

**THE UNIVERSITY OF TEXAS AT ARLINGTON**  
**College of Education and Health Professions**  
**Department of Educational Leadership and Policy Studies**  
**EDAD 5352.001 – Higher Education Law**  
**Course Syllabus – Fall 2009**

**Professor:**

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Office Hours:	Tuesdays before and after class By appointment, virtual office	
Course Times & Location:	Tuesdays 5:00 – 7:50p	TH 118

**The University Mission:**

The University of Texas at Arlington is a comprehensive research, teaching, and public service institution whose mission is the advancement of knowledge and the pursuit of excellence. The University is committed to the promotion of lifelong learning through its academic and continuing education programs and to the formation of good citizenship through its community service learning programs. The diverse student body shares a wide range of cultural values and the University community fosters unity of purpose and cultivates mutual respect.

**College of Education and Health Professions Mission:**

The mission of the College of Education and Health Professions (CEHP) is to promote a collaborative culture of excellence in research, teaching, and service. The College is committed to fostering critical, creative thinkers prepared to engage meaningfully in a dynamic society.

**Course Description:**

This course examines legal issues relevant to American colleges and universities to provide students with the fundamental knowledge of higher education law for administrators. Topics include the legal governance of higher education, academic freedom, affirmative action, and legal issues pertinent to faculty and students.

**Student Learning Outcomes:**

- explain how the legal structure and governance of higher education and the judicial system affect policies and practices;
- recognize key Constitutional and statutory provisions;
- articulate the key court rulings that establish legal parameters (students will be expected to outline or “brief” each of the assigned cases);
- explain how institutional regulations/directives translate the law into on-the-job requirements;

- demonstrate the ability to apply legal concepts from an administrative perspective;
- be able to use basic legal terminology; and
- utilize technological tools to develop, submit and organize course assignments and engage in collaboration and “virtual” discourse with others.

### **Required Materials:**

Olivas, M. A. (2006). *The law and higher education: Cases and materials on colleges in court*, 3<sup>rd</sup> edition. Durham, NC: Carolina Academic Press.

Additional readings will be made available electronically for students enrolled in this course.

### **Additional Resources:**

*Texas Administrative Code* (2008). Available online at [http://info.sos.state.tx.us/pls/pub/readtac\\$ext.viewtac](http://info.sos.state.tx.us/pls/pub/readtac$ext.viewtac) or <http://ritter.tea.state.tx.us/rules/tac/index.html>

### **Instructional Methods**

Most class sessions will be devoted to exposing students to a basic body of law through an exploration of federal and state statutory law, judicial and administrative law via the Socratic method. Assigned cases will be discussed in relation to the readings, and interactive lectures will summarize the discussions and add new developments.

### **Course Policies and Standards:**

*Attendance:* Students are expected to attend all class meetings. Much of the learning that occurs in the course involves class and group discussion that cannot be duplicated outside of class. Students who will be late, will be leaving early, or cannot attend class must notify the instructor via email or telephone prior to the class session. Three or more absences for whatever reason will be applied to class participation and may reduce your grade by one letter. Attendance will be taken at the beginning of each class session.

*Electronic Devices:* Modern electronic devices, such as pagers and cellular/wireless telephones, are equipped with features that enable the user to mute them in a variety of ways. Therefore, students who have such devices are expected to have sufficiently muted them before class to avoid disturbing others and disrupting activities.

*Academic integrity/honesty statement:* Class participants are expected to exhibit and maintain intellectual honesty in the completion of course assignments as well as in class activities. Cheating and plagiarism are forms of intellectual misconduct defined in UT policy. “Scholastic dishonesty includes but is not limited to cheating, plagiarism, collusion, the submission for credit

of any work or materials that are attributable in whole or in part to another person, taking an examination for another person, any act designed to give unfair advantage to a[n individual] or the attempt to commit such acts. [Students] who willingly commit violations of academic integrity/honesty while carrying out academic assignments may, at the discretion of the instructor, be denied credit on the particular assignment in question, receive an 'F' in the class, or be brought before a higher level of governance for possible dismissal from the University" (UT System Regents' Rules and Regulations, Part One, Chapter VI, Section 3, Subsection 3.2, Subdivision 3.22). Additional information is available at [http://www.uta.edu/studentaffairs/judicialaffairs/2004updated\\_files/frame.htm](http://www.uta.edu/studentaffairs/judicialaffairs/2004updated_files/frame.htm)

