



HIED 7378 Higher Education Law and Governance Spring 2018

*This is a required course for students in the Doctoral Degree in Educational Administration.
This course also meets the requirements for SHSU's Academic and Community Engagement criteria.*

College of Education Department of Educational Leadership

Instructor: Matthew Fuller, Ph. D.
SHSU Box 2119
TEC 323I or 212
Huntsville, Texas 77341
936.294.3399
mfuller@shsu.edu
twitter: [@assessculture](https://twitter.com/assessculture)

Office hours: Wednesdays, 10 am to 4 pm, by appointment.

Meeting Time: Tuesdays, 4:40 to 7:10 pm

Location: Sam Houston State University- The Woodlands, Room 255

Description:

The purpose of this course is to provide an overview of the organization, governance, and administration of higher education. This course is based on analyzing the elements that define colleges, describing models to explain how colleges are organized and managed; and integrating these models with administrative views to influence organizational processes, to include the communication of current issues to other personnel. The course will also focus on legal issues that affect the governance of higher education (Graduate catalog, 2017-2019). This course will primarily focus on the student/institution relationship, the institution/faculty relationship, and the institution/society relationship. Four legal bases of these relationships will be explored including the constitutional, contractual, statutory, and tort dimensions. The legal precedents guiding a number of issues including institutional decision making, alumni influence, student safety, tenure, admissions, affirmative action, campus discipline, personal relationships, and other issues will be examined.

The purpose of this course is to instill in doctoral students a foundation for using legal precedents as a foundation for policy decisions in higher education administrative contexts. This context includes financial, economic, political, social, and other interests that give rise to contemporary higher education practices and policies. **The second purpose of this course is to introduce students to legal jargon, systems of citation, and cultivate an ethic of scholarship based upon logical, legal philosophy.** In order to inform administrative practice, one must be well informed and able to accurately articulate the legal precedents handed down through America's legal and judicial system. *This course will also hone students' abilities in oral argumentation and justification of arguments.*

It is also important to note what this class is not intended to do. This is an educational administration course and not a law school class. This course is NOT designed to provide legal training or advice. Moreover, the instructor is not a lawyer and will not provide legal advice. If legal advice is desired, seek competent legal counsel.

COURSE OBJECTIVES:

Doctoral students completing this class, will, to varying degrees, be able to:

1. Accurately access and cite legal cases.
2. Use legal jargon appropriately.
3. Articulate how the concepts of state action, procedural and substantive due process, contractual theory, negligence and liability, policy, and governance are applied in higher education administrative concepts.
4. Map how legal issues originate and are resolved in the various jurisdictions of the court system, articulating how various judicial opinions are subject to different contexts.
5. Articulate the primary types of legal issues facing higher education and hypothesize realistic plans for addressing these legal issues.
6. Articulate the basic parameters of the law and governmental acts related to higher education governance, functions, and policy.
7. Describe various governance structures and policies frequently found in colleges and universities.
8. Develop and implement realistic plans for leading higher education institutions through litigious situations.

COURSE EVALUATION AND IDEA OBJECTIVES:

At least three opportunities for course evaluation will be offered: 1) A pre-class survey for gathering expectations, 2) a mid-class evaluation, and 3) the end-of-term IDEA evaluation of faculty performance. I also encourage students to email or call me with concerns about the class if any should arise. I am open and responsive to professional, constructive advice on the course.

Objectives assessed by the IDEA course evaluation system include:

Essential: Gaining factual knowledge (terminology, classifications, methods, trends)

Developing skill in expressing oneself orally or in writing

Important: Developing specific skills, competencies, and points of view needed by professionals in the field most closely related to this course.

To see how this course supports SHSU's of the College of Education's Mission, Visions, and Goals, as well as professional standards and the College of Education's Framework for Excellence, please see the Foundations of Our Learning Community document in our course's homepage.

TEXTBOOKS:

Kaplin, H. and Lee, B. (2014). The law of higher education [Student Version]. (5th Ed.). San Francisco: Jossey-Bass Pub. Co. ISBN-13: 978-1-118-03662-4.

This text is the perennial text on legal issues in higher education. It covers the structures of higher education law, case precedents, and offers a guide for administrators. This text is comprehensive and offers a glossary of terms.

Jordan, T.L. (2012) The U.S. Constitution: And fascinating facts about it. (8th Ed.). Trego, WI: Oak Hill Pub. Co. ISBN-10: 1891743155, ISBN-13: 978-1891743153

This guide offers the full text of the U.S. Constitution, the Declaration of Independence, and the Bill of Rights. It also offers historical information that has led the evolution of America's approach to federal and state laws.

Additional texts will be distributed online.

COURSE FORMAT AND CONTENT:

This course is based upon the Socratic Method of instruction. You will prepare for each class by reading all assigned materials BEFORE EACH CLASS. The instructor and classmates will ask each other questions about the cases and legal precedents reviewed, culminating in applications of the law to hypothetical situations and contexts. Most class sessions will include collaborative brief summaries of the main arguments of the course readings and legal cases. Students will prepare a law portfolio via a blackboard wiki documenting the legal guidance of all cases for the semester. This notebook will be graded by the instructor at the end of the semester. Students will be quizzed (oral and written) on the topics of the course content. I will also make use of media, film, art, narrative, and music when applicable. It is the general expectation of faculty that doctoral students spend six hours in outside preparation for every one hour of course credit per week. This class, however, is reading intensive and requires an extraordinary amount of preparation on behalf of students and you should organize your schedule accordingly. Students will be evaluated primarily upon their participation in class and must attempt to make at least 3 significant, meaningful contributions to class dialogue each week. These contributions and all interactions should demonstrate the highest ideals of professionalism. On specific nights, expert leaders, legal counselors, and/or administrators will be invited to share their perspective with the class. A heightened sense of participation is expected on these evenings.

WHY I TEACH THIS COURSE:

The law guiding higher education is perhaps the clearest demonstration of our ethical and professional values, if not, the limits of those professional commitments. While serving as a higher education administrator, I witnessed the complexities of higher education law on a daily basis. I also saw how a grounding in law and an ability to discuss it in everyday language helped administrators, faculty, and students understand the boundaries of what they could do in higher education. Lastly, I was taught by exceptional, world-renown higher education legal experts and found these experiences to be highly formative in my graduate education.

