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## Case of the Month

### **Fifth Circuit upheld \$182,000 verdict against university for terminating employee without cause as defined in contract.**

Denise Taylor-Travis, the head coach of the women's basketball team at Jackson State University, was terminated mid-contract after a university investigation concluding that she misappropriated \$4,544.44 in university funds and mistreated athletes. The university also disclosed information regarding Taylor-Travis and its investigation to a newspaper in response to a public records request.

Taylor-Travis sued the university in federal district court, alleging sex discrimination and retaliation in violation of Title VII of the Civil Rights Act of 1964, [42 U.S.C. § 2000e-2](#), and Title IX of the Education Amendments of 1972, [20 U.S.C. § 1681](#), and related state law claims that it breached her employment contract by terminating her without cause, invaded her privacy by disclosing the information to the newspaper, and breached an implied covenant of good faith and fair dealing. The district court found for Taylor-Travis on the invasion of privacy claim and awarded her \$200,000 in damages. A jury awarded Taylor-Travis the amount remaining on her contract, \$182,000, for breach of contract and denied or awarded no damages on the remaining claims. The university filed a motion for judgment as a matter of law and either a new trial on procedural grounds or a reduction of damages. Taylor-Travis filed a motion for new trial on the retaliation claim on procedural grounds. The district court denied both parties' motions and both parties appealed.

The Fifth Circuit Court of Appeals considered Taylor-Travis's breach of contract claim by addressing whether the termination was made with "cause", which the contract partly defined as "deliberate, serious and willful violations [of duties] or refusal or unwillingness to perform such duties in good faith". The court held there was sufficient evidence that there was no mistreatment of players to give cause for termination and that any mismanagement of funds was not "deliberate, serious and willful" and that Taylor-Travis acted in good faith. Regarding the breach of privacy claim, the court held that the disclosed information was of legitimate concern to the public because it involved the termination of a head coach at a major public university and thus was not an invasion of privacy. The court upheld the award of damages for breach of contract, reversed the district court's judgment on the invasion of privacy claim, and denied both parties' requests for a new trial. [Taylor-Travis v. Jackson State Univ.](#), No. 17-60856, 2021 WL 50168 (5th Cir. Jan. 6, 2021).

### **Why Is This Case Significant?**

A community college may terminate an employee mid-contract for good cause. However, colleges should exercise caution when defining good cause in a contract or policy, as they may unnecessarily limit their ability to terminate an employee.

### Highlights

[Update 40](#) is now available.

Updated on eLaw:  
[Families First Coronavirus Response Act Employee Leave Provisions](#)

### 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

Documents related to an investigation conducted by university system contractor could not be withheld by the system under the [Texas Public Information Act](#) because communications between the system and contractor were not covered by the attorney-client privilege under [Texas Rule of Evidence 503](#). [Franklin Ctr. for Gov't v. Univ. of Tex. Sys.](#), No. 03-19-00362-CV, 2020 WL 7640146 (Tex. App.—Austin Dec. 22, 2020, no pet. h.) (mem. op.).

### Business and Finance

Corporation's lawsuit against a university for conspiracy to interfere and tortious interference with an agreement to license intellectual property was dismissed under the [Texas Citizens Participation Act](#) because it failed to provide evidence of damages. [Gensetix, Inc. v. Baylor Coll. of Med.](#), No. 14-19-00488-CV, 2020 WL 7868126 (Tex. App.—Houston [14th Dist.] Dec. 31, 2020, no pet. h.).

Private college's registered service marks were infringed by an apparel company that marketed and sold products that bore content identical or similar to the marks and were likely to create consumer confusion. [Savannah Coll. of Art & Design, Inc. v. Sportswear, Inc.](#), 983 F.3d 1273 (11th Cir. Dec. 22, 2020).

The Texas Attorney General concluded that a specific community college district may convey certain museum real and personal property to the Texas Historical Commission provided that it is not a gratuitous transfer prohibited by the Texas Constitution. Tex. Att'y Gen. Op. No. [KP-344](#) (Dec. 16, 2020).

