January 2008 (#s 554, 555, & 556)

Legal Update for Community Colleges
January 2008

Johnny R. Purvis*

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Terry James, Chair of the Department of Leadership Studies
Jack Klotz, Program Coordinator of Leadership Studies
Shelly Albritton, Technology Coordinator
Wm. Leewer, Jr. Editor, Mississippi State University
Safe, Orderly, and Productive School Institute
Department of Leadership Studies
University of Central Arkansas
201 Donaghey Avenue
316 Torreyson West
Conway, AR 72035
*Phone: 501-450-5258 (office)

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Topics:

- Administrators
- Labor and Employment
- Torts

Topics

Administrators:

"Director of Judicial Affairs Was Public Official: Fraternity Entitled to Summary Judgment"

Fiacco v. Sigma Alpha Epsilon Fraternity (D. Me., 484 F. Supp. 2d 158), April 5, 2007.

Plaintiff David Fiacco was hired by the University of Maine in Orono as the Director of Judicial Affairs in 2001. Fiacco was responsible for overseeing the process through which allegations of student misconduct were investigated, adjudicated, and potentially sanctioned. Plaintiff had the capacity to investigate allegations of student misconduct, adjudicate cases, conduct hearings, and prescribe sanctions or refer a case to a committee for its action. In the spring of 2002, the Maine Alpha chapter of Sigma Alpha Epsilon (SAE) was being prosecuted for violations of the student code of conduct at the University. Fiacco was in charge of investigating and processing the allegations on behalf of the University. Attorney N. Laurence Willey, Jr. was retained to aid in the defense of the Maine Alpha. Willey, in turn, retained a private investigator, Victor Craft, to look into Fiacco's background. The investigator discovered that Fiacco's former girlfriend sought and obtained a permanent restraining order against Fiacco pursuant to Colorado's Domestic Abuse Act (14-4101); Fiacco had been convicted of "Driving While Ability Impaired (DWAI), where he had a blood alcohol content of .089 percent; and Fiacco had been dismissed from his employment of public safety at Fort Lewis College in Colorado. The SAE distributed the collected documents to select individuals and newspapers within the University of Maine community. Plaintiff, who had been a very social person who enjoyed spending time with his family and friends, became depressed and preferred to be alone. Thereupon, Fiacco brought action against SAE for intentional infliction of emotional distress, civil conspiracy, prima facie tort, and negligent infliction of emotional distress. The United States District Court, D. Maine, held that: (1) Plaintiff **was a public official** and was required to demonstrate actual malice to establish intentional emotional distress; (2) Various assertions in the memorandum **were statements of opinion** and could not be a basis for recovery for intentional infliction of emotional distress; and (3) Various assertions in the memorandum **were substantially true** and could not be a basis for liability for intentional infliction of emotional distress.

Labor and Employment:

"University Police Officer Not Subject to Hostile Work Environment for Expressing Breast Milk"
Page v. Trustees of University of Pennsylvania (C. A. 3 {Pa.}, 222 Fed. App. 144), March 21, 2007.

Jennifer Page (plaintiff) was employed for several years as a police officer for the University of Pennsylvania. Page went on maternity leave in 2002. Upon her return in November of that year, Page submitted a memorandum requesting "out of service" (personal) time to express milk, and was granted two such breaks during her shift. Plaintiff asserts that despite this permission, her supervisors refused to allow her to request a courtesy transport from her foot patrol to headquarters. She protested and was assigned to a patrol closer to headquarters. She alleges that her supervisor nevertheless called for her on the radio and interrupted her in the locker room where she expressed milk. Thereupon, she brought suit against the university alleging pregnancy discrimination in violation of Title VII. The United States Court of Appeals, Third Circuit, held that plaintiff was **not** subjected to a hostile work environment as a result of her desire to take personal time to express breast milk, so as to render university liable for pregnancy discrimination in violation of Title VII. In addition, the university **was able to demonstrate** that plaintiff was assigned menial tasks as any other officer while on light duty.

Torts:

"State University Did Not Mishandle Cadaver"
Melican v. Regents of University of California (Cal. App. 4 Dist., 59 Cal. Rptr. 3d 672), May 23, 2007.