COURSE POLICIES:

Late Assignments. Assignments are designed to allow you to demonstrate your abilities in the objectives of this course. As this is a doctoral-level course, **late assignments will not be accepted.** All assignments are to be submitted online via the course website by the start of class on the due date, unless otherwise instructed. If the course website is experiencing difficulties, email or bring in a paper copy of your assignment to class. **All assignments are due by the start of class on the day they are assigned.**

Participation. As adults and emerging scholars engaging challenging material, we will experience a significant portion of our learning through dialogue. As Paulo Freire said, dialogue is much more than conversation. Listening to each other, respecting and seeking out differing views, and engaging the subtleties of ideas is crucial to successful participation. I expect active participation in course dialogue and thoughtful consideration of others' ideas. Be mindful that, particularly in a course that engages issues of diversity of thought and equity, not everyone will agree. Please know that I will strive to create a classroom environment conducive to participation, both in person and our online environment.

A maximum of 10 participation points will be given when students initiate and sustain constructive, insightful, and respectful dialog either in class or online. Simply attending class or just posting a thought online does not translate into participation points. Students should plan to make at least 3 significant, meaningful contributions to class each week

Class attendance. Class attendance is extremely important and is *expected*. Class will start and end on time. Excessive lateness (more than 30 minutes late) will be considered an absence. Two or more absences compromise your ability to pass this class and you will be advised to drop the course.

GRADING SCALE:

Class Participation and Dialog – 10 points
Quizzes (3 at 5 points each) – 15 points
Case Law Review– 25 points
Briefs and Notebook – 25 points
Final Exam and Oral Case Study Response – 25 points

The grade scale for this course:

A = 90–100 total points
B = 80–89.99 total points
C = 70–79.99 total points
D = 60–69.99 total points
F = below 60 total points
100 points total

Work is graded on demonstrated insight, connections to coursework, clarity of conveying a concise thesis, legibility (for in-class writings), completion of stated expectations of the assignment as outlined in this syllabus or class, coherence of organization, and grammar and spelling. All written work should be in APA format (12 point font, double spaced, 1 inch margins). Oral work will be evaluated upon a) the soundness and accuracy of the arguments being made, and b) the confidence and clarity with which an argument/position is made.

PLEASE NOTE: I MAINTAIN A PAPER GRADEBOOK AS THE OFFICIAL GRADEBOOK FOR THE COURSE. THE ONLINE GRADEBOOK IS NOT THE OFFICAL GRADEBOOK, BUT IS A GUIDE FOR STUDENT PERFORMANCE.

ASSIGNMENTS:

PLEASE REFER TO THE COURSE CALENDAR FOR DUE DATES AND ASSIGNED READINGS. ALL ASSIGNMENTS ARE DUE BY THE START OF CLASS ON THE DUE DATE.

Class Participation and Dialogue – 10 points (Objectives 2-7)

See above. A maximum of 10 participation points will be given when you initiate and sustain constructive, insightful, and respectful dialog either in class or online. Active participation in a class designed around the Socratic Method of instruction is critical and expected each week. Simply attending class or just positing a random, uninformed thought does not translate into participation points. Moreover, online communication of the same standard can support your effort to earn participation points. All students will be assessed on their contributions to class dialogue throughout the semester. It is critical that students answer accurately and confidently; as such, you will be evaluated on these criteria. I consider at least 3 meaningful contributions to class or inquires each week to be the minimal standard for quantitative and will advise students of expectations related to quality of engagement.

Quizzes – 15 points (3 @ 5 points each) (Objectives 3-7)

At three points during the semester, you will be asked to respond to a short quiz given orally at the beginning of class on the assigned night, with the benefit of your text, notebooks, and notes. Quizzes will be primarily multiple-choice and short essay format. You will have 10 minutes to complete the quizzes.

Case Law Review – 25 points (All Objectives):

By the third week of class, students should have met with a senior leader at a college or university. Working with this leader, identify a legal concern or topic of particular importance to the campus. Throughout the semester, students should identify three or four cases, acts, or sources of legal parameters guiding how the institutions should **respond to** or **avert** the legal challenge. Please note that a high-quality response will offer guidance for averting adverse legal action, not just responding to it. The final product demonstrating student skills in this area will be a 15 minute (maximum) oral presentation and visual presentation recorded using screencastomatic.com. Students should make their presentation private, password protected and should disclaim their status as a doctoral student (i.e. you are not a lawyer but a student of higher education administration) at SHSU at the beginning of the video. The final video presentation must be emailed to Dr. Fuller and the campus leader by March 27, 2018.

Community Engagement: In this course, you will not only learn knowledge and skills, but also actively use them to make a difference in our community to improve the quality of life, in this case the quality of life or administration at a college or university. This experience, it is hoped, will help you see yourself as a positive force in this world and deepen your understanding of your role as a citizen. Academic Community Engagement: In this course, students will not only become familiar with the concepts (or theories, skills, content) in (course name), but will use this knowledge to respond to issues that have been identified by leaders/administrators in the community and create a plan that makes a difference within a community. This ACE experience, it is hoped, will help students see themselves as positive forces in this world and able to improve the quality of life.

Briefs and Notebook – 25 points (All Objectives)

The primary means of preparing for class this semester will be through the collaborative preparation of legal briefs **each week**. Each week, every student will have at least 1 or 2 briefs to prepare as a review of specific cases. All briefs should be posted to the blackboard site **2 weeks** in advance of the class in which they will be discussed so that all students can read the entire week's briefs. A sample brief is attached to the last page of this syllabus. Briefs must be included in the student's electronic portfolio on blackboard, evaluated at the end of the semester via the final exam. Proper legal citations, clear issues questions, accurate answers to these issues questions, and descriptive facts of the case must be provided. One student each week will lead the discussion on the case(s) they briefed. Students should read all briefs each week. **Failure to prepare for class by reading or to prepare assigned briefs 2 weeks in advance will result in loss of 10 points for each missed brief. Students not providing 3 or more briefs in the semester will receive a failing grade for the course.**

Final Exam and Oral Case Study Response– 25 points (All Objectives)

The final class will consist of an in-class summative evaluation focused on the laws and legal concepts offered throughout the semester. As a part of this final exam, students will respond to a short case study which will allow the students to demonstrate the patent applications of key legal sources. Thus, the most effective means of preparation is reading all assigned materials and engaging in course dialogue.

BONUS POINTS

As this is a doctoral level course, bonus point opportunities are not offered.

COLLEGE OF EDUCATION INFORMATION

Please be advised that the College of Education conducts ongoing research regarding the effectiveness of the programs. You will receive one survey in the final semester prior to graduation regarding the operations of the unit during your time here. A second survey will occur within one year following graduation from or completion of a program, and will be sent to you and to your employer. This survey will focus on the preparation received at SHSU. Please remember that your response to these surveys is critical to SHSU program excellence.

