



WHAT DO LAWYERS HAVE TO DO WITH INTEGRITY?

WORKING WITH THE LAW, AND, YES, LAWYERS, TO ACHIEVE IT

Steve McDonald, General Counsel, Rhode Island School of Design
Jennifer Papillo, Associate General Counsel, University of Vermont
George Tetler, NECHE Commissioner, *Moderator*

2019 New England Commission of Higher Education Annual Conference

DISCLAIMER!

■ Always read the fine print:

- We are lawyers
- But we are not your lawyers
- This is general information, not legal advice

DISCLAIMER!

- Always read the fine print:
 - We are lawyers
 - But we are not your lawyers
 - This is general information, not legal advice

STANDARD NINE: INTEGRITY, TRANSPARENCY, AND PUBLIC DISCLOSURE

The institution subscribes to and advocates **high ethical standards** in the management of its affairs and in its dealings with students, prospective students, faculty, staff, its governing board, external agencies and organizations, and the general public. Through its **policies and practices**, the institution endeavors to exemplify **the values it articulates in its mission** and related statements. In presenting the institution to students, prospective students, and other members of the public, the institutional website provides information that is complete, accurate, timely, readily accessible, clear, and sufficient for intended audiences to make informed decisions about the institution.



THE LAW AND LAWYERS

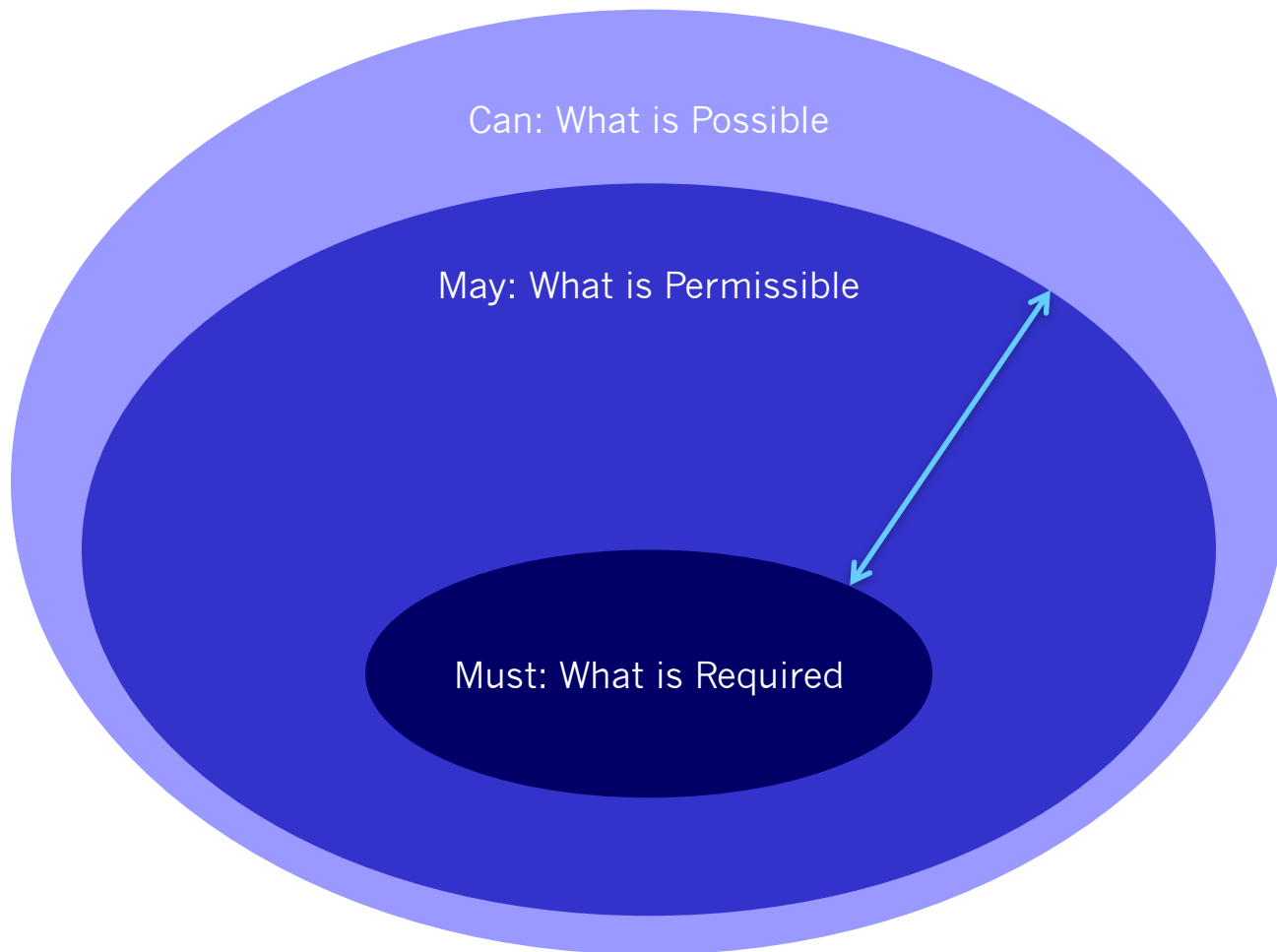
AN OWNER'S MANUAL



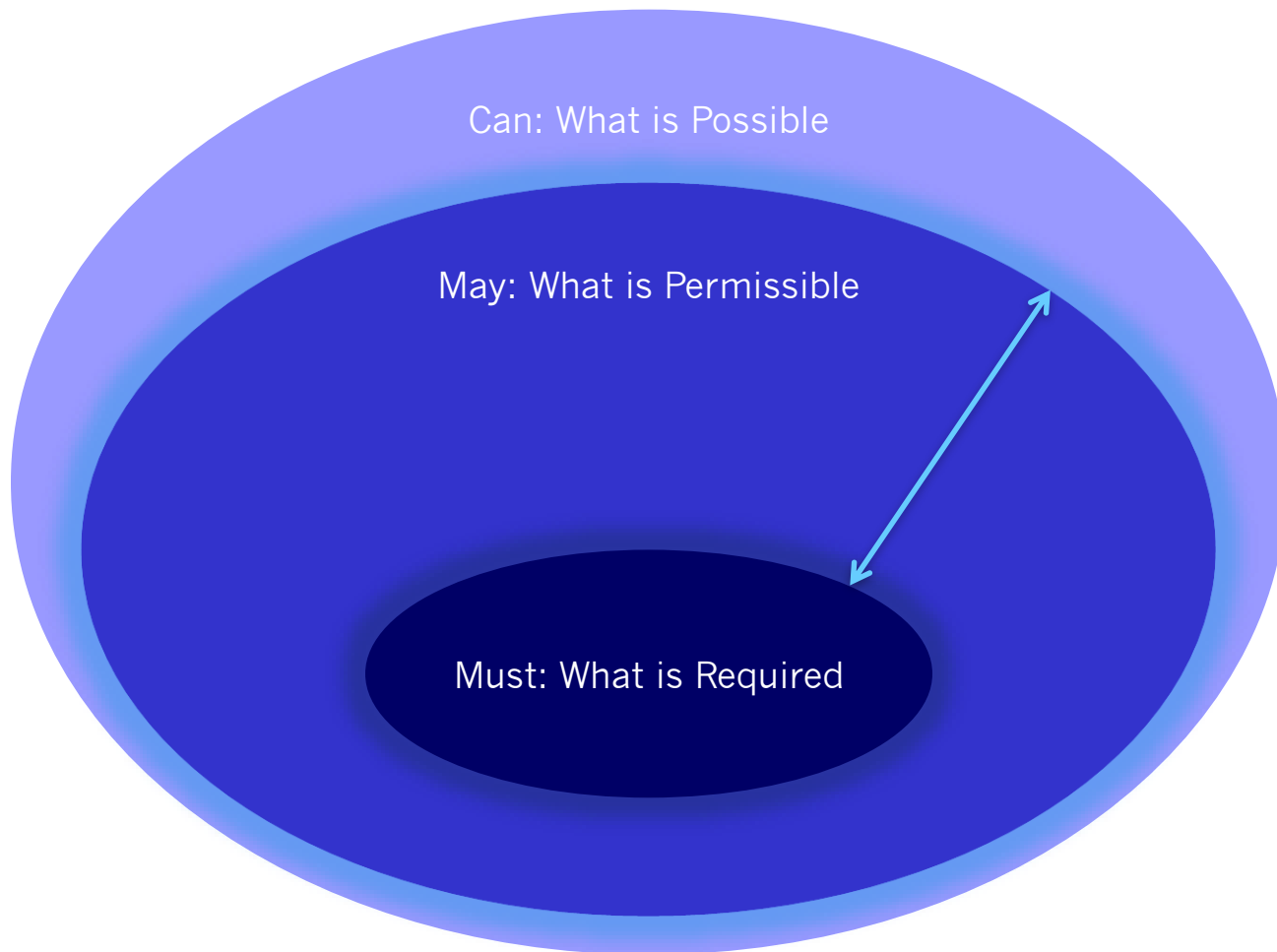
YES, WE ARE LAWYERS

- Insert favorite joke here:
 - The problem with lawyer jokes is that lawyers don't think they're funny, and nobody else thinks they're jokes
 - 99% of the lawyers make the rest of us look bad

THE OFFICE OF NO?



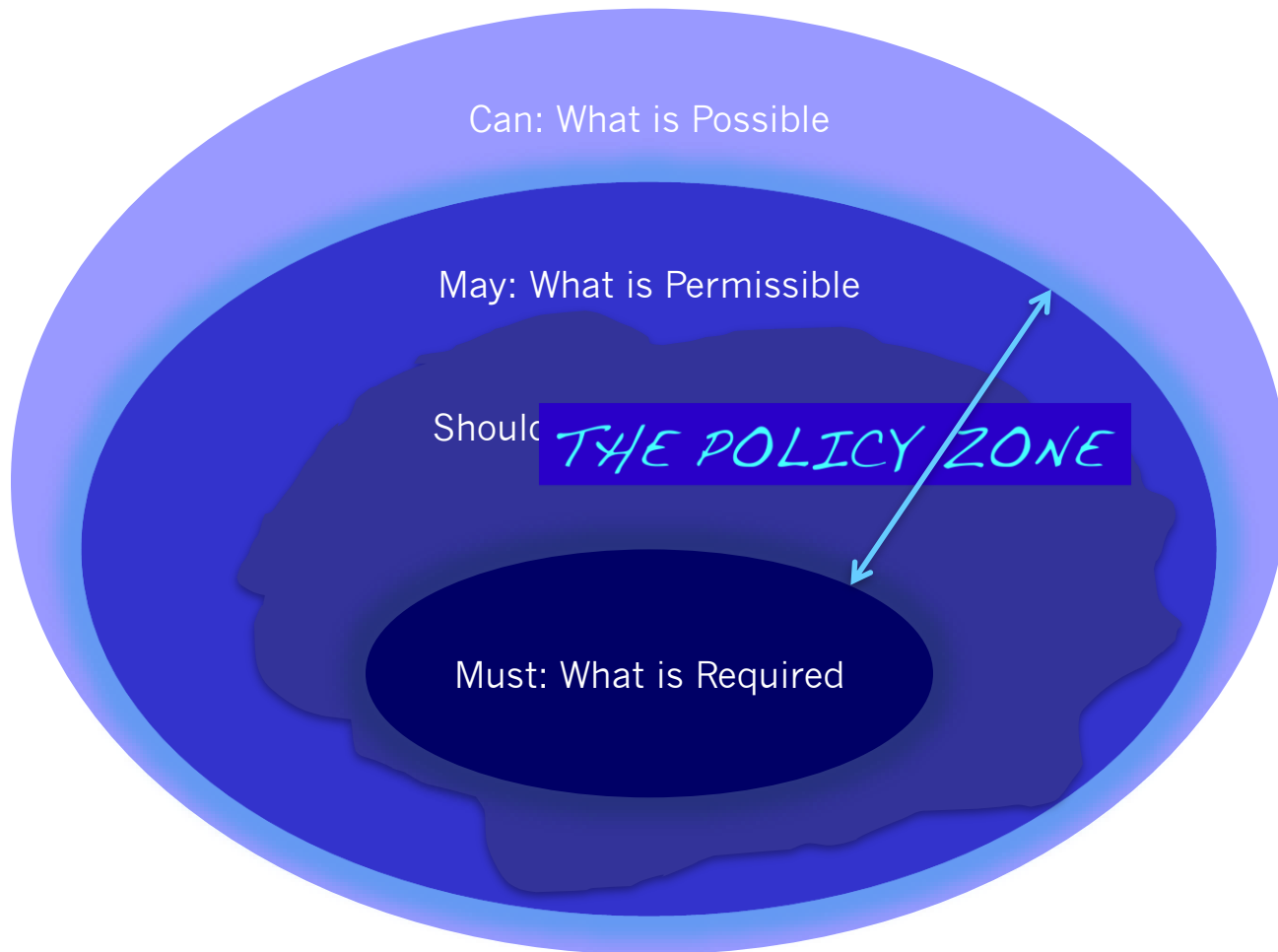
THE OFFICE OF NO?



