mind that because they are student organizations, Greeks, as well as any other student organizations, are covered by universities' alcohol policies and therefore subject to parental notification under § 1232g(i).

from disclosing..."⁴⁶ This gives the colleges and universities the choice of instituting a policy, but it does not require it.

It is interesting that the statute seems to allow disclosure of virtually any information where the student has violated Federal, State or local law or school policy governing the use or possession of alcohol "if the institution determines that the student has committed a disciplinary violation with respect to such use or possession."⁴⁷ The student also must be under the age of twenty-one for this provision to be applicable.⁴⁸ This could pose some interesting questions that school might consider and we will consider them when we look at the policy as enacted at various institutions.

For instance, assume that an underage student gets arrested for public drunkenness off campus one night and must spend the night in jail. A law has been broken which would satisfy 20 U.S.C. § 1232g(i)(1).⁴⁹ The student is underage, so 20 U.S.C. § 1232g(i)(1)(A)⁵⁰ is satisfied. What about subsection (B)⁵¹ of this provision? Would it be satisfied?

FERPA lists some definitions in 20 U.S.C. § 1232g, but "disciplinary violation" is not defined. Can the school consider this a disciplinary violation? It doesn't seem that it could be in this case. However, assume that the student misses his eight o'clock class the next morning because he is still in the holding cell at the jail. Assume that the school has a strict rule that there can be no unexcused absences. Is this now a disciplinary violation? It seems like it might be getting closer to a violation now.

What if the school, like almost all schools, has an attendance policy that allows up to six absences per semester and this just happens to be the seventh absence for the student in question? Now it looks like we have a disciplinary violation and the parents could be notified.⁵²

⁴⁶ 1232g(i)(1) *supra* at note 21.

⁴⁷ § 1232g(i)(1)(B) *supra* at note 21.

⁴⁸ § 1232g(i)(1)(A) *supra* at note 21.

⁴⁹ *Supra* at note 21.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² As an aside from this hypothetical, consider the parental notification adopted by the University of California at Santa Barbara in 2002. Most of its alcohol-related problems were coming from off-campus residents. To complicate matters for the administration, California has its own student privacy laws so there could not be a blanket parental notification policy. So, instead of initiating the standard policy, staffers in the Dean of Students' office comb the police reports from Isla

UNIVERSITY OF GEORGIA

The University of Georgia (UGA) is the flagship institution in the state of Georgia. With over 30,000 students, a top ten football team, a thriving Greek system and the campus being right near downtown Athens, UGA has been tabbed as a party school by many.⁵³ This is, not surprisingly, seen as a problem by many people close to the University.

Because of its size and power in the state of Georgia, UGA is usually a leader when it comes to policy decisions. However, with regards to a parental notification policy, UGA was not a leader. In 2002, UGA first considered whether to introduce a parental notification policy, and the administrators ultimately decided that a policy would not be adopted at that time. In fact, Richard C. Mullendore, who was Vice President for Student Affairs at the time, was adamant that UGA students were adults: "...students are adults, and we treat them that way. What happens to them on campus is their business."⁵⁴

Three years later, in February 2005, the parental notification policy was finally adopted by UGA.⁵⁵ The contents of the policy will be investigated further infra, however it is interesting to focus on policy reasons that the administration did an about-face after the 2002 decision to not adopt the policy. What are the reasons that might explain this change of stance?

First, it is important to note that Richard C. Mullendore is no longer the VP of Student Affairs.⁵⁶ Mullendore was so adamant about students being adults in 2002, that he was not open to the idea of notifying parents about their misbehaving children. Since Mullendore is no longer in that position, it was easier to push the policy through the appropriate channels.

Vista—where most of the students live. If they find an incident of drunkenness or vandalism they report this to the student's parents. In 2002, UCSB sent 327 letters to parents. The dean says that most parents called to thank UCSB for the notification.

See Angelo, *supra* at note 36.

⁵³ UGA is ranked as the number eight party school in the nation in the latest rankings by The Princeton Review. The ranking is a product of survey questions regarding alcohol use, number of hours of studying per day and the popularity of the Greek system.

See *Best 357 College Rankings: Parties*, The Princeton Review, available at <http://www.princetonreview.com/college/research/rankings/rankingDetails.asp?requireReg=1&CategoryID=4&TopicID=26> (last viewed April 26, 2005).

⁵⁴ Rebecca McCarthy, *UGA tables drug, alcohol notification*, The Atlanta Journal-Constitution via NASPA's NetResults, (November 11, 2002), available at <http://naspa.org/netresults/PrinterFriendly.cfm?ID=833>.

⁵⁵ See Jennifer Moore, *UGA to notify parents in alcohol cases*, Athens Banner Herald, (February 4, 2005), available at http://onlineathens.com/stories/020405/uga_20050204057.shtml.

