

Dean & Provost

Practical Advice and Strategies for Academic Leaders

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Academic Freedom

The case for academic freedom: Student opinions, faculty standards

By Nancy Thomas, J.D., Ed.D.

On March 28, the U.S. Court of Appeals for the Tenth Circuit decided *Pompeo v. Board of Regents of the University of New Mexico*, ruling in favor of a university that had been accused of discriminating against a student because of her political views. The court's decision affirmed faculty academic freedom and offered guidance to professors navigating challenging waters of controversial political issue discussions and course content at public institutions. It is also relevant to private institutions, where academic freedom is usually a normative value and contractual right. While the case may yet be appealed, the opinion seems intentionally written to withstand judicial review. I believe this will be a widely cited and respected ruling.

The court's ruling also aligns with our research at Tisch College's Institute for Democracy and Higher Education, which for the past two years has been examining campus climates for political learning and engagement in democracy. We've visited public and private colleges and universities across the country and analyzed data from focus groups and interviews involving more than 500

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Professional Development

The challenges and rewards of leading as an interim administrator

By Costas Spirou, Ph.D.; and Kelli Brown, Ph.D.

Colleges and universities across the country are in the midst of unprecedented changes as the higher education enterprise is undergoing significant shifts and is subjected to rapid fluctuations. It is within this highly complex environment that interim administrators are often called upon to lead for various reasons. Planned or unexpected transitions of current personnel, failed searches, and internal complications brought on by politically induced circumstances require that those in interim capacities provide stability and leadership.

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Campus staff not diverse

Racial and ethnic minorities are underrepresented among higher education staff members, according to the College and University Professional Association for Human Resources annual Staff in Higher Education Salary Survey. The study found that only 29 percent of higher ed staff members are racial or ethnic minorities, and representation varies depending on the type of position, with 40 percent of service and maintenance positions held by staff members of color versus 16 percent of skilled craft positions.

The survey found that staff members of color earn less, with minority service and maintenance members earning 90 cents on the dollar versus white counterparts.

Read the study at <http://bit.ly/2seKJ4i>. ■

Tennessee passes free speech law

A free speech bill inspired by recent on-campus protests, like the University of California, Berkeley's protests in response to Breitbart's Milo Yiannopoulos'

speech on campus, has passed and been signed into law in Tennessee. The new law states that it "is not the proper role of an institution to attempt to shield individuals from free speech including ideas and opinions they find offensive." The law prohibits so-called "free speech zones" that confine protests to a certain area on campus.

The law also bans institutions from revoking invitations to speakers and protects faculty members from being punished for classroom subjects that are deemed on topic for the subject matter at hand. ■

Colleges not adequately training workers

The United States is not developing an adequately trained and skilled technical workforce, according to a report from the National Academies of Sciences, Engineering, and Medicine. Employees in health care and manufacturing have the biggest training gaps, according to the report, which singled out those who work as medical laboratory technicians, computer support specialists, and installation and repair technicians.

The report suggests that community colleges and other institutions that offer credentials in these areas should create more flexible and integrated programs and offer more supportive services to students in these areas.

Read the full report at <http://bit.ly/2rVbqIF>. ■

Social justice concerns affect enrollment

The University of Missouri saw a 35 percent drop in enrollment between 2015 and 2016 after protests in 2015 by students of color. School leaders say they believe the drop in enrollment was due in large part to the protests, according to *The Chronicle of Higher Education*.

The increased politicization of incoming freshman students may mean the protests were enough to drop the university from college lists, and many students who were high school juniors at the time of the protests may have written the university off completely. The protests led to the resignation of both the university president and the chancellor. ■

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Reflections on academicians who have gone before us

By Dawn Z. Hodges, Ph.D.

Earlier this summer, I was checking my 6-year-old granddaughter out of the last day of first grade. I could tell she was reluctant to leave her teacher.

When she finally let go and let herself walk down the hall with me, I said, "It's hard to leave first grade, isn't it? Our teacher, and all our friends." She agreed and said she wished it could still be school. This is a kid who was going to the beach the following week!

Well, I was glad that she had a good experience in first grade and liked her teacher.

It bodes well for all the years ahead. It made me reflect on my own school years. But I concentrated on the professors and administrators who had a big influence on me in college. One day when I was an undergraduate, I ran smack into my constitutional law professor, Dr. Fred Jewell, coming from the library. He wasn't exactly who I'd want to run into. He called my name.

"Dawn."

"Yes, sir," I responded, probably shaking in my shoes.

"I've noticed on your self-chosen cases that you've been choosing the short ones. The ones that don't take much effort. That's OK, but you have a lot of potential; you're a good writer, and analyze well. You are selling yourself short."

