

LECTURE NOTES
LEGAL ISSUES IN STUDENT AFFAIRS
CSD 5760

CHAPTER IV (KAPLAN & LEE)
THE COLLEGE AND THE STUDENTS

THE COLLEGE AND THE STUDENTS (371 - 377)

4.1 THE EVOLUTIONARY PROCESS (371 -372)

Although the legal status of students has been with us always, it continues to change dramatically each decade. Students are currently recognized as “persons” with enforceable constitutional rights. This means that a person does not leave their constitutional rights at the main gate once they enter the campus proper.

Important Case: *Dixon v. Alabama State Board of Education (1961)* in which the court rejected the notion of education in state schools is a “privilege”; implicitly rejected the concept of *in loco parentis*.

4.1.2 THE AGE OF MAJORITY (372 - 373)

Established by state law in all states, until the 1970s, 21 was typically the age of majority in most states. Who knows what happened to necessitate the change in the legal age in the 1960s and ‘70s?

4.1.3 THE CONTRACTUAL RIGHTS OF STUDENTS (373 - 377)

The contract theory is constantly undergoing change. This is especially true with regard to:

1. 1. The means of identifying the terms and conditions of the student-institution contract;
2. 2. The extent to which the school catalogue constitutes part of the contract; and
3. 3. The extent to which the institution retains implied or inherent authority.
4. 4. Institutions should be cognizant of the language used in all rules and policies for suggestiveness and implied promises to which it will ultimately have to live up to.

Publics and Privates can have express contractual relationships with students. Examples: housing contract, food service contracts, loan agreements, affording students opportunity to participate in institutional governance.

The contractual relationship between student and institution extends beyond the terms of express contracts. Concept of *ultra vires* means “beyond authority,” and the defense is essentially, “You can’t enforce this contract against us because we didn’t have authority to make it in the first place”.

Kaplan and Lee suggest that administrators should consider the adoption of an official policy, perhaps even a “code of good practice,” on fair dealing with students.” What do you think about this concept? Who believes we already have these in place? If so, in what form?

4.2 ADMISSIONS (377 - 421)

4.2.1 BASIC LEGAL REQUIREMENTS (377 - 378)

Institutions are subject to three general constraints in formulating admissions policies:

- (1) The selection process must not be arbitrary or capricious;
- (2) The institution may be bound, under a contract theory, to adhere to its published admissions standards and to honor its admissions decisions; and
- (3) The institution may not have admissions policies that unjustifiably discriminate on the basis of race, sex, age, disability, or citizenship.
- (4) The institution may also maintain the confidentiality of letters of recommendation if the student has waived the right of access; such a waiver may be sought during the application process.
- (5) When a student from one discipline applies for admission to another discipline of the same institution, the student is treated as an applicant rather than a currently enrolled student with respect to the second unit’s admissions process (records); those records are therefore not subject to Buckley until the student is in attendance in the second unit.
- (6) Falsification of information on an application may be grounds for disciplinary action or expulsion.

4.2.2 ARBITRARINESS (378 - 380)

The “arbitrariness” standard of review is the one most protected by the courts. The court will only overturn a negative admissions decision if there is no reasonable explanation for an institution’s actions.

Important cases:

Lesser v. Board of Education of New York, 239 N.U.S.2d (N.Y. App. Div. 963)

Arizona Board of Regents v. Wilson, 539 P.2d 043 (Ariz. Ct. App. 1975)

Grove v. Ohio State University, 424 F. Supp. 377 (S.D. Ohio 1976)

**Bartlett v. Pantzer*, 489 P. 2d. 375 (Mont. 1971).

The cases of *Levine v. George Washington University* and *Paulsen v. Golden State University* are important because they rely on common law principles protecting student at private institutions against arbitrary interpretation of institutional policies.

- (1) (1) Suits to force admission are almost always decided in favor of the institution and are generally decided on the basis of constitutional violations of equal protection, due process, liberty interest or property interest being paramount in the court’s mind.

4.2.3 THE CONTRACT THEORY (380 -382)

Important Case: *Eden v. Board of Trustees of the State University*, 374 N.Y.S.2d 686 (N.Y. App. Div. 1975) established that a prospective student has a contract with the school once the school accepts his or her admissions application. The court specifically ruled that the state's decision to not open school of podiatry was "arbitrary and capricious" and a breach of contract.

Steinberg v. University of Health Sciences/Chicago Medical School, 354 N.E.2d 586 (Ill. App. Ct. 1976)

This case rested upon the court reasoning that the school's catalogue was an invitation to make an offer; the plaintiff's application in response to that invitation was an offer; and the medical school's retention of the application fee was the acceptance of the student's offer.

As a result of this ruling, contract theory clearly applies to both public and private schools, although public institutions may have defenses not available to private schools

4.2.4 THE PRINCIPLE OF NON-DISCRIMINATION (382 - 400)

4.2.4.1 RACE (382 -385)

Postsecondary institutions are prohibited in varying degrees and by varying legal authorities from discriminating in the admission process on the basis of race, sex, disability, age, residence, and alien status.

The U.S. Supreme Ct. applied and affirmed in *Florida ex rel. Hawkins v. Board of Control*, 350 U.S. 413 (1956) the applicability of Bakke reasoning to higher education.

Important Case: *United States v. Fordice*, 122 S. Ct. 2727 (1992) in which the issue of state's public higher education was ruled in violation of both the U.S. Constitution and Title VI of the Civil Rights Act of 1964 in its admissions criteria application.

Important Case: *United States v. League of United Latin American Citizens*, 793 F.2d 636 (5th Cir. 1986). Black and Latino college students raised Title VI and constitutional challenges to the state's requirement that college students pass a reading and mathematics skills test before enrolling in more than six hours of professional education courses at Texas public institutions.

In addition to the Constitution's equal protection clause and the desegregation criteria developed under Title VI, there are two other major legal bases for attacking racial discrimination in higher education.

First, the civil rights statute called "Section 1981 " (42 U.S. C. §1981).

Second, federal income tax law.

Revenue Ruling 71-447, 1971-2 C.B. 230 **denies tax-exempt status** to schools found guilty of practicing racial discrimination.

Revenue Procedure 72-54, 1972-2 C.B. 834, requires schools to publicize their nondiscrimination policies.

Revenue Procedure 75-50, 1975-2 C.B. 587, requires that a school carry the burden of proof 'showing affirmatively ...that it has adopted a racially nondiscriminatory policy toward students' and also establishes record-keeping and other guidelines through which a school can demonstrate its compliance.

