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Case of the Month

University may not charge U.S. citizens out-of-state tuition if non-citizens without lawful status are eligible for in-state tuition.

Young Conservatives of Texas Foundation, a student association, sued the University of North Texas in federal court claiming that Texas university tuition statutes based on residency conflict with federal immigration law. [Texas Education Code section 54.051\(d\)](#) governs university tuition, setting rates lower for Texas residents than for non-residents. The student association challenged the Texas university tuition structure by asserting that it conflicts with a [1996 federal immigration statute](#) prohibiting a non-citizen who is not lawfully in the United States from receiving a postsecondary education benefit based on residence unless U.S. citizens have the same benefit regardless of whether they are residents. The association claimed that charging any U.S. citizen higher out-of-state tuition, while allowing resident non-citizens without lawful status the benefit of paying lower in-state tuition, is contrary to the federal law.

If a state statute conflicts with a federal statute, the U.S. Constitution's [Supremacy Clause](#) requires federal "preemption"—and invalidation—of the inconsistent state law. Analyzing the tension between Texas university tuition law and the 1996 federal immigration statute, the court applied the preemption doctrine, concluding that the Texas university tuition provisions were irreconcilable with the federal immigration law. The court reasoned that non-U.S. citizens without legal status who establish residency in Texas receive the postsecondary education benefit of in-state tuition, while that benefit is not available to U.S. citizens who are not Texas residents. This scenario conflicts with the federal law's prohibition on residency-based benefits for non-U.S. citizens without legal status that are unavailable to U.S. citizens regardless of their residency.

The court rejected UNT's argument that the federal law prohibits only preferential treatment, and therefore does not conflict with Texas law, which applies equally to in-state students regardless of citizenship status. The court also dismissed UNT's claim that in-state university tuition does not fit the immigration law's definition of "post-secondary education benefit." Cases from other jurisdictions cited in support of UNT's position were distinguished. Unpersuaded by UNT's arguments, the court declared Section 54.051(d) invalid and permanently enjoined UNT's administrators from applying it, noting that the court could not consider the concern expressed by UNT that millions of dollars in tuition revenue are at stake. [Young Conservatives of Tex. Found. v. Univ. of N. Tex.](#), No. 4:20-CV-973-SDJ, 2022 WL 1063876 (E.D. Tex. Apr. 8, 2022).

Why is This Case Significant?

Though the specific tuition provision at issue in this case applies to universities, not community colleges, the case may have ramifications for the college-related section of the tuition statute if a court applies this reasoning more broadly. TASB Community College Services is monitoring the appeal.

Highlights

Online course available Friday, May 6, 2022: [Open Meetings Act Basics for Community College Trustees](#)

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

Injunction upheld against the [Governor's Executive Order GA-38](#) prohibiting school districts and community colleges from mandating face masks, as the [Texas Disaster Act](#) does not authorize the governor to override school and college officials' authority to protect the safety and health of their students and staff. [Abbott v. La Joya Indep. Sch. Dist.](#), No. 03-21-00428-CV, 2022 WL 802751 (Tex. App.—Austin Mar. 17, 2022).

Business and Finance

Student's class action suit seeking refund of tuition and fees due to university's shift to online learning did not allege facts establishing a breach of contract or unjust enrichment action and, furthermore, was precluded by the 2021 [Texas Pandemic Liability Protection Law](#), which prevents an award of monetary damages against an institution of higher education for pandemic-based program modifications. [Tex. Civ. Prac. & Rem. Code § 148.004\(a\)\(2\), \(b\)](#). [Hogan v. S. Methodist Univ.](#), No. 3:20-CV-02899-X, 2022 WL 954344 (N.D. Tex. Mar. 29, 2022).

Personnel

Black professor's proffered evidence of racial bias against veterinary school—her supervisor's racially-stereotyped comments, job evaluations, and transfer of core job duties to an untrained white colleague—was insufficient to survive university's summary judgment motion against claims of racial discrimination, hostile work environment, and retaliation in violation of [Title VI](#) and [Title VII](#) of the Civil Rights Act of 1964 and Louisiana's similar state laws. [Daniel v. Bd. of Supervisors of La. State Univ.](#), No. 21-30555, 2022 WL 1055578 (5th Cir. Apr. 8, 2022).

