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Case of the Month

University did not discriminate against Asian American applicants for admission in violation of Title VI.

Students for Fair Admissions, Inc. (SFFA), a non-profit organization that includes in its membership Asian Americans denied admission to Harvard College, sued the university and its president, fellows, and board of overseers (collectively referred to as Harvard), alleging the university's admissions policies violated Title VI of the Civil Rights Act of 1964, [42 U.S.C. § 2000d](#), by discriminating against Asian American applicants to the benefit of white applicants. The district court entered judgment for Harvard and dismissed the case. SFFA appealed.

After determining that SFFA had standing to bring the case, the First Circuit Court of Appeals considered whether Harvard's use of race in admissions would withstand strict scrutiny. Noting that Harvard identified specific, measurable goals for its use of race in admissions following a comprehensive study, the court concluded that the university had a compelling interest in a diverse student body.

Further, the court concluded that the admissions policies were narrowly tailored to that interest, finding Harvard did not use quotas or engage in racial balancing, nor did Harvard give certain applicants a predefined boost based solely on race resulting in race being the decisive factor in admissions. Instead Harvard considered race as part of a holistic review process. Harvard also considered race-neutral alternatives and appropriately determined they were not workable.

Finally, the First Circuit concluded Harvard did not intentionally discriminate against Asian Americans based on its practices to mitigate the risk of bias and on the statistical evidence. Finding no error in the lower court's decision, the First Circuit affirmed the district court's judgment. [Students for Fair Admissions, Inc. v. President and Fellows of Harvard Coll.](#), No. 19-2005, 2020 WL 6604313 (1st Cir. Nov. 12, 2020).

Why is This Case Significant?

This case is the first major case to apply the test established by the U.S. Supreme Court in [Fisher v. Univ. of Tex. at Austin](#), 136 S. Ct. 2198 (June 23, 2016). It is anticipated that this case will be appealed to the Supreme Court, potentially resulting in further modification of the legal standards addressing race-based admissions.

Highlights

Update 40 to the [Community College Policy Reference Manual](#) is now available.

New or updated on eLaw:
[First Amendment Basics](#)
[Campus Expression and Facilities Use](#)
[Epinephrine Auto-Injectors Administered by Community Colleges](#)
[Community College Websites: Required and Optional Internet Postings](#)

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

Dean placed on administrative leave and then denied a contract by a community college failed to provide evidence to support his claims that the college's actions constituted racial discrimination and retaliation and created a hostile work environment in violation of [Title VII of the Civil Rights Act of 1964](#). [Affiah v. Tex. Southmost Coll.](#), No. 20-40045, 2020 WL 6553790 (5th Cir. Nov. 6, 2020) (per curiam).

University did not retaliate against a tenured professor for asserting his U.S. Constitution [Fourteenth Amendment](#) due process rights by, after he refused to resign, bringing termination proceedings, commenting to the press on an ongoing misconduct investigation, and removing his teaching duties. The professor was also not retaliated against for asserting his U.S. Constitution [First Amendment](#) rights because his comments on the issue were not a matter of public concern. [Ryan v. Blackwell](#), No. 19-6447, 2020 WL 6437973 (6th Cir. Nov. 3, 2020).

Former employee failed to provide evidence that her termination as part of a university-wide reduction-in-force constituted intentional racial discrimination and retaliation in violation of [Title VII](#). However, she did provide sufficient evidence of improper discipline for her hostile work environment claim to survive summary judgment. [Webber v. Univ. of Tex. MD Andersen Cancer Ctr.](#), No. 4:18-CV-04291, 2020 WL 6703881 (S.D. Tex. Nov. 13, 2020).

Former community college professor whose contract was not renewed following a Title IX investigation cited no authority entitling him to challenge the investigatory process under [Title IX of the Education Amendments of 1972](#) as the subject of the investigation. His [Fourteenth Amendment](#) and [Texas Constitution](#) due process claims were also dismissed because he failed to allege sufficient supporting facts.

[Boles v. Navarro Coll.](#), No. 3:19-CV-02367-X, 2020 WL 6273765 (N.D. Tex. Oct. 26, 2020).

Search of a former professor and researcher's electronic devices as part of a fraud investigation was not overbroad, and the child pornography discovered on the devices constituted probable cause for a subsequent search; therefore, his allegations that the searches violated the U.S. Constitution [Fourth Amendment](#) were dismissed. [Xie v. Univ. of Tex. M.D. Anderson Cancer Ctr.](#), No. CV H-19-5014, 2020 WL 6287721 (S.D. Tex. Oct. 27, 2020) (adopting report and recommendation in [Xie v. Univ. of Tex. M.D. Anderson Cancer Ctr.](#), No. CV H-19-5014, 2020 WL 6293444 (S.D. Tex. Oct. 8, 2020)).

