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Case of the Month

University's academic dismissal did not violate student's due-course-of-law rights under the Texas Constitution.

Ivan Villarreal was dismissed from a state university law school after his first year because his grade point average (GPA) was below the university's standards. He challenged his grades through internal university processes, but his petitions were denied. Villarreal sued the university in state district court, alleging it deprived him of liberty and property without due course of law in violation of the Texas Constitution [article 1, section 19](#) and breach of contract. The university filed a plea to the jurisdiction, the court dismissed Villarreal's claims, and Villarreal appealed.

The appellate court addressed whether Villarreal had made viable claims that he held protected liberty and property interests in his continuing education and that the university deprived him of those interests without providing procedural or substantive due course of law. The court determined that Villarreal had adequately alleged that the university deprived him of a protected liberty interest by acting in bad faith regarding an internal investigation into a matter affecting his GPA and deprived him of his substantive due-course-of-law rights by providing a remedy to address one of his grades that was not based on professional judgment and therefore was not entitled to judicial deference. The court reversed the trial court's dismissal, which the university appealed, and dismissed the breach of contract claim, which was not appealed.

The Supreme Court of Texas stated the proper analysis in addressing Villarreal's claim of a deprived liberty interest is whether the dismissal imposed a stigma that would impact his future in his chosen profession. The court determined that, although a disciplinary dismissal may implicate a student's protected liberty interest, Villarreal's dismissal was purely academic and would not impose a stigma and thus did not deprive him of a liberty interest. Regarding Villarreal's claim of a deprived property interest in his education, the court held that, regardless of whether he held such an interest, the university provided sufficient notice of the GPA requirements, opportunities to appeal, and the option to re-enroll after two years. Lastly, the court held that Villarreal did not have a property right to a continued education that was afforded substantive due-course-of-law protection. The court dismissed Villarreal's claims. [Tex. S. Univ. v. Villarreal](#), No. 19-0440, 2021 WL 1432232 (Tex. Apr. 16, 2021).

Why Is This Case Significant?

Although the due-course-of-law clause in the Texas Constitution does not provide a student with a fundamental right to a college education, a college should adopt policies and procedures that provide notice of academic requirements and opportunities to properly appeal a dismissal.

Highlights

[Update 41](#) is now available.

Join us at the [2021 TASB/TACCA Post-Legislative Seminar](#) (July 30)

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

The U.S. Supreme Court agreed to consider a petition filed by a Texas community college in which it appeals a decision by the U.S. Fifth Circuit Court of Appeals holding that a former board member has standing to sue the college on his claim that the board's censure issued in response to his public statements about the board made while he was a board member violated his U.S. Constitution [First Amendment](#) free speech rights. Any decision by the Supreme Court in the case is not expected until after the Court's next term begins on September 27, 2021. [Houston Cmty. Coll. Sys. v. Wilson](#), No. 20-804, 2021 WL 1602636 (U.S. Apr. 26, 2021).¹

Business and Finance

The Texas Attorney General addressed Texas Government Code [section 3000.002](#), which restricts a community colleges' and other governmental entities' ability to regulate building products or materials used in residential or commercial buildings. The attorney general concluded that the law may apply to a limitation on paint color palettes or patterns adopted by a governmental entity but whether an entity may regulate in an area that is not addressed by a national model code depends upon the particular facts. Tex. Att'y Gen. Op. No. [KP-370](#) (May 5, 2021).

Community college and other taxing units had the statutory right to a bona-fide appeal in state district court of the ad valorem valuation of certain property by a tax appraisal review board, regardless of whether the taxing units had entered into an invalid legal-services contract regarding the appeal. [Kinder Morgan SACROC, LP v. Scurry Cty.](#), No. 19-1122, 2021 WL 1705212 (Tex. Apr. 30, 2021).

Personnel

Former technical college instructor filed a complaint with the Texas Workforce Commission (TWC) alleging that the college discriminated against him based on his age by not renewing his employment contract. His subsequent district court claim that the nonrenewal constituted retaliation against him in violation of the [Texas Commission on Human Rights Act](#) was dismissed because he did not claim retaliation in his complaint filed with the TWC, which was required before proceeding to district court. [Texas State Tech. Coll. v. Owen](#), No. 13-20-00264-CV, 2021 WL 1567505 (Tex. App.—Corpus Christi—Edinburg Apr. 22, 2021, no pet. h.) (mem. op.).

Former university medical resident failed to provide sufficient evidence that the university discriminated against her due to her age in violation of the [Age Discrimination in Employment Act](#) (ADEA) by terminating her from its residency program because the decision to terminate was based on her patient safety error and was not a pretext for discrimination. She also failed to provide sufficient evidence that the university violated the [Americans with Disabilities Act](#) (ADA) by terminating her due to her disability because the university had not recognized her disability or by terminating her in retaliation for her attorney complaining of discrimination in a letter to the university because there was no causal connection between the termination and the letter. [Canning v. Creighton Univ.](#), 995 F.3d 603 (8th Cir. Apr. 21, 2021).

University associate professor failed to show that the university retaliated against him in violation of the ADEA by removing him as a department chair based on the alleged discriminatory influence of his supervisor because the removal decision was instead

¹ The lower court's opinion was summarized in the April 2020 edition of the [Community College Legal Update](#).

based on an independent investigation. [Sinha v. Bradley Univ.](#), 995 F.3d 568 (7th Cir. Apr. 26, 2021).

