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Case of the Month

University's investigation and disciplinary proceedings against male student may have been influenced by gender bias in violation of Title IX.

In 2017, Doe (a male student) and Roe (a female student) at Rice University had a sexual relationship. Before engaging in unprotected sex, Doe disclosed to Roe a history of herpes. After the relationship ended, Roe filed a complaint with the university against Doe claiming she became infected with herpes after a consensual sexual encounter with Doe. The university's investigation found Doe violated the student code of conduct by failing to adequately inform Roe about the disease, risks, and potential consequences of engaging in unprotected sex with him. Doe's access to campus was limited, he lost his athletic scholarship and after an unsuccessful appeal alleging bias, he withdrew from the university.

Doe sued the university alleging, among other claims, gender discrimination based on the university's investigation and discipline against him in violation of [Title IX of the Education Amendments of 1972](#), 20 U.S.C. § 1681. Doe asserted claims of erroneous outcome, selective enforcement, and archaic assumptions. The university filed a summary judgment motion, which the district court granted based on a finding that the university acted within its procedures and Doe failed to raise an issue of material fact as to whether the university acted with gender bias. The court dismissed the case,¹ and Doe appealed.

The Fifth Circuit Court of Appeals found the university's procedures did not provide Doe adequate due process. He was banned from campus and participation in athletics before he could present his story. A university employee was assigned to assist him in the investigation process, but his counsel was not permitted to participate. The court's examination of Doe's treatment during the investigation and proceedings, including failure to consider Doe's arguments about Roe's credibility and how Roe had not been subject to the same treatment or held to the same level of personal responsibility despite no complaint being filed against Roe, resulted in a fact issue whether the proceedings and outcome were motivated by gender bias. The Fifth Circuit reversed the district court's decision and remanded the case for further proceedings. [Doe v. Rice Univ.](#), No. 21-20555, 2023 WL 3373316 (5th Cir. May 11, 2023).

Why is This Case Significant?

This case addresses the importance of applying consistent procedures during a Title IX investigation, including affording proper due process and consideration of all relevant evidence, to avoid potential liability.

¹ This case was summarized in the [October 2021](#) Community College Services Legal Update.

Highlights

Join us August 4th at the [2023 TASB/TACCA Post-Legislative Seminar](#)

Updated on eLaw: [Budget & Tax Rate Adoption Resources](#)

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

A political subdivision was not barred from bringing an eminent domain proceeding against another political subdivision and governmental immunity did not apply because the public's resources would not be harmed by the suit and a governmental entity may be sued for taking public or private property without just compensation. [Hidalgo Cnty. Water Improvement Dist. No. 3 v. Hidalgo Cnty. Irrigation Dist. No. 1](#), No. 21-0507, 2023 WL 3556685 (Tex. May 19, 2023).

Personnel

Former employee who was dismissed after engaging in several protected activities including filing U.S. Equal Employment Opportunity Commission complaints and lawsuits against university did not provide enough evidence to overcome summary judgment on a [Texas Commission on Human Rights Act](#) retaliation claim. [Esparza v. Univ. of Tex. at El Paso](#), No. 08-22-00094-CV, 2023 WL 2209883 (Tex. App.—El Paso May 8, 2023).

Former county employee who was terminated following an approved [Family and Medical Leave Act](#) (FMLA) absence failed to provide sufficient evidence to overcome summary judgment on her claim the county violated her FMLA rights after the county showed it had already decided to terminate her position for reasons unrelated to her leave. [Byrd v. Clay Cnty.](#), No. 22-10746, 2023 WL 3122462 (5th Cir. Apr. 27, 2023) (per curiam).

Former professor who alleged her contract was not renewed following a request for accommodations, unlawful questioning into her

condition, and for helping female students with the complaints process was discrimination and retaliation under the [Americans with Disabilities Act](#) and [Title IX of the Education Amendments Act of 1972](#) because did not allege sufficient facts to overcome summary judgment on her claims. [Lashley v. Spartanburg Methodist Coll.](#), 66 F.4th 168 (4th Cir. Apr. 18, 2023).

