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)
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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 –

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February 2010 March 2010 (#'s 595, 596, & 597)

Legal Update for Community Colleges
February 2010 - March 2010

Johnny R. Purvis*

West's Education Law Reporter
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April 2, 2009 – Vol. 241 No. 1 (Pages 1 – 518)
April 16, 2009 – Vol. 241 No. 2 (Pages 519 – 977)

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Topics:

- Civil Rights
- Labor and Employment
- Religion
- Torts

Topics

Labor and Employment:

"Non-Renewal of Employee's Contract Not a Pretext for Discrimination"
Hunter v. Rowan University (C. A. 3 [N. J.], 299 Fed. App. 190), November 12, 2008.

An administrative assistant (plaintiff – Caucasian female) in the Office of the Dean of the College of Engineering sued the university, a dean, and others, claiming that she was subjected to retaliation and to race, age, and national origin discrimination in violation of federal civil rights statutes and state laws. After a new dean was appointed to the College of Engineering, the plaintiff's duties were reassigned a bit and shortly thereafter, the quality and quantity of her work within the College begin to decline, especially in regard to her compliance with deadlines. On December 6, 2001, the Dean of the College recommended that the plaintiff's contract not be renewed. The United States Court of Appeals, Third Circuit, held that the university's proffered (evidence offered to the court) explanation for the non-renewal of an employee's contract, based on her performance not being satisfactory, was **not** a pretext for discrimination. **Neither** the Age Discrimination in Employment Act (ADEA) nor the Age Discrimination Act (ADA) was violated.

"Reasons for Not Promoting Professors Was Not Pretext for Discrimination"
Sosa v. Rockland Community College (C. A. 2 [N.Y.], 302 App. 56), December 17, 2008.

Community college's legitimate, non-discriminatory reasons for not promoting two community college professors to rank of associate professor namely, was that they were **not** qualified for promotion as defined by college's detailed promotion policy. Thus, the promotional denial **was not** a pretext for unlawful discrimination based on national origin and color under the Fourteenth Amendment of the United States Constitution.

Religion:

"University Officials Entitled to Immunity In Religious Group's Suit"
Roman Catholic Foundation v. Regents of University of Wisconsin System (W. D. Wis., 590 F. Supp. 2d 1083), December 16, 2008.

Religious foundation and state university students who were adherents to that religion filed action against state university officials to challenge the constitutionality of the university's refusal to fund certain activities out of university's segregated fee account that funded a variety of student activities. The United States District Court, W. D. Wisconsin, held that **reasonable** state university officials could have concluded that the Establishment Clause of the First Amendment *prohibited* the university from funding activities of religious foundation out of the university's segregated fee account that funded a variety of student activities. Therefore, university officials **were entitled** to qualified immunity. Expenses for which the religious foundation sought reimbursement were **not** expenses shared by all student organizations. In addition, the foundation resembled a student-run church in some respects, and some of the disputed activities of the foundation involved ordained clergy, prayer, and worship.

Civil Rights:

"Student Antiabortion Organization *Had Standing* to Bring Suit Against University for Constitutional Violation"
Rock for Life-UMBC v. Hrabowski (D. Md., 594 F. Supp. 2d 598), January 26, 2009.

Student antiabortion organization and its officers **had standing** to assert damage claims against state university and university officials based on alleged violations of their rights to free speech and equal protection resulting from university's application to them for former policy on facilities use, which resulted in university's relocation of organization's pro-life poster display to a low-traffic area of the campus. Furthermore, the university declared its intention to assign similar future events to the same site. **Note:** The group (plaintiff) was told by university officials that they could set-up their display (Consisting of 23 signs measuring 4 x 8 feet in size that pertained to "genocide awareness".) directly in front of the University Center; however, the university reassigned them to a vacant field behind the University Commons.

Torts:

"Community College Was Entitled to Governmental Immunity"
Meyer v. Community College of Beaver County (Pa. Cmwlth., 965 A. 2d 406), February 11, 2009.

