December 2008-January 2009 (#s 573, 574, & 575)

Safe, Orderly, and Productive School Legal News Note
December 2008-January 2009

Johnny R. Purvis*

West's Education Law Reporter
May 15, 2008 – Vol. 230 No. 2 (Pages 127 – 451)
May 29, 2008 – Vol. 230 No. 3 (Pages 453 – 1003)
June 12, 2008 – Vol. 231 No. 1 (pages 1 – 494)

Terry James, Chair, Department of Leadership Studies, University of Central Arkansas
S. Ryan Niemeyer, Editor, Director, University of Mississippi – Grenada and Assistant Professor, Leadership and Counselor Education
Shelly Albritton, Technology Coordinator, Department of Leadership Studies, University of Central Arkansas
Safe, Orderly, and Productive School Institute
Department of Leadership Studies
University of Central Arkansas
201 Donaghey Avenue
230 Mashburn
Conway, AR 72035
*Phone: 501-450-5258 (office)
*E-mail: jpurvis@uca.edu

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 Institute** located in the Department of Leadership Studies 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 at **501-450-5258**. In addition, feel free to contact Purvis regarding educational legal concerns; school safety and security issues; crisis management; student discipline/management issues; and concerns pertaining to gangs, cults, and alternative beliefs.

Topics

"School Officials Not Indifferent toward Student's Sexual Abuse Claim"
Kline ex rel. Arndt v. Mansfield (C. A. 3 [Pa.], 255 Fed. App. 624), November 27, 2007.

Middle school student made frequent visits to a male teacher's (Mansfield) sixth grade classroom before, during, and after school, which included the student's cutting of classes. Finally, her seventh grades teachers met and issued a statement to her to not go to the teacher's classroom for any reason. The relationship continued, became intimate, and eventually became sexual. The plaintiff admits that neither she nor her mother complained to school officials about plaintiff's contact with the male teacher. Furthermore, no school official or teacher possessed actual knowledge of the intimate or sexual nature of the relationship. Mansfield was charged with various sexual offenses arising from his conduct with the plaintiff and was sentenced to 11.5 years to 31 years of imprisonment. Plaintiff sued, alleging sexual harassment under Title IX. The United States Court of Appeals, Third Circuit, held that there was **no evidence** that neither school officials nor teachers *were deliberately indifferent* to student's right to be free from sexual abuse. Furthermore, the school district's failure to provide training to district employees to recognize and report signs of sexual abuse did **not** *demonstrate a conscious or deliberate indifference* to student's right to be free from sexual abuse.

"Parent Failed In Her Claim against School Officials for Reporting Her for Child Abuse"
Thomas v. Evansville-Vanderburgh School Corp. (C. A. 7 [Ind.], 258 Fed. App. 50), April 2, 2008.

African-American mother **failed** to establish that elementary school officials discriminated against her due to her race, in violation of her equal protection rights, when school authorities reported her to Child Protection Services (CPS) for 10 incidents (two of the reports were substantiated) of suspected abuse of her daughter that were corroborated by scars and welts on the student's body. Mother made **no showing** of similarly situated whites receiving preferential treatment.

"Student Must Exhaust Administrative Remedies under IDEA After Committing Sex Acts on School Bus"

Renguette v. Board of School Trustees ex rel. Brownsburg Community School Corp. (S. D. Ind., 540 F. Supp. 2d 1036), Marcy 31, 2008.

Junior high student (7th grader) and her mother **were required to exhaust administrative remedies** *under IDEA* as a prerequisite to bringing claims against school district, school board, and school personnel under Rehabilitation Act (Section 504), ADA, and Section 1983 arising out of alleged sexual harassment by a high school student (9th grader) while riding a school bus. Plaintiff's daughter was suspended from school, required to undergo counseling, perform 20 hours of community service, assigned to an in school suspension program, and prohibited from riding a school bus for the remainder of the semester (Student completed the school year and was promoted to the 8th grade.) due to her participation in sexual activities on school property (school bus). Various forms of relief were sought by the plaintiff, including transportation expenses and counseling fees, under IDEA.

"Remand Required to Determine Whether Search of Student's Vehicle Required Reasonable Suspicion or Probable Cause"

R. D. S. v. State (Tenn., 245 S. W. 3d 356), February 6, 2008.

On November 25, 2003, G. N. a student at Williamson County's Page High School, was taken to the office of the vice-principal due to being "under the influence of some type of intoxicating substance". Vice-principal and the school's SRO (sworn law enforcement officer-Deputy with the Williamson County Sheriff's Office) learned that he had been with another student [R.D.S.]) and they had been in this particular student's pick-up truck while skipping class and going off campus. The vice principal and the SRO found R.D.S. and escorted him to his truck. Thereupon, they found a plastic bag containing marijuana and a glass pipe. R.D.S. was transported by the school's SRO to the juvenile detention center and he was charged with the delinquent act of simple possession of marijuana or casual exchange of marijuana and possession of drug paraphernalia. R.D.S was adjudicated a delinquent in the Circuit Court of Williamson County. Juvenile appealed the decision of the court based on the *law enforcement status of the SRO and how such status related to Miranda rights and his interrogation*. The Supreme Court of Tennessee, Nashville, affirmed in part, reversed in part, and ***remanded back to the lower court***. In so ruling, the court stated that: (1) SRO's questioning of juvenile constituted interrogation or its functional equivalent for purposes of ***Miranda***; (2) Juvenile was **not** in custody at the time he was interrogated by SRO and Miranda was **not** required; (3) The **reasonable suspicion standard** ***is the appropriate standard to apply*** to searches conducted by a law enforcement officer assigned to a school on a regular basis; (4) A law enforcement officer who is *not* assigned to a school on a regular basis must be held to **the probable cause standard**; and (5) ***Lack of evidence existed*** in the record regarding the deputy's role as a SRO and *the case* ***should be remanded back*** *to trial court for a new trial to determine whether the deputy (SRO) was required to have reasonable suspicion or probable cause to conduct the search* associated with the case.

"Reasonable Suspicion Justified Search of Student by School Security Officer"
R. B. v. State (Fla. App. 3 Dist., 975 So. 2d 546), February 6, 2008.

Reasonable suspicion **justified** search of a juvenile by school security officer (non-certified law enforcement officer). Security officer had personal knowledge of the high school student being at school under the influence of illegal drugs within the past two or three weeks. Officer *not only* observed juvenile's state but had observations confirmed by the student's parents, who came to school and expressed concern that juvenile was obtaining illegal drugs at school. Officer observed student showing something to another student concealed inside his cupped hands and then return the object to his pocket in a furtive (stealthy or sneaky) gesture. The officer directed the student to empty his pockets; R. B. removed a lighter and a pen. Thereupon, the officer reached into the student's pocket and removed a small bag of marijuana. The officer then called the police and the juvenile was charged with possession of cannabis in violation of Florida law.

"Search of Student Was Not the Result of a Reasonable Suspicion of Criminal Activity"
C. A. v. State (Fla. App. 3 Dist., 977 So. 2d 684), March 5, 2008.

In-school search was ***not*** *the result of a reasonable suspicion* of a criminal activity by a 14-year-old student. Although teacher smelled the odor of marijuana after juvenile left classroom, teacher did *not* smell marijuana while in student's presence or while escorting him to the classroom door. The teacher did *not* see him take anything from or pass anything to the student he was visiting. The teacher *simply associated* student *with her suspicion* that the other student possessed marijuana. As a footnote to the case, the student was found with a small bag of marijuana in his wallet.

"Principal of Elementary School Not Deliberately Indifferent to the Risk of Sexual Abuse of a Student by Gym Teacher"
Sanders v. Brown (C. A. 4 [Va.], 257 Fed. App. 666, December 11, 2007.

Plaintiff (20 years old at the time of the law suit) claimed that beginning around 1995-1996, when she was nine-years-old and in the fourth grade, she was subjected to "frequent and ongoing physical and sexual touching by her gym teacher (Mr. Brown) and the touching continued until she left the school at the end of the sixth grade. The United States Court of Appeals, Fourth Circuit, held that any negligence on the part of elementary school principal with regard to the risk of sexual abuse of a student at the hands of a gym teacher did **not** rise to the level of *deliberate indifference*, as required to support imposition of supervisory liability in connection with the teacher's alleged "physical and sexual touching of students." The principal *immediately responded to complaints* against the teacher by two other students, *conducted her own investigation and inquiry* into the complaints, *reported* the allegations to her superiors and other appropriate individuals, and *sought their guidance* in investigating and handling the situation.

Note: Johnny R. Purvis is currently a professor in the Department of Leadership Studies at the University of Central Arkansas. He retired (30.5 years) as a professor, Director of the Education Service Center, Executive Director of the Southern Education Consortium, and Director of the Mississippi Safe School Center at the University of Southern Mississippi. Additionally, he serves as a law enforcement officer in both Arkansas and Mississippi. He can be reached at the following **phone numbers**: 501-450-5258 (office) and 601-310-4559 (cell).

Special Note:

The "Legal Update for District School Administrators" is dedicated to the memory of **Dr. Wm. (Bill) Leewer** (November 17, 1950 – May 26, 2008) and **Dr. Jack Klotz** (February 26, 1943 – May 20, 2008). Dr. Leewer was a professor at Mississippi State University-Meridian, Mississippi and editor of the Legal Update for District School Administrators. Dr. Klotz was a professor in the Department of Leadership Studies at the University of Central Arkansas and a former professor of educational administration at the University of Southern Mississippi. Both of these gentlemen and educators will be greatly missed by their families, friends, and their students. They were not just colleagues of mine, but very dear friends. Their memory and legacy will live on through their students and their writings. Strength and honor

February-March 2009 (#'s 576, 577, & 578)

Safe, Orderly, and Productive School Legal News Note
February-March 2009

Johnny R. Purvis*

West's Education Law Reporter
June 26, 2008 – Vol. 231 No. 2 (Pages 495 – 1009)
July 10, 2008 – Vol. 232 No. 1 (Pages 1 – 547)
July 24, 2008 – Vol. 232 No. 2 (Pages 549 – 1002)

Terry James, Chair, Department of Leadership Studies, University of Central Arkansas
S. Ryan Niemeyer, Editor, Director, University of Mississippi – Grenada and Assistant Professor, Leadership and Counselor Education
Shelly Albritton, Technology Coordinator, Department of Leadership Studies, University of Central Arkansas
Safe, Orderly, and Productive School Institute
Department of Leadership Studies
University of Central Arkansas
201 Donaghey Avenue
230 Mashburn
Conway, AR 72035
*Phone: 501-450-5258 (office)
*E-mail: jpurvis@uca.edu

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 Institute** located in the Department of Leadership Studies 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 at **501-450-5258**. In addition, feel free to contact Purvis regarding educational legal concerns; school safety and security issues; crisis management; student discipline/management issues; and concerns pertaining to gangs, cults, and alternative beliefs.

Topics

"Substitute Teacher Attempted to Kiss and Retain a Student at His Residence"
People v. Miller (N. Y. City Crim. Ct., 856 N. Y. S. 2d 443), February 21, 2008.

Defendant, a substitute teacher, was charged with attempted sexual abuse to the second degree, attempted sexual abuse in the third degree, unlawful imprisonment, harassment, and endangering the welfare of a child. The situation arose when a 24-year-old substitute teacher attempted to kiss and retain a 13-year-old female student at his residence. The Criminal Court, City of New York, Kings County held that allegations that substitute teacher attempted to kiss a female student by moving his face in close proximity to the student's face **was sufficient** to establish sexual contact which is associated with attempted sexual abuse of a minor.

