Legal Up Date For District School Administrators February 2005

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The **Legal Up Date For District School Administrators** is a monthly update of selected significant court cases pertaining to school administration. It is written by Johnny R. Purvis for the **Safe, Orderly, and Productive School Initiative** located in the Graduate School of Management, Leadership, and Administration at the University of Central Arkansas. If you have any questions or comments about these cases and their potential ramifications, please phone me at **501-450-5258.** In addition, feel free to contact me regarding educational legal concerns; school safety and security issues; student discipline/management issues; and concerns pertaining to gangs, cults, and alternative beliefs.

Topics:

- Civil Rights
- Freedom of Expression
- Home Schooling
- Labor and Employment
- Religion
- Security
- Torts
- Transportation

Commentary:

- No commentary

Topics

Civil Rights

"Superintendent Violates Teacher's Rights to Rear His Son"
*Barrett v. Steubenville City Schools (C.A. 6 {Ohio}, 388 F. 3d 967), November 15, 2004.

Elementary teacher stated a claim under Section 1983 for superintendent's violation of his constitutional right to rear his child by alleging that superintendent not only conditioned his full-time employment on where the teacher's son attended school, but also terminated him once his son was removed from public school. Note: The principal of the elementary school (who was getting ready to assume the superintendent's position for the school district the next school year) where the teacher worked as a full-time substitute teacher told him that he would not give the teacher a contract if his son continued to attend a Catholic school. The teacher finally removed his son from the Catholic school and enrolled him in the district's public school (the son had attended the Catholic school since kindergarten). Thereupon, he was hired as a full-time substitute teacher, with the expectation of receiving a full-time teaching contract. However, the teacher removed his son from the public high school and re-enrolled him back in the Catholic school. The superintendent then removed the teacher from the full-time substitute teaching position.

Freedom of Expression

"Student's Religious Mural Unconstitutional"
*Bannon v. School Dist. Of Palm Beach County (C.A. 11 {Fla.}, 387 F. 3d 1208), October 12, 2004.

While the school district's high school was undergoing long-term remodeling, students were prevented from walking into the construction area by dozens of large plywood panels in interior and exterior hallways. The panels were unsightly, and would remain a part of the school for up to four years. To beautify the school, students were invited to paint murals on the panels. The school did not specifically prohibit students from expressing religious views. However, school officials did instruct students that their artwork could not be profane or offensive to anyone. On a Saturday afternoon, the plaintiff (a senior) and other members of the school's Fellowship of Christian Athletes (FCA) painted several murals with various religious messages and symbols. The United States Court of Appeals, Eleventh Circuit, held that the religiously diverse public school had legitimate pedagogical concern in avoiding disruption of school's learning environment caused by student's painting of religious words and symbols on murals as part of the school's beautification project. The district's policy of prohibiting religious expression on its walls was reasonably related to that concern because it ended the disruption. In addition, the court held that the murals constituted "school sponsored expression" which occurred in the context of a curricular activity, even though students were not required to participate and received no grade nor credit for doing the activity.

"Half–Sister Gets Guardianship of Brother"
*Hinkley v. Chapman (Ind. App., 817 N.E. 2d 1288), November 30, 2004.

Ten year old child resided with his mother since birth and had been home schooled by her since kindergarten. He was diagnosed with a speech impediment (which made his speech difficult to understand): Functioned at kindergarten level in reading and spelling; and at first grade level in mathematics. Thus, his half-sister and her husband filed a petition seeking temporary and permanent guardianship over the youngster. The Court of Appeals in Indiana held that appointment of the child's half-sibling and half-sibling's husband as guardian for the child was not an abuse of discretion. No statute required the trial court to consider less restrictive alternatives before appointing a guardian for a child. Accordingly, the trial court found appointment of guardianship was in the child's best interest. Note: As a footnote to this case, the trial court cited a psychological evaluation of the child that found that the youngster's development lag was not the result of a learning disability, but his mother's failure to educate him using "age-appropriate material".

<u>Labor and Employment</u>

"Principal's Promise to Hire Teacher Unenforceable"
"Saxonis v. City of Lynn (Mass. App. Ct., 817 N. E. 2d 793), November 8, 2004.

Promises that were allegedly made by principal of city's vocational school that substitute teacher would be hired as a permanent substitute for a full-time teacher, and that substitute would be hired to replace full-time teacher when she retired were unenforceable. Promises ran counter to express legislative policy that made substitutes teacher an employee at will; and she was presumed to know that promises were contrary to law. Note: The plaintiff closed her beauty salon, which she had operated for twenty-three years, in order to serve as a permanent substitute cosmetology teacher.

"Teacher Not Establish Claim of Quid Pro Quo Sexual Harassment But Judgment Precluded on Hostile Work Environment"

*Marchione v. Board of Educ. Of City of Chicago (N.D. ILL., 341 F. supp. 2d 1036). October 25, 2004.

Elementary school teacher who was terminated for falsification of employment records brought suit against city school board of education and school principal, alleging: sexual harassment, sex discrimination; religious discrimination; Title VII retaliation defamation' and First Amendment retaliation. The United States District Court, N.D. Illinois, Eastern Division, held that the school board could not be held liable on claim of quid pro quo sexual harassment. However, the Court held that summary judgment was precluded regarding the subjecting of plaintiff to a hostile work environment created by the principal. Note: Teacher (plaintiff) had been convicted on three felony courts, which involved a scheme in which merchandise was ordered using a stolen credit card. She marked "No" on her application for a teaching certificate regarding the question, "Have you ever been convicted of a crime?" Her teaching certificate was revoked by State of Ohio due to her criminal conviction and falsifying her application. She claimed she never received a letter information her of the revocation of her teaching certificate. To further complicate matters, she alleged that her principal questioned her about her love life; berated her about her work performance; made comments about women's menstrual cycles offered her better working conditions in exchange for sexual favors; pinned her arms in an unwelcome embrace, thrust his pelvic against her; and made several explicit and definite sexual advances. In addition, the plaintiff was removed from her teaching duties and reassigned non-classroom duties (counting and separating books) because of the teacher's classroom performance, demeaning language toward students, and corporal punishment of students. All the allegations against the teacher were supported by parent-tutor who was present in the teacher's classroom.

As an additional note: The issue was not the teacher's termination, which was well settled law. It was the principal's conduct toward the teacher while she was assigned to his school.

Teacher Terminated After Requiring Second Grader to Hump the Wall In Her Classroom"

*Spurlock v. East Feliciana Parish School Bd. (La. App. 1 Cir., 885 So 2d 1225), October 29, 2004

Evidence supported findings that tenured second grade teacher's conduct in making misbehaving second grade male simulate a sex act in front of her classroom, along with stating that she hoped their penises would "swell up and break off", constituted willful neglect of duty even though the teacher did not violate a direct administrative order or an identifiable school policy. One of the teacher's students reported that he saw three of his classmates "humping" the rest room wall. When the three students returned to class, she made all three "hump" the wall in front of her second grade class. As a footnote to the case, prior to the three boys, who humped the rest room wall returning to class the teacher ordered the student who reported the behavior of the other students to demonstrate "humping" in front of his classmates.

Religion

"Cross on Brick Not Violate Establishment Clause"
*Demmon v. Loudon County Public Schools (E.D. Va., 342 F. Supp. 2d 474), October 15, 2004.

Parents (Parents Associated With the School {PAWS} associated with a school district initiated a fund-raising project through which they solicited sales of engraved bricks that would create a "walkway of fame" on high school property. The manufacturer had a number of symbols available that were associated with such things as gymnastics, hockey, thespian masks, lacrosse sticks, soccer, volleyball, music, and drama. The only available religious symbol was the Latin cross. Once the walkway of fame was completed, the principle received a complaint about the bricks bearing the Latin cross. After consulting with PAWS, the decision was made to remove the bricks inscribed with the Latin cross. The Unites States District Court, E.D. Virginia, Alexandria division, held that school district engaged in "prohibited viewpoint discrimination in limited public forum". Thus, school officials were in violation of the First Amendment when officials removed bricks displaying the Latin cross from the "walkway of fame". School officials did allow3 donors to display other symbols, students' names, phrases or symbols personifying student, student accomplishments, and other secular symbols. Accordingly, having created a limited public forum, school officials could not deny donors the opportunity to display the Latin cross when it allowed recognition of athletic, academic, and other achievements of students.

Security

"School Security Service Owed No Duty to Protect Students"
*Dabbs v. Aron Sec., Inc. (N.Y.A.D. 2 Dept., 784 N.Y.S. 2d 601), November 8, 29004.

Student and his sister sustained physical injuries when they were attacked by a fellow student in the courtyard of their school. The Aron Security, Inc. and Arrow Security Patrols had the contract to provide unarmed security service for the Middle Country Central School District. The Supreme Court, Appellate Division, Second Department, ruled that the security service owed no common-law or contractual duty to protect students from injury resulting from an attack by a fellow student. Their contract provided that "service would protect physical facilities and welfare of students".

Torts

"Parents Trips and Falls Over School's Curb"
*Richard v. Pembroke School dist. (N.H., 859 A. 2d 1157), October 21, 2004.

Even if parent's injuries from tripping over curb (while picking her son up at school) were of insufficiency in sidewalk, parent failed to establish (as required by statute) that school district had notice of alleged sidewalk insufficiency resulted in school district's immunity from liability for parent's injury. Maintenance supervisor for school district (who was officer responsible for maintaining school grounds) stated in his affidavit that he did not, at any time prior to parent's trip and fall, receive written or verbal notice of alleged insufficiency in sidewalk, Note: Plaintiff suffered severe injury to her right arm, for which her husband sought damages for lost of consortium (association).

"Student's Negligence Claim Was Timely"
*Herbert v. Calcasieu Parish School Bd. (La. App. 3 Cir., 884 So, 2d 1268), October 13, 2004.

Fact that student refrained from filing suit for initial diagnosis of minor injuries (namely hemorrhage and nondisplaced skull fracture) which student sustained in a fall at recess did not preclude student from later filing suit for epileptic lesion which was unknown to the student until approximately one year and six months after the fall. An EEG revealed that student had epileptic lesion, allegedly caused by the fall. Since student filed her negligence action against school board approximately one month after she discovered the existence of the lesion, her claim was timely pursuant to the application of a one year limitation period.

"**Teacher Had No Duty to Refrain From Sex With Adult Student"**
*Scotts v. Eveleth (Iowa, 688 N.W. 2d 803), November 10, 2004.

Junior high male teacher began a sexual relationship with a female student during the spring of her senior year. By the time the sexual relationship began, the student had already reached the age of eighteen. The teacher did not teach, advise, or coach the young lady. When the couple engaged in sex, it was always away from the school premises, and was always consensual. The Supreme Court of Iowa stated that the teacher did not owe a common law duty as an element of negligence to refrain from a sexual relationship with the student. Teacher never had a teacher-student relationship with student. Student was an 18-year-old adult, and their sexual activities took place off school premises.

<u>Transportation</u>

"Student Injuries Ankle While Disembarking School Bus"
*Soto v. Board of Edu. of City of New York (N.Y.A.D. 1 Dept., 783 N.Y.S. 2d 527), September 28, 2004.

Award of $550,000 for future pain and suffering to student passenger who injured her ankle when she stepped into "street depression" while disembarking from school bus deviated materially from what was reasonable compensation. Thus, the court ordered that the award for student's future pain and suffering not exceed $200,000.

