Crosswalk for the *Student Version and The Law of Higher Education, Fifth Edition*

The crosswalk below directs interested readers from particular sections of the *Student Version* to the parallel section or sections in *The Law of Higher Education, Fifth Edition*. Since *LHE 5th* is a larger work (2 volumes), it contains more citations of resources and more case examples than the *Student Version*. This additional material in *LHE 5th* may be useful to instructors preparing classes and to students engaging in research or independent study. In addition, *LHE 5th* includes various sections covering topics—usually specialized topics of primary interest to practitioners—that are not treated in the *Student Version*. Although these additional sections in *LHE 5th* are not shown on this crosswalk, interested readers may view the entire Table of Contents of *LHE 5th* by going to the NACUA Web site that supports *LHE 5th* and the *Student Version* (see “Notice of Web Site and Periodic Supplements,” previously in the front matter).
General Introduction: The Study of Higher Education Law

A. The Universe of Education Law
B. The Governance of Higher Education
C. Sources of Higher Education Law
D. The Legal Relationships Within Institutions of Higher Education
E. The Law/Policy Distinction
F. The U.S. Legal System as It Relates to Higher Education Law

PART ONE: PERSPECTIVES AND FOUNDATIONS

I Overview of Higher Education Law

1.1 How Far the Law Reaches and How Loudly It Speaks
1.2 Evolution of Higher Education Law
1.3 The Governance of Higher Education
   1.3.1 Basic concepts and distinctions
   1.3.2 Internal governance
   1.3.3 External governance
1.4 Sources of Higher Education Law
   1.4.1 Overview
   1.4.2 External sources of law
      1.4.2.1 Federal and state constitutions
      1.4.2.2 Statutes
      1.4.2.3 Administrative rules and regulations
      1.4.2.4 State common law
      1.4.2.5 Foreign and international law
   1.4.3 Internal sources of law
      1.4.3.1 Institutional rules and regulations
      1.4.3.2 Institutional contracts
      1.4.3.3 Academic custom and usage
   1.4.4 The role of case law
   1.4.5 Researching case law
1.5 The Public-Private Dichotomy
1.5.1 Overview
1.5.2 The state action doctrine
1.5.2.1 When private postsecondary institutions may be engaged in state action
1.5.2.2 When students, employees, and others may be engaged in state action
1.5.3 Other bases for legal rights in private institutions

1.6 Religion and the Public-Private Dichotomy
1.6.1 Overview
1.6.2 Religious autonomy rights of institutions and their personnel
1.6.3 Government support for religious institutions
1.6.4 Religious autonomy rights of individuals in public postsecondary institutions

1.7 The Relationship Between Law and Policy

II Legal Planning and Dispute Resolution

2.1 Legal Liability
2.1.1 Overview
2.1.2 Types of liability
2.1.3 Agency law
2.1.4 Enforcement mechanisms
2.1.5 Remedies for legal violations
2.1.6 Avoiding legal liability
2.1.7 Treatment law and preventive law

2.2 Litigation in the Courts
2.2.1 Overview
2.2.2 Judicial (academic) deference
2.2.3 Managing litigation and the threat of litigation

2.3 Alternative Dispute Resolution
2.3.1 Overview
2.3.2 Types of ADR
2.3.3 Applications to colleges and universities
2.4 Institutional Management of Liability Risk

2.4.1 Overview and suggestions
2.4.2 Risk management strategies
2.4.3 Enterprise risk management

2.5 Institutional Liability for Violating Federal Constitutional Rights (Section 1983 Liability)

2.5.1 Overview
2.5.2 Eleventh Amendment immunity

PART TWO: THE COLLEGE AND ITS GOVERNING BOARD AND STAFF

III The College’s Authority and Liability

3.1 The Question of Authority

3.1.1 Overview
3.1.2 Trustee Authority

3.2 Institutional Tort Liability

3.2.1 Overview
3.2.2 Negligence
3.2.2.1 Premises liability
3.2.2.2 Liability for injuries related to on-campus instruction
3.2.2.3 Liability for injuries in off-campus instruction
3.2.2.4 Liability for co-curricular and social activities
3.2.2.5 Liability for co-curricular and social activities
3.2.2.6 Student suicide
3.2.2.7 Liability for injuries related to outreach programs
3.2.3 Educational Malpractice
3.2.4 Defamation

3.3 Institutional Contract Liability

3.4 Institutional Liability for Violating Federal Constitutional Rights (Section 1983 Liability)
IV The College and its Employees

