LEADERS & INNOVATORS
Kevin Davis, assistant director of public safety at Harding University and co-owner of D-2 Security Solutions, shares tips on how to prepare for an active shooter situation. Page 3

MANAGING YOUR OFFICE
Take steps to advance racial equity in your unit and across campus. Page 8

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Review recent court and agency rulings on safety. Pages 10–11

EMERGENCY PREPARATION
Campus emergency notification systems: Lessons learned from a miscommunication
By Ryan Patten, Ph.D.; Rick Ruddell, Ph.D.; and Matthew O. Thomas, Ph.D.

The ability to instantly notify tens of thousands of students and campus personnel about potential or actual threats at an institution of higher education has become an important crisis communications tool for campus security and police departments. Used correctly, these emergency notification systems can reduce threats to life and property. The most common uses of emergency notification systems are for severe weather communication, law enforcement emergencies, class cancellations, and traffic or construction updates.

Continued on page 4.

AN ADVISOR SPEAKS
My education on locks
By David Miles

Does your campus locksmith report to you as the director of public safety? If the answer is yes, then like me, you had to learn all about the different types of locks and locking devices that are used.

Years ago, most locksmiths reported to the facilities department. Now with the big emphasis on security, it makes more sense for the locksmith to report to public safety, and I am in full favor of that. Having had the campus locksmith report to me for more than 30 years has given me quite the education.

When I first started having the locksmith report to me, he used terms like keyway, mortise locks, deadbolts, interchangeable cores, door closers, panic devices, etc., and I thought he was speaking in a locksmith code that only other locksmiths would understand. Working at an institute of higher education makes you understand that you can always learn. Knowing that I had to learn locksmith-speak, I did some research and I attended a very basic locksmith seminar.

So with all this newfound lock knowledge, what did I really learn? The first thing I learned is that I am not a locksmith and that type of work is best left

Continued on page 6.
Education Department reboots Title IX

U.S. Department of Education Secretary Betsy DeVos released a proposed rule that would alter expectations for the handling of campus-based sexual violence, assault, or misconduct, according to a press release from the Education Department. The proposed changes to Title IX would include that institutions would be required to investigate only allegations of misconduct that occurred within campus-sanctioned programs, potentially changing investigative practices of off-campus allegations.

The proposed changes also include bolstered rights for students accused of sexual assault. The changes were applauded by men’s rights activist groups, while advocates for sexual assault survivors warn that the changes could decrease reporting of allegations. The proposed change is up for public comment.

Federal lawsuit alleges faculty members raped students

A federal lawsuit alleges that faculty members at Dartmouth College plied students with alcohol and drugs in order to sexually assault them, according to CNN. The lawsuit alleges that the college “knowingly permitted three of its prominent (and well-funded) professors to turn a human behavior research department into a 21st century Animal House,” that the college mishandled student complaints of sexual assault, and that the treatment went on for more than 10 years.

Seven women claimed the professors coerced them into drinking and allegedly told them their success depended upon going along with the behavior.

Judge blocks security fees for controversial campus speaker

A judge has blocked Kent State University from charging a proposed $1,800 security fee to bring a controversial conservative pro-gun alumna, Kaitlin Bennett, to campus, according to Cleveland.com. Judge John Adams ruled against the security fee, saying he was concerned the fee encroached on the First Amendment rights of both the students and the speaker.

Kent State officials claim the security fee is necessary, as an earlier event held by Bennett, an open-carry walk, attracted thousands of protesters, led to a police standoff and four arrests, and cost the institution $65,000 in security costs.

Exortion attempts target student emails

Students at the University of Central Florida have been warned about potential extortion attempts after many reported receiving emails from a hacker claiming to have videos of the students watching pornography and that the images would be released unless the student sent the hacker $900 via bitcoin, according to ClickOrlando.com.

The university warned students to report the scam and not to pay the hacker.
Consistent practice key to readiness for an active shooter emergency

By Halley Sutton, Assistant Editor

Besides being assistant director of public safety at Harding University, Kevin Davis is the co-owner of D-2 Security Solutions, a security training and consulting business that provides active shooter training to K–12 schools and businesses. “It’s something we’re really passionate about,” Davis said of the consulting company, which he co-operates with another Harding professional.