**Performance Assessments:** A conventional letter grade (A - F) will be computed based upon the following:

- Mid-term examination – 30%
- Final examination – 50%
- Case briefs – 10%
- Participation in class discussion – 10%

**Level of Proficiency:** 90-100=A; 80-89=B; 70-79=C; 60-69=D; Below 60=F

**Course Evaluation:** Students will be given an opportunity to offer (anonymously) formal comments on the course, materials, and the professor.

**University Policies/Statements:**

*E-Culture:* The University of Texas at Arlington has adopted the University email address as an official means of communication with students. Through the use of email, UT Arlington is able to provide students with relevant and timely information, designed to facilitate student success. Specifically, important information concerning registration, financial aid, payment of bills, and graduation may be sent to students through email.

All students are assigned an email account and information about activating and using it is available at [www.uta.edu/email](http://www.uta.edu/email). New students (first semester at UT Arlington) are able to activate their email account 24 hours after registering for courses. There is no additional charge to students for using this account, and it remains active so long as a student is enrolled at UT Arlington. Students are responsible for checking their email regularly.

*Student Support Services:* The University of Texas at Arlington supports a variety of student success programs to help you connect with the University and achieve academic success. These programs include learning assistance, developmental education, advising and mentoring, admission and transition, and federally funded programs. Students requiring assistance academically, personally, or socially should contact the Office of Student Success Programs at 817.272.6107 for more information and appropriate referrals.

*Americans with Disabilities Act:* The University of Texas at Arlington is on record as being committed to both the spirit and letter of federal equal opportunity legislation; reference Public Law 92-112 – The Rehabilitation Act of 1973, as amended. With the passage of federal legislation titled, Americans with Disability Act (ADA), pursuant to section 504 of the Rehabilitation Act, there is renewed focus on providing this population with the same opportunities enjoyed by all citizens.

Faculty members have a legal obligation to provide “reasonable accommodations” to students with disabilities, so as not to discriminate on the basis of that disability. Student responsibility primarily rests with informing faculty of their need for accommodation and in providing authorized documentation through designated administrative channels. Information regarding specific diagnostic criteria and policies for obtaining academic accommodations can be found at [www.uta.edu/disability](http://www.uta.edu/disability), or at the Office for Students with Disabilities, University Hall, Room 102 (817.272.3364).

*Grade grievance:* It is the obligation of the student, in attempting to resolve any student grievance regarding grades, first to make a serious effort to resolve the matter with the instructor with whom the grievance originated. Individual instructors retain primary responsibility for assigning grades. The instructor's judgment is final unless compelling evidence shows preferential treatment or procedural irregularities. If students wish to appeal, their requests must be submitted in writing on an Academic Grievance Form available in departmental or program offices to the department chair or program director. Before considering a grievance, the department chair or program director will refer the issue to a departmental or program committee of graduate faculty. If the committee cannot reach a decision acceptable to the parties involved, the department chair or program director will issue a decision on the grievance. If students are dissatisfied with the chair or director's decision, they may appeal the case to the academic dean. If they are dissatisfied with the academic dean's decision, they may appeal it to the Dean of Graduate Studies. Students have one year from the day grades are posted to initiate a grievance concerning a grade.

*Course drop/withdrawal:* Graduate students who wish to change a schedule by either dropping or adding a course must first consult with their Graduate Advisor. Adds and drops may be made through late registration either on the Web at MyMav or in person through the student's academic department. Drops may occur until a point in time two-thirds of the way through the semester, session, or term. The last day to drop a course is listed in the Academic Calendar available at <http://www.uta.edu/uta/acadcal>

**Getting the Most from the Course:**

*Attend* classes and be mentally present. This is essential. Also refer to the attendance policy in this syllabus.

