What are the objectives of this training?

• Assist you in identifying common issues in the classroom that could have legal implications (i.e., issue spotting)
• Provide you with tips for how to address those issues
• Share information about the Office of Legal Affairs (who is available to assist you when these issues arise)
What is NOT an objective of this training?

For you to become an expert!

What kinds of legal issues can arise in the classroom?
Topics Covered in this Presentation

- Title IX
- Family Educational and Privacy Rights Act
- Americans with Disabilities Act/Section 504 of the Rehabilitation Act
- Student Safety Concerns
- Copyright/Free Speech
- NCCU Policies, Regulations and Rules Website
- NCCU Office of Legal Affairs Website

Scenario #1

Dr. Lonnie is a beloved instructor who truly enjoys the work that he does and interacting with students. He is often seen interacting with students outside of his posted office hours and advisors within the School regularly refer students who are having trouble making the transition from high school to college to “have a talk” with Dr. Lonnie.

One day after class as he is gathering his materials, Dr. Lonnie overhears a group of students talking about an incident that occurred at a party the previous week. Based on what he hears, one student was sexually assaulted by another student. However, the alleged victim doesn’t want to move forward and has only told her friends. The students that Dr. Lonnie hears talking are trying to figure out what they can do to help the alleged victim. When Dr. Lonnie walks over to the students in an effort to gather more information, they all quickly leave the classroom.

*Should Dr. Lonnie do anything with the information that he overhears? If so, what?*
Title IX of the Education Amendments of 1972

What is Title IX?
Federal law that requires educational institutions that receive federal funds or financial assistance to prohibit sex discrimination in all programs and activities.

![Title IX Legislation](image)

What does “sex discrimination” mean with respect to Title IX?
An individual cannot be treated differently on the basis of his/her sex in regards to recruitment, admissions, and counseling; financial assistance; athletics; sex-based harassment; treatment of pregnant and parenting students; discipline; single-sex education; and employment.

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Title IX

What is sex-based harassment?
Sexual harassment is unwelcome conduct of a sexual nature. It includes unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature. Sexual violence is a form of sexual harassment. Sexual violence, refers to physical sexual acts perpetrated against a person’s will or where a person is incapable of giving consent, including rape, sexual assault, sexual battery, sexual abuse, and sexual coercion. ([US Dept. of Education](https://www2.ed.gov/about/offices/list/olm/dischargeserv/whatisix.html))

How can NCCU comply with its obligations under Title IX?
Designate a Title IX Coordinator - individual with the responsibility for coordinating NCCU’s efforts to comply with and carry out its responsibilities under the law, including the investigation of complaints, which should be completed within 60 days of NCCU learning about allegation.

**Ms. Ann Penn, Interim Director of EEO, serves as NCCU’s Title IX Coordinator.**
Title IX

Do faculty members have an obligation to report allegations that involve sexual harassment?
YES; a faculty member is considered a “responsible employee” at NCCU.

Who is a “responsible employee”? 
NCCU’s Sexual Misconduct Policy defines a responsible employee as follows: any employee who has the authority to take action to redress the misconduct; has the duty to report misconduct; or is someone a student could reasonably believe has that authority or responsibility. When a report is made to a responsible employee, the University is officially on notice of an alleged violation involving sex-based discrimination and has an obligation to investigate and take appropriate action.

Who does NCCU’s Sexual Misconduct Policy apply to?
All members of the NCCU community, including students, faculty, staff, administrators, volunteers, vendors, independent contractors, and any individuals regularly or temporarily employed, studying, living, visiting, conducting business or having any official capacity with the University, i.e., EVERYBODY.

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Title IX

What should Dr. Lonnie do with the information he overheard?

Contact Ann Penn-Title IX Coordinator (919-530-6881, TitleIX@nccu.edu) and report the information he overheard, including:

1) the name of the alleged victim (also referred to as complainant),
2) the name of the alleged respondent (person accused of engaging in sex-based harassment against the complainant),
3) the names of any individuals with information about what allegedly happened (i.e., the witnesses),
4) the location of the incident, and
5) the approximate date of the incident.