"Student's Rights Violated When School Banned T-Shirt with Anti-Gay Statement"
Nuxoll ex rel. Nuxoll v. Indian Prairie School Dist. #204 (C. A. 7 [Ill.], 523 F. 3d 668), April 23, 2008.

High school student ***was likely to succeed*** on merits of his claim that school would violate his speech rights by preventing him from wearing T-shirt with slogan "Be Happy, Not Gay" in response to "Day of Silence" intended to draw attention to harassment of homosexuals. Therefore, plaintiff **was entitled to preliminary injunction** to prevent school from banning his "T-shirt". School rule banning derogatory comments referring to sexual orientation appeared to satisfy the First Amendment, slogan on plaintiff's T-shirt **was only *tepidly negative*** (moderately negative), and it ***was highly speculative*** that it would poison the school's educational atmosphere.

"Sweep of School Parking Lot Did <u>Not</u> Constitute a Search"
Hill v. Sharber (M. D. Tenn., 544 F. Supp. 2d 670), February 28, 2008.

On or about October 21, 2005, two deputies from the Williamson County Sheriff's Department conducted a canine sweep of Franklin High School's (FHS) parking lot. A deputy, who was employed and assigned as a resource officer (SRO) at FHS, and the school's assistant principal accompanied the aforementioned deputies during the sweep. The canine hit on the plaintiff's vehicle, who was a special education student that attended FHS. During the search of the plaintiff's vehicle a duffel bag containing 10 twelve ounce bottles of beer were found. It was determined that the student's conduct was *not* a manifestation of his disability (IDEA) and he was assigned to the school district's alternative school for one month. At the conclusion of one month, the plaintiff was returned to classes at FHS. The plaintiff claimed that his rights associated with the Fourth Amendment and Fourteenth Amendment had been violated. The United States District Court, M. D. Tennessee, Nashville Division, held that (1) Student did **<u>not</u>** have a reasonable expectation of privacy in the school's parking lot where he parked his vehicle; (2) Search of the student's vehicle **was supported** by probable cause (Fourth Amendment); (3) Handcuffing of student during the search did **<u>not</u>** constitute an unreasonable seizure; and (4) Student's Fourteenth Amendment rights were **<u>not</u>** violated.

"Audio-Video Monitoring of Classrooms Permissible"
Plock v. Board of Educ. of Freeport School Dist. No. 145 (N. D. Ill., 545 F. Supp. 2d 755), December 18, 2007.

Special education teachers (plaintiffs) brought suit against school board under the Fourth Amendment of the U. S. Constitution and Illinois Eavesdropping Act, challenging a proposed audio-video monitoring of their classrooms through the use of audio-video equipment. The United States District Court, N. D. Illinois, Western Division, held that plaintiffs *did **not** have a reasonable expectation of privacy* concerning communications in their public school classrooms. Thus, proposed audio-video monitoring of their classroom activities would **not** violate their Fourth Amendment rights and their state's Eavesdropping Act.

"Student's Free Speech Challenge to School's Dress Code Failed"
Jacobs v. Clark County School Dist. (C. A. 9 [Nev.], 526 F. 3d 419), May 12, 2008.

Plaintiff (Kimberly Jacobs), then an eleventh grader at Liberty High School (Liberty) repeatedly violated Liberty's uniform policy (wearing shits containing religious messages). She was suspended from school five times for a total of approximately 25 school days. During her suspensions, she was provided with educational services, and in fact, her grade point average improved during the time in which she was suspended from school. The plaintiff claimed that she missed out on classroom interaction, suffered reputational damage among her teachers and peers, had a tarnished disciplinary record, and was unconstitutionally deprived of her First Amendment rights to free expression and free exercise of religion because of Liberty's enforcement of its mandatory school uniform policy. The United States Court of Appeals, Ninth Circuit, held that Liberty's mandatory dress codes for students were viewpoint and content neutral, and thus *Tinker* "substantial interference" test governing schools' viewpoint-based suppression of students' speech did **not apply** on plaintiff's free speech/expression conduct challenge to school district's dress code because it allowed an exception for clothing containing a school's logo. Stated purposes of dress policy were increasing student achievement, promoting safety, and the logo exception by itself *did **not** covert otherwise content-neutral policy into content-based one*.

"Third Grader Seriously Injured Teacher"
Stroh v. Calcasieu Parish School Bd. (La. App. 3 Cir., 978 So. 2d 1114), March 5, 2008.

Evidence **overwhelmingly supported** the trial court's finding that a third grade teacher met her burden of proving that she was seriously injured while escorting an out-of-control student from her classroom to the principal's office. While attempting to escort the third grader to the principal's office, the teacher's feet became entangled with the student's feet and she fell to the ground as he resisted her efforts. Consistent with the teacher's testimony, a witness testified that the student was pulling and fighting the teacher as she tried to lead him out of her classroom, down the hall, and to the principal's office. Therefore, she **was entitled** to paid sick leave without a reduction in pay.

"SRO's Termination Upheld For Insubordination"
Grey v. Dallas Independent School Dist. (C. A. 5 [Tex.], 265 Fed. App. 342), February 14, 2008.

Grey (plaintiff) was hired by the Dallas Independent School District (DISD) as a School Resource Officer (SRO) in 2001. In January 2002, the Chief of the DISD Police and Security Services discovered that the plaintiff's driver's license had been suspended and assigned him to dispatch until the license situation was resolved. While the order was in place, the plaintiff rode on patrol with other officers for several shifts. When the Chief confronted the plaintiff about disobeying his direct order, the plaintiff responded by stating "you want to talk, we can talk to my attorney." Thereafter, the plaintiff was discharged from his employment for insubordination. The United States Court of Appeals, Fifth Circuit, held that former employee: (1) **failed** to establish a case of race discrimination under Title VII, (2) did **not** engage in a protected activity, (3) did **not** have a due process liberty interest in his reputation and good name, and (4) did **not** have due process property interest in his continued employment.

"Third Grader Sexually Assaulted by Fifth Grader on School Bus"
Doe v. East Baton Rouge Parish School Bd. (La. App. 1 Cir., 978 So. 2d 426), March 28, 2008.

School board **was independently liable**, under the doctrine of respondent superior, for the fifth-grade student's sexual assault of a third-grade student that occurred on a school bus. The bus driver, a school board employee, acknowledged that she violated the rules established by her supervisors when she got off the bus at a transfer point, which was when the assault occurred. The driver further acknowledged that she could have prevented the assault if she had been on the bus as required by directives from her superiors. Furthermore, evidence in the record indicated that there had been numerous assaults (more than 1,000 physical and sexual altercations) at the school bus transfer point in the five years immediately preceding the incident.

"School District Obligated to Defend Baseball Coach"
Matyas v. Board of Educ. (N. Y. Sup., 855 N. Y. S. 2d 339), March 31, 2008.

In late May 2006, plaintiff (guidance counselor and baseball coach) was involved in an altercation with a parent of one the players on the baseball team. The parent approached the coach, talked to him in a threatening manner and either grabbed or tapped coach on his shoulder. Parent was charged with harassment, acquitted, and filed a civil suit against coach for malicious prosecution. The Supreme Court, Broome County, held that civil action for malicious prosecution brought by a parent of a student on the school's baseball team against the coach *arose out of performance of coach's employment duties*. Therefore, the school district **was obligated to defend and indemnify** (secure against hurt, loss, or damages) coach in the civil action against him. Although coach registered his complaint against the offending parent at his own home, outside of school hours, and without being told to do so by his superiors; however, *the coach's interaction with the parent occurred at a baseball game, on school property, and involved the coach fulfilling his coaching duties*.

"School Board Can Ban Student Possession of Cell Phones"
Price v. New York City Bd. of Educ. (N. Y. A. D. 1 Dept., 855 N. Y. S. 2d 530), April 22, 2008.

The decision of Chancellor of New York City Department of Education to "*ban the possession of cellular telephones"* by students in the public schools of New York **was rationally related to legitimate goal of government**. Therefore, the banning of cell phones **did <u>not</u>** violate parents' Fourteenth Amendment due process rights as pertaining to their liberty interest in the care, custody, and control of their children or the due process clause of the state of New York's Constitution. The Chancellor and his staff *reasonably determined* that a ban on cell phone possession ***was necessary to maintain order in schools and the goal of maintaining student discipline was a legitimate educational priority.*** The Supreme Court of New York, Appellate Division, First Department, went on to state that the Department of Education **demonstrated a proper basis** for the cell phone policy and concluded that if the schools were required to enforce a ban on "*cell phone use"*, the pedagogical mission ***would be undermined*** by the time spent confronting and disciplining students. As a footnote to this case, on April 13, 2006, the Department announced that students at certain middle and high schools would be scanned by mobile metal detectors prior to entering the school. The intended target of the scan was "weapons and dangerous instruments such as firearms, knives, and box cutters." A small number of weapons were found; however, thousands of cell phones were detected.

"Middle School Student Guilty of Harassing Principal"
A. B. v. State (Ind., 885 N. E. 2d 1223), May 13, 2008.

Evidence **was sufficient** to prove that juvenile *had requisite intent* to harass, annoy, or alarm her former middle school principal, with *no* intent of legitimate communication, when she posted profanity-laced statements on social networking site (My-Space) on internet as would support delinquency adjudication based on six counts of harassment. Evidence did *not* establish that juvenile, when making postings on private profile site, had *subjective expectation* that her conduct would come to principal's attention. Student *intended* publicly accessible "group page" as legitimate communication of her criticism of principal's disciplinary action. As a **footnote** to the case, the student's message on My-Space was transmitted as follows: "hey you piece of greencastle s**t. what the f**k do you think of me know (sic) that you cant (sic) control me? Huh? ha ha ha guess what ill (sic) wear my f**king piercings all day long and to school and you cant (sic) do s**t about it! ha ha ha f**king stupid b*tard!"

"Student Assigned to Alternative School Due to Mother's Beer"
Langley v. Monroe County School Dist. (C. A. 5 [Miss.], 264 Fed. App. 366), January 31, 2008.

On a Sunday afternoon in September 2004, Charles and Kathy Langley drove their Ford Mustang to a cookout at a friend's home. Kathy drank part of a beer and left it in the vehicle. Laura (Charles and Kathy's daughter), an honor roll student who held leadership positions in several organizations at her high school drove the Mustang to school the following Tuesday because her own vehicle would not start. She did not see the partially-full beer can in the console cup holder. Later that day, the assistant principal noticed the Mustang did not have a parking decal. In the course of inspecting the car to determine its owner, he discovered the beer and called the principal. After consulting with the superintendent the high school administration assigned Laura to 30 days at an alternative school due to her violation of the school district's "zero tolerance" policy. Laura withdrew from the school and obtained her GED. The United States Court of Appeals, Fifth Circuit, held that the student's temporary transfer to an alternative school implicated **no** constitutionally-protected property interest.

"Student Hits another Student with a Cafeteria Tray"
In re Expulsion of N. Y. B. (Minn. App., 750 N. W. 2d 318), June 10, 2008.

Before being expelled, N. Y. B. (plaintiff) was a freshman at Coon Rapids High School (CRHS). Sometimes in late November or early December 2006, C. S. who also attended CRHS, made comments to other students about N. Y. B.'s racial heritage. During lunch in the school cafeteria on December 13, 2006, N. Y. B. confronted C. S. about rumors that she believed C. S. was spreading. A fight ensued, during which N. Y. B. broke a cafeteria tray over C. S.'s head. School staff promptly broke up the fight. While being escorted to the main office by a school official, N. Y. B. turned and ran toward C. S., who was being escorted in the opposite direction. As a result, an assistant principal physically restrained N. Y. B. to prevent the resumption of the fight. The school board voted 5 to 1 to expel N. Y. B. until December 12, 2007. The Court of Appeals of Minnesota ruled that in order to support an expulsion of a student for one calendar year, the school board **was required** to explain the basis for determining *relative egregiousness* of student's behavior as compared to other students, provide *factual context* of any incidents resulting in expulsion with which student's conduct was compared, explain how student's conduct *compared with other incidents*, and explain how the board *reached its conclusion* about relative seriousness of student's conduct with consideration of *mitigating circumstances* presented by the student.