ACADEMIC DISHONESTY:

I have a zero tolerance policy for academic dishonesty, plagiarism, mis- or non-attribution, and cheating. The work you submit must be the product of your *own original* and *current* efforts. When you incorporate the works, words, or ideas of another, you must cite them accordingly. If you have any question about appropriate methods of citation, consult a style manual or me. Additionally, academic integrity concerns will be referred to the graduate faculty and other appropriate disciplinary authorities. All students are expected to engage in all academic pursuits in a manner that is above reproach. Students are expected to maintain honesty and integrity in the academic experiences both in and out of the classroom. Any student found guilty of dishonesty in any phase of academic work will be subject to disciplinary action. The University and its official representatives may initiate disciplinary proceedings against a student accused of any form of academic dishonesty including, but not limited to, cheating on an examination or other academic work which is to be submitted, plagiarism, collusion and the abuse of resource materials. For a complete listing of the university policy, see:

<http://www.shsu.edu/administrative/faculty/sectionb.html#dishonesty>

STUDENT ABSENCES ON RELIGIOUS HOLY DAYS POLICY:

Section 51.911(b) of the Texas Education Code requires that an institution of higher education excuse a student from attending classes or other required activities, including examinations, for the observance of a religious holy day, including travel for that purpose. Section 51.911 (a) (2) defines a religious holy day as: "a holy day observed by a religion whose places of worship are exempt from property taxation under Section 11.20...." A student whose absence is excused under this subsection may not be penalized for that absence and shall be allowed to take an examination or complete an assignment from which the student is excused within a reasonable time after the absence. University policy 861001 provides the procedures to be followed by the student and instructor. A student desiring to absent himself/herself from a scheduled class in order to observe (a) religious holy day(s) shall present to each instructor involved a written statement concerning the religious holy day(s). The instructor will complete a form notifying the student of a reasonable timeframe in which the missed assignments and/or examinations are to be completed. For a complete listing of the university policy, see:

http://www.shsu.edu/~vaf_www/aps/documents/861001.pdf

STUDENTS WITH DISABILITIES POLICY:

I strive to make my classroom open and accessible to all students. It is the policy of Sam Houston State University that individuals otherwise qualified shall not be excluded, solely by reason of their disability, from participation in any academic program of the university. Further, they shall not be denied the benefits of these programs nor shall they be subjected to discrimination. Students with disabilities that might affect their academic performance are expected to visit with the Office of Services for Students with Disabilities located in the Counseling Center. They should then make arrangements with their individual instructors so that appropriate strategies can be considered and helpful procedures can be developed to ensure that participation and achievement opportunities are not impaired.

SHSU adheres to all applicable federal, state, and local laws, regulations, and guidelines with respect to providing reasonable accommodations for students with disabilities. If you have a disability that may affect adversely your work in this class, then I encourage you to register with the SHSU Counseling Center and to talk with me about how I can best help you. All disclosures of disabilities will be kept strictly confidential. NOTE: No accommodation can be made until you register with the Counseling Center. For a complete listing of the university policy, see: http://www.shsu.edu/~vaf_www/aps/811006.pdf

VISITORS IN THE CLASSROOM:

Unannounced visitors to class must present a current, official SHSU identification card to be permitted in the classroom. They must not present a disruption to the class by their attendance. If the visitor is not a registered student, it is at the instructor's discretion whether or not the visitor will be allowed to remain in the classroom. Given the difficult topics discussed, the need to fully focus on the aspects of the cases reviewed, and the Socratic, dialogical nature of the class, this instructor has chosen to allow only those students enrolled in the course to attend classes. Individuals—including current or former students, family members, children, or colleagues—not enrolled in a specific section of a class will not be permitted to attend class.

CELL PHONE AND COMPUTER USE IN CLASS:

While in class, students are expected to adhere to the highest ideals of respect and professionalism. This includes providing undivided attention to your professor and classmates. As such, class will be conducted as if it were a technology free zone with exception of the technology supported by SHSU. Cell phones should be silenced. Under no circumstances will texting, instant messaging, or other similar technologies be allowed. Laptop and desktop computers are to be turned off and stowed at all times during class. If you are actively using a cell phone or laptop while in class, you will likely be called upon to lead the class discussion, asked to put your technology away, face a reduction in class participation, or have your technology confiscated under class concludes. If, during class, you are made aware of an emergency situation and need to address it, you must inform the professor of the situation and ask to be excused to address the situation.

Tentative Course Schedule*

Week 1- January 23, 2018: The Four C's, The U.S. Constitution, Legal Citation Systems, Lexus-Nexus, Structure of U.S. Federal and State Legal Systems, Courts of Origination, Appeals, Institutional Governance Structures

Big Question(s): What are the sources and structures guiding legal and governance practices of an institution?

Assigned Readings:

- ☐ Read The U.S. Constitution: And Fascinating Facts About It
- ☐ Read Kaplin and Lee, Preface, Introduction, and Appendices A, B, C, D

Assignments Due: Briefs for Weeks 2 and 3 are due shortly after the first class.

Closing Case Study: None

Week 2- January 30, 2018: State Action, The Public/Private Dichotomy, Campus Authority, in loco parentis

Big Question(s): What are the boundaries of the campus' authority? What are the ramifications of being a state run or private institution?

Assigned Readings:

- ☐ Read Kaplin and Lee Ch. 1, paying special attention to Sect. 1.5.2 The state action doctrine and **related cases**
- ☐ The 1st, 4th, and 14th Amendments of the U.S. Constitution and 42 U.S.C. § 1983
- ☐ Read Forsythe's Guide to Section 1983 claims: http://www.constitution.org/brief/forsythe_42-1983.htm

Assigned Cases:

- ☐ Trustees of Dartmouth College v. Woodward, 4 Wheat 518 (1819) (State action)
- ☐ Burton v. Wilmington Parking Authority, 365 U.S. 187 (1961) (State action)
- ☐ Powe v. Miles, 407 F. 2d 73 (2nd Cir. 1968) (State action)
- ☐ Sword v. Fox, 446 F. 2d 1091 (4th Cir. 1971) (State action; protections for protestors)
- ☐ Rendell-Baker v. Kohn, 491 U.S. 43 (1989) (State action)
- ☐ Blum v. Yaretsky, 457 U.S. 991 (1982) (State action)
- ☐ Jackson v. Metropolitan Edison Co., 419 U.S. 345 (1974) (State action)
- ☐ Brentwood Academy v. Tennessee Secondary School Athletic Association, 531 U.S. 288 (2001) (State action)
- ☐ Leeds v. Meltz 898 F. Supp. 146 (E.D.N.Y. 1995) (Does state action trigger free speech protections)
- ☐ Kusnir v. Leach et al., 64 Pa. Commw. 65 (1982) (Collegiate authority)
- ☐ Anthony v. Syracuse, 231 N.Y.S. 435 (N.Y. App. Div. 1928) (Collegiate authority)
- ☐ Gott v. Berea College, 161 S.W. 204, 206 (Ky. 1913) (College authority)
- ☐ Hartman v. Bethany College, 778 F. Supp 286 (N.D. W. Va 1991) (College authority, Tort Liability)

Assignments Due: Briefs for Weeks 3 and 4.

