February-March 2009 (#’s 576, 577, & 578)

Legal Update for Community Colleges
December 2008 - January 2009

Johnny R. Purvis*

West’s Education Law Reporter
June 26, 2008 – Vol. 231 No. 2 (Pages 495 – 1009)
July 10, 2008 – Vol. 232 No. 1 (Pages 1 – 547)
July 24, 2008 – Vol. 232 No. 2 (pages 549 – 1002)

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

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
- Labor and Employment
- Student Discipline
- Torts

Topics

Labor and Employment:

"Requiring Professor to Teach on Mondays, Wednesdays, and Fridays Not Adverse Employment Action"
Recio v. Creighton University (C. A. 8 [Neb.], 521 F. 3d 934), April 8, 2008.

Creighton University (private university in Omaha, Nebraska) alleged action of requiring professor to teach on Mondays, Wednesdays, and Fridays, despite her stated preference for teaching on Tuesdays and Thursdays because it would best fit her work habits, if proven, was **not** materially adverse. Thus, professor's claim of retaliation for filing a national-origin discrimination claim (She was of Spanish origin.) could **not** be basis for Title VII retaliation claim, absent she suffered some material disadvantage.

"University Failed to Respond to Employee's Allegations of Sexual Harassment"
Gonzales v. North Carolina State University (N. C. App., 659 S. E. 2d 9), April 15, 2008.

Former students, who were allegedly sexually harassed by professor, brought tort claims against state university, alleging negligent infliction of mental and emotional distress on professor's part and negligent retention and supervision of professor on university's part. The Court of Appeals of North Carolina held that state university's *failure* to properly respond to female employee's allegation of sexual harassment by male professor **was proximate cause of injuries** sustained by female former students (several incidents of harassment occurred, 10 prior to the suit), who were sexually harassed by professor while either working as a research assistant or applying for that position. Therefore, the university **failed** to follow its own guidelines, demonstrated a pattern of ignoring complaints of sexual misconduct, showed a lack of concern, and professor continued to harass female students in the intervening time.

Civil Rights:

"Former Student Failed to State a Stigma Claim"
Nuttle v. Ponton (W. D. N. Y., 544 F. Supp. 2d 175), March 12, 2008.

Former university graduate student (plaintiff) stated that a professor made certain complaints against her to the Director of Judicial Affairs and such complaints caused her to receive no interviews or job offers upon her graduation with a master's degree. A United States district court in New York held that the plaintiff **failed** to allege that public university officials publicized complaints by the professor regarding the former student or disseminated any stigmatizing information about her outside of the university.

Student Discipline:

"University Did Not Act Arbitrarily in Refusing to Award Degree"
Burch v. Moulton (Ala., 980 So. 2d 392), August 31, 2007.

Employees and officers of the University of South Alabama and its medical school *did **not** act arbitrarily **or in bad faith**, or **exceed their discretion***, in refusing to award a student (plaintiff) a medical degree after he was dismissed from the medical school. Thus, the employees' and officers' state immunity was **not** compromised in the student's action for equitable relief. At the time of his arrest for unlawful possession of prescription drugs just before his scheduled graduation, the plaintiff had been on non-cognitive probation from the medical school and lacked many of the requirements necessary to graduate. Both the medical school faculty and the plaintiff were well aware of the requirements for graduation, consisting of both cognitive (e. g. academic performance, standardized grades, examinations, and courses completed) and non-cognitive criteria (e. g. attentiveness, cooperation, and responsibility).

Torts:

"University Employees 'Acted Within Their Scope of Employment' When They Circulated Evidence of Their Supervisor's Affair"

Massey v. Roth (Ga. App., 659 S. E. 2d 872), March 24, 2008.

In the summer of 2003, Massey (plaintiff and university employee in the University of Georgia Environmental Protection Division [EPD]) found an intimate letter with references to a sex manual and sexual activity from Roth (defendant and his immediate supervisor with the EPD) to Scott (Associate Vice President for Environmental Safety) inside a Valentine's Day card located in a canvas bag in a communal office supply closet. Thereupon, plaintiff took a copy of the card and letter to the University of Georgia's Office of Legal Affairs to complain about the relationship between Roth and Scott. Both Roth and Scott were reprimanded, but the affair continued. The Court of Appeals of Georgia held that the plaintiff **acted within the scope of his employment** by sharing the card and letter with fellow employees and university counsel. Therefore, he **was entitled to immunity** from his supervisor's (Roth) invasion of privacy lawsuit pursuant to Georgia's Tort Claims Act. Plaintiff **presented evidence** that he feared harassment, sexual favoritism, and possible administrative sanctions or termination of employment.

