Introduction to the 2018 Special Issue of The Journal of College and University Student Housing

Contemporary Legal Issues in College and University Student Housing

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Currently, campus housing staff work in an environment that requires a heightened understanding of the law. Comprehension of the law is also paramount to preserving students’ rights and limiting institutional liability. The importance of understanding the law in higher education has been recognized by accrediting bodies and professional associations, which have required knowledge on legal issues as a central element of the ACPA/NASPA professional competency and CAS Standards in graduate preparation program in higher education programs (ACPA/NASPA, 2015, 2016; CAS, 2012; COSPA, 1965). Moreover, legal issues have an impact on most, if not all, of the ACUHO-I Core Competencies (Cawthon & Schreiber, 2012). ACUHO-I has previously argued that “[t]here is no question that campus housing professionals must be increasingly knowledgeable about legal and legislative issues” (ACUHO-I, 2015). Chief student affairs officers (CSAOs) have also recognized the importance of legal knowledge in student affairs practice (Schmitt, 1990). In addition, higher education law is a rapidly changing area in the field, and knowledge of the law is critical to anyone in a professional position in higher education (Gajda & Olivas, 2015).

The law has played an important role in the development of higher education in the United States, especially in regards to students’ and employees’ constitutional rights, student equity and access, and non-discrimination principles. Institutions of higher education are frequently involved with legal controversies from issues related to Title IX to violations of the U.S. Constitution. Institutions expect to pay hefty prices for legal fees and litigation costs. The complexity and volume of legal issues in higher education have exponentially grown (Santora & Kaplin, 2003), which illustrates how important it is for professionals to understand legal liability in their work.

When thinking of legal issues in higher education, it is always critical to understand that legal compliance is a minimum bar and that professionals may and should go above and beyond compliance to achieve student success.
The articles included in this special issue highlight the voices of student affairs professionals on a variety of challenging legal issues pertinent to on-campus college life. Student affairs professionals are often faced with navigating the balance between providing a rich extra-curricular community for students (which has been connected in a variety of ways to persistence and personal development and satisfaction) while managing safety and legal concerns. This encompasses a vast landscape of longstanding issues such as socialization, private versus communal spaces, freedom of expression, the legalization of concealed carry on campuses, and recent changes in legislation regarding the legalization of marijuana.

Fundamental to student housing is the question of access to housing, an issue that Bradley D. Custer addresses in his analysis of the use of criminal background checks (CBCs) as a portion of the application process for students wishing to live in on-campus housing. Custer provides an overview of the Fair Housing Act (FHA)—which prohibits racial discrimination in housing—and discusses why the demographics of individuals involved in the criminal justice system may result in unfair exclusion of minorities from on-campus housing. The low rate of crime caused by individuals with a history of involvement with the criminal justice system is pointed to as a validation that this common policy, utilized in the objective of protecting student safety, results in a disproportionate rejection of applicants form a protected class with little to no evidence of supporting student safety. Custer presents various hypothetical scenarios to exemplify how these practices may be discriminatory and offers a discussion of how state laws vary between states—from those that prohibit the use of CBCs, to those that allow institutions to use them, to those that require CBCs. To the end of limiting litigation, he suggests institutions begin reviewing policies to align with FHA requirements against racial discrimination more effectively.

Understanding how antidiscrimination law impacts students who do choose to reside in on-campus housing incorporates issues beyond race, including students diagnosed with Autism Spectrum Disorder (ASD). Miele, Kelley, and Hamrick offer analysis of how students with ASD may present unique challenges for residence life professionals, which underscores the value of sound understanding on antidiscrimination law. In this case, understanding the prohibitions on public educational institutions discriminating against individuals with disabilities as promulgated in Section 504 and the Americans with Disabilities Act (ADA) offers an imperative need for residence life professionals to be prepared and capable to support the needs of this unique student population. Miele et al. offer an overview of common characteristics of ASD, with an emphasis on features most relevant to college students, and recommendations for drafting and enforcing student codes of conduct in order to effectively manage the potential for unintentional violations from ASD students, and to determine whether ASD is a relevant consideration in a conduct violation.

