

**EDAD 5352**

**HIGHER EDUCATION LAW**

**DEPARTMENT OF EDUCATIONAL LEADERSHIP AND POLICY STUDIES**

**UNIVERSITY OF TEXAS AT ARLINGTON**

**FALL, 2012**

Lewis M. Wasserman

Associate Professor, Educational Leadership and Policy Studies

**Mail**

Box 19575

701 Planetarium Place

Arlington, Texas 76019-0575

**Office**

103B Trimble Hall

Arlington, Texas 76019-0575

Telephone: 817-272-3105

Fax: 817-272-2127

Email: [lmwasser@uta.edu](mailto:lmwasser@uta.edu)

**Catalogue Course Description**

*The purpose of this course is to provide students with the fundamental cases of higher education law for administrators. Topics in this course may include the legal structure of higher education, separation of church and state, religion, academic freedom, employment and tenure, due process, computer-related legal issues, copyright, students' rights of speech and expression, search and seizure, desegregation, tort liability, contracts, and collective bargaining.*

This course will be comprised of units aligned with the catalogue course description and emphasize current issues in higher education law.

#### Core Legal Terminology and Concepts Attachment

To assist students with their assignments, each will receive with the syllabus an attachment which defines core legal vocabulary and explains concepts you will encounter in the assigned reading. You should refer to this attachment where appropriate. It will enhance your understanding of the course material.

#### Purpose of Course

. The principal goals of the course include:

1. understanding the federal and state legal systems and their relationship to the legislative and executive branches in connection with higher education law.
2. expanding students' legal vocabulary and concepts and learning how to apply them.
3. expanding students' understanding of how higher education law intersects with other legal fields and how state and local laws relate to each other and to federal law.
4. learning to distinguish legal from policy, political, or human relations issues which students will confront as higher education administrators.
5. gaining specific knowledge about the principal legal concepts in higher education and their implementation in practice.
7. learning how to use legal principles to resolve disputes.
8. learning when you should consult with the college's or university's lawyer(s) and/or other administrators higher in the chain-of-command.
9. expanding knowledge of sources of law and legal research.
10. developing an understanding of higher education issues from the perspective of both a legal analyst and an educational leader.

#### Course Plan

Each student will make five class presentations with an associated power point based on the citations listed in the course outline below. Each presentation will include: name of case, court from which it emanated, the facts giving rise to the dispute, the legal issue(s) which confronted the court, how the court resolved the conflict, the legal principles which guided the court in rendering its decision and a statement as to whether the presenter agreed with the outcome of the case and why s/he came to that conclusion. With respect to the latter point each presenter should discuss what implication the decision has for higher education policy. The class presentations will comprise 75% of each student's grade. The other 25% of the grade will be derived from an in-class examination focusing on the legal system and how it operates. The exam will take about an hour and be given on November 12 or November 19. I will provide you with at least two weeks' notice of when the exam will be given.

### **Required Course Readings**

Judicial Decisions listed in the syllabus

Edited cases provided by the instructor and listed in the syllabus

### **Recommended Textbook [Not Required]**

Richard Fossey, Kerry Brian Melear, & Joseph Beckham, *Contemporary Issues in Higher Education* (Dayton, OH: Education Law Association, 2010).

**Class # 1: Monday, August 27, 2012-5:00-7:50 p.m.** Introduction to the Judicial System and Legal Research.

Legal Research on your laptop [bring to class]

Overview of handout on legal system

### **September 3: LABOR DAY: NO CLASS**

**Class # 2: Monday, September 10, 2012-5:00- 7:50 p.m.** Students' Right to Due Process in Student Disciplinary and Academic proceedings.

*Dixon v. Alabama State Board of Education*, 294 F.2d 150, cert. denied, 368 U.S. 930 (1961)

*Weidemann v. State University of New York*, 592 N.Y.S.2d 99 (A.D. 3 Dept. 1992)

*Nash v. Auburn University*, 812 F.2d 665 (11th Cir. 1987)

*Osteen v. Henley*, 13 F.3d 221 (7th Cir. 1993)

*Cloud v. Trustees of Boston University*, 720 F.2d 721 (1st Cir. 1983)

*Ahlum v. Administrators of Tulane Educational Fund*, 617 S.2d 96 (La. App. 1993)

**Class # 3: Monday, September 17, 2012-5:00 p.m.-7:50 p.m.** A Student's Right to Due Process When Challenging University's Academic Decision; A University's Authority to Revoke a Degree

