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Webinar



# DOCUMENTATION:

## Legal Implications & Critical Issues Campuses Should Consider

*Thursday, April 12, 2012*

*2:00 – 3:30 PM ET*

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# PANELISTS

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# OVERVIEW

Whether you are documenting a incident in a residence hall, a conduct report, student plagiarism or mental health concerns, there are standards for – and legal implications to – proper record keeping in all areas of campus.

# OVERVIEW

Recent cases have brought to light problems that can arise when institutions have documented internal protocol that is not followed.

***It is vital to create a campus culture where all employees are encouraged to practice good record keeping which includes updating documented protocols to match practice.***

# OVERVIEW

*In this presentation, we will discuss:*

- The legal implications of not having proper documentation.
- Best practices of proper documentation.
- How to cultivate a campus culture of good record keeping.

# OVERVIEW

*In this presentation, we will discuss:*

- The importance of a records management/retention procedure.
- The impact documentation may have on institutions that fail to follow printed protocols, policies or applicable laws.

# IMPORTANCE

“Executives from all levels agree that records management policies are probably the one part of corporate governance that is uniformly neglected.”

*American Association of Corporate Counsel* (June 2005)



# Why So Difficult?

- Perceived cost
- Lack of senior management support
- Time-consuming, coupled with perception that it is not “productive”
- Electronic v. paper
- Which department(s) own it?

# What Records Must Be Kept?

- Required under Federal Law
- Required under State Law
- Required by accreditation organizations
- Required under contract with other parties
- Required by policy at your institution
- Required under best practices

# What Records Must Be Kept?

- Impossible to adopt a “one size fits all” approach—even within higher education institutions

# LEGAL IMPLICATIONS

## NOT HAVING PROPER DOCUMENTATION

- Compliance issues
  - Fines or penalties
- Liability issues
  - May not be able to defend
- Evidentiary issues
  - May not be permitted to defend

# BEST PRACTICES FOR PROPER DOCUMENTATION

- **Three stages of record management:**
  - **Creation (or receipt)**
  - **Maintenance and use**
  - **Disposition**

# BEST PRACTICES FOR PROPER DOCUMENTATION

- **Stage one of record management:**
  - **Creation (or receipt)**
    - Staff should know what types of records must be created (or maintained after received).
      - *What records are necessary to conduct the business or document activities for which the department is responsible.*

*National Archives and Records Administration*

# BEST PRACTICES FOR PROPER DOCUMENTATION

- Examples:
  - Date everything (*include year*)
  - Items posted
    - *Create stamps or labels to help staff consistency with documentation*
    - *Staff initials*
  - File created
    - *Color coded*

# BEST PRACTICES FOR PROPER DOCUMENTATION

- Examples:
  - Take notes during phone calls
  - Print e-mails that document communication with a student
    - *If electronic copies are to be retained instead of printed copies, how can those be accessed by others?*



# BEST PRACTICES FOR PROPER DOCUMENTATION

- **Stage two of record management:**
  - **Maintenance and use**
    - Records should be stored so that information can be found when needed.
      - *This means setting up filing systems (in whatever format) that allows records to be safely stored and efficiently retrieved when necessary.*

*National Archives and Records Administration*

# BEST PRACTICES FOR PROPER DOCUMENTATION

- Examples:
  - Paper versus electronic
  - Organize documents in a systematic manner.
    - *How documents are placed in a file can be a time saver later.*

# BEST PRACTICES FOR PROPER DOCUMENTATION

- **Stage two of record management:**
  - **Maintenance and use**
    - Records should be stored so that information is secure from inappropriate and unauthorized access.

# BEST PRACTICES FOR PROPER DOCUMENTATION

- Examples:
  - Personal iPhones or iPads passcode protected if staff members access business e-mails that contain FERPA protected documents.

# BEST PRACTICES

## FOR PROPER DOCUMENTATION

- **Stage two of record management:**
  - **Maintenance and use**
    - Move inactive records to the institution's secure storage facilities to save office space.

# BEST PRACTICES FOR PROPER DOCUMENTATION

- **Stage three of record management:**
  - **Disposition**
    - Be familiar with any institutional disposition requirements or schedules.

# BEST PRACTICES

## FOR PROPER DOCUMENTATION

- **Stage three of record management:**
  - **Disposition**
    - Be familiar with any institutional disposition requirements or schedules.