Revenue Ruling 75-231, 1975-1 C.B. 158, furnishes a series of hypothetical cases to illustrate when a church-affiliated school would be considered to be discriminating and in danger of losing tax-exempt status. The U.S. Supreme Court upheld the basis policy of Revenue Ruling 71-477 in *Bob Jones University v. United States*, 461 U.S. 574 (1983).

The combined impact of – the equal protection clause, Title VI, Section 1981, and IRS tax rulings – is clear: *neither public nor private postsecondary institution may maintain admissions policies (exception is affirmative action policies) that discriminate against students on the basis of race, nor may states maintain plans or practices that perpetuate racial segregation in a statewide system of postsecondary education.*

4.2.4.2 SEX (385 -390)

Title IX of the Education Amendments of 1972 is the primary legal source governing sex discrimination in admissions policies.

The implementing regulations to Title IX are found in 34 C.F.R. Part 106, and apply nondiscrimination principles to both public and private institutions receiving federal funds (special exemptions concern admissions).

Schools that are prohibited from discriminating in admissions are: (1) **graduate schools**; (2) **professional schools**, unless they are part of an undergraduate institution exempted from Title IX's admissions requirements; (3) **vocational schools**, and (4) **public undergraduate institutions** that are not, or have not always been, **single-sex schools**.

Important Case: In *United States v. Commonwealth of Virginia*, 766 F. Supp. 1407, vacated, 976 F.2d 890 (4th Cir. 1992), the U. S. Department of Justice challenged the admissions policies of the Virginia Military Institute, which admitted only men.

4.2.4.3 DISABILITY (390 - 398)

Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794) and the Americans with Disabilities Act (ADA) (42 U.S.C. §12101 et seq.) – prohibit discrimination against individuals with disabilities.

4.2.4.4 AGE (390 - 398)

4.2.5 AFFIRMATIVE ACTION PROGRAMS (400 - 418)

4.3 FINANCIAL AID (421 - 451)

4.3.1 General Principles (421 - 425)

Legal principles affecting financial aid come from a wide variety of sources. Some principles apply generally to all financial aid, whether awarded as scholarship, assistantships, loans, fellowships, preferential tuition rates, or in some other form.

The principles of contract law may apply to financial aid awards, since awards once made may create a contract between the institution and the aid recipient.

The law regarding gifts, grants, wills, and trusts may also apply to financial aid awards. These legal principles would generally require aid administrators to adhere to any conditions that the donor, grantor, testator, or settlor placed on use of the funds. But the conditions must be explicit at the time of the gift. Important case: *Hawes v. Emory University*, 374 S.E. 2d 328 (Ga. Ct. App. 1988)

Funds provided by government agencies or private foundations must be used in accordance with conditions in the program regulations, grant instrument, or other legal document formalizing the transaction.

Conditions that discriminate by race, sex, or religion have posed the greatest problems in this respect. If a public agency or entity has compelled or affirmatively supported the imposition of such conditions, they will usually be considered to violate the federal Constitution's equal protection clause (Important case: *In re Wilson*, 465 N.Y.S.2d 900 (N.Y. 1983).

Conditions in **testamentary** or **inter vivos trusts** can sometimes be modified by a court under the *cy pres* doctrine.

The doctrine of *cy pres* is a judicial mechanism for the preservation of a charitable trust when accomplishment of the particular purpose of the trust becomes impossible, impracticable, or illegal. In such a situation, if the settlor manifested an intent to devote the trust to a charitable purpose more general than the frustrated purpose, a court, instead of allowing the trust to fail, will apply the trust funds to a charitable purpose as nearly as possible to the particular purpose of the settlor.

A third relevant body of legal principles is that of constitutional due process.

These principles apply generally to public institutions; they also apply to private institutions when those institutions make awards from public funds. Since termination of aid may affect both "**property**" and "**liberty**" interests of the student recipients, courts may sometimes require that termination be accompanied by some form of procedural safeguard. Important case: *Corr v. Mattheis*, 407 F. Supp.847 (D.R.I. 1976).

If aid is terminated for academic rather than disciplinary reasons, procedural safeguards may be almost nonexistent, as courts follow the distinction between academic deficiency problems and misconduct problems.

Conrad v. University of Washington, 834 P.2d 17 (Wash. 1992) The Washington State Supreme Court ruled that student athletes do not have a constitutionally protected property interest in the renewal of their athletic scholarships. The court reasoned that since both the university and the NCAA provided minimal due process guarantees, this effectively prevented the creation of a property interest.

Federal and state laws regulating lend and extensions of credit provide a fourth body of applicable legal constraints.

At the federal level, the Truth in Lending Act establishes various disclosure requirements for loans and credit sales. The act also exempts National Direct Student Loans (Perkins Loans) and Guaranteed Student Loans (Federal Family Education Loans).

One strategy that has received substantial attention is the creation of pre-paid tuition plans by colleges and states.

In 1987, Michigan adopted a prepaid tuition plan promised to pay four years of tuition at a state institution. The funds were put into a trust fund, which invested the money. The assumption underlying the plan was that the investment would produce the anticipated returns and that tuition increases would be stable. That assumption later proved to be incorrect.

Some states have adopted a savings plan; Illinois has its own prepaid tuition plan.

4.3.2 FEDERAL PROGRAMS (425 - 428)

To protect its investment and ensure the fulfillment of national priorities and goals, the federal government imposes many requirements on the way institutions manage and spend funds under federal programs.

The most prominent general requirements are the nondiscrimination requirements, which apply to all financial aid, whether or not it is provided under federal programs. The federal Buckley Amendment (FERPA) imposes various requirements on the institution's record-keeping practices for all the financial aid that it disburses.

FERPA regulations partially exempt financial aid records from nondisclosure requirements. They provide that an institution may disclose personally identifiable information from a student's records, without the student's consent, to the extent "necessary for such purposes as" determining the student's eligibility for financial aid, determining the amount of aid and the conditions that will be imposed regarding it, or enforcing the terms or conditions of the aid.

The Student Assistance General Provisions impose numerous requirements on institutions participating in the programs under the Higher Education Act. The most recent changes are contained in the Higher Education Amendments of 1992.

The specific programmatic restrictions on federal student aid depend on the particular program.

1. Programs through which the federal government provides funds to institutions to establish revolving loan funds – as in the Perkins Loan Program.
2. Programs in which the government grants funds to institutions, which in turn grant them to students – as in the Supplemental Educational Opportunity Grant (SEOG) program.
3. Programs through which students receive funds from the federal government – as in the GI Bill Program and the Pell Grant program.
4. Programs through which students receive funds from the federal government through the states – as in the Statue Student Incentive Grant (SSIG) program.
5. Programs through which students receive funds from third-party lenders – as in the Federal Family Educational Loan program.