⁵⁶ The current interim VP and Dean of Students is Rodney D. Bennett. See *Guide to Student Affairs*, UGA Student Handbook, available at <http://www.uga.edu/stuact/handbook/stuaffairs/ndex.html> (last viewed April 26, 2005).

Second, UGA had to realize that there are fewer and fewer colleges and universities deciding not to implement a parental notification policy—especially in the region. In the state of Georgia, UGA is the largest institution—with Georgia State University, Georgia Institute of Technology, and Georgia Southern University being the next largest schools.

Georgia State does not have an explicit parental notification policy,⁵⁷ but it does note that it has the right to notify parents.⁵⁸ This is not too terribly surprising when one considers that the vast majority of students at Georgia State, because of its location in downtown Atlanta, do not live on campus. There is really no room for dorms and on campus living, since the city has engulfed the college.

Georgia Tech adopted a parental notification policy in the fall of 2000,⁵⁹ and Georgia Southern University adopted its parental notification policy in the Spring Semester of 2001.⁶⁰ These two institutions had adopted policies more than four years prior to UGA.

While UGA is in the same state as these institutions, it does not have many other similarities. UGA is a large research institution that is the flagship university of its state. In a personal interview with Jason C. Lane, Assistant Director UGA Office of Legal Affairs, he stated that his research concerning the adoption of the parental notification policy included looking at the policies that both the University of Florida and the University of Virginia had adopted.⁶¹ These universities are more similar to the University of Georgia in size and resources. Also, Gainesville, Florida, and Charlottesville, Virginia, are more similar to Athens, Georgia, than Atlanta is.⁶² Thus,

⁵⁷ See Georgia State University Dean of Students Office: Alcohol Policy, *available at* http://www2.gsu.edu/~wwwdos/codeofconduct_adminpol_c.html (last viewed April 26, 2005).

⁵⁸ Linked to the Office of Legal Affairs' website (Miscellaneous Higher Education: Office of Legal Affairs, *available at* http://www2.gsu.edu/~wwwola/legal_resource/miscellaneous.html) is a link for Parental Notification Brochure. This link leads to an outside source. Security on Campus, Inc. Parental Notification Information Brochure, *available at* <http://www.securityoncampus.org/parents/brochure.html> (last viewed April 26, 2005) (calling for parents to exercise their rights and call school administrators to request that they stay informed of issues affecting their children's health and safety).

⁵⁹ See McCarthy, *supra* at note 54.

⁶⁰ See Georgia Southern University Student Guide; 2004 – 2005 Code of Conduct, University Policies & Procedures at 8, *available at* <http://students.georgiasouthern.edu/sta/guide/05GuideWeb.pdf> (last viewed April 26, 2005).

⁶¹ Interview with Jason C. Lane, Assistant Director, University of Georgia Office of Legal Affairs, in Athens, Georgia (April 19, 2005).

⁶² College towns are unique in their own way. Atlanta, home to Georgia State and Georgia Tech, will never be confused with a college town, such as Athens, Georgia.

it makes sense to compare UGA with similar universities like the University of Florida and the University of Virginia.

Parental Notification Policy at UGA

President Michael Adams decided that UGA needed to address the issue of alcohol use and abuse on campus. In January 2005, Adams addressed the issue in his State of the University address saying, "I am not a fan, and do not intend to become one, of a place with multiple weeknight party invitations, alcohol use during the school week and Friday morning absences from class."⁶³ Adams went on to say that the problem of weeknight drinking needed to be addressed.⁶⁴

Shortly after this speech, the parental notification policy at UGA was adopted February 4, 2005.⁶⁵ However, tracking down an actual copy of the policy was an adventure in and of itself. The University's alcohol policy is published on its website,⁶⁶ however finding the parental notification policy was not so easy. First, I contacted the Office of Judicial Programs, who will administer the policy.⁶⁷ I was told that they had written the first draft and from there it was sent to the President's office. The Office of Judicial Programs told me that some changes were made prior to the adoption of the final draft in February. I went to the President's office and inquired about the final draft. The President's office seemed stumped by my request. They contacted the Vice President and Dean of Students' office. That office told the President's office to call the Office of Legal Affairs. I was then directed to the Office of Legal Affairs. Once I arrived at that office, I met with Jason Lane.⁶⁸

Mr. Lane was very helpful. However, even he was somewhat bewildered. The policy does not go into effect until July 2005, so it has not been published anywhere yet. He pulled the file concerning the policy and allowed me to go through it with him. The latest paper filed in the

⁶³ *UGA should watch Emory alcohol policy*, Athens Banner Herald, (April 12, 2005), available at http://onlineathens.com/stories/041205/opi_20050412030.shtml.

⁶⁴ *See id.*

⁶⁵ *See Moore, supra* at note 55.