YOU MAKE THE CALL

- The good news:
 - The law gives us considerable discretion
 - We get to make a choice
- The bad news:
 - The law gives us considerable discretion
 - We *have* to make a choice
- Not making a choice *is* making a choice, to accept the status quo

THE OFFICE OF NO?



DECISIONS, DECISIONS

- Law
- Risks
- Benefits
- Costs
- Values
- Relationships
- Public Relations
- Practicalities
- ...



FINDING YOUR INNER LAWYER

RISKY BUSINESS

- Risk is something to be *managed*, not *avoided*
 - Risk includes not only the bad things that might happen if you proceed, but also the good things that won't happen if you don't proceed
- Gray areas are just as gray from the other side, and therefore just as risky for the other side
 - Why cede that whole space to the other side?
- “Pigs get fed, but hogs get slaughtered”

ADVICE AND CONSENT

- Lawyers give *advice*, not orders
- Ask not: *Can (may)* I do X?
- Administrators make *decisions* and *choices*
- Ask: *How* can (may) I do X?

Lawyers don't make your decisions.

Lawyers help make your decisions better.

ADVISE AND DISSENT

- Your lawyer really isn't trying to botch things up by raising issues
- Your lawyer's job is to be a professional pessimist, for your protection
- Ultimately, most issues are questions of business and of risk management, and *you* make the call



THE LAW OF HIGHER EDUCATION

AN OVERVIEW



WHAT WE ARE

How We Think of Ourselves

- Educators

In the Eyes of the Law

- | | |
|----------------------------|--------------------------------|
| ■ Educators | ■ Power Plant Operators |
| ■ Employers | |
| ■ Landowners | ■ Hazardous Materials Handlers |
| ■ Landlords | |
| ■ Restaurants | ■ Health Care Providers |
| ■ Retailers | |
| ■ Entertainment Facilities | ■ Banks |
| ■ Fitness Clubs | ■ Internet Service Providers |
| | ■ ... |

PART I—GENERAL HIGHER EDUCATION PROGRAMS

Higher Education Act of 1965

(P.L. 89-329)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Higher Education Act of 1965".

TITLE I—GENERAL PROVISIONS

PART A—DEFINITIONS

SEC. 101. [20 U.S.C. 1001] GENERAL DEFINITION OF INSTITUTION OF HIGHER EDUCATION.

(a) INSTITUTION OF HIGHER EDUCATION.—For purposes of this Act, other than title IV, the term "institution of higher education" means an educational institution in any State that—

(1) admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate;

(2) is legally authorized within such State to provide a program of education beyond secondary education;

(3) provides an educational program for which the institution awards a bachelor's degree or provides not less than a year program that is acceptable for full credit toward a degree;

(4) is a public or other nonprofit institution; and

(5) is accredited by a nationally recognized accrediting agency or association, or if not so accredited, is an agency or association that has been granted preaccreditation status by such agency or association that has been recognized by the Secretary of the granting of preaccreditation status, and the Secretary has determined that there is satisfactory assurance that the institution will meet the accreditation standards of such an agency or association within a reasonable time.

(b) ADDITIONAL INSTITUTIONS INCLUDED.—For purposes of this Act, other than title IV, the term "institution of higher education" also includes—

(1) any school that provides not less than a 1-year program of training to prepare students for gainful employment in a recognized occupation and that meets the provision of paragraphs (1), (2), (4), and (5) of subsection (a); and

(2) a public or nonprofit private educational institution in any State that, in lieu of the requirement in subsection (a)(1), admits as regular students persons who are beyond the age of



One Hundred Tenth Congress of the United States of America

AT THE SECOND SESSION

*Began and held at the City of Washington on Thursday,
the third day of January, two thousand and eight*

An Act

to extend the Higher Education Act of 1965, and for other purposes.

enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I.—TABLE OF CONTENTS.

