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Legal Update for Community Colleges

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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, Co-Director, Mississippi Teacher Corps and Assistant Professor,
Leadership and Counselor Education, University of Mississippi
Shelly Albritton, Technology Coordinator, Department of Leadership Studies, University of
Central Arkansas

Wendy Rickman, Assistant Professor, 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 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
- Student Discipline

Topics

Civil Rights:

“Technical College Entitled to Qualified Immunity Regarding Suspended Student’s First Amendment Retaliation Claim”

Castle v. Appalachian Technical College (C.A. 11 [Ga.], 631 F. 3d 1194), January 27, 2011.

On two separate occasions after the former nursing student received disciplinary warnings, the administration received reports of her misconduct from her instructors. First, in June 2007, one of the plaintiff’s instructors informed an administrator that a student told her that the plaintiff had threatened him. Second, on August 21, 2007, a different instructor reported that the plaintiff was inappropriately loud and argumentative during a class discussion and another student had reported the plaintiff threatened her to “be careful in the parking lot.” The United States Court of Appeals, Eleventh Circuit, held that the college administrators **were entitled** to qualified immunity on both the plaintiff’s First Amendment retaliation claim and the student’s procedural due process claim as associated with the Fourteenth Amendment.

“Preacher Was Not Entitled to Preliminary Injunction against University’s Speech Policy”

Bloedorn v. Grube (C.A. 11 [Ga.], 631 F. 3d 1218), January 28, 2011.

Christian evangelical preacher seeking a preliminary injunction against a public university’s speech policy requiring outside, non-sponsored speakers to speak only in a designated free speech area after receiving a permit to do so did **not** have the substantial likelihood of success on the merits of his First Amendment claim that the policy impermissibly gave the university officials unbridled discretion to determine the location, time, or the length of the allowed speech. The policy **was content neutral on its face, it did not employ vague or undefined standards, and university’s practice was to issue a permit for a speaker’s requested date and time so long as the space had not been reserved by another speaker or group.** In addition, the policy set specific standards for assigning the length of time and frequency for which the permit was granted.

“University Violated Professor’s Procedural Due Process Rights by Revoking His Graduate Faculty Status”

Gunasekera v. Irwin (S.D. Ohio, 748 F. Supp. 2d 816), October 6, 2010.

Professor **had a property interest that was protected** by the due process clause of the Fourteenth Amendment of the United States Constitution in regard to his graduate faculty status, and thus **had a right to a notice and an opportunity to be heard before university suspended that status**. **By custom** the university mandated that a professor maintained graduate faculty status so long he met four specific criteria; furthermore, university had never before suspended a professor who met those criteria. In addition, the plaintiff’s suspension caused him to lose both pay and benefits.

Student Discipline:

“University’s Determination that Student Violated its Code of Conduct Was Not Unreasonable or Irrational”

Hyman v. Cornell University (N.Y.A.D. 3 Dept., 918 N.Y.S. 2d 226), March 3, 2011.

University determined that a female graduate student had violated its code of conduct by harassing a male professor through a series of e-mails and was **not** unreasonable or irrational where university did **not** deviate from its own procedures for disciplinary proceedings, and its determination **was amply supported** by evidence that the plaintiff suggested to a professor that they have a sexual affair and that she continued to contact him even after he requested that she *not* communicate with him anymore.

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)