⁶⁶ University of Georgia Policy on Alcohol and Other Drugs, (September 2004), available at, <http://www.uga.edu/drugpol/>.

⁶⁷ *See Moore, supra* at note 55.

⁶⁸ Interview with Lane, *supra* at note 61.

file was a draft of the policy from January 20, 2005.⁶⁹ The word “DRAFT” is written at the top of the paper, but according to Mr. Lane since there is nothing else in the file, and because of the proximity of the date of the draft to the date of adoption of the policy, this should be the final draft of the policy actually adopted on February 4, 2005.⁷⁰

Contents of the UGA Policy⁷¹

The University of Georgia Parental Notification Policy is broken down into three parts. The first paragraph announces that FERPA has given universities the “option to notify parents or guardians about specific types of information from a student’s judicial record.”⁷² The second paragraph dictates when the Office of Judicial Programs will notify a student’s parents. It will notify parents and guardians when a student has violated the Alcohol Policy⁷³ when they are under the age of 21 and at least one of the five following subsections occurs:⁷⁴

- (1) When a student has been found to have violated the alcohol or other drug policy a second time.
- (2) When there is significant property damage.
- (3) When medical attention to any person, including the student, is required as a result of the student’s alcohol or other drug related behavior
- (4) When the student demonstrates reckless disregard for his or her own personal safety or the safety of others.
- (5) There is evidence that the student’s alcohol or drug related behavior negatively impacts the learning environment.⁷⁵

⁶⁹ Because the University of Georgia Parental Notification Policy has not been published, the draft is attached as “Appendix A” at page 38. After the submission date for this article, the author finally received a copy of the approved (but still unpublished) policy from Student Affairs. It is now attached following Appendix A. E-mail from Pamela White, Sr. Admin. Secretary, VP for Student Affairs, UGA, to Edgar M. Smith (May 2, 2005, 09:37:24 EDT) (on file with author).

⁷⁰ During the interview, Both Mr. Lane and I were working on the presumption that this is the final draft since neither of us could find a final draft published anywhere. Interview with Lane, *supra* at note 61.

⁷¹ During discussions of what to include in UGA’s parental notification policy, administration wanted the policy to serve as an educational purpose rather than a strictly punishment purpose. *Id.*

⁷² See Appendix A.

⁷³ See University of Georgia Policy on Alcohol and Drugs, *supra* at note 66.

⁷⁴ Much care was taken in developing the specific guidelines that would constitute violations that would require parental notification. There was concern that the guidelines be specific enough so that there would be no questions of preferential treatment toward certain students or organizations. The Office of Legal Affairs did not want there to be questions of why there was notification in one instance and none in another. Interview with Lane, *supra* at note 61.

⁷⁵ Appendix A.

(1) Repeat Offenses⁷⁶

Subsection (1) states that the university will notify parents and guardians when the alcohol policy has been violated for a second time. This gives the student a chance to correct his behavior after his first violation before his parents will be notified. This subsection is fairly common to most parental notification policies. University of Florida officials will notify parents if the alcohol and drug policy has been violated twice during the same semester or after the third violation total.⁷⁷ Marshall University notifies parents when underage students have committed “serious or repeated *violations*” of the University’s alcohol policy (emphasis in original).⁷⁸ Georgia Southern University has a similar provision where parents would be notified after the second alcohol violation or the first drug offense.⁷⁹

While it may appear that it takes multiple violations for notification to occur, that is not the case. In all the policies mentioned above, there are other provisions that call for notification of first time offenses that the university deems serious enough.

(2) Property Damage

UGA will notify parents and guardians when there is significant property damage, even if it is a first offense. The UGA policy is not clear whether this has to be university property, the student’s own property, or other private property. If there are serious complaints in the case of someone else’s private property, more than likely the police will be called and that could be considered “significant property damage” under subsection (2) of the UGA policy.

⁷⁶ Throughout the remainder of this article, comparisons will be made to the policies of the Georgia Institute of Technology and Georgia Southern University due to the fact they are both public institutions in the state of Georgia similar to UGA.

Comparisons will be made to the policies of University of Virginia, University of Florida, and University of South Carolina because they are the large flagship state institution of their respective states in the South.

Comparisons will be made to the policies of Florida Atlantic University and Marshall University because according to the Higher Education Center, their policies are model parental notification policies. See *Alcohol and Other Drug Prevention, The Parent Connection*, Higher Education Center, available at <http://www.edc.org/hec/parents/#3> (last viewed April 26, 2005).

⁷⁷ See University of Florida Parent Notification for Drug, Alcohol, and Campus DUI Cases, available at <http://www.dso.ufl.edu/judicial/procedures/parental.php> (last viewed April 26, 2005).

