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## Case of the Month

### Gratuities accepted by community college officials following an official act are not prohibited by 18 U.S.C. § 666.

While James Snyder was the mayor of Portage, Indiana, the city awarded contracts to, and purchased trucks from, a local trucking company. The following year, the trucking company paid Snyder \$13,000, which he claimed was for independent consulting services he performed in addition to his work as mayor. The federal government charged Snyder with violating a federal statute, [18 U.S.C. § 666](#), which makes it a crime for state and local officials to corruptly solicit, accept, or agree to accept anything of value intending to be influenced or rewarded in connection with any official business worth \$5,000 or more. Snyder was convicted and sentenced to prison. Snyder appealed.

The U.S. Court of Appeals for the Seventh Circuit affirmed, holding that his payment violated the federal statute. Snyder argued the federal statute applied only to bribes, and that his payment was a gratuity because there was no prior agreement for a payment in exchange for awarding the contracts, but the court determined it applied to gratuities as well as bribes, and evidence of a prior agreement was not required for a conviction under the federal statute. Snyder again appealed.

The U.S. Supreme Court reviewed the text, structure, and history of the federal statute and determined that it addressed bribery and not gratuities. The text of 18 U.S.C. § 666 was similar to [18 U.S.C. § 201\(b\)](#), which is the bribery statute for federal officials. A review of the statute's history also revealed it previously contained similar language to the gratuities statute for federal officials, [18 U.S.C. § 201\(c\)](#), but Congress later amended § 666 to model after the federal bribery statute instead. The Court also noted that Congress has distinguished bribery and gratuities in separate provisions with different punishments due to the seriousness of the crimes. The court declined the federal government's argument that § 666 applied to gratuities because state and local governments regulate prohibitions on prohibited payments, and interpreting § 666 to include gratuities would infringe on state and local government regulation of prohibited payments. The court also determined Congress decided the timing of the agreement was key to determining a violation of § 666 and not the timing of the payment. The Court reversed the Seventh Circuit's decision and remanded to the lower court to apply the correct analysis. [Snyder v. U. S.](#), 144 S. Ct. 1947 (June 26, 2024).

### Why is This Case Significant?

The U.S. Supreme Court determined that the federal statute addresses bribes and not gratuities. However, college officials should be aware that under the state law prohibiting bribes, Texas Penal Code § 36.02, it is not a defense to prosecution if the benefit is given after the official act.

### Highlights

Updated on eLaw:  
[Affordable Care Act](#)  
[Deadlines for November 2024 Community College Elections](#)

### Resources

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

## Enforcement of the 2024 Title IX regulation amendments delayed in Texas.

The U.S. Department of Education (ED) substantially amended the regulations adopted under [Title IX of the Education Amendments of 1972](#), 20 U.S.C. § 1681, effective August 1, 2024. The regulation amendments made changes to the definitions of sexual harassment and to grievance procedures for investigating potential Title IX violations, and expanded the scope of Title IX to include sexual orientation, gender identity, and pregnancy or related conditions. The state of Texas and The University of Texas at Austin professors sued the ED to halt enforcement of the [2024 Title IX regulation amendments](#), claiming that they violate the [U.S. Administrative Procedure Act](#) (APA), 5 U.S. Code chapter 5, because the amendments are not in accordance with law, exceed the ED's statutory authority, and in issuing the amendments, the ED acted arbitrarily and capriciously. The state and professors filed a motion for a preliminary injunction.

The federal district court considered the ED's argument that the U.S. Supreme Court's reasoning in [Bostock v. Clayton County](#)<sup>1</sup>, 590 U.S. 644 (2020), applies to the analysis of the application of Title IX and therefore justified the 2024 amendments stating the regulations apply to discrimination on the basis of sexual orientation and gender identity. The Court in *Bostock* concluded that [Title VII of the Civil Rights Act of 1964](#), 42 U.S.C. § 2000e-2, which prohibits discrimination "because of ... sex," prohibits discrimination on the basis of sexual orientation and gender identity. The court rejected this argument, concluding that the statutes cannot be compared because Title VII is an employment, not education, statute, and the phrasing of the two statutes, "because of ... sex" under Title VII and "on the basis of sex" under Title IX, necessitates a different analysis. The court found the intent of Title IX was to provide for equality for women. It does not address gender identity or sexual orientation. The court also found that the amendments addressing the scope of the regulations are arbitrary and capricious.

The court turned to the professors' claim that the definition of hostile environment harassment found in the 2024 amendments violated the U.S. Constitution [First Amendment](#). The court agreed, finding that the definition was not narrowly tailored and would chill student and professor speech. For example, it is unclear whether misgendering individuals would constitute hostile environment harassment. Considering Texas's argument that the amendments would require the state to violate state law, the court determined that the 2024 amendments' definition of *pregnancy or related conditions*, which includes *termination of pregnancy*, would require education institutions to cover abortions in their student health insurance plans in violation of Texas law.

