

INSTRUCTOR'S MANUAL  
for  
***THE LAW OF HIGHER EDUCATION:  
ESSENTIALS FOR  
LEGAL AND ADMINISTRATIVE  
PRACTICE***

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## PREFACE

This is the *Instructor's Manual* for *The Law of Higher Education: Essentials for Legal and Administrative Practice*, published in 2024. The Manual is designed for individuals who teach graduate courses for either law students or masters/doctoral students in education programs. It can also be used for preparing training programs for faculty and staff about significant legal issues that affect their work. This 2024 edition expands upon and updates the former *Student Version* that was derived from the two-volume treatise, *The Law of Higher Education*, published in 2019.

Information about both books, and about auxiliary resources that accompany the books, is available on *The Law of Higher Education* webpage (<https://www.nacua.org/resource-library/resources-by-type/the-law-of-higher-education>), hosted for us by the National Association of College and University Attorneys.

In this *Manual*, we have collected and set out our observations and suggestions on “teaching from” *The Law of Higher Education: Essentials for Legal and Administrative Practice*—that is, using it as the text (or one of the texts) for a higher education law course in a graduate school of education or a law school. Although we do not address other instructional uses in this *Manual*, we think that the current edition also could be a useful text or resource for graduate courses in higher education administration, higher education policy, or higher education governance, for some upper-level undergraduate courses, and for in-service training programs for professionals on the staffs of colleges and universities.

We would be delighted to hear from instructors who have used or are considering using *The Law of Higher Education: Essentials for Legal and Administrative Practice* as a course text. Feedback is important to us. We also would be pleased to receive copies of course syllabi from instructors who have adopted the 2024 book. Please send comments and syllabi to: [barbalee@oq.rutgers.edu](mailto:barbalee@oq.rutgers.edu)

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## PART I

### PURPOSE, ORGANIZATION, AND CONTENT OF *The Law of Higher Education: Essentials for Legal and Administrative Practice*

#### 1. Purpose of the text.

*The Law of Higher Education: Essentials for Legal and Administrative Practice* has the specific goal of supporting the effective teaching and learning of higher education law. To accomplish this goal, this volume presents foundational principles and concepts, in-depth analysis, and practical suggestions on a wide array of legal issues faced by public and private colleges and universities. The discussions draw upon pertinent court opinions, constitutional provisions, statutes, administrative agency regulations, and related research and scholarship.

#### 2. How We Developed this book

We designed *The Law of Higher Education: Essentials for Legal and Administrative Practice* for a dual purpose: first to provide an overview and analysis of significant issues facing institutions of higher education for use by lawyers and administrators, and second to be used in higher education law courses in graduate schools of education and law schools. We selected the topics that we believe are of greatest importance and interest to both institutional leaders and the attorneys who advise them, as well as to students and their instructors. The issues we emphasize for each topic are usually ones that administrators, faculty members, or students could encounter at virtually any institution of higher education in the country (or, sometimes, in the world). In developing these issues, we focus not only on the applicable law, but also on pertinent policy considerations and on implications for practice.

#### 3. Study Aids in the Student Version

*The Law of Higher Education: Essentials for Legal and Administrative Practice* includes numerous study aids designed specifically for instructors to use with their students. These study aids include:

- A “General Introduction to the Study of Higher Education Law,” that lays the conceptual foundation for study of the subject matter and also provide guidance for students who do not have background or training in the law.
- An appendix (Appendix B) that provides an overview of the American system of courts and highlights key distinctions between federal and state courts, and between trial and appellate courts.
- An appendix (Appendix C) that provides practical guidelines for reading and analyzing judicial opinions.
- An appendix (Appendix D) that contains a glossary of legal terms used in the book.
- Overviews at the beginning of chapters (in italics) that introduce the topics and concepts to be addressed in each chapter.
- Six graphics (or figures), spread throughout the book that illustrate particular legal concepts and distinctions.

In addition to these study aids that are incorporated into the book, we also have prepared a separate volume of edited cases and practice problems, keyed to the book, which is available to instructors for distribution to students. (See Part IV (1) below.)

#### 4. **Organization and Content of *The Law of Higher Education: Essentials for Legal and Administrative Practice***

The book is organized into five parts:

- Perspectives and Foundations
- The College and Its Governing Board and Staff
- The College and Its Faculty
- The College and Its Students
- The College and the Outside World.

In turn, these five parts are divided into twelve chapters, preceded by a General Introduction. Each chapter is divided into numerous sections and subsections with their own titles. The content of the chapters is as follows:

- **Chapter One** provides a framework for understanding and integrating what is presented in subsequent chapters and a perspective for assimilating future legal developments.
- **Chapter Two** addresses foundational concepts concerning legal liability, preventive law, and the processes of litigation and alternative dispute resolution.

- **Chapters Three through Ten** develop the legal concepts and issues that define the *internal* relationships among the various members of the campus community, and address the law’s impact on particular roles, functions, and responsibilities of students, faculty members, and trustees and administrators.
- **Chapter Eleven** focuses on the postsecondary institution’s *external* relationships with government at the federal, state, and local levels. This chapter examines broad questions of governmental power and process that cut across all the *internal* relationships and administrative functions considered in Chapters Three through Ten.
- **Chapter Twelve** also addresses the institution’s *external* relationships, but the relationships are those with the private sector rather than with government. This chapter reviews the various national and regional education associations with which postsecondary institutions interact, as well as the various research ventures in which institutions engage with private entities from the commercial world.

Further description of each chapter’s content is included in the overviews (in italics) that are of the beginning of each chapter.

## **5. Terminology Used in *The Law of Higher Education: Essentials for Legal and Administrative Practice***

We have endeavored throughout the text to use terminology that is accessible to both individuals with legal training and those without legal training. For students or instructors who may need help with terminology, we have provided it in two ways. First, the Preface to the book includes a section on “Nomenclature and Definition of Terms” that explains key terms such as “postsecondary education,” “University,” “public institution,” and “private institution.” Second, Appendix D to the book contains a Glossary that defines the various legal terms that we use in the text, and each such term appears in bold face the first time it appears in the text.

## **6. Recommendations for Using the book and Keeping Up-to-Date**

Numerous recommendations on using the book are included in Parts II through V of this *Instructor’s Manual*. In addition, we have two precautions about using the book. First, the legal analyses and practical suggestions in the book are not adapted to the law of any particular state or to the circumstances of any particular postsecondary institution. Furthermore, the book is not a substitute for the advice of legal counsel, or a substitute for further research into the legal authorities



and factual circumstances that pertain to particular legal problems that face an institution, administrator, student, or faculty member in real life.

Second, the book is not necessarily the latest word on the law. The law moves especially fast in its applications to postsecondary education. Thus, we suggest that users of the book keep abreast of ongoing developments concerning the topics and issues in this book. Various aids available for this purpose are described in the Preface to the book. In particular, we recommend that instructors use our *Law of Higher Education* webpage, hosted by the National Association of College and University Attorneys (NACUA) (<https://www.nacua.org/resource-library/resources-by-type/the-law-of-higher-education>), on which we post pertinent new developments keyed to *The Law of Higher Education: Essentials for Legal and Administrative Practice* (see Part IV(3) of this Manual). An even more timely source of updated information is the weekly NACUA posting “New Cases and Developments” that is released every Monday. The NACUA website homepage also includes information on recently-published court opinions, regulations, and other important documents.

There also are two specialty journals, both of which we recommend, and both of which provide extended legal analysis on recent developments, as well as classical concerns: *The Journal of College and University Law*, published by NACUA, and the *Journal of Law and Education*, published by the Joseph F. Rice School of Law at the University of South Carolina, which covers elementary and secondary as well as postsecondary education.

## PART II

### THE AUDIENCE FOR *THE LAW OF HIGHER EDUCATION: ESSENTIALS FOR LEGAL AND ADMINISTRATIVE PRACTICE* -- EDUCATORS VS. LAWYERS

We have designed the *Student Version* for use not only by law students but also by education students (and students in related fields) who may not have prior training or background in law. The General Introduction to the *Student Version* speaks directly to both groups. The text of the twelve chapters is written in a style accessible to both groups. Moreover, we have auxiliary teaching materials (see Parts IV (1) & V below), with cases that are edited, and notes and questions that are crafted, to accommodate the needs and perspectives of both groups; and with problems and problem-solving exercises that are designed to be addressed from the perspective of either group – or from the perspectives of both, thereby allowing for comparison and accommodation of viewpoints, as well as collaborative problem-solving experiences.