4.1 Overview of Employment Relationships

4.2 Employment Contracts

4.2.1 Defining the contract
4.2.2 The at-will doctrine

4.3 Collective Bargaining

4.3.1 Overview
4.3.2 The public-private dichotomy in collective bargaining
4.3.3 Collective bargaining and antidiscrimination laws

4.4 Personal Liability of Employees

4.4.1 Overview
4.4.2 Tort liability
4.4.2.1 Overview
4.4.2.2 Negligence
4.4.2.3 Defamation
4.4.3 Contract liability
4.4.4 Constitutional liability (personal liability under Section 1983)
4.4.4.1 Qualified immunity
4.4.4.2 Issues on the merits: State created dangers

4.5 Employment Discrimination

4.5.1 Overview: The Interplay of statutes, regulations, and constitutional protections
4.5.2 Sources of law
4.5.2.1 Title VII
4.5.2.2 Equal Pay Act
4.5.2.3 Title IX
4.5.2.4 Section 1981
4.2.2.5 Americans with Disabilities Act and Rehabilitation Act of 1973
4.5.2.6 Age Discrimination in Employment Act
4.5.2.7 Constitutional prohibitions against employment discrimination
### Part Three: The College and Its Faculty

#### V Special Issues in Faculty Employment

- **5.1** Overview
- **5.2** Faculty Contracts
  - **5.2.1** Overview
  - **5.2.2** Academic custom and usage
  - **5.2.3** Part-time faculty
  - **5.2.4** Contracts in religious institutions
- **5.3** Faculty Collective Bargaining
- **5.4** Application of Nondiscrimination Laws to Faculty Employment Decisions
  - **5.4.1** Overview
  - **5.4.2** Judicial deference and remedies for tenure denial
- **5.5** Affirmative Action in Faculty Employment Decisions
- **5.6** Standards and Criteria for Faculty Employment Decisions
<table>
<thead>
<tr>
<th>Section Numbers</th>
<th>LHE 5th Section Numbers</th>
</tr>
</thead>
<tbody>
<tr>
<td>5.6.1</td>
<td>6.6.1</td>
</tr>
<tr>
<td>5.6.2</td>
<td>6.6.2</td>
</tr>
<tr>
<td>5.6.3</td>
<td>6.6.3</td>
</tr>
<tr>
<td>5.7</td>
<td>6.7</td>
</tr>
<tr>
<td>5.7.1</td>
<td>6.7.1</td>
</tr>
<tr>
<td>5.7.2</td>
<td>6.7.2</td>
</tr>
<tr>
<td>5.7.2.1</td>
<td>6.7.2.1</td>
</tr>
<tr>
<td>5.7.2.2</td>
<td>6.7.2.2</td>
</tr>
<tr>
<td>5.7.2.3</td>
<td>6.7.2.3</td>
</tr>
<tr>
<td>5.7.3</td>
<td>6.7.3</td>
</tr>
</tbody>
</table>

### VI Faculty Academic Freedom and Freedom of Expression

<table>
<thead>
<tr>
<th>Section Numbers</th>
<th>LHE 5th Section Numbers</th>
</tr>
</thead>
<tbody>
<tr>
<td>6.1</td>
<td>7.1</td>
</tr>
<tr>
<td>6.1.1</td>
<td>7.1.1</td>
</tr>
<tr>
<td>6.1.2</td>
<td>7.1.2</td>
</tr>
<tr>
<td>6.1.3</td>
<td>7.1.3</td>
</tr>
<tr>
<td>6.1.4</td>
<td>7.1.4</td>
</tr>
<tr>
<td>6.1.5</td>
<td>7.1.5</td>
</tr>
<tr>
<td>6.1.6</td>
<td>7.1.6</td>
</tr>
<tr>
<td>6.1.7</td>
<td>7.1.7</td>
</tr>
<tr>
<td>6.1.8</td>
<td>7.1.8</td>
</tr>
<tr>
<td>6.2</td>
<td>7.2</td>
</tr>
<tr>
<td>6.2.1</td>
<td>7.2.1</td>
</tr>
<tr>
<td>6.2.2</td>
<td>7.2.2</td>
</tr>
<tr>
<td>6.2.3</td>
<td>7.2.3</td>
</tr>
<tr>
<td>6.2.4</td>
<td>7.2.4</td>
</tr>
<tr>
<td>6.3</td>
<td>7.3</td>
</tr>
<tr>
<td>6.4</td>
<td>7.8</td>
</tr>
</tbody>
</table>
PART FOUR: THE COLLEGE AND ITS STUDENTS