Community college **was entitled** to governmental immunity in former students' action under the Consumer Protection Law asserting breach of contract and breach of warranty after the college lost its certification under the Municipal Police Officers Education and Training Act. The community college **was a local agency for governmental immunity purposes**; therefore, the liability in regard to the students' action was **not** predicated on a negligent act within an exception to governmental immunity. **Note:** Before the plaintiffs' completed the Academy's course of study for law enforcement certification, the Academy's certification for such law enforcement officers was suspended, and later revoked. Thus, the plaintiffs were required to attend another police academy and were disallowed most of the credits earned at their former community college.

"College Not Liable for Employee's Fall in the Cafeteria"
Bellassai v. Roberts Wesleyan College (N. Y. A. D. 4 Dept., 872 N. Y. S. 2d 842), February 11, 2009.

The employee of a company that provided food services to the college brought action against the college, seeking to recover damages for injuries she sustained when she slipped and fell on the wet floor of the dining hall on the college's campus. The Supreme Court of New York, Appellate Division, Fourth Department, held that the college's alleged "general awareness" that dangerous condition may have been present on dining hall floor in area of food service company employee's fall **was legally insufficient to constitute notice of the particular condition that caused the fall**. Therefore, the college would **not** be liable for the employee's injuries.

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April 2010 (#'s 598, & 599)

Legal Update for Community Colleges
April 2010

Johnny R. Purvis*

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Topics:

- Civil Rights
- Free Speech
- Labor and Employment

Topics

Civil Rights:

"Scolding and Verbal Threats Insufficient to Establish Adverse Employment Action"

Bollinger v. Thawley (C. A. 9 [Nev.], 304 Fed. App. 612), December 24, 2008.

University employee (plaintiff) brought action against state university and community college system and two of her supervisors, alleging that defendants retaliated against her because she planned to testify in a pending lawsuit. The Untied States Court of Appeals, Ninth Circuit, held that the allegations of the plaintiff that one of her supervisors yelled at her and later wrote her a letter instructing her not to speak with police and that another supervisor remarked to a third party that he might have to take away her office space; **were insufficient to establish an adverse employment action** as required to establish a First Amendment retaliation claim.

Free Speech:

"Employee's Speech about Alleged Sexual Harassment by Coworker Not Protected Under First Amendment"

McCullough v. University of Arkansas for Medical Sciences (C. A. 8 [Ark.], 559 F. 3d 855), March 23, 2009.

On June 28, 2005, a female employee in the College of Public Health (COPH) submitted a formal complaint stating that plaintiff (A computer project program director for the University of Arkansas for Medical Sciences.) sexually harassed her. On July 7, 2005, another female employee at COPH filed a sexual harassment complaint against the plaintiff. After reviewing the finding of an investigation into the aforementioned complaints against the plaintiff, it was concluded that there was a "*preponderance of evidence*" to indicate that the plaintiff exhibited inappropriate behavior of a sexual nature toward his coworkers. Furthermore the plaintiff did so on multiple occasions; thus, making the incidents serious. For these reasons the plaintiff's employment was terminated. He appealed, and the United States Court of Appeals, Eighth Circuit, held that: (1) Employer's belief that plaintiff engaged in sexual harassment and filed untruthful complaints **was a legitimate** non-sex based reasons for discharge and (2) Employee's speech about alleged sexual harassment by coworkers was **not** protected speech under the First Amendment.

Labor and Employment:

"Counselor's Threat of Violence Did Not Bar Her ADA Claim"
Menchaca v. Maricopa Community College Dist. (D. Ariz., 595 F. Supp. 2d 1063), January 26, 2009.

Former college employee brought action under ADA, alleging that her termination was motivated by disability discrimination. In December 1991, the plaintiff suffered a traumatic brain injury as a result of being involved in an auto accident. She eventually returned to full-time work in August 1992, but remained under the care of a psychologist for the next four years. After a meeting with her immediate supervisor, she stated that she felt "distressed", "paranoid", and "totally stressed out with an anxiety level that was off the charts." Several hours after the meeting, she returned to her supervisor's office and told her that if she reported her comings and goings to the college's administration that she "would come back and kick your ass." A clinical psychologist testified that the plaintiff suffered from a narcissistic personality disorder and she was unable to function as a counselor because "she lacks the empathy that is necessary to understand what a concerned or troubled student might feel regarding that student's self or his or her future." A United States district court in Arizona held that plaintiff's statement to her supervisor that she would "kick your ass" was **not sufficiently egregious** as a matter ***to bar*** employee's claim that her termination was motivated by her disability in violation of ADA. Even if the threat qualified as criminal conduct under state law, such an outburst ***was*** arguably symptomatic of her mental impairments due to her traumatic brain injury and post-traumatic stress disorder (PTSD).

