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Safe, Orderly, and Productive School Legal News Note

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

"Elementary School Principal Turned Blind Eye to Teacher's Sexual Abuse of Students"
Sandra T. E. v. Sperlik (N. D. Ill., 639 F. Supp. 2d 912), July 23, 2009.

Evidence that a public elementary school principal turned a blind eye to reports of a music teacher's sexual abuse of his students **created fact issue** as to whether she had allowed such a climate to flourish where teacher was able to cause harm to students. Therefore, **precluding summary judgment** on behalf of the principal due to the fact that the principal provided victims' parents with a watered-down version of the students' allegations, allegedly lied to coworkers about the extent of the teacher's actions, and allegedly *failed* to impose discipline beyond mere warnings to the pervert. Furthermore, the principal was **not** entitled to qualified immunity existing from substantive due process and equal protection violations existing under the Fourteenth Amendment of the United States Constitution, along with a Section 1983 claim. **Note:** The pervert bent on sexual gratification was focused on his fetish in bondage pornography.

"State's Attendance Law Could Not be Used to Impose Criminal Liability on Parents Whose Children Came to School But Insisted on Cutting Her Classes"
In re Gloria H. (Md., 979 A. 2d 710), September 14, 2009.

Defendant, a mother who allegedly permitted her high school age child to miss school, was convicted in the Circuit Court of Prince George's County, for violating the state's public school attendance law; thereupon, the defendant appealed the Circuit Court's decision. The Court of Appeals of the State of Maryland held that the defendant's conviction for violating the state's compulsory school attendance law ***required proof beyond a reasonable doubt*** that the child, rather than merely skipping a class, did not attend school. Upon entering school, the defendant's child ***was committed to the control of the state and local authorities*** and although evidence showed that the student was marked as absent from her homeroom class, **no** evidence was presented indicating whether she was absent from school. **Note:** Defendant got her daughter up to go to school and either left the house with her daughter, paid for a cab to take her daughter to school, drove her daughter to school herself, or the daughter's aunt took the youngster to school. The defendant never allowed her daughter to stay home from school. Furthermore, when the defendant received phone calls that her daughter was not at school she would leave work to go home to check in an effort to make sure she was not there, and then report to school officials. Her daughter just decided that she was not going to class once she got to school and she testified to that fact (recorded absent 74 out of 180 days).

"Banning Shirts with Printed Messages Did Not Violate Student's First Amendment Rights Related to Free Speech"
Palmer ex rel. Palmer v. Waxahachie Independent School Dist. (C. A. 5 [Tex.], 579 F. 3d 502), August 13, 2009.

Public high school's dress code banning all shirts with printed messages, except small logos on shirts and campus principal-approved shirts that promote school clubs, organizations, athletic teams, or school spirit, and allowing political buttons and pins, did **not** violate the First Amendment right to free speech under the immediate scrutiny analysis. The school's dress code *promoted* important government interests in maintaining *an orderly and safe learning environment, increasing the focus on instruction, promoting safety and life long learning, and encouraging professional and responsible dress* for all students. The dress code was no more strict than necessary to achieve goals as it allowed speech through other mediums at school and did not restrict speech after school hours. **Note:** Student wore a shirt to school with "San Diego" written on it. Assistant principal told the student that his shirt violated the school district's dress code. Student called his parents to bring him another shirt to wear, which they did, but it was a t-shirt with "John Edwards for President 08". The student was not allowed to wear that shirt either, and process toward legal action pursued.

"Autistic Student Found Naked and Muddy After Wandering From School Was Not Deprived of His Fourteenth Amendment"
Parker v. Fayette County Public Schools (C. A. 6 [Ky.], 332 Fed. App. 229), May 22, 2009.

Sixth grade student who suffered from autism was **not** deprived of his due process rights to bodily integrity, in violation of the Fourteenth Amendment, by school or its employees when he wandered from his gym class through an open gym door into a surrounding neighborhood. With the help of local police, he was found several hours later laying naked and covered in mud a few blocks from the school. While the student was found dirty and unclothed, there was **no** evidence of any trauma or injury, physical or otherwise.

"Limited Force Used On Autistic Student Was Reasonable"
G. C. ex rel. Cosco v. School Bd. of Seminole County, Florida (M. D. Fla., 639 F. Supp. 2d 1295), June 10, 2009.

The limited incidents of physical restraint used on middle school autistic student by teacher did **not** result in an injury which rose to a level which shocked the court's conscience so as to establish a substantive due process claim under the Fourteenth Amendment. The student's teacher would restrain him to prevent him, a student known as a "runner", from attempting to run away for safety purposes. The teacher restrained the student by placing her leg over the student's legs while they waited at the school's bus stop and the amount of force used to restrain the student was **not obviously excessive, nor did it present a reasonable foreseeable risk of bodily injury**, much less a severe injury.

"School District Did Not Have Notice of Coach's Alleged Sexual Discrimination Involving the Only Female Member on Football Team"

Elborough v. Evansville Community School Dist. (W. D. Wis., 636 F. Supp. 2d 812), June 23, 2009.

High school student who was the only female member of the school's freshman football team, brought action against school district and school's head football coach under Title IX, due process, and the equal protection clause of the Fourteenth Amendment. The United States District Court, W. D. Wisconsin, held that in order for the school district to be held liable under Title IX for injuries allegedly sustained by the plaintiff, who alleged that she was injured as a result of sex discrimination on the part of the head football coach. Plaintiff *was required* to show that the school district *had notice* that she was hurt as a result of intentional sex discrimination under the standard of *deliberate indifference*. The aforementioned means that *the plaintiff was required to show* that the school district made a deliberate choice to follow a discriminatory course of action from among various alternatives. Therefore, the school district did **not** have notice of alleged intentional acts of sex discrimination allegedly carried out by the high school's head football coach. **Note:** The plaintiff charged that the head football coach discriminated against her by failing to keep the girls' locker room unlocked, keeping snacks and the practice schedule in the boys' locker room where she was not allowed, and telling her that she needed to get her hair cut "like a boy".

"School District Employee Voluntarily Resigned His Position"

Brown v. Columbus Bd. of Educ. (S. D. Ohio, 638 F. Supp. 2d 856), June 30, 2009.

School district employee with an assault conviction voluntarily resigned from his job and thus could **not** maintain his legal action claim regarding a violation of his due process rights even though he was given a choice of resigning or being terminated. **Note:** While on vacation on September 24, 2005, in Washington, D. C., he was arrested for both a public disturbance and assault on a police officer; plus, disorderly conduct and simple assault.

"Teacher's Employment Termination Due to Having Sex with a Student Twenty-Six Years Ago Was Valid"

Waisanen v. Clatskanie School Dist. # 6J (Or. App., 215 P. 3d 882), July 15, 2009.

