



Contents

[Case of the Month](#)
[From the Courts and the Attorney General](#)
[Recent Regulations and Guidance](#)
[In the News](#)



Case of the Month

School district response to a citizen's conduct during board meetings, though reasonable in part, violated his free speech rights, resulting in \$299,200 attorney's fees award.

Gerry Monroe was a regular attendee of Houston Independent School District (HISD) board meetings. Monroe attended two board meetings where he directed loud criticism, insults, and profanities at administrators, including conduct which HISD considered a physical threat toward a principal. In response, HISD sent Monroe a letter banning him from all HISD facilities, meetings, and activities. Monroe appealed the ban through the HISD grievance procedures, alleging it violated his [First Amendment](#) rights. HISD did not respond. Monroe filed suit under [42 U.S.C. § 1983](#) alleging the ban violated his First and [Fourteenth Amendment](#) rights and sought a preliminary injunction to enjoin enforcement of the ban. HISD then sent other letters modifying the length of the ban and providing alternate methods for communicating with the board. In the final letter, HISD also provided examples of inappropriate conduct that could result in removal, such as use of profanity, personal verbal attacks, threats, offensive or derogatory displays, and screaming.

The federal district court denied the injunction, finding the final letter appropriately balanced HISD's right to address security concerns with Monroe's First Amendment rights. After Monroe appealed and the case remanded, he amended his motion, asking the court to enjoin enforcement of the additional restrictions in the final letter. The court again determined the ban was reasonable based on the threat to the principal but found that, because HISD applied restrictions only to Monroe's speech and not others' and mandated positive speech over his desired negative speech, HISD violated his free speech rights. The court granted Monroe's injunction, enjoining HISD from banning him based on the restrictions in the final letter. The court later removed the injunction because the final letter was retracted and awarded Monroe \$299,200 in attorney's fees plus court costs and interest as the prevailing party. HISD appealed the attorney's fee award, arguing it was based on litigation beyond the pursuit of successful claims.

The U.S. Fifth Circuit Court of Appeals considered Monroe's claims and determined that, though Monroe's claims were not always successful, he was awarded the requested injunction and his unsuccessful claims shared common facts and legal theories with the successful claims. The Fifth Circuit affirmed the attorney's fee award. [Monroe v. Houston Indep. Sch. Dist.](#), No 21-20642, 2023 WL 1434280 (5th Cir. Feb. 1, 2023) (per curiam).

Why is This Case Significant?

Colleges should exercise caution in determining how to respond to potentially disruptive situations during board meetings because the consequences could include significant penalties.

Highlights

[TASB/TACCA Post-Legislative Seminar](#)
August 4, 2023
TASB offices

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

Citizen's challenge to a school district policy, as applied, limiting criticism against employees as a violation of the [First Amendment Free Speech clause](#) raised fact issues regarding viewpoint discrimination for which both parties were denied summary judgment. [Ryan v. Grapevine-Colleyville Indep. Sch. Dist.](#), No. 4:21-cv-1075-P, 2023 WL 2481248 (N.D. Tex. Mar. 13, 2023) (mem.).

Business and Finance

The [Public Facility Corporation Act](#) does not specify geographic limitations on a public facility corporation's ability to acquire property outside of its boundaries. Tex. Att'y Gen. Op. No. [KP-437](#) (Mar. 8, 2023).

Personnel

Former offshore oilrig employee was not exempt under the [Fair Labor Standards Act of 1938](#) and was eligible for overtime pay despite earning \$200,000 per year since he was paid a daily rate instead of being paid on a salary basis. [Helix Energy Sols. Grp. Inc., v. Hewitt](#), 143 S. Ct. 677 (Feb. 22, 2023).

Former employee who was not hired for an open position provided sufficient evidence to overcome a jurisdictional plea on his claim the university discriminated against him on the basis of age in violation of the [Texas Commission Human Rights Act](#) by hiring a less qualified, younger candidate. [Univ. of Tex. Rio Grande Valley v. Kavanaugh](#), No. 13-22-00351-CV, 2023 WL 2182300 (Tex. App.—Corpus Christi—Edinburg Feb. 23, 2023) (mem. op.).

