Examining legal literacy in higher education professionals: A phenomenological inquiry

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Understanding the law has become an integral part of the job for higher education professionals. For decades, courts have played an increasingly important role in shaping the litigious nature of society and in higher education (Greenleaf, 1982). Barr and Associates (1988) noted the increasingly major influence of the law on campus life. Gehring and Penney (1995) highlighted the critical need to understand legal issues for those professionals entering the field of higher education and student affairs. Olivas (1986) found that higher education law is a rapidly changing area in the field, and knowledge of the law is critical to anyone in a professional position in higher education (Olivas, 1989).

While many agree that it is critical to know and understand the law, there is little to no research examining the experiences of higher education professionals on how they obtain, utilize, understand, and stay and feel competent of legal principles that they learn from graduate preparation programs, professional development opportunities, and/or colleagues and supervisors. However, given the increased nature of legal compliance in higher education, professionals are required to understand, implement, and comply with the law on a daily basis. Consequently, this article aimed to fill this gap and examine the experiences of higher education professionals with legal literacy in their profession.

**The impact of law in higher education**

The law has played an important role in the development of higher education in the United States, especially in regards to students’ and employees’ constitutional rights, student equity and access, and non-discrimination principles. Institutions of higher education are frequently involved with legal controversies from issues related to Title IX to violations of the U.S. Constitution; institutions expect to pay hefty prices for legal fees and litigation costs (White, 2011). In the 1960s, only 50 colleges and universities had in-house counsel, while today
all colleges and universities either have in-house counsel, outside counsel on contract, or are represented by their states’ attorneys general (Bickel & Ruger, 2004; Lipka, 2005; Smith 2005). This is because the complexity and volume of legal issues in higher education have exponentially grown (Santora & Kaplin, 2003).

Over the last century, the Civil Rights Movement and federal court rulings on various constitutional rights have generated new constitutional case law for institutions to abide and implement (Fields, 2003). New understandings regarding free speech, free association, free press, equal protection, and other student- and employee-rights issues are particularly of necessary for public and state-supported colleges and universities to know. These students’ rights and responsibilities eventually led into the formation and drafting of disciplinary codes of conduct. Faculty rights of academic freedom, freedom of expression, and employment discrimination have also been at the forefront of institutional legal concerns.

In addition to constitutional law, legislation has played a large role in compliance for institutions. Gehring (1994) states that government viewed higher education as “a vehicle for the implementation of federal policy” (p. 95). As a result, the compliance of federal policy places a cost on institutions of higher education. Again, compliance began to peak during the Civil Rights Movement. Major pieces of legislation passed during the 1960s were The Higher Education Facilities Act of 1963, the Equal Pay Act, the Civil Rights Act of 1964, the Economic Opportunity Act of 1964, the Higher Education Act of 1965, the Age Discrimination Act, and Executive Orders 11246 and 11375 pertaining to affirmative action.

Currently, while institutions are working to ensure an equitable working and studying environment, they also need to ensure the safety of their campuses. Legislation addressing issues of sexual harassment and sexual assaults on campus are issues of hot topic, such as the Clery
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Act, the Violence Against Women Act, the Campus SAVE Act, and Title XI of the Educational Amendments. While some may view these laws and legislation as being burdensome and creating a challenge for institutions of higher education, these legal mandates help institutions create an equal and safe environment for work and study.

**Legal literacy in higher education**

As discussed, because of the increase in legal compliance demands placed upon higher education professionals continually grow (Fifolt, Solomon, & Owens, 2010). Increasingly, since student affairs and higher education professionals are the front-line staffs that address various complex student issues and situations, ACPA and NASPA endorsed professional competency areas that are critical and important for professionals to know and understand (ACPA and NASPA, 2015). These competencies defined the broad professional knowledge, skills, and attitudes expected of professionals (ACPA and NASPA, 2015). One of these competencies is understanding law, policy, and governance. Within this competency, professionals should know the laws and legal systems in which they work. It reads as follows:

“Know laws of country, state or province, and regulations that both influence and govern higher education. Ability to apply the law to policies and practices carried out by individuals working in higher education. Disposition to see the big picture and respond appropriately to regulations imposed by external influences.”