Instructors will want to advise students without legal background to pay particular attention to the suggestions and cited resources in section F of the *Student Version's* General Introduction, as well as to the four appendices at the back of the text: the U.S. Constitution, the American Court System, Reading and Analyzing Court Opinions, and Glossary of Legal Terms.

It follows, from this description of the student audience for the *Student Version*, that the text also may be used by both instructors who are lawyers and those whose professional training or background is in administration, policy making, or some other education-related field. Instructors without legal training should find the resources cited in Section F of the General Introduction and the material in the appendices to be particularly helpful the first few times they offer the course.

In courses for education students and courses that mix education students together with law students, instructors should use the *Student Version* with an important caution in mind: Educators need not learn to know the law like lawyers know the law, to analyze problems like lawyers do, or to perform the functions that lawyers perform. In real-world settings, there are (or should be) lawyers available to do these things. It is important for instructors to impress upon education students that educators, administrators, and public policy-makers have different roles -- in which it is more critical to know about law than to know the law; more critical to know how to analyze problems from their own discipline's perspective, against the backdrop of law, than to analyze problems from the lawyer's perspective; and more critical to know how to work with lawyers in performing their own functions, than to perform the lawyers' functions for them.

## PART III

### ORGANIZING THE COURSE

The *Student Version* has a General Introduction followed by 12 chapters, each with numerous sections and subsections (see Part I (4) of this Manual). The organization and content allow instructors flexibility to delete particular sections or subsections from their assignments for the course; to add additional material to their assignments, including readings from the full *6th Edition (LHE 6th)* on topics not covered in the *Student Version* (see Part IV (2) of this Manual); and to change the order of topics assigned from the *Student Version*. In addition, instructors have flexibility to add cases and/or problems from our teaching materials (*CPM: Student Version*) to course assignments, as discussed in Parts IV (1) & V below. All these case materials and problems are keyed to the *Student Version*.

Here are some further suggestions about course organization:

1. We suggest that courses begin either with the General Introduction or with Chapter I, Sections 1.1 and 1.2. These readings, taken together, would make a good first assignment for a class meeting.

Caution: Part A of the General Introduction (The Universe of Education Law) introduces the distinction between higher education and K-12 education. While it is important for instructors to emphasize this distinction, which is deeply imbedded in the law, we suggest that instructors also provide an alternative perspective for their students. According to this emerging perspective, there are important interrelationships between higher education and K-12 education, such that problems and challenges at one level often may have serious effects on the other. For this reason, there is now a gradual trend toward viewing formal education as a continuum rather than a series of distinct stages (pre-K, K-12, undergraduate, graduate). This viewpoint has important implications for the governance of education, and at a minimum suggests that the almost total separation between higher education and K-12 education in state and federal governance structures must be breached to encourage more cooperation between the two levels.

2. We suggest that all (or almost all) of chapter 1 be assigned at the beginning of the course. Preceded by the General Introduction, it would make a good first assignment for a class meeting. Students should be able to absorb most of these materials on their own without substantial lecturing

by the instructor. There is, however, much in these sections (especially sections 1.5 and 1.6) that would provide the basis for challenging and interesting discussions, if the instructor so chooses.

3. In making coverage choices, instructors should be helped not only by our detailed table of contents for the *Student Version* but also by the brief overviews that appear in the text at the beginning of each chapter.

4. Probably the major choice about the order of assignments arises with respect to Part Three (“The College and Its Faculty”) and Part Four (“The College and Its Students”) of the *Student Version*. For courses focusing on student affairs, some instructors may wish to reverse the order of these two Parts. Moreover, in student affairs courses, instructors may want to give more emphasis to Part Four than to Part Three; and in courses focusing on academic affairs, instructors may want to give more emphasis to Part Three than to Part Four.

Caution: In courses emphasizing student affairs (Part Four), instructors likely will want to cover, at a minimum, section 6.2 of the Part Three materials; and in courses emphasizing academic affairs (Part Three), instructors likely will want to cover, at a minimum, sections 7.1.4, 7.7.2, 7.8, and 8.2 of the Part Four materials.

5. Another choice regarding the order of assignments may arise with Chapters II and III. Most of this material could be addressed either near the beginning or near the end of a course. If the instructor decides to move this material to the end of the course, we recommend that Section 3.1 nevertheless remain at the beginning, since it introduces students to the college or university as a legal entity apart from its administrators and faculty.

6. For instructors seeking to skip or move very quickly over certain blocks of material in the *Student Version*, the best places to look for possibilities often will be Chapter IV (“The College and Its Employees”) and Chapter XI (“The College and External Private Entities”). The instructor’s specific course goals will dictate whether any, or how much, of these materials need to be covered.

Caution: In courses for students who are, or are about to be, staff members at higher education institutions, the instructor may identify the development of professionalism as a course goal. In this circumstance, we recommend that the course cover at least the first four sections of Chapter IV. Also, in courses that cover the application to faculty of federal nondiscrimination laws (Chapter V, Section 5.4), we recommend that instructors cover at least Sections 4.5 and 4.6 of Chapter IV.



## PART IV

### AUXILIARY RESOURCES AVAILABLE FOR USE WITH THE BOOK

The book, along with periodic updates that we post on our *Law of Higher Education* webpage (see 3 below), stands on its own as a course text. Instructors need not combine it with any other texts or readings. On the other hand, if instructors do wish to supplement the text with other resources – for example, to add additional topics or to facilitate a particular teaching method – we have made it easy to do so. In particular, we have teaching materials, available to instructors free of charge that are keyed to the text and will support an instructor’s use of the case method, the problem-based method, or both. And our full two-volume treatise (the *6th Edition*), which addresses various topics beyond those in the 2024 text, will support an instructor’s efforts to broaden, or add a special emphasis to, the course. These auxiliary resources – our teaching materials and full *6th Edition* – are described below, along with suggestions for using them. A third auxiliary resource, our periodic updates on the LHE webpage, is then discussed to round out the picture. And, of course, instructors may wish to have students read court opinions, journal articles, or other materials in addition to the materials discussed in this Instructor’s Manual. The sample syllabi found in the Appendix provide examples of these additional materials, many of which are added throughout the semester as new developments occur.

#### 1. *The Teaching Materials*

*Cases, Problems, and Materials for use with The Law of Higher Education: Essentials for Legal and Administrative Practice* (hereinafter *CPM*) is a volume of teaching materials for classroom use that we make available in electronic format free of charge for instructors who adopt *The Law of Higher Education: Essentials for Legal and Administrative Practice* as a required text. *CPM* is made available by the National Association of College and University Attorneys. Any instructor who has adopted the text as a required course text may download and reproduce *CPM* (or portions of it) for distribution to the students in the course. No other reproduction, distribution, or transmission is permitted. Instructions for downloading and purchasing are on our webpage (<https://www.nacua.org/resource-library/resources-by-type/the-law-of-higher-education>).

*CPM* is divided into two parts. Part I contains three types of materials: court opinions that we have carefully edited and keyed to the text and that illustrate selected facets of the law’s development; notes and questions on the cases to stimulate discussion and enhance understanding of each case’s broader law and policy implications; and short, narrowly focused practice problems that explore the law’s concrete applications, and which are designed to elicit discussion of particular issues. Answer guidelines for each problem are included in an appendix. Part II of *CPM* is a series

of “large-scale” problem-solving exercises whose issues are not confined to a single section or chapter of *CPM* or the text. In a formal course, these problem exercises may be used periodically to integrate knowledge or to practice professional roles in problem solving; or they may be used for end-of-course review and synthesis, independent study, or as the basis for research and writing assignments or examinations. Preceding the first of the large-scale problem exercises is a proposed set of directions and a proposed set of basic questions for problem review. Guidelines for working through each problem, with references to pertinent sections of the text, are also contained in an appendix. (Instructors may wish to defer student access to these answer guidelines, and to those for the Part I problems, until students have completed the problem.)