James Conroy donated his body to the medical school at the University of California, Irvine (UCI) for teaching or scientific research. Evelyn Conroy, his widow claimed breach of contract and infliction of emotional distress when UCI failed to keep track of her husband's body; failed to contact her before disposing of her husband's remains; and mishandled or otherwise treated her husband's body in a disrespectful manner while using it for purposes other than teaching or scientific research. California's Court of Appeals, Fourth District, Division 3, stated that **evidence was insufficient** to support negligence claim by decedent's widow against regents of state university and others for university's alleged mishandling of decedent's body while using it for purposes other than teaching or scientific research. In addition, decedent's widow presented **no evidence** that university actually mishandled decedent's body.

"University Student Not Owed a Duty to Underage Motorist"
Vitale v. Kowal (Conn. App., 923 A. 2d 778), June 12, 2007.

Motorist's parent, on his own behalf and as administrator of the estate of 19-year-old motorist who was intoxicated and allegedly lost control of the automobile he was operating and was killed, brought action against university student, who had been drinking beer with motorist in student's dormitory room. The Appellate Court of Connecticut held that university student, who had been drinking beer with 19-year-old motorist in student's dormitory room, did **not owe a duty** to motorist who subsequently left dorm room intoxicated and drove and lost control of his automobile and was killed. Student had not invited motorist to his dormitory room that evening. Student did not know that motorist had been invited to the dormitory room. Student did not bring alcohol to the dormitory room that evening. Additionally, student did not retrieve alcohol from his refrigerator for motorist, and did not provide or serve alcohol to motorist on the evening of the automobile accident.

"Alleged Defect in Community College's Walkway Not Caused by County's Negligent Repair"
Delgado v. County of Suffolk (N. Y. A. D. 2 Dept., 835 N. Y. S. 2d 379), May 1, 2007.

Pedestrian injured when she tripped and fell on a defective walkway on the campus of a community college, sued county and others to recover damages. New York's Supreme Court, Appellate Division, Second Department, held that plaintiff's submissions **were not supported** by empirical data or any relevant construction practices or industry standards; and further, pedestrian's expert witness **failed** to explain how he had reached the conclusion that the defect in the walkway was caused or created by negligent repair of the walkway.

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Johnny R. Purvis*

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Terry James, Chair of the Department of Leadership Studies
Jack Klotz, Program Coordinator of Leadership Studies
Shelly Albritton, Technology Coordinator
Wm. Leewer, Jr. Editor, Mississippi State University
Safe, Orderly, and Productive School Institute
Department of Leadership Studies
University of Central Arkansas
201 Donaghey Avenue
316 Torreyson West
Conway, AR 72035
*Phone: 501-450-5258 (office)

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Topics:

- Labor and Employment
- Security
- Student Discipline

Topics

Labor and Employment:

"Statements By Community College Supervisor Not Protected"
Bessent v. Dyersburg State Community College (C. A. 6 {Tenn.}, 224 Fed. App. 476), April 2, 2007.

Former supervisor of a community college adult education program sued the community college and its president, claiming her First Amendment and procedural due process rights were violated in connection with her termination. Sharron Bessent (plaintiff) started the Dyer County Literacy Program (DCLP) in 1986 as a non-profit community-based agency (completely funded by private donations) focused on adult literacy in Dyer County, Tennessee. In 1991, the state of Tennessee allocated funding for a fill-time adult education program in every county. DCLP received this state funding for Dyer County between 1992 and 1997. In June 1997, Dyersburg State Community College (DSCC) and DCLP agreed to form a cooperative effort, and each would perform designated administrative duties related to the cooperative effort. Following allegations of inappropriate overtime, falsification of time sheets and clients served, and other fabrications at DCLP, DSCC Director of Finance Administration notified Bessent that the state would be conducting an audit of DCLP, and that DSCC intended to take control of DCLP, including its private donations. Bessent expressed her opposition to the takeover, despite DCLP board of directors' agreement to the merger. Plaintiff was placed on probation due to allegations of improprieties and the audit findings, and was later terminated. She filed suit against DSCC, claiming her First Amendment and due process rights (14th Amendment) were violated. The United States Court of Appeals, Sixth Circuit, held that: (1) plaintiff's statements opposing the merger between DSCC and DCLP were **not** entitled to First Amendment protection because such statements pertained to her officials duties; and (2) statement ("There were some recurring problems with the management of the grant, and we have decided to change the leadership of that program") made by the President of DSCC in a newspaper article did **not** deprive the plaintiff of any liberty interest under the Due Process Clause of the Fourteenth Amendment. **Note:** To establish a case of First Amendment retaliation, a plaintiff must demonstrate that: (1) individual was engaged in constitutionally protected speech; (2) individual was subject to adverse action or was deprived of some benefit; and (3) individual's protected speech was a substantial or motivating factor in the adverse action.

