Legal Update for Community Colleges February 2005

West's Education Law Reporter
December 30, 2004 – Vol. 193 No. 1 (Pages 1 – 341)
January 13, 2005 – vol. 193 No. 2 (Pages 343 – 631)

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Topics:

- Abuse and Harassment
- Civil Rights
- Labor and Employment
- Student Discipline

Topics

Abuse and Harassment

"Coach's Sexual Comments Did Not Violate Title IX"
Jennings v. University of North Carolina at Chapel Hill (M.D.N.C., 340 F. Supp. 2d 666), October 27, 2004.

State university soccer coach's comments regarding sexual activities of female soccer team members were not sufficiently severe, pervasive, and objectively offensive to support team member's "hostile environment-sexual harassment" claim under Title IX. Players were teasing and joking amongst themselves when comments were made. Coach did not initiate discussions or steer players' conversation in direction of sex. Comments were not physically threatening. Atmosphere at practice did not interfere with player's performance on field or in classroom. In addition, only two comments were directed at the plaintiff.

It is interesting to **note** that the plaintiff's charges were made after she was dismissed from the team. The coach dismissed the substitute goal keeper due to her failure to contribute physically, academically, and socially to the team.

Civil Rights

"Police Department Plaintiff Did Not Experience Hostile Work Environment"
Smith v. Northeaster Illinois University (C.A. 7 {Ill.}, 388 F. 3d 559), November 4, 2004.

The United States Court of appeals, Seventh Circuit, held that the plaintiff did not experience an objectively hostile work environment in violation of Title VII where an offensive term heard uttered by a white officer was **not** directed at her, but rather at a third person. Furthermore, plaintiff did not suffer adverse employment action in violation of Title VII when an officer came to her home to make inquiries about charges of child abuse; issuance of tickets for lacking registration sticker for her vehicle; and for not have auto insurance.

Labor and Employment

"Professor Failed to show Gender Discrimination Claim"
Cummings v. Com., State System of Higher Edu. (Pa. Cmwilth., 860 A. 2d 650), November 1, 2004.

State university **articulated legitimate, non-discriminatory reasons** for not offering male professor a tenure track position as student teacher supervisor, namely that professor **lacked** established record of scholarship; **failed** to express interest in future scholarly growth; and had **no** grant writing experience. Professor admitted that he did not address his professional and academic accomplishments in his interview; and his statement that he wanted a job where he would have summers off and less stress was not a statement of one committed to scholarship.

"Community College President Breached Employment Contract"
Harmon v. Adirondack Community College (N.Y.A.D., 784 N. Y.S. 2d 663), November 4, 2004.

Plaintiff was appointed president of community college September 1, 1998. Incorporated within the job description was the board's authority to "assign, reassign, add to, subtract from, or modify plaintiff's duties at any time". In May, 2000, the board placed plaintiff on administrative leave, relieving her of "authority for the day to day operation of the college". She continued to receive her salary and benefits, including the use of an automobile until her contract expired on August 31, 2001. In April 2001, plaintiff notified the board that she had accepted an appointment as president of a college in California, commencing on June 1, 2001. In response, the board informed plaintiff that she removed from administrative leave, effective June 1, 2001, and would be removed from administrative leave, effective June 1, 2001, and would be discharged from her contract for "just cause". The board advised plaintiff that the decisio9n was based upon her inability to "perform the responsibilities of President of Adirondack Community College (ACC) while simultaneously being employed by the college in California.

The Supreme Court, Appellate Division, Third Department, stated that the former president of ACC **breached implied obligation of good faith and fair dealing** when she accepted new, out-of-state position that rendered her unavailable to college and its board of trustees while still obligated by contract.

Student Discipline

"Student Suspended From University for Cheating"
Gupta v. Stanford University (Cal. App. 6 Dist., 21 Cal. Rptr. 3d 192), October 29, 2004.