VII The Student/Institution Relationship

7.1 The Legal Status of Students 8.1

7.1.1 Overview 8.1.1
7.1.2 The age of majority 8.1.2
7.1.3 The contractual rights of students 8.1.3
7.1.4 Student academic freedom 8.1.4
7.1.5 Students’ legal relationships with other students 8.1.5

7.2 Admissions 8.2

7.2.1 Basic legal requirements 8.2.1
7.2.2 Arbitrariness 8.2.2
7.2.3 The contract theory 8.2.3
7.2.4 The principle of nondiscrimination 8.2.4
7.2.4.1 Race 8.2.4.1
7.2.4.2 Sex 8.2.4.2
7.2.4.3 Disability 8.2.4.3
7.2.4.4 Immigration status 8.2.4.6
7.2.5 Affirmative action programs 8.2.5
7.2.6 Readmission 8.2.6

7.3 Financial Aid 8.3

7.3.1 General principles 8.3.1
7.3.2 Federal programs 8.3.2
7.3.3 Nondiscrimination 8.3.3
7.3.4 Affirmative action in financial aid programs 8.3.4
7.3.5 Discrimination against aliens 8.3.6
7.3.5.1 Documented (immigrant and nonimmigrant) aliens 8.3.6.1
7.3.5.2 Undocumented aliens 8.3.6.2

7.4 Student Housing 8.4

7.4.1 Overview 8.4.1
7.4.2 Discrimination claims 8.4.2
7.4.3 Searches and seizures 8.4.3

7.5 Campus Computer Networks 8.5
<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>7.5.1</td>
<td>Freedom of Speech</td>
<td>8.5.1</td>
</tr>
<tr>
<td>7.5.2</td>
<td>Right to Privacy</td>
<td>8.5.2</td>
</tr>
<tr>
<td>7.5.3</td>
<td>Liability issues</td>
<td>8.5.3</td>
</tr>
<tr>
<td>7.6</td>
<td>Campus Security</td>
<td>8.6</td>
</tr>
<tr>
<td>7.6.1</td>
<td>Security officers</td>
<td>8.6.1</td>
</tr>
<tr>
<td>7.6.2</td>
<td>Protecting students against violent crime</td>
<td>8.6.2</td>
</tr>
<tr>
<td>7.6.3</td>
<td>Federal statutes and campus security</td>
<td>8.6.3</td>
</tr>
<tr>
<td>7.7</td>
<td>Other Support Services</td>
<td>8.7</td>
</tr>
<tr>
<td>7.7.1</td>
<td>Overview</td>
<td>8.7.1</td>
</tr>
<tr>
<td>7.7.2</td>
<td>Services for students with disabilities</td>
<td>8.7.3</td>
</tr>
<tr>
<td>7.7.3</td>
<td>Services for international students</td>
<td>8.7.4</td>
</tr>
<tr>
<td>7.8</td>
<td>Student Records</td>
<td>8.8</td>
</tr>
<tr>
<td>7.8.1</td>
<td>Family Educational Rights and Privacy Act (FERPA)</td>
<td>8.8.1</td>
</tr>
<tr>
<td>7.8.2</td>
<td>State law</td>
<td>8.8.2</td>
</tr>
<tr>
<td>VIII</td>
<td>Student Academic Issues</td>
<td></td>
</tr>
<tr>
<td>8.1</td>
<td>Overview</td>
<td>9.1</td>
</tr>
<tr>
<td>8.2</td>
<td>Grading and Academic Standards</td>
<td>9.2</td>
</tr>
<tr>
<td>8.3</td>
<td>Online Programs</td>
<td>9.3</td>
</tr>
<tr>
<td>8.3.1</td>
<td>Overview</td>
<td>9.3.1</td>
</tr>
<tr>
<td>8.3.2</td>
<td>Student legal claims about online programs</td>
<td>9.3.2</td>
</tr>
<tr>
<td>8.4</td>
<td>Academic Accommodations for Students with Disabilities</td>
<td>9.4</td>
</tr>
<tr>
<td>8.4.1</td>
<td>Overview</td>
<td>9.4.1</td>
</tr>
<tr>
<td>8.4.2</td>
<td>Requests for programmatic or other accommodations</td>
<td>9.4.2</td>
</tr>
<tr>
<td>8.4.2.1</td>
<td>Domestic programs</td>
<td>9.4.2.1</td>
</tr>
<tr>
<td>8.4.2.2</td>
<td>Study abroad programs</td>
<td>9.4.2.2</td>
</tr>
<tr>
<td>8.4.2.3</td>
<td>Online programs</td>
<td>9.4.2.3</td>
</tr>
</tbody>
</table>
8.5 Sexual Harassment of Students by Faculty Members