"Student Was Acting As a University Agent in Connection With Vehicle Accident"
Fils-Aime v. Ryder TRS, Inc. (N. Y. A. D. 2 Dept., 836 N. Y. S. 2d 670), May 22, 2007.

While Matthew VerMilyea was a student at Cornell University, he solicited the donation of certain laboratory equipment from a medical group. The department chair of Animal Science accepted the donated equipment on behalf of Cornell. VerMilyea agreed to transport the donated equipment in a vehicle rented by him, at Cornell's expense. While en-route with the equipment, VerMilyea was involved in an auto accident in which several individuals were injured. Cornell sought summary judgment to dismiss complaints against the university. The Supreme Court of New York, Appellate Division, Second Department, held that genuine issues of material fact **existed** as to whether private university (Cornell) student was acting as university's agent when motor vehicle accident occurred while he was volunteering his services in transporting donated laboratory equipment, thus **precluding summary judgment** in favor of the university on issue of whether university was liable for said injuries ***under*** *doctrine of respondeat superior*.

"African-American Did <u>Not</u> Meet Police Department's Requirements for Captain"
Fox v. Wichita State University (D. Kan., 489 F. Supp. 2d 1216), May 23, 2007.

Plaintiff Brendon Fox is an African-American who had been employed by Wichita State University (defendant) since August 2000. In early summer 2005, defendant had two openings for the job of captain in the Wichita State University Police Department. Plaintiff applied for both positions and was not hired. Thereupon, he filed suit against defendant because he was neither interviewed nor hired for either of the captain positions, due to racial discrimination in violation of Title VII. The United States District Court, D. Kansas, held that plaintiff did **<u>not</u>** satisfy requirement for prima facie (produce enough evidence) case of racial discrimination in promotion under Title VII. Plaintiff (along with 36 other applicants) did not meet the minimum of two years of supervisory experience required for both captain positions. The seven remaining applicants were then evaluated using a matrix of factors which resulted in a numeric ranking for each applicant. The top three were interviewed, and offers were made to the top two candidates.

"Community College Was Required to Follow Its Own Dismissal Policies"
Combs v. Wade (Ala. Civ. App., 957 So. 2d 464), June 30, 2005.

Before her termination, Linda Combs (plaintiff) had been a child-development instructor at Bevill State Community College (BSCC) for 11 years. In the early spring of 2001, the Governor of Alabama officially declared the State of Alabama's Special Education Trust Fund (SETF) in proration (distribute proportionate or proportionately), with higher education scheduled to receive a 6.2% reduction in funding from the amount originally allocated for that fiscal year. On May 1, 2001, the President of BSCC notified plaintiff by letter that, because of proration and its impact on BSCC's budget, he intended to terminate Combs's position. Plaintiff's petition for a review of the manner in which she was terminated especially the application of Alabama's Fair Dismissal Act (Alabama code 36-26-100 through 36-26-105) by the three-member employee-review panel. The Circuit Court of Walker County, granted BSCC summary judgment. Instructor appealed. The Court of Civil Appeals of Alabama **reversed and remanded with instructions**. In so ruling, the Court of Civil Appeals held that the community college **was required** to follow its own dismissal policies as outlined in its personnel handbook.