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).

Special Note:

The "Legal Update for District School Administrators" is dedicated to the memory of **Dr. Wm. (Bill) Leewer** (November 17, 1950 – May 26, 2008) and **Dr. Jack Klotz** (February 26, 1943 – May 20, 2008). Dr. Leewer was a professor at Mississippi State University-Meridian, Mississippi and editor of the Legal Update for District School Administrators. Dr. Klotz was a professor in the Department of Leadership Studies at the University of Central Arkansas and a former professor of educational administration at the University of Southern Mississippi. Both of these gentlemen and educators will be greatly missed by their families, friends, and their students. They were not just colleagues of mine, but very dear friends. Their memory and legacy will live on through their students and their writings. Strength and honor

April May 2009 (#'s 579, 580, & 581)

Legal Update for Community Colleges
April - May 2009

Johnny R. Purvis*

West's Education Law Reporter
August 7, 2008 – Vol. 233 No. 1 (Pages 1 – 501)
August 21, 2008 – Vol. 233 No. 2 (Pages 503 – 1023)
September 4, 2008 – Vol. 234 No. 1 (pages 1 – 514)

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

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:

- Fraternities
- Student Discipline
- Torts

Topics

Fraternities:

"Reinstatement of Suspended Fraternity Was Warranted"
Alpha Eta Chapter of Pi Kappa Alpha Fraternity v. University of Florida (Fla. App. 1 Dist., 982 So. 2d 55), April 14, 2008.

The University of Florida's assistant vice president upheld the decision of the dean of students who suspended Alpha Eta Chapter of Pi Kappa Alpha Fraternity for failure to comply with the university's alcoholic beverages policy. The fraternity sought an appeal of the university's decision with the District Court of Appeals of Florida, First District. The District Court of Appeals held that the Greek judicial board **violated** the university's rule that provided the fraternity's right to question adverse witnesses, and the reinstatement of the fraternity **was warranted**.

Student Discipline:

"Suspension of Black Student for Hazing Not Discriminatory"
Williams v. Wendler (C. A 7 [Ill.], 530 F. 3d 584), June 23, 2008.

University officials' suspension of three black female (plaintiffs) state university students, who were members of a sorority, based on hazing another black female student pledging at sorority by physically hurting her did **not** give rise to racial discrimination under Title VI (The plaintiffs beat the pledge repeatedly with paddles over a four-day period, bruising her buttocks so severely that it was painful for her to sit, and forced her to dive knee first barelegged onto grains of rise, which was very painful.). The plaintiffs alleged that their punishment was more severe than if they had been white.

Torts:

"University's Director of Office of Community Standards Was A Public Official"
Fiacco v. Sigma Alpha Epsilon Fraternity (C. A. 1 [Me.], 528 F. 3d 94), June 13, 2008.

Fiacco (plaintiff) was the Director of the Office of Community Standards, Rights and Responsibilities (Office of Community Standards) at the University of Maine at Orono ('UMO"). In this capacity, the plaintiff oversaw the student discipline process at UMO: he reviewed allegations of misconduct, assigned case mangers to handle grievances, referred cases to UMO administrators or the Conduct Committee, and occasionally adjudicated cases himself subject to review by the Conduct Committee. In 2002, plaintiff's office started an investigation of the Sigma Alpha Epsilon Fraternity (SAE) for alleged misconduct. In response, the group hired a private investigator to uncover evidence of any bias the plaintiff might hold against SAE or fraternities in general. The investigator found several court records and newspaper articles dating back to Fiacco's college years. Those documents revealed Fiacco's past involvement in two legal proceedings: a conviction for Driving While Ability Impaired ("DWAI") that results in his departure from the post of Director of Public Safety at Fort Lewis College in Colorado, and a temporary restraining order secured against him by a former girlfriend. The documents gave no indication that Fiacco was biased against fraternities or, in particular, SAE. After becoming aware of the documents discovered by SAE's investigator, the plaintiff brought legal action against SAE for the intentional infliction of emotional distress. The United States Court of Appeals, First Circuit, held that the plaintiff **was a "public official"** and the fraternity's published statements about the plaintiff **were not false**. Therefore, SAE's statements were protected under the First Amendment of the United States Constituion.

