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Case of the Month

The sexual orientation and gender identity provisions in the 2024 EEOC Enforcement Guidance on Harassment in the Workplace were vacated.

In 2024, the Equal Employment Opportunity Commission (EEOC) issued the [Enforcement Guidance on Harassment in the Workplace](#) clarifying its position regarding [Title VII of the Civil Rights Act of 1964](#), 42 U.S.C. § 2000e-2. The guidance defined sex to include sexual orientation and gender identity and stated that “sex-based harassment includes harassment based on sexual orientation or gender identity, including how that identity is expressed.” The guidance also included hypotheticals consistent with these provisions. Texas and the Heritage Foundation sued the EEOC under the [U.S. Administrative Procedure Act](#) (APA), 5 U.S. Code chapter 5, arguing that the guidance is contrary to law among other claims. The parties filed motions for summary judgment.

After determining the guidance was a final agency action that may be reviewed under the APA and other procedural matters, the federal district court considered Title VII’s plain language and concluded that the scope of the term sex only refers to the biological binary of male and female and to pregnancy, childbirth, or related medical conditions. The court stated that, though the guidance references *Bostock v. Clayton Cnty*, 590 U.S. 644 (2020)¹, to support the EEOC’s position, the U.S. Supreme Court in *Bostock* refused to redefine sex under Title VII to include gender identity and sexual orientation. The court stated that the *Bostock* holding was narrow, focused only on the termination of an employee based on the employee’s gender identity, and that the Supreme Court chose not address issues in the hypotheticals the guidance mentioned. The court concluded that an employee is not disadvantaged by being required to follow certain bathroom, pronoun, or dress code policies, despite the employee’s sexual orientation or gender identity, and is not subject to discriminatory harassment. Therefore, the court concluded that the guidance was contrary to law and granted Texas and the Heritage Foundation’s motion for summary judgment while denying the EEOC’s. The court vacated the sexual orientation and gender identity portions of the guidance. [Tex. v. Equal Employment Opportunity Comm’n](#), No. 24-CV-00173-Z (N.D. Tex. May 15, 2025) (mem.).

Why is This Case Significant?

The decision aligns with the President’s executive order [Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government](#) and administration priorities for its Title VII enforcement efforts. However, the U.S. Supreme Court decision in *Bostock* is still in effect, raising questions about liability regarding discrimination and harassment on the basis of sexual orientation and gender identity under Title VII. Community colleges should consult local counsel when making decisions that may involve the issues cited in this case.

¹ This case was summarized in the [June 2020](#) edition of the Legal Update newsletter.



From the Courts and the Attorney General

Governance

The U.S. Department of Education (ED) and ED officials were preliminarily enjoined from enforcing the February 14, 2025 [Dear Colleague Letter](#)² addressing race-conscious education programming and racial discrimination under [Title VI of the Civil Rights Act of 1964](#), the U.S. Constitution [Equal Protection Clause](#), and related laws against certain organizations, their members, and associated entities. [Nat'l Educ. Ass'n v. U.S. Dept. of Ed.](#), No. 25-CV-091-LM, 2025 WL 1188160 (D.N.H. Apr. 24, 2025).

Personnel

Former employee, who was terminated for performance deficiencies following leave for a medical issue, failed to provide sufficient evidence to overcome summary judgment on her claims the college interfered with her leave and retaliated against her in violation of the federal [Family Medical Leave Act](#) and discriminated against her based on her disability in violation of the federal [Americans with Disabilities Act](#) (ADA). [Ramsey v. San Jacinto Coll. Dist.](#), No. 4:2023-CV-1719, 2025 WL 1261027 (S.D. Tex. Apr. 30, 2025) (mem.).

Former employee, who was terminated by a technical college for sleeping on the job and only then told the college he was meditating to ease the side effects of illnesses and medication, failed to provide sufficient evidence to overcome dismissal of his claims that the college discriminated against him on the basis of, and failed to accommodate, his disability in violation of the [Texas Commission on Human Rights Act](#). [Tex. State Technical Coll. Sys. v. Donovan](#), NO. 09-24-00169-CV, 2025 WL 1403562 (Tex. App. —Beaumont May 15, 2025, no pet. h.) (mem. op.).

Students and Instruction

Former medical student, who was dismissed for failing to take an exam after her request for leave to recover from a lung transplant was denied, provided sufficient evidence to overcome dismissal of her claims that a university failed to accommodate her disability in violation of [Section 504 of the Rehabilitation Act](#) and university officials discriminated against her on the basis of her disability in violation of the ADA. [Salamah v. UT Southwestern Med. Sys.](#), No. 3:2024-CV-0477-D, 2025 WL 1211124 (N.D. Tex. Apr. 25, 2025) (mem.).

Community and Governmental Relations

University, which applied the [Texas Public Information Act](#) (PIA) student record exception to deny an organization's request for information, provided sufficient evidence to overcome summary judgment on the organization's claim that the information was improperly withheld in violation of the PIA. [Tarleton State Univ. v. Found. for Individual Rights and Expression](#), No. 15-24-00057-CV, 2025 WL 1322593 (Tex. App. —Tex. May 6, 2025) (mem. op.).

