



Robbins Schwartz
One Team. Making Your Mission Ours.

Legal Updates and Compliance Reminders for 2023

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Introduction

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Agenda

- Legal Updates: Community College Highlights for SY 2023-24 and Beyond
- Compliance Reminders: Ongoing Community College Responsibilities for SY 2023-24
 - Gainful Employment Regulations
 - Gramm-Leach-Bliley Act Regulations
- Planning Considerations: Financial Considerations relating to the Use of Tort Funds
- Questions and Answers

Legal Updates

Community College Highlights
for Academic Year 2023-24 and
Beyond



Working Cash Fund Amendments (Public Act 103-0278)

- Amends the Illinois Public Community College Act to provide greater flexibility and authority for the use of working cash funds
- Revises Section 3-33.6 of the Act to establish that “[m]onies in the working cash fund may be used for any and all community college purposes”
- Lifts the restriction regarding abolition of the working cash fund and allows for the increase or abatement of the working cash fund at any time by resolution of the Board of Trustees
 - Requires that the community college “maintains an amount to the credit of the working cash fund...to be reimbursed to the working cash fund, at least equal to 0.05% of the then-current value...of the taxable property in the district”
 - If necessary to effectuate the abatement, any outstanding loans to other funds of the community college may be paid or become payable to the fund or funds to which the abatement is made
- Also allows a Board secretary to receive compensation *if* the secretary is not a member of the Board of Trustees
- Effective July 28, 2023

Work Job Program Act Amendments (Public Act 103-0305)

- Amends the Work Job Program Act (under which Illinois community colleges can qualify as “community-based organizations”)
- Retains bid credits for contractors and subcontractors that employ apprentices who have completed the Illinois Works Preapprenticeship program
- Creates requirement that contractors and subcontractors must provide the Department of Commerce and Economic Opportunity certified payroll documenting the hours performed by apprentices to earn bid credits

Work Job Program Act Amendments (Public Act 103-0305)

- Contractors and subcontractors can use bid credits toward future bids for public works projects contracted or funded by the State or an agency of the State in order to increase the likelihood of being selected as the contractor for the public works project toward which they have applied the bid credit
- Increases utilization goals for apprentices from the Illinois Works Preapprenticeship Program, the Illinois Climate Works Preapprenticeship Program, and the Highway Construction Careers Training Program
 - Contracts entered into after July 28, 2023 but before January 1, 2024: 25%
 - Contracts entered into after January 1, 2024: 50%
- Creates additional waiver and reporting requirements
- Effective July 28, 2023

Out-of-District Attendance (Public Act 103-0159)

- Amends the Illinois Public Community College Act to “expand educational services to the greatest number of students in each community college district and maximize the utilization of the finances, facilities, equipment, and personnel of each district to provide educational services that might otherwise be impracticable for a district individually”
- If a student in a “sending college” district would like to enroll in a program not offered by that community college, the student may attend a “receiving college” that offers the program
 - Students must pay tuition and fees at the in-district rate of the receiving college
 - Students must seek federal financial assistance at the receiving college if such assistance is desired
 - However, students must apply for enrollment to the sending college in accordance with rules and procedures established by the sending college
 - A letter designating the student as participants in an approved program must be received from the sending college and forwarded to the receiving college
 - A student may choose to complete any required general education coursework and take approved courses at the sending or receiving college
- Effective January 1, 2024

Hunger Free Campuses (Public Act 103-0435)



Amends the Board of Higher Education Act to establish a hunger-free campus grant program



Designation as a hunger-free campus is required to receive grant funding



Community colleges in higher need areas to receive priority



Effective August 4, 2023

Hunger Free Campuses (Public Act 103-0435)

- To be designated, a community college must:
 - Establish a hunger task force that meets a minimum of 3 times per academic year
 - Designate a staff member responsible for assisting students with enrollment in the Supplemental Nutrition Assistance Program (SNAP)
 - Provide options for students to utilize SNAP benefits at campus stores or provide information about stores in the surrounding area that accept SNAP
 - Participate in an awareness day campaign activity and plan a campus awareness event
 - Provide at least one physical food pantry on campus or enable students to “receive food through a separate, stigma-free arrangement with a local food pantry”
 - Develop a student meal credit donation program or free meal voucher program
 - Annually conduct a survey on student hunger