Commentary

No commentary

***Possible implications for Arkansas's Schools.**

Legal Up Date For District School Administrators March 2005

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- Athletics
- Attorney Fees
- Civil Rights
- Disabled Students
- Labor and Employment
- Parties
- Religion
- Student Discipline
- Torts
- Witnesses

Commentary:

- No commentary

Topics

Athletics:

"Second Grader Fractured Arm During Gym Class"
*Lindaman ex rel. Lindaman v. Vestal Cent. School Dist. (N.Y.A.D.) 3 Dept., 785 N.Y.S. 2d 549), November 18, 12004

Seven-year-old became entangled with another student, fell on a hardwood floor, and fractured her left arm during a multiple-ball version of the game of dodge ball in her second-grade gym class. The New York Supreme Court, Appellate Division, Third Department, held that: (1) While schools are not insurers of the safety of their students, they are **under a duty** to exercise the same degree of care as would a "reasonably prudent parent" when placed in comparable circumstances; (2) Genuine issue of material fact **existed** as to whether dodge ball game was "age appropriate" for seven=year-old. Thus, **summary judgment was precluded** (school district denied motion for summary judgment) in favor of school district.

Attorney Fees:

"Pre-Administrative Settlement Does Not Entitle Parents to Attorney Fees"
*Alegria v. District of Columbia (C. A. D. C., 391 F. 3d 262), December 3, 2004.

Parents of a disabled student, who resolved their claim for special education placement through a "pre-administrative hearing settlement agreement", requested attorney fees under I
IDEA. The United States Court of Appeals, District of Columbia Circuit, held that they were <u>not</u> entitled to attorney fees as a "prevailing party."

Civil Rights:

"High School Student Threatens Teacher"

***In re Ernesto H. (Cal, App. 6 Dist., 21 Cal. Rptr. 3d**

A physical education teacher interceded when two male students attempted to engage in a fight. When teacher interceded, both students claimed they were just playing. However, later during the period the two students went to a secluded area out of the teacher's sight to renew their fight. Thereupon, they posted a male lookout (the plaintiff). When the teacher was within two or three feet of the plaintiff, in addition to the yelling at the two students top stop fighting, he informed the plaintiff that being a lookout was not "okay". The plaintiff yelled "Don't yell at me. Yell at me again and see what happens!" When the plaintiff spoke, his hands were clenched at his sides, his head was tilted back, and he took a step toward the teacher. The Court of Appeals, Sixth District, held that **juvenile yelling at the teacher constituted threat of unlawful injury, and was intended to influence performance of public employee's duties; and teacher did <u>not</u> violate student's free speech rights he held the youngster accountable for yelling at him.**

"Suppression of Student's Article in High School Newspaper Violated First Amendment"

*Dean v. Utica Community Schools (.D. Mich., 345 F. Supp. 2d 799), November 17, 2004.

Former student and reporter for her high school newspaper brought suit against school district and superintendent, alleging that they violated her freedom of speech and press under the First and Fourteenth Amendments by censoring an article she wrote for the high school newspaper. The article was about a lawsuit pending against the school district, in which residents of a neighborhood adjoining the district's bus garage claimed that diesel fumes from idling buses constituted a nuisance, violated their right of privacy, and harmed their health. The faculty advisor (teacher who taught journalism and English classes) of the school sponsored newspaper took the article to the high school principal, who in turn took it to the assistant superintendent, who in turn took it to the superintendent. Thereupon, the superintendent told the principal to remove the article from publication because the school district was involved in litigation and it "would be inappropriate for the school newspaper to comment on that". The United States District Court. E.D. Michigan, Southern division, stated that the school district **violated** free speech component of the First Amendment by suppressing the student's article. Furthermore, the district's stated pedagogical concerns were <u>not</u> supported by evidence submitted by school officials.

"Special Needs Student's Parents Not Entitled to Attorney Fees"

*Metropolitan School Dist. of Lawrence Tp. V. M.S. (Ind. App., 818 N. E. 2d 978). December 8, 2004.

Parents of a nine-year-old student (youngster's disabilities included cerebral palsy, spastic quadriplegia, and orthopedic conditions that prevent her from walking and significantly limit the use of her hands) were not prevailing party entitled to an award of attorney fees in connection with due process hearing under IDEA. The only issue of any consequence on which parents prevailed at hearing, namely, the school's unilateral decision to reduce time spent by student in "stander" (Student utilizes a wheelchair, and she uses a "stander" apparatus during the day to help strengthen her legs, torso muscles, and to aid in digestion. School decreased the student's time in the stander from one hour to thirty to forty-five minutes per session because the one-hour session was causing her knee caps to dislocate), was not a material violation of student's IEP. Additionally, the request for the IEP hearing **was motivated** by the parent's desire to have their youngster transferred to another school.

"Student's IEP Was Reasonably Calculated to Meet Free Appropriate Public Education Standard"

*J.R. Board of Educ. Of City of Rye School Dist. (S.D.N.Y., 345 F. Supp, 2d 386), November 22, 2004.

The modified continuation of an IEP, which included mainstream classroom activities at public school, counseling, and special education activities, **was likely** to continue the progress of educational and social development for a student with special needs. Thus, the student's IEP **was reasonably calculated** to provide the student with a free appropriate education as required under IDEA. Even if student performed better at a private school that specialized in special needs students, the student's teachers and psychologist testified that the student **achieved** the goals (e.g. social, coping, and academic) set forth in her IEP. **Note:** The 14-year-old had been diagnosed with Trisomy-14 Mosaic Type ("Trisomy"), a genetic disorder that caused her numerous disabilities, including speech and language impairments; fine and gross motor difficulties; visual problems; and an auditory processing disorder,. In addition, she was also diagnosed with a bipolar disorder for which she is treated with medication.

Labor and Employment:

"Teacher Allowed to Depose Individual Board Members"
*Lee v. East Baton Rouge Parish School Bd. (La. App. 1 Cir. 887 So. 2d 1), June 30, 2004.

School board found tenured teacher guilty of "willful neglect of duty" and suspended her for five years and barred her from teaching in East Baton Rouge Parish schools. The teacher, with 18 years of experience sought a judicial review of the board's decision. She subpoenaed members for disposition in an effort to demonstrate that the board was predisposed in finding her guilty, hereby rendering its decision arbitrary and capricious. The Court of Appeals of Louisiana, First Circuit, held that the teacher **should be allowed to depose individual school board members** regarding relevant maters of fact that did not probe into or compromise the mental process employed by the board members in formulating their decision. **Note:** During the teacher's hearing, some of the board members were totally inattentive, eating snacks, and chatting with each other.

"State's Contribution to Employee Health Insurance Had a Rational Basis"
*Carter v. Arkansas (C.A. 8 {Ark.}, 392 F. 3d 965), December 17, 2004.

Former superintendent, who is a retired public school employee, brought civil rights action under Section 1983 against state governor and members of board that administered state employees' benefits plan. He alleged equal protection and due process violations under both the federal and state constitutions because the state of Arkansas contributed more for health insurance premiums for state employees than for public school employees. The United States Court of Appeals, Eight Circuit, held that defendants' action in contributing more toward state employees' health insurance premiums that to public employees' premiums **had rational basis.** Thus, the state did not violate employee's substantive due process rights.

March 2005 (#'s 492 & 493)

"Absent of Bias-School Board May Conduct Hearing"

*In re Hopkinton School Dist. (N.H., 862 A 2d 45), November 18, 2004.

This case concerns the non-renewal of a principal. She, the non-renewed principal, sought a review of the State Board of Education's (board) decision finding that there was "bias and/or the appearance of bias" in the board of education's decision affirming the superintendent's recommendation for non-renewal of her contract. The Supreme Court of New Hampshire vacated and remanded the case back to the board. In so doing, the Court stated that absent showing the school board's actual bias or prejudice, school board **may** conduct hearing concerning non-renewal of the employment contract. The court went further and said that the State Board of Education (board) **was required** to find that there was more than prior involvement of school board's chair or the school board before the recommendation was made by the superintendent.

Parties:

"University Student's Home Computer Seized"

*Mink v. Salazar (D. Colo., 344 F. Supp. 2d 1231), October 26, 2004.

University of Northern Colorado (UNC) student published an internet journal concerned with current events within the UNC community using a computer he shared with his mother in her home. The journal featured a regular column from a fictitious character named "Mr. Junius Puke". However, the column included a doctored photograph of an actual professor at UNC named Junius Peake. Professor Peake was not amused and contacted the District Attorney's office, launching an investigation into the student's activities. The Greeley Police Department, armed with a search warrant, seized the student/mother's computer. The United States District Court, D. Colorado, held that deputy district attorney **was engaged** in quasi-judicial conduct when she reviewed and approved the affidavit that subsequently was submitted in support of search warrant. In addition, the deputy district attorney **was entitled** to absolute prosecutorial immunity that **precluded** Section 1983 claim for violations of First and Fourth Amendments allergy resulting from the execution of the search warrant.

March 2005 (#'s 492 & 493)

Religion:

"School Voucher Program Violated Florida's Constitution"

Bush v. Holmes (Fla. App. 1 Dist., 886 So. 2d 340), November 12, 2004.

The central issue in this case pertained to whether Florida's Opportunity Scholarship Program (OSP) violated the last sentence of article 1, section 3 of Florida's Constitution…"no revenue of the stat….shall ever be taken from the public treasury directly or indirectly to aid….of any sectarian institution." The District Court of Appeal of Florida, First District, stated that no-aid provision of the State Constitution **prohibited** indirect benefit to sectarian schools resulting from receipt of funds by such institutions through the state's voucher program.

"Student's T-Shirt Message is Within the First Amendment"

*Harper ex rel. Harper v. Poway Unified School Dist. (S.D. Cal., 345 F. Supp. 2d 1096), November 4, 2004.

High school student (a Christian with a firmly held religious belief that homosexuality is immoral) who was suspended for wearing a T-shirt with message expressing religious condemnation of homosexuality brought action against school district and school officials. He alleged that his suspension from school violated his rights to freedom of speech and free exercise of religion under the First Amendment, along with equal protection and due process under the Fourteenth Amendment. The United States District Court, S.D. California, held that the student **stated a valid claim** under the Establishment Clause of the First Amendment, based on allegations that school policy which prohibited T-shirt inhibited religion. In addition, the deputy sheriff and vice principal **made statements** which were intended to coerce him into changing his religious belief about homosexuality. **Note:** On the school day when the school observed "A Day of Silence", the plaintiff wore a T-shirt with the words "I will not accept what God has condemned" on the front and "Homosexuality is shameful, Romans 1:27" on the back. The next day, the student wore a different T-shirt which stated "Be ashamed, our school embraced what God has condemned" on the front and Homosexuality is shameful, Romans 1:27" on the back.

"Elementary Student Accused of Bringing a Handgun to School"

*Wofford v. Evans (C.A. 4 {Va.}, 390 F. 3d 318), November 19, 2004.

One afternoon, several students reported to their teacher that a 10-year-old classmate had brought a handgun to school. One student said that he had seen the accused throw the gun into the woods adjoining the school. During the ensuing investigation, school administrators twice held the accused student in the principal's office for questioning. During the second detention, law enforcement officers also quizzed the child. The accused child's mother was not contacted until the police had departed. The United States Court of Appeals, Fourth Circuit, held that: (1) The student's Fourteenth Amendment due process rights were not violated, in that the child's mother did not have to be contacted prior to her child's temporary detention and questioning by school administrators and police. At all times during the detention and questioning, the student **remained on school property under the auspices of school administrators.** (2) The student's Fourth Amendment rights pertaining to search and seizure were not violated because school officials were subject to a lesser degree of procedural scrutiny than law enforcement. School officials need only to **justify a search at its inception** and to extend the scope of the search within **reasonable bounds related to the initial justification.** As a footnote, the weapon was not found.

"Expelled Disabled Student Continues Education While Expelled Non-Disabled Student is Denied Schooling"

*In re RM (Wyo., 102 P. 3d 868), December 10, 2004.

Student A and student B were caught selling marijuana to other students while on school grounds. After hearing, the board of education unanimously elected to expel both students from school for a period of calendar year because their acts were detrimental to the safety, education, and general welfare of the other students. The Supreme Court of Wyoming stated that providing educational services to (student A) covered by IDEA and within his IEP who had been expelled, without providing the same services to non-disabled student (student B) who had also been expelled, was a narrowly tailored method of rectifying the long history of disparity which existed for disabled students. Thus, providing alternative service for student A to continue his education, while student B was externally expelled from school, did not constitute an equal protection violation.