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).

Special Note:

The "Legal Update for District School Administrators" is dedicated to the memory of **Dr. Wm. (Bill) Leewer** (November 17, 1950 – May 26, 2008) and **Dr. Jack Klotz** (February 26, 1943 – May 20, 2008). Dr. Leewer was a professor at Mississippi State University-Meridian, Mississippi and editor of the Legal Update for District School Administrators. Dr. Klotz was a professor in the Department of Leadership Studies at the University of Central Arkansas and a former professor of educational administration at the University of Southern Mississippi. Both of these gentlemen and educators will be greatly missed by their families, friends, and their students. They were not just colleagues of mine, but very dear friends. Their memory and legacy will live on through their students and their writings. Strength and honor

June July 2009 (#’s 582, 583, & 584)

Legal Update for Community Colleges
June - July 2009

Johnny R. Purvis*

West’s Education Law Reporter
September 18, 2008 – Vol. 234 No. 2 (Pages 515 – 1059)
October 2, 2008 – Vol. 235 No. 1 (Pages 1 – 695)
October 16, 2008 – Vol. 235 No. 2 (Pages 697 – 1278)

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

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
- Disabled Students
- Labor and Employment
- Religion
- Torts

Topics

Civil Rights:

"Christian Evangelist Denied Permission to Speak On University's Campus"
Gilles v. Garland (C. A. 6 [Ohio], 281 Fed. App. 501), June 18, 2008.

Campus evangelist (plaintiff) who was denied permission to continue a speech on the grounds of a university (Miami University in Oxford, Ohio), brought action against campus officials, alleging that the policy they enforced was a violation of his free speech, free exercise, due process, and equal protection rights. The Untied States Court of Appeals, Sixth Circuit, held that: (1) Plaintiff's allegations **were sufficient** to state a due process claim (14th Amendment) because the university's policy was *not* well understood by university officials and (2) University's open areas, including the "Academic Quad" on the campus where the plaintiff sought the right to speak **was a limited public forum rather than a "traditional public forum"**.

Disabled Students:

"University Was Not Deliberately Indifferent Toward Disabled Middle School Student"

S.S. v. Eastern Kentucky University (C. A. 6 [Ky.], 532 F. 3d 445), July 2, 2008.

From 2000 to 2003, S. S. (plaintiff) was a student at the Model Laboratory Middle School (Model), which was operated by Eastern Kentucky University (EKU) to train student teachers under the supervision of certified teachers. The plaintiff had various disabilities, including cerebral palsy, ADHD, dyslexia, pervasive developmental disorder, and post-traumatic stress disorder. During his attendance at Model S. S. was involved in numerous physical and verbal altercations with other students, leading the plaintiff to complain that he was being bullied and harassed. The plaintiff left Model after successfully completing the sixth, seventh, and eighth grades. The United States Court of Appeals, Sixth Circuit, held that the university was **not** deliberately indifferent to alleged incidents of harassment by plaintiff's classmates, as required for student's disability based peer-on-peer harassment claim brought under ADA and the Rehabilitation Act. School officials responded to all of the alleged incidents involving the student of which it was made aware, and its responses included conducting individual and group interviews with plaintiff's classmates in an attempt to determine who was at fault. The university instructed students to not taunt the plaintiff, arranged for outside speakers to talk to students about name calling, identifying related topics for discussion at school assemblies and in small groups, monitored students, held mediation sessions between students, discipline students who were found at fault, called police, and called students parents about the issue.

Labor and Employment:

"University Employee Did Not Suffer Adverse Employment Action That Would Support First Amendment Claim"

Mills v. Williams (C. A. 6 [Mich.], 276 Fed. App. 417, April 24, 2008.

Terminated state university employee, who initially worked as customer service representative in academic advising center at East Michigan University (EMU), brought First Amendment retaliation claim under Section 1983 against four university administrators. Plaintiff claimed that due to her political views and speech (discussions she had with the city council), the university eliminated her position and transferred her to a less desirable job (A EMU satellite campus 20 miles away.) which refused to accommodate her religious obligations. The United States Court of Appeals, Sixth Circuit, held that the elimination of plaintiff's position and her subsequent transfer to another campus was **not an adverse action** that would support her First Amendment retaliation claim against four university administrators. Furthermore, the court stated that a reasonable person would **not** find that the plaintiff's transfer to another job with the same pay, identical benefits, and only an extra 20 miles away sufficient to deter the exercise of her First Amendment rights.