Open Records Letter Rulings

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

- Information pertaining to specified city services. Tex. Att’y Gen. [OR2021-10111](#) (Apr. 20, 2021);
- An incident report. Tex. Att’y Gen. [OR2021-10417](#) (Apr. 23, 2021);
- Communications involving three employees. Tex. Att’y Gen. [OR2021-10467](#) (Apr. 23, 2021);
- Information pertaining to specified requests for proposals. Tex. Att’y Gen.

[OR2021-11345](#) (May 3, 2021), [OR2021-11885](#) (May 6, 2021);

- A case report involving the requestor. Tex. Att’y Gen. [OR2021-11707](#) (May 5, 2021);
- Information pertaining to a specified solicitation. Tex. Att’y Gen. [OR2021-11765](#) (May 5, 2021);
- Meeting minutes and a college committee report. Tex. Att’y Gen. [OR2021-11813](#) (May 5, 2021);
- Vendor responses and the contract from a specified solicitation. Tex. Att’y Gen. [OR2021-12275](#) (May 11, 2021);
- Information pertaining to contracts with three specified entities. Tex. Att’y Gen. [OR2021-12472](#) (May 12, 2021);
- A specified lease agreement. Tex. Att’y Gen. [OR2021-12640](#) (May 13, 2021); and
- A specified contract and invoices. Tex. Att’y Gen. [OR2021-12680](#) (May 13, 2021).



Recent Regulations and Guidance

The Texas Higher Education Coordinating Board took the following rulemaking actions:

- amended a [regulation](#) concerning advisory committees and subcommittees, including the reimbursement of expenses by members and the applicability of conflicting rules;
- amended a [regulation](#) concerning the terms of advisory committee members and the selection of committee officers;
- amended a [regulation](#) concerning the exemption of students from the college-readiness assessments required by Texas Success Initiative for students obtaining certain test scores;
- amended a [regulation](#) concerning the Minority Health Research and Education Grant Program; and

- repealed [regulations](#) concerning certain requirements for community colleges to establish a block schedule curriculum because the underlying statutory authority for the regulations expired on August 1, 2019.

The Texas Comptroller of Public Accounts (Comptroller) amended a [regulation](#) concerning the continuation of a residence homestead exemption for purposes of property tax administration.

The Comptroller [repealed](#) and [amended](#) regulations concerning the payroll deduction process for paying membership fees to certain law enforcement employee organizations, including deductions for employees of institutions of higher education and other state employees.

The Teachers Retirement System of Texas adopted an [emergency rule](#) amending the definition of a

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.

substitute for purposes of employment after retirement.

The Texas Department of Health and Human Services [amended](#), [repealed](#), and [adopted](#) regulations concerning the production, sale, and labeling of raw milk and raw milk products.

The U.S. Department of Labor [announced](#) the [withdrawal](#) of its independent-contractor rule concerning the determination of a worker's status as

an independent contractor or employee. The withdrawal was effective May 6, 2021.

The U.S. Department of Education amended a [regulation](#) to allow an institution of higher education to determine the individuals who are currently or previously enrolled and are eligible to receive emergency financial aid grants under the Higher Education Emergency Relief programs, as originally enacted under the Coronavirus Aid, Relief, and Economic Security (CARES) Act.



In the News

The Texas Governor issued [Executive Order GA-36](#) prohibiting any governmental entity, including a community college, from requiring any person to wear a face covering except in certain living centers, hospitals, and jails.

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

The Texas Governor [renewed](#) the disaster proclamation issued for all counties in Texas due to severe winter weather.

The U.S. Department of Education (DOE) [launched](#) a new website providing information on reopening colleges and universities, the Safer Schools and Campuses Best Practices Clearinghouse.

The Centers for Disease Control and Prevention (CDC) updated:

- [guidance](#) concerning COVID-19 for institutions of higher education;
- [guidance](#) for operating child care programs during COVID-19, including information regarding hand sanitizers packaged like food or drinks; and
- [guidance](#) for organizing large events and gatherings, including cleaning and disinfection information.

The Job Accommodation Network, funded by the U.S. Department of Labor, [updated](#) its webpage on COVID-19 accommodation and compliance.

The DOE [announced](#) the availability of approximately \$36 billion in emergency grants for institutions of higher education to assist in operations during the COVID-19 pandemic under the Higher Education Emergency Relief Fund (HEERF III).

The DOE issued [information](#) concerning certain public reporting requirements for Emergency Financial Aid Grants to students under the Coronavirus Response and Relief Supplemental Appropriations Act of 2021 Section 314.

The DOE [announced](#) its intention to establish negotiated rulemaking committees to prepare regulations for programs authorized under Title IV of the Higher Education Act of 1965 and to hold public hearings regarding topics to be addressed by the committees.

The U.S. Internal Revenue Service (IRS) issued [guidance](#) concerning tax breaks for continuation health coverage under COBRA pursuant to changes made by the American Rescue Plan Act of 2021.

The IRS [announced](#) a free webinar concerning the reporting of earnings for election workers to be held on June 24, 2021.

The final day of the [87th regular session](#) of the Texas Legislature is May 31, 2021.