Security:

"Clery Act Required University to Report Assault Committed by Student"
Havlik v. Johnson & Wales University (D. R. I., 490 F. Supp. 2d 250), May 11, 2007.

At approximately 12:00 a. m. on Friday, September 17, 2004, an altercation occurred between two Johnson and Wales University (JWU) students in the area of Richmond and Pine Streets in Providence, Rhode Island. During the altercation, Christopher Havlik (plaintiff) threw a punch and struck Donald Ratcliffe (Ratcliffe). As a result of being struck, Ratcliffe fell and suffered a fractured skull and a concussion. The Providence Police Department responded to the incident and JWU's Department of Campus Safety and Security (Campus Safety) conducted an internal investigation. In compliance with the Clery Act, JWU posted a notice concerning the incident between the plaintiff and Ratcliffe. The notice was titled "Crime Alert" and "Assault" in which the plaintiff was identified. Upon plaintiff's dismissal from the university, he brought action against JWU, alleging defamation and breach of contract. The United States District Court, D. Rhode Island, held that: (1) The university **had a legal duty** to issue a crime alert regarding student's assault of another student; and (2) university's handling of plaintiff's dismissal did **not** breach implied covenant of good faith and fair dealing in contract with student under Rhode Island law.

Student Discipline:

"Disciplinary Sanction Imposed on Student by University Was Neither Shocking or Disproportionate"
Quercia v. New York University (N. Y. A. D. 1 Dept., 838 N. Y. S. 2d 538), June 21, 2007.

In May 2005, university officials searched plaintiff's dormitory room and uncovered a locked bin containing 10 ounces of marijuana, $1,740 in United States currency, and drug paraphernalia (e. g. digital scale, 2 boxes of Ziploc bags, a sifter, a grinder, and a red cup with leafy residue). According to the New York Supreme Court, Appellate Division, First Department, the sanction imposed by the university, which included suspension and possibility of reinstatement only after completion of 500 hours of community service, **was neither shocking nor disproportionate**.

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Johnny R. Purvis*

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Terry James, Chair, Department of Leadership Studies, University of Central Arkansas
S. Ryan Niemeyer, Editor, Director, University of Mississippi – Grenada and Assistant Professor, Leadership and Counselor Education
Shelly Albritton, Technology Coordinator, Department of Leadership Studies, University of Central Arkansas
Safe, Orderly, and Productive School Institute
Department of Leadership Studies
University of Central Arkansas
201 Donaghey Avenue
230 Mashburn
Conway, AR 72035
*Phone: 501-450-5258 (office)
*E-mail: jpurvis@uca.edu

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Topics:

- Evidence
- Labor and Employment
- Torts

Topics

Evidence:

"Collapsed Chair Missing as Evidence"
Quinn v. City University of New York (N. Y. A. D. 1 Dept., 841 N. Y. S. 2d 306), September 13, 2007.

Plaintiff brought action against university (defendant) to recover for injuries he allegedly sustained when a chair collapsed. Furthermore, plaintiff charged that the defendant destroyed the evidence (chair) that was necessary for his liability suit against the university. The Supreme Court of New York, Appellate Division, First Department, held that although defendant was remiss in failing to preserve the chair, the collapse of which caused plaintiff's injuries, failure to preserve the chair **reflected no intentional misconduct** on the part of the university. Furthermore, the failure to preserve the collapsed chair did **not** warrant precluding defendant from offering evidence at trial pertaining to the condition of the chair. The defendant preserved the chair following the accident, and permitted the plaintiff to photograph the chair shortly after the accident. The chair was also made available to all parties related to the action commenced by plaintiff against the chair's manufacturer. In addition, the defendant labeled the chair as evidence and put it in a secure storage room, where it was nevertheless destroyed by an outside contractor.

Labor and Employment:

"Professor Failure to Establish Same Sex Harassment"
Russell v. University of Texas of Permian Basin (C. A. 5 [Tex.], 234 Fed. App. 195), June 28, 2007.