Davis shared best practices for developing dynamic active shooter training on your campus, ensuring your institution is protected in the case of an emergency, and more.

Build an understanding of protocol, campus layout

Almost every institution — if not every institution — has a protocol in place in case of an active shooter, Davis said. But some active shooter training is more likely than others to result in prepared law enforcement professionals, minimal loss of life, and a quick and thorough response. “Our hope is that not everyone has to face this [scenario], but unfortunately it is one of those realities that everyone has to look at,” Davis said.

Review his tips on conducting training to ensure safety in the face of a nightmare:

➢ Ensure buy-in from administrators. A good training program for law enforcement response to an active shooter threat is not going to be cheap or quick, Davis said. Your team is going to need to run drills more than once a year. “You don’t have to go out and buy the latest and greatest toys or new equipment, but you do need the training time [for your personnel],” he said.

➢ Maximize the training time you have. This can be as simple as having flexibility with your staff, Davis said. “[In law enforcement,] we’re a 24-hour business; we’re always here,” he added. Finding trainers who are flexible enough to come in on the off hours to train graveyard-shift staff means your department will pay overtime only for one or two people, rather than a percentage of your department, he said. And ensuring that trainers have preplanned how your officers are going to learn what they need to learn in each training session ahead of time will lead to less wasted downtime with each session, he said.

➢ Cross-train with local agencies to simulate real-life emergencies. “At Harding, every year we have a large annual disaster drill on campus to help prepare for emergencies,” Davis said. That drill doesn’t always revolve around an active shooter incident — recent years have included drills for a simulated fire in a dorm room and a tornado hitting campus — but Davis and his team have drilled with local law enforcement agencies and emergency first responders for active shooter situations, to help simulate what a real event would look and feel like. Such trainings are a good opportunity to evaluate whether your policies would actually work in the face of an emergency, Davis said. For active shooters, Harding uses simunition to simulate live ammunition rounds, and Harding drama students wear makeup to pretend to be victims to add reality to the drill. “Those drills have really helped to ensure that officers are as prepared [for the real thing] as possible,” Davis said.

➢ Train frequently enough that response becomes automatic. “Like computers, humans only have so much random access memory,” Davis said. If something isn’t ingrained as muscle memory, your officer won’t remember it during an actual emergency, he added. That requires enough consistent practice that your officer won’t have to stop to consider how to handle her weapon during a threat, ensuring a solution that minimizes loss of life or mistakes. “It would be absolutely tragic and completely devastating to any officer if you missed your shot or it went through the threat to an innocent you’re trying to protect,” Davis said.

➢ Develop a deep understanding of your campus. Davis and his team practice maneuvering through campus buildings frequently so that each officer is deeply familiar with each building. Practicing at least once a quarter is crucial, Davis said.

Contact Davis at kdavis@harding.edu. You may visit D2 Security Solutions at http://www.d2securitysolutions.com/.
Like any other safety-related strategies, however, the usefulness of emergency notification systems is shaped by three factors: the applications used by the institution (e.g., text messages, email, phone calls, instant messages, message boards, pop-up alerts, social networking websites, or public address systems); the proportion of university personnel and students receiving these notifications; and the content and delivery of the messaging.

Although all of these factors are important, our analysis relates to the content and delivery of a well-intentioned emergency notification that ended in misunderstanding and frustration — the opposite of what the senders had intended.

By sharing lessons learned from this incident, we hope to reinforce the importance of purposeful emergency communication and managing the messages sent to students, campus personnel, and other stakeholders.

**Emergency notification systems miscommunication and an hour of chaos**

The following briefly describes a miscommunication occurring at a medium-sized public university during an otherwise quiet Tuesday morning in the fall 2016 semester. The campus in question has a somewhat distinctive footprint, as it is adjacent to the community’s downtown area and is also bordered by a high school enrolling more than 2,000 students. In addition, the campus has open borders, allowing anyone to enter or pass through. As a result, there are a lot of visitors passing through the campus on any given day, and the grounds can be crossed in a five-minute walk.

➢ **Emergency notification.** The municipal police were notified of a man with a gun who had allegedly been in an argument and was headed to a campus. The municipal police were unsuccessful in obtaining any additional information and lacked a description of the individual, or to which campus he was headed. The police dispatchers relayed this information to the university police department.

