March 19, 2008

To: Vice President for Student Affairs

From: Paul Dorres, Director of International Programs

Subject: Legal Issues Pertaining to our Growing Population of International Students

I. Introduction

Western Oregon University (WOU), a public, Liberal Arts University, with a student body of just over 5,000, has recently embarked upon a foreign recruitment initiative in order to entice the best and brightest overseas students to study at our beautiful campus. As a result, we have recently reached an unprecedented international student population ratio of nearly twenty per cent. Many unforeseen challenges have been faced as a result of such a large surge of foreign students. Since the university plans to maintain this ratio of international to domestic students, a task force has been created to identify and respond to legal issues pertaining to foreign students being admitted to, and studying at, our institution.

As the chair of this committee, I have been charged with the task of sharing the committee’s findings and recommendations. The results of these findings and recommendations should trigger appropriate actions to ensure compliance with legal issues such that all students at WOU receive an equal share of the excellent educational opportunities available at our institution. In particular, this task force has identified three major categories of most urgent concern: 1. discrimination issues, 2. TOEFL testing fraud, and 3. student visa complications.
This memo will first identify policy, educational, and administrative issues and questions. Next, legal issues will be addressed, including applicable caselaw, statutes, and regulations. *Please note: there are numerous policy recommendations and implications of action/inaction included in the III. Legal Issues section. Then, the committee’s summary of recommendations for action will be communicated. Finally, I will wrap up with conclusions, implications, and questions for further exploration. Included is a bibliography and table of cases, statutes, regulations, and rules.

II. Policy/Educational/Administrative Issues and Questions

Current WOU policy requires incoming international students to attend a special International Student Orientation that is facilitated by International Programs. By the time a student has reached this orientation program, it is assumed that admission to the university has been granted, and as such, appropriate TOEFL scores were obtained and student visas acquired. The major question at hand is: do we currently have procedures in place to assure that international students are not being discriminated against due to their race or national origin; and if so, is there a process to ensure that reported TOEFL scores are legitimate and student visas have been acquired lawfully?

It is unlawful to discriminate against a student seeking admission to a public college or university based upon race or national origin (See Section III, Title VI). WOU firmly believes in providing equal opportunity for admissions to all applicants. The equal opportunity statement of WOU reads: “[WOU] prohibits discrimination based on race, marital status, religion, sex, age, disability, sexual orientation or national origin” (WOU: About, n.d.). This is a fair policy statement to have featured in the “about WOU” section of the website. But how can we be sure that Admissions is being held to such a standard
when considering the applications of international students? Is it possible that upholding the equal opportunity statement could result in “reverse discrimination?”

The Test of English as a Foreign Language (TOEFL) is touted as “the most widely accepted English-language test in the world” (TOEFL: Test, n.d.). A key requirement for international student admission at WOU is scoring above a certain minimum score on the TOEFL. This requirement ensures that students can prove they meet a level of proficiency in the English language necessary to effectively participate in, and learn from, American university courses. A student who takes the TOEFL test at a recognized Educational Testing Service (ETS) testing site must request that test scores be sent directly to WOU Admissions. Although WOU policy requires that test scores come directly from ETS, how can we be certain that the results did indeed originate at ETS and that the documents are genuine? Are there any preventative measures in place to protect our employees should they be tempted to assist with TOEFL fraud?

Another crucial requirement for admission to WOU is proof of F-1 student visa. Visa acquisition can be challenging and confusing for many students. WOU offers online documents with instructions to assist students with the visa application and interview process. In order for WOU policy to reflect the laws regarding visa acquisition, it is important that the International Programs Office keep abreast of the constantly changing Immigration and Customs Enforcement (ICE) regulations and Student Exchange Visitors Information System (SEVIS) procedures. The I-20 form, which is prepared by the International Programs Office as a required document for visa issuance, is of critical concern as this is the form that is often a direct link to cases of visa fraud. International Office policy requires that I-20 forms be completed and issued to students in compliance
with ICE regulations. But how can we be absolutely sure that all I-20 forms are issued appropriately? Are there other less obvious avenues where students and/or staff might be vulnerable to visa-related fraud?