"Yes, sir. Thank you for that feedback. I'll do better." And with that, we parted ways. Argh! I was never so embarrassed. But he was dead-on correct! I was selecting the short cases just to get them done. His advice has stayed with me for the past 40 years.

Dr. Fred Alexander, dean of enrollment management at my undergraduate university, was my first boss at an academic institution. I never knew exactly what it was that he saw in me that made him take a chance on me. You see, he worked for a very conservative Christian college and for years only young men had represented the college to the public. I was the first female who had been hired to represent the college to the public. But I believe he never regretted his choice and I know I learned much from my mentor and friend. I remain friends with his three children who are my age.

And the third academician who had great influence

over my college years was Dr. Paul Sharp, the president emeritus of the University of Oklahoma. He was my first professor in my Ph.D. program. Dr. Sharp was

completely unassuming. He did not act like anyone should treat him special because of his status on campus, and he was one of the nicest I had ever met. Even at 32, I was his youngest student. Since this was higher education administration, most people were further along in their careers than me.

One assignment was to write a paper about "the president's role in higher education." I wrote a paper about my alma mater and the president who was there while I went to school and worked there, the one who had just become the president (he was my business teacher), and the one who had been president during the 1960s. I made an A on the paper, and Dr. Sharp praised me about what a clever idea it was to write the paper as a study of three real presidents. He said he hadn't expected that. I was so pleased that the words he bestowed on me kept me going through graduate school. I never forgot the encouragement of Dr. Sharp.

I'm sure you had your own academicians who molded your collegiate years. Take a few minutes every now and then to ponder them and to appreciate what influence they had on your brain power! ■

About the author



Dawn Z. Hodges, Ph.D., is vice president for academic affairs at Southern Crescent Technical College. Her regular column, "The Reflective Leader," appears monthly in *Dean & Provost*. Email her at dhodges@sctech.edu. ■

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professors, students, and administrators. Our case studies highlight the importance of balancing student expressive freedom and faculty academic freedom. We found promising examples of professors who artfully manage classroom discussions on politically charged topics in the manner supported and affirmed by the circuit court's decision: through careful preparation, well-communicated expectations and standards, and principled facilitation and conflict management. These lessons for educators, always valuable, are especially vital in these politically polarized times.

About the author

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Amendment rights. Pompeo claimed that both the reactions to the paper and the suggestion that she had been disruptive and disrespectful in class were

based on Pompeo's viewpoint rather than on a legitimate educational concern. In other words, Pompeo claimed that the professor and the department chair were personally offended by the student's *political* viewpoint — her anti-gay perspective — and

used pedagogical purposes as a pretext, negatively affecting Pompeo's grade and future in the class. A lower court ruled on summary judgment (a decision based on the briefs, with limited testimony) in favor of the university and the faculty members, and Pompeo appealed.

The facts

In 2012, Monica Pompeo enrolled in an upper-level course at the University of New Mexico called "Images of (Wo)men: From Icons to Iconoclasts." The stated pedagogical goals for the course included teaching students to think critically, write analytic papers, and, according to the syllabus, "discern critical argument from opinions and polemics." In the syllabus, the professor warned that students would view sexually explicit material and should expect "perhaps even incendiary classroom discussions." The syllabus also stated that students would be expected to act "with respect and care for everybody's marvelously complex subjectivities." Students were advised that they may be required to rewrite papers that did not satisfy these requirements.

The professor assigned the 1985 film *Desert Hearts*, about a lesbian romance, and required students to write an analytic paper about the film. The plaintiff's paper included disparaging statements such as referring to lesbians as "barren" and describing the film as "perverse in its desire and attempt to reverse the natural roles of man and woman" while offering little critical assessment of the film. The professor discussed the paper with the student and explained that "inflammatory" or "polemical" statements must be "backed up with critical, authoritative citations and sources." In subsequent classroom discussions, the professor found the student to be domineering, speaking out of turn and interrupting others. Both the professor and Pompeo took the matter up the academic ladder. A decision was made that Pompeo would finish the class as an independent study with the department chair, but she never resubmitted the paper and eventually withdrew from both the class and the university.

Pompeo sued the university, the professor, and the department chair, alleging violations of her First

The law

The U.S. Circuit Court of Appeals affirmed the lower court's ruling and, in a 28-page decision, carefully walked through the debate over First Amendment rights at public universities. On one hand, students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate" (*Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (1969)). Faculty members should establish trusting relationships with students and encourage students to inquire freely (*Sweezy v. New Hampshire*, 354 U.S. 234 (1957)). (*Sweezy* is usually cited for its articulation of the four essential freedoms in higher education: the right to determine who may teach, what may be taught, how it shall be taught, and who may be admitted to study.) Here the Court warned that academics should avoid casting "a pall of orthodoxy" over the classroom (*Keyishian v. Board of Regents*, 385 U.S. 589 (1967)). In other words, faculty members should not indoctrinate students.

