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## Case of the Month

### **A medical school could require a resident to repeat a year despite an internal complaint and medical leave of absence.**

Rosandra Daywalker was the only black resident in the University of Texas Medical Branch at Galveston's (UTMB) Otolaryngology program class. She received mostly good evaluations her first two years when supervised by a white woman, but after a white man became her supervisor, performance issues began to be noted more frequently in her evaluations and she eventually was placed on a remediation plan. Her supervisor was replaced after she filed a complaint against her supervisor, and later she requested a four-month leave of absence. UTMB informed her that she would have to repeat her third year, and subsequently she requested her leave be converted to leave under the [Family Medical Leave Act](#) (FMLA), 29 U.S.C. chapter 28, which was granted. After UTMB confirmed she would repeat her third year, she resigned and filed suit against UTMB alleging race and gender discrimination under [Title VII of the Civil Rights Act of 1964](#), 42 U.S.C. § 2000e-2, violations of the FMLA, and other claims. UTMB moved to dismiss Daywalker's claims.

The district court dismissed Daywalker's Title VII claims because she did not provide a resident with similar performance issues who was treated more favorably, she could not connect her complaint to the decision to hold her back, and her evidence of offensive comments and treatment did not meet the threshold to establish a hostile work environment. The district court also dismissed her FMLA claim because she did not connect her FMLA leave to her repeating her third year. Daywalker appealed.

The Fifth Circuit Court of Appeals disagreed with Daywalker's arguments. Daywalker failed to provide evidence on her claims UTMB violated Title VII. She could not provide a comparator with similar performance issues, and racially offensive comments that her supervisor made over several months were not found to be frequent or pervasive enough to create a hostile work environment or amount to a constructive discharge after she eventually resigned. She also failed to provide evidence that administrators with the intent to retaliate against her influenced the faculty's decision to require that she repeat her third year. She failed to provide sufficient evidence UTMB violated the FMLA by holding her back because UTMB's decision occurred before she put the university on notice of potential FMLA leave. The court upheld the dismissal of her Title VII, FMLA, and other claims. [Daywalker v. Univ. of Tex. Med. Branch at Galveston](#), No. 22-40813, 2024 WL 94297 (5th Cir. Jan. 19, 2024) (per curiam).

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

This case demonstrates the high threshold for connecting discriminatory bias to employment actions.

### Highlights

The new [TASBColleges.org](#) is a tailored experience for community college members.

Updated on eLaw:  
[Community College Records Management and the Public Information Act](#)

### 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 university's claim on an insurance policy for financial losses caused by the presence of COVID-19 on the university's properties was denied because the virus fell within an exclusion applicable to pollutants or contaminants. [Baylor Coll. of Med. v. XL Ins. Am., Inc.](#), No. 14-22-00145-CV, 2024 WL 438019 (Tex. App.—Houston [14th Dist.] Feb. 6, 2024) (mem. op.).

### Personnel

Doctorate candidate failed to provide sufficient evidence to overcome summary judgment on her claims a university violated the U.S. Constitution [First Amendment](#) and [Fourteenth Amendment](#), among other claims, when she was dismissed from her program following a poor presentation of her paper. [Dai v Le](#), No. 23-30504, 2024 WL 415458 (5th Cir. Feb. 5, 2024) (per curiam).

Former employee failed to provide sufficient evidence to overcome summary judgment on his claims that a university violated [Section 504 of the Rehabilitation Act](#) by failing to accommodate his disability, and [Title VII of the Civil Rights Act of 1964](#) by failing to promote him instead of a black woman. [Taylor v. Univ. of Miss. Med. Ctr.](#), No. 23-60246, 2024 WL 512559 (5th Cir. Feb. 9, 2024) (per curiam).

Former white male university administrator provided sufficient evidence to overcome dismissal of his claims that a university discriminated against him on the basis of race in violation of [Title VII](#) by terminating and replacing him with a younger, black female. [Greig v. Tex. A&M Univ. Texarkana](#), No. 5-23-CV-00030-JRG-JBB, 2024 WL 643228 (E.D. Tex. Feb. 15, 2024) (adopting report and recommendation in [Greig v. Tex. A&M Univ. Texarkana](#), No. 5-23-CV-00030-JRG-JBB, 2024 WL 647414 (E.D. Tex. Jan. 26, 2024)).

African-American professor failed to provide sufficient evidence to overcome dismissal of her claims that a university racially discriminated against her, created a hostile work environment, and retaliated against her in violation of [Title VII](#) for actions that took place over two and a half years, including reassigning her to a basement office and replacing her with a white professor. [Ogbonna-McGruder v. Austin Peay St. Univ.](#), No. 23-5557, 91 F.4th 833 (6th Cir. Jan. 30, 2024).

