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Foreword: Special Issue Dedicated to Legal Issues in Higher Education

Joy Blanchard*

Law, policy, and practice do not exist in a vacuum. Whether on the “micro level” (e.g., within departments, divisions, or institutions) or at the state and national level, law affects policy and practice, and very often the law in return is reactive to what is occurring within institutions or among policymakers.

I was incredibly excited and honored when I was asked by Neal Hutchens to work with him to assemble manuscripts for this legally centered edition of the Kentucky Journal of Higher Education Policy and Practice. I continue to be fascinated by the trends at the intersection of higher education law and policy—and even moreover by examinations of how organizational factors dissolve within this mixture.

Michael W. Klein, executive director of the New Jersey Association of State Colleges and Universities, has written extensively on state-level policy and higher education law. Considering the wealth of experience he draws from his professional position, Klein is able to astutely measure how legal trends stand to influence policymakers and legislators. For this special edition he contributed a case study examining the organizational factors behind the distribution of stimulus funds in Kentucky and New Jersey, respectively. The literature, as scholars such as Michael Olivas point out, is desperately in need of more studies utilizing organizational theory to frame discussions surrounding higher education law. Klein’s piece successfully argues for the use of such frameworks by policymakers in the future.

I contributed a piece to the issue borne from work I had begun in my doctoral dissertation. Back then I repeatedly read and anecdotally heard that there existed a disconnect between campus policy and what courts were opining as to the level of liability institutions ought to be held to regarding student safety. I visited three campuses in 2008 and conducted follow-up interviews in 2011 to gauge not just the knowledge of higher education law among administrators but also the consistency of its enforcement. I spoke with legal counsel, deans of students, mental health practitioners, student conduct officers, and residence life staff among others and found that knowledge of the law among campus administrators is strong yet consistent enforcement is lacking, particularly in regard to mental health issues. By applying an organizational framework, I argue that frequent turnover (which unfortunately is a chronic problem on many campuses) and lack of empowerment at all levels of the organizational chart impede campuses from enacting consistent and responsive policy. In regard to alcohol-related policy, I found that the three campuses were continually improving on innovative practice. However, these campuses illustrate the nationwide trend that policy and practice for those with mental illness have not kept pace. After the tragedies at Virginia Tech and other school shootings, the public at-large and courts will be calling on institutions to protect students at a higher level than ever before.

Christie M. Letarte, recent graduate of the Stetson University College of Law, is featured in the “Emerging Scholar” section of this issue. Letarte further expands on the notion that institutions will increasingly be held liable for promoting student safety. Her piece focuses on the role of resident assistants (RA) in campus housing. Letarte gives a legal-historical analysis of the negligence-related cases that have ushered in this current era of a reasonable duty of care,

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particularly as it relates to the residential setting. Letarte astutely points out that with the broadened mandates of the Clery Act, as well as the expanding standards within negligence case law, colleges and universities would be well served to bolster the education and training offered to RAs. Though resident assistants are students and not full-time professional staff, they offer “front line” support to students in need and should be equipped and empowered to make swift and prudent decisions in emergency situations.

Finally, Neal H. Hutchens offers through his “Practitioner Brief” a different take on legal issues occurring in the realm of campus residences: the use of emotional support animals. In summer 2013 a federal court required that the University of Nebraska at Kearney permit therapy animals to live in campus housing. Previously most places of public accommodation, including campus residence halls, allowed only animals for the blind or those with other physical impairments. This court ruled that animals used to assist those with mental health issues must also be allowed, as campus residence halls fall within the definition of dwelling under the Fair Housing Act. The Department of Housing and Urban Development (HUD) issued guidelines on how institutions should respond and prepare to welcome more service animals into campus housing. A version of his brief previously appeared in the Fall 2013 issue of ACPA’s Developments.

It is undeniable that legal issues are becoming more prevalent in the day-to-day operations of colleges and universities, as well as among policymakers and lawmakers. These manuscripts illustrate the need for all those in higher education to become more aware of the changing legal environment and concomitant regulatory requirements, to educate top-down among those working with students, and for the higher education legal community to begin examining these issues from a broader lens and incorporate the scholarship of policy and organizational change to study the influence of the law on a broader level. Though this special issue addresses but a few of the pressing legal issues existing in higher education, we hope that this begins the dialogue and sparks new research.