Former student with physical disabilities failed to show she was suspended and denied participation in university programs based on her disabilities or that she was otherwise qualified to participate as required to support her [Rehabilitation Act Section 504](#) and [Americans with Disabilities Act](#) (ADA) claims. [Cook v. Stephen F. Austin Univ.](#), No. 9:19-CV-201-RC-ZJH, 2020 WL 6545073 (E.D. Tex. Nov. 6, 2020) (adopting report and recommendation in [Cook v. Stephen F. Austin Univ.](#), No. 9:19-CV-201-RC-ZJH, 2020 WL 6553963 (E.D. Tex. Oct. 21, 2020)).

Students and Instruction

Former student expelled for sexual misconduct failed to show he was discriminated against during the disciplinary proceedings on the basis of his sex in violation of [Title IX](#) or on the basis of his disability in violation of the [Americans with Disabilities Act](#). [Rossley v. Drake Univ.](#), No. 18-3258, 2020 WL 6494710 (8th Cir. Nov. 5, 2020).

College student's [First Amendment](#) free speech rights were not violated when an instructor removed his post made in response to a class assignment on a class message board. The

post constituted school-sponsored speech and was therefore subject to censorship when reasonably related to legitimate pedagogical reasons that are viewpoint neutral. [Collins v. Putt](#), No. 19-1169-CV, 2020 WL 6325865 (2d Cir. Oct. 29, 2020).

Former student's claims of retaliation by a university and a hospital in violation of [Title VI of the Civil Rights Act of 1964](#) were dismissed because they were undermined by her allegations describing the accommodations and support she was provided and by the fact that she graduated. [Jones v. Southern Univ.](#), No. 20-30231, 2020 WL 6735616 (5th Cir. Nov. 13, 2020) (per curiam).

Community and Governmental Relations

Organization that includes university students had standing to bring [First](#) and [Fourteenth Amendment](#) challenges to, and to seek a preliminary injunction against the enforcement of, the university's campus expression regulations. Despite revision of the policies after commencement of litigation, the court declined to find the case moot. Though the court did not decide the merits of the case, the court declined

to find the merits of the case, the court expressed concern about the content of the regulations. [Speech First, Inc. v. Fenves](#), No. 19-50529, 2020 WL 6305819 (5th Cir. Oct. 28, 2020).

Open Records Letter Rulings

This month, the attorney general issued Open Records Letter Rulings¹ based on requests from Texas community colleges related to:

- Information related to a solicitation. Tex. Atty. Gen. Op. [OR2020-26247](#) (Oct. 19, 2020);
- Information regarding a request for proposals. Tex. Atty. Gen. Op. [OR2020-26491](#) (Oct. 21, 2020), [OR2020-27618](#) (Nov. 3, 2020);
- The college's agreement with a third party. Tex. Atty. Gen. Op. [OR2020-27615](#) (Nov. 3, 2020); and
- Bid tabulation and proposals for a bid. Tex. Atty. Gen. Op. [OR2020-27691](#) (Nov. 4, 2020).

Recent Regulations and Guidance

The Texas Attorney General adopted [regulations](#) addressing human trafficking prevention signs posted at transportation hubs, including buses and bus stops.

The Texas Comptroller of Public Accounts [amended](#) the [Manual for the Appraisal of Agricultural Land](#).

The comptroller [amended](#) the [Manual for the Appraisal of Timberland](#).

The Texas Department of Licensing and Regulation (TDLR) [amended regulations](#)

addressing esthetician and manicurist curriculum standards.

The Texas Department of Public Safety repealed [regulations](#) addressing motorcycle operator training courses because regulation of those courses was transferred to TDLR.

The Texas Funeral Service Commission [amended regulations](#) addressing the continuing education requirements for funeral service practitioners.

¹ 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 Texas Behavioral Health Executive Council adopted and amended [regulations](#) addressing the licensure and regulation of social workers, including educational requirements.

The U.S. Department of Defense, U.S. General Services Administration, and NASA amended

the [Federal Acquisition Regulation](#) to address the prohibition on the award of certain federal contracts to higher education institutions that prevent Reserve Officer Training Corps (ROTC) units or military recruiting on campus.



In the News

By December 1, each community college is required to report to state officials regarding the college's implementation of the campus expression provisions in [Texas Education Code section 51.9315](#) and post the report on the college's website.

November is [GenerationTX](#) (GenTX) Month focusing on college application and financial aid awareness initiatives.

The [Tri-Agency Workforce Initiative](#), a collaboration between the Texas Higher Education Coordinating Board (THECB), the Texas Education Agency (TEA), and the Texas Workforce Commission (TWC) to increase the

state's economic prosperity, launched its website and [released](#) the report Linking Education and Workforce: Spurring Economic Growth Across Texas.

The U.S. Department of Education issued an [interpretation](#) clarifying its enforcement authority for failure of an institution of higher education to disclose gifts from or contracts with a foreign source as required by [20 U.S.C. § 1011f](#).