The federal Family Loan program includes three types of loans:

1. Stafford Loans
2. Supplemental Loans for Students
3. Parent Loans for Undergraduate Students (PLUS)

Most federal student aid programs were created by the Higher Education Act of 1965 (20 U.S.C. §§1070-1099). This ACT has been re-authorized and amended regularly since that year.

In 1982 Congress amended the Military Selective Service Act to require that students subject to the draft registration law must register as a condition of receiving federal student aid [Defense Department Authorization Act of 1983, 50 U.S.C. §462(f)]. The validity of this requirement was upheld by the U.S. Supreme Court in *Selective Service System v. Minnesota Public Interest Research Group*, 468 U.S. 841 (1984).

Higher Education Act of 1965 requires institutions to make certain information available. The information must accurately describe:

- (1) The financial aid programs available to students and the methods by which such aid is distributed;
- (2) The forms, applications, and other requirements that students must complete to be eligible for such assistance;
- (3) The responsibilities of students receiving such assistance;
- (4) The personnel who can assist students with questions regarding financial assistance.
- (5) Other information:
 - a. Such as the cost of attendance (tuition, fees, books and supplies, room and board, and related items);

- b. Its refund policy;
- c. The services available to student with disabilities;
- d. The institution's standards for "satisfactory progress" toward completion of the degree;
- e. And the terms and conditions under which students receiving guaranteed student loans or direct loans may receive deferral or repayment or partial cancellation under the Peace Corps Act or the Domestic Volunteer Act, or for comparable full-time community service.

In 1990, the Student Right-to-Know and Campus Security Act added more consumer information requirements, particularly with regard to graduation rates of the student body and of athletes, and crime statistics.

The Immigration Reform and Control Act of 1986 (IRCA) amended Section 484 of the Higher Education Act of 1965. Under Title IV programs, all students must declare in writing that they are U.S. citizens or in an immigrant status that does not preclude their eligibility. The IRCA also requires alien students to provide the institution with documentation that clearly establishes their immigrant status, and further requires the institution to verify the status of such students with the INS.

Institutions are prohibited from denying, delaying, reducing, or terminating Title IV funds without providing students with a reasonable opportunity to establish eligibility.

Another provision of the Higher Education Act requires an institution participating in the federal student aid program to certify "that it has in operation a drug abuse prevention program that is determined by the institution to be accessible to any officer, employee, or student at the institution".

Institutions that participate in federal student aid programs must have their program records audited annually by an independent auditor.

Federal courts have refused to authorize a private right of action under the Higher Education Act for students to enforce financial assistance laws and regulations. A few courts have permitted students to use state common law fraud or statutory consumer protection theories against the Education Department, colleges, or lenders when the college either ceased operations or provided a poor-quality education
Important case: *Tipton v. Alexander*, 768 F. Supp. 540 (S.D. W. Va. 1991).

Students were permitted to file a RICO (Racketeer Influenced Corrupt Organization) claim against a trade school, alleging mail fraud. In *Gonzalez v. North American College of Louisiana*, 700 F. Supp. 362 (S.D. Tex. 1988), students charged that the school induced them to enroll and obtain federal student loans, which they were required to repay. The school was unaccredited; and, after it had obtained the federal funds in the students' name, closed and did not refund the loan proceeds.

4.3.3 NONDISCRIMINATION (428 - 431) – TITLE IV

Sharif by Salahuddin v. New York State Education Department, 709 F. Supp. 345 (S.D.N.Y. 1989)
Flanagan v. President and Directors of Georgetown College, 417 F.Supp. 377 (D.D.C. 1976)

Title IX has the most substantial impact on the financial aid programs and policies of postsecondary institutions (p. 216).

Four exceptions to this nondiscrimination policy (p. 216)

The Americans with Disabilities Act prohibits discrimination on the basis of disability in allocating financial aid.

Both public and private schools are covered by Title III as “places of public accommodation, and are thus prohibited from limiting the access of individuals with disabilities to the benefits enjoyed by other individuals.

4.3.4 MINORITY SCHOLARSHIPS (431 - 434)

A 1993 GAO Study found that 5% of funds awarded undergraduates, and 4% of the overall aid awarded were reserved exclusively for minority students.

Legal challenges to race-exclusive minority scholarships:

Pobresky v. Kirwan, 764 F. Supp. 364 (D. Md. 1991)

4.3.5 DISCRIMINATION AGAINST NONRESIDENTS (434 - 436)

Court sanctioning of differential tuition charges for in- versus out-of-state students.

Starns v. Malkerson, 326 F. Supp. 234 (D. Minn. 1970)

San Antonio Independent School District v. Rodriguez, 411 U.S. 1 (1973)

Peck v. University Residence Committee of Kansas State University, 807 P.2d 652 (Kan. 1991)

4.3.6 DISCRIMINATION AGAINST ALIENS (436 - 441)

Nyquist v. Jean-Marie Mauclet, 432 U.S. 1 (1977)

Alienage as a “suspect classification”

Discrimination against resident aliens in awarding financial aid can be justified only if the discrimination is necessary in order to achieve some compelling governmental interest.

4.3.7 COLLECTION OF STUDENT DEBTS (441 - 451)

The Legal quagmire surrounding repayment of educational loans can be mindboggling.

4.3.7.1 Federal Bankruptcy Law (441 - 445)

Chapter 7 or “straight” bankruptcy

Chapter 13 or ‘qualified’ bankruptcy

The Bankruptcy Reform Act of 1979, 1990 Amendments

State v. Wilkes, 41 N.Y.2d 655 (N.Y. 1977)

Bruner v. New York State Higher Education Services Corp., 831 F.2d 395 (2d Cir. 1987)

Elter v. Great Lakes Higehr Education Corp., 95 Bankr.Rpt. 618 (E.D. Wis. 1989)

Undue Hardship Exception Cases

4.3.7.2 WITHHOLDING CERTIFIED TRANSCRIPTS (445 - 447)

“Automatic Stay”

Johnson v. Edinboro State College, 728 F.2d 163 (3d Cir. 1984)

Does the withholding of a certified transcript deprive the student of a “liberty” or “property” interest protected by the due process clause of the federal Constitution?

4.3.7.3 DEBT COLLECTION REQUIREMENTS IN FEDERAL STUDENT LOAN PROGRAMS (447 - 451)

The Perkins Loan (formerly NDSL) program’s statutes and regulations contain provisions affecting the institution’s debt collection practices.

The statute provides that where a note or written agreement exists re: a student loan that has been in default for at least six months, the institution may assign its collection to the U.S. Government.

If the debt is collected by the U.S. Government, the amount, minus a 30% administrative fee, is returned to the institution as an additional capital contribution.