Accrediting bodies have also required graduate preparation programs to include a required course on legal issues (COSPA, 1965; CAS, 2012). There is no doubt that the understanding of the law is important in student affairs and higher education practice. Chief student affairs officers have recognized the importance of legal knowledge in student affairs practice (Schmitt, 1990). Most studies pertaining to higher education law have focused on legal
knowledge and information that practitioners should know, such as First Amendment rights for students and faculty (Venter, 2015; Hutchens & Sun, 2015; Paige & Beckham, 2015), Fourth Amendment search and seizure rights in residence halls (Fossey, 2015), legal rights of underrepresented students and undocumented students (Nguyen, 2014; Nguyen & Martinez Hoy, 2015; Nguyen & Serna, 2014; Nguyen & Ward, 2017; Serna, Cohen, & Nguyen, 2017), legal issues in housing (Bauman, Davidson, Sachs, and Kotarski, 2013; Hulm, 1990; Jeffes & Janosik, 2002; Moran, Roberts, Tobin, and Harvey, 2008; Sadayuki, 2015; Waggoner & Russo, 2014), etc.

Very few research has examined how professionals understand the law and their experiences gaining competency of the law. For example, Coleman and Keim (2000) conducted a study to see how many graduate preparation programs were offering higher education law courses and how many national conference presentations were related to law. They argued that while this is a very important topic, professionals were not able to get enough training in this area. The other two studies provided overviews of teaching law and ethics in student affairs programs and the benefits of developing moral judgment in these courses (Gehring & Penney, 1995; Richmond, 1989). While these studies have provided initial insights into understanding how graduate preparation programs are teaching higher education law, there are no studies that have examined empirically the experience and perceptions of student affairs and higher education professionals with their legal literacy; this study aims to fill this gap.

Legal literacy in education

While legal literacy in higher education has been sparsely if not studied, studies examining the legal literacy of K-12 educators and administrators provide an understanding and framework for higher education. Legal literacy in K-12 education have been examined for the
past 50 years (Decker, 2014). Legal literacy in education has been defined as the educator’s actual knowledge of the law (Schimmel & Militello, 2007), while legal literacy in other disciplines have been defined as “understanding, skills, and values that enable practitioners to connect relevant legal rules with their professional practice, to appreciate the roles and duties of other practitioners, and to communicate effectively across organizational boundaries” (Preston-Shoot & McKimm, 2013). For this study, we utilize the ACPA/NASPA Competency for Law, Policy & Governance discussed later.

Studies in K-12 legal literacy form a foundational framework for this study. Schimmel and Militello (2007) surveyed more than thirteen hundred K-12 educators in thirteen states. In their survey, Schimmel and Militello examined the educators’ knowledge of the law, their level of interest in various areas of school law, their source of legal information, and the educators’ level of comfortability with the law in their practice. Schimmel’s & Militello’s findings show that most educators are uninformed or misinformed about student and teacher rights, have never taken a course in school law, obtain their legal information from other colleagues, would behave differently if they knew the law, and have a desire to learn more about the law. Implications from their results suggest that coursework should include school law classes, professional development opportunities with a focus on law and policy should be readily available, and a greater understanding and comfortability with the law permits better protection of student and teacher rights (Schimmel & Militello, 2007). Respondents in Schimmel’s & Militello’s study exhibited that literacy is power for them to ensure students’ rights and health and safety.

Militello, Schimmel, & Eberwein (2009) conducted a large-scale, multi-state study of school principals that examined their sources of legal knowledge, their understanding of the law, and types of legal issues they encountered in their work. Similar to the 2007 study, Militello,
Schimmel, & Eberwein (2009) found that majority of school principals were misinformed or uninformed about teachers’ and students’ rights. Even though most of the respondents had received some school law training, the respondents got their information from other colleagues. Eighty-five percent of the respondents stated that they would have changed their behaviors if they would have known more about the law (Militello, Schimmel, & Eberwein, 2009). This study also confirmed that literacy is power.

These studies in K-12 legal literacy provide a comprehensive framework that can be used as a conceptual lens to understand how non-lawyer professionals perceive their own legal literacy, understand and experience the law in their professional roles, and seek legal knowledge and understanding. This framework that has been used to examine legal literacy in K-12 educators and administrators was deemed an ideal lens to use for this study. Similarly, to their primary and secondary education peers, higher education professionals are also tasked with state and federal legal compliance daily in their work. However, little to no information is known about the levels of legal literacy in higher education.