## Records Retention and Archival Policy

### Objective

Federal and state laws and regulations require Baylor University to adhere to numerous record retention guidelines or mandates. In addition to legally mandated retention requirements, the University's membership in outside organizations (such as the Southern Association of Colleges and Schools or the National Collegiate Athletic Association) may require certain records of the University to be maintained. Finally, various departments of the University have also determined that certain records should be maintained for certain periods of time in order to allow the University to conduct its affairs efficiently and consistently or to retain records and other documents for historic purposes. Therefore, each department should develop its own records management plan in cooperation with its Vice President, the Office of General Counsel, the ITS Information Security Officer, and the University Archivist (the Texas Collection).

### Criminal Sanctions and Other Penalties

This Policy is intended to facilitate Baylor's compliance with all applicable laws and regulations governing the retention and destruction of Baylor records.

Federal, State and other laws and regulations require Baylor University to maintain certain types of records for particular periods. Failure to maintain such records may subject the organization and/or individuals to penalties and fines and may compromise Baylor's position in litigation.

It is a federal crime, punishable by a fine and up to twenty years in prison, for anyone to knowingly alter, destroy, mutilate, conceal, cover up, falsify, or make a false entry in any record with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of a federal department or agency or any bankruptcy case. The same penalty applies to anyone who alters, destroys, mutilates, or conceals a record, or attempts to do so, with the intent to impair the object's integrity or availability for use in an official proceeding, regardless of whether such proceeding is pending or about to be instituted at the time of the offense.

### Definition of Record

A "record" is any recorded information in any format (including without limitation paper, electronic and audiovisual materials), wherever such information is stored, that has been created by or for Baylor University, or received by Baylor University in connection with the transaction of the organization's affairs.

### Retention and Maintenance of Records

The University requires that its records be maintained in a consistent and logical manner and be managed so that the University:



# BEST PRACTICES FOR PROPER DOCUMENTATION

- **Stage three of record management:**
  - **Disposition**
    - Be familiar with any institutional disposition requirements or schedules.
    - Be familiar with regulatory disposition requirements or restrictions.
      - *For example: CLERY Act requires that supporting documents be maintained for seven years.*

# BEST PRACTICES FOR PROPER DOCUMENTATION

- **Stage three of record management:**
  - **Disposition**
    - Records should be disposed of in a secure manner.
      - *Paper copies shredded rather than discarded in trash.*
    - Both paper and electronic copies must be disposed of at the same time.

# CULTIVATING A CULTURE OF GOOD RECORD KEEPING

- **Senior administrator buy-in is critical.**

*“Many top executives may be removed from the detail of what is actually needed for an effective records management program.”*

*Ernst & Young: “Records management: seven best practices for staying ahead of the curve”*

# CULTIVATING A CULTURE OF GOOD RECORD KEEPING

- **Senior administrator buy-in is critical.**
  - Without executive buy-in, it will be difficult to change the culture in an organization.
  - An institution-wide records management program is critical to creating a culture of change.

# CULTIVATING A CULTURE OF GOOD RECORD KEEPING

- **One step forward is better than none.**
  - Even if your institution does not have a campus-wide records management program, create one in the areas for which you have oversight.

# CULTIVATING A CULTURE OF GOOD RECORD KEEPING

- **Train staff members on documentation expectations for your department, division, and the institution.**
  - *Employees should understand how good record keeping helps everyone work smarter, not harder. Give them examples:*
    - *If the president's office calls, would a student's file be organized, complete and ready to be delivered?*

# CULTIVATING A CULTURE OF GOOD RECORD KEEPING

- **Train staff members on documentation expectations for your department, division, and the institution.**
  - *Documentation should help “tell the story.”*

*“If it’s not documented, it’s not done.”*

*Ernst & Young*

# CULTIVATING A CULTURE OF GOOD RECORD KEEPING

- **Identify who will be responsible for monitoring proper documentation in your department.**
  - *Keep in mind that “employees may do what you inspect, not what you expect.”*
    - *Creating check lists that employees initial will help staff members pay closer attention to completing the documentation for which they are responsible.*



# RECORDS

## IMPORTANCE OF MANAGEMENT/RETENTION

- **Compliance Issues**

- CLERY Act

- *Supporting documents must be maintained for seven years.*

- Office of Civil Rights (OCR) Title IX “Dear Colleague Letter” 2011 Guidelines (April 4, 2011)

- *Office of Civil Rights “Resolution Agreement” with the University of Notre Dame provides helpful guidelines for documenting written reports for sexual harassment investigations.*

# RECORDS

## IMPORTANCE OF MANAGEMENT/RETENTION

- **Compliance Issues**

- FERPA (Family Educational Rights and Privacy Act)

- *The disclosure of personally identifiable information from a student's educational record must be maintained in accordance with the recordkeeping requirements concerning requests and disclosures under section 99.32.*