*Be prompt.* Attendance will be taken at the beginning of class.

*Keep a well-organized notebook.* The notebook for this course should contain the course outline, class handouts, case briefs and holdings, and your notes arranged chronologically or by topic.

Some students choose to disassemble the course materials and handouts and insert them in the notebook. In constructing the notebook, you are encouraged to observe the following:

- a. Use a loose-leaf notebook so that pages can be easily inserted and removed.
- b. Arrange the notebook into sections with clearly marked tabs. Some students integrate case briefs and class notes so that both can be viewed concurrently. However, each individual has his/her own organizational style. **What is important** is that you begin compiling your notebook with the first assignment.
- c. *Take your own notes and construct your own case briefs; don't rely on someone else.* You will learn far more, be better prepared for examinations, and better able to apply the concepts as a professional administrator if you do your own work. As an educator, you know that there is no substitute for being actively engaged in the learning process.

*Read the chapter and case materials, and keep current on assignments.* If you have not read the materials, you will miss most of the significance of class discussion. Being unprepared wastes everyone's time.

*Participate actively in class activities and discussions.* Informed class participation makes a valuable contribution to the class and enhances retention of concepts. It also demonstrates one's ability to apply them to school settings and alerts the instructor of any gaps in knowledge or understanding.

*Form a study group.* Many students find it helpful to form study groups not only because they learn better when they work with others, but also because skills of cooperation are so critical in our society and the world.

*Prepare thoroughly for examinations.* Examinations provide an opportunity to demonstrate your knowledge. Research literature in the area of testing suggests that test anxiety is caused by the lack of preparation, negative thoughts during the exam, and a belief that poor preparation strategies are adequate. **There is no substitute for preparing adequately for examinations. It is unlikely that simply reading your notes will be sufficient preparation for the exams.**

The following suggestions may be helpful when taking exams:

- a. Read each exam question carefully, and consider each option completely before responding.
- b. Organize your thoughts about the question or problem before responding.
- c. **Respond only to what is asked, and answer all parts of the question.** Refrain from making assumptions, adding events to the question or problem, or relying on common knowledge or district practices.
- d. Your response to essay and short-answer questions should be sufficiently detailed so that someone who is not familiar with educational leadership and administration would be able to understand your explanation.
- e. Pace yourself so that you can thoughtfully respond to each question completely.
- f. Proofread the completed examination to eliminate spelling and grammatical errors.

*Don't be afraid to ask questions.* The questions you raise will help everyone more thoroughly understand the legal concepts.

*If you need help, consult with the instructor. Don't wait.*

### **About the Instructor:**

Dr. Carrie Ausbrooks is Associate Dean for Academic Affairs and Associate Professor of Educational Leadership and Policy Studies at the University of Texas at Arlington. She holds a baccalaureate degree in business administration and master's degree in vocational-technical education, with a minor in business computer information systems. Her Ph.D. in educational administration includes a minor in computer education and cognitive systems. She is listed in Who's Who in American Education, World Who's Who of Women, Outstanding Americans, and the American Educational Research Association's (AERA) Registry of Educational Researchers (<http://www.aera.net>). She was previously a public school administrator in a large urban school district after having served as a business and computer science educator. Courses taught include business law, beginning and advanced accounting, economics, personal business management, keyboarding, and computer science and programming.

She is formerly Co-Director for the Center for Education Law, Administration and Policy and member of the research team that conducted a multifaceted study of public and private school choice in San Antonio. She is one of the original members and one of four principal investigators of the evaluation team that conducted the study documenting the evolution of Texas open-enrollment charter schools for the first five years as stipulated in the state's charter school statute. Over the past several years, Dr. Ausbrooks has been involved in a number of research projects, including a study of civic and political attitudes among middle and high school students in public and private schools in Texas and New York, as well as comprehensive legal research examining equality of student access to charter schools and charter school finance within the context of race and class. Some of her more recent projects include Texas legislation and charter schools; the constitutionality of charter school access; the constitutionality of the Texas pledge law; and when students who use threatening speech violate the First Amendment. She and two colleagues recently completed a study of the role of schools in the social and academic adjustment of adolescents evacuated to the Metroplex as a result of Hurricane Katrina funded by the education and human services branch of the National Science Foundation.