"Student Injured in Fight: School Board Had Knowledge of Previous Victimization"
S. K. ex rel. Philip K v. City of New York (N. Y. Sup., 856 N. Y. S. 2d 448), February 26, 2008.

On October 20, 1999, plaintiff SK, a seventh-grade student, was injured during a fight with LC, a fellow student at the end of gym class. LC struck plaintiff in the head causing the hemorrhage of a latent congenital vascular malformation which necessitated approximately 10 brain surgeries. Plaintiff alleges that school officials were aware that plaintiff had previously and repeatedly been harassed and assaulted by fellow students, including LC. The Supreme Court, Kings County, New York, stated that *genuine issues of material fact* **existed** as to whether the school board, in light of the alleged specific knowledge it had that plaintiff had previously been targeted and victimized by other students, should have provided closer supervision of plaintiff or taken other action to protect plaintiff's safety during school hours. As to whether the student was a voluntary participant in the fight with another student **precluded summary judgment** on the plaintiff's negligent action against school officials and the board. Therefore, *summary judgment for the board* **was denied**.

"Student Looses Two Teeth in a Fight"
MacCormack v. Hudson City School Dist. Bd. of Educ. (N. Y. A. D. 3 Dept., 856 N. Y. S. 2d 721, May 1, 2008.

Board of education and school district did **not** have sufficient notice to be able to have anticipated the actions of a student who struck a fellow student (plaintiff), knocking out two of his teeth; thus, ***precluding*** the imposition of liability. School administrators **were unaware** of any serious problems between the two students and had *not* experienced any significant disciplinary problems with the offending student or plaintiff prior to the incident. The offending student struck the plaintiff in the face, causing him to lose two teeth, as they ascended the school's stairs.

Note: Johnny R. Purvis is currently a professor in the Department of Leadership Studies at the University of Central Arkansas. He retired (30.5 years) as a professor, Director of the Education Service Center, Executive Director of the Southern Education Consortium, and Director of the Mississippi Safe School Center at the University of Southern Mississippi. Additionally, he serves as a law enforcement officer in both Arkansas and Mississippi. He can be reached at the following **phone numbers**: 501-450-5258 (office) and 601-310-4559 (cell).

Special Note:

The "Legal Update for District School Administrators" is dedicated to the memory of **Dr. Wm. (Bill) Leewer** (November 17, 1950 – May 26, 2008) and **Dr. Jack Klotz** (February 26, 1943 – May 20, 2008). Dr. Leewer was a professor at Mississippi State University-Meridian, Mississippi and editor of the Legal Update for District School Administrators. Dr. Klotz was a professor in the Department of Leadership Studies at the University of Central Arkansas and a former professor of educational administration at the University of Southern Mississippi. Both of these gentlemen and educators will be greatly missed by their families, friends, and their students. They were not just colleagues of mine, but very dear friends. Their memory and legacy will live on through their students and their writings. Strength and honor

April May 2009 (#'s 579, 580, & 581)

Safe, Orderly, and Productive School Legal News Note
April-May 2009

Johnny R. Purvis*

West's Education Law Reporter
August 7, 2008 – Vol. 233 No. 1 (Pages 1 – 501)
August 21, 2008 – Vol. 233 No. 2 (Pages 503 – 1023)
September 4, 2008 – Vol. 234 No. 1 (Pages 1 – 514)

Terry James, Chair, Department of Leadership Studies, University of Central Arkansas
S. Ryan Niemeyer, Editor, Director, University of Mississippi – Grenada and Assistant Professor, Leadership and Counselor Education
Shelly Albritton, Technology Coordinator, Department of Leadership Studies, University of Central Arkansas
Safe, Orderly, and Productive School Institute
Department of Leadership Studies
University of Central Arkansas
201 Donaghey Avenue
230 Mashburn
Conway, AR 72035
*Phone: 501-450-5258 (office)
*E-mail: jpurvis@uca.edu

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 Institute** located in the Department of Leadership Studies 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 at **501-450-5258**. In addition, feel free to contact Purvis regarding educational legal concerns; school safety and security issues; crisis management; student discipline/management issues; and concerns pertaining to gangs, cults, and alternative beliefs.

Topics

"Male Student Not Subjected to a Hostile Environment after Telling a Male Classmate That He Loved Him"

Levarge v. Preston Bd. of Educ. (D. Conn., 552 F. Supp. 2d 248), March 11, 2008.

On March 4, 2004, T. L. (plaintiff) then 9 years old, said to another boy at his lunch table "Do you love me? I love you." According to the principal, she learned that T. L. said this repeatedly and refused to stop at the other child's request. In response, the child threw food at T. L. According to the principal, T. L. reported the food-throwing to teachers who moved the offended student to another table. The principal maintains that T. L. began laughing and boasting that he had gotten the other student in trouble. Furthermore, the principal reported that the offended student responded by calling T. L. "gay" and encouraged other students to do the same. After the incident, both students went to principal's office and were punished by being "sent to the fence" during recess. A United States District Court in Connecticut held that the plaintiff was **not** subjected to a sexually hostile educational environment in violation of Title IX when he was subjected to thrown food and homophobic teasing in the school cafeteria after he asked another male student if he loved him. The other student's conduct was not so severe, pervasive, and objectively offensive that student was effectively denied equal access to the school.

"Grabbing, Twisting, and Hitting Student's Testicles *Supported* Claim under Title IX for Gender Stereotyping"

Doe v. Brimfield Grade School (C. D. Ill., 552 F. Supp. 2d 816), April 10, 2008.

Plaintiff alleged that her grade school son was sexually harassed by six other male students from November 2004 through November 2005. The harassment consisted of verbal and physical abuse, the physical "sexual misconduct consisted predominantly of grabbing, twisting, and hitting the youngster's testicles. Both his principal and basketball coach were aware of the ongoing practice of male students hitting each other in the testicles, also known as "sac stabbing." The student and his parents (plaintiff) repeatedly objected to this abuse, tried to impress upon school officials the seriousness of the situation, but their efforts fell on deaf ears and school officials did not take reasonable steps to prevent or intervene in the matter. The plaintiff's son eventually suffered severe swelling, pain, and damage to his testicles and had to have surgery. After his surgery and his return to school, he was teased and intentionally struck in his testicles. His stitches popped and his surgical incision broke open. The school principal still did nothing to correct the situation. In fact, the only thing that the coach did was tell the youngster that "he needed to stick up for himself." Because of the school's repeated refusal to take reasonable steps to protect their son, John's parents removed him from school in December 2005. A United States District Court in Illinois held that (1) the allegations **were sufficient to support** claim against school officials under Title IX for gender stereotyping and (2) the complaint described behavior which **rose to a level of harassment that was severe, pervasive, and objectively offensive** that student **was denied equal access** to his education.

"Teacher's Discharge for Irresponsible and Inappropriate Misconduct Was Appropriate"

Lackow v. Department of Educ. (or "Board") of the City of New York (N. Y. A. D. 1 Dept., 859 N. Y. S. 2d 52), May 27, 2008.

On December 3, 2004, plaintiff (Lackow), then a tenured biology teacher became the subject of an investigation based on an incident in which a student reported to an assistant principal that she had yelled out "Lackow sucks". Thereupon, the plaintiff responded to the student by saying, "No, you suck - well that's what it says in the boys' bathroom." In response to the incident, along with interviewing seven students and a teacher, it was discovered that the teacher had used a number of sexual innuendoes in his high school classes. The New York Supreme Court, Appellate Division, First Department, held that plaintiff's penalty of discharge upon determination that he had engaged in insubordination, sexual harassment, used inappropriate language, and engaged in conduct unbecoming a teacher did **not** shock the conscience, given the teacher's proven misconduct. The plaintiff had been previously warned three (3) times in writing about his inappropriate behavior. Furthermore, **the repetitive nature** of the teacher's misconduct provided a **continued a pattern of conduct** that **was clearly irresponsible and inappropriate** within the classroom setting.

"School Exercised Ordinary Care While Investigating Claims of Harassment"

Beacham v. City of Starkville School System (Miss App., 984 So. 2d 1073), June 17, 2008.

On July 5, 2002, plaintiff's daughter (Ashley) attended a pool party at a male student's home. The pool party was not a school-related event. Boys attending the party secretly videotaped Ashley changing into her swimsuit and Ashley found out about the videotape two weeks later. One month after the incident, Ashley began her freshman year at Starkville High School where she served as a cheerleader. Plaintiff called the high school principal and informed him about the incident, pending court proceedings, and a restraining order against the boys. During the subsequent trail the plaintiff alleged that on at least three instances her daughter was harassed by one or more of the boys who did the videotaping. The Court of Appeals of Mississippi held that **there was substantial evidence to support** the circuit court's finding that the school district **exercised ordinary care** in investigating the plaintiff's claims of harassment at school when it was brought to the high school administration attention. Thus, the school district **was immune from liability**. The school district was **not** responsible for any harassment student suffered outside of the school that was linked to the videotaping incident. Furthermore, the school system could **not** be held responsible for its students' failure to respect their peers' boundaries.

"Detective Had Probable Cause to Arrest Music Teacher"
Fronczak v. Pinellas County, Florida (C. A. 11 [Fla.], 270 Fed. App. 855), March 24, 2008.

During November 2003, M. L. noticed drops of blood in the underwear of her seven-year-old daughter, C. L. M. L. took her daughter to her pediatrician for an examination. C. L. denied any sexual abuse. In January 2004, M. L. noticed a recurrence of vaginal bleeding by C. L., who again denied any abuse. In April 2004, when C. L.'s mother noticed a third episode of bleeding, C. L. underwent a gynecological examination by the Child Protection Team at Help A Child that revealed scarring and damage to C. L.'s hymen that was consistent with sexual abuse. After this examination, C. L. spontaneously disclosed to her mother that she had been fondled and digitally penetrated by her music teacher, Fronczak. The teacher was interviewed by a detective from the Pinellas County Sherriff's Office and he denied any wrongdoing. In addition the detective and three other officers interviewed 280 students at the school; 71 said that they had seen other children sitting on the teacher's lap and 20 stated that they sat on the teacher's lap. The teacher was suspended from his teaching position. He turned himself in to law enforcement authorities without an arrest warrant on April 28, 2004. He was later acquitted (Found not guilty) of the capital sexual abuse charges. The United States Court of Appeals, Eleventh Circuit, held that detective **had probable cause** to arrest the music teacher, **precluding liability** of detective and sheriff's office for false arrest. Detective **possessed physical evidence** that the seven-year-old student had been sexually abused and she **unequivocally identified** the music teacher as her assailant. In addition, **other evidence also suggested the teacher's guilt**, including statements from other students, one of whom also identified teacher as her abuser.

"Evidence Sufficient to Support Conviction of Sex Offender Living Within 1,000 Feet of a School"
State v. Gonzales (Mo. App. E. D., 253 S. W. 3d 86), April 22, 2008.

Even if the state was required to prove that the defendant acted knowingly, **there was sufficient evidence to permit an inference** that sex the offender (defendant) had knowledge of the location and distance of the school (A Catholic elementary school for student from pre-kindergarten through eighth grade.) when he established residency. Thus, **evidence was sufficient to support** defendant's conviction (four years of imprisonment) for violating state statue requiring certain offenders, including those convicted of statutory sodomy in the second degree, not to establish residency within 1,000 feet of a school.