# RECORDS

## IMPORTANCE OF MANAGEMENT/RETENTION

- **Accreditation Purposes**

- SACS (Southern Association of Colleges and Schools Commission on Colleges)

- *3.9.2 The institution protects the security, confidentiality, and integrity of student records and maintains security measures to protect and back up data.*

# RECORDS

## IMPORTANCE OF MANAGEMENT/RETENTION

- **Accreditation Purposes**

- CAS (Council for the Advancement of Standards in Higher Education)

- 4.9 Employees and volunteers receive specific training on institutional policies and privacy laws regarding access to student records and other sensitive institutional information.
- 4.11 *Staff members receive training on policies and procedures related to the use of technology to store or access student records and institutional data.*

# RECORDS

## IMPORTANCE OF MANAGEMENT/RETENTION

- When should records **NOT** be maintained?
  - If a Students of Concern Response Team maintains a database that lists all students of concern issues that have come to the team's attention, should that database be accessible to everyone on the team?

# DOCUMENTATION IMPACT

## WHEN PRINTED POLICIES OR PROCEDURES ARE NOT FOLLOWED



# DOCUMENTATION IMPACT

## WHEN PRINTED POLICIES OR PROCEDURES ARE NOT FOLLOWED



VIRGINIA:

IN THE CIRCUIT COURT FOR FAIRFAX COUNTY

ELIZABETH SOON JEE KIM AND  
WILLIAM HOON KIM  
CO-ADMINISTRATORS AND PERSONAL  
REPRESENTATIVES OF THE ESTATE OF  
DANIEL SUN KIM

Plaintiff,

vs.

THE COMMONWEALTH OF VIRGINIA

SERVE: William Mims  
Attorney General for the  
Commonwealth of Virginia  
900 E. Main St.  
Richmond, Virginia 23219  
(City of Richmond)

JAMES THOMAS BROWN, Dean of Students  
501 Draper Road  
Blacksburg, Virginia 24060  
(Montgomery County)

VICKI ARBUCKLE, Assistant Director  
Psychiatric Services  
240 McComas Hall  
Blacksburg, Virginia 24061  
(Montgomery County)

and

CHRISTOPHER FLYNN, Director of Cook  
Counseling Center  
240 McComas Hall  
Blacksburg, Virginia 24061  
(Montgomery County)

Defendants

FILED  
CIVIL INTAKE

2009 DEC -4 PM 3:11

JOHN T. FREY  
CLERK, CIRCUIT COURT  
FAIRFAX, VA

Case No.: 2009-17445

COMPLAINT

COME NOW the Plaintiffs, ELIZABETH SOON JEE KIM AND WILLIAM  
HOON KIM CO-ADMINISTRATORS AND PERSONAL REPRESENTATIVES OF



# DOCUMENTATION IMPACT

## WHEN PRINTED POLICIES OR PROCEDURES ARE NOT FOLLOWED

- 2011 Virginia Tech Settlement in Student's Suicide
  - 16. ...VT published “Guidelines for Appropriate Action” in a document known as the “Care Team Manual”, which established a “Student Crisis and Emergency Response Protocol” in order “to coordinate the timely response by the university to student emergencies” ...

*Case #2009-17445, Circuit Court Fairfax County*

# DOCUMENTATION IMPACT

## WHEN PRINTED POLICIES OR PROCEDURES ARE NOT FOLLOWED

- 2011 Virginia Tech Settlement in Student's Suicide
  - 17. According to the protocol set forth in the Care Team Manual, “[i]f a student has made an actual suicide attempt and/or any gesture or reference to suicide he or she *must be seen* by the psychologist on call” (emphasis added).

*Case #2009-17445, Circuit Court Fairfax County*

# DOCUMENTATION IMPACT

## WHEN PRINTED POLICIES OR PROCEDURES ARE NOT FOLLOWED

- 2011 Virginia Tech Settlement in Student's Suicide
  - 26. Although the Blacksburg Police Department has a number of officers on staff who are trained in suicide intervention, (referred to as crisis intervention team, CIT officers) Detective Robinson was not a CIT officer and not qualified to determine whether Daniel was in need of intervention.

*Case #2009-17445, Circuit Court Fairfax County*

# **Documentation Impact**

**When Printed  
Policies or  
Procedures**

34. Va. Tech, acting through its agents, servants, and employees, including, but not limited, to Thomas Brown, Vicki Arbeskie, Christopher Flynn, and members of the Care Team, failed to use ordinary care and acted negligently, in that, among other things, they failed to check on David's well-being, they failed to comply with Va. Tech's protocol, they relied upon the observations of an untrained Staunton police officer, they

...they failed to comply with Va. Tech's protocol...

intervention, and they failed to notify David's parents of the warning received from Shaun Pitts.