Perking Loan regulations provide that each institution maintaining a fund be responsible for, and use due diligence in effecting, collection of all amounts due and payable to the fund.

Due diligence includes the following elements:

- (1) Providing borrowers about changes in the program that affect their rights and responsibilities.
- (2) Conducting exit interviews with borrowers when they leave the institution and providing them with copies of repayment schedules that indicate the total amount of the loans and the dates and amounts of installments as they come due.
- (3) Keeping a written record of interviews and retaining signed copies of borrowers’ repayment schedules.
- (4) Staying in contact with borrowers both before and during the repayment period, in order to facilitate billing and keep the borrowers informed of changes in the program that may affect rights and obligations.
- (5) The institution must also use specified billing procedures.

The Student Loan Default Prevention Initiative Act of 1990 permits colleges to use collection agencies to recover defaulted loans and permits judges to award attorney’s fees to institutions that must litigate to recover unpaid loans.

The Health Education Assistance Loan(HEAL) program authorized schools to withhold and to note student loan defaults on academic transcripts.

4.4 Support Services

List every unit of campus that qualifies as an auxiliary service?

4.5 Disciplinary and Grievance Systems 455

4.51 Establishment of Systems 455

Postsecondary institutions have extensive authority to regulate both the academic and the nonacademic activities and behaviors of students.

The administrator must skillfully implement this authority through various systems for the resolution of disputes concerning students. Systems should include procedures for processing and resolving disputes, substantive standards or rules to guide the judgment of the persons responsible mechanisms and penalties with which decisions are enforced.

Dispute resolution systems should create a two-way (win-win) situation by providing for complaints by students against other members of the academic community as well as complaints against students by other members of the academic community.

The choice of structures for resolving disputes depends on policy decisions made by administrators, preferably in consultation with representatives of various interests within the institution.

4.5.2 Codes of Student Conduct 457

Devices for creating dispute-resolution systems may include

- a) honor codes or codes of academic ethics
- b) codes of student conduct
- c) bills of rights or rights and responsibilities
- d) use of various legislative bodies (e.g., student or univ. senate)
- e) a formal judiciary system
- f) grievance mechanisms for students (i.e., ombudsman or grievance comm.)
- g) security guards or law enforcement system
- h) alternatives or supplement to judiciary or grievance mechanisms

Three aspects to revision of student conduct codes:

1. the type of conduct the code will encompass
2. the procedures to be used when infractions of the code are alleged
3. the sanctions for code violations

Academic misconduct: plagiarism, cheating, forgery, alterations of institutional records

Read: Kibler, W., Nuss, E., Peterson, B., & Pavela, G. (1998). Academic Integrity and Student Development. College Administration Publications.

Private institutions not subject to the state action doctrine are not constitutionally required to follow the same principles regarding student codes.

Important Question: Why should the same judicial policies that apply to the general population *not* apply to student organizations; to individual students?

Case: *Paine v. Board of Regents of the University of Texas System*, 355 F. Supp. 199 (W.D. Tex. 1972)...Institution violated students' due process and equal protection rights when it imposed harsher penalties on students convicted of drug offenses off-campus.

1. Codes of conduct must comply with due process requirements, be clear enough for students to understand, and not be susceptible to arbitrary enforcement.
2. A state school's code of conduct must be in compliance with constitutional doctrines of over-breadth in any area where the code could affect First Amendment rights.
3. Code must comply with a general requirement of evenhandedness.
4. Codes can apply to the off-campus activity of students.

4.5.3 Judicial Systems

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Characteristics: membership of judicial bodies, sensitivity to procedural safeguards, the procedures they use, the extent to which their proceedings are open to the academic community, the sanctions they may impose, the methods by which they may initiate proceedings against students, and provisions for appealing their decisions should be set out in writing and made available to the general academic community.

Full due process safeguards need not be provided at every preliminary stage; only where procedures are at a critical stage that could have a "prejudicial impact" on the final determination of whether the student violated the judicial code.

When a student's campus judicial case is also the subject of criminal court proceedings, the state institution is not legally required to defer to the criminal courts by canceling or postponing its proceedings. Per the court's ruling in *Paine*, 'it is not double jeopardy to be held accountable in two venues simultaneously' and punishment may be different.

However, if a public institution proceeds with its campus action while the student is subject to charges still pending in criminal court, the institution may have to permit the student to have a lawyer with him during the campus proceedings.

4.6 Disciplinary Rules and Regulations

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This section focuses on student challenges to (1) the validity of the rule they allegedly violated and (2) by attacking the nature of the disciplinary system determined the occurrence of the alleged violation.

The practice of using written codes is beneficial to both student and institution; especially in the event of a law suit brought against the institution.

4.6.1 Public Institutions 462

Issue of “vagueness” of judicial codes of conduct was decided in *Esteban v. Central Missouri State College*, 415 F.2d 1077 (8th Cir. 1969). In this case distinct issues of due process, vagueness, and that rules governing student conduct must be written and made available to all.

Soglin v. Kauffman, 418 F.2d 163 (7th Cir. 1969) signaled institution’s vulnerability where it has no written rules at all or where the rule provides no standard to guide conduct.

4.6.2 Private Institutions 464

Private schools have greater latitude in promulgating disciplinary rules. Courts recognize a broad right to make and enforce rules that is inherent in the private student-institution relationship or to find such a right implied in some contractual relationship between student and school.

4.6.3 Disciplining Students with Psychiatric Illnesses 336

Students with mental or psychological disabilities are protected against discrimination by the Rehabilitation Act and the Americans with Disabilities Act.

Opinion is divided on whether students suffering from mental disorders who violate the institution’s code of conduct should be subject to the regular disciplinary procedure or should be treated as having a medical problem; thus the need for separation from the institution. What do you think should be the institution’s position with regard to such students?

4.7 GRADES, CREDITS, AND DEGREES

Courts tend to be very differential to academic institutions with regard to the evaluation of scholarly work, believing that faculty are the experts!

4.7.1 Awarding of Grades and Degrees

Lexington Theological Seminary v. Vance, 596 S.W.2d 11 (Ky. Ct. App. 1979)

Board of Creators of the University of Missouri v. Horowitz, 435 U.S. 78 (1978)

Russell v. Salve Regina College, 890 F.2d 484 (1st Cir. 1989)

Olsson v. Board of Higher Education of the City of New York, 402 N.E.2d 1150 (N.Y. 1980)

Degree by Estoppel
Academic Deference
The Standard of Review

4.7.2 Degree Revocation

Whereas institutions have the right to confer degrees, they also have the right (and obligation) to revoke fraudulent and unearned degrees.

In revoking a degree, what procedural protections must the institution give the student?