The University of Texas of Permian Basin (UTPB) hired plaintiff as a visiting professor of English in the Department of Humanities and Fine Arts (the Department). She claimed that her department chair (Dr. Sarah Shawn Watson) sexually harassed her, including suggestive remarks and provocative touching. Specially, the plaintiff alleges that Dr. Watson: (1) provocatively rubbed the side of her hand; (2) called her "honey" and "babe"; (3) said to her "I wouldn't mind watching the movie in bed with you"; (4) once rubbed plaintiff's thigh with her hand while in plaintiff's office; and (5) sat next to her and said "I want to move to NYC with you". The United States Court of Appeals, Fifth Circuit, held that plaintiff did **not** establish that her failure to receive a tenure-track position resulted from her rejection of her department head's sexual advances. Furthermore, for purposes of hostile work environment same-sex harassment claim, viewed in light of all circumstances, **was neither severe nor pervasive**.

"Disabled Applicant for Lab Position Was Not Qualified"
LeBlanc v. Lamar State College (Tex. App.-Beaumont, 232 S. W. 3d 294), July 26, 2007.

Plaintiff (LeBlanc) has a hereditary, neurological disorder called Friedreich's ataxia. It is a progressive disease that affects balance and coordination. At the time of the plaintiff's deposition, she was confined to a wheelchair. LeBlanc was working as a part-time tutor in Lamar's Learning Resource Center when Lamar posted a new full-time lab manager position that was funded through the Texas Workforce Commission. Plaintiff applied for the position and was not hired. Thereupon, she filed suit against the college alleging that she was discriminated against because of her disability and was subjected to a hostile work environment. The Court of Appeals of Texas, Beaumont, stated that the disabled employee was **not** qualified for the lab manager's position because the position required a bachelor's degree and plaintiff had an associate's degree.

Torts:

"Student Receives Injury While Participating in a PE Class at Community College"
Calouri v. County of Suffolk (N. Y. A. D. 2 Dept., 841 N. Y. S. 2d 598), August 21, 2007.

Genuine issues of material fact **existed** as to whether a student acted voluntarily in attempting a strategy suggested by gym instructor for performing an activity she had never before attempted, and whether doctrine of assumption of risk was applicable, **precluding summary judgment** for county community college. Note: A 40-year-old female was enrolled in a backpacking class in order to satisfy the college's physical education requirement while attempting to get over a rope without making contact. While being assisted by a fellow student, along with the instructor's advice, she lost her balance and sustained fractures to her left leg and ankle.

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Johnny R. Purvis*

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Terry James, Chair, Department of Leadership Studies, University of Central Arkansas
S. Ryan Niemeyer, Editor, Director, University of Mississippi – Grenada and Assistant Professor, Leadership and Counselor Education
Shelly Albritton, Technology Coordinator, Department of Leadership Studies, University of Central Arkansas
Safe, Orderly, and Productive School Institute
Department of Leadership Studies
University of Central Arkansas
201 Donaghey Avenue
230 Mashburn
Conway, AR 72035
*Phone: 501-450-5258 (office)
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Topics:

- Abuse and Harassment
- Labor and Employment
- Torts

Topics

Abuse and Harassment;

"Student's Rape Did Not Support Title IX Claim"
Ross v. Corporation of Mercer University (M. D. Ga., 506 F. Supp. 2d 1325), March 30, 2007.

Female student (plaintiff) and male perpetrator went to a bar and had a few drinks. Sometimes during their stay at the bar, the perpetrator slipped "a date rape drug" into the victim's drink. Afterward, they went to the perpetrator's house where the plaintiff was raped sometimes later that evening or early the next morning. The plaintiff sued the university, claiming that the university's response to the alleged rape violated her rights to equal educational access under Title IX. The United States District Court, M. D. Georgia, Macon Division, held that the university did **not** have actual knowledge that the male student was likely to rape female student, as required for liability on the part of the university under Title IX.

Labor and Employment:

Jones v. University of Dist. of Columbia (D. D. C., 505 F. Supp. 2d 78), August 17, 2007.

