

# VASFAA Conference 2017

## Legal Issues Impacting Higher Education

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## QUICK DISCLAIMER.....

*This presentation provides general information regarding recent topics, cases and legislation in higher education but does not include a complete recitation of the applicable laws in these areas and should not be construed as legal advice.*



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## IMMIGRATION – Executive Order 1

### Aziz v. Trump, (E.D. Va. Feb. 13, 2017)

- ▶ The plaintiffs were 50 to 60 lawful permanent residents of the United States who were detained at Dulles International Airport pursuant to the January 27, 2017 executive order issued by President Donald Trump to ban on admission to the U.S. of nationals of Iraq, Iran, Libya, Somalia, Sudan, Syria and Yemen, and denied access to counsel.
- ▶ The Commonwealth of Virginia moved to intervene in the case on Jan. 31. The Commonwealth's stated interest was in protecting its universities from the disruption created by the executive order.
- ▶ On February 13, Judge Brinkema granted the Commonwealth of Virginia's motion for a preliminary injunction, with an accompanying memorandum order. This enjoined the defendants from enforcing the section 3(c) enforcement clause of the Executive Order against any person who was a Virginia resident or an employee or student of a Virginia public educational institution; and who, as of the time that the Executive Order was issued, had LPR status, an immigrant visa entitling the person to LPR status upon admission, a nonimmigrant student visa, a nonimmigrant work visa, or was a derivative of one of the latter two visas.



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## IMMIGRATION – Executive Order 2

Sarsour v. Trump (E.D. Va. Mar. 24, 2017)

- ▶ Plaintiffs, a group of Muslims who resided in various states, sought an emergency restraining order enjoining the enforcement of Executive Order 13,780 issued on March 6, 2017 which temporarily barred nationals from certain countries from obtaining visas or entering the United States.
- ▶ The plaintiffs included 2 students of Somali and Yemeni origin who were issued single-entry F-1 student visas.
- ▶ Court denied the request for injunction because plaintiffs did not establish the likelihood of success and other elements required to order relief.



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## Deferred Action for Childhood Arrivals (DACA)

Deferred Action for Childhood Arrivals (DACA) is a kind of administrative relief from deportation. The purpose of DACA is to protect eligible immigrant youth who came to the United States when they were children from deportation. DACA gives young undocumented immigrants: 1) protection from deportation, and 2) a work permit. The program expires after two years, subject to renewal.



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## 2017 HOMELAND SECURITY GUIDANCE MEMOS

- ▶ The guidance leaves intact President Barack Obama's executive orders on DACA, which protects undocumented immigrants brought to the US as children from being removed and orders the low prioritization of undocumented immigrants who are parents of US citizens. However, the memo says that DACA "will be addressed in future guidance."
- ▶ Tightens immigration laws on asylum seekers and unaccompanied minors entering the country
- ▶ Expands the use of "expedited removal" proceedings for unauthorized immigrants, allowing them to be deported more quickly with limited court proceedings.
- ▶ Seeks to end the "catch-and-release" policies that allow individuals to be paroled from detention while awaiting immigration court proceedings



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## 2017 DCL on TRANSGENDER STUDENT ACCOMMODATIONS

- ▶ 2015/2016 Dear Colleague Letters - took the position that Title IX's protections against discrimination "on the basis of sex" included discrimination based on gender identity and that schools generally must treat transgender students consistent with their gender identity. These documents are at the center of several cases currently being litigated nationwide.
- ▶ February 22, 2017 DCL- withdraws the prior guidance documents because the new administration claims that the initial guidance documents did not contain extensive legal analysis or explain how the position that Title IX extends to discrimination based on gender identity is consistent with the language of Title IX. The 2017 DCL also stated that the previous guidance documents had not undergone any formal public process and expressed the belief that "there must be due regard for the primary role of the States and local school districts in establishing educational policy."



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## DISCRIMINATION – GENDER IDENTITY

### Gloucester County School Board v. G.G. (U.S. Mar. 6, 2017)

A female high school student who identifies as male filed suit alleging sex discrimination by the Gloucester County School Board. The Fourth Circuit had previously reversed in part and vacated in part the district court's dismissal of Plaintiff's claim after concluding that the district court should have deferred to the Department of Education's interpretation of Title IX regulations based on its May 13, 2016 "Dear Colleague" Letter, which required schools to allow transgender students to use the facilities consistent with their gender identity.

A new "Dear Colleague" Letter was issued since that ruling. The U.S. Supreme Court's order instructs the Fourth Circuit to reconsider the matter in light of this new guidance.



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## CONSTITUTIONAL ISSUES – DUE PROCESS

### John Doe v. Alger (W.D. Va. Dec. 23, 2016)

- ▶ A former student at James Madison University claimed that the University deprived him of a property right—his right to continued enrollment—without adequate due process. Plaintiff was initially found not responsible for sexual misconduct, but an appellate board ultimately reversed the decision without explanation and suspended Plaintiff for five-and-a-half years.
- ▶ The plaintiff alleged that he was not allowed to appear before the appeals board; was not shown new evidence submitted by his accuser on appeal; was not given the names of the people hearing his appeal; and was not given notice of the appeals board’s meeting.



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## CONSTITUTIONAL ISSUES – DUE PROCESS

► Is there a property interest in continued enrollment in school?

YES or NO

► Were the Plaintiff's due process rights violated?

