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December 2009 – January 2010

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The **Safe, Orderly, and Productive School Legal News Note** is a monthly update of selected significant court cases pertaining to school safety-security and student management issues. It is written by *Johnny R. Purvis for the **Safe, Orderly, and Productive School 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

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Topics

"Principal <u>Not</u> Entitled to Immunity In Regard to Sexual Harassment of Student by Teacher"
C. C. ex rel. Andrews v. Monroe County Bd. of Educ. (C. A. 11 [Ala.], 299 Fed. App. 937, November 10, 2008.

Under Alabama law, a middle school principal was **<u>not</u>** entitled to state-agent immunity where *policy imposed affirmative duties* on him to investigate complaints of sexual harassment of students and to submit a completed investigation to his superintendent or designee for review. The principal *failed to do so*; therefore *he acted beyond his authority* by failing to comply with the requirements of the policy. The court further stated that the principal **failed** to act within the *"scope of his discretionary authority"*. **<u>Note:</u>** The facts of the case focused on the alleged sexual molestation of two middle school female students by a male teacher on or about January 21, 2000. The principal met with the students, students' parents, and the teacher. The teacher denied the allegation. Thereafter, the principal looked-in on the teacher from time to time and monitored his interaction with students in the school's hallways. Sometimes during May 2000, the teacher again sexually molested the same two students. After the students' parents found out about the May 2000, incident, they went to the police.

"United States Government Entitled to Documents Related to Child Sexual Abuse on School Buses"
Lopez v. Metropolitan Government of Nashville and Davison County (M. D. Tenn., 594 F. Supp. 2d 862), January 15, 2009.

The United States Department of Justice (DOJ) moved to intervene in tort action brought against the city of Nashville and Davidson County, Tennessee (e. g. Metro Police Department and Metropolitan Nashville Public School System) on behalf of a special needs student who was allegedly sexually abused on school buses. The United States District Court, M. D. Tennessee, Nashville Division, held that the DOJ **was** a law enforcement agency **entitled to an exception** to Tennessee statute that prohibited the release of information concerning reports or investigations which pertained to child abuse. Therefore, the DOJ **was entitled** to documents relating to complaints or investigations of alleged sexual misconduct, harassment, or assault which allegedly occurred on school buses that transported students to and from city schools to determine the extent to which the city's policies and practices may have fostered an environment conducive to sexual harassment in violation of Title IX.

"Principal's Decision to Question and Search a Student Was Not Based on Impermissible Considerations"

Vassallo v. Lando (E. D. N. Y., 591 F. Supp. 2d 172), October 31, 2008.

A parent (plaintiff) on behalf of her child filed a civil rights action against a school district, principal, and superintendent alleging a violation of her son's Fourth Amendment right against an unlawful search and seizure and equal protection clause violation under the Fourteenth Amendment following the student's questioning and search after a fire in his high school's restroom. In regard to the case against the 11th grader, the following were undisputed facts: (1) Student was in the hallway on the third floor in the vicinity of the fire very shortly after the fire alarm sounded; (2) Upon making eye contact with his teacher in the hallway, the student said nothing, put up the hood of his sweatshirt, quickened his pace, and covered the lower part of his face; (3) Upon searching the student's backpack for evidence related to the fire (e. g. matches, lighters, or an accelerant), the principal found marijuana seeds; (4) At the direction of the high school principal and a police officer, the student's sweatshirt, shoes, and socks were removed and his shirt and pants legs lifted, but his pants and shirt were never removed; and (5) Upon observing a bulge in his waistband, the student was directed to remove the object and he removed a bag containing a small amount of marijuana from his waistband. A United States District Court in New York held that: (1) For a plaintiff to successfully prevail on an equal protection claim under the 14th Amendment the plaintiff must demonstrate that he was treated differently from other individuals who were similarly situated in all material respects; he **was not treated differently** and (2) The search of the student's belongs, including his backpack, for evidence of his involvement in the restroom fire **was supported by reasonable suspicion** and did **not** violate the student's 4th Amendment civil rights. Furthermore the principal's search of the student was **not** an un-particularized suspicion or hunch. As a further **note**, the principal and the school's administration was unable to determine who started the fire in the school's third floor men's restroom.

"Assistant Principal Terminated Due to Reporting Superintendent's Sexual Misconduct with a Minor"

Moore v. Middletown Enlarged City School Dist. (N. Y. A. D. 2 Dept., 871 N. Y. S. 2d 211), December 16, 2008.

The plaintiff (assistant principal) reported his concerns of sexual misconduct between the then superintendent of the school district and a minor student to school district officials and later to the press. Thereafter, school officials *retaliated* against him by eliminating his position as high school principal, which he had had for five years. Furthermore, school district officials refused to hire him in the newly named identical position entitled "house principal". In addition, the plaintiff was transferred to an assistant principal's position in another school within the district and assigned secretarial duties. The Supreme Court of New York, Appellate Division, Second Department, held that transferring the plaintiff to another school within the school district to perform secretarial work **was sufficient to state a retaliation claim** against the school district..

"Custodian Who Pled Nolo Contendere to Misdemeanor Controlled Substance Offense Could Not be Terminated"
Cahoon v. Governing Bd. of Ventura Unified School Dist. (Cal. App. 2 Dist., 89 Cal. Rptr. 3d 783), February 23, 2009.

Section of the California Education Code defining "conviction" to include nolo contendere pleas did **not implicitly amend** the section of the code prohibiting a school district from employing any person convicted of a controlled substance offense. The section of the code defining "conviction" was part of the legislation enacted to *prohibit school districts from employing any person convicted of a sex offense based on a nolo contendere plea* and was **not** intended to change the law on misdemeanor substance abuse offense convictions.

"Suspicionless and Random Drug Testing of Employees Was Not Justified as a Special Need"
American Federation of Teachers-West Virginia, AFL-CIO v. Kanawha County Bd. of Educ. (S. D. W. Va., 592 F. Supp. 2d 883), January 8, 2009.

A teacher union brought state court action against a school board, seeking to enjoin the implementation of a revised drug testing policy, which mandated the random testing of teachers and other public school employees on both constitutional and privacy grounds. The United States District Court, S. D. West Virginia, held that there was **no** evidence that teachers or other public school employees performed duties that *were so fraught with such risks of injury to others that even a momentary lapse of attention could have disastrous consequences, as required to deem their positions "safety sensitive"*; and to justify school district's proposed implementation of a suspicionless drug test policy as a special need. Furthermore, there was **no** evidence that teachers and other employees had a pervasive drug problem or occupied positions for which observations/supervision would *not* detect the impairment. **Note:** "Safety sensitive positions" were defined as those which involve the care and supervision of students or where a single mistake by such employee can create an immediate threat of serious harm to students, to himself or herself or to fellow employee. Several of the "47 – safety sensitive positions" included within the policy were the following: superintendent, principal and assistant principal, teacher, coach, bus operator, chief mechanic, custodian, plumber, truck driver, and carpenter.

"Suspension of Student Created a *State Created Danger Theory for Liability*"
Wilson v. Columbus Bd. of Educ. (S. D. Ohio, 589 F. Supp. 2d 952), December 11, 2008.