35. The negligence of Va. Tech acting through its agents, servants, and/or employees was a direct and proximate cause of the death of David Kim.

36. On August 26, 2008, notice was given, pursuant to Va. Code §8.01-295.6, to the Honorable Robert F. McDonnell (then Attorney General for the Commonwealth of Virginia) and to Mr. D. LeMond, Director of Risk Management for the Department of

...failed to use ordinary care and acted negligently in, among other things, departing from protocols, which did not allow for exercise of discretion, established by Va. Tech...

Health.

38. Dean Brown, Vicki Arbeskie, and Christopher Flynn failed to use ordinary care and acted negligently in, among other things, departing from protocols, which did not allow for the exercise of discretion, established by Va. Tech for the safety of its students, including David Kim, and such negligence was the direct and proximate cause of David's death.

# DOCUMENTATION IMPACT

## WHEN PRINTED POLICIES OR PROCEDURES ARE NOT FOLLOWED

- Review printed policies, procedures, or protocols on a regular basis.
  - If actual implementation does not match what the institution has in print, make necessary updates as soon as possible.

# SUMMARY & TAKE AWAY

- Train staff on the importance of records management.
- Stay on top of not only what is legally required, but also best practices.
- Coordinate retention responsibilities with other departments—don't assume they know to retain your documents
- Follow your printed policies/procedures or make the necessary updates.

# RESOURCES

- Higher Education Compliance Alliance  
higherredcompliance.org  
[www.higheredcompliance.org/](http://www.higheredcompliance.org/)
- Higher education professional organization websites (Educause, NASFAA, NASPA, NACUA, NACUBO)
- Campus Legal Information Clearinghouse (The Catholic University of America)  
<http://counsel.cua.edu/>



# RESOURCES

- CAS – Council for the Advancement of Standards in Higher Education <http://www.cas.edu/>
- SACS – Southern Association of Colleges and Schools <http://www.sacs.org/>
- ARMA – Association of Records Managers & Administrators <http://www.arma.org/>
- Baylor’s Document Retention Policy & Schedule (e-mail [bethany\\_mccraw@baylor.edu](mailto:bethany_mccraw@baylor.edu))

# RESOURCES

- NARA – National Archives and Records Administration: *Frequently Asked Questions about Records Management in General*  
<http://www.archives.gov/records-mgmt/faqs/general.html>
- Ernst & Young – *Records Management: seven best practices for staying ahead of the curve*  
[http://www.ey.com/Publication/vwLUAssets/Records\\_management:\\_seven\\_best\\_practices\\_for\\_staying\\_ahead\\_of\\_the\\_curve/\\$FILE/Records\\_management-seven\\_best\\_practices\\_for\\_staying\\_ahead\\_of\\_the\\_curve.pdf](http://www.ey.com/Publication/vwLUAssets/Records_management:_seven_best_practices_for_staying_ahead_of_the_curve/$FILE/Records_management-seven_best_practices_for_staying_ahead_of_the_curve.pdf)

# Q/A

## *How Do I Call-in with a Question?*

If you would like to ask a question of our panelist(s) please press \*1 and you will be put in a call queue until it is your turn to ask your question.

OR

You can write in a question or comment anytime during the event by clicking on the “**Chat**” **Bubble** in the right hand corner of your screen.

## *For Questions that Arise After the Conference*

If you have a question that you were unable to ask of our presenter(s), please feel free to email us at:

[Info@paper-clip.com](mailto:Info@paper-clip.com)

...and we will be happy to forward it to our panelists!

# Feedback

*We want your feedback on today's event!*

If you would like to provide suggestions for improvement and/or ideas for future event topics, please email Tamie Klumpyan at:

[tamie@paper-clip.com](mailto:tamie@paper-clip.com)

and she will send you the link to our brief online survey.

Thank you for your participation,  
*PaperClip Communications*

# PaperClip Resources

## *FREE Weekly Newswires*

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## *Upcoming Webinar Conferences:*

- Effective Faculty Evaluations: A Comprehensive Approach - April 17, 2012
- Student Disabilities: Best Practices for Compliance & Services - April 18, 2012
- Navigating Involuntary Withdrawal Policies - April 19, 2012
- Serving & Supporting Undocumented Students - April 24, 2012
- Maximizing Student Retention: Curricular Infusion for Success - April 25, 2012
- Title II Update: Direct Threat Protocol and Policies - April 25, 2012
- Student Conduct & Counseling: Confidentiality Issues - April 26, 2012