

Education Law: Topics in Higher Education

Fall 2023

Tuesdays 8:10–10:10 p.m. Zoom

Professors Charles Henter and Emily Wack

2 credits (1 in-class and 1 out-of-class)

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Office Hours: By appointment.

Higher education plays a singular role in our society. Colleges and universities are complex organizations and institutions with unique missions to discover, create and transmit knowledge, and to further social mobility.

This course is a first point of engagement in the complexity of higher education law in the United States. Our focus will be on the relationship between students and institutions of higher education. Through this lens, we will explore the breadth of issues faced by institutes in higher education in the United States in pursuing their educational missions, and the ways in which legal rules and norms relate to these issues.

Learning Outcomes:

By the end of the course, students should:

- Be familiar with legal relationship between a student and a college;
- Be familiar with a college's obligations to a student;
- Have an understanding of the basic legal principles of free speech, the disciplinary process, and discrimination as it applies to colleges and universities;
- Be able to analyze the complex situations inherent in the student-college relationship and understand major legal issues that may be involved.

Course Materials:

Reading materials for each class session will be emailed to the class.

We recommend reading the following as background material:

Barbara A. Lee, [Fifty Years of Higher Education Law: Turning the Kaleidoscope](#), 36 J.C. & U.L. 649 (2009-2010). (Skim)

Michael Patrick Rutter and Steven Mintz, *11 Lessons From the History of Higher Ed: Envisioning the Future*, Inside Higher Ed: Opinion (May 6, 2017), <https://www.insidehighered.com/blogs/higher-ed-gamma/11-lessons-history-higher-ed>

Course Requirements:

Both credits are graded and receive the same grade. The final grade will be based on a substantial research paper (60%), the reaction papers (25%), and class participation (15%).

Participation:

All students are expected to attend and actively participate in all sessions. We consider successful participation regular, punctual attendance, contribution to conversation, engagement with the reading, and respectful and civil engagement with professors and peers.

Please keep your cameras on—if you need to participate with your camera off due to illness, technical issues, or other exigencies, please contact the professors before the start of class. Due to the compressed nature of the course, missing two class sessions will cause you to be ineligible for credit in this course under the Law School's academic regulations (<http://www.law.gmu.edu/academics/regulations>). One absence can be excused by completing a make-up assignment responding to a hypothetical based on the class day's readings.

Reaction papers:

All students should submit reaction papers to the readings for three class sessions. Sign up for your class sessions will be available the week before classes. You are expected to submit comments and questions about the readings via e-mail to the professors no later than 7 p.m. ET on the day preceding class. Reaction papers should describe the points raised by the readings that you would most like to discuss, as well as your own principal questions, concerns, reactions or criticisms. Please do not summarize the readings. The reaction papers should be roughly 500 words. Sign up for your reaction paper dates here: [Education Law Reaction Paper Sign Up](#)

Research Paper:

A research paper on a topic of the student's choice is required. While we are focusing on select topics in Higher Ed in our class sessions, students may choose any topic under the broader umbrella of Education Law. Papers may be based on critiques or

commentaries on the readings but must involve additional research beyond the course materials. Your paper should take on an important topic and seek to make a contribution to the scholarly analysis of this topic. Thus, you should demonstrate engagement with the literature and a wide range of relevant sources, and should articulate and defend an original thesis. Papers should be at least 3750 words (15 pages), excluding footnotes. On your final paper, please report the number of words contained in your paper (excluding footnotes), to ensure that you have satisfied this requirement.

Paper topics must be submitted (a one paragraph description by email) no later than **October 10**.

Outlines must be submitted by **October 24**. The outline should include a thesis statement, the sources on which you will primarily rely, and a summary of each major section of your paper.

First Drafts of at least 2,000 words must be submitted by **November 7**. The more complete your draft, the more useful the feedback we can give you as you prepare your final paper.

Final Papers are due **on Monday, November 27**.

Per the Law School's academic regulations, the professors cannot approve any extension of the final paper deadline. Students seeking an extension must obtain permission from Assistant Dean Christine Malone.

Although there is somewhat more flexibility for other deadlines, please keep two things in mind: (i) you must request an extension in advance of the deadline; and (ii) the timing of deadlines is designed to provide adequate time for feedback along the way and incorporate comments prior to submission of the final draft.

Note About Offensive Language and Sensitive Material:

Occasionally, we will be reading cases where offensive language and conduct are used, including stereotypes and crude and vulgar language. Your instructors may occasionally use such language in class in an effort to explore this subject properly (such as in hypothetical problems). Students must be willing to both read and listen to this material and discuss the offensive language in an academic and respectful setting. We will also occasionally be reading cases which cover sensitive material that may be emotionally upsetting. Students should be prepared to engage in a professional manner with such material.

Academic Policies & Honor Code

Unless students have been otherwise specifically informed in class, this course follows the standard policies adopted by the Law School, as they are amended from time to time. You can find more information about those policies here:

- <http://www.law.gmu.edu/academics/regulations>
- http://www.law.gmu.edu/academics/honor_code

Disability Accommodations

If you require an accommodation to fully access this course, please contact the Records Office and/or Associate Dean Nields. Requests for disability accommodations must go through the University's Office of Disability Services.

Class Schedule - subject to change

Class	General Subject of Class	Assignment
Class 1 03 Oct	Class Introduction Legal Relationship between Student and Educational Institution	Contract <i>Mangla v Brown Univ.</i> , 135 F.3d 80 (1st Cir. 1998) <i>Shaffer v. George Washington Univ.</i> , 27 F.4th 754 (D.C. Cir. 2022) <i>Dixon v. Univ. of Miami</i> , 75 F.4th 1204 (11th Cir. 2023) Tort Liability <i>Jian v. State of Iowa</i> , 617 N.W.2d 293 (Iowa 2000) <i>Schieszler v. Ferrum College</i> , 236 F.Supp.2d 602 (W.D.Va. 2002) Property Interest/Section 1983 <i>Regents of Univ. of Michigan v. Ewing</i> , 474 U.S. 214 (1985) <i>Martinson v. Regents of the Univ. of Michigan</i> , No. 09-13552, 2011 WL 13124122 (E.D. Mich. Sept. 28, 2011)
Class 2 17 Oct	Admissions	<i>Regents of the University of California v. Bakke</i> , 438 U.S. 265 (1978) <i>Gratz v. Bollinger</i> , 539 U.S. 244 (2003)

		<p><i>Grutter v. Bollinger</i>, 539 U.S. 306 (2003)</p> <p><i>Fisher v. University of Texas at Austin</i>, 570 U.S. 297 (2013) (Fisher I) / <i>Fisher v. University of Texas at Austin</i>, 579 U.S. 365 (2016) (Fisher II)</p> <p><i>Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.</i>, 143 S. Ct. 2141 (2023)</p>
Class 3 24 Oct	Disability	TBD
Class 4 31 Oct	Student Discipline	TBD
Class 5 7 Nov	Academic Freedom	TBD
Class 6 14 Nov	Student Expression	TBD
Class 7 21 Nov	A Safe Learning Environment	TBD