Plaintiff (Jane Doe) was an eighth grade student at a middle school. Jane Doe lived with her mother and stepfather, with whom she had lived with almost all of her life. Beginning when Jane Doe was in the sixth grade, the stepfather sexually molested her and his molestation continued for approximately two years, until February 2005. On January 25, 2005, the plaintiff was placed on a 10-day out-of-school suspension for shoving another student. While serving her suspension, with no one else around the house, her stepfather vaginally raped her for the first time during school hours on February 7, 2005. The plaintiff claimed that she had told her basketball coach/computer teacher that she was being sexually abused by her stepfather. While waiting to meet with the school's assistant principal she overheard a boy respond (according to Jane Doe's words), after learning of his out-of-school suspension by the assistant principal, "You don't know what will happen to me if I get suspended or if – something is going to happen cause I'm he's like – he said he's in a foster home and that he would get abused or something like that. I don't remember his exact words, but that's what he said." Regardless of what was said, Jane Doe jumped in on the conversation and said something like, "I understand how you feel." Then she started to sob. Thereupon the assistant principal asked the school's counselor to talk with her. Jane Doe told the counselor that her basketball coach/computer teacher knew why she was unhappy. Afterward, the counselor observed that the plaintiff was upset, crying, and then non-responsive. A United States district court in Ohio held that **genuine issues of material fact existed**, as to whether an assistant principal who imposed a 10-day out-of-school disciplinary suspension on the plaintiff that was being sexually abused at home by her stepfather *was aware of the facts which **inferences** ("red flags") could be drawn* that that the youngster would be at home with her abuser during the administrative imposed suspension. Therefore, the court concluded whether assistant principal actually drew such an inference, **precluded summary judgment** for the assistant principal and school district under the **"state-created danger" theory** that is based on **"deliberate indifference to a known risk of danger"**. The imposing of the suspension on the plaintiff actually *resulted in an increase of harm* in regard to the student's liberty interests **which are protected** by the Fourteenth Amendment of the United States Constitution.

"Teacher Cannot Be Criminally Convicted For Sexual Intercourse with an Eighteen-Year-Old Student"
State v. Hirschfelder (Wash. App. Div. 2, 199 P. 3d 1017), January 13, 2009.

High school choir teacher (60 months older than his victim), allegedly had sexual intercourse with one of his 18-year-old female students who was a member of his high school choir. The incident occurred shortly before the student graduated from high school. The state of Washington charged the teacher with one count of first degree of sexual misconduct with a minor. The Court of Appeals of Washington, Division 2, held that the state legislature intended to criminalize only the behavior of school employees who had sexual intercourse with minor students who were under the age of 18 *and* who were at least 60 months older than the employee's victim. Therefore, the charges against the teacher **had to be dismissed**.

"Ban on Student's Wearing Confederate Flag on Clothing Did Not Violate Free Speech Rights of Students"
B. W. A. v. Farmington R-7 School Dis. (C. A. 8 [Mo.], 554 F. 3d 734), January 30, 2009.

A group of high school students brought legal action against a school district and school officials after they were sent home for refusing to remove items of clothing depicting the Confederate flag symbol. The United States Court of Appeals, Eighth Circuit, held that school officials at a high school of approximately 1,200 students **could reasonably forecast** a substantial disruption resulting from any display of the Confederate flag due to *substantial race-related events* occurring in both the school and in the community. Therefore, the ban pertaining to high school students wearing of clothing depicting the Confederate flag and accompanying discipline *did **not** amount to viewpoint discrimination* in violation of free speech under the First Amendment of the United States Constitution. School officials decided to issue the ban after the following events occurred: (1) a skirmish occurred between the high school that the plaintiffs attended and another high school during a basketball tournament when two students allegedly used racial slurs against two black players; (2) a white student urinated on a black student causing the black student to withdraw from the school district; (3) a fight occurred between a black student and a white student at the black student's home, leading to a later confrontation at the high school and; (4) numerous racial slurs were uttered by students at the high school, along with offensive symbols (e. g. swastikas and "white power song lyrics") being drawn on notebooks and chalkboards.

"Probable Cause *Was Required* for School Authorities to Search a Student's Person If the Items Seized In The Search Are to Be Used in Juvenile Proceedings"
State ex rel. Juvenile Dept. of Clackamas County v. M. A. D. (Or. App., 202 P. 3d 249), February 18, 2009.

The state of Oregon filed a petition for adjudication of a delinquent juvenile, based upon the charge that the juvenile committed what would be, if committed by an adult, would constitute felony and misdemeanor crimes of possession and delivery of less than an ounce of marijuana within a 1,000 feet of a school. The juvenile moved to suppress the evidence. The Court of Appeals of Oregon held that in order for the state to use in a delinquency proceeding under the state's current juvenile code, evidence derived from the actions of school officials in lawfully confronting a juvenile based on information they had acquired, in lawfully searching the juvenile, and in lawfully seizing the contraband in the possession of the juvenile that could pose a risk to the safety of other students or that could interfere with the school's educational mission; the state's current constitution constitutionally **prohibits such a search** of a student and/or associated seizure of contraband ***unless it is based on nothing less than probable cause***.

"Evidence Did <u>Not</u> Support Delinquency Adjudication of Student for Making an Alleged Terroristic Threat"
P. J. B. v. State (Ala. Crim. App., 999 So. 2d 581), February 1, 2008.

The fact that a school principal had to meet with the juvenile (plaintiff) as a result of the juvenile's threat to burn a corn field (While riding a school bus, the student told his school bus driver, "I want to set that field on fire.") did **<u>not</u>** amount to a "disruption of school activities" so as to be necessary to sustain a juvenile's delinquency adjudication for making a terroristic threat. The principal's meeting with the student did **<u>not</u>** disrupt any activity associated with the normal functionally of the school. There was **<u>no</u>** evidence presented indicating that any classes or extracurricular activities were disrupted as a result of the student's threat. Furthermore, the school bus driver who reported the threat stated that she waited until after she completed her bus route to report the threat; thus, school bus transportation activities were **<u>not</u>** disrupted due to the student's threat.

"School Board Assumed Duty to Protect Teacher from Aggressive Student"
Dinardo v. City of New York (N. Y. A. D. 1 Dept., 871 N. Y. S. 2d 15), December 23, 2008.

Board of education **assumed affirmative duty** to act on a special education teacher' behalf when the board *knew about* an overly aggressive 10-year-old special education student. Thus, the board was **not** entitled to an affirmative judgment on its behalf at the close of the teacher's case to recover damages for injuries sustained when she attempted to protect one of her students from being attacked by another student who had a history of aggressive and disruptive behaviors. Even thought the board made *no* explicit promise to protect the plaintiff, evidence demonstrated that the board *initiated a referral to have the aggressive student transferred* from the teacher's classroom to another program. Therefore, the board and its agents *had knowledge that the overly aggressive student* ***could lead to harm***. Furthermore, the teacher ***justifiably relied*** on the board's affirmative undertaking to remove the overly aggressive student from her classroom.

"School Bus Driver Negligent"
Turner v. North Panola School Dist. (C. A. 5 [Miss.], 299 Fed. App. 330), November 7, 2008.

Parents and students sued a school district because a school bus driver repeatedly and arbitrarily suspended three minor children from riding the bus only because the children allegedly had a bad odor. The Untied States Court of Appeals, Fifth Circuit, held that **evidence supported** trial court's finding that the bus driver ***acted preemptively and offensively*** rather than to control or discipline the children. Therefore the evidence **supported claim against** the school district. Evidence **supported the fact** that bus driver *trapped a student's hand* in the school bus door while driving off and that he *sprayed deodorizer* directly on another student. Furthermore, the bus driver **arbitrarily** suspended the children from school bus privileges.

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Johnny R. Purvis*

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Topics

"School Not Liable for Snow Being Thrown or Rubbed In Student's Face"
Halladay ex rel. A. H. v. Wenatchee School Dist. (E. D. Wash., 598 F. Supp. 2d 1169), February 13, 2009.