Dr. Lonnie may also complete the Title IX Reporting Form/Statement which will automatically be sent to Ms. Penn electronically upon submission of the form.
Is Dr. Lonnie a responsible employee?  
**Title IX**

**YES.** Even if he doesn’t have the authority to address the alleged misconduct, students who interact with Dr. Lonnie might think that he does.

Should Dr. Lonnie try to find out more information about the claims or conduct an investigation into the allegations on his own?  
**NO.** NCCU has designated Ms. Penn and others on campus, known as Deputy Title IX Coordinators and Title IX Investigators, to conduct investigations into matters that implicate Title IX. Dr. Lonnie’s only obligation is to report the information that he overheard to Ms. Penn.

Does Dr. Lonnie’s reporting obligations depend on whether or not the information that he overheard is true?  
**NO.** Title IX does not require that a responsible employee verify whether or not information received about an alleged act of sex-based discrimination is true. The responsible employee need only report that information received to the Title IX Coordinator.

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**Scenario #2**

Amy Administrator is a faculty lead within the School. As part of her duties, she is responsible for ensuring that all students are properly registered for classes and that faculty members timely transmit grades to students throughout the semester and after final examinations.

One day, in her haste, Amy mistakenly sends an email with the names of students and their corresponding final grades to all of the students on her departmental student distribution list, rather than to the departmental faculty advisor distribution list as she intended.

*Has Amy violated any laws or policy? If so, what should Amy do?*
FERPA

What is FERPA?
The Family Educational Rights and Privacy Act is a federal law that protects the privacy of student education records (applies to schools that receive federal funds from the Dept. of Education). (20 USC §1232g, 34 CFR Part 99)

How does FERPA ensure the privacy of student education records is maintained?
An eligible student must provide written permission to NCCU to release information from a student’s education record unless the information is considered directory information (and the student doesn’t have a directory hold on his/her account).

Who is an “eligible student”?
A student who has either: (1) reached 18 years of age; OR (2) attends a postsecondary school.

What is an “eligible student” entitled to receive?
(1) right to have access to his/her education record; (2) right to seek to have the records amended; (3) right to have control over the disclosure of personally identifiable information from the records (some exceptions); and (4) right to file a complaint with the US Department of Education.

FERPA

What is an education record?
A record that is maintained by NCCU in any media which contains information that is: (1) directly related to a student; and (2) is personally identifiable to a student.

What rights does FERPA provide to a student?
Affords student/parent the right to inspect and review an education record within 45 days of the student’s request or to amend a record that the student believes is inaccurate or misleading.

What does “directory information” refer to?
Information that an institution may release without first obtaining consent from student/dependent student’s parent, as long as the student hasn’t asked the institution not to release directory information to anyone (i.e., a “directory hold”).
FERPA

What is “directory information” at NCCU?
According to NCCU’s FERPA Regulation, directory information includes a student’s name, local and permanent address, email address, telephone number, date and place of birth, class, major field of study, dates of attendance, enrollment status, degrees and awards (including scholarships) received, participation in officially recognized activities and sports, weight and height of members of athletic teams, and the most recent previous educational agency or institution attended.

What is NOT directory information?
A student’s Banner ID # or social security number

Can information about a student’s grade be released without permission?
NO

FERPA

Are there any exceptions to the requirement to obtain consent prior to releasing information from a student’s education record?
YES; an education record can be released without consent to:

- School officials with legitimate educational interest;
- Other schools to which a student is transferring;
- Specified officials for audit or evaluation purposes;
- Appropriate parties in connection with financial aid to a student;
- Organizations conducting certain studies for or on behalf of the school;
- Accrediting organizations;
- To comply with a judicial order or lawfully issued subpoena;
- Appropriate officials in cases of health and safety emergencies; and
- State and local authorities, within a juvenile justice system, pursuant to specific State law.
FERPA

Who is a school official?
In accordance with NCCU’s FERPA Regulation, a school official is an employee, agent or officer of the university or the University of North Carolina’s Office of the President or General Administration in an administrative, supervisory, academic or research, or support staff position and acting in his or her official capacity, including a student assisting another school official in performing his or her tasks.