Plaintiff taught metal shop in a high school from 1977 until his termination in 2005. The plaintiff's termination was based on a complaint made in April 2005 by a former student who attended the high school in which the plaintiff taught from 1975 until her graduation in June 1979. The former student's sexual encounters with the plaintiff came to light after her husband informed the superintendent of his wife's sexual relationship with the teacher. The former student submitted to a polygraph exam to verify that she had sexual intercourse with her former teacher when she was 16 years old. The Court of Appeals of Oregon held that the results of the complainant's polygraph examination indicated that she was truthful concerning her sexual encounters with her former teacher 26 years ago and such results were adequate grounds to dismiss the plaintiff from his teaching position.

"Teacher's Odd Behavior Did Not Warrant Termination"
Ripley v. Anderson County Bd. of Educ. (Tenn. Ct. App., 293 S. W. 3d 154), May 4, 2009.

On May 17, 2006, one of the plaintiff's eighth grade students walked into the school principal's office and told the principal that she was very disturbed about the plaintiff's behavior and how she had conducted her class. The principal went to the plaintiff's classroom and found her very "visibly upset" and afterward the principal escorted the teacher to her office. Thereupon the plaintiff told the principal that she was on medication for depression and that she had a doctor's appointment the next day. After the meeting the plaintiff's principal told her to go home for the remainder of the school day, afterward, the principal secured statements from 40 students who had attended the plaintiff's homeroom and reading class; plus, a compact disk entitled "The Future". A Tennessee appeals court held that although the tenured teacher (approximately 15 years of experience) broke down student class projects that had not been taken home and disposed of them in the trash, tossed gym bags and books, and played a song that delved into controversial social topics, such as politics and religion, teacher's conduct did **not** warrant the drastic action of termination. The teacher's actions *were a unique deviation from her usual behavior* and she was attempting to deal with her emotional difficulties (She was on prescribed medication [Effexor- an anti-depressive medication] and was under great stress due to difficulties in caring for her elderly mother.) during the time in question, and shortly thereafter had sought medical assistance. Furthermore, the teacher did *not* attack any of her students nor were any students harmed.

"School Owed No Constitutional Duty to Protect Student from Being Raped"
Doe ex rel. Magee v. Covington County School Dist. ex rel. its Bd. of Educ. (S. D. Miss., 637 F. Supp. 2d 392), April 27, 2009.

Parents of a nine-year-old female student, who was checked-out from her elementary school by an unauthorized individual, who then proceeded to molest, rape, and sodomize her before returning her to school filed suit against school district alleging that school officials violated their child's constitutional rights under the due process clause. A United States District Court in Mississippi held that a "special relationship" did **not** arise between a public school student attending an elementary school in compliance with Mississippi's mandatory attendance statute and school employees, solely by virtue of the fact that student was nine years old, owed **no** constitutional duty to protect the student from dangers posed by a non-state actor. **Note:** Between September 2007 and January 2009, student was checked-out of school on six occasions by a none-state actor who raped, molested, and sodomized her. The pervert had no relationship to the student and checked the victim out by representing himself to be different persons, several times as the father of the child and even one time as the child's mother. The school had a "permission to check-out form" but it was *never* consulted to determine whether the pervert was an authorized individual to check-out the student.

"Rape of School Skipper Was Not Foreseeable"
A. B. ex rel. C. D. v. Stone County School Dist. (Miss. App., 14 So. 3d 794), July 28, 2009.

Alleged sexual assault of a perpetually truant high school student by a school bus driver's nephew on the day that the student skipped school and went to the bus driver's home in his truck was **not** a foreseeable result of the school district's failure to exercise ordinary care in enforcing the state's compulsory attendance laws through the reporting of student's absences. The school district could **not** be held liable for the student's injuries under Mississippi's Tort Claims Act because the bus driver had been a model citizen before the incident, student's prior absences involved her leaving campus on foot, and student had *no* pattern of remaining on her school bus. **Note:** The 15 year-old had a habit of skipping some or all of her classes on an almost daily basis. She would ride the bus to school, walk to a nearby apartment complex to spend the day with her older boyfriend or other friends. She would return to the school in the afternoon to ride the bus home. The student's parents were unaware that she was missing school.

"Drug Transaction Illegal"
Com. v. Marion (Pa. Super., 981 A. 2d 230), September 2, 2009.

The Superior Court of Pennsylvania found that the Commonwealth **established by a preponderance of the evidence** that drug transaction between defendant and confidential informant occurred within 1,000 feet of a state university, as necessary to support imposition of mandatory minimum sentence of two to four years on defendant. The defendant prosecution focused on the delivery of marijuana (Undercover police officer purchased ¼ ounce of marijuana for $35.00 from defendant.) possession with the intent to deliver a controlled substance (PWID), possession of a small amount of marijuana for personal use, and criminal use of a communication facility (use of a phone to arrange purchase of illegal substance).

"Student's Shouting at Teacher Did Not Support Finding of Disorderly Conduct"
In re L. E. N. (Ga. App., 682 S. E. 2d 156), July 15, 2009.

Juvenile's shouting ("I better get my fucking Sharpie back.") in school lunchroom to teacher, who had confiscated his marker, was **not** sufficient to constitute "fighting words" so as to support finding of disorderly conduct. The mere fact that juvenile used a curse word to emphasize his statement could *not* sustain a finding of disorderly conduct. Juvenile was rude, disrespectful, and angry in conjunction with the use of profanity, but the behavior was **not** sufficient to support finding of disorderly conduct because nothing he said during the incident threatened the immediate breach of the peace or would have incited the listener to react violently to the language.

"Teachers Lacked Constitutional Standing Regarding Action against School Board for Its Refusal to Expel Students"
Lansing Schools Ed. Ass'n, MEA/NEA v. Lansing Bd. of Ed. (Mich. App., 772 N. W. 2d 784), January 27, 2009.

Teachers **lacked constitutional standing necessary** to assert action against a school board for its refusal to expel students who allegedly assaulted a teacher, where injuries allegedly sustained by teachers were **not** caused by school board but by students who were *not* parties to the action. The lack of a constitutional standing both *prevented* teachers from establishing an injury-in-fact and causal connection elements for a constitutional standing. **Note:** According to plaintiffs, students hit two teachers with a chair, one student slapped one of the teachers, and one student threw a wristband toward one of the teachers and it struck the teacher in the face. Michigan law states that school boards have the sole power to determine whether a student physically assaulted a teacher and findings by a school board are generally deemed conclusive Michigan's courts.

"Did a Teacher Use Excessive Force Against an Artistic Student?"
M. S. ex rel. Soltys v. Seminole County School Bd. (M. D. Fla., 636 F. Supp. 2d 1317), July 10, 2009.