YES or NO



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## TITLE IX – DUE PROCESS

### Resolution Agreement between the Office for Civil Rights and Wesley College on Title IX Violations

- ▶ Resolution agreement entered into between the Department of Education's Office for Civil Rights and Wesley College regarding an allegation by a parent that the College discriminated against her son on the basis of sex when it subjected him to an unlawful grievance and appeal process. The student had been accused of, and ultimately expelled for, live streaming a video of a female student engaging in a sexual act with a male student without the female student's knowledge.
- ▶ OCR found that the College did not follow several of its Title IX procedures when it processed the complaint involving the accused student, thus denying him the procedural protections to which he was entitled. As part of the Resolution Agreement, the College has voluntarily agreed to review its handling of the accused student's case and provide specific remedial actions if warranted, to address identified deficiencies in its policies and notice of non-discrimination, and to correct the investigative deficiencies in cases involving other accused students, among other actions.



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## CONSTITUTIONAL ISSUES - SPEECH

Keefe v. Adams (8th Cir. Oct. 26, 2016)

After Central Lakes College removed Plaintiff from its nursing program due to complaints about unprofessional and threatening messages that Plaintiff had posted to Facebook, Plaintiff sued, claiming violations of his First Amendment and due process rights. The district court granted summary judgment to Defendants. On appeal, Plaintiff argued that students “may not be punished for off-campus speech . . . unless it is speech that is unprotected by the First Amendment.”

**HOW SHOULD THE COURT RULE?**

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## CONSTITUTIONAL ISSUES – FREE SPEECH

Pompeo v. Board of Regents of the University of New Mexico (10th Cir. Mar. 28, 2017)

A graduate student at the University of New Mexico (UNM) ultimately withdrew from a course after receiving a poor grade on an assigned class paper and refusing to revise it. She filed suit against the University's Board of Regents, her professor, and a dean, accusing them of retaliating against her in violation of her right to free speech because they disagreed with viewpoints she expressed in the paper.

**HOW SHOULD THE COURT RULE?**

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## AFFIRMATIVE ACTION

Fisher v. University of Texas (U.S., June 23, 2016)

The race-conscious admissions program in use by the University of Texas at Austin when Abigail Fisher applied to the school in 2008 is lawful under the Equal Protection Clause.

Legal affirmative action programs for college admissions must still withstand strict scrutiny, be monitored, and carefully evaluated for their effectiveness.



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## ADA ACCOMMODATIONS – MENTAL HEALTH & WITHDRAWAL

University of Tennessee – A student filed a complaint alleging that UT failed to make reasonable modifications to its policies, practices, and procedures when it placed her on a mandatory medical leave of absence from UT because of her mental health condition without first considering options for her continued enrollment. Case settled with U.S. Department of Justice.

Princeton University – Student filed suit alleging that when he was hospitalized after ingesting 20 tablets of a prescribed antidepressant, the university barred him from his dorm room and classes, even from setting foot on campus. He was told to submit to "voluntary" withdrawal. Case settled with U.S. Department of Justice.



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## VIRGINIA GENERAL ASSEMBLY 2017 SESSION

*Bills Affecting Higher Education*



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## VIRGINIA GENERAL ASSEMBLY 2017 - HIGHLIGHTS

- ▶ Revisions to the Virginia Freedom of Information Act
- ▶ Dual Enrollment
- ▶ Mental Health
- ▶ Academic Credit for Apprenticeship
- ▶ Liability Protection for Administration of Meds
- ▶ Virginia Guaranteed Assistance Program
- ▶ Two-Year College Transfer Grant Program
- ▶ Speech



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## FEDERAL LAWS & GUIDANCE

*Affecting Federal Financial Aid*



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## 2016 Clery Handbook Changes

- ▶ “Institution-Associated” Entities
- ▶ Clery Geography Updates
- ▶ Revisions in Campus Security Authority (CSA) Definitions & Guidance
- ▶ Revised Definition of Sexual Orientation, Gender, Gender Identity
- ▶ Guidance re: how to determine dating violence
- ▶ “Negligent Manslaughter” changed to “Manslaughter by Negligence”
- ▶ Clarifies how rape stats should be counted
- ▶ Clarifies/modifies definitions for:
  - “Aggravated Assault”
  - Unlawful Entry
  - Burglary
  - Arson
  - Attempted Forcible Entry



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## Final Regulations on Borrower Defense

Final regulations establishing new federal standards and processes for determining when a student loan borrower can have his or her loan repayments discharged due to an institution's acts or omissions were published by the U.S. Department of Education.

The regulations, which are designed to protect students from “misleading, deceitful, and predatory practices of” higher education institutions, give students access to a debt relief process and require institutions deemed “financially risky” to take responsibility for losses resulting from loan discharges. Additionally, the Department has amended Direct Loan Program regulations to prohibit the use of certain dispute-resolution contractual provisions. The regulations go into effect on July 1, 2017.



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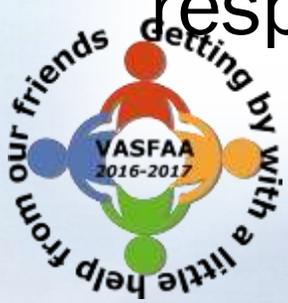


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## Dear Colleague Letter on Third-Party Servicer Q&A's

August 18, 2016

Issued by the U.S. Department of Education providing guidance on issues related to third-party servicer requirements. The Department received a number of questions regarding a Dear Colleague Letter it published in January 2015, which discussed the responsibilities and requirements of institutions that enter into contracts with third-party servicers. This Letter provides clarifications in response to these questions.



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## Dear Colleague Letter on Protecting Student Information

July 1, 2016

Issued by the U.S. Department of Education on protecting student information from cybersecurity threats. The Letter, which is a follow up to Dear Colleague Letter from July 29, 2015, reminds institutions of their legal obligations to protect student information used in the administration of the Title IV Federal student financial aid programs. It also explains the methods the Department will use to assess institutions' capabilities in securing that information.



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THANK YOU!!!!!!



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Helping lenders help students™



Virginia Association of Student Financial Aid Administrators