Torts:

"School Not Negligent in Supervision of Assaulted Student"

*Taylor v. Dunkirk City School Dist. (N.Y.A.D. 4 Dept., 785 N. Y.S. 2d 6231), November 19, 2004.

School district **established** that classroom teacher did not have reason to anticipate an assault on a student by a fellow student in the school's hallway. School district and teacher were not liable for attack on theory of negligent supervision. Although attacker had behaved disruptively and defiantly toward the teacher and may have been verbally aggressive toward her victim, attacker had no history of physically aggressive behavior. Additionally, attacker did not demonstrate any such behavior in the classroom on the day of the attack.

Witnesses:

"Six-Year Old Special Education Student Competent to Testify Against Board of Education"

Tate ex rel. Tate v. Board of Educ. Of City School Dist. of Peekskill (S.D.N.Y., 346 F. Supp. 2d 536), November 29, 2004.

"Multiply disabled" six-year-old special education student **was competent** to testify in federal civil rights action against board of education and related entities and individuals. The student's parents alleged physical abuse of their child, and school officials' failure to investigate and stop abuse. The student was questioned on a wide array of topics and gave responsive answers; displayed a demeanor consistent with other children his age; and showed the ability to communicate recollection of relevant events. In addition, he demonstrated an appreciation for the concept of truthfulness.

No commentary

***Possible implications for Arkansas's schools.**

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April 2005 (#'s 494 & 495)

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- No commentary

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Abuse and Harassment

"Former Students Claim Sexual Abuse by Coach"
D.M. v. River Dell Regional High School (N.J. Super. A.D., 862 A. 2d 1266), December 23, 2004.

While they were high school students between the years 1969 and 1981, a number of male students alleged that they were sexually abused by their athletic coach. The abuse mostly occurred on athletic and camping trips and consisted primarily of genital fondling, oral sex and being given liquor and cigarettes. The Superior Court of New Jersey, Appellate Decision, held that they **were entitled** to a hearing on the charges against their former coach; however, the school and school district were not subject to New Jersey's Child Sexual Abuse Act.

Civil Rights

"Mother's Cousin Engages in Sexual Misconduct With Her Son"
*N.C. ex rel. M.C. v. Bedford Cent. School Dist. (S.D.N.Y, 348 F. Supp. 2d 32), August 27, 2004.

Beginning when he was in the seventh grade, a student's mother's cousin began to give him gifts, show him pornographic videos, provide him with prostitutes, and watch him engage in sexual conduct. By the time the youngster was in the ninth grade, the cousin's sexual contact had escalated to sodomy. On or about this time, the student's parents sought to have their son evaluated and classified as "emotionally disturbed" under IDEA. It was at this point in time, the school district's social worker, counselor, and other school officials became involved in the case. The student and his parents **failed** to show that communication between the school social worker, guidance counselor, and assistant superintendent regarding the youngster's history of sexual abuse violated the student's right to privacy. Furthermore, school officials **had a substantial interest** in setting forth all relevant details about events (which were likely to have impacted the student's emotional well-being) during the evaluation of his emotional state; plus, **all** communication occurred during the course of evaluation.

Disabled Students:

"Down Syndrome Student Sexually Assaulted at High School"
*Teague ex rel., C.R.T. v. Texas City Independent School Dist. (S.D. Tex., 348 F. Supp. 2d 785), December 3, 2004.

A male high school student forced a female special education student, who suffers from Down's syndrome, into a rest room and sexually assaulted her. Instead of contacting her parents, school officials escorted the young lady into the security office, questioned her, and forced her to disrobe. A United States District Court in Texas held that parents' suit **could be maintained against the school district** under Section 1983 due to the fact that the school officials **failed to provide adequate supervision** in the special education classroom to which the victim was assigned. The court went on to state that there was **absolutely no justification** on the facts presented for strip-searching the young lady without notification of her parents. Moreover, school officials were not trained in forensics; thus, their investigation **destroyed or adulterated evidence, rather than preserving it.**

Labor and Employment:

College Employee Violated Internet Policy"
Pettyjohn v. Unemployment Compensation Bd. Of Review (Pa. Cmwlth, 863 A 2d 162), December 14, 2004.

Claimant's use of internet for personal purposes during working hours **constituted willful misconduct;** thus, former employee was not entitled to unemployment compensation benefits. Employee **was aware** of college's policy prohibiting use of the internet for personal purposes except for designated times (breaks and lunch hours).

"Teacher Aide Caught Stealing Money At School"
*Agnew v. North Colonie Cent. School Dist. (N.Y.A.D. 3 Dept., 787 N. Y.S. 2d 521), January 13, 2005.

Substantial evidence **supported** school district's finding that a teacher's aide was guilty of stealing money from the classroom to where she was assigned. Testimonial evidence **established** that teacher placed a white envelope containing a small amount of cash in the top drawer of a file cabinet one morning, and the envelope was missing from the cabinet one day later. A videotape surveillance camera captured the teacher aide removing the envelope and placing it in her handbag during the intervening 24-hour period.

Security:

Student Injured By Fellow Student In School's Cafeteria"
*Smith v. Half Hollow Hills Cent. School dist. (E.D.N.Y., 349 F. Supp. 2d 521), December 1, 2004.

A middle school student was assaulted by a fellow student who was attempting to take coins from his food tray in the school's cafeteria. The plaintiff stated that the school's administration were aware of the culprit's propensity for violence, yet did nothing to protect plaintiff prior to the attack, nor intervene in any way to stop the attack. In addition, the plaintiff suffered both physical (injured neck, back, and shoulders) and emotional harm; and, the incident caused him to transfer to a private educational institution. A United States district court in New York held that school officials' did not breach their duty to supervise and protect the plaintiff. Moreover, they could not have anticipated the assault by the offending student, who did have six prior disciplinary incidents. However, none of the previous incident involved attempts to take money from food trays in the school's cafeteria; and he had not had any behavioral problems during the current school year.

Student Discipline:

"Student Charged With Terrorism"
*Porter v. Ascension Parish School Bd. (C.A. 5 {La.}, 393 F. 3d 608), December 10, 2004.

When the plaintiff was 14 years old, he sketched a drawing of his high school in the privacy of his home. It was crudely drawn, depicting the school under a state of siege by a gasoline tanker truck, missile launcher, helicopter, and various armed person. The sketch also contained obscenities and racial epithets directed at characters in the drawing. In addition, the drawing contained disparaging remarks about the high school principal. The youngster stored the drawing in his closet. Two years later, his 12 year old brother was looking for something to draw on and found the older brother's sketch pad, which contained the sketch on the siege of the school. While riding home on a school bus the younger brother allowed another student to flip through the pad. Thereupon, the older brother's sketch was discovered and shown to the bus drive. The bus driver took the pad with the school siege sketch to the high school principal, and the plaintiff was recommended for expulsion. However, he was assigned to the alternative school and allowed to continue his education. The following fall, he was allowed to re-enroll in his previous high school; but he dropped out of school the following spring. The student and his parents filed suit against the school district, alleging the violation of the youngster's First, Fourth, and Fourteenth Amendment rights. The United States Court of Appeals, Fifth Circuit, held that the sketch **was protected speech** (First Amendment); school officials did not violate either the student's Fourth Amendment (search and seizure) or Fourteenth Amendment (due process); and the principal **was entitled** to qualified immunity.

Torts:

Special Need Student Sexually Assaulted on School Bus"
*Doe ex rel. Ortega-Oiron v. Chicago Bd. Of Educ. (Ill., 289 Ill. Dec. 642, 820 N.E. 2d 418), November 18, 2004.

Guardian brought forth allegations on behalf of ward (who was a mentally impaired special education sltudwents at a school for maladjusted boys) who was sexually assaulted by a fellow student who had been declared sexually aggressive and was under a protective plan never to be left unsupervised. The court held that the plaintiff **did state a valid claim for willful and wanton misconduct** by school officials in their **failure** to provide a bus attendant when they should have known of the likelihood of harm to the plaintiff.

"Student Injured by P.E. Teacher for Non-Participation"
*Boone v. Reese (La. App. 3 Cir., 889 so. 2d 435), December 8, 2004.

Mother, individually and on behalf of her son, sued physical education teacher and school board, alleging son suffered serious injuries as a result of being called names and pushed into a wall by his physical education teacher. The incident occurred when the ninth grader (who suffered from congenital heart condition; teacher had not been informed of the condition by school officials) refused to walk around the gym rather than running as the rest of the class. Teacher walked over to the student (who was sitting in the gym's bleachers), grabbed him by his hand, and said, "You're gonna walk". Thereupon, the student claimed that the teacher pushed him into the wall. A Louisiana circuit court stated that plaintiff **failed** to prove his claim by a preponderance of evidence.

Commentary

No commentary

***Possible implications for Arkansas's Schools.**

Legal Up Date For District School Administrators May 2005

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Topics:

- Alternative Education
- Civil Rights
- Disabled Students
- Property and Contracts
- Student Discipline
- Torts

Commentary:

- No commentary

Topics

Alternative Education:

"Student Plot Shooting on School Bus"
*Stein v. Asheville City Bd. Of Educ. (N.C. App. 608 S. e. 2d 80), February 1, 2005.

While riding a school bus two students (13 and 14 years old and behaviorally/emotionally handicapped) plotted "robbing and killing somebody", One of the students stated that he had a gun at his house under his mattress. A bus monitor overheard the boy's conversations. She, in turn, told the bus driver; however, neither the monitor not the driver shared their information with school or law enforcement officials. Approximately one week later, the boys begin stopping cars at an intersection with the intent to rob and kill each of the drivers. One driver was shot in the head by one of the boys and now suffers from vascular injury, spinal fracture, nerve damage, and post-traumatic stress disorder. The Court of Appeals of North Carolina held that officials and employees **had a duty to protect** others against harm from their students. Accordingly, employees **breached that duty** by failing to report students' threats of violence.

Civil Rights:

"Towel Boys Caught Videotaping Girls in School's Locker Room"
Harry A. Duncan (D. Mont.., 351 F Supp. 2d 1060), January 13, 2005.

The high school boys, who served as towel boys, employed a scheme (from October 2000 until November 2002) in which they videotaped high school girls in their locker room during home games and regular physical education classes. They installed cameras in such places as behind a two-way mirror in the girls' bathroom, and another two-way mirror affixed to the back of an old off-color gym locker that was placed horizontally on top of regular lockers in the boys' locker room. The set-up was finally discovered by one of the school's custodians who happened to notice a power cord going to one of the cameras. A United States District Court in Montana stated that **neither** the school district nor school officials could be held liable, absent showing of deliberate indifference.

Reasonable Suspicion Justifies Search of Student"
*State v. Bullard (Fla. App. 4 Dist., 891 so. 2d 1158), January 26, 2005.

School security specialist received face-to-face report from a student that the plaintiff possessed bags of marijuana. In addition, plaintiff had a record of skipping class and standing in the same location at certain times of the day, which aroused the suspicion of security personnel. When the security specialist and a fellow security specialist asked the plaintiff to accompany them to the office, the plaintiff ran. While running he threw seven baggies containing marijuana onto the ground. He was caught, and upon searching him, they found $216 on his person. Student claimed his Fourth Amendment rights had been violated. A Florida court of appeals held that the security specialist **had reasonable suspicion** to search the defendant.

Disabled Students:

"Second Grader Taped to a Tree"
*John Doe v. State of Hawaii Dept. of Edu. (D. Hawaii, 351 F. Supp. 2d 988), February 23, 2004.

