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INTRODUCTION

FACULTY DECISION MAKING AND THE LAW

This series of essays is designed to educate and inform administrators and faculty about the legal implications of decisions they make. Knowing the law and adopting preventive measures is the best way to cope with the law and to prevent legal challenges and reduce exposure.

Faculty often make or participate in the initial decisions that can lead to litigation. For example, faculty members evaluate and advise students; recommend personnel decisions; establish major and degree requirements; and establish admission standards. In sum, faculty significantly determine the educational program and provide the services that the college offers.

As a matter of law, the college generally is responsible and liable for the acts of its employees, including members of the faculty. In relatively few instances are faculty members personally liable even if they are named in a lawsuit.

In all of these roles—evaluator, policy maker and curriculum designer—faculty make critical decisions that can generate litigation. Accordingly, it is in the interest of the college that faculty understand the law and take appropriate preventive actions.

This manual on faculty as decision makers focuses on:

- **Academic Freedom: Limitations and Protections**
- **The Faculty Handbook and Contractual Claims**
- **Teachers as Role Models**
- **Faculty Liability**

- **Duty to Advise Students**
- **Confidential Materials**
- **Evaluation and Defamation**
- **Student Challenges to Academic Judgments**

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

Specific comments on this manual are welcome. For further information, please write to College Legal Information, Inc., P.O. Box 150541, Nashville, Tennessee 37215, or call 615-383-3332. Copies can be obtained by sending payment to College Legal Information, Inc., P.O. Box 150541, Nashville, Tennessee 37215. Copies are \$60.00 each.

IF LEGAL ADVICE OR OTHER EXPERT ASSISTANCE
IS REQUIRED, THE SERVICES OF A COMPETENT
PROFESSIONAL SHOULD BE SOUGHT.

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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. He edited two volumes for the Center for Constitutional Studies that have had singular impact on the independent sector: *A Legal Inventory for Independent Colleges and Universities* and *A Legal Deskbook for Administrators of Independent Colleges and Universities (2nd Edition)*.

He is a Professor of Practice 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 manual, Weeks has written seven others, each addressing particular topics relevant to different college personnel: *Managing Admissions and the Law*; *Complying with Federal Law*; *Student Affairs Decisions and the Law*; *Faculty Evaluation and the Law*; *Record Retention and Disposal*; *Student Handbook Policies*; *Managing Department Chairpersons and the Law*; *Staff Handbook Policies*; *Faculty Handbook Policies*; *The College and University Legal Audit*; *Managing Liability in Overseas Programs*; *Managing Campus Conflict Through Alternative Dispute Resolution*; *Implementing Student Policies*; *Managing Student Disability Compliance*; *Institutional Advancement and the Law*; and *Managing Campus Cyberspace and the Law*.

Weeks has consulted with colleges throughout the United States and serves as legal counsel to several colleges and national and international 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 Service Panel.

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