



Contents

[Case of the Month](#)
[From the Courts and Attorney General](#)
[Recent Regulations and Guidance](#)
[In the News](#)



Case of the Month

Professor failed to provide sufficient evidence to overcome dismissal of his First Amendment chilled speech, retaliation, and unwritten speech code claims against a university.

Richard Lowery, a business school professor and associate director of a public policy institute at the University of Texas at Austin, criticized university officials online, including in social media, regarding their actions on various issues, such as critical race theory, and for allegedly advancing left-wing causes. University officials discussed Lowery and asked him multiple times to tone down his speech, one time mentioning his position at the institute might be impacted. Eventually, Lowery stopped tweeting. University police also opened a threat mitigation investigation into Lowery's posts. Lowery sued university officials claiming they were chilling his speech and retaliating against him for his protected speech in violation of the U.S. Constitution [First Amendment](#), U.S. Const. amend I. Lowery filed a motion for a preliminary injunction seeking to enjoin the university from chilling his speech, and the university and officials filed a motion to dismiss. While the motions were pending, Lowery was reappointed to the policy institute and received a raise.

After the federal district court dismissed his retaliation claim and denied his injunction, Lowery updated the pleadings to include an unwritten speech code claim. The university and officials filed new motions to dismiss and for summary judgment. The court determined the chilled speech claim was in essence a retaliation claim, which the court had already dismissed because Lowery had not sufficiently alleged an adverse employment action to support it. The court also dismissed the speech code claim because Lowery did not sufficiently allege a facial or as-applied First Amendment claim. Lowery appealed the dismissal of and grant of summary judgment on his claims.

After determining that Lowery had standing, the Fifth Circuit Court of Appeals considered Lowery's claim of chilled speech. The court reviewed caselaw and determined that no binding opinions have recognized a chilled-speech claim as distinct from a retaliation claim. The court then considered whether Lowery had argued an adverse employment action as required to support a claim of retaliation for protected speech under Fifth Circuit precedent, a higher standard than mere criticism or investigations. The court concluded that the actions taken by university officials constituted threats to take certain actions, complaints about his behavior, or investigations without sanctions and therefore were not sufficiently adverse. Instead of being fired or demoted, his contract was renewed and pay increased. Finally, the court determined that university officials' general comments on cooperation amongst staff and his tone were not sufficient to show an unwritten speech code existed. Even if a code existed, Lowery did not show a substantial number of applications of the code that fail the *Pickering* balancing test, a test balancing governmental interest and employee rights described by the U.S. Supreme Court in [Pickering v. Bd. of Educ.](#), 391 U.S. 563 (1968). The Fifth Circuit upheld the lower court's opinion. [Lowery v. Mills](#), No. 24-50879, 2025 WL 3041865 (5th Cir. Oct. 31, 2025).

Why is This Case Significant?

The Fifth Circuit Court of Appeals clarified that a chilled-speech claim is not distinct from a claim of retaliation based on protected speech under court precedent, as well as clarified the evidence necessary to support retaliation and speech code claims.

Highlights

Join us at the [TACCA Conference](#) at TASB on Jan. 22-23, 2026.

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

Applicant for a university police telecommunicator position, who alleged he told the university that he did not have his driver's license because he was scared to drive due to a mental issue and who was subsequently removed from the applicant pool though a driver's license was not listed as required in the job description, provided sufficient evidence to overcome dismissal and summary judgment on his claim the university discriminated against him based on his perceived disability in violation of the [Texas Commission on Human Rights Act](#). *Univ. of Tex. at El Paso v. Aranda*, No. 08-25-00083-CV, 2025 WL 3164675 (Tex. App.—El Paso Nov. 12, 2025, no pet. h.).

Former coordinator and community college firing range master, who reported to his supervisor and college officials his concerns that law enforcement academy instructors were deviating from the state-approved course curriculum and subsequently was placed on administrative leave until his contract expired for expressing the desire to harm a coworker, failed to provide sufficient evidence to dismiss his claims that the college's termination of him based on his reports was retaliation in violation of the U.S. Constitution [First Amendment](#) and violated the [Texas Whistleblower Act](#). *Mahmoud v. Tarrant Cnty. Coll. Dist.*, No. 05-23-01129-CV, 2025 WL 3055625 (Tex. App.—Dallas Oct. 31, 2025, no pet. h.) (mem. op.).

