

# **NASPA Certificate Program in Student Affairs Law and Policy**

## **June 4 – 8, 2018**

### **Hyatt Regency Clearwater Beach Resort**

### **Clearwater Beach, FL**

## **Course Description and Goals**

The Certificate Program is designed to introduce participants to core concepts in foundational areas of private and public law that impact higher education and provide specific training in the “Law, Policy and Governance” competency area articulated in the *ACPA/NASPA Professional Competency Areas for Student Affairs Practitioners* (2010). This program will feature lectures, interactive dialogue, exercises, Socratic dialogue led, etc. Specific topics covered will include:

### **Law and the Legal System**

- ❖ importance of law to student-affairs professionals
- ❖ the Facilitator Model
- ❖ types and sources of law
- ❖ overview of the legal system
- ❖ techniques for reading legal materials
- ❖ working with legal resources and electronic databases
- ❖ working with general or outside counsel
- ❖ how law relates to policy
- ❖ sources of law and legal updates
- ❖ the litigation process

### **Private Law**

- ❖ **Torts**
  - negligence (including alcohol and other drugs and suicide/self-injury)
  - risk-management concepts
  - insurance issues
- ❖ **Property**
  - premises liability
  - landlord-tenant

### **Public Law**

- ❖ **Constitutional Law/Civil Rights Law**
  - free speech and expression
  - religion on campus
  - admissions
  - diversity/multiculturalism
  - academic freedom
  - disability law
  - due process: student conduct and discipline
- ❖ **Criminal Law and Procedure**
  - basics of criminal law terminology, such as felony v. misdemeanor

- working with law enforcement
- search and seizure
- overview of processes such as arrest, charge, bail, plea
- impact of student arrest/conviction on campus processes
- ❖ **Administrative and Regulatory Law**
  - civil rights/employment/discrimination/safety
  - FERPA
  - Clery Act and other key federal regulations
  - Title IX
  - working with administrative agencies

## **Special Issues in Student Affairs Law and Policy**

- ❖ Mental health
- ❖ Student injury and death
- ❖ Student organizations and activities
- ❖ Crisis management /Care teams
- ❖ Residential Life issues
- ❖ Hazing
- ❖ Greek Life issues

## **Learning Objectives**

- Develop basic skills in working with different types and sources of law, legal reasoning, legal structures related to institutions of higher education, and the U.S. legal system.
- Develop skills in how to find, read, analyze, and update cases, statutes, and administrative regulations.
- Develop effective strategies for working with legal counsel.
- Understand the interaction between law and policy in the higher education context.
- Demonstrate the ability to identify, articulate, and apply core legal rules and concepts relating to the practice of student affairs.
- Develop the ability to identify and work with key features of appellate court decisions, statutes, and regulations that impact higher education. This includes demonstrating an ability to work with the “IRAC” heuristic and organizing legal and law-like analysis.
- Develop the ability to discuss and describe legal concepts, issues, and rules succinctly and efficiently.
- Develop the ability to recognize key “facts” that are known, or must be discovered, that will augment or hinder their posture in contested situations.
- Demonstrate an understanding of the appropriate and inappropriate use of law as a tool for dispute resolution.
- Develop skills in working with combined issues of law and policy.
- Develop the ability to engage in constructive dialogue with others regarding contentious issues of law and policy. Respect for ideas of others that one does not personally accept is necessary to learn and conceptualize legal topics.
- Demonstrate the ability to recognize and work with issues of tolerance, diversity, and inclusion from a law and policy perspective.
- Demonstrate the ability to reason and communicate objectively regarding issues of law and policy. This includes the demonstrated ability to provide carefully reasoned elaboration for positions, opinions, and the like.

## Instructor Information

Lead Instructor: Peter Lake, Professor of Law, Charles A. Dana Chair, and Director of Center for Excellence in Higher Education Law & Policy at Stetson University College of Law

Instructor: Dr. Oren Griffin, Associate Dean for Academic Affairs and Associate Professor of Law, Mercer University School of Law

Instructor: Dr. Brian Mistler, Executive Director of Student Health and Wellbeing Services, Humboldt State University

## Contact Information

**For questions concerning the syllabus, assignments, etc., please contact Professor Peter Lake at [plake4@me.com](mailto:plake4@me.com) (preferred contact) or (941) 544--3361 (mobile). Please copy Jennifer Lake at [jlake@hierophantenterprises.com](mailto:jlake@hierophantenterprises.com) on each email you send to Professor Lake. If you call, please leave your name, your specific question, and where and when you may be contacted.**

For any on-site needs, please contact Jennifer Lake via call or text at 941-961-4575 (mobile).

## Attire

Casual or business casual attire is appropriate. We encourage each participant to bring a jacket or sweater, as meeting rooms may be chilly.

## Meals and Breaks

As part of your tuition, a Welcome Dinner (not including alcoholic beverages) will be provided on the first evening of the program. On each subsequent day of the program, breakfast and lunch will be provided and dinner will be on your own. If you did not already do so at the time you registered, please inform Tiki Ayiku at NASPA ([tayiku@naspa.org](mailto:tayiku@naspa.org)) as soon as possible if you have any special dietary needs.