**Significance and purpose of the study**

The purpose of this research study was to discern the experiences and perceptions that higher education professionals have regarding the level of interaction the law has with their work, as well as how and where they obtain their knowledge and understanding of the law. As discussed above, empirical research on the experiences of legal literacy in higher education professionals is sparse if nil. As a result, I sought to contribute to the understanding of legal literacy in non-lawyers, specifically in professionals working in a higher education setting.

**Conceptual Framework**
The conceptual framework for this study was informed by the above synthesis and analysis of the literature in K-12 legal literacy (Schimmel & Militello, 2007; Militello, Schimmel, & Eberwein, 2009). From this literature, the categories of actual legal knowledge, perceptions of adequate legal knowledge, and sources of legal knowledge served as a conceptual framework. These categories provide a comprehensive framework that can be used as a conceptual lens to understand how non-lawyer professionals perceive their own legal literacy, understand and experience the law in their professional roles, and seek legal knowledge and understanding. This framework that has been used to examine legal literacy in K-12 educators and administrators was deemed an ideal lens to use for this study.

Methods

In this study, I employed qualitative research methods to understand the experiences and perceptions of higher education professionals of their own legal literacy. Qualitative research tools were used so that I could collect rich information and understand the phenomenon of legal literacy in higher education in-depth (Creswell, 2003). Qualitative inquiry is also ideal to ask questions that address the what, how, and why of a phenomenon (Creswell, 2003; Patton, 2002). As a result, after IRB approval, I used purposeful sampling to recruit participants via email and in-person invitations. Additional participants were also identified through snowball sampling. I conducted 14 individual, face-to-face interviews with full-time professionals working in various areas of higher education so that we could gain an understanding of how these professionals gain their knowledge of the law, how they feel about their understanding of the law, and where they get their knowledge of the law. I made an effort to find a diverse group of participants, with varying years of experience, worked in various areas of higher education, and had various levels of educational training.
Data collection

Data was collected through individual semi-structured interviews. The interview protocol is attached in the Appendix. Through these individual interviews, I was able to focus on the varying experiences and perspectives of the participant’s legal literacy. The interviews were recorded while observation notes were taken. The final sample included 14 full-time higher education professionals that ranged from entry-level to vice presidential-level, from one to twenty-seven years of experience, and from working in areas of housing to research and economic development. Through this diverse array of experiences, I sought to identify commonalities across these participants.

Before the interview, the participants read and signed a consent form for participation in the study. The interviews consisted of approximately twelve semi-structured questions related to their legal literacy within higher education and demographic information and lasted approximately 30 to 45 minutes. The questions were guided by an interview protocol (see Appendix A). The questions asked participants about specific experiences learning the law and how they felt about utilizing the law in their work. For instance, examples are: “Can you describe your experience learning about higher education law?” and “Please describe how the law intersects with your work in higher education.” The semi-structured approach allowed for follow-up or clarifying questions if needed in order to gain deeper insight into the phenomenon and explore emerging themes (Holstein & Gubrium, 1995). The interviews were audio recorded for transcription and later review.

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<th>Name</th>
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Data analysis

Data collection was completed by mid-spring semester of 2017, and data analysis began spring semester 2017. Consistent with methods of qualitative inquiry (Creswell, 2003; Strauss & Corbin, 1990, 1998), I read through each individual transcript to better understand how each respondent experienced their legal literacy in their daily work. From this, I generated initial themes to provide a foundation of the analysis. Thereafter, I utilized NVivo Qualitative Research Software to code the transcripts. I used open-coding and axial-coding techniques to create categories and identify relationships between the categories (Strauss & Corbin, 1990, 1998).

Findings

The data analysis resulted in three themes that categorized the participants’ perceptions of legal literacy. The first theme was “formal legal training and professional development,” and it explains whether formal legal training in graduate preparation programs and/or professional development opportunities, such as conferences and seminars, helped the participants develop legal knowledge and understanding. The second theme was “lack and fear of legal knowledge,”
which describes the participants general fear of understanding the law and applying it in their work. This theme also addresses how inadequate the participants’ felt regarding their understanding of the law. The third theme, “job-specific law knowledge and use,” refers to the cases where the participants expressed that the legal knowledge that they were comfortable with or understood was directly-related to their job duties. These themes were not mutually exclusive, and there was overlap. The participants’ descriptions of their experiences oftentimes described one or more of these themes.