A disabled second grade student attended an after school program at an elementary school where he "acted up" on a number of occasions over a period of weeks. On one occasion, a teacher "smacked" him on the back of the head and then dragged him by his shirt to the principal's office. A few weeks later, he got into a fight with several other boys. Thereupon, he and the other boys had to stand with their noses touching the outside wall of the school's cafeteria, while wearing a sing that read "On Detention". On another occasion in which he misbehaved, a strip of one inch wide masking tape was wrapped once around his head and a tree limb. The United States District Court, D. Hawaii, held that given that both the vice-principal and after-school-program worker **lacked** any knowledge of the student's disability, and that they did **not** act solely on the basis of the youngster's disability. Therefore, the defendants could not be held liable under Section 504 of the Rehabilitation Act.

Property and Contracts:

Paintball Gun Discovered on School Property"
In re M.H.M. (Pa. Super., 864 A. 2d 1251), December 23, 2004.

Two high school students left school during their lunch period and drove around town shooting various targets (e.g. garage doors and vehicles) with a carbon dioxide-powered paintball gun. Police investigating the damaged automobiles identified the two students as possible suspects. The plaintiff's father gave the police consent to search the vehicle, which was parked at school, upon doing so; they found six paintball guns in the vehicle's trunk. The Superior Court of Pennsylvania stated that a carbon dioxide-powered paintball gun is a "weapon" within the meaning of Pennsylvania law. Thus, both boys **could be adjudicated** as delinquents.

Student Discipline:

"Cheerleaders Suspended From School for Drinking"
*Jennings v. Wentzville R-IV School Dist. (C.A. 8 {Mo.}, 397 F. 3d 1118), February 16, 2005.

Two high school cheerleaders **were afforded** due process prior to their 10-day suspensions, when they received notice that they were being charged with violating school policy pertaining to consuming alcohol before a school event. The two female cheerleaders had drunk vodka at another student's house, prior to cheering at a school sponsored football jamboree. The high school principal spoke to one cheerleader about the charge and gave her an opportunity to respond. Thereafter, he spoke to the other cheerleader; and she terminated the discussion without permitting the principal to explain what evidence he possessed. Following the discussions (or at least attempted discussions) with the two cheerleaders, he informed their parents about the suspensions and invited them to contact him to discuss the matter. Both sets failed to contact the principal. Thus, the suspensions **were upheld.**

Torts:

"Basketball Fan Falls Off top Bleacher"
*Funston v. School Town of Muster (Ind. App., 822 N.E. 2d 985), December 16, 2004.

A middle school assistant principal (while watching his 12-year-old son play basketball in an AAU basketball tournament at the school district's high school) fell off the top tier of bleachers (about five feet off the floor) and injured himself. Prior to the fall, he was sitting on the lower tier of seats and reclined upon the row or bench behind him. However, while sitting on the top tier, he crossed his legs, leaned back, and fell to the floor. The Court of Appeals of Indiana reversed and remanded the lower court's decision (which ruled in favor of the school district) back to the lower court to examine the issue as to whether the plaintiff knew or should have known that there was no back on the last tier of bleachers, thus **precluding summary judgment** based on contributory negligence on the part of the plaintiff.

Commentary

No commentary

***Possible implications for Arkansas's Schools**

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June 2005 (#'s 498 & 499)

Topics:

- Athletics
- Civil Rights
- Disabled Student
- Dress Code
- Labor and Employment
- Religion
- Security
- Student Discipline

Commentary:

- No commentary

Topics

Athletics

"Soccer Player Injured"
*Stephenson v. Commercial Travelers Mut. Ins. Co. (La. App. 3 Cir., 893 So. 2d 180), February 2, 2005.

High school soccer player "rolled" her left ankle (she wore an ankle brace and taped her right ankle due to a previous injury) during a soccer match, and was subsequently told by her physician that she would also have to tape her left ankle once she was cleared to play. Approximately two weeks later, her coach asked her if she was able to play. Her response was "yes." Furthermore, she did not bring her medical restrictions to the coach's attention. She got a teammate to tape her ankles. During the game she was kicked by an opposing player during a ball-handling maneuver and suffered multiple fractures of her right leg. A Louisiana appeals court held that the plaintiff could not prevail on her negligent claim against the coach and school because the youngster's depiction of the accident did not reference her sprained left ankle; and, she was not sure that per pre-existing ankle injury had any bearing on her broken right leg.

Civil Rights:

"High School Science Teacher Has Sex With Student"
Sauls v. Pierce County School Dist. (C.A. 11 {Ga.}, 399 F. 3d 1279), February 9, 2005.

Although school district officials ultimately may have been ineffective in preventing female teacher's sexual harassment of male student, district could **not** be held liable under Title IX, since district officials did not act with deliberate indifference in response to actual notice of incidents of misconduct. School officials **sufficiently responded** to each report of misconduct they received by investigating the allegations and interviewing the relevant parties. Furthermore, they also consistently **monitored** the teacher's conduct and **warned** her about her interaction with students. The case arose after school officials received an anonymous e-mail about the sexual relationship between the science teacher and the high school junior. In addition to having sex with the young man, the teacher provided him with prescription drugs, pain pills, gave him money, paid speeding tickets, and bought him a cell phone. As a side issue, the student's academic performance improved drastically during the sexual relationship.

Disabled Student:

"Child Not Deprived of Free Education"
*Simmons ex rel. Simmons v. District of Columbia (D.D.C., 355 F. Supp. 2d 12), September 19, 2004.

Seven-month delay between parents' request for administrative hearing to challenge IEP for their disabled child (4 year old) and issuance of hearing officer's determination did not deprive child of FAPE, in violation IDEA because of the **absence of any substantial harm.** Evidence submitted did demonstrate that the child remained in her parents' preferred educational setting during the delay.

"School's Dress Code Challenged"

*Blau v. Fort Thomas Public School dist. (C.A. 6 {Ky.} 401 F. 3d 381), February 8, 2004.

Middle (sixth, seventh, and eighth grades) school's dress code* **was unrelated to the suppression of expression** as required to withstand First Amendment over breadth challenge. School officials **conveyed what the school district believed was appropriate,** where its stated purpose was to create unity, strengthen school spirit, pride, and focus attention upon learning and away from distractions. Additionally, its stated purpose **was concerned** with the school's statutory mandate to implement policies and provided an environment to enhance students' academic achievement. Furthermore, the school district did not regulate any particular viewpoint, but merely regulated the types of clothing that students could wear.

*Among other prohibitions, the dress code restricts the following:

- Clothing that is too tight, revealing or baggy, as well as tops and bottoms that do not "overlap";
- Hats, caps, scarves, or sweatbands' except on "special event days" such as "spirit" or "reward" days;
- Non-jewelry chains and chain wallets;
- Clothing that is "distressed" or has "holes in it";
- "Visible body piercing (other than the ears)";
- "Unnaturally colored hait that is distracting to the educational process," including "blue, green, red, purple, or orange" hair;
- Clothing that is too long, flip-flop sandals, or high platform shoes";
- Pants, shorts or skirts that are not of "a solid color of navy blue, black, any shade of khaki, or white";
- "Shorts, skirts, or skorts" that do not "reach mid-thigh or longer";
- Bottoms made with stretch knits, flannel, or fleece such as sweatpants, jogging pants, or any type of athletic clothing", as well as "baggy, sagging, or form-fitting pants";
- Tops that are not "a solid color" and are not "crew neck (style), polo style with buttons, oxford style, or turtle-neck";
- Tops with writing on them and logos larger that the size of a 'quarter'…except 'Highlands' logos or other 'Highlands Spirit Wear'";
- Tops that are not "of an appropriate size and fit"; and
- "Form-fitting or baggy shirts" or "any material that is sheer or lightweight enough to be seen through".

Labor and Employment:

"Teachers Challenge Transfers and Nonrenewal"
Richardson v. Terry (Ala., 893 So. 2d 277), March 19, 2004

Tenured teachers challenged their transfers, and nontentured teachers challenged the non-renewal of their contracts and brought action against Superintendent of the Alabama Department of Education, Department of Education, the Department's chief financial officer, and others. The Alabama Supreme Court affirmed in part, reversed in part, and remanded back to the circuit court. In arriving at its decision, the court held that the chief financial officer lacked authority to transfer tenured teachers; however, he did have the authority to non-renew nontenured teachers. The case arose when the Bessemer School Board requested that the State Board of Education assume control over the school district's finances. The State Board authorized the State Superintendent to appoint a chief financial officer for the Bessemer School System. Therefore, he appointed the State Department's chief financial officer. As part of the move to make the district financially stable, the State Department's chief financial officer recommended to the Bessemer Board the transfer of several tenured teachers, and the non-renewal of several nontenured teachers. The board approved the recommendations.

Religion:

"**Boy Scouts In School Permissible by Court"**
*Scalise v. Boy Scouts of America (Mich. App., 692 N.w. 2d 858), January 20, 2005.

School district's decision to allow the Boy Scouts of America (BSA) to distribute its literature, collect its communications during school hours, and to hang its posters in school hallways, did not implicate state constitution's Establishment clause. A wide array of organizations **were allowed** to display posters and to distribute literature to students, as long as those organizations satisfied **neutral qualifying criteria*. Furthermore**, BSA's literature and posters were not afforded unique, privileged placement, and did not denote the group's religious aspect. Additionally, **neither** school nor school district compelled students to take literature or incorporate posters into the school's curriculum. *The school district's policy reads as follows: Community groups or organizations which include residents of the district shall be permitted and encouraged to use school facilities for worthwhile purposes when such use does not interfere with the school program. School building may be used by responsible organizations for activities that are consistent with federal, state, and local laws. The Board shall prescribe regulations for occupancy and use to secure fair, reasonable, and impartial use of the properties.

Security:

Student Punched in High School's Stairwell"
"Mohammed ex rel. Mohammed v. School Dist. of Philadelphia (E.D. Pa., 355 F. Supp. 2d 779), February 4, 2005.

While on his way to his advisory room located on the fourth floor of a Philadelphia high school, another student attempted to punch a student in front of the plaintiff. The student ducked, and the plaintiff was hit in the eye. The stairwell where the incident occurred was not monitored by video surveillance cameras, and there were no security personnel present when the attack occurred. A United States district court held that the school district did not owe a duty of care to the assaulted student under the Fourteenth Amendment based on the "state-created danger theory". Evidence of a generally dangerous school environment did not make it foreseeable that a student would receive a punch intended for someone else. School's conduct did not create foreseeable that a student would receive a punch intended for someone else. School's conduct did not create foreseeable risk that student would suffer harm which actually occurred.

Student Discipline:

"Student Smoking Marijuana Not Under School Supervision"
*D.O.F. v Lewisburg Area School Dist. Bd. Of School Directors (Pa. Cmwlth., 868 A. 2d 28), November 12, 2004.

Ninth grade student was not "under the supervision of the board of school directors" when he packed and smoked a marijuana pipe with three female classmates on an intermediate school playground at night after a high school band concert. Thus, board's enforcement of school district's drug policy against student **was a violation of its authority under statute providing that board may adopt and enforce such reasonable rules as it may deem necessary regarding conduct of all pupils during such time as they are *"under their supervision of the board of school directors".*** Furthermore, the court held that there was **no** connection between the playground incident and the concert which concluded at least one and one-half hours prior to the incident. **Note:** a police officer noticed the students on the intermediate school's playground somewhere around 11:00 p.m. and proceeded to investigate. Thereupon, School officials attempted to expel the student for his role in the affair. The court not only ruled in favor of the student; it also required the school district to **expunge** any record of the incident and attempted expulsion from his records.

Commentary

No commentary

*** Possible implications for Arkansas's Schools**

Legal Up Date For District School Administrators July 2005

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Topics:

- Civil Rights
- Disabled Students
- Labor and Employment
- Student Discipline
-

Commentary:

- No commentary

Topics

Civil Rights:

"Strip Searches of Students Were Unreasonable"
*Beard v. Whitmore Lake School Dist. (C.A. 6 [Mich.], 402 F. 3d 598), January 26, 2005.

