

Session Abstracts in Alpha Order

Assessment Issues in COVID Times

Ah Ra Cho (Independent Scholar)

This session will focus on assessment issues and navigating them during the COVID-19 pandemic. As colleges and universities have moved to remote, hybrid, and alternative forms of learning at this time, there have been shifts and challenges to assessment within the classroom and co-curricular setting.

Behavioral Intervention and Threat Assessment: Importance of Objective Risk Assessment

Makenzie Schiemann (The National Association for Behavioral Intervention and Threat Assessment) & Scott Lewis (TNG Consulting)

Relying on two recent case law examples, the presenters will discuss the importance of using objective assessment practices to accurately assess risk and deploy appropriate interventions. The case law examples demonstrate what can happen when schools do not accurately assess risk and intervene in a way that does not respond to the actual level of risk present, resulting in discriminatory and even tragic outcomes. Presenters will discuss the process for objective risk assessment as well as tools available to facilitate this process.

Collaborative Behavior or Collusion?: Investigating the Blurred Lines of Academic Collaboration Among College Students

Zachary Taylor (Texas State University), Patricia Somers, & Lori McNabb (University of Texas at Austin)

While postsecondary students' rate of academic dishonesty has been consistent over the last fifty years, the most significant increase in cheating has been in unpermitted collaboration. Given the changing learning environments necessitated by COVID-19, this study investigates how 12 college students at a highly selective R1 institution view collaboration, unpermitted collaboration, and how their attitudes are shaped by faculty guidance or lack thereof.

COVID-19, 20, & 21, and HR/Employment Law – Past, Present and Future

Chad Timmons (Abernathy, Roeder, Boyd & Hullett)

COVID-19 is an ongoing public health concern affecting employers through many different avenues – some of which are the handling of employee sick leave, FMLA Leave, abandonment of positions, and other related employment issues that can have adverse legal consequences upon the employer.

COVID and Personnel Issues

Lynn Rossi Scott (Brackett & Ellis)

Fort Worth attorney Lynn Rossi Scott will address potential scenarios that administrators may be called to address related to COVID, including the Americans with Disabilities Act, the Family Medical Leave Act, and other state and federal laws that may impact employees as they deal with COVID issues.

COVID Related Legal Issues

Jennifer Cowley (University of North Texas) & Renaldo Stowers (UNT System)

The last two years have challenged colleges and universities as they navigate a complicated guidance system in response to the COVID-19 pandemic. Our campus constituents have offered strong opinions about how our campuses should operate. This session responds to the questions and suggestions coming from our stakeholders and provides the legal context that supports decision making.

COVID's Impact on Student Mental Health from the Dean of Student's Perspective

Renee McNamara & Maureen "Moe" McGuinness (University of North Texas)

The pandemic has impacted everyone on many levels but our students struggle in numerous ways. In this session, members of UNT Dean of Students Offices will share different struggles students have gone through and interventions that have helped them be successful or cope.

Educational Malpractice in Higher Education in the Time of the Pandemic: A Cognizable Claim?

William R. Fossey (University of Louisiana) & Todd DeMitchell (University of New Hampshire)

Educational malpractice, a cause of action uniformly rejected by the courts in both K-12 and higher education, has resurfaced as part of the wave of student lawsuits brought against colleges and universities. This session will discuss educational malpractice claims in the time of COVID-19 responses.

FERPA in the Virtual World: What We Have Learned from the Pandemic Intersecting with FERPA

Ashley Wheelis & Maureen "Moe" McGuinness (University of North Texas)

FERPA – The acronym many in academics throw out there to abide by or to hide behind. Higher education went virtual during the pandemic and FERPA issues and complaints increased. We will share lessons learned and how we were able to remedy challenges.

Higher Education Case Law Update

Ian M. Steusloff (Texas Association of School Boards)

Join TASB attorney as he summarizes recent cases and attorney general opinions affecting institutions of higher education.

Is What's Old New Again? Office of Civil Rights Enforcement Under the Biden Administration

Danielle Dary & Jackie Wernz (Thompson & Horton)

When President Joe Biden took office earlier this year, many assumed that the Office for Civil Rights would quickly return to what it looked like in the Obama era. In some ways that has been true, but in others it has not. Join us to review recent OCR decisions ranging from Title IX to disability to gain an understanding of the current state of affairs at OCR. You will leave feeling better prepared to help your institution comply with the law.

The Law of Religious Liberty and Higher Education

Derek Teeter (Husch Blackwell)

State and federal Constitutions, employment laws, and non-discrimination laws provide important protections for religious liberty. This session surveys the ways in which religious liberty impacts higher education, including discussion of religious exemptions from COVID-19 mandates, accommodation of religious practices by employees, and funding and membership for religious student organizations.

The Legal Evolution of DEI, Protected Classes, and Disparate Impact

Katie Anderson & Pete Thompson (Clark Hill)

This presentation will discuss the evolution of DEI from Executive Orders to case law, the changing nature of protected classes, the positive impact of DEI on workplace investigations/risk mitigation, and considerations in higher education. We will briefly discuss COVID-19's impact on DEI/protected classes in the education context.

Legal Update on Deferred Action for Childhood Arrivals (DACA) and Implications for Undocumented Students

David Nguyen (Indiana University–Purdue University Indianapolis)

The DACA program has provided legal relief for over 800,000 undocumented young people and has provided a pathway into and through higher education. Unfortunately, the program has been put through litigation to invalidate its legal protections. This presentation will provide a legal update and pose concerns and implications for higher education practitioners to consider.