There are two basic ways in which instructors may wish to use *CPM* in conjunction with the text:

(1) The instructor may use the text as the primary resource and *CPM* as a secondary resource. The text would then be the main source of assigned readings and the main support for class presentations and discussions, while selected materials from *CPM* would be used for illustrating particular points of presentations and discussions, and/or for problem solving practice, writing assignments, or independent study. *CPM*'s availability in electronic format will facilitate this type of selective use and allow instructors to integrate other teaching materials with those in *CPM*.

(2) The instructor may use *CPM* as the primary resource and the text as a parallel or secondary resource. *CPM* would then be a regular source of assigned readings and the main support for class discussions, case analysis, simulations, or other problem-solving exercises. The text would be a source for assigned background readings, independent study of particular topics, assistance with problems and questions in *CPM*, and general review and synthesis. In addition, the text could be a basic resource for students doing research papers, memos, or other projects.

Instructors, of course, also may devise variants of these two basic approaches to suit their particular pedagogical styles and goals, or – having adopted the text as a course text – may simply use *CPM* as a personal resource for planning purposes or a resource for exam questions.

## **2. *The Two-Volume Treatise Sixth Edition (“LHE 6th”)***

*The Law of Higher Education, 6th ed.* (2019), is a comprehensive treatise designed for college and university attorneys, officers and administrators, trustees, faculties, and staffs. It organizes and conceptualizes the entire range of legal considerations pertinent to the operation of colleges and universities. Being more comprehensive than *The Law of Higher Education: Essentials for Legal*

and *Administrative Practice*, *LHE 6th* is in two volumes comprising sixteen chapters. The table of contents of *LHE 6th* is available on our webpage hosted by NACUA

(<https://www.nacua.org/resource-library/resources-by-type/the-law-of-higher-education>).

For certain advanced doctoral courses, some instructors may prefer to use the full sixth edition, rather than the 2024 book, as the course text – particularly if the doctoral students are likely to want to keep the treatise as a professional resource. But our focus here is on ways that instructors could use *LHE 6th* to support teaching and learning in courses where the 2024 book is the assigned text. For these purposes, we are assuming that the instructor would arrange to have a copy of the full *6th edition* placed on library reserve.

Instructors may find the full *6th edition (LHE 6th)* helpful in one or more of these ways:

- *LHE 6th* can provide analysis and suggested resources for additional topics, beyond those in the 2024 text, that instructors may wish to cover in their courses. Similarly, *LHE 6th* can provide more extended discussion, and additional case examples and practical suggestions, for certain topics that are in the 2024 text but to which the instructor wishes to give extra emphasis.
- *LHE 6th* can be a helpful resource for students choosing research topics or doing research papers. *LHE 6th* can serve this need because it covers more topics than the *Student Version*, includes more case examples, contains more text cites and footnotes identifying useful resources, and includes a Selected Annotated Bibliography at the end of each of its sixteen chapters.
- *LHE 6th* can be a useful resource for instructors as they prepare particular classes. Instructors wishing additional background or grounding on particular topics that they plan to cover, for instance, can read the section in *LHE 6th* that parallels the 2024 text section they assign to the students, or can consult one of the resources cited in the chapter Bibliographies in *LHE 6th*. Instructors seeking additional case examples for class discussion, or additional suggestions on implications for practice, may also find them in the more expansive discussions in *LHE 6th*. In addition, instructors seeking to extend discussion of a particular 2024 text topic by addressing an additional, related topic may find such related topics in *LHE 6th*. (For example, an instructor covering student support services in class may extend the discussion beyond the topics in Section 7.7 of the 2024 text by addressing one of the other support services discussed in *LHE 6th* Sections 8.7.2, 8.7.5, or 8.7.6.)

For instructors who do not yet have access to a copy of *LHE 6th*, the full table of contents is available on our website hosted by NACUA (<https://www.nacua.org/resource-library/resources-by-type/the-law-of-higher-education>).



### 3. ***The Periodic Updates (New Developments)***

Because, the law moves especially quickly in its applications to higher education (see Part I (6) above), instructors will want to have efficient ways to keep abreast of new and ongoing developments concerning the topics and issues they address in their courses. To meet this need, we have established a “new developments” section on *The Law of Higher Education* Website (<https://www.nacua.org/resource-library/resources-by-type/the-law-of-higher-education>). Accessible to both instructors and students, this section includes new developments, clarifications, and errata that we post on a continuing basis to update and supplement the 2024 text.

In addition, the preface of the 2024 text contains numerous recommendations on other resources that instructors or students may wish to consult to stay up to date on the topics in the text or other topics being explored via independent study or research.

**PART V**

**USING PROBLEMS AND PROBLEM SOLVING  
AS AN INTEGRAL PART OF THE COURSE**

We think that problem-based learning (PBL) and its cousin, collaborative learning, can be particularly effective in higher education law courses. We therefore recommend that instructors assign practice problems as part of the course work and dedicate part of class time to problem-solving practice. Problems could be used periodically throughout the course or could be reserved for the end stage of the course. Instructors who choose not to use problems in this way may nevertheless find it beneficial to provide problems to students for their own independent study.

These uses of problems are facilitated by our teaching materials, *CPM* (see Part IV (1) above). Instructors can match the small-scale, targeted problems in Part I of *CPM* to particular topics from the text and thus use problems throughout the course. Instructors can use the large-scale problem-solving exercises in Part II of *CPM* at transitional points in the course after covering the various topics highlighted in the exercise, or at the end of the course for purposes of review and integration of materials covered earlier. For both the small-scale and large-scale problems, instructors can assign the answer guidelines (in Appendices A and B of *CPM*) for student review of problems that they have completed; and instructors can use the guidelines themselves in preparing for class discussion of problems or in preparing to grade students' written responses to problems. The answer guidelines include numerous references to pertinent sections of the text, some or all of which instructors may use as assigned reading prior to doing the problem or recommend to students as a resource to consult while doing the problem. In addition, for the large-scale problems, Part II of *CPM* contains suggestions on role-playing and general questions to use for reviewing the large-scale problems in class. (Instructors may also adapt these suggestions and questions to problems that they devise themselves.)

The large-scale problems in *CPM* Part II also lend themselves to use in simulation exercises that place students in professional roles. In courses for education students, the students could assume the roles of administrators; in courses for law students, they could assume the roles of attorneys; and in mixed courses, both types of roles could be represented in the same problem. Instructors in courses for education students may wish to recruit lawyers from their institution's office of general counsel or professors from the law school to play lawyer roles in simulations; similarly, instructors in courses for law students may wish to recruit professionals from their institution's administration and staff to play administrator roles in simulations. Appendix B to this *Instructor's Manual* contains a

handout introducing students to simulation exercises. Although this handout was drafted for law students, instructors can readily adapt it for education students, as well. Regardless of how much or little time they spend on problems in the course, many instructors may want to introduce students to the legal problem-solving process, *i.e.*, the process that lawyers go through in advising clients with higher education law problems.

## APPENDIX A

### Sample Course Syllabi\*

This Appendix contains course syllabi developed by different instructors for different courses. We present them here as examples of how higher education law courses might be focused and organized. Syllabus Nos. 1, 2 and 3 are for courses offered in a graduate school of education. We have made minor edits in each syllabus.

The syllabi remain the property of the instructors and are included in this Instructor's Manual with their permission. Other instructors who would like to use portions of one of these syllabi for their own courses should contact the instructor listed on that syllabus.

#### **\*Notice to users of the Instructor's Manual:**

The syllabi included in this version of the Manual refer to the 2024 LHE book *The Law of Higher Education: Essentials for Legal and Administrative Practice*. More syllabi will be added as they become available.