What is a legitimate educational interest?
This refers to the function of a school official who is performing an authorized task or an activity that he or she is undertaking in the name of the university for which access to an educational record is necessary or appropriate to the operation of the university or to the proper performance of the educational mission of the university.

Are all faculty members automatically school officials?
No. A faculty member is only considered a school official when he or she needs to know information from a student’s education record to fulfill a responsibility as part of his/her official duties with the University.

FERPA

Should Amy have released the grade information without student consent?
NO

What should Amy do to remedy the disclosure of information?
1) Contact the Office of Legal Affairs to report the inadvertent disclosure and receive guidance regarding any additional necessary steps, such as contacting the students to inform them of the disclosure.

2) Contact ITS and request assistance to recall her email and to have the email deleted from the students’ email accounts; also, seek guidance from ITS regarding protocols that should be followed when sharing confidential information via email, such as assigning a password to a file.

**Amy should also consider informing her chair/dean of the inadvertent disclosure.**
FERPA
What steps could Amy have taken in order to prevent the inadvertent disclosure of confidential student information to others?
- Carefully check any attachments prior to hitting “send” on an email message
- Keep documents with student PII in separately labeled electronic folders, i.e., “CONFIDENTIAL INFORMATION”
- Limit the number of email addresses that are included in a group email (i.e., avoid sending mass emails)

If Amy had released the student grade information using a code known only to Amy and each individual student, but without the use of student names, would Amy have violated FERPA?
Maybe not. If a unique code or identifier is used to identify a student rather than a student’s name which is personally identifiable, then posting grades in this manner is not a FERPA violation. However, in this case, because Amy shared the information to a select group of students, someone could attempt to determine a student’s grade by process of elimination. Faculty are discouraged from posting grade information in a publicly available manner.

Scenario #3
Jackie is a first-year student in the School. All throughout high school, Jackie either had an Individual Education Plan (IEP) or a 504 Plan which allowed her to receive accommodations for ADHD, a learning disability and assistive technology tools. However, after matriculating to NCCU, Jackie decides that she no longer wants or needs to receive services for her disability. In her opinion, daily medication will manage her ADHD, learning techniques developed over the years will allow her to master any difficulties posed by her learning disability and her brand new iPhone 7 Plus and Mac Book Pro will allow her to utilize her own assistive technology tools in order to be successful.

During the first few weeks of school, Jackie experiences problems keeping up with the nightly reading and daily homework assignments. Though she starts to fall behind, she is still unwilling to visit the SDS. Nevertheless, following the mid-term exam, and her third failing homework assignment grade, Jackie realizes that she does need to register to receive disability services via the SDS. During her initial meeting with the SDS staff, Jackie not only seeks to receive accommodations for any future assignments, tests and quizzes, but she also wants the accommodations to be retroactively applied.

What should Jackie do in order to receive accommodations at NCCU? If granted accommodations, should they be retroactively applied?
ADA/Section 504

What law(s) entitle a student to receive accommodations on the basis of his/her disability?

What do these laws provide?
Section 504 prohibits discrimination on the basis of a disability in any program or activity operated by a recipient of federal funds. Title II of the ADA prohibits disability discrimination by public entities, whether or not they receive federal funding. The ADAAA includes changes to the definition of disability under the ADA and changes the way in which a determination is made as to whether an individual has a physical/mental impairment that substantially limits one or more major life activities, has a record of such an impairment or is regarded as having a disability.

What does Section 504 and the ADA require of colleges and universities for students in need of accommodations?
Colleges and universities are required to provide students with appropriate academic adjustments and auxiliary aids and services (i.e., accommodations) that an individual with a disability needs in order to have an equal opportunity to participate in the school's programs.

Is NCCU subject to both Section 504 and the ADA?
YES; as a recipient of federal funds from the Department of Education and as a public entity, NCCU is covered by both Section 504 and the ADA.

Statement of Inclusion/Non-Discrimination
North Carolina Central University is committed to the principles of affirmative action and non-discrimination. The University welcomes diversity in its student body, its staff, its faculty, and its administration. The University admits, hires, evaluates, promotes, and rewards on the basis of the needs and relevant performance criteria without regard to race, color, national origin, ethnicity, sex, sexual orientation, gender identity, gender expression, age, disability, genetic information, veteran's status, or religion. It actively promotes diversity and respectfulness of each individual.