## Required Materials

The required materials for the course are 1) Peter Lake, *The Foundations of Higher Education Law & Policy: Basic Legal Rules, Concepts and Principles for Student Affairs* (2011), 2) Peter Lake, *Beyond Discipline – Managing the Modern Higher Education Environment* (2009), and 3) *Secrets of Basic Tort Law* (audio files). These materials will be provided to you a few weeks before the course begins and you should bring the books with you to the live event. Additional items will be included in a special “NASPA Dropbox” online or as handouts during the program. These materials are included in the price of your tuition. Participants are also encouraged to purchase Peter Lake, *The Rights and Responsibilities of the Modern University: The Rise of the Facilitator University* (Carolina Academic Press 2013), as some optional readings from this text are suggested.

## **Pre-Program Reading/Assignments**

Course Texts: Prior to the start of the Certificate Program, please read *The Foundations of Higher Education Law & Policy* in its entirety and read chapters 1-3 (at a minimum) of *Beyond Discipline*.

Online Resources: Prior to the start of the Certificate Program, please listen to the *Secrets of Basic Torts* (approximately 6 hours of digital audio material). The NASPA Dropbox also contains extensive reading materials such as cases, regulatory materials, etc., that you should familiarize yourself with prior to the start of the Certificate Program. Instructions for accessing this material online will be sent via email.

## **Preparation and Class Attendance**

Attendance, and quality of attendance, are essential for success in the Certificate Program. This program will provide unique learning opportunities that cannot be replicated simply from notes or after-class time spent with professors. Classes will not be recorded. Should you have an emergency that forces you to miss class, please contact the lead instructor as soon as possible. Quality of attendance is also a key for success. Temporary absences from class may be necessary from time to time for participants to handle pressing matters. Cell phones and similar devices should be in the silent or vibrate modes during class time.

Participants should endeavor to complete all required reading before class. Specific readings are assigned for each day of the program; these items have been provided to you via hard copy (books) or as web links/PDF documents in the NASPA Dropbox. It is important for you to complete the pre-program assignments listed above prior to the beginning of the Certificate Program. Assignments listed in the right-hand column below are the readings associated with that day's session, and should be reviewed before you arrive at the Certificate Program and then briefly reviewed again the evening before the material will be discussed.

## Course Topics & Readings

Day	Instructor	Topics	Reading Assignments
Monday June 4	Lake	Program Check-In	
12:00 PM – 2:00 PM			
2:00 PM – 6:00 PM		<p>Welcome &amp; Introductions Course Overview</p> <p>Law in the Life of Student Affairs Higher Education Business Structures Overview of U.S. Legal System Civil Litigation Overview Working with University Legal Services and Compliance Vendors</p> <p><i>EXERCISE: Techniques in Reading Cases, Statutes, Regulatory Materials, etc.</i></p>	<p><i>The Foundations of Higher Education Law &amp; Policy (Foundations)</i> 1-45, 47-64, 251-260</p> <p>1. <i>Schaer v. Brandeis Univ.</i> 2. US DOE Office for Civil Rights Letter to Spring Arbor University 3. Code of Federal Regulations (C.F.R. Title II ADA) paying special attention to § 35.139 Direct Threat</p>
		<p>A Brief Student-Affairs-Centered History of Higher Education Law: The Four (Five?) Eras</p>	<p>To learn more about the 4 Eras, please refer to: <i>The Rights &amp; Responsibilities of the Modern University: The Rise of the Facilitator University</i> 3-16, 17-34</p>
		<p>Public v. Private: “State Action” and Beyond</p>	<p><i>Foundations</i>, 64-76</p>
6:30 PM		Welcome Dinner	

Day	Instructor	Topics	Reading Assignments
<b>Tuesday</b> <b>June 5</b> <b>9:00 AM –</b> <b>4:30 PM</b>	<b>Lake</b> <b>Griffin</b>	<b>Basics of Legal Research:</b> <b>Where is the law?</b>	 Discussion only
		<i>EXERCISE: Basics of Legal Research</i> 1. Sources of Information Regarding Legal Issues in Higher Education	 Handouts will be provided.
		2. Working with Electronic Databases 3. Working with Governmental/Regulatory Databases	
		<b>Criminal Justice Overview</b>	 <i>Foundations, 227 – 231</i> <i>Washington v. Chrisman</i> <i>Commonwealth v. Carr</i> Optional: <i>Freeh Report on</i> <i>Penn State</i>
		<b>Documentation, Attorney-Client            Privilege, and Work Product</b>	 Discussion only
<b>Wednesday</b> <b>June 6</b> <b>9:00 AM –</b> <b>4:30 PM</b>	<b>Lake</b> <b>Griffin</b>	<b>Employee and Student Civil Rights and            Empowerment: Inclusion, Diversity and            Multiculturalism</b>	
		1. Employees	 Discussion only
		2. Students A. “Equal Protection” and Civil Rights Laws	 <i>Foundations, 231 – 247</i> <i>Grutter v. Bollinger</i> <i>Gratz v. Bollinger</i> <i>Fisher v. Univ. of Texas</i> BROWSE: <i>Schuette v. Coalition</i> <i>to Defend Affirmative Action</i>
		B. First Amendment	 <i>Foundations, 197 – 231</i> <i>Bd. of Regents Univ. of Wis. v.</i> <i>Southworth</i> <i>Christian Legal Society v.</i> <i>Martinez</i> <i>Lane v. Franks</i>
		C. Due Process: Conduct Codes and Alternatives	 <i>Beyond Discipline, Chapters 3</i> <i>and 4 (Ch. 4 is optional)</i> <i>Foundations, 179 – 195</i> <i>Univ. of Missouri v. Horowitz</i> <i>Univ. of Michigan v. Ewing</i> <i>Flaim v. Med. College of Ohio</i>