Community college adviser terminated after complaining that implementation of reimbursement policies was discriminatory failed to provide sufficient evidence to overcome summary judgment against national origin discrimination and retaliation claims under [Title VII](#). [Briceno-Belmontes v. Coastal Bend Coll.](#), No. 2:20-CV-00114, 2022 WL 912785 (S.D. Tex. Mar. 29, 2022).¹

The Texas Attorney General concluded that a school district policy providing paid leave to staff who provide proof of vaccination could be found in violation of Governor's [Executive Order GA-39](#), and that standardized documentation of vaccination status may be prohibited by [Texas Health and Safety Code section 161.0085](#) as a vaccine passport. Tex. Att'y Gen. Op No. [KP-0403](#) (Apr. 14, 2022).

Black female doctor failed to present sufficient evidence that shift scheduling and educational programming at her former residency program constituted race and gender discrimination and created a hostile work environment in violation of [Title VII](#). [Okeke v. Adm'rs of Tulane Educ. Fund](#), No. 21-30451, 2022 WL 1025991 (5th Cir. Apr. 6, 2022).

Community and Governmental Relations

Responding to an emergency appeal, the U.S. Supreme Court summarily reversed the Wisconsin Supreme Court's adoption of a map reapportioning voters that, due to population shifts, resulted in an additional Black-majority district, which the Court rejected in a Voting Rights Act analysis without briefing or argument by the parties, adding to the "shadow docket" drawing criticism from a minority of the Court's members. [Wisconsin Legislature v. Wisconsin Elections Comm'n](#), No. 21A471, 145 S. Ct. 1245 (Mar. 23, 2022) (per curiam).

¹ The opinion on motion to dismiss in the case was summarized in the [March 2022](#) Community College Services *Legal Update*.

Open Records Letter Rulings

This month, the attorney general issued Open Records Letter Rulings² based on requests from Texas community colleges related to:

- Emails by college employees and other named individuals negotiating a property transaction. Tex. Att’y Gen. [OR2022-07872](#) (Mar. 17, 2022);
- A contract with a third party. Tex. Att’y Gen. [OR2022-07927](#) (Mar. 18, 2022);
- Five categories of Information, including employees’ fitness for duty and contact information. Tex. Att’y Gen. [OR2022-09479](#) (Mar. 31, 2022);
- A specific bid. Tex. Att’y Gen. [OR2022-09641](#) (Apr. 1, 2022);
- A request for proposal. Tex. Att’y Gen. [OR2022-10286](#) (Apr. 7, 2022); and
- The winning proposal from a specified request for proposals. Tex. Att’y Gen. [OR2021-10336](#) (Apr. 8, 2022).



Recent Regulations and Guidance

The Texas Higher Education Coordinating Board announced [appointments](#) to a negotiated rulemaking committee for the Texas College Work Study Grant Program, including five representatives from Texas community colleges.

The Texas State Board of Public Accountancy amended [regulations](#) to provide that instructors of accounting ethics will be authorized, rather than contracted, to teach Board-approved accounting ethics courses.

The Texas State Board of Plumbing Examiners [repealed](#) regulations related to course providers, instructors, and materials for continuing professional education courses.

The U.S. Department of Labor provided a [notification of interpretation](#) that, consistent with

the U.S. Supreme Court’s decision in [Bostock v. Clayton County](#), its [implementation](#) of the prohibition against sex-based discrimination codified in the Workforce Innovation and Opportunity Act will include discrimination on the basis of sexual orientation.

The U.S. Department of Agriculture amended [regulations](#) to update the list of institutions that are granted Hispanic-Serving Agricultural Colleges and Universities certification for the period October 1, 2021 to September 30, 2022.

The U.S. Small Business Administration issued [regulations](#) increasing receipts-based small business size definitions for the education services sector, which includes junior colleges, based on the impacts of the COVID-19 pandemic.



In the News

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

The Texas Comptroller is concluding a statewide [Broadband Listening Tour](#), including

events at Texas community colleges, seeking input about internet access in developing the state’s broadband plan through events and an online [survey](#).

² 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 General Land Office [announced](#) federal and state [grants](#) available to Texas public colleges and universities to improve management of coastal resources and ensure long-term ecological and economic productivity of the coast.

The U.S. Department of Education [announced](#) that the COVID-related pause on student loan repayment, previously set to expire on May 1, 2022, is extended through August 31, 2022.

The U.S. Department of Labor (DOL) [announced](#) “Mental Health at Work: What Can I Do?,” a public education campaign highlighting the importance of mental health-friendly workplaces.