Waliga v. Board of Trustees of Kent State University

Crook v. Baker, 813 F. 2d 88 (6th Cir. 1987)

Hand v. Matchell, 957 F2d 791 (10th Cir. 1992)

What is the significant of the court's reasoning in Waliga and Crook?

4.7.3 Sexual Harassment by Faculty

Title IX of the Education Amendments of 1972

Title VII of the Equal Employment Act

Alexander v. Yale University, 631 F.2d 178 (2d Cir. 1980)

Lipsett v. University of Puerto Rico, 864 F.2d 881 (1st Cir. 1988)

Smith v. Hennepin County Technical Center, 1988 U.S. Dist. LEXIS 4876 (D. Minn. 1988)

Rowinsky v. Bryan Independent School District, 80 F.3d 1006 (5th Cir. 1996)

4.7.4 Students with Disabilities

Rehabilitation Act and Americans with Disabilities Act of 1990

Wynne v. Tufts University School of Medicine, 976 F.2d 791 (1st Cir. 1992)

Halasz v. University of New England, 816 F. Supp. 7 (D. Me. 1993)

4.8 Procedures for Suspension, Dismissal, and Other Sanctions 483

4.8.1 General Principles 483

Institutions have clear right to dismiss, suspend, or impose lesser sanctions. Three exceptions to general follow-the-rules doctrine:

1. institutions are excused from following their own rules if the student voluntarily waives his or her right to them;
2. when deviations from established rules do not disadvantage the student;
3. if an institution provides more elaborate protections than constitutionally required, failure to provide non-required protections may not imply constitutional violations.

4.8.2 Public Institutions: Disciplinary Sanctions

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Since the early 1960s, the concept of procedural due process has been one of the primary legal forces shaping the administration of postsecondary education. For purposes of due process analysis, courts typically assume, (also the U.S. Supreme Court) without deciding, that a student has a property interest in continued enrollment at a public institutions.

Landmark case: *Dixon v. Alabama Board of Education*, 294 F.2d 150 (5th Cir 1961) in which the supreme court established standards by which to measure the adequacy of a public institution's expulsion procedures.

Landmark case: *Esteban v. Central Missouri State College*, 277 F.Supp. 649 (W.D. MO. 1967)

Court ordered Central Missouri State to put following safeguards in place:

- 1) a written statement of the charges, for each student, made available at least ten days before the hearing;
- 2) a hearing before the person(s) having power to expel or suspend;
- 3) the opportunity for advance inspection of any affidavits or exhibits the college intends to submit at the hearing;
- 4) the right to bring counsel to the hearing to advise them (but not to questions witnesses)
- 5) the opportunity to present their own version of the facts, by personal statements as well as affidavits and witnesses
- 6) a determination of the facts of each case by the hearing officer, solely on the basis of the evidence presented at the hearing;
- 7) a written statement of he hearing officer's findings of fact;
- 8) the right to hear evidence against them and to question (personally, not though counsel) adverse witnesses; and
- 9) the right, at their own expense, to make a recording of the hearing.

4.8.2.1 Notice

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Notice should be given of both the conduct with which the student is charged and the rule or policy that allegedly proscribes the conduct.

There is not clear constitutional requirement concerning how much advance notice the student must have of the charges.

4.8.2.2 Hearing

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Minimum requirement is that students be given an opportunity to speak in their own defense and explain their side of the story. Due process does not required that a hearing be open or closed to the public. It is the school's administrative choice.

4.8.3 Public Institutions: Academic Sanctions 491

The 14th Amendment's due process clause also applies to students facing suspension or dismissal from publicly supported schools for deficient academic performance. Courts grant students less protection because they recognize that they are less competent to review academic evaluative judgments than factually based determinations of misconduct and that hearings and the attendant formalities of witnesses and evidence are less meaningful in reviewing grading than in determining misconduct.

Landmark case: *Gaspar v. Bruton*, 513 F.2d 843 (10th Cir. 1975)

4.8.4 Private Institutions 497

Private colleges and universities are not held to the same constitutional standards as are public institutions, even if state law requires them to promulgate disciplinary rules.

4.9 Student Protest and Demonstrations 500

4.9.1 General Principles 500

Freedom of expression for students is primarily protected by the free speech and press provisions of the 1st Amendment, and apply only to "public" schools. Most applicable cases are on the books as a result campus unrest in the late '60s and '70s, in which courts have consistently affirmed that students have a right to protest and demonstrate -- peacefully. However, institutions may assert and protect their interests in ways that create limits on student freedom of speech.

Important case: *Healy v. James*, 408 U.S. 169 (1972).

4.9.2 Regulation of Student Protest 501

Administrators seeking to regulate protest activity on grounds of disruption must base their action on something more substantial than mere suspicion or fear of possible disruption. It is sufficient that administrators have actual evidence on which they can "reasonably...forecast" that substantial disruption is imminent (in order to bar an event prior to its actual occurrence).

The three part judicial test:

- (1) regulations are justified without reference to the content of the regulated speech,
- (2) regulations are narrowly tailored to serve a significant governmental interest, and
- (3) regulations leave open ample alternative channels for communication of the information.

The “overbreadth” doctrine provides that regulations of speech must be “narrowly tailored” to avoid sweeping within their coverage speech activities that would be constitutionally protected under the 1st Amendment.

The “vagueness” doctrine provides that regulations of conduct must be sufficiently clear so that the persons to be regulated can understand what is required or prohibited and conform their conduct accordingly. Vagueness principles apply more stringently when the regulations deal with speech-related activity.

4.9.3 Prior Approval of Protest Activities 506

A prior approval system constitutes a “prior restraint” on free expression and is the least tolerable infringement on 1st Amendment rights by the courts.

Important case: *Hammond v. South Carolina State College*, 272 F.Supp. 947 (D.S.C. 1967). In this case, students were expelled for violating rules after they held a demonstration for which they had not obtained prior approval.

4.9.4 Court Injunctions and Criminal Prosecutions 508

Institutional leaders who find themselves unable to control a mass demonstration have at their disposal the use of discussion, negotiation, threat of disciplinary action, court injunctions terminating the demonstration, arrest and criminal prosecution.

The use of the injunction process does not legally foreclose the possibility of criminal prosecutions, and injunctive orders or criminal prosecutions do not legally prevent the institution from initiating student disciplinary proceedings.

The legality of injunctions or criminal prosecutions depends on:

- (1) (1) whether the conduct at issue is unlawful under state law. To warrant an injunction, the conduct must be an imminent or continuing violation of property rights or personal rights protected by state statutory law or common law. To warrant a criminal arrest and prosecution, the conduct must violate the state criminal code.
- (2) (2) whether the conduct at issue must not constitute expression protected by the 1st Amendment.