On December 6, 2005, a fifth-grade student (plaintiff) either had snowballs either thrown or rubbed in his face during lunch recess at an elementary school. The plaintiff responded by chasing the other student and saying, "I'll kill you!" Upon returning to class, the student who had thrown or rubbed the snowball in the plaintiff's face told his teacher what the plaintiff had said to him. The next day, the teacher told the principal, and the principal "emergency expelled" the student; however, about an hour or two later, she reduced the emergency expulsion to a one day suspension for the rest of the school day (Student missed between four and five hours of school.). A Untied States district court in the state of Washington held that school district did **not** violate plaintiff's procedural due process rights (Fourteenth Amendment) by failing to provide him with notice of his behavioral infraction and opportunity to be heard regarding the infraction before the principal's emergency expulsion of the plaintiff, which was reduced to a one day suspension for the rest of the school day. The student's parents *were notified* of their right to appeal the emergency expulsion and the one day suspension.

"Change in Child's School Did Not Change Custodian Environment"
Parent v. Parent (Mich. App., 762 N. W. 2d 553), January 22, 2009.

Mother (defendant) sought a review of an order from the Circuit Court, Oakland County, which granted the father's (plaintiff) motion to enroll the parties' minor daughter in public schools. Defendant began home-schooling the daughter (Emily) after the parties separated in December 2005, and continued to do so through the daughter's kindergarten year. As a note, the parties shared joint legal custody of their two children, and defendant received sole physical custody of the children. Plaintiff then filed a motion to enroll the parties' daughter in public school. The trial court granted the plaintiff's motion and from that grant the defendant appealed to the Court of Appeals of Michigan. The Michigan Court of Appeals held that: (1) **Remand was necessary** (refer back to the Circuit Court, Oakland County) for the trial court to make a finding regarding the best interest of the child or conduct a hearing if deemed necessary and (2) The changing of the child's school did **not** constitute a change of custodial environment as to require the father to demonstrate clear and convincing evidence that the change was in the child's best interest; rather, the burden of proof was a preponderance of the evidence that the change was in the child's best interest.

"No Evidence That School Employees Touched Student"
Workman v. District 13 Tanque Verde Unified School Dist. (C. A. 9 [Ariz.], 304 Fed. App. 595), December 23, 2008.

Student (plaintiff) brought action against school district, district superintendent, county sheriff's department, and county deputy sheriffs, alleging the use of excessive force, due process violation, and various other state law claims. The United States Court of Appeals, Ninth Circuit, held that there was **no** *evidence that school district employees touched the plaintiff, or* that they had any control over police officers who allegedly touched him, so as to support plaintiff's excessive force claim. **Note:** The plaintiff was suspended from school, and because of such, he claimed that he was falsely imprisoned, maliciously prosecuted, and wrongly arrest without probable cause by law enforcement officers.

"State Statute Which Authorized School Boards to Adopt a Uniform Dress Code Was 'Content-Neutral' and Did Not Violate the First Amendment"
Dempsey v. Alston (N. J. Super. A. D., 966 A. 2d 1), March 5, 2009.

Student's parents (plaintiffs) filed a complaint against school superintendent, assistant high school principal, and board of education, seeking an order compelling defendants to permit their son to attend high school without having to comply with the board's dress code policy and challenging the constitutionality of the state statute which authorized board of education to adopt uniform dress codes in public schools. The Superior Court of New Jersey, Appellate Division, held that the state statute which authorized boards of education to adopt uniform dress codes in public schools was **not** unconstitutional as applied to the plaintiffs' son. **No** First Amendment rights ***were implicated*** by applying the statute to student because his non-compliance with the school's dress code policy was ***not*** rooted in any desire *to communicate any particular message*. There was **no** indication that the student was subject to disparate treatment in the board of education's enforcement of its school dress code policy. There was **no** privacy interests implicated, whether such arose in the context of the student's individual privacy rights or the parent-child relationship. Furthermore, there was **no** fundamental right to be exempt from the school dress code policy. The school district stated that the school district's intent for the student dress code was to assist in controlling the environment within its public schools, to facilitate and maintain an effective learning environment, and to keep the focus of the classroom on learning.

"Evidence Sufficient to Support Termination of High School Principal"
Simpson v. Holmes County Bd. of Educ. (Miss. App., 2 So. 3d 799), February 10, 2009.

On Friday, February 24, 2006, officials from the Mississippi Department of Education were on the campus of Williams-Sullivan High School in Durant, Mississippi to perform a state audit of the school. During their visit, three incidents occurred on school's campus which caused the principal's (plaintiff) employment termination. The incidents included a fire in a classroom, a shooting with a pellet or BB gun (A teacher and an official from the Department of Education were struck with the pellets as they walked across the school's campus.), and a fight during a black history month program. The plaintiff appealed his termination. The Court of Appeals in Mississippi held that evidence **was sufficient to support** the superintendent's decision to terminate the plaintiff. There *was evidence* of three incidents which occurred on a single day, including a fire in a classroom, a shooting with a pellet or BB gun, and a fight during a black history month school sponsored program, which was witnessed by officials of the Mississippi Department of Education and visiting dignitaries. The principal of the school *knew of the shooting* and *did not report it to county board of education or to the authorities* as required by state statute and the school district's policy manual.

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Topics

"School District <u>Not</u> Deliberately Indifferent to Sexual Harassment of Female Special Education Student"
Watkins v. La Marque Independent School Dist. (C. A. 5 [Tex.], 308 Fed. App. 781), January 27, 2009.

School district was **<u>not</u> deliberately indifferent** to sexual harassment of female special education student by a male student in her class. Therefore, the school district was **<u>not</u>** subject to liability under Title IX in connection with the incident in which the male student exposed himself to the victim, kissed the victim, and lifted her skirt, even though school officials were aware of the male student's prior disciplinary record. School officials did not immediately remove him from the school; however, they asked the police to investigate the incident and took several remedial action designed to prevent any future incident, including providing the victim with an escort at all times. **<u>Note:</u>** The victim was 16 years of age, in the seventh grade, and functioned at a second-grade level.

"Principal Had Expectation of Privacy Regarding Her E-Mail Files"
Brown-Criscuolo v. Wolfe (D. Conn., 601 F. Supp. 2d 441), March 9, 2009.

A middle school principal (plaintiff) bought action against the superintendent (defendant) of her school district, alleging improper search and seizure of her computer records in violation of the First and Fourth Amendment of the United States Constitution. The United States District Court, D. Connecticut, held that plaintiff ***had a reasonable expectation of privacy in her e-mail files*** on her work computer to justify her action against the defendant for allegedly accessing and forwarding her e-mail files and attached letters to his work computer. The files and attached letters informed the plaintiff's lawyer about her concerns about her job, which **comported with** school district policy that pertained to professional use of the school district's computer system. Furthermore, the school district policy permitted routine maintenance/monitoring of the system; however, there was **<u>no</u>** showing that routine monitoring was practiced or that the defendant conducted routine maintenance. **<u>Note</u>:** The court went on to state that whether an employee has an expectation of privacy in electronic mail messages sent or received on an employer's computer system or e-mail system depends on whether: (1) employer maintains a policy banning personal or other objectionable use; (2) employer monitors the use of an employee's computer or e-mail; (3) third parties have a right of access to employee's computer or e-mail; and (4) employer notified employee, or employee was aware, of the employer's monitoring policies and the use of such policies.

"Student's Fake Internet Profiles of Teacher and Administrator Were <u>Not</u> Protected by the First Amendment"

Barnett ex rel. Barnett v. Tipton County Bd. of Educ. (W. D. Tenn., 601 F. Supp. 2d 980), January 26, 2009.

Former high school students (plaintiffs) sued county board of education, director (superintendent), and high school principal for violation of their First Amendment and due process rights (14th Amendment) in regard to disciplinary action taken against them due to their creation of fake internet profiles of a high school assistant principal and a coach. A United States District Court, W. D. Tennessee, Western Division, held that: (1) High school students' fake internet profiles pertaining to a teacher and school administrator on public website, including sexually suggestive comments about female students, were **<u>not</u>** protected by the First Amendment as "parodies" (humorous or satirical imitations) and (2) High school's disciplinary actions (suspensions/in-school suspensions) against the plaintiffs **satisfied procedural due process requirements** due to the fact that both students and their parents received notice of and were present at disciplinary hearings. Furthermore, the plaintiffs had an opportunity to rebut allegations against them and their parents had an opportunity to question school officials during the students' hearing.