## **SYLLABUS NO. 1**

**Seminar for PhD Program in Higher and Postsecondary Education  
In Person  
New York University**

### **HIGHER EDUCATION AND THE LAW Fall Semester, 2024**

**Course No. I-IPSE -GE 2115.1**

**DAY: Thursday  
TIME: 4:55 - 6:35 p.m.  
PLACE: Paulson Center**

**INSTRUCTOR: Terrance J. Nolan  
Email: [terrance.nolan@nyu.edu](mailto:terrance.nolan@nyu.edu)  
Office Hours: by appointment  
181 Mercer St.- 300**

#### **Course Content and Objectives:**

**This course is based principally upon discussion and evaluation of primary materials to examine the effect of law and the legal system on institutions of higher education and their faculty, students and staff. Specific issues considered include the differences and similarities between public and private institutions, student activities and liability, faculty status and rights, employment and equal opportunity issues, labor relations, student discipline, and religion and the First Amendment. Other questions touched upon involve study abroad, student records, student loans, student residence and voting, copyright, taxation and institutional accreditation. Guest lecturers are a feature of the course.**

**The goal of the course is to provide a substantial framework and reference for higher education administrators and related professionals in evaluating the potential legal dimensions of their responsibilities and activities.**

#### **Resources:**

**The textbook for the course is The Law of Higher Education: Essentials for Legal and Administrative Practice, by William A. Kaplin, Barbara A. Lee, et al. (Jossey Bass, 2024). Additional weekly readings are posted on Brightspace.**

#### **Class Organization:**

**For each class, several students will each be assigned to provide a summary and analysis of an individual case. This usually will be followed by a discussion and evaluation of the student's presentation by other students and the instructor. The instructor may set the stage for this discussion by a short, introductory lecture. It is always appropriate, and often necessary, to discuss the policy reasons supporting, or the policy implications of, a rule of law. This in many instances will involve considerations, for example, of history, philosophy, economics and sociology.**

**Requirements:**

1. Attendance and participation.
2. Readings as assigned and oral case presentations.
3. Mid-Term Examination
4. Final Assignment - TBD

**Grading:** Class participation and case presentations, 50%;  
Mid-Term Examination, 25%;  
Final Assignment, 25%

**COURSE OUTLINE AND ASSIGNMENTS (subject to change)**

**September 5 I. The Legal System and the College/Student Relationship**

- A. The Judicial System: federal and state
- B. Review of assignments
- C. College/Student Legal Relationship

**Text:**

Pages 4-11; 963-970

**Cases:**

Gott v. Berea College, 156 Ky. 376, 161 S.W.204 (1913)

Goldstein v. New York University, 76 AD 80, 78 N.Y.S. 739 (1st Dept. 1902)

Anthony v. Syracuse University, 224 AD 487, 231 NYS 435 (4th Dept. 1928)

Storino v. New York University, 193 AD3d 436 (1st Dept., 2021)

**September 12 II. Public and Private Institutions**

- A. Public v. Private: State Action?
- B. "Mixed" Public and Private

**Text:**

Pages 26-35

**Cases:**

Powe v. Miles, 407 F.2d 73 (2d Cir. 1968)

Albert v. Carovano, 851 F.2d 561 (2d Cir. 1988)

Hiers v. Board of Regents, 2022 US Dist Lexis 43617 (ND Tex. 2022), pp. 1-10; 22-24.

Speech First Inc. v. Cartwright, 32 F.4th 1110 (11th Cir. 2022), pp 5-9; 13-17.

Hening v. Adair, 644 F. Supp. 2d ( WD Va. 2022)

**September 19 III. Students and Liability for Injury — Part I**

- A. Alcohol Use

- B. Student Violence
- C. Security
- D. Field Trips
- E. Study Abroad

**Text:**

Pages 96-108; 115-124

**Cases:**

Bradshaw v. Rawlings, 612 F.2d 135 (3d Cir. 1979), cert. denied, 446 U.S. 909, 100 S.Ct. 1836, 64 L.Ed.2d 261 (1980)

Eiseman v. State of New York, 70 N.Y.2d 175, 518 N.Y.S.2d 608, 511 N.E.2d 1128 (1987)

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

Nero v. Kansas State University, 861 P.2d 768 (Kan. 1993)

Fav v. Thiel College, 55 Pa. D+C4th 353 (ct. Comm Pl. 2001)

Nguyen v. Massachusetts Institute of Technology, 479 Mass. 436 (2018)

**September 26 IV. Students and Liability for Injury — Part II**

**Text:**

Pages 777-790

**Cases:**

Beach v. University of Utah, 726 P.2d 413 (Utah, 1988)

Furek v. University of Delaware, 594 A.2d 506 (Del., 1991)

McClure v. Fairfield University, 35 Conn. L. Rptr. 169 (Conn. Super. 2003)

Regents of the University of California v. Superior Court, 4 Cal. 5th 607 (2018)

Barlow v. State of Washington, 2 Wa.3d 583 (2024) (majority opinion)

**October 3 V. Faculty — Part I**

- A. Tenure and Re-Employment Rights
- B. Constitutional Due Process
- C. Academic Freedom
- D. Non-Discrimination
- E. Labor Relations I Collective Bargaining

**Reading:** American Association of University Professors (AAUP), 1940 Statement on

Principles of Academic Freedom and 1970 Interpretive Comments.

**Text:**

Pages 315-321; 368-388

**Cases:**

Board of Regents v. Roth, 408 U.S. 564 (1972)  
Perry v. Sindermann, 408 U.S. 593 (1972)  
Gorum v. Sessoms, 561 F3d 179 (3d Cir. 2009)  
Meriwether v. Hartop, 992 F3d 492 (6th Cir. 2021)  
Veikos v. Trustees of University of Pennsylvania (E.D. Pa. 2023)

October 10 VI. Faculty — Part II

Text:

Pages 279-294

Cases:

Otero-Burgos v. Inter-American University, 558 F.3d 1 (1<sup>st</sup> Cir. 2009)  
Haviland v. Simmons, 45 A.3d 1246 (RI 2012)  
Zahorik v. Cornell University, 729 F2d. 85 (2d Cir. 1984)  
University of Pennsylvania v. EEOC, 493 U.S. 182 (1990)  
Alberti v. Rector arid Visitors of the University of Virginia, F.4th (4thCir. 2023)

October 17 VII. Faculty — Part III

Text:

Pages 147-157; 260-265

Cases:

Trustees of Columbia University, 97 NLRB No. 72 (1951)  
Cornell University, 183 NLRB No. 41 (1970)  
NLRB v. Yeshiva University, 444 U.S. 672 (1980)  
Trustees of Columbia University, 364 NLRB No. 90 (2016)  
Community College of Philadelphia v. Commonwealth of Pennsylvania,  
Pennsylvania Labor Relations Board, 432 A.2d 637 (Pa. Cmwlt. 1981)

October 24 Mid-Term Exam

October 31 VIII. Student Admissions and Activities — Part I

- A. Nondiscrimination in student admissions
- B. Affirmative action

Text:

Pages 463-487

Cases:

Regents of the University of California v. Bakke, 438 U.S. 265 (1978) [opinion of Powell, J.]  
Gruffer v. Bollinger, 539 U. S. 306 (2003) [Opinion of O'Connor, 1, pp. 311-344.  
Students for Fair Admissions, Inc. v. President and Fellows of Harvard University;  
600 U. S. , 143 S.Ct. 2141(2023):



Syllabus — pp. 1-8

Concurrence of Kavanagh, J. —pp. 107-131

Dissent of Jackson, J. — pp. 209-237

November 7 IX. Student Admissions and Activities — Part II

- A. Student discipline/Academic sanctions
- B. Student protests

Text:

Pages 684-702

Cases:

Dixon v. Alabama State Board of Education, 294 F.2d 150 (5th Cir.), cert. denied, 368 U.S. 930, 82 S.Ct. 368, 7 L.Ed.2d 193 (1961)

Matter of Doe v. Skidmore College, 152 AD 3d 932 (3d Dept. 2017)

Powers v. St. John's University, 25 NY 3d 210 (2015)

Matter of Susan M. v. New York Law School 76 NY 2d 241 (1990)

Kollaritsch v. Michigan State University, 944 F.3d 613 (8th Cir. 2019) (majority opinion)

Hall v. Millersville University, 22 F.4th 397 al Cir. 2022), pp.4-13.