A student was suspended from a private university for copying work for a computer science class from two students for three different assignments. Instead of following the university's judicial appeal process, he filed a complaint for damages against the university. The Court of Appeals, Sixth District, held that the **doctrine of exhaustion of judicial remedies precludes** an action that challenges the results of a quasi-judicial proceeding, unless the plaintiff first challenges the decision through a petition for writ of mandamus (A writ issued by a superior court to compel a lower court or a **government officer** to perform mandatory or purely ministerial duties correctly.)

Legal Update for Community Colleges March 2005

West's Education Law Reporter
January 27, 2005 – Vol. 193 No.3 (Pages 633 - 1005)
February 10, 2005 –Vol. 194 No. 1 (Pages 1 –459)

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Topics:

- Civil Rights
- Labor and Employment
- Security
- Torts

Topics

Civil Rights:

"Provost Refused to Permit Professor to Serve as Department Chair"

Tzannetakis v. Seton Hall University (D.N.J., 344 F. Supp. 2d 438), October 26, 2004.

Former economics professor brought action alleging that university officials discriminated and retaliated against him because of his Greek national origin and Orthodox religion. The plaintiff has been elected by members of the university's Economics Department as their chair for seven consecutive terms, each term lasting three years. The Dean of the School of Business sent a memorandum to all chairs setting forth a detailed list of what he expected to be included in their annual reports. One requirement was that the chairs had to submit evaluations for tenured and non-tenured faculty members of their department. Plaintiff considered the directive to be "an uninformed, misguided, and incompetent letter" that exceeded the Dean's authority and was meant to turn the plaintiff into a "hatchet man" for eliminating foreign-born faculty. In response to the plaintiff's incomplete annual report, the Dean recommended to the university's provost that plaintiff's election as chair of the department not be approved (provost had final say over plaintiff's election). A United States District Court, D. New Jersey, held that the provost's refusal to reappoint professor as department chair was not pretext for national origin discrimination, and disapproval of professor as department chair was not retaliatory.

"White Professor Failed to Establish Discrimination"
Miller v. Barber-Scotia College (N.C. App., 605 S. E. 2d 474), December 7, 2004

Plaintiff was a professor who taught, sociology, criminal justice, and anthropology. The college had a policy that once a professor submitted a final grade for a student, it could be changed only under four circumstances, which were: (1) an incorrectly computed grade; (2) an incorrect transcription of a grade; (3) an unintentional omission of some component of a student's work; and (4) a successful grade appeal. Any request for a grade change must be in writing, and must state the reason for grade change. The grade change form must be approved by the professor's division chair, and then by the dean for academic affairs, before it is forwarded to the registrar or the college. The first two times the plaintiff submitted a grade change, he did not state a reason for the grade change. The third time he submitted a change of grade request, he did state a reason; but it was not one of the four circumstances for which a grade could be changed. After the change of grade incident, the plaintiff was sent a memo informing him that he was being given a one year terminal contract. The plaintiff's division chair and immediate supervisor, who is black, approved the third change of grade request; however, there was not alternation of the chair's employment status. The Court of Appeals of North Carolina vacated and remanded the case back to the lower court. Nevertheless, the Court did state that the college **established a legitimate** non-discriminatory reason for the adverse employment action against the professor. Additionally, the Court held that black professor and chair (he was chair of the social science department; did not share the same immediate supervisor; and did not have the same job responsibilities or job description) who approved white professor's grade change was <u>not</u> similarly situated to white professor. Thus, any disparate treatment between the plaintiff and black professor, who was not disciplined, did <u>not</u> establish discrimination on the basis of race.

"White Applicants Sue Law School"

Smith V. University of Washington (C.A. 9 {Wash.}, 392 F. 23d 367, December 20, 2004.

Unsuccessful white applicants to state university's law school sued university and university officials, challenging allegedly racial discriminatory admissions practices. The United States Court of Appeals, Ninth Circuit, held that despite the fact that state university law school (in process of conducting its race-conscious admissions program) allegedly referred for further review, rather than directly admitting, proportionately more white applicants than minority applicants from pools of applicants rated as preemptively admitted or preemptively denied based on test scores and grades, did not render program in violation of the Equal Protection Clause of the Fourteenth Amendment. Race **was never the sole determinant in decision** to admit an applicant from the pools of applicants. A system of checks and balances was in effect for admission/referral decisions, and **no** applicant was foreclosed from all consideration simply by virtue of race.

