

The JRCERT does not provide legal advice to program officials. Nevertheless, the JRCERT has received numerous inquiries regarding criminal background checks and drug screening (hereinafter referred to as tests) for program applicants and students. The JRCERT is also hearing significant concern expressed by program officials at various professional meetings about the increasing requirement for students to pass such tests prior to being admitted to some clinical facilities for clinical education. Following discussions with JRCERT legal counsel regarding such checks in light of JRCERT accreditation standards, the JRCERT offers the following information.

The Joint Commission on Accreditation of Healthcare Organizations (JCAHO) does not require such testing. JACHO criteria, however, require facilities to be in compliance with state law as it relates to “staff, students, and volunteers”. Many clinical facilities tend to err on the side of caution and require such testing, regardless of whether it is required by state law.

The mechanism for such testing is varied. Some educational programs require testing as part of the application and/or admissions process for each student. The cost may be included in general tuition and fees, or the program may assess the testing cost to each student. Some programs require such testing only of students assigned to clinical education sites that require it prior to student placement. In this situation, the clinical site may conduct the test itself and either pay for it or assess the fee to the student. The site may or may not share the results with the program. Alternatively, the site may require the student to take the test and have the results forwarded to the clinical site.

When an educational program requires the testing of all students, it assures that all students are treated equally regarding such requirements. By conducting the testing itself, the program can also assure that the information requested is relevant. This method, however, places some burden on the program if it acquires negative information regarding any student through such tests. Because some clinical sites may not accept students for whom negative information is acquired through such tests, the educational program must determine what information may be disclosed and to whom. Knowledge of negative information obtained through these tests may impact the ability of the program to assure placement of a student at a clinical site.

If the clinical site conducts the background check or drug screening or requires the student to submit results of such tests directly to the site, the program may or may not learn why a student was rejected by the site, particularly if the clinical site chooses to not share the information with the program. The program could then be placed in an uncomfortable position by placing the student at another site that does not require any testing.

Programs should have a policy in place regarding the consequences to a student who fails such testing. If the program is unwilling, as it well might be, to place such a student in a facility that does not require testing, it will be impossible for the student to complete the program. This should be made explicitly clear in student publications.

Programs should assure that students have an avenue of recourse should they “fail” such a test. Mistakes can be made and, as with any other threat to a student’s right to maintain enrollment, some means of due process should be available.

Given the increased incidence of demands for such testing, programs should consider adding this element to their affiliation agreements with clinical sites. This would allow for clarification of who does the testing, who pays the related fees, and who has access to the results.

Regardless of how the testing is done, one of the most critical elements is the timely provision of notice to the student that he or she may be subject to such testing and, if so, the cost, of any associated fees. By advising students, through program publications, that they will or may be subject to such testing, students can determine whether or not to proceed with application for admission to a program.

If the issue of testing arises after students are admitted to the program, the potential ramifications of such testing requirements should be promptly communicated to all enrolled students. Programs should attempt to postpone implementation of such testing to allow notification of students prior to enrollment. If this is not possible, however, it should be understood that the program may be exposing itself to significant student placement issues (in light of the above concerns) and/or legal concerns.

There are no hard and fast answers, but programs can be proactive in attempting to identify potential issues and addressing them before problems occur. As with other issues with significant legal consequences, programs are encouraged to consult with the institution’s legal counsel regarding their policies and procedures as they relate to these issues.