Open Records Letter Rulings

This month, the attorney general issued Open Records Letter Rulings³ based on requests from Texas community colleges related to:

- Information regarding an incident. Tex. Att'y Gen. Op. [OR2025-13121](#) (Apr. 16, 2025);
- Contracts with certain vendors. Tex. Att'y Gen. Op. [OR2025-13251](#) (Apr. 17, 2025);

² The Dear Colleague Letter was summarized in the [February 2025](#) Community Colleges Legal Update.

³ 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.

- Information regarding two investigations. Tex. Att'y Gen. Op. [OR2025-14382](#) (Apr. 30, 2025);
- An incident report. Tex Att'y Gen. Op. [OR2025-14570](#) (Apr. 30, 2025);
- Certain contracts. Tex. Att'y Gen. Op. [OR2025-14583](#) (May 1, 2025);
- Information regarding a criminal investigation. Tex Att'y Gen. Op. [OR2025-14737](#) (May 5, 2025);
- Information related to a reimbursement. Tex. Att'y Gen. Op. [OR2025-14883](#) (May 5, 2025);
- Information regarding insurance policies. Tex. Att'y Gen. Op. [OR2025-15446](#) (May 8, 2025);
- Information regarding complaints and investigations involving an individual. Tex. Att'y Gen. Op. [OR2025-16023](#) (May 13, 2025); and
- A winning proposal and scoring sheet related to a request for proposals. Tex. Att'y Gen. Op. [OR2025-16062](#) (May 13, 2025).



Recent Regulations and Guidance

The Texas Higher Education Coordinating Board (THECB) repealed [regulations](#) regarding the Higher Education Strategic Planning Committee and the Marketable Skills Task Force because they no longer meet.

THECB amended [regulations](#) to clarify the deadlines for renewing an Institutional Plan for Distance Education (IPDE).

THECB repealed and adopted [regulations](#) addressing the awarding of scholarships to relatives of board members to reorganize and clarify the provisions.

THECB adopted [regulations](#) to address the administration of THECB grant programs and the requirements a grantee must meet to receive and retain funds.

THECB repealed [regulations](#) addressing the Community College Finance Program for Fiscal Year 2024 because they were superseded by rules adopted last Spring.

THECB adopted and amended [regulations](#) regarding student financial aid programs for clarity and to update terminology and definitions.

THECB amended [regulations](#) addressing the Texas Educational Opportunity Grant Program.

The State Board for Educator Certification (SBEC) adopted and amended [regulations](#) regarding educator preparation program curricula and coursework.

The Texas Commission on Law Enforcement (TCOLE) amended a [regulation](#) regarding the operation of a law enforcement agency to address the use of personally-owned patrol vehicles.

TCOLE amended [regulations](#) regarding reports the must be submitted by law enforcement agencies and administrators to TCOLE if a person licensed by TCOLE is arrested or fails certain examinations.

TCOLE amended a [regulation](#) to require a training coordinator to report a failed medical or psychological exam.



Policy Spotlight

Community college board members and officers provide an invaluable service to their college and community by volunteering their time and talents. Texas law allows a community college board of trustees to select officers during the first regular meeting after a board member election. After the initial selection of board officers, a board may only select new officers when a vacancy arises. College trustees may not elect officers according to a preset schedule or in a way that varies from Texas statute. TASB Community College Services recommends reviewing your college's current practices regarding board officer selection to ensure compliance with Texas law.

Community colleges that subscribe to policy services offered by Community College Services will find that the policies in the BCA policy series that address board officers were consolidated at TASB Policy BCA during Update 49. A new model local policy, TASB Policy BCA(Local), offers recommended language outlining the selection process for board officers, including guidance regarding a board vacancy. This policy also clarifies the officers' duties. Community College Services offers two versions of this model policy, one for

colleges with a board president, vice president, and secretary, and one for colleges with a board chair, vice chair, and secretary.

Also relevant to board operations, Community College Services released two new model local policies at Update 49 to address committee selection and formation. TASB Policy BCB(Local) provides model language regarding the formation, duties, and dissolution of board committees, while TASB Policy BCE(Local) addresses advisory committees. Advisory committees differ from board committees in that they consist primarily of non-board members, such as administrators, faculty, and students.

Colleges localized with TASB Community College Services received the Update 49 packet with these new model policies in May. For further guidance on the election of board officers, see [After the Board Election](#) at TASB College eLaw.

If you have any questions on behalf of your member college about these or other policies, email colleges@tasb.org or call 800.580.1488 to speak with your college's policy consultant or another TASB Community College Services attorney.



In the News

The President issued executive orders that impact higher education, including directives to federal officials regarding [accreditation](#), [foreign gifts](#), [Historically Black Colleges and Universities](#), and [high-paying skilled trade jobs](#).

The U.S. Department of Education (ED) issued a [press release](#) announcing that it will resume collecting defaulted federal student loan debt.

ED issued a [Request for Institutions to Provide Repayment Information to Former Students to Prevent Defaults](#) on their federal student loans.

The National Endowment for the Humanities (NEH) published a webpage providing information regarding the [NEH Implementation of Recent Executive Orders](#).

The National Science Foundation (NSF) published a webpage providing information regarding the [NSF Implementation of Recent Executive Orders](#).

The last day of the 89th regular session of the Texas Legislature is June 2nd.