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May 2010 (#'s 600 & 601)

Legal Update for Community Colleges
May 2010

Johnny R. Purvis*

West's Education Law Reporter
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Topics:

- Labor and Employment
- Torts

Topics

Labor and Employment:

"Professor's Suspension Without Pay After His Felony Conviction Did Not Violate Equal Protection"
Rosa v. City of University of New York (C. A. 2 [N. Y.], 306 Fed. App. 655), January 13, 2009.

University had a reasonable interest in ensuring that faculty members teaching legal and ethical aspects of business did not engage in illegal and unethical business behavior, and thus, the decision to suspend plaintiff without pay following his felony conviction did **not** violate his equal protection rights under the 14th Amendment of the United States Constitution. The plaintiff, who taught business law and ethics, was convicted of grand larceny for using escrow funds belonging to an organization for which he served as an accountant to pay personal bills.

Torts:

"Evidence Was Insufficient to Show That Chain Stretched Across Throughway Did Not Pose an Unreasonable Risk of Harm"
University of Texas at Austin v. Hayes (Tex. App.-Austin, 279 S. W. 3d 877), March 6, 2009.

Judicial evidence **was insufficient** to show that a dark metal chain stretched at night across the entire width of a throughway and sidewalk on state university campus did **not** pose an unreasonable risk of harm in bicyclist's personal injury action. The throughway was used very often by both bicyclists and pedestrians, and there was **no** cones or reflective material used on the chain. **Note:** The bicyclist and his wife were riding bikes on the university throughway about 8:30 p.m. when his bike's front tire struck the metal chain stretched across the throughway. As a result of the collision, the bicyclist was thrown from his bike and suffered personal injuries, including a broken jaw.

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June 2010 (#'s 602 & 603)

Legal Update for Community Colleges
June-July 2010

Johnny R. Purvis*

West's Education Law Reporter
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Topics:

- Security
- Torts

Topics

Security:

"Non-Student Found Guilty of Procuring Counterfeit Student Identification Card"
U. S. v. Agarwal (C. A. 3 [Pa.], 314 Fed. App. 473), November 20, 2008.

Rishabh Agarwal (defendant) paid an undercover FBI agent $150.00 for a counterfeit Carnegie Mellon University student identification card, with which he had hoped to gain access to various campus facilities, especially the university's gym and robotics building. He was arrested minutes after receiving the identification card from the undercover agent. He was found guilt of violating the False Identification Crimes Control Act and sentenced to two years probation. He appealed his conviction. The United States Court of Appeals, Third Circuit held that the defendant's conduct in procuring a counterfeit university student identification card **had a connection to the interstate commerce clause** as required for a conviction for fraud in connection with the identification document. The defendant used the Internet to make arrangements to purchase the card; component parts of the card traveled through interstate commerce; university accepted students not only from the United States, but also from other nations; and the card could have been used to gain access to university facilities.

Torts:

"Fraternity Note Liable for Student's Death"
Elwood v. Alpha Sigma Phi (N. Y. A. D. 3 Dept., 878 N. Y. S. 2d 499), May 7, 2009.