⁷⁸ The Marshall policy also notes that even if the violations are minor, if there is a second violation, that would reasonable cause for notice. See Marshall University Student Conduct and Welfare Committee Subcommittee on Notifying Parents of Judicial Action Guidelines Adopted May 1999, available at <http://www.edc.org/hec/parents/marshall.html> (last updated October 5, 1999).

⁷⁹ In the personal interview with Mr. Lane, he intimated that this is a recommendation that he made. He thought that the first drug offense is more egregious than the first alcohol violation. While this language is present in the Georgia Southern policy, it was not adopted in the UGA policy. See Georgia Southern University Student Guide, *supra* at note 60.

This is a very common clause in parental notification policies. Marshall University,⁸⁰ Florida Atlantic University,⁸¹ and Georgia Southern University⁸² all have a property provision in their parental notification policies.

(3) Medical Attention

Subsection (3) of UGA's policy requires notification when medical attention is needed as a result of the student's alcohol or drug use. This includes the student and any other person that might be affected. This clause will allow for notification in several different situations. Any injury sustained in a fight or auto accident, if serious enough to seek medical attention, will be notified to parents.

The situation that was probably contemplated by the drafters of the policy is the one that is played out in the news several times every year. There is the big party and someone ends up drinking too much and blacks out or starts to get really sick. They obviously need medical attention and many that do not get this medical attention end up dying.⁸³

A criticism of this type of provision is that if students know that if they contact the appropriate authorities in an emergency situation that sanctions will still be levied against them and their parents will be notified. Imagine a large party where everyone has been drinking. A student might be in obvious need of medical attention, but the other students there are already drunk and decide that it would be best if they do not report this. They know that if they report it, then everyone at the party will be subject to punishment.⁸⁴

⁸⁰ See Marshall University Student Conduct, *supra* at note 78 (Calling for notification where "the violation involved harm or threat of harm to persons or property").

⁸¹ See Florida Atlantic University Presidential Memorandum #93: Parental Notification Policy for Alcohol and Other Drug Violations available at <http://www.fau.edu/admin/pm/93.htm> (May 4, 2000) (Calling for notification where "the student was responsible for vandalism or other destruction of property under the influence of alcohol or other drugs.").

⁸² See Georgia Southern University Student Guide, *supra* at note 60 (Calling for notification where "the incident involved significant property damage").

⁸³ See Associated Press, *supra* at note 41.

⁸⁴ See Joe Johnson, *Judge denies verdict request from defense*, Athens Banner Herald, (January 15, 2004), available at http://onlineathens.com/stories/011504/new_20040115057.shtml. UGA student Brett Steele was tried and ultimately convicted (See Joe Johnson, *Student guilty in truck fall*, Athens Banner Herald, (January 17, 2004), available at http://onlineathens.com/stories/011704/new_20040117074.shtml.) of second degree homicide by vehicle for the death of his passenger and fraternity brother Travis Starr, who was thrown from the back of a Steele's pickup truck. Starr was not taken to the hospital for over twenty hours. The "idea [of taking him to the hospital] was rejected out of fear of getting in trouble because the accident was alcohol-related," according to a friend, Benjamin Smith.

Some schools are combating that criticism by creating an exemption. Emory University is in the process of instituting a “medical amnesty” policy will shield individuals and organizations from disciplinary action where possession and use of alcohol is concerned.⁸⁵ Officials at Emory saw this as a “situation where we should look at health and safety first and conduct issues second.”⁸⁶ In coming up with this policy, the administration at Emory looked to its peer universities and noticed that “benchmark” institutions such as Duke University and Dartmouth both had a similar policy.⁸⁷

There are criticisms of such amnesty programs though. One criticism might be that the students will take advantage of this exemption and think they can drink without repercussions. Emory took care of that criticism by putting a limit on the number of times a student can claim amnesty—students can only claim amnesty once.⁸⁸

This amnesty provision at Emory is at direct odds with UGA’s policy, as well as the policies of many other universities. The University of Florida’s policy advocates notification where a “student is transported to an emergency medical treatment center for drug use or intoxication.”⁸⁹ Georgia Tech will notify parents when alcohol poisoning or hospitalization occurs.⁹⁰ Florida Atlantic University will notify parents if “the student is required to be transported to a medical facility and treated because of alcohol or other drug use.”⁹¹ Marshall University has even stronger language where the student’s parents will be notified if the student “became physically ill and/or required medical intervention as a result of consumption of alcohol and/or drugs.”⁹² Marshall’s policy only requires physical illness which, depending on the particular drinker, could come from one drink or fifteen drinks.

⁸⁵ This policy would not shield students from disciplinary action in connection with student conduct violations, such as property damage, that might have occurred in connection with the emergency situation. See UGA Should watch Emory alcohol policy, *supra* at note 63.