On the other hand, courts "do not and cannot intervene in the resolution of conflicts which arise in the daily operations" of schools, unless the decision infringes on an individual's constitutional rights (*Ep-person v. Arkansas*, 393 U.S. 97, 104 (1968)). Here, the court went to great lengths to clarify the right of teachers to restrict speech for pedagogical purposes and to assure that students learn "whatever lessons the activity is designed to teach." Educators may limit speech that is "poorly written, inadequately researched, biased or prejudiced." It is only when a decision to limit speech has *no* educational purpose that the courts might intervene.

Two parts of the ruling answer some long-standing questions about viewpoint discrimination that might provoke heightened judicial scrutiny and cause a court to overrule the judgment of a teacher or professor;

specifically, when a matter involves viewpoint discrimination about “race, gender, economic class, religion or political persuasion” (“the *Settle* factors,” quoting *Settle v. Dickson County School Board*, 53 F.3d 152 (6th Cir. 1995)). Interestingly, Pompeo did not argue that the professors were motivated by these impermissible factors.

Nonetheless, the court observed that while Pompeo’s allegations concerned “a politically charged topic,” to warrant stricter scrutiny the faculty bias or prejudice would need to concern *partisan affiliation* — political parties and candidates — not merely views that “cross some threshold of political salience.” Simply stated, a student’s or professor’s attitudes toward lesbian lifestyles may be politically charged, but disagreements about them do not reach the level of discrimination based on political persuasion.

Indeed, the court noted that Pompeo’s assertion that professors may not restrict student speech based on opposition to the viewpoint expressed in that speech “is plainly incorrect.” I interpret this to mean that the courts are not going to meddle in pedagogical decisions based on accusations of political correctness.

Nor is viewpoint neutrality necessary or even appropriate. On this, the court cited the *Settle* case, which said:

... teachers, like judges, must daily decide which arguments are relevant, which computations are correct, which analogies are good or bad, and when it is time to stop writing or talking ... it is the essence of the teacher’s responsibility in the classroom to draw lines and make distinctions — in a word to encourage speech germane to the topic at hand and discourage speech unlikely to shed light on the subject. Teachers therefore must be given broad discretion to give grades and conduct class discussion based on the content of speech.

The court’s opinion also included a thoughtful but firm review regarding standards — objective, subjective, and whose — when considering viewpoint discrimination. In short, the court applied a subjective standard, concluding that if the professor deems a paper to be substandard, then it is substandard. The student has no constitutional right to make statements found to be inflammatory from the professor’s point of view without being critiqued or asked to make revisions.

One cautionary note, based on the court’s comparison between the facts of this case and a prior ruling: The plaintiff in *Axson-Flynn v. Johnson*, 356 F.3d 1277 (10th Cir. 2004), was a religiously observant Mormon student who objected to swearing as part of an acting class assignment. Ruling in favor of the student who alleged religious viewpoint discrimination, the court noted the demeaning ways the professor and

academic administrators treated her.

Her professor told her to “get over” her language concerns. Administrators told her that her request for language accommodations was unreasonable, that other “good Mormon girls” did not object, and that she could continue the program if she modified her values.

Finding in favor of the student, *Axson-Flynn* reminds us that administrators and professors may not degrade or disparage students. The respect the professor showed to the student in *Pompeo* was duly noted by the 10th Circuit Appellate Court. ■

What the case means

The *Pompeo v. Board of Regents of the University of New Mexico* ruling affirms what most professors already know to do, particularly in discussion-based courses:

- ✓ Clearly state the pedagogical aims of the course in the syllabus.
- ✓ Provide general but fair warning in the syllabus if the course will involve discussions or assignments with materials that are likely to offend some students.
- ✓ Establish clear expectations about academic standards, particularly regarding supporting statements and opinions with facts.
- ✓ Set the right tone in the class by insisting on civility and respect from students, and then model that tone. Professors may challenge student opinions and statements, but they should not cross a line and denigrate or humiliate a student.

Based on our research at Tisch College’s Institute for Democracy and Higher Education, I would add that professors need better preparation in leading discussions. They should know, for example, how to use the first class to build relationships, trust, and rapport, and to set the tenor and attributes of the learning community the students and professor collectively wish to create for the course. Pedagogical aims, intellectual standards, and expectations for classroom behavior and tone should be discussed and clarified on the first day of class and revisited periodically throughout the term.