Plaintiff, a campus police officer, sued the University of the District of Columbia under the Americans with Disability Act (ADA) and Section 504 of the Rehabilitation Act, alleging it committed disability discrimination by failing to accommodate her disability. The plaintiff suffered three job-related injuries: (1) An employee physically assaulted plaintiff while she was on duty; (2) Employee who assaulted the plaintiff entered an elevator with her causing her to suffer a spasm, faint, and injure herself; and (3) Plaintiff fell while escorting a contractor on the roof of a building. As a result of the aforementioned incidents, plaintiff suffered injuries to her mouth, jaw, face, right shoulder, back, knees and ankle; leaving her with "chronic arthritis in her shoulder, neck and knees, bursitis in her hip, and various chronic back conditions". The United States District Court, District of Columbia, held that the disabled campus police officer could **not** perform the essential functions of her job even with reasonable accommodations. She could stand for only two hours during her eight-hour shift, and during those two hours was unable to run after suspects, tackle suspects, or carry a gun. Furthermore, simply being able to do "some traffic detail" and write "some tickets", did **not** fulfill the "multitude of tasks in a wide range of environments" that a campus police officer position entailed.

"Male Applicant Did Not Show Gender Discrimination"

Menta v. Community College of Beaver County (W. D. Pa., 513 F. Supp. 2d 505), May 25, 2007.

A male employee of community college whose position was one of three eliminated in accordance with a reorganization plan and who was not hired for either of the two open positions for which he interviewed, both of which were filled by the females whose positions had been eliminated, filed a complaint against college charging it with sex discrimination in violation of Title VII and the Pennsylvania Human Relations Act. The United States District Court, W. D. Pennsylvania, held that the college **articulated legitimate nondiscriminatory reasons** for not hiring the plaintiff for the open positions. Among those reasons were the following: (1) Exhibited a lack of preparedness during the interview; (2) Believed that his years with the college entitled him to greater consideration that the employees who had fewer years of experience; (3) Plaintiff failed to present his credentials and qualifications to the interview committee, and (4) The other applicants were more prepared, interested, motivated, and better qualified for the available positions (special populations coordinator and career link/services specialist).

"Employee's Violent Notes Got Him Fired"
Evans v. Louisiana State University Agriculture Center (La. App. 1 Cir., 965 So. 2d 418), June 8, 2007.

Plaintiff was employed at the Agriculture Center machine shop and shared an office with his supervisor (Thomas McClure). Both men used the same telephone and a common calendar. On June 17, 2005, the plaintiff was sitting at his desk using the telephone and at the same time jotted down the following notations on the shared calendar: June 6, 2005: "Tom received his new A. K. 47 via mail order"; June 7, 2005: "Tom assembled his new A. K. 47"; June 8, 2005: "Tom gunned down all of the student workers for fun"; June 9, 2005: "Tom sharpened his knife"; and June 10, 2005: "Watched Tom kill a person in cold blood". On Saturday, June 18, 2005, Mr. McClure was at work, and he saw the notations on the calendar. He recognized the handwriting as that of Mr. Evans. The plaintiff's employment with the university terminated because he violated the Agriculture Center's Violence-Free Workplace policy. A Louisiana court of appeals held that **there was a rational basis** for university's decision to terminate plaintiff.

Torts:

"Motel Liable for Sexual Assault During College Fraternity Party"
Paliometros v. Loyola (Pa. Super., 932 A. 2d 128), August 13, 2007.

Plaintiff was invited to a party by a fraternity member, which was held at a motel. Most of the guests at the party were under the age of 21-years, and alcoholic beverages were served to both invited guests and fraternity members. The motel had no security and only one employee was on duty the evening of the party. Sometimes during the night the plaintiff entered a motel room, passed out, and was sexually assaulted. Thereupon, plaintiff brought action against the motel. The Superior Court of Pennsylvania held that the owners of the motel **owed** guests the affirmative duty to exercise reasonable care, and to provide reasonable supervision by having supervisory (security) personnel physically present on premises to monitor both premises, and conduct of guests to prevent possible injury. Therefore, both the motel and its employee **breached their duty to provide reasonable care**, especially due to the fact that "underage guests" were present were alcoholic beverages were being served. Plaintiff was awarded $548,700.00.