November 14 X. Student Admissions and Activities — Part III

- A. Use of facilities

Reading: Madison, James, Memorial and Remonstrance Against Religious Assessments (1785)

Text:

Pages 768-776; 790-792

Cases:

Widmar v. Vincent, 454 U.S.263, 102 S.Ct.269, 70 L.Ed.2d 440 (1981)

Rosenberger v. Rector and Visitors of the University of Virginia, 515 U.S. 819, 115 S.Ct. 2510, 132 L.Ed.2d 700 (1995)

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

(Opinion of Ginsburg, J. and Dissent of Alito, J)

Doe v. New York University, 786 NYS 2d 892 (Sup. Ct. NY Co. 2004).

Guillot v. Whitehead, (Sup. Ct. WA 2023), pp. 3-13; 22-23;26-28.

Awad v. Fordham U., 64 Misc.3d 1234 (Sup. Ct. NY Co. 2019), rev'd 189 AD3d 605 (1St Dept. 2020)

November 21 XI. Federal and State Regulation I

- A. Taxation
- B. Student voting
- C. Student residence

**D. Student Loans**

**Text:**

**Pages 857-861; 874-878**

**Cases:**

**Case Western Reserve University v. Wilkins, 105 Ohio St. 3d 276, 825 N.E. 146 (2005)**

**Williams v. Salerno, 792 F.2d 323 (2<sup>nd</sup> Cir. 1986)**

**Lockett v. University of Kansas 111 P.3d 170 (Kansas Court of Appeals, 2005)**

**In re Shadwick, 341 B.R. 6 (Bankr, W.D. Mo. 2006)**

**In re Love 649 B. R. 556 (Bankr, E.D. Cal. 2023), pp. 1-5; 10-12.**

**December 5 XII. Federal and State Regulation II**

**A. Student Records**

**B. Copyright**

**C. Accreditation**

**Text:**

**Pages 571-577; 891-901; 938-944**

**Cases:**

**Russo v. Nassau Community College, 81 N.Y.2d 690, 603 N.Y.S.2d 294, 623 N.E.2d 15 (1993)**

**United States v. Miami University, 294 F.3d 797 (6th Cir. 2002)**

**Princeton University Press v. Michigan Document Services, 99 F.3d 1381 (6th Cir. 1996), cert. denied, 520 U.S. 1156, 117 S.Ct. 1336, 137 L.Ed.2d 495 (1997)**

**Marjorie Webster Junior College v. Middle States Association, 432 F.2d 650 (D.C. Cir.), cert. denied, 400 U.S. 965, 91 S.Ct. 367, 27 L.Ed.2d 384 (1970)**

**December 12 XIII. Employment Regulation**

**A. ADA, OSHA, FLSA, NLRB, Title VII., etc**

**B. Colleges and Universities as Employer**

**Text:**

**Pages 143-147; 180-194**

## SYLLABUS NO. 2

### Doctoral Level Seminar for Higher Education Students Hybrid—Synchronous and Asynchronous Rutgers University

#### Higher Education and the Law

16:507:520

#### Course Syllabus

Professor Barbara Lee  
Wednesdays, 6:00-8:00 p.m. Synchronous  
Remainder of class time Asynchronous  
Office hours by appointment via Zoom or telephone

Office hours by appt.  
[barbalee@oq.rutgers.edu](mailto:barbalee@oq.rutgers.edu)  
609.462.6908

#### Course Overview

Colleges and universities are among the most heavily regulated organizations in the United States. They are subject not only to common law liability (tort, contract, defamation, etc.), but also are closely regulated by both state and federal laws applicable to business organizations, such as the laws regulating employment, as well as additional laws involving eligibility for federal funds, such as Title IX, and Title VI of the Civil Rights Act. Public colleges and universities are subject to the U.S. Constitution's requirements. This seminar addresses all of these issues; academic freedom for both faculty and students is addressed as well.

The course learning management system is Canvas. Recorded lectures, paper prompts, and other course materials, except for the course text (see below) will be posted on the course's Canvas site.

#### Course Objectives

This is a doctoral-level course that requires substantial reading and analysis of the course text, journal articles, and the decisions of state and federal courts. The course has the following general learning goals:

1. Enable the student to understand the foundational legal principles affecting the operations and leadership of colleges and universities
2. Provide the tools to equip the student to analyze a situation and identify potential legal issues
3. Enable the student to understand how to incorporate legal principles into the policy development process

## Specific Learning Outcomes—Based upon ACPA/NASPA Professional Competencies

At the end of the course, the successful student should be able to:

1. Explain the basic tenets of personal or organizational risk and liability as they relate to one's work
2. Explain the differences between public and private higher education with respect to the legal system and what they may mean for students, faculty, and staff at both types of institutions.
3. Describe the evolving legal theories that define the student–institution relationship and how they affect professional practice
4. Describe how national constitutions and laws influence the rights that students, faculty, and staff have on public and private college campuses.
5. Explain the concepts of risk management and liability reduction strategies.
6. Explain when to consult with one's immediate supervisor and campus legal counsel about those matters that may have legal ramifications.
7. Act in accordance with federal and state/province laws and institutional policies regarding nondiscrimination.
8. Identify the internal and external special interest groups that influence policy makers at the department, institutional, local, state/province, and federal levels
9. Describe the public debates surrounding the major policy issues in higher education, including access, affordability, accountability, and quality.
10. Describe the governance systems at one's institution, including the governance structures for faculty, staff, and students.
11. Describe the system used to govern or coordinate one's state/province system of higher education, including community college, for-profit, and private higher education.
12. Describe the federal and state/province role in higher education

## Course Requirements and Grading

The course will rely heavily on analysis of course readings, student discussion and consideration of the implications of the law for policy. Students are responsible for all assigned reading and for participation in class discussion. Evaluation of students will include:

Two short papers responding to a practical problem (four double-spaced pages maximum)	20 percent
Research paper on topic of student's choice (must be approved by instructor)	50 percent
Presentation of research paper to class	10 percent
Class participation in threaded discussion and in synchronous portion of class	20 percent

A series of short lectures has been recorded and are available on the Canvas course website. Students should review the lectures and readings assigned for that night **prior** to Tuesday's class.

## **Attendance Policy**

This course involves much discussion and student engagement during the synchronous portion of the class. **You are required to have your camera on for the duration of the class** unless I have given you permission to keep it off for one class session due to illness or other appropriate reason.

## **Required Course Materials**

Course Text: William A. Kaplin, Barbara A. Lee, Neal H. Hutchens and Jacob H. Rooksby. *The Law of Higher Education: Essentials for Legal and Administrative Practice*, Jossey-Bass, Inc., 2024. ISBN 978-1-394-19628-9. Court opinions are available on Westlaw or LEXIS; other reading assignments are posted on the course website.

**Final Paper and Presentation.** The final paper is due on Friday, November 29, 2024 at 5:00 p.m. You must have your topic approved by me **early** in the semester—no later than 10/1/24. Some topics are far too broad for a research paper of 15-20 pages; others are so narrow that there is virtually no litigation on the topic. After I have approved your topic, you will need to give me a paragraph that discusses the topic and how you will address it, plus a rough outline of the paper—due Wednesday, 10/16/24.

Students will present their papers during the last two weeks of the class. Please post your paper in two places—under Assignments and under Discussions—Research Paper so that your classmates can read it prior to your presentation, at which time they will be expected to comment, ask questions, etc.

Students are expected to submit written work on or before the due date. Assignments that are turned in after the due date will lose points, which will lower the grade.

## **Academic Integrity Policy**

The School of Graduate Studies supervises issues related to violations of academic integrity. Please familiarize yourself with the university policy on academic integrity at <https://grad.rutgers.edu/sites/default/files/2021-07/10.2.13%20-%20current.pdf>.