Day	Instructor	Topics	Reading Assignments
<b>Thursday June 7 9:00 AM – 4:30 PM</b>	<b>Lake</b>	<p><b>Safety and Wellness</b></p> <p>1. Safety Law Overview – Civil Litigation, Negligence, Tort Basics, Liability, Settlements, Special Issues </p> <p>2. Title IX (Sexual Assault) and Regulatory Process Overview </p> <p>3. AOD Risk, Liability Prevention </p> <p>4. FERPA </p> <p>5. Insurance/Administrative Liability </p> <p>6. Sovereign Immunity </p> <p>7. Hazing </p> <p>8. Models of Student Engagement </p> <p>9. Mental Health/Care Teams </p>	<p><i>Foundations</i>, 20–35, 91–178  <i>Freeman v. Busch</i>  <i>Bradshaw v. Rawlings</i>  <i>Nova Southeastern v. Gross</i>  <i>Regents of the Univ. of California v. Rosen</i>  Optional: Chapter 6 of <i>Rights &amp; Responsibilities</i></p> <p>OCR/DOJ <i>Letter and Resolution Agreement</i> with Univ. of Montana  US DOE OCR <i>Dear Colleague Letter on Title IX Coordinators</i> (April 24, 2015)  US DOE OCR <i>Title IX Resource Guide</i> (April 24, 2015)  US Dept. of Education and US Dept. of Justice, <i>Dear Colleague Letter: Transgender Students</i> (May 13, 2016)  US Dept. of Education Office for Civil Rights <i>Q&amp;A on Campus Sexual Misconduct</i> (September 2017)</p> <p>See 1., <i>supra</i>.</p> <p><i>Foundations</i>, 227 – 231  US Dept. of Education <i>Dear Colleague Letter: Protecting Student Medical Records</i> (August 24, 2016)</p> <p>See Insurance Handout (hard-copy)</p> <p><i>Foundations</i>, 153 – 154</p> <p><i>Foundations</i>, 190 – 191  Florida Hazing Law</p> <p><i>Beyond Discipline</i>, Chapters 1 and 5 (Ch. 5 is optional)  Optional: Chapter 6 of <i>Rights &amp; Responsibilities</i></p> <p><i>Foundations</i>, 165-170  <i>Shin v. MIT</i></p>

Day	Instructor	Topics	Reading Assignments
Thursday June 7 Continued			BROWSE ONLY: <ul style="list-style-type: none"> <li>• <i>Student Mental Health and the Law</i> (Jed Foundation)</li> <li>• <i>Balancing Safety and Support on Campus</i> (Jed/HEMHA)</li> <li>• <i>URMIA, Campus Threat Assessment and Management Teams</i></li> </ul>
Friday, June 8 9:00 AM – 1:00 PM	Mistler Lake	<b>Safety and Wellness Continued</b>  <b>Enterprise Risk Management</b>    <b>Student Affairs as a Discipline</b> <b>Wrap-up, Final Thoughts</b> <b>Discussion of Final Exam</b>	URMIA, <i>ERM in Higher Education</i> AGB/UE, <i>The State of ERM at Colleges and Universities Today</i> P. Lake, <i>Welcome to Compliance U: The Board's Role in the Regulatory Era</i>

## Examination/Assessment

The final examination will be open book and open note. However, once the examination is distributed, participants may not collaborate with any other participant or third party, or contact any Instructor. The examination will be assessed on a scale of High Competency, Competency, Competency Emerging, and Not Competent. To receive a certificate in the course, a participant must achieve a High Competency or Competency grade on the final examination. The examination will be released electronically at approximately 12:00 p.m. ET on Monday, June 11, 2018 and must be returned by 5:00 p.m. ET on Monday, July 30, 2018. Participants will be notified of exam results no later than 12:00 a.m. midnight ET on Wednesday, October 31, 2018.

Should a participant receive a grade of Competency Emerging or Not Competent, the participant will be asked to resubmit the final examination upon feedback from the Lead Instructor. The participant must then receive a High Competency or Competency grade upon resubmission. There will be only one opportunity for resubmission. Extensions on the final examination may be given if extreme circumstances arise. Extensions are at the sole discretion of the Lead Instructor.