"Parents and Daughters Entitled to TRO to Prevent Prosecution Pertaining to 'Sexting' Through the Use of Facebook or MySpace"

Miller v. Skumanick (M. D. Pa., 605 F. Supp. 2d 634), March 30, 2009.

Parents, individually and on behalf of their minor daughters, brought legal action against a county district attorney alleging that potential charges against the plaintiffs' daughters for "sexting", which involved the practice of sending or posting sexually suggestive text messages and images, violated their right to free expression under the First Amendment. The United States District Court, M. D. Pennsylvania, held that *minors* seeking a temporary restraining order (TRO) enjoining a county district attorney from initiating child pornography charges against them for "sexting" unless images at issue depicted sexual activity or exhibited genitals in a lascivious way, **had substantial likelihood of success on merits of their claim** that the government's requirements that minors attend a "re-education" program to avoid prosecution **violated their right to be free from compelled (coerced) speech or expression**. The court went on to state that the plaintiffs' daughters *would have been retaliated against* due to being compelled to write an essay explaining what they did wrong because they contented that they in no way violated any laws. Furthermore, they contended that they in no way violated any laws and as such, a "re-education" requirement would compel them to describe their behavior as being wrong under the threat of felony prosecution. **<u>Note:</u>** School officials confiscated the students' cell phones, examined them, and discovered photographs of "scantily clad, semi-nude and nude teenage girls". Many of the girls were enrolled in the school district. The school officials turned over the phones to the county district attorney who initiated a criminal investigation.

"Sergeant and Captain Not Immune from Officer's First Amendment Claim"
Turner v. Perry (Tex. App.-Hous. [14 Dist.], 278 S. W. 3d 806), January 27, 2009.

Terminated school district police officer (defendant) brought a First Amendment, due process, slander, and infliction of emotional distress action against his sergeant and captain (plaintiffs). A Texas court of appeals held that the sergeant and captain in the school district's police department were **not** entitled to qualified immunity on a claim by a police officer that the sergeant and captain violated his First Amendment rights by disciplining and terminating him after he reported to the county district attorney that they had unlawfully tampered with a government record by entering his office and removed a traffic citation he had written on a teacher (The removal was due to the teacher being well "politically connected".). At the time of the incident, it was well established that a legitimate report of unlawful police conduct was protected by the First Amendment, and the state's whistleblower statute **expressly protected governmental employees, including police officers, from employment actions when employee in good faith reported a violation of law** by an employing governmental entity to an appropriate law enforcement authority.

"Evidence Was Sufficient To Demonstrate That Juvenile Committed Second-Degree Trespass When He Entered the Girls' Locker Room"
In re S. M. S. (N. C. App., 675 S. E. 2d 44), April 7, 2009.

Evidence **was sufficient** to demonstrate that 15-year-old student **committed second-degree trespass** when he entered the girls' locker room (two 14-year-old girls were changing clothes at the time of the entrance) at his high school so as to support adjudication of delinquency. The sign marked "Girls' Locker Room" on the entrance door to the girls' locker room **was reasonably likely** to provide plaintiff *sufficient notice* that he was *not* authorized to enter into the locker room.

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Topics

"Student's Title IX Claim Regarding Teacher Harassment Not Valid Because *No* School Official Knew"

Plamp v. Mitchell School Dist. No. 17-2 (C. A. 8 [S. D.], 565 F. 3d 450), May 11, 2009.

High school counselor, teachers, and principal were **not** "appropriate persons" with actual knowledge of male teacher's alleged sexual harassment of a female student; thus, **precluding** Title IX claim against the school district for deliberate indifference to known acts of discrimination occurring under the school district's control. The counselor and teachers *lacked sufficient authority* to address the alleged harassment and institute corrective measures. On the other hand, the principal ***lacked actual knowledge*** *of the alleged harassment until he was informed by the student's mother, at which time he* ***took immediate action***. **Note:** The teacher had been employed at the school since 1988, and in addition to teaching an American government course he was the boys wrestling and golf coach. The teacher's harassment of the student began while she was a student in his class. He knew that the plaintiff suffered from "anorexia nervosa" and used that information as a pretext to engage in inappropriate behavior with the student. Some of the alleged sexual harassment activities committed by the teacher included the following: call her to his desk to discuss her eating disorder and her treatments for the disorder, requested that she bring him a photograph of herself with few clothes on so that he could see signs of her anorexia, caress her shoulders and made statements about her "knock-out body", told her she should eat more so that her breasts were not so disproportionate to her "skinny" body, attempted to engage her into discussing her sex life and sexual preferences, and asked her to come to his classroom early one morning so he could weigh her without any clothing.

"Evidence Supported Teacher's Sexual Abuse of Student"

Ellis v. State (Md. App., 971 A. 2d 379), May 11, 2009.

Evidence **was sufficient** to support a finding *beyond a reasonable doubt* that defendant (a 25-year-old high school history and American government teacher) had responsibility for the supervision of a minor and did sexually abuse the minor child when he allegedly grabbed her hand in an attempt to get her to touch his penis. **Note:** During the fall of 2006, the defendant and the victim (a 17-year-old senior) began an increasingly friendly relationship. Just prior to the school's winter break, the defendant sent the victim several "sexual related" photographs of himself. After the break, the defendant invited the victim to visit his classroom after school; it was during this visit that he showed his penis to the victim and attempted to get her to touch it, she immediately left his classroom. Upon learning of the event, the school's administration reported the incident to the police. The "pervert" was sentenced to three years of incarceration for indecent exposure, a consecutive one year term for telephone misuse, a consecutive one year for display of obscene material to a minor, and 10 years for the sexual abuse of a minor.

"Board Had a Duty to Provide a Defense For Vice Principal"
Board of Education of Worcester County v. Horace Mann Ins. Co. (Md., 969 A. 2d 305), April 10, 2009.

Board of education **had a duty** to provide vice principal with a defense, in civil action by high school student alleging that vice principal assaulted him by brandishing a knife (six to seven inch blade) that was confiscated from another student who was afraid after being "picked on" by another student in the school. Furthermore, the board had a duty to provide school district employees' legal counsel when they committed actions **within the scope of their employment and without malice**. Vice principal *was required to address disciplinary matters pursuant to his duties*. In this particular situation, he called a student to his office in an effort to resolve a potential disciplinary issue and a knife was shown in the context of a asking the student "how he would feel if someone that he had picked on had brought a knife to school."

"Excessive Unexcused Absences <u>Not</u> Educational Neglect"
In re Jamol F. (N. Y. Fam. Ct., 878 N. Y. S. 2d 581), April 21, 2009.

Child's excessive unexcused absences (missed 44 days of school during one school year and 18 days during a subsequent school year) from school and failure to consistently attend alternative school or to receive home schooling did **<u>not</u>** constitute educational neglect. Mother of the student exercised a minimum degree of care by talking to the child, setting an example by attending college herself, maintaining ongoing contact with school officials, driving the youngster to school, making reasonable efforts to discipline him for not attending school, attempting to obtain appropriate alternate placement, and enrolling him in a private school. However, the child was beyond the child's mother's abililty to control him.

"Student Denied TRO and Preliminary Injunction Against School's Ban on 'Free A-Train' Slogan"
Brown ex rel. Brown v. Cabell County Bd. of Educ. (S. D. W. Va., 605 F. Supp. 2d 788), March 30, 2009.