Students and Instruction

Police officer who searched a student's dormitory without a warrant or consent and informed student that any evidence gathered would not be used in a criminal proceeding was not entitled to qualified immunity from the student's U.S. Constitution [Fourth Amendment](#) claims under [42 U.S.C. 1983](#) because the police officer's actions violated the student's right to be free from unreasonable searches. [Police v. Navarro Coll.](#), No. 3:22-cv-00712-E (N.D. Tex. May 10, 2023) (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:

- Information regarding contracts and a binding agreement related to a specified request for proposals. Tex. Atty. Gen. [OR2023-13269](#) (Apr. 17, 2023);
- Information regarding a request for proposals. Tex. Atty. Gen. [OR2023-15527](#) (May 5, 2023); and
- A request for proposals and bid tabulation for a specified request for proposals. Tex. Atty. Gen. [OR2023-16417](#) (May 12, 2023);

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.

- Information pertaining to specified documents. Tex. Atty. Gen. [OR2023-14252](#) (Apr. 23, 2023); and
- Score sheets and the winning proposal in response to specified requests for qualifications. Tex. Atty. Gen. [OR2023-14572](#) (Apr. 28, 2023);



Recent Regulations and Guidance

The Texas Higher Education Coordinating Board (THECB) amended [regulations](#) to add definitions relevant to the approval process for academic and applied associate degrees.

THECB amended [regulations](#) regarding procedures to request a revision or modification to a certificate or degree program that already has Coordinating Board approval.

THECB adopted [regulations](#) regarding the approval of distance education courses and programs.

THECB amended [regulations](#) regarding compliance with reporting requirements and administrative penalties for institutions of higher education relating to certain incidents of sexual harassment, sexual assault, dating violence, or stalking.

THECB amended [regulations](#) regarding an exception for courses taught at Texarkana College as part of a program offered at a regional airport located no more than five miles across a state line.

THECB amended [regulations](#) clarifying the excess hours limits for formula funding and required notice to students approaching the limit, in response to statutory changes made during the 87th Legislative Session.

THECB adopted [regulations](#) establishing the Texas Reskilling and Upskilling Through Education (TRUE) Grant Program for creating, redesigning, or expanding workforce training programs.

THECB amended [regulations](#) to clarify the definition of “expected family contribution” for

state financial aid purposes to better align with similar language in other state statutes and applicable federal financial aid terminology.

THECB amended [regulations](#) regarding the calculation of loan limits under the Hinson-Hazlewood College Student Loan Program.

The U.S. Equal Employment Opportunity Commission (EEOC) issued new [guidance](#) to assist employers in determining whether the use of artificial intelligence or other algorithmic decision-making tools as part of their employment selection procedures causes an adverse impact in violation of [Title VII of the Civil Rights Act of 1964](#).

The EEOC updated [technical guidance](#) on COVID-19 and compliance with workplace discrimination laws such as the [Americans with Disabilities Act](#), [Title VII of the Civil Rights Act of 1964](#), and the [Genetic Information Nondiscrimination Act](#), following the end of the federal COVID-19 public health emergency declaration.

The U.S. Department of Labor (DOL) issued a [bulletin](#) providing guidance regarding the enforcement of the Providing Urgent Maternal Protections for Nursing Mothers Act (PUMP Act) provisions of the [Fair Labor Standards Act](#).

The U.S. DOL, Wage and Hour Division, revised the required Family and Medical Leave Act (FMLA) [poster](#) for workplaces. Community colleges will satisfy the FMLA posting requirement by posting this version, the April 2016, or the February 2013 versions.



In the News

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

The Texas Governor announced the Texas Workforce Commission awarded Jobs and Education for Texans (JET) grants by the Texas Workforce Commission to [Coastal Bend College](#) and [Austin Community College](#).

The National Science Foundation awarded \$1 million in [grant funding](#) to institutions including Midland College and Odessa College related to work with the Permian Basin Energy Development Lab project.

The final day of the [88th regular session](#) of the Texas Legislature was May 29, 2023. However, the Texas Governor has called for a [special session](#) of the 88th legislature beginning May 29, 2023.