**TOPIC:** NOTIFICATION OF ADAMS STATE UNIVERSITY’S CHANGE TO THEIR NON-ACADEMIC CONDUCT FOR ADMISSION POLICY

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**I. SUMMARY**

This is a notification of Adams State University’s changes to their admission policy. C.R.S. 23-5-106.5 requires institutions of higher education to notify CCHE for changes to their criminal and disciplinary history admission policy.

Adams State University (ASU) is proposing these changes to remain in compliance with the United States Department of Education’s (DOE) [ruling in 2023](https://www.ed.gov/news/press-releases/us-department-education-launch-application-process-expand-federal-pell-grant-access-individuals-who-are-confined-or-incarcerated) on Second Chance Pell. Specifically, ASU confirmed with DOE representatives that the non-academic and criminal questions on their admission application (that are still allowable within state statute) must be removed to retain their Second Chance Pell standing for their Prison Education Program (PEP). PEPs are approved higher education programs for confined and incarcerated individuals.

Fall 2023 was ASU’s first semester implementing Second Chance Pell which caused a significant increase in their PEP applications.

Programs requiring licensure post-graduation may have additional requirements and disclosures. Additionally, ASU may inquire into an admitted applicant's criminal history when obtaining information pertaining to participation in campus life or student housing.

**II. BACKGROUND**

In 2019, [Senate Bill 19-170](https://leg.colorado.gov/bills/sb19-170) Inquiry Into College Applicant Criminal History was passed and signed into law. The bill, among other requirements, restricted Colorado state institutions of higher education from asking criminal or educational disciplinary history prior to admission. Certain exceptions were permitted, including asking about prior convictions for stalking, sexual assault and domestic violence, convictions within past 5 years for assault, kidnapping, voluntary manslaughter, or murder, and pending criminal charges. IHEs changed their admission applications accordingly and submitted their revised admission policies to CDHE to remain in compliance.

Similarly, in 2023, the DOE made changes to Second Chance Pell which provided Pell eligibility in certain circumstances for confined and incarcerated individuals enrolled in a PEP. The below summary was taken from the DOE Federal Student Aid [website](https://fsapartners.ed.gov/knowledge-center/library/dear-colleague-letters/2023-03-29/eligibility-confined-or-incarcerated-individuals-receive-pell-grants):

*The FAFSA Simplification Act (the Act), was signed into law in December 2020, restored Pell Grant eligibility to confined or incarcerated individuals for the first time since 1994. The new law requires a “confined or incarcerated individual” (see*definitions*section) to enroll in an eligible prison education program (PEP) in order to access a Federal Pell Grant. On October 28, 2022, the Department of Education (Department)*[***published a final rule***](https://nam11.safelinks.protection.outlook.com/?url=https%3A%2F%2Ffsapartners.ed.gov%2Fknowledge-center%2Flibrary%2Ffederal-registers%2F2022-10-28%2Ffinal-regulations-pell-grants-prison-education-programs-determining-amount-federal-education-assistance-funds-received-institutions-higher-education-9010-change-ownership-and-change-control&data=05%7C02%7CCarl.Einhaus%40dhe.state.co.us%7Ceb4682bea1a84fdacded08dc20ffcf5e%7C472b2de6094648849c95a8326b5e99f5%7C0%7C0%7C638421530300313214%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C0%7C%7C%7C&sdata=pMWrim0KCeZn5UcJWtBT7F%2FFi0KFBJEZojwRTv%2F2vx0%3D&reserved=0)*in the*Federal Register *(87 FR 65426) to implement the requirements in the Higher Education Act of 1965, as amended (HEA) for eligible PEPs. This final rule will go into effect on July 1, 2023.*

***What the FAFSA Simplification Act Does***

*The Act adds new HEA section 483(t)(3), which requires confined or incarcerated individuals who otherwise meet Pell Grant eligibility requirements to be enrolled or accepted for enrollment in an eligible PEP (Note: the law does not require a school to make changes to existing postsecondary educational programs in correctional facilities unless the school seeks to make those programs eligible for Pell Grant funds). As summarized further below, the Act made several other significant changes that directly or indirectly affect the eligibility of confined or incarcerated individuals for student assistance under title IV of the HEA.*

*Effective July 1, 2023, the Act also removes the prohibition in HEA section 401(b)(6) that prevented institutions from awarding Federal Pell Grants to any individual who is not incarcerated in any Federal or State correctional facility but is subject to an involuntary civil commitment upon completion of a period of incarceration for a forcible or nonforcible sexual offense. As of July 1, 2023, the implementation date of the Act, these individuals are not considered to be confined or incarcerated and are not required to enroll in a PEP to receive title IV aid.*

**III. STAFF ANALYSIS**

CDHE commends ASU’s work to educate confined and incarcerated individuals. The benefits to the individual and community are profound. The proposed changes to ASU’s admission policy to retain Second Chance Pell eligibility for their PEP are in alignment with our state’s attainment and equity missions.