Professors can relax a little when discussing politically charged topics. Students do not have the right to unlimited free speech, particularly if the speech is inconsistent with the pedagogical aims of the course, and students cannot claim viewpoint discrimination based on political persuasion unless the professor attacks a student’s party affiliation or, for example, candidate choice. It is entirely appropriate for professors to challenge students’ political viewpoints to get them to think more critically and to support their opinions with evidence. Indeed, that is the job. ■

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In fact, at some large institutions, interim appointments are the norm and are always present within the organization. Consider that due to the extraordinary tension that recently faced the University of Missouri, Mizzou started the spring 2016 semester with 15 administrators serving in an interim role.

Serving in an interim capacity is not an easy task. In fact, it may be one of the most challenging positions in higher education, given the rapid changes and increased pressures facing the academy. At the same time, interim appointments can bring about extensive professional growth and opportunities to gain a deeper understanding of our complicated and dynamic enterprise.

In what follows, we share the experiences of two

interim administrators. Our reflections are the outcome of one of us serving as an interim president of a regionally comprehensive university and the other as an interim provost of a liberal arts university.

Each of us was in those positions for seven months, and we both also bring additional interim administrative experiences as an associate provost and a dean. So what are some of the challenges that we faced? What are the rewards? What advice could we share with others who may find themselves embarking on similar situations?

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The interim challenges

1 Your colleagues' view. Some of your colleagues will be surprised that you were chosen to serve in an interim capacity. They may view you differently now, and that can be both positive and negative. Be aware of a possible behavioral change and how your

Follow this advice as you take on an interim role

Consider these reflections and suggestions for those preparing to take on an interim administrative role at their institution:

1. It is all about the students. When getting involved in the day-to-day affairs and demands of the position, it is easy to lose focus of the bigger picture. When that happens, keep in mind why you are doing what you are doing. It is and should be about the students. All decisions, especially the difficult ones, must be made with that focus in mind.

2. Be professional. Maintaining a professional approach in all situations is very important. You will often be called upon to represent your institution. You will also find yourself in circumstances that are contested, requiring that you address challenging issues. Approaching those situations in a professional manner will ensure that you do not allow emotions or personal matters to take over and dominate.

3. Be objective and fair. You will now need to view the institution from a very different lens, a much wider lens. Embracing this broader perspective quickly and understanding that your role and outlook has changed is crucial. Keep in mind that your interim position is not to advocate for your previous unit or your disciplinary home. Being impartial and transparent will help ensure that you maintain this critical neutrality.

4. Think about the implications. Be mindful of the unintended consequences as you are called to make decisions. Many of the issues you will be facing are likely to be multifaceted. The greater the interim's responsibility within the organization, the greater the

impact these decisions will have on the institution. Be mindful of not only the short-term impacts of your decisions, but also the long-term ramifications associated with these decisions.

5. Seek support. Being in a leadership position does not mean that you are expected to do everything alone. There are many helpful colleagues around you who want you to succeed and are willing to provide you with assistance. Reach out to them and seek their suggestions and perspectives. They likely bring many years of experience and expertise that will prove most beneficial. Having their guidance and support will ensure your success.

6. Think about the position. Prior to accepting the interim role, carefully clarify the "terms" of the interim with the supervisor. This would include compensation issues, but also should include a clarification regarding the degrees of freedom the interim has in making decisions. What decisions does the supervisor feel comfortable with the interim making? Are there areas that the supervisor would rather the interim leave for the permanent leader?

In closing, keep in mind that even though you are expected to fulfill the responsibilities of the office, you may not have the remuneration, security, and distinction given to the permanent leader. Enjoy the interim experience! While there are many challenges in navigating the interim role, personal and professional growth opportunities abound, making this a great way to clarify your goals and future advancement options.

— Costas Spirou and Kelli Brown ■

new position may impact your professional efforts and personal relationships.

2 Your new direct reports' view. You will now have a number of new direct reports. While the majority of those will adjust accordingly and continue to function as before, some may view this as an opportunity to advance their interests. Since you lack a historical context, this may prove a significant challenge. It should be noted that this would likely occur in the early stages of your tenure, when you are least familiar with the new setting.

3 Time limitations. There is typically little time to prepare for service as an interim. It all happens very quickly, and you must be flexible as you enter this new role. Disregard the fear that asking questions may reveal your limitations. Ask questions anyway. Although there is an expectation to know how to perform the job right away, be prepared to expend quite a bit of extra time and energy learning the ropes.