Finally, the court found that some of the amended grievance procedures, including those permitting a single investigator model, addressing access to evidence, and permitting, but not requiring, live cross examination of witnesses, are arbitrary and capricious because they violate the U.S. Constitution [Fourteenth Amendment](#), U.S. Const. amend XIV, due process protections. The court granted a preliminary injunction prohibiting federal officials from enforcing the 2024 Title IX regulation amendments against the state of Texas and the two plaintiff professors. [Tex. v. U.S.](#), No. 2:24-CV-86-Z, 2024 WL 3405342 (N.D. Tex. July 11, 2024) (mem. op.).

### Why is This Case Significant?

The court's ruling delays the enforcement of the 2024 Title IX regulation amendments against Texas community colleges and other state educational institutions, pending further proceedings in the case. While enforcement is paused, colleges should continue to implement existing law and policy.

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<sup>1</sup> This case was summarized in the [June 2020](#) Community College Services Legal Update.



## From the Courts and the Attorney General

### Governance

A political subdivision does not violate [Texas Education Code section 255.003\(a\)](#) regarding the prohibition against the spending of public funds for political advertising if it allows an employee who resides at a residence owned by the political subdivision to place political advertising outside of the residence. Tex. Ethics Opinion [No. 607](#) (June 18, 2024).

### Business and Finance

The U.S. Securities and Exchange Commission violated an individual's U.S. Constitution [Seventh Amendment](#) right to a jury trial in common law actions by imposing civil monetary penalties against him for securities fraud through its in-house administrative adjudication process instead of through the courts, a determination based on reasoning that may implicate the administrative adjudication processes of other federal agencies pursuing actions for fraud, such as the U.S. Department of Labor, Office of Inspector General, or the U.S. Environmental Protection Agency. [Securities and Exch. Comm. v. Jarkesy](#), 144 S.Ct. 2117 (June 27, 2024).

Florida and Texas state legislation restricting social media companies' ability to engage in content moderation violated the companies' U.S. Constitution [First Amendment](#) rights but the parties did not fully address the range of social media platforms and activities to which content moderation applies. [Moody v. NetChoice](#)<sup>2</sup>, Nos. 22-277, 22-555, 144 S.Ct. 2383 (July 1, 2024).

The U.S. Department of Education (ED) was enjoined from enforcing a provision in its [financial transparency and gainful employment final rule](#) limiting the financial aid granted to students attending a vocational program that exceeds the minimum hours required for licensure by the state (the bare minimum rule). [360 Degrees Educ., LLC v. U.S. Dept. of Educ.](#),

No. 4:24-cv-00508-P, 2024 WL 3092459 (N.D. Tex. June 21, 2024) (mem.).

### Personnel

The U.S. Department of Labor, Wage and Hour Division's 2024 [Fair Labor Standards Act final rule](#) raising the minimum salary threshold for exempt employees was enjoined from enforcement against the state of Texas as an employer only, not community colleges and other political subdivisions; colleges must comply with the final rule. [Tex. v. U.S. Dept. of Labor](#), No. 4:24-CV-499-SDJ (E.D. Tex. June 28, 2024).

Police officer failed to provide sufficient evidence to overcome dismissal of her claims that a city violated the [Texas Commission on Human Rights Act](#) by discriminating against her on the basis of her sex and retaliating against her following her discrimination complaints. [City of Houston v. Wills](#), No. 14-23-00178-CV, 2024 WL 3342439 (Tex. App.—Houston [14th.] July 9, 2024, no pet. h.) (mem. op.).

<sup>2</sup> This case was summarized in the [October 2022](#) Community College Services Legal Update as [NetChoice v. Paxton](#), which was consolidated with the present case.

## Students and Instruction

The U.S. ED's request to stay a preliminary injunction of the 2024 [Title IX of the Education Amendments Act of 1972 regulation amendments](#) in its entirety in Louisiana, Mississippi, Montana, and Idaho was denied. [La. v. U.S. Dept. of Educ.](#), No. 24-30399, 2024 WL 3452887 (5th Cir. July 17, 2024).<sup>3</sup>

Former student failed to provide sufficient evidence to overcome dismissal of his claims a university violated the [Americans with Disabilities Act](#) and [Section 504 of the Rehabilitation Act](#) and by not accommodating his disability and retaliating against him following his accommodation request. [Lacount v. Tex. A&M Univ.](#), No. 4:24-CV-01087, 2024 WL 3070192 (S.D. Tex. June 20, 2024) (mem.).

The 2024 [Title IX of the Education Amendments Act of 1972 regulation amendments](#) was enjoined from enforcement in Alaska, Kansas, Utah, and Wyoming, and including Texas schools attended by children of the members of Moms for Liberty and other named organizations, because the ED exceeded its authority in expanding the definition of sex discrimination to include sexual orientation and gender identity. [Kansas v. U.S. Dept. of Educ.](#), No 24-4041-JWB, 2024 WL 3471331 (D. Kansas July 19, 2024) (mem.).

