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## Case of the Month

### University may be liable under Title IX for acts of non-student guests.

Karlie Hall, a student at Millersville University in Pennsylvania, was murdered in her dorm room by her boyfriend, who was not a student but who often visited. Prior to her death, Hall's resident advisor (RA) received a report the boyfriend had verbally and physically abused Hall and called university police to remove him from the dorm. The RA reported the incident to the deputy Title IX coordinator. Hall's roommate's mother also made a report to the university police and college officials who said they could not respond absent a complaining witness. After her death, Hall's parents filed a lawsuit against the university, alleging that the university acted with deliberate indifference toward the boyfriend's on-campus acts of sexual harassment in violation of [Title IX of the Education Amendments of 1972](#) (20 U.S.C. § 1681). The university filed a motion for summary judgment.

The federal district court considered whether the university may be held liable under Title IX for sexual harassment committed by non-student guests. The court concluded that it could not because the university did not receive adequate notice of potential liability for non-student guests' acts. The court found no court precedent applying Title IX to non-student guests and that relevant guidance documents from the U.S. Department of Education (DOE) and other sources only spoke to liability for harassment committed by students or parties over which educational institutions have control or otherwise introduce to the students. The court granted the university's motion, and the Halls appealed.

The Third Circuit Court of Appeals reviewed the relevant precedent, in particular [Davis v. Monroe County Bd. of Educ.](#), 526 U.S. 629 (1999). Contrary to the district court's conclusion, the Third Circuit determined that the U.S. Supreme Court had held that a recipient of federal funding may be subject to Title IX liability if the recipient acts with deliberate indifference toward sexual harassment committed by a third party when the recipient has control over both the harasser and context of the harassment. The court concluded that this history, further supported by DOE guidance and the university's own policies, provided the university adequate notice of potential liability for the acts of non-student guests. The Third Circuit then reviewed the record and found genuine disputes of fact in each part of the Halls' deliberate indifference claim. The court reversed the district court's decision and remanded the case. [Hall v. Millersville Univ.](#), No. 19-3275, 2022 WL 98132 (3rd Cir. Jan. 11, 2022).

### Why is This Case Significant?

As stated by the court, this case is the first circuit court case directly addressing the issue of Title IX liability for non-student guests. Though not direct precedent, this case is instructive on the matter of Texas community college liability in this context.

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## From the Courts and the Attorney General

### Governance

Citizen who was blocked from interacting on a state representative's senate campaign page on Facebook did not state a claim under [42 U.S.C. § 1983](#) for violation of the citizen's U.S. Constitution [First](#) and [Fourteenth](#) Amendment rights because the candidate was not acting under the color of state law but instead as a candidate. [Clark v. Kolkhorst](#), No. 1:19-CV-198-LY, 2021 WL 5783210 (W.D. Tex. Dec. 7, 2021).

Candidate may establish a general-purpose campaign committee using the candidate's own political contributions and control the committee, but the committee's acceptance of contributions is subject to the statutory personal use restriction. Tex. Ethics Comm'n [No. 569](#) (Dec. 9, 2021)

### Business and Finance

Associations composed of large social media companies alleging restrictions imposed by the 87th Texas Legislature on their content curation violated the [First Amendment](#) and would likely result in irreparable harm, among other claims, were granted a preliminary injunction against the enforcement of the law. [NetChoice v. Paxton](#), No. 1:21-CV-840-RP, 2021 WL 5755120 (W.D. Tex. Dec. 1, 2021).

### Personnel

Former university professor who was arrested and later terminated based on a contested search by university police failed to show that the search violated the U.S. Constitution [Fourth Amendment](#) or that the circumstances related to the termination violated his [Fourteenth Amendment](#) due process rights. [Xie v. Univ. of Tex. MD Anderson Cancer Ctr.](#), No. 20-20622,

2021 WL 5968648 (5th Cir. Dec. 15, 2021) (per curiam).

Law professor who had prior pursued claims that she was paid less than her male colleagues failed to show that later pay raises that were lower than her colleagues' constituted retaliation for her original claims in violation of [Title VII of the Civil Rights Act of 1964](#) and the federal [Equal Pay Act](#). [Mullenix v. Univ. of Tex. at Austin](#), No. 1-19-CV-1203-LY, 2021 WL 5416996 (W.D. Tex. Nov. 19, 2021).

Community college failed to show that evidence supporting a former college president's breach of contract claim, which stemmed from issues related to her removal as president, was insufficient to support a jury award in favor of the president. [Tercero v. Tex. Southmost Coll. Dist.](#), Civil Action No. 1:16-CV-282, 2021 WL 6298347 (S.D. Tex. Dec. 02, 2021).<sup>1</sup>

### Students and Instruction

Medical student disciplined by a university following an incident of dating violence failed to support his claims for damages based on allegations that gender bias on the part of the university and members of the discipline committee resulted in procedural due process violations and erroneous outcome under [Section 1983](#) and [Title IX](#), but his requests for injunctive relief survived a motion to dismiss. [Doe v. Univ. of Tex. Health Science Ctr. at Houston](#), H-21-1439, 2021 WL 5882625 (S.D. Tex. Dec. 13, 2021) (mem. op.).

Former student who was denied entry to a community college library the college stated was available to current students only failed to allege facts to support his state and federal law claims, including that he was discriminated against based on his race and gender. [Taylor v.](#)

<sup>1</sup> A related opinion was summarized in the [March 2021](#) Community College Services Legal Update.