Closing Case Study: Charting a Path for a Charter School

Week 3- February 6, 2018: Constitutional First, Fourth, Fourteenth Amendments, Hate Speech

Big Question(s): What freedoms are students afforded? What are the boundaries of an institution's ability to control student and faculty speech or actions?

Assigned Readings:

- ☐ The 1st, 4th, and 14th Amendments of the U.S. Constitution and 42 U.S.C. § 1983
- ☐ Read Defending Academic Freedom in the Age of Garcetti: <http://www.aaup.org/article/defending-academic-freedom-age-garcetti#.UqVdKOK8rKc>

- Read Kaplin and Lee, Section 9.5, Speech Codes and the Problem of Hate Speech

Assigned Cases:

- *Tinker v. Des Moines Independent Community School District*, 393 U.S. 502 (1969) (Freedom of Speech)
- *Pickering v. Board of Education*, 391 U.S. 563 (1968) (Freedom of Speech)
- *Soglin v. Kauffmann*, 418 F. 2d 163 (7th Cir. 1969) (Freedom of speech and assembly)
- *Connick v. Myers*, 461 U.S. 138 (1983) (Free speech and workplace regulation)
- *Garcetti v. Ceballos*, 547 U.S. 410 (2006) (Limitations to free speech)
- *Grossner v. Trustees of Columbia*, 287 F. Supp 535 (S.D.N.Y 1968) (Campus protests)
- *Keyishian v. Board of Regents of the University of the State of New York*, 385 U.S. 589 (1967) (Assembly)
- *Healy v. James*, 33 L. Ed. 226 (1972) (Assembly)
- *Iota Xi Chapter of Sigma Chi Fraternity v. George Mason University*, 993 F. 3d 389 (4th Cir. 1993) (Free speech protections)
- *Brown v. Board of Regents of Nebraska*, 640 F. Supp. 674 (1986) (Free speech and artistic expression)
- *Joyner v. Whiting*, 477 F. 2d 456 (4th Cir. 1978) (Freedom of press)
- *Papish v. Board of Curators of Missouri*, 410 U.S. 667 (1972) (Freedom of press)
- *Mt. Healthy v. Doyle*, 429 U.S. 274 (1977) (Employees freedom of speech and press participation)
- *RAV v. City of St. Paul*, 60 L.W. 466 (Hate speech and municipal codes)
- *U.S. v. City of Philadelphia*, 798 F.2d 81 (1986) (Municipal codes, recruiting, armed forces /institution relations)
- *UMW Post v. Board of Regents of University of Wisconsin*, 774 F. Supp. 1163 (E.D. Wis. 1991) (Hate speech)
- *Pro-Life Cougars v. University of Houston* (S.D. Tex, 2003) (Campus events and free speech protections)
- *Wisconsin v. Mitchell*, 61 L.W. 4575 (1993) (Hate speech penalty enhancements)

Assignments Due: Briefs for Week 5. Email Dr. Fuller with your expert-guided area for the Case Law Review.

Closing Case Study: All He Wants for Christmas is a Free Speech Nightmare OR Lashing out at Hampshire

Week 4- February 13, 2018: Substantive and Procedural Due Process (also an introduction to torts and negligence)
(CLASS WILL BE HELD ONLINE ASYNCHRONOUSLY)

Big Question(s): What procedures and assurances must be in place to take action against a student or faculty member?

Assigned Readings:

- Read Kaplin and Lee, Chapter 2
- Watch [Due Process in Higher Education Podcast](#)
- Review *Trustees of Dartmouth College v. Woodward*, 4 Wheat 518 (1819)

Assigned Cases:

- *Sweezy v. New Hampshire*, 354 U.S.234 (1957) (substantive due process)
- *Dixon v. Alabama State Board of Education*, 294 F.2d 150 (5th Cir. 1961) (sub. and procedural due process)
- *Gardenhire v. Chalmers*, 326 F. Supp. 1200 (D. Kan. 1971) (procedural due process)
- *Board of Curators of the University of Missouri v. Horowitz*, 435 U.S. 78 (1978) (procedural due process)
- *Goss v. Lopez*, 419 U.S. 565 (1975) (procedural due process)
- *Gabrilowitz v. Newman*, 582 F. 2d 100 (1st Cir. 1978) (procedural due process)
- *Dickey v. Alabama State Board of Education* 273 F. Supp 613 (M.D. Ala. N.D. 1967) (substantive due process)
- *Regents of University of Michigan v. Ewing*, 474 U.S. 214 (1985) (substantive due process)

Assignments Due: Briefs for Week 6.

Closing Case Study: Due Process in a Cup

Week 5- February 20, 2018: Tort Liability, Contracts, Qualified Immunity, In Loco Parentis

Big Question(s): What constitutes a contract? How is higher education guided by contractual agreements?

Assigned Readings:

- ☐ Read Kaplin and Lee, Chapter 3
- ☐ Watch [Contracts and Tort Liability Podcast](#)

Assigned Cases:

- ☐ *Corso v. Creighton University*, 731 F.2d 529 (8th Cir.1984) (Expulsions and breach of contract)
- ☐ *Abbariao v. Hamline University School of Law*, 258 N.W.2d 108 (Minn.1977) (Grades, due process, and contracts)
- ☐ *AASE v. State, South Dakota Board of Regents*, 400 N.W.2d 269 (1987) (breach of contract)
- ☐ *Eisman v. State*, 489 N.Y.S.2d 957 (1985) (Negligence, institutional liability)
- ☐ *Stineman v. Fontbonne College*, 664 F. 2d 1082 (8th Cir. 1981) (Negligence)
- ☐ *Smith v. Day*, 538 A. 2d 157 (Vt. 1987) [Search via citation] (Limitations to institutional liability)
- ☐ *Meese v. Brigham Young University*, 639 P. 2 d 720 (UT. 1981) (Duties, Negligence)
- ☐ *Potter v. N.C. School of the Arts*, 245 S.E. 2d 188 (N.C. App. 1978) (Duties, Negligence)
- ☐ *Mintz v. State*, 362 N.Y.S. 2d 619 (S. Ct. App. Div. 3rd Dept. 1975) [Search via citation] (Limitations, duties, Negligence)
- ☐ *Whitlock v. Duke University*, 637 F. Supp 1463 (1986) (Negligence)
- ☐ *Beach v. University of Utah*, 726 P.2d 413 (Utah 1986) (Negligence, student responsibility)
- ☐ *Graham v. Montana State University*, 767 P. 2d 331 Mass. 1983) (Negligence, student responsibility)
- ☐ *Peterson v. San Francisco Community College District*, 205 Call. Rptr. 842 (1984) (Grounds, negligence)
- ☐ *Rabel v. Illinois Wesleyan University*, 514 N.E. 2d 552 (Ill. App. Ct. 1987) (Negligence)

