



Legal Issues Impacting Community Colleges

Harassment, DEI training, and job transfers among recent legal issues involving higher education.

BY IRA MICHAEL SHEPARD, ACCT GENERAL COUNSEL

The Supreme Court reversed the holdings of some circuit courts of appeal that “significant harm” must be proven in order to state a claim of job discrimination resulting from a job transfer.

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

College prevails in Title IX lawsuit alleging co-student sex harassment, off campus, at a private party unrelated to the college. A federal judge recently ruled that a student plaintiff failed to provide evidence that their college had substantial control over the context in which an assault or sex harassment occurred to make the college liable under Title IX. The judge concluded that even though the college had control over the alleged harasser because of an alleged student code violation, this was not enough to substantiate jurisdiction under Title IX. (*Roe v. Marshall University Board of Governors*, 2024 BL 215044, S.D. W. Va. No. 3:22-cv-00532, 6/24/24).

When harassment occurs off campus, the judge ruled that the court must find some nexus between the “out of school conduct and the school.” The court concluded that the incident in



“I’m just wondering why you only say ‘no bad ideas’ after my suggestions, Janice!”

question took place at a private party at a private residence and the party was not sanctioned, hosted, or sponsored by the college or an entity affiliated with the college. Moreover, permission for the party was not sought by the college, and the college was unaware of the party until it was over.

The college's Title IX office determined four days after the incident that the matter should be handled by the college's office of student conduct, which the judge concluded was consistent with Title IX regulations at the time. The student office immediately issued an no contact order between the student and the alleged harasser and conducted a six-week investigation.

The alleged harasser, a male student, was ultimately placed on probation, required to participate in an alcohol education program, perform 20 hours of community service, and accept responsibility for violation of the student code. The plaintiff, the alleged victim, was also put on probation, required to participate in an alcohol education program, and complete 10 hours of community service after admitting to underage drinking. In dismissing the case against the college, the judge also concluded that the alleged harasser also faced possible independent criminal penalties.

Appeals court to review whether discharge for refusal to take mandatory DEI training is itself discriminatory. The U.S. Court of Appeals for the Seventh Circuit (covering Illinois, Indiana, and Wisconsin) will decide whether to affirm a federal trial court's dismissal of a discrimination claim brought by a white employee who claimed he was discharged in violation of federal and state anti-discrimination laws for his refusal to take the employer's mandatory DEI training, which he claimed was discriminatory.

The appeals court will hear oral arguments over the appeal of the dismissal of the case on summary judgement, holding that the plaintiff was discharged for refusing to take mandatory online DEI training, which he claimed was inherently biased against white employees, after admitting he had no knowledge of the contents of the DEI training (*Vavra v. Honeywell International Inc.*, case No. 23-02823, oral arg. sched 5/21/24).

The trial court concluded that the plaintiff's internal emails to the company's president which accused the company of "race baiting" were protected communications. The court further concluded that the plaintiff was not terminated for the communications but rather because of his refusal to take mandatory DEI training, which was not itself discriminatory. The employer's DEI and legal departments had properly vetted the training and concluded it was intended to foster an inclusive work environment.

U.S. Supreme Court to determine employer burden of proof to obtain an exemption to application of FLSA minimum wage exemptions. The Supreme Court has granted certiorari to resolve a split on the precise evidentiary burden applicable to employers attempting to justify an exemption to the application of the FLSA's minimum wage and overtime provision. Several appellate circuit courts are split over whether an employer must

prove an exemption by "clear and convincing evidence" rather than the lesser standard of "preponderance of the evidence." The Supreme Court will resolve this split and decide which standard is applicable to employers going forward. (*E.M.D. Sales Inc. v. Carrera*, U.S. No. 23-217, petition granted 6/17/24).

The issue involves whether the defendant firm's sales personnel fall within the "outside sales exemption." The company lost the case at trial when the federal court held that it did not meet the "clear and convincing" standard, while other circuit courts of appeals have applied the less stringent "preponderance of the evidence" standard.

Texas sues EEOC over guidance protecting LGBTQ+ employees from sex harassment relating to their choice of pronouns and bathrooms consistent with their gender identity. The Texas Attorney General has filed suit in federal court seeking to block enforcement of the U.S. Equal Employment Opportunity Commission's recent guidance on workplace harassment aimed at shielding LGBTQ+ employees who seek to use pronouns and bathrooms consistent with their gender identity. The Texas suit alleges that the most recent EEOC guidance goes beyond the statutory limits of Title VII, as did prior EEOC workplace guidance which was vacated in Texas Federal Court (*The State of Texas v. EEOC*, N/D. Tex., 2:21-CV- 194-Z, complaint, filed 5/21/24). Separately, a coalition of 18 Republican attorney generals have also filed suit alleging the same legal overreach by the EEOC, seeking to block its guidance.

Supreme Court rules that job transfers can violate Title VII even in the absence of "significant harm." In a unanimous ruling, the Supreme Court resolved a split among appellate circuit courts on the issue of whether a plaintiff must prove "significant harm" in order to state a claim of discrimination under the applicable anti-discrimination statutes as a result of a job transfer.

The Supreme Court reversed the holdings of some circuit courts of appeal that "significant harm" must be proven in order to state a claim of job discrimination resulting from a job transfer. However, the court stopped short of eliminating the "harm" requirement entirely, holding that a discrimination plaintiff must show that the transfer resulted in some level of injury or harm despite concluding that the statute does not require by its terms the high bar of "significant" harm (*Muldrow v. St. Louis*, US Case No. 22-193,4/17/24). The concurring justices, who did not dissent, argued that the change from "significant" harm to some other lower level of harm was confusing and would lead to further inconsistent litigation.



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