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Terry James, Chair, Department of Leadership Studies, University of Central Arkansas
S. Ryan Niemeyer, Editor, Director, University of Mississippi – Grenada and Assistant Professor, Leadership and Counselor Education
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Safe, Orderly, and Productive School Institute
Department of Leadership Studies
University of Central Arkansas
201 Donaghey Avenue
230 Mashburn
Conway, AR 72035
*Phone: 501-450-5258 (office)
*E-mail: jpurvis@uca.edu

The **Legal Update For Community Colleges** is a monthly update of selected significant court cases pertaining to post-secondary institutions. It is written by Johnny R. Purvis for the **Safe, Orderly, and Productive School Institute** located in the Department of Leadership Studies at the University of Central Arkansas. If you have any questions or comments about these cases and their potential ramifications, please phone Johnny R. Purvis at **501-450-5258**. In addition, feel free to contact Purvis regarding educational legal concerns; school safety and security issues; crisis management; student discipline/management issues; and concerns pertaining to gangs, cults, and alternative beliefs.

Topics:

- Civil Rights
-

Topics

Civil Rights:

"Grad Student Not Protected Under Title VII"
Bakhtiari v. Lutz (C. A. 8 [Mo.], 507 F. 3d 1132), November 15, 2007.

A threat by a graduate teaching assistant (An Iranian national.) at a state university that he would pursue a grade appeal (He did not receive the grade that he thought he should have received in advanced inorganic chemistry.) with the United States Department of Education, complaints to the university's international affairs office about the handling of matters pertaining to his student immigration status, and complaints that a student affairs office employee spoke to him in a discriminatory manner during a student conduct investigation were **not "protected activities"** under Title VII. Plaintiff's retaliation claim arising from the termination of his teaching assistant position, grade appeal, and other complaints all pertained to his teaching assistant status as a graduate student and did **not** amount to discriminatory employment practices.

"Sorority Not Liable for Suspending Members for Hazing"
Jolevare v. Alpha Kappa Alpha Sorority, Inc. (D. D. C., 521 F. Supp. 2d 1), November 9, 2007.

Sorority members who were suspended by a sorority (Howard University) for violating the sorority's anti-hazing policy **failed** to establish that the sorority breached a duty to them, as required for the sorority to be liable to them in negligence action under District of Columbia law. Even if the sorority had a duty to its members to comply with its own policies and procedures in suspending members, the sorority **did abide** by policies and procedures in its constitution and by-laws. In addition, the sorority **did abide** by its anti-hazing handbook by conducting an investigation of the alleged hazing incident, during which the offending members were afforded an opportunity to present their positions to a panel of their peers. Furthermore, the offending members **were provided an opportunity to appeal** the decision of the hearing panel to the leadership of the sorority.

"College Did Not Discriminate Against Injured Employee under ADA"
Jones v. Saint Joseph's College (N. Y. A. D. 1 Dept., 847 N. Y. S. 2d 584), December 27, 2007.

College **did not discriminate** against its sole, full-time college recruiter on the basis of her disability by terminating her employment after injuries she sustained in an auto accident which rendered her unable to make certain recruiting trips (Staten Island). Since such recruiting trips were **an essential function** of the college's recruiter's position, and the plaintiff's **proposed accommodations** for the trips for the college **were unreasonable**.

Note: Johnny R. Purvis is currently a professor in the Department of Leadership Studies at the University of Central Arkansas. He retired (30.5 years) as a professor, Director of the Education Service Center, Executive Director of the Southern Education Consortium, and Director of the Mississippi Safe School Center at the University of Southern Mississippi. Additionally, he serves as a law enforcement officer in both Arkansas and Mississippi. He can be reached at the following **phone numbers**: 501-450-5258 (office) and 601-310-4559 (cell).

