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Case of the Month

Court concluded a university may delay conducting a Title IX investigation pending the resolution of a criminal process.

Two male students at Dillard University were accused of raping a fellow student and subsequently arrested. Following their arrest in spring 2019, the university suspended the students pending its internal investigation [under Title IX of the Education Amendments Act of 1972](#). The university delayed conducting its investigation until the resolution of the criminal process, which at the time of the court's opinion remained ongoing. The following fall, the students enrolled in classes, chose housing, and the university accepted financial aid for the students for that semester. The students then received notice that they would be dropped from classes and prohibited from accessing on-campus housing.

The students filed suit under Title IX alleging that the university violated their rights under the [Jeanne Clery Disclosure Campus Security Policy and Campus Crime Statistics Act](#) and [U.S. Department of Education 2001 Title IX Guidance](#) by failing to provide a fair and prompt review of their charges. The university filed a motion to dismiss the students' lawsuit. The court found that students failed to demonstrate, under any theory of Title IX liability, that the university discriminated against them on the basis of their sex in delaying its internal investigation and in suspending the students pending that investigation. The court explained that the students' claim failed under the erroneous outcome theory of liability because the investigation remained ongoing and the students did not allege gender bias in the university's decision to suspend them. The students' claim also failed under the selective enforcement theory of liability because they did not allege that their suspensions were based on their sex or that a similarly situated female was treated more favorably. Finally, the students did not allege that the university was deliberately indifferent in its actions or that its actions were based on archaic assumptions about the roles or behavior of men and women. For these reasons, the court granted the university's motion to dismiss the Title IX claim. [Givens v. Dillard Univ.](#), No. CV 19-12448, 2019 WL 6492850 (E.D. La. Dec. 3, 2019).

Why is this Case Significant?

Proposed changes to the Title IX regulations have not yet been finalized. Current interim guidance provided by the U.S. Department of Education requires a prompt resolution of Title IX complaints but provides that there is no fixed time frame to complete an investigation. In conducting investigations, colleges should continue to follow current regulations and applicable guidance, the college's internal sexual misconduct policies, and due process requirements.

Highlights

Join us at the 24th Annual UNT Texas Higher Education Law Conference
March 23-24
New FAQ available on The [Affordable Care Act](#)

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

Personnel

Former professor's discrimination and retaliation claims under [Title VII of the Civil Rights Act of 1964](#) were dismissed where a community college established legitimate nonretaliatory reasons, including unprofessional conduct within the department and poor work performance in the classroom, for the nonrenewal of the professor's employment contract. [Henson v. Tex. Southmost Coll. Dist.](#), No. 1:18-CV-174, 2020 WL 488991 (S.D. Tex. Jan. 30, 2020).

Professor denied tenure failed to establish evidence of [Title VII](#) discrimination and retaliation sufficient to defeat the university's motion for summary judgment. [Theidon v. Harvard Univ.](#), No. 18-1279, 2020 WL 502496 (1st Cir. Jan. 31, 2020).

Former professor rejected for an internal position provided sufficient evidence of a [First Amendment](#) retaliation claim to survive a motion for summary judgment where the professor made a blog post regarding her pro-life views on abortion and was subsequently questioned on the topic during her interview. [Isabell v. Trs of IN Univ.](#), No. 3:18CV364 DRL-MGG, 2020 WL 94070 (N.D. Ind. Jan. 7, 2020).

Students and Instruction

Former student suspended for academic misconduct was barred by sovereign immunity from bringing breach of contract claims against a university employee in his

official capacity. [Eustice v. Powers](#), No. 14-18-00722-CV, 2020 WL 64690 (Tex. App.—Houston [14th Dist.] Jan. 7, 2020, no pet.) (mem. op.).

Female students' Title IX sexual harassment and membership claims were dismissed for failure to establish deliberate indifference and as beyond the scope of the statute. [McNeil v. Yale Univ.](#), No. 3:19-CV-00209 (VAB), 2020 WL 495061 (D. Conn. Jan. 30, 2020).

Student suspended for two years following allegations of sexual assault was granted a temporary restraining order to prevent the university from enforcing the students' suspension. [Doe v. Univ. of CT](#), No. 3:20CV92 (MPS), 2020 WL 406356 (D. Conn. Jan. 23, 2020).