The primary focus of her research has been on school choice, school reform and education law, although she has also conducted research on values in public and private schools, tolerance, and technology trends. She is the author of several book chapters, including "Organizational Structure and the Role of Government in Texas Public Education" and "Federal Government Involvement in Education," co-author of the curriculum law chapter in the *Principal's Legal Handbook*, and has been a frequent contributor to *The Yearbook of Education Law*. Courses taught include beginning and advanced education law, theoretical foundations, contemporary issues, educational policy issues, educational governance, and introductory courses in educational administration.



**Course Outline:**

SESSION/DATE	CONTENT/TOPICS	READINGS/CASES*
1/Tuesday, 25 August	Course Orientation How to Read a Court Case Briefing Cases	Course Syllabus
2/Tuesday, 1 September	The Legal Framework Four Sources of Law in Education Federal Court System State Court System Stakeholders in Education	<i>Handouts:</i> U.S. Constitution : Bill of Rights and Selected Amendments Texas Constitution: Preamble and Bill of Rights Comparing Court Systems Geographic Boundaries Court Structure of Texas Stakeholders in Education
3/Tuesday, 8 September	The Legal Governance of Higher Education  What is a College?	Chapter 1, pp. 3 – 17 “The Governance of a University”  <i>Coffee v. Rice University</i>
4 Tuesday, 15 September	What is a College?	Chapter 1, pp. 17 – 20; 22 – 31  <i>Fountain Gate Ministries v. City of Plano</i> <i>Philip Crosby Associates v. Florida State Board of Independent Colleges</i> <i>Hacker v. Hacker</i> <i>Beth Rochel Seminary v. Bennett</i>
5/Tuesday, 22 September	What is a College?  Establishment of Private Colleges	Chapter 1, pp. 28 – 49  <i>Beth Rochel Seminary v. Bennett (cont’d)</i>  <i>Trustees of Dartmouth College v. Woodward</i> <i>Fenn College v. Nance</i>

	Private Colleges and State Action	<i>Powe v. Miles</i>
<b>6/Tuesday, 29 September</b>	Religion and Higher Education  Background: <i>Abington v. Schempp</i> (audio tape of Sup. Ct. oral arguments) <i>Lemon v. Kurtzman</i> <i>Lee v. Weisman</i> <i>Santa Fe v. Doe</i> <i>West VA v. Barnett</i>	<b>Chapter 1, pp. 49 – 57; 60 – 67</b>  <i>Bob Jones University v. United States</i> <i>Witters v. Washington Department of Services for the Blind</i>
<b>7/Tuesday, 6 October</b>	Religion and Higher Education (cont'd)  The Establishment of Public Colleges and State Agency	<i>State ex rel. McLemore v. Clarksville School</i>  <b>Chapter 1, pp. 68; 70 - 76</b>  <i>Krynicky v. University of Pittsburg</i> <i>Boles v. Gibbons</i>
<b>8/Tuesday, 13 October</b>	Consortia and Institutional Governance      Trustees	<b>Chapter 1, pp. 97-100; 110-117; 119-126</b>  <i>Bennett v. State Bar of Nevada</i> <i>U.S. v. Brown University</i>  <i>Cahn and Cahn v. Antioch University</i>
<b>9/Tuesday, 20 October</b>	<b>Exam One</b>	
<b>10/Tuesday, 27 October</b>	Students and the Law The Legal Relationship Between Colleges and Students In Loco Parentis and Due Process	<b>Chapter 4, pp. 595 – 603; 611-617; 631-636; 642-651; 659 – 691</b>  <i>Gott v. Berea College</i> <i>Anthony v. Syracuse University</i> <i>Tarasoff v. Regents of University of California</i>