Debt Assistance (Public Act 103-0054)

- Amends the Student Debt Assistance Act to change recently enacted requirements relating to the withholding of official transcripts
- Eliminates requirement that an institution of higher education must provide an official transcript to a current or potential employer
- Limits the reasons why a student may request a transcript to:
 - Completing a job application
 - Transferring from one institution of higher education to another
 - Applying for student aid
 - Joining the United States Armed Forces or the Illinois National Guard
 - Pursuing other postsecondary opportunities

Debt Assistance (Public Act 103-0054)

- Requires the adoption of a policy that outlines that outlines the process by which a current or former student may obtain a transcript or diploma that has been withheld from the student because the student owes a debt
- Adds additional reporting requirements
- Effective June 9, 2023



RISE Act (Public Act 103-0058)

- Creates the Respond, Innovate, Succeed and Empower Act
- Requires that each public institution of higher education, including community colleges, adopt a policy that makes documentation submitted by an enrolled or admitted student sufficient to establish that the student is an individual with a disability
- The policy must be transparent and explicit regarding information about the process by which the public institution of higher education determines eligibility for accommodations for an individual with a disability
- Requires institutions of higher education to engage in an “interactive process” to establish a reasonable accommodation

RISE Act (Public Act 103-0058)

- Documentation establishing a disability includes: Documentation that the individual has had an individualized education program (IEP) in accordance Section 614(d) of the federal Individuals with Disabilities Education Act. The public institution of higher education may request additional documentation from an individual who has had an IEP if the IEP was not in effect immediately prior to the date when the individual exited high school
 - Documentation that the individual has received services or accommodations provided to the individual under a Section 504 plan provided to the individual pursuant to Section 504 of the federal Rehabilitation Act of 1973. The public institution of higher education may request additional documentation from an individual who has received services or accommodations provided to the individual under a Section 504 plan if the Section 504 plan was not in effect immediately prior to the date when the individual exited high school
 - Documentation of a plan or record of service for the individual from a private school, a local educational agency, a State educational agency, or an institution of higher education provided under a Section 504 plan pursuant to Section 504 of the federal Rehabilitation Act of 1973 or in accordance with the federal Americans with Disabilities Act of 1990
 - A record or evaluation from a relevant licensed professional finding that the individual has a disability
 - A plan or record of disability from another institution of higher education
 - Documentation of a disability due to military service in the uniformed services

Other Noteworthy Highlights

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- Illinois Articulation Initiative Act (Public Act 103-0469)
 - Emergency Contraception (Public Act 103-0465)
 - Remediation Data (Public Act 103-0401)
 - Equitable Restrooms Act (Public Act 103-518)
 - Gender Violence Act Amendments (Public Act 103-282)

Compliance Reminders

Ongoing Community College
Responsibilities for SY 2023-24



Gainful Employment Regulations

- In September 2009, the U.S. Department of Education established negotiated rulemaking committees to address regulation of for-profit colleges and career education programs to ensure they led to “gainful employment in a recognized occupation”
- The rules generally apply to non-degree programs (e.g., certificate programs) at public institutions
- In June 2011, the Department published the final gainful employment rule.
 - The final rule included two measures that would be evaluated for institutions continued participation in federal student aid:
 - Debt incurred during compared to annual earnings after graduation
 - Repayment rate
- In July 2012, the Association of Private Sector Colleges and Universities (APSCU) successfully challenges the Department’s final rule, arguing that there was no reasonable basis for the choice of eligibility threshold for the repayment rate

Gainful Employment Regulations

- In October 2014, the Department again finalized regulations that removed the “repayment rate” eligibility measure
- A program would be considered to lead to gainful employment if the “estimated annual loan payment of a typical graduate did not exceed 20 percent of their discretionary income or 8 percent of their total earnings”
- The 2014 rules were implemented for one year, but the APSCU challenged the rules in November 2014 as exceeding the Department’s authority because it lacked a reasonable basis for the use of the debt-to-earnings criteria the rule was later challenged by the Association of Proprietary Colleges in May 2015, the American Association of Cosmetology Schools (AACCS) and a group of acupuncture schools
- In October 2017, the Trump administration refused to enforce the regulation leading to further litigation by state attorneys general
- In August 2018, the Trump administration formally rescinded the Department’s rules regarding gainful employment, effective July 2020