Genuine issues of material fact as to whether force applied to a 12 year-old student (e. g. severely autistic, mentally retarded, unable to dress himself, could not shower alone, not able to tie his own shoes, not able to use the restroom without assistance, and basically nonverbal) by a teacher was conscience-shocking, and thus excessive, whether the student suffered physical, mental, and/or emotional injuries sufficient to constitute a constitutional deprivation, and whether the teacher acted maliciously **precluded summary judgment** for the teacher on her claim of qualified immunity. **Note:** On October 22, 2004, the student refused to put a magazine down and do his class work; thereupon his teacher jerked him out of his desk, flipped his body down on his desk, placed both his arms behind him, and held his head down on the desk. The teacher held the student head so tight against the desk that "his eyes were bulging" and "his lips started turning blue". The teacher was convicted of a third-degree felony under the state of Florida's criminal codes.

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Topics

"Sexual Conviction of Coach Was Against the Weight of the Evidence"
People v. O'Neil (N. Y. A. D. 3 Dept., 887 N. Y. S. 2d 705), October 22, 2009.

In 2005, the defendant, then 24 years old, was hired to teach physical education and coach track at a high school in Washington County, New York. Over the next two years, he worked closely with the alleged victim, the school's best female runner, who was a 14-year-old freshman when he began coaching her. Prior to the start of her junior year, the alleged victim's family moved to Fulton County, New York, and she enrolled in school there. Shortly thereafter, she disclosed that defendant had raped her. The defendant was charged with three counts of rape in the second degree, two counts of rape in the third degree, six counts of criminal sexual act in the second degree, three counts of criminal sexual act in the third degree, six counts of sexual abuse in the third degree, and one count of endangering the welfare of a child. All of the aforementioned charges centered on sexual contact and 10 to 15 separate instances of rape and other sex-related crimes that allegedly occurred between December 2005 and March 2007. The New York Supreme Court, Appellate Division, Third Department, stated the following: The jury's verdict convicting the coach of sexual abuse and related contact **was against the weight of the evidence**. Students testified that they never witnessed any inappropriate behavior or inappropriate touching by the coach toward the alleged victim. Multiple witnesses, including students, testified that the alleged victim had a reputation for being untruthful. Furthermore, multiple individuals, including students, testified as to the defendant's professional conduct and his highly respectable reputation in dealing and working with athletes and students.

"Prohibiting the Display of the Confederate Flag Did <u>Not</u> Violate the First Amendment"
A. M. ex rel. McAllum v. Cash (C. A. 5 [Tex.], 585 F. 3d 214), October 9, 2009.

Racial tension and hostility at high school (Burleson High School, Burleson, Texas) **justified** school policy prohibiting the display of the Confederate flag at the school on grounds that the display of the flag might cause substantial disruption of school activities. Therefore, the policy and its enforcement did **<u>not</u>** violate students' right to free speech and expression within view of the First Amendment. The action of school officials was associated with the "racially inflammatory meaning that was associated with the Confederate flag and the school's experiences with racially hostile graffiti, vandalism, and physical confrontation between white and black students. In addition, a Confederate flag was flown over the school's flagpole on Martin Luther King Jr. Day and a white student simulated the lynching of an black student.

"Disabled Student Orally Raped on Schools Bus"
Lopez v. Metropolitan Government of Nashville and Davidson County (M. D. Tenn., 646 F. Supp. 2d 891), July 7, 2009.

Mother of a disabled child with autism, mental retardation, emotional disturbance, and speech and language impairments who was allegedly orally raped by an older student while riding a school bus brought legal action against city and county government and the learning center which operated a private academy that the victim attended. The legal action focused on Section 1983, Title II of the Americans with Disabilities Act (ADA), Rehabilitation Act (504), and Title IX. The United States Court, M. D. Tennessee, Nashville Division, held that: (1) the exhaustion of administrative remedies **would have been futile**; (2) fact issues **precluded summary judgment** regarding Section 1983 claim of *deliberate indifference or state created danger theory*; (3) fact issues **precluded summary judgment** on Title IX claim; and (4) fact issue as to *reasonable foreseeability* of student's rape **precluded summary judgment** on negligence claim. **Note:** The nine year old disabled student was orally raped by a 19-year-old while riding on his way home on board his assigned school bus by the victim performing oral sex ("eating cookies") on the older student.

"Student Raped In Middle School Restroom"
Shannea M. v. City of New York (N. Y. A. D. 2 Dept., 886 N. Y. S. 2d 483), October 6, 2009.

A special education student who was allegedly raped in a middle school restroom brought a personal injury claim against the city of New York, as the operator of the school. The New York Supreme Court, Appellate Division, Second Department, held that: (1) Schools are **not** insurers of their students' safety, but they are under an obligation to provide such care as a reasonable prudent parent and (2) City could **not** find that the city was negligent unless it had "actual or constructive notice of prior assaults in the school's restrooms. **Note:** An expert testified for the plaintiff that middle school restrooms were "notorious" for incidents, including fights, but such testimony was not relevant to the case because *the issue was whether the incident even occurred*.

"Spectator Hit in the Head While Watching a Baseball Game"
Vivyan v. Ilion Cent. School Dist. (N. Y. A. D. 4 Dept., 886 N. Y. S. 2d 268), October 2, 2009.

Genuine issues of material fact **existed** as to whether a baseball game organizer (Ilion Memorial Post #920, American Legion, Inc.) and school district that owned the baseball field satisfied their duty of care to protect spectators from baseballs; thus, ***precluded summary judgment*** in spectator's action to recover for personal injuries sustained when he was struck in the head by a baseball while watch a game. **Note:** Plaintiff was seated in an unscreened bleacher located behind the first baseline when the baseball struck him.

"School District Was an Additional Insurer"
Stillwater Cent. School Dist. v. Great American E. & S Ins. Co. (N. Y. A. D. 3 Dept., 887 N. Y. S. 2d 719), October 29, 2009.

School district brought action against youth football league's insurer, seeking declaration that insurer had a duty to defend and indemnify (a duty to make good regarding a loss or damage) the district in underlying action that arose out of a spectator's fall from bleachers on a football field owned by the school district. The New York Supreme Court, Appellate Division, Third Department, held that the school district, as owner of the football facility that was loaned to the youth football team that was a member of a youth football league, was an additional insurer, within the meaning of endorsement within the youth football league's insurance policy that modified the policy to include as an additional insurer any owners of premises loaned to the league.

"Issue Regarding Sexual Abuse of Student Teacher was Foreseeable Which Precluded Summary Judgment for a School District"
Canaday v. Midway Denton U. S. D. No. 433 (Kan. App., 218 P. 3d 446), October 30, 2009.