"IDEA Student's Parents Must Exhaust Administrative Remedies"
A. W. ex rel. Wilson v. Fairfax County School Bd. (E. D. Va., 548 F. Supp. 2d 219), March 13, 2008.

Suspended high school student (18 year-old senior), by his parents and next of friends, sued school board and superintendent, claiming that the student was being singled out for harsh discipline (Used his cell phone camera to take multiple pictures up a female classmate's skirt without her knowledge and sent them to other students.) because of his disability (Asperger's Syndrome). An Untied States District Court in Virginia held that IDEA does not prevent the parents of disabled child from seeking relief under the statute designed for their child's protection. However, IDEA requires a plaintiff **to first exhaust all administrative remedies available** prior filing suit under IDEA.

"Student Barred From Running for Class Office Due to Vulgar Comments about Administrators"
Doninger v. Niehoff (C. A. 2 [Conn.], 527 F. 3d 41), May 29, 2008.

Mother (plaintiff) brought state-court suit (sought a preliminary injunction) alleging violations of her daughter's (student) First Amendment and other federal and state rights when the high school student was barred by school officials (Karissa Niehoff-principal and Paula Schwartz-superintendent) from running for senior class secretary based on a derogatory blog the student posted on an independent web site about the principal's and superintendent's cancellation of an upcoming student event ("Jamfest" – an annual battle-of-the-bands concert that was sponsored by the student council. The event was temporarily cancelled due to problems with the school auditorium's sound and lighting equipment. It later was rescheduled.). The student's blog read as follows (direct quote): "Jamfest is cancelled due to douchebags in central office. Here is an email that we sent to a tone of people and asked them to forward to everyone in their address book to help get support for jamfest. Basically, because we sent it out, Paula Schwartz is getting a TON of phone calls and emails and such. We have so much support and we really appreciate it. However, she got pissed off and decided to just cancel the whole thing all together. Anddd so basically we aren't going to have it at all, but in the slightest chance we do it is going to be after the talent show on may 18th. Andd..here is the letter we sent out to parents." The United States Court of Appeals, Second Circuit stated that: (1) Plaintiff did **not** demonstrate substantial likelihood of success on merits of her First Amendment claim; (2) Student's away-from school posting on an independent blog in which she called school administrators "douchebags' and encouraged others to contact the superintendent "to piss her off more" **contained the sort of language that can properly be prohibited in a schools**; and (3) **Nothing** in the First Amendment *prohibits* school authorities *from discouraging inappropriate language* within the school environment.

"Restraining Order Denied Regarding Placement in Alternative Setting"
Scott v. Livingston Parish School Bd. (M. D. La., 548 F. Supp. 2d 265), March 5, 2008.

A student's parents filed suit against school district seeking temporary restrain order (TRO) requiring school officials to cease and desist and to further refrain from denying their child a public education, as well as the student's immediate placement in a alternative educational setting. A Louisiana district court held that plaintiff did **not** demonstrate the likelihood of success on the merits of their claim that student's expulsion from school for alleged misconduct involving the use/possession of a controlled substance violated their youngster's due process property interest in receiving a public education. Furthermore, school officials **afforded** the student **sufficient procedural due process**.

"School Administrator's Search of Student Was Reasonable"
Com. Smith (Mass. App. Ct., 889 N. E. 2d 439), July 3, 2008.

Defendant, a student at a public high school was convicted of unlawful possession of a firearm (.380 caliber handgun) and unlawful possession of ammunition. The Appeals Court of Massachusetts, Suffolk, held that the school's assistant headmaster **had reasonable grounds** for searching student. The search **was reasonable at its inception** for the purposes of determining whether the search was reasonable under *the totality of circumstances*. Headmaster was aware that the student had not entered the school building through single entrance (School's front doors are the only authorized entrance.) that is equipped with metal detectors. Student had avoided leaving his school bag in headmaster's office (Student was required to drop his belongings in the assistant headmaster's office at the start of each school day.), which was his usual practice. Defendant had been told on the day before the search not to return to school without his parent. In addition, the student had been in an unauthorized area of the school during class, in violation of school rules.

"Police Officer Was Engaged in the Execution of His Legal Duties When He Detained Student"

C. M. M. v. State (Fla. App. 5 Dist., 983 So. 2d 704), June 6, 2008.

Police officer who detained a juvenile in school hallway **was engaged in the lawful execution of his legal duties**; and the juvenile **could be convicted** of battery on a law enforcement officer and resisting arrest with violence arising out of her hitting and kicking the officer (Hit officer with her fist and kicked him in the chest, stomach, and neck.). At the time of the incident, the officer **was assigned** as a school resource officer (SRO) and was *attempting to enforce school rules* at the direction of the school administrator. **Note:** The court went on to state that school resource officers perform a unique mission. They are certified law enforcement officers who are assigned to work at schools under the cooperative agreement ("memorandum of understanding") between law enforcement agencies and school boards. They are statutorily bound to "abide by district school board policies" and "consult with and coordinate activities through the school principal." In this capacity, school resource officers are called upon to perform many duties not traditional to the law enforcement function, such as instructing students, serving as mentors and assisting administrators in maintaining decorum, and enforcing school board policy.

"Student Shot and Killed By Non-Student"

Gary Community School Corp. v. Boyd (Ind. App., 890 N. E. 2d 794), July 29, 2008.

On March 30, 2001, at approximately 8:15 a. m., 16-year-old Neal Boyd (Neal) was dropped off by his mother at Lew Wallace High School (LWHS), where he attended high school. After he arrived, Neal went to the area where students generally congregated prior to classes beginning. While he waited for classes to start, Neal was shot and killed by Donald Burt, who at that time was not a student at LWHS. Burt had been expelled the previous school year and had withdrawn for the 2000-2001 school year. A behavioral assessment had been completed on Burt which indicated that he exhibited aggressive behavior with homicidal ideations (ideas). Neal's parents (plaintiffs) brought a negligent law suit against the school district. The Superior Court, Lake County, Indiana, ruled in the plaintiffs favor and the school district appealed. The Court of Appeals of Indiana affirmed in part, reversed in part, and remanded the case back to the lower court for a new trial. In so ruling, the Court of Appeals stated that *prior incidents of violence at or around* the high school were **not** sufficiently similar to incident in which plaintiffs' son was shot and killed. Prior incidents were *not admissible* as evidence to show that the shooting of the plaintiffs' son was reasonably foreseeable. The three prior incidents occurred four to eight years before the shooting of Neal. One prior incident involved a student being hit by a stray bullet at a football game. The other two prior incidents involved students either being shot or struck by stray bullets while walking home from school and not being on campus.

"Kindergarten Student Sexually Assaulted by Classmate"
Nelson v. Turner (Ky. App., 256 S. W. 3d 37), June 6, 2008.

In November 2005, five-year-old F. B. was registered as a kindergarten student in Diane Turner's (Turner) class at a public elementary school in Fayette County Public School District, Kentucky. On November 16 of that same year, F. B. was sexually assaulted in the classroom during regular school hours by a female classmate (C. Y.). F. B. described the incident to her mother two days after the incident occurred. The student's mother (Nelson) telephoned Turner and reported that F. B. had complained that C. Y. had "put her finger up my butt" at school. The teacher assured Nelson that she would separate the children. On the morning of Monday, November 21st, Turner advised her teaching assistant that F. B. and C. Y. would no longer be allowed to be close to one another. In addition, Turner also admonished C. Y. that touching someone's bottom was wrong. In an effort to keep the children apart, Turner assigned them specific seats and forbade them from attending the restroom at the same time. After the lunch period on November 21, 2005, F. B. told Turner that C. Y. had been "up my butt. On November 22nd, 2005, F. B. told her mother that C. Y. pushed her into a table, had rubbed and pinched her nipples, and has touched her anus and vagina, all while they were in the classroom together. Nelson had F. B. examined and the medical team noted that there was "some small irritation of the vagina" and brought in a social worker to advise and counsel both the child and her mother. F. B. did not return to the Fayette County Public School District. The Appeals Court of Kentucky vacated in part and remanded the case back to the lower court. In so ruling the Appeals Court stated: (1) The case was **remanded back** to trial court to determine the applicability of the state's statutory abuse reporting requirement and whether the teacher was required to make a report of the alleged abuse that occurred in her classroom to local law enforcement officials for determining if teacher was entitled to qualified official immunity and (2) While the student's mother was not satisfied with the teacher's reaction to the alleged incident, the teacher's behavior could **not** be regarded as so extreme or outrageous as to support recovery for outrage.

"School District Owed Students the Highest Degree of Care that is Akin to a Common Public Carrier"

Green v. Carlinville Community Unit School Dist No. 1 (Ill. App. 4 Dist., 320 Ill. Dec. 307, 887 N. E. 2d 451), March 28, 2008.

Student (attended kindergarten from August 1991 through May 1992) sued school bus driver (Convicted of three counts of child abuse and sentenced to four years in prison.), who allegedly sexually abused student (six other families had children abused by the same bus driver), and school district, alleging that district engaged in intentional infliction of emotional distress, committed assault and battery, was negligent per se, and negligently hired bus driver. An appeals court in Illinois held that a school district that operates school buses to transport its students is *not* a "common carrier," but it is performing the same basic function, transporting individuals; and like a passenger on a common carrier, a student on a school bus *cannot ensure* his or her own personal safety, but, rather, ***must rely*** *on the school district to provide fit employees to do so*. Therefore, a school district that operates school buses **owes** their students the highest degree of care that is equivalent to the same extent that common carriers owe their passengers in regard to the highest degree of care.

Note: Johnny R. Purvis is currently a professor in the Department of Leadership Studies at the University of Central Arkansas. He retired (30.5 years) as a professor, Director of the Education Service Center, Executive Director of the Southern Education Consortium, and Director of the Mississippi Safe School Center at the University of Southern Mississippi. Additionally, he serves as a law enforcement officer in both Arkansas and Mississippi. He can be reached at the following **phone numbers**: 501-450-5258 (office) and 601-310-4559 (cell).

Special Note:

The "Legal Update for District School Administrators" is dedicated to the memory of **Dr. Wm. (Bill) Leewer** (November 17, 1950 – May 26, 2008) and **Dr. Jack Klotz** (February 26, 1943 – May 20, 2008). Dr. Leewer was a professor at Mississippi State University-Meridian, Mississippi and editor of the Legal Update for District School Administrators. Dr. Klotz was a professor in the Department of Leadership Studies at the University of Central Arkansas and a former professor of educational administration at the University of Southern Mississippi. Both of these gentlemen and educators will be greatly missed by their families, friends, and their students. They were not just colleagues of mine, but very dear friends. Their memory and legacy will live on through their students and their writings. Strength and honor

June July 2009 (#s 582, 583, & 584)

Safe, Orderly, and Productive School Legal News Note
June – July 2009

Johnny R. Purvis*

West's Education Law Reporter
September 18, 2008 – Vol. 234 No. 2 (Pages 515 – 1059)
October 2, 2008 – Vol. 235 No. 1 (Pages 1 – 695)
October 16, 2008 – Vol. 235 No. 2 (Pages 697 – 1278)

Terry James, Chair, Department of Leadership Studies, University of Central Arkansas
S. Ryan Niemeyer, Editor, Director, University of Mississippi – Grenada and Assistant Professor, Leadership and Counselor Education
Shelly Albritton, Technology Coordinator, Department of Leadership Studies, University of Central Arkansas
Safe, Orderly, and Productive School Institute
Department of Leadership Studies
University of Central Arkansas
201 Donaghey Avenue
230 Mashburn
Conway, AR 72035
*Phone: 501-450-5258 (office)
*E-mail: jpurvis@uca.edu

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 Institute** located in the Department of Leadership Studies 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 at **501-450-5258**. In addition, feel free to contact Purvis regarding educational legal concerns; school safety and security issues; crisis management; student discipline/management issues; and concerns pertaining to gangs, cults, and alternative beliefs.