### Personnel

University employee who received a final warning for a safety policy violation and was terminated after a flooding incident failed to

provide evidence that he was terminated and denied a raise due to age discrimination in violation of the [Texas Commission on Human Rights Act](#) (TCHRA). [Hudgens v. Univ. of Tex. MD Anderson Cancer Ctr.](#), No. 14-18-00938-CV, 2020 WL 7214248 (Tex. App.—Houston [14th Dist.] Dec. 8, 2020, no pet.).

Former college employee's claims of age discrimination and retaliation in violation of the [TCHRA](#) were dismissed because he failed to file an administrative complaint with the Texas Workforce Commission within 180 days of allegedly being forced into retirement after a workplace injury. [Johnson v. San Jacinto Coll.](#), No. 4:20-CV-2948, 2021 WL 40323 (S.D. Tex. Jan. 5, 2021).

Current and former professors alleged sufficient facts supporting their claims that a university created a hostile work environment and retaliated against them in violation of [Title VII of the Civil Rights Act of 1964](#) by taking no remedial action against a supervisor found by the university to have engaged in sexual misconduct towards them, denying one professor's request for a different supervisor, and reducing the other professor's responsibilities. [Owens v. Univ. of Tex. at Tyler](#), No. 6:20-CV-372-JDK, 2021 WL 111501 (E.D. Tex. Jan. 12, 2021) (adopting report and recommendation in [Owens v. Univ. of Tex. at Tyler](#), No. 62-CV-0372-JDK-JDL, 2020 WL 8093573 (E.D. Tex. Dec. 7, 2020)).

Former university employee failed to provide evidence that the non-renewal of her contract, alleged interference with subsequent employment, and treatment by a supervisor constituted gender discrimination, retaliation, or hostile work environment in violation of [Title VII](#). [Saketkoo v. Tulane Univ. Sch. of Med.](#), No. 19-12578, 2020 WL 7861308 (E.D. La. Dec. 31, 2020).

Former university medical center employee failed to provide evidence that he was denied

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leave or any benefit or that his termination was retaliation for taking sick leave in violation of the [Family Medical Leave Act](#) or that he was denied a raise and terminated based on his religion in violation of [Title VII](#). [Greenberg v. State Univ. Hosp. - Downstate Med. Ctr.](#), No. 19-3570, 2020 WL 7380245 (2d Cir. Dec. 16, 2020).

Professor failed to show that the denial of her tenure application by a university based on her scholarship record was discriminatory based on her sex in violation of [Title VII](#). [Maras v. Curators of Univ. of Mo.](#), 983 F.3d 1023 (8th Cir. Dec. 29, 2020).

## Students and Instruction

University student expelled for conduct in violation of university policies failed to show that the university deprived him of due process under the [Texas Constitution](#) by denying his attorney adversarial cross-examination of accusers in a 2018 hearing and allowing submission of only written questions that would be read by a panel member at the hearing. [Tex. A&M Univ. v. John Doe](#), No. 10-19-00057-CV, 2020 WL 7866878 (Tex. App.—Waco Dec. 30, 2020, no pet. h.) (mem. op.).

Former university graduate student who was dismissed from a graduate program after failing a preliminary exam alleged the dismissal was discriminatory and in retaliation for his views on vaccine safety in violation of the U.S. Constitution [First Amendment](#) and denied him due process in violation of the U.S. Constitution [Fourteenth Amendment](#). The court dismissed the claims because the student failed to provide evidence that his professors were aware of his views and because he was provided sufficient notice of substandard academic performance. [Doe v. Harrell](#), No. 19-51013, 2021 WL 70525 (5th Cir. Jan. 7, 2021) (per curiam).

Graduate student who was permanently banned and suspended by a university for violating sexual harassment and stalking policies failed to provide evidence that the disciplinary actions

were racially discriminatory in violation of [Title VI of the Civil Rights Act of 1964](#) or sexually discriminatory in violation of [Title IX of the Education Amendments of 1972](#). The court held that the policies were not unconstitutionally vague or overbroad and that enforcement did not constitute retaliation for protected speech in violation of the [First Amendment](#). [Rowles v. Curators of Univ. of Mo.](#), 983 F.3d 345 (8th Cir. Dec. 18, 2020).