Gainful Employment Regulations

- Between July 2020 and September 2020, further legal challenges to the rescinding of the Department’s gainful employment rules made their ways through the courts
- In 2021, the Department placed rules related to gainful employment on their planned negotiated rulemaking session
- Despite delays, the Department released its final rules, retitled “Financial Value Transparency and Gainful Employment” rule, consisting of 775 pages of rules intended to create accountability relating to programs that fall under the rule
 - According to the American Association of Community Colleges (AACC), a “formidable amount of work will be necessary to comply with the new regulations”
 - AACC also rightfully points out that the rule is subject to likely court challenges and potential reversal

Financial Value Transparency and Gainful Employment Rule Requirements

- Any non-degree programs at community colleges will be subject to the rule
- The rule’s “debt-to-earnings” metric for determining eligibility include:
 - The annual median debt payments of program completers must not exceed 20% of their median discretionary earnings (defined as earnings above 1.5 x the Federal Poverty Guideline)
 - The annual median debt repayments of program completers must not exceed 8% of their median total annual earnings
 - A program may become ineligible if it fails to satisfy the metric for two out of three years



Financial Value Transparency and Gainful Employment Rule Requirements

- A new “earnings premium” metric requires median earnings graduates to be greater than the median earnings of high school graduates in the state aged 25 to 34 who are employed or in the labor market (unemployed individuals who are seeking work are included).
- If a program fails to meet this standard for two out of three years, it becomes ineligible for Title IV

Financial Value Transparency and Gainful Employment Rule Requirements

- All prospective students must receive a dedicated communication directing them to a new disclosure website created by the Department
- Student aid recipients must receive the same communication for each year during which they receive aid in advance of the first payment period
- If a program fails to meet the earnings premium metric, a warning must be sent to prospective and current students regarding the potential that the program will lose Title IV eligibility
- The Rule establishes reporting requirements for program cohorts, which may require reporting of data relating to student enrollment, aid, program accreditation, and additional information
- Effective July 1, 2026

Gramm-Leach-Bliley Act Regulations

- Originally passed in November 1999, the Gramm-Leach-Bliley Act (GLBA) repealed the Glass-Steagall Act of 1933
- Eventually, GLBA led the adoption of federal laws and regulations known as:
 - The Financial Privacy Rule (requiring financial institutions, as defined under GLBA, to provide privacy notices to consumers)
 - The Safeguards Rule (requiring financial institutions to implement data security requirements)
- Following enactment of the GLBA and related federal rulemaking, there were questions regarding the applicability of GLBA to institutions of higher education, although such compliance was mandated by Federal Student Aid Program Participation Agreements

Gramm-Leach-Bliley Act Regulations

The Department of Education issued a Dear Colleague Letter urging participants in Title IV aid to comply with GLBA's Safeguards Rule

July 2015

The federal Office of Management and Budget announced that the single audit process would include an audit objective for the Safeguards Rule for FSA

Jan. 2017

Penalties were announced, including potential referral to the FTC or loss of access to Department systems

Feb. 2020

The Department informed schools that annual audits would commence to enforce GLBA compliance, strongly encouraging institutions of higher education to understand and address NIST 800-171 controls

The Department's Office of Inspector General outlined audit procedures through CPA-19-01

Gramm-Leach-Bliley Act Regulations

- The Federal Trade Commission (FTC) issues amendments to the Safeguards Rule on December 9, 2021
- The amendments establish nine “elements” of a regulatory compliant information security program
- Entities subject to GLBA, including community colleges, required to comply with the nine elements by December 9, 2022
- The FTC later extends the compliance deadline to June 9, 2023



Gramm-Leach-Bliley Act Regulations

- In February 2023, the Department made a general announcement emphasizing the need for institutions of higher education to protect consumer data through GLBA compliance

“Our expectation is that all FSA partners will quickly assess and implement strong security policies and controls and undertake ongoing monitoring and management for the systems, databases and processes that support all aspects of the administration of Federal student financial aid programs authorized under Title IV of the Higher Education Act of 1965, as amended (the HEA). Such systems, databases and processes include all systems that collect, process, and distribute information – including PII – in support of applications for and receipt of Title IV student assistance.”