Student Disability Services
Students with disabilities (physical, learning, psychological, chronic or temporary medical conditions, etc.) who would like to request reasonable accommodations and services under the Americans with Disabilities Act must register with the Office of Student Disability Services (SDS) in Suite 120 in the Student Services Building. Students who are new to SDS or who are requesting new accommodations should contact SDS at (919) 530-6325 or sds@nccu.edu to discuss the programs and services offered by SDS. Students who are already registered with SDS and who would like to maintain their accommodations must renew previously granted accommodations by visiting the SDS website at www.nccu.edu/sds and logging into Eagle Accommodate. Students are expected to renew previously granted accommodations at the beginning of each semester, preferably during the first two (2) weeks of class. Reasonable accommodations can be requested at any time throughout the semester; however, they will not be effective retroactively. Students are strongly encouraged to contact their professors to discuss the testing and academic accommodations that they anticipate needing for each class.
Confidentiality and Mandatory Reporting
All forms of discrimination based on sex, including sexual misconduct, sexual assault, dating violence, domestic violence, and stalking offenses, are prohibited under NCCU’s Sexual Misconduct Policy (POL 80.07.1). NCCU faculty and instructors are considered to be responsible employees and are required to report information regarding sexual misconduct to the University’s Title IX Coordinator. The Sexual Misconduct Policy can be accessed through NCCU’s Policies, Rules and Regulations website at www.nccu.edu/policies/retrieve.cfm?id=450. Any individual may report a violation of the Sexual Misconduct Policy (including a third-party or anonymous report) by contacting the Title IX Coordinator at (919) 530-6334 or TitleIX@nccu.edu, or submitting the online form through http://www.nccu.edu/administration/dhr/titleix/index.cfm.

Other Campus Programs, Services, Activities, and Resources
Other campus resources to support NCCU students include:

Student Advocacy Coordinator. The Student Advocacy Coordinator is available to assist students in navigating unexpected life events (e.g. short-term illness/injury, loss of a loved one, personal crises) and guide them to the appropriate University or community resources. Students may also receive assistance with resolving some emergency financial concerns; understanding NCCU policies, rules and regulations; or general problem-solving strategies. Contact Information: Student Services Building, Suite 236, (919) 530-7492, studentadvocacy@nccu.edu.

Counseling Center. The NCCU Counseling Center is staffed by licensed psychologists and mental health professionals who provide individual and group counseling, crisis intervention, substance abuse prevention and intervention, anger management, and other services. The Counseling Center also provides confidential resources for students reporting a violation of NCCU’s Sexual Misconduct Policy. Contact Information: Student Health Building, 2nd Floor, (919) 530-7646, counseling@nccu.edu.

University Police Department. The University Police Department ensures that students, faculty and staff have a safe and secure environment in which they can live, learn, and work. The Department provides a full range of police services, including investigating all crimes committed in and around its jurisdiction, making arrests, providing crime prevention/community programs, enforcing parking regulations and traffic laws, and maintaining crowd control for campus special events. Contact Information: 2010 Fayetteville Street, (919) 530-6106, nccudpinfo@nccu.edu.
What happens after a student requests an accommodation?
After requesting an accommodation, a student will be required to submit medical documentation of his/her disability to SDS. SDS will then engage in the interactive process with the student in order to determine an appropriate accommodation.

What is the interactive process?
The interactive process refers to the discussion that SDS staff will have with the student regarding his/her requested accommodation(s), the student’s particular needs, whether or not the student is eligible to receive an accommodation and the type of accommodation(s) that should be granted in order to provide a student with equal opportunity to participate in NCCU’s programs.

What are examples of accommodations that may be granted?
Extended time on tests, excused absences, special classroom seating, note-taking assistance, and the use of assistive technology (screen readers, closed-captioning, etc.). NCCU’s Accessibility Policy for Course Design requires that all course materials be in an accessible format.

