Overview of Higher Education Law for Non-Lawyers

Steven G. Olswang, Provost, City University of Seattle
Lori E. Fox, General Counsel, Teachers College, Columbia University

A. What do we mean when we speak of "the law"?

1. Source of law:
   a. U.S. Constitution
   b. Federal
   c. State
   d. Local
   e. "Private" sources of law such as accreditation rules, NCAA requirements, contractual obligations

2. Kinds of Law
   a. Constitutional requirements
   b. Statutes
   c. Regulations
   d. Agency guidance (e.g., “Dear Colleague Letters”)
   e. "Case law"

3. Contractual Obligations
   a. Accreditation standards
   b. Institutional policies
   c. Collective bargaining agreements
   d. Memorandums of understanding

4. International Laws
   a. Laws of the country in which your faculty, staff or students are working.
   b. Licenses
   c. Agency approvals
   d. Employment policies

5. Private Institutions v. Public Institutions: Some of the laws applicable to state institutions are different from laws applicable to private institutions. For example:
   a. Open meetings requirements
   b. Sovereign immunity
   c. Benefit rules
B. How is higher education regulated and otherwise subject to laws?

1. As Public Agencies, Non Profit Corporations, or for Profit Corporations
   a. Charters
   b. Incorporation documents
   c. By laws
   d. Business licenses

2. As providers of Higher Education
   1) Financial aid regulations (Title IV of the HEA)
   2) Clery Act
   3) Title IX

3. As Businesses
   a. Employers
   b. Contractors
   c. Property owners
   d. Landlords
   e. Parks and recreation

C. A Few Myths Relating to the Law

1. If it’s not written and signed, it’s not really a contract.
2. We should never do anything that might risk litigation.
3. It doesn’t matter if we get sued, we’ll win.
4. If there’s a lawyer in the room, everything we say is privileged.
5. Email is confidential.
6. My conversations with my colleagues are confidential.
7. Television shows give reliable accounts of legal proceedings.
8. Newspapers provide reliable accounts of legal issues and disputes.

D. What are some major areas of law relevant to higher education?

1. Governance
   a. The authority and responsibility of trustees, officers, administrators, or others to take particular actions on behalf of the college.
   b. How the Board conducts its business (e.g., open meetings, selection of auditors, compliance with institutional bylaws).
   c. Shared Governance.
   d. Conflict of Interest

2. Compliance. Higher education is a “regulated industry.” Colleges and universities are subject to thousands of federal, state, and local laws, regulations, and ordinances. Your school may have a dedicated compliance office or compliance may fall to many individual administrators. Compliance work overlaps with legal work, but the approaches differ.
3. **Student affairs**
   a. Financial aid and the myriad regulations that apply to any institution that accepts Federal student assistance, including audit requirements.
   b. College- and University- specific regulations like FERPA and Clery reporting requirements.
   c. Student conduct codes and disciplinary proceedings
   d. Scholastic honesty requirements
   e. Student health and safety issues
   f. Disability accommodations
   g. Students who pose threats to self or others (a current hot issue)
   h. Fraternities and Sororities
   i. Students as employees (and sometimes unionized employees)

4. **Landlord/Tenant**
   a. Residence halls
   b. Family housing
   c. Faculty housing
   d. Conference facilities

5. **Civil Rights Laws**
   a. Anti-discrimination and anti-harassment laws including:
      Sexual harassment and gender based misconduct (current hot issues)
   b. Individuals with Disabilities -- ADA/Title 504 (a current hot issue)
   c. Compliance, litigation, and reporting requirements
   d. OFCCP; OCR; State and Local Agencies

6. **Employment and Labor Law**
   a. Unionized and non-unionized environments:
      Collective bargaining agreements v. institutional employment policies
   b. Faculty (a special category of employees)
      1) Appointments
      2) Tenure, non-renewal and termination.
      3) Special faculty rights and responsibilities, e.g., Academic Freedom
   c. State and federal wage and hour laws
   d. Anti-discrimination laws.
   e. Students as employees
   f. Employee benefits

7. **Campus safety and security**
   a. Clery Act and similar state laws
   b. Alcohol and drug laws
   c. Hazing
   d. Minors on campus – safety, abuse protection
   e. Police/security force
8. **Athletics.**
   a. National Collegiate Athletic Association; other League/Conference rules
   b. Contracts with coaches
   c. Safety and liability issues
   d. Property management: stadium and grounds; parking; concessions

