

Harassment, Hazing, Housing and Other Issues: The Law and Your Campus

Edited by Daniel J. Gephart

LRP Publications, Horsham, PA , 2000, 96pp.

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The prudent college administrator and faculty member has a real interest in keeping abreast of the rapid changes that occur in the legal environment as it relates to colleges and universities. Failure to do so can result in some unpleasant consequences for the institution with needless legal expenses and court settlements. This can be especially difficult for institutions in an age of shrinking public resources. The surest method of avoiding legal pitfalls is education (training). Therefore, Gephart's work should be required reading of all personnel employed in colleges and universities that deal with academics, student records, housing, and extracurricular activities.

The book was logically organized into chapters covering the most common areas of litigation that occur in higher education, including harassment, housing, fraternities, disabilities, FERPA (the Family Educational Rights and Privacy Act), athletics, and other notable cases organized together in a chapter entitled, "Etc." Each case began with a descriptive title and a lesson to be learned from the case followed by a brief narrative of the case and its results. At the conclusion of the summary, the actual court case was

cited. The appendix of the book contained the full text of the majority opinion of some of the more significant and groundbreaking decisions.

The first chapter on harassment contained a variety of interesting cases to the higher education professional. One case involved university liability for a hostile environment created by a visitor. Another cautionary case demonstrated the need for colleges and universities to take email harassment claims seriously. The major area of concern with regard to harassment for colleges and universities is sexual harassment. Three cases are discussed that involve sexual harassment between agents of the university and students. The reader can glean from these cases that one should be vigilant, consistent, and strictly adhere to established procedures in dealing with harassment claims.

Student housing is another area full of possible litigation for higher education institutions, and Gephart's second chapter discussed several cases from this aspect of student affairs. One case of interest was in New York where a court ruled that colleges and universities in that state have final authority over roommate selection in student housing. A different case found that the university was not liable for a student falling from a bed because bed rails were not legally mandated in that state. Another case involved a student with a disability claiming discrimination and harassment by university officials. The student was cited for safety violations for having boxes and furniture blocking egress from the student's room. When the student was eventually asked to move out of the residence hall for failing to take action, the student claimed discrimination. The court found that the university was not responsible for moving the items for the student because that would constitute services of a "personal nature," which, according to the Office of Civil Rights, are not required.

The third chapter covered was Greek affairs, which has been noted for numerous incidents of litigation. The first case involved the issue of hazing, and it was determined that national fraternities must take an active role in enforcing prohibitions on the hazing of pledges. Further cases illustrated the need for institutions to be proactive in preventing hazing and to make sure such measures will hold up under scrutiny in court. One case of note found that colleges could face liability for injuries if they allow employees to supervise fraternity parties.

The next chapter outlined several important cases in the area of individuals with disabilities. One major case ruled that colleges do not have to make accommodations for students with disabilities if doing so would compromise the integrity of the academic program. Another case demonstrated the wide latitude that courts give to academic affairs administrators. A student with a disability was dismissed from an academic program for having poor grades even after accommodations were made. The court found no wrongdoing on the part of the college. Another case ruled that colleges and universities, not the college officials themselves, were liable for claims of discrimination under the Americans with Disabilities Act (ADA). Other cases included those covering the scope of ADA, contact personnel for ADA, and accessibility.

The Family Educational Rights and Privacy Act (FERPA) constituted the fifth chapter of the book. FERPA is certainly a source of liability issues for higher education institutions. Gephart's selection of cases was representative of the varied nature of FERPA. A noteworthy case informed the reader that only tangible records are covered

by the legislation, not personal notes, conversations between college officials, or records that are kept in the sole possession of their creator. Other cases involved disclosure of records to third parties acting on behalf of the institution, tape recordings of student teaching activities, and testing for properly informing students of a subpoena of their educational records.

In light of recent injuries surrounding celebrations of collegiate sporting events, Gephart's chapter on liability in the realm of athletics was particularly enlightening. A cited case illustrated this point when numerous students at the University of Wisconsin were injured in a stampede while trying to get on the football field during a post-game celebration. The students were trampled when fans tried to get through gates in a fence that surrounded the field. Students sued the university claiming that they should have been aware that a stampede was possible. The Wisconsin Supreme Court disagreed when it ruled that the university officials were free from liability because they used professional judgment in having the fence erected. Other cases pertained to liability for intramural athletics, injuries to ballplayers at university playing fields, and repayment of scholarships for athletes who fail to qualify academically.

The final chapter of the book was a collection of cases in a variety of areas and appropriately entitled, "Etc." Some of the more interesting cases presented by Gephart identified that trespassers have no right to use university facilities, committees that appropriate student activities fees must hold public meetings, and colleges are not responsible for student safety during off-campus activities. The final case consisted of a ruling that college yearbooks are nonpublic forums and, therefore, a university may restrict their distribution without infringing on the free speech rights of the students.

Harassment, Hazing, Housing and Other Issues: The Law and Your Campus would make a useful resource for any higher education employee. However, there is one caveat to consider. Most of the cases presented by Gephart are from the mid- to late-1990s. The legal environment in America, particularly with regard to education, is quite fluid, and it would be irresponsible for a college or university official to read this book and assume that these cases are a definitive guide to follow in liability decision-making. Also, the legal environment does vary from state to state, so Gephart's work should certainly not be considered an exhaustive work on the topic. The book would, however, make a great addition to a comprehensive plan to educate employees about legal issues they may encounter in conducting the day-to-day activities related to their jobs. The book would also be useful in graduate programs training higher education leaders of tomorrow.