TITLE.—This Act may be cited as the "Higher Education Act of 1965".

OF CONTENTS.—The table of contents for this Act

is as follows:

Table of contents.

Effective date.

TITLE I—GENERAL PROVISIONS

Definition of institution of higher education.

Meaning of institution of higher education for purposes of title IV.

General definitions.

Freedom of student speech and association rights.

Freedom of territories and territorial student assistance.

Advisory Committee on Institutional Quality and Integrity.

Alcohol abuse prevention.

Rights and obligations.

Grants.

Information concerning the Federal student financial aid.

Agency in college tuition for consumers.

Sec. 112. Textbook information.

Sec. 113. Database of student information prohibited.

Sec. 114. In-State tuition rates for Armed Forces members, spouses, and dependent children.

Sec. 115. State higher education information system pilot program.

Sec. 116. State commitment to affordable college education.

Sec. 117. Performance-based organization for the delivery of Federal student financial assistance.

Sec. 118. Procurement flexibility.

Sec. 119. Certification regarding the use of certain Federal funds.

Sec. 120. Institution and lender reporting and disclosure requirements.

TITLE II—TEACHER QUALITY ENHANCEMENT

Sec. 201. Teacher quality enhancement.

TITLE III—INSTITUTIONAL AID

Sec. 301. Program purpose.

Sec. 302. Definitions; eligibility.

Sec. 303. American Indian tribally controlled colleges and universities.

Sec. 304. Alaska Native and Native Hawaiian-serving institutions.

Sec. 305. Predominantly Black Institutions.

Sec. 306. Native American-serving, nontribal institutions.

Sec. 307. Assistance to Asian American and Native American Pacific Islander-serving institutions.

Financial Aid - Compliance Requirements

Compliance Requirement	Compliance Organization	Description of Requirement	Responsible Department	Responsible Party	Frequency
FISAP (Fiscal Operations Report and Application to Participate)	US Department of Education	Fiscal Operations Report for program participation during the previous year. Application to Participate in the three campus-based programs (Federal Perkins Loan, Federal Supplemental Educational Opportunity Grant [FSEOG] and Federal Work-Study [FWS]).	Financial Aid	Director, Financial Aid	Annually, due by 10/1
General Provisions relating to student assistance programs - Financial Aid and Institutional Information	Federal, State and local regulations	The institution must publish and make readily available to current and prospective students information on the entire Federal, State, local, private and institutional financial assistance programs available to them.	Financial Aid	Director of Financial Aid	No deadline, but September 1 is suggested
Graham Leach Bliley		Requires the college to have a security plan to protect confidentiality and integrity of personal information. Privacy notices explaining an institution's information-sharing practices must also be provided.	Financial Aid		On-going
Form I-9, Employment Eligibility Verification	Department of Homeland Security U.S. Citizenship and Immigration Services	Employers are responsible for completion and retention of Form I-9 for each individual they hire for employment in the United States. This includes citizens and noncitizens.	Human Resources	Director, Employee & Labor Relations (Financial Aid for work study students)	Within 3 business days of new hire start date.
Family Educational Rights and Privacy Act (FERPA)	US Department of Education	Protects the privacy of student education records at all schools that receive funds under an applicable program of the U.S. Department of Education. FERPA gives parents certain rights with respect to their children's education records. These rights transfer to the student when he or she reaches the age of 18 or attends a school beyond the high school level. Students to whom the rights have transferred are "eligible students."	Academic Affairs Financial Aid Finance Legal	Multiple Parties	On-going

CONSUMER INFORMATION DISCLOSURES AT-A-GLANCE

These charts provide a summary of School Disclosure Requirements (Non Loan Related and Loan Related). Related Activities from the FSA Assessments are also included in the first column, if applicable.

Non Loan Related Disclosure Requirements

Topic/Related Activity	Recipient of the Requirement	Required Information/Regulatory, Law Resource Links	Method of Disclosure
Notice of Availability of Institutional and Financial Aid Information Activity 1	All Participating Title IV Schools	34 CFR 668.41 (a)-(d) , 34 CFR 668.42 , 34 CFR 668.43 Each school must annually distribute to all enrolled students a notice of the availability of the information that is required to be made available to students under the Family Educational Rights and Privacy Act of 1974 (FERPA) and under Section 485(a)(1), Section 485(f), Section 485(g), Section 485(h) and Section 485(j) The notice must list and briefly describe the information and include a statement of the procedures required to obtain the information. For information listed in the notice that is disclosed on a school's website, the notice must include the exact electronic address and a statement that the school will provide a paper copy upon request.	Notice distributed to each enrolled student
Contact Information for Assistance in Obtaining Institutional or Financial Aid Information Activity 1	All Participating Title IV Schools	34 CFR 668.43 ; 34 CFR 668.44 Each school must make available to prospective and enrolled students information regarding how and where to contact individuals designated to assist enrolled or prospective students in obtaining the institutional or financial aid information required to be disclosed under HEA Section 485(a)(1), Section 485(f), Section 485(h), and Section 485(j).	Made available through appropriate publications, mailing, or electronic media
Student Financial Aid Information Activity 1	All Participating Title IV Schools	34 CFR 668.41 (a)-(d) , 34 CFR 668.42 , 34 CFR 668.43 Each school must make available to prospective and enrolled students information about: <ul style="list-style-type: none"> • All the need-based and non-need-based federal, state, local, private and institutional student financial assistance programs available to students who enroll at the school • Terms and conditions of the Title IV, HEA loans • Criteria for selecting recipients and for determining award amount • Eligibility requirements and procedures for applying for aid • Methods and frequency of disbursements of aid • Rights and responsibilities of students receiving Title IV, HEA student Financial Aid, including criteria for continued student eligibility and standards for Satisfactory Academic Progress • Terms of any loan received as part of financial aid package, sample loan repayment schedule, and the necessity for repaying loans 	Made available through appropriate publications, mailing, or electronic media



The Handbook for Campus Safety and Security Reporting 2016 Edition



Geography: Location, Location, Location

CHAPTER 2



The *Clery Act* requires institutions to disclose statistics for reported crimes based on

- where the crimes occurred,
- to whom the crimes were reported,
- the types of crimes that were reported, and
- the year in which the crimes were reported.

