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Case of the Month

Servicemembers are entitled to use educational benefits earned separately under two GI Bills.

James Rudisill served in the U.S. Army for eight years, reenlisting twice. During his periods of military service, he earned up to 36 months of educational benefits under the [Veterans' Educational Assistance Program Act of 1984](#) (Montgomery GI Bill), and separately earned up to 36 months of educational benefits under the [Post 9/11 Veterans Educational Assistance Act](#) (Post-9/11 GI Bill). Both entitlements were subject to a 48 month aggregate benefits cap. He used 25 months and 14 days of his Montgomery benefits to earn an undergraduate degree, then applied to use his Post-9/11 benefits to attend divinity school. The U.S. Department of Veterans Affairs (VA) concluded that because he requested his Post-9/11 benefits before exhausting his Montgomery benefits, he had elected to use only Post-9/11 benefits and was only entitled to the balance of his unused Montgomery benefits: 10 months and 16 days. Rudisill filed a notice disagreement with the VA, believing he was entitled to Post-9/11 benefits. The Board of Veterans' Appeals affirmed the VA's decision. Rudisill appealed.

The Court of Appeals for Veterans Claims reversed, stating the statute did not apply to veterans who had multiple years of service. The U.S. Court of Appeals for the Federal Circuit then reversed, holding Rudisill was entitled only to the balance of his unused Montgomery entitlement. Rudisill appealed.

The U.S. Supreme Court found Rudisill earned two separate entitlements due to his periods of service, and the statute explicitly obligates the VA to pay him 48 months of benefits. The VA argued that the statute required Rudisill to "coordinate" his benefits under both entitlements, but the Court found the plain text of the statute did not require Rudisill to "elect" to use his earned benefits. Rudisill earned his benefits separately, which foreclosed any issue that he would be receiving duplicate benefits. The statute did not apply to Rudisill because he earned separate entitlements and only chose to use one after the other, rather than "coordinate" or swap one entitlement for the other. The Court reversed, holding that servicemembers who have separate entitlements to both Montgomery and Post-9/11 benefits are entitled to both benefits in any order up to the combined 48 month cap, and remanded the case. [Rudisill v. McDonough](#), No. 22-888, 144 S. Ct. 945 (Apr. 16, 2024).

Why is This Case Significant?

The U.S. Supreme Court's decision resolves an unsettled area in the application of educational benefits earned by servicemembers and ensures that these servicemembers are able to pursue and continue their education.

Highlights

[Update 47](#) is now available.

Updated on eLaw:
[Elections and Tax Documents](#)

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

Business and Finance

Contractual alternative dispute resolution procedures did not limit the waiver of immunity under the [Local Government Contract Claims Act](#) for the cities of Conroe and Magnolia in claims brought by the San Jacinto River Authority for failure to pay amounts due under contracts for municipal water. [San Jacinto River Auth. v. City of Conroe](#), No. 22-0649, 2024 WL 1590001 (Tex. Apr. 12, 2024).

A signed document between a private developer and a municipal water system for sewer services waived the municipal system's immunity from suit under the [Local Government Contract Claims Act](#) because the developer provided sufficient evidence that the document stated the essential terms of an agreement and the developer participated in the agreement. [Campbellton Rd., Ltd. v. City of San Antonio ex rel. San Antonio Water Sys.](#), No. 22-0481, 2024 WL 1590000 (Tex. Apr. 12, 2024).

Personnel

Former employee failed to provide sufficient evidence to overcome summary judgment on his claims a university discriminated against him on the basis of sex and race and created a hostile work environment in violation of [Title VII of the Civil Rights Act of 1964](#). [Gooden v. Univ. of Houston Sys.](#), No. H-23-1987, 2024 WL 1893609 (S.D. Tex. Apr. 30, 2024).

Students and Instruction

In response to a certified question submitted by the U.S. Fifth Circuit Court of Appeals, the

Texas Supreme Court answered that the Texas Constitution's prohibition on retroactive laws was not violated by the application of the [Pandemic Liability Protection Act](#) to a student's breach-of-contract claim against a university for failing to provide a tuition refund during the university's shift to online learning during the pandemic. [Hogan v. Southern Methodist Univ.](#), No. 23-0565, 2024 WL 1819826 (Tex. Apr. 26, 2024).¹

Community and Governmental Relations

Defamation suit by a medical doctor who was the subject of an article detailing allegations of legal and ethical violations was dismissed under the [Texas Citizens' Participation Act](#), which provides for dismissal of any lawsuit "based on or in response to a party's exercise of the right of free speech." [ProPublica, Inc. v. Frazier](#), No. 01-22-00281-CV, 2024 WL 1774224 (Tex. App.—Houston [1st Dist.] Apr. 25, 2024, no pet. h.) (mem. op.).

Open Records Letter Rulings

This month, the attorney general issued Open Records Letter Rulings² based on requests from Texas community colleges related to:

- Specified individuals. Tex. Att'y Gen. [OR2024-15395](#) (May 2, 2024);
- The termination of a named employee. Tex. Att'y Gen. [OR2024-15396](#) (May 2, 2024); and
- Specified communications involving a named individual during a certain period of time. Tex. Att'y Gen. [OR2024-16894](#) (May 14, 2024)

¹ This case was previously summarized in the [August 2023](#) Community College Services Legal Update.