It was **not** foreseeable that a university student would trespass on fraternity chapter's private property, cross to the far side of its fence, and fall to his death in a nearby gorge. Thus, the Alpha Sigma Phi fraternity (defendant) was **not** liable for the student's death. The defendant's president, advisor, and members of the fraternity testified that the area along side and rear of the fraternity house were only rarely used and then only by fraternity members who were aware of the gorge. There was **no** evidence that there had ever been guests, whether invited or uninvited, within the area near the gorge; or that anyone has ever trespassed in the area prior to the student's accident. **Note:** The decedent (a sophomore at Cornell University) had been drinking heavily and went with a friend in an attempt to find his way to another fraternity party. Although they were neither members nor guests of the defendant, they turned into the defendant's private driveway, drove into the defendant's parking lot and parked illegally in a fire lane. It was 10:00 p.m. and there was no party or any other event going on at the fraternity house. Defendant had previously installed a five-foot-high split-rail fence on its premises to separate the fraternity's property (no gates and no gaps) from the gorge. The decedent cross to the other side of the split-rail fence, proceeded in the dark about six feet through foliage that obscured the edge of the gorge, and tragically fell 80 feet to his death. Decedent's blood alcohol content was found to be .26%.

"Did Elevated Bumper On University Loading Dock Create A Dangerous Condition?"
Walker v. Drexel University (Pa. Super., 971 A. 2d 521), April 27, 2009.

Plaintiff, who was a truck driver employed by a sheet metal company was unloading his delivery truck at a university loading dock that had rubber bumpers which protruded approximately 2 to 2 ½ inches above the loading dock. While unloading his delivery truck, his right toe became hooked on the top of the bumper causing him to trip and fall. As a result of the accident, he was diagnosed with a lumbar radiculopathy and a right knee meniscus tear. The Superior Court of Pennsylvania held that: (1) Whether bumper on loading dock created an unreasonably dangerous condition **was for a jury**; (2) Truck driver **was a business invitee and not required to be on alert to discover** defects which were not obvious; (3) University **failed** to exercise reasonably care to protect driver from injury; and (4) Evidence **was sufficient** to support finding that height of elevated bumper was proximate cause of the driver's tripping and injuring his knee.

"Fact Issue Existed As to Whether University Had Notice of Icy Condition"
Managault v. Rensselaer Polytechnic Institute (N. Y. A. D. 3 Dept., 879 N. Y. S. 2d 612), May 21, 2009.

A bus driver parked her bus on defendant's campus in order to use a restroom that was located on the university's campus. As the plaintiff approached the field house, her feet slid on what she claimed to be black ice, causing her to fall and injure her right knee and hand. The Supreme Count of New York, Appellate Division, Third Department held that genuine issues of ***material fact existed*** as to whether dangerous icy conditions existed outside of the field house on university's campus, and if so, whether university had actual or constructive notice that icy condition was present; thus, **precluding summary judgment** in plaintiff's slip-and-fall action against the university.

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August September 2010 (#'s 604 & 605)

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June-July 2010

Johnny R. Purvis*

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July 23, 2009 – Vol. 244 No. 3 (Pages 893 – 1128)
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Terry James, Chair, Department of Leadership Studies, University of Central Arkansas
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Topics:

No cases for this issue.

Topics

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October 2010 (#'s 606 & 607)

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October 2010

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Topics:

- Abuse and Harassment
- Athletics
- Civil rights
- Torts

Topics

Abuse and Harassment:

"Rape Victim Failed to Exhaust Administrative Remedies Associated With Her Harassment Claim"
Allen v. University of Vermont (Vt., 973 A. 2d 1183), March 27, 2009.

Former state university student who had reported that she has been raped by a male student **failed** to exhaust administrative remedies as to harassment claim by failing to notify the university that she was filing a harassment claim according to university policy, as distinct from her report of rape. Thus, under administrative remedy exhaustion requirements under state law, student ***was precluded*** from initiating a discrimination claim against the university based on the university's nonresponsive actions associated with her claim due to the fact that the plaintiff did not follow university policy and administrative procedures that were readily available to her.

Athletics:

"Preliminary Injunction Preventing University from Eliminating Women's Volleyball"
Biediger v. Quinnipiac University (D. Conn., 616 F. Supp. 2d 277), May 22, 2009.

Current and incoming members of a university varsity women's volleyball team and their coach brought suit challenging the university's plan to eliminate women's volleyball as a varsity sport. Plaintiffs requested a preliminary injunction to prevent immediate elimination of the program while legal proceedings moved forward. A United States District Court in Connecticut stated that the preliminary injunction sought by plaintiffs **would prevent** the university from eliminating women's volleyball as a varsity sport; however, *it was a prohibitory injunction, not a mandatory injunction*. Nevertheless, *it would restrain* the university from carrying out its decision to eliminate the volleyball team in the upcoming academic school year. Therefore, the injunction *would preserve the status quo rather than requiring the defendant to undertake an affirmative act*.