	<p>Tort Theories Contract Theories</p> <p>Student Admissions</p>	<p><i>Mullins v. Pine Manor College</i></p> <p><i>Johnson v. Lincoln Christian College</i> <i>Vought v. Teachers College, Columbia University</i></p> <p><i>Steinberg v. Chicago Medical School</i> <i>University of California v. Bakke</i> (audio tape of oral arguments) <i>Hopwood v. State of Texas</i></p>
<b>11/Tuesday, 3 November</b>	<p>Students and the Law What is the difference between academic and disciplinary dismissals?</p> <p>Academic Dismissals</p> <p>Disciplinary Dismissals</p> <p>Academic Misconduct</p> <p>Recognition of Student Organizations</p> <p>Student Fees</p>	<p><b>Chapter 4, pp. 698 – 706; 709 – 713; 716 - 744; 748 – 749; 760 – 781; 802 – 809</b></p> <p><i>Board of Curators of the University of Missouri v. Horowitz</i></p> <p><i>Regents of University of Michigan v. Ewing</i></p> <p><i>Dixon v. Alabama State Board of Education</i> <i>Goss v. Lopez</i> <i>Picozzi v. Sandalow</i> “Trial by Fire”</p> <p><i>Crook v. Baker</i> <i>Waliga v. Board of Trustees of Kent State University</i></p> <p><i>Healy v. James</i> <i>Gay Student Services v. Texas A&amp;M University</i></p> <p><i>Rosenberger v. University of Virginia</i></p>

<b>12/Tuesday, 10 November</b>	The Student Press and Distribution on Campus  The College as an Open Forum for Students	Chapter 4, pp. 809 (intro); 811 – 829; 849 - 852 <i>Texas Review Society v. Cunningham</i> <i>Stanley v. McGrath</i> <i>Hazelwood School District v. Kuhlmeier</i> [local case] <i>Widmar v. Vincent</i>
<b>13/Tuesday, 17 November</b>	Affirmative Action and Institutions  Affirmative Action and Students  Affirmative Action and Employment	Chapter 5, pp. 893 – 895; 943 – 947; 956 – 958; 977 – 982; 1008 – 1013; 1016 - 1025  <i>Mississippi University for Women v. Hogan</i>  <i>Lucy v. Adams</i> <i>Arwen Bird v. Lewis &amp; Clark College</i>  <i>Pime v. Loyola University of Chicago</i> <i>Mecklenberg v. Montana State Board of Regents</i>
<b>14/Tuesday, 24 November</b>	Academic Freedom  A citizen of the Academy  <i>Is there any justification for the notion that public employees should have less right to express themselves than other citizens?</i>  Is the Speech a Matter of Public Concern?  Institutional Academic Freedom	Chapter 2, pp. 219 – 223; 225 - 237  <i>Pickering v. Board of Education</i>  <i>Richard Aumiller v. University of Delaware</i>  <i>Mt. Healthy City School District Board of Education v. Doyle</i>  <i>Connick v. Myers</i>  Chapter 2, pp. 271 – 272

		(intro); 280 - 283 <i>Widmar v. Vincent</i>
<b>15/Tuesday, 1 December</b>	<p>The Law and the Faculty</p> <p>Tenure and Promotion Issues</p> <p>What exactly was the Odessa JC tenure policy? How did they measure whether faculty were “happy in their work” and displaying a “cooperative attitude?”</p> <p>A Reasonable Expectation of Continued Employment, Tenure by Default, De facto Tenure</p> <p>Tenure and Race</p> <p>Financial Exigency</p>	<p>Chapter 3, pp. 303-313; 333-336; 344-346; 349 – 356; 360 – 372; 404 - 412</p> <p><i>Perry v. Sindermann</i> <i>Board of Regents v. Roth</i></p> <p><i>Soni v. University of Tennessee</i> <i>Spuler v. Pickar</i></p> <p><i>Scott v. University of Delaware</i></p> <p><i>AAUP v. Bloomfield College</i></p>
<b>16/Tuesday, 8 December</b>	<b>Exam Two</b>	