



Contents

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



Case of the Month

Court held university faculty plausibly violated a student's free speech rights by refusing to provide instruction in response to a paper that criticized faculty and the university.

Andrew Babinski was a graduate student in the Louisiana State University (LSU) theatre program who enrolled in a course on gender, sexuality, and performance in spring of 2019. He submitted a final paper in the course that expressed his feelings about alleged mistreatment and discrimination and, while non-threatening, included expletives and harsh criticism of faculty and students and requested that the course professor share it with two other faculty members and meet to discuss his concerns about the program. The professor sent the paper to other LSU departments and no security concerns or policy violations were found. Babinski was failed in the course, his graduate assistantship was revoked, and a majority of program faculty members refused to teach or administer exams to him in other courses. The college dean informed Babinski that he could not continue in the program, but Babinski completed three additional courses without incident and transferred to another department. Babinski filed suit in federal district court in Louisiana under [42 U.S.C. § 1983](#) against the faculty members, alleging that the U.S. Constitution [First Amendment](#) protected his paper and that the faculty violated his rights to free speech by *de facto* expelling him from the program and retaliating against him for his speech, violated his rights to due process and equal protection under the U.S. Constitution [Fourteenth Amendment](#), and conspired to violate his civil rights. Babinski asked the court to order reinstatement into the program and additional relief and the faculty members filed a motion to dismiss.

The issue for the court was whether Babinski's claims were plausible and, although the paper was not part of the record, the court concluded that Babinski's paper was curricular and was not school-sponsored speech. Applying the analysis set out in the U.S. Supreme Court case *Tinker v. Des Moines Independent School District*, the court held that the paper was protected by the First Amendment because it did not substantially disrupt school activities and held that Babinski plausibly alleged violations of the First Amendment and that the expulsion was retaliation against him for his protected speech. The court dismissed Babinski's due process, equal protection, and conspiracy claims and dismissed the claims against faculty members in their individual capacities based on qualified immunity. The court granted the faculty members' motion in part, denied the motion in part, and provided Babinski the opportunity to amend his complaint to cure deficiencies. [Babinski v. Queen](#), No. CV 20-426-SDD-EWD, 2021 WL 4483061 (M.D. La. Sept. 29, 2021).

Why Is This Case Significant?

A community college is limited by the First Amendment in disciplining students for their own speech in course assignments, particularly when the speech does not disrupt or interfere with college activities. Disciplinary actions against students for such speech may subject a college to First Amendment claims.

Highlights

Update 42 to the [Community College Policy Reference Manual](#) is now available.

Updated on eLaw:

[Community College Websites: Internet Postings](#)

[Responding to the Risk of Infectious Disease](#)

[Dual Credit](#)

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

Community college that had begun constructing a campus on land that it purchased with existing deed restrictions limiting use of the land to single-family houses was ordered to compensate a private developer that owned adjacent land because the construction devalued the adjacent land and was an inverse condemnation for which the college must provide compensation. [Westside Ventures, Ltd. v. Houston Cmty. Coll. Sys. Dist.](#), No. CV H-19-2928, 2021 WL 4690577 (S.D. Tex. Oct. 7, 2021).

Personnel

Former community college faculty member who elected to participate in the state Optional Retirement Program (ORP) and then retired provided sufficient evidence that the college breached her employment contracts by forwarding her contributions to the Teachers Retirement System instead of into her ORP account during her employment. The appellate court concluded that the former faculty member could sue for additional damages and attorney's fees. [Tamasy v. Lone Star Coll. Sys.](#), No. 14-19-00883-CV, 2021 WL 4737308 (Tex. App.—Houston [14th Dist.] Oct. 12, 2021, no pet. h.).

University professor did not sufficiently allege that the university violated [Title VII of the Civil Rights Act of 1964](#) by creating a hostile work environment because any alleged sexual harassment occurred more than 300 days before she filed a charge with the Equal Employment Opportunity Commission (EEOC), by retaliating against her because there were no adverse employment actions alleged, or by giving her a negative performance evaluation that was discriminatory against her based on her race or national origin. [Chapa v. Univ. of Houston at Victoria](#), No. 6:20-CV-00032, 2021 WL 4480742 (S.D. Tex. Sept. 30, 2021).

Former university employee provided sufficient evidence that the university discriminated against him based on his gender in violation of Title VII by transferring some of his job duties to female employees and providing to female employees certain job title upgrades, training, and another position that were denied to him. The former employee's claim for retaliation in violation of Title VII was dismissed because it was not included in his charge filed with the EEOC and the employee therefore did not exhaust Title VII's administrative remedies. [Littleton v. Jackson State Univ.](#), No. 3:19-CV-815-HTW-FKB, 2021 WL 4480988 (S.D. Miss. Sept. 29, 2021).