Topics

"Identity of Accused Teachers Regarding Allegations of Sexual Misconduct May Be Disclosed Only If The Misconduct is Substantiated or The Conduct Results in Some Form of Disciplinary Action"
Bellevue John Does 1-11 v Bellevue School Dist. # 405 (Wash., 189 P. 3d 139), July 31, 2008.

The Seattle Times Company (Times) filed public disclosure requests with the Bellevue and Federal Way school districts seeking copies of all records pertaining to allegations of teacher sexual misconduct in the last 10 years. The school districts notified 55 current and former teachers that their records were gathered in response to the Times Requests. Thirty-seven of the teachers filed a lawsuit to enjoin the school districts from releasing their records, arguing that disclose of records identifying them as subjects of sexual misconduct allegations violated their right to privacy. After considering documentary evidence as to each plaintiff's status, the trial court concluded that the identities of 15 of the original plaintiffs were exempt from disclosure, while the identities of the 22 remaining teachers were open for disclosure to the public. The Supreme Court of Washington, En Banc (With all judges participating-full court heard the case.), held that: (1) Identities of public school teachers alleged to have committed sexual misconduct against students **were "personal information"**, under public disclosure act provisions that exempts personal information from disclosure to the extent that such disclosure **violates** a public employee's right to privacy, because those identities are specifically related to particular people; (2) Public school teachers against whom unsubstantiated or false accusations of sexual misconduct was made have a right to privacy in their identities, as protected under the public disclosure act, because the unsubstantiated or false accusations are matters concerning teachers' private lives and are ***not*** *specific incidents of misconduct during the course and scope of their employment*; and (3) When there is an allegation of sexual misconduct against a public school teacher, the identity of the accused teacher *may be disclosed* to the public pursuant to the state of Washington's Public Disclosure Act (PDA) ***only*** if the misconduct **is substantiated** or the teacher's conduct results in **some form of discipline**.

"Strip Search of Middle School Student Was Unconstitutional"
Redding v. Safford Unified School Dist. No. 1 (C. A. 9 [Ariz], 531 F. 3d 1071), July 11, 2008.

Thirteen-year-old middle school honor student (plaintiff), by her mother and legal guardian, brought Section 1983 action against school district, school vice principal, administrative assistant, and school nurse, alleging that a strip search violated her Fourth Amendment rights. On October 8, 2003, plaintiff was attending a math class when the assistant principal walked into her classroom and instructed her to pack up her belongings and accompany him to his office. Another female student had been caught with several white ibuprofen pills and blamed her possession of the pills on the plaintiff in an attempt "to save her own hide". By the way, this was the only possible link between the plaintiff and the ibuprofen pills. Upon arrival at his office the assistant principal directed plaintiff's attention to several white ibuprofen pills sitting on his desk. He asked plaintiff if she had anything to do with the pills. She stated that she had never seen the pills before entering the assistant principal's office. Dissatisfied with her answer, he asked plaintiff if he could search her belongings, she agreed. Thereupon he and his administrative assistant (female) search all of plaintiff's belongings and found nothing. Despite plaintiff's discipline-free history at the school, the assistant principal asked his administrative assistant to take the plaintiff to the nurse's office for a second and more thorough search. There, at the assistant principal's request, his administrative assistant and the school nurse conducted a strip search of the plaintiff. Plaintiff was required to remove all of her clothing and sat in her bra and underwear while the two adults examined her clothing, they found nothing. Plaintiff was then required to pull her bra out to the side and shake it, no pills. Afterward, she was required to pull out her underwear at the crotch and shake it, no pills. The United States Court of Appeals, Ninth Circuit, held that school officials' strip search of a middle school student in an effort to find ibuprofen was ***not*** *reasonably related in scope to the circumstances which justified the inference in the first place*, as required to comply with the *reasonableness standard* under the Fourth Amendment. Even though student's search took place in a school nurse's office in front of two women, *the most logical places where the pills might have been found had already been searched to* ***no*** *avail*. ***No*** information pointed toward the conclusion that the pills were hidden under student's bra or panties. Furthermore, there was ***no*** immediate danger posed by the possession of prescription-strength ibuprofen pills by the student or other students.

"Teacher Injured When A Fellow Teacher Attempted to Break-Up a Fight Between Two Middle School Students"

Moore v. Dallas Independent School Dist. (N. D. Tex., 557 F. Supp. 2d 755), March 14, 2008.

Plaintiff, a full-time math teacher at a middle school in the Dallas Independent School District (DISD) was monitoring students as they moved in the school's hallways between classes when a fight broke-out near her between two eighth grade boys. A fellow teacher (Marvin Lane or "Lane") attempted to separate the two students. He was unable to do so, and his unsuccessful efforts caused him to lose his balance and start to fall. Plaintiff attempted to keep her distance from the fight, but as Lane fell to the floor he kicked plaintiff's feet out from under her, causing her to fall hard on her knees. Once on the floor, the force of the three falling bodies (Lane and the two students) shoved plaintiff up against the wall, injuring her neck and shoulders. Plaintiff filed suit against DISD, alleging the violation of her Fourteenth Amendment right to due process due to the failure of DISD to curb the growing problem of student violence, its failure to supervise and train teachers on how to respond to student violence, and the deprivation of her substantive due process rights to her bodily integrity. A United States District Court in Texas held that: (1) Plaintiff's allegations that school district under-reported occurrences of student violence and discouraged teachers from reporting such occurrences, so as not to lose funding from state and federal government, did **not** constitute allegation of affirmative actions by school district rendering her more vulnerable to danger of being injured by student violence; (2) Assuming that school district's actions in under-reporting student violence and discouraging teachers from reporting student violence increased the risk of harm to teachers posed by student violence, such actions did **not** increase teacher's vulnerability to danger, as a required element of her due process claim; and (3) Teacher **failed** to plead facts that established that the school district acted with deliberate indifference to her substantive due process right to bodily integrity, as an essential element of her claim against the school district in regard to the theory of "a state-created danger".

"State Department of Education's License Renewal of Teacher Who Molested Student Did Not Violate Student's Equal Protection Rights"
B. T. v. Davis (D. N. M., 557 F. Supp. 2d 1262), July 31, 2007.

The New Mexico State Department of Education and associated officials who had conducted an earlier investigation into previous allegations that a male teacher had inappropriately touched male students, did **not** *act with deliberate indifference* in renewal of the teacher's license despite his failure to disclose the prior investigation on his sworn application for license renewal. Therefore, **no** substantive due process violation occurred with respect to student who allegedly was subsequently molested by the teacher. **None** of the defendants *assisted the teacher in his alleged effort to cover up his history of abusing young male students or were deliberately indifferent* to students' safety. *At the most, defendants knew of the allegations against the teacher* and about the State Department attorney's investigation, which concluded that there was *insufficient evidence* to revoke the teacher's license. **Note:** From September 1998 through March 1999, the teacher was investigated by the Department of Education for alleged inappropriate touching of several male students while teaching at Granger Elementary School (Granger). The report concluded that while such allegations were possible and did generate the immediate concern for students' safety, the inability to corroborate any allegation coupled with the numerous contradictions made it difficult to formulate a case sufficient to support licensure charges against the teacher. In November of 1998, the teacher resigned from his position at Granger and began teaching at Salazar Elementary School (Salazar) in the fall of 1999. The alleged injuries which constituted the basis for the lawsuit involved allegations that the teacher inappropriately touched B. T. in 2001 through 2003 while B. T. was a student at Salazar.

"Fifth Grader Threatens to Blow-Up the School House"
Cuff ex rel. B. C. v. Valley Cent. School Dist. (S. D. N. Y., 559 F. Supp. 2d 415), May 5, 2008.

At the time of the incident, the student (plaintiff) was 10-years-old and in the fifth grade. On September 12, 2007, a science teacher asked her students to fill in a picture of an astronaut with statements about their personalities. Plaintiff listed his birthday, his teacher's name, his favorite sports, and wrote the following: "Blow up the school with all the teachers in it." He then turned the assignment in to his teacher without showing it to any of his classmates. As a result of the incident, the plaintiff was suspended from school for five days and served one day of internal suspension. After plaintiff served his suspension, his parents requested that the Board of Education expunge the incident from his files. The Board refused, and litigation followed. The United States District Court, S. D. New York, stated that student's threat to "blow up the school with all the teachers in it" **had potential to materially and substantially disrupt class work and discipline in the school**, so that it was **not** protected speech under the First Amendment; although none of the student's classmates saw the threat. However, the written threat *was communicated directly to his teacher and it was judged a violent threat*.

"Student Not Allowed to Participate In Graduation"
Khan v. Fort Bend Independent School Dist. (S. D. Tex., 561 F. Supp. 2d 760), June 6, 2008.

Student (plaintiff) would **not suffer irreparable injury** in absence of preliminary injunction preventing school district from preventing him from participating in high school graduation ceremony and delivering his valedictorian address, due to his failure to exhibit good conduct (Plaintiff hacked into the Fort Bend Independent School District's computer system and altered students' grades. In addition, a grand jury indicted him for stealing computers from the school district.) during his enrollment in the school district's alternative education center. The plaintiff *would graduate* from high school regardless of whether he donned a graduation gown, crossed the stage, or delivered the address. Furthermore, the plaintiff *would retain* the honored distinction of graduating valedictorian. There were *no* scholarships or other opportunities that would be revoked if student did not participate in the graduation exercises and there was *no* evidence that his academic record would indicate that he was preventing from attending or participating in the graduation exercises.

"Student Received Adequate Notice and Meaningful Opportunity to be Heard at Expulsion Hearing"
Coronado v. Valleyview Public School Dist. 365-U (C. A. 7 [Ill.], 537 F. 3d 791), August 12, 2008.

During the lunch hour on February 4, 2008, several boys – some of them Latin Kings – sat down at the plaintiff's table in the school cafeteria. Within a few minutes, a member of a second gang, the Gangster Disciples, approached the table and began to taunt the group. The other boys, including the 15-year-old plaintiff rose to confront their rival, which attracted more Gangster Disciples. Both sides started shouting and making gang signs. But before the situation could escalate further, the bell rang and the group dispersed at the urging of a security guard. Shortly thereafter another security guard filed an incident report that included the plaintiff and 12 to 14 other students involved in the confrontation. Thereupon, the plaintiff, along with other involved students, received a two-semester expulsion from school. The plaintiff sued the school district, a police officer, and various school officials, claiming that his expulsion hearing deprived him of his procedural due process rights under the Fourteenth Amendment of the United States Constitution. The United Stated Court of Appeals, Seventh Circuit, held that plaintiff **received adequate notice and a meaningful opportunity to be heard** at his disciplinary hearing before his expulsion from school. Therefore, he was *not* denied his due process rights.

"Paintball Incident <u>Not</u> A Manifestation of Student's Disability"

Fitzgerald v. Fairfax County School Bd. (E. D. Va., 556 F. Supp. 2d 543), May 23, 2008.