Student (plaintiff), a high school freshman, wrote the words "Free A-Train" on both of his hands with a felt tipped marker. The message was an obvious reference to the detention of another student (Anthony Jennings), commonly known as "A-Train", who was facing criminal charges (two counts of armed robbery)—including the shooting (attempted murder) of a police officer. The high school assistant principal gave the plaintiff the option of washing the message from his hands or serving a 10 day suspension. The student initially did wash the message from his hands, but later elected to re-write it. He was warned against the consequences, but declined to remove "Free A-Train" and was placed on a 10 day suspension. His father was given a notice of the suspension, which stated that the grounds for the suspension were "disruption of the educational process". A United States District Court in West Virginia held that the plaintiff **had no substantial likelihood of success on the merits of his claim** that his words "Free A-Train" was protected speech under the First Amendment within the halls of his high school. **Note:** The high school and community had a serious gang problem and "A-Train" was a known member of one of the gangs (Black East Thugs – "BET") within the school-community.

Criminal Restitution:

"School is Entitled to Restitution Due to Bomb Threat"
State v. Vanbeek (Wis. App., 765 N. W. 2d 834), February 11, 2009.

Derick G. Vanbeek was convicted of making a bomb scare at his high school, which violated Wisconsin law that pertained to "intentionally conveying a false threat to destroy any property by the means of explosives." Thereupon, the court required that he reimburse the school district $15,796.89 for salaries and benefits paid to teachers and other school personnel during the resulting evacuation. The Court of Appeals of Wisconsin held that: (1) The school district **was a direct "victim"** of the defendant's conduct of making a false bomb scare for purposes of restitution due to the fact that the false threat conveyed the intent to destroy school property, resulted in the total evacuation of school facilities, and disrupted the delivery of school district services and (2) During the four and one-half hours that the students and staff were evacuated from school district property, **as a direct result of the defendant's false bomb scare**, the school district paid its employees, but received no services from them. **Note:** On November 27, 2006, a note containing a bomb threat was found in the middle school lunch room at Markesan High School at approximately 10:15 a.m. After being interviewed by law enforcement, the defendant admitted to writing the threat, but stated that he had been coerced into doing so by two other students.

"Denial of Application for Employment Based on Robbery Conviction Was Arbitrary and Capricious"
Acosta v. New York City Dept. of Educ. (N. Y. A. D. 1 Dept., 878 N. Y. S. 2d 337), May 7, 2009.

City department of education's denial of plaintiff's application for employment as an administrative assistant at a nonprofit organization that provided special education services to disabled preschoolers, based on the applicant's (plaintiff) convictions for armed robberies committed when she was a 17-year-old high school student more than 13 years earlier, **was arbitrary and capricious**. The plaintiff's duties would *not* involve or require any contact with young children, there was *no* showing that the nature of her crimes for which applicant was convicted was relevant to the job duties or posed an unreasonable risk of danger to those in the preschool program, and there *was overwhelming evidence* of the plaintiff's rehabilitation. **Note:** The plaintiff was a 31-year-old, college educated, wife, and mother of a two-year-old boy. There was undisputed evidence that her duties did not involve or require any contact with young children. However, the department of education stated that the specific reason for the plaintiff's denial of employment was her 13-year-old criminal record and that she "would pose an unreasonable risk to the safety and welfare of the school-community."

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The **Safe, Orderly, and Productive School Legal News Note** is a monthly update of selected significant court cases pertaining to school safety-security and student management issues. It is written by *Johnny R. Purvis for the **Safe, Orderly, and Productive School 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 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 Resource Officer Sexually Molested Student"
Doe v. Dickenson (D. Ariz., 615 F. Supp. 2d 1002), April 30, 2009.

Bill Dickerson, a former school resource officer (SRO), sexually molested an elementary school male student while assigned to the student's school. Plaintiff stated that she believes that her son will never be normal again; furthermore, both she and her husband continue to suffer emotional distress and all are in therapy. A United States District Court in Arizona held that the SRO alleged molestation of an elementary school student **inflicted sufficiently severe damage *to support*** mother's claim that SRO **violated her due process right to familial association**, even if alleged injuries were *not* both permanent and total. Additionally, there was *no* evidence that SRO actually intended to harm the parent-child relationship.

"School District's Failure to Report Substitute Teacher's Sexual Abuse Did <u>Not</u> Breach Duty to Future Victims"
P. S. v. San Bernardino City Unified School Dist. (Cal. App. 4 Dist., 94 Cal. Rptr. 3d 788), June 5, 2009.

Plaintiffs were first-grade students in the Central School District (CSD) when they were sexually molested by a substitute teacher (Eric Norman Olsen). In addition to filing a suit against the CSD, the plaintiffs also filed a suit against the defendant school (San Bernardino City Unified School District [SBCUSD]) district were the "molester" had previously sexually molested students while working as a substitute teacher. A California appeals court stated that school officials who employed the former substitute teacher who later molested students in another school district owed **<u>no</u>** duty to those students who are under the umbrella of California's Child Abuse and Neglect Reporting Act to report incidents of child abuse to authorities in the CSD; therefore, the defending school district is **<u>not</u>** liable. Furthermore, the legislative intent of California's Child Abuse and Neglect Reporting Act was **<u>not</u>** intended to create negligence liability to all future children who might be harmed by a suspected abuser.

"Random, Suspicionless, Drug and Alcohol Testing of School District Employees Violated State Constitution"

Jones v. Graham County Bd. of Educ. (N. C. App., 677 S. E. 2d 171), June 2, 2009.

County board of education's policy, mandating the random, suspicionless drug and alcohol testing of all school district employees **violated** the state of North Carolina's constitutional guarantee against unreasonable searches. Furthermore, the board's policy provided that any employee who was found through drug or alcohol testing to have in his or her body a detectable amount of illegal drug or of alcohol would be automatically suspended from their employment with the school district. Based thereupon, the policy **was remarkably intrusive** and there was **no** established existence of "concrete problems" for which the policy was designed to prevent. So, the court went on to state that the district's employees did **not *have a reduction in their expectation of privacy*** by virtue of their employment with the school district.

"Female Student Entering Male Student Restroom Did Not Support a Sexual Offense"

Doe v. Richland County School Dist. Two (S. C. App., 677 S. E. 2d 610), March 25, 2009.

The plaintiff, a 14-year-old high school student was suspended for two school days in August for two days after she engaged in a verbal altercation with another student. Less than a month later a school surveillance camera captured the plaintiff following a male student into the boys' restroom. According to the plaintiff, she entered the boys' restroom to retrieve a comb the student had taken from her. The plaintiff remained in the boys' restroom for about a minute until another male student entered the restroom; then, she exited the restroom. The Court of Appeals of South Carolina held that substantial evidence did **not** support the school board's finding that the plaintiff committed a sexual offense in violation of the school's student disciplinary code. Thus, evidence did **not** support student's expulsion from school. Evidence indicated that the plaintiff did enter a boys' restroom in an effort to retrieve a comb that a male student took from her; however, **no** statement from the offending male student or any other student indicated that anything sexually occurred.

"Governmental Immunity Barred Tort Claims Against School District Regarding Teacher's Relationship with a Student"

Frye v. Brunswick County Bd. of Educ. (E. D. N. C., 612 F. Supp. 2d 694), March 9, 2009.

Plaintiffs' (daughter [Kylee] and her parents) alleged that a male teacher engaged in an inappropriate sexual relationship with Kylee from October 2005 through April 2006, culminating in his marriage proposal. According to the complaint the relationship progressed from e-mails, gifts, touching, and multiple sexual acts. Eventually, school officials become aware of the situation and reported it to law enforcement. The teacher was charged with five felonies. He retired from teaching, pleaded guilty to all counts and was sentenced to 90 days in custody and five years of probation. In addition, as part of the plea agreement, he agreed not to teach at any school. Parents and their daughter brought civil action against the school district seeking monetary damages. A United States District Court in North Carolina held that allegations by parents and their daughter that school district officials violated their equal protection rights under both the United States and North Carolina Constitutions by raising a defense of governmental immunity in response to their claims arising from the offending teacher's sexual relationship with daughter when she was a high school senior; **failed** in their efforts to state such a claim. Plaintiffs were **not** able to sufficiently demonstrate that they were treated differently from other similarly situated persons. Furthermore, they **failed** to show that the school district' treatment of their claim was the result of intentional or purposeful discrimination.

