

EDH 7405 Law and Higher Education Course
University of Florida
Fall 2016
Online

Teaching Team:

Chris Loschiavo, JD

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Office hours: By appointment (in the office between 8 and 5 pm every day)

Due to the nature of my work, I am not always available all hours between 8 and 5. Depending on what incidents or crises I am managing it is best to make appointments ahead of time. We can meet in person (if you are in town), via phone, or skype.

Course Description

In an age where higher education is impacted more and more directly by the law, this course addresses legal issues confronted by student affairs practitioners. Additionally we will learn how to read and interpret case law, legislation and federal and state guidance and how to act within the parameters of the law.

Course Objectives

Upon completion of this course, students will be able to:

- Demonstrate an understanding of the American Legal System and how it pertains to higher education.
- Explain the importance of the legal concept “state action” and distinguish how legal issues affect public and private institutions differently.
- Identify sources of legal liability most often encountered by student affairs professionals and apply these concepts to effectively manage risk.
- Recognize the specific legal issues facing various functional areas within student affairs.
- Explain how federal laws and guidance affect student affairs and demonstrate knowledge of relevant federal laws
- Utilize legal research skills to research and remain current on legal issues affecting student affairs.
- Utilize skills of analysis, synthesis and verbal and written communication concerning issues and ideas salient to legal issues in student affairs.

Expectations of Students

Students are expected to complete all required readings and participate actively in computer mediated discussions each week. I will take responsibility for the general design and direction of this course, you as participants will determine the quality of this course by your participation in our computer-facilitated discussions. I will post discussion questions via CANVAS and it is my expectation that each of you will comment at least twice during each discussion. Perfection in your responses is not the goal, nor is having answers longer than two paragraphs. However, answers should be long enough to demonstrate that you have seriously engaged with the reading materials for the week.

Student Honor Code & Academic Integrity

All students are expected to support and adhere to the University of Florida Honor Code: “We the members of the University of Florida community, pledge to hold ourselves and our peers to the highest standards of honesty and integrity.” For more information on the honor code and the University’s Honor Code process and definitions of prohibited behavior, please visit:

<https://www.dso.ufl.edu/sccr/process/student-conduct-honor-code/>

ADA Statement

The University of Florida provides high-quality services to students with disabilities through the Disability Resource Center. Students with disabilities requiring academic accommodations should 1) register with the Disability Resource Center (352-392-8565; 001 Reid Hall), and 2) send a letter to the instructors from the DRC indicating the specific accommodations required for this course. Please complete this process as soon as possible at the beginning of the semester.

U Matter, We Care Initiative

Your well-being is important to the University of Florida. The U Matter, We Care Initiative is committed to creating a culture of care on our campus by encouraging members of our community to look out for one another, and to reach out for help if a

member of our community is in need. If you or a friend is in distress, please contact umatter@ufl.edu so that the U Matter, We Care Team can reach out to the student in distress. A nighttime and weekend crisis counselor is available by phone at 352-392-1575. The U Matter, We Care Team can help connect students to the many other helping resources available including, but not limited to, Victim Advocates, Housing Staff, and the Counseling and Wellness Center. Please remember that asking for help is a sign of strength. In case of emergency, call 9-1-1.

Civility

Mature and respectful behavior is expected of all students in all interactions with instructors, guest presenters, and other students.

E-Mail Communication

Students are required to have and use their GatorLink account for all UF related e-mail functions. Official university communications are sent to students at this email address. You are responsible for staying informed and current with all correspondence. Please e-mail the instructor directly via the e-mail address at the top of this syllabus with questions, concerns, etc. **rather than** e-mailing through the Canvas site.

Participation

Participation counts for 25% of your overall course grade. Discussion and participation are critical to the learning that takes place in the online classroom.

Participation Behaviors that Count:

- Completing assignments on time
- Asking relevant questions
- Answering questions
- Contributing to class discussion
- Participating in group activities
- Displaying respectful listening and communication skills

Behaviors to Avoid:

- Making fun or otherwise berating something said by another person
- Being disrespectful on online discussions.

Course Texts:

Required Text: Kaplin, W. A., & Lee, B. A. (2014). *The law of higher education* (5th ed., Student version). San Francisco, CA: Jossey-Bass.

Cases and legislation must be looked up by the student on their own. Links to other readings will be provided.

Required reading: United States Constitution:

http://www.senate.gov/civics/constitution_item/constitution.htm

Suggested supplemental reading:

Lake, Peter F. 2011 *Foundations of higher education law & policy: basic legal rules, concepts and principles for student affairs*. Washington, D.C.: NASPA

Kaplin, William, and Barbara Lee. 2009 *A Legal Guide for Student Affairs Professionals*. San Francisco, CA: Jossey-Bass.

