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# The Law and Higher Education

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## Cases and Materials on Colleges in Court

FOURTH EDITION

**Michael A. Olivas**

WILLIAM B. BATES DISTINGUISHED CHAIR OF LAW AND  
DIRECTOR OF THE INSTITUTE FOR HIGHER EDUCATION LAW & GOVERNANCE  
UNIVERSITY OF HOUSTON LAW CENTER

**Amy Gajda**

PROFESSOR OF LAW  
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# Introduction

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This is such an interesting time to be studying higher education law. It is a time when many colleges are struggling financially and otherwise; their resulting business decisions could well lead courts to lessen historical deference. It is a time when students have become decidedly business-savvy, willing to look with a more critical eye at institutions of higher education and the legal landscape surrounding them. And it is a time when the ground appears to be shifting in once-solid matters such as tenure, affirmative action, and the economic viability of many higher education degrees.

This new edition, we hope, reflects our interest in higher education law and the excitement we feel in writing about it. While this latest volume continues to cover the important history and the older cases that have been a part of the field since its inception, it also includes interesting newer cases and case notes up to the first part of 2015. It is a look at the very old and the very new—and we hope that, by the end, the reader will come away with a full understanding of where the field is and how we got here.

Higher education law is such a fluid and dynamic area that it is impossible to always be synchronized and updated. The events in this area changed—such as with same-sex marriage, affirmative action, sexual harrasment, and college closures—as the book was in galley in Summer, 2015, and will be addressed thoroughly in the Supplement and in the fifth edition.

There are some small changes to note. The reader will notice that we no longer include many URLs in these pages. This reflects our belief (and our advice) that those interested in reading a particular article will search for the headline and will not attempt to copy the lengthy URL. For articles from the *Chronicle of Higher Education* and *Inside Higher Ed*, for example, we have mostly simply included the headlines and the dates on which the articles appeared online. As of Spring 2015, those articles are instantly accessible by headline from the Internet browsers we used; only a few had been removed permanently from the Internet. We have included URLs when the information presented seemed more difficult to access, as from a government or other non-media website.

We have also taken the liberty here, as in past editions, to make the cases easier to read by eliminating internal citations, by removing passages we feel are not necessary for our purposes, and by making small changes, such as correcting typographical or punctuation errors. While we have used ellipses to indicate the removal of large portions of text, we have not alerted the reader to the insignificant changes we made in court opinions. We have also repeated some key information and sometimes cases within different chapters here, knowing that some readers will read only selected portions of this casebook for class or otherwise.

Finally, we wanted to note what a pleasure it has been to work together on this project. We met nearly a decade ago when Michael was a reviewer for one of Amy's books. Since then, we have become good friends and strong colleagues. We rarely even mention that one of us (Michael) is an Ohio State graduate while the other (Amy) attended the Uni-

versity of Michigan. After Ohio State's resounding athletic successes within the past few years and Michigan's less impressive performance, Amy sincerely hopes that by the next edition this reference to our historic higher education rivalry continues to resonate with readers and will not be one of the many changes within the field of higher education.

As always, we welcome your comments and suggestions. Michael can be reached at molivas@uh.com and Amy at gjda@tulane.edu.

\* \* \*

MAO: In this 4th edition, Michael thanks University of Houston Law Center graduates Sarah Rodriguez Arvidsson, Emiliano Fragoso, Kate Harding, and Angeline J. Gallivan, all of whom helped with basic document acquisitions, analysis, and more importantly, the careful filing that is a prerequisite for this bibliographical project. In addition, I have been blessed by working with several great UHLC Research Librarians who have been indispensable in this overall book, since the beginning; those with whom I have worked include Mon Yin Lung, Lauren Schroeder, Kay Stein, and Emily Lawson. At Carolina, Amy and I thank Keith Sipe and Linda Lacy. To the wonderful Amy Gajda, welcome aboard. And in many various forms and forums, I thank Leland B. Ware, William A. Kaplin, Augustina H. Reyes, and Deborah Y. Jones. Finally, this book is a labor of teaching love, and I learn each time from my law and other graduate students, who always see more in these cases than I had recognized. In essence, I stay in this project for them, and to make me a better teacher and learner.

Santa Fe, NM, and Houston, TX,  
April, 2015

AG: First, I thank the amazing Michael Olivas for inviting me to join this ever-exciting project and for his wit, wisdom, talent, and leadership. I also thank my research assistants at Tulane Law School who have helped with this edition: Laura Fink, Faith Perdue, Christopher Arkin, Rebecca Sha, Shannon Chapman, Lauren Michel, Sara Smith-Clevenger, and Caitlin Poor. I am also grateful to the students in my Law of Higher Education classes at Tulane whose insightful comments and questions helped to shape this project. And, finally, I thank Dave, Michael, and Matthew, who support me in ways big and small.

New Orleans,  
April, 2015