The university police department sent an emergency notification to alert the campus students and personnel that a potentially armed man was being sought by municipal and university police in a park adjacent to university property.

As the notification was deemed to be precautionary, the notification did not contain other information and lacked a description of the individual. Approximately one hour after the initial notification, a second notification was sent advising recipients that the situation was resolved and there was no longer a threat.

➢ **Faculty and staff confusion.** Because the announcement was considered precautionary, the senders did not provide any instructions or direct the recipients to take any action, and this lack of guidance resulted in widespread confusion.

Faculty were unsure whether they should dismiss their classes, wait for their buildings to be locked down, cancel their next scheduled classes, or whether they should even report to work if they were off-campus.

Other university personnel also reported being in limbo — unsure of whether to stay put, travel to areas farther away from the park where the armed man was thought to be, or go home.

➢ **Student uncertainty.** There were two unexpected impacts of the notification relating to the students. First, as not all faculty members received the notification, some students ended up advising their instructors of the notification. Second, because of the ambiguity of the message, some students felt unsafe remaining in their classes and some reported feeling trapped in their classes, as they were fearful of facing discipline by losing participation points or otherwise appearing disrespectful to their instructors if they left class.

Similar to the dilemma confronting the faculty members, students scheduled for classes later in the day in buildings close to the park were confused on whether they should report for class, and if they did not report for class, would they be penalized?

Students who were not yet on campus were also unsure whether they should attend their scheduled classes.

➢ **Parents.** One unanticipated outcome of the notification was dozens, if not hundreds, of panicked phone calls from parents who had also received notifications. The total number of the calls received is uncertain, as these calls were not directed to a single source but were instead going to academic and nonacademic units throughout the university.

As no additional information was immediately released by the university police department, the persons answering these calls could not provide satisfactory answers to these nervous parents.

➢ **Outcomes.** The result of the emergency notification was largely chaos. Departmental and senior academic offices were inundated with frantic emails, phone calls, text messages, and visits from university and nonuniversity members.
Campus Security Report

University response. The following day, the university police department chief released a statement addressing two main questions the university community wanted answered: (1) why was the initial description of the man not circulated, and (2) if nothing could be substantiated from the initial call — whether there was a man, if he was armed, and if he was headed toward campus — then why issue an emergency alert?

The chief responded the notification was appropriate because the high school adjacent to the university and other local schools in the immediate area had been locked down and the precaution of the notification seemed appropriate.

Moving forward. Although the uncertainty created by the notification lasted only a few hours, this example provides some important lessons about emergency notification, and our hope is that campus security and police personnel can use these insights to enhance the effectiveness of their notifications and reduce chaos:

- Informational notifications should carefully specify the actions recipients should take, and provide as much relevant detail about the event as possible or permissible.
- Staff must receive comprehensive training on how and when to issue alerts, and especially personnel working in nonweekday roles (e.g., weekends, evenings, and nights). All staff need training on appropriate actions in such events.
- Students may be placed in the role of advising faculty and staff (who are not receiving notifications) of emergency messages. Their relative lack of power may inhibit them from sharing information or challenging faculty responses to notifications.
- Faculty also need comprehensive training in order to understand the appropriate actions to take in a variety of emergency events.
- Parents and the family members of campus personnel will place additional demands on the institution’s ability to respond to notifications. As a result, campus security personnel should develop strategies on how to communicate with these stakeholders during emergencies.
- International and English as a Second Language students may be more likely to misinterpret emergency notifications than English-speaking students, and this group might benefit from exposure to more information about emergency notification systems.
- Emergency planning and notification on campuses located in distinctive places, such as a large inner-city campus, needs to take into account the visitors who would have no access to internet-based emergency notification systems.

Ultimately, we find that emergency notifications and plans are only useful if they are clear, direct, and executed by personnel on the ground. As the emergency message in question provided no guidance or advice to the university community, the message served only to create confusion.

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to someone with years of experience. What I did gain is a much better appreciation of how master keying is done, an understanding of differences between grades of locks, and basic knowledge about the best locks for security.