**IV. STAFF RECOMMENDATION**

**C.R.S. only requires that institutions notify CCHE of policy changes – no recommendations needed.**

1. **sTATUTORY aUTHORITY**

**C.R.S. 23-5-106.5.** **Authority of governing boards – student applications – criminal and disciplinary history inquiry – exceptions - definitions.**

Statute text

**(1)** For the purposes of this section, unless the context otherwise requires:

**(a)** “Academic institution” means any elementary or secondary school or any postsecondary education institution.

**(b)** “Conviction” means a conviction by a jury verdict or by entry of a verdict or acceptance of a guilty plea or a plea of nolo contendere by a court. “Conviction” does not include a plea to a deferred judgment and sentence until the deferred judgment and sentence is revoked.

**(c)** “State institution of higher education” means a state institution of higher education as defined in section 23-18-102 (10).

**(2)**

**(a)** Except as provided in subsection (3) of this section, the governing board of any state institution of higher education shall not inquire into, or require disclosure of, an applicant’s criminal history, or disciplinary history at another academic institution, on any form of application, including electronic applications, for admission to the state institution of higher education.

**(b)** The application or instructions for the application for admission to a state institution of higher education must inform an applicant of the applicant’s rights pursuant to this section, including the right to appeal a decision made based on any information required to be disclosed pursuant to subsection (3) of this section, and that, pursuant to section 24-72-702, the applicant is not required to disclose any information contained in sealed records.

**(c)**

**(I)** A state institution of higher education that accepts a form of application that may also be used to apply for admission to any other institution of higher education shall not consider any information provided by the student on that application that the state institution of higher education is prohibited from inquiring into pursuant to this section.

**(II)** Notwithstanding any provision of this section, a state institution of higher education may consider criminal conviction history if information pertaining to such history is provided on an application that is designed by a national application service, tailored for admission to a specific degree program, and used by postsecondary education institutions in other states. An applicant denied admission based on information provided on an application pursuant to this subsection (2)(c)(II) that an institution would otherwise be prohibited from inquiring into pursuant to this section has the right to appeal that decision pursuant to subsection (4)(b) of this section.

**(d)** Except as authorized pursuant to any other section of law, the governing board of any state institution of higher education may not obtain the criminal history, or disciplinary history at another academic institution, of an applicant at any time prior to admitting the applicant.

**(e)** A state institution of higher education may not use as the basis for rejection of an applicant any information that the institution is prohibited from collecting pursuant to this section, regardless of how that information is obtained.

(3) Notwithstanding any requirement in this section, the governing board of a state institution of higher education, on any form of application for admission, may inquire into any of the following:

(a) An applicant’s prior convictions for stalking, sexual assault, and domestic violence;

(b) An applicant’s prior convictions, within five years before submitting the application, for assault, kidnapping, voluntary manslaughter, or murder;

(c) An applicant’s prior disciplinary history at another academic institution for stalking, sexual assault, and domestic violence;

(d) Any criminal charges pending against the applicant; and

(e) An applicant’s educational records related to academic performance.

(4)

**(a)** Any additional review by a state institution of higher education of an otherwise qualified applicant based on information provided by the applicant pursuant to subsection (3) of this section must be completed within a reasonable period of time.

**(b)** An applicant denied admission based on information provided by the applicant pursuant to subsection (2)(c)(II) or (3) of this section has the right to appeal that decision within the state institution of higher education. The governing board of each state institution of higher education shall adopt policies and procedures for appeals made pursuant to this section.

**(5)** Each state institution of higher education shall publish any policy enacted pursuant to this section on the institution’s publicly accessible website and shall file such policies with the commission. A state institution of higher education shall notify the commission at least thirty days before enacting any change to a policy filed with the commission.

**(6)** Nothing in this section prohibits a state institution of higher education from providing an applicant with information or counseling concerning licensure in a profession that may result from a course of study.

**(7)** A state institution of higher education may inquire into an admitted applicant’s criminal history when obtaining information pertaining to participation in campus life or student housing. If an institution elects to make such inquiries, the institution shall consider the following:

**(a)** The nature and gravity of any criminal conduct and whether it bears a direct relationship to a particular aspect of a student’s participation in campus life, including but not limited to campus residency and campus activities;

**(b)** The time that has passed since the occurrence of any criminal conduct;

**(c)** The age of the student at the time of the conduct underlying a criminal conviction;

**(d)** Any evidence of rehabilitation or good conduct produced by the student; and

**(e)** The benefit to the student of participating in campus life.

**ATTACHMENT:**

Pre-Admission Non-Academic Conduct – Tracking Changes