[El Centro Coll.](#), No. 3:21-CV-0999-D, 2022 WL 102611 (N.D. Tex. Jan. 10, 2022) (mem. op.).

Community college student whose educational information, including academic profile and disciplinary records, was accessed by teaching assistants and later publicly revealed without the student's authorization to his classmates, failed to support a [Family Educational Rights and Privacy Act](#) (FERPA) claim against the college, because FERPA does not provide for a private right of action. [Esparza v. Galveston Coll.](#), No. 3:21-cv-176 2021 WL 5830043 (S.D. Tex. Dec. 1, 2021) (mem. op.).

Former student originally denied retroactive accommodations under the [Americans with Disabilities Act](#) (ADA) after she resubmitted her request failed to support allegations that her ADA rights were violated because the university ultimately took steps to provide her accommodations. [Bullock v. Univ. of Tex. at Arlington](#), No. 4:21-cv-0864-P, 2021 WL 5866644 (N.D. Tex. Jan. 5, 2022) (mem. op.).

The Texas Attorney General concluded that a court would have the basis to find that the National Collegiate Athletic Association (NCAA) policy in effect at the time of the opinion on competition by certain transgender athletes, a policy similar to that promulgated by the National Junior College Athletic Association (NJCAA), violates Title IX. Tex. Att'y Gen. Op. No. [KP-396](#) (Dec. 20, 2021).

### 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:

- Contact information of board members, civil rights complaints by students, and

information regarding all completed and ongoing legal disputes. Tex. Att'y Gen. [OR2021-32317](#) (Nov. 16, 2021);

- A specified request for proposals. Tex. Att'y Gen. [OR2021-32687](#) (Nov. 18, 2021), [OR2021-34007](#) (Dec. 2, 2021), [OR2021-34863](#) (Dec. 8, 2021), [OR2021-36001](#) (Dec. 16, 2021);
- Information pertaining to a grievance made by the requestor. Tex. Att'y Gen. [OR2021-33711](#) (Dec. 1, 2021);
- Email correspondence pertaining to a former employee. Tex. Att'y Gen. [OR2021-33853](#) (Dec. 1, 2021);
- Information regarding specified contracts. Tex. Att'y Gen. [OR2021-35796](#) (Dec. 15, 2021);
- Contracts with a third party during a certain date range. Tex. Att'y Gen. [OR2021-36012](#) (Dec. 16, 2021);
- Copies of the current employee and student directories. Tex. Att'y Gen. [OR2021-36112](#) (Dec. 17, 2021), [OR2021-36159](#) (Dec. 17, 2021);
- Information related to a specified investigation. Tex. Att'y Gen. [OR2021-36676](#) (Dec. 22, 2021);
- Written reports, video recordings, and photographs related to a specified incident. Tex. Att'y Gen. [OR2022-00234](#) (Jan. 4, 2022), [OR2022-00260](#) (Jan. 4, 2022);
- A specified request for categories of information pertaining to a specified topic. Tex. Att'y Gen. [OR2022-00407](#) (Jan. 6, 2022); and
- A list of completed and ongoing legal disputes during a certain time period. Tex. Att'y Gen. [OR2022-00527](#) (Jan. 6, 2021).

<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

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The Texas Attorney General amended [regulations](#) addressing human trafficking informational signs to be posted at transportation hubs and cosmetology facilities in response to statutory changes made during the 87th Legislative Session.

The Employee Retirement System of Texas amended [regulations](#) related to the board composition and operations.

The Texas Ethics Commission amended [regulations](#) addressing campaign and lobbyist reporting thresholds and procedures and lobbyist registration.

The Texas Board of Nursing amended [regulations](#) addressing the criminal history background check requirements applicable to individuals seeking or holding a nursing license and nursing education programs.

The Texas Real Estate Commission (TREC) amended [regulations](#) addressing continuing education requirements for and prohibited activities of real estate agents and brokers.

TREC amended the standard [real estate contracts](#) in response to statutory changes made during the 87th Legislative Session.

The Texas Commission on Fire Protection amended [regulations](#) addressing the continuing education requirements for fire protection personnel certifications.

The Texas State Board of Plumbing Examiners repealed and adopted [regulations](#) addressing

the renewal of a license, registration, or endorsement and continuing education requirements for certain plumbing work in response to statutory changes made during the 87th Legislative Session.

The Texas Department of Licensing and Regulation amended [regulations](#) addressing the education requirements and programs for massage therapists.

The State Board for Educator Certification amended [regulations](#) addressing educator preparation program accountability.

The Texas State Board of Public Accountancy amended [regulations](#) addressing continuing professional education (CPE) for accountants and CPE program standards.

The U.S. Department of Education issued [priorities](#) and related definitions for current and future discretionary grant programs.

The U.S. Department Labor Wage and Hour Division adopted [regulations](#) addressing the minimum wage for federal contractors.

The U.S. Department of Justice adopted [regulations](#) addressing the Sex Offender Registration and Notification Act (SORNA) registration requirements.

The National Highway Traffic Safety Administration adopted a [regulation](#) addressing bus rollover structural integrity standards.



## In the News

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

The Texas Attorney General updated the [Landowners Bill of Rights](#) that must be distributed by community colleges when exercising eminent domain authority.

The U.S. Department of Education issued [guidance and funds](#) to support community college students in overcoming barriers to success, particularly those created by the COVID-19 pandemic.