Assignments:

Case Briefs – TBA

100 pts

Having the ability to read and understand case law is a necessary skill for student affairs professionals today. Case briefing is a time tested method of being able to distill a case down to its most important points. Therefore, each student will be expected to brief 4 cases over the course of the semester. Briefs should be typed and single spaced with 1 inch margins. Case briefs should be no more than 2 – 3 pages. Each brief should include the formal case citation, a summary of the facts of the case, a brief description of the procedural history of the case, the legal question that was answered by the case, the court decision or holding, the rationale for the decision from the court (in your own words), any important dissenting or concurring opinions and a brief statement of the significance of the case. For a good guide to case briefing visit:

<https://lawschool.westlaw.com/marketing/display/SG/3>

Legislative Interpretation

25 pts

More and more legislation is being written that impacts higher education. For this assignment, you will take a piece of recently passed or amended legislation and provide a summary of what it means for your campus (you can use the campus you are currently working on or you can pick a campus or make up a campus. You are to write this summary as if you are preparing it for your Vice President of Students Affairs to help him/her talk with other senior leadership about the implications this legislation will have on the campus and what your campus will need to do to be compliant with the law should it pass or once it goes into effect. For this assignment you can use whatever format will help you best summarize the legislation and its impacts on your institution. 3 – 4 pages.

Federal Guidance Interpretation

25 pts

In addition to case law and legislation, federal guidance has played a significant impact on compliance issues for higher education. In fact, it could be argued that the Department of Education's April 2011 Dear Colleague Letter has had a greater impact on higher education than almost any case or piece of legislation passed in the last 50 years. You will write an analysis of a piece of federal guidance for your Vice President of Student Affairs outlining the impact and your institution's current status in relation to the guidance. Is your campus compliant, if so, how, if not, what do you need to do to be compliant and how much might it cost? For this assignment you can use whatever format will help you best summarize the guidance and its impacts for your institution. 3 – 4 pages

Discussion Participation

100 pts.

- 1) Provide at least two substantive responses to each week's discussion; these replies could be in response to a question posed by the discussion leader or a comment provided by a peer. I encourage at least one of your replies to include an external source. For example, you could provide a link to a recent article from *The Chronicle of Higher Education*. **This is due every week.**
- 2) Create two discussion questions (per person) to be used while serving as a discussion leader (questions to be approved by the instructor one week in advance); lead the corresponding discussion(s) during the assigned week; this requires the discuss leader to ask follow-up questions and provide examples from the readings to ensure a rich discussion during the assigned week. **Due: Please see Course Schedule below for your assigned week (selected at random).**

Paper analyzing a case study

150 pts

Your final paper will involve your analysis of a case study. Your task is to identify all of the legal issues presented by the case study that you are assigned to and provide a response as to how these legal issues will shape your response. Paper is to be 8 – 10 pages should include appropriate citation and should be typed, double spaced with 1 inch margins. Please use APA format.

Final course grades will be assigned using the following scale:

A = 93 – 100, A- = 90 – 92; B+= 88 – 89, B = 83 – 87; B- =80 – 82; C+ = 78-79; C= 73 – 77; C- = 70 – 72; D+ = 68 – 69; D = 63 – 67; D- = 60 – 62; E = 59 and lower

Course Schedule (Subject to Change)

Week of August 21st: Introduction; legal materials, assignments, historical perspectives and governance.

Readings:

- 1) Introduction to the Federal Court System <https://www.justice.gov/usao/justice-101/federal-courts>
- 2) *The U.S. Legal System: A Short Description* Federal Judicial Center
- 3) [http://www.fjc.gov/public/pdf.nsf/lookup/U.S. Legal System English07.pdf/\\$file/U.S. Legal System English07.pdf](http://www.fjc.gov/public/pdf.nsf/lookup/U.S. Legal System English07.pdf/$file/U.S. Legal System English07.pdf)
- 4) Readings: *Law of Higher Education General Introduction, Chapter 1, Section 2.2, and Appendices A, B, C, & D*
- 5) <http://agm.org/sites/agm.org/files/u3/AcademicFreedomPrimer.pdf>
- 6) <http://agm.org/sites/agm.org/files/u3/AcademicFreedomGuide.pdf>
- 7) *Sweezy v. New Hampshire, 354 U.S. 234 (1957).*
- 8) *Bishop v. Aronov, 926 F. 2d 1066 (11th Cir. 1991).*
- 9) *Joint Statement on Rights and Freedoms of Students*