4 Your new supervisor. The interim must quickly learn how to "manage up." This involves getting to know the new supervisor and understanding what he wants to know and doesn't want to know about. The interim must learn the idiosyncrasies of the new supervisor—reporting requirements, personality, etc.

5 A balancing act. The interim must balance the delicate dance of making decisions that will continue moving the institution forward versus maintaining the status quo and preparing the institution for the future permanent leader. How far does the interim go in making decisions that might bind the future of the permanent leader? There are some decisions that the interim may not feel comfortable

making, nor have the clearance to make, such as filling vacant positions.

The interim rewards

1 An extraordinary growth opportunity. This benefit will become apparent very quickly, as you will learn quite a bit about higher education in general and about your own institution in particular. In fact, there will be areas of the institution that you never considered before and now you will come to value their importance within the organization. These macro-level opportunities are invaluable.

2 Gain a deeper understanding of your position and those of others. In addition to learning about your institution, you will also come to know quite a bit about the position itself. Although professionals often reflect on the role that various positions have on the effectiveness of the organization, unless you serve in that position, it is impossible to completely understand its complexities, scope, expectations, and demands. You will also learn about the human condition. You are likely to come in contact with colleagues whose behavior can be unexpected.

3 Complexities abound. It is probable that you will come to realize that the various issues before you are multifaceted. You will thus gain a more realistic view of higher education and an appreciation for the complexities of issues. While some of those situations are quite clear, many others are very complicated and require that you negotiate them with great attention. This experience will prove helpful in developing your professional skills and contribute to your growth as a more effective leader. ■

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Adopt 10 key strategies for successful leadership

By Joan Hope, Ph.D., Editor

NEW ORLEANS — If you're looking for higher-level leadership opportunities, showing leadership in your current position can get you noticed. Chemene Crawford, vice president for student services and enrollment management at El Centro College in the Dallas County Community College District; and Ann Johnson, vice president for student success at Lone Star College, Tomball, explained how to lead from any position at a session at the American Association of Community Colleges annual convention.

Adopt these 10 strategies for successful leadership:

1 "I" am not smarter than "we." "I might know the direction I need to go, but I need the group to get there," Johnson said.

2 Know your leadership style and how it impacts trust. How you interact with subordinates, peers, and bosses matters, Crawford said. To effectively communicate the message of change through your college, you need to know your strengths and weaknesses so you can surround yourself with people who complement your strengths, she added.

3 Don't be afraid to grow in your leadership. Support the message or goal set by your college's president, Johnson said. Officials need to work together and not undo one another's work, she added.

4 Evaluate your leadership strengths and weaknesses. Communication and feedback are useful, and baseline data about your strengths can help. And surround yourself with people who complement your strengths. When Crawford was hired for her position, she was asked to restructure the office. After she arrived, she learned the college's president was retiring and her search had been contested. In addition, many staff members had worked at the college for 35 or 40 years. It was important for Crawford to work closely with people who knew and were part of the college culture and to make an effective sales pitch for her strategies.

5 Don't be afraid to make tough decisions. Some people might not accept a culture shift. "Let me help you out" is Johnson's approach to them, meaning she helps staff members understand what they need to do or find a position that suits them better. "Fit is very real," she said.

6 Value and engage the people around you. "As you grow, they will grow," Crawford said. Staff members need to perceive opportunities for upward mobility, and they need to know what a winning team looks like, she added.

7 Have fun and enjoy your position. At the end of each day, Johnson likes to be able to say, "I

or my team made a difference in someone's life."

8 Empower through delegation. If you empower people, they might want your job, Crawford said. But that's OK, she added. "Maybe they can get one similar to yours," she said.

9 Be flexible. "You can't manage all people the same, but you have to do it the way they can accept it," Johnson said. For example, Johnson has an employee who needs a lot of face time. They both come in early so they can talk.

10 Never forget to say "Thank you." At a former college, Crawford started the "CIA," or "caught in the act," award. Staff members were presented with a certificate and gift card for excellent service. And it's important to thank colleagues and your president when they support you on an issue, Johnson said. ■

Know your leadership style

To develop a high-performance culture, think about what leadership style best fits your needs. "There is no one style that works for everyone," said Ann Johnson, vice president for student success at Lone Star College, Tomball. Johnson uses a combination of styles depending on the situation.

Johnson and Chemene Crawford, vice president for student services and enrollment management at El Centro College in the Dallas County Community College District, described the six styles of leadership identified by author Daniel Goleman at a session at the American Association of Community Colleges annual convention.