Labor and Employment:

"College Sued For Failure to Promote Black Employee"

Alexander v. Chattahoochee Valley Community College (M.D. Ala., 345 F. Supp. 2d 1306), November 23, 2004.

Community college's failure to appoint African-American employee as director of admissions, and instead reassign duties of the position to director of student services to which college appointed a white employee, was not an adverse employment action. Accordingly, black employee was not discriminated against under Title VII because white employee never enjoyed any tangible advantage. The white employee's promotion was rescinded one month after it was made; her pay was never adjusted; and she never assumed any of the new duties.

"Campus Security Had Jurisdiction to Make Arrest"
City of Missoula v. O'Neil (Mont., 102 P, 3d 21) November 23, 2004.

University campus security officer **had jurisdiction** to arrest defendant for driving under the influence of alcohol (DUI) and traveling in excess of the posted speed limit, under state statute permitting certain officials within state university system to enter into agreement to expand campus security officers' general authority. University had entered into such an agreement with the city. A portion of the agreement with the city. A portion of the agreement authorized campus security officers to issue citations for all moving traffic violations occurring on streets and alleys within or contiguous to campus.

Torts:

"College Security Office Injured Chasing Suspect"
Keegan v. Lemieux Sec. Services, Inc. (Vt. 861 A 2d 1135), September 28, 2004.

While on routine patrol, the college security guard saw four men dismantling a construction site barrier. She gave chase, entered the construction site, and eventually caught one suspect. However, during the chase and capture of the suspect, the slipped on the "wet ground and construction material" and injured her knee, arm, and back. She did receive workers' compensation during her recovery time. Thereafter, she brought negligence action against the contractor and security service hired by the contractor to guard the construction site. The Supreme Court of Vermont decided that defendants owed **no greater duty** to officer than they owed to trespasser. Thus, officer **failed** to show that defendants breached a duty owed to her.

Legal Update for Community Colleges
April 2005

West's Education Law Reporter
February 24, 2005 – Vol. 194 No.2 (Pages 461 - 763)
March 10, 2005 –Vol. 194 No. 3 (Pages 765 – 1042)

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- Labor and Employment

Topics

Labor and Employment:

"College Employee Violated Internet Policy"
Pettyjohn v. Unemployment Compensation Bd. Of Review (Pa. Cmwlth, 863 A 2d 162), December 14, 2004.

Claimant's use of internet for personal purposes during working hours **constituted willful misconduct;** thus, former employee was not entitled to unemployment compensation benefits. Employee **was aware** of college's policy prohibiting use of the internet for personal purposes except for designated times (breaks and lunch hours) during regular working hours.

"University's Health Insurance Policy Unconstitutional"
Snetsinger v. Montana University System (Mont., 104 P 3d 445), December 30, 2004.

The Supreme Court of Montana held that the state university system's policy for denying health insurance benefits to unmarried same-sex partners of public employees, while granting benefits to unmarried opposite-sex couples, was not rationally related to legitimate government interest; was not justified by administrative efficiency; and **violated** equal protection. Policy allowed the partner of a heterosexual employee to qualify for benefits by signing an affidavit of common law marriage, even if they were unable to establish a common law marriage and were not legally married. The policy did not allow the same-sex partner of a homosexual of bisexual employee to qualify for benefits by signing the same affidavit. Furthermore, marital status was not the defining difference between the classes.

Legal Update for Community Colleges
May 2005

West's Education Law Reporter
March 24, 2005 – Vol. 195 No.1 (Pages 1 - 423)
April 7, 2005 –Vol. 195 No. 2 (Pages 425 – 680)

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Topics:

- Abuse and Harassment
- Property and Contracts
- Standards and Competency

Topics

Abuse and Harassment:

"Doctoral Student Accuses Professor of Harassment"

University of Southern Mississippi v. Williams (Miss., 891 So. 2d 160), January 20, 2005.

