


September 4, 2008

MEMORANDUM

To: College Presidents
From: Frederick P. Schaffer 
Re: State and Federal Legislation: Textbooks

I am writing to advise you of new State and federal legislation designed to regulate the marketing, choice, pricing and purchasing of course materials in an effort to reduce student expenditures on those materials. The new state law, Article 15-C of the Education Law (commonly referred to as the "Textbook Access Act"), will go into effect on July 1, 2009. The federal provisions are contained in the latest reauthorization of the Higher Education Act of 1965 (commonly referred to as the Higher Education Opportunity Act), and they will go into effect on July 1, 2010.

Textbook Access Act

While there are several provisions in this law, the most significant ones affect CUNY faculty members. The law includes a blanket prohibition on our employees' demanding or receiving any payment for adopting specific course materials. As part of this provision, the statute allows employees to receive sample copies, instructor's copies, or instructional material, but specifically prohibits those materials from being sold. Thus, under this law, to the extent that

certain textbook companies have a practice of visiting CUNY campuses to buy back instructor editions or review copies of textbooks from faculty members, that practice must cease.

The law further mandates that institutions of higher education institute policies that encourage faculty members to place their orders for course materials with sufficient lead time to enable the institution or college bookstore to confirm the availability of the requested materials, and, when appropriate, the availability of used textbooks or alternate digital formats. Please let me know the steps you plan to take at your college to implement this provision.

The legislation also regulates the conduct of publishers and college bookstores. It seeks to ensure pricing transparency by requiring that publishers of college textbooks, upon request, make available to prospective adopters of their products who are faculty members or purchasing entities of higher education institution the price at which the publisher would make the products available to the college bookstore for purchase by students. It further requires that textbooks be sold in the same manner as ordered by the faculty member or entity in charge of selecting textbooks for courses, and requires that, if a textbook ordered is unavailable, the bookstore, faculty and publisher work together to provide the best possible substitute and make available the price of that substitute.

Higher Education Opportunity Act

The new federal law also seeks to decrease costs of purchasing course materials for students. It imposes requirements on both higher education institutions and publishers.

Specifically, it requires higher education institutions to provide accurate information to college bookstores (upon request of the bookstores) concerning course schedules, course materials, the number of students in each course, and the maximum student enrollment for each course. The law also requires institutions, to the extent practicable, to disclose on their Internet course schedules the International Standard Book Number (“ISBN”) and retail price information

of required and recommended course materials. If the ISBN is not available, institutions are required to include on their Internet course schedules the author, title, publisher, and copyright date for course materials. Colleges must also include on their written course schedules a notice that textbook information is available on their Internet course schedules and the Internet address for those schedules.

In addition, the law encourages colleges to distribute information to students concerning available programs for renting textbooks or purchasing used textbooks, textbook buy-back programs, alternative content delivery programs, or other cost-cutting strategies.

Publishers also must comply with new requirements. They must provide faculty members or others in charge of selecting course materials with information in writing concerning the price to be charged to students for those materials and, as applicable (i) the copyright dates of the three previous editions of such materials; (ii) a description of the revisions made between the current edition of the materials and the previous edition; (iii) information concerning whether the materials are available in other formats (including paperback and unbound); and (iv) the price of those materials in other formats. In addition, publishers are required to sell college textbooks and supplemental materials as separate and unbundled items, each separately priced, if they also sell the materials bundled together.

If you have any questions about these new laws, please contact Hilary Klein or Jane Davis of my office at Hilary.Klein@mail.cuny.edu or Jane.Davis@mail.cuny.edu, respectively.

c: Chief Academic Officers
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