On December 16, 2006, Kevin (plaintiff) and some friends decided to drive by Falls Church High School (FCHS) [on three different occasions the same day] and shoot at the their school, school owned vehicles, and school buses with paintball guns. The boys were in Kevin's vehicle during the entire episode. In fact, during the episode, Kevin drove the group to an establishment that sold paintball gun supplies and purchased additional supplies, including CO2 cartridges and more paintballs. Kevin, an eleventh grader at the time, was classified under IDEA as a student with an emotional disability. However, the school board suspended Kevin for the remainder of his eleventh-grade year. He was allowed to enroll in a computer enhanced instructional program which enabled him to successfully complete the remainder of that school year's course work. He did attend a regular Fairfax County public school other than FCHS for his senior year. His parents challenged the school district's procedures and finding of manifestation determination review (MDR) held by the school board which upheld his suspension. A United States District Court in Virginia held that the school board: (1) Did **<u>not</u> violate** IDEA's procedural requirements by choosing people to serve on plaintiff's MDR committee who were not "relevant members" of his IEP team. Plaintiff's parents **believed incorrectly** that "relevant members" were a limited class of persons who could only be individuals to serve on the plaintiff's MDR and if she or he knew the plaintiff personally and had served on the student's IEP team; (2) Did **<u>not</u> violate** the right of parents to a "fundamentally fair" MDR process when MDR committee met informally to discuss the student's MDR before formal MRD hearing. Furthermore, the board did **<u>not</u>** unlawfully predetermine the outcome MDR; and (3) MDR committee **correctly determined** that the student's conduct was *<u>not</u>* caused by, and did not have a direct relationship to his disability and his suspension was **<u>not</u>** *impermissible* punishment under IDEA.

"Employee Violated University's Use of E-mail Account Policy"
Bowers v. Scurry (C. A. 4 [Va.], 276 Fed. App. 278), May 2, 2008.

State university Human Resource employee, who was terminated for using her university e-mail account to send documents from private organization to which she belonged (the organization opposed proposed legislation that the university supported), brought state court action against university for violating her First Amendment rights. The plaintiff claimed the university terminated her employment in retaliation for exercising her freedom of speech and her association with the organization in which she had membership. The United States Court of Appeals, Fourth Circuit, held that the state university's interest in providing effective and efficient services to the public **strongly outweighed** plaintiff's interest in her expression, in the form of compensation and benefits documents that were prepared by a private organization to which she belonged and which she forward on her university e-mail account. Furthermore, the plaintiff's speech was **not** entitled to First Amendment protection within the framework of the United States Constitution because of the state's policy limiting the sending of personal e-mails from state accounts and computers bolstered the university's attempts to manage the dissemination of information from its accounts and providing effective and efficient services to the public that it serves.

"Thirteen Felony Convictions Kept Substitute Teacher from Becoming a Permanent Teacher in School District"
Crook v. El Paso Independent School Dist. (C. A. 5 [Tex.], 277 Fed. App. 477), May 8, 2008.

Plaintiff, who had been convicted of 13 felonies, brought civil rights action against school district alleging employment discrimination, fraud, and equal protection and substantive due process violations for the district's refusal to hire him as a social studies teacher. *Note:* Plaintiff had been convicted of 13 counts of *felony barratry* (soliciting potential legal clients). Shortly thereafter, his license to practice law in the state of Texas was suspended for "disciplinary reasons". The United States Court of Appeals, Fifth Circuit, held that the school board's policy of *not* hiring convicted felons as permanent teachers (Plaintiff had worked for the school district as a substitute teacher.) **was reasonable** to further legitimate interest of protecting students from both physical harm and corrupt influences. Therefore, the district's policy did **not** violate the due process rights of the plaintiff.

"Student's School Records Were Admissible in Student Rape Case"
Doe v. Department of Education of City of New York (N. Y. A. D. 2 Dept., 862 N. Y. S. 2d 598), August 12, 2008.

The plaintiff, along with her father, sought to recover damages for injuries she allegedly received when she was sexually assaulted by a fellow student in a stairwell at her high school. Plaintiff sought evidence from school officials which consisted of her attacker's prior school records, as well as records of prior assaults by students at the school, including a rape that occurred in the same stairwell in which she was raped. Such records *were necessary* to demonstrate that the sexual assault on the plaintiff *was foreseeable*. The New York Supreme Court, Appellate Division, Second Department, held that evidence of alleged student attacker's prior school records, as well as records of prior assaults by students at high school, including the rape that was initiated in stairwell, were probative (necessary to prove or disprove) with respect to issue of whether alleged attack on student was foreseeable. Thus, the offending student's records, along with school records related to prior incidents, **were admissible** in plaintiff's action to recover damages for injuries she allegedly sustained when she was sexually assaulted by a fellow student.

"Security Guards Were *Not* School Employees and Defendant Could <u>Not</u> Be Charged With Battery Upon a School Employee"
State v. Johnson (N. M. App., 190 P. 3d 350), August 6, 2008.

Defendant and his cousin went to Gallup High school during regular school hours, although neither were students there. During the process of trying to ascertain the identity and status of the two students, the cousin physically attacked two of the school's security guards. Thereupon, the defendant attempted to intervene in the fracas. During the confrontation, three of the security guards suffered head and facial injuries and the defendant was charged with three counts of battery upon school employees. The Court of Appeals of New Mexico stated that security guards at the high school, who were employed by an independent security contractor, were **<u>not</u>** "school employees". Therefore, **neither** the defendant nor his cousin **could be** charged with battery upon a school employee. Although the school district set the hours worked by the guards, supervised them on a daily basis, and required the guards to adhere to the policies and procedures of the school district; contractor *maintained conspicuous and superseding control over the guards, retained the ability to hire, fire, and discipline guards, was required to insure the guards, assigned to schools or elsewhere, and was the entity that paid the guards*.

"Admission of Hearsay Evidence Did Not Deny Student of His Due Process Rights During His Expulsion Hearing"

E. K. v. Stamford Bd. of Educ. (D. Conn., 557 F. Supp. 2d 272), May 28, 2008.

Plaintiff was a senior in a Connecticut high school when he engaged in a verbal altercation at school (February 1, 2007) with a female student for which he was suspended from school. On February 3, 2007, the same female student received racist and threatening voice mail messages (off campus) from the plaintiff. On February 27, 2007, plaintiff engaged in an on campus fight with a male student. The school board expelled plaintiff for engaging in conduct, both on and off school grounds, which endangered persons or property and was a serious disruption to the educational process; plus, was a violation of school district policy pertaining to student conduct on and off the school's campus. A United District Court, D. Connecticut, held that the admission of hearsay evidence at high school student's expulsion hearing without allowing him to confront student witnesses and the limitation of student's cross-examination of the board of education's witnesses did **not** violate student's right to due process. The risk of deprivation of student's rights associated with due process **was low** and school officials **had a strong interest in protecting student witnesses**. Furthermore, the due procedures associated with the student's expulsion **complied with the board's administrative policies and procedures and corresponding state law**.

"Threat of Blowing-Up School Not a Terroristic Threat"

C. G. M. II v. Juvenile Officer (Mo. App. W. D., 258 S. W. 3d 879), June 10, 2008.

Juvenile officer filed petition seeking determination that juvenile (12-year-old) was in need of the care and treatment of the Juvenile Court because he had committed an act, which if committed by an adult, would have constituted an offense of making a terroristic threat. The Missouri Court of Appeals, Western District, held that evidence **was insufficient** to establish that juvenile's statement to classmate, in which juvenile stated that he might receive dynamite from his father for his birthday, and inquired of his classmate whether he wanted to help blow-up the school, constituted an expression of the juvenile's intent to cause an incident involving danger to life or an unjustifiable risk to support a terroristic threat. Juvenile's statement *did make a listener question* whether he was making a serious expression to cause an incident involving danger to life. School principal testified that he would *not* have considered ordering any type of evacuation or closure of the school based on the student's statement.

"School Officials Did Not Have Notice or Knowledge of Alleged Misconduct That Was Associated With Student's Injuries"

Hallock v. Riverhead Cent. School Dist. (N. Y. A. D. 2 Dept., 861 N. Y. S. 2d 753), July 8, 2008.

Plaintiff, on behalf of her child, brought legal action against a school district to recover damages for personal injuries inflicted on plaintiff's child by a fellow student during school attendance. The Supreme Court of New York, Appellate Division, Second Department, held that school authorities **lacked sufficiently specific knowledge or notice** of the dangerous conduct by students which caused injury to another student to support imposition of liability in a personal injury suit. School officials **had no actual or constructive notice or knowledge** of the alleged misconduct on a school bus or at the school. **Note:** In so ruling, the court relied on the following legal concepts: "In determining whether the duty to provide adequate supervision had been breached in the context of injuries caused by the acts of fellow students, it must be established that school authorities had sufficiently specific knowledge or notice of the dangerous conduct which caused the individual's injury. That is, the third-party's (offending perpetrator [student]) acts could have reasonably been anticipated."

Note: Johnny R. Purvis is currently a professor in the Department of Leadership Studies at the University of Central Arkansas. He retired (30.5 years) as a professor, Director of the Education Service Center, Executive Director of the Southern Education Consortium, and Director of the Mississippi Safe School Center at the University of Southern Mississippi. Additionally, he serves as a law enforcement officer in both Arkansas and Mississippi. He can be reached at the following **phone numbers**: 501-450-5258 (office) and 601-310-4559 (cell).

October November 2009 (#s 588, 589, & 590)

Safe, Orderly, and Productive School Legal News Note
October – November 2009

Johnny R. Purvis*

West's Education Law Reporter
December 11, 2008 – Vol. 237 No. 2 (Pages 557 – 1016)
December 25, 2008 – Vol. 238 No. 1 (Pages 1 – 489)
January 8, 2009 – Vol. 238 No. 2 (Pages 491 – 962)

Terry James, Chair, Department of Leadership Studies, University of Central Arkansas
S. Ryan Niemeyer, Editor, Director, University of Mississippi – Grenada and Assistant Professor, Leadership and Counselor Education
Shelly Albritton, Technology Coordinator, Department of Leadership Studies, University of Central Arkansas
Safe, Orderly, and Productive School Institute
Department of Leadership Studies
University of Central Arkansas
201 Donaghey Avenue
230 Mashburn
Conway, AR 72035
*Phone: 501-450-5258 (office)
*E-mail: jpurvis@uca.edu

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 Institute** located in the Department of Leadership Studies 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 at **501-450-5258**. In addition, feel free to contact Purvis regarding educational legal concerns; school safety and security issues; crisis management; student discipline/management issues; and concerns pertaining to gangs, cults, and alternative beliefs.

Topics

"Middle School Leaflet Distribution Policy Was Reasonable"
M. A. L. ex rel. M. L. v. Kinsland (C. A. 6 (Mich.), 543 F. 3d 841), October 7, 2008.

Middle school student through his parents, brought action against a school district, principal, and others alleging his First Amendment free speech rights were violated by a school regulation preventing him from handing-out leaflets in the school's hallways between classes. The United States Court of Appeals, Sixth Circuit, held that middle school's leaflet distribution policy, which allowed students to post leaflets on bulletin boards in hallways and to distribute them in cafeteria during lunch, **was reasonable restriction on time, place, and manner of communicating** non-school speech and did **not** violate the First Amendment of the United States Constitution.

"Assistant Principal Did Not Act on Behalf of Law Enforcement When Student Was Asked to Write a Statement"
S. E. v. Grant County Bd. of Educ. (C. A. 6 [Ky.], 544 F. 3d 633), October 24, 2008.

Plaintiff (parents) brought suit against school board, school officials, and school nurse alleging that administrative investigation that led to seventh grade student's placement in juvenile diversion program (six month probation) violated her constitutional rights (Fourth and Fifth Amendments). The United States Court of Appeals, Sixth Circuit, held that assistant principal was **not** acting on behalf of law enforcement when he asked student to write a statement or her "side of the story" concerning events (Student was bi-polar and ADHD and took Adderall for her condition. She gave another student one of her Adderall pills.) that occurred on the last day of the previous school year. Also, the assistant principal was **not** required to administer Miranda warnings. Nothing was done over the summer break; however, the assistant principal called the two students into his office once school resumed after the summer break and asked them to write statements regarding the events that took place on the last day of school.