Religion:

"Christian Fraternity Not Likely to Succeed In Its Challenge to University's Antidiscrimination Policy"
Beta Upsilon Chi v. Machen (N. D. Fla., 559 F. Supp. 2d 1274), May 29, 2008.

The nation's largest Christian fraternity (plaintiff) and its local chapter sued the University of Florida, seeking to enjoin university from enforcing its requirement that fraternity's constitution include a statement that it would not discriminate on the basis of religious belief or creed. The United States District Court, N. D. Florida, Gainesville Division, held that state university did **not** engage in viewpoint discrimination against plaintiff by refusing to grant it status as a registered student organization unless it included a statement in its constitution that it would not discriminate on the basis of religious belief or creed. There were other Christian organizations that had the same religious viewpoints as the plaintiff and they had been granted the status of registered student organizations by the university. Therefore, plaintiff's specific motivating ideology, speaker's opinion, or religious perspective was **not** the rationale for the university's decision.

Torts:

"Freshman Climbs on Window Ledge and Falls to His Death"
Wellhausen v. University of Kansas (Kan. App., 189 P. 3d 1181), August 8, 2008.

State University **had no duty to warn or protect** a student-tenant against *open and obvious danger* which might result from climbing out of seventh-floor dormitory room window in order to stand upon a two-foot-wide ledge several feet below window. The *discretionary function exception to liability* under Kansas' Tort Claims Act **applied** to bar wrongful death suit brought by student's parents against university. There was **no** evidence indicating that the student (while intoxicated – blood-alcohol was .16) was distracted or inadvertently failed to appreciate the danger of his action when he decided to crawl out the narrow opening of his seventh-floor dormitory room window, drop down approximately five feet to a two-foot-wide ledge (45 to 50 feet above the ground), and smoke a cigarette. Furthermore, a university is **not** an insurer of the safety of its students, and the doctrine of in loco parentis does **not** apply to contemporary collegiate life.

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).

Legal Update for Community Colleges
October - November 2009

Johnny R. Purvis*

West's Education Law Reporter
December 11, 2008 – Vol. 237 No. 2 (Pages 557 – 1016)
December 25, 2008 – Vol. 238 No. 1 (Pages 1 – 489)
January 8, 2009 – Vol. 238 No. 2 (Pages 491 – 962)

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

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
- Labor and Employment
- Torts

Topics

Civil Rights:

"Student Had Property Interest In Continued Enrollment"
Lankheim v. Florida Atlantic University, Bd. of Trustees (Fla. App. 4 Dist., 992 So. 2d 828), September 24, 2008.

Student that was enrolled at a community college that was located on state university's campus **had due process property interest in continued enrollment**. Therefore, the university could ***not*** permanently bar the student from entering the campus based on the student's prior allegedly threatening behavior toward the university's faculty and staff, without giving her notice and an opportunity for a hearing to contest the university's decision. The plaintiff ***had met her contractual obligations for enrollment*** at the community college and was otherwise in good standing as a student. **Note:** The plaintiff has reportedly stated: "I'm not a violent type of person, I'm more of a Ghandi type of person, that's my approach, I really would hate to hurt FAU."

Labor and Employment:

"Educator Fired After Three Days on the Job"
Beaubrun v. Thomas Jefferson University (E. D. Pa., 578 F. Supp. 2d 777), September 23, 2008.

A 47-year-old black female educator who was discharged after three days of employment at a university family center brought civil rights claims under Section 1983, Title VII, Age Discrimination in Employment Act (ADEA), and the Pennsylvania Human Relations Act (PHRA), alleging age and race discrimination. The United States District Court, E. D. Pennsylvania, held that *relatively minor incidents* relating to the failure to greet plaintiff properly when she began work, failure to correctly document her status as a supervisor, failure to give her an office superior (Plaintiff's office measured 8 by 7.5 feet. Her desk and chair were child-sized and uncomfortable and her office lacked a phone and computer.) to that of staff members she supervised, and delay of her starting date; were minor incidents that did **not** rise to the *level of severity or frequency necessary to support* her hostile environment claim based on her age or race.

Torts:

“Intoxicated Student Falls From Balcony”
O’Neill v. Ithaca College (N. Y. A. D. 3 Dept., 866 N. Y. S. 2d 809), November 6, 2008.

