SAFE, ORDERLY, AND PRODUCTIVE SCHOOL LEGAL NEWS NOTES

February 2005

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

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"**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 grad 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.

"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".

"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.

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

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"High School Student Threatens Teacher"

"In re Ernesto H. (Cal. App. 6 Dist., 21 Cal. Rptr. 3d 719), December 1, 2004.

A 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**. In addition, the teacher did not violate student's free speech rights he held the youngster accountable for yelling at him.

"University Student's Home Computer Seized by Law Enforcement"

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

A 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.

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 never 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.

"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.

"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.

***Possible Implications for Arkansas's Schools**

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"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.

"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.

"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.**

"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.

"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 when the incident occurred.

"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 <u>not</u> violate either the student's Fourth Amendment (search and seizure) or Fourteenth Amendment (due process); and the principal **was entitled** to qualified immunity.

"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.

*Possible implications for Arkansas's Schools

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"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 nor 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.

"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.

"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.

"High School Cheerleaders Suspended From School for Drinking"

*Jernnings 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 drank 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.**

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"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 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.

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Cases

"Strip Searches of Male 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.

"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.

"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.

"School's Transportation Director Brings Handgun to School District's Bus Garage"

*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 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.

"Charter School's Counselor Sexually Assaults Student"

P.J. v. Gordon (S.D. Fla., 359 F. Supp. 2d 1347), January 24, 2005.

Charter school guidance counselor was convicted and sentenced for sexually assaulting a 13 year old female student. Student's parents sued school district for damages. The United States District Court, S.D. Florida, held that state statute governing charter schools did **note** impose upon sponsoring school district any responsibility for hiring, training, or supervision of charter school's personnel, thus **precluding liability** of school district for sexual assault of female student by the charter school's counselor. State statute explicitly charged school district only with the responsibility for academic accountability and fiscal affairs of charter schools. Therefore, the responsibility for hiring and supervision of personnel rested with the charter school. Thus school district's personnel policies were not applicable to charter school employees.

*Possible implications for Arkansas's Schools

SAFE, ORDERLY, AND PRODUCTIVE SCHOOL LEGAL NEWS NOTES

August 2005

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

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Cases

" 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**.

" School Not Liable For Disabled Students'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 raped at 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 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

September 2005

SAFE, ORDERLY, AND PRODUCTIVE SCHOOL LEGAL NEWS NOTE

September 2005

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

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Cases

"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 an 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 selectively used against him. The incident arose after the deputy was fired by the 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 of investigative activities associated with OCR, unless those activities related to law enforcement or investigating a crime. Plaintiff also alleged that both the former superintendent and sheriff targeted him with "a campaign of intimidation" and planned ultimately to terminate his employment.

"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 wonna date?" The United States District Court, D. Massachusetts, stated that 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 the results of the investigation.

"Girls Stripped Search at Middle Schools"
*Lamb v. 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 issue. 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." "Strip search" was not defined anywhere within the board's policies.

"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 lunchtime, 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 his Section 1983 claim under IDEA where student sought a full shield remedies. Student could recover compensatory damages if he could demonstrate that he suffered quantifiable harm through violations of IDEA.

"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.

"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 finding 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 Restroom"
*Doe v. Town of Hempstead Bd. of Educ.(N.Y.A.D.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 State, 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.

"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.

*Possible implications for Arkansas's Schools

October2005(#'s504&505)

SAFE, ORDERLY, AND PRODUCTIVE SCHOOL LEGAL NEWS NOTE

October 2005

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

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Cases

"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-year-old eighth grade special education student was struck in the eye by another eighth grade special education student for no apparent reason during a special education class. The teacher referred the offending student to the 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's 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 that school officials acted willfully, maliciously, fraudulently, in bad faith, or beyond their authority.) in fulfilling their supervisory obligations toward the student.

"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 disciplined for wearing a 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 "items 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., 372 F. Supp. 2d 203), February 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 a Ruger shotgun safely broken open over his shoulder violated his First Amendment Rights. Student further claims that students in the past had been permitted to pose with items expressing their hobbies or interest, such as athletic equipment, cars, and musical instruments. School official argued that the yearbook must reflect current standards and values of the community. The United States District Court, D. New Hampshire, ruled that content-neutral regulation forbidding all props on student portraits **precluded the likelihood of student prevailing.**

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

When a high school student walked by a sheriff deputy and a SRO as they talked in a high school corridor, they noticed a strong odor of marijuana emanating from the juvenile. Accordingly, 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. Student replied, "no". Thereupon, the student was asked to empty his pockets, which produced a plastic bag containing 10 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 student was limited to a pat down and the juvenile emptying his pockets. Thus, it was **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.

"School Officials Must Provide Adequate Supervision"
*Ungaro v. Patchogue-Medford, New York School Dist. (N. Y. A. D. 2 Dept., 797 N. Y. S. 2d 114), June 13, 2005.