### Students and Instruction

Former student failed to provide sufficient evidence to overcome summary judgment on his claims that a university's disciplinary proceedings against him resulted in an erroneous outcome or constituted selective enforcement, or that the university created a hostile educational environment, in violation of [Title IX of the Education Amendments Act of 1973](#) because of anti-male bias. [Roe v. St. John's Univ.](#), No. 21-1125, 91 F.4th 643 (2d Cir. Jan. 31, 2024).

### Community and Governmental Relations

A Texas district court may issue a writ of mandamus ordering the Texas governor and Texas attorney general to release information under the [Texas Public Information Act](#). [Paxton v. American Oversight](#), No. 03-23-00090-CV, 2024 WL 175967 (Tex. App.—Austin Jan. 17, 2024).

Citizen journalist failed to provide sufficient evidence to overcome dismissal of her claims that police officers who arrested her for sharing nonpublic law enforcement information violated her [First Amendment](#) free speech rights and [Fourth Amendment](#) protection against an unreasonable search and seizure because the officers were entitled to qualified immunity. [Villareal v. City of Laredo](#), No. 20-40359, 2024 WL (5th Cir. Jan. 23, 2024).



## Recent Regulations and Guidance

In response to statutory changes enacted by House Bill 8 during the 88th Legislative Session, the Texas Higher Education Coordinating Board (THECB) amended regulations concerning [agency administration](#), [academic and workforce education](#), [rules applying to all public institutions of higher education in Texas](#), [program development in public two-year colleges](#), [financial planning](#), [student services](#), [student financial aid programs](#), and [education loan repayment programs](#).

THECB announced its intention to engage in [negotiated rulemaking](#) to amend rules relating to the Nursing Scholarship Program in response to statutory changes made during the 88th Legislative Session, proposing representatives from Lee College, South Texas College, and Trinity Valley Community College serve on the committee.

THECB announced its intention to engage in [negotiated rulemaking](#) to amend rules for the Professional Nursing Shortage Program in response to statutory changes made during the 88th Legislative Session, proposing representatives from Dallas College, Hill College, Houston Community College, South Texas College, and Victoria College serve on the committee.

The Texas Commission on Fire Protection amended [regulations](#) relating to functional descriptions for positions including Fire and Life Safety Educators and Fire Marshals.



## Policy Spotlight

### How to Access Content on our New Website

In January, TASB rolled out changes to the main site but also introduced a [new website](#) for colleges. The website contains all the quality resources and guidance you have come to expect from TASB Community College Services, packaged in a new, tailored experience specifically for community college members. Community college administrators, board members, and members of the Texas Association of Community College Attorneys have access to the website.

One of the most common pages you probably access is [TASB College eLaw](#), which is a collection of FAQs and other helpful legal resources for community college officials and the college community. To get there on the new page, you can bookmark [this link](#) or go to the [home page](#), click on “Resources” on the top

menu, click on “[TASB College eLaw](#),” then click on “[TASB College eLaw Index](#).”

To get to the Legal Update Newsletters from the [main page](#), click on “[Legal](#)” either under the “[Solutions & Services](#)” menu option or underneath the picture, then, under “Resources and Insights”, click on “[Community College Legal Update Newsletter](#)”, then click on the “[View All Newsletters](#)” button. Scroll down and you will find an archive of all the legal update newsletters organized by year.

To get to the Policy Tutorials page from the [main page](#), click on “[Policy and Governance](#)” either under the “[Solutions & Services](#)” menu option or underneath the picture, then, under “Resources and Insights,” click on “[Policy](#)”

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

[Tutorials.](#)” You will find helpful resources here such as the Policy How-To Videos, Policy Guides, and the [Policy Online User’s Guide](#).

When visiting the website, TASB Community College services recommends pushing the “Log In” button in the top right corner of page. This will allow you to log in with your credentials. If you ever forget or lose your credentials, you can click “Forgot your password?” on that page.

[Policy Online](#) was not changed during this most recent website update. For those colleges who have localized their policies with TASB, you can still access your college’s policy manual using the link on your college’s website. For those with permissions, you can also access the [Community College Policy Reference](#)

[Manual \(CCPRM\)](#), which has all the legal frameworks.

One feature on [Policy Online](#) for TASB localized colleges that is accessible to the college’s CEO, CEO’s assistant, and policy contact is the [Governance and Management Library \(GML\)](#), which is located under the “More TASB Resources” menu option. It also includes the materials found on the [Policy Tutorials](#) page. The GML includes [Policy Development Tips](#) and [Webinars and Online Learning](#).

If you have questions about the website, please utilize the website’s [contact page](#). If you have legal questions, email [colleges@tasb.org](mailto:colleges@tasb.org) or call 800.580.1488.



### In the News

The U.S. Department of Education [announced](#) the reduction of verification requirements, suspension of new routine program reviews, and additional flexibility on recertification for federal funding in response to delays associated with the new Free Application for Federal Student Aid (FAFSA) form.

The Texas Comptroller’s office recently released an updated [A Field Guide to the Taxes of Texas](#), a periodic report providing an overview of Texas’ major state taxes.