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

*Regents of the University of Michigan v. Ewing*, 474 U.S. 214 (1985)

*Sylvester v. Texas Southern University*, 957 F. Supp. 944 (S.D. Tex. 1997)

*Napolitano v. Princeton University*, 453 A.2d 263 (N.J. Super. Ct. App. Div. 1999)

*Goodreau v. Rector and Visitors of the University of Virginia*, 116 F. Supp. 2d 694 (W.D. Va. 2000)

**Class # 4: Monday, September 24, 2012-5:00 p.m.-7:50 p.m.** The Fourth Amendment as a limit on authority to discipline.

*State v. Hunter*, 831 P.2d 1033 (Utah App.1993)

*Piazzola v. Watkins*, 442 F.2d 284 (5th Cir. 1971)

*Moore v. Student Affairs Comm. of Troy State University*, 284 F. Supp. 725 (D.C. Ala. 1968)

*Commonwealth v. Carr* (Mass. 2010)

*U.S. v. Heckenkamp*, 482 F.3d 1142 (9<sup>th</sup> Cir.) cert. denied (2007)

*State of Tennessee v. Burroughs*, 926 S.W.2d 243(Tenn. 1996)

**Class # 5: Monday, October 1, 2012-5:00 p.m.-7:50 p.m.** Students' Free Speech Rights and Right of Association

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

*Gay Student Services v. Texas A&M University*, 737 F.2d 1317 (5th Cir. 1984), cert. denied, 105 S.Ct. 160 (1985)

*Pi Lambda Phi v. University of Pittsburgh*, 229 F.3d 435 (3rd Cir. 2000)

*Widmar v. Vincent*, 454 U.S. 263 (1981)

*Christian Legal Society v. Martinez*, 130 S. Ct. 2971 (2010)

*Justice for All v. Faulkner* (5th Cir.2005)

*Brown v. Li*, 308 F.3d 939 (9th Cir. 2002), *cert. denied*, 538 U.S. 908 (2003)

*Pro-Life Cougars v. University of Houston*, 259 F. Supp. 2d 575 S.D. Tex. 2003)

*Gilles v. Davis*, 427 F.3d 197 (3rd Cir. 2005)

*Tatro v. University of Minnesota*, 800 N.W.2d 811(Minn. Ct. App. 2011)

**Class # 6: Monday, October 8, 2012-5:00 p.m.-7:50 p.m. I. Student Press and Other Student Free Speech Issues**

*Papish v. Board of Curators of the University of Missouri*, 410 U.S. 667 (1973)

*Sinn v. Daily Nebraskan*, 829 F.2d 179 (8th Cir. 1987)

*Stanley v. McGrath*, 719 F.2d 179 (8th Cir. 1987)

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

*Hosty v. Carter*, 412 F.3d 731 (7th Cir. 2005)

*Leeds v. Meltz*, 898 F. Supp. 146 (E.D. N.Y. 1995)

**Class # 7: Monday, October 15, 2012-5:00 p.m.-7:50 p.m. II. Student Activity Fees**

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

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

**Class # 8: Monday, October 22, 2012-5:00 p.m.-7:50 p.m. Torts, Safety and Order: The Duty to Protect Students and Others.**

*Boyd v. Texas Christian University*, 8 S.W.3d 758 (Tex. Ct. App. 1999)

*Hartman v. Bethany College*, 778 F. Supp. 286 (N.D. W.Va. 1991)

*Bradshaw v. Rawlings*, 612 F.2d 135 (3th Cir. 1979), *cert. denied*, 446 U.S. 909 (1980)

*Fox v. Board of Supervisors of Louisiana State University*, 576 So.2d 978 (1991)

*University of Denver v. Whitlock*, 744 P.2d 54 (Colo. 1987)

*Beach v. University of Utah*, 726 P.2d 413 (Utah 1986)

*Stephen F. Austin University v. Flynn*, 228 S.W.3d 653 (2007)

*Dimas v. Texas State University System* (Tex. Ct. App. 2006)

**Class # 9: Monday, October 29, 2012-5:00 p.m.-7:50 p.m.** Torts, Safety and Order: The Duty to Protect Students and Others [continued]

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

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

*Nova Southeastern University, Inc. v. Gross*, 758 So. 2d 86 (2000)