## **Students with Disabilities**

Rutgers University is committed to the creation of an inclusive and safe learning environment for all students, and welcomes students with disabilities into all the University's educational programs. The Office of Disability Services (ODS) is responsible for the determination of appropriate accommodations for students who encounter barriers due to disability. Once a student has completed the ODS process (registration, initial appointment, and submitted documentation) and reasonable accommodations are determined to be necessary and appropriate, a Letter of Accommodation (LOA) will be provided. The LOA must be given to each course instructor by the student and followed up with a discussion. This should be done as early in the semester as possible as accommodations are not retroactive. More information can be found at [www.ods.rutgers.edu](http://www.ods.rutgers.edu). You can contact ODS at (848) 202.3111 or via email at [dsoffice@echo.rutgers.edu](mailto:dsoffice@echo.rutgers.edu).

### **Chosen Gender Pronoun**

This course affirms people of all gender expressions and gender identities. If you have any questions or concerns, please do not hesitate to contact me.

### **Chosen Name**

If you have a preferred name other than what is listed on the roster, kindly let me know

## **Assignments**

### Week of

9/4/24

#### **Unit One: Introduction to the Course**

Structure of higher education regulation; public/private differences; governance

#### Assignment for 9/4/24

Text, pp. xxxiii-xl; 3-28, 38-40

Lectures Unit One

Structure and Regulation of Higher Education

Primary Areas of Regulation of Higher Education

Barbara A. Lee. "Fifty Years of Higher Education Law: Turning the Kaleidoscope." 36 *Journal of College & University Law* 649 (2010).

Research Paper Guidelines

#### Asynchronous Assignment for 9/4//24

None

9/11//24

#### **Unit Two: Tort liability issues**

Premises liability; on-campus injuries; off-campus injuries; student activities; student suicide; outreach programs; educational malpractice; defamation

#### Assignment for 9/11//24

Text, pp. 96-138

Lectures Unit Two

Tort Law Overview

On and Off Campus Injuries

Special Relationship

Defamation in Higher Education

*Nguyen v. MIT*, 96 N.E.3d 128 (Mass. 2018).

*Regents of University of California v. Superior Court*, 413 P.3d 656 (Cal. 2018).

Michael R. Pfahl, "Enhancing Enforceability of Exculpatory Clauses in

Education Abroad Programming through Examination of Three Pillars,”  
46 *Journal of College & University Law* 93 (2021).

Asynchronous Assignment for 9/11/24:

Threaded discussion responding to prompt (students are expected to post early in the period between classes and to respond to the posts of classmates—at least three substantial posts in all for each assignment.) In Canvas under “Assignments”

9/18/24

**Unit Three: Employment issues**

Collective bargaining; employment discrimination

Assignment for 9/18/24

Text, pp. 143-162; 178-218

Lectures Unit Three

Collective Bargaining Basics

Nondiscrimination Law Overview

Stereotyping, Sexual Orientation & Gender Identity

*Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989).

*Bostock v. Clayton County*, 140 S. Ct. 1731 (2020).

Asynchronous assignment for 9/18/24:

Threaded Discussion responding to prompt (students are expected to post early in the period between classes and to respond to the posts of classmates—at least three substantial posts in all for each assignment.) In Canvas under “Assignments”

9/25/24

**Unit Four: Special issues in faculty employment**

Tenure; role of AAUP; termination of faculty

Assignment for 9/25/24

Text, pp. 243-253; 260-313

Lecture Unit Four:

Faculty Tenure and Promotion Decisions

M.A. Connell, K.B. Melear, and F.G. Savage, “Collegiality in Higher Education Employment Decisions: The Evolving Law.” *Journal of College & University Law*, Vol. 37 (2011), 529—572 (omit appendices) (on Canvas website)

Asynchronous assignment for 9/25/24

Threaded discussion responding to prompt (students are expected to post early in the period between classes and to respond to the posts of classmates—at

least three substantial posts in all for each assignment.) In Canvas under “Assignments”

**Short paper #1 due by 5:40 p.m. on 9/25/24**

10/2/24

### **Unit Five: Academic Freedom and Faculty Free Speech**

#### Assignment for 10/2/24

Text, pp. 337-345, 365-393

Lectures:

Academic Freedom and Faculty Free Speech

Academic Freedom in Teaching

*AAUP 1940 Statement on Academic Freedom and Tenure* (on Canvas Website)

*AAUP Statement on Professional Ethics* (on Canvas website)

*Garcetti v. Ceballos*, 547 U.S. 410 (2006) (on Westlaw)

*Meriwether v. Hartop et al*, 992 F.3d 492 (6<sup>th</sup> Cir. 2021) (on Westlaw)

#### Asynchronous Assignment for 10/2/24

Threaded discussion responding to prompt (students are expected to post early in the period between classes and to respond to the posts of classmates—at least three substantial posts in all for each assignment.) In Canvas under “Assignments”

**Paper topic and rough outline submitted to instructor on or before 10/2/24**

10/9/24

### **Unit Six: Admissions and Financial Aid**

#### Assignment for 10/9/24

Text pp. 440-515

Lectures:

Affirmative Action in Admissions

Affirmative Action after Supreme Court ruling

Financial Aid Overview

Noncitizens and DACA

*Students for Fair Admissions v. President and Fellows of Harvard College*, 143 S. Ct. 2141 (2023) (Majority opinion pp. 2154-2176; Jackson dissent pp. 2263-2279 (on Canvas website)

#### Asynchronous assignment for 10/9/24

Threaded discussion responding to prompt (students are expected to post early in the period between classes and to respond to the posts of classmates—at least three substantial posts in all for each assignment.) In Canvas under “Assignments”



10/16/24

## **Unit Seven: Student Academic Issues**

### Assignment for 10/16/24

Text, pp. 590-622; 643-663

Lectures Unit Seven

Student Challenges to Academic Decisions

Academic Dismissals

*Ward v. Polite*, 667 F.3d 727 (6<sup>th</sup> Cir. 2012)

*Emeldi v. University of Oregon*, 698 F.3d 715 (9<sup>th</sup> Cir. 2012)

### Asynchronous assignment for 10/16/24

Threaded discussion responding to prompt (students are expected to post early in the period between classes and to respond to the posts of classmates—at least three substantial posts in all for each assignment.) In Canvas under “Assignments”

10/23/24

## **Unit Eight: Student organizations; nondiscrimination policies and the First Amendment**

### Assignment for 10/23/24

Text, pp. 741-747; 756-790

Lectures Unit Eight

Student Organizations and Nondiscrimination

Fraternal Organizations

*InterVarsity Christian Fellowship/USA v. Univ. of Iowa*, 5 F.4<sup>th</sup> 855 (8<sup>th</sup> Cir. 2021).

*Halmon v. Lane College*, 2020 WL 2790455 (Tenn. Ct. App. May 29, 2020).  
New Jersey Anti-Hazing Law (on Canvas course website under Module 8)

**Short paper #2 due by 5:40 p.m. on 10/23/24**

### Asynchronous assignment for 10/23/24

Threaded discussion responding to prompt (students are expected to post early in the period between classes and to respond to the posts of classmates—at least three substantial posts in all for each assignment.) On Canvas course website under “Assignments”

10/30/24

## **Unit Nine: Student discipline; student free speech; FERPA**

### Assignment for 10/30/24

Text, pp. 664-740; 571-589

Lectures Unit Nine  
Student Discipline  
Student Free Speech  
FERPA

*Mahanoy Area School Dist. v. B.L.*, 141 S. Ct. 2038 (2021)  
*Speech First v. Schlissel*, 939 F.3d 756 (6<sup>th</sup> Cir. 2019)  
*Tatro v. University of Minnesota*, 816 N.W.2d 509 (Minn. 2012)  
Erwin Chemerinsky and Howard Gillman, *Free Speech on Campus*,  
chapter 5 (on Canvas course website under Module 9)

Asynchronous assignment for 10/30/24

Threaded discussion responding to prompt (students are expected to post early in the period between classes and to respond to the posts of classmates—at least three substantial posts in all for each assignment.) In Canvas under “Assignments”