In a student injury suit against a school district, the New York Supreme Court, Appellate Division, Second Department, stated the following: (1) School officials are **not insurers** of the safety of its students, for it **cannot** be reasonably expected to continuously supervise and control all of students' movements and activities; and (2) School officials established that they provided **adequate supervision**, and that the level of supervision was **not** proximate cause of an infant plaintiff's accident, thus **precluding imposition of liability** on the school district.

"Evidence Precluded Summary Judgment In Action Against School District"
*Oakes v. Massena Cent. School Dist. (N. Y. A. D. 3 Dept., 797 N. Y. S. 2d 640), June 30, 2005.

Genuine issue of material fact as to whether injury causing conduct **was reasonably foreseeable,** and thus preventable, **precluded summary judgment** in action by student's parents against school district for alleged negligent supervision and failure to properly instruct students concerning safely risks after eight grader suffered eye damage when he was unintentionally hit by a football kicking tee thrown by a fellow student during physical education class.

*Possible implications for Arkansas's Schools

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

SAFE, ORDERLY, AND PRODUCTIVE SCHOOL LEGAL NEWS NOTE

November 2005

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

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Cases

"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.

"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.

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**.

"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.

"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.

"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 <u>not</u> 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 <u>no</u> indication of hostilities between the two male students. Therefore, the school district was **<u>not</u>** liable for kicked student's resulting injury.

*Possible implications for Arkansas's Schools

December 2005(# 511)

SAFE, ORDERLY, AND PRODUCTIVE SCHOOL LEGAL NEWS NOTE

December 2005

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Cases

"Basketball Player Assaulted"
*Baker v. Trinity-Pawling School (N.Y.A.D. 1 Dept., 800 N.Y.S. 2d 10), August 11, 2005.

Neither high school for which student played on basketball team, nor high school of opposing team, **could be held liable** for injuries student sustained when he allegedly was assaulted by player from opposing team following basketball game. There was **no** history of violent conduct or behavioral problems on part of student or purported assailant, or between schools' two teams. There was **no** violent history between student and alleged assailant, such that schools had **no** actual or constructive knowledge of dangerous conduct on part of purported assailant. Therefore, neither school could have reasonably foreseen attack on student.

"Mother Did Not Suffer Physical Injury After Son Drowned During School Outing"
*Maracallo v. Board of Educ. of City of New York (N.Y.A.D. 1 Dept., 800 N.Y.S. 2d 23), August 18, 2005.

Mother of a 14-year-old student who drowned in a wave pool at a water park while on a school field trip **failed** to establish she suffered contemporaneous or consequential physical injury, or that she was within zone of danger, as required to support her individual claim against school district of emotional distress caused by lapse of time in recovery of son's body.

"School Liable for Negligent Supervision on School Bus"
*Doe ex rel. Doe v. DeSoto Parish School Bd. (La. App. 2 Cir., 907 So. 2d 275), June 29, 2005.

Coaches employed by school board, and traveling on school bus with members of the high school boys' and girls' basketball teams, **breached their duty** to provide reasonable supervision when they did not sit between boys and girls teams as directed by school district policy to avoid sexual and other behavioral incidents. Thus, **school board was liable** to female student in action based on her sexual assault by five members of the boys' basketball team. Prior incidents had occurred on school sponsored trips, thus generating school policy regarding coaches sitting between the two teams.

"Student Assaulted by School Employee"
*Vicknair v. St. James Parish School Bd. (La. App. 5 Cir., 907 So. 2d 820), June 28, 2005.

A Louisiana court of appeals held that a trial court **did not** abuse its discretion in awarding $2,500 in mental anguish damages to two eight-year-old students assaulted by adult school employee as they attempted to throw their plates away in the school's cafeteria. The employee pinched and shoved both students, which caused marks and bruises; and students' mental suffering was uncontradicted.

"District Not Liable for Sexual Assault On School Bus"
*Hamlin ex rel. Hamlin v. City of Peekskill Bd. of Educ.(S.D.N.Y., 377 F. Supp. 2d 379), July 13, 2005.

Alleged sexual assault of special needs teenager by another student, on school bus operated by a private company as she was traveling to her home for weekend visit from residential school which she attended at school district's expense, if proven, could **not** be basis for school district liability for due process violation under Section 1983. There was **no** affirmative exercise of district's power in restraint of student's liberty; and district was **not** placed on notice that youngster had been abused.

"Parents Sue for Damages Because Bus Driver Got Lost"
*School Bd. of Miami-Dade County, Florida v. Trujillo (Fla. App. 3 Dist., 906 So. 2d 1109), May 4, 2005.

Parents of four-year-old special needs student, who was on a school bus for four (4) hours before bus transported him to school (due to bus driver getting lost), did **not** establish false imprisonment claim against school board. There was **no** evidence that the school board or its employees intended to confine student, had knowledge that confinement would result, or that student was prevented from leaving the bus or held against his will. Evidence showed that the bus driver picked student up and thereafter got lost; and this **hardly amounted to false imprisonment.**

*Possible implications for Arkansas's Schools