Plaintiff was allegedly sexually abuse on as many as 100 occasions between the ages of 12 and 17 by Robert Baird, his counselor, coach, and teacher. Thus, former student brought negligence and intentional tort action against his former school district based on the alleged sexual abuse by his former teacher. The Court of Appeals of Kansas held that genuine issue of material fact as to whether school district had notice of teacher's propensities, and thus whether teacher's alleged sexual abuse of student was foreseeable, **precluded summary judgment** on student's negligence and intentional tort claims against his former school district.

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Topics

"School Police Officer Had Probable Cause to Arrest Student for Criminal Trespassing"
Williams v. Underhill (C. A. 9 [Nev.], 337 Fed. App. 688), July 7, 2009.

Under Nevada law, high school students did ***not*** have contractual right to remain on school property after the period of compulsory attendance ended, or to remain on school property after they were asked to leave. Therefore, school police officer **had probable cause** to arrest high school students for criminal trespassing.

"School's Dress Code Ban on Racially Divisive Symbols Did Not Violate Student's Free Speech Rights"
Defoe, ex rel. Defoe v. Spiva (E. D. Tenn., 650 F. Supp. 2d 811), August 11, 2009.

High school's dress code's ban on racially divisive symbols, including the Confederate flag, did **not** violate students' free speech rights; especially in light of a reasonable potential of such symbols causing a material and substantial disruption to school work and school discipline. The high school had a history of racial tension and conflict, including one incident in which a large confederate flag was hung in the school's hallway two days after two African-American students enrolled along with racial graffiti written within and around the high school's facilities. **Note**: Plaintiff violated the school's dress code on a number of occasions by wearing a t-shirt with a Confederate flag, wearing a belt buckle depicting the Confederate flag, and other articles of clothing depicting the aforementioned flag and related symbols. He was suspended from school for his offenses and stated that his father had told him about his ancestors and heritage and that the flag represented his heritage.

"Officers Who Searched High School Soccer Team Had Qualified Immunity"
Lopera v. Town of Coventry (D. R. I., 652 F. Supp. 2d 203), September 9, 2009.

On September 28, 2009, the Central Falls School boys' soccer team played an away game against Coventry High School. After arriving at Coventry High School several of the Central Falls team members used the restroom inside the Coventry boys' locker room. After the soccer game approximately 20 members of the Coventry High School's football team stopped the Central Falls soccer coach as he was about to board the team's bus and accused members of his soccer team of stealing electronic devices (iPods and cell phones) from their locker room. Thereupon the Central Falls coach and his assistant coach searched all the members of their team, who had already boarded the team's bus; however, they did not find any of the missing items. In the mean time, a rather large crowd gathered around the team's school bus and shouted racial (several of the Central Falls team members were Hispanic) epithets and accusations of theft. Soon thereafter police arrived on the scene and in an effort to demonstrate that his players did not steal the missing items, agreed to allow the police officers search each member of his soccer team. The search of the team by the police lasted approximately one hour and none of the missing items were found. Thereupon several members of the Central Falls soccer team filed suit against the town, police chief, and the police officers who participated in the search claiming that their civil rights were violated and they were humiliated in front of the large crowd that had gathered around their school bus. The United States District Court, D. Rhode Island, held that neither the officers nor any of the other defendants violated the plaintiffs' civil rights and all defendant parties **were eligible for qualified immunity** under both Rhode Island and federal laws.

"School District Employee's Complaints Were Not Protected by the First Amendment"
Converse v. City of Oklahoma City (W. D. Okla., 649 F. Supp. 2d 1310), July 23, 2009.

A school district employee's complains about a campus police officer's treatment of students at a high school in her school district and about an African-American student's suspension were made **pursuant to the employee's official duties**, and as such, was **not** *protected speech* under the First Amendment of the United States Constitution. The complaints were made during working hours; the comments about the officer were made at a meeting scheduled by the employee's supervisor for the purposes of discussing the officer's conduct. The complaint about the student's suspension was made when the plaintiff notified the school district's legal counsel that the student's rights had been violated; such complaint was made in the employee's capacity as a school district employee who was charged with the responsibility for assuring a safe learning environment for students and that students receive their due process rights. **Note**: Shortly after the aforementioned occurred, the plaintiff was transferred from the position of Executive Director of Student Performance (Plaintiff supervised principals at 15 schools.) to Executive Director of School and Community Services. Employee complained that the transfer was in retaliation for the exercise of her First Amendment rights and her attempt to assist an African American student.

"Former At-Will Police Officer Did Not Have to Exhaust Administrative Remedies before Bringing Retaliatory Discharge Claim"
Larsen v. Santa Fe Independent School Dist. (Tex. App.-Hous. [14 Dist.], 296 S. W. 3d 118), July 28, 2009.

Plaintiff began working as an at-will police officer for the defendant October 16, 2003. He was injured while participating in *a work-related training exercise* on October 5, 2005 and took a leave of absence from his job. The defending school district reported the plaintiff's injury to its workers' compensation administrator on October 11, 2005. Plaintiff began receiving workers' compensation benefits thereafter. On January 23, 2006, the school district's superintendent sent a letter to the plaintiff informing him that his FMLA and other leave time expired on January 18, 2006, and due to such, he was terminated from his employment with the district due to his inability to return to work. A Texas court of appeals held that plaintiff's retaliatory discharge claim against the defendant did **not** *involve "school laws of the state"* and therefore the former police officer did **not** have to exhaust the school district's administrative remedies prior to bringing his claim to the courts.

"Facts Existed as to whether Strip-Search of Students for iPod violated Their Fourth Amendment Rights"
Foster v. Raspberry (M. D. Ga., 652 F. Supp. 2d 1342),

According to a United States District Court in Georgia, **genuine issues of material fact**, regarding whether school district officials violated clearly established federal rights of which *reasonable officials would have know*n in conducting a strip-search of a high student to locate an electronic device (iPod), **precluded summary judgment on qualified immunity defense** to claim brought under the Fourth Amendment of the United States Constitution. **Note:** The situation arose after a junior ROTC instructor confiscated an iPod from one of his students and while he was using the restroom another student retrieved the contraband iPod from his desk drawer.

"Students Due Process Rights Were Not Violated Due to Their Long-Term Suspensions"
Hardy ex rel. Hardy v. Beaufort County Bd. of Educ. (N. C. App., 685 S. E. 2d 550), November 17, 2009.

Given that high school students admitted their involvement in an altercation that led to their long-term suspensions, students **could not prove** that the school board's due process procedures violated their due process rights. Even if their due process rights were violated as alleged by the plaintiffs, *students admitted guilt, were provided ample opportunities to argue their case in administrative hearings* provided by both school officials and the district's board of education; thus, prejudice by the board could **not** be demonstrated.

"Issues as To Whether District's Employees Reasonably Suspected Child Abuse Barred Summary Judgment in Mother's Defamation Action"
Biondo v. Ossining Union Free School Dist. (N. Y. A. D. 2 Dept., 888 N. Y. S. 2d 75), October 13, 2009.