Assignments Due: Briefs for Week 7. Quiz 1 (State Action, Constitutional Rights, Due Process; Kaplin and Lee, Ch. 1 and 2)

Closing Case Study: None

Week 6- February 27, 2018: Faculty and Staff Contracts and Employment, Academic Freedom, Tenure

Big Question(s): What are some boundaries for hiring and firing faculty or staff? What legal and professional guidelines support tenure decisions?

Assigned Readings:

- ☐ Read Kaplin and Lee, Chapters 4 and 5, especially Section 4.2.2 *The At-Will Doctrine*
- ☐ Read Lederman, D. (2010). To Sue or Not to Sue, Inside Higher Ed. Retrieved from <https://www.insidehighered.com/advice/2010/05/14/hamill>
- ☐ Review *Mt. Healthy v. Doyle*, 429 U.S. 274 (1977)
- ☐ Read [AAUP Statement on Procedural Standards in Faculty Dismissal Proceedings](#)

Assigned Cases:

- ☐ *Board of Regents of State Colleges v. Roth*, 408 U.S. 564 (1972) (Faculty dismissal)
- ☐ *Perry v. Sinderman*, 408 U.S. 593 (1972) (Faculty dismissal, due process)
- ☐ *McConnell v. Howard University*, 621 F.Supp. 327 (1985), 818 F.2d 58 (1987) (Dismissals with cause)
- ☐ *Hamer v. Brown*, 831 F.2d 1398 (1987) (Dismissal with cause, financial exigency)
- ☐ *Upadhy v. Lagenberg*, 834 F.2d 661 (1987) (Property interests in faculty appointments, academic freedom)
- ☐ *Hill v. Talladega College*, 502 So.2d 735 (1987) (AAUP Standards, faculty dismissal)
- ☐ *Martin v. Parrish*, 805 F 2d 583 (5th Cir. 1986) (Free speech, faculty dismissal)

- ☐ *Vanderhurst v. Colorado Mountain College District*, 16 F. Supp. 2d 1297 (D.Colo. 1998)
- ☐ *Weinstein v. University of Illinois*, 628 F. Supp 862 (1986) (Intellectual property, tenure)
- ☐ *Price v. Oklahoma College of Osteopathic Medicine and Surgery*, 733 P.2d 1357 (1986) (Contract signing, contract protests)
- ☐ *Bowers v. Rector and Visitors of the University of Virginia*, 478 F. Supp. 2d 874 (2008) (Staff email use and Free Speech)

Assignments Due: Briefs for Week 9 (Skipping forward for Spring Break).

Closing Case Discussion: Freedom of Speech in the Heartland OR What's on at Wheaton

Week 7- March 6, 2018: Faculty and Staff Employment; Tenure, Academic Freedom; Grading

Big Question(s): What are some boundaries for hiring and firing faculty or staff? What legal and professional guidelines support tenure decisions, academic freedom, and grading?

Assigned Readings:

- ☐ Read the [AAUP 1940 Statement on the Principles of Academic Freedom and Tenure](#)
- ☐ Read Legal Issues Concerning Academic Freedom: <http://www.nea.org/assets/docs/HE/legalissues.pdf>
- ☐ Read Kaplin and Lee, Chapter 6
- ☐ Review *Martin v. Parrish*, 805 F.2d 583 (1986)

Assigned Cases:

- ☐ *Edwards v. California Univ. of Pennsylvania*, 156 F. 3d 488 (3d Cir. 1998) (Academic freedom and autonomy)
- ☐ *Parate v. Isibor*, 868 F.2d 821 (1989) (Grades and academic freedom)
- ☐ *Lovelace v. Southeastern Mass. Univ.*, 793 F.2d 419 (1986) (Property interests)
- ☐ *Honore v. Douglas*, 833 F.2d 565 (1987) (Appointments, committees, administrative authority)
- ☐ *Carley v. Arizona Board of Regents*, 737 P.2d 1099 (1987) (Student evaluations)
- ☐ *Hetrick v. Martin*, 480 F. 2d 705 (6th Cir. 1973) (Dismissals, freed speech)
- ☐ *Power v. Summers*, (226 F. 3d 815) (Adverse Employment Actions, Raises)
- ☐ *Harrington v. Harris*, 118 F. 3d 359 (5th Cir. 1997) (Adverse Employment Actions, Raises, contracts, discrimination)
- ☐ *Krotkoff v. Goucher College*, 585 F.2d 675 (1978) (Dismissal through financial exigency)
- ☐ *AAUP, Bloomfield Chapter v. Bloomfield College*, aff'd 346 A.2d 615 (App. Div. 1975) (Bona fide financial exigency)
- ☐ *Polishook v. City University of New York*, 234 A.D.2d 165 (N.Y. App. Div. 1996) (Financial exigency)

Assignments Due: Quiz 2 (Tortious liability, Contracts, Faculty Employment, Tenure, Kaplin and Lee Chs. 1-6), Briefs for Week 10

Closing Case Study: Not Content with Different Content

Week 8- March 13, 2018: Spring Break

- ☐ Use this time to read and prepare for class and case law reviews

Week 9- March 20, 2018: Student/Inst. Relationships, Judicial Affairs, Dismissal, Probation, Awarding Degrees

Big Question(s): What are some boundaries for academic and non-academic discipline of students? Can an institution rescind degrees it has already awarded?

