

March 2011 (#'s 614 & 615)

Legal Update for Community Colleges

March 2011

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West's Education Law Reporter

December 10, 2009 – Vol. 249 No. 2 (Pages 547 – 988)

December 24, 2009 – Vol. 250 No. 1 (Pages 1 – 495)

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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:

- Admissions
- Civil Rights
- Labor and Employment

Topics

Admissions:

“State University’s Consideration of Race as an Admissions Factor was Narrowly Tailored to Serve a Compelling Interest”

Fisher v. University of Texas at Austin (W. D. Tex., 645 F. Supp. 2d 587), August 17, 2009.

State university’s consideration of race as one “factor” in its admissions process **was narrowly tailored to support university’s compelling interest in achieving a critical mass of minority students**, as required to satisfy the equal protection clause of the Fourteenth Amendment of the United States Constitution. Race was one of seven “special circumstances,” which was in turn one of six factors that made up an applicant’s personal achievement score. At no point in the process was race considered individually or given a numerical value. University did not accept any applicant based solely on race or ethnicity, university had given serious good faith consideration to race-neutral alternatives, including the state’s admission of students under Texas Top Ten Percent Law. Furthermore, the university’s admissions and enrollment policies were evaluated every five years to determine whether consideration of race remained necessary to achieve a diverse student body.

Civil Rights:

“University’s Regulation of Student Anti-abortion Organization’s Protected Speech Did Not Violate the First Amendment”

Rock for Life—UMBC v. Hrabowski (D. Md., 643 F. Supp. 2d 729), July 8, 2009.

Student anti-abortion organization challenged the constitutionality of a state university’s former policy on use of the school’s facilities, as allegedly granting the university unbridled discretion to discriminate based on the content of speech and viewpoint of speakers in violation of the First Amendment and Equal Protection Clause. The United States District Court, D. Maryland, held that the case **was rendered moot** by university’s voluntary revision of its policy to no longer allow university officials to relocate events at facilities for any reason. Since the university had *no* intention to reenact the former policy, but rather, made revised policy as public and a permanent as possible by formally changing the policy, alerting the district court as to the policy’s revision, and updating the university’s public website to include the revised policy.

Labor and Employment:

“Lack of Collegiality Was Legitimate Ground for Termination”

Bernold v. Board of Governors of University of North Carolina (N. C. App., 683 S. E. 2d 428), October 6, 2009.

Lack of collegiality **was legitimate ground** on which professor could be terminated from his tenure teaching position at state university. The engineering college regulations stated that “each faculty member is expected to work in a collegial manner.” Professor was aware that collegiality was a professional expectation for his position and that his collegiality was one possible focus of evaluation during his post-tenure reviews. Furthermore, the professor had received unsatisfactory post-tenure reviews in his last three consecutive years **which constituted sufficient evidence** of his professional incompetence **to justify** his termination.

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)