University was entitled to summary judgment on former professor's claims the university discriminated on the basis of national origin and retaliated against him in violation of [Title VII of the Civil Rights Act of 1964](#) by removing him from his position as chair, cancelling his wife's assistantship, and suspending him because the university provided legitimate, non-discriminatory reasons for the actions related to his performance and departmental financial considerations. [Iqbal v. Univ. of Tex. Rio Grande Valley](#), No. 7:21-cv-00081, 2023 WL 2411575 (S.D. Tex. Mar. 8, 2023).

Students and Instruction

Student claim against university for breach of contract and unjust enrichment related to move to remote learning during COVID-19 pandemic dismissed because the university was shielded by the [Pandemic Liability Protection Act](#), which limited monetary liability against the educational system during the pandemic and did not violate [Texas](#) and [U.S.](#) Constitution. [King v. Baylor Univ.](#), W:20-CV-00504-DC, 2023 WL 2518335 (W.D. Tex. Mar. 11, 2023) (mem.).

University was enjoined from discontinuing a men's rowing team because the university should not have included its esports participants in its calculation of sporting opportunities for purposes of [Title IX of the Educational Amendments of 1972](#) compliance since e-sports is not a sport. [Navarro v. Fl. Inst. of Tech.](#), No. 6:22-cv-1950-CEM-EJK, 2023 WL 2078264 (M.D. Fla. Feb. 17, 2023).

Open Records Letter Rulings

This month, the attorney general issued Open Records Letter Rulings¹ based on requests from Texas community colleges related to:

- Information pertaining to a request for proposals. Tex. Att’y Gen. [OR2023-05812](#) (Feb. 16, 2023); [OR2023-07279](#); (Mar. 1, 2023);
- Information pertaining to a specified contract. Tex. Att’y Gen. [OR2023-06447](#) (Feb. 23, 2023);
- Communications pertaining to specified individuals during a certain time period. Tex. Att’y Gen. [OR2023-06991](#) (Feb. 27, 2023);
- Communications by a named individual referring to the requestor and two other named individuals. Tex. Att’y Gen. [OR2023-07005](#) (Feb. 27, 2023);
- Information pertaining to a bid solicitation. Tex. Att’y Gen. [OR2023-07009](#) (Feb. 27, 2023);
- Vendor responses to a request for proposals. Tex. Att’y Gen. [OR2023-07196](#) (Feb. 28, 2023);
- Information pertaining to a solicitation. Tex. Att’y Gen. [OR2023-07275](#). (Mar. 1, 2023); and
- Information pertaining to a property transfer. Tex. Att’y Gen. [OR2023-07713](#). (Mar. 6, 2023).



Recent Regulations and Guidance

The U.S. Equal Employment Opportunity Commission increased the [maximum civil monetary penalty](#) per violation of the [notice-posting requirements](#) of Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, and the Genetic Information Non-discrimination Act from \$612 to \$659.

The U.S. Department of Labor, Office of Federal Contract Compliance Programs, rescinded “[Implementing Legal Requirements Regarding the Equal Opportunity Clause’s Religious Exemption](#)” for federal contractors, which was in effect since January 8, 2021, restoring the OFCCP’s prior policy and practice of interpreting and applying the religious exemption under the previous administrations.



In the News

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

The Texas Higher Education Coordinating Board announced the [Future Occupations & Reskilling Workforce Advancement to Reach Demand \(FORWARD\) loan program](#), a new low-interest loan option for Texas students in certain high-demand credential programs.

THECB announced the public launch of the [Texas Student Success Program Inventory](#).

The 60-day filing [deadline](#) has passed in the 88th Texas Legislature for the unrestricted filing of bills and joint resolutions other than local bills, emergency appropriations, and emergency matters submitted by the governor.

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.

The U.S. Department of Education, Office of Postsecondary Education, is inviting applications for new awards for the [Open Textbooks Pilot program](#).

The U.S. Department of Education, Office of Federal Student Aid, published the [Better FAFSA Better Future Roadmap](#), outlining important resources for students, parents, schools, states, and vendors.