Doctoral candidate in the English Department brought action against state university and three of her professors, alleging that they prevented her from receiving her doctoral degree and caused severe emotional and mental anguish. The facts of the case cover a period of approximately 17 years, which included events such as the following: completed course work with almost all A's (one B); passed doctoral comprehensive exam; admitted to candidacy for Ph.D.: prospectus for dissertation approved by doctoral committee; English instructor in the English Department: instructor in criminal justice in a community college; chair of her committee visited her house and had sex with her on at least four occasions; instructor in English at a community college; received an inappropriate Valentine card from the chair of her committee; head of criminal justice program at university made an improper remark with sexual overtones about her at an awards program; and the new chair of her committee told her she needed to start over on her dissertation. The Supreme Court of Mississippi affirmed in part, reversed in part, and remanded the case back to the Circuit Court. In doing so, the Court held that **evidence presented fact issue** for jury as to whether university and its employees had breached duty of good faith and fair dealing in their contractual relationship with the doctoral candidate by precluding or severely delaying the completion of her dissertation requirements. Furthermore, plaintiff's testimony and documentary evidence **supported** her allegations of sexual harassment, lack of guidance and attention from her dissertation committee, and lack of hearing of her complaints.

Property and Contracts:

Three Year Old Dies From Fall at University"

University of Texas at San Antonio v. Trevino (Tex. App. – San Antonio, 153 S.W. 3d 58), November 27, 2002.

Parent's action against state university arising from fatal fall of their three-year-old child from bleachers on university campus **was based on maintenance activities not within discretionary function** of sovereign immunity under Texas' Tort Claims Act. Parents did not allege that bleacher railings were defectively designed; instead they alleged that the university failed to maintain bleachers in a safe condition. Plaintiffs **were able to present** evidence that side railings were loose and platform boards were warped. Thus, the university was not immune from liability.

Standards and Competency:

"University Police Officer's Conduct Constituted Gross Misconduct"

Jones v. Kansas State University (Kan. 106 P. 23d 10), February 18, 2005.

State university police officer sought judicial review of administrative decision to terminate his employment. The Supreme Court of Kansas determined to terminate his employment. The Supermen Court of Kansas determined that **substantial competent circumstantial evidence was sufficient to support** conclusion of Civil Service Board that university police officer's filing of false police report, indicating that stopped vehicle had been legally parked, was intentional, **so as to warrant finding of gross misconduct.** Videotape of traffic stop clearly showed that stopped vehicle was illegally parked (driver's license had also been suspended) and officer acknowledged on videotape that vehicle was illegally parked. Further more, the officer gave inconsistent explanations for inaccuracy in his report and failed to log in stop in video recording log. Additionally, the officer admitted that he turned off video camera to hide fact that he was going to tell driver that she could do whatever she wanted after her left.

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June 2005

West's Education Law Reporter
April 21, 2005 – Vol. 195 No.3 (Pages 681 - 1046)
May 5, 2005 –Vol. 195d. No. 1 (Pages1 – 368)

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West's Education Law Reporter
May 19, 2005 – Vol. 196 No. 2 (Pages 369 - 744)
June 2, 2005 –Vol. 196 No. 3 (Pages 745 – 1021)

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- Civil Rights
- Disabled Student

Topics

Civil Rights:

Hudson v. Craven (C.A. 9 {Wash.}, 403 F. 3d 691), April 6, 2005

Under *Pickering* (Pickering v. Board of Education, 391 U.S. 563) balancing test, community college's **legitimate interest** in the safety of students, and interest in maintaining its political neutrality as an educational institution **strongly outweighed** college instructor's association interest in attending a political protest with students under the auspices of the college. The instructor was free to attend the protest on her own; was free to communicate her views on the issues to her students or to anyone else; and was free to associate with her students in the classroom on the matter. **Note:** The situation arose when an adjunct instructor of Economics 101 at Clark College (community college) wanted to organize a field trip with her students to the World Trade Organization (WTO) protests in Seattle, Washington in November 1999. School officials were opposed to the idea, due to the safety of the college's students. Accordingly, the instructor was told not to organize the field trip. However, the instructor did attend the protest ("Battle for Seattle") with some of her students. Her teaching contract was non-renewed.

