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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:

- Athletics
- Student Discipline
- Torts

## Topics

### Athletics:

#### **“Student Did Not Have a Property Right in His Playing College Football”**

Awrey v. Gilbertson (E. D. Mich., 833 F. Supp. 2d 738), June 30, 2011.

State university (Saginaw Valley State University) student did **not** have a property interest in his playing college football, *as required for his legal action* alleging the violation of his Fourteenth Amendment due process rights regarding his removal from the university’s football team for his alleged violations of the National College Athletic Association’s rules. The student was restored before the start of the next football season and the student’s scholarship or efforts to attain an education were not revoked upon his removal from the team. **Note:** His dad, also the university’s head football coach, got the plaintiff a below market rental rate for an apartment located near the university’s campus.

### Student Discipline:

#### **“Preliminary Injunction Preventing College from Dismissing Student for Smoking Synthetic Marijuana was Not Warranted”**

Carter v. Citadel Bd. of Visitors (D. S. C., 835 F. Supp. 2d 100), September 1, 2011.

A sophomore cadet at The Citadel brought a Section 1983 legal action against the college and its officers alleging that his substantive and procedural due process rights under the Fourteenth Amendment were violated by the defendants’ decision to dismiss him for two semesters for allegedly smoking synthetic marijuana (K2/Spice). A United States District Court, D. South Carolina, Charleston Division held that the student did **not** have the substantial likelihood of success on the merits of his claim that: (1) his due process rights were violated when he was not allowed the presence of an attorney at his disciplinary hearing; (2) he was deprived of due process when he was denied a chain-of-custody procedures at his disciplinary hearing; (3) the decision to dismiss him was arbitrary and capricious; and (4) he was deprived of his due process rights when the chair of the disciplinary hearing temporarily left the hearing.

## **Torts:**

### **“Photographs of College Student Taken from Her Social Networking Website were Admissible in Personal Injury Trial”**

Johnson v. Ingalls (N. Y. A. D. 3 Dept., 944 N. Y. S. 2d 654), May 3, 2012.

Probative value (serving to test) of photographs of a college student taken from her social networking website (Facebook) shortly after an accident in which she fell from a moving vehicle on the campus of the State University of New York at Albany, and over the course of the following year, *outweighed* their potential for prejudice, and **admissible** for trial in the student’s personal injury action against the driver of the vehicle. The photographs depicted the student attending parties, socializing, vacationing with friends, dancing, drinking beer in a inverted position referred as a “keg stand,” and otherwise appearing to be active, socially engaged, and happy shortly after the accident. The student claimed that she suffered from anxiety which allegedly prevented her from socializing with friends and she refrained from drinking alcoholic beverages in compliance with advice from her health professions. **Note:** The plaintiff had been drinking at a bar in the city of Albany and was observed by the defendant walking along a campus roadway apparently intoxicated and talking loudly on her cell phone and either stopped or slowed down to somewhere between two and five miles per hour. Plaintiff went to the vehicle, stepped onto its running board, leaned into an opened window, and according to passengers, began to swing her arms at the passenger who had thrown a drink into her face at the aforementioned bar. Defendant accelerated; plaintiff fell or jumped off the vehicle, suffering a fractured skull. The plaintiff claimed that she suffered severe anxiety, vertigo, constant migraines, and pain for a period of about two years.

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

1. Leadership: Lessons From the Coyote, [www.authorhouse.com](http://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](http://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. In addition, he serves as a law enforcement officer. He can be reached at the following **phone numbers:** 501-450-5258 (office) and 601-310-4559 (cell)