

Legal Issues Impacting Community Colleges

First Amendment issues, antidiscrimination statutes, student athletics, and disparate impact cases are among recent developments.

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The U.S. Equal Opportunity Commission (EEOC) announced in a memo to staff that it planned to administratively close most pending unintentional discrimination/disparate impact cases and investigations.

THE FOLLOWING RECENT LEGAL DEVELOPMENTS ARE IMPORTANT TO the day-to-day administration of community colleges throughout the country. All developments were current as of the publication date but are subject to change. This article does not provide legal advice; all readers are advised to seek legal guidance from their institution's legal advisors before acting on any of the topics discussed herein.

Appeals court revives lecturer's free speech lawsuit involving controversial off-campus speech, citing lack of disruption to the teaching process. The U.S. Court of Appeals for the Third Circuit reversed a trial judge's dismissal of a lecturer's First Amendment claims that his public university employer violated the First Amendment when it failed to renew his contract following public disclosure of his alt-right views expressed off campus, including praising Hitler. The appeals court concluded that the record did not



"A lawyer unpaid is justice denied."

support a conclusion that student disapproval of the lecturer's speech "disrupted the administration of the university." (*Jorjani v. N.J. Institute of Technology*, 3rd Cir. No. 24-02588, 9/8/25).

The court concluded that disputes between the lecturer and his teaching colleagues and administrators over his off-campus speech, which was recorded at a pub and publicly disclosed by the New York Times, are not the type of "disruption" required to override free speech rights. The court concluded that these disputes were "reasoned debate," not "disruption." The case was remanded back to the trial court for further disposition.

Unpaid mentors are not employees subject to protection under federal anti-discrimination statutes. The U.S. Supreme Court denied hearing and therefore let stand a 5th Circuit Court of Appeals decision denying an unpaid university mentor the ability to sue for sex discrimination under Title VII. The Fifth Circuit concluded that the plaintiff was not an employee given her unpaid status and not subject to federal anti-discrimination law protection (*Wessels Wells v. Texas Tech University*, US No. 24-10518, cert denied, 10/6/25; Texas Tech waived its right to oppose cert.)

The Fifth Circuit dismissed the plaintiff's discrimination claims, holding that failure to allege that the plaintiff was paid a salary or given other financial benefits while serving as a mentor was necessary to conclude that she was an "employee" subject to Title VII protection. In denying to hear this matter, the Supreme Court let stand a division in the circuits on this issue. Five circuits (the 5th, 2nd, 4th, 8th, and 10th) have denied unpaid workers the ability to use the federal anti-discrimination statutes. Only the 6th and 9th circuits have ruled that remuneration is only one factor in determining whether a worker is an employee subject to federal anti-discrimination statute protection and does not automatically exclude them from protection. As a result, the question of whether unpaid workers are subject to Title VII and other federal anti-discrimination law protection will depend on where the alleged employee is employed.

Female athletes appeal challenge to the \$2.8 billion NCAA antitrust settlement on Title IX grounds. A small group of four female athletes have appealed the U.S. District Court's approval of the NCAA \$2.8 billion settlement of the antitrust NIL (Name, Image, Likeness) litigation to the Ninth Circuit Court of Appeals. The female athletes are arguing that the court-approved settlement excluded all Title IX considerations and awarded over 90% of the \$2.8 billion settlement to male athletes (*House v. NCAA*, 9th Cir., No. 45-2137, Appellants Briefs filed 10/29/25).

The four female athletes pointed out that the settlement approved by the federal district court trial judge would net them between \$188 and \$456, while male athletes will largely receive tens if not hundreds of thousands of dollars. Under the settlement, institutions in the five most competitive sports conferences can share up to 22 percent of annual sports revenue with college athletes, or about \$20 million at each Division I institution. The back pay settlement of \$2.75 Billion

would be paid over 10 years to Division I athletes participating since 2016. Attorneys representing the plaintiff athletes who negotiated the multi-billion dollar settlement have stated that Title IX claims are irrelevant to an antitrust settlement.

Teacher loses retaliatory discharge claim that firing for refusal to use pronouns aligned with student's gender identity violates her First Amendment rights. A California K-12 teacher lost her First Amendment retaliatory discharge lawsuit against the school district's administrators and board members after arguing that her discharge for refusal to use pronouns that align with a student's gender identity violated her First Amendment rights. The federal court ruled that the school district's administrators and board members had qualified immunity which insulated them from the lawsuit (*Ramirez v. Oakland Unified School Dist.*, N.D. Cal. No. 3:24-cv-09223, 10/20/25).

The teacher was a kindergarten teacher who refused to use male pronouns as instructed by the student's parents, claiming that the use violated her religious beliefs and her First Amendment free speech rights. The plaintiff, who was Catholic, also filed a religious discrimination lawsuit under Title VII alleging that the determination constituted religious discrimination. The court also dismissed the Title VII claim, holding that the plaintiff waited too long to file suit. The court rejected the plaintiff's claim that the EEOC's notice of right to sue was sent to a wrong address as lacking proof.

EEOC to administratively close most "unintentional" disparate impact cases under investigation. The U.S. Equal Opportunity Commission (EEOC) announced in a memo to staff that it planned to administratively close most pending unintentional discrimination/disparate impact cases and investigations by September 30, 2025. The memo instructed EEOC staff to conclude most disparate impact cases and issue a "right to sue" letter to the charging party allowing it to pursue the claim with his or her own counsel in federal district Court by October 31, 2015. This is the latest EEOC enforcement shift adopted by the agency in response to the current administration's executive orders. Separately, the EEOC has already begun curtaining the litigation and processing claims of transgender discrimination pursuant to the Trump Administration directive that the government recognizes that there are only two sexes.



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