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Case of the Month

Courts concluded Title IX prohibits discrimination on the basis of gender identity.

Two U.S. Appellate courts considered cases in which transgender students alleged they were denied access to bathrooms that affirmed their gender identity in violation of [Title IX of the Education Amendments of 1972](#) and the Equal Protection Clause of the U.S. Constitution [Fourteenth Amendment](#). In both cases, the students, Gavin Grimm and Drew Adams, were prohibited from using the boy's bathroom because policies in place at their respective schools required students to use bathrooms that corresponded with their biological sex. The district courts found for Grimm and Adams, and the school boards appealed to the Fourth and Eleventh Circuit Court of Appeals, respectively.

In considering the Title IX claims, the courts in both cases relied on the U.S. Supreme Court's decision in [Bostock v. Clayton County Georgia](#), No. 17-1618, 2020 WL 3146686 (June 15, 2020)¹ that Title VII prohibits discrimination on the basis of gender identity. The courts acknowledged that the Title VII definition of discrimination based on sex informs its interpretation in Title IX settings and held that Title IX prohibits discrimination on the basis of gender identity. The courts then held that by excluding Grimm and Adams from the boy's bathrooms because they were transgender and by treating them differently than cisgender boys, the school boards discriminated against them in violation of Title IX. The courts dismissed arguments from the school boards that Title IX permits sex-separate bathrooms stating that separating bathrooms is not discriminatory in itself but that Title IX does not permit discriminatory applications of the definition of sex.

The courts considered the equal protection claims and found that the school boards' policies of excluding transgender students from gender-affirming bathrooms were not substantially related to the school boards' interests in protecting the privacy of other students. The Fourth Circuit Court of Appeals affirmed the district court's finding for Grimm, and the Eleventh Circuit Court of Appeals affirmed the district court's finding for Adams. [Grimm v. Gloucester Cty. Sch. Bd.](#), No. 19-1952, 2020 WL 5034430 (4th Cir. Aug. 26, 2020); [Adams by & through Kasper v. Sch. Bd. of St. Johns Cty.](#), No. 18-13592, 2020 WL 4561817 (11th Cir. Aug. 7, 2020).

Why is This Case Significant?

The courts' findings demonstrate a trend of Title VII litigation impacting Title IX litigation and are consistent with previous Title IX case law prohibiting gender stereotyping. Community colleges should consider this trend when developing anti-discrimination policies.

Highlights

[Update 39](#) is now available.

New on eLaw:

[Incorporating the New Title IX Regulations into Policy](#)

[Deadlines for November 3, 2020 Community College Trustee Elections](#)

COVID-19 resources are available on [TASB College eLaw](#) and the [TASB COVID-19 Website](#).

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 employee, challenging his termination by a community college, claimed disability discrimination under the [Texas Commission on Human Rights Act](#) and breach of contract for failure to pay wages. The court found the employee failed to establish that his termination was due to his disability, but that he held a valid employment contract for purposes of his breach of contract claim so it reversed the district court's grant of a plea to the jurisdiction to the college on appeal. [Rogers v. Houston Cmty. Coll.](#), No. 14-18-00591-CV, 2020 WL 3967944 (Tex. App.—Houston [14th Dist.] July 14, 2020) (mem. op.).

Former employee demoted and then terminated after complaining to human resources about race discrimination and retaliation filed a complaint under [Title VII of the Civil Rights Act of 1964](#). The employee filed an initial timely complaint with the Texas Workforce Commission Civil Rights Division (TWCCRD) and a subsequent untimely complaint that TWCCRD filed with the EEOC. The court found the employee satisfied Title VII exhaustion requirements because the initial complaint constituted a valid EEOC charge that allowed the second complaint to relate back to the initial complaint and denied the college's motion to dismiss. [Peters-Clark v. Angelina Coll.](#), No. 9:20-CV-00031-RC, 2020 WL 4747829 (E.D. Tex. Aug. 15, 2020).

Students and Instruction

Student suspended from a university for sexual misconduct was denied a preliminary injunction to lift his suspension because his alleged harms were too speculative to constitute irreparable harm. The court found that he was unlikely to prevail on his [Title IX of the Education Amendments Act of 1972](#) claim because he failed to sufficiently plead that gender was a motivating factor of his suspension, and that he could not demonstrate a due process violation

under [42 U.S.C. § 1983](#) because he was provided adequate notice and opportunity to be heard. [Doe v. Louisiana State Univ.](#), No. CV 20-00379-BAJ-SDJ, 2020 WL 4193473 (M.D. La. July 21, 2020).