Civil Rights:

"Student Stated Claims Under ADA"
Brodsky v. New England School of Law (D. Mass., 617 F. Supp. 2d 1), April 29, 2009.

Law student who suffered from memory and organization deficits, "consistent with long-term damage to the brain" possibly arising from an accident some 20 years earlier and was expelled for obtaining a failing grade in two courses, filed suit alleging that law school's refusal to readmit him violated ADA. The United States District Court, D. Massachusetts, held that plaintiff **stated claims** for disability discrimination under ADA. The Court went on to state that although the plaintiff did not explicitly state that his disability caused him to fail the two classes, **such an inference could be fairly drawn** from the allegations.

Torts:

"University Not Liable for Slip-and-Fall"
Wartski v. C. W. Post Campus of Long Island University (N. Y. A. D. 2 Dept., 882 N. Y. S. 2d 192), June 19, 2009.

University moved for summary judgment in action brought by plaintiff who was allegedly injured when she slipped and fell on water and icy snow from prior storm that was tracked onto stairs connecting the first floor and basement in a building owned by the defendant. The defendant **established its entitlement to judgment** as a matter of law by submitting evidence that it did *not* create the alleged defect nor *have* actual or constructive notice thereof.

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Legal Update for Community Colleges

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Johnny R. Purvis*

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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 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
- Crimes
- Labor and Employment
- Torts

Topics

Civil Rights:

"Transsexual Instructor's Ban from Using Women's Restrooms Was Legitimate"
Kastl v. Maricopa County Community College Dist. (C. A. 9 [Ariz.], 325 Fed. App. 492), April 14, 2009.

A community college instructor brought gender discrimination claims against a community college after college banned the instructor, who was transsexual, from using the women's restrooms until she could prove the completion of sex reassignment surgery. The United States Court of Appeals, Ninth Circuit, held that the college's ban on transsexual instructor's use of women's restrooms for safety reasons **was a legitimate, nondiscriminatory justification** under Title VII.

Crimes:

"Student in Possession of a Knife in Hallway of College Dormitory"
State v. Campbell (Conn. App., 975 A. 2d 757), August 11, 2009.

Student's (defendant) carrying a knife in the common hallway of his college dormitory **fell outside the residence or place of abode exception** to the statutory prohibition against carrying a dangerous weapon. Defendant did **not** have the exclusive use of hallway or right to control access to, or exclude others from the hallway. Furthermore, although students needed a key card to enter the dormitory, once students were inside dormitory, they were free to access all common areas. In addition, students were **not** allowed to leave their possessions in the hallway and students had **no** reasonable expectation of privacy in the dormitory hallways.

Labor and Employment:

"Written Agreement Permitted University to Terminate Professor and Former Chancellor"

Trustees of Indiana University v. Cohen (Ind. App., 910 N. E. 2d 251), July 30, 2009.

The University hired Cohen in 1987 to serve as a professor of physics with tenure and as Chancellor of the University's campus in South Bend, Indiana (IUSB). A female employee of the University accused Cohen of forcibly kissing and groping her breasts during a private meeting in Cohen's office in November 1994. As a result of the sexual harassment allegations against him, Cohen agreed to resign his position as Chancellor of IUSB and the University agreed that Cohen would continue to be a professor of physics. In 1999-2000 a number of students complained about Cohen's treatment of them in a very authoritarian, condescending, harassing, and demeaning manner. On or thereabout August 2, 2001, Cohen received a letter from the President of the University that he had been dismissed from his faculty position. Thereupon, Cohen challenged his termination from IUSB. The Court of Appeals of Indiana held that the written agreement that he signed when he agreed to resign from the Chancellor's position and continue as a professor of physics ***clearly and unambiguously permitted the university to terminate the professor's employment*** for his repeated violation of the university's ethics code as set forth in the school's academic handbook, and the university did **not** breach the agreement by dismissing the professor for committing additional acts of harassment and retaliation.