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October November 2008 (#'s 570, 571, & 572)

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Johnny R. Purvis*

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Terry James, Chair, Department of Leadership Studies, University of Central Arkansas
S. Ryan Niemeyer, Editor, Director, University of Mississippi – Grenada and Assistant Professor, Leadership and Counselor Education
Shelly Albritton, Technology Coordinator, Department of Leadership Studies, University of Central Arkansas
Safe, Orderly, and Productive School Institute
Department of Leadership Studies
University of Central Arkansas
201 Donaghey Avenue
230 Mashburn
Conway, AR 72035
*Phone: 501-450-5258 (office)
*E-mail: jpurvis@uca.edu

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Topics:

- Civil Rights
- Torts

Topics

Civil Rights:

"Bus Driver Not Eligible for Reasonable Accommodation"
Fiumara v. President and Fellows of Harvard College (D. Mass., 526 F. Supp. 2d 150), November 26, 2007.

Bus driver (plaintiff) for university, who was injured when he slipped and fell on steps of his bus, was **not** "qualified individual" able to perform the *essential functions* of his assigned job. Therefore, the plaintiff **failed** to demonstrate that his claim established that the university did not provide reasonable accommodation on his behalf under both Massachusetts law and the Americans with Disability Act (ADA). Plaintiff was hired in a position that required him to maintain his commercial driver's license (CDL), but his Department of Transportation (DOT) certification, which was required to maintain the CDL, had expired. In addition, the plaintiff's physicians continually wrote to university stating that driver was not able to return to work, but they did *not* include any indication that he could have returned with appropriate accommodation.

"Black Officers Allege Racial Discrimination"
Nichols v. Southern Illinois University-Edwardsville (C. A. 7 [Ill.], 510 F. 3d 772), December 28, 2007.

Current and former university police officers sued a state university under Title VII, alleging race discrimination and retaliation. The United States Court of Appeals, Seventh Circuit held: (1) Black officers did **not** show that they were equally qualified to receive temporary upgrades in position than white officers who received upgrades. Thus, the plaintiffs **failed** to establish a prima facie case of race discrimination under Title VII; and (2) University police officers were terminated based upon administrative findings that they made numerous objectively baseless allegations against their colleagues and *not* because they made allegations that the university police department discriminated against them due to their race. Thus, they were **not** retaliated against in violation of Title VII.

Torts:

"Clery Act Prompts University to Issue Campus Alert"
Havlik v. Johnson & Wales University (C. A. 1 [R. I.], 509 F. 3d 25), December 5, 2007.

A university student who assaulted (During an argument with another student, plaintiff punched the student, knocking him to the ground. As a result, the student hit his head on the sidewalk. Furthermore, the plaintiff flashed a knife at the time of the incident.) another student **failed** to establish that the university's primary motivating factor in issuing a crime alert notifying campus community of assault was malice, so as to overcome university's privilege from liability for defamation based on reasonable belief it had a legal duty to publish the alert under the **Clery Act**. University officials decided to include student's name and fraternity affiliation in alert believed the information would be useful to the community and would prevent future incidents.

"University Softball Coach Hits Player in the Head with Bat"
Murphy v. Polytechnic University (N. Y. Sup., 850 N. Y. S. 2d 339), December 31, 2007.

A coach who had 25 years of coaching experience injured plaintiff when he hit her in the face with a bat during "T-drill" practice. The New York Supreme Court, Kings County, held that (1) Question for determining whether player assumed risk was ***not*** whether being hit by bat during practice was reasonably foreseeable consequence of participation, ***but rather*** whether injury was reasonably foreseeable when it was coach who was wielding the bat; and (2) Genuine issue of material fact as to whether player's previous experience in organized games and being coached created an expectation on her part that coach would ensure that it was safe to proceed before swinging the bat, **precluded summary judgment** for university on issue of assumption of risk.

"Assistant Basketball Coach Makes Sexual Advances Toward Player"
Nicholas v. Board of Trustees of University of Alabama (C. A. 11 [Ala.], 251 Fed. App. 637), October 17, 2007.

African-American male who was hired as assistant coach of women's basketball team at state university filed a Title VII claim of disparate treatment and retaliation after he was suspended with pay, then banned from having contact with team players, after it was alleged he made improper sexual advances toward a student on the team. The United States Court of Appeals, Eleventh Circuit, held that assistant coach **failed** to establish a prima facie case of race or gender-based disparate discipline and there were **legitimate, non-retaliatory reasons** for removal of his coaching duties.

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