Legal Issues Impacting Community Colleges

Supreme Court rules on affirmative action, plus recent decisions involving harassment and religious discrimination.

BY IRA MICHAEL SHEPARD, *ACCT GENERAL COUNSEL*

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THE FOLLOWING RECENT LEGAL DEVELOPMENTS ARE IMPORTANT TO the day-to-day administration of community colleges.

Supreme Court holds that the use of race as a factor in college admissions is unconstitutional — impact on workplace affirmative action plans not immediate. Rejecting the arguments of Harvard University, the University of North Carolina, and the Biden Administration that affirmative action programs were necessary to ensure campus diversity, the U.S. Supreme Court ruled 6-3 that the universities' use of race in their specific admission programs violates the Equal Protection clause of the Constitution and the Fourteenth Amendment. The decision is 237 pages long, with majority, concurring, and dissenting opinions. The majority decision is 47 pages (*SFFA v. Harvard* and *SFFA v. UNC*, 6/29/23).

"I made you a mixtape."

Chief Justice Roberts, who wrote the majority opinion, concluded that these affirmative action programs "...lacked sufficiently focused and measurable objectives warranting the use of race... involve racial stereotyping, and lack meaningful end points." He concluded, "We have never permitted admission programs to work that way, and we do not do so today."

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Supreme Court eases workers' ability to prove religious discrimination when an employer denies a request for an employment-based religious accommodation. In a case involving the U.S. Postal Service's denial of a Christian employee's request to be exempt from Sunday work, the U.S. Supreme Court modified the test applicable to an employer's denial of a religious accommodation, increasing the employer's burden to prove that such an accommodation would be costly.

In 1977, the Supreme Court had ruled that under Title VII an employer could deny an employee's request for a religious accommodation if the employer could demonstrate that the accommodation would create a "undue burden" (*TWA v. Hardison*). The current Supreme Court interpreted the longstanding *Hardison* rule to mean that in order for an employer to deny an employee's request for a religious accommodation, it must show the burden of granting the accommodation "would result in substantial increased costs in relation to the conduct of its particular business." (*Groff v. DeJoy*, U.S. No. 22-174, 6/29/23).

The plaintiff had asked the Supreme Court to modify the standard for denial of a religious accommodation to be consistent with the standard for denial of an Americans with Disabilities Act (ADA) accommodation. The Supreme Court did not grant that request, but has clearly raised the employer's burden in being able to reject a religious-based accommodation from how the prior standard applied since 1977.

Federal court of appeals rules that offensive music in the workplace is actionable sexual harassment, rejecting defense that it is offensive to both sexes. The Ninth Circuit Court of Appeals (covering California, Oregon, Washington, Idaho, Montana, Nevada, and Arizona) reversed a federal trial court dismissal of a sexual harassment hostile environment complaint brought by warehouse workers who complained about offensive, sexually graphic, and misogynistic music played by coworkers and supervisors. The trial court dismissed the case on "equal opportunity harassment" grounds, concluding that the music was offensive to both sexes. The court of appeals disagreed, holding that sex-based discrimination violates Title VII even if it is directed at more than one sex and can create a hostile work environment which is actionable (*Sharp v. S&S Activewear LLC*, 9th Cir. Blom. DLR, 6/9/23). The ruling effectively put an end to the defense which has been come to be known as the "equal opportunity harasser" defense.

College prevails against tenured professor in hostile environment sexual harassment case after appeals court rejects defenses that Education Department and university enforcement of Title IX is anti-male. The Fourth Circuit Court of Appeals (covering Virginia, Maryland, West Virginia, North Carolina, and South Carolina) affirmed the lower court decision dismissing a case brought by a tenured psychology professor at George Mason University who contested as "anti-male" the sanctions the university applied following its decision that the professor created a sexually hostile environment for graduate students.

Four students complained that the professor shared explicit talk regarding his sexual exploits, asked questions about their sex lives, and forced them to participate in the conversations in order to curry favor and receive favorable treatment for research and education opportunities. The university continued to employ the professor as a tenured psychology professor, but banned him from teaching graduate level courses and mentoring graduate students for approximately two years. It also disaffiliated him with its clinical psychology program for five to six years.

The appeals court rejected the professor's due process allegations, concluding that the sanctions did not amount to a "significant demotion" because he is still employed as a tenured professor. The court also pointed out that the sanctions are not permanent (*Kashdan v. George Mason University*, 4th Cir. No. 20-01509, 6/13/23). The court rejected the male bias accusations levelled against the university, its Title IX coordinator, its compliance coordinator, and the Education Department, concluding that the general allegations the professor raised did not amount to evidence of anti-male bias.

Ira Michael Shepard is Of Counsel with the law firm of Saul Ewing, LLP, in Washington, D.C., and ACCT's General Counsel.

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