Torts:

"University Student Attacked by Unidentified Armed Assailants in University's Parking Garage"

Board of Trustees of University of Dist. of Columbia v. DiSalvo (D. C., 974 A. 2d 868), July 2, 2009.

On January 14, 2002, at about 3:30 in the afternoon, Graciette DiSalvo (DiSalvo), a scholarship student at the University of the District of Columbia (UDC), was attacked by two unidentified armed assailants in parking garage 52 on UDS' campus. The assailants demanded money and one of the assailants stabbed Disalvo through her cheek with a knife, fracturing her tooth. Disalvo was able to escape and the assailants were never identified nor apprehended. Soon thereafter, Disalvo brought negligence action against the university in an effort recover damages for the injuries that she received during the attack. The District of Columbia Court of Appeals held that the university was **not** liable for the student's injuries since the university had **no** reason to foresee the attack on the student. Furthermore, the university had **no** reason to be aware of an increased in violent criminal activity in the parking garage prior to the attack on the student.

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Topics:

- Colleges and Universities
- Labor and Employment
- Torts

Topics

Colleges and Universities:

"College Students Lacked Standing to Challenge Noise Ordinance"
Manlove v. Unified Government of Athens-Clarke County (Ga., 680 S. E. 2d 405), June 15, 2009.

College students (plaintiffs) challenged the constitutionality of defendant's noise ordinance which prohibits sounds that are "plainly audible" from a distance of 300 feet at any time, except that, after 11:00 p.m. on weeknights and after midnight on weekends, the distance is reduced to 100 feet. The Supreme Court of Georgia stated that the plaintiffs **lacked standing** to challenge under the First Amendment a noise ordinance that prohibited sounds that were "plainly audible" from various distances at various times of the week and also prohibited sounds from inside an apartment, town home, or similar dwelling that were plainly audible five feet from the boundaries of a building. Plaintiffs had never been subject to any fine or penalty or otherwise harmed as a result of violating the ordinance. Furthermore, their assertion that they intended to play their music "loudly" in the future did *not* necessarily trigger a violation of the ordinance or an imminent threat of prosecution.

Labor and Employment:

"African-American Female Assistant Professor Failed of Establish a Case of Discrimination under Title VII"
Rowe v. North Carolina Agr. and Technical State University (M. D. N. C., 630 F. Supp. 2d 601), June 10, 2009.

African-American female former state university assistant professor (received three one year contracts over a three year period) brought action in state court against her former employer, alleging sex discrimination and retaliation pursuant to Title VII because she was denied promotion and tenure. A United Stated District Court in North Carolina held that: (1) Plaintiff's argument that university's requirement that a candidate for promotion and tenure with less than five years of teaching experience as an assistant professor show "very exceptional circumstances" for promotion and tenure was fabricated in order to deny her candidacy **was insufficient** to demonstrate a case of racial or sexual discrimination under Title VII.

"Professor Not Qualified For Promotion and Failed to Establish Discrimination"
Marpaka v. Hefner (Tenn. Ct. App., 289 S. W. 3d 308), October 3, 2008.

State university associate professor was **not qualified** for the position of full professor, and thus, **failed** to establish a case of discrimination on the basis of religion and national origin against Tennessee State University after he was denied promotion to full professor. In fact, the professor *conceded he lacked achievements in both research and pubic service*. **Note**: The plaintiff was a native of India and a practitioner of Hinduism.

Torts:

"Student Assumed Risk of Injury and Death When He Joined a Fight"
Cornelius v. Morris Brown College (Ga. App., 681 S. E. 2d 730), July 14, 2009.

Parents of a college student killed in a physical altercation at a college brought suit against the college and others for the wrongful death based on college's alleged failure to implement adequate security measures despite the high potential for danger in the area of attack. The Court of Appeals of Georgia held that the student **assumed the risk of injury and death** after being struck on his head with a beer bottle when he voluntarily ran across a street to join a fight that had already begun. Furthermore, there was **no** evidence that any weapon was involved before the student joined in the altercation.

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