Since injunctions act to restrain future demonstrations, they may operate as prior restraints on expression and would also be subject to the 1st Amendment principles (outlined in section 8.1.3).

4.10 The Special Problem of Hate Speech 508

“Hate speech” is an imprecise, catch-all term that includes verbal and written words and symbolic acts that convey a grossly negative assessment of particular persons or groups based on their race, gender, ethnicity, religion, sexual orientation, or disability.

To date, no cases involving campus hate speech has reached the U.S. Supreme Court. However, the following lower court cases have bearing.

- 1) *Doe v. University of Michigan*, 721 F. Supp. 852 (E.D. Mich. 1989).
- 2) *UMV Post, Inc. v. Board of Regents of the University of Wisconsin System*, 774 F. Supp. 1168 (E.D. Wis. 1991)
- 3) *Iota Xi Chapter of Sigma Chi Fraternity v. George Mason University*, 993 F.2d 386 (4th Cir. 1993)

[Define the principle of “underbreadth” as it applies to free speech.] Under this principle, an institution could not have a specific hate speech code based on (for example) a “fighting words” rationale, but it could have as broader regulation that applies to hate speech constituting fighting words as well as to all other types of fighting words.

Five major free speech principles severely constrain the authority of [institutions] to regulate hate speech.

- 1) Regulations on the content of speech (i.e., the speaker’s message).
- 2) The emotional content as well as the cognitive content of speech is protected from government regulation.
- 3) Speech may not be prohibited merely because persons who hear or view it are offended by the message.
- 4) Government may not regulate speech activity with provisions whose language is either overbroad or vague and would thereby create a chilling effect on the exercise of free speech rights.
- 5) 5) when government is regulating what is considered an unprotected type of speech, it generally may not restrict expression of certain topics or view points in that unprotected area without also restricting expressions of other topics and viewpoints within that same area.

It is advisable that public and private institutions utilize *non-regulatory* approaches for dealing with hate speech because

- (a) Such approaches do not rely on the prohibition of certain types of speech or the imposition of involuntary sanctions on transgressors, as do regulatory approaches;
- (b) Non-regulatory initiatives may reach or engage a wider range of students than regulatory approaches;
- (c) Non-regulatory initiatives may have more influence on student attitudes and values; and,
- (d) Non-regulatory initiatives may be more effective in creating an institutional environment that is inhospitable to hate behavior.

Therefore, it is theoretically possible that

- (1) (1) non-regulatory initiatives may have a broader and longer-range impact on hate speech problems.
- (2) (2) non-regulatory initiatives may also be more in harmony with higher education's mission to foster critical examination and dialogue in the search for truth.
- (3) (3) non-regulatory initiatives do not raise substantial 1st Amendment issues.

In addition to non-regulatory initiatives, institutions may regulate hate conduct or behavior (as opposed to speech).

1. When hate speech is combined with non-speech actions in the same course of behavior, institutions may regulate the non-speech elements of behavior without violating the 1st Amendment. While it cannot prohibit particular messages, it can prohibit harmful acts (e.g., defacement of property or physical assaults on persons).

2. Institutions may regulate the time or place at which hate speech is uttered, or the manner in which it is uttered, as long as they use neutral regulations that do not focus on the content or viewpoint of the speech.
3. Institutions may regulate the content of hate speech that falls within one of the various exceptions to the principle forbidding content-based restrictions on speech. Thus, institutions may punish hate speech that constitutes fighting words, obscenity, incitement, or private defamation.
4. Institutions may regulate hate speech in the form of threats or intimidation aimed at particular individuals and creating in them a realistic fear for their physical safety or the security of their property. Speech activities with such effects are analogous to assaults, which typically are punishable under both criminal law and tort law.
5. Institutions may regulate hate speech that occurs on or is projected onto private areas, such as dormitory rooms or library study carrels, and thereby infringes on privacy interests of individuals who legitimately occupy such places.
6. Institutions may regulate hate speech that furthers a scheme of racial or other discrimination.
7. Institutions may also devise enhanced penalties under their conduct codes for hate behavior or conduct that does not itself involve speech.

4.11 Student Organizations

516

Recognition of a student organization as an "official" college group may lead to claims that the organization is the agent of the college, raising concerns about the institution's potential contract and tort liabilities.

4.11.1 Right to Organize

516

Student organizational rights are protected by the freedom-of-association and freedom-of-expression concepts of the 1st Amendment. However, public institutions retain authority to withhold or revoke recognition in certain instances and to evenhandedly regulate the organizational use of campus facilities. *Healy v. James*, 408 U.S. 169 (1972) is the leading case in the field.

Healy and related cases reveal three broad bases on which administrators may regulate the recognition of campus organizations without violating associational rights.

First, if a RSO violated campus law, its RSO status may be suspended or withdrawn for a reasonable period of time.

Second, RSO activities need not be tolerated there they interrupt classes or substantially interfere with the opportunity of other students to obtain an education.

Third, the institution may act to prevent organizational activity that is itself illegal under local, state, or federal laws, as well as activity “directed to inciting or producing imminent lawless action and likely to incite or produce such action.”

Important cases:

Gay Rights Coalition v. Georgetown University, 536 A.2d 1 (D.C. 1987)

Gay and Lesbian Students Assn. V. Gohn, 850 F.2d 361 (8th Cir. 1988)

Clarke v. United States, 898 F.2d 162 (D.C. Cir. 1990)

4.11.2 Right not to Organize

520

In overseeing student organizations, administrators should avoid imposing compulsory membership requirements. In allocating mandatory fees, they should develop evenhanded processes devoid of artificial limits on the number or type of viewpoints that may be supported. If the process does include limits on purposes or groups that may be supported, these limits should be demonstrably consistent with the three bases for regulation (see section 9.1.1). They may also elect to consider developing a system that permits students to deduct from their fees an amount equivalent to the proportion of funds allocated to “political or ideological” groups.

Important cases:

Good v. Associated Students of the University of Washington, 542 P.2d 762 (Wash. 1975). Court distinguished between university’s requirement that all students be members of the ASUW and the University’s ability to impose a mandatory student fee.

Larson v. Board of Regents of the University of Nebraska, 204 N.W.2d 568 (Neb. 1973). The court rejected student challenges to mandatory fee allocations for the student newspaper and the visiting-speakers program.

Smith v. Regents of California, 844 P.2d 500 (Cal. 1993). The court decided the issue of institutional rights to impose mandatory fees for educational purposes and the student's right to be free of compelled speech and association.

4.11.3 Principle of Nondiscrimination

523

This principle concerns restrictions that administrators are required to impose concerning discrimination by the institution and student organizations. The institution has the responsibility to prohibit discrimination or to withhold institutional support from those organizations that do discriminate.