Over the years, members of the campus community became more aware of the need for security and we had to adjust our locksmithing duties to become much more focused on security and not just putting any lock on a door. We had deadbolt locks installed on doors to give us what we felt was better security, especially in residence halls and sensitive offices or labs. We use an interchangeable core system on all of our locks, and with that system, we can easily change the core and the key so that any lost key will no longer work.

We use a number of keyways for our key system so each building is on a separate keyway and our officers no longer have to carry around key rings that are overloaded with keys. A keyway is the opening in a lock or cylinder that is shaped to accept the key bit or blade of a proper configuration. On many key blanks, there may be a letter on the blade of the key that indicates the proper keyway.

Entry doors to buildings have been equipped with an outside pull handle and a panic device on the inside. These devices hold up the best to the constant entering and exiting of the building, but they also meet any fire codes.

Lost keys were a concern, and we purchased an electronic key box to track keys that are taken out to open a certain room or area. This helped to track who took out any keys and prevent keys from going missing. The electronic key box is linked to a computer system. All employees allowed to use the keys are given an access code to unlock the electronic key box. They take the key or keys they need out from the assigned numbered space. The key box has a light that stays lit until the key is returned. If the key is not returned, an audit trail can be run to show who has the key.

Working with our facilities department, we have now come up with standards for all of our locks, panic devices, and door closers that are used on the campus. These standards are given to any contractor who is working on new construction or replacing any doors. This has been a big help, as we have to stock only a few of each of the locks and devices that we use.

Most important, when you make any changes to your campus locks, you have to have buy-in from your locksmith. I have been fortunate that the same campus locksmith has worked with me for more than 20 years and we both are on the same page. Both of us want to make sure the safety of all members of the campus community is the number-one priority. It took us a number of years to get the way we handle our campus locks in order, but we now feel we are in a much better place.

I can now hold my own in speaking not only with the locksmith, but with architects or others dealing with the locks on our campus.

This whole experience may sound like it has a happy ending, but just when I started to better understand the locksmith terms, electronic security came into the marketplace. So now, some 30 years later, it is back to school to be educated on a whole new set of terms.

About the author

David Miles is the director of public safety for the Metropolitan Campus of Fairleigh Dickinson University in Teaneck, N.J. He has held this position since 1984. He is a graduate of the 64th class of the Union County Police Academy in New Jersey and holds both bachelor’s and master’s degrees from Fairleigh Dickinson University. His column appears regularly in Campus Security Report.

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Was student-athlete wrongfully arrested?
By Aileen Gelpi, Esq., Legal Contributor

Police officers in California, Pennsylvania, received a report in October 2014 that an individual was severely beaten outside a restaurant by a group of California University of Pennsylvania football players.

After a warrant was issued, a student-athlete was arrested. He was bound over for trial after a preliminary hearing at which police officers and witnesses testified that: (1) a man in a yellow sweatshirt stomped on the victim’s face during the fracas; (2) after the assault was committed, the football players left in a white Acura; (3) a cellphone belonging to the student-athlete was found at the scene; (4) while wearing a yellow sweatshirt, the student-athlete went to the residence of the victim’s girlfriend and recovered his cellphone; and (5) one of the admitted assailants said he had left in the white Acura with someone with the same first name as the student-athlete.

The student-athlete was also dismissed from both his football team and the university.

When the criminal charges were later dropped, the student-athlete filed a lawsuit against the city and the university, claiming there was no basis for his arrest.


Did the student-athlete’s lawsuit survive the motion to dismiss?

A. Yes. The court held that the circumstantial evidence was insufficient to demonstrate probable cause for the student-athlete’s arrest.

B. Yes. The judge ruled that the fact all charges were dropped showed that the student-athlete’s arrest wasn’t supported by probable cause.

C. No. The court dismissed the student-athlete’s lawsuit, holding that sufficient evidence was introduced at the preliminary hearing to support the arrest.

D. No. The judge held that the student-athlete failed to introduce sufficient evidence at the preliminary hearing to challenge a finding of probable cause for arrest.

Correct answer: C.

