

## **LAW 101 FOR FACULTY: AVOIDING LAW SUITS, EEOC COMPLAINTS, AND OTHER DANGEROUS ANIMALS**

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One thing that is certain in the course of one's academic career is that it is impossible to make everyone you come into contact with happy. As professors, we encounter students with a wide variety of personalities; we also deal with student complaints, disruptive students, etc. Also as faculty members, we may be on committees, whether at the university college/school or department level (e.g., search committees, promotion and tenure committees, etc.) that expose us to complaints, and even legal action, from fellow colleagues, employees or potential employees. For those who decide to step away from faculty status and go into administration, they become exposed to an entirely different set of complaints, legal actions, etc. Hence, our profession is not much different than other professions. Similar issues exist in every profession where customers, employees, etc., have rights and if they feel these rights have been violated, they may seek restitution through a complaint process or through legal actions.

There are many different laws and regulations that as professors and faculty we have to make sure we know and understand in order to avoid complaints, law suits, etc. Some of these include FERPA, ADA, Section 504 of the Rehabilitation Act, Free Expression and the First Amendment, Title IX, etc.

FERPA, or Family Educational Rights and Privacy Act, is a Federal law that protects the privacy of student education records. The law applies to all schools that receive funds under an applicable program of the U.S. Department of Education. The act 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." Parents or eligible students have the right to inspect and review the student's education records maintained by the school. Generally, schools must have written permission from the parent or eligible student in order to release any information from a student's education record. However, FERPA allows schools to disclose those records, without consent, to the following parties or under the following conditions: school officials with legitimate educational interest; other schools to which a student is transferring; specified officials for audit or evaluation purposes; appropriate parties in connection with financial aid to a student; organizations conducting certain studies for or on behalf of the school; accrediting organizations; to comply with a judicial order or lawfully issued subpoena; appropriate officials in cases of health and safety emergencies; and state and local authorities, within a juvenile justice system, pursuant to specific State law.

The "FERPA Gatekeeper" at any most colleges and universities is the Registrar, so faculty should feel free to direct questions about FERPA to their institution's Registrar. To stay in compliance, faculty should keep in mind that they should not share a student's records with a third party. This sharing may occur if a faculty member posts grades publicly, requires peer reviews, or through inadvertent gossip. According to cases in the past, an individual faculty member cannot be sued for violating a student's FERPA rights (FERPA website).

Another issue of concern to some faculty is when students divulge personal information about themselves. Many faculty tend to become very close to students and always have them hanging around their offices, etc. In such cases, these faculty members should be very careful

that they understand, and the students understand, that there is no such thing as “faculty privilege,” as far as confidentiality goes. Faculty members are usually not clergy members and not many are trained psychologists and psychiatrists and are not obligated to hold student information confidential. Thus, legal authorities have a legal expectation to be able to get this information from faculty members. Even if some faculty are clergy or licensed psychiatrists, if they are not acting in those roles at the time a student divulges personal information, there is no obligation for the faculty member to protect the information, unless it is information related to FERPA. Therefore, it is important for faculty to be aware of how to handle certain situations to make sure that they do not compromise themselves or their position.

The Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act apply to almost all colleges, universities, and trade schools. The laws mandate an equal opportunity for students, and employees, with disabilities. The ADA is designed to level the playing field through reasonable accommodations after a student is admitted to a program, or after an employee begins a job. It requires these individuals to be registered or employed by the institution and to be confirmed by the Disability Support Services Office at the institution as having the disability and is entitled to the accommodations as determined by the institution. To be considered for accommodations, the student or employee must submit medical or other documentation showing the claimed disability. Any accommodations deemed appropriate after this documentation is submitted begins at that time and is not retroactive. Section 504 of the Rehabilitation Act is a law giving legal recourse to individuals who are discriminated against on the basis of their disability. This occurs primarily when discrimination is precluding admission to a program or employment by an college or university or in the case of employees, if there is discrimination about compensation, promotions, etc., based on disabilities. For there to be a violation of Section 504, the student or employee should be and should remain otherwise qualified. In this case, it is important for faculty to make sure to abide by any accommodations required for students in their classes.

Other issues may arise around Free Expression and the First Amendment. The rules here are a little different, depending on whether you are at a public or private university/college. Public schools have been designated as public forums where free speech and expression is required. This could cause some problems for maintaining any kind of control in a classroom, so there are classroom rights. There are also rights that supervisors may rely upon to keep order in the workplace. If a student makes a true threat or is disruptive to the class, the speech is deemed “actionable” or “restrictive speech,” and the professor may take the appropriate action against the student. Similarly, if an employee’s actions or speech become disruptive to the workings of the department or other work unit, it becomes actionable. Interestingly, professors have little control over what students wear to class in a public institution. They are not supposed to have any kind of requirements for dress, even during formal presentations. Clothing only becomes “actionable” if a student’s (or employee’s) genitals are exposed (Hall 2002).

In addition to Free Expression and the First Amendment, many think that Title IX applies to athletics only and requires an institution to have as many opportunities for female athletes as it does for male athletes. However, it applies to the institution as a whole and generally relates to discrimination based on gender. It also applies to sexual harassment among both students and employees.

In this special session, the panelists discuss these issues and their own experiences in the classroom and their thoughts on avoiding, or at least, dealing with disruptive student behavior, avoiding and/or dealing with EEOC complaints from students and employees., etc. After short presentations by each panelist, the session is opened for discussion of this topic among the panelists and attendees.

References Available upon Request