University's delay between responding to a sexual assault complaint and implementing sanctions did not constitute deliberate indifference under [Title IX](#) but was inconsistent with its own sexual misconduct policies. The student provided historical evidence of deficiencies in the university's sexual misconduct process, so the case was remanded for a consideration of the pre-assault claims that the university maintained a policy of deliberate indifference to sexual misconduct. [Karasek v. Regents of the Univ. of CA](#), No. 18-15841, 2020 WL 486786 (9th Cir. Jan. 30, 2020).

Community and Governmental Relations

Private citizens lacked standing to bring suit under the [First Amendment](#) of the U.S. Constitution against a public university for its removal of Confederate statues on campus. [McMahon v. Fenves](#), 946 F.3d 266 (5th Cir. 2020).

A community college was considered a school district for purposes of an exemption from impact fees imposed by the city because the city's imposition of a fee constituted a taking under the [Fifth Amendment](#) of the U.S. Constitution. [Houston Cmty. Coll. Sys. v. City of Houston](#), No. CV H-18-2730, 2020 WL 70842 (S.D. Tex. Jan. 7, 2020).

Open Records Letter Rulings

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

- Video surveillance from security cameras on college property Tex. Att'y Gen. Op. [OR2020-00075](#) (Jan. 2, 2020);
- The identities of individuals who participated in a compliance investigation Tex. Att'y Gen. Op. [OR2020-00226](#) (Jan. 3, 2020);
- A criminal investigation report Tex. Att'y Gen. Op. [OR2020-00372](#) (Jan. 6, 2020);
- A request for proposals Tex. Att'y Gen. Op. [OR2020-00395](#) (Jan. 6, 2020);
- A specified bid proposal, including pricing information Tex. Att'y Gen. Op. [OR-2020-00397](#) (Jan. 6, 2020);
- Marketing materials, the contract, statement of work, and emails with a security camera company Tex. Att'y Gen. Op. [OR2020-00450](#) (Jan. 6, 2020);
- An audio recording of a grievance hearing; Tex. Att'y Gen. Op. [OR2020-00621](#) (Jan. 7, 2020);
- A criminal report of fraudulent use of identifying information Tex. Att'y Gen. Op. [OR2020-00636](#) (Jan. 8, 2020);
- An investigation and related communications Tex. Att'y Gen. Op. [OR 2020-00879](#) (Jan. 9, 2020);
- A contract and related proposals and evaluation documents Tex. Att'y Gen. Op. [OR2020-00979](#) (Jan. 10, 2020);
- Contract rates with a waste-management company, Trashco Tex. Att'y Gen. Op. [OR2020-01507](#) (Jan. 15, 2020);
- The results and the report of a study Tex. Att'y Gen. Op. [OR2020-01688](#) (Jan. 17, 2020);
- A request for proposals Tex. Att'y Gen. Op. [OR2020-01690](#) (Jan. 17, 2020);
- A request for proposals Tex. Att'y Gen. Op. [OR2020-1943](#) (Jan. 22, 2020);
- A video recording of a specified incident Tex. Att'y Gen. Op. [OR2020-02462](#) (Jan. 27, 2020);
- Organizational charts Tex. Att'y Gen. Op. [OR2020-02693](#) (Jan. 29, 2020);
- A police report Tex. Att'y Gen. Op. [OR2020-02894](#) (Jan. 30, 2020);
- A bid tabulation, award letter, and proposal response by a winning vendor's bid Tex. Att'y Gen. Op. [OR2020-02848](#) (Jan. 30, 2020).



Recent Regulations and Guidance

The Texas Higher Education Coordinating Board (THECB) amended and adopted regulations in response to statutory changes made during the 86th Legislative Session addressing:

- [student transcript notations](#);
- the requirement that students enrolled in a multidisciplinary degree program [file a degree plan](#);

- [degree plans required by students](#);
- an institution of higher education's [policy on sexual harassment, sexual assault, dating violence, and stalking and required reporting](#) of these incidents.



In the News

The U.S. Department of Labor [awarded \\$100 million in grants](#) to 28 apprenticeship partnership programs.

The U.S. Department of Labor Office of Federal Contract Compliance Programs launched a [Contractor Compliance Institute](#) to aid federal contractors in complying with equal employment opportunity obligations.