Assigned Readings:

- ☐ Read Kaplin and Lee, Chapters 8 and 9
- ☐ Read Connel and Mallette: [The Right of Educational Institutions to Withhold or Revoke Academic Degrees](#)
- ☐ Review *Board of Curators of the University of Missouri v. Horowitz*, 435 U.S. 78 (1978)
- ☐ Review *Gabrilowitz v. Newman*, 582 F. 2d 100 (1st Cir. 1978)

- ☐ Review Regents of University of Michigan v. Ewing, 474 U.S. 214 (1985)
- ☐ Review Powe v. Miles, 294 F. Supp. 1269 (1968); 407 F.2d 73 (1968)

Assigned Cases:

- ☐ French v. Bashful, 303 F. Supp 1333 (E.D. La., New Orleans Div. 1969) (judicial proceedings, due process)
- ☐ University of Houston v. Sabeti, 676 S.W.2d 685 (1984) (due process, counsel in student hearings)
- ☐ Wright v. Texas Southern University, 392 F. 2d 728 (1968) (expulsion, due process)
- ☐ Esteban v. Central Missouri State College, 227 F. Supp 649 (W.D. Mo. 1967) (due process)
- ☐ Harris v. Blake, 798 F.2d 419 (1986) (due process)
- ☐ University of Texas Med. School at Houston v. Than, 874 S.W. 2d 389; 901 S.W. 2d 926 (Tex. 1995) (due process in grad. School)
- ☐ Haberle v. University of Alabama Birmingham, 803 F.2d 1536 (1986) (expulsion, amica curia)
- ☐ Russell v. Salve Regina College, 649 F. Supp 391 (1986) (contractual obligations, student life issues)
- ☐ Waliga v. Kent State, 488 N.E.2d 850 (1986) (Revocation of degrees)
- ☐ Johnson v. Lincoln Christian College, 501 N.E.2d 1380 (1986) (Revocation of degrees)

Assignments Due: Briefs for Week 11.

Closing Case Study: Burden of Proof OR Heathcliffe's Honorary Degree Hubbub

Week 10- March 27, 2018: Finance and financial aid, Admissions, Affirmative Action

Big Question(s): What has been the historic development of the courts' perspectives on affirmative action in higher education? Are financial aid packages contractual in nature?

Assigned Readings:

- ☐ Read Race in Admissions: A Tale of two Flagship Universities: <http://www.chron.com/default/article/Race-in-admissions-A-tale-of-two-flagship-4168315.php>
- ☐ Read Kaplin and Lee, Chapter 7

Assigned Cases:

- ☐ Fusell v. Louisiana Business College of Monroe, 519 So.2d 384 (1988) (Dismissals, breach of contract)
- ☐ Frame v. Residency Appeals Comm., 675 P.2d 1157 (1983) (In state tuition)
- ☐ Witters v. Washington Dept. of Services for the Blind, 474 U.S. 481 (1986) (Establishment clause, state funding)
- ☐ Steinberg v. Chicago Medical School, 371 N. E. 2d 634 (Ill. 1977) (Admissions, ancillary admissions info.)
- ☐ Pushkin v. Regents of Univ. of Colorado, 504 F.Supp 1292 (1980); 658 F.2d 1372 (1981) (admissions, student handicaps)
- ☐ Mississippi University of Women v. Hogan, 455 U.S. 1014 (1982) (Gender in admissions, institutional tradition)
- ☐ U.S. v. Commonwealth of Virginia, 44 F.3d 1229 (1995) (Gender in admissions, institutional tradition)
- ☐ DeFunis v. Odegaard, 416 U.S. 312 (1974) (Admissions; affirmative action)
- ☐ Regents of the University of California – Davis v. Bakke, 438 U.S. 265 (1978) (Admissions; affirmative action)
- ☐ Gratz v. Bollinger, 539 U.S. 244 (2003) (Admissions; affirmative action)
- ☐ Grutter v. Bollinger, 539 U.S. 306 (2003) (Admissions; affirmative action)
- ☐ Bob Jones University v. United States, 461 U.S. 574, (1983) (Admissions; affirmative action)
- ☐ Hopwood v. Texas, 78 F.3d 932 (5th Cir. 1996) (Admissions; affirmative action)
- ☐ Fisher v. University of Texas, 136 S.Ct. 2198 (2016) (Admissions; affirmative action)

Assignments Due: Briefs for Week 12. Case Law Review videos due to Dr. Fuller and to leaders.

Closing Case Study: A Tale of Two Universities

Week 11- April 3, 2018: Sexual Harassment, Disability (and Intro to Discrimination)

Big Question(s): What are the legal boundaries of sexual harassment in the higher education and workplace setting? What are the different types of sexual harassment and how can they be prevented or dealt with? What are best practices in dealing with students, faculty and staff in alleged sexual harassment situations?

Assigned Readings:

- ☐ Read Title IX of the Educational Amendments of 1972, Know Your rights: <http://www2.ed.gov/about/offices/list/ocr/docs/title-ix-rights-201104.pdf>
- ☐ Read Title IX and Sexual Harassment: <http://www2.edc.org/womensequity/pubs/digests/digest-title9-harass.html>
- ☐ Read Title VII of the Civil Rights Act of 1964: <http://www.eeoc.gov/laws/statutes/titlevii.cfm>

Assigned Cases:

- ☐ Gebser v. Lago Vista School District, 524 U.S. 274 (1998) (School liability in harassment)
- ☐ Davis v. Monroe Country Board of Education, 74 F. 3d 1186 (11th Cir. 1996) (School liability in harassment)
- ☐ Rowinsky v. Bryan Independent School District, 80 F. 3d 1006 (5th Cir. 1996) (Student on student harassment, duty to care)
- ☐ Korf v. Ball State, 726 F.2d 1222 (1984) (quid pro quo harassment, faculty harassment of students, faculty termination)
- ☐ Alexander v. Yale University, 631 F.2d 178 (1980) (Harassment via Title IX)
- ☐ Patricia H. v. Berkeley Unified School District, 830 F. Supp. 1288 (N.D. Cal. 1993) (Harassment via Title IX)
- ☐ Winston v. Maine Technical College System, 631 A. 2d 70 (Me. 1993) (Harassment, sexual compulsion)
- ☐ Adusumilli v. Illinois Institute of Technology, 1999 WL 528169 (7th Cir. July 20, 1999) (Harassment determinations)
- ☐ Franklin v. Gwinnett County Public School, 112 S. Ct. 1028 (1992); 60 L.W. 4167 (Restitution for harassment)
- ☐ Williams v. University System of Georgia, (2006) ([Available here](#)) (Rape, harassment)

Assignments Due: Briefs for Week 13. **SPECIAL GUEST: Jeanine Bias, Associate Dean of Students, SHSU will discuss how Title IX has changed the face of higher education.**

Closing Case Study: Star Power or An Unsuccessful Defense for Harassment.

Week 12- April 10, 2018: Student and Employee Discrimination

Big Question(s): What constitutes discriminatory action? What classes are protected by discrimination laws? What laws govern discrimination claims? How can institutional leaders respond to allegations of discrimination?