Intoxicated 19-year-old college sophomore sustained serious injuries when she fell from a third-floor balcony attached to a student apartment in a residential building on the defendant’s campus after she stepped outside “to get some fresh air”. The Supreme Court of New York, Appellate Division, Third Department, held that: (1) Genuine issue of material fact **existed** as to whether third-party defendant (students who shared the apartment) assisted in *furnishing* alcohol to underage student; (2) Evidence **was insufficient** to raise inference that third-party defendant played an indispensable role or actively assisted in *procuring* alcohol for underage student; (3) Third-party defendants were **not** liable for contribution based on common law negligence claim that defendants breached duty to *control or supervise* the activities of the plaintiff; (4) Third-party defendants were **not** liable for contribution based on common law negligence claim that they *breached the duty they specifically owed to college to reasonably prevent underage drinking at their campus apartment*.

Books of Possible Interest: Two recent books published by Purvis –

1. Leadership: Lessons From the Coyote, www.authorhouse.com
2. Safe and Successful Schools: A Compendium for the New Millennium-Essential Strategies for Preventing, Responding, and Managing Student Discipline, www.authorhouse.com

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).

December 2009 January 2010 (#'s 591, 592, 593, & 594)

Legal Update for Community Colleges
December 2009 - January 2010

Johnny R. Purvis*

West's Education Law Reporter
January 22, 2009 – Vol. 239 No. 1 (Pages 1 – 314)
February 5, 2009 – Vol. 239 No. 2 (Pages 315 – 788)
February 19, 2009 – Vol. 239 No. 3 (Pages 789 – 1119)
March 5, 2009 – Vol. 240 No. 1 (Pages 1 – 502)

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

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
- Labor and Employment
- Student Discipline
- Torts

Topics

Civil Rights:

"Professor Entitled To a Name Clearing Hearing"
Gunasekera v. Irwin (C. A. 6 [Ohio], 551 F. 3d 461), January 8, 2008.

State university professor **sufficiently alleged** that he had due process-protected property interest in his graduate faculty status, **in support** of his claim that he was deprived of such interest when his graduate faculty status was suspended without notice and opportunity to be heard. Professor alleged that the university stated criteria limited university's discretion to name graduate faculty status due to the fact, that in practice, professors retained their appointments so long as they satisfied those criteria. Furthermore, his suspension of graduate faculty status caused him to lose both pay and benefits.

Labor and Employment:

"Proper Remedy for Layoff Was Reassignment If Qualifications and Seniority Requirements Were Met"
Appeal of Vicky Morton (N. H., 960 A. 2d 332), November 7, 2008.

Program specialist, who had been laid off from her position after it was abolished in the New Hampshire Community Technical College System (NHCTCS), appealed the decision of the Personnel Appeals Board (PAB) ruling that the proper remedy for her layoff did not include reinstatement to her previous position; and that she did not meet the minimum qualifications for other positions in the college system for which she applied. The Supreme Court of New Hampshire held that the ***proper remedy*** for layoff of employee in the community college system ***was reassignment*** if the employee was qualified for a similar position and had more seniority than its present holder, **not** reinstatement to her prior position that had been abolished.

Student Discipline:

"Hearsay Evidence Did Not Violate Student's Due Process Rights"
Heiken v. University of Cent. Florida (Fla. App. 5 Dist., 995 So. 2d 1145), December 5, 2008.

State university's reliance on hearsay evidence in an un-sworn police report in imposing discipline on student did **not** violate student's due process rights. The student was confronted with the report and *offered an opportunity to rebut* the charges, and the student refused to answer specific questions, instead he invoked his privilege against self-incrimination. Furthermore, the student made *no* attempt to call witnesses or present additional evidence.

Torts:

"Presence of Wheelchair in Hospital Room Was Open and Obvious"
Terranova v. Staten Island University Hosp. (N. Y. A. D. 2 Dept., 870 N. Y. S. 2d 84), December 16, 2008.

Presence of wheelchair in university hospital room, the footrest of which plaintiff allegedly tripped on, **was open and obvious**, **known to the** plaintiff, and **not** inherently dangerous. The defendant had **no duty** to protect or warn against the condition.

Books of Possible Interest: Two recent books published by Purvis –

1. Leadership: Lessons From the Coyote, www.authorhouse.com
2. Safe and Successful Schools: A Compendium for the New Millennium-Essential Strategies for Preventing, Responding, and Managing Student Discipline, www.authorhouse.com

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).