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Case of the Month

Two universities may revoke the degrees of a former student for academic misconduct while a student.

Former graduate students S.O. and K.E. received a Ph.D. from the University of Texas at Austin and Texas State University, respectively, but the universities later pursued revocation of the degrees, and in the case of Texas State revoked K.E.'s degree, after concluding S.O. and K.E. engaged in scientific misconduct and academic dishonesty in connection with their doctoral research while still students. They brought separate actions alleging ultra vires claims against the respective university officials, specifically that the officials lacked statutory authority to revoke awarded degrees. They sought declaratory and injunctive relief, asking, among other claims, the courts require reinstatement of their degrees. The officials filed pleas to the jurisdiction, which the trial courts denied. The officials appealed.

The Third Court of Appeals, considering each case separately, reviewed the statutes governing each system. The court determined that neither [Texas Education Code chapter 51](#), which provides broad authority to public institutions of higher education and their governing boards to govern their institutions, nor the statutes applicable to the University of Texas, [Texas Education Code chapter 65](#), and Texas State, [Texas Education Code chapter 95](#), grant the universities degree revocation power. The Texas Supreme Court granted the officials' petitions and consolidated the cases.

Contrary to the court of appeals, the Texas Supreme Court determined Chapter 65 and Chapter 95 permit the universities to revoke student degrees. The court noted the statutory powers are expansive and empower each university to make academic decisions, including addressing a student's academic misconduct while the student is still enrolled or after the student has left the university. The court concluded this is consistent with the decisions of other courts that have considered the issue under similarly worded statutes. Students must be granted due process prior to revocation, including sufficient notice and the opportunity to be heard. The supreme court reversed the court of appeals' judgment regarding declaratory relief for K.E. and S.O. on the matter of the universities' power to revoke degrees and dismissed them for lack of jurisdiction. [Hartzell v. S.O.](#), No. 20-0811, 2023 WL 2745109 (Tex. Mar. 31, 2023).

Why is This Case Significant?

This case specifically grants two universities the power to revoke degrees based on student misconduct, but the Texas Supreme Court's reasoning could be extended to apply to similar statutes applicable to community colleges such as in Texas Education Code chapter 51 and [Texas Education Code chapter 130](#) regarding powers of the governing boards.

Highlights

[Open Meetings Act Training for Community Colleges](#) online course now available.

New on eLaw:
[Working With Your College Attorney](#)

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 claim alleging a violation of the U.S. Constitution [Fourteenth Amendment](#) Equal Protection Clause because he was treated differently from other speakers during public comment at a commissioners court meeting including his speaking time cut short, different camera angles used to present him, and security guards positioned closer to him than other speakers, failed because he did not provide evidence he was treated differently. [Stein v. Dallas Cnty.](#), No. 3:22-CV-1255-D, 2023 WL 2700720 (N.D. Tex. Mar. 29, 2023) (mem. op.).

Personnel

College's summary judgment motions against former professor whose contract was not renewed and who brought a discrimination claim under the [Age Discrimination in Employment Act](#), a sex discrimination and retaliation claim under [Title VII of the Civil Rights Act of 1964](#), and a discrimination claim under the [Americans with Disabilities Act](#), failed because former professor proved her replacements were younger, at least one was male, and that she was told she was not renewed because she had been ill. [Spears v. La. Coll.](#), No. 20-30522, 2023 WL 2810057 (5th Cir. Apr. 6, 2023) (per curiam).

Former teacher who alleged school's rescission of his request to call transgender students by their last names constituted religious discrimination in violation of [Title VII of the Civil](#)

[Rights Act of 1964](#) was denied summary judgment because his requested accommodation caused an undue burden on the school. [Kluge v. Brownsburg Comm. Sch. Corp.](#), No. 21-2475, 2023 WL 2821871 (7th Cir. Apr. 7, 2023).

Open Records Letter Rulings

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

- Bids and evaluations connected to a request for proposals. Tex. Att'y Gen. [OR2023-09658](#) (Mar. 17, 2023);
- An incident report. Tex. Att'y Gen. [OR2023-09670](#) (Mar. 17, 2023);
- Information regarding a request for proposals. Tex. Att'y Gen. [OR2023-11121](#) (Mar. 28, 2023), [OR2023-11675](#) (Mar. 31, 2023);
- Submissions and bid tabulations pertaining to a request for proposals. Tex. Att'y Gen. [OR2023-11129](#) (Mar. 28, 2023);
- Communications sent or received by the college's board of trustees regarding a named individual over a stated time period. Tex. Att'y Gen. [OR2023-11560](#) (Mar. 30, 2023);
- A winning proposal. Tex. Att'y Gen. [OR2023-11682](#) (Mar. 31, 2023); and
- Information regarding a specified incident. Tex. Att'y Gen. [OR2023-12295](#) (Apr. 5, 2023);

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.



Recent Regulations and Guidance

The Texas Board of Professional Engineers and Land Surveyors adopts [regulations](#) regarding evaluation of applications with criminal history.

The Texas Commission on Fire Protection amended [regulations](#) regarding requirements for fire fighter training facilities and certification training.



In the News

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

The Federal Student Aid Office of Enforcement announced it will use [secret shoppers](#) to evaluate an institution's recruitment, enrollment, financial aid, and other practices, and to monitor [Title IV of the Higher Education Acts of 1965](#) compliance.

The U.S. Department of Education invited [public comment](#) on or before May 15, 2023 regarding its [proposed amendments](#) to the regulations implementing [Title IX of the Education Amendments of 1972](#).

The Aspen Institute awarded the [Aspen Prize for Community College Excellence](#) to Amarillo College, which received \$500,000 for demonstrating outstanding performance in teaching and learning, certificate and degree completion, transfer and bachelor's attainment, workforce success, equitable access, and equitable outcomes for students of color and students from low-income backgrounds.

Austin Community College, Blinn College, and McLennan Community College were named as [2023 Most Promising Places to Work in Community Colleges](#) by *Diverse: Issues in Higher Education* along with the National Institute for Staff and Organizational Development. Honorable mentions included Houston Community College and College of the Mainland.