11/6/24

**Unit Ten: Religious college and universities**

Assignment for 11/6/24

Text pp. 40-57; 230-239; 253-260; 404-406

Lectures Unit Ten  
Religious College and Universities  
Ministerial Exception

*DeWeese-Boyd v. Gordon College*, 163 N.E.3d 1000 (Mass. 2021)  
*Our Lady of Guadalupe School v. Morrissey-Beru*, 140 S. Ct. 2049 (2020)  
Elise S. Faust, “Comment: Who Decides? The Title IX Religious  
Exemption and Religious Authority,” 2017 *B.Y.U. Law Review* 1197  
(2017) (on Canvas course website under Module 10)

Asynchronous assignment for 11/6/24

Threaded discussion responding to prompt (students are expected to post early in the period between classes and to respond to the posts of classmates—at least three substantial posts in all for each assignment.) In Canvas under “Assignments”

11/13/24

**Unit Eleven: Title IX**

Assignment for 11/13/24

Text, pp. 622-643; 912-931

Lectures Unit Eleven  
Title IX Overview and Athletics  
Sexual Harassment and Assault

*Gebser v. Lago Vista Independent School District*, 524 U.S. 274 (1998).  
*Davis v. Monroe County Board of Education*, 526 U.S. 629 (1999).  
ED Summary of Title IX 2024 Regulations Changes (on Canvas website)

Asynchronous assignment for 11/13/24

Threaded discussion responding to prompt (students are expected to post early in the period between classes and to respond to the posts of classmates—at least three substantial posts in all for each assignment.) In Canvas under “Assignments”

11/20/24

**Unit Twelve: Athletics**

Assignment for 11/20/24

Text pp. 809-854

Lectures Unit Twelve

Athletics

NCAA Challenges

NLRB, *Statutory Rights of Players at Academic Institution (Student-Athletes) under the National Labor Relations Act* (on Canvas course website under Module 12)

*Johnson v. NCAA*, 2024 U.S. App. LEXIS 16953 (3d Cir. July 11, 2024)

On Canvas website under Module 12

*NCAA v. Alston*, 141 S. Ct. 2141 (2021) (syllabus only, on Canvas course website under Module 12)

Transgender Students in Higher Education (powerpoint) on Canvas course website under Module 12

Asynchronous assignment for 11/20/24

None

11/27/24

**No class—Friday classes meet today**

**Research paper due Friday, 11/29/24**

12/4/24

**Presentations of research papers**

Assignment for 12/4/24

Read research papers scheduled to be presented on 12/3/24

12/11/24

**Presentations of research papers**

Assignment for 12/11/24

Read research papers scheduled to be presented on 12/11/24

Graduate Course in Education and Policy Studies  
Asynchronous Online  
Neal H. Hutchens



## Higher Education and the Law

EPE 682

**Term:**

**Credit hours:** 3

**Meeting days/time/location:** asynchronous online

Instructor Information

**Name:** Neal Hutchens, JD, PhD (he, him, his)

**Email:** neal.hutchens@uky.edu

**Office building and room number:**

**Office phone:**

**Office hours:** please email me to schedule an appointment either online, by phone, or in person at a time that is mutually convenient.

### Course Description

This class explores the legal standards affecting higher education institutions and members of the campus community (e.g., faculty, students, and administrators). The class will address key legal issues arising in higher education, including: institutional legal obligations and responsibilities; student rights and responsibilities (e.g., speech rights, organizational rights, and student conduct); rights and responsibilities of faculty members; legal issues related to affirmative action; and legal distinctions between public and private colleges and universities.

### Student Learning Outcomes

After completing this course, a student will be able to:

- Identify and analyze key legal issues arising in higher education
- Read published legal opinions
- Reflect on the intersections between legal standards arising in higher education and the implications for professional practice

### Required Materials

William A. Kaplin, Barbara A. Lee, Neal H. Hutchens, & Jacob H. Rooksby. (2024). *The Law of Higher Education: Essentials for Legal and Administrative Practice* (7th ed.). Jossey-Bass.

Other readings will be available through Canvas.

### Activities Outside of Regular Class Meetings

As an asynchronous course, there are no required course meetings. During the semester, I will be available for regular one-on-one check-ins to work with individuals on their assignments. These check-ins are not required but are greatly encouraged to help students tailor the assignments and learning to their scholarly and professional goals. For students who are physically present in Lexington all or part of the semester, I am also happy to meet in person if our schedules can align. These one-on-one check-ins provide a great opportunity for me to learn more about you and your interests and work. An asynchronous learning environment provides greater flexibility to meet learning needs, but I hope to connect with students during the semester to help them maximize what they are able to get out of the course. I suggest scheduling a check-in about every three weeks or as often as needed to be helpful. I will share a Calendly link to assist with scheduling. As helpful, I am also open to scheduling optional synchronous online meetings for multiple students, such as in response to a topic that comes up on our Canvas discussion board. No matter the medium, I encourage (welcome) students to be in contact with me throughout the semester as needed!

### Course Recordings

Any optional meetings of this course may be recorded. Students may also create recordings as a part of completing class assignments and activities. All such video and audio recordings are for educational use by students in this class only. They are available only through the Canvas shell for this course and are not to be copied, shared, or redistributed.

### Course Activities and Assignments

The following are the assignments/activities for the semester. Additional details for the completion of assignments/activities will be provided elsewhere in the syllabus or during the semester. Note: depending on circumstances, the schedule, readings, and activities and assignments may be amended as needed.

Assignment/Activity	Points
Participation/Discussion in Canvas Modules such as discussion postings or other assignments. We will use Canvas for our module discussions. My hope is that these discussions are informative and interactive and provide a place for us to learn from one another. I don't use the discussion board as a place for "busy work," and I do not require lengthy posts or responses. Instead, I ask for students to provide responses that are thoughtful and reflect their deep engagement with readings/topics. I also ask that we are respectful of one another in how we interact with and respond to our peers in our online discussions. That, of course, doesn't mean that everyone has to share the same interpretation of a reading or topic covered in class (e.g., feel free to disagree with something I've said in the	40 (5 points each module)

module recording or in a comment!), but I do expect that everyone will be treated with respect.	
Class presentation on final paper in Canvas	10
Paper (or collection of papers) on topic of choice dealing with a legal issue arising in higher education. Also, I am very open to alternative assignments as they serve student learning needs and interests. Please reach out to me to help design a major learning assignment that aligns with your educational and professional goals. We will discuss the final assignment more during our discussion posts in Canvas. Based on their paper, or one of their papers if writing a collection of papers, students will make a presentation to the class that will be posted in Canvas for Module 8. While this is an asynchronous class, I am happy to and welcome the opportunity to meet with students by zoom, phone, or in person. You can schedule an appointment using Calendly (link will be provided in Canvas) or by email.	50

### Course Grading

*90 – 100% = A*

*80 – 89% = B*

*70 – 79% = C*

*Below 70% = E*

#### Policy on Participation and Completion of Activities, including Late Assignment Standard

You are expected complete all readings and activities by the specified due date in Canvas for each module. Failure to do so may result in the partial or complete loss of points on an assignment or activity. If an issue arises that interferes completing an assignment or activity for a module or the course, please let me know, in advance if possible. I am happy for us to work together to consider options to help you complete the course successfully.