1. Visionary. This style works when your unit needs to go in a different direction.

2. Coaching. You develop individuals so they have the expertise they need.

3. Affiliative. You rely on teamwork to move forward.

4. Democratic. You draw on team members' knowledge and skills.

5. Pacesetter. The leader models expected behavior.

6. Commanding. Subordinates must do as the leader says. This style is sometimes appropriate, such as in the military, but it does not work for building teams. ■

Submit an article

For *Dean & Provost* writers' guidelines or to suggest a topic, please contact the editor, Joan Hope, at jhope@wiley.com. ■

AT A GLANCE

A Review of This Month's Lawsuits and Rulings

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POLICIES AND PROCEDURES

College agrees to accommodations for students at judicial hearings

Case name: *Letter to: Yavapai Community College*, No. 08-14-2214 (OCR 02/05/15).

Ruling: The Office for Civil Rights closed a complaint against Yavapai Community College after the college agreed to enter into a resolution agreement that resolved the complainant's disability-discrimination allegations.

What it means: Postsecondary institutions should ensure that their policies and procedures for investigating and adjudicating student conduct allow individuals with disabilities the opportunity to request and use disability accommodations, and they should make those policies and procedures known to students involved in judicial processes.

Summary: A student with a disability enrolled at Yavapai Community College claimed the college discriminated when it failed to accommodate his disability during a judicial hearing, treated him differently on the basis of his disability, and retaliated by failing him in a course.

OCR met with both parties to facilitate a mediated resolution, and the college and student entered into an Early Complaint Resolution Agreement to resolve the allegations.

Accordingly, OCR advised both parties that it was closing the complaint and noted that while it would not monitor compliance with the agreement, the student could file another complaint should a breach occur. ■

DISABILITY

Doctors' reports keep former employee's suit alive

Case name: *Dugger v. Stephen F. Austin State University*, No. 2:15-CV-1509 (E.D. Texas 02/06/17).

Ruling: The U.S. District Court, Eastern District of Texas refused to dismiss a Rehabilitation Act suit against Stephen F. Austin State University.

What it means: It is not necessarily fatal to a Rehabilitation Act suit that the treating doctors never specifically provided a diagnosis of a disability.

Summary: In August 2014, Stephen F. Austin State University campus policeman Timothy Dugger injured his back when he fell at work. He was then seen by a series of doctors.

After providing some medical treatment, Dr. David Smyers cleared Dugger to return to work with restrictions. According to Smyers, Dugger was not to engage in prolonged standing, kneeling, bending, pushing, pulling, twisting, or climbing, and he was to be limited to a maximum of two hours of walking per day.

In response, Dugger was given a light-duty assignment. However, the department advised him in September that it could no longer provide such work, and he would not be allowed to return until he obtained a full-duty release.

After examining Dugger in December, Dr. James Michaels diagnosed the possibility of right sacroiliitis with myofascial pain. However, he did not think surgery was necessary.

Dr. Michael Grandison evaluated Dugger two weeks later and released him to work subject to activity restrictions. Those included not walking more than two hours per day.

In January 2015, pain management specialist Dr. Kenneth Fults assessed Dugger with "lumbar disc protrusion with radiculitis" and "thoracic and lumbar strain/sprain."

In May, Dr. Renato Bosita examined him and recommended surgery. However, the State Office of Risk Management ultimately declined to approve it.

In April 2016, SFA fired Dugger because he had exhausted all of his accumulated leave.

Dugger then filed a suit that claimed violations of the Rehabilitation Act.

LAWSUITS & RULINGS

This regular feature summarizes recent court or agency records of interest to academic administrators.

Lawsuit court records are summarized by Richard H. Willits, Esq.

OCR rulings are summarized by Aileen Gelpi, Esq.

The university filed a motion to dismiss, arguing that none of Dugger's medical providers ever diagnosed a disability.

The district judge ruled the lack of a "disability diagnosis" was immaterial because the evidence showed Dugger had back pain that precluded lifting heavy loads, bending, and walking for extended periods of time.

SFA alternatively contended Dugger had never requested an accommodation. But the judge ruled the jury would decide whether or not he had made such a request because: (1) Dugger claimed he had asked for a light-duty assignment and (2) emails between SFA officials in September 2014 indicated they were aware Dugger was unhappy when his light-duty assignment ended.

The university next contended Dugger had not complied with its specific protocol for reporting injuries and disabilities.

But the judge declared there was evidence that Dugger at least substantially complied with the SFA requirements, because he had informed his supervisors of his condition and his physicians regularly provided the university with updates.

The judge refused to dismiss the claim. ■

HIRING

Lack of evidence sinks former employee's suit

Case name: *Giraldo v. Miami-Dade College*, No. 16-21172-CIV (S.D. Fla. 02/28/17).