This chapter identifies and breaks down the physical parameters of reporting and explains how to apply these parameters to institutions of different sizes and in different settings.

You must disclose statistics for reported *Clery Act* crimes that occur (1) on campus, (2) on public property within or immediately adjacent to the campus, and (3) in or on noncampus buildings or property that your institution owns or controls. The definitions for these geographic categories are *Clery Act*-specific and are the same for every institution regardless of its physical size or configuration. It doesn't matter whether your campus consists of leased space in a strip mall, occupies 10 city blocks or consists of a couple of buildings on another school's campus. "*Clery Act* geography" is defined the same way.

Understanding each of these geographic categories as defined by the *Clery Act* is vital to complying with the law. You must provide a breakdown of the statistics by category. You must disclose, for example, an Aggravated Assault that occurred on your campus, or on the public sidewalk in front of your campus or in a high school classroom in a nearby city that your institution rents for creative writing classes. Remember, location is the key here—crimes that don't occur within your *Clery Act* geography are not included in your *Clery Act* statistics, even if your students or employees are involved. As you read through the description of each of the three categories, it may be helpful to create a list of the buildings and

Geographic breakdown
citation
34 CFR 608.40(c)(4)

The definitions for these geographic categories are *Clery Act*-specific and are the same for every institution regardless of its physical size or configuration.



FEDERAL STUDENT AID HANDBOOK WITH ACTIVE INDEX

2018–2019

Federal Student Aid
An OFFICE of the U.S. DEPARTMENT of EDUCATION

PROUD SPONSOR of
the AMERICAN MIND®

Index to the 2018–2019 Federal Student Aid Handbook

Page numbers are given in the following format: Volume number–Page number.
AVG in place of a volume number refers to the “Application and Verification Guide.”
In general, concepts with established acronyms are found under the acronym, e.g., FAFSA, FSEOG.
Entries that extend to multiple pages are in blue.

A

- A-numbers. See Alien Registration Numbers
- AAI. See Adjusted available income
- Abbreviated loan periods, 5–91
- Ability-to-benefit
 - alternatives for high school completion, AVG–89
 - career pathway programs and, 1–12, 3–44
 - ceasing to be an ATB student, 1–12
 - tests, 1–12
- Absences, excused, 3–19, 5–62
- ACA. See Administrative cost allowance
- Academic amnesty/renewal, 1–16
- Academic calendar, 3–6, 3–47, 3–51
- Academic coursework, definition, 3–75
- Academic plans, 1–17
- Academic progress, 3–104
- Academic qualifications, student eligibility for aid and, 1–8
- Academic terms. See Terms, academic
- Academic year. See also Borrower-Based Academic Year; Scheduled Academic Year
 - awards affected when a program does not meet standards for, 3–4
 - clock hours and, 3–4, 3–7, 3–10
 - credit hours and, 3–4
 - determining program length, 3–125
 - direct assessment programs and, 2–29
 - Direct Loan Program and, 3–95, 3–96, 3–101, 3–123
 - grade level progression and, 3–113
 - loan limits and, 3–101
 - minimum program length, 3–4
 - obtaining documentation from prior school for transfer students, 3–117
 - proration and, 3–115
 - reductions in length of, 3–4
 - reporting to COD, 3–92, 3–126
 - requirements, 3–3
 - transfer student with overlapping academic years, 3–121
 - two payment period limit, 3–9
 - “two-week” rule, 3–6
 - weeks of instructional time, 2–30, 3–3
 - when to update, 3–127
- Acceleration of loans. See Loan acceleration
- Access and Identity Management System, 2–64
- Access device
 - definition, 4–57
- Accounting
 - accounting systems, 4–139
 - accrual basis, 2–80
 - cash basis, 2–85
 - financial management systems, 4–165
 - Generally Accepted Accounting Principles, 2–76, 2–80, 4–139
 - Generally Accepted Government Auditing Standards, 2–76, 2–80
- Accounts. See also Bank accounts
 - crediting a student’s account, 4–43, 5–99
 - education savings accounts, AVG–18
 - education savings accounts (table), AVG–61
 - interest-bearing, 4–17
 - outstanding charges and, 5–99

PREVIEW OF COMING “ATTRACTIONS”



116TH CONGRESS
1ST SESSION

H. R. 4674

To amend and strengthen the Higher Education Act of 1965 to lower the cost of college for students and families, to hold colleges accountable for students' success, and to give a new generation of students the opportunity to graduate on-time and transition to a successful career.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 15, 2019

Mr. SCOTT of Virginia (for himself, Mrs. DAVIS of California, Mr. GELMALVA, Mr. COURTNEY, Ms. FUDGE, Mr. SARLAN, Ms. WILSON of Florida, Ms. BONAMICI, Mr. TAKANO, Ms. ADAMS, Mr. DESAULNIER, Mr. NOBLES, Ms. JAVAPAL, Mr. MORELLE, Ms. WILD, Mr. HARDER of California, Ms. SCHIEHL, Mrs. HAYES, Ms. SHALALA, Mr. LEVIN of Michigan, Ms. OMAR, Mr. TRONE, Mrs. LEE of Nevada, Mrs. TRAHAN, and Mr. CASTRO of Texas) introduced the following bill; which was referred to the Committee on Education and Labor

A BILL

To amend and strengthen the Higher Education Act of 1965 to lower the cost of college for students and families, to hold colleges accountable for students' success, and to give a new generation of students the opportunity to graduate on-time and transition to a successful career.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1165

1 (2) by inserting “and” after the semicolon; and
2 (3) by adding at the end the following:

3 “(B) information from the Integrated
4 Postsecondary Education Data Survey, the
5 postsecondary student data system established
6 under section 132(l), or a successor system
7 (whichever includes the most recent data), that
8 is disaggregated by race in a manner that cap-
9 tures all the racial groups specified in the
10 American Community Survey of the Bureau of
11 the Census;”.