Students and Instruction

Former university student did not provide sufficient evidence that the university's investigation into allegations that he sexually harassed or inflicted mental or bodily harm on another student was discriminatory based on his gender in violation of [Title IX of the Education Amendments of 1972](#) because there was no procedural flaw or evidence of gender bias in the investigation or subsequent interim suspension for failing to participate in the investigation, that the university selectively enforced its procedures against him because of his gender or disciplined him based on archaic assumptions about males, or that the investigation breached any contract. [Doe v. William Marsh Rice Univ.](#), No. 4:20-CV-2985, 2021 WL 4215501 (S.D. Tex. Sept. 16, 2021).

Former university student who was dismissed from the university's nursing program due to failing grades sufficiently pled that the university violated the [Rehabilitation Act Section 504](#) by failing to accommodate her ADHD disability with extra exam time and note-taking assistance, which negatively affected her grades, and by dismissing her based on her disability. [Pickett v. Tex. Tech Univ. Health](#)

[Sciences Ctr.](#), No. 5:20-CV-232-H-BQ, 2021 WL 4316566 (N.D. Tex. Sept. 23, 2021) (adopting in part report and recommendation in *Pickett v. Tex. Tech Univ. Health Sciences Center*, No. 5:20-CV-232-H-BQ (N.D. Tex. July 30, 2021)).

Former university student's claims that the university discriminated or retaliated against her because of her pregnancies in violation of Title IX were dismissed because any alleged discrimination or retaliation occurred more than two years before her claims were filed and were therefore barred by the statute of limitations and claims that the university violated the [Americans with Disabilities Act](#) and the Rehabilitation Act Section 504 by not accommodating her pregnancy were dismissed because pregnancy is not a disability under either law. The university's denial to remediate a failed grade was not disability discrimination because remediation would have required the university to change the academic requirements of its pharmacology program. [Folkes v. Univ. of Houston](#), No. CV H-20-3165, 2021 WL 4820675 (S.D. Tex. Oct. 15, 2021).

University violated students' rights to free exercise of religion under the U.S. Constitution [First Amendment](#) by denying participation in athletic activities for not receiving vaccinations against COVID-19 that were required by university policy because the university did not provide religious accommodations for the students' sincerely held religious beliefs when requested and the policy was not narrowly tailored to achieve the university's interest in fighting COVID-19 because non-athletes were

allowed to remain unvaccinated. [Dahl v. Bd. of Trs. of W. Mich. Univ.](#), No. 21-2945, 2021 WL 4618519 (6th Cir. Oct. 7, 2021).

Open Records Letter Rulings

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

- A specified dispute involving several named individuals. Tex. Att'y Gen. [OR2021-25982](#) (Sept. 21, 2021);
- Certain information pertaining to a specified request for proposals. Tex. Att'y Gen. [OR2021-26278](#) (Sept. 23, 2021);
- Records related to a named college employee and specified written procedures. Tex. Att'y Gen. [OR2021-27005](#) (Oct. 1, 2021);
- The payment bond issued for a specified project. Tex. Att'y Gen. [OR2021-27289](#) (Oct. 5, 2021);
- Certain information pertaining to a named employee. Tex. Att'y Gen. [OR2021-27874](#) (Oct. 12, 2021);
- Documentation pertaining to complaints concerning the requestor and three named complainants. Tex. Att'y Gen. [OR2021-28145](#) (Oct. 13, 2021); and
- Online classes or lectures taught by a named employee. Tex. Att'y Gen. [OR2021-28245](#) (Oct. 14, 2021).



Recent Regulations and Guidance

The Texas Ethics Commission adopted a [regulation](#) concerning the effects of expenditures for mass media communications on a registered lobbyist's reporting requirements.

The State Board of Dental Examiners amended regulations concerning human trafficking

prevention courses required for [dental hygiene](#) and [dental assistant](#) applicants.

The Texas Animal Health Commission (TAHC) adopted [regulations](#) concerning chronic wasting disease in deer species.

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 TAHC adopted new and amended [regulations](#) concerning animal diseases requiring action or reporting.

The TAHC amended [regulations](#) concerning swine for clarity and in response to legislative changes.

The Teacher Retirement System of Texas replaced [regulations](#) concerning the employment of eligible employees after retirement and amended a [regulation](#) concerning health care benefits for retirees in response to new legislation passed by the 87th Texas Legislature.



In the News

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

The third special session of the 87th Texas Legislature ended on October 19, 2021.

The U.S. Department of Education announced it is accepting [applications](#) for the Fulbright-Hays

Seminars Abroad program through December 28, 2021.

U.S. Congress [enacted](#) legislation, which was signed by the President, to continue appropriations to federal agencies through December 3, 2021, effectively preventing a federal government shutdown.