The International Programs Office supports a trust-first policy with our faculty, staff, and students. However, we must be aware of the fact that human beings are inherently prone to discriminatory and/or fraudulent behavior that we may be involuntarily coerced into committing without fully recognizing the implications of our actions. Even those with the best intentions can make mistakes; and those with the worst intentions are easily swayed. International Programs recognizes that policy should be designed with the goal of facilitating the prevailing educational goals of the institution first, with cautionary measures applied to minimize the risk of encountering legal repercussions second.

III. Legal Issues

A. Caselaw

*Discrimination issues.* WOU believes in promoting the benefits of a racially and ethnically diverse student body. The learning community is simply stronger and richer when students bring life experiences from a variety of cultural backgrounds. Equal opportunities for a high quality education are extended to all applicants. In recent years, the concept of enhancing diversity on campus has been met by a generally favorable response. However, no institution to date has found the perfect action plan for achieving comprehensive diversity.

The University of Michigan thought they had found a great way to enhance the racial diversity of their student body by creating a points system as part of their
admissions policy. Under this system, students received points based upon a number of
different factors related to the student’s application. If a student scored 100 points or
more they were essentially guaranteed admission to the university. One of the criteria
that resulted in points was membership in an underrepresented racial or ethnic minority
group. Any applicant of African American, Hispanic, or Native American descent was
automatically granted 20 points toward their total score. The university was surely acting
in good faith by attempting to attract and admit students from underrepresented groups.
However, two Caucasian students, who were both denied admission to the university,
filed a lawsuit against the university and various administrators based upon their belief
that the school discriminated against them in violation of the Fourteenth Amendment and
Title VI (Gratz, Hamacher v Bollinger, 123 S. Ct. 2411). The district court found for the
defendant, but on writ of certiorari, the case was brought before the U.S. Supreme Court
where it was reversed in favor of the students. In this case, while the university may have
been attempting to achieve a more diverse student body, the potential of discriminating
against Caucasian students was completely overlooked.

Once the university attracts and admits international students, as well as domestic
students from diverse racial backgrounds, it becomes the institution’s responsibility to
ensure those students receive equal access to educational opportunities. It is important to
realize that, even when the university is doing everything according to standards of good
practice, the potential for being sued is ever-present.

In Louisiana, a female student of Indian national origin brought a lawsuit against
Louisiana State University (LSU) alleging discrimination based on her race
(Balakrishnan v LSU, 939 So. 2d 595). After completing two years in a medical school
program at LSU, the student was informed that she would not graduate from the program. The student believed that she had been discriminated against and defamed. A trial court agreed, awarding her a judgment of $640,453. LSU contested this decision, and in the Court of Appeal of Louisiana the judgment was vacated and set aside. This was a fortunate turn of events for LSU. However, LSU had to spend time and money on this case, all the while being viewed by the public as an institution that could possibly be engaging in discriminatory practices. This case points out the importance of maintaining policies that reduce the risk of incurring legal consequences. Furthermore, it is critical that students are addressed and communicated with locally in an attempt to resolve disputes well before any party would consider bringing a case to the courtroom. If LSU had engaged the student appropriately, using tact requisite of the situation, the institution may have been able to avoid the legal process, and concomitantly, save face.

Examinations, as a form of measuring a student’s comprehension of course or program content; whether routine, in the form of a mid-term; or required, for entrance to an advanced educational program, must also be administered free of discrimination based upon race or national origin. It may come as a bit of a surprise that lawsuits of this nature do not always involve underrepresented populations. For instance, the Rensselaer Polytechnic Institute (RPI) in New York was sued by a white male of American national origin on the basis of discrimination when he failed his examination for his doctoral degree for the third time (Bucklen v RPI, 166 F. Supp. 2d 721). In this case, the district court denied RPI’s motion to dismiss the claim of educational discrimination under Title IX and New York Human Rights Law. It is important to recognize that policy written to
protect the rights of international and/or minority students should be comprehensive; considering all races and national origins, including those of the majority.

For an example of exam discrimination involving a foreign student, consider the currently unpublished case brought this year against Southern California University of Health Sciences. In this case, a student of Middle Eastern national origin alleged that:

[The] defendants discriminated against him in grading his midterm examinations in one of his classes, failed to follow the procedures set forth in the Student Handbook when investigating his discrimination complaint, retaliated against him by suspending him, and failed to follow proper procedures when they suspended him. (*Amini v SCUHS*, 2008 Cal. App. Unpub. LEXIS 257)

The situations leading to this lawsuit were so poorly handled that the student went on multiple tirades – in the form of yelling, barging in on meetings, and sending scathing emails – against the various parties involved. The public incidents frightened bystanders and resulted in reports against the student describing his behavior as violent. Fortunately, the Court of Appeal of California found in favor of the university. However, the damage was done long before this situation reached the courtroom. At WOU, we can learn from cases like this by taking the necessary precautions to avoid experiencing such an ugly string of events.

