

ATTORNEY WORK PRODUCT



Memorandum

TO: File

FROM: Ryan L. Morris, Assistant General Counsel

DATE: October 25, 2017

SUBJECT: Follow-Up to Textbooks and Contracts Memorandum; LMC0003804

On June 5, 2017, in response to questions asked during Spring 2017 by faculty and faculty senate presidents at multiple colleges, I sent a memorandum to Tammy Cortes, AVC for Budget, Finance & Treasury. Part of that memorandum discussed what Lone Star College faculty may tell students about purchasing textbooks and course materials from sources other than the College bookstores run by Follett Higher Education Group, Inc. without violating the College's exclusive contract with Follett. In response to specific faculty requests for language they may use when informing students about textbooks and course materials, that memorandum suggested the following language:

"You are not required to buy your textbooks and course materials from the bookstore—buy them wherever you want—but the bookstore is the only source recommended by the College. [Add personal endorsement of the bookstore if desired]."

This communicates that textbooks and course materials may be obtained without going through the bookstore while simultaneously not mentioning any particular outside source of those textbooks or course materials. Mentioning another source could be seen as endorsing, licensing, or otherwise approving or supporting that other source, which the College has contractually agreed not to do.

QUESTIONS PRESENTED

Since June 5, 2017, the Office of the General Counsel has received from College faculty the following two additional questions on the same topic:

1. What happens if the bookstore does not offer the book the professor has chosen?

2. What if a publisher offers both a paper copy text and an electronic text? If the e-text is less expensive and works within the professor's course, can faculty suggest students purchase the text from an online source?

ANSWERS

1. *If the bookstore does not offer the book the professor has chosen*—In this situation, the professor should obtain a written statement signed by the College's Follett regional representative (contact information may be obtained from the local bookstore manager) that Follett does not offer that textbook or other commercial course material for that semester. The statement should expressly authorize the College to provide another vendor's contact information to relevant students for them to obtain that specific textbook or commercial course material until Follett chooses to offer such textbook or course material. The professor asking this question was not personally aware of an instance in which the bookstore had not offered a textbook chosen by a College professor, so this situation is probably uncommon.
2. *If a publisher provides a less expensive electronic text*—Without Follett's specific, unambiguous written permission, the College should not provide students with hyperlinks to non-Follett sources of electronic texts or other commercial course materials. If a professor wants to use a less expensive electronic version of a textbook, then when submitting textbook selections to Follett, the professor should indicate the electronic version of a textbook is an acceptable substitute. Follett will then work with the publisher to obtain access to the electronic text at wholesale prices and should supply the professor with a hyperlink that the professor may give to students to purchase the electronic text.

In other words, whatever textbook or commercial course materials a professor plans to use—whether hard copy, electronic, or anything else—the professor should work through the bookstore to provide students with access to those materials. No College employee may give students a hyperlink to an alternate source for those materials or otherwise point students to an alternate source. If students buy textbooks or commercial course materials from an alternate source, they must do so on their own, without the help of any College employee.

Free electronic materials are a special case. From my meetings with its representatives, Follett seems to have no problem with professors giving students hyperlinks to free

online learning materials. But if there is any cost associated with access to online materials, Follett wants professors to coordinate with the bookstore to give students a bookstore hyperlink to such materials, and such coordination is consistent with the College's obligations under its contract with Follett.

Follett has a policy to match other vendors' (not including private individuals) lower prices on textbooks and commercial course materials. The same contract that requires the College not to endorse, license, approve, or support any other source of textbooks requires Follett to "make all efforts to lower textbook costs to students including improving used textbook ratios." The bookstore has several ways to lower textbook costs to students, and many of those ways depend on faculty's decisions regarding textbooks and commercial course materials and require long-term planning. I recommend that faculty concerned about keeping textbook costs low for students share their concern with their local Follett bookstore manager and ask what options they have as faculty to lower the costs their students pay for textbooks and commercial course materials.

Sincerely yours,



Ryan L. Morris
Assistant General Counsel

Approved:  10.25.2017

Mario K. Castillo, Chief Operating Officer & General Counsel