Disabled Students:

"Students Not Disabled"

Marlon v. Western New England College (C.A. 1 {Mass.}, 124 Feb. App. 15), January 11, 2005.

Former law student brought action alleging that college failed to provide reasonable accommodation under the American Disabilities Act (ADA). The United States Court of Appeals, First Circuit, held that law student's carpal tunnel syndrome did **not** substantially limit her ability to learn or work, and thus **did not** constitute a "disability" under ADA. Students had college degree and 15 years of experience as paralegal. There was **no** evidence that students would be disqualified from broad range of jobs, or otherwise substantially limited in her ability to work (when compared to the average person in the general population) because of her physical limitations.

"Student Failed to Demonstrate School Violated ADA"

In re Allegheny Health, Educ. And Research and Foundation (Bkrtcy. W.D. Pa., 321 B.R. 776), March 11, 2005.

Student who had been dismissed from private medical school for substandard academic performance sued school, asserting that its failure to accommodate her alleged learning disorder (attention deficit disorder {ADD}) and its dismissal of her violated the ADA and breached its implied contract with her. The United States Bankruptcy Court, W.D. Pennsylvania, held that (1) to prevail on claim under Title II of the ADA, a plaintiff must prove that; {1} s/he has a disability within the meaning of ADA; {2} s/he is otherwise qualified, with or without reasonable accommodations, to receive services or participate in programs or activities provided by his/her defendant; {3} s/he, by reason of his/her disability, was denied the benefits or, or excluded from participation in such services, programs, or activities, or was discriminated against by such defendant; and {4{ such defendant was a

public entity within the meaning of ADA; and (2) Student **failed** to establish that when was "disabled" within the meaning of the ADA.

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- Security

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Civil Rights:

" Student Murdered In dorm"
Griffin v. Troy State University (C. A. 11 (Ala.), 128 Fed. Appx.739), April 20, 2005.

Parents of college freshman filed their claim after their 17 years old daughter was murdered on her campus dormitory during her first semester at school. The plaintiffs allege that by requiring students under the age of 19 living on campus. TSU assumed a duty to provide adequate security for its students. Thus, the plaintiffs accused TSU as being deliberately indifferent to inadequate security and control of the university's campus. The United States Court of Appeals, Eleventh Circuit, held that university officials were entitled to qualified immunity and **not** liable for the incident.

Extracurricular Activities:

"Spending Limits On Campaigns Constitutional"
Flint v. Denneson (D. Mont., 361 F. Supp. 2d 1215), March 28, 2005.

Campaign spending limits ($100) placed on candidates for student government offices at state university were reasonable in light of university's policy of guarantee that all students, regardless of financial circumstances, might have educational experience of participating in student government. Thus, imposed campaign spending limits did not violate First Amendment free speech rights of candidate who was

removed from elected office (student body president) by student association for violating university's spending limits.

Student Discipline

"Student's suspension for Rape Upheld"
Ruane v. Shippensburg University (Pa. Cmwlth., 871 A. 2d 859), February 1,2005.

Classmate's testimony that student sexually assaulted her, alone constitute evidence to support state university judicial board's findings and decision to suspend student. Board did **not** err to the extent that it might have given classmate's e-mail report about the incident its natural probative effect: Classmate, under oath, adopted e-,ailed statements as an accurate description of the events and answer questions on cross-examination regarding her statements. On cross-examination, classmate essentially reiterated statements in her e-mail and testified that student pulled her shirt up and fondled her breasts.