## Open Records Letter Rulings

This month, the attorney general issued Open Records Letter Rulings<sup>4</sup> based on requests from Texas community colleges related to personnel information involving the requestor. Tex. Att'y Gen. [OR2024-24402](#) (July 15, 2024).



## Recent Regulations and Guidance

The Texas Health and Human Services Commission amended [regulations](#) to require that applicants for child-care facility positions submit to the facility an affidavit disclosing certain criminal history information and for the facility to maintain the affidavit in personnel files, in response to statutory changes made by the 88<sup>th</sup> Legislature.

The Texas Department of Insurance (TDI) repealed [regulations](#) concerning agreements, settlements, commutations in the workers' compensation claim

dispute resolution process which were repetitive and obsolete.

TDI amended [regulations](#) regarding required forms and procedures for the review and approval of settlements in the worker's compensation dispute resolution process.

The Texas Commission on Fire Protection amended [regulations](#) regarding the addition of accepted certifications taught at community colleges required to take the basic fire marshal examination.

<sup>3</sup> This case was summarized in the [June 2024](#) Community College Services Legal Update.

<sup>4</sup> 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.





## Policy Spotlight

In preparation for the new academic year, TASB Community College Services recommends that community colleges review their local policies and associated regulations, employee and student handbooks, and webpages to ensure they are consistent with law and college practices. A few examples of policies to review are provided below.

Community colleges are required to designate a Title IX of the Education Amendments Act of 1972 coordinator and Americans with Disabilities Act/Section 504 of the Rehabilitation Act coordinator. The college should check to ensure the contact information for the employee designated as the Title IX coordinator and/or ADA/Section 504 coordinator is accurate and confirm that each coordinator's contact information is updated in the college's student and employee handbooks, websites, and anywhere else this information is made available. For community colleges that subscribe to TASB policy updating services, DIAA(LOCAL) and DIAB(LOCAL) for employees, and FFDA(LOCAL) and FFDB(LOCAL) for students, includes information regarding the college's Title IX coordinator, and Americans with Disabilities Act/Section 504 of the Rehabilitation Act coordinator, respectively. TASB Community College Services recommends employees and students be notified of the name, office address, telephone number, email address and webpage of the

coordinator in local policy, and that this information is always provided together with procedures.

An annual review of your college's leaves and absences policies is also recommended to ensure compliance with the Fair Labor Standards Act (FLSA) and so employees are aware of the policies. If your college has changed the definition of its workweek, or changed how the college awards compensatory time, it is recommended that this policy be updated to reflect those changes due to FLSA implications. For member colleges, DEAB(LOCAL) includes information relating to defining the college's workweek and limits for compensatory time. DED(LOCAL) relates to holidays; any holidays which have been added to the college's academic calendar should be reflected in the policy as well as in student and employee handbooks and the college's website.

Changes made by the 88<sup>th</sup> Legislature to the Texas Public Information Act (PIA) allow for a community college to designate up to 10 additional non-business days for purposes of complying with PIA requests. Colleges should ensure these days are adopted by the board and communicated through the college's websites or other public methods such as calendars.

If you have any questions on behalf of your member college, email [colleges@tasb.org](mailto:colleges@tasb.org) or call 800.580.1488 to get connected with a TASB Community College Services attorney.



## In the News

The U.S. Department of Education (ED) issued a [Fact Sheet: Harassment based on Race, Color, or National Origin on School Campuses](#) regarding federal civil rights obligations of colleges and other recipients of federal financial aid assistance to ensure nondiscrimination based on race, color, or national origin under [Title VI of the Civil Rights Act of 1964](#).

The U.S. ED [final rule](#) implementing the Saving on a Valuable Education (SAVE) student loan

relief plan was enjoined and a stay was granted, prohibiting the ED from implementing the plan.

The U.S. Department of Labor announced the availability of \$65 million in [Strengthening Community Colleges Training Grants](#) to support community college workforce training programs. [Applications](#) must be submitted electronically by September 24, 2024.

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The Texas governor announced the Texas Workforce Commission awarded [Jobs and Education for Texans \(JET\) grants](#) to Jim Hogg County ISD in partnership with Coastal Bend College and United ISD in partnership with Laredo College.

The Texas governor announced the Texas Workforce Investment Council awarded [Texas Talent Connection grants](#) to North Central Texas College and South Texas College.

The Texas Higher Education Coordinating Board (THECB) is offering [Texas Reskilling and Upskilling Through Education \(TRUE\) grants](#). The [application](#) deadline is September 9, 2024.

THECB has published the [Certification Submission for Senate Bill 17 online form](#) which community colleges must complete to certify compliance with [Texas Education Code section 51.3525](#) regarding diversity, equity, and inclusion initiatives by September 1, 2024.

THECB has published the [Training Materials Submission for SB 17 online form](#) through which a college's general counsel may request, pursuant to [section 51.3525](#), THECB approval of trainings, programs, or activities designed or implemented in reference to race, color, ethnicity, gender identity, or sexual orientation.