8.6 AcademicDismissals and Other Sanctions

9.1 Disciplinary and Grievance Systems

9.2 Disciplinary Rules and Regulations

9.3 Procedures for Suspension, Dismissal, and Other Sanctions

9.4 Student Protests and Freedom of Speech

IX Student Disciplinary Issues

9.1 Disciplinary and Grievance Systems

9.1.1 Overview

9.1.2 Establishment of systems

9.1.3 Codes of student conduct

9.1.4 Judicial systems

9.2 Disciplinary Rules and Regulations

9.2.1 Overview

9.2.2 Public institutions

9.2.3 Private institutions

9.2.4 Disciplining students with mental disorders

9.3 Procedures for Suspension, Dismissal, and Other Sanctions

9.3.1 Overview

9.3.2 Public institutions: Disciplinary sanctions

9.3.2.1 Overview

9.3.2.2 Notice

9.3.2.3 Hearing

9.3.3 Private institutions

9.4 Student Protests and Freedom of Speech

9.4.1 Student free speech in general

9.4.2 The “public forum” concept
IX Rights and Responsibilities of Student Organizations and Their Members

10.1 Student Organizations

10.1.1 The right to organize
10.1.2 Right not to join, or associate, or subsidize
10.1.3 Mandatory student activities fees
10.1.4 Principle of nondiscrimination
10.1.5 Religious activities

10.2 Fraternities and Sororities

10.2.1 Overview
10.2.2 Institutional recognition and regulation of fraternal organizations
10.2.3 Institutional liability for the acts of fraternal organizations

10.3 The Student Press

10.3.1 General principles
10.3.2 Mandatory student fee allocations to student publications
10.3.3 Permissible scope of institutional regulation
10.3.4 Advertising in student publications
10.3.5 Obscenity
10.3.6 Libel
10.3.7 Obscenity and libel in private institutions

10.4 Athletics Teams and Clubs

10.4.1 General principles
10.4.2 Athletes’ due process rights
10.4.3 Athletes’ freedom of speech
10.4.4 Pertinent statutory law
10.4.5 Athletic scholarships
10.4.6 Sex discrimination
10.4.7 Discrimination on the basis of disability
10.4.8 Drug testing
10.4.9 Tort liability for athletic injuries

PART FIVE: COLLEGE AND THE OUTSIDE WORLD

XI The College and Government

11.1 Local Government Regulation

| 11.1.1 Overview of local government regulation | 12.1 |
| 11.1.2 Trespass statutes and ordinances | 12.6.3 |
| 11.1.3 Relations with local police | 12.5 |

11.2 State Government Regulation

| 11.2.1 Overview | 13.1 |
| 11.2.2 State provision of public postsecondary education | 13.2.1 |
| 11.2.3 State chartering and licensure of private postsecondary institutions | 13.3.1 |
| 11.2.4 Other state regulatory laws affecting postsecondary education programs | 13.5 |
| 11.2.4.1 Laws on gun possession on campus | 13.5.6 |

11.3 Federal Government Regulation

| 11.3.1 Overview of federal constitutional powers over education | 14.1.1 |
| 11.3.2 Federal regulation of postsecondary education | 14.2 |
| 11.3.2.1 Overview | 14.2.1 |
| 11.3.2.2 Regulation of research | 14.2.3 |
| 11.3.2.3 Regulation of intellectual property | 14.2.5 |

11.4 Federal Aid-to-Education Programs

| 11.4.1 Functions and history | 14.4.1 |
| 11.4.2 Legal structure of federal aid programs | 14.4.3 |
11.5 Civil Rights Compliance

11.5.1 General considerations
11.5.2 Title VI
11.5.3 Title IX
11.5.4 Section 504
11.5.5 Coverage of unintentional discrimination

XII The College and External Private Entities

12.1 Education Associations

12.1.1 Overview of the education associations
12.1.2 Accrediting agencies
12.1.3 Athletic associations and conferences

12.2 Business Partners
12.2.1 Research collaboration
12.2.2 The research agreement

Appendices

A. Constitution of the United States of America: Provisions of Particular Interest to Postsecondary Education
B. The American Court System
C. Reading and Analyzing Court Opinions
D. Glossary of Legal Terms

Bibliography

Case Index

Statute Index

Subject Index