12 **PART G—UNITED STATES INSTITUTE OF PEACE**
13 **SEC. 10501. REAUTHORIZATION OF THE UNITED STATES IN-**
14 **STITUTE OF PEACE.**

15 Section 1710 of the United States Institute of Peace
16 Act (22 U.S.C. 4609) is amended in subsection (a)(1) by
17 striking “fiscal years 2009 through 2014” and inserting
18 “fiscal year 2021 and each of the 5 succeeding fiscal
19 years”.

○

IT TAKES A VILLAGE

- “This is our General Counsel – he keeps us safe”
 - We *help* keep you as safe as you *want* to be
- Approaches:
 - Central compliance office/“czar”
 - (*Not* the lawyer – it’s a conflict of roles)
 - Steering committee of “usual suspects”
 - (*Including* the lawyer, as a lawyer)
 - In either case, diffuse responsibility *and* authority



The Higher Education Compliance Alliance (HECA) provides the higher education community with a centralized repository of information and resources for compliance with federal laws and regulations.

Compliance News

[National Association of Student Financial Aid Administrators Analysis of the Department of Education's Final Accreditation Regulations \(November 8, 2019\)](#)

11/08/2019

[Notice of Proposed Rulemaking by the Department of Labor on Fluctuating Workweek Method of Computing Overtime \(November 5, 2019\)](#)

11/05/2019

Announcements

Welcome to the redesigned Higher Education Compliance Alliance (HECA) web site! The site features the same great content but has been redesigned to provide a more responsive and user-friendly user experience. We hope you find the site to be useful and informative.

Finally, if you would like to suggest content for the Compliance Matrix or otherwise offer feedback regarding this resource, we invite you to share your thoughts using the [Contact Us](#) section. We will consider your feedback as we continue to make updates. Thanks for your efforts to keep the web site up-to-date!

<http://higheredcompliance.org>

SORT BY TOPICS

SORT BY DEADLINES

Statute

Regulations

Statutory Summary

Reporting Requirements &
Deadlines

Additional Resources

Academic Programs

Age Discrimination Act of 1975
[42 U.S.C. §§ 6101-6107](#)

ED: [34 C.F.R. § 110](#)
HHS: [45 C.F.R. § 90](#)
NSF: [45 C.F.R. § 617](#)

- Prohibits discrimination based on age in educational or academic programs or activities that receive federal financial assistance.
- Prohibits retaliation for filing a complaint with OCR or participating in a mediation or investigation of a violation, or for advocating for a right protected by the Act.

Not Applicable

- [Human Resources](#)

Americans with Disabilities Act of 1990
[42 U.S.C. §§ 12101-12213](#)

DOJ: [28 C.F.R. § 35](#)
DOJ: [28 C.F.R. § 36](#)
DOL: [29 C.F.R. § 1640](#)
EEOC: [29 C.F.R. § 1630](#)

- Provides broad nondiscrimination protection in employment, public services, and public accommodations (including colleges and universities) for individuals with disabilities.
- Requires reasonable accommodations (e.g., a modification or adjustment to the status quo inherent in the program or activity) to allow a qualified person with a disability to participate fully in the educational or academic programs and activities of the university.
- Enforced by multiple federal agencies, including the U.S. Department of Justice, U.S. Department of Labor, U.S. Department of Education, and the U.S. Equal Employment Opportunity Commission.

Not Applicable

- [Disabilities and Accommodations](#)

Higher Education Act: Institutional and Financial Assistance Information for Students
[20 U.S.C. 1092](#)

ED: [34 C.F.R. § 668 subpart D](#)

- Among other things, requires the following annual disclosures to enrolled and prospective students:
 - f) diversity statistics;
 - g) retention rates;
 - h) employment placement data; and
 - i) fire safety report.
- c) transfer of credit policies;

No deadline is mandated, but
October 1 annually is suggested.

- [HEA Compliance Obligations](#)

Higher Education Act: Textbook Information
[20 USC § 1015\(b\)](#)

ED: [34 C.F.R. § 600](#)
ED: [34 C.F.R. § 668 subpart D](#)

- Requires disclosure of the course schedule along with the International Standard Book Number (ISBN) of every required and recommended textbook and supplemental material and retail price information to all prospective and enrolled students.

No deadline is mandated, but
October 1 annually is suggested.

- [HEA Compliance Obligations](#)

<https://www.higheredcompliance.org/compliance-matrix>





STRANGER THAN FICTION ...

THE TOP 5 LEGAL ISSUES WE THINK YOU SHOULD KNOW ABOUT (TODAY)



STUDENT MENTAL HEALTH

- Upon arrival at Your Institution (YI), Student received information about YI's Student Health Services.
- Experiencing the pressures of college, by October Student resumed cutting, a behavior that first started in high school.
- In January, Student overdosed on codeine medication and was hospitalized. Student's treating clinicians recommended that Student engage in psychotherapy after discharge. Student met with a mental health counselor in Student Health Services. After discussing treatment options, it was recommended that Student accept a referral for weekly treatment outside YI; Student refused.
- In April, Student tells a Teaching Assistant about a bottle of sleeping pills they had obtained and intended to take, but decided not to.