Security:

"College Not Liable For student's Injuries Sustained in a Fight"
Ayeni V. County of Nassau (N.Y.A.D. 2 Dept., 794 N.Y.S 2d 412), May 2, 2005.

College officials' awareness that altercation had taken place on campus did **not** put them on notice that some participants in that melee were planning retaliatory action later that day against another student and his friends. Thus, college was not liable for personal injuries sustained by student in second fight, where first altercation involved individuals other that students attacked in second incident and his assailant. Campus security officers arrived at location of second incident almost immediately after that fight began. Allege assailant was apprehended moments after attack by campus security officers. In addition, police and emergency medical services were called, and responded within minutes.

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July 14, 2005 – Vol. 198 No. 1 (Pages 1 - 382)
July 28, 2005 –Vol. 198 No. 2 (Pages 383 – 776)

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Topics:

- Civil Rights
- Student Disciplines

Topics

Civil Rights

" University's Literature Distribution Policy Violated First Amendment"
Justice For All v. Faulkner (C. A. 5 {Tex.} 410 F 3d 760, May 27, April 20, 2005.

Justice For All (JFA) is a student anti-abortion group at the University of Texas at Austin. JFA brought action challenging the University's "Literature Policy," which requires that all printed materials distributed on campus bear the name of a university-affiliated person or organization responsible for distribution. JFA contends that the policy is an unconstitutional restriction on anonymous speech in a designated public forum. The University responded that the policy is a reasonable, viewpoint neutral regulation of speech within a limited public forum. The University's literature distribution policy was not narrowly tailored to a significant government interest distribution policy was not narrowly tailored to a significant government interest, and thus, was invalid under the First Amendment.

Student Discipline

"**Former University Football Players Sexually Assaulted Female Student"**
Gomes v. University of Maine System (D. Me., 365 F Supp. 2d 6), April 8, 2005.

Two undergraduate university students, suspended for one year for sexually assaulting a female student in violation of the Student Conduct Code, sued university for denial of due process, breach of contract, and related torts. The United States District Court, D. Maine, held: students' disciplinary hearing **was fair**; disciplinary proceedings **complied with** student code provisions; university officials **were entitled** to discretionary act immunity; publications of student disciplinary proceedings was not defamatory; and university did not intentionally inflict emotional distress.

"University Band Members Fined"
Gauder v. Leckrone (W. D. Wis., 366 F. Supp. 2d 780), April 20, 2005.

Certain members of the University of Wisconsin-Madison varsity band misbehaved during the band's return trip from an officially sanctioned trip. Collectivity, 29 members of the band were fined $1,200 (or $41.38 each) for their actions. Sometimes during the trip, the bus river believed that the band members were being too noisy for him to drive safely. The driver and the field assistant told the band members that the driver would stop the bus and call the police if the

group did not quiet down. Shortly thereafter, a band member other than the plaintiff yelled something at the driver that caused him to pull the bus over and call the police. This individual was taken off the bus. After speaking with the police, he apologized to the driver and re-boarded the bus. A United States District Court in Wisconsin held that student was not deprived of substantive due process; any property interest that student had in continued university attendance was not violated; and university officials **were entitled** to qualified immunity on procedural due process claim.

"College's Student Handbook Not Constitute Binding Contract"
Millien v. Colby College (Me., 874 A. 2d 397), June 9, 2005.

Just prior to the fall semester of his senior year at Colby College, plaintiff was accused by another Colby student of sexual assault. Plaintiff admitted that he had engaged in sexual activity with the female student, but insisted that it was consensual. As a result of the college's disciplinary proceedings that ensued, Colby placed plaintiff under an administrative restraining order (prohibited from living on campus housing, eating in college dining halls, being on campus after 11:00 p.m., and placed on his scholarship. The Supreme Judicial Court of Maine ruled that student handbook, which set forth college's disciplinary system, did not constitute a binding contract or **exclusive source** of terms of agreement between college and male student. Student alleged college had breached its contract with him by permitting female student's appeal of initial decision of college's "dean's hearing board" that had been favorable to him. College claimed that the appeal of the "dean's hearing board" was necessary because of "new evidence", which consisted of a tape recording of a telephone conversation.

