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Case of the Month

A hospital did not violate the Americans with Disabilities Act (ADA) by restricting a nursing student's service dog due to the service dog posing a direct threat to patients and staff.

Mia Bennett, a nursing student with a panic disorder, was assigned a clinical rotation at the University of Michigan-Flint, Hurley Medical Center. She requested permission for her service dog, Pistol, to accompany her during her rotation. Initially, the medical center approved her request per its written policy regarding service animals, but after several staff members and a patient reported allergic reactions to Pistol, the medical center reevaluated the request and determined Pistol could not accompany Bennett at all times. The medical center offered alternative accommodations, such as designated space for Pistol on another floor and breaks for Bennett to be with Pistol, but Bennett refused these accommodations. Bennett completed her rotations, but filed suit alleging Hurley Medical Center violated Title II of the [Americans with Disabilities Act \(ADA\)](#), 42 U.S.C. chapter 126, [Rehabilitation Act Section 504](#), 29 U.S.C. § 794, by refusing to permit Pistol to accompany her. Hurley Medical Center filed a motion for summary judgment.

The federal district court granted summary judgment to the medical center. The court's concerns were focused on Pistol and his effects on the staff and patients, not with Bennett's disability. The court also found the medical center's proposed accommodations were reasonable. Bennett appealed.

The U.S. Sixth Circuit Court of Appeals considered Bennett's argument that the medical center intentionally discriminated against her because of her disability, and agreed with the lower court that Bennett did not provide evidence the medical center prevented Pistol from accompanying her because of her panic disorder. The medical center demonstrated its decision was due to concerns about Pistol causing allergic reactions to staff and patients. Bennett argued the medical center could have accommodated Pistol by relocating allergic staff and patients, but the medical center provided evidence her requested accommodations would be unreasonable. The court found that Pistol posed a direct threat because multiple people had allergic reactions, and there was a risk of future reactions which could not be reduced through relocation of patients and staff. The court affirmed the district court's decision. [Bennett v. Hurley Med. Ctr.](#), No. 23-1162, 86 F.4th 314 (5th Cir. Nov. 9, 2023).

Why is This Case Significant?

An otherwise reasonable accommodation, such as a service animal, can be restricted if it poses a direct threat to the health and safety of others.

Highlights

The new [TASB.org](#) and [TASBColleges.org](#) websites are now live.

[Update 46](#) is now available.

New on eLaw:

[Deadlines for May 2024 Community College Elections](#)

Resources

[Texas Higher Education Coordinating Board](#)
[Texas Legislature](#)
[Texas Statutes](#)
[Texas Attorney General](#)
[U.S. Department of Education](#)



From the Courts and the Attorney General

Personnel

Former employee failed to provide sufficient evidence to overcome summary judgment on his claims his employer racially discriminated against him in violation of [Title VII of the Civil Rights Act of 1964](#) by dismissing him in accordance with its neutral absence control policy after repeated absences. [Price v. Valvoline](#), No. 23-20131, 88 F.4th 1062 (5th Cir. Dec. 15, 2023).

University employee failed to provide sufficient evidence to overcome summary judgment on her claims a university violated [Title VII](#) by failing to take action regarding her sexual harassment complaint and retaliated against her by relocating her to a storage room while her complaint was investigated. [Johnson v. Bd. of Supervisors of La. State. Univ.](#), No. 22-30699, 2024 WL 78514 (5th Cir. Jan. 8, 2024).

Faculty member accused of having a relationship with a student provided sufficient evidence that her claim under [42 U.S.C. § 1983](#) that the university violated her U.S. Constitution [Fourteenth](#) Amendment rights and the Virginia constitution, and violated [Title IX of the Education Amendments of 1972](#) did not accrue until the university made a final decision in accordance with its own policy, overcoming dismissal. [Reid v. James Madison Univ.](#), No. 22-1441, 2024 WL 87628 (4th Cir. Jan. 10, 2024).

Students and Instruction

Former student failed to provide sufficient evidence to overcome dismissal of her claim that a community college had actual knowledge or was deliberately indifferent to her report of sexual harassment in violation of [Title IX](#). [Lane v. Navarro Coll.](#), No. 3:23-CV-00883-N, 2024 WL 102933 (N.D. Tex. Dallas Jan. 8, 2024, no pet. h.) (mem. op.).