As a senior level administrator being told this information, what's the first question you need answered?

Student should not be on campus.
How do we place them on leave?

What is YI's reporting protocol? Student
didn't actually use the pills ...

Can we call Student's parents or
guardian?

Is Student currently connected and
safe?

Who deals with students in distress,
because it's not me!

In ruling for victim in UCLA attack, California Supreme Court says universities should protect students

More college students are seeking help for mental health, but what happens when there aren't enough counselors?

STRAIGHT FROM THE HEADLINES

 The Stanford Daily

'Inhumane and deficient:' student groups rally against 'discriminatory' leave of absence policies

Plaintiffs argue that Stanford has a “blanket practice” of pressuring students suffering from severe mental health issues into taking leaves of ...

Feb 21, 2019

M.I.T. Is Not Responsible for Student's Suicide, Court Rules



The campus of the Massachusetts Institute of Technology in Cambridge, Mass. A court ruled Monday that the university could not be held responsible for a student's suicide in 2009. Charles Krupa/Associated Press



Clemson student suicide case to go to trial next month

One in four adults live with **mental illness** in their lives, but many go years before getting help.





SPOTLIGHT  | POWERED BY The Inquirer

Feeling suicidal, she turned to her college. But it had just cut campus mental health services.

SEXUAL MISCONDUCT

- Jane Doe reports to your Title IX Office that she was sexually assaulted by John Roe in her off-campus apartment. Jane and John had been in a consensual relationship, and were engaged in a consensual encounter, but Jane felt that John had exceeded the scope of her consent.
- Following a detailed investigation, in which both parties had an opportunity to review and respond to the evidence, the investigator finds John responsible for sexual misconduct and suspends him for two years (at which point Jane will have graduated).
- John sues your institution and seeks immediate reinstatement, claiming that his due process rights were violated, because he wasn't given an opportunity to see the investigator's notes, to have a hearing by a panel of his peers, and to cross-examine Jane.



Your lawyer asks how you would like to respond to the lawsuit. What do you tell her?

Concede – We’ve clearly violated the new Title IX regulations.

A

Offer to settle – We’ll share all potentially exculpatory material and hold a panel hearing, but without direct cross-examination.

B

Full speed ahead – We followed our procedures to the letter, and John was treated fairly.

C

Ask someone else – I’ve just retired.

D

STRAIGHT FROM THE HEADLINES

More Title IX Lawsuits by Accusers and Accused

Increased legal challenges place mounting pressure on universities' Title IX proceedings.

By [Greta Anderson](#) // October 3, 2019

9 COMMENTS



Students Accused of Sexual Misconduct Had Title IX Rights Violated by Wesley College, Says U.S. Department of Education

Department of Education receives more than 100,000 public comments on Title IX overhaul

by Diana Stancy Correll
| January 31, 2019 07:39 PM



He Violated Sexual-Misconduct Policy. He's Back in the Classroom. What Should the University Do Now?

By [Emma Pettit](#) | NOVEMBER 15, 2019 ✓ PREMIUM



Alamy

A professor's behavior at the U. of Texas at Austin was inappropriate enough to warrant punishment but not dismissal. Some students are now protesting vehemently as he returns to teaching.

In 2017 an essay written by a former graduate student dropped like a bombshell in the University of Texas at Austin's English department.



The former student, Jenn Shapland, wrote in *The Arkansas International* about an unnamed professor who "first came on to me (after me?) in an email early in the semester I took his required class, telling me 'You write like a dream.'"

They flirted by email and started having sex, Shapland wrote. Then, it ended, and

she questioned the power imbalance between herself and the professor.

RESPONDING TO CONTROVERSIAL SPEECH

- Professor Jones operates several social media accounts, one of which is under the name “DrSupreme” on a site dedicated to connecting with Co-Eds.
- DrSupreme often posts philosophical musings, however in early spring DrSupreme’s posts become concerning; several recent messages are ones that many would view as racist and sexist. Some of these posts mention female college students and students of color as a “troubled population that needs correction.”
- The institution where Professor Jones works espouses diversity and inclusion as core values.
- Students are well aware that DrSupreme is Professor Jones and are concerned they will be graded more harshly because of their race and gender after seeing recent postings.



Students approach you in the hallway with various demands, and the news media has taken interest in the story. The Department Chair is similarly distraught. How do you proceed?

Immediately fire DrSupreme

Send copies of DrSupreme's postings to the Bias Response Team

Conduct a threat assessment given the change in DrSupreme's tone

Issue a statement to campus condemning viewpoints and promoting campus values

1 and 3

2, 3, and 4

More States Are Passing Campus Free-Speech Laws. Are They Needed, or Is the Crisis Talk Overblown?

STRAIGHT FROM THE HEADLINES

CAMPUS FREE SPEECH

Professor Punished for Teaching Students About Badly Worded Holocaust Poll

University of Michigan ends Bias Response Team in free speech lawsuit settlement

Posted Oct 29, 2019

Racist Incidents at Syracuse University Putting Students, Faculty On Edge

A string of racist and anti-Semitic hate speech and graffiti culminated with the Christchurch shooter's manifesto being airdropped to Syracuse students

By EJ DICKSON



Students at Syracuse University stage a sit-in on campus at the Barnes Center on November 14th, 2019. Jessica Tran



ANN

A Professor's Comments, a Board Chair's Reaction and Academic Freedom

Temple professor lost his job as CNN commentator over speech he gave at United Nations. University says it is defending his right to free speech, but board chair's comments suggest



The Professor's Views Are Loathsome, Stupid, and Ignorant, the Provost Said. But He Won't Be Fired.

