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Legal Update for Community Colleges

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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:

- Abuse and Harassment
- Athletics
- Student Discipline
- Torts

Topics

Abuse and Harassment:

“Student Sufficiently Stated Negligent Infliction of Emotional Distress Claim against University”

Vega v. Sacred Heart University, Inc. (D. Conn., 836 F. Supp. 2d 58), July 20, 2011.

Allegations that an university student (plaintiff) was kidnapped by members of a sorority as part of a hazing process and was physically and mentally abused over a period of several hours, that university failed to protect the plaintiff from the harassment and intimidation on campus during a second kidnapping by the very same individuals only week later, and that the harassment was so severe she was forced to move off campus to escape her assailants; therefore such inaction on the part of defendant **was sufficient** to claim negligent infliction of emotional distress under Connecticut law. **Note:** On the night of October 2, 2009, the plaintiff was kidnapped by members of the Delta Phi Kappa, taken to an unknown location off campus, where she was physically and mentally abused over a period of several hours. She suffered injuries to her shoulders, ankle, spine, and severe emotional distress as a result of the kidnapping. On October 12, October 15, and November 16, 2009, she was again harassed and intimidated by the same perpetrators of the initial attack and their friends. Even after reporting each incident the university failed to respond to her requests for assistance and help.

“Strength Coach and Weight-Room Assistants were Not Agents of the Trainer for Purposes of Vicarious Liability in Injured Student-Athlete’s Action Against Trainer”

Ramsey v. Gamer (C. A. 11 [Ala.], 469 Fed. App. 737), March 15, 2012.

Plaintiff, a scholarship football player at Auburn University brought action against the university’s head football trainer, alleging negligence and wantonness conduct (conduct in which the actor is aware of the risks but indifferent to the results) related to plaintiff’s claim that he re-injured his back during rehabilitation when he was required to lift weights contrary to his physician’s instructions. The United States Court of Appeals, Eleventh Circuit, held that the strength coach and his weight-room assistants were **not** agents of the head football trainer, and therefore, the trainer was **not** vicariously liable for the actions of the strength coach and weight-room assistants. The strength coach and his assistants independently managed the weight room and there was **no** evidence that the trainer controlled, supervised, or directed the strength coach and his assistants in drafting athletes’ daily weight-room regiments, and there was **no** showing that the trainer had the power to select or choose the strength coach’s staff. **Note:** The plaintiff had spinal surgery in April 2008, and in May 2008, his surgeon cleared him to return to regular training. After re-injuring his back due to the weight training incident, the plaintiff underwent a second spinal surgery. Afterward he decided to not continue playing football and was medically disqualified from football due to the risk of further injury.

Student Discipline:

“College’s Determination that Student had engaged in Academic Dishonesty was Not Irrational”

Shah v. Union College (N. Y. A. D. 3 Dept., 948 N. Y. S. 2d 456), July 12, 2012.

College’s determination that a student had engaged in academic dishonesty was **not** irrational. The student admitted that in a written assignment he failed to provide citations to certain material that he copied from several websites, which was conduct that the college’s student handbook clearly indicated was academic dishonesty. In addition, he admitted that he and his biology lab partner jointly prepared graphs submitted as part of their individual lab reports.

Torts:

“College Baseball Player Assumed the Risk of Being Hit by a Line Drive When He Participated in Indoor Baseball Practice”

Bukowski v. Clarkson University (N. Y., 971 N. E. 2d 849), June 5, 2012.

University freshman baseball pitcher **assumed the inherent risk** of being hit by a line drive when he participated in an indoor practice by throwing to a batter in a nylon cage without protective netting. Based thereon, the plaintiff was **precluded** from being granted any sort of favorable verdict as so pertaining to his personal injury action against the defendant and the university’s head baseball coach. The plaintiff *was aware of the risk of getting hurt in baseball*, he had seen other pitchers get hit by batted balls, had experienced balls being batted back to him, and he had hit batters with his own pitches. In addition, the plaintiff *was aware of the obvious risk of pitching without protective netting* and he had had the opportunity to observe the lighting in the facility and the multicolored pitching backdrop prior to the accident. **Note:** The incident occurred when the plaintiff threw a fastball and the batter hit the ball directly back to him, striking his jaw and breaking his tooth.

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. 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-phone)