Searches of 20 male high school students conducted by a male teacher in the high school's locker room (in which students had to remove their shirts and lower both their pants and underwear) were **not related in scope to circumstances justifying the search.** Thus, the searches **were unreasonable in violation of the Fourth Amendment.** Students **had significant privacy interest** in their unclothed bodies, and the searches **were too intrusive.** Students did not consent to the searches; and school's interest in recovering the prom money a student had reported stolen was not weighty enough to justify the intrusive searches. Furthermore, there was no reason to suspect any particular student was responsible for the alleged theft.

July, 2005 (#'s 500 & 501)

"Atheist Mother Wins Suit Over School Uniforms"

*Wilkins v. Penns Grove-Carneys Point Regional School Dist. (C.A. 3 [N.J.], 123 Fed Appx. 493), February 14, 2005.

School district adopted a mandatory school uniform policy; however, it exempted students with "moral" objectives to uniforms. The following year the district changed policy to allowed objections based on "sincerely held religious beliefs". In addition, the school district provided three additional uniform exemptions: (1) financial hardship; (2) children wearing the uniforms of "nationally recognized youth organizations such as the Boy Scouts or Girl Scouts; and (3) children wearing the uniforms of certain approved school clubs. Plaintiff, an atheist, sought and was denied a States Court of Appeals, third Circuit, held that **a narrow religious exemption** to mandatory school uniforms policy **was rationally drawn to further legitimate interest** in accommodating students' free exercise of religion without undermining pedagogical goals of school uniform policy.

Disabled Students:

"Police Officer Arrests Disabled Student at School"

*Hayenga ex rel. Hayenga v. Nampa School Dist. NO. 131. (C.A. 9 [Idaho], 123 Fed. Appx. 783), February 17, 2005.

A student, who had been recently diagnosed with Asperser's syndrome, disrupted his classroom by continuously tapping o his desk and being verbally aggressive toward teachers. The school staff summoned a law enforcement officer for help. The officer had observed the plaintiff being verbally and physically aggressive with school staff; and in one episode, had been hit by the student (perhaps accidentally, while trying to calm him). The officer had to resort to force. She took him to the ground, handcuffed him, and with the help of other officers, hobbled his legs and sent him to the hospital on a mental hold. In the meantime, the student continually complained of pain, struggled against his confinement and remained verbally aggressive. The United States Court of Appeals, Ninth Circuit held that the school district breached **no** duty to developmentally-disabled student by "failing" to intervene when police officer (who had been summoned by school staff for help with student) despite contention that district knew that arrest created high probability that harm would result to student. Officer was employed by police department, not the school district. Thus, school officials had no authority whatsoever over the officer.

July, 2005 (#'s 500 & 501)

"School District Provided Disabled Student FAPE"

*L.C. v. Utah State Bd. of Educ. (C.A. 10 [Utah], 125 Fed. App. 252), March 21, 2005.

Parents of disabled middle school child (He suffered from a number of disorders, including anxiety, epilepsy, and a spastic colon.) brought action against board of education, office of education, superintendent, compliance officer, school district, and district administrators alleging substantive and procedural claims under IDEA, as well and Section 1983 claims. The United States Court of Appeals, Tenth Circuit, held that school district **adequately accommodated** disabled student's limited ability to write with a pen or pencil; he was never required to complete a test or assignment that was beyond his capacity; any information presented in a complicated form was simplified for him; and he was supplied with special education staff to assist him in his mainstream classes.

<u>Labor and Employment:</u>

"Teacher Not Disabled Under ADA"

*Winters v. Pasadena Independent School Dist. (C.A. 5 [Tex.], 124 Fed. App. 822), January 26, 2005.

Elementary teacher sued school district, alleging a discrimination claim under the Americans with Disability Act (ADA) in connection with a decision not to offer her a teaching contract. The school district claimed that plaintiff did not offer any evidence that she had a record of a disability, or that she was "regarded as disabled". Furthermore, school officials argued that plaintiff's performance problems were a legitimate, non-discriminatory reason for not renewing her teaching contract. The United States Court of Appeals, Fifth Circuit, stated that the teacher **failed** to prove that she was "disabled" within the meaning of the ADA, even though she went on medical leave for depression and was hospitalized in a mental institution. She testified that her depression was controllable by medication and her physician stated that her depression was treatable with medication, which would not prevent her from working.

"Male Teacher Failed to Rebuke District's Hiring of Younger Female Teacher"
*Brierly v. Deer Park Union Fee School dist. (E.D.N.Y. , 359 F. Supp. 2s 275), March 23, 2005.

White, male (approximately 50 years of age) high school "co-curricular director" of the Deer Park High School Marching Band sued school district and his former supervisor, alleging age discrimination, gender discrimination, retaliation, and deprivation of his constitutional rights. The United States District Court, E.D. New York, ruled that teacher (1) **failed** to establish discrimination policy or practice in violation of ADA; (2) **failed** to rebut district's explanations for hiring younger female teacher for music coordinator position; (3) **failed** to rebut district's explanation for denying him position of "Director of Fine and Performing Arts"; and (4) **failed** to rebut school district's explanation for transferring him to intermediate school.

"School's Transportation Director Brings Handgun to School"
*Bolden v. Chartiers Valley School Dist. (Pa. Cmwlth., 869 A 2d 1134), March 10, 2005.

On August 29, 2003, the plaintiff (Director of Transportation) drove his motorcycle to work and parked it inside the bus garage. Several employees opened the motorcycle's tank bib compartment and discovered a handgun. They, in turn, reported their observations to the school district's administration. Following the incident, the plaintiff was suspended for four months without pay for incompetencey, neglect of duty, unintentionally bringing a loaded firearm onto school property, and hindering an investigation. The Commonwealth Court of Pennsylvania recognized the authority for school board to take disciplinary action against its employees; however, the court remanded the case back to the school board to determine whether it desires to reduce the fourth month suspension without pay.

Student Discipline:

"Student Expelled For Sale of Drugs"
*Rossi v. West Haven Bd. of Educ. (D. Conn., 359 F. Supp. 2d 178), March 7, 2005

High school student who was expelled for one year for illegal sale of drugs was **not** denied equal protection. Though other disciplined students received less severe punishment, they were not similarly situated, thus there was rational basis for difference in treatment (other students either were not engaged in conduct which subjected them to statutorily-mandated expulsion, or were engaged in less severe misconduct). **Note:** Student had stolen various controlled substances such as Alprazolam (commonly known as Xanex), Vicoden, and Valium while working in a drug store. The plaintiff did distribute over 1,000 Xamex pills in two different high schools, both on and off the campus.

Commentary

No commentary

***Possible implications for Arkansas's Schools.**

Legal Up Date For District School Administrators August 2005

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The **Legal Up Date For District School Administrators** is a monthly update of selected significant court cases pertaining to school administration. It is written by Johnny R. Purvis for the **Safe, Orderly, and Productive School Initiative** located in the Graduate School of Management, Leadership, and Administration at the University of Central Arkansas. If you have any questions or comments about these cases and their potential ramifications, please phone me at **501-450-5258.** In addition, feel free to contact me regarding educational legal concerns; school safety and security issues; student discipline/management issues; and concerns pertaining to gangs, cults, and alternative beliefs.

August, 2005 (#'s 502 & 503)

Topics:

- Athletics
- Civil Rights
- Jurisdiction
- Labor and Employment
- Security
- Torts

Commentary:

- No commentary

Topics

Athletics:

" Student Dies During PE Class"

*James v. Jackson (La. App. 4 Cir., 898 So. 2d 596), March 2, 2005)

Parent of a 16-year-old high school student (weighed 327 pounds) who died after collapsing during a physical education class brought a wrongful death suit against high school, school board, and insurer. The incident occurred during a physical education class which was conducted by a substitute art teacher. The gym was not air- conditioned, and the temperature inside was at least 90 degreed during the class. Prior to collapsing, the student complained of headache. A Louisiana court of appeals stated that the high school and school board breached a duty to exercise reasonable care and supervision over the student

Civil Rights

" Dean's Report of Coach's Alleged Improper Conduct Not Protected Speech"

* Tierney v. Quinty School Dist. No. 172 (C. A. 7 (I11), 125 Fed. Appx. 711), March 28, 2005.

Dean of at junior high school complained to school officials that the high school's swim coach gave her 16 years old daughter a massage at a team party at the night before a swim meet. During the alleged incident, the coach allegedly unhooked the student's bra and rubbed her back and legs up to the base of her buttocks. The incident was investigated school officials, and the coach was retained in his position. In the meantime, the dean (plaintiff) wrote a letter of inquiry about a new administrative position (" building assistant", which paid less than her dean position. The position was filled sometime later.

Thus, the plaintiff alleged incident pertaining to the swim coach. A United State Court of Appeals, Seventh Circuit, held that the dean did not engage in protected speech when she reported the incident. Therefore, such speech did not support claim that school officials retaliated against her due to her speech by refusing to hire her as the school's building assistant.

" Teacher's Political Comments in Classroom Not Protected"
*Calef v. Budden (D.S.C., 361 F. Supp. 2d 493), March 18, 2005.

Substitute teacher sued school district and employees, claiming her First Amendment rights were violated when she was barred from substitution at the middle school, in retaliation for her expression of political views hostile to the President and military policy in both Panama and Iraq. She claimed that the president was "stupid" and "idiot", plus wore a button with a slogan " War is Not the answer". A South California district operations outweighed substitute teacher's First Amendment interest in expressing her political views, thus allowing the ban on future substitute assignments.

Jurisdiction:

" Teacher Must Exhaust Administrative remedies"
*Dotson v. Grand Prairie Independent school Dist. (Tex. App.- Dallas, 161 S.W. 3d 289), April 27, 2005.

Teacher filed suit against school district, alleging breach of employment contract and sought injunctive relief to prevent school district from transferring him to another school. The situation arose when the middle school teacher filed a grievance against the school district which stated he believed that he was entitled to at least four years of back pay for his work in an after-school detention program. In addition to the pay issue, he was reassigned to the district school in an effort to resolve the existing conflict between the grievant and campus administration. A Texas appeals court held that the teacher must exhaust administrative remedies before filing suit. It is interesting to note that the court went on to sat that the exhaustion of administrative remedies is not necessary if: (1) The aggrieved party will suffer irreparable harm and the administrative agency is unable to provide relief;(2) the claims are for a violation of a constitutional or federal statutory right; (3) the cause of caution involves pure questions of law and the facts are not disputed; and (4) the administrative agency acts without authority.

Labor and Employment

" Teacher Aid Falsified Time Sheets and Abused Leave Time"
* Rogers v. Sherburne-Earlville Cent. School Dist. (N. Y. A. D. 3 Dept., 792 N.Y. S. 2d 738), April 14, 2005.

Substantial evidence supported school district's finding that teacher's aide falsified time sheets and abused leave time benefits. Aide undisputedly represented on time sheet that he worked more hours that he had, although he claimed he believed he was entitled to compensatory time. On one occasion, he claimed he was sick, but went hunting.

" Maintaining employee Morale and Harmony Outweighed Teacher's Interest"
* Jackson v. State of Alabama State Tenure Com'n (C.A. 11 (Ala.), 405 F. 3d 1276), April 14, 2005.

During the latter part of his nearly 25 years tenure as a welding teacher, plaintiff sent numerous insulting and demanding letters to members of the school board. Shortly before his termination, a student in his welding class (who was not wearing safety gloves) was burned on his hand by a welding torch. In addition, the teacher went to a board meeting (at which he was not schedule to participate) and distributed confidential records regarding his special education students in an attempt to demonstrate that his classes were overcrowded. About a week after the board meeting, the board terminated the plaintiff's contact. The teacher brought action against the school district alleging race discrimination in violation of title ????, Section 1983, and First Amendment retaliation. The United States Court of Appeals, Eleventh Circuit, stated that the board interested in avoiding serious disciplinary problems and in maintaining employee morale and harmony among co-workers outweighed teacher' interest in engaging in his First Amendment activity of sending demeaning and inflammatory letters to school superintendent and board members. Note: Teacher sent a letter to a board describing one of the board members as " Grand Wizard of the Ku Klux Klan and a selfish, no-business minded, insulting and disgusting person". He also sent a letter describing the then assistant superintendent as a "black overseer with his whip, riding on his stallion with all of the noble trust and loyalty that he master invested in him." Another letter was sent to the superintendent in which he stated: " I think that the superintendent has demonstrated how she feels about the black community. She has our vote of no confidence".