"Student's Desire to Wear 'Non-Otic jewelry' Was <u>Not</u> Protected Speech Under the First Amendment"

Bar-Navon v. Brevard County School Bd. ex rel. DiPatri (C. A. 11 [Fla.], 290 Fed. App. 273), August 15, 2008.

Sixteen-year-old high school student through her legal parent brought legal action against school board because the school district's student dress/grooming policy prohibited her from wearing to school her body pierceings located on her tongue, nasal septum, lip, navel, and chest. Plaintiff filed action alleging that the school board violated the student's First Amendment right to free speech by prohibiting her from wearing jewelry in her "non-otic" (pertaining to the ear) body piercings at school. Plaintiff asserted that her piercings were an expression of her individuality, a way of expressing her non-conformity and wild side, an expression of her openness to new ideas, and her readiness to take on challenges in life. Plaintiff stated expressly that the student non-compliant piercings were intended to make no religious or political statement. The Untied States Court of Appeals, Eleventh Circuit, held that school board's content and viewpoint neutral dress code dress/grooming policy, which prohibited the wearing of non-otic pierced jewelry, **was promulgated in furtherance of legitimate educational objectives, so as to survive intermediate level of free speech scrutiny**. Board sought to avoid extreme dress or appearance which *could have created* a school disturbance or which *could have been hazardous* to the student or to others. **<u>Note:</u>** The school district policy read as follows: "Pierced jewelry shall be limited to the ear. Dog collars, tongue rings, wallet chains, large hair picks, chains that connect one part of the body to another, or other jewelry/accessories that pose a safety concern for the student or other shall be prohibited."

"Reasonable Suspicion Standard Satisfied When Students' Vehicles Were Searched"

State v. Best (N. J. Super. A. D., 959 A. 2d 243), November 10, 2008.

School principal **had reasonable suspicion** to search a student's car parked on school grounds. The questioning of the student and search of his person **were justified** by the principal's knowledge that the student had sold green pills to another classmate in violation of school policy. However, when that search yielded several white capsules, but none of the green pills described by classmate, the principal **was justified** in searching the student's locker. After searching the student's locker and finding no green pills, the principal **reasonably believed** that additional green pills were likely stashed in the student's car that was parked on campus. Therefore, the search **was narrowly focused** on the student's car because logically it was the only remaining place the green pills could have been hidden. As a note, school officials found both pills and marijuana in the student's car.

"Student Provided Notice and Hearing Prior to Emergency Expulsion"
Doe v. Mercer Island School Dist. No. 400 (C. A. 9 [Wash.], 288 Fed. App. 426), August 5, 2008.

Student brought action against a school district and superintendent, challenging his emergency expulsion and seeking expungement of his records. The United States Court of Appeals, Ninth Circuit, held that: (1) School district's emergency expulsion of student **was consistent** with Washington state's administrative code and did **not** violate student's substantive due process rights, where superintendent made the decision to expel the student based on his knowledge of the student's assault on two sisters who attended the same school and the possible threat of violence within the school; and (2) Student was **not** entitled to expungement of his records related to the assault incident, which consisted of a letter of the initial decision to expel the student and a letter of reinstatement, neither would be a part of his permanent record and both would be destroyed upon his graduation form high school.

"Middle School Special Education Student's Paddling Was Not Excessive"
C. A. ex rel. G. A. v. Morgan County Bd. of Educ. (E. D. Ky., 577 F. Supp. 2d 886), September 22, 2008.

Middle school special education student (I.Q. 42) **failed to demonstrate** that paddling by a principal amounted to "excessive force" which would have violated her Fourteenth Amendment substantive due process rights. The plaintiff did **not prove that force applied** caused severe injury, was disproportionate to need presented, was inspired by malice or sadism, and was careless or unwise excess of zeal that amounted to brutal and inhuman abuse of official power that shocked the conscience. The only evidence of injury was "blood red whelp across both cheeks of her butt". Student admitted that she *was "out of control"* and was *not* responding to her teacher's other attempts to control her. Furthermore the student was paddled *as a last resort* and then *only at the command of her father*. **Note:** On the morning of the incident the student tore off some of her clothes, exhibited self-injuring behavior, kicked off her shoes, and was meowing like a cat.

"Principal Injured When Arrested For Refusing to Allow Police to Speak With A Student"
Doyle v. City of Buffalo (N. Y. A. D. 4 Dept., 867 N. Y. S. 2d 614), November 14, 2008.

Jury award of $1.2 million for school principal's future pain and suffering, covering a period of 32.6 years, **deviated materially from reasonable compensation**, in action against city, police department, and arresting officers for personal injuries sustained when officers placed her under arrest for refusing to allow them to speak to a student. The plaintiff did sustain back injuries that would require future surgery, suffered from post-traumatic stress disorder that kept her from returning to work for three months, and had not been able to resume activities that she had previously enjoyed. **Note:** The award was reduced from $1.2 million to $825,000 for future pain and suffering.

Books of Possible Interest: Two recent books published by Purvis –

1. Leadership: Lessons From the Coyote, www.authorhouse.com
2. Safe and Successful Schools: A Compendium for the New Millennium-Essential Strategies for Preventing, Responding, and Managing Student Discipline, www.authorhouse.com

Note: Johnny R. Purvis is currently a professor in the Department of Leadership Studies at the University of Central Arkansas. He retired (30.5 years) as a professor, Director of the Education Service Center, Executive Director of the Southern Education Consortium, and Director of the Mississippi Safe School Center at the University of Southern Mississippi. Additionally, he serves as a law enforcement officer in both Arkansas and Mississippi. He can be reached at the following **phone numbers**: 501-450-5258 (office) and 601-310-4559 (cell).

December 2009 - January 2010 (#s 591, 592, 593 & 594)

Safe, Orderly, and Productive School Legal News Note
December 2009 – January 2010

Johnny R. Purvis*

West's Education Law Reporter
January 22, 2009 – Vol. 239 No. 1 (Pages 1 – 314)
February 5, 2009 – Vol. 239 No. 2 (Pages 315 – 788)
February 19, 2009 – Vol. 239 No. 3 (Pages 789 – 1119)
March 5, 2009 – Vol. 240 No. 1 (Pages 1 – 502)

Terry James, Chair, Department of Leadership Studies, University of Central Arkansas
S. Ryan Niemeyer, Editor, Director, University of Mississippi – Grenada and Assistant Professor, Leadership and Counselor Education
Shelly Albritton, Technology Coordinator, Department of Leadership Studies, University of Central Arkansas
Safe, Orderly, and Productive School Institute
Department of Leadership Studies
University of Central Arkansas
201 Donaghey Avenue
230 Mashburn
Conway, AR 72035
*Phone: 501-450-5258 (office)
*E-mail: jpurvis@uca.edu

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 Institute** located in the Department of Leadership Studies 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 at **501-450-5258**. In addition, feel free to contact Purvis regarding educational legal concerns; school safety and security issues; crisis management; student discipline/management issues; and concerns pertaining to gangs, cults, and alternative beliefs.

Topics

"Student Subjected to an Abusive Educational Environment Violated Title VI"
Howard v. Feliciano (D. Puerto Rico, 583 F. Supp. 2d 252), October 31, 2008.

Student's parents brought action against the Puerto Rico Department of Education, alleging discrimination based on race and national origin under Title VI of the Civil Rights Act. The student suffered from ADHD and Asperger's Syndrome and was in the seventh grade. There was un-contradicted evidence presented that the student was exposed to the following, especially by his seventh grade math teacher by the name of Gregorio Feliciano: posters in Feliciano's classroom with derogatory comments against "gringos"; Feliciano would make derogatory anti-American remarks in the classroom and would look "meanly" at the plaintiff; Feliciano would follow the plaintiff and call him a "son of a bitch American", "asshole", and "American jerk"; and when the plaintiff made a "C" on his grade report in math, Feliciano announced to the class "I am going to give gringo Robert a C because he is an American. The Untied States District Court, D. Puerto Rico held that (1) **Evidence supported** jury's verdict that student *was subjected to discrimination* based upon his national origin, and that the discrimination *was sufficiently severe and pervasive* as to create an abusive educational environment *in violation* of Title VI and (2) Jury's award of damages in the amount of $1,000,000 **was adequately supported** by the evidence.

"School District Liable for an Eleven Year Old Student's Harassment by an Older Student"
Dawn L. v. Greater Johnstown School Dist. (W. D. Pa., 586 F. Supp. 2d 332), November 13, 2008.

Parents of minor high school student with psychological problems (e. g. social phobia, selective mutism, and intellectual snobbery), on their behalf and on behalf of their daughter, brought Title IX action against a Pennsylvania school district for the district's unreasonable response in regard to the sexual harassment of their daughter by a female student who was at least two years older than their daughter. An United States District Count in Pennsylvania held that: (1) School district's response to suspected student-on-student sexual harassment **was unreasonable and indicated deliberate indifference**, *despite repeated notices*. School officials conducted *no* investigation until almost four weeks after the original complaint by victim's mother and its actual responses ***were patently unreasonable*** (e. g. principal advised one of the victim's teachers to "keep an eye out" for the two students, no notice was given to other teachers who taught the victim, assistant superintendent failed to institute an immediate investigation even after far more detailed information was learned about the victim's harassment, no practical choice [except remove victim from school and place in homebound instruction] was given to the victim's mother, and the superintend did not inquire into the victim's harassment which was contrary to school district policy) and (2) Under Title IX the plaintiff's daughter **was deprived of access to educational opportunities and benefits** as a direct result of her removal from school and placement on homebound instruction for almost two months.

"School District Not Entitled to Summary Judgment Regarding Student-On-Student Harassment"
Patterson v. Hudson Area Schools (C. A. 6 [Mich.], 551 F. 3d 438), January 6, 2009.

Genuine issue of material fact, as to whether officials in a school district were *deliberately indifferent* to student-on-student sexual harassment of student, **precluded summary judgment** for school district on parents' Title IX claim. School officials *had knowledge* that its methods for dealing with the overall student-on-student sexual harassment of the victim *were ineffective, but continued to employ only those same methods*. **Note:** Beginning in the sixth grade, with continuation into high school, students teased and mistreated the male student in ways similar to the following: pushed and shoved him in the hallways, called him names (e. g. pig, queer, faggot, fat, man boobs, "Mr. Clean" [due to his supposed lack of pubic hair], and gay), and he was sexually assaulted by a student after baseball practice in the team's locker room.

"School District Not Liable for Teacher's Sexual Misconduct with Student"
Hansen v. Board of Trustees of Hamilton Southeastern School Corp. (C. A. 7 [Ind.], 551 F. 3d 599), December 23, 2008.

Parents of a high school student brought both Section 1983 and Title IX actions against a school district's board of trustees (negligent hiring and supervision) and against a teacher/assistant band director after the teacher had engaged in an improper sexual relationship with a high school student. While in therapy for substance abuse the victim admitted to a therapist that she had engaged in a sexual relationship with the teacher. During the investigation of the teacher it was learned that he had engaged in at least two other sexual relationships with female students, the first relationship was with a former student who is now his wife, in another school district. The United States Court of Appeals, Seventh Circuit held that: (1) There was **no** evidence that any school official of the school district with authority to institute corrective measures had been aware of the teacher's misconduct prior to the time that the student revealed the existence of a relationship with the teacher to a therapist, after which school officials *took prompt disciplinary action against the teacher* and (2) There was **no** evidence that school officials knew or should have known of the teacher's past improper sexual relationship with former students at the time in which the teacher was hired. Therefore, the school district did **not** violate Title IX, ***nor was there sufficient evidence*** to support the district being negligent in regard to its personnel hiring/retention policies and procedures.

