



Legal Issues Impacting Community Colleges

Free speech, employment, and gender discrimination among recent legal issues involving higher education.

BY IRA MICHAEL SHEPARD, ACCT GENERAL COUNSEL

The U.S. Equal Employment Opportunity Commission (EEOC) has received reports from workers and advocacy organizations representing Jewish, Muslim, and Arab communities of an increase in workplace discrimination against protected groups resulting from the Israel - Hamas War. The EEOC has signaled an interest in pursuing domestic workplace discrimination that may result from “local, national, or global events.”

STATE UNIVERSITY EMPLOYEE HAS FIRST AMENDMENT, FREE SPEECH RIGHT to speak to press about alleged mishandling of student's sex harassment complaint. The Sixth Circuit U.S. Court of Appeals (covering Michigan, Ohio, Kentucky, and Tennessee) rejected a state university's defense of sovereign immunity and allowed a university employee's claim of First Amendment speech retaliation to proceed (*Ashford v. Univ of Michigan*, 6th Cir., No. 22-02057, 1/9/24).

The plaintiff alleged that the local campus police mishandled a student's sex harassment complaint against a professor. The plaintiff also alleged that he raised his concerns internally with his supervisor and with campus security before speaking with the press. In addition, the employee alleged that the newspaper came to him for comment and initiated the process which led to his statement.



“I’m sick of the economy, dear. Can’t we disagree about something else?”

The appeals court held that the employee's speaking to the press about the university's "mishandling" of the student's complaint was a matter of public concern. Further, this matter was not part of the employee's employment responsibilities or duties, and the court held that the plaintiff was not speaking to further his official duties but rather was speaking as a private citizen. The court therefore allowed the employee's claims, including that his 10-day suspension be expunged, to proceed to trial. The employee is also requesting an injunction against the university barring future retaliation for future speech he might engage in.

Professor claims loss of "endowed chair" title is unlawful gender discrimination against males. A federal trial court recently ruled that a professor's claim of gender discrimination resulting from his college's decision to remove his "endowed chair" designation following its initial punishment for his sex harassment transgressions can proceed to trial (*Simons v. Yale University*, 2024 BL 15344, D. Conn., No. 3:19-cv-01547, 1/17/24).

The professor alleged that only men are subject to multiple punishments for the same infraction. The court ruled that losing an honorific endowed chair title could be an adverse job action, even if pay was not reduced in that action. The court concluded that the plaintiff had already previously been punished in multiple ways concerning the incident, including losing his position as chief of the section of cardiovascular medicine and director of the university's cardiovascular research center in the college's initial action.

EEOC on alert to act on workplace discrimination resulting from the Israel - Hamas war. The new general counsel to the U.S. Equal Employment Opportunity Commission (EEOC), Karla Gilbride, indicated at her first press event that the EEOC has received reports from workers and advocacy organizations representing Jewish, Muslim, and Arab communities of an increase in workplace discrimination against protected groups resulting from the Israel - Hamas War. The EEOC has signaled an interest in pursuing domestic workplace discrimination that may result from "local, national, or global events." The general counsel indicated that it is a "priority" in the agency's "strategic enforcement plan" to be responsive in this area.

"We are reviewing the data to get a better handle on whether we at the EEOC are recognizing an uptick in discrimination on the basis of religion

or national origin affecting Jewish, Muslim, or Arab communities or people who might be perceived as belonging to those communities, even if they did not actually belong to those communities," Gilbride said. The general counsel indicated that global events in the past, such as 9/11, led to an increase in domestic workplace discrimination.

Appeals court revives tenured professor's claim that his termination violated his tenure contract without due process.

The Fifth Circuit Court of Appeals (covering Texas, Louisiana, and Mississippi) reversed a lower court's dismissal of a tenured biology professor's contract violation claim stemming from his termination. The appeals court ruled that the trial court erred in concluding that his claim was barred by the statute of limitations. The professor was terminated for alleged unauthorized research, which stemmed from his use of unauthorized undergraduate students to assist in his research, as well as the use of students' urine.

The professor was suspended in 2015, and the department chair concluded in mid-2015 that he would recommend the professor's termination. In 2018, the faculty personnel committee sided with the professor, but the university president rejected the committee's reinstatement recommendation later that year. In March 2019, the board of the Mississippi Institutions of Higher Learning (IHL) terminated the professor per the university president's decision. The professor sued in 2022, and the trial court dismissed his claim on the grounds of a three-year statute of limitations. The appeals court reversed the dismissal, holding that the IHL board's decision to terminate the professor in 2019 was when the statute of limitations would start running and the lawsuit was therefore filed within the three-year limit. The appeals court noted that the professor's termination was not final until reviewed by the IHL board.



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