When it becomes absolutely necessary that disciplinary action be taken against a student, the university must be certain that the adjudication process is handled fairly and consistently. Any student who feels that they were not treated fairly when accused of a crime will surely seek defense against the institution. However, when a student believes that the unfair treatment was motivated by discrimination based on their race or national
origin, the university’s commitment to fair treatment of their diverse student population is immediately called into question.

At University of Texas at Dallas, a foreign student was accused of plagiarism. As a result, the student was expelled from the university. The student believed that discrimination based on race or national origin was the actual reason for expulsion, so the university landed in Texas District Court (Ntreh v UT Dallas, 2000 Tex. App. LEXIS 5228). The court found for the university, but the plaintiff appealed. In appeals court, the university was “lucky” because the appellant had been deported and was unable to appear for the trial. The court affirmed the district court judgment believing that there was enough evidence to support the plagiarism claim and not enough evidence to prove discrimination. Had the student been present in the appeals court, the outcome of this case may have been much different. Of course, any student, regardless of race or national origin, may feel that they were unfairly expelled and take an institution to court. Therefore, the best defense for a university if they are completely unable to avoid court proceedings exists in their adherence to an oath that all students are treated equally.

TOEFL testing fraud. While a university is simply requesting TOEFL test scores in order to determine if a student is fit to attend classes speaking English as a second language, the test scores themselves are much more significant to other entities involved in the testing process. For many foreign nationals, achieving a passing TOEFL score is a barrier blocking entry to the United States. But those who have found ways to cheat the system have effectively circumvented the barrier by using our educational institutions as a binding point for entry. The university is often not directly involved in the proceedings when the United States brings an individual accused of TOEFL fraud to the courtroom.
However, at least one educational institution will always be indirectly involved when named as the intended recipient of the TOEFL scores. Whether received scores are potentially fraudulent or not, WOU needs to be aware of the legal cases involving TOEFL testing and the ETS.

Take, for instance, four separate cases where a ring of foreign nationals allegedly worked together to arrange for imposters to take the TOEFL test for them (U.S. v Al Hedaithy, 392 F.3d 580; U.S. v Alsugair, 256 F. Supp. 2d 306; U.S. v Alkaabi, 223 F. Supp. 2d 583; U.S. v Al-Ame, 434 F.3d 614). In each of these cases, the conspirators devised a complex, yet very similar plan. One defendant would apply to take the exam. The defendant would then pay money to the imposter who would arrive at the testing site and claim to be the defendant. Then the imposter would sign paperwork, be photographed, and finally take the test using the defendant’s name. The imposter would ask for the results to be mailed to an address in another state where other conspirators would substitute photographs on the test results before sending the doctored score report to a university. They even figured out how to create a counterfeit envelope sealed with the ETS trademark. The main charges of this case revolved around mail fraud, as well as misrepresentation of the ETS’s “property interest in maintaining the integrity of the testing process” (U.S. v Al Hedaithy). In cases such as this, an Admissions Officer at a university may be the first person to handle the fraudulent documents. The question is: would that employee – or better yet – should that employee be able to make the determination as to whether or not the official looking documents are, in fact, fraudulent?

Student visa complications. Another gateway into the United States, which of course makes it susceptible to fraud, is the student visa. At any given time there are
foreign nationals who are willing to pay handsome sums of money for university employees to help with illegally obtaining a visa or maintaining F-1 student status. If the monetary temptation weren’t enough, there could be other various avenues to coerce individuals into participating in such schemes.

In 1992 an adjunct professor at Mesa College began selling passing grades to foreign students who had never attended his classes (U.S. v Hayes, 231 F.3d 663). Interestingly, the professor never actually met the students at all. A third party was involved who would pay him to pass these students so that they could maintain their non-immigrant F-1 status and remain in the United States. In this case, it was a faculty member who was responsible for the crime. This complicates matters for International Programs; because, although the actions of our staff are supervised in a controlled environment, faculty members operate essentially “at large” with little, if any, direct supervision. It would be convenient to cast responsibility to the head of the faculty member’s home department. However, since the fraud involved foreign students on F-1 visas, the International Programs Office would, to some extent, be expected to have knowledge of the potential for fraud of this sort.