*Ross v. Creighton University*, 957 F.2d 410 (7th Cir. 1992)

*Lemoine v. Cornell University*, 769 N.Y.S.2d 313 (N.Y. App. 2003)

*Eiseman v. State*, 511 N.E.2d 1128 (1987)

*Wells v. Bard College*, 584 N.Y.S.2d 565, 75 Ed. Law Rep. 1161 (1992)

*Jain v. Iowa*, 617 N.W.2d 293 (Iowa 2000)

**Class # 10: Monday, November 5, 2012-5:00 p.m.-7:50 p.m.** The Clery Act

*Havlik v. Johnson & Wales University*, 509 F.3d 25 (1st Cir. 2007)

**Class # 11: Monday, November 12, 2012-5:00 p.m.-7:50 p.m.** Contractual Obligations of Colleges and Universities

*Doherty v. Southern College of Optometry*, 862 F.2d 570 (6th Cir. 1988)

*Till v. Delta School of Commerce*, 487 So.2d 180 (La. Ct. App. 1986)

*Steinberg v. Chicago Medical School*, 371 N.E.2d 634 (Ill. 1977)

*Beukas v. Fairleigh Dickenson Univ.*, 605 A.2d 708 (N.J.App. 1992)

*Miller v. Loyola University of New Orleans*, 829 So. 2d 1057 (La. Ct. App. 2002)

**Class # 12: Monday, November 19, 2012-5:00 p.m.-7:50 p.m.** Equal Opportunity in Education, overview

*Sweatt v. Painter*, 339 U.S. 629 (1950)

*McLaurin v. Oklahoma State Regents for Higher Education*, 339 U.S. 637 (1950)

*Grutter v. Bollinger*, 539 U.S. 306 (2003)

*Gratz v. Bollinger*, 539 U.S. 244 (2003)

*\*School Board of Nassau County v. Arline*, 107 S.Ct. 1123 (1987) (summary in lecture notes)

**Class # 13: Monday, November 26, 2012-5:00 p.m.-7:50 p.m.** Sexual Harassment, Sex Discrimination, and Hazing

*Liu v. Striuli*, 36 F. Supp. 2d 452 (D. R.I. 1999)

*Mississippi University for Women v. Hogan*, 478 U.S. 718 (1982)

Ramstad Amendment to the 1992 Higher Education Act (to be handed out in class)

*Iota Xi Chapter of Sigma Chi Fraternity v. George Mason University*, 993 F.2d

386 (4th Cir. 1993)

*Chi Iota Colony of Alpha Epsilon Pi Fraternity v. City University of New York*, 502 F.3d 136 (2nd Cir. 2007)

*Alexander v. Kappa Alpha Psi Fraternity, Inc.*, 464 F. Supp. 2d 751 (M.D. Tenn. 2006)

*State of Texas v. Boyd* (Tex. Ct. Crim. App. 2001)

*S.S. v. Alexander*, 177 P.3d 724 (Wash. Ct. App. 2008)

Fossey, R. (2010). Deliberate indifference to gang rape may violate Title IX, *Teachers College Record*.

**Class # 14: Monday, December 3, 2012-5:00 p.m.-7:50 p.m.** Academic Freedom and Free Speech in Academia

*Sweezy v. New Hampshire*, 354 U.S. 234 (1957)

*Keishian v. Board of Regents*, 385 U.S. 589 (1967)

*Urofsky v. Gilmore*, 216 F.3d 401 (4th Cir. 2000)

*\*Garcetti v. Ceballos* (U.S. 2006) (summary in lecture notes)

*Adams v. University of North Carolina-Wilmington*, 640 F.3d 550 (4th Cir. 2011)

*Bishop v. Aronov*, 926 F.2d 1066 (11th Cir. 1991)

*Piggee v. Carl Sandburg College*, 464 F.3d 667 (7<sup>th</sup> Cir. 2006)

*Levin v. Harleston*, 966 F.2d 85 (2nd Cir. 1992)

*Trejo v. Shoben*, 319 F.3d 878 (7th Cir. 2003)

## Other Instructional Units if time allows

### **Academic Freedom and Institutional Authority**

*Martin v. Parrish*, 805 F.2d 583 (5th Cir. 1986)

*Dambrot v. Central Michigan University*, 55 F.3d 1177 (6th Cir. 1995)

*Hetrick v. Martin*, 480 F.2d 705 (6th Cir. 1973)