9. **Financial matters**
   a. Payroll requirements
   b. Finance – e.g., institutional assets (UPMIFA), bond-financing
   c. Development – e.g., gifts, scholarships, endowments, state fundraising rules.
   d. Taxation – e.g., the “990,” payroll taxes, UBIT
   e. Record keeping

10. **Local/Town-Grown Matters**
    a. Zoning
    b. Property taxation
    c. Student housing, parking, and noise
    d. Public support: fire and police

11. **Intellectual property and technology transfer**
    a. Patent
    b. Trademark
    c. Copyright
    d. Bayh – Dole Act
    e. Institutional vs. Individual intellectual property (IP) rights
    f. Music downloading and the use of films, DVDs, and other copyrighted material both in and outside the classroom.

12. **Litigation**
    a. Court
    b. Administration hearings
    c. Arbitrations and mediations

13. **Investigations**

14. **International Activities**
    a. Overseas campuses
    b. Study abroad programs.
    c. Business and research overseas
    d. Employees in Foreign countries
    e. US laws governing overseas activities and foreign nationals: Export Controls, FCPA, etc.
    f. Foreign nationals as faculty, staff and students/SEVIS requirements
    g. Immigration
    h. Travel requirements
15. **Criminal law**
   a. Law enforcement subpoenas and searches
   b. Criminal investigations of community members
   c. Alerts for campus incidents

E. **Some Special Issues about Dealing with Lawyers**

1. Who is the client?
2. Attorney-client privilege
3. The critical importance of candor and “full disclosure”
4. Insurance and indemnification

F. **Where to Find the Law?**

1. Your campus has a lawyer either in house, or on retainer or contract, available to help with these issues. And the lawyer has access to NACUA, which has extensive resources.

2. More generally, there are a few terrific general resources
   c. University of Vermont website for this program (see appendix A)

3. Compliance
   b. Campus Legal Information Clearinghouse at the Catholic University of America. counsel.cua.edu
## Vermont Conference Sessions by Area of Law

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<th>To learn more about</th>
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| **Academic Freedom & Freedom of Speech** | • 2C. Balancing Public Interest & Academic Freedom in Responding to FOIA Requests  
• 4A. State of Academic Freedom at Public Colleges and Universities  
• 6C. Free Speech / Free Exercise / Free Assembly | • 2011 Session 1C. Volatile and Hurtful Speech on Campus  
• 2010 Session 4A. Emerging Issues Affecting Academic Freedom and Tenure |
| **Athletics** |  | • 2011 Session 4C. A Primer on the NCAA  
• 2010 Session 1C. Changes in Athletics & Higher Education: Sexual Misconduct & Personal Liability |
| **Campus safety and security** | • RT1. Current Topics in Hazing  
• RT3 – Deconstructing the Myth that Campuses are Unsafe  
• 3C. Developing a Proactive Clery Compliance Program  
• 4B. Ensuring the Safety of Children on Campus  
• 5A. Developing a Bystander Intervention Program  
• 7C. Student Drug Sharing/Medications/Abuse and Marijuana  
• 8A. Bullying Prevention | • 2011 Session 2C. Safety Education Programs for Students  
• 2011 Session 4A. Gun Control & Weapons on Campus  
• 2011 Session 5A. The Clery Act: Updates & Compliance  
• 2011 Session 6A. Hazing Prevention Strategies  
• 2011 Session 6B. Understanding Sexual & Gender Violence  
• 2011 Session 7A. Students in Danger of Harming Themselves or Others  
• 2011 Session 8C. Emerging Trends re: Risk Associated with Student Life  
• 2010 Session 6A. Security Issues at Student Events  
• 2010 Session 7C. Behavioral Intervention Teams  
• 2010: The Aftermath of Tragedy on Campus |
| **Civil Rights** | • 1B. The OFCCP’s Latest: Affirmative Action for Job Applicants with Disabilities  
• 2A. Title IX Investigations  
• 3A. Affirmative Action in Student Admissions, Faculty Hiring, and Financial Aid  
• 3B. At Risk Students and the ADA: Dealing With At Risk Students In Light Of Conflicting Federal Guidance  | • 2011 Session 1A. Social Justice  
• 2011 Session 2A. What You Must Know About the 2011 Dear Colleague Letter on Sexual Violence  
• 2011 Session 3B. Dealing with Disabled Staff & Students  
• 2011 Session 7A. Students in Danger of Harming Themselves or Others  
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• 2010 Session 3C. Addressing Access to Higher Ed  
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