In order to obtain the student visa, a foreign national must first be issued an I-20 form from the college where they plan to study. The school has to verify the necessary paperwork required to issue the I-20 form and then provide an official signature. At Morris Brown College, the designated school official responsible for validating paperwork and signing the I-20 was found guilty of a scheme to issue I-20 forms based upon knowingly fraudulent documentation so that foreign students could obtain student visas (U.S. v Evans, 188 Fed. Appx. 878). In exchange for substantial sums of money,
the defendant worked with co-defendants to issue the fraudulent I-20 forms on behalf of approximately 150 foreign students who never even intended to set foot on the college campus. In visa fraud cases, defendants are often making tens of thousands of dollars by participating in these illegal activities. Those convicted of crimes were simply unable to resist the temptation for easy money. Administrators and faculty of WOU need to be made aware of these scams through university wide educational programs. Many of us are unaware of how much power we wield in our positions and, as a result, how much that power is sought after by those who wish to take advantage of the system.

Unfortunately, there are cases where university employees use their power to manipulate others for purposes unrelated to money. In Rhode Island, an international student pursuing a graduate degree claimed to be experiencing problems maintaining her F-1 visa status (Liu v Striuli, 36 F. Supp. 2d 452). One of her professors allegedly offered to help her with her visa issue, but eventually used his position as an immigration official to forcibly coerce her into having sex with him. Rape, discrimination, and gender motivated violence charges were brought against the professor and the college, citing Civil Rights and Title IX violations. The court delivered a mixed verdict, but the facts of the case supported her claim of being taken advantage of when in need of help with her visa problem. We never want to assume that any university employee could be capable of such a horrendous crime. However, it is possible for an otherwise exemplary employee to fall victim to temptation, even of the non-monetary variety. Informing the community of the various forms of temptation is a first step toward preventing individuals from unwittingly (or intentionally) making the wrong decisions.

B. Other Applicable Law
The federal government provides a number of laws that protect and/or regulate rights for foreign students. The Fourteenth Amendment Equal Protection Clause in the U.S. Constitution provides that states cannot deny a person equal protection of the laws. Public universities, as state institutions, are beholden to this clause; which requires that laws are applied equally, thereby refusing the states the option to discriminate. In effect, this portion of the Constitution insures that states apply laws equally to all parties. Title VI of the Civil Rights Act of 1964 takes things a step further by ensuring that any entity receiving funding from the federal government does not discriminate on the basis of race, color, and national origin, lest that entity be stripped of all funding. In our public universities, Title VI strictly prohibits discrimination in Admissions practices and policies, as well as in any other university programs or activities.

The United States Code provides definitions of immigration status for our international students. Title 8 of the United States Code (8 U.S.C. § 1101(a)(15)) outlines three important distinctions of concern to WOU. First, students who plan to pursue a full course of study at an institution in pursuit of an academic degree are referred to as F-1 status (8 U.S.C. § 1101(a)(15)(F)(i)). Most, if not all, foreign students who attend WOU are in the U.S. on an F-1 visa. In contrast, international students studying at a vocational school or at a “nonacademic” institution will obtain a visa with M-1 status (8 U.S.C. § 1101(a)(15)(F)(M)(i)). Finally, those entering the United States as “exchange visitors,” studying or conducting research in a specialized field, are required to carry a J-1 visa (8 U.S.C. § 1101(a)(15)(F)(J)).

The specific regulations for student visas are subject to frequent change, and as such, it is crucial that the International Programs Office keep abreast of the most recent
policies and procedures. The State Department regulations are found in the Code of Federal Regulations (22 C.F.R. § 41.61). Homeland Security Citizenship and Immigration Services (CIS) approves the schools that student can gain visas to attend (8 C.F.R. § 214.3) and provides additional regulations for students on F-1 and M-1 visas (8 C.F.R. § 214.2(f), (m)). Furthermore, International Programs must be very familiar with Immigration and Customs Enforcement (ICE) and the Student and Exchange Visitors Information System (SEVIS) (Kaplin & Lee, 2007). The SEVIS system is used to enter information for students studying in the U.S. on visas (8 C.F.R. § 103, 214). Effectively serving our international student population requires that university officials are able to navigate the various rules and regulations governing student visas so that potential complications are avoided and students are able to pursue their studies uninterrupted.