The student-athlete argued there was no reason to arrest him because: (1) no witness had specifically identified him as one of the assailants and (2) a video of the altercation in the possession of the police that didn’t show him at the scene was withheld when the police applied to the magistrate for the arrest warrant.
Create a space to uncover unconscious bias to advance racial equity on campus

By Halley Sutton, Assistant Editor

WASHINGTON, D.C. — In an increasingly polarized world, learning how to have difficult conversations and build spaces on campus that advance racial equity is a more and more important skill. “Unconscious bias lives in all of us,” said Mee Moua, principal at Interdependent Group LLC and consultant at the W.K. Kellogg Foundation, at a session on advancing racial equity presented at the annual conference of the Association of American Colleges and Universities.

Moua and Mike Wenger, senior AAC&U fellow, senior consultant on race relations at the W.K. Kellogg Foundation, and an adjunct faculty member teaching courses in race relations and institutional racism at George Washington University, shared strategies for working toward uncovering unconscious bias, listening deeply, and learning to relate to the perceived “other” to advance racial equity on your campus. They said the following considerations are good places to start to open up these potentially difficult experiences:

1. Create a safe space for conversations. Racial healing circles are an important component of breaking down racial hierarchies and learning to see one another as human beings. “It’s the pillar that focuses on ways to heal from the wounds of the past to build mutually respectful relationships across perceived racial and ethnic lines of differences,” Moua said.

2. Focus on stories that affirm humanity, rather than solving a problem. Difficult topics such as confronting internal bias can lead to resistance, or can be difficult for people to handle without feeling, or placing, blame. Focusing on sharing stories, rather than solving the problem of racism, will help people connect more authentically, Wenger said.

3. Form a habitual practice. “When we do this work habitually, two things happen. Individuation occurs that unveils our common humanities in ways that allow us to see people for their true selves, qualities, and attributes,” Moua said. And we also see a transformation of perspective — sharing stories leads us to walk metaphorically in the shoes of another person, she added.

4. Have a process in place before racially charged incidents occur. The GWU campus experienced an incident where graffitied swastikas appeared on campus buildings, Wenger said. The work of racial healing circles to foster deep understanding and difficult conversations can be scaled for student communities in times of need.

5. Check in after the conversations. Follow up on a regular basis to learn how participants see a change after the workshop. Following up is also a good way to get feedback about the efficacy of training, so you can tweak and assess as needed for the next workshop, Wenger said.

6. Expect pushback. Even at the Kellogg Foundation, Wenger said he’s experienced pushback when attempting to put these techniques in practice. “For some people, the touchy-feely stuff is out of their norms,” he said. For others, the conversations are uncomfortable.

Building blocks of a racial healing circle

In a session at the annual conference of the Association of American Colleges and Universities, Mee Moua, principal at Interdependent Group LLC and consultant at the W.K. Kellogg Foundation; and Mike Wenger, senior AAC&U fellow, senior consultant on race relations at the W.K. Kellogg Foundation, and an adjunct faculty member teaching courses in race relations and institutional racism at George Washington University, explained the necessary components for creating successful racial healing circles on your campus.

✔ Sit in a circle.
✔ Conduct an opening ceremony that sets the energy or tone of the circle.
✔ Anchor intentions before beginning any conversation.
✔ Find intentionally diverse facilitators to lead the group.
✔ Ensure that the group is made up of participants with different ethnic and sociocultural backgrounds.
✔ Pair participants before beginning conversations.
✔ Set expectations for how the space will be used.
✔ Give a strong prompt that gives each pair the opportunity to share strong, personal stories and practice deep listening.
✔ Invite participants to share stories with the rest of the circle.
✔ Foster a group reflection on the stories shared.
✔ Conduct a closing ceremony that helps give a sense of closure for participants.
FBI reports increase in hate crimes nationwide for third consecutive year

By Halley Sutton, Assistant Editor

For the third year in a row, the Federal Bureau of Investigation’s annual report on hate crimes reported an uptick in such crimes nationwide. In 2017, there were 7,175 hate crimes in the United States, compared to 6,121 hate crimes in 2016. That represents a 17 percent increase over a year that had seen a 5 percent increase in hate crimes reported compared with 2015.

In particular, both nationwide and on college and university campuses, hate crimes motivated by religious background, specifically anti-Semitic crimes, increased about 37 percent between 2016 and 2017. In a statement, Acting Attorney General Matthew Whitaker said he was “particularly troubled by the increase in anti-Semitic hate crimes.”

