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## Case of the Month

### **A state agency failed to accommodate an employee's religious belief under a clarified undue hardship standard by the U.S. Supreme Court.**

Elimelech Shmi Hebrew was hired as a prison guard by the Texas Department of Criminal Justice (TDCJ). Hebrew was informed he must comply with TDCJ's grooming policy, which prohibited male officers from having long hair and beards. Hebrew refused to comply, citing his religion, which prohibits cutting hair and beards. Hebrew was provided religious accommodation paperwork, but his request was denied and TDCJ terminated his employment. Hebrew sued TDCJ under [Title VII of the Civil Rights Act of 1964](#), 42 U.S.C. § 2000e-2, alleging religious discrimination and failure to accommodate. TDCJ moved for summary judgment.

The federal district court found TDCJ discriminated against Hebrew because of his religion, but legitimately terminated Hebrew because the grooming policy was intended to protect officers from being grabbed by the hair and prevent smuggling of contraband. The court also rejected Hebrew's failure to accommodate claim, stating TDCJ would have carried an undue burden by requiring other employees to perform extra work. Hebrew appealed.

The Fifth Circuit of Appeals considered the facts in light of the recent U.S. Supreme Court case, [Groff v. DeJoy](#), No. 22-174, 143 S. Ct. 2279 (June 29, 2023).<sup>1</sup> An employer may decline to provide a religious accommodation under Title VII if doing so would cause an undue hardship. In *Groff*, the Supreme Court stated employers must take into account all relevant factors, including cost and impact to operations, and must consider potential alternative accommodations. The court determined TDCJ did not meet the requirements of Title VII because it did not prove Hebrew's long hair or beard would pose safety concerns which would result in substantial additional costs, nor did it consider potential alternatives. TDCJ allowed officers with medical conditions to have beards, and female officers were allowed to have long hair, but did not provide evidence that exempting Hebrew would pose a greater safety risk than what TDCJ had allowed to other officers. The Fifth Circuit reversed and remanded the lower court's decision. [Hebrew v. Tex. Dept. of Crim. Justice](#), No. 22-205127, 80 F.4th 717 (5th Cir. Sept. 15, 2023).

### **Why is This Case Significant?**

The Fifth Circuit was the first federal appeals court to apply the U.S. Supreme Court's clarified standard for considering religious accommodation requests.

<sup>1</sup> This case was summarized in the [July 2023](#) Community College Services Legal Update newsletter.

### Highlights

Join us at the [TACCA Conference](#) at TASB on Jan. 25-26, 2024.

Updated on eLaw:  
[Notice of Candidate Filing Period for May 4, Election](#)

### 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 teacher failed to provide evidence that a school unreasonably failed to accommodate her request for extended leave with no expected return date after hip surgery and subsequently terminated her for failing to return to work in violation of the [Americans with Disabilities Act](#), among other claims. [Der Sarkisian v. Austin Preparatory Sch.](#), 85 F.4th 670 (1st. Cir. Nov. 7, 2023).

Former professor failed to provide evidence to overcome summary judgment on her claims a university discriminated against her on the basis of sex and national origin and retaliated against her in violation of [Title VII of the Civil Rights Act of 1964](#) after she filed several discrimination complaints and her contract was not renewed. [Shahrashoob v. Tex. A&M Univ.](#), No. H-22-699, 2023 WL 8238192 (S.D. Tex. Nov. 28, 2023) (mem.).

Former instructor failed to provide evidence to overcome summary judgment on her claims that a community college racially discriminated against her and retaliated against her in violation of [Title VII of the Civil Rights Act of 1964](#) by assigning her less work hours than non-white peers after filing a complaint about student mistreatment by a non-white instructor. [McClendon-Lemman v. Tarrant Cnty. Coll.](#), No. 4:21-CV-1338-P, 2023 WL 8007122 (N.D. Tex. Nov. 2, 2023) (adopting report and recommendation in [McClendon-Lemman v. Tarrant Cnty. Coll.](#), No. 4:21-CV-1338-P, 2023 WL 8007122 (N.D. Tex. Nov. 2, 2023) (mem.).

Former professor whose contract was not renewed by a community college after several policy violations for making public comments

failed to provide evidence to overcome summary judgment on his claim that his non-renewal or the college's policies violated his U.S. Constitution [First Amendment](#) rights. [Phillips v. Collin Comm. Coll. Dist.](#), No. 4:22-cv-184, 2023 WL 7302000 (E.D. Tex. Nov. 4, 2023) (mem.).