Ruling: The U.S. District Court, Southern District of Florida granted a partial summary judgment in favor of Miami-Dade College.

What it means: A plaintiff who was not selected for a position cannot succeed in a disability-discrimination suit simply by proving he was both disabled and qualified for the job.

Summary: Mauricio Giraldo was born with a congenital condition that permanently confined him to a wheelchair.

In 2004, he became one of eight part-time tutors at Miami-Dade College.

Eight years later, MDC reduced the number of tutor positions within Giraldo's department from eight to three. All of the part-time tutors were invited to apply for the three remaining positions.

Giraldo applied, and a screening committee chose him as one of five finalists. Thereafter, he was interviewed by Vice Provost of Human Resources Zoila de Yurre Fatemian, who made the final decision concerning who would be chosen for the three open positions.

Fatemian did not choose Giraldo and one other

finalist, ostensibly because she felt they could not articulate very well in English.

The three individuals she chose for the positions did not appear to be disabled.

Giraldo filed a suit that asserted several claims. One of them was that MDC had violated the Americans with Disabilities Act.

The college filed a motion for summary judgment with respect to that claim.

The district judge said Giraldo had failed to come forward with evidence that his disability had anything to do with the employment decision. She explained the only evidence conceivably relevant to the issue of disability discrimination was: (1) he was qualified for the part-time tutor position, (2) MDC chose to fill it with individuals with no apparent physical disability, and (3) a screening committee member said the reason why he did not get the job was that they needed "another person."

The judge granted summary judgment in favor of the college on the claim, ruling Giraldo's evidence was insufficient. ■

BREACH OF CONTRACT

Vague student policy allows expelled student another chance

Case name: *Doe v. Amherst College, et al.*, No. 15-30097 (D. Mass. 02/28/17).

Ruling: The U.S. District Court, District of Massachusetts refused to dismiss a suit against Amherst College.

What it means: A student conduct code must address what should happen when the accused is incapacitated by alcohol. Institutions should treat both the accused and the accuser fairly.

Summary: In October 2013, Amherst College student John Doe was accused by a female student of committing sexual misconduct during the previous year.

At his December hearing, Doe consistently maintained he had "blacked out" from intoxication at the time. However, the hearing panel found him "responsible, by a preponderance of the evidence, for violating ... the Sexual Misconduct Policy." It held that even if Doe had blacked out, Amherst's policy specified that being "intoxicated or impaired by drugs or alcohol is never an excuse for sexual misconduct and does not excuse one from the responsibility to obtain consent."

He was immediately expelled.

Doe unsuccessfully appealed, claiming new evidence suggested his accuser had been motivated to be dishonest.

Several months later, Doe obtained copies of text messages that were sent to and from his accuser after

he had left the premises on the night in question. Contending they could be read to depict his accuser as the aggressor, Doe unsuccessfully requested a reopening of his disciplinary proceedings.

Doe filed a suit against Amherst and others that asserted breach of contract and violations of Title IX.

The defendants filed a motion to dismiss.

They first argued Amherst's policy did not absolve an intoxicated student from the responsibility of obtaining consent. Doe countered that because he was "blacked out" at the time, the code did not require him to obtain consent from his accuser.

The district judge said the Amherst policy did not address whether an incapacitated individual was required to obtain consent from a non-incapacitated person. However, he concluded that students reading the policy could reasonably expect that their own actions could not violate the policy if they were "blacked out" from intoxication.

Doe also argued there was gender discrimination because (1) the college encouraged his accuser to file a formal complaint, but (2) Amherst did nothing when the subsequent investigation revealed Doe may have been subjected to nonconsensual sexual contact by his accuser while he was "blacked out."

The judge agreed that if the college had actually responded differently to similar reports when the genders of the potential victims and aggressors were different, discrimination may have been involved.

He allowed both claims to continue. ■

SEXUAL MISCONDUCT

Fundamental fairness of disciplinary process defeats student's suit

Case name: *Faparusi v. Case Western Reserve University, et al.*, No. 1:16CV1586 (N.D. Ohio 02/28/17).

Ruling: The U.S. District Court, Northern District of Ohio dismissed a suit against Case Western

Reserve University.

What it means: Courts cannot interfere with a private university's enforcement of disciplinary rules unless there is a clear abuse of discretion.

Summary: In 2016, Case Western Reserve University student Olaoluwa Faparusi went to a campus building to study. While there, he decided to use the women's restroom. According to Faparusi, it was common practice for both sexes to use it.