² 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.



Recent Regulations and Guidance

The U.S. Equal Employment Opportunity Commission issued [final guidance](#) regarding workplace harassment, addressing developments in the law and emerging issues regarding the workplace.

The Texas Higher Education Coordinating Board (THECB) amended [regulations](#) relating to the authority of THECB to recover costs of the common application form system from participating institutions.

THECB amended [regulations](#) relating to the transfer of lower division course credit among institutions of higher education through core curricula, field of study curricula, and a procedure for the resolution of transfer disputes.

THECB repealed [regulations](#) relating to the Texas Success Initiative (TSI) and replaced them with adopted new [regulations](#) relating to TSI and addressing college readiness standards.

THECB repealed [regulations](#) relating to dual credit partnerships between secondary schools and Texas public colleges, and replaced them with adopted new [regulations](#) providing for new dual credit requirements and clarifying reporting and funding requirements.

THECB adopted [regulations](#) relating to the requirement that college athletes complete on teams according to their biological sex as correctly stated on their birth certificate.

THECB adopted [regulations](#) relating to the protection of pregnant and parenting students, resources for those students, and reporting requirements.

THECB adopted [regulations](#) relating to the implementation and administration of the Texas Innovative Adult Career Education (ACE) Grant program.

THECB adopted [regulations](#) relating to the implementation and administration of the Opportunity High School Diploma Program.

THECB adopted [regulations](#) relating to the addition of employers to the list of workforce stakeholders that can partner with institutions to analyze job postings and identify employers hiring roles with skills developed through the Texas Reskilling and Upskilling through Education (TRUE) Grant Program.

THECB adopts [regulations](#) relating to the establishment and administration of the new subchapter concerning the community college finance program, which was adopted on an emergency basis and will be replaced by the new subchapter effective September 1, 2024, in response to statutory changes made during the 88th Legislative Session.

THECB adopts [regulations](#) relating to the establishment of a new subchapter designating high-demand fields in which credentials awarded by community colleges are eligible for additional funding under the new community college finance system.

THECB amended [regulations](#) relating to the removal of the reporting requirements for respective governing boards to file adopted copies of rules and regulations for the Texas Public Educational Grant and emergency tuition, fees, and textbook loan programs to THECB and the Texas Comptroller.

THECB adopts [regulations](#) relating to the administration of the Texas Leadership Research Scholars Program.

The Texas Health and Human Services Commission amended [regulations](#) relating to permitting and inspection fees for retail food establishments.



Policy Spotlight

Policy recommendations related to Senate Bill 1445

If your college is localized with TASB Community College Services, your college recently received an Update 47 packet. The packet includes changes to legal frameworks and recommended revisions to local policies.

One of the bills from the 88th Legislative Session that impacted several policies in Update 47 is Senate Bill 1445, which requires a law enforcement agency to adopt model policies issued by the Texas Commission on Law Enforcement, or TCOLE, or substantially similar policies regarding employment matters affecting peace officers and telecommunicators. Specifically, the TCOLE model policies address the Employment of Peace Officers and Telecommunicators, Medical and Psychological Examinations, Misconduct Investigations, and Personnel Files. The bill's medical examination provisions also apply to school marshals.

The bill impacted revisions to several local policies, including CHA, DBA, DBB, DC, and DH. CHA mainly adds cross references to these policies, and the other policies cover the relevant subjects a bit more deeply.

TCOLE has issued proposed model policies in compliance with Senate Bill 1445 for review

and comment. TCOLE has adopted the final versions of these model policies, with adoption deadlines set for the policy addressing Medical and Psychological Examinations set for September 1, 2024, and all other model policies to be adopted by June 1, 2025. Though Senate Bill 1445 and TCOLE uses the term "policy" when referring to the models issued by TCOLE, the term is not intended to refer to a board-adopted policy. Therefore, the revisions recommended by TASB for this policy grouping enable board oversight and address the adoption of procedures in compliance with the bill and TCOLE guidance, consistent with college personnel procedures, but do not replicate the TCOLE models.

The recommended revisions were issued only to colleges that have previously notified TASB Community College Services that they have police departments or school marshals. If you did not receive this policy and believe you should have, contact your policy consultant.

If you have any policy questions about Senate Bill 1445 and the local policies that were revised due to this bill, contact your [assigned policy consultant](#). If you have legal questions about Senate Bill 1445, email colleges@tasb.org or call 800.580.1488 to get connected with a TASB Community Colleges attorney.



In the News

The U.S. Department of Education, Office for Civil Rights, issued a [Dear Colleague letter](#) providing clarification on how Title VI of the Civil Rights Act of 1964 applies to discrimination based on shared ancestry or ethnic characteristics, including those considered to be

Jewish, Muslim, Arab, Sikh, South Asian, Hindu, Palestinian, or any other faith or ancestry.

The U.S. DOE, Office of Federal Student Aid, announced [additional updates](#) to the processing of Free Application for Federal Student Aid

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(FAFSA) forms, enabling all institutions to package financial aid offers and increasing access for individuals to enter and complete the form.

The Texas speaker of the house issued 68 [interim committee charges](#) for the Texas House of Representatives committees to consider in preparation for the 89th Legislative Session.