Gramm-Leach-Bliley Act Regulations

- Required Elements for GLBA Compliance
 - Element 1: Designates a qualified individual responsible for overseeing and implementing the institution's or servicer's information security program and enforcing the information security program (16 C.F.R. 314.4(a))
 - Element 2: Provides for the information security program to be based on a risk assessment that identifies reasonably foreseeable internal and external risks to the security, confidentiality, and integrity of customer information (as the term customer information applies to the institution or servicer) that could result in the unauthorized disclosure, misuse, alteration, destruction, or other compromise of such information, and assesses the sufficiency of any safeguards in place to control these risks (16 C.F.R. 314.4(b))
 - Element 3: Provides for the design and implementation of safeguards to control the risks the institution or servicer identifies through its risk assessment (16 C.F.R. 314.4(c)). At a minimum, the written information security program must address the implementation of the minimum safeguards identified in 16 C.F.R. 314.4(c)(1) through (8)

Gramm-Leach-Bliley Act Regulations

- Element 4: Provides for the institution or servicer to regularly test or otherwise monitor the effectiveness of the safeguards it has implemented (16 C.F.R. 314.4(d))
- Element 5: Provides for the implementation of policies and procedures to ensure that personnel are able to enact the information security program (16 C.F.R. 314.4(e))
- Element 6: Addresses how the institution or servicer will oversee its information system service providers (16 C.F.R. 314.4(f))

Gramm-Leach-Bliley Act Regulations

- Element 7: Provides for the evaluation and adjustment of its information security program in light of the results of the required testing and monitoring; any material changes to its operations or business arrangements; the results of the required risk assessments; or any other circumstances that it knows or has reason to know may have a material impact the information security program (16 C.F.R. 314.4(g))
- Element 8: For an institution or servicer maintaining student information on 5,000 or more consumers, addresses the establishment of an incident response plan (16 C.F.R. 314.4(h))
- Element 9: For an institution or servicer maintaining student information on 5,000 or more consumers, addresses the requirement for its Qualified Individual to report regularly and at least annually to those with control over the institution on the institution's information security program (16 C.F.R. 314.4(i))

Planning for Risks Associated with New Legal Requirements

Financial considerations
relating to the use of Tort Funds





Legal Authority for Funds

- Legal Authority for Funds – Specific community college funds, and the permitted uses of monies in these funds, are established through the Illinois Public Community College Act (110 ILCS 805/1, *et seq.*), ICCB regulations, and other statutes applicable to public bodies

Lawful Use of Tort Fund Revenue for Risk Management Programs

- The Illinois Local Governmental and Governmental Employees Tort Immunity Act (745 ILCS 10/9-101.1, *et seq.*) allows for the levy of taxes for certain risk management activities under Section 9-107(b)

“(i) the cost of insurance, individual or joint self-insurance (including reserves thereon), including all *operating and administrative costs and expenses directly associated therewith, claims services and risk management directly attributable to loss prevention and loss reduction*, legal services directly attributable to the insurance, self-insurance, or joint self-insurance program, and educational, inspectional, and *supervisory services directly relating to loss prevention and loss reduction...* (iii) pay judgements and settlements under [certain conditions]...(vii) to pay the costs of *risk management programs*.”

Use of Tort Fund Strictly Construed

- Despite its broad language, Section 9-107(b) must be strictly construed...
- “Notwithstanding the extraordinary nature of the tax authorized by this Section, however, it has become apparent that some units of local government are using the tax revenue to fund expenses more properly paid from general operating funds. These uses of the revenue are inconsistent with the limited purpose of the tax authorization. Therefore, the General Assembly declares, as a matter of policy, that (i) the use of the tax revenue authorized by this Section for purposes not expressly authorized under this Act is improper and (ii) the provisions of this Section **shall be strictly construed** consistent with this declaration and the Act's express purposes.”