**Formal legal training and professional development**

Participants were asked how they obtained legal knowledge. In addition to how they had previously obtained their legal knowledge, they were asked to describe preferred modes of legal information delivery. While some participants had taken a course in higher education law, either in their masters or doctoral graduate programs, other participants did not have any such educational opportunities. For those that took a higher education law course, they thought it was a good foundational preparation for their professional work. Carla, an academic advisor who just completed her master’s degree in higher education stated:

“So, had I not taken the class I guess in Higher Ed then I probably wouldn't know as much as I feel that I can apply now to my professional position, um, having taken the class.”

Trish, a student conduct and rights officer, did not have the opportunity to take a law class in her graduate school program, and she also did not complete a graduate preparation program in higher education nor student affairs. She has a master’s degree in educational leadership. She reflected on her opportunities learning the law and stated:

“So, I looked through my transcript, and I did not have to take … there were no
individual law classes. They were all, it was a part of a lot of the classes that I took, but I remember taking a law class for … for lower education. You know … um … elementary school. We did a law of class for that, but not for grad school.”

Connie, who is a mid-level student affairs professional with 14 years of experience and completed her graduate preparation program in higher education and student affairs more than a decade ago reflected that her master’s program did not have a higher education law course. As a result, she states that she is mostly self-taught. In fact, all participants indicated to some degree their legal literacy derived from being proactive and being self-taught. Connie stated:

“That’s my academic background and everything else has been through either personal professional reading or professional development opportunities I have sought out, recognizing that the law has an impact.”

Carla echoed that it is important to take it upon yourself to stay abreast of the legal changes and how it impacts work. Most of the time, that knowledge has to be gained outside of the job description and potentially the working environment. She says:

“It’s a lot like wanting to educate myself outside of some of the limited things that campus offers.”

The participants found that some sort of formal legal training was important to obtain the knowledge they need in the job. Carla explained it saying:

“.. had I not taken the class I guess in higher education then I probably wouldn’t know as much as I feel that I can apply now to my professional position.”

In addition to formal legal training in graduate preparation courses, the participants found that professional development opportunities also provide good knowledge and
understanding of the law. Connie, the mid-level student affairs professional with 14 years’ experience referenced that she attended a workshop through NASPA | Student Affairs Administrators in Higher Education. She said:

“My most intensive one was put on by NASPA. It was a five-day conference limited to 40 people in student affairs and law facilitated by the one and only Peter Lake who I think is the legal mind of student affairs.”

Peter Lake was mentioned several times pertaining to professional development in higher education law. April, a mid-level student affairs professional, stated similarly with Connie:

“I went to a conference by Peter Lake; he's the guru of higher ed law. He does massive consulting and is quoted in The Chronicle. So I was at the conference on student orgs and he was talking a lot about institutional liability with student orgs and free speech with student orgs, um … free speech on college campuses; and so that was my first exposure to Peter Lake.”

Other participants mentioned webinars, conferences, and programs specific to their professional associations or attending a higher education law specific conference. Harry, a student union professional, also mentioned how conferences were helpful to stay abreast of the law. He stated:

“And I think … I don’t know if it was this past national conference, or international conference I went to or the one prior, but … FLSA was breaking and they actually formed … an impromptu session there and it was a packed house because everyone was stressed out how FLSA was gonna impact like their employees, their campus. Uh, so, umm… conferences are great for that.”
While these opportunities were welcomed opportunities to learn and reinforce their knowledge of the law, all participants still felt they lacked literacy in the law.

**Lack and fear of legal knowledge**

The participants all noted lack of legal literacy and some degree of fear. All of the participants expressed a lack and fear not only from their current positions but also from their degree programs. For example, outside of a professional role, such as the director of an office of student rights and responsibilities, that requires in-depth knowledge of the law and usually requires a legal degree, professionals in this study expressed that there is room for growth in their development of legal literacy.