Former nursing student did not provide sufficient evidence to overcome dismissal of her claim that a university nursing school breached a contract created by the student handbook by failing to provide her academic accommodations related to her rheumatoid arthritis. [Omokwale v. Baylor Univ.](#), No. 3:23-CV-0354-X, 2024 WL 116428 (N.D. Tex. Jan. 10, 2024, no pet. h.) (mem. op.).

Open Records Letter Rulings

This month, the attorney general issued Open Records Letter Rulings¹ based on requests from Texas community colleges related to:

- A solicitation. Tex. Att'y Gen. [OR2023-43547](#) (Dec. 20, 2023); [OR2023-43386](#) (Dec. 20, 2023).



Recent Regulations and Guidance

The Texas Higher Education Coordinating Board (THECB) renewed the effectiveness of the [emergency](#) repeal of certain provisions relating to community college financial reporting

which will be replaced with a new consolidated community college data reporting rule, in response to statutory changes made by House Bill 8 during the 88th Legislative Session.

¹ Open record letter rulings are limited to the particular records at issue and the facts as presented to the attorney general. These rulings must not be relied upon as a previous determination regarding any other records or any other circumstances.

THECB renewed the effectiveness of [emergency regulations](#) relating to the formula funding process and financial system for community colleges adopted in response to statutory changes by House Bill 8 during the 88th Legislative Session.

The Texas Ethics Commission (TEC) amended [regulations](#) relating to the expenditure and compensation thresholds for lobbyists.

TEC amended [regulations](#) to adjust the reporting thresholds for contributions and expenditures by certain candidates and committees.

The Texas Real Estate Commission amended [regulations](#) to add a fuel gas piping disclosure in the seller's disclosure notice, in response to statutory changes made by the 88th Legislature.

The Texas Health and Human Services Commission (HHSC) adopted [regulations](#) relating to a required display of a food allergen

awareness poster in retail food establishments, in response to statutory changes made by the 88th Legislature.

HHSC amended [regulations](#) relating to the continuing education requirements for nursing facility administrator's license renewal.

The Texas Workforce Commission adopted a "[Reporting Workplace Violence](#)" notice, in response to statutory changes made by the 88th Legislature.

The U.S. Department of Labor [amended](#) a final rule addressing the classification of workers as employees or independent contractors under the [Fair Labor Standards Act](#), effective March 11, 2024.

The U.S. Equal Employment Opportunity Commission issued "[Providing an Accessible Workplace](#)," which offers resources regarding accommodations for individuals with disabilities in the work environment and compliance with anti-discrimination and accessibility laws.



Policy Spotlight

In the [November 2022](#) issue of TASB Community College Services [Legal Update Newsletter](#), the "Case of the Month" was [Tex. Comm. on Environmental Quality v. Sierra Club](#), which related to a [Texas Public Information Act](#) (PIA) request and centered on the issue of *business days*. Previously, *business days* were not defined in statute. The court's interpretation of *business day* differed from that long advised by the Texas Attorney General.

In response to this case, during the 88th Regular Legislative Session the legislature passed House Bill (HB) 3033, which defines business day as a day other than a Saturday or Sunday, a national holiday, or a state holiday. The bill also permits the chief administrative officer of a governmental body, including a community college, to designate a day on which the governmental body's offices are closed or operating with minimum staffing as a nonbusiness day. A governmental body may designate at most 10

nonbusiness days per calendar year. The bill took effect on September 1, 2023.

Last month, colleges localized with TASB received the Update 46 packet. Included in this packet for most colleges were changes to GCB(LOCAL) that recommended language related to *nonbusiness days* at the college. More updates from HB 3033 were also made to GCB(LEGAL), including the incorporation of national holidays and state holidays, and were included in the Update 46 packets and in the Community College Policy Reference Manual (CCPRM) update in October.

If you have questions about implementing HB 3033 at your community college, review the [FAQ](#) on the PIA at [TASB College eLaw](#). If you have policy questions, contact your college's [policy consultant](#). For related legal questions, email colleges@tasb.org or call 800.580.1488.

Legal Update is a publication of TASB Community College Services



In the News

The Texas Higher Education Coordinating Board announced Houston Community College and Texas Southmost College as recipients of its [2023 Star Awards](#) for exceptional contributions toward meeting the goals outlined in Texas's strategic plan for higher education, Building a Talent Strong Texas.

The U.S. Department of Education [announced](#) that Institutional Student Information Record data collected in completed Free Application for Federal Student Aid (FAFSA) forms will not be available to colleges and state agencies until March.