Former professor failed to provide evidence a community college violated her U.S. Constitution [First Amendment](#) rights by disciplining her for emails sent to university officials criticizing made in the performance of her job duties. [Duke-Koelfgen v. Alamo Comm. Coll. Dist.](#), No. SA-22-CV-01010-JKP (W.D. Tex. Nov. 1, 2023) (mem.).

### Open Records Letter Rulings

This month, the attorney general issued Open Records Letter Rulings<sup>2</sup> based on requests from Texas community colleges related to:

- Information related to a third party and a request for proposals. Tex. Att'y Gen. [OR2023-36022](#) (Oct. 19, 2023)
- Two individuals' personnel files, including disciplinary information. Tex. Att'y Gen. [OR2023-35891](#) (Oct. 19, 2023).
- A course and the course's instructor. Tex. Att'y Gen. [OR2023-36154](#) (Oct. 20, 2023).
- Certain contracts with named companies. Tex. Att'y Gen. [OR2023-37154](#) (Oct. 30, 2023)
- Information pertaining to the requestor. Tex. Att'y Gen. [OR2023-37479](#) (Oct. 31, 2023).
- Requests for specified proposals. Tex. Att'y Gen. [OR2023-37748](#) (Nov. 1, 2023).

<sup>2</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.



## Recent Regulations and Guidance

The Texas Higher Education Coordinating Board adopted [regulations](#) providing clarity on how the Future Occupations & Reskilling Workforce Advancement to Reach Demand (FORWARD) loan program repayment process will be implemented.

The Texas Department of Information Resources (DIR) adopted [regulations](#) regarding minimum requirements for a college's information security assessment and reporting requirements, in response to statutory changes made by the 88th Legislature.

DIR adopted [regulations](#) regarding minimum requirements for a college's information security assessment of its data governance program, and responsibilities and mandatory standards for cloud computing services subject to the Texas Risk and Authorization Management Program (TX-RAMP).

The Texas Workforce Commission adopted [regulations](#) establishing the Lone Star Workforce of the Future Fund, which will develop workforce training programs administered by colleges, in response to statutory changes made by the 88th Legislature.

The Texas Department of Insurance, Division of Worker's Compensation, adopted [regulations](#) clarifying how a legal beneficiary may file claims for death benefits.

The Texas Board of Nursing adopted [regulations](#) regarding clarified factors for approval of new vocational and professional nursing education programs and determination of high-risk programs.



## Policy Spotlight

### Senate Bill 17 and its Impact on Local Policy

Senate Bill 17, passed during the 88<sup>th</sup> Regular Legislative Session, prohibits diversity, equity, and inclusion (DEI) offices and initiatives at institutions of higher education, including community colleges, with limited exceptions. The bill takes effect on January 1, 2024 and the majority of the provisions are effective for the Spring 2024 semester. Given that these dates are fast approaching, colleges should consider the impact of this bill on local policy.

By the end of December, if your college is localized with TASB, you will receive your Update 46 packet. Included in this packet will be four new local policies that focus on DEI, along with legal frameworks that cover that topic as well and were part of the Community

College Policy Reference Manual (CCPRM) in October.

The first new policy which addresses DEI, BG(LOCAL), addresses the prohibition against DEI offices at colleges work that resembles DEI. CFE(LOCAL) is a high-level local policy which covers contractor discipline for violating these new initiatives. DAA(LOCAL) focuses on prohibited DEI initiatives related to employees. Finally, FA(LOCAL) addresses prohibited DEI initiatives related to students, and exceptions to those prohibitions.

If you have questions about implementing SB 17 at your community college, make sure to review the [FAQ](#) on that subject at [TASB College eLaw](#). If you have questions, contact your college's [policy consultant](#). For related legal questions, email [colleges@tasb.org](mailto:colleges@tasb.org) or call 800.580.1488.

*Legal Update* is a publication of TASB Community College Services



## In the News

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The U.S. Department of Education, Office for Civil Rights, [issued](#) a Dear Colleague letter addressing prohibited discrimination against students, particularly those who are or are perceived to be Jewish, Israeli, Muslim, Arab, or Palestinian, under [Title VI of the Civil Rights Act of 1964](#).

The fourth special session of the 88th Texas Legislature [adjourned](#) on December 5, 2023.

The Texas Comptroller announced five additional firms to the office's [list](#) of companies that boycott the oil and gas industry and announced additions to its [list](#) of companies engaged in scrutinized business operations in Iran. Under [Texas Government Code chapter 2252](#) and [Texas Government Code chapter 2276](#), governmental entities, including a college district, may not enter into certain contracts with companies that are identified on this list.

The U.S. Department of Education, Office of Federal Student Aid, provide an [update](#) on the new Free Application for Federal Student Aid (FAFSA) form, which will be available to students and parents by December 31, 2023.