

Legal Issues in Academic Advising
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I. Agency law

- a. You are an agent of your institution. Your institution is the “principal.”
- b. Under agency law, your promises can “bind” the institution.

II. Fiduciary law

- a. You are a *fiduciary* of the students you advise – you owe them the highest duties of good faith, trust, confidence and candor
- b. Issues:
 - i. When to keep a student’s confidences
 - ii. Keeping your values and priorities separate from your students
 - iii. Being honest with students about their options

III. Constitutional law

- a. Applies to public universities and their employees
- b. U.S. Constitution limits the power of the state
- c. Fundamental rights
- d. Protected classes
- e. Public institutions cannot infringe on the constitutional rights of students
 - i. Biggest issue for advisors: Students have a “property interest” in their education once they are enrolled
 - ii. Also think about scholarships, assistantships, etc.
 - iii. Property cannot be taken without due process – notice and an opportunity to be heard

IV. Contract law

- a. Both public and private institutions can contract with their students
- b. Many student lawsuits against institutions are based in contract
- c. Contract law is linked to your role as an agent
- d. Other contracts can be based on documents, such as catalogs, syllabi and policies – remember to include language that states that this document “does not create a contract”

V. Tort law

- a. Torts are civil wrongs that are not based on contract
- b. Torts include negligent and intentional acts
- c. The Mississippi Tort Claims Act provides protection to the employees of state institutions

VI. Family Educational Rights and Privacy Act

- a. “Education records” are defined very broadly

- b. Students have a right to see their records – but an advisors’ personal notes are not education records
 - c. Records are protected from disclosure to third parties
 - d. You may disclose information to other employees if they need it to do their job
 - e. Safety exception – if you believe a student represents a danger to himself or others
- VII. Advisors as employees – a few random issues
- a. Most ethical issues for advisors probably involve a conflict between duty to institution and duty to students
 - b. Employees in Mississippi are either contractual or “at-will”
 - c. Public employees have a right to speak on matters of public concern