Assigned Readings:

- ☐ Read Kaplin and Lee, Section 4.5, 7.2.4 (nondiscrimination in admissions), 7.3.3 (...in financial aid), 10.4.1 (...in student orgs.), and 10.4.6 and 10.4.7 (...in athletics)
- ☐ Read Hart's (2007). [Disparate Impact Litigation](#)

Assigned Cases:

- ☐ McConaughy v. Univ. of Cincinnati, 2010 US Dist Lexis 142805 (Discrimination claim by students in academic dismissals, *Prima facie* cases doctrine)
- ☐ Manning v. Temple University, 157 F. App'x 509, (3d Cir. 2005) (Discrimination claim by students in academic dismissals, *Prima facie* cases doctrine) ****SEARCH BY CITATION.
- ☐ Qualls V. Cunningham, 183 F. App'x 564 (7th Cir. 2006) (Discrimination claim by students in academic dismissals, *Prima facie* cases doctrine) ****SEARCH BY CITATION.
- ☐ Emeldi V. University of Oregon, 673 F. 3d 1218 (9th Cir. 2012) (Discrimination claim by students in academic dismissals, *Prima facie* cases doctrine) ****SEARCH BY CITATION.
- ☐ Southeastern Community College v. Davis, 442 US 397 (1979) (Rehabilitation act, disability discrimination)

- ☐ Ahlmeyer v. Nevada System of Higher Education, 555 F. 3d 1051 (9th Cir. 2009)
- ☐ Jackson v. Northeastern Illinois University, 2001 U.S. App. Lexis 25339 (7th Cir. 2001). (Disparate Treatment racial discrimination claims by employees)
- ☐ Nichols v. Southern Illinois University Edwardsville, 432 F. sup. 2d 798 (S.D. Ill. 2006) (Discrimination claim by employee)
- ☐ Swinton v. Potomac Corp., 270 F.3d 794 (9th Cir. 2001) (Discrimination claim by employee)
- ☐ Trujillo V. Univ. of Colorado Health Sciences Center, 388 F.3d 1211 (10th Cir. 1998). (Discrimination claim by employee)
- ☐ Griggs v. Duke Power co. 401 US 424 (1971) (Disparate Impact claim)

Assignments Due: Briefs for Week 14.

Closing Case Study: Race to Nowhere

Week 13- April 17, 2018: Student – Institution Relationships, Student Organizations, Student Press, Fees

Big Question(s): Can institution's control the content and operations of student organizations? How can institutions recognize student organizations? What are the freedoms that student press enjoys? What is a content based restriction and is it Constitutional? Can an institution make a student pay a fee to support an activity they do not agree with?

Assigned Readings:

- ☐ Read Kaplin and Lee, Ch. 7

Assigned Cases:

- ☐ Gay Rights Coalition v. Georgetown Univ., 496 A.2d 567 (1985) (Org. recognition)
- ☐ Gay Student Services v. Texas A&M University, 737 F. 2d 1317 (5th Cir. 1984) (Org. recognition)
- ☐ Board of Regents of the Univ. of Wisconsin System v. Southworth, (Supreme Court Case, Spring 2000) (Student fees, free speech)
- ☐ Erzinger v. Regents of University of California, 185 Cal. Rpt. 791 (1982) (Student fees)
- ☐ Rosenberger v. University of Virginia, 515 U.S. 819 (1995) (Org. funding, religious groups, content-based restrictions)
- ☐ Widmar v. Vincent, 454 U.S. 263 (1981) (Org. recognition, religious groups)
- ☐ Sigma Chi Fraternity v. Regents of University of Colorado, 258 F.Supp. 515 (1966) (Organization suspension)
- ☐ Good v. Associated Students of Univ. of Washington, 542 P. 2d 762 (Wash. 1975) (required student organization membership)
- ☐ Galda v. Rutgers, 772 F.2d 1060 (1985) (Mandatory fees; First Amendment)
- ☐ Stanley v. McGrath, 719 F.2d 279 (1983) (Freedom of Press)

Assignments Due: Briefs for Week 15. **SPECIAL GUEST: Dr. Rhonda Beassie, Assistant General Counsel, Texas State University System will discuss applications of law and offer case studies for consideration.**

Closing Case Study: Data Dalliances

Week 14- April 24, 2018: Campus Housing, Alcohol, Hazing, Greek Organizations, Campus Safety

Big Question(s): Can students be required to live on campus? Are students protected against unreasonable search or seizure? Who is legally liable for Greek student actions: The institution, the student, or the Greek organization?

Assigned Readings: None.

- ☐ Review Complaint of Champion v. Florida A&M University ([Available here](#))

Assigned Cases:

- ☐ Pratz v. Louisiana Polytechnic Institute, 316 F. Supp. 872 (N.D. La. 1970), affd. 401 U.S. 1004 (1971) (parietal rule)
- ☐ Chapman v. Thomas, 743 F.2d 1056 (1984) (door-to-door solicitation in campus housing)
- ☐ Moore v. Student Affairs Committee of Troy State Univ., 284 F. Supp 725 (M.D. Ala. 1968) (search and seizure)
- ☐ Bradshaw v. Rawlings, 464 F. Supp. 175 (E.D. Pa. 1979) (Negligence, Liability in organizational parties/events)

- Ballou v. Sigma Nu General Fraternity, 352 S.E. 2d 488 (S.C. App. 1986) (Hazing)
- Furek v. University of Delaware, 594 A. 2d 506 (Del. 1991) (Fraternity initiation, hazing, institutional liability)
- Estate of Hernandez v. Arizona Board of Regents, 866 P. 2d 1330 (Az. 1994) (Wrongful death, liability)
- Wilson by Wilson v. Bellamy, 414 S.E. 2d 247 (N.C. App. 1992) (Sexual battery allegations in Greek orgs.)
- Beta Beta Chapter of Beta Theta Pi Fraternity v. May, 611 So. 2d 889 (Miss. 1993). (Negligence, student injury)

Assignments Due: All briefs.

Closing Case Study: Triggering Warnings

Week 15- May 1, 2018: Campus Safety, FERPA, Codes, Acts, Accreditation, Whistleblower Protections, Intellectual property, and Research

Big Question(s): What are the institution's obligations regarding campus safety? Are institution's liable for third party malicious activities? What do various Acts and Codes direct higher education practice? Is accreditation voluntary and how does it influence higher education? Who owns faculty works? What are at will employees? What are Whistleblower protections?