While visiting the defending school district's "Little School" classroom for two-year-old children, the coordinator of the program observed the plaintiff hit her son on his hand hard enough to leave a red mark when he threw a cookie during snack time. Soon thereafter, the coordinator reported the incident to the State's Child Protective Services. The plaintiff reported that she merely tapped her son's hand when he threw the cookie and told him softly, "Don't do that, it's not nice." Thereupon, the plaintiff brought action against the school district and two of its employees alleging negligence and defamation arising from the report of mother's alleged child abuse or mistreatment. The New York Supreme Court, Appellate Division, Second Department, held that **genuine issues of material fact existed** as to whether school district employees had *reasonable cause* to suspect possible child abuse or maltreatment of the child by his mother and if those defendants reported such alleged child abuse or maltreatment *in good faith*. Thus, summary judgment on behalf of the defending school district and employees was **precluding** *due to sufficient evidence presented* by the plaintiff in her negligence and defamation claim against defendants.

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Topics

"Principal's Sexual Display toward School Counselor Did Not Rise to the Level of Adverse Action under Title VII"
Steele v. Mayoral (Or. App., 220 P. 3d 761), November 4, 2009.

Plaintiff filed legal action against her principal and school district alleging sexual harassment, negligence, and retaliation. The plaintiff, a counselor in the high school in which the defendant served as her supervising principal began seeing each other during non-work activities which included going to dinner, seeing a movie, and shopping. According to the plaintiff, she explained to the defendant that she was interested in a social relationship and not a sexual relationship. However, on the night of March 4, 2002, the defendant allegedly physically and sexually assaulted the plaintiff at his home. Once school officials learned of the incident, the defendant was placed on paid administrative leave pending an investigation of the alleged incident. During the two months in which it took to complete the investigation, the plaintiff stated that she felt uncomfortable at work, perceived some conduct by her coworkers as retaliatory, and on one occasion found her office unlocked and the thermostat turned-up. In July 2002, after reading the written report of the investigation, the superintendent notified the defendant that she intended to recommend that the board terminate his employment with the school district. In the mean time, the plaintiff expected the defendant to fight his dismissal "vigorously" and return to his position as principal of the high school; thereupon, she resigned her position in July 2002. The defendant resigned the following month. The Court of Appeals of Oregon, held that plaintiff did **not** experience a materially adverse employment related action, as would support a retaliation claim under Title VII; furthermore, the school district **did** investigate and discipline her supervising principal.

"Evidence Supported Coach's Use of Corporal Punishment"
Nolan v. Memphis City Schools (C. A. 6 [Tenn.], 589 F. 3d 257), December 11, 2009.

Evidence was sufficient to show that a public high school basketball coach's use of corporal punishment against a basketball player was **not unreasonable or excessive** and therefore **would not support** assault and battery charges brought on behalf of the student against his coach. Testimony was presented that the coach paddled the player on several occasions because the student was referred to him by teachers based on misconduct during their classes, he paddled the youngster once or twice for a bad conduct grade on his report card, and paddled him occasionally for improper basketball technique when he perceived the improper techniques were the product of the player's not paying attention or horsing around during basketball practice. In addition, the plaintiff stated that he was *not* seriously injured from the "corporal punishment" that he received from his coach. In addition, the court went on to state that the corporal punishment that the plaintiff received was **not** conscience-shocking, disproportionate, or inspired by malice or sadism. **Note:** The plaintiff never complained to the high school principal or anybody else about being paddled; furthermore, he never sought medical treatment for physical injuries resulting from the "board of education being applied to the seat of learning".

"Fifth Grade Student Suspended for Writing 'Blow up the School with All the Teachers in It' During a Class Assignment"
Cuff ex rel. B. C. v. Valley Cent. School Dist. (C. A. 2 [N. Y.], 341 Fed. App. 692), July 21, 2009.

The United States Court of Appeals, Second Circuit, held that *allegations* by the parents of a ten-year-old student (5th grader) that their son's suspension from school for 6 days, for writing "blow up the school with all the teachers in it" on an in-class assignment, *violated* his First Amendment free speech rights **were sufficient to state a claim** under Section 1983 (pertains to a federal law which enables an individual to file suit for monitory damages when one's civil rights are violated). Furthermore, the court concluded that it was reasonable as a matter of law to ***not foresee*** a material and substantial disruption to the school environment. The student's apparent threat was made in crayon in direct response to an in-class assignment. In addition, the student did *not* show the assignment to any classmates and handed it directly to his teacher after completing the assignment. In addition, the student had *no* other disciplinary history that would suggest a violent tendency.

"Assistant Principal's Refusal to Engage in Professional Misconduct May <u>Not</u> Have Been Protected Speech"
Fierro v. City of New York (C. A. 2 [N. Y.], 341 Fed. App. 696), July 27, 2009.

Assistant principal brought state court action against city, city department of education, former principal, and several superintendents and deputy superintendents, alleging hostile work environment, sexual harassment, retaliation, and violations of free speech rights in violation of federal law and the city's human rights law. The plaintiff stated that he exercised his First Amendment rights as so associated with free speech when he refused to follow his supervising principal's order to submit false and damaging information (sabotage) about two classroom teachers at his assigned school. Furthermore, the plaintiff stated that his principal subsequently retaliated against him in violation of the First Amendment by creating a hostile work environment for him and by transferring him to a location with inferior working conditions. The United States Court of Appeals, Second Circuit, held that it was **<u>not</u> clearly established** that an assistant principal's refusal to abide by an alleged instruction to engage in misconduct *was protected speech* under the First Amendment of the United States Constitution. Therefore, the plaintiff's supervising principal **was entitled to qualified immunity** on the assistant principal's retaliation claim.

"School District's Expungement of Teacher's Employment File Rendered His Suit Moot"
Robinson v. Alief Independent School Dist. (Tex. App.-Hous. [14 Dist.], 298 S. W. 3d 321), August 25, 2009.

Plaintiff, a teacher with the defending school district during the 2004-2005 school year, contends that in the fall of 2004 he had a brief romantic relationship with a fellow female employee. In addition, the plaintiff claims that the female in which he had the romantic relationship and a male employee in the district's human resources department began a campaign against him in an effort to tarnish his reputation as an educator. In August 2005, he resigned his teaching position due to a stress-related medical disorder. Upon receiving the plaintiff's resignation, the school district expunged his employment records with the school district that had any reference to his alleged romantic relationship with a district employee along with any references or documents pertaining to other comments or statements by other school district employees. The Court of Appeals of Texas, Houston (14th District), held that the plaintiff's action against his former school district and it superintendent seeking injunctive relief to expunge portions of his employment file relating to controversy over which he resigned his position **was rendered moot** upon the district's decision to expunge portions of the plaintiff's employment file; accordingly, there was *no more action* that a court enjoin to satisfy the teacher's request in regard to expunging his employment records.