Lesson Learned: Maintaining a Robust Student Experience During Covid

Kim Novak (NovakTalks)

Covid has impacted administrators in a myriad of ways as they worked to maintain some sense of normalcy on their campuses and for their faculty, staff, and students. Join Kim for a conversation about the lessons learned regarding maintaining the student experience outside of the classroom during these challenging times.

Mahanoy Area School District v. B.L.: Scalia's "Ghoul" in A Different Context?

Kathleen Conn (King, Spry, Herman, Freund & Faul)

In a 1993 case involving the Establishment Clause of the First Amendment, Justice Antonin Scalia caustically described the "Lemon test" as "some ghoul in a late night horror movie that repeatedly sits up in its grave and shuffles abroad . . . frightening little children and school attorneys." This presentation will show how the Mahanoy Area School District controversy transformed Tinker's student speech analysis into a similar ghoul, further diminishing the authority of, and respect for, public school officials. Tinker's extension into higher education will also be examined.

Meriwether v. Hartop: Faculty Speech with Sincerely-held Religious Beliefs and Implications for Higher Education

David Nguyen (Indiana University–Purdue University Indianapolis) & Matthew Besmer (State Center Community College District)

In early 2021, the 6th Circuit Court of Appeals ruled in favor of a professor for violating university policy by not using a student's preferred pronouns because he claimed it was impinging on his religious liberty. This presentation will provide a background of the case, similar situations in higher education, and implications for faculty and practitioners.

Mitigating the Risk of Abuse in Residence Halls, Camps, and Third-Party Programs

Ross Mitchell (Praesidium)

Many universities serve more minors than enrolled students throughout the year. This session, led by national experts in managing abuse risk, spotlights the challenges universities face with residential, camp, and third-party youth programming. Learn how to identify abuse risk, strategize solutions, and implement best practices in your university's youth programs.

Name, Image, and Likeness Legal Developments

Andrew Little & Jonathan Stewart (Abilene Christian University)

Recent legal developments mean that student athletes now have limited legal rights to profit from their names, images, and likenesses (NIL). This presentation offers: 1) an overview of the 2021 Supreme Court precedent and Texas NIL law, 2) a comparative analysis of several states, and 3) concerns about unanswered questions.

One Pandemic Later: How SB212 Has Affected Texas' Postsecondary Institutions

Zachary Taylor (Texas State University), Patricia Somers (University of Texas at Austin), & Corey Benson (University of Texas – Permian Basin)

In a response to the #metoo movement and unclear Title IX guidelines forwarded by the U.S. Department of Education, the Texas Legislature recently enacted Senate Bill 212 (SB212), a bill aimed at increasing the reporting of sexual violence on college campuses in Texas. In this session, we report on institutional Title IX guidance just before SB212's January 1st, 2020 implementation date, as SB212 drastically increases the reporting requirements and penalties associated with failures to comply.

Pre- and Post-Covid-19: Discovering Impact of Federal Policies and Laws on International Students

Yi Leaf Zhang (University of Texas at Arlington) & Rosalind Latiner Raby (California State University Northridge)

The presentation discusses legal implications and potential concerns for international student recruitment, students' academic and social experiences, and on-campus services available for the students. It also intends to understand better the challenges international students face and the services needed to promote their adjustment and success in the post-COVID world.

Recent Cases and Legislation and Other Current Issues Affecting Students

Amy Magee & Scott Rizzo (Texas Association of School Boards)

This presentation addresses select student issues of current interest, including those raised in recent court cases and by the state legislature, and the implications for institutions' policies and procedures. Join a TASB attorney and policy specialist as they discuss name, image, and likeness, speech, safety, privacy, and other student matters.

Selected Issues on Critical Race Theory at the University

Neal Hutchens (University of Mississippi)

In almost 30 states, bills have aimed to ban the teaching of "Critical Race Theory" or other related concepts designated as "divisive." Some state proposals include higher education, and this session considers academic freedom and other implications when such bills extend to public colleges and universities.

SPECIAL PRESENTATION: Noah Lelek and the Interactive Theatre Troupe (Texas Woman's University)
Diversity at the University

Tuition Refund Litigation in the Wake of the COVID Pandemic: Many Courts Are Allowing Claims to Move Forward

William R. Fossey (University of Louisiana) & Todd DeMitchell (University of New Hampshire)

In March 2020, colleges and universities closed their campuses in response to the COVID pandemic. Virtually every school shifted from face-to-face instruction to online learning. Students filed hundreds of lawsuits seeking tuition refunds, and many courts are allowing these lawsuits to move forward. The presentation summarizes pending litigation.

Unmasking the Disability-Related Legal and Ethical Implications of the COVID-19 Pandemic in Higher Education

Katy Washington (University of North Texas)

The COVID-19 pandemic has created an opportunity to re-imagine accessibility and inclusion in higher education on a scale never seen. Empty and limited capacity campuses, remote course offerings and flexible work arrangements became the norm. The goal of this presentation is to look at the implications of this new normal.

Update on 2020 Title IX Regulations

Kathleen Conn (King, Spry, Herman, Freund & Faul)

The 2020 Title IX Regulations have stimulated both commendation and controversy as they redefine sexual harassment pre-K through postsecondary education, creating a new vocabulary and a new process to deal with discrimination on the basis of sex. This presentation will examine the genesis of the regulations and update the status of these new rules of law under the Biden administration.