Are faculty involved in the interactive process?
Faculty input may be needed regarding the essential standards for courses, programs, services, activities and facilities. Faculty can also provide input regarding whether an accommodation fundamentally alters a program or compromises the essential requirements of a course or program.

How are faculty notified of a student’s accommodation(s)?
Faculty members are notified of a student’s accommodations via Eagle Accommodate!, a web-based system used at NCCU to receive requests for accommodations, to inform faculty of a student’s accommodations and to manage other aspects of the accommodations process.
ADA/Section 504

Are faculty required to provide students with the accommodations included in the notification letter from SDS?
Yes.

Are there any consequences for not providing a student with his/her approved accommodations?
Yes. Students who do not receive their approved accommodations have the right to file a complaint with the Office for Civil Rights ("OCR") of the US Department of Education, who is responsible for ensuring that a student’s civil rights are protected in federally-funded schools (including, discrimination on the basis of race, sex, color, national origin, disability and age). OCR will investigate the student’s complaint, which may involve requesting documentation from the University as well as interviewing individuals with information regarding the student’s allegations. If OCR finds that the institution did not comply with the requirements of the law, i.e., such as providing a student with accommodations, OCR will offer the institution the option of entering into a resolution agreement, or issue a letter finding that the institution is not in compliance with the requirements of the law.

A student may also file a complaint in federal court. Note that students have previously named faculty members and other administrators on campus as defendants in lawsuits where accommodations were not provided that were included in the Notice of Accommodations.

ADA/Section 504

Are faculty required to alter their courses in order to provide a student with an accommodation?
No. Faculty are not required to significantly change the essential nature of a course or program to provide a student with an accommodation.

Are students required to meet with faculty members regarding their approved accommodations?
No. Students are not required to meet with faculty members regarding their approved accommodations. Faculty members receive notification of a student’s accommodation via Eagle Accommodate. Students are encouraged to meet with faculty members to discuss the implementation of the accommodations in the classroom, but they are not required to do so.
ADA/Section 504

What should Jackie do in order to receive accommodations at NCCU?

Contact SDS and submit a request for accommodations. Jackie will need to provide medical documentation to support her accommodations request and participate in the interactive process prior to receiving approved accommodations.

If SDS determines Jackie has a disability and that she is entitled to receive accommodations, does that mean she's entitled to receive the specific accommodations that she requested?

No. The University is not required to provide accommodations that will result in an undue financial or administrative burden on the institution, meaning that it will be significantly difficult to implement the accommodations or very expensive to provide the accommodations.

If granted, will Jackie’s accommodations be retroactive to prior tests and assignments?

Generally, no. The ADA and Section 504 do not require NCCU to make accommodations retroactive. NCCU’s duty to provide Jackie with accommodations is prospective and starts at the point where Jackie established her disability and the need for accommodations. However, if individuals at NCCU treated Jackie as though she had a disability (i.e., she was regarded as having a disability), NCCU may be obligated to provide retroactive accommodations.

Scenario #4

Seven, a student entering into his junior year at the School, is a beloved student by all of the School faculty. He not only is a bright student, maintaining a 4.0 GPA since his freshman year, but also has a warm and friendly personality. Faculty members can always count on Seven to serve on student committees and to participate in School community service events.

Nevertheless, early during the fall semester, Seven begins to engage in behavior that is troubling and concerning to his instructors. His appearance declines and his grades start to slip. He also stops participating in class and in committee and community events.

One day, one of Seven’s classmates mentions something to him about his appearance in class. Seven responds by yelling at the student, turning over his desk and leaving class…slamming the door on his way out.

What should Seven’s instructor do? Should Seven be disciplined for his behavior?
Student Safety Concerns

What should a faculty member do whenever he/she has safety concerns about a student?
If the student does not pose an immediate threat to others, refer the student to the Behavioral Intervention Team managed by the Division of Student Affairs. If the student poses an immediate danger to others, contact University Police.

What is the Behavioral Intervention Team?
The Behavior Intervention Team ("BIT") is a committee on campus that is focused on students who demonstrate behaviors that may be early warning signs of possible disruptive or violent behavior. BIT’s goal is to provide proactive care and concern for students who may be in distress, to identify resources and implement coordinated responses that ensure the NCCU community is healthy and safe. Representatives from the Office of the Dean of Students, Student Counseling, University Police, SDS, Residential Life and the Office of Conduct and Community Standards serve on the Committee.