" Teacher Dismissed Following Conviction of Grand Larceny"
*Green v. New York City Dept. of Educ. (N.Y.P.D 1 Dept., 793 N.Y.S. 2d 405), April 26, 2005.

Penalty of dismissal imposed upon public school teacher following her conviction of grand larceny (She was sentence to a conditional discharge and resolution of more that $30,000. This conviction was based on teacher's numerous misrepresentations in connection with her Section 8 housing filings.) was not so disproportionate to the offense as to shock the judicial conscience. The teacher also had prior convictions for fraud, base upon similar conduct.

Security

" Sixteen Inch dagger was a Dangerous Weapon"
* State v. J. R. (Wash. App. Div. 1,111 P. 3d 264), March 7, 2005

Fifteen year old student brought a 16-inch dagger to school and showed it to his class mates, also stating that he was going to use the dagger against another student later that day. The student and the intended victim went and told the vice-principal, who in-tern called the police. A Washington appeal's court held that a 16-inch dagger with a fixed, 10 inch scalloped-edge blade **is a dangerous weapons** for purposes of statute prohibiting processing dangerous weapons on school premises. Thus, student's conviction of processing a dangerous weapon on campus **was upheld.**

"Failure to Give Miranda Warning Did Not require Suppression of marijuana Charge"
* State v. J. H. (Fla. App. 4 Dist., 898 So. 2d 240), March 16, 2005

Failure of SRO to give Miranda warning to high school student during custodial interrogation at school concerning alleged possession of marijuana did not Require suppression of marijuana in juvenile delinquency proceeding. Officer **had reasonable suspicion** to search student and marijuana **would have been discovered inevitably, without interrogation**.

Torts:

" School Not Liable For Disabled Student's Suicide"
*Allison C. v. Advance Educ. Services (Cal. App. 4 Dist., 28 Cal. Rptr. 3d 605), May 18, 2005.

Plaintiff's only child (Dylan) was born in 1987 and begin to have very serious emotional and behavioral problems in the third grade. In 1997 he was rapedat knife-point by a 14 year-old boy. Shortly thereafter, he was diagnosed as bipolar (manic-depressive) by his psychiatrist, a condition that was aggravated by post traumatic stress disorder due to the 1997 rape. One morning while attending school during the 2000 school year, he used a needle and thread to sew his fingers together and told the staff that he had not taken his medication before coming to school. About one hour after "sewing incident", he left campus and went missing for three days, during which time he was sexually assaulted by an adult male. Three months later, while staying at his grandparents house, he went into his grandparents bedroom, took a rife from under their bed and shot himself. Thereupon, his mother filed a wrongful death action against the school district, alleging that officials were liable for her son's death, precipitates by his rape when he left campus. A California court of appeals help that mother did not establish either foreseeability or causation as to son's suicide, and mother could not recover for mental distress

" Student Sexually Abused by Bus Driver"
*Doe v. Rohan (N. Y. A. D. 2 Dept., 793 N. Y. S. 2d 170), April 18, 2005.

School district did not breach its duty to supervise adequately fourth grade student who was sexually abused and molested by her bus driver. Given that the bus driver had no prior criminal history; had no prior complaints of improper conduct made against him during his 27 years of employment record, evidence was insufficient to alert school district personnel to the possibility that the driver was abusing the nine- year-old

*** Possible implication for Arkansas's Schools.**

Legal Up Date For District School Administrators September 2005

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Topics:

- Abuse and Harassment
- Administrators
- Civil Rights
- Disabled Students
- Free Speech
- Labor and Employment
- School Districts
- Security
- Torts

Commentary:

- No commentary

Topics

Abuse and Harassment

" Fifth Grade Teacher Alleged to Have Sexually Abused Student"

* Doe v. D'Agostino (D. Mass., 367. F Supp. 2d 157), April 25, 2005.

Female fifth grade teacher allegedly harassed and abused a fifth grade female student in ways similar to the following: conducted an unwanted ringworm examination by pulling down student's pants; pressed student's abdomen in an attempt to force her to urinate on herself; stated student's urine smelled like vinegar; rolled a lint brush over student's chest; and sent student an e-mail stating "Heyya sexxa wanna date?" The United States District Court, D. Massachusetts, stated that the school district was not deliberately indifferent to claim that fifth grade teacher had sexually harassed female student as to subject district to Title IX liability. School superintendent met with relevant parties, ordered an investigation, and did not determine that allegations were unsubstantiated until after reviewing results of the investigation.

Administrators

" White Officer's Rights Not Violated"

* Phillips v. Mabe (M. D. N. C., 367 F Supp. 2d 861), February 28, 2005.

According to a United States District Court in North Carolina, a sheriff's deputy stationed as a SRO at a high school **failed** to state a Section 1983 claim against former sheriff and school superintendent based on equal protection violation, even though he sufficiently pled that defendants harbored animosity toward him personally. Furthermore, the deputy did not plead specifically which policy or regulation was fired by sheriff for wanting to become involved with an OCR investigation of the high school due, numerous racial incidents. Plaintiff was told to cease any type related to law enforcement or investigating a crime. Plaintiff also alleged that both the former superintendent and sheriff targeted him "a campaign of intimidation" and planned ultimately to terminate his employment.

Civil Rights

" Restrictions Placed On Teacher Regarding Religious Content"

*Williams v. Vidmar (N.D. Cal., 367 F. Supp. 2d 1265), April 28, 2005.

Since fifth grade teacher's free speech rights were not infringed on by restrictions on his use of supplemental classroom materials having religious content, school district's policy and practice in implementing California Education Code and board policy were not unconstitutional vague as applied to him. Furthermore, **a teacher of ordinary intelligence would be able to gauge** from the alleged interactions and the accompanied explanations which materials were unacceptable for teaching about religion. **Note**: The teacher is an avowed orthodox Christian. He has religious discussions in his classroom regarding such issues as "under God in the Pledge of Allegiance", "What is a Christian?", explaining the Christian allegory in C.S. Lewis' work, and "Easter activity sheets".

"Girls Stripped Search at Middle Schools"

* Lamb b. Holmes (Ky., 162 S. W. 3d 902), May 19, 2005.

Teachers were entitled to qualified immunity with respect to students' state law claims against them, arising out of alleged strip searches teachers conducted on middle school students during a physical education class after another student reported a missing pair of shorts. School board's policy prohibiting "strip searches" did not apply to searches that students alleged to

have taken place. The term "strip search" as used in the policy contemplated nothing less than a nude search, which had not occurred with respect to the searches at issues. Acts of teachers had been in good faith; were discretionary in nature; and within the scope of their authority. Note: Teachers/administrators stated that they required each student to turn her waistband down so they could tell if the students were wearing the missing shorts. The school board had a policy which stated, "in no instance shall a school official strip search any student." "Strips search" was not defined anywhere within the board's policies.

Disabled Students

" The Brownie Incident"

*C. M. v. Board of Educ. Of Union County Regional High School Dist. (C. A. 3 {N. J.}, 128 Fed. Appx. 876), April 19, 2005.

The Child Study Team(CST) at the plaintiff's high school held an open house; and the room in which the open house was held had a table full of refreshments. As the plaintiff entered the room that morning to drop off his belongings, he asked a teacher in the room if he could take an item from the refreshment table. She said yes, but he did not take anything at that time. Around lunch time, plaintiff returned and took a brownie from the refreshment table. The school psychologist jumped up out of her chair, grabbed the plaintiff's arm, pried the brownie from his hand, and placed the brownie back on the table. The United States Court of Appeals, Third Circuit, held that student's graduating from high school did not **moot** hid Section 1983 claim under IDEA where student sought a full shield of remedies. Student **could** recover compensatory damages **if he could demonstrate** that he suffered quantifiable harm through violations of IDEA.

Free Speech

" School's Refusal to Allow Flyer Distribution Upheld"

* Child Evangelism Fellowship of Md., Inc. v. Montgomery County Public Schools (D. Md., 368 F Supp. 2d 416), March 24, 2005.

Public school district's non-public forum, consisting of policy under which certain groups were permitted to submit flyers for teachers' distribution to elementary school students to take home to their parents, **was reasonable and thus comported (agreed) with** First Amendment of the United States Constitution's free speech guarantee. District chose to limit the number of submitting organizations to **five** categories involved in activities of traditional educational relevance, including: (1) Montgomery County Public Schools; (2) Agencies/departments within the county, state, or federal government; (3) Parent Teacher Associations (PTA)/organizations; (4) Licensed day sports leagues.

Labor and Employment

"Kindergarten Teacher Dismissed"

* Segal v. City of New York (S. D. N. Y., 368 F. Supp. 2d 360), May 12, 2005.

City department of education's dismissal of probationary kindergarten teacher did not violate due process, despite teacher's contention that dismissal was based on false allegations that she had encouraged kindergarten students to beat another student. Department offered teacher an opportunity. **Note**: Teacher was unable to deal with a fracas among her students. She summoned the school's guidance counselor, via telephone. When the counselor arrived she found the teacher standing near a group of students who were kicking Student A, who was lying on the

floor. The children reported that the teacher told them to hit Student A, after Student A hit other students.

School Districts

" Student Injured in Fight at School"
*Siller v. Mahopac Cent. School Dist. (N. Y. A. D.2 Dept., 795 N. Y S. 2d 605), May 9, 2005.

High school student injured in fight on school grounds with another student brought negligence action against his assailant, school district, and district board of education. The Supreme Court of New York, Appellate division, Second Department, stated that genuine issue of material fact **existed** as to whether gym teacher, who witnessed start of a fight between plaintiff and another high school student, was presented with a potentially dangerous situation and failed to intervene in time to prevent other student from injuring plaintiff. Therefore, the court **precluded summary** judgment for school district and district board of education in plaintiff's negligence suit against them.

Security

"Student Attacks School Nurse"
*Buchholz v. Midwestern Intermediate Unit IV (C. A. 3 {Pa}, 128 Fed. Appx. 890), April 19, 2005.

The plaintiff (school nurse) brought teen-aged, moderately mentally retarded Downs Syndrome student to her office for colostomy care. On September 10, 13, and 16, 1999, the student ran down the hall and plaintiff had to chase and apprehend student physically. On September 16, 1999, student tackled and attempted to choke plaintiff with her ID necklace. On September 23, 1999, the student "plopped down" in the hallway and refused directives to get up. On September 30, 1999, student attacked plaintiff in her office by smacking her in the head with his hand, grabbing her around her waist, lifting her off the floor, and attempting to slam her body against the wall of the office. She filed a complaint on September 26, 2001. The United States Court of Appeals, Third Circuit, held that there **was sufficient evidence to support** jury's findings that the plaintiff's Section 1983 claims against school officials for failing to protect her from physically aggressive student did **not** fall within statute of limitations (two years), even though student assaulted nurse once within limitations period.

"Student Raped In High School Room"
*Doe v. Town of Hempstead Bd. of Educ. (N. Y. A. Y. 2 Dept., 795 N. Y. S. 2d 322), May 16, 2005.

Female student was raped by a non-student in one of the high school's restrooms, which was located near an exterior door through which the perpetrator entered. The Supreme Court of New York, Appellate Division, Second Department, held that town board of education, town public schools, and high school did not have knowledge or notice of prior sexual assaults at high school, **or reason to anticipate** that intruders would enter school for purpose of committing violent crimes against students. Thus, school officials were not on notice of imminent foreseeable danger to high school student and could not be held liable.