#### Academic Policy Statements

Review this link for relevant university policy statements —

<https://provost.uky.edu/proposals/guidance-course-proposals/standard-academic-policy-statements>

University plagiarism standard — <https://ombud.uky.edu/students/what-plagiarism>

### Tentative Course Schedule

Class	Topics	Readings/Audio-Visual Materials	Assignments and Activities
<b>Module 1</b> 8/26 -9/8	<ul style="list-style-type: none"> <li>• Introduction to course</li> <li>• Overview of major assignments</li> <li>• Discussion of how to read, brief cases</li> <li>• Higher education governance and organization from a legal perspective</li> <li>• Public versus Private higher education (importance of state action)</li> <li>• Overview of judicial/court systems</li> </ul>	<ul style="list-style-type: none"> <li>• Sample case brief of <i>Harwood v. Johns Hopkins University</i> (copy of case provided in Canvas)</li> <li>• <i>Harwood v. Johns Hopkins University</i> (Canvas)</li> <li>• General Introduction and Overview of Higher Education Law (pages 1-57) from <i>The Law of Higher Education: Essentials for Legal and Administrative Practice</i></li> </ul>	<ul style="list-style-type: none"> <li>• Review course syllabus in Canvas</li> <li>• Watch instructor recording posted in Canvas by 9/8</li> <li>• Introduce yourself in Canvas to class/ask questions about the syllabus by 9/8</li> <li>• Canvas discussion post on readings (complete by 9/8)</li> <li>• Schedule optional individual check-in as needed</li> </ul>
<b>Module 2</b> 9/9-9/22	<ul style="list-style-type: none"> <li>• Contract principles and the student/institutional relationship</li> </ul>	<ul style="list-style-type: none"> <li>• The Student-Institutional Relationship (pages 409-439) from <i>The Law of Higher Education: Essentials for Legal and Administrative Practice</i> (Canvas)</li> <li>• <i>Harwood v. Johns Hopkins University</i> (Canvas) (review)</li> <li>• <i>Shaffer v. George Washington University</i> (Canvas)</li> </ul>	<ul style="list-style-type: none"> <li>• Watch instructor recording in Canvas by 9/15</li> <li>• Complete readings by 9/22</li> <li>• Reflections/ Questions on Module 2 readings (complete by 9/22)</li> <li>• Schedule optional individual check-in as needed</li> </ul>



Class	Topics	Readings/Audio-Visual Materials	Assignments and Activities
<b>Module 3</b> 9/23-10/6	<ul style="list-style-type: none"> <li>Potential tort liability of colleges and universities to students, including discussion of rise and fall (and partial resurgence) of the doctrine of <i>in loco parentis</i></li> </ul>	<ul style="list-style-type: none"> <li>The College's Authority and Liability (pages 91-142) from <i>The Law of Higher Education: Essentials for Legal and Administrative Practice</i> (Canvas)</li> <li><i>Jain v. Iowa</i> (Canvas)</li> <li><i>Regents of University of California v. Superior Court</i> (Canvas)</li> <li>Watch oral arguments in <i>Regents of University of California v. Superior Court</i> (Canvas)</li> </ul>	<ul style="list-style-type: none"> <li>Watch instructor recording in Canvas by 9/29</li> <li>Complete readings by 10/6</li> <li>Reflections/Questions on Module 3 readings (complete by 10/6)</li> <li>Schedule optional individual check-in as needed</li> </ul>
<b>Module 4</b> 10/7 - 10/20	<ul style="list-style-type: none"> <li>Student Due Process <ul style="list-style-type: none"> <li>Student conduct and non-curricular context</li> <li>Academic decisions</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>Student Disciplinary Issues (pages 664-701) from <i>The Law of Higher Education: Essentials for Legal and Administrative Practice</i> (Canvas)</li> <li><i>Doe v. Baum</i> (Canvas)</li> <li><i>Board of Curators of University of Missouri v. Horowitz</i> (Canvas)</li> <li><i>Tatro v. University of Minnesota</i> (Canvas)</li> <li>Listen to oral arguments in <i>Horowitz</i> in Oyez (Canvas)</li> </ul>	<ul style="list-style-type: none"> <li>Watch instructor recording in Canvas by 10/13</li> <li>Complete readings by 10/20</li> <li>Reflections/Questions on Module 4 readings (complete by 10/20)</li> <li>Schedule optional individual check-in as needed</li> </ul>
Class	Topics	Readings/Audio-Visual Materials	Assignments and Activities

<p><b>Module 5</b> 10/21 – 11/3</p> <p>Note: 10/28, 10/29 – fall break</p>	<ul style="list-style-type: none"> <li>• First Amendment rights of students and student organizations, including legal claims involving religion</li> <li>• Importance of context and role in determining available First Amendment rights for student speech</li> <li>• Students' online speech</li> <li>• Campus Protests</li> <li>• Challenges of hate speech</li> </ul>	<ul style="list-style-type: none"> <li>• Student Protests and Freedom of Speech and Speech Codes and the Problem of Hate Speech (pages 702-740) from <i>The Law of Higher Education: Essentials for Legal and Administrative Practice</i> (Canvas)</li> <li>• New Training and Tougher Rules: How Colleges Are Trying to Tame Gaza Protests, <i>The New York Times</i>, Alan Blinder (Canvas)</li> <li>• Clips about campus protest rules and guidance, including new rules <ul style="list-style-type: none"> <li>▪ New protest rules for UC, USC campuses, an approach being followed at multiple campuses <a href="https://www.youtube.com/watch?v=B-TZHFijGgk">https://www.youtube.com/watch?v=B-TZHFijGgk</a></li> <li>▪ Univ. of Idaho training video <a href="https://www.youtube.com/watch?v=8j8FzXDTonc">https://www.youtube.com/watch?v=8j8FzXDTonc</a></li> </ul> </li> <li>• <i>Gerlitch v. Leath</i> (Canvas)</li> <li>• <i>IOTA XI Chapter of Sigma Chi Fraternity v. George Mason University</i> (Canvas)</li> </ul>	<ul style="list-style-type: none"> <li>• Watch instructor recording in Canvas by 10/27</li> <li>• Complete readings by 11/3</li> <li>• Reflections/Questions on Module 5 readings (complete by 11/3)</li> <li>• Schedule optional individual check-in as needed</li> </ul>
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Class	Topics	Readings/Audio-Visual Materials	Assignments and Activities
<b>Module 6</b> 11/4 – 11/17	<ul style="list-style-type: none"> <li>• Academic freedom and tenure</li> <li>• Speech rights of university employees, both faculty and staff</li> <li>• Special focus on anti-CRT legislation and academic freedom</li> <li>• Institutional academic freedom /autonomy               <ul style="list-style-type: none"> <li>▪ Special focus on Affirmative Action</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Faculty Academic Freedom and Freedom of Expression (pages 337-388) of <i>The Law of Higher Education: Essentials for Legal and Administrative Practice</i> (Canvas)</li> <li>• <i>Alves v. Board of Regents of University System of Georgia</i> (Canvas)</li> <li>• <i>Meriwether v. Hartop</i> (Canvas)</li> <li>• <i>Pernell v. Florida Board of Governors of State University System</i> (Canvas)</li> <li>• <i>Students for Fair Admissions, Inc. v. Presidents and Fellows of Harvard College</i> (Canvas)</li> <li>• Listen to portion of oral arguments in <i>Students for Fair Admissions</i> (Canvas)</li> </ul>	<ul style="list-style-type: none"> <li>• Watch instructor recording in Canvas by 11/10</li> <li>• Complete readings by 11/17</li> <li>• Reflections/Questions on Module 6 readings (complete by 11/17)</li> <li>• Schedule optional individual check-in as needed</li> </ul>
<b>Module 7</b> 11/18 -12/1	<ul style="list-style-type: none"> <li>• Federal role/legislation, including overview of FERPA and student privacy, Title IX, Clery Act, ADA</li> <li>• Special focus on Student Conduct, Title IX and sexual misconduct</li> </ul>	<ul style="list-style-type: none"> <li>• Federal Government and Civil Rights Compliance (pages 889-937) <i>The Law of Higher Education: Essentials for Legal and Administrative Practice</i> (Canvas)</li> <li>• <i>Selection on latest status of Title IX regulations [to be identified closer to date given ongoing court challenges]</i> (Canvas)</li> <li>• The End of Chevron Deference, Neal Hutchens, <i>Inside Higher Ed</i> (Canvas)</li> </ul>	<ul style="list-style-type: none"> <li>• Watch instructor recording in Canvas by 11/24</li> <li>• Complete readings by 12/1</li> <li>• Reflections/Questions on Module 7 readings (complete by 12/1)</li> <li>• Schedule optional individual check-in as needed</li> </ul>
<b>Module 8</b> 12/2-12/11	<ul style="list-style-type: none"> <li>• Course wrap up</li> <li>• Final paper presentations</li> </ul>		<ul style="list-style-type: none"> <li>• Upload presentation to Canvas on final paper/project to share with class by 12/8</li> <li>• Watch and provide feedback on presentations of final assignments by 12/11</li> <li>• Final paper due by email or posted in Canvas by 12/11</li> <li>• Schedule optional check-in as needed</li> </ul>