

Rutgers University Graduate School of Education

The Law and Higher Education, Fall 2014

15:230:606:01

Three credits

Professor Barbara Lee
Tuesdays, 12:40 – 3:00 p.m.
Beck Hall Room 221
Livingston Campus

Office hours by appt.
(848) 445-1350
lee@smlr.rutgers.edu
Seminar

Catalog Description

Legislative, judicial, and administrative sources of law affecting institutions of higher education; focuses on the legal implications of administrative decision making in such institutions, issues of educational and employee equity, and strategies for avoiding legal problems.

Course Objectives

This is a graduate-level course that requires substantial reading and analysis of both the course text 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 practice of college student affairs
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. Maintain an appropriate degree of confidentiality that follows applicable legal and licensing requirements, facilitates the development of trusting relationships, and recognizes when confidentiality should be broken to protect the student or others.
5. Describe how national constitutions and laws influence the rights that students, faculty, and staff have on public and private college campuses.
6. Explain the concepts of risk management and liability reduction strategies.
7. Explain when to consult with one's immediate supervisor and campus legal counsel about those matters that may have legal ramifications.
8. Act in accordance with federal and state/province laws and institutional policies regarding nondiscrimination.
9. Describe how policy is developed in one's department and institution, as well as the local, state/province, and federal levels of government.
10. Identify the major policy makers who influence one's professional practice at the institutional, local, state/province, and federal levels of government.
11. Identify the internal and external special interest groups that influence policy makers at the department, institutional, local, state/province, and federal levels
12. Describe the public debates surrounding the major policy issues in higher education, including access, affordability, accountability, and quality.
13. Describe the governance systems at one's institution, including the governance structures for faculty, staff, and students.
14. 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.
15. Describe the federal and state/province role in higher education
16. Explain the advantages and disadvantages of different types of decision making processes (e.g., consensus, majority vote, and decision by authority).
17. Identify and then effectively consult with key stakeholders and those with diverse perspectives to make informed decisions.

Course Requirements and Grading

The course will rely heavily on student discussion and analysis of real situations involving student affairs professionals. Students are responsible for all assigned reading and for participation in class discussion. Evaluation of students will include:

Four short essay-type quizzes (open book, first 30 minutes of class)	40 percent
Research paper on topic of student's choice (must be approved by instructor) and brief presentation to class	40 percent
Class participation	20 percent

Required Course Materials

Course Text: William A. Kaplin and Barbara A. Lee. *The Law of Higher Education, Fifth Edition (Student Version)*. Jossey-Bass, Inc., 2014. ISBN 978-1-118-03662-4

Cases and materials posted on course website (Sakai)

Academic Integrity Policy

The Office of Student Conduct supervises issues related to violations of academic integrity (see <http://academicintegrity.rutgers.edu>). Please familiarize yourself with the university policy on academic integrity at http://academicintegrity.rutgers.edu/files/documents/AI_Policy_2013.pdf

Students with Disabilities

Rutgers University welcomes students with disabilities into all of the University's educational programs. In order to receive consideration for reasonable accommodations, a student with a disability must contact the appropriate disability services office at the campus where you are officially enrolled, participate in an intake interview, and provide documentation: <https://ods.rutgers.edu/students/documentation-guidelines>. If the documentation supports your request for reasonable accommodations, your campus's disability services office will provide you with a Letter of Accommodations. Please share this letter with your instructors and discuss the accommodations with them as early in your courses as possible. To begin this process, please complete the Registration form on the ODS web site at: <https://ods.rutgers.edu/students/registration-form>.

Assignments

- September 2, 2014 **Course Introduction**
Overview of Higher Education Law
- Assignment for 9/2/14
- Text, Chapter One, pp. 1-32
The Judicial System in the United States
- September 9, 2014 **Legal Planning and Dispute Resolution**
- Assignment for 9/9/14
- Text, Chapter Two, pp. 66-90

September 16, 2014 **Regulation of Employment — Monica Barrett, guest lecturer**

Assignment for 9/16/14

Text, pp. 136-210

Green v. Tulane University

Newberry v. East Texas State Univ.

September 23, 2014 **Institutional Liability in Tort, Contract, and Constitutional Claims**

Assignment for 9/23/14

Text, Chapter Three, pp. 97-135

Nero v. Kansas State University

Nova Southeastern v. Gross

Orzech v. Fairleigh Dickinson University

September 30, 2014 **Faculty Academic Freedom**

Assignment for 9/30/14

Text, pp. 275-340

AAUP 1940 Statement on Academic Freedom and Tenure

AAUP Statement on Professional Ethics

Martin v. Parrish

Garcetti v. Ceballos

Parate v. Isibor

Quiz #1

October 7, 2014 **Admissions, Affirmative Action, and Financial Aid; FERPA**

Assignment for 10/7/14

Text, Chapter 7, pp.376-423; skim pp.424-445; read pp. 495-506

U.S. v. Virginia

Grutter v. Bollinger

Fisher v. University of Texas-Austin

FERPA and Campus Security

- October 14, 2014 **Peer Harassment and Assault, Sex Discrimination & Retaliation**
- Assignment for 10/14/14
- Text, pp. 368-376; 799-812
OCR Dear Colleague Letter
Williams v. University of Georgia
McGrath v. Dominican College
Emeldi v. University of Oregon
Quiz #2
- October 21, 2014 **Housing Regulations and Searches, Computer Network Issues
Campus Security**
- Assignment for 10/21/14
Text, Chapter 7, pp. 446-490
Limpuangthip v. United States
State v. Houvener
Estate of Butler v. Maharishi University
Research paper topic and outline due today by email
- October 28, 2014 **Student Legal Rights in Academic Matters; Academic Accommodations**
- Assignment for 10/28/14
- Text, Chapter 8, pp. 507-568
Regents of University of Michigan v. Ewing
Guckenberger v. Boston University
- November 4, 2014 **Discipline of Students**
- Assignment for 11/4/14
- Text, Chapter 9, pp. 569-602
University of Texas Medical School v. Than
Tatro v. University of Minnesota
Schaer v. Brandeis University
Quiz #3

November 11, 2014 **Student Free Speech**

Assignment for 11/11/14

Text, Chapter 19, pp. 602-636

Rosenberger v. Rector and Visitors of the University of Virginia
UWM Post, Inc. v. Board of Regents, University of Wisconsin
Ward v. Polite

November 18, 2013 **Legal Issues Involving Student Organizations**

Assignment for 11/18/14

Text, Chapter 10, pp. 637-685; skim pp.

Summary and analysis of *Christian Legal Society v. Martinez*
Pi Lambda Phi Fraternity v. University of Pittsburgh

November 25, 2014 **No class—Thanksgiving week—Thursday classes meet today**

December 2, 2014 **Athletics**

Assignment for 12/2/14

Text, Chapter 10; pp. 704-745; 822-23

Choike v. Slippery Rock University
Knapp v. Northwestern University

Research paper due today

December 9, 2014 Quiz #4

Student presentations