Assigned Readings:

- Review Kaplin and Lee, Section 7.6, Campus security and Section 3.2.2.6, Student suicide
- Read Kaplin and Lee, Chs. 11 and 12, particularly section 11.5
- Review Dept. of Ed. Handbook for Campus Safety and Security Reporting:
<http://www2.ed.gov/admins/lead/safety/handbook.pdf>
- Review Rabel v. Illinois Wesleyan University, 514 N.E. 2d 552 (Ill. App. Ct. 1987)
- Review Bradshaw v. Rawlings, 464 F. Supp. 175 (E.D. Pa. 1979)
- Read Fuller, M.B. & Lugg, E.T. (2012). Legal precedents guiding higher education accreditation. *Journal of Higher Education Management*, 27(1), 47-88.
- Read Springer's article: <http://www.aaup.org/issues/copyright-distance-education-intellectual-property/faculty-and-faculty-unions-2005>
- Read Work for Hire Cases: <http://copyright.columbia.edu/copyright/copyright-ownership/work-for-hire-case-summaries/>
- Read Fuller, M. B. (2017). An Update on FERPA.
- Read Kaplin and Lee, Chs. 11 and 12, particularly section 11.3
- Read Springer's article: <http://www.aaup.org/issues/copyright-distance-education-intellectual-property/faculty-and-faculty-unions-2005>
- Read Work for Hire Cases: <http://copyright.columbia.edu/copyright/copyright-ownership/work-for-hire-case-summaries/>
- In class: Clery Act: <http://clerycenter.org/jeanne-clery-act>
- In class: FERPA: <http://www.ed.gov/policy/gen/guid/fpco/ferpa/index.html>
- In class: HIPPA and Higher Education by Goldsmith: <https://net.educause.edu/ir/library/pdf/erm0159.pdf>
- In class: HEOA: <http://www2.ed.gov/policy/highered/leg/hea08/index.html?exp=0> (especially the Dear Colleague Letter)
- In class: USA PATRIOT Act, Harrison: http://www.nacua.org/documents/PatriotAct_Outline.pdf
- In class: Texas Education Code, Title 3, Subtitles A-F: <http://www.statutes.legis.state.tx.us/?link=ED>

Assigned Cases:

- Doe v. Gonzaga University, 24 P. 3d 390 (Wash. 2001) (FERPA)
- United States v. Miami University, No. 00-3518, 2002 U.S. App. LEXIS 12830 (FERPA, FOIA)
- State of North Dakota v. North Central Association, 99 F.2d 697 (1938) (Accreditation)

- ☐ Auburn University v. Southern Association of Colleges and Schools, 489 F.Supp.2d 1362 (2002) (Accreditation)
- ☐ Hays v. Sony Corp, 847 F2d 412 (7th Cir. 1988) (Intellectual property)
- ☐ Williams v. Weisser, 78 Cal. Rptr. 542 (Cal. App. 1969) (Intellectual property, class notes)
- ☐ Foraste v. Brown University, 248 F. Supp. 2d 71 (D.R.I. 2003) (intellectual property, work for hire)
- ☐ Weinstein v. University of Illinois, 628 F. Supp 862 (1986) (Intellectual property, tenure)
- ☐ University of Houston V. Elthon, 9 S.W.3d 351 (Ct. App. Tex. 1999) (Whistleblower protections)
- ☐ Shea v. Emmanuel College, 682 N.E. 2d 1348 (Mass. 1997) (At will employment and Whistleblower protections)
- ☐ Matikas v. University of Dayton, 788 N.E.2d 1108 (Ohio Ct. App 2003) (At will employment)
- ☐ McCallum v. North Carolina Cooperative Extension Service, 542 S.E. 2d 227 (N.C. Ct. App. 2001) (At will employment)
- ☐ Woundaris v. West Virginia State College, 588 S.E. 2d 406 (W. Va. 2003).

Assignments Due: Quiz 3 (Codes, Sexual harassment, Discrimination, Stu. Orgs., Hazing, general administrative governance theory). All Briefs for all weeks.

Closing Case Study: Lying with Numbers OR Accreditation Under Fire OR Liable for Libel

Week 16- May 8, 2018: Final Exam (Given in Class)

Assigned Readings: None. Prepare for the Final Exam and Oral Case Study Response.

Assigned Cases: Final Exam and Oral Case Study Response conducted in class

Assignments Due: Online portfolio/Wiki of cases, Case Study Assignments completed in class with final examination.

COURSE SYLLABUS IS SUBJECT TO CHANGE. SOME CLASSES MAY BE TAUGHT ONLINE.

Sample Brief

Dixon v. Alabama State Board of Education, 294 F. 2d. 150 (5th Cir. 1961).

Facts: Twenty-nine African American students of Alabama State College participated in a sit in a public eatery. A subsequent mass demonstration was held by students, including those from the sit in, outside a court proceeding involving another student. The students were reportedly in attendance at additional rallies involving hundreds of students in several cities. The president of Alabama State College advised the student body that the demonstration was disrupting the orderly conduct of the college. After another demonstration, the president presented the names of the students and his report of incidents to the State Board of Education. The Board expelled six students (the plaintiffs). Each student was then notified by the Board of the expulsion decision.

The students filed for a permanent injunction to restrain the State Board of Education from obstructing their right to attend college. The U.S. District Court for the Middle District of Alabama upheld the expulsions. The students appealed. The Court of Appeals reversed and remanded.

Issue: Does due process require any notice and some opportunity for a hearing in a state supported college?

Answer: Yes.

Reasoning of the Court: Though no rule existed requiring formal charges of a hearing, the college's usual practice has been to grant a hearing to students prior to decision of expulsion. The Court reasoned that any governmental action causing injury to an individual must adhere to Constitutional due process requirements. The minimum requirements of due process are to be determined by the circumstances and interests of the parties involved in the action. Actions of the government cannot be arbitrary.

Expulsion from a state college was determined to be a significant interest to an individual. Attending college is not in and of itself a constitutional right. However, "One may not have the Constitutional right to go to Baghdad, but the Government may not prohibit one from going there unless by means consonant with due process law." Therefore, expulsion required a commensurate level of due process since the state was attempting to prohibit an individual's privilege.

Due process requires notice and hearing. The notice ought to contain specific charges and grounds justifying expulsion. The hearing may vary according to the circumstances of the case. The student should be given names of witnesses, a report of the facts of the allegations. The student should have the opportunity to present to the proper authority a defense and corroborating testimony pertaining to the specific charges.

Additional Comments: Only private associations may obtain a waiver granting authority to make a decision without notice or a hearing pertaining to a valuable right. Also, student hearings need not be subject to the same level of adversarial argumentation before a judge (i.e. full legal representation before a judiciary officer) as required in the courts.