Important cases:

Joyner v. Whitting, 477 F.2d 456 (4th Cir. 1973). Black student newspaper's practices of disallowing ads from whites and not hiring of non-black staff. Court's reasoning in supporting institution: "The equal protection clause forbids racial discrimination in extracurricular activities of state-supported institutions and freedom of the press furnishes no shield for discrimination."

Federal civil rights laws may require private as well as public institutions to ensure, as a condition to receiving federal funds, that student organization do not discriminate.

Important case:

Uzzel v. Friday, 547 F.2d 801 (4th Cir. 1977). Concerned certain rules of student organizations at the U. of North Carolina involving the composition of the legislative branch of the student government association.

Frank v. Ivy Club, 576 A.2d 241 (N.J. 1990). Concerned Sally Frank's charges of sex discrimination by two private "eating clubs" and their "symbolic relationship" with the Princeton University.

4.11.4 Religious Activities

526

Important cases:

Widmar v. Vincent, 454 U.S. 263 (1981). The Supreme Court ruled in favor of plaintiff regarding rights of student religious groups to use university facilities and content-based speech. Case also established guidelines for institutional authority over student religious groups.

Rosenberger v. Rector and Visitors of the University of Virginia, 115 S. Ct. 2510 (1995) addressed the establishment of a mandatory student activities fee and its distribution to a campus magazine with religious content.

Tipton v. University of Hawaii, 15 F.3d 922 (9th Cir. 1994) involved decision to deny funding to RSO whose purpose is to promote a particular religious point of view.

The issues addressed in *Widmar*, *Rosenberg*, and *Tipton* demonstrate the continuing tension between free speech and establishment clause issues as they relate to the actions of public colleges and universities. Private colleges need not recognize a student organization but must sometimes provide equal access to facilities.

4.12 Fraternities and Sororities 419

The issues that affect non-fraternal student organizations may also arise with respect to fraternities and sororities. But because fraternal organizations have their own unique histories and traditions, are related to national organizations that may influence their activities, and play a significant social one on many campuses, they may pose unique legal problems for the college.

4.12.1 Institutional Recognition and Regulation of Fraternal Organizations 420

Institutional Recognition and Regulation of Fraternal Organizations 420 Relationship statements outline the college's regs. and elicit the organizations' assurance that it will obtain insurance coverage, adhere to fire and building codes, and comply with institutional polities on the serving of alcohol.

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

4.12.2 Institutional Liability for the Acts of Fraternal Organizations 424

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

4.13 STUDENT PRESS 538

4.13.1 General Perspectives 538

A public institution's relationships with student newspapers, magazines, and other publications should be viewed in the first instance under the same principles that are applicable to student organizations.

The most guarded of First Amendments rights is the right to a free press. This protections covers student publications from all encroachments on editorial prerogatives by public institutions.

The chief concern of the 1st Amendment's free press guarantee is censorship and the imposing prior restraint on publications by public institutions.

It is important that prior restraints do not affect the time, place, or manner of distribution of the publication.

4.13.2 Permissible Scope of Regulation 539

Important case: *Mississippi Gay Alliance v. Goudelock*, 536 F.2d 1073 (5th Cir. 1976), a suit against a student newspaper that had refused to print an ad for a gay counseling service.

Important case: *Sinn v. The Daily Nebraskan*, 829 F.2d 662 (8th Cir. 1987), the court held that the newspaper was not engaged in state action when it refused to print sexual preferences in classified ads.

As long as administrators avoid direct or indirect control of content, they may regulate publications by student organizations or individual students in much the same way that they may regulate other organizations or students generally. Even content need not be totally beyond an administrator's concern. A disclaimer can be imposed to avoid confusion about the publication's status within the institution.

4.13.3 Obscenity

542

Obscenity is not definable in terms of an institution's or an administrator's own personal conceptions of taste, decency, or propriety. It can be defined only in terms of the guidelines that courts have constructed to prevent the concept from being used to choke off controversial social or political dialogue.

4.13.4 Libel

543

Institutions may discipline students or organizations that publish libelous matter; however, the authority of public institutions extends only to matter that is libelous according to technical legal definitions.

Common law and constitutional doctrines require that (1) the statement be false; (2) the publication serve to identify the particular person libeled; (3) the publication at least nominal injury to the person libeled; and (4) the falsehood be attributable to some fault on the part of the person or organization publishing it.

Much of the material in campus publications may involve public officials or public figures and thus be protected by the higher fault standard of actual malice. (What does this statement mean to student affairs administrators who appear in student publication cartoons and editorials?)

Landmark case: *Mazart v. State*, 441 N.Y.S.2d 600 (N.Y.Ct. Cl. 1981). First, the court established that institutional control over a student newspaper, or lack thereof, is a key to establishing or avoiding institutional liability. Second, even though publishing of the letter was libelous, its publication was protected by a qualified privilege because the subject matter was of public concern.

(Given the conservative nature of our small campus community, what do you think would have been the likely outcome of this case if the incident had taken place on the campus of EIU?)

4.13.5 Obscenity and Libel in Private Institutions

548

The First Amendment does not apply to private institutions that are not engaged in state action. They thus have a freer hand in regulating obscenity and libel. However, in devising their policies, private institutions should consider the potential impact of state law.

4.14 STUDENT HOUSING

4.14.1 Housing Regulations

Prostrollo v. University of South Dakota 507 F. 2d 775 (8th Cir. 1974)
Cooper v. Nix, 496 F. 2d 1285 (5th Cir. 1974)
Texas Woman's University v. Chayklintaste, 521 S.W.2d (Tex. Civ. App. 1975)
Texas Woman's University v. Chayklintaste, 530 S.W.2d 927 (Tex. 1975)
Futrell v. Ahrens, 540 P.2d 214 (N.M. 1975)
Fleming v. New York University, 865 F.2d 478 (2d Cir. 1989)
Bynes v. Toll, 512 F.2d 252 (2d Cir. 1975)
Fair Housing Act

4.14.2. Searches and Seizures

Fourth Amendment to the U.S. Constitution
Administrative Searches
Health and Safety Searches
“Plain view” exception to the 4th Amendment
Piazolla v. Watkins, 442 F.2d 284 (5th Cir. 1971)
State of Washington v. Chrisman, 102 S. Ct. 812 (1982)
Duarte v. Commonwealth, 407 S.E.2d 41 (Va. Ct. App. 1991)

