

2023 PRESIDENTS INSTITUTE
Designing the Future >>>

Legal Issues That Keep Presidents
Up at Night

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Presenters

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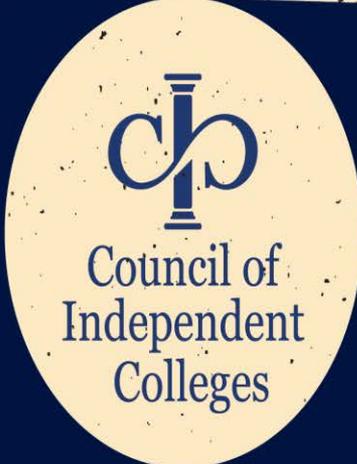
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Chair: A. Zachary Faison

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guidebook

Stevens  Strategy
Colleges • Universities • Schools


Dynamic Campus

With Grateful Acknowledgement to Our Great Colleagues

- Peter Lake – Title IX
- Shawn Morgan – Cybersecurity
- Josh Stearns – NIL
- Melissa Watkins – UPMIFA

*Thank
you*



Relationships



Communication



Budgeting
and Staffing



Know-How



Results

2023 Issue Overview

- Impact of *Dobbs*
- Title IX Update
- Financial Stresses
- Tenured Faculty Termination
- Affirmative Action
- Evolution of NIL
- Cybersecurity Threats
- Things to Always Do
- Hot Topics



Relationships



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Results

Dobbs

Supreme Court's rejection of *Roe v. Wade* has multiple implications on campus, including:

- Health services provided by the institution
- Aiding and abetting restrictions
- Student activism
- Admissions
- Title IX / Title VII
- Employee benefits



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Results

Title IX Update

- Status of the Biden Administration's Proposed Regulations
- Trends in Title IX Cases
 - *Tennessee v. U.S. Department of Education*
 - *Cummings v. Premier Rehab Keller, PLLC* – Not a TIX case but likely an important limitation
 - *Fairfax Co. Sch. Bd. V. Doe* – Sustains *Gebser/Davis*



Relationships



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Know-How



Results

Financial Stresses

- Endowment management under UPMIFA
- Downsizing/restructuring/eliminating programs
 - Personnel issues
 - Faculty handbook
 - Early exit plans
 - Accreditation issues



Relationships



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Results

Faculty Termination Issues

- *Porter v. Berea College* – Terminated tenured faculty member asserted the following claims:
 - State and Federal Civil Rights Discrimination Claims
 - Age
 - Race
 - Sex
 - Retaliation



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Results



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Results

Faculty Termination Issues

- *Porter v. Berea College* (Cont'd)
 - Breach of Contract
 - Constitutional claims imported through faculty handbook
 - Impact of AAUP statements
 - Due process claims
 - Confidentiality claim
 - Refusal to mediate claim
 - Lack of counsel claim
 - Academic freedom claim

The Harvard/UNC Affirmative Action Cases



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Results

- Key Issue – Are “holistic” admissions processes which consider race and ethnicity valid under the First Amendment or a violation of prospective students’ Equal Protection and Title IV rights?

The Harvard/UNC Affirmative Action Cases

- ACE filed an amicus brief for 39 higher education groups, including CIC, arguing
 - IHEs should be allowed to pursue holistic reviews of applicants' backgrounds
 - IHEs cannot pursue missions by mechanically relying on “objective” criteria
 - Race-conscious admissions disadvantage minorities and discriminates against speech
 - Perils of judicial interference in IHE administration will worsen



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Results

The Harvard/UNC Affirmative Action Cases

- October 31 oral arguments should suggest USSC will overturn *Bakke*, *Fisher I*, *Fisher II* precedents
- Ultimate outcome may be based on divided majority, with different justices writing nuanced opinions
- The nuance will matter to IHEs
- More to come!



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Results

The Ongoing Evolution of NIL

- Compliance issues
 - Recruiting
 - Collectives v. athletic department funds
 - F-1 students
 - Enforcement
- Quality control
 - IP licensing
 - Hostile industries



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Know-How



Results

Cybersecurity Threats

- Types of threats
 - Phishing
 - Vishing
 - Ransomware/malware
 - Vendors/campus users
 - Website spoofing
- Sources of liability
 - Graham-Leach-Bliley (notice obligations)
 - HIPAA/HITECH
 - State data privacy laws



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Know-How



Results

Cybersecurity Threats

- Proactive Steps as to employees/students
 - Adopt a solid “Acceptable Use Policy”
 - Conduct regular and unannounced training as a condition of continued use
 - Limit vendor access
 - Terminate access rights promptly when employees depart
 - Embrace “See Something, Say Something” culture



Relationships



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Know-How



Results

Cybersecurity Threats

- Proactive preparedness
 - Search Internet for “Your” content
 - Implement Multi-Factor Authentication for ALL users
 - Upgrade threat detection/response measures
 - Consider “red team”/“blue team” attacks
 - Conduct tabletop exercise
 - Consider joining Infragard



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Know-How



Results

Cybersecurity Threats

- Proactive management of risk
 - Obtain adequate cyber insurance
 - Understand the limits of cyber insurance policy
 - Enlist third party to evaluate the policy
 - Know limits/breadth of ransomware payments
 - Coordinate with insurers to identify a response team, including external experts, now to avoid post-breach delays in resolving cyber emergency



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Results



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Results

Some Things to Always Do

- Be nice to the neighbors (a/k/a potential jurors!) – Oberlin
- Notify your insurers – Harvard
- Be objective about your litigation and avoid injecting personal acrimony into assessing – College of DuPage

Really Hot Topics



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Results



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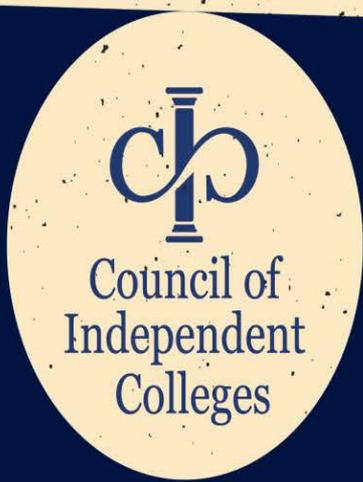


Results



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Thank you