Salminen and Gregory detail how antidiscrimination requirements of FHA and ADA have also led to recent legal decisions entitling students with documented mental illnesses
to have Emotional Support Animals (ESAs), which can create unique challenges for administrators, particularly at campuses with no-pet policies. Salimen and Gregory explain the different legal parameters for both service animals and ESAs, or assistance animals, and detail relevant legal precedents that can be useful in drafting policies governing the incorporation of these animals into college and university spaces. They also offer advice on specific language that can be utilized in determining the reason for a student’s request to bring an animal onto campus. Given the potential for disruption, or potential injury to other students resulting from contact with a disruptive animal, Salimen and Gregory’s analysis offers a framework for understanding and enacting policies to minimize the potential for litigation.

Richard Fossey addresses a recurring issue for residence life professionals: navigation of legality surrounding how and when student residence hall rooms can be subjected to searches by law enforcement officials. As his analysis demonstrates, courts may be clear on the fact that students are, via the Fourth Amendment, entitled to privacy in their residence hall rooms, as adults inside their domiciles. However, the determination of when and what constitutes a legal room search requires an understanding of a variety of contextual questions including: understanding officials’ motivations in pursuing a search, whether nonstudents are involved, and consideration of whether the institution involved is public or private. Fossey’s review of key legal decisions regarding residence hall searches offers a primer for student affairs professionals seeking to determine how to best protect students’ constitutional rights in the event that a search may be necessary.

Tess Barker and Amanda L. McLittle pick up on the theme of protecting students’ constitutional rights in their analysis of First Amendment issues in public residence hall spaces. Many of the issues they discuss fall into an increasingly challenging terrain for university administrators: balancing freedom of speech rights against university policies designed to be respectful of and supporting to diversity and inclusion on campus. Barker and McLittle offer analysis of the scope and limitations on First Amendment rights as pertaining to student-generated speech in a variety of public spaces: printed and posted materials, communication on whiteboards and bulletin boards, and items posted in exterior-facing windows. Their analysis offers a dissection of how the specific space in question (traditional, limited, and non-public forums) can impact limitations on freedom of speech as well as the limitations that have been placed on free speech. The conclusion provides a framework of questions that housing professionals should consider when navigating free speech issues within residence halls.

Lyke’s multi-modal analysis offers an overview of current trends in drug and alcohol use as a background for a conceptual framework explaining how student behavior on campuses is influenced by both interactions with college and university student housing personnel and state policies. The realities of new marijuana laws are shown to have impact on the manner in which students consume alcohol and drugs, as well as having added complexities to framing university policies for campuses in
states where marijuana is legal for recreational use. Awareness of pending legal changes requires adroit implementation of training and workshops to keep residence life professionals up-to-date with policies designed to protect the health and safety of students.

With an increasing number of states passing legislation permitting concealed weapons on campus, Ward, Nguyen and Nguyen’s study provides a framework for a residence life director’s understanding of the potential challenges of managing concealed carry in residence halls. Ward et al. utilize Weick, Sutcliffe, and Obstfeld’s (2005) sensemaking process to analyze how five different residence life directors working in colleges in states permitting concealed carry laws have utilized the perspectives of supporters and critics of concealed carry in order to craft policy that will prepare student life personnel to navigate implementing policy on this controversial topic.

Each of the above articles highlight the complexity of legal compliance and the value of resident life professionals having adequate training and understanding of a wide spectrum of applicable laws in their daily professional lives. Nguyen, Collier, Watts, Cartwright, and King-Kostelac offer a phenomenological exploration of this issue via a legal consciousness framework, in order to offer a greater understanding of how this complex navigation of law may be experienced on a daily basis. A general discussion is provided by Nguyen et al. on common legal issues faced by residence life professionals, including student health and safety, Title IX, Family Education Rights and Privacy Act (FERPA), search and seizure, the Clery Act, and student death. Each of these issues is addressed in a phenomenological case study analysis of the experiences of 25 residence life professionals. Based on interviews with these individuals, common themes regarding the importance of purposeful and recurrent law training and in-depth professional development via on-site seminars or conferences emerged as key factors for these professionals to develop robust legal consciousness.

College and university residence life and housing are two areas in higher education and student affairs that experience the most intersections of law and policy with practice and compliance. While this special issue is not an exhaustive culmination of legal issues that residence life professionals encounter in their practice, it is a combination of traditional and contemporary issues that professionals should understand and add to their knowledge base. When thinking of legal issues in higher education, it is always critical to understand that legal compliance is a minimum bar and that professionals may and should go above and beyond compliance to achieve student success.

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REFERENCES