Student Discipline

"Former UniverStudent's suspension for Rape Upheld"
Ruane v. Shippensburg University (Pa. Cmwlth., 871 A. 2d 859), February 1,2005.

Classmate's testimony that student sexually assaulted her, alone constitute evidence to support state university judicial board's findings and decision to suspend student. Board did **not** err to the extent that it might have given classmate's e-mail report about the incident its natural probative effect: Classmate, under oath, adopted e-,ailed statements as an accurate description of the events and answer questions on cross-examination regarding her statements. On cross-examination, classmate essentially reiterated statements in her e-mail and testified that student pulled her shirt up and fondled her breasts.

Security:

"College Not Liable For student's Injuries Sustained in a Fight"
Ayeni V. County of Nassau (N.Y.A.D. 2 Dept., 794 N.Y.S 2d 412), May 2, 2005.

College officials' awareness that altercation had taken place on campus did **not** put them on notice that some participants in that melee were planning retaliatory action later that day against another student and his friends. Thus, college was not liable for personal injuries sustained by student in second fight, where first altercation involved individuals other that students attacked in second incident and his assailant. Campus security officers arrived at location of second incident almost immediately after that fight began. Allege assailant was apprehended moments after attack by campus security officers. In addition, police and emergency medical services were called, and responded within minutes.

Legal Update for Community Colleges
October 2005

West's Education Law Reporter
July 14, 2005 – Vol. 198 No. 1 (Pages 1 - 382)
July 28, 2005 –Vol. 198 No. 2 (Pages 383 – 776)

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Topics:

- Athletics
- Security

Topics

Athletics

"Cheerleading Coordinator Ousted"
Braswell v. Board Of Regents of University System of Georgia(N. D. Ga., 369 F. Supp. 2d 1362), April 26, 2005.

Terminated cheerleading coordinator at University of Georgia did **not** show substantial likelihood of succeeding on claim that her equal protection rights were violated, as required for injunctive relief. Cheerleading coordinator allege that she was terminated for interjecting her Christian beliefs into cheerleading activities, while football team. There was **no** similarity of situations because **no** complaints were lodged about football team; coach was not placed on probation (cheerleading coordinator was placed on probation by university officials due to complaint filed by Jewish cheerleader); and coach did not issue a issue a statement critical of university's abridgement of her religious rights (which identified Jewish cheerleader who had brought complaint against her). **Note:** Complaint alleged that cheerleading coordinator used her position to encourage students to adopt certain religious practices, and treated non-Christian cheerleaders (there were Jewish cheerleaders on the cheerleading squad) unfavorably.

"University Not Liable for Sexual Assault"
Simpson v. University of Colorado (D. Colo., 372 F. Supp. 2d 1229), March 31, 2005.

Although relevant university officials were aware of some incidents of sexual harassment, sexual assaults, and alcohol use of certain identified university football players and football recruits over a period spanning approximately four years preceding the sexual assaults of female students by players and recruits, the relevant information known to university officials **did not constitute adequate notice** under Title IX. Incidents which officials were aware of included domestic violence involving players' spouses; assault against a parking lot attendant; players' verbal harassment of the team's only female player; and a player's sexual assault of a female student trainer.

Security:

"University Police Authority Not Limited"
Brierton v. Department of Motor Vehicles (Cal. App. 4 Dist., 30 Cal Rptr. 3d 275), June 21, 2005.

On July 30, 2003, at 1:31 a.m., a San Diego State University police officer observed plaintiff accelerate and lose traction for "approximately 20 – 25 feet" while driving in a non-campus area. The officer stopped the plaintiff for a possible vehicle code violation. Thereupon, he observed plaintiff's bloodshot and watery eyes, detected odor of an alcoholic beverage, and observed plaintiff's unsteady and slurred speech—all of which constitute objective signs of intoxication. Plaintiff's breathalyzer registered a blood alcohol concentration of 0.15 percent (0.08 is considered sufficient for intoxication). As a result of plaintiff's arrest, his driver's license was suspended. A California court of appeals held that arresting officer **had reasonable suspicion** to stop plaintiff; university campus police officer's jurisdictional authority was **not limited** to area within one mile of campus; and a state statutes granting campus police officers statewide authority did **not unconstitutionally conflict** with powers of the city.