"Teacher Did Not Breach His Duty by Failing to Supervise Tardy Students Who Got Into an Altercation"
Medeiros v. Sitrin (R. I., 984 A. 2d 620), December 11, 2009.

High school marine occupations (e. g. boat building, painting, welding, and fisheries) teacher did **not** breach his duty to supervise students by failing to prevent an altercation between two tardy students that occurred in his marine occupations laboratory that adjoined his classroom, which resulted in the plaintiff fracturing his ankle. There was no evidence of a specific act or omission of the teacher that indicated that he deviated from proper standard of care or evidence pertaining to supervisory expectations of a teacher regarding tardy students. The teacher actively fulfilled his obligations when he took class attendance in his classroom and observed his student for any "signs" that would indicated that they would not be able to participate in class activities. On the other hand, while the teacher did not position himself to "maximize" his view of his lab, he still had a partial view of the lab; and he heard the "just seconds-long" altercation that occurred and immediately entered his lab to assist the injured student.

"Teacher Possesses Firearm at School"
Doe v. Medford School Dist. 549C (Or. App., 221 P. 3d 787), November 18, 2009.

Plaintiff's school district adopted a policy that prohibited their employees from possessing firearms on school district property or at school-sponsored events. Plaintiff, a classroom teacher, wished to carry a handgun while teaching and thereupon initiated legal action to challenge the lawfulness of the policy. The plaintiff was licensed to carry a concealed handgun and desired to carry her firearm with her at all times because she feared a violent confrontation with her former husband. The Court of Appeals of Oregon held that school district's policy of prohibiting school district employees from possessing firearms on school district property did **not** represent the sort of exercise of "authority to regulate" firearms that the state statute "preempted" (to take the place of or to supplant).

"School District Was Not Liable for the Alleged Sexual Molestation of a Kindergarten Student on a School Bus"
Andrew T. B. v. Brewster Cent. School Dist. (N. Y. A. D. 2 Dept., 889 N. Y. S. 2d 240), November 17, 2009.

The plaintiff's kindergarten age son was allegedly sexually molested by two second or third grade students while seated toward the rear of a school bus on his way home from school. The plaintiff commenced legal action to recover damages for personal injuries, alleging negligent supervision, training, and hiring. The Supreme Court of New York, Appellate Division, Second Department, held that the school district ***had neither actual nor constructive notice of any prior conduct similar to that claimed*** by the kindergartener who was allegedly sexually molested by two students while seated in a school bus on his way home after the end of the regular school day; thus, **precluding the imposition of liability** against the defending school district.

"Student Hit by a Vehicle after Smoking a Cigarette across the Street from Her School"
Dalton v. Memminger (N. Y. A. D. 4 Dept., 889 N. Y. S. 2d 785), November 13, 2009.

Prior to the start of the school day, plaintiff crossed the street in from of her high school to smoke a cigarette and upon attempting to cross-back over to her school was struck by a vehicle. The plaintiff claimed that school officials failed to properly supervise her and ensure her safety. By the way, this happen despite the fact that the school district provided a traffic light, crosswalk, and a crossing guard at an intersection within a very short distance from the spot where the plaintiff's injury. Supreme Court of New York, Appellate Division, Fourth Department, stated that the school's duty to its students **is coextensive with physical custody and control over them** and when a student is injured off school premises, a school district **cannot be held liable for breach of their duty** which *"generally"* extends only to the boundaries associated with school properties.

"Pedestrian Slipped and Fell on School's Sidewalk"
Gary Community School Corp. v. Roach-Walker (Ind., 917 N. E. 2d 1224), December 10, 2009.

On Saturday, February 5, 2005, plaintiff took her children to a middle school to attend enrichment classes that were being conducted by an independent nonprofit organization. As the plaintiff approached the entrance to the school, she slipped and fell on the walkway. A nearby witness described the area where the plaintiff slipped as "slick" and "wet looking". No evidence established that there had been any recent rain, snow, or sleet; however, there was testimony that there had been no precipitation that day or the night before the accident. The Supreme Court of Indiana held that the school district was **not** entitled to immunity from liability under Indiana's tort claims act ***absent*** any showing by the school district that the plaintiff's injuries from her slip and fall incident occurred as a result of a temporary weather condition and prior to the time in which the school was reasonably required to respond to the condition by clearing the sidewalk or otherwise remedying its slick surface.

"Youth Director of Summer Program Slipped and Fell on School's Restroom Floor"
Cotto v. Board of Educ. of City of New Haven (Conn., 984 A. 2d 58), December 15, 2009.

Youth director for the Latino Youth Development, Inc. that ran a summer program (The entity did not pay any rent or fees for the use of the facility.) at a public school brought negligence action against a board of education, superintendent, and the principal of the school at which the plaintiff slipped and fell on a wet bathroom floor. The Supreme Court of Connecticut held that all the defendants **had qualified immunity** from liability *because the risk of specific harm* to the director as a specific identifiable person *was not sufficiently immediate* because any person using the restroom could have slipped at any time.

"School Bus Driver Motioned For Motorist To Cross Intersection Which Resulted In A Fatal Accident"
Downing v. Kingsley (Kan. App., 221 P. 3d 115), December 24, 2009.

A school bus driver was traveling north and stopped at an intersection, while at almost the same time a vehicle was stopped at the same intersection facing east; thereupon the bus driver gestured with his hands for the motorist to cross the intersection so he could make a wide left turn with his school bus. Upon seeing the bus driver's gesture, the motorist proceeded across the intersection and collided with a second vehicle that was traveling north in the outside lane. The motorist in the second vehicle died as a result of the collision. The Court of Appeals of Kansas held that the school bus driver's hand gesture to motorist to proceed through the intersection *was **not** undertaking to render services* to another as necessary for the protection of a third person and provided **no** basis to impose liability on the bus driver for the resulting fatal accident.

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Topics

"Search of Student Was Reasonable"
State v. Best (N. J., 987 A. 2d 605), February 3, 2010.

The search by a high school assistant principal of a vehicle belonging to "first student" **was reasonably related in the scope of circumstances** that had justified assistant principal's search of the "first student's" outer clothing. The search of the "first student's" outer clothing occurred after the assistant principal had met with a "second student", who appeared to be under the influence of drugs and who indicated that "first student" had given him a green pill, which the "first student" denied any wrongdoing. The search of the "first student's" clothing revealed three white capsules in his pants pocket, but no green pills. Thereafter, the "first student" admitted that he sold a white pill for $5.00, claiming the pill was a nutritional supplement. Next, the assistant principal extended the search to the "first student's" locker, and, when that proved unproductive, to the "first student's" vehicle. **Note:** The search of the passenger compartment of the "first student's" car revealed a liquid-filled syringe, a fake cigarette with a hole in it that could be used as a pipe, a wallet, a bottle of pills, a bag of suspected marijuana, a bag containing a white powdery substance, and a vial.