⁸⁶ Rachael Zerkowitz, *Alcohol Policy adds incentive to receive help*, The Emory Wheel Online, (April 12, 2005), available at <http://www.emorywheel.com/vnews/display.v/ART/2005/04/12/425ad188cdb13>.

⁸⁷ See *id.*

⁸⁸ See *id.*

⁸⁹ See University of Florida Parent Notification, *supra* at note 77.

⁹⁰ See Georgia Institute of Technology Parental Notification Policy, available at <http://www.deanofstudents.gatech.edu/Policy/parental.notification.pol.prn.pdf> (last viewed April 26, 2005).

⁹¹ Florida Atlantic University, *supra* at note 81.

⁹² Marshall University Student Conduct, *supra* at note 78.

It is interesting to note that the schools above that will notify parents in medical emergencies are public institutions. Schools, such as Emory and its peer institutions, with the medical amnesty provision are private. Would this make a difference? The Athens Banner Herald in Athens, Georgia, has called for UGA to look at the Emory provision and consider whether to add something of the sorts to the UGA parental notification policy.⁹³ When asked about this, Mr. Lane stated that it would be easier for a private school to implement such a policy.⁹⁴ It is true that private schools have more latitude in making decisions regarding students' rights, but is this really a case where that would matter? There is discretion in the statute as to whether a school has to have a notification policy.⁹⁵ Also, each school seems to have some discretion within its policy to do what it wishes to do.⁹⁶

(4) Reckless disregard for safety

Subsection (4) of UGA's policy allows notification of parents when the student demonstrates reckless disregard for his or her own safety or the safety of others. This subsection seems to cover things such as driving under the influence and public drunkenness where a fight breaks out. This also might overlap with other subsections such as (2) and (3). Many times if there is reckless disregard for safety, there will be some necessary medical attention or significant property damage.

There appears to be a problem with this subsection. "Reckless disregard" is not defined in the subsection and there is no indication of what will rise to the level of "reckless disregard." There might be an issue here if a student's parents are notified under this subsection if the student claims that he did not have notice.

Georgia Southern University is the only school of the ones investigated so far that has a provision similar to subsection (4) of the UGA Parental Notification Policy. Georgia Southern generally notifies parents after a repeat violation, but reserves the right to notify after the first

⁹³ See *UGA should watch Emory alcohol policy*, *supra* at note 63.

⁹⁴ Interview with Lane, *supra* at note 61.

⁹⁵ "Nothing...shall be construed to prohibit an institution of higher education from disclosing, to a parent or legal guardian, or a student, information regarding any violation..." 20 U.S.C. § 1232g(i)(1) (2005). Notice, however, that nothing in the statute requires an institution to adopt a policy.

⁹⁶ This statement will be discussed more in the next section entitled "Discretion in Policy" on page 25.

violation if the “incident involved a reckless disregard for the safety of themselves and/or the safety of others.”⁹⁷

(5) The “Catch All”

Subsection (5) of the UGA Parental Notification Policy allows for notification where there is evidence that the student’s alcohol or drug related behavior negatively impacts the learning environment. This seems to be a very subjective standard.⁹⁸ By using the language “negative impact on the learning environment,” this presumably brings in the academic realm of university life. One might assume that the hypothetical mentioned earlier where a student misses exams or too many classes due to alcohol consumption might fall into this category.

The problem with this is that at a university the size of UGA, most underage students are still working on their basic core classes. These classes can have as many as three hundred students and the professors generally do not know the students and have no idea who misses a class or an exam. If it is the intent of this subsection to monitor the academic life of the student, it would be more feasible at a small college where the professors know each student more closely. The professors hear through the grapevine what is going on with their students.⁹⁹ This type sanction would hold more weight in a small college.

The goal of having the specific subsections was to have set guidelines to take some of the guesswork out of the decision making as to who deserved this sanction,¹⁰⁰ but this particular subsection just seems to open the door to more questions. If it is a “catch all” category and it is as subjective as it seems, it does not reach the aim of taking the guesswork out. It also opens the door to the claim of preferential treatment because of the subjective nature of the subsection.

⁹⁷ Georgia Southern University Student Guide, *supra* at note 60.

⁹⁸ In fact, Mr. Lane noted that this is a “catch all” category that can include violations that were not contemplated in the previous four subsections. Interview with Lane, *supra* at note 61.

⁹⁹ The author speaks from experience. The Dean of Student Affairs at Huntingdon College, a liberal arts college in Alabama with less than one thousand students, appeared in my dorm room one morning at 5:45 a.m. to discuss illegal drug activity that was occurring with some of my suite-mates. Word travels very quickly in a small college.

¹⁰⁰ Interview with Lane, *supra* at note 61.