IV. Recommendations for Action

First and foremost, training the campus community to understand the implications of educating a diverse, international community of students must be done regularly and with the cooperation of multiple divisions of the university. Once per term, the International Programs Office should offer a half-day “International Student Awareness” workshop for all faculty and staff. During the workshop, attendees will be alerted of the most recent changes in immigration policies and procedures and how those changes could affect them in their functional areas. Next, small groups will discuss topics of contemporary concern facilitated by International Programs staff. When the group comes back together, there will be a discussion focused on identifying and proposing solutions to challenges and opportunities presented as a result of our growing international student population. This workshop must be supported by central administration, as well as the
heads of the various departments on campus, in order to ensure participation that leads to positive action.

Second, International Programs staff needs to be provided the funding necessary to engage in outside training and extensive opportunities for professional development. The staff of International Programs is the university community’s conduit to foreign student policies and regulations that inform our actions on a daily basis. Understanding the legal implications and constantly shifting rules and regulations governing international student rights requires consistent, thorough instruction from a variety of educational sources. Academic and Student Affairs Deans, as well as members of upper administration, should be encouraged to engage in these training programs alongside International Programs staff.

A task force for anti-discrimination should be created that consists of a wide variety of volunteers across campus; including faculty, staff, and students. This task force will be directed to identify potential areas of discriminatory practice on campus with the purpose of creating preventative strategies to be immediately put into practice through the cooperation of university leadership. Rather than spending a year forming the task force and discussing issues, this task force will be focused on quickly, yet thoughtfully, designing plans for imminent action. As a result, the task force will serve as our institution’s primary discrimination prevention and awareness resource, providing year-round guidance to ensure that WOU upholds its commitment to enhancing diversity and providing equal opportunities to all members of the campus community.

Finally, with regard to the recent increase of international students from China, International Programs must take the initiative to learn as much about Chinese culture
and traditions as possible in order to share our findings with the rest of campus. A new position will be created for a bilingual Chinese/English advisor with extensive experience in international affairs at state institutions. The new advisor will not only advise students, but will also advise the International Programs staff on ways to best support the Chinese students in their academic endeavors. Once again, greater understanding and education of the overall community is the intended outcome. Therefore, this advisor will be expected to help with the coordination of campus-awareness activities and be an advocate and source of information for Chinese students at WOU and in the greater area of Monmouth.

V. Conclusions, Implications, Questions for Further Exploration

Western Oregon University plans to continue recruiting and retaining international students in order to enrich the lives of all our campus learners in this age of globalization in higher education. As a result, new educational opportunities are sure to present themselves, often in unpredictable ways. However, with every iteration of the modern institution comes those who seek to exploit new systems using unforeseen, and often ingeniously insidious methods. Then, perhaps caught in the middle of a much larger scheme, it is often a well intended individual with a certain degree of power who is tempted, or duped, into aiding and abetting a serious crime. WOU must endeavor to protect students, faculty, and staff from those with malicious intent, concurrently enhancing educational opportunities provided by the increasingly diverse student population.

The implications of having a student body comprised of twenty per cent international students are yet to be fully realized. However, we have learned that we
cannot be complacent in our duty to learn from our mistakes and reward those responsible for contributing to the knowledge of the greater good. Each international student who sets foot on our campus provides us with that much more of a convergence with their respective culture. Future policy should seek to embrace and integrate the cultural norms of our foreign students into our overall campus culture rather than imposing strict rules that lend to assimilation. The resulting atmosphere of WOU will therefore continue to expand across multiple cultural horizons. We should strive for an institution where learning occurs as a basic function of person to person interaction.

What will our student body look like in fifty years? Will we continue to diversify until the concept of being an underrepresented minority ceases to exist? What new avenues for illegal entry to our country will be exposed as we continue to encourage the international exchange of ideas? Future educators should research the long term effects of maintaining a recruitment model that emphasizes a yearly increase in our population of minority and international students. We all agree that the overall learning community is enriched through the merging of cultural ways of knowing and being. But how can we measure and assess those educational assets? WOU should be at the forefront of burgeoning research on the positive and negative effects of maintaining a multicultural, multinational educational institution as we venture forth into an increasingly globalized world.
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