"Fourteen Year-Old Runs Away With School Security Guard"
Kach v. Hose (C. A. 3 [Pa.], 589 F. 3d 626), December 23, 2009.

Plaintiff was a 14-year-old student at the time in which she became intimate with a privately-employed school security guard at her middle school, ran away with him, and spent approximately 10 years clandestinely living with him; brought civil action against security guard, law enforcement personnel, and others after she disclosed her true identify to a friend (when she was approximately 24 years of age) and was removed by law enforcement from the security guard's house. The United States Court of Appeals, Third Circuit, held that the plaintiff **failed** to present any evidence suggesting that the security guard's actions in engaging in a impermissible relationship with her were committed on anyone's initiative but his own or with anything other than his own interests in mind. Therefore, the security guard's actions could **not** be fairly treated as actions of the state, so as to establish the security guard's actions *as a state actor*. **Note:** While living with the security guard, the plaintiff did remain in his house much of the time; however, she walked around the neighborhood on foot, rode city buses around town, went shopping, and made frequent visits to convenience stores.

"Etching Cream, Aerosol Pain, Etc. Not Allowed On Public School Properties"
In re Miguel H. (Cal. App. 2 Dist., 103 Cal. Rptr. 3d 884), January 12, 2010.

Public high school **was a "public place"** within meaning of a state statute prohibiting the possession of etching cream or aerosol container of paint in a public place, even though public access to the school was limited to some degree by state statute. **Note:** High school student was accused of drawing graffiti on school property (e. g. restroom, glass casing, classroom table, folder in his backpack, and classroom chalkboard), along with the school assistant principal finding black shoe polish, white shoe polish, yellow spray paint, and etching tool in the student's backpack.

"Suspension of Student Did Not Violate Her Constitutional Rights"
Ariz. (D. Ariz., 664 F. Supp. 2d 1070), October 8, 2009.

Thirteen-year-old student was **not** denied due process in receiving two temporary school suspensions of less than ten days each for her alleged use of alcohol and marijuana on high school premises due to superintendent's alleged bias against her based on her mother's prior Equal Employment Opportunity Commission (EEOC) charge against him. There was **no** personal involvement or animosity by the district's superintendent, it was part of his job to maintain student discipline within the district's schools and investigate possible disciplinary violations. The student's short-term suspensions ***were clearly based*** on school policies that pertained to precluding the use and possession of prohibited substances on the district's school campuses.

"Officer Had Probable Cause to Arrest School Bus Driver for Assault"
Washington v. Blackmore (Conn. App., 986 A. 2d 356), February 2, 2010.

Town police officer **had probable cause** to arrest school bus driver. The officer arrived at a middle school in response to an emergency call (911) from a student on the bus stating that the bus driver had assaulted a passenger; furthermore, the officer observed on one of the passengers redness on his left cheek and a bleeding scratch in his mouth. In addition the school's principal informed the officer that students exiting the bus punched a student, and a school security guard at the school told the officer that a student had alleged that the bus driver had yelled and spit at the student and had hit and punched the student while on the bus. **Note:** The bus driver was found not guilty on all the charges that were filed against him; thereupon, he commenced legal action against the officer claiming false imprisonment, intentional infliction of emotional distress, negligent infliction of emotional distress, malicious prosecution, municipal liability, and violation of his constitutional rights (e. g. unreasonable seizure, equal protection, and due process)

"School Not Responsible for Student's Suicide"
King v. Pioneer Regional Educational Service Agency (Ga. App., 688 S. E. 2d 7), November 5, 2009.

Parents of student who committed suicide at school for children with emotional disorders filed action against school system and the Georgia State Department of Education (DOE). Defendants could **not** be held liable in regard to alleged inadequate policies, procedures, and training of staff for student's suicide while confined to a time-out room at a school for youngsters with emotional behavior disorders. Furthermore, there was **no** violation of the student's constitutional rights.

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Topics

"School Was Not Deliberately Indifferent Regarding Biracial Harassment of Student"
DT v. Somers Cent. School Dist. (C. A. 2 [N. Y.], 348 Fed. App. 697), October 15, 2009.

School's investigation of incident of alleged student-on-student racial harassment in the school's cafeteria that involved one student tapping a biracial student on his head while sitting with a group of students who regularly sat together at the same lunch table was **not** unreasonable in light of known circumstances. Therefore the school was **not** deliberately indifferent to race discrimination as so prohibited under Title VI of the Civil Rights Act of 1964. The teacher who was supervising the cafeteria at the time of the incident did *not* believe that the incident involved any malicious intent, and thereafter, kept an informal eye on the biracial student for the rest of the school year, who continued to eat lunch with the same group of student. Furthermore, school officials advised the mother of the student that she has a right to file a complaint regarding the incident.

"Public High School Was Public Property"
People v. Ojeda (Ill. App. 2 Dist., 921 N. E. 2d 490), December 31, 2009.

A student was convicted of aggravated battery for using his fist to strike a classmate in the face causing a cut and severe swelling. Due to the incident occurring on school property the incident was upgraded from battery to aggravated battery and the student appealed his conviction. The Appeals Court of Illinois held that the public funded high school constituted "public property" and as such met the requirement for the offender's conviction to be upgraded under Illinois' enhancement statute from battery to aggravated battery.

"Probable Cause Was Not Required for Principal's Search of Student"
State v. Burdette (Kan. App., 225 P. 3d 736), February 19, 2010.

Search of a student by a high school principal **was a school search** (based on reasonable suspicion), **not** a law enforcement search, even though two sheriff's deputies were present in the room at the time of the search, and thus probable cause was **not** required to support the search. The principal did **not** conduct the search at the request of the deputies; and the search was conducted after a teacher noticed the student acting strangely and reported such to a school guidance counselor. The deputies only became involved after overhearing the teacher's conversation with the counselor and the deputies did **not** initiate an investigation or search as so pertaining to the student. Furthermore, the deputies did **not** speak to the student prior to the search, and the principal, **not** the deputies told the student that he was required to empty his pockets. **Note:** The student's pockets contained money in a clip and two "little baggies of weed" (marijuana).

"City Ordinance Barring Sex Offenders from Entering Schools Was Not Vague"
People v. Conti (N. Y. City Ct., 895 N. Y. S. 2d 660), January 26, 2010.

City ordinance barring sex offenders from entering schools, child care facilities, playgrounds, and parks **was sufficiently definite** to put a person of ordinary intelligence on fair notice that term "school" meant both school buildings and school grounds; thus, ***satisfying*** a constitutional analysis so related to the vagueness test. The offender was charged with violating the ordinance based on his alleged conduct of walking on a paved pathway from the south end of a high school property near a baseball field and north toward the school's football field, while making stops along the way, including near the girls' restroom.