Discussion Leader: Chris Loschiavo

Week of August 28: Historical Perspective, Governance Issues and Academic Freedom

Readings:

- 1) *Rules and Regulations of the University of Florida, sections UF – 1, UF – 2 , UF – 4*
<http://regulations.ufl.edu/regulations/uf-1-general>
- 2) <http://www.flbog.edu/about/regulations/regulations.php>
- 3) *Philip Crosby Associates v. Florida, 506 So. 2d 490 (Fla 5 DCA. 1987)*
- 4) *Trustees of Dartmouth College v. Woodward, 17 U.S. (4 Wheat.) 518 (1819).*
- 5) *Nova University v. The Board of Governors, 305 N.C. 156, 287 S.E. 2d 872(1982).*
- 6) *Readings: Law of Higher Education Sections 3.1, 3.3, 3.4, 4.4, & 6.1*

Week of September 4: The College and the Student: the evolving legal relationship

Readings:

- 1) *Readings: Law of Higher Education Section 7.1*
- 2) *Dixon v. Alabama State Board of Education, 294 F. 2d 150 (5th Cir. 1961)*
- 3) *Gott v Berea College, 161 S. W. 204 (KY. 1913)*
- 4) *Board of Curators, Univ of Missouri v. Horowitz, 435 U.S. 78 (1978).*
- 5) *Goss v. Lopez, 419 U.S. 565 (1975).*

Week of September 11: Student Conduct

Readings:

- 1) *Readings: Law of Higher Education Sections 9.1, 9.2, & 9.3*
- 2) *Stoner, E. N. & Lowery, J. W. (2004). "Navigating Past the Spirit of Insubordination: A twenty-first century model student conduct code with a model hearing script." Journal of College and University Law, 31, 1- 77.*
- 3) *ASCA 2014 White Paper*
<http://www.theasca.org/files/Publications/ASCA%202014%20Gold%20Standard.pdf>
- 4) *Pavela, G. (2014, May 1). Courts or Campuses? Different Questions and Different Answers, ASCA Law and Policy Report, No. 487. <http://www.theasca.org/Files/Publications/LPR487May12014.pdf>*
- 5) *Cloud v Boston University 720 F. 2d 721 (1st Cir., 1983)*
- 6) *Furey v. Temple University, 884 F. Supp. 2d 223 (E.D. Pa., 2012.*
- 7) *Gomes v University of Maine, 365 F. Supp. 2d 6 (D. Me. 2005).*

Week of September 18: Student Conduct

Readings:

- 1) *Gorman v. University of Rhode Island, 837 F.2d 7 (1st Cir. 1988).*
- 2) *Krasnow v. Virginia Polytechnic Institute, 551 F. 2d 591 (4th Cir. 1977)*
- 3) *Osteen v. Henley, 13 F. 3d 221 (7th Cir. 1993)*
- 4) *Schaer v. Brandeis University, 735 N.E. 2d 373 (Mass. 2000).*
- 5) *Woodis v. Westark Community College, 160 F.3d 435 (8th Cir. 1998).*

Week of September 25: Title IX, VAWA, Clery, ADA

Readings:

- 1) U.S. Department of Education, Office for Civil Rights, Dear Colleague Letter: Sexual Violence (April 4, 2011). <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.pdf>
- 2) OCR Question and Answer Document
<http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>
- 3) OCR Dear Colleague Letter on Retaliation
<http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201304.html>
- 4) OCR Dear Colleague Letter on the Title IX Coordinator
<http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201504-title-ix-coordinators.pdf>
- 5) OCR Dear Colleague Letter on Pregnant Students
<http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201306-title-ix.html>

Week of October 2: More on Title IX VAWA, Clery and ADA

Readings:

- 1) *Readings: Law of Higher Education Section 7.6*
- 2) *OCR Dear Colleague Letter on Transgender Students*
<http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201605-title-ix-transgender.pdf>
- 3) *NACUA Notes: Title II and Direct Threat*

<http://counsel.cua.edu/nacuanotes/titleIIregulations.cfm>

4) Clery Act Summary: <http://clerycenter.org/summary-jeanne-clery-act>

5) UF annual Security Report

<http://www.police.ufl.edu/wp-content/uploads/2012/01/UFPD-Together-For-A-Safe-Campus-2015.pdf>

Optional Reading:

1) *Clery Handbook*: <http://www2.ed.gov/admins/lead/safety/handbook.pdf>

Week of October 9: First Amendment, Freedom of Speech, Student Protests, and the Student Press, Church and State

Readings:

1) *Readings: Law of Higher Education Sections 7.5, 9.4 & 9.5*

2) *Kincaid v. Gibson*, 236 F.3d 342 (6th Cir. 2001).