Risk Management Programs and Activities under the Act



Courts have had limited opportunities to interpret Section 9-107(b) and determine whether an expenditure of tort funds is appropriate



In 2007, the Appellate Court of Illinois for the Second District decided *In re Objections to Tax Levies of Freeport School District 150, et al.*, 372 Ill.App.3d 562 (2d Dist. 2007)

In re Objections to Tax Levies of Freeport School District 150

- The case involved 2,000 property owners that filed a tax objection challenging the taxing bodies' tort immunity levies under Section 9-107(b) for the 2000 tax year
- The issue before the trial court was whether the taxing districts' *expenditures* were authorized under Section 9-107(b)
- After the trial court found for the taxpayers, the appeals court certified the following questions for an interlocutory appeal:
 - Whether the use of the tort immunity levy to partially fund the compensation of taxing bodies' employees is authorized
 - Whether the use of revenue generated by one of the taxing bodies was "to pay for safety- and security-related expenditures" under the act
 - Whether the use of the tort immunity levy by a different taxing body to partially fund its equity program was appropriate

In re Objections to Tax Levies of Freeport School District 150

- One of the taxing bodies involved in the lawsuit (Pearl City School District) had expended funds for a risk management plan to “reduce and prevent the district’s tort liability exposure”
 - Pearl City School District had spent funds to pay a portion of compensation to its employees for risk management duties they performed
 - In connection with the plan, the district had analyzed which employee positions were best suited to prevent exposure to tort liability , including “specific liability-prevention responsibilities” in the job descriptions of specific personnel and observed employees in their jobs
- Another of the taxing bodies (Freeport School District) had allocated funds for insurance, salaries and activities related to equity programs, in part as a result of threatened litigation from an advocacy group and a pending investigation by the U.S. Department of Education Office of Civil Right
- Another of the taxing bodies (Highland Community College) had paid for OSHA training, campus safety software, and ergonomics training using tort levy funds
- Other parties were engaged in similar risk prevention activities

Questions Addressed by the Court in *Freeport School District 150*

- Whether the use of the tort immunity levy to partially fund the compensation of taxing bodies' employees is authorized
 - The use of tort funds for salary expenditures is permissible where employees are assigned specific risk management responsibilities outside ordinary safety tasks
 - The use of tort funds in such manner would not be proper in the absence of a formal risk management process or survey of time spent by staff on risk management activities
 - Tort funds may be used for duties performed for risk management, meaning:
 - Identification and analysis of loss exposures
 - Selection of technique or combination thereof to handle each exposure
 - Implementing chosen techniques
 - monitoring the decision made and implementing appropriate changes

Questions Addressed by the Court in *Freeport School District 150*

- Whether the use of revenue generated by one of the taxing bodies was “to pay for safety- and security-related expenditures” under Section 9-107(b)
 - The use of tort funds for safety trainings and ergonomics training was an allowable expenditure, even absent a risk management program, since the unambiguous language of Section 9-107(b) allows for the use of tort funds for “educational, inspectional, or supervisory services directly related to loss prevention”
 - However, expenditure for campus security software was not. Here the court distinguished the software as a “good and not a service”

Questions Addressed by the Court in *Freeport School District 150*

- Whether the use of the tort immunity levy to partially fund its equity program was appropriate
- The use of tort funds for funding equity programs was not an appropriate use of revenue, though the decision was based on the nature of damages



Risk Management Programs and Activities under the Act

- Lessons from *In re Objections to Tax Levies of Freeport School District 150*
 - Community colleges should carefully analyze whether risk management activities constitute a good or services
 - Employees such as food service workers, administrators, nurses, and faculty cannot be paid salary from the Tort Fund if no responsibilities above and beyond their ordinary job duties are assigned to the personnel, even if the employees are referenced in the taxing districts' risk management policy
 - Prior to allocating tort funds to salaries, community colleges should establish a risk management plan and conduct an analysis of risk management activities
 - Community colleges should be mindful that trial courts have rejected the use of tort funds for “routine expenses” that mitigate risks, such as road salt, fire extinguishers, elevators, snow plows, first aid equipment, radios, and door openers
 - Legal expenses should be reviewed to determine whether tort funds may be used

Discussion: Potential Use of Tort Funds for Compliance Activities

- Applicability to Recent Legal and Regulatory Changes
 - Training on RISE Act reasonable accommodation procedures
 - Cost of equipment for to process SNAP purchases
 - Cost of salaries related to new gainful employment regulations
 - Cost of analyze of security systems for compliance with GLBA



A blurred background image showing a group of people in a classroom or meeting. Several individuals have their hands raised, indicating an interactive session or a Q&A period. The scene is dimly lit, with a focus on the raised hands in the foreground. The text 'QUESTION & ANSWER' is overlaid in the center in a white, serif font.

QUESTION & ANSWER

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