"Student Sexually Assaulted on School Bus"

Brandy B. v. Eden Cent. School Dist. (N. Y. A. D. 4 Dept., 880 N. Y. S. 2d 431), June 5, 2009.

Student's mother brought action against school district, board of education, and county child protection agency, seeking to recover damages for injuries student allegedly sustained when she was sexually assaulted on a school bus by another foster child of student's foster parents. The New York Supreme Court, Appellate Division, Fourth Department, held that defendants **lacked** knowledge or notice of the dangerous conduct that the offending student exhibited toward the plaintiff, and thus, was **not** liable for damages. School records did **not** indicated any previous relevant dangerous conduct by the offending student and the assailant had *not* been disciplined for any conduct of any kind during the year in which he attended school within the school district.

"Student Lost an Eye While Participating in a Lacrosse Game During Physical Education"
Larchick v. Diocese of Great Falls-Billings (Mont., 208 P. 3d 836), May 19, 2009.

On February 6, 2004, plaintiff was injured while participating in a lacrosse game during P.E. class as a freshman at Billings Central Catholic High School (Central). While the facts leading up to the plaintiff's injuries are somewhat disputed, it is undisputed that the youngster sustained immediate and permanent vision loss in his right eye when he was hit with a lacrosse stick by another student. A lower court entered judgment for the diocese and denied the plaintiff a new trial based on newly discovered evidence. The Supreme Court of Montana held that newly discovered evidence, which was obtained from one of the student's attorneys after the end of civil proceedings, showed that the PE teacher was not in the gym when the plaintiff was struck in the eye with a lacrosse stick while participating in a lacrosse game during a PE class. The caller stated that the PE teacher was pressured to testify falsely during the court's proceedings. Therefore, the phone call **was material to the issues** raised at the trial; thus, the plaintiff **was entitled** to a new trial. **The significant issue** at the new trial will focus on whether the school provided adequate supervision during the PE class in which the student was injured and was the PE teacher in fact present when the plaintiff's injury actually occurred.

"Student Runs Over Jogger So He Could Have Sex With Her Corpse"
Emanuel v. Great Falls School Dist. (Mont., 209 P. 3d 244), May 27, 2009.

Plaintiff, who was injured when a high school student purposely ran over her as she was jogging past a high school, brought civil action against school district, alleging that school officials were negligent in their handling of the student subsequent to their discovery of student's resolution list, which included a resolution to get a drivers' license so he could do horrible things to people. The passenger in the offending student's vehicle told police that Robbins (offending student) spotted the plaintiff jogging and he stated that he planned to run her over so that he could engage in necrophilia with her corpse. The Supreme Court of Montana held that it was **not foreseeable** on the part of school officials that, after 17 months after school district became aware of the student's New Year's resolution list, which included resolution to get drivers' license so he could do horrible things to people, that student would deliberately run over a pedestrian after school hours and off school grounds. Thus, school district as a matter of law, owed **no** duty to plaintiff.

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October 2010

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Topics

"Special Education Teacher's Alleged Abuse of Student Was Not Caused By Lack of Certification"

Roe v. Nevada (D. Nev., 621 F. Supp. 2d 1039), December 10, 2007.

Parent (plaintiff) brought civil action on behalf of herself and her child under IDEA, ADA, Section 504 of Rehabilitation Act, and state law against school officials and special education teacher alleging that the four-year-old autistic youngster's special education teacher physically and verbally abused (e. g. slapped, hit, slammed, force-fed, and forced him to walk barefoot from his school bus to his classroom) him. A United States District Court in Nevada held that: (1) Genuine issues of material fact as to whether school officials had knowledge of the teacher's abuse of the autistic student and whether they failed to report abuse **precluded summary judgment** for the defendants and (2) Special education teacher's alleged abuse of the plaintiff's child was **not** caused by her lack of certification because the teacher had both an undergraduate and master's degree in special education, including a focus on autism.

"Forcing Students to Remain On a Football Field Was Not a Fourth Amendment Seizure"

Doran v. Contoocook Valley School Dist. (D. N. H., 616 F. Supp. 2d 184), March 25, 2009.

High school students' parents sued their school district, school board, school principal, town officials, and town's police chief, challenging the constitutionality of a school-wide search (Police and state troopers used dogs to search the entire high school.) for illegal drugs while all students were retained within the confines of the school's football field and stadium area. A United States district court in New Hampshire held that forcing high school students to remain on a football field while police moved through the school with drug detection dogs was **not a "seizure"** for purposes for a Fourth Amendment analysis. Relocating the students to the school's football field, where they remained under constant adult supervision, *allowed the search to be conducted in a way that was both efficient and minimally intrusive*. **Note**: The plaintiffs' children complained that they "felt trapped" on the field because the gates were locked and one of the students was not allowed to eat some food that was in his pocket.

"Assistant Principal's Reasonable Suspicion of Drug Distribution Did Not Justify Strip Search of a Student"

Safford United School Dist. #1 v. Redding (U. S., 129 S. Ct. 2633), June 25, 2009.

Assistant principal's reasonable suspicion that a 13-year-old middle school student was distributing drugs did **not** justify a strip search in which the student was directed to pull out her bra and the elastic band of her underpants. The principal knew the pills in question were prescription strength pain relievers, the nature of the drugs were of *limited threat*, there was *no* reason to suspect that a large amount of drugs were being passed around or that individual students were receiving a great number of pills, and *nothing suggested* that the student was hiding common pain killers in her underwear. **Note:** The assistant principal had a female administrative assistant and a female school nurse search the student's clothing, required the student remove her outer clothing, told her to pull her bra out and shake it, and had her to pull out the elastic on her underpants; thus exposing her breasts and pelvic areas to some degree.

"Evidence Supported Conviction for Disturbance of a Public School"
State v. Maki (N. D., 767 N. W. 2d 852), July 9, 2009.

Norma Breimeier has a bachelor's degree in elementary education and is licensed to teach in the state of North Dakota. In May 2008, she was employed as a teacher's aide in the special education program at New Salem High School. After the final bell rang for the start of the school day Breimeier was in her assigned classroom with five students when one of the student's mother walked into the classroom, put her hands right up on the table were the teacher was sitting, leaned forward, and said something similar to the following: "You had better not f--- with my son again." In addition, the student's mother told her that if she was not scared now, she would take her across the street and beat her up. The teacher thinks that the student's mother was referring to an incident that occurred on May 2, 2008, when she and another co-worker put the mother's child in a chair and held him in the chair because he was running around the classroom and crawling under tables. The Supreme Court of North Dakota held that evidence **was sufficient** that defendant (student's mother) insulted or threatened a teacher in the presence of students, **so as to support the conviction** of disturbance of a public school. Although the threatened person was officially employed as a teacher's aide, she was a licensed teacher and she was the only figure of authority present in the classroom at the time of the incident.

"Expelled Middle School Student <u>Not</u> Deprived of Due Process"
Hinds County School Dist. Bd. of Trustees v. R. B. ex rel. D. L. B. (Miss., 10 So. 3d 387), December 11, 2008.