4.15 Athletics

4.15.2 Athletic Scholarships

Cases: *Begley v. Corp. of Mercer Univer..\ity*, 367 F. Supp. 908 (E.D. Tenn. 1973)
Taylor v. Wake Forest University, 191 S.E2d 379 (N.C. Ct. App. 1972).
Conard V uTniv. of Washington, 814 P.2d 1242 (Wash. Ct. app. 1991)
Ross v. Creighton University, 957 F.2d 410 (7th Cir. 1992)

4.15.3 Sex Discrimination

Cases involving Title IX, equal rights amendments and The Civil Rights Restoration Act of 1987
Case: *Blair v. Washington State University*, 740 P.2d 1379 (Wash. 1987)
Cohen v. Brown Univer.S'ity, 991 F.2d 888 (I st Cir. 1993)

4.15.4 Discrimination on the Basis of Disability

Title IX Section 504 = Rehabilitation Act of 1973
Case: *Wright v. Columbia University*, 520 F. Supp. 789 (E.D. Pa. 1981)
Pahulu v. University of Kansas, 897 F. Supp. 1387 ~. Kan, 1995)
Knapp v. Northwestern University, 101 F.3d 473 (7 Cir. 1996)

4.15.5 Drug Testing

If we test athletes, why should we not test all students involved in any activity; especially, an activity in which they are representing the University?

What about he 14 th Amendment and Wlreasonable search & seizure?

Case: *Derdeyn v. University of Colorado*, 832 P.2d 1031 (Colo. App. 1991)

Hill v. NCAA, 273 Ca1. Rptr. 402 (Cal. Ct. App. 1990)

4.15.6 Tort Liability for athletic injuries

Case: *Scott v. State*, 158 N.Y.S.2d617 (N.Y. Ct. C.1956)

Lowe v. Texas Tech University, 530 S.W.2d 337 (Tex. Civ. App. 1975)

Kleinknect v. Gettysburg College, 898 F.2d 1360 (3d Cir. 1993)

Limited immunity v. Statutory Immunity v. Sovereign Immunity
Duty of Reasonable Care

Case: *Fox v. Board of Supervisors of Louisiana State University and Agricultural and Mechanical College*, 576 So. 2d 978 (La. 1991)

Swanson v. Wabash College, 504 N.E. 2d 327 (Ind. Ct. App. 1987)

4.16 STUDENT FILES AND RECORDS (576 - 580)

Twenty-Sixth Amendment to the U.S. Constitution guaranteed voting rights to anyone 18 years and older. States may set higher minimums for special purposes.

4.16.1 THE BUCKLEY AMENDMENT (576 - 579)

Family Educational Rights and Privacy Act of 1974 (20 U.S.C. §1232g)

The Act and its implementing regulations apply to all public and private educational institutions or agencies receiving federal funds from U.S. Dept. Education or whose students receive such funds. FERPA regulations pertain to:

1. Students' rights of access to their educational records
2. Students' right to challenge the content of their records
3. Disclosure of personally identifiable information from personnel records
4. The institution's obligation to notify students of their rights under the Act and regulations
5. Recourse for students and the federal government when an institution may have violated the Act or its regulations
6. All students enrolled or formerly enrolled in a educational institution have rights under the Act and its regulations.
7. This amendment does not apply to the records of persons who are not or have not been students at the institution; thus, admissions records are not covered until the applicant has been accepted and is in attendance at the institution.

If students are dependents for federal income tax purposes, they cannot prevent their parents from seeing their educational records.

Protected under FERPA are all records that are:

- (1) Directly related to a student; and
- (2) Maintained by an educational agency or institution or by a party acting for the agency or institution.

Students can file suit against educational agencies for violations of their rights to privacy under Section 1983 of the Civil Rights Act.

4.16.2 STATE LAW (579 - 580)

Recognized common law tort of invasion of privacy protects individuals against

1. 1. The public disclosure of damaging private information about them.
2. 2. The intrusion into private affairs.
3. 3. Does not apply directly to higher education institution but is viewed as a basic legal right. Important case: *White v Davis*, 533 P.2d 222 (Cal. 1975)
4. 4. State right to privacy laws usually includes record keeping practices in the form of:
 - (a) (a) Subject-access laws,
 - (b) (b) Open record or public-record law, and
 - (c) (c) Confidentiality laws.

4.16.3 THE FEDERAL PRIVACY ACT OF 1974 (580)

1. 1. Applies directly to federal government agencies
2. 2. Does not restrict postsecondary institutions
3. 3. Accords all persons (students, faculty and staff) certain rights enforceable against the federal government re: information about them contained in federal files
4. 4. Grants an individual the right to inspect, copy, and correct such information
5. 5. Limits the agencies ability to disseminate the information contained therein
6. 6. Section 7 of Act prohibits fed, state, and local government agencies from requiring disclosure of Social Security numbers.

4.17 Campus Security

4.17.1 Security Officers

Should campus security officers carry guns and/or other lethal weapons? What type of training or certification should campus officers possess? Under whose authority do they act? What specific powers should campus security personnel possess?

Sovereign Immunity

Ministerial v. discretionary actions

State v. Lyon, 584 P.2d 844 (Utah 1978)

Commonwealth of Pennsylvania v. Mitchell, 554 A.2d 542 (Pa. Super. Ct. 1989)

People v. Zelinski, 594 P.2d 1000 (Cal. 1979)

Wright v. Scheffler, 618 A.2d 412 (Pa. Super. Ct. 1992)

Hickey v. Zezulka, 487 N.W.2d 106 (Mich. 1992)

4.17.2 Protection Against Violent Crime on Campus

Vangeli v. Schneider, 598 N.Y.S.2d 837 (N.Y. App. Div. 1993)

Nola M. v. University of Southern California, 20 Cal. Rptr. 2d 97 (Cal. Ct. App. 1993)

Eiseman v. State, 518 N.Y.S.2d 608 (N.Y. 1987)

Rabel v. Illinois Wesleyan University, 514 N.E.2d 552 (Ill. App. Ct. 1987)

Tanja H. V. Regents of the University of California, 278 Cal. Rptr. 918 (Cal. Ct. App. 1991)

Jesik v. Maricopa County Community College District, 611 P.2d 547 (Ariz. 1980)

Peterson v. San Francisco Community College District, 205 Rptr. 842 (Cal 1984)

4.17.3 Federal and State Statutes on Campus Security

Higher Education Act of 1965

Crime Awareness and Campus Security Act (Title II of Pub. L. No. 101-542 (1990)

Public L. No. 102-325

The Campus Security Act requires colleges to report on an annual basis murders; sex offenses; robbery; aggravated assault; burglary; motor vehicle theft; liquor law violations; drug abuse violations, weapons possessions.

What is, and where does one find, EIU's policy regarding campus safety?

What constitutes "timely warning"?