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Case of the Month

University's disciplinary proceedings did not discriminate against a student in violation of Title IX, and the university's requirement that the student's questions for his accuser be asked by the hearing panel did not violate due process.

Austin Van Overdam, a student at Texas A&M University, engaged in multiple sexual acts with a fellow student. Claiming only one act was consensual, the student filed a complaint with the university against Van Overdam alleging sexual abuse, inappropriate sexual contact, and dating violence. At the disciplinary hearing, Van Overdam was permitted to submit relevant written questions for the hearing panel to ask the other student in lieu of direct cross-examination. The panel found that one of the acts violated university policy and suspended Van Overdam for a semester.

Van Overdam sued the university and administrators alleging sex discrimination in violation of [Title IX of the Education Amendments of 1972](#), 20 U.S.C. § 1681, on the theories of erroneous outcome and selective enforcement. He also alleged deprivation of due process under [42 U.S.C. § 1983](#), because his attorney was unable to directly cross-examine the other student. The university filed a motion to dismiss that was granted by the district court on the Title IX erroneous outcome and Section 1983 due process claims. Van Overdam appealed.

The Fifth Circuit Court of Appeals reviewed the two legal frameworks for analyzing Title IX challenges to higher education disciplinary proceedings and applied a standard consistent with both. The court considered whether the allegations raise a plausible inference the university or its administrators discriminated against Van Overdam on the basis of sex and found that it did not. Turning to the due process claims, the court acknowledged court precedent, concluding due process does not require students accused of sexual assault to have the opportunity for their attorneys to cross examine their accusers during disciplinary proceedings. Permitting Van Overdam to submit unlimited, relevant questions for the panel to ask in real-time is acceptable. The Fifth Circuit affirmed the district court's ruling. [Overdam v. Texas A&M Univ.](#), No. 21-20185, 2022 WL 3207431 (5th Cir. Aug. 9, 2022) (per curiam).

Why is This Case Significant?

This case clarifies the applicable standard for analyzing Title IX challenges to Texas community college disciplinary proceedings. It also affirms that a college may require a student subject to discipline for sexual assault and harassment to submit questions to be asked by the hearing panel instead of the student's attorney.

Highlights

[2022-23 HR Services Community College Salary Survey](#) launches September 8th.

The new [Policy Online™](#) launches next month.

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

Governance

Texas's age-based restrictions on mail-in voting do not discriminate on the basis of age or race in violation of the U.S. Constitution [First](#), [Fourteenth](#), [Fifteenth](#), and [Twenty-Sixth](#) Amendments or [Section 2 of the federal Voting Rights Act](#), a decision made, in part, to be consistent with the trend of judicial deference to state legislatures' election procedures. [Tex. Democratic Party v. Scott](#), No. CV SA-20-CA-438-FB, 2022 WL 3456915 (W.D. Tex. July 25, 2022).

Business and Finance

University system's and company's contract containing royalty provisions that applied to different categories of veterinary tests was ambiguous as to the royalty rate that applied to particular testing products. [IDEXX Labs., Inc. v. Bd of Regents of Univ. of Tex. Sys.](#), No. 14-20-00699-CV, 2022 WL 3267881 (Tex. App.—Houston [14th Dist.] Aug. 11, 2022, no pet. h.).

Personnel

A public official may be held individually liable for retaliation in violation of the federal [Fair Labor Standards Act](#) (FLSA). Whether qualified immunity may be used as a defense under the FLSA is to be settled, but even if it may, it is not clearly established law that an official violates the FLSA by terminating an employee who insists a violation of law not occur that ultimately does not occur. [Stramaski v. Lawley](#), No. 20-20607, 2022 WL 3274132 (5th Cir. Aug. 11, 2022).

Former university employee who was granted leave under the federal [Family Medical Leave Act](#) (FMLA) as requested and returned from leave to her prior position failed to allege sufficient facts to overcome dismissal of her FMLA interference claims. [Lopez v. Tex.](#)

[Christian Univ.](#), No. 4:22-cv-00171-O, 2022 WL 3227854 (N.D. Tex. Aug. 10, 2022).

University police officer who used deadly force against a student during a traffic stop was not entitled to summary judgment based on official immunity in a wrongful death action brought by the student's parents because whether the officer acted in good faith was in dispute. [Univ. of the Incarnate Word v. Redus](#), No. 04-21-00115-CV, 2022 WL 3006404 (Tex. App.—San Antonio July 29, 2022).

Students and Instruction

Test-taker was denied a restraining order enjoining a college admissions testing company from failing to accommodate his Attention Deficit/Hyperactivity Disorder (ADHD) and other conditions because he failed to show his conditions constituted disabilities for which he could receive accommodations under the federal [Americans with Disabilities Act](#) (ADA) and [Section 504 of the Rehabilitation Act of 1973](#). [Valles v. ACT, Inc.](#), No. 4:22-CV-00568, 2022 WL 2789900 (E.D. Tex. July 15, 2022) (mem.).

Community and Governmental Relations

An organization's request to inspect emails under the [Texas Public Information Act](#) was subject to provisions permitting a county to charge for the programming and manipulation of data because the emails needed to be converted to an accessible format and redacted, and conditioning availability of the information on payment of those costs did not constitute refusal to make the information available. [Empower Texans, Inc. v. Dallas Cty.](#), No. 05-20-00546-CV, 2022 WL 2785846 (Tex. App.—Dallas July 15, 2022).

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 a request for proposals. Tex. Atty. Gen. Op. [OR2022-20801](#) (July 18, 2022), [OR2021-21264](#) (July 20, 2022), [OR2022-22163](#) (July 28, 2022), and [OR2022-23564](#) (Aug. 08, 2022);
- Information related to an internal affairs investigation. Tex. Atty. Gen. Op. [OR2022-21548](#) (July 22, 2022);
- Responses and evaluative documents connected to a request for proposals. Tex. Atty. Gen. Op. [OR2022-22495](#) (Aug. 01, 2022);
- Specified lease agreements. Tex. Atty. Gen. Op. [OR2022-23552](#) (Aug. 08, 2022);
- A specified contract. Tex. Atty. Gen. Op. [OR2022-23816](#) (Aug. 10, 2022); and
- An officer's logs for specified dates and a racial profiling form. Tex. Atty. Gen. Op. [OR2022-24066](#) (Aug. 12, 2022).



Recent Regulations and Guidance

The Texas Department of Transportation amended [regulations](#) regarding the College Cooperative Education Program and the College Intern Program to address required medical examinations of certain participants.

The Texas State Board of Public Accountancy amended [regulations](#) addressing the credit hours and courses necessary to be eligible to take the Uniform Certified Public Accountant Examination (UCPAE), including qualifying courses at board recognized community colleges.

The Texas Department of Insurance amended [regulations](#) addressing the Texas standard prior authorization request forms to update definitions and the contents of the prescription drug benefits form.

The federal [Inflation Reduction Act](#) describes climate and transportation grants for which community colleges may qualify.



In the News

The Texas Governor renewed the [disaster proclamation](#) issued for all counties in Texas due to the COVID-19 pandemic.

The President issued an [three-part plan](#) addressing student loan relief, including up to \$20,000 debt cancellation for eligible borrowers, updated repayment options, and a final extension on the loan repayment pause until the end of the year, and committing to take steps to control college costs.

The President's Office of Science and Technology Policy issued [guidance](#) requiring federal agencies to update their policies to grant public access to taxpayer-supported research immediately and at no cost.

The U.S. Department of Education Office of Postsecondary Education issued a [notice](#) inviting applications for the Basic Needs for Postsecondary Students Program.

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.