Middle school student was summoned to the principal's office due to another student reporting that the aforementioned student was selling drugs on campus. While searching the student's backpack, the principal discovered an instrument that could be described as both a nail file and a knife, which was in violation of Mississippi code (97-37-17[4]). Thereupon, the school board expelled the offending student from the middle school for the remained of the 2004 school year and placed him in an alternative school for the rest of the 2004 school year and the first nine weeks of the following 2004-2005 school year. The Supreme Court of Mississippi held that the school board's failure to give the student charged with a disciplinary violation notice of a school board meeting at which the recommendation of the appeals committee was reviewed, or an opportunity to speak on his own behalf at such meeting, did **<u>not</u>** constitute deprivation of due process. Student *had been given notice* of appeals committee meeting and had spoken on his own behalf at such meeting, and *neither principles of due process nor anything in school district policy entitled student to more than one hearing*.

"Student's Decision to Commit Suicide Was Not Caused By School Officials' Actions"
Mikell v. School Administrative Unit No. 33 (N. H., 972 A. 2d 1050), March 18, 2009.

On January 18, 2005, a middle school special education teacher reported to the vice-principal that Joshua (student) had referred to two mints on his desk as medicine. The student's mother (plaintiff) alleged that the teacher did so "falsely and knowingly" in an attempt to affect her son's disciplinary record, and winked at Joshua while reporting the incident as "an acknowledgement of her lie." The following day, Joshua was again reported to the vice-principal for tipping his desk in class, being rude, and calling a teacher a "bitch". Due to his actions, Joshua was suspended from school and his mother was called to pick him up. Upon arriving at his home, Joshua went immediately to his room. Soon thereafter, the plaintiff left to take Joshua's grandfather, who had accompanied her to the school, to his residence. When she returned home, she found Joshua had hanged himself. The Supreme Court of New Hampshire held that the alleged false accusation by the special education teacher, stating that Joshua had referred to two mints on his desk as medicine, even coupled with the teacher's position of authority and teacher's allegedly 'winking" at the student, did **not** rise to the level of extreme and outrageous conduct *as required* in order for the plaintiff to establish a cause of action for Joshua's suicide. Furthermore, there was **no** evidence that the teacher's conduct was extreme or outrageous with an intentional intent to cause the student severe emotional distress that would be a substantial factor in bringing about his suicide.

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Topics

"School District Not Deliberately Indifferent to Teacher's Alleged Abuse and Harassment of Student"

Garcia ex rel. Marin v. Clovis Unified School Dist. (E. D. Cal., 627 F. Supp. 2d 1187), April 16, 2009.

A middle school student who was allegedly subjected to abuse and harassing behavior by her math teacher filed suit against a school district and individual school district employees alleging such charges as assault, battery, false imprisonment, intentional infliction of emotional distress, sexual harassment, violation of California Education Code, negligence per se, negligent supervision, negligent training, negligent hiring/retention, violation of Title IX, and two violations of Section 1983 by both the teacher and school district. The United States District Court, E. D. California, held that the school district **was not deliberately indifferent** to male middle school teacher's harassment of a female student so as to incur damages under Title IX. School officials *took immediate action* to end the harassment once officials were informed of it. First, school officials granting the student's request to be removed from the teacher's class, thereby eliminating regular and prolonged contact she would have with him. Second, the teacher was immediately removed from the classroom altogether. **Note**: In early November 2007, the plaintiff was walking back to her desk when she was approached from behind by her math teacher who lifted the young lady upside down and completely off the classroom floor. The teacher then held the victim, including on or about her buttocks, 'feeling her', positioning her head directly in his groin area, and proceeded to shake her up and down several times, in front of the entire class. Once class was dismissed the victim's classmates encouraged her to report the incident to the school's administration.

"Student Sexually Abused By School Contractor"

Howell v. Austin Indep. School Dist. (C. A. 5 [Tex.], 323 Fed. App. 294), March 25, 2009.

A former student brought action against school district, alleging that he was sexually abused by a school contractor. Furthermore, the plaintiff alleged that the contractor's supervisor, the school's band director, had knowledge of the sexual abuse. The United States Court of Appeals, Fifth Circuit, held that evidence that a school contractor told a band director that he believed that plaintiff was both divulging his homosexuality to him and "coming-out"; however, the band director responded that the contractor should stay away from the student or be dismissed. Based on the aforementioned, evidence **did not establish** that the school district had actual knowledge of the student's sexual abuse by contractor **or** that the band director **was deliberately indifferent** to establish monetary damages under Title IX.

"Search of a Student's Car Was Justified"
State v. Schloegel (Wis. App., 769 N. W. 2d 130), May 13, 2009.

Search of a high school student's car **was justified and reasonable** at its inception because school officials had received an anonymous tip that student was in possession of drugs, including pills, and possibly some other illegal substances. Approximately three years prior to this particular incident, the student had been arrested for possession of marijuana on school grounds. **Note:** School officials and the school's liaison officer searched the student's book bag, his person, and his locker, but no drugs were found. However, the search of the student's vehicle yielded a container of marijuana, a pipe, Oxycontin, and cash.

"Student's Questioning by School's Dean of Students Not Subject to a Custodian Interrogation for Miranda Purposes"
In re Tateana R. (N. Y. A. D. 1 Dept., 883 N. Y. S. 2d 476), July 14, 2009.

Evidence supported Family Court's judicial ruling that a student was **not** subjected to a custodial interrogation for Miranda purposes when she was called into the school dean's office and questioned regarding an allegation that she refused to return another student's property, notwithstanding the presence of a uniformed police officer during the questioning. Questioning was **not** initiated by the officer and officer provided minimal input to the dean during the student's interview with the school's dean. **Note:** The 13-year-old female student was called into the dean's office in an attempt to secure another student's iPod. The student informed the dean that she was not going to return the student's IPod; thereupon she was placed under arrest.

"School Officials Had Statutory Immunity Regarding Student's Arrest, Prosecution, and Conviction"
Jones v. Maloney (Mass. App. Ct., 910 N. E. 2d 412), August 3, 2009.

Regional school district and its administration **had statutory immunity** from suit, as to claims of negligence and negligent infliction of emotional distress brought by a high school student and his mother alleging that high school's assistant principal failed to notify the student's mother of a police investigation that led to the student's arrest and conviction for indecent assault and battery on a classmate. In addition, the plaintiff claimed that the school's administration failed to act in loco parentis to prevent the student from being interview by police and prevent the student from criminal prosecution and conviction. **Note:** While one student held a female student's arms the plaintiff's son, then age 18, grabbed and squeezed the young lady's breasts.

"School Receptionist's Not Entitled to Immunity Due to Releasing First-Grader to Non-Custodial Father"

McDowell v. Smith (Ga., 678 S. E. 2d 922), June 29, 2009.

School receptionist's release of a first-grade student from school to non-custodial father who was not authorized to pick-up the child **was a ministerial duty** for which the receptionist was **not** entitled to official immunity from liability. School policy provided that, before releasing a student, receptionist was required to check student's information card to verify that person picking-up the child was authorized to do so, policy also required receptionist to consult with the school's administration about facsimile or telephone call request for an early release, and the receptionist had *no* discretion with respect to compliance with the policy. **Note:** The receptionist received both a telephone call and a facsimile note from a woman claiming to be the child's mother. The woman requested that the biological father of the first-grader be allowed to pick-up the child from school on that particular day. The receptionist did check the father's driver's license to confirm his identity, but she failed to check the student's information card.

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Safe, Orderly, and Productive School Legal News Note

December 2010

Johnny R. Purvis*

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Topics

"School Board Entitled to Immunity Regarding Reporter's First Amendment Claims"
Cole v. Buchanan County School Bd. (C. A. 4 [Va.], 328 Fed. App. 204), May 14, 2009.

A newspaper reporter, who was banned from all school property, brought civil action against defending school board and four of its individual members, alleging retaliation for the exercise of his First Amendment rights. The United States Court of Appeals, Fourth Circuit, held that both the school board and its members **were entitled to qualified immunity** regarding the plaintiff's First Amendment retaliation claim. A reasonable school board member ***could have*** believed that banning "critical reporter" from school grounds *would not have violated* the reporter's First Amendment. **Note**: The board's decision to ban the reporter from all school properties was based on events such as the following: (1) Reporter entered an elementary school building and took photos during the school day without reporting to the principal's office; (2) While taking photos at the aforementioned school, the reporter interviewed students without school administrative or students' parents approval; and (3) On October 20, 2006, the reporter published an article questioning why a board member sent his child to a school outside of the school district.