DISCRETION IN POLICY

FERPA grants each college and university the discretion of whether to have a parental notification policy.¹⁰¹ Since colleges do not have to adopt a policy, they in turn have the right to adopt whatever kind of policy they would like. The only requirements set forth in the statute are that the student must be under the age of twenty-one¹⁰² and that the institution must determine “that the student has committed a disciplinary violation with respect to such use or possession [of alcohol or drugs].”¹⁰³ As long as these requirements are met, the university may adopt any type parental notification policy they would like.

Will v. May

One difference among the policies is the discretion that the administrators have once a violation has occurred. The language of the UGA policy is read so that there is little discretion: “The Office of Judicial Programs *will* notify parents...”(emphasis added)¹⁰⁴ This is also the type language used in the policies adopted by Georgia Tech,¹⁰⁵ Georgia Southern University,¹⁰⁶ Marshall,¹⁰⁷ and Florida Atlantic.¹⁰⁸ This language leads to a policy that does not need much interpretation. The students are put on notice that if they violate the alcohol policy then their parents will be notified.

Some other schools choose to use more interpretive language. The University of South Carolina adopted a policy that says that “parents/guardians *may* be notified...”(emphasis added).¹⁰⁹ The policy goes on to say that the University reserves the right to notify the parents when the student is under the age of twenty-one and is found to be responsible for a violation of the University’s alcohol and drug policies.¹¹⁰ The University of Florida’s policy states that the

¹⁰¹ See § 1232g(i)(1), *supra* at note 21

¹⁰² See § 1232g(i)(1)(A), *supra* at note 21.

¹⁰³ This is a due process issue. The university must have found that a violation occurred through its notice and hearing procedure set forth in its own alcohol policy. 20 U.S.C. § 1232g(i)(1)(B).

¹⁰⁴ Appendix A.

¹⁰⁵ See Georgia Institute of Technology Parental Notification Policy, *supra* at note 90.

¹⁰⁶ See Georgia Southern University Student Guide, *supra* at note 60.

¹⁰⁷ See Marshall University Student Conduct, *supra* at note 78.

¹⁰⁸ See Florida Atlantic University, *supra* at note 81.

¹⁰⁹ University of South Carolina Alcohol and Drug Programs: Parental Notification Guidelines, *available at* <http://www.sa.sc.edu/adp/parentalnotification.htm> (last viewed April 26, 2005).

¹¹⁰ See *id.*

parents *may* be notified.¹¹¹ Unlike the University of South Carolina's policy, there is no other language in Florida's policy to expound on this.

With this "may" language, policies such as those of South Carolina and Florida leave themselves open to attack. Since there is no strict language requiring when a violation deserves notification, there might be claims of preferential treatment. Questions could be asked as to why a certain violation deserved notification and another did not. This was one of the concerns when UGA was drafting its policy.¹¹² It would seem that a university would want to keep its policy as objective as possible and use the strict language used by UGA and others.

The University of Virginia cuts some sort of middle line here. Its policy has the stricter language stating that parents and guardians *will* be notified, *unless* "family circumstances make parental notification inappropriate..."(emphasis added).¹¹³ In that case, the student will be sent to professional counseling.¹¹⁴ By using this type of policy, the University of Virginia is showing concern for the students. There could be many reasons that the family circumstances make notification inappropriate: if the parents are abusive; in poor health; recovering alcoholics; and other personal, cultural, and/or religious reasons. The school is concerned about more than punishment and is making sure that the student is living a healthy complete life.

Exceptions within Each Policy

Schools also have discretion whether to allow for exceptions. This was explored to some extent *supra* when discussing whether to grant medical amnesty. In that respect, it seems that if a university truly is concerned with education and safety rather than punishment it would rather adopt policies such as the medical amnesty provision from Emory University.¹¹⁵

Georgia Southern University lists specific exceptions that will not call for notification—students who reach age twenty-one by the date of adjudication and underage students who are

¹¹¹ See University of Florida Parent Notification, *supra* at note 77.

¹¹² Interview with Lane, *supra* at note 21.

¹¹³ University of Virginia 2004-2005 University Regulations: Non-academic Regulations, *available at* <http://www.virginia.edu/registrar/records/ugradrec/chapter5/chapter5-2.htm#na18> (last viewed April 26, 2005).

¹¹⁴ See *id.*

¹¹⁵ See Zerkowitz, *supra* at note 86.

financially independent will not have their parents notified.¹¹⁶ Also, it has a similar exception to the UVA exception discussed *supra*.¹¹⁷

Like the Georgia Southern policy, some schools choose to exempt financially independents from parental notification. South Carolina requires the student's consent if he meets the legal standard for independent status.¹¹⁸ Florida Atlantic University will only notify parents and guardians of dependent students.¹¹⁹ The University of Florida may notify parents about a violation of the alcohol policy only if the student is claimed as a dependent by the parents.¹²⁰

Precise Terminology

A problem with many policies of any kind is the interpretation of vague and uncertain terms.¹²¹ Some schools choose to list precise violations and define terms. This does away with the problem of interpretation. Also, in the face of an attack, this would strengthen the school's position that the student had notice of the violations that would lead to parental notification.

