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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
- Labor and Employment
- Student Discipline

Topics

Civil Rights:

“University Policy Limiting the Possession of a Firearm on Campus Did Not Violate Visitor’s Constitutional Rights”

DiGiacinto v. Rector and Visitors of George Mason University (Va., 704 S. E. 2d 365), January 13, 2011.

The defendant’s regulation prohibiting the possession of a firearm in state university’s facilities or at university events did **not** violate plaintiff’s (non-student) right to bear arms under both state and federal constitutions. Furthermore, the university constituted a sensitive place having 30,000 students enrolled, 5,000 employees, 50,000 elementary and high school students attending summer camps, and 130 children attending preschool. In addition, the regulation *was tailored* to restricting weapons only in those places where people congregated and were most vulnerable.

Labor and Employment:

“College’s Chief of Police Not Entitled to Worker’s Compensation”

Witkovich v. Suny Alfred State College (N.Y.A.D. 3 Dept., 914 N.Y.S. 2d 796), January 27, 2011.

Three months after plaintiff began serving as the Chief of Police for Suny Alfred State College he was terminated. A day later, he filed an application for workers’ compensation benefits, claiming that in the days immediately proceeding his termination he had suffered “a recurrence of posttraumatic stress disorder, irritable bowel syndrome, anxiety, and a panic attack. The New York Supreme Court, Appellate Division, Third Department, stated that the former chief was **not** entitled to worker’s compensation benefits as a result of work-related stress, where medical evidence established that the plaintiff has a history of claiming that he had suffered psychological injuries as a result of stress in the workplace, along with exhibiting signs of “delusional thinking and paranoia.” Furthermore, there was **no** evidence introduced in his hearing that indicated that his position was extraordinarily stressful or that his injuries he claimed to have sustained were caused by conditions that existed in his work setting.

Student Discipline:

“University Provided Student More Than Ample Due Process Prior to Expulsion”

Willis v. Texas Tech University Health Sciences Center (C.A. 5 [Tex], 394 Fed. App. 86), September 1, 2010.

State university provided plaintiff **more than minimum due process in conducting his disciplinary hearing** that was based on a complaint that he pointed a 9mm handgun (pistol) at a fellow student while they were arguing off-campus. The university student conduct board sent the plaintiff a detailed letter which explained that a complaint had been filed against him, notified the plaintiff of the hearing date, provided a factual basis for the complaint, provided portions of the student code of conduct allegedly violated, provided a list of the members of the student conduct board and an opportunity to challenge them in regard to partiality, explained to him how to submit evidence, demonstrated to him the manner in which he could call witnesses in his behalf, and the manner in which he could secure an advisor. Furthermore, the hearing was conducted as so pertaining to the aforementioned and the plaintiff did state his position but did not call any witnesses.

“University’s Discipline of Student Raised Issues Related to Due Process”

Furey v. Temple University (E.D. Pa., 730 F. Supp. 2d 380), August 2, 2010.

Genuine issue of material fact existed as to whether university’s disciplinary hearing panel was *biased* against plaintiff **precluded summary judgment** in the plaintiff’s action against the university which alleged procedural due process violations in connection with his expulsion from the university for an off-campus altercation with an off-duty police officer. One hearing panel member allegedly stated that he would believe a police officer over a civilian because of his position. Another issue surrounding the plaintiff’s claim against the university focused on the student being aggressively being cross-examined by the panel while the police officer was allowed to give a narrative without close questioning. Also, during the hearing, a panel member told the student’s mother to “shut-up.” **Note:** After a night of parting and drinking, the plaintiff went to a friend’s house; thereupon, the plaintiff’s friend locked himself out of his bedroom and the plaintiff went to secure a machete from his car to pry open the bedroom door. While the plaintiff was at or around his car, the plaintiff saw a number of men approach him and one of them had a gun. The off-duty officer identifying himself as a police officer and told him to drop his machete, fearing that the men might attack him, he hesitated to drop his machete, but he eventually threw down the machete. Thereupon, the officer threw him to the ground and subdued him.

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)