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INTRODUCTION

FACULTY EVALUATION AND THE LAW

Personnel decisions are the most critical decisions administrators will make. These decisions vitally affect the future of the institution and establish its program and character.

Employment decisions are complicated by many mandates and legal decisions. Heightened concern about issues such as professional ethics and sexual harassment places additional responsibilities on colleges and their decision makers.

As a matter of law, the college generally is responsible and liable for the acts of its employees, including those who make personnel decisions. In relatively few instances are these personnel liable, even if named in a lawsuit.

In all of their roles—recruiter, evaluator, promoter, assessor, terminator, cheerleader and developer—college administrators make critical decisions that can and do generate litigation. Accordingly, it is in the interest of the college that personnel decisions be made by those who understand the law and take appropriate preventive actions.

This manual focuses on the following topics:

- Academic Freedom: Its Protections and Limitations
- The Faculty Handbook and Contractual Claims
- Defamation
- Faculty Evaluations and Claims of Discrimination
- Collegiality and Faculty Decisions
- Teachers as Role Models
- Student Evaluations of Professors
- Evaluating Student Harassment Claims Against Faculty
- Duty to Advise Students
- Post-Tenure Review and Policy Development

Each of these essays is presented with a common format: Overview, Application, and Preventive Measures. A Selected Bibliography follows each topic.

It should be noted that in *Kimel v. Florida Board of Regents*, 120 S.Ct. 631 (2000), the U.S. Supreme Court ruled that state employers are protected under the Eleventh Amendment from private lawsuits brought under the Age Discrimination in Employment Act (ADEA). The court determined that although Congress intended to abrogate state immunity under the ADEA, it had exceeded its authority. The Supreme Court came to a similar conclusion in *Board of Trustees of the University of Alabama v. Garrett*, 121 S.Ct. 955 (2001). In this case, the court ruled that employees of state governments cannot bring suit against their employer under the Americans with Disabilities Act (ADA) because of Eleventh Amendment sovereign immunity.

Based on these two decisions, state employees are barred from directly suing their employers for claims arising from the ADA and the ADEA. However, the effect of the Eleventh Amendment on federal employment law is constantly evolving.

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IS REQUIRED, THE SERVICES OF A COMPETENT
PROFESSIONAL SHOULD BE SOUGHT.

THE AUTHOR

Kent M. Weeks, a practicing attorney with the law firm of Weeks, Anderson & Baker of Nashville, Tennessee has a distinguished professional career as a teacher, administrator, lawyer, and author. A Fulbright Scholar, Weeks earned degrees from The College of Wooster, University of New Zealand, Duke University, and a Ph.D. from Case Western Reserve University.

For many years, Weeks was a Professor of the Practice of Education at Vanderbilt University and has been invited by many colleges and their associations to present seminars on higher education and the law. He has written several books and more than 43 articles and papers for scholarly journals, and he currently edits *Lex Collegii*, a legal newsletter for independent colleges and universities. In addition to this book, Weeks has written or coauthored others, each addressing particular topics relevant to college personnel and policies including: *Institutional Advancement and the Law*; *The College and University Legal Audit*; *Managing Liability and Overseas Programs*; *Managing Campus Conflict*; *Implementing Student Policies*; *Managing Admissions, Records, and the Law*; *Complying with Federal Law*; *Faculty Decision Making and the Law*; *Student Affairs Decisions and the Law*; *Student Behavior: Policies, Programs and the Law*; *Record Retention and Disposal*; *Staff Employment Policies*; *Student Handbook Policies*; and *Managing Departments and the Law*.

Weeks has recently authored a book: *A Leaner America: Private Choices and Public Policies* that carefully examines the causes of the startling epidemic of overweight and obesity and zeros in on the efforts that are needed to address this private and public problem, including campus initiatives.

Weeks has consulted with colleges throughout the United States and serves as legal counsel to several national and international colleges and educational associations. He has participated in and directed more than 150 seminars and workshops for college administrators, faculty and trustees and has addressed many higher education organizations, associations, and legal groups. Weeks is a member of the National Association of Independent Colleges and Universities Legal Services Panel.

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This manual is a product of many years of thought and reflection on issues and laws facing college administrators and faculty who make significant employment decisions. It also reflects numerous contacts with both college administrators and faculty regarding the legal terrain in which employment decisions are made.

Acknowledgment must be given to my many clients who throughout the years have caused me to think about these issues and about how to reduce or eliminate legal exposure. The Board of Higher Education and Ministry of The United Methodist Church has been a long-standing client and has vigorously supported legal services to its institutions. Specifically, it sponsors *Lex Collegii* for its member institutions. Some of the material in this manual is adapted from articles in *Lex Collegii*, the copyright of which is held by the Board of Higher Education and Ministry in Nashville, Tennessee.

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