University of Virginia gives a non-exclusive list of violations that would lead to notification.¹²² Even though it is non-exclusive, the list gives students a better idea of which violations will bring about what type of action. Many schools list specific crimes or instances that would constitute a violation that triggers notification.¹²³

¹¹⁶ See Georgia Southern University Student Guide, *supra* at note 60.

¹¹⁷ The language of the Georgia Southern exception is more precise than that of UVA. "The parents or legal guardians of students under 21 years of age may not be notified in view of various social, religious, or cultural customs or practices, or under extraordinary circumstances." See *id*.

¹¹⁸ See University of South Carolina Alcohol and Drug Programs, *supra* at note 109.

¹¹⁹ The dependency is determined as defined in 26 U.S.C. § 152 or the IRS Code of 1954. See Florida Atlantic University, *supra* at note 81.

¹²⁰ The University of Florida's policy only puts this dependency requirement on the notification of violations of the alcohol policy. The University does not have this requirement on the subsection dealing with notification after medical attention. See University of Florida Parent Notification, *supra* at note 77.

¹²¹ See *supra* at page 23, the discussion of "reckless disregard."

¹²² "Violations that would trigger parental notification include, but are not limited to, driving under the influence, public drunkenness and underage possession." University of Virginia, *supra* at note 113.

¹²³ See Florida Atlantic University, *supra* at note 81, (Notification if "the student was operating a vehicle while under the influence of alcohol or other drugs"). And see Georgia Institute of Technology Parental Notification Policy, *supra* at note 90, ("Specific instances would include DUI, fighting, alcohol poisoning, and hospitalization"). And see Georgia Southern University Student Guide, *supra* at note 60, (Notification proper after the first violation if "the incident was a DUI").

Type of Notification

It is up to each college or university as to how it will notify the parents once notification is deemed appropriate. UGA, at this time, has not included anything in its parental notification policy to show how the parents will be notified.¹²⁴ Other schools take different approaches.

The University of Virginia encourages the student to make the first call to his parents and then will follow up with the parents with a phone call of its own.¹²⁵ Phone calls are also the method preferred by the University of Florida.¹²⁶ The Dean of Students Office at Florida, who administers the disciplinary procedure, avoids conflict by assigning the phone call to an Assistant Vice President who is not involved in any appeal.¹²⁷

While some institutions prefer the telephone notification, others choose to mail letters to the students' parents.¹²⁸ Georgia Southern University mails letters to parents unless it is a "potentially serious incident requiring their immediate notification."¹²⁹ Even then, there is a follow-up letter.¹³⁰

No matter what type of notification schools choose, many schools inform the student in advance that his parent will be notified.¹³¹ This seems to be in line with the idea that most colleges' and universities' alcohol and drug policies are about education and not punishment.

LACK OF LITIGATION

The parental notification section of FERPA has led to no substantial litigation. Why is that?

¹²⁴ See Appendix A. Note, however, that the policy does not go into effect until July 2005. UGA will presumably list the means of notification at that point.

¹²⁵ See University of Virginia, *supra* at note 113.

¹²⁶ See University of Florida Parent Notification, *supra* at note 77.

¹²⁷ See *id.*

¹²⁸ This is presumably another layer of protection for the school. Having the notification in writing is better evidence in case of any later procedures or appeals.

¹²⁹ Georgia Southern University Student Guide, *supra* at note 60.

¹³⁰ See *id.*

¹³¹ See Marshall University Student Conduct, *supra* at note 78, (stating that "whenever possible, students will be informed that parental notification is planned *in advance* of their parents' receiving the notice") (Emphasis in original). And see Florida Atlantic University, *supra* at note 81, ("Whenever possible, students will be notified in advance that their parents or guardians are to be contacted"). And see Georgia Southern University Student Guide, *supra* at note 60, ("Students...will be verbally informed by the University Judicial Officer before parental notification occurs. This will give the student an opportunity to initiate contact with their parents or legal guardians before the parental notification letter is mailed").

First of all, the Supreme Court has decided that FERPA's nondisclosure provisions create no private right of action under 42 U.S.C. § 1983 (2005).¹³² This precludes many possible plaintiffs from filing suit. It also precludes attorneys from taking cases that might have a legitimate argument on other grounds.

Even if there were a private right of action against disclosure in parental notification cases, the amount of discretion that a university has in developing and implementing its policy will tend to work against any potential plaintiff. A school can set up its policy as it chooses. This will tend to leave the plaintiffs with very little argument on its part.

DOES IT WORK?