Medical school student who was forced to withdraw after failing two clerkships alleged he was denied accommodations for previous courses in the form of extra time for written exams and retaking a midterm, in violation of the [Americans with Disabilities Act](#) and [Rehabilitation Act Section 504](#). The court held that he failed to identify any reasonable accommodation that would have allowed him to meet the medical school's requirements. [Goldberg v. Fla. Int'l Univ.](#), No. 20-11462, 2020 WL 7703136 (11th Cir. Dec. 29, 2020) (per curiam).

## Open Records Letter Rulings

This month, the attorney general issued Open Records Letter Rulings<sup>1</sup> based on requests from Texas community colleges related to:

- Information regarding two specified requests for proposals. Tex. Att'y Gen. [OR2020-31635](#) (Dec. 17, 2020); and
- Information regarding a specified contract and related orders. Tex. Att'y Gen. [OR2020-31919](#) (Dec. 18, 2020).

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<sup>1</sup> 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 Higher Education Coordinating Board [renewed](#) for 60 days an emergency [regulation](#) authorizing the commissioner of higher education to adjust formula funding reporting requirements for institutions of higher education within disaster areas.

The State Board for Educator Certification amended [regulations](#) addressing the Accountability System for Educator Preparation and educator preparation programs.

The Texas Board of Professional Engineers and Land Surveyors (TBPELS) amended and adopted [regulations](#) addressing the merger of Texas Board of Professional Engineers and the Texas Board of Professional Land Surveying into TBPELS, including continuing education requirements for land surveyors. The Texas Board of Professional Land Surveying repealed [regulations](#) addressing the merger.

The Texas Workforce Commission (TWC) amended and adopted [regulations](#) addressing the Adult Education and Literacy Program and the High School Equivalency Subsidy Program.

TWC adopted [regulations](#) addressing the Texas Industry-Recognized Apprenticeship Programs Grant Program.

TWC adopted [regulations](#) addressing the Eligible Training Provider system to provide training services funded by the federal Workforce Innovation and Opportunity Act and repealed [regulations](#) that are obsolete due to the repeal of the federal Workforce Investment Act.

The State Board of Dental Examiners amended [regulations](#) addressing human trafficking prevention training requirements for health care practitioners, including dental hygiene licensees and dental assistant certificate holders.

The Texas Medical Board amended [regulations](#) addressing licensing and continuing education requirements for certain health care practitioners, including surgical assistants and physician assistants.

The Texas Commission of Licensing and Regulation amended [regulations](#) addressing human trafficking prevention training requirements for athletic trainers.

The Texas Health and Human Services Commission amended [regulations](#) addressing mental health first aid training requirements.



## In the News

THECB [updated](#) its COVID-19 FAQ on campus operations.

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

The President [issued](#) an Executive Order on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation, directing federal agencies to review existing regulations related to sex discrimination, including Title VII of the Civil Rights Act of 1964, and that are inconsistent with the order's statement of policy to prevent

discrimination on the basis of gender identity or sexual orientation.

The President [issued](#) an Executive Order on Supporting the Reopening and Continuing Operation of Schools and Early Childhood Education Providers, directing the Secretary of Education to provide guidance, advice, or technical assistance to institutions of higher education on reopening for in-person learning and other matters related to the COVID-19 pandemic.

The President [issued](#) an Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal

Government, revoking [Executive Order 13950](#) (Combating Race and Sex Stereotyping), which prohibited federal contractors and grant recipients from engaging in training that promotes concepts defined by the order as “divisive” or race or sex “stereotyping” or “scapegoating”.

The Department of Education (DOE) [announced](#) its intent to extend Federal Student Loan relief.

DOE [announced](#) \$21.2 billion in grants available for institutions of higher education under the Coronavirus Response and Relief Supplemental Appropriations Act to prepare for, prevent, and respond to coronavirus.