Two female students entered while he was in one of the stalls. One of them became upset and accused him of using his smartphone to take pictures of women in that location.

Later that day, campus police informed Faparusi they received a complaint that he had been taking pictures in the women's restroom. Faparusi allowed the officers to inspect his phone. Finding no incriminating photos, the officers left.

However, Faparusi was nevertheless charged with misconduct. After a disciplinary hearing, he was found guilty of "Sexual Exploitation and Disorderly Conduct."

Faparusi lost his appeal and filed a suit claiming a lack of due process and a breach of contract.

The university filed a motion to dismiss.

The district judge decided Faparusi had failed to sufficiently allege either that Case Western's actions were the result of sexual bias, or that there was a pattern of decision-making improperly motivated by indifference to sexual bias. He also held that courts could not interfere with a private university's enforcement of disciplinary rules unless there was a clear abuse of discretion. In addition, he ruled that Faparusi's breach of contract claim failed because strict adherence to administrative procedures was not required.

The judge dismissed the case, finding the process was fundamentally fair because Faparusi had: (1) an opportunity to know the charges, (2) an opportunity to be heard, and (3) an appeal where he had asserted all relevant issues. ■

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Build a stronger campus through streamlined strategic planning

By Halley Sutton, Assistant Editor



SUSAN WENTE

helped build her understanding of academic leadership.

Susan Wente, Ph.D., came to the Provost's Office at Vanderbilt University through the School of Medicine. "It was a little bit unusual, in part because the last undergraduate course I taught had been as a graduate student at Berkeley," Wente said. However, Wente's work prior to becoming provost at Vanderbilt, where she also served as department chair, associate vice chancellor, and dean of biomedical sciences,

Break down barriers while retaining individual identity

In 2013, Wente also helped helm one of Vanderbilt's most challenging and major undertakings in recent history: an academic strategic plan that spanned all 10 colleges within the university. Previously, academic strategic plans had been created only on an individual college basis. The new strategic plan, One Vanderbilt, would provide a 10-year plan for the university to focus on four thematic areas at each college: the undergraduate residential experience; educational technology; building trans-institutional programs; and health care solutions for the campus's large, specialized medical complex. Wente shared the lessons she learned during the project, which have helped inform her position as provost:

➤ **Keep planning short.** It was important to Wente to keep the planning phase of One Vanderbilt to 12 months. "Some people let the planning go two or even three years, and by the end, people have planning fatigue," Wente said. While she admits that the truncated timeline added stress of the project for herself and her planning partner, it was also important to ensure that campuswide enthusiasm for the changes did not flag. Planning began in June 2013, and by January 2014, Wente had written a high-level executive summary that was released to faculty in the spring for feedback.

➤ **Involve only faculty.** Wente created focus groups and steering committees for the colleges out of only the faculty on campus, not the deans or other administrative or academic leaders. This kept the focus securely on the vision faculty members had for the university, and ensured buy-in from faculty

across campus. For the thematic areas, Wente created committees of 10 or so faculty members from across the university's different colleges. She also scheduled retreats for other faculty members, 40 for each thematic area, to help draft recommendations for One Vanderbilt.

➤ **Focus on the highest priorities.** With feedback from hundreds of faculty members, Wente had to find a way to keep the project on track. Keeping the focus on the four thematic areas, Wente also launched three steering committees from faculty members to focus on three areas that were critical to the thematic focuses: graduate education, diversity and equity inclusion, and international student recruitment. These steering committees were dedicated to developing these areas within the intersection of the four thematic areas. "That's how during that year we kept the train on the tracks to deliver the project," Wente said.

➤ **Ensure that colleges keep their individual identity.** Even as Wente was overseeing the One Vanderbilt strategic plan, she was careful to ensure that each college retained its own identity within the university. It became clear that each college needed to have its own strategic plan to match the individual missions of the college to the larger One Vanderbilt plan, Wente said. Within the individual college strategic plans, each college would outline the ways in which the thematic goals would apply specifically to its students and its unique mission.

➤ **Provide the opportunity to create something new.** One of the most exciting opportunities that came out of the strategic plan was the way that it bridged gaps between faculty members in different departments, Wente said. One of the thematic areas, trans-institutional programming, provided for unique opportunities for faculty to work together on creating new courses. Now, Wente hosts a faculty peer-reviewed call for proposals on new interdisciplinary courses. Faculty members commit to a three-year trial of the course they propose to teach, and after that time, students vote for the course with their feet, Wente said. If enrollment in the course is high, it might become a part of the curriculum. This approach has led to the generation of such interdisciplinary courses as a law and divinity course, and a music and neurobiology course.

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