Part of the increase in reported hate crimes may stem from an increase in agencies reporting hate crimes to the FBI. Approximately 1,000 more agencies reported hate-crime statistics to the FBI in 2017 than had reported in 2016.

Hate crimes up across the nation, including college campuses

Other key findings from the report include:
➢ Campus police departments reported 280 hate crimes in 2017, versus 250 hate crimes reported by campuses in 2016. In 2015, there were 194 reported hate crimes that occurred on college or university campuses. Hate crimes that occurred on college or university campuses accounted for 10.5 percent of all reported hate crimes.
➢ On college campuses, more than half (57 percent) of the reported hate crimes were race-related, a similar percentage to hate crimes reported nationwide (56 percent of hate crimes nationwide were race-related).
➢ On college campuses, 26 percent of hate crimes were related to religion, versus only 6 percent of the total hate crimes reported nationwide.
➢ Nearly 16 percent of hate crimes reported from college campuses pertained to sexual orientation, which is approximately twice the percentage of hate crimes motivated by sexual orientation nationwide (8 percent).
➢ Nationwide, there were 128 hate crimes reported against individuals with disabilities in 2017, versus 76 hate crimes against individuals with disabilities in 2016. The uptick in 2017 comes after two years of fewer hate crimes against individuals with disabilities in 2015 and 2016.
➢ Of the more than 7,000 hate crimes reported, about 5,000 were crimes against persons, including assault, intimidation, murder, and rape. The remainder of the crimes were classified as crimes against property, like vandalism, robbery, or burglary.
➢ On college campuses, approximately 60 percent of the hate crimes reported involved crimes against property, such as vandalism or graffiti.
➢ Fifteen hate-motivated murders were reported in 2017, including the fatal stabbing of a black man on the campus of the University of Maryland at College Park. The murder was the first hate-motivated killing on a college campus to be reported to the federal government since 2006.
➢ Of the hate crimes motivated by race, the majority (48.8 percent) occurred against black Americans. A little over 17 percent occurred against white Americans. Approximately 10.9 percent of the race-motivated hate crimes reported were driven by an anti-Latino or anti-Hispanic bias.
➢ Of the hate crimes motivated by religion, the majority (58.1 percent) targeted those of Jewish faith, and 18.7 percent targeted those of Muslim faith.
➢ Mississippi reported the fewest hate crimes of any state in 2017, reporting only one incident during the year. However, it also recorded the second fewest (second only to New Mexico) agencies reporting hate crimes to the FBI during the year.
➢ Of the offenders identified for full or partial responsibility for a hate crime in 2017, more than 50 percent (50.7 percent) were white, and 21.3 percent were black.


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SEXUAL HARASSMENT

Judge rejects extra claims


Ruling: The U.S. District Court, Southern District of New York refused to allow the amendment of suits pending against a college.

What it means: Claims for negligent hiring and retention are disallowed if the employee acted within the scope of her employment, unless the employer was grossly negligent.

Summary: In 2015, women’s softball players at a college filed several suits claiming the head coach had committed outlandish harassment, which included creating the slogan “top tits.” They also alleged that he had subjected one or more of them to: (1) licking their ears, (2) kissing their lips and faces, (3) touching their buttocks, (4) grabbing their breasts, (5) using sexually explicit language, (6) requiring attendance at a “life coaching” session with a pornographic actress, (7) offering to assist them in obtaining employment in the adult entertainment industry, and (8) arranging a mandatory underage “drinking outing.”

In 2018, the plaintiffs filed motions to add claims that the college had negligently hired and retained the assistant softball coach. In support of those motions, they claimed the assistant never took any action to stop the head coach.

The district court judge said claims for negligent hiring and retention were generally disallowed where the employee acted within the scope of her employment, unless the employer was grossly negligent.

The judge refused to allow the amendments because the plaintiffs (1) were claiming that the assistant coach had been acting within the scope of her employment and (2) did not allege any gross negligence on the part of the college.

DUE PROCESS

Court reverses discipline

Case name: In the matter of Tyrone Hill v. State University of New York at Buffalo, No. 811 TP 18-00205 (N.Y. App. Div. 07/06/18).

Ruling: The Supreme Court of New York, Appellate Division reversed a finding that a student-athlete violated a university’s conduct code.