Emory Wants to Fire Law Professor Who Said N-Word Twice

SCRUTINY OF ADMISSIONS PRACTICES

- An FBI agent shows up unannounced at your Admissions Office, asking to see the application materials submitted by a Chinese-American student.
- Your Director of Admissions refers the FBI agent to the Office of the General Counsel, but also reviews the student's records. The student had excellent credentials, but his grades do not reflect that. It's a good thing, the Director of Admissions thinks, that the student was an early-decision candidate and therefore wasn't eligible for any special financial aid.
- When the student is advised of the inquiry and questioned about the discrepancy, he asserts that this is all just evidence of your discrimination against Asian students and threatens to sue.



Who should handle this?

The Director of Admissions – it's an admissions matter

Campus Police – it's a criminal matter

The Office of Diversity and Inclusion – it's a discrimination matter

The General Counsel – it's a legal matter

The Media Office – it's going to be a public matter

The President – it's going to be a really big matter

All of the above – it's all of the above

Admissions officers and high school counselors are grappling with how much the Varsity Blues scandal reflects on the whole field.

By Rick Seltzer // September 30, 2019



LOUISVILLE, Ky. -- More than six months after the Varsity Blues scandal broke, those who work in college admissions are still coming to terms with what the bribery allegations say about how higher education decides who gets into which campus.

BOSTON
GLOBE/CONTRIBUTOR
/GETTY IMAGES
William "Rick" Singer leaves
the John Joseph Moakley
United States Courthouse in
Boston on March 12, 2019.

STRAIGHT FROM THE HEADLINES

Harvard Won a Key Affirmative Action Battle. But the War's Not Over.

More than 40 years after the Supreme Court first weighed in on race-conscious admissions, the fight remains as fractious as ever.



College Admissions Group Votes to Allow More Aggressive Student Recruiting

Changes come amid threat of continued legal action by the Justice Department, which said current rules stifled competition

Admissions Pressure Grows



NACAC says it needs to remove several measures from its code of conduct to avoid a Justice Department suit. What do the provisions do? Arguably they protect students.

By Scott Jaschik // September 3, 2019



RESCISSION OF DACA

- Oral arguments were heard by the US Supreme Court on November 12, 2019 in the three consolidated cases challenging the rescission of the Deferred Action for Childhood Arrival Program (DACA).
- On TBD in 2020, the US Supreme Court issues a decision which upholds the constitutionality of the Trump Administration's justification and process used to rescind protections afforded by DACA.
- DACA recipients on your campus become immediately subject to deportation and work authorizations are pulled.



As a senior level administrator who has just heard this news, which action(s) would you most want to consult with counsel about?

Terminating Employment of
Dreamers

Issuing a Statement to Campus
Detailing Values

Providing Support Resources
to Impacted Members of
Campus

Identifying Dreamers to ICE

Doing Nothing

All of the Above

'Nine Justices Deciding Your Fate': Young Immigrants Face Uncertainty as the Supreme Court Considers Ending DACA

STRAIGHT FROM THE HEADLINES



Over 1,700 undocumented UC students will be affected by outcome of DACA case before Supreme Court

JANELLE MARIE SALANGA — CAMPUS@THEAGGIE.ORG 4 HOURS AGO

UC takes DACA fight to the Supreme Court

By Nicole Freeling, UC Newsroom
Thursday, November 7, 2019



Student Activists Are Pushing Back Against Immigration Policy. For Some, It's Personal.

By Danielle McLean | NOVEMBER 05, 2019 PREMIUM



Columbia submits joint amicus brief defending DACA

Facebook Twitter Email More



Campus Staff With DACA Status Face Uncertainty Too

QUESTIONS?





YOU DECIDE

- **INSERT LINK TO POLL QUESTION 5**
- As a senior level administrator who has just heard this news, which action(s) would you most want to consult with counsel about?
 - Terminating Employment of Dreamers
 - Issuing a Statement to Campus Detailing Values
 - Providing Support Resources to Impacted Members of Campus
 - Identifying Dreamers to ICE
 - Doing Nothing
 - All of the Above

YOU DECIDE

- **INSERT LINK TO POLL QUESTION 4**
- Who should handle this?
 - The Director of Admissions – it's an admissions matter
 - Campus Police – it's a criminal matter
 - The Office of Diversity and Inclusion – it's a discrimination matter
 - The General Counsel – it's a legal matter
 - The Media Office – it's going to be a public matter
 - The President – it's going to be a really big matter
 - All of the above – it's all of the above

YOU DECIDE

- **INSERT LINK TO POLL QUESTION 3**
- Students approach you in the hallway with various demands, and the news media has taken interest in the story. The Department Chair is similarly distraught. How do you proceed?
 - Immediately fire DrSupreme
 - Send copies of DrSupreme's postings to the Bias Response Team
 - Conduct a threat assessment given the change in DrSupreme's tone
 - Issue a statement to campus condemning viewpoints and promoting campus values
 - 1 and 3
 - 2, 3, and 4

YOU DECIDE

- **INSERT LINK TO POLL QUESTION 2**
- Your lawyer asks how you would like to respond to the lawsuit. What do you tell her?
 - Concede – We’ve clearly violated the new Title IX regulations.
 - Offer to settle – We’ll share all potentially exculpatory material and hold a panel hearing, but without direct cross-examination.
 - Full speed ahead – We followed our procedures to the letter, and John was treated fairly.
 - Ask someone else – I’ve just retired.

YOU DECIDE

- **INSERT LINK TO POLL QUESTION I**
- As a senior level administrator being told this information, what's the first question you need answered?
 - Student should not be on campus. How do we place them on leave?
 - What is YI's reporting protocol? Student didn't actually use the pills ...
 - Can we call Student's parents or guardian?
 - Is Student currently connected and safe?
 - Who deals with students in distress, because it's not me!