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Legal Update for Community Colleges

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The **Legal Update for Community Colleges** is a monthly update of selected significant court cases pertaining to post-secondary institutions. It is written by Johnny R. Purvis for the **Safe, Orderly, and Productive School Institute** located in the Department of Leadership Studies at the University of Central Arkansas. If you have any questions or comments about these cases and their potential ramifications, please phone Purvis at **501-450-5258**. In addition, feel free to contact Purvis regarding educational legal concerns; school safety and security issues; crisis management; student discipline/management issues; and concerns pertaining to gangs, cults, and alternative beliefs.

Topics:

- Labor and Employment
- Student Discipline

Topics

Labor and Employment:

“Failure of University to Restore Laboratory to Professor Did Not Constitute an Adverse Employment Action”

Chen v. Wayne State Univ. (Mich. App., 771 N. W. 2d 820), June 2, 2009.

Alleged failure of state university to restore tenured professor’s access to a laboratory did **not** constitute a “materially adverse employment action,” so as to maintain civil rights action against a university for natural origin, age discrimination, and retaliation for filing a claim with the Equal Employment Opportunity Commission (EEOC). When the professor had a lab, he did *not* use the lab to conduct research, obtain grants or supervise graduate students. Furthermore, professor rejected an offer of a new lab on the grounds that it was too small and the offer of a second lab on the grounds that it was ostensible radioactive.

“University Was Entitled To Terminate Its Contract with an Administrator”

Marks v. Smith (N. Y. A. D. 1 Dept., 885 N. Y. S. 2d 463), September 15, 2009.

Fordham University **was entitled** to terminate its contract with plaintiff, which appointed her to a tenure track associate professorship, subject to the provision that plaintiff first serve as an associate dean and be paid as an administrator and not as a faculty member until her full-time faculty status began. In response to the plaintiff’s repudiation of the contract by refusing to accept any teaching assignment for the fall term, which refusal lacked any justification; plaintiff **effectively abandoned** her faculty appointment, thereby becoming the first party to breach her contract.

“Associate Professor Sufficiently Alleged Title VI Retaliation Claim”

Kimmel v. Gallaudet University (D. D. C., 639 F. Supp. 2d 34), August 4, 2009.

University professor’s allegations that she was discriminated against by university for deaf persons, because of the nature and extent of her disability deafness, including the ways in which she chose to respond to her deafness that did **not** conform to what was preferred or accepted by university officials. Therefore, such discrimination **was sufficient for a disability discrimination claim** under Title VI of the District of Columbia Human Rights Act even though professor did not allege discrimination solely due to her deafness, but to her particular kind of deafness and approach to her disability.

Student Discipline:

“Fraternity Five-Year Loss of Recognition by University Upheld”

Alpha Kappa Lambda Fraternity v. Washington State University (Wash. App. Div. 3, 216 P. 3d 451), September 17, 2009.

Student conduct board’s decision to sanction fraternity to a five-year period of loss of recognition from university was **not** arbitrary and capricious. Evidence demonstrated that illegal drug activity was actively condoned by many of the fraternity’s officers and even those officers who may not have been involved in the drug activity failed to take reasonable precautions to stop it. Furthermore the general practices of the fraternity itself contributed significantly to the drug culture of the house.

Books of Possible Interest: Two recent books published by Purvis –

1. Leadership: Lessons From the Coyote, www.authorhouse.com
2. Safe and Successful Schools: A Compendium for the New Millennium-Essential Strategies for Preventing, Responding, and Managing Student Discipline, www.authorhouse.com

Note: Johnny R. Purvis is currently a professor in the Department of Leadership Studies at the University of Central Arkansas. He retired (30.5 years) as a professor, Director of the Education Service Center, Executive Director of the Southern Education Consortium, and Director of the Mississippi Safe School Center at the University of Southern Mississippi. Additionally, he serves as a law enforcement officer in both Arkansas and Mississippi. He can be reached at the following **phone numbers:** 501-450-5258 (office) and 601-310-4559 (cell)