"School District Not Entitled to Summary Judgment for Failing to Protect Student"
Doe ex rel. Doe v. Coventry Bd. of Educ. (D. Conn., 630 F. Supp. 2d 226), April 23, 2009.

Parent, on behalf of her daughter (a high school student) who had been sexually assaulted by a fellow male student off school grounds, brought Title IX legal action alleging that school officials knowingly failed and refused to protect her daughter from discrimination stemming from student-on-student sexual harassment; thus, depriving plaintiff's daughter of educational opportunities and benefits. The United States District Court, D. Connecticut, held that genuine issue of material fact as to the severity of harassment experienced by female student who had been sexually assaulted by a male student off school ground **precluded summary judgment** on plaintiff's Title IX claim against defending school district. The ***mere fact*** that the plaintiff's daughter and male student who had raped her attended the same school together ***could be found to constitute pervasive, sever, and objectively offensive harassment so as to deny her equal access to school resources and opportunities***. In addition to potential interaction, the victim and her assailant shared a lunch period and a class during their sophomore year and a class together the first day of classes their junior year; thus, ***a reasonable jury could further conclude that harassment of victim by assailant's friends on and off school grounds created a hostile environment that interfered with her educational opportunities***. The court went on to ***precluded summary judgment*** for the school district on the plaintiff's Title IX claim due to the fact that the school district ***could be liable for deliberate indifference*** to post-assault harassment and once school officials became aware of the sexual assault and the related student harassment ***a reasonable jury could find that schools officials were given adequate notice of both assault and harassment***. **Note**: The plaintiff's daughter received harassing name calling, voice-mails, and harassing letters from the friends of the male student who raped her. Furthermore, she was victimized by both taunts and name-calling that included such insults as "slut", "cow", "whore", "liar" and "bitch".

"Student Sexually Assaulted Fellow Students While Teacher in Classroom"
T. Z. City of New York (E. D. N. Y., 634 F. Supp. 2d 263), June 23, 2009.

On November 9, 2004, plaintiff (A junior high female student.) left her classroom to speak to her guidance counselor. Upon her return to her class a number of students were standing around her teacher and talking loudly as he worked on his computer. With her teacher's permission, the plaintiff sat down in the back corner of the classroom to talk to two friends. Thereupon, two students started sexually harassing her by touching her breasts and hugging her from behind. She yelled for her teacher while kicking and biting her attackers. Her two attackers pulled down the plaintiff's pants, touched her vagina, and caressed her buttocks. After her attack, the plaintiff's teacher simply told her to get up and go to her seat. One of the plaintiff's friends told another teacher and the school's administration moved forward with an investigation and punishment for the offenders. Following an adverse summary judgment ruling, the plaintiff moved for reconsideration regarding her claim against the city of New York and the city's school district under Title IX. The United States District Court, E. D. New York held that reconsideration of a lower court's ruling denying plaintiff's summary judgment motion **was warranted** due to the fact that the lower court overlooked the fact that the plaintiff had cited cases in support of her position that a one-time incident ***could be "pervasive" for purposes of a Title IX claim of student-on-student harassment*** and ***such material would reasonably be expected to alter the court's conclusion***.

"Teacher's Unethical Conduct Supported License Revocation"

Richardson v. N. C. Dept. of Public Instruction Licensure Section (N. C. App., 681 S. E. 2d 479), August 18, 2009.

Plaintiff was a teacher for 22 years and held a teaching license issued by the North Carolina State Board of Education (SBOE). In 1994, the plaintiff brought suit against his school district alleging that the board had unlawfully denied him a promotion due to his race and had given him low evaluations because he had filed discrimination charges with The Equal Employment Opportunity Commission (EEOC). A federal magistrate dismissed all of the claims except that which alleged discrimination by the board in failing to promote him to an assistant principal position. At trial, jury was unable to render a verdict, and the federal magistrate declared a mistrial. A retrial was scheduled, but before it was held, the parties reached a settlement. A few weeks after the mistrial, Jessie Blackwelder, Assistant Superintendent for the Cabarrus County Schools (school district in which plaintiff was employed) and a designated witness against the plaintiff received an anonymous letter. The letter referred to Blackwelder's "lies", noted that it was time "to get her back," and referred to "incriminating evidences" which would be revealed "to Mr. Richardson's (plaintiff) attorney… and to Judge Horn, too" unless Richardson received an administrative position "immediately." The letter also "promised" Blackwelder jail, fines, and "sudden retirement" if she did not cooperate with the demands made by the anonymous author. Thereafter, Blackwelder received at least two other anonymous threatening letters. A federal magistrate concluded that the plaintiff typed and mailed the three anonymous letters or caused them to be typed and mailed. The magistrate further concluded that the plaintiff's conduct was intentional, egregious, sent in bad faith, and that the letters threatened Blackwelder. Furthermore, the letters "most likely" violated federal laws dealing with perjury and intimidating witnesses. The Court of Appeals of North Carolina held that the plaintiff, and former teacher, **failed** to establish that the decision by the SBOE to deny reinstatement of his teaching license was arbitrary, capricious, or an abuse of discretion under the "whole record" test, where there was **no** evidence that anything presented to or considered by the Ethics Advisory Committee panel or the state superintendent was improper, irrelevant, or tainted by the decision-making process.

"Graduating Students Who Furnished Beer Lacked Duty of Care to Victim of Criminal Assault"

Cameron v. Murray (Wash. App. Dist. 1, 214 P. 3d 150), August 17, 2009.

Mother of a non-graduating (11th grader) high school student brought wrongful death and negligence claims against non-assailant graduating students, alleged assailant graduating students, sales representative for wholesale beer distributor, and distributor's successor corporation for the alleged high school junior's death that was caused by a head injury from criminal assault at a keg party. A group of high school graduating seniors planned a keg party (May 1998) for approximately 100 graduating seniors in a remote section of a state park. The planners of the party purchased six kegs of beer, each containing 15.5 gallons of beer, which provided the 100 attendees almost one gallon of beer apiece. During the party a graduating senior allegedly hit the plaintiff's son on the forehead with a heavy glass beer mug. The wound initially appeared to be minor and was stitched in an emergency room, but four months later he collapsed in a coma. The plaintiff's son died in 2004 after surviving for more than four years in a persistent vegetative state. An autopsy revealed that the case of death was the head wound at the keg party, and the death was determined to be a homicide. A Court of Appeals of Washington, Division I, held that: (1) Non-assailant graduating high school students who planned the keg party were **not** liable and (2) Even if non-assailant graduating high school students who planned the keg party to celebrate students' graduation violated state statute forbidding the purchase of alcohol by minors, statute was **not** intended to protect against the particular hazard of a subsequent criminal assault by a consumer of the illegally purchased alcohol.

"Factual Issues Precluded Summary Judgment On Behalf of a School District Due to Student Injured in a Fight"

Coleman v. St. Tammany Parish School Bd. (La. App. 1 Cir., 13 So. 3d 644), May 8, 2009.

Genuine issues as to whether a middle school student's injuries that were caused by a fight with a fellow student was foreseeable and if teachers and principal provided adequate supervision **precluded summary judgment** in suit to recover for student's injuries. The injured student's mother had contacted school officials several times about threats made against her fourth grader and she was assured that they would take care of it. However, on March 19,2003 the plaintiff's son was attacked by a student on the school's playground during lunchtime.

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

1. Leadership: Lessons From the Coyote, www.authorhouse.com
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