Participants noted that some their graduate preparation programs did not incorporate a higher education law course. Lack of exposure to legal issues as it pertains to higher education and student affairs was seen as a detriment to the participants. Carla, an academic advisor, expressed:

“That lack of training kind of hurts me in a sense because again I want to… [do] what is best for the student, and so sometimes not being very knowledgeable in what types of laws and policies are out there, um … could potentially come back and bite me if I am ever disclosing something you know to another professional member on campus when maybe I’m not supposed to … because it is strictly confidential.”

As this quotation suggests, Carla discussed the uncertainty of whether she is abiding by law and policy to protect students’ rights. This quote was a general sentiment that while participants trusted their gut, they were unsure whether what they were doing is legal or not. They attributed this uncertainty to their lack of training in the law. This concern translated into fear for some of them. Trish, a student conduct and rights officer, described her feelings and emotions about her
legal knowledge:

“Law literacy … I can tell you that law literacy scares me. Like you coming into interview me and say you’re going to interview me about law literacy. Yea, that kind of frightens me.”

Heidi, a participant that works in career services, expressed a similar sentiment and fear of potentially going to jail:

“You know like at University X, I was afraid if I messed up I was going to get fired or thrown in jail because like I was afraid of University X jail … You know I was like really worried all the time about following the rules.”

These quotes exhibit the level of importance that participants place on the law and breaking the law can have consequences. Because of this level of importance, participants were fearful that if they broke the law or did something that they were not supposed to or could not do, their actions would be consequential, either by losing their job or ultimately rising up to being criminal. Obviously, the participants were not engaging in illegal or criminal activity, but as lay people view the law or the justice system, jail- and prison-time is usually seen as the punishment.

**Job-specific law knowledge and use**

While the participants expressed a lack of adequate legal literacy, they all stated that they were most comfortable with the laws that pertained to their job duties. On the job training was most useful to make the laws relevant and applicable in their work. Rachel, a senior-level student affairs administrator with 30 years’ experience, talked about her familiarity with certain laws because it was so prevalent in her work. She said:

“I would say I have learned through doing; so for example, Title IX. When the Dear Colleague Letter came out in 2011, I think we all became very quickly educated on Title
IX policies. So I knew that Title IX is related to athletics, but I knew very little as it related to Title IX and women’s rights, and sexual misconduct, and so on. So that would be a way, same with disabilities, I think you learn the law when a student comes in and wants help.”

While learning on the job, colleagues become very valuable resources and tools. Many participants talked about utilizing their campus or professional colleagues to answer questions or ensure correct compliance with law and policy. Erin, a housing professional who has six years’ experience and working on her doctorate, stated:

“[I ask] for clarification if I am not sure to those [laws] that [I need to] have additional knowledge. Umm … so our like for example, Clery, our Chief of Police is well-educated … umm … and well versed in Clery … umm … and so he also knows who to ask if we’re kind of not certain how to count a certain report or statistic. So that is how I gain further information just by doing research and asking questions when needed.”

Anne, who is a career services professional, echoed Erin’s sentiments, and stated:

“I usually call people. I’ll call risk management. One of my former mentors is the director of safety for the university system, so I call him and ask him or call his employees. I feel like the information is pretty easy to get when you need it.”

These quotations illustrate that legal information and knowledge is often times learned on the job by research or oftentimes relying on the information given by other colleagues within their institutions or professional circles. While a few participants mentioned contacting university general counsel, the few that did were upper level administrators. For those professionals who were entry- or mid-level employees, they relied heavily on their peers and colleagues.

Discussion
From this study, several conclusions can be drawn pertaining to the experiences of legal literacy among these participants. The purpose of this study was to ascertain the experiences and perceptions of professionals who work in higher education in relation to how often the law interfaces with their work. In addition, participants were asked how and where they obtain information about the law. Results of this study provided beneficial information to inform universities and graduate preparation programs on the educational preparation of future higher education and student affairs professionals on how to prepare and train individuals on the law and compliance of the law as it relates to their work.