What are examples of the types of behaviors exhibited by individuals that should be referred to BIT?
- Decline in work or academic performance
- Demonstrating disruptive or disturbing behavior
- Showing dramatic changes in appearance, behavior or weight
- Having problems at home, classes or work
- Making disturbing comments in conversation, email, letters, social media postings or papers
- Observed self-injurious behavior, such as cuts, burns, or known attempts of suicide

How can a faculty member make a referral to BIT?
Student Safety Concerns

What happens after a referral is made to BIT?
BIT performs an initial assessment of the risk and develops a support plan to mitigate the risks posed by the student and to promote student well-being and success. BIT may also make recommendations for action and share information with other University personnel to assist with managing potentially harmful or disruptive behavior.

What types of actions can BIT recommend or take with respect to a student?
- Assist faculty, staff or students in developing an action plan to manage the concerning behaviors
- Refer the student to existing on campus support resources as well as to appropriate community resources
- Recommend a Medical Leave of Absence, Involuntary Leave of Absence of Interim Suspension.

Is a faculty member authorized to ask a student to leave class and to bar him or her from returning?
Yes and no. Section 6.1.2.4 of the Student Code of Conduct permits a faculty member to remove a student for one class period only without invoking the process and procedures afforded to students via the Student Code of Conduct. So, a faculty member can ask a disruptive student to leave his/her classroom, but a faculty member cannot bar the student from returning. The faculty member should contact the Dean of Students Office for assistance and make any appropriate referrals to the BIT.

Does the University provide any guidance or resources to faculty who need assistance managing disruptive students?
Yes. Please see the “Dealing with Disruptive Students” brochure on the Dean of Students website for additional information. In addition, a faculty member may contact a representative of the Office of the Dean of Students for assistance.
Student Safety Concerns

What should Seven’s instructor do?
If the instructor believes that Seven is a danger to others, the instructor should contact University Police. Otherwise, the instructor should complete a BIT Reporting form for a referral to the BIT.

Should Seven be disciplined for his behavior?
The Office of Conduct and Community Standards will determine whether or not Seven should be disciplined for his behavior. In some cases, BIT may refer a student to the OSCCS. In other cases, BIT may determine that it is more appropriate for a student to receive treatment services in order to address the underlying issues which led to the student’s behavior.

A faculty member who desires to report student behaviors that the faculty member believes has violated the Student Code of Conduct may submit information regarding the student and the incident using the Incident Reporting Form. The faculty member may also contact the Office of the Dean of Students for assistance.

Scenario #5
Charlie, a veteran professor within the School, is committed to student success and strives to provide students with the necessary tools that they need in order to excel, both as students at the University and in life. In doing so, Charlie is known to sometimes offend students in his efforts to “keep it real” and prepare them for life outside of the four walls of the School, especially when discussing controversial political topics as well as those related to his course, Policy, Leadership and School Improvement curriculum.

In an effort to close the gap between the resources provided by vendors to students, Charlie developed a test-taking packet based off of the vendor’s test materials. Charlie’s test-taking packet is comprised of information from the vendor’s materials, as well as his own course content. The test-taking packet is available on Charlie’s page within the University’s website, as well as via hardcopy.

Is Charlie in compliance with the University’s copyright policy? Is Charlie’s speech regarding controversial political topics protected? What about speech regarding controversial topics related to his course?
Copyright/Free Speech

What should a faculty member consider prior to distributing any copyrighted material?
The faculty member must determine whether or not the distribution of the copyrighted material violates The Copyright Act of 1989. Section 106 of the Act provides protection for “original works of authorship” that are in fixed, tangible medium. The copyright owner has exclusive rights to do and to authorize reproductions of the work, the creation of derivative works, the distribution of the copyright work to the public, the performance of the work publicly or via digital audio transmission, and to publicly display the work.