What it means: An academic institution should conduct a disciplinary proceeding in a manner that: comports with due process, renders decisions consistent with the facts, and respects the presumption of innocence.

Summary: The plaintiff was a black man who played on a university’s intercollegiate football team.

In July 2017, a university student called campus police to report that a white male was brandishing a gun on the grounds.

The police immediately responded and identified a suspect. However, that first suspect claimed the plaintiff did it.

Even though the plaintiff was never charged by the police, a hearing was scheduled to decide whether he had violated the student conduct code.

Neither the student who reported the incident nor the first suspect appeared at the hearing. At its conclusion, the plaintiff was found guilty of violating the conduct code even though the student who reported the matter had identified the offender as white.

The plaintiff filed a suit claiming a lack of due process.

The court annulled the guilty finding, stating that it had rested entirely on the first suspect’s “seriously controverted hearsay statement,” which had implicated the plaintiff. It also ordered the university to expunge all references to the incident from the plaintiff’s school records.

The court declared that a university had an unwavering obligation to conduct a student disciplinary proceeding in a manner that comported with fundamental notions of due process for the accused, rendered decisions consistent with the facts, and respected the presumption of innocence to which a student was entitled.

THREAT ASSESSMENT

OCR finds medical leave appropriate to risk posed by student with PTSD

Case name: Letter to: Merrimack College, No. 01-14-2018 (OCR 08/29/17).

Ruling: The Office for Civil Rights concluded that Merrimack College did not discriminate against a student with disabilities.

What it means: A student who poses a direct threat to the health and safety of others is not a qualified person with a disability under Section 504 of the Rehabilitation Act.
Summary: A complainant submitted a complaint to OCR, alleging discrimination on the basis of disability against Merrimack College. The complainant, a student at the college, claimed that the college violated his rights by placing him on an involuntary medical leave and prohibited him from completing one semester of classes and from enrolling in the following semester.

OCR’s investigation revealed that prior to enrolling at the college, the complainant served in the U.S. Army until he was honorably discharged. The complainant advised that he developed post-traumatic stress disorder and experienced traumatic brain injury during his military service. He disclosed his conditions to the college’s disability services office. The DS staff informed the complainant’s professors about his disabilities and advised that he could experience unexpected stress and anxiety in a classroom setting. However, the DS office confirmed that the complainant did not separately request any specific academic adjustments.

Correspondence provided by the complainant and college indicated that the complainant engaged in several verbal and physical altercations with professors, students, and a third-party vendor. The college’s records also indicated that it filed a report concerning the complainant in response to his behavior in one of his courses.

The college reported that it convened its Threat Assessment Team after the complainant had a verbal altercation with a professor and later approached her in an aggressive manner, outside her apartment complex, where the complainant also resided. The TAT’s duty was to (1) assess the risks, (2) assess the threat, (3) refer to counseling, (4) reach out to professionals, (5) perform a background check, and (6) assess issues related to residence life.

In this case, the TAT sought outside assistance from SIGMA Threat Management Associates, a partnership of experts in behavioral threat assessment, threat assessment management, and violence prevention. The TAT and SIGMA determined that the complainant presented a high risk of harm to himself and others. The college reached out to a psychiatric hospital and clinical care provider for military veterans, and to the complainant’s parents.

The college also placed the complainant on medical leave, which it characterized as voluntary. The complainant disputed that he agreed to take the medical leave. The letter advising the complainant of the leave also explained the steps he had to take to be allowed to return to the college.

OCR also found that although the college had written procedures that apply to voluntary medical leaves, the same did not exist for involuntary leaves. However, the college had a practice of involuntarily placing students on medical leave for a variety of reasons, including when they pose a threat to the campus community. Specifically, during the same academic year, the college placed 10 students on medical leave, including two who posed a threat to the campus community.

Consequently, OCR concluded that the college’s actions were not discriminatory because they were based on an established practice and an individualized assessment of the risk posed by the complainant.

CAMPUS SECURITY

Judge decides university might have failed accuser

Case name: Cavalier v. Catholic University of America, No. 16-2009 (D.D.C. 03/27/18).

Ruling: The U.S. District Court, District of Columbia refused to dismiss a suit that had been filed against the Catholic University of America.

What it means: When a university has knowledge that its remedial action is inadequate and ineffective, it is required to take reasonable actions to eliminate the misconduct.