White former mediation course instructor, who was terminated by a community college after she wrote a racially derogatory word suggested by a Black student employee on the board and incorporated it into her class discussion of difficult labels that would challenge impartiality and then further offended the student when apologizing for the incident, failed to provide sufficient evidence to overcome dismissal of her

claims the college discriminated against her on the basis of her race and retaliated against her in violation of [Title VII of the Civil Rights Act of 1964](#) and [42 U.S.C. § 1981](#) and failed to provide her due process in violation of the U.S. Constitution [Fourteenth Amendment](#). *Young v. Collin Coll.*, No. 4:24-CV-00979-SDJ-BD, 2025 WL 2966688 (E.D. Tex. Oct. 20, 2025) (adopting the report and recommendation in *Young v. Collin Coll.*, No. 4:24-CV-00979-SDJ-BD, 2025 WL 2591569 (E.D. Tex. Aug. 11, 2025)).

Black former employee, who filed an internal complaint that he and other Black employees were micromanaged, defamed, and treated differently than white colleagues and who was subsequently terminated, provided sufficient evidence to overcome dismissal of his claims the college and a college employee discriminated against him on the basis of his race in violation of the [Fourteenth Amendment](#) Equal Protection Clause and subjected him to a hostile work environment and retaliation in violation of [Title VII](#). *Moseti v. Collin Coll.*, No. 4:25-CV-00358-MJT-CLS, 2025 WL 3091827 (E.D. Tex. Nov. 5, 2025) (adopting in part the report and recommendation in *Moseti v. Collin Coll.*, No. 4:25-CV-00358-MJT-CLS (E.D. Tex. Oct. 7, 2025)).

Open Records Letter Rulings

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

- Information regarding an incident involving the requestor. Tex. Att'y Gen. Op. [OR2025-37389](#) (Oct. 16, 2025);
- Information regarding an incident. Tex. Att'y Gen. Op. [OR2025-37411](#) (Oct. 16, 2025);
- Information regarding certain contracts and solicitations. Tex. Att'y Gen. Op. [OR2025-37717](#) (Oct. 20, 2025);
- Information regarding a solicitation. Tex. Att'y Gen. Op. [OR2025-37922](#) (Oct. 21, 2025), [OR2025-38651](#) (Oct. 24, 2025), [OR2025-39384](#) (Oct. 30, 2025);
- Information regarding certain contracts. Tex. Att'y Gen. Op. [OR2025-38514](#) (Oct. 24, 2025);
- Information regarding an investigation of certain people. Tex. Att'y Gen. Op. [OR2025-38677](#) (Oct. 27, 2025);
- Information regarding a request for proposals. Tex. Att'y Gen. Op. [OR2025-38891](#) (Oct. 28, 2025);
- Information regarding the requestor's client. Tex. Att'y Gen. Op. [OR2025-39040](#) (Oct. 29, 2025);
- Winning proposal in a specified solicitation. Tex. Att'y Gen. Op. [OR2025-39141](#) (Oct. 29, 2025);
- A bid tabulation. Tex. Att'y Gen. Op. [OR2025-39918](#) (Nov. 4, 2025);
- A contract. Tex. Att'y Gen. Op. [OR2025-40035](#) (Nov. 4, 2025);
- Contracting information with certain vendors. Tex. Att'y Gen. Op. [OR2025-40117](#) (Nov. 5, 2025);
- Certain contracts. Tex. Att'y Gen. Op. [OR2025-40416](#) (Nov. 6, 2025);
- Information regarding a contract. Tex. Att'y Gen. Op. [OR2025-40432](#) (Nov. 6, 2025);
- Information regarding an individual. Tex. Att'y Gen. Op. [OR2025-40334](#) (Nov. 6, 2025), [OR2025-40622](#) (Nov. 10, 2025); and
- Information regarding an internal affairs investigation. Tex. Att'y Gen. Op. [OR2025-40718](#) (Nov. 10, 2025).



Recent Regulations and Guidance

The Texas Higher Education Coordinating Board (THECB) adopted [regulations](#) establishing the General Education Curriculum Advisory Committee, in response to statutory changes made by the 89th Legislature.

THECB amended a [regulation](#) to continue the Lower-Division Academic Course Guide Manual Advisory Committee four more years.