3) *McCauley v. Univ. of the Virgin Islands*, 618 F.3d 232 (3d Cir. 2010).

4) *Orin v Barclay*, 272 F. 3d 1207 (9th Cir. 2001).

Week of October 16: First Amendment, Freedom of Speech, Student Protests, and the Student Press, Church and State

Readings:

1) *Roberts v. Haragan*, 346 F. Supp. 2d 853 (N.D. Tex 2004).

2) *Iota Xi Chapter of Sigma Chi Fraternity v. George Mason University* 993 F. 2d 386 (1993).

3) *Bob Jones University v. U.S.* 461 U.S. 574, (1983).

4) *Lemon v. Kurtzman*, 403 U.S. 60 (1971) *Lemon v. Kurtzman*, 411 U.S. 192 (1973).

Week of October 23: Student Organizations

Readings:

1) *Readings: Law of Higher Education Sections 10.1, 10.2, & 10.3*

2) *Badger Catholic V. Walsh*, 620 F. 3d 775 (7th Cir., 2010).

3) *Board of Regents of the University of Wisconsin System v. Southworth*, 529 U.S. 217 (2000).

4) *Christian Legal Society v. Martinez*, 561 U.S. 661 (2010).

5) *Rosenberger v. Rector and Board of Visitors of the University of Virginia*, 515 U.S. 819 (1995).

6) *Gay and Lesbian Bisexual Alliance v. Pryor*, 110 F3d 1543 (11th Cir. 1997).

7) *Healy v. James*, 33 L. Ed. 226 (1972).

Week of October 30: Federal Legislation and State Legislation

Readings:

1) *Readings: Law of Higher Education Section 7.8*

2) *Readings: Law of Higher Education Sections 11.3 & 11.5*

3) *Campus Accountability and Safety Act*

4) *Read North Carolina Law*

5) *Read Illinois Law*

6) *Read California Law*

7) *Read New York Law*

8) *Read Violence Against Women Act*

9) *FERPA: An overview* <http://70.32.97.65/resources/publications/CRS-Report-on-FERPA.pdf>

Week of November 6: Torts, Alcohol and Threats

Readings:

1) *Tarasoff v. Regents of the University of California*, 551 P. 2d 334 (Cal. 1976).

2) *Mullins v Pine Manor College*, 449 N.E. 2d 331 (Mass. 1983).

3) *Bradshaw v. Rawlings*, 464 F. Supp. 175 (E.D. Pa. 1979) and 612 F. 2d 135 (3rd Cir. 1979).

4) *Ballou v. Sigma Nu General Fraternity*, 352 S.E. 2d 488 (S.C. App. 1986)

5) *Estate of Hernandez v. Arizona Board of Regents*, 866 P. 2d 1330 (Az. 1994).

6) *Readings: Law of Higher Education Sections 2.4 & 3.2*

Week of November 13: Torts Alcohol and Threats

Readings:

- 1) *Wilson by Wilson v Bellamy*, 414 S.E. 2d 347 (N.C. App. 1992).
- 2) *Furek v. University of Delaware*, 594 A. 2d 506 (Del. 1991).
- 3) *Nova Southeastern University v. Gross*, 758 So. 2d 86 (Fl. 2000).
- 4) *James v. Duquesne*, 936 F. Supp. 2d 618 (W. D. Pa. 2013).

Week of November 20: Housing Issues

Readings:

- 1) *Pavela, G.* (2004, July 29). *The law of search and seizure for residence life staff members.* ASJA Law and Policy Report, 150, 1-4.
- 2) *Readings: Law of Higher Education Section 7.4*

Week of November 27: Affirmative Action and Admissions

Readings:

- 1) *Readings: Law of Higher Education Sections 7.2, 7.3, & Chapter 8*
- 2) *Regents v Bakke*, 438 U.S. 265 (1978)
- 3) *Hopwood v. State of Texas*, 78 F. 3d 932 (5th Cir. 1996).
- 4) *U.S. v Commonwealth of Virginia*, 852 F. Supp. 471 *aff'd* 44 F. 3d 1229.
- 5) *U.S. v. Commonwealth of Virginia* 116 S. Ct. 2264 (1996).
- 6) <https://www.acenet.edu/news-room/Documents/Race-Class-and-College-Access-Achieving-Diversity-in-a-Shifting-Legal-Landscape.pdf>
- 7) *Fisher v. University of Texas*, 570 U.S. (2013) 2016

Week of December 4: Summary and follow up questions. Final paper due