Reaction from Schools

There is little statistical evidence on the matter, but from one institution to another parental notification policies seem to be working. Texas A&M University instituted its parental notification policy in 1998.¹³³ Since that time, the number of reported cases of underage drinking has dropped thirty-seven and a half percent.¹³⁴

Georgia Tech has seen a reduction in the number of letters sent home to parents.¹³⁵ In spring and summer of 2001, Georgia Tech sent out forty-seven letters to parents, but that number had dropped to twenty-five for the same term in 2002.¹³⁶ Notice that these numbers are the number of letters actually sent home. This does not necessarily mean that the number of underage drinkers has gone down at all.

Ohio University had a reduction of thirty-six percent in the number of alcohol- or drug-related cases in the first year of the parental notification policy.¹³⁷ Interim Vice President for Student Affairs, Mike Sostarich, seemed to give in to the fact that the policy alone had not been

¹³² *Gonzaga Univ. v. Doe*, 536 U.S. 273, 122 S.Ct. 2268 (2002).

¹³³ See Kelly Proctor, *Parental Policy worked in Texas*, *The Red & Black*, February 7, 2005, at 1.

¹³⁴ See *id.*

¹³⁵ See McCarthy, *supra* at note 54.

¹³⁶ See *id.*

¹³⁷ See Philip Elliott, *Parental notification study released*, *The Post Online Edition*, (June 2, 2000), available at <http://thepost.baker.ohiou.edu/archives3/jun00/060200/news2.html>.

the sole reason for the decline. He stated that “we have to at least attribute some of that to the policy.”¹³⁸

Reaction from Students

One would not be surprised that many students under the age of twenty-one are not fans of the parental notification policies at their respective universities. Again, hard evidence is not easily obtainable for students’ views. The most common view among students is one shared by a UGA freshman that “you can just drink off campus.”¹³⁹

Many students don’t like the policy just because they believe that if they are old enough to go to college on their own, they should be old enough to tell their parents themselves. A senior UGA student, David Denham, agreed that an underage alcohol violator should have to tell his parents, “but I don’t know if that’s the University’s business.”¹⁴⁰

CONCLUSION

Regardless of whether a student thinks that a school should inform his parents about alcohol violations, Congress has said that schools have this authority. Not surprisingly, many schools have enacted parental notification policies and it seems that these policies help. At the least, it can be said that the policies do not hurt the schools in their attempts to curtail underage alcohol abuse.

One would hope that students would be honest with their parents in the first place. Working on that assumption, the parental notification policy is not an intrusion on the student’s rights. However, that is not the case with most college freshmen. Schools have to do something, so it seems that a parental notification policy would encourage healthy communication among the student, the school and the parents. This will help more than just requiring community service hours or probation.

No matter how objective each school tries to make its policy, there is still a lot of subjectivity in the majority of policies. Each school should attempt to be as objective as possible.

¹³⁸ *Id.*

¹³⁹ Proctor, *supra* at note 133.

¹⁴⁰ Moore, *supra* at note 55.

The best way that schools can do this is to come up with a set list of violations and incidents that will be listed in the policy. If one of these incidents occurs, then the student will know that his parents will be notified. Also, schools should enact a medical amnesty provision to encourage students to seek emergency aid when it is necessary.

Closer to home, the University of Georgia Parental Notification Policy will go into effect in July 2005. This policy has attempted to be objective, but it might still face attacks. There are subjective elements of the policy that might cause some problems. Time will only tell. UGA should consider a medical amnesty provision as well. This provision would help keep the student body of UGA safe.

Overall, parental notification policies are effective and helpful. Every college or university should have a policy in effect, provided the proper due process considerations are provided in each school's alcohol policy.

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January 20, 2005

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University of Georgia

Parental Notification Policy

The Family Educational Rights and Privacy Act (FERPA) have given colleges/universities the option to notify parents or guardians about specific types of information from a student's judicial record.

The Office of Judicial Programs will notify parents or guardians when a student is found to have violated Code of Conduct policies on the use or possession of alcohol or other drugs when they are under the age of 21 and one or more of the following occurs:

1. When a student has been found to have violated the alcohol or other drug policy a second time.
2. When there is significant property damage.
3. When medical attention to any person, including the student, is required as a result of the student's alcohol or drug related behavior.
4. When the student demonstrates reckless disregard for his or her own personal safety or the safety of others.
5. There is evidence that the student's alcohol or drug related behavior negatively impacts the learning environment.

University of Georgia

Parental Notification Policy

APPROVED: FEBRUARY 3, 2005

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1. When a student has been found to have violated the alcohol or other drug policy a second time and every subsequent time.
2. When there is significant property damage.
3. When medical attention to any person, including the student, is required as a result of the student's alcohol or drug-related behavior.
4. When the student demonstrates reckless disregard for his or her personal safety or the safety of others.
5. When there is evidence that the student's alcohol or drug-related behavior negatively impacts the learning environment.