Torts

"Parent Falls at High School Football Game"
*Prescott v. City of Meriden (Conn., 873 A. 2d 175), May 31, 2005.

Spectator, who fell while descending bleachers at his son's high school football game, **was not a member** of an identifiable class of foreseeable victims subject to imminent harm for purposes of satisfying exception to qualified immunity. The plaintiff's presence at football game **was purely voluntary** and he was not entitled to special consideration of care by school officials because of his status as a parent. **Note:** Just before the end of the game, the plaintiff began to descend the moveable bleachers which were wet and muddy due to the rain. In addition, there was no stairway, no nonskid material, and no handrails. The plaintiff slipped on the fiberglass-covered plank, fell on his back, and suffered permanent injuries, which left him totally disabled.

"Student Injured Climbing School's Gate"
*Atanasoff v. Elmont Union Free School Dist. (N. Y. A. D. 2 Dept., 795 N. Y. S. 2d 726), May 23, 2005.

Action was brought against school district to recover for injuries allegedly sustained by an elementary age youngster when he fell attempting to climb through a locked gate located at the rear of an elementary school's property. The court held that the condition of the gate located at the rear of an elementary school's property, which allegedly caused plaintiff's injury when he fell attempting to climb through it, was obviously **not** dangerous. The gate was chained closed to keep persons from entering property. Furthermore, the plaintiff did not identify the nature of the allegedly dangerous condition of the gate; and, he was very much aware of the condition of the gate because he visited and climbed through the gate many time before the incident.

"Student Points Toy Gun At Teacher Assistant"
*Lafayette Parish School Bd. v. Cormier ex rel. Cormier (La. App. 3 Cir., 901 So. 2d 1197), May 4, 2005.

Eleven-year-old special education student (emotional and behavioral disorder, with impulsive and aggressive behavior), pointed a toy gun (2-3 inches long and silver in color) and simulated firing gun by shouting "bang", causing a teaching assistant to suffer mental and emotional trauma. A Louisiana appeals court held that the student did not breach the standard of care applicable to him; thus, the student's mother could not be held vicariously liable for her son's actions. The court based its conclusion on the student's maturity level, knowledge of the situation, and awareness of the risks involved as compared to a reasonably prudent 11-year-old boy who had the same exceptionalities the student possessed.

Commentary

No commentary

***Possible implications for Arkansas' Schools.**

October2005(#'s506&507)

Legal Up Date For District School Administrators October 2005

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School Leadership, Management, and Administration's Safe, Orderly, and Productive School Initiative

SAFE, ORDERLY, AND PRODUCTIVE SCHOOL LEGAL NEWS NOTE

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The ***Safe, Orderly, and Productive School Legal News Note*** is a monthly update of selected significant court cases pertaining to school safety-security and student management issues. It is written by Johnny R. Purvis for the **Safe, Orderly, and Productive School Initiative**, located in the Graduate School of Management, Leadership, and Administration at the University of Central Arkansas. If you have any questions or comments about these cases and their potential ramifications, please phone me at **501-450-5258**. In addition, feel free to contact me regarding school safety and security issues; student discipline/management issues; and issues pertaining to gangs, cults, and alternative beliefs.

Topics:

- Civil Rights
- Free Speech
- Labor and Employment
- Security
- Standard and Competency
- Torts

Commentary:

- Conducting Student Searches Relying on Student Tips
  -
  -
  - Topics

Civil rights:

"Student Assaulted By Classmate"
Walton ex rel. R. W. v. Montgomery County Bd. of Educ. (M.D. Ala., 371 F. Supp. 2d 1318), May 20, 2005.

Fifteen years old eight grade special education student was struck in the eye another eight grade special education student for no apparent reason during a special education class. The teacher referred the offending student to assistant principal, and the culprit was suspended from school for three days. In addition, an arrest warrant was issued for the offending student and he was arrested. As part of his sentence, he was required to pay restitution to the injured student family for the victim's medical visits. Plaintiff's filed suit against school district , alleging constitutional violations, retaliation, and negligent training and supervision. The United States District Court, M.D. Alabama, Northern Division, held: (1) defendants in their official capacities **had** state sovereign immunity or state immunity with regard to the supervision of the injured student; and (2) defendants **were entitled** to discretionary function(student's parents did not argue school officials acted willfully, maliciously, fraudulently, in bad faith, or beyond their authority) in fulfilling their supervisory obligations toward student.

Free Speech

"Student Wearing Tee-Shirt and Belt Buckle Displaying the Confederate Flag"
Bragg v. Swanson (S. D. W. Va., 371 F. Supp. 2d 814) February 14, 2005.

A west Virginia high school student (18 year-old senior – unblemished discipline record) who was discipline for wearing tee-shirt and belt buckle that displayed the Confederate flag, purportedly in observance of his Southern heritage, sued principal and county board of education. Student moved for preliminary injunction and temporary restraining order (TRO). The United States District Court, W.D. West Virginia, at Charleston, held that the school district's policy prohibiting "item displaying the Rebel flag" within category " racist language and/or symbols or graphics**" was unconstitutionally overbroad** under the First Amendment. Thus, school principal **was prohibited** from enforcing the policy. The preliminary injunction and TRO was granted on the student's behalf.

"No Shotgun Photo in School's yearbook"
Douglass ex rel. Douglass v. Londonderry School Bd. (D. N. H., 327 F. Supp. 2d 203) Februry 14, 2005.

High school student and his father sought a preliminary injunction against school district, claiming that yearbook's denial of proposed senior portrait showing him dressed in trapshooting attire with Ruger shotgun safely broken open over his shoulder violated his First Amendment Rights. Student further claim that student in the past has been permitted to pose with items expressing their hobbies or interest, such as athletic equipment, cars, and musical instruments. School officials argue that the yearbook must reflect current standards and values of the community. The United State District Court, D. New hampshire , ruled that content-neutral regulation forbidding all props on student portraits **precluded the likelihood** of student prevailing.

"Teacher Fell and Broke Her Foot During Field Trip"
Hamilton v. City of Natchitoches (La. App. 3 Cir., 903 So. 2d 1274), June 1,2005

Teacher , an employee of the Natchitoches Parish School Board, accompanied her class on a school sponsored field trip. As she assisted her students across the street (Louisiana Highway 6), she stepped off the curb, fell, and broke a bone in her foot. She received workers' compensation benefits for her broken foot through school district. In addition, she alleged that she fell due to a defective condition in the street's pavement which was responsibility of the Department of Transportation and Development (DOTD). A Louisiana court of appeals stated that the DOTC was a third person within the meaning of Loiusiana's workers' compensation statute, thus permitting suit against a third person. Accordingly, the teacher **was not prevented** from bringing a tort suit against Louisiana(DOTD

<u>Security:</u>

"Student Arrested with Intent To Sell or deliver Marijuana"
*In re S.W. (N.C. App., 614 S. E 2d 424), July 5, 2005.

Hen a high school student walked by a sheriff deputy and SRO as they talked in high school corridor, they noticed a strong odor of marijuana emanating from the juvenile. According, they asked the student to accompany them in a nearby weight room. In the company of two assistant principals, they asked the juvenile if they could search him. A student replied , "no". Thereupon, the student was asked to empty his pockets, which produce a plastic bag containing ten small plastic bags of marijuana. The Court of Appeals of North Carolina held that the search of the student **was reasonable** in that both officers established reasonable suspicion to initiate the search. In addition, the search of the students was limited to a pat down and juvenile emptying his pockets. Thus, items not **excessively intrusive** in light of the age and gender of the juvenile and nature of the suspicion. Furthermore, the search **was reasonably related** to the school district's objective of maintaining a drug-free educational environment.

Standards and Competency:

"Standard Department Violated Due Process Rights of School district failing to Meet AYP"

*Reading School Dist. v. Dept. of Educ. (Pa. Cmwth., 875 A.2d 1218), June 6, 2005.

Pennsylvania State Department of Education's policy limiting appeals of determinations that school within school district failed to achieve annual yearly progress (AYP) under the federal NO Child Left Behind, which prohinited school district from questioning whether Act resulted in unfounded mandate, **violated school district's due process rights**. State Administrative Agency Law specifically permitted a party to question the statute underlying the party's appeal; and limitations effectively prevented school district from ever being heard on issue of unfounded mandate. Note: The Reading school District submitted a plan to the State Department to bring its schools into compliance. The estimated cost of the plan was in excess of $26,000,000.00 and the district expected to receive slightly in excess of $8,000,000.00 in federal funding. Thus, **it was ruled an unfounded mandate.**

Torts:

" First Grader falls From School's Monkey Bars"

Rivera v. Board of Edu. Of City of Yonkers (N.Y.A.D. 2 Dept., 796 N.Y.S. 2d 182), June 6, 2005.

Plaintiff, who was in the first grade and almost six years old, was injured when he fell from a monkey bar apparatus in a school playground during recess. There were tow teacher's aids supervising the 25 to 30 first graders playing on the playground at the time of the accident. The school had a rule that students in pre-kindergarten to second grade were not allowed to play on the monkey bars. Therefore, the plaintiff alleged that the board was negligent in failing to enforce the rule and supervised the plaintiff adequately. The New York Supreme Court, Appellate Division, Second Department, stated that **issues of fact existed as to whether** the board was negligent in failing to adequately supervise first grader. Enforce its rule prohibiting first-graders from playing on the monkey bars, and whether such failure was the proximate cause of the plaintiff's injuries. Thus, summary judgment on behalf of the school district **was precluded.**

" Bus Monitor Slips on School House Steps"

*Unlinger v. Gloversville Enlarged school Dist. (N.Y.P.D. 3 Dept., 796 N.Y.S 2d 437), June 9, 2005.

A school bus monitor when she fell on the steps outside one of the defendant's schools as she was delivering a student's medication to the school's nurse. The New York Supreme Court, Appellate Division, Third Department, held that : (1) Liability for a slip and fall **may not be** imposed upon a landowner unless there is evidence that the landowner know, or in exercise of reasonable care, should have known the icy condition existed, yet failed to correct the situation within a reasonable time. This standard merely reiterated that a landowner must have constructive notice of the dangerous condition,

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Conducting student Searches Relying on Student Tips

Student searches are not necessarily invalid simply because they rely on student tips. Tips are simply information regarding contraband, or illegal or unauthorized activities at school. Tips can be provided by person who are known to school officials; by persons anonymously. The information communicated by a tip can concern a wide range of kinds of contraband: possession of items not unlawful of dangerous in themselves, but a violation of school policy to possess while in school (e.g. cell phone and tape recorder); item that are dangerous in themselves and legal to possess but not on school property(e.g. pocketknife and hunting rifle); or items that are harmful in themselves and illegal to possess or distribute at anytime(e.g. marijuana and cocaine). Whenever school officials respond to information in a tip, they must be aware their response will be assessed by a reasonableness standard in the inception and scope of a search.

Consider the following guidelines for searches which are based on student tips.

1. The more intuitive the search, the more closely that courts will scrutinize the nature of an informant's information and the motives of the informant.

2. Each school should have at least one male and female employee trained to conduct student searches.
3. Intrusive searches that require pat downs or removal of clothing must be conducted only by school officials of the same gender as the student
4. While courts are likely to uphold student searches for weapons based on anonymous tips (in large part because the risk of not conducting a search is too great, but also in part because such searches are less likely involve intrusive strip searches) school officials should still try to obtain as much information or collaboration as possible under the circumstances.
5. Anonymous tips regarding concealed drugs that may require a strip search will probably require some measure of collaboration, such as the suspicious behavior of the accused student or history of discipline problems.
6. Tips from students whose names are known require that a school official inquire of a teacher or other school employee familiar with the information whether/he has any animosity or ulterior motives in providing the information.
7. Tips that are not anonymous from students whose names are not known can probably be treated as non- anonymous tip, but should require a brief assessment of the demeanor of the tipster if that person cannot otherwise be located in the school.
8. Any student who is the subject of a tip must be informed of the content of the informant's information before any search takes place, and must be afforded an opportunity to respond.
9. Engage the school district's attorney to update student handbooks regarding student searches, and to conduct orientation sessions with school personnel responsible for searches.