Summary: In 2012, a first-year Catholic University of America student and lacrosse player reported to a resident assistant that she was raped in her dorm room by a freshman football player.

The university eventually notified both the student and the accused by letter that: (1) a disciplinary hearing had been set and (2) neither was to have direct or indirect contact with the other.

Approximately four years later, the student filed a suit claiming the university violated Title IX in a variety of ways. One of her assertions was that it had completely failed to enforce the no-contact order.

The university filed a motion to dismiss.

The district court judge said the plaintiff’s burden was to set forth allegations permitting the reasonable inference that: (1) she was the victim of student-on-student sexual harassment, (2) the university was aware of it, (3) the university’s response was clearly unreasonable, and (4) the ongoing harassment was so pervasive and objectively offensive that it effectively barred her access to an educational opportunity or benefit.

He then ruled the plaintiff had done exactly that.

The judge refused to dismiss that claim, stating that a university with knowledge that its remedial action was inadequate was required to take reasonable actions to eliminate the misconduct.
### Legislative Watch: State legislative bills

The following bills are being considered or have passed in the state legislature. To express your support or opposition, contact your state senator or representative.

**Ohio bill proposes banning free speech zones on campuses**

**Bill data:** House Bill 758 was introduced by Ohio Representatives Niraj J. Antani and Andrew Brenner on Nov. 1, 2018.

**Bill status:** The bill was referred to the House Committee on Higher Education and Workforce Development on Nov. 13, 2018.

The bill has only a few weeks to make it through the House before the current legislative session ends in January 2019.

If it doesn’t pass by that time, Rep. Antani has stated his intention to reintroduce it when the next set of lawmakers is sworn into the House of Representatives.

**Potential impact:** Would ban the use of free speech zones on campuses. Would make campuses liable for any damages or legal fees from speakers not allowed on campus.

**Description:** The bill would ban the use of free speech zones on public college and university campuses.

The bill would also penalize public campuses for not allowing speakers on campus so long as the speaker wasn’t breaking the law or disrupting the business of the school.

The bill would make colleges and universities liable to pay damages and legal fees to speakers who aren’t allowed on campus.

Richard Spencer, a prominent white supremacist, was denied a chance to speak at Ohio State University, after being invited by a student at a separate institution, in the spring of 2018 when the university cited a concern about the need for increased security on campus if he did so. Spencer was one of the central figures of the Nazi march in Charlottesville that resulted in the death of a counterprotester.

**Analysis:** Proponents of the bill believe free speech zones on campus are in violation of First Amendment rights. Rep. Antani argues that so-called “free speech zones” actually limit free speech and unfairly relegate students with conservative and anti-abortion views to specific sites on campus.

Opponents of the bill believe institutions should retain the right to make decisions about potentially costly speakers coming to campus, or speakers who could potentially incite riots or lead to dangerous counterprotests.

**Georgia bill limiting campus patrol does not pass**

**Bill data:** Senate Bill 348 was introduced on Jan. 23, 2018, by primary sponsor Senator Tyler Harper and nine co-sponsors.

**Bill status:** The bill was not passed during Georgia’s most recent General Assembly session. It’s not yet known if a different version of the bill will be resurrected during the next General Assembly session.

**Description:** The bill would have changed the jurisdiction that campus police officers were allowed to investigate crimes beyond campus boundaries from 1,500 feet (more than a quarter of a mile) to 500 feet (less than a tenth of a mile).

An amendment to the bill allowed campus police officers employed at technical colleges to continue to investigate up to 1,500 feet from the boundaries of technical campuses.

**Potential impact:** Would limit the jurisdiction of campus police officers to investigate crimes to 500 feet from the boundaries of campus.

**Analysis:** Proponents of the bill believed that limiting the area past the boundaries of campus that campus police officers could investigate crimes kept institutional responsibility for crimes committed off campus in check.

Proponents of the bill also believed limiting the distance off campus that campus police officers could investigate would keep a good balance for municipal policing between campus and local law enforcement.

Opponents of the bill believed that limiting the distance campus police officers could investigate crimes impeded the safety of college staff, students, and faculty.

The University System of Georgia voiced concern that officials believed unintended safety consequences of the bill hadn’t been thoroughly explored.