Does the copyright protection for an original work of authorship last forever?
No; works published before 1923 no longer have copyright protection and are in the public domain. Works created on/after January 1, 1978 are protected for the life of the author plus 70 years and are covered automatically whether or not they have a copyright notice.

What are the different categories of copyrighted works?
Literary work – Musical work – Dramatic work – Pantomimes and choreography – Pictorial, graphic and sculptural works – Motion pictures and other audiovisual works – Sound recordings – Architectural works

Copyright/Free Speech

Are faculty permitted to redistribute copyrighted materials to students in their classes?
Yes, if the use of the copyrighted materials constitutes “fair use”.

What is fair use?
Fair use refers to one’s right to use portions of copyrighted materials without permission for purposes of education, commentary or parody. If the fair use doctrine applies, the use of the copyrighted work will not constitute copyright infringement and can permissibly be used without first obtaining permission from the copyright holder.

Does this mean that any educational use of copyrighted materials constitutes fair use?
No. A faculty member should conduct an assessment of the material that he/she wishes to distribute to his/her class for an educational purpose each and every time the faculty member wishes to invoke the fair use doctrine.
Copyright/Free Speech

How does one determine whether or not the proposed use is fair use?
Consider the **purpose**, **nature**, **amount** and **effect** of the copyrighted work.

What do these terms mean?

**Purpose and Character** – How will the copyrighted work be used, commercially or for non-profit educational purposes? Is the use of the copyrighted work transformative, i.e., is something new, with a further purpose or different character, created?

**Nature** – What is the work? Is it factually based or a highly creative work? A published work or an unpublished work? Are all of the materials to be used relevant to the educational objectives of the course? (This factor analyzes the degree to which the work to be used relates to the copyright’s purpose of encouraging creative expression.)

**Amount** – How much of the work do you want to share? Is it a substantial portion of the original work or a small part of the original work? (Evaluate both the quality and the quantity of the copyrighted work that is desired for use.)

**Effect** – What is the impact that the use will have on the value of the copyrighted work? Will using the work harm the sale of the copyrighted material? Is the work reasonably available and affordable to students?

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**Copyright/Free Speech**

Are there any tools available for faculty to use to determine whether or not the fair use doctrine applies?
Yes. Please see the **NCCU Fair Use Checklist** for assistance in determining whether the fair use doctrine applies to the work you would like to use.

In addition to the fair use doctrine, are there any other exceptions to the Copyright Act that allow faculty members to use copyrighted works in the classroom?
Yes, the Classroom Use Exemption.

**What is the Classroom Use Exemption?**
The Classroom Use Exemption (17 U.S.C. §110(1)) applies when a faculty member wishes to use a copyrighted work in a classroom (or similar place devoted to instruction), in person, engaged in face-to-face teaching activity, at a non-profit educational institution.
Copyright/Free Speech

What does the Classroom Use Exemption allow a faculty member to do?
It allows both a faculty member and students to perform or display any works, including movies, and music of any length.

What if a course is being taught via distance education, rather than face-to-face in the classroom? Can the Classroom Use Exemption be used to show copyrighted material?
No. However, the TEACH Act (17 USC §110(2)) would allow the faculty member to transmit lawfully obtained copyrighted materials that are being used for educational purposes in a setting that is comparable to that used in-class in an on-campus course via a distance education course.

Are there any limitations to the TEACH Act?
Yes. The TEACH Act does not apply to homework or other out of class assignments.

Copyright/Free Speech

Are faculty members permitted to share their opinions about political matters?
Yes. A faculty member is permitted to make oral or written statements regarding his/her political opinion as long as the faculty member’s statement makes it clear that the faculty member is not speaking on behalf of NCCU. Political speech is protected speech. However, the Political Activities Policy provides that “employees must not imply that the political opinions they assume are endorsed by the University.”