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November 2005(#'s 509 & 510)- {508 not used due to being late}

Legal Up Date For District School Administrators
October 2005

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The **legal Up Date For District School Administrators** is a monthly update of selected significant court cases pertaining to school administration. It is written by Johnny R. Purvis for the **Safe, Orderly, and Productive School Initiative** located in the Graduate School Management, Leadership, and Administration at the University of Central Arkansas. If you have any questions or comments about these cases and their potential ramifications, please phone **Johnny R. Purvis** (researcher and writer) at **501-450-5258**. In addition, feel to contact me with student discipline/management issues; and concerns pertaining to gangs, cults, and alternatives beliefs.

Topics:

- Abuse and Harassment
- Civil Rights
- Disabled Students
- Extracurricular Activities
- Labor and Employment
- School Districts
- Student Discipline
- Torts

Commentary:

- No Commentary

Topics

Abuse and Harassment:

"Student Sexually Assaulted on School Bus"
*Camacho v. Rochester City School Dist. (N.Y.A.D. 4 Dept., 798 N.Y.S. 2d 288), July 1, 2005.

Mother brought action against school district and transit company, seeking damages for injuries sustained by daughter as a result of being sexually assaulted by another student while a passenger on a school bus operated by Laidlaw Transit, Inc. The court **ruled in favor of plaintiff**, and increased the jury's award from $20,000 to $75,000.

"Kindergartner Raped in School's Restroom"
*Miami-Dade County School Bd. v. A.N., Sr. (Fla. App. 3 Dist., 905 So. 2d 203), July 13, 2005.

Parents brought action in negligence suit, individually and on behalf of their child, against school board after their son was sexually assaulted by another male kindergarten student in an elementary school's restroom. Plaintiff's negligence claim was based on the school board's **failure to warn their child's substitute teacher** of the other child's developmental and sexually aggressive behavior; its **failure** to inform the substitute teacher of the school's restroom pass procedure (limit the use of the school's restroom to one child at a time); and its **failure** to take reasonable precautions to prevent a child with a history of sexually aggressive behavior from being alone in the restroom with their son. A Florida appeals court held that there **was sufficient evidence established** that the school board **was negligent**; and evidence established a reasonable probability that the child's psychological injury was permanent.

Civil Rights:

"Student Challenges School's Mandatory Uniform Policy"
*Jacobs v. Clark County School Dist. (D. Nev., 373 F. Supp. 2d 1162) June 10, 2005.

Content neutral mandatory school dress code did **not violate** First Amendment freedom of expression rights of students. There was ample testimonial evidence by school administrators that student dress code furthered government objectives of increasing student achievement, promoting safety, and enhancing positive school climate. Dress code requirements were unrelated to suppression of student expression and restrictions were **no more than necessary** to facilitate the school district's objective of providing a safe school environment. Furthermore, students were left with alternative avenues of personal expression. **Note:** The school district's mandatory school uniform (Khaki pants and either red, white, or blue shirts without any printed material thereon) required: (1) Students must wear the uniform during regular school hours, subject to the

principal's retained authority to grant exceptions for special occasions/events; (2) A student is not considered non-compliant if wearing a school uniform violates the religious beliefs of a student or parent; (3) School must assist in the purchase of uniforms for students who, for reason of financial hardship, cannot comply with the uniform policy; (4) Parents who choose not to have their child participate in the uniform policy are eligible to apply for a zone variance so that their child may attend another school; (5) No student may receive a lowered grade because of non-compliance with the uniform policy; and (6) Where a student fails to comply with the uniform policy, a conference must be held with the student's parent, and continued non-compliance will result in progressive disciplinary action.

"Wrestling Coach Encouraged Beatings"

*Meeker v. Edmundson (C.A. 4 {N.C.}, 415 F. 3d 317), July 13,2005.

A freshman student (five feet and five inches tall, weighing 115 pounds) joined the high school wrestling team. The coach allowed (e.g. instituted, permitted, endorsed, encouraged, facilitated, and condoned) student's teammates to pull-up or remove his clothing; and they would take turns hitting him on his bare torso until it would turn red. The young man received such beatings, referred to as "red bellies", at least 25 times during the few months he was a member of the team. The United States Court of Appeals, Fourth Circuit, held that the plaintiff **had a substantive due process right** to be free from the beatings allegedly encouraged by his wrestling coach. Thus, coach's claim to qualified immunity was defeated.

"Kindergarten Teacher Dismissed"

*Lifton v. Board of Educ. of City of Chicago (C.A. 7 {Ill.}, 416 F. 3d 571), July 22, 2005.

The United States Court of Appeals, Seventh Circuit, held that teacher **failed to establish** that school board's warning resolution was motivated by teacher's speech about either principal's contract or her proposal to restructure the kindergarten program; and alleged actions of principal and board were not sufficiently outrageous to support teacher's claim for intentional infliction of emotional distress. **Note**: By all accounts, the teacher has been an exemplary teacher during her 15 year tenure with the school district. During the summer of 2002, she went to her principal with her proposed changes. He indicated that they would look at her proposed changes in the near future; but it was too late to change the program for the upcoming school year. She set about sending flyers home to kindergarten parents; having unauthorized meetings with parents; and notes similar to the following: "Yesterday, I cried and slept and slept, unmotivated to complete your child's report card as I planned…You know your child best. Please complete the report card." After a trip to Mexico with her sister, she told her kindergarten students that a bird pooped in her lap at a restaurant, and that her sister got into trouble for taking things that did not belong to her. Finally, she went on extended medical leave and then resigned.

Disabled Students:

"Parents Not Entitled For Tuition Reimbursement"
*Carmel Cent. School Dist. v. V.P. ex rel. G.P. (S.D.N.Y., 373 F. Supp. 2d 402), June 9, 2005.

Parents of disabled student did not give new school district, to which they moved after placing student in private school, meaningful opportunity to consider whether student could receive FAPE before they re-enrolled student in a private school. Given parents' failure to cooperate seriously with formulation of public school solution to student's educational needs, parents **were ineligible** for tuition reimbursement from new school district under IDEA.

"Pre-Existing Mental Retardation Not Considered"
Doe ex rel. Doe v. North Panola School Dist. (Miss. App., 906 So. 2d 57), November 30, 2004.

Student was born as an able-bodied child. However, during her first year of life, she contracted meningitis which left her moderately retarded. Based on her test scores, the student was placed in the "educably mentally retarded" range. In April 2002, she was the only girl in a five student fourth period special education math class at a middle school. It was in this class that the student was raped by fellow male students when her teacher was on restroom duty (during the five minute break between classes), approximately 50 feet from his classroom. The court held that the student's pre-existing mental retardation could **not** be considered when awarding damages. However, the court **awarded** plaintiff over $20,000 in actual past, present, and future medical and psychological expenses arising from her sexual assault.

Extracurricular Activities:

"School Not Liable for Football Player's Injuries"
*Serrell v. Connetquot Cent. School Dist. of Islip (N.Y.A.D. 2 Dept., 798 N.Y.S. 2d 493), June 27, 2005.

School District was **not** liable for head injury sustained by varsity football player during practice. The player was an experienced high school football player, and voluntarily **assumed the risk** of injury by participating in the varsity football practice during which he was injured.

Labor and Employment:

"Principal Nonrenewed For Having An Affair"
*Reed v. Rolla 31 Public School Dist. (E.D.Mo., 374 F. Supp.2d 787), July 1, 2005.

Female elementary school principal, whose contract was not renewed due to an extramarital affair with the school district maintenance director and other inappropriate conduct (e.g. use of school phone, use of school computer, creation of a hostile work environment, unwelcome conduct of a sexual nature, sexually explicit talk, sexually provocative photographs, and foul or hostile language), **failed** to refute school district's nondiscriminatory reasons for their action. School officials conducted a thorough

investigation of the precipitating charges against the principal, and made credibility determinations reasonably and n good faith. Furthermore, there was **no** evidence that principal was treated less favorably than similarly-situated employees outside of her protected group.

"Teacher Not Qualified Under ADA"
*Falchenberg v. New York City Dept. of Educ. (S.D.N.Y., 375 F. Supp. 2d 344), July 1, 2005.

Public school science teacher, who refused to take certification examination (she was required to become certified as a teacher by passing a test established by the New York State Department of Education) due to school district's alleged failure to accommodate her dyslexia, was **not** qualified individual with disability within the meaning of the ADA. The state set examination was a valid job-related requirement.

School Districts:

"Duty of Care Owed By District For Student's Off-Campus Injury"
Travis v. Bohannon (Wash. App. Div. 3, 115 P. 3d 342), June 30, 2005.

School district **owed a duty of care** to students participating in off-campus "work day" activities during school hours, during which students performed work for members of the community in exchange for donations to school's student body association. Students were in school district's custody; and therefore, district owed them a duty of reasonable care. Note: The 11th grade student was participating in a school sponsored "workday", for which community members could donate $15 for three hours of work by students to raise funds for the student body association. Participation was optional for students. The student was participating in splitting and stacking firewood when she lost three fingers at the first knuckle while operating a log splitting machine.

Student Discipline:

"Student Suspended For Pulling Another Student's Pants Down"
*Alexander v. Cumberland County Bd. of Educ. (N.C. App., 615 S.E. 2d 408), July 19, 2005.

While walking to the school's track to participate in physical education activities, plaintiff pulled another girl's shorts down (including her undergarments) and exposed the young lady's buttocks. The action by the student was commonly referred to as "shanking". The Court of Appeals of North Carolina held that **substantial evidence supported** the board's finding that the high school student's conduct in pulling fellow student's pants down violated school district's policies regarding disruptive behavior, disorderly conduct, and hazing. Pulling another student's pants down could be construed as a ridiculous trick that was harassing under hazing policy; and the record indicated that the student's conduct led to some students not focusing upon their exams after the event.

Torts:

"Cheerleader Injured"
*Driever v. Spackenkill Union Free School Dist. (N.Y.A.D. 2 Dept., 798 N.Y.S. 2d 145), July 5, 2005.

Cheerleader was injured while performing a cheerleading stunt. The New York Supreme Court, Appellate Division, Second Department, held that: (1) school district **remains** under a duty to exercise ordinary and reasonable care to protect student athletes involved in extracurricular sports from unreasonable risks; and (2) genuine issues of fact **existed** as to whether student's cheerleading coach should have prohibited the stunt that injured the youngster due to the dangerous wind conditions, and whether coach failed to provide adequate supervision.

"School Not Liable When Student Kicked By Fellow Student"
*Van Leuvan v. Rondout Valley Cent. School Dist. (N.Y.A.D. 3 Dept., 798 N.Y.S 2d 770), July 7, 2005.

Student's intentional conduct in kicking another student during recess **was a sudden and spontaneous act** that school district could not have reasonably anticipated, given absence of any prior conduct on kicking student's part that should have put school officials on notice to protect kicked student. Both students had participated in a friendly and relatively brief snowball fight on the afternoon of the incident; however, there was no indication of hostilities between the two male students. Therefore, the school district was **not** liable for kicked student's resulting injury.

"Student Slips and Falls on Restroom Floor"
*Palermo v. Roman Catholic Diocese of Brooklyn (N.Y.A.D. 2 Dept., 799 N.Y.S. 2d 248), July 18, 2005.

There was **no** evidence that the installer of tiles in an elementary school bathroom created any unusually slippery condition or had actual or constructive notice that the floor was unusually slippery when wet, so as to support imposition of liability on the installer in a negligence suit brought by a student who slipped and fell on the tiles. Additionally, there was **no** evidence that a water fountain also installed by the installer was the source of water on the bathroom floor. Furthermore, it was common knowledge that a water fountain could be misused by elementary school children.

" Bus Monitor Slips on School House Steps"
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