THECB amended a [regulation](#) addressing the reporting of self-supporting courses that has the effect of removing the requirement that

institutions of higher education, including community colleges, report those courses to THECB.

THECB amended a [regulation](#) addressing procedures for the resolution of transfer disputes.

THECB amended a [regulation](#) to except certain emergency medical technicians and fire protection personnel from the Texas Success Initiative, in response to statutory changes made by the 89th Legislature.

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 adopted [regulations](#) addressing requirements for career and technical education program of study curricula.

THECB repealed and adopted [regulations](#) to address the standards for publication of cost of attendance and financial aid information on institution of higher education's websites to reconstitute existing rules.

THECB repealed and adopted [regulations](#) addressing the Texas Reskilling and Upskilling Through Education (TRUE) grant program to consolidate related rules and reconstitute existing rules.

THECB amended a [regulation](#) addressing the list of approved assessments for the Opportunity High School Diploma program.

THECB adopted [regulations](#) addressing the determination of resident status to consolidate rules regarding tuition and fees and those addressing resident status, clarify the rules, and codify current documentation practices as well as to incorporate the federal district court's opinion in *U.S. v. Texas*, No. 7:25-cv-00055, 2025 WL 1583869 (N.D. Tex. June 4, 2025).²

THECB repealed and adopted [regulations](#) on tuition exemptions and waivers to consolidate existing rules, apply provisions on program classification, reporting, and administration, and address the economic development and diversification waiver.

THECB repealed and adopted [regulations](#) addressing student loan programs to reconstitute existing rules, codify existing procedures, and provide additional transparency to stakeholders.

THECB amended [regulations](#) addressing the Texas Armed Services Scholarship program, in response to statutory changes made by the 89th Legislature.

THECB amended and adopted [regulations](#) addressing the Mental Health Professionals Loan Repayment Assistance program, in response to statutory changes made by the 89th Legislature.

THECB repealed [regulations](#) addressing the administration of the Texas Innovative Adult Career Education Grant Program that were superseded by other rules.

The Texas Commission on Law Enforcement (TCOLE) amended a [regulation](#) to define *full-time peace officer*, *part-time peace officer*, and *reserve law enforcement officer* for purposes of the TCOLE rules.

TCOLE amended a [regulation](#) on the responsibilities of the chief administrator of a law enforcement agency to address the investigation of misconduct by a person who holds a license issued by TCOLE and the maintenance of their personnel files, in response to statutory changes made by the 88th Legislature.

TCOLE adopted a [regulation](#) addressing the appointment of a TCOLE licensee to serve as a training coordinator over a basic licensing course, including the necessary qualifications and responsibilities of the training provider.

TCOLE amended a [regulation](#) to require a training coordinator to report a student to TCOLE if the student does not complete a basic licensing course.

TCOLE amended a [regulation](#) to address the revocation of a license of a licensee who is convicted or placed on community supervision for certain offenses, such as offenses considered an abuse of office.

The Texas Commission on Fire Protection amended [regulations](#) to establish definitions, qualifications, and certification requirements for ropes rescue awareness personnel and to correct errors.

² This case was summarized in the [July 2025](#) Community College Services Legal Update.

The Texas Ethics Commission amended [regulations](#) to adjust the reporting thresholds for contributions and expenditures by certain candidates and committees and the expenditure and compensation thresholds for lobbyists.

The U.S. Department of Education adopted [regulations](#) to describe activities that disqualify employers from participating in the Public Student Loan Forgiveness program and establish procedures for determining ineligibility and the manner by which the employer may regain eligibility.



In the News

The governor appointed Stacy Williams Hock to serve as the [Chair](#) of the Texas Higher Education Coordinating Board and Welcome Wilson, Jr. to serve as Vice Chair.

The U.S. Department of Education (ED) announced it is [partnering](#) with other federal agencies so that those agencies may administer six existing ED programs with ED oversight, including entering into a partnership with the U.S. Department of Labor to administer postsecondary education programs previously managed by ED's Office of Postsecondary Education.

The National Telecommunications and Information Administration granted [final approval](#) the Texas Broadband Development Office's plan to invest \$1.3 billion through the Broadband Equity, Access, and Deployment (BEAD) program to expand access to high-speed internet across the state.