*Cohen v. San Bernardino College*, 92 F.3d 968(9th Cir. 1996)

*Brown v. Armenti*, 247 F.3d 69 (3rd Cir. 2001)

*Parate v. Isabor*, 868 F.2d 821(6th Cir. 1989)

### **Student Loan Liability (a brief overview)**

*In re Halverson*, 401 B.R. 378 (Bankr. D. Minn. 2009)

Fossey, R. (2008). Blood from a turnip: Overburdened student loan debtors should have access to the bankruptcy courts. *Teachers College Record*, tcrecord.org

Fossey, R., & Cloud, R. Abandon hope, all ye who enter here: Defaulting student loan debtors have no place to hide. *Teachers College Record*, tcrecord.org.

### **Termination of faculty for financial exigency or cause**

*Krotkoff v. Goucher College*, 585 F.2d 675 (4th Cir. 1978)

*Corstvet v. Boger*, 757 F.2d 223 (10th Cir. 1985)

*San Filippo v. Bongiovanni*, 961 F.2d 1125 (3d Cir. 1992)

*Pugel v. Bd. of Trustees of the University of Illinois*, 378 F.3d 659 (7th Cir. 2004)

*Texton v. Hancock*, 359 So. 2d 895 (Fla. App. 1978)

### **Procedural Due Process**

\**Board of Regents v. Roth*, 408 U.S. 564 (1976) (summary in lecture notes)

\**Perry v. Sindermann*, 408 U.S. 593 (1972) (summary in lecture notes)

*Haimowitz v. University of Nevada*, 579 F.2d 526 (9th Cir. 1978)

*Maples v. Martin*, 858 F.2d 1546 (11th Cir. 1988)

\**Cleveland Board of Educ. v. Loudermill*, 105 S.Ct. 1487 (1985) (summary in lecture notes)

*Gunasekera v. Irvin*, 517 F. Supp. 2d (S.D. Ohio 2007)

*Stotter v. University of Texas at San Antonio* (5th Cir. 2007)

### **Defamation**

*Salek v. Passaic Collegiate School*, 605 A.2d 276 (N. J. Super. 1992)

*Nadel v. Regents of the University of California* (Cal. Ct. App. 1994)

*Melton v. Bow*, 247 S.E.2d 100 (Ga. 1978)

*Slack v. Stream*, 988 So.2d 516 (Ala. 2008)

*Yeagle v. Collegiate Times*, 497 S.E.2d 136 (Va. 1998)

### **Copyright issues**

*University of Princeton Press v. Michigan Document Services*, 99 F3d 1381 (6th Cir. 1996)

### **FERPA**

*Gonzaga University v. Doe*, 536 U.S. 273 (U.S. 2002).

### **Guns on Campus**

Lewis M. Wasserman, *Gun Control on College and University Campuses in the Wake of District of Columbia v. Heller and McDonald v. City of Chicago*, 19 VIRGINIA JOURNAL OF SOCIAL POLICY & THE LAW 1, (Fall, 2011).

### Rules of the Course

You may not under any circumstances confer or seek or render assistance to any person about the class assignments, since they are intended to be a measure of your grasp of the course content. However, you may obtain information from the library or other sources in preparing your presentations. If you have questions about how to go about preparing your presentation please contact me and I will provide advice about how to proceed.

You may not seek or rendering from students or other sources during the exam. Violations of this rule will be treated as a form of academic dishonesty and taken most seriously by the instructor. Such cases will be dealt with according to UTA's rules and regulations concerning academic dishonesty.

**Note: The UTA Graduate Honor Code establishes a standard of academic integrity. The code demands firm adherence to a set of values and is founded on the concept of honesty with respect to the intellectual efforts of oneself and others. You must read and study the requirements of the Graduate Honor Code as a requirement of this course. Please visit the UTA website for details concerning your obligations in this regard.**

If you would like to meet with me in person to discuss any issues related to the course I would be glad to meet with you at the Arlington campus during my regularly scheduled office hours. These are Mondays and Wednesdays between 3:00 and 5:00 p.m. Central Time and other times by arrangement between us.

**Note: If you at any time believe you are a student with a disability who requires a reasonable accommodation, related in any way to this course, please visit the UTA website regarding accommodations based on disability so that, where appropriate, such accommodations may be offered to you. Such accommodations may include rights under the Americans with Disabilities Act ("ADA") and the Rehabilitation Act ("Section 504").**

