

# Legal Issues and Higher Education Governing Boards

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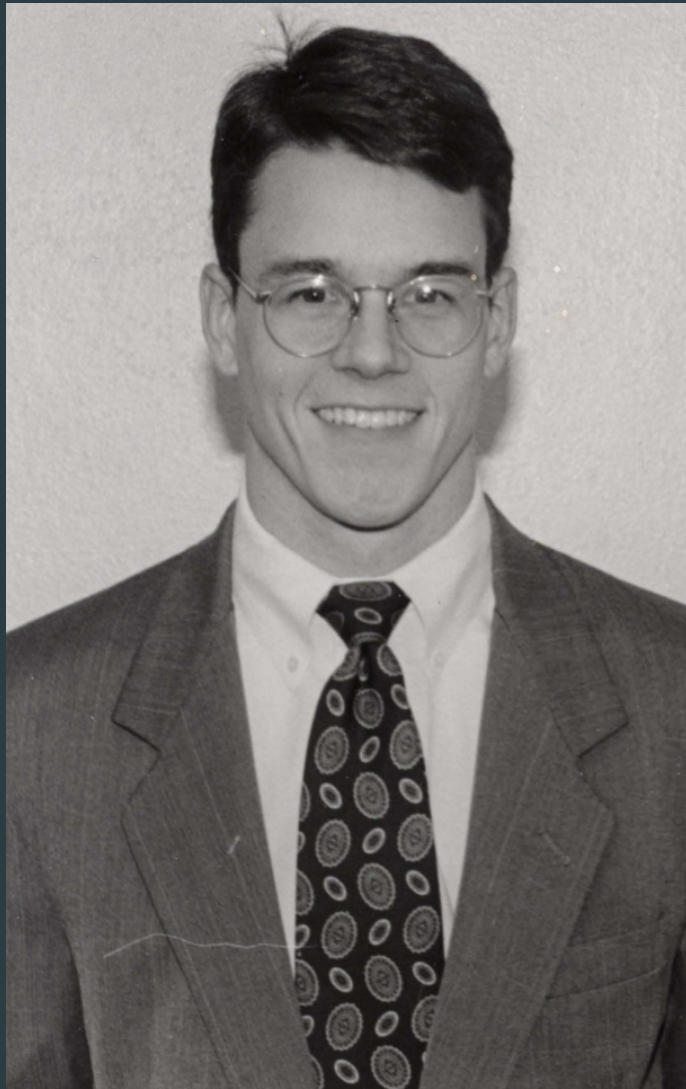
2019 Annual Trustees Conference  
November 1, 2019

University of Arkansas Pulaski Technical College

# Session Outcomes

Participants will leave the session with an understanding of:

- ▶ Anticipated new regulations implementing Title IX on college campuses;
- ▶ New accreditation requirements from the Higher Learning Commission
- ▶ New Arkansas legislation that became effective in 2019 .
- ▶ Free speech issues that can arise on campus.







# Probable amended Title IX Regulations

1. Must have actual knowledge.
2. Title IX Coordinator or School Official with authority to institute corrective measures.
3. School cannot be deliberately indifferent.
4. Definition of Sexual Harassment.
5. School cannot issue gag orders.

6. Burden of proof on school to gather evidence.

7. Advisors

8. Live hearing and cross examination.

9. Both parties must have access to, can review, and can respond to the evidence.



10. Preponderance of the evidence vs. clear and convincing.

11. Either party can appeal.

12. Informal resolution is possible.

13. Record retention.

The Higher Learning  
Commission's new policy,  
effective

September 1, 2019.

Recruiting, Admissions,  
and Related Institutional  
Practices.

(CRRT.C.10.010)

- Job Titles
- Education and training
- Code of Conduct
- Cannot complete applications for prospects

- Data Privacy Policy
- Information provided must be accurate, complete, and up-to-date
- Promptly honor requests to remove from contact list.
- Refund policy