Should the faculty member make political statements in his/her classroom?
No. The Political Activities Policy provides that an employee may not use the authority of his/her position or property of the university to secure support for, or to oppose, any person or issue in any election. If a faculty member made political statements in the classroom about a particular candidate or issue, the statement has the potential to violate the Political Activities Policy.
Copyright/Free Speech

Are faculty members permitted to make controversial statement that are related to the information being discussed during class and which is related to course content?
Yes. Academic freedom allows both faculty members and students to engage in intellectual debate without fear of censorship or retaliation. Section 3.2 of the 2014 NCCU Faculty Handbook provides that the University, “will not penalize or discipline members of the faculty because of the exercise of academic freedom in the lawful pursuit of their respective areas of scholarly or professional interest and responsibility.” In addition, the First Amendment may protect a faculty member’s speech in the classroom – even if controversial – if the speech is germane to the course and concerns a matter of public concern.

Does this mean that a faculty member can say anything in the classroom, even if it has the potential to harm a student?
No. Academic freedom does not permit a faculty member to make statements that harass, threaten, intimidate or ridicule a student.

Copyright/Free Speech

Is Charlie in compliance with the provision of the Copyright Act?
It depends. If Charlie’s test-taking packet is comprised of test forms and workbook pages from the vendor that are meant to be used and repurchased, and if Charlie provides the materials to his classes on a repeated basis, i.e., every semester or every year, then the use most likely does not constitute fair use; Charlie should request that his students purchase the test booklet. The content that Charlie develops on his own is most likely permissible, provided that Charlie’s content is not based on the information in the vendor’s test booklets.

Can Charlie make statements regarding controversial topics related to his course in class?
Most likely. Controversial speech in the classroom is protected for both faculty members and students. However, if Charlie’s speech harasses, threatens, ridicules or intimidates a student, the speech may violate NCCU’s policies. NCCU would need to determine whether Charlie’s speech is so severe that it denies or limits a student’s ability to participate in or benefit from the course (i.e., the educational program).
Policies, Regulations and Rules Website

NCCU Policies, Regulations and Rules Website

NCCU Policies, Regulations and Rules Website

NCCU Policies, Regulations and Rules Website

Handbooks

This website includes policies, regulations, and rules approved by the authorized officers or boards by administrative policies or their delegated authority and in accordance with NCCU and University policy. Information included on this website may not be used in whole or in part unless an express written notice is specifically included. Please check this website in order to view the rules on the rule that may be used. Further guidelines and information are included in the Handbook document shall take precedence.

If you have questions regarding any of the information included in a document, you should contact the Office of the President who issued the document. If you have general questions regarding information included on this website, please contact the Office of Legal Affairs at legalaffairs@nccu.edu.

Truth and Service
Resources

NCCU's Sexual Misconduct Policy - http://www.nccu.edu/policies/retrieve.cfm?id=450

US Department of Education, "Sex-based harassment" -
https://cm.maxient.com/reportingform.php?NCCentralUniv&layout_id=4

NCCU's FERPA Regulation - http://www.nccu.edu/policies/retrieve.cfm?id=381

NCCU's FERPA Consent Form - http://www.nccu.edu/formsdocs/proxy.cfm?file_id=1459

https://www2.ed.gov/policy/gen/guid/fpco/ferpa/students.html

Office of Student Disability Services – Syllabus Statement -
http://www.nccu.edu/students/studentservices/disability/syllabus-statement.cfm

Accessibility Policy for Course Design - http://www.nccu.edu/policies/retrieve.cfm?id=427

NCCU Student Code of Conduct - http://www.nccu.edu/policies/retrieve.cfm?id=442

Behavioral Intervention Team Reporting Form -
https://cm.maxient.com/reportingform.php?NCCentralUniv&layout_id=4

Incident Reporting Form - https://cm.maxient.com/reportingform.php?NCCentralUniv&layout_id=0

Office of Dean of Students – “Dealing With Disruptive Students” -
http://www.nccu.edu/formsdocs/proxy.cfm?file_id=1183

NCCU Political Activities Policy - http://www.nccu.edu/policies/retrieve.cfm?id=447

US Copyright Office - https://www.copyright.gov/

NCCU Fair Use Checklist - https://www.nccu.edu/formsdocs/proxy.cfm?file_id=4014

Copyright in an Electronic Environment
http://www.dpi.state.nc.us/copyright1.html


Office of Legal Affairs Website - http://www.nccu.edu/legalaffairs/index.cfm
Office of Legal Affairs

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