Free speech advocacy organization sued a university on students' behalf claiming the university's policies addressing bias-motivated incidents, no contact directives, and literature distribution violated the students' U.S. Constitution [First Amendment](#) free speech rights. The court denied the organization's motion for a preliminary injunction to stop the application of the policies because it failed to argue facts to show the students would be disciplined by the policies for their speech. [Speech First, Inc. v. Killeen](#), No. 19-2807, 2020 WL 4333565 (7th Cir. July 28, 2020).

Community and Governmental Relations

Two transgender women sued the U.S. Department of Health and Human Services (HHS) challenging HHS' amendments to its nondiscrimination rules adopted under the Affordable Care Act (ACA), including the repeal of the prohibition on discrimination based on sex stereotyping and gender identity. The court granted a stay of the rules' effective date and a preliminary injunction on the rules' enforcement, concluding that they were contrary to law in light of the U.S. Supreme Court's decision in [Bostock v. Clayton County Georgia](#), No. 17-1618, 2020 WL 3146686 (June 15, 2020) that [Title VII of the Civil Rights Act of 1964](#) discrimination on the basis of gender identity; HHS acted arbitrarily and capriciously by failing to consider or address *Bostock* in the rules. [Walker v. Azar](#), No. 20CV2834FBMSG, 2020 WL 4749859 (E.D.N.Y. Aug. 17, 2020).

Open Records Letter Rulings

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

- Invoices for legal services. Tex. Att'y Gen. [OR2020-18432](#) (July 23, 2020);
- A proposal submitted in response to a specified request for proposals. Tex.

Att'y Gen. [OR2020-19063](#) (July 30, 2020); and

- The personnel records of a named individual, including internal affairs investigations, disciplinary records, and certain e-mails. Tex. Att'y Gen. [OR2020-19231](#) (July 31, 2020).



Recent Regulations and Guidance

The Texas Higher Education Coordinating Board (THECB) amended [regulations](#) addressing the contents of student loan debt disclosures to clarify that only federal and state loan information must be included.

THECB amended [regulations](#) addressing the Texas College Work-Study Program to reference the Work-Study Student Mentorship Program and to add relevant definitions.

THECB amended, adopted, and repealed [regulations](#) addressing the eligibility requirements for the Texas Educational Opportunity Grant for greater clarity, to remove outdated or redundant definitions, to better align with statute, and to add an additional circumstance for hardship consideration.

THECB amended a [regulation](#) addressing the release of individual level data from the Education Research Center (ERC) P-20 Workforce Data Repository to provide additional secure methods for researchers to access the information.

The State Board for Education Certification (SBEC) amended and repealed [regulations](#) addressing certificate renewal, continuing education, and criminal history background check requirements for educators.

The Texas State Board of Public Accountancy amended [provisions](#) addressing the accounting courses an individual may complete to be eligible to take the CPA exam to remove the

requirement that the courses be attended in-person.

The Texas Department of Licensing and Regulation (TDLR) adopted a new [regulation](#) addressing the painting and signage requirements for paved accessible parking spaces in response to statutory changes made during the 86th Legislative Session.

TDLR [adopted](#) as the electrical code for the state the 2020 version of the National Electrical Code, effective November 1, 2020.

TDLR amended [regulations](#) addressing the course, exam, apprenticeship, and other licensing requirements for athletic trainers.

TDLR amended [regulations](#) addressing licensing and continuing education requirements for dietitians as well as complaint processes involving those individuals in response to statutory changes made during the 86th Legislative Session.

The Texas Board of Physical Therapy Examiners amended [regulations](#) addressing the training requirements applicable to a physical therapist or physical therapist assistant seeking to renew or reactivate the person's license.

The Texas Board of Occupational Therapy Examiners amended [regulations](#) addressing the occupational therapist or occupational

therapist assistant continuing education requirements.



In the News

The U.S. Department of Education [updated](#) its FAQ regarding the [Coronavirus Aid, Relief, and Economic Security \(CARES\) Act](#) Higher Education Emergency Relief Funds (HEERF).

A federal district court [blocked](#) U.S. Department of Health and Human Services [regulations](#) that removed anti-discrimination protections in healthcare for individuals based on gender identity. This case is summarized above at Community and Governmental Relations.

The Texas Higher Education Coordinating Board (THECB) [updated](#) its COVID-19 FAQ's addressing, Reopening of Campus Operations, Career and Technical Education, Tuition, Refunds, and Financial Aid, Courses Calendars, and Reporting, and Teacher Preparation.

The U.S. Department of Education (DOE) [extended](#) Federal Student Loan relief through December 31, 2020.

The DOE [updated](#) deadlines for flexibilities related to COVID-19.

¹ This case was summarized in the [June 2020](#) Community College Services Legal Update.