"Release Form Did Not Release School from Negligent Acts"
Clay City Consol. School Corp. v. Timberman (Ind. App., 896 N. E. 2d 1229), December 2, 2008.

Parents brought wrongful death action against school district following the death of their son during basketball practice. The Clay Superior Court entered judgment on a jury verdict in favor of the student's parents. The mother received $176,470.57 and the father received $123,529.43. The school district appealed the decision of the lower court. The Court of Appeals of Indiana held that: (1) The school's release form did **not** release the school district form any alleged *negligent acts*; (2) School officials **were required** to exercise *reasonable care* in the supervision of students during basketball practice and to *anticipate and guard* against conduct of students by which the student might harm himself or others; and (3) The trial court **erred** in instructing the jury that it "may" find for the school if the student was negligent. **Note:** The 13-year-old youngster had asthma and used an inhaler. On Monday, November 17, 2003, while practicing with his eighth-grade basketball team he complained of dizziness, along with stating that he had not eaten that day. The coach did not allow the student to continue practice, but allowed him to shoot free throws. After practice, the coach told the younger's mother what happened. They agreed that he would not participate in running or strenuous activity until he was checked by a physician. On Wednesday night, the youngster showed-up for basketball practice, the coach assumed he was all right, and allowed him to participate in basketball practice without restrictions. Toward the end of practice, while performing running drills, the student collapsed and did not recover despite the efforts of the coaches performing CPR and the EMTs' efforts upon their arrival. The youngster died from a malignant type of heart rhythm abnormality known as "ventricular fibrillation".

"Security Guard Used Excessive Force"
Pinkney v. Thomas (N. D. Ind., 583 F. Supp. 2d 970), September 17, 2008.

A full-time firefighter was working as a part-time security guard for the Fort Wayne Community schools when he received a call on his two-way radio that there were two kids fighting in front of the school. The situation turned out to be a student (plaintiff) who was arguing, along with some grappling (wrestling), with an adult male over some money that the student had given the adult male for a ride to school. When the adult male saw the security guard, he got in his vehicle and drove off. Thereupon, the security guard sought to question the student to find out what was going on. As the security guard approached the student, he started walking away, and almost immediately started running away from the security guard. The guard gave chase, along with a police officer who was some distance behind the security guard. As the plaintiff attempted to jump a fence, the security guard grabbed the student's left arm with both hands and seized him. Almost instantaneously, the police officer arrived and hit the student three times in the face with his fist as the security guard held his left arm. The student was then ordered to his knees and was hand-cuffed. The plaintiff brought action against both the security guard and the police officer. Plaintiff claimed that the security guard used unreasonable force in concert with the officer and he should have stopped the officer from hitting him. The security guard moved for summary judgment and to strike the case. A United States appeals court in Indiana held that: (1) Guard was **not** entitled to summary judgment on the plaintiff's battery's claim; (2) The guard's grabbing of the arrestee was **not** unreasonable force under the Fourth Amendment; (3) Guard was **not** liable on plaintiff's excessive force claim; and (4) The security guard was **not** entitled to summary judgment on the plaintiff's excessive force claim to the extent that the guard **allegedly *failed*** to take ***reasonable steps*** *to stop the officer's alleged assault* on the student.

"Response to a Racially-Charged Incident Was Not Deliberately Indifferent"
D. T. Somers Cent. School Dist. (S. D. N. Y., 588 F. Supp. 2d 485), November 24, 2008.

School district's response to allegedly racially-charged incident that occurred against student (plaintiff) in the high school's cafeteria, wherein the plaintiff was hit in the back of the head approximately 12 times and accused of not being a "good nigger," was **not** *so deliberately indifferent* as to be clearly unreasonable. Furthermore, the incident did **not** *support* a claim of hostile educational environment claim under Title VI. Acting principal of the high school *did engage* in "some forms of investigation" into the incident, even though the victim's parents and the student may have been disappointed with the outcome. However, the student *was **never again** subjected to harassment* by the students involved in the incident. **Note:** No disciplinary action was taken against the offending students; however, the acting principal did observe the plaintiff's youngster on a very regular basis. In fact, during such observations, she saw him seated at the same lunch table with the same group of students involved in the cafeteria incident.

"Student <u>Not</u> Entitled to Preliminary Injunction Barring Disciplinary Action for Wearing T-Shirt"
Miller ex rel. Miller v. Penn Manor School Dist. (E. D. Pa., 588 F. Supp. 2d 606), September 30, 2008.

A 14-year-old ninth grader wore a T-shirt to school that his uncle purchased for him at the Fort Benning Post Exchange. The T-shirt prominently displays images of an automatic handgun on the front pocket area and back of the T-shirt. The front pocket of the T-shirt was also imprinted with the statement "Volunteer Homeland Security" with the image of an automatic handgun placed between the word "Volunteer" above the handgun and the words "Homeland Security" below the handgun. The back of the T-shirt was imprinted with the statement "Special Issue-Resident-Lifetime License, United States Terrorist Hunting Permit, Permit No. 91101, Gun Owner-No Bag Limit" in block letters superimposed over a larger automatic handgun. The plaintiffs (student's parents) sought a preliminary injunction on behalf of the son challenging the constitutionally of the school district's student expression policy and baring any disciplinary action by school officials in regard to their son. A United States district court in Pennsylvania held that: (1) The First Amendment ***does not prohibit*** schools from restricting speech that is vulgar, lewd, or obscene, or that promotes illegal behavior and (2) Student was **<u>not</u>** *likely to succeed on merits of his claim* that high school's refusal to permit him to wear T-shirt displaying images of automatic handgun and purporting to be a hunting license for terrorists violated his First Amendment free speech rights. Thus, the student was **<u>not</u> entitled** to a preliminary injunction barring school from enforcing the ban pertaining to his T-shirt, despite the student's contentions that the T-shirt was intended to show his support for the United States troops serving in Iraq.

"Private Day School Constituted 'School Property' Even If It Reverted to Church Property"
King v. Com. (Va. App., 670 S. E. 2d 767), January 13, 2009.

On or around 8:00 p. m. on Friday, August 25, 2006, plaintiff discharged a firearm in the city of Hopewell, Virginia, hitting an individual in her throat. The discharge occurred approximately 795 feet from the property line of the premises leased by The LEAD Center, a private day school. The plaintiff was convicted in circuit court of willfully discharging a firearm within 1,000 feet of the property line of school property, and he appealed. The Court of Appeals of Virginia, Richmond, held that for purposes of statute making it unlawful to willfully discharge a firearm upon any public property within 1,000 feet of the property line of any public school, private school, religious school or private day school for students with disabilities **constituted "school property"**. The aforementioned was legally valid even though, based on the terms of the lease the premises reverted from school property to church property at 6:00 p. m. on Friday and did not revert back to school property until 7:00 a. m. the following Monday morning. There was **no** distinction between schools that leased their facilities and those that did not, nor did it distinguish between schools *based on how or by whom* they were used after hours.

"Sufficient Nexus Existed Between Sexual Relationship between Former Student and Teacher to Warrant Teacher's Termination on Immorality"
Lehto v. Board of Educ. of Caesar Rodney School Dist. (Del. Supr., 962 A. 2d 222), December 2, 2008.

Record **demonstrated *sufficient nexus*** between the sexual relationship between an elementary school teacher and his 17-year-old former student and the teacher's fitness to teach *so as to warrant teacher's termination* **on grounds of immorality**. The teacher had a sexual relationship with the student that began in the school environment. The relationship began when the student started to come to the elementary school to pick-up her younger sibling. Public controversy followed the teacher's arrest and the disclosure of the relationship, which compounded the teacher's job responsibilities associated with requiring teachers to serve as role models for their students. **Note:** The teacher was charged with fourth degree rape based on the student's age and his position as a person "in a position of trust, authority or supervision" over her. The criminal charges were later *dropped*; however, the termination of the teacher **was upheld**.

"Alcove on Campus Made Assault of "Special Needs" Student Foreseeable"
Jennifer C. v. Los Angeles Unified School Dist. (Cal. App. 2 Dist., 86 Cal. Rptr. 3d 274), December 8, 2008.

A 14-year-old student with special needs (e. g. hearing disability, aphasia, behavior problems, emotional difficulties, and cognitive difficulties.) brought action against school district for negligent supervision and maintaining a dangerous condition of public property, after being sexually assaulted by another "special needs" student. A California appeals court held: One, Maintenance of a hiding place on a school campus where a "special needs" child could be victimized **satisfies the foreseeability factor of the duty analysis, in determining a school district's liability for negligent supervision**, ***even in the absence of prior similar occurrences of victimization***. Two, "Special needs" student's sexual assault by another student **was foreseeable**, as would support the finding that school district **had a duty** to student in her action for negligent supervision since as a "special needs' student she **was particularly vulnerable** to sexual assault. Therefore, an alcove beneath a concrete stairway on the school's border **was a foreseeable** hiding place; although the alcove was visible from a public sidewalk on the other side of a chain-link fence, it was *not* visible from elsewhere on the campus.

"Statute under Which Juvenile Was Adjudicated a Delinquent Was Not Vague"
In re D. B. (Ga. App., 669 S. E. 2d 480), November 10, 2008.

State statute making it unlawful for *any person* to disrupt or interfere with the operation of any public school was **not *void for vagueness***. The statute *contained words of ordinary meaning that provided fair notice* as to its application.

"Principal's Search of A Student for A Gun Was Legal"
In re. William P. (N. Y. A. D. 4 Dept., 870 N. Y. S. 2d 664), December 31, 2008.

Juvenile was adjudicated a delinquent based on a finding that he committed the crime of "unlawful possession of weapons by persons under the age of 16-years-of-age". The juvenile appealed the judgment based on the allegation that he was illegally searched by a school principal based on information received by another student that the plaintiff had a gun in his book bag. The Supreme Court of New York, Appellate Division, Fourth Department, held that the plaintiff **failed to lay out** a factual scenario which, if credited, would have warranted the suppression of evidence. Thus, a suppression hearing pertaining to the evidence discovered by the principal **was not warranted**.

"Vice-Principal Did Not Suffer Emotional Distress Due to Students' Offensive Website"
Draker v. Schreiber (Tex. App.-San Antonio, 271 S. W. 3d 318), August 13, 2008.

Vice principal's claims, which included the intentional infliction of emotional distress, civil conspiracy, and negligence against two high school students who published an offensive website ostensibly belonging to the vice-principal **failed** to demonstrate the claims sought by the plaintiff. Thus, the claims sought by the vice principal were **not** viable. **Note:** The website created by the students contained the name of the vice principal, a photo of her, place of employment, and explicit and graphic sexual references.

Books of Possible Interest: Two recent books published by Purvis –

1. Leadership: Lessons From the Coyote, www.authorhouse.com
2. Safe and Successful Schools: A Compendium for the New Millennium-Essential Strategies for Preventing, Responding, and Managing Student Discipline, www.authorhouse.com

Note: Johnny R. Purvis is currently a professor in the Department of Leadership Studies at the University of Central Arkansas. He retired (30.5 years) as a professor, Director of the Education Service Center, Executive Director of the Southern Education Consortium, and Director of the Mississippi Safe School Center at the University of Southern Mississippi. Additionally, he serves as a law enforcement officer in both Arkansas and Mississippi. He can be reached at the following **phone numbers**: 501-450-5258 (office) and 601-310-4559 (cell).