November 2005(#'s 509 & 510)- (508 not used due to being late)

Legal Update for Community Colleges November 2005

West's Education Law Reporter
September 8, 2005 – Vol. 199 No. 2 (Pages 545- 1014)
September 22, 2005 –Vol. 200 No. 1 (Pages 1 – 495)

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Topics:

- Admission
- Religion

TOPICS

Admission:

"Illegal Aliens Allowed to Attend Kansas' Universities"
Day v. Sebelius (D. Kan., 376 F. Supp. 2d 1022), July 2005.

Kansas university students and parents sued Governor of Kansas, Kansas officials, and state universities challenging the constitutionality and legality under federal law, of statute allowing undocumented or illegal aliens to attend Kansas universities and pay resident or in-state tuition. The United States District Court, D. Kansas, ruled students and parents **lacked standing** under federal statute prohibiting states from offering in-state tuition to illegal aliens.

Religion:

"Sculpture Not Violate Establishment Clause"
O'Connor v. Washburn University (C.A. 10 {Kan}, 416 F.3d 1216), July 28, 2005.

Washburn University's Campus Beautification Committee selected a statute entitled "Holier Than Thou", which depicted a Roman Catholic bishop with a contorted facial expression and a miter that some interpreted as a stylized representation of a phallus (penis). The caption with the statute read: "I was brought up Catholic. I remember being 7 and going into a dark confessional booth for the first time. I knelt down, and my face was only inches from the thin screen that separated me and the one who had the power to condemn me for my evil ways. I was scared to death, for on the other side of that screen was the persona you see before you." The United States Court of Appeals, Tenth Circuit, held that the university did **not** have an improper motive of disparagement of religion when it selected and displayed a work of sculpture, as part of an outdoor display. Furthermore, the displayed sculpture was **not** to foster hostility toward religion.

December 2005(# 511)

Legal Update for Community Colleges
December 2005

West's Education Law Reporter
October 6, 2005 – Vol. 200 No. 2 (Pages 497- 938)

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Topics:

- Civil Rights
- Labor and Employment
- Torts

TOPICS

Civil Rights:

"Costs Saving Move Not Pretext for Racial Discrimination"
Mun v. University of Alaska at Anchorage (D. Alaska, 378 F. Supp. 2d 1149), June 29, 2005.

Employee brought action under Title VII and Section 1983 alleging state university and his supervisors discriminated against him on basis of his race and religion, and retaliated against him for filing a grievance. A United States district court held that university's elimination of position (Curriculum Manager) as a cost saving move was **not** pretext for racial discrimination against prospective applicant for position. Additionally, there was **no** evidence that eliminating position favored any similarly situated employee or that submitted reason was not legitimate.

Labor and Employment:

"Instructor Entitled to Due Process"
House v. Jefferson State Community College (Ala., 907 So. 2d 424), February 11, 2005.

Under terms of employment contract, a probationary employee (computer science instructor) of a community college **was entitled** to be given cause, and the opportunity for a hearing when his employment was terminated within the period of his contract.

Torts:

"Kidnapping in College Parking Lot Not Foreseeable"
Agnes Scott College, Inc. v. Clark (Ga. App., 616 S.E. 2d 468), May 24, 2005.

Student was kidnapped from college's parking lot and raped off campus. The Court of Appeals of Georgia held that in the absence of evidence of similar criminal incidents involving physical attacks of persons in college parking lot, kidnapping of student from college parking lot was **not reasonably foreseeable** intervening criminal act by third party. Thus, college **was insulated** from liability in student's action against college for college's alleged negligent failure to keep college premises safe.