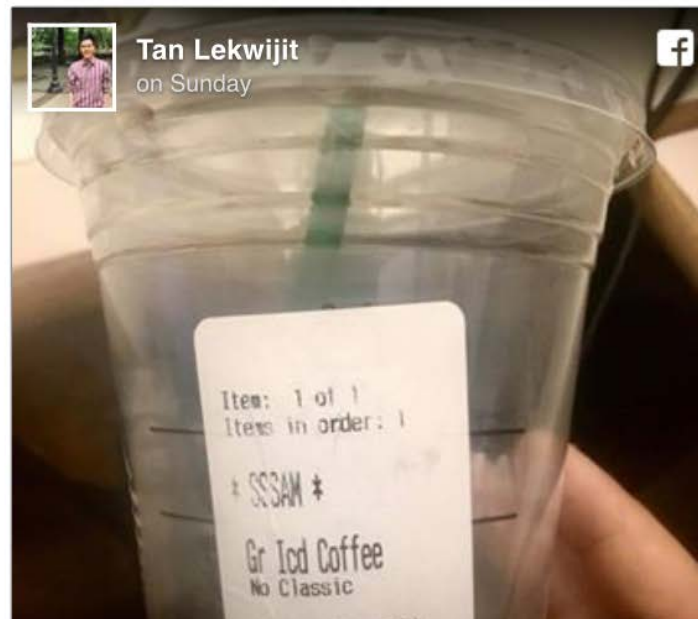
Freedom of Speech - Content

▶ SOCIAL MEDIA  
AND EMPLOYMENT

Arkansas is an  
employment-at-will state

General rule is that an  
employee can be fired at  
any time for any reason

An employee of a Philadelphia Starbucks has been fired after a [viral Facebook post](#) showed the barista had mocked a stuttering customer by including extra letters on their order.





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## Can MLB Punish Umpire Rob Drake for Controversial Tweet?

MLB is investigating after umpire Rob Drake tweeted "I will be buying an AR-15 tomorrow, because if you impeach MY President this way, YOU WILL HAVE ANOTHER CIVIL WAR!!!"

BY MICHAEL MCCANN , OCT 24, 2019



GOT WHAT IT TAKES TO BE A  
SPORTSKID OF THE MONTH? **Sports Illustrated**



# Pickering vs. Board of Education (1968)



Public  
Employees

Speech on a matter of  
public concern is  
protected speech

# What are matters of public concern?

1. Political issues
2. Community issues
3. Safety Issues

# Professor Suspended After Joke About Killing Students on Facebook

March 3, 2010

By DALIA FAHMY



The list of Facebook faux-pas just grew longer.

Gloria Gadsden, a sociology professor at East Stroudsburg University in Pennsylvania, says she was suspended last week after updating her Facebook status with complaints about work that alluded to violence.

In January, she wrote: "Does anyone know where I can find a very discrete hitman? Yes, it's been that kind of day..." Then in February: "had a good day today. DIDN'T want to kill even one student. :-). Now Friday was a different story."

Gadsden says she posted the comments in jest, on a profile she thought could only be seen by friends and family. She says officials were notified of the posts by a student -- even though she says she had no students in her "friend" list.



Just a Bad Day

"I was just having a bad day, and I was venting to family and friends," says Gadsden, who says she didn't realize her comments could be read by the public after Facebook relaxed its privacy standards in December. "My friends and family knew I was being facetious. They knew I wasn't targeting anyone."

Fahmy, Dalia(2010, March 3). Professor Suspended After Joke About Killing Students on Facebook. *ABC News* . Retrieved from <http://abcnews.go.com/Business/PersonalFinance/facebook-firings-employees-online-vents-twitter-postings-cost/story?id=9986796>

Two police officers in Louisiana were fired Monday after one wrote a Facebook post suggesting Rep. Alexandria Ocasio-Cortez should be shot and the other liked it.

CNN

July 23, 2019

# Iowa teacher on leave after 'sniper rifle' comment about Greta Thunberg visit

ROBIN OPSAHL | DES MOINES REGISTER

5:47 pm EDT Oct. 6, 2019



## Activist Greta Thunberg speaks at Iowa City climate strike

Activist Greta Thunberg speaks during the strike for a "Town-Gown Climate Accord" hosted by the Iowa City Climate Strikers, Oct. 4, 2019.

JOSEPH CRESS, IOWA CITY PRESS-CITIZEN

DES MOINES, Iowa - A Waterloo high school teacher is on administrative leave after he left a threatening Facebook comment on a news story about [climate activist Greta Thunberg's Iowa City visit](#) Friday.

# Freedom of Speech - Location

- ▶ Public forums
- ▶ Closed forums
- ▶ Limited public forums

# 2019 Legislation



## Act 184 of 2019

- ▶ To establish the Forming Open and Robust University Minds (FORUM) Act
- ▶ Eliminates free speech zones.
- ▶ Reinforces freedom of association by students and student organizations.

# Act 395 of 2019

- ▶ To ensure the freedom of expression of a student journalist at a public institution of higher education.
- ▶ Student journalist has the right to engage in protected activities.
- ▶ Student media advisor shall not be dismissed, suspended, or disciplined for protecting a student journalist's First Amendment rights.

# Act 844 of 2019

- ▶ Allows a state-supported institution of higher education to classify certain students as in-state for purposes of tuition and fees at a state-supported institution of higher education.
- ▶ Employment authorization document.
- ▶ Immigrated from Marshall Islands.
- ▶ DACA.

## Act 1028 of 2019

- ▶ Requires all open public meetings to be recorded.
- ▶ Recording shall be maintained for a minimum of one year from the date of the meeting.

“Do the right thing.  
It will gratify some  
people and astonish  
the rest.”

Mark Twain

Questions?