

HOT TOPICS IN HIGHER EDUCATION LAW AND POLICY

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FOUR OVERARCHING THEMES

- We live in disruptive times—particularly in legal dimensions
- Colleges are increasingly being cast as “referees”/The role of Mark Kennedy’s “Shapeholders”
- “Compliance U” is here to stay
- Students increasingly seek transparent, authentic, safe, values/faith-based experiences—Consumer advocacy is rising; “basic needs”/social justice/debt

ADMISSIONS INTEGRITY

- “Varsity Blues”
- Program Integrity Beyond Admissions
- Due Diligence? Standardized Tests
- Expect Law Reform
- Expect Concerns to Mutate to Retention and Adverse Decisions

TITLE IX

- Proposed New Title IX Regulations
 - Off-campus incidents? Due process and direct cross-examination? Change in the definition of harassment? Single Investigator? Mediators (JAMS)?
 - Jerry Falwell letter to Dept. of Education/Betsy DeVos
 - Notice and Comment Period—Over 100,000 comments
- Congress? Courts? (Sixth Circuit/California Appellate Court)
- “Erroneous Outcome” (*Fogel v. Univ. of the Arts, et al*, E.D. Pa., 2019)
- #MeToo Movement
- New Research on Sexual Predation
 - Foubert, J.D., Clark-Taylor, A., & Wall, A. (2019). “Is campus rape primarily a serial or single time problem? Evidence from a multi-campus study.” *Violence Against Women*. DOI: 10.1177/1077801219833820.

TITLE IX: PRESIDENT IN THE HOT SEAT

- The University of Michigan placed holds on student's transcript and degree based on an accusation of sexual assault prior to any finding of responsibility.
- President Mark Schlissel was ordered by Federal Court (E.D. Mich.) Judge Arthur Tarnow to appear in court and university is fighting this demand.
- Plaintiff claims due process requirements as set by 6th Circuit precedent were not met.

Jeremy Bauer-Wolf, *Dragging a President Into Court*, Inside Higher Ed (May 10, 2019).

STUDENT SAFETY/ “SPECIAL RELATIONSHIPS”

- For the first time two major state supreme court decisions hold that the college/student relationship is itself “special.”
 - *Dzung Duy Nguyen v. Massachusetts Institute of Technology*, 96 N.E.3d 128 (Mass. Supreme Judicial Court. 2018) (Nguyen, a grad. student with past suicide attempts sought university help with “test-taking problems” over a two-year period and subsequently committed suicide.)
 - *Regents of University of California v. Superior Court*, 413 P.3d. 656 (Cal. Supreme Court 2018) (Rosen, a state university student was attacked and severely injured in a chemistry laboratory by a fellow student who had been treated by the university for serious mental health issues.)
- Prominent Safety Scandals
- Hazing (Pennsylvania/Florida)
- Suicide/Self-Harming

FREE SPEECH AND “EXTREME EXPRESSION”

- President Trump’s Executive Order (linking federal funds to free speech protections on campus)
- Basic First Amendment literacy issues in our populations
- Managing protests and controversial speakers; statements of principles and policies/*Citizens United*
- Free speech isn’t free!
- Pew Research—Are we as tolerant of others’ ideas as we think we are?

(Pew Research Center, *In Polarized Era, Fewer Americans Hold a Mix of Conservative and Liberal Views* (Oct. 23, 2017), <http://www.pewresearch.org/fact-tank/2017/10/23/in-polarized-era-fewer-americans-hold-a-mix-of-conservative-and-liberal-views/>)

- Do we really want freedom of speech or freedom from speech?



FREE SPEECH: *JOHN MCADAMS V. MARQUETTE UNIV.*

- Free Speech/Breach of Contract
- Conservative political science professor was fired for criticizing a graduate student online by name on his personal blog over a classroom discussion that involved issues related to gay marriage.
- Wisconsin Supreme Court ruled in favor of the professor. University must pay damages and reinstate the professor.
- Larger issues of academic freedom and free speech.

Colleen Flaherty, *Divided Wisconsin Supreme Court Backs Marquette Faculty Blogger*, Inside Higher Ed (July 9, 2018).

NAVIGATING THESE DISRUPTIVE TIMES

- The Rule of Law
- Voluntary Compliance
- Prevention

QUESTIONS?