According to Decker (2014) it is an ideal time to increase research, advocacy and action on accountability and education law. While Decker (2014) focused on K-12 educators, the findings from this study support similar experiences in higher education. There is a need to increase research and advocacy to show the value of legal literacy and validate legal knowledge among non-lawyer professionals. Also, in order for higher education professionals to make reasonable and prudent decisions, knowledge of and understanding the law is critical. Most of the participants, but specially April, mentioned that it is not enough to just show kindness to students; institutions can be liable if they do not follow due process and First Amendment rights. Decker (2014) also points out that being legally literate is not about winning court cases but avoiding litigation. Mitigating litigation and liability is the purpose of the mandated trainings of the law that the participants stated were boring.

Legal illiteracy impacts everyone, particularly students, and the implications are usually negative. Having extensive legal information available to educators will significantly help them be more effective in the classroom. Similarly in higher education, ensuring that educators and administrators understand how the law affects their daily practice is critical. Legal literacy
allows for ethical decision-making in higher education. As members of a campus community become legally literate, they also develop the skills necessary to apply the law to their daily lives and work responsibilities which can lead to more informed and better decisions. Legal literacy also allows educators, administrators and support staff to maintain legal compliance while performing their jobs more effectively.

Institutions are not actively promoting the legal literacy of their employees beyond the basic understanding needed for a specific position. Participants discussed a perceived lack of investment and promotion of law competency from many of their employers. From the participants’ responses, it appeared that institutions may not have enough time or resources to promote knowledge of the law for their professionals. Participants also described receiving extensive training for compliance reasons rather than professional development. Some participants noted that these compliance trainings were monotonous and predictable and not helpful for their professional development nor understanding. While the law may have varying levels of impact on the work in higher education, the development of professionals on these topics is likely lacking.

Graduate school law courses heavily assisted in the development of their legal literacy. Since all of the participants in the study completed a level of education higher than a bachelor’s degree, a common theme in the data was how graduate school was either central or not to the development of legal literacy. Most of the participants in the study were able to complete courses specifically about the law within higher education. These courses were reported to have varying levels of impact. For those participants that did not have a law course, they had the opportunity to learn under colleagues and mentors in their institutions, for example, a Title IX coordinator or a director of student conduct. Provided that these courses were specifically designed to develop
law competency, it appeared that these courses had a significant impact on the development of legal competency.

Legal knowledge increased through service as a professional. All participants but one had current or former experience working in residential housing, student conduct, or other areas of student affairs that required an understanding of certain laws. Participants stated that this experience helped them to gain knowledge about laws, such as FERPA, Title IX, and the Clery Act, etc. Protection of student information was also a very important topic among participants when working in student conduct or academic advising.

Many of the participants in the study reported a lack of personal interest in the law as it relates to their lives and work. Some participants shared that, while they felt the law was important within their work, they typically only needed a casual working knowledge of the law to complete their regular tasks. This interest did not necessarily mediate the participants’ development-seeking behaviors. Yet, may be more indicative of the amount of interaction the participants’ work had with the law on a regular basis.

Participants sought out legal knowledge in relation to current events or situations they were working through. Current events were discussed as a significant topic of interest relative to the law and higher education. Participants talked at length about how current events stirred interest in the law, often seeking out legal knowledge to supplement direction or action in their jobs.

**Conclusion**

Professionals in higher education are increasingly asked to know and understand the law in their practice. As non-lawyers, this can be very intimidating. Prior research has shown that knowledge in legal issues is critical for professionals in higher education and student affairs.
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The data garnered from this study illustrates the impressions, challenges, and anxieties that professionals face when dealing with the law in their work. Understanding these experiences of legal literacy can help graduate preparation programs adopt higher education law courses and better design their courses to meet the varying demands in higher education. In addition, institutions should invest in quality professional development for their professionals on differing areas of the law depending on the nature of the work. Since the participants stated that they seek advice from colleagues, it is important that all professionals have a baseline understanding of the law in order for them to pass on this knowledge to others.

This qualitative study gives a glimpse into the experiences of higher education professionals of their legal literacy. Future research could include mixed methods studies to examine both their perceptions of legal literacy and actual knowledge of the law to measure the accuracy of their perceptions. In addition, future research could examine legal literacy in specific areas of higher education, such as housing, student conduct, student affairs, etc. Given the heightened responsibilities of professionals to comply with the law and to utilize the law as a minimal threshold to ensure student safety and success, understanding the legal literacy of higher education professionals is only going to become more critical to our work.
REFERENCES


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