"Student's Suspension for Creating a Fake Internet Profile of His Principal Violated His First Amendment Rights"
Layshock ex rel. Layshock v. Hermitage School Dist. (C. A. 3 [Pa.], 593 F. 3d 249), December 10, 2010.

A school district's suspension of a 17-year-old high school student who created, while using his grandmother's home computer during non-school hours, a fake internet "unflattering profile" of his school's principal on "MySpace" **violated** the student's First Amendment right of free expression; even though the plaintiff accessed the profile from a school district own computer. There was **no** evidence that he engaged in any lewd or profane speech while in school and student's speech did **not** result in any substantial disruption of his high school.

"Student's Suspension for Creating a Profile of Her Principal Was Not Unconstitutional"
J. S. ex rel. Snyder v. Blue Mountain School Dist. (C. A. 3 [Pa.], 593 F. 3d 286), February 4, 2010.

Middle school's suspension of an eighth grader for creating a principal's internet profile on MySpace of her principal, containing a misappropriated photograph of him and profanity-laced statements insinuating that he was a sex addict and pedophile, did **not** interfere with her parent's substantive due process right to direct their youngster's upbringing free from governmental intervention. Furthermore, such suspension did **not** usurp the child's parents' disciplinary authority due to the fact that they also punished their child for creating the profile. **Note:** The internet profile was created on a Sunday by the plaintiff and her friend and disseminated to at least 22 other middle school students prior to the opening of school on Monday morning. The profile was distributed to the 22 aforementioned students at off-campus locations due to the MySpace being blocked at school.

"School District's Code of Conduct Pertaining to Prohibited Group Affiliations Was Unconstitutionally Vague"
Lopez v. Bay Shore Union Free School Dist. (E. D. N. Y., 668 F. Supp. 2d 406), November 9, 2009.

Hispanic high school student, whose suspension from school for allegedly making remarks related to a violent street gang, was reversed and expunged from his record by the New York State Commissioner of Education, brought action through his mother, against the school district, seeking damages pursuant to Fourteenth Amendment of the United States Constitution. A United States District Court in New York held that the school district's code of student conduct pertaining to group affiliations, which provided that any activity, affiliation, or communication in connection with non-school sanctioned clubs or groups, including fraternal organizations or gang, was prohibited; **was unconstitutionally vague under the 14th Amendment**.

"School District Lacked Control Over Elementary Teacher's Sexual Abuse of a Student"
Doe-2 v. McLean County Unit Dist. No. 5 Bd. of Directors (C. A. 7 [Ill.], 593 F. 3d 507), January 22, 2010.

From 2002 to 2005, Jon White was an elementary school teacher in McLean County and during such time he sexually harassed female students through methods that included hugging and holding student on his leg, having students massage him and wrap their legs around him, showing students sexually suggestive photographs, commenting on students' sexual attractiveness, and students playing a "taste test game" in which the teacher would blindfold students and then place various foods in their mouths using a banana, his hand, or his penis. In 2005, Jon White entered into an agreement to resign from the McLean County School District with a positive letter of recommendation. In August 2005, the Urbana School District hired White to teach second grade in one of its elementary schools. While teaching in Urbana from 2005 to 2007, he harassed several of his female students using similar methods to those in McLean County. The plaintiff, the mother of a student that the teacher sexually assaulted in the Urbana School District filed legal action against the McLean County School District for not sounding an alarm about the teacher's conduct and allowing him to simply resign and obtain a new teaching position in another school district. The United States Court of Appeals, Seventh Circuit, held that the McLean County School District **lacked requisite control over** the sexual abusive behavior committed by the teacher in the Urbana School District; thus, **precluding their liability**, even assuming the county school district had knowledge of the risk that the teacher would sexually abuse students in his new school district.

"School District <u>Not</u> Liable for Student's Assault as He Walked Home"
Pistolese v. William Floyd Union Free Dist. (N. Y. A. D. 2 Dept., 895 N. Y. S. 2d 125), January 19, 2010.

School district was **<u>not</u>** liable for injuries sustained by a student who was allegedly assaulted by other youths as he walked home from school, rather than ridding a school bus. The incident occurred at a time when the student was **<u>no</u>** longer in the district's custody **nor** under its control; therefore, ***outside of the orbit of its authority***. **<u>Note</u>:** The incident occurred in late June 2008, on the last day of school as the plaintiff walked home from school with friends rather than ride his assigned school bus.

"School Not Liable for a Student Who Was Shot With a BB gun on Negligent Security Theory"

Robinson v. Sacred Heart School (N. Y. A. D. 2 Dept., 895 N. Y. S. 2d 136), February 2, 2010.

School was **not** liable on a "negligent security theory" for injuries to an 11-year-old student allegedly sustained when he was shot with a "BB gun" by an unknown assailant as he was leaving a school building following an after-school basketball program. The school's principal testified that the school had doors with buzzers, an alarm system, and security cameras; and that he had instructed the basketball coaches that all doors had to be closed at the end of the school day, with access to the building only by buzzers, and that only students on the basketball team were permitted in the building during practice.

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Topics

"High School Student Sends a Fellow Student a Threatening Message"
D. C. v. R. R. (Cal. App. 2 Dist., 106 Cal. Rptr. 3d 399), March 15, 2010.

High school student and his parents brought hate crime, defamation, and intentional infliction of emotional distress against another student (both students attended a private educational institution) and his parents for posting derogatory comments on the plaintiff's website and threatening him with bodily harm. A California Court of Appeals, Second District, Division 1, held: (1) offending student, who posted message on victim's website stating that he wanted to rip his heart out and pound his head with an ice pick, did **not** establish under the objective standard test that his message was protected speech and (2) offending student who claimed he establish his website to promote his entertainment career was **not** a public figure or a limited public figure and therefore California's hate crimes laws were applicable.

"Student's Calling a Teacher a Bitch and Other Epithets Amounted to Fighting Words"
In re Nickolas S. (Ariz. App. Div. 1, 226 P. 3d 1038), March 2, 2010.

The first incident occurred on January 27, 2009, a teacher (B. B.) was monitoring an on-campus high school student suspension class in a classroom when she saw one of the students "texting" on his cell phone and told him to put it away. The juvenile refused to put the phone away and she directed him to bring the phone to her desk. He refused to bring the phone and the teacher told him that she was going to call security. The student told her, "Go ahead and call them if they think they can take it away." Thereupon, security arrived and removed both the phone and student from the classroom. The second incident occurred two days later when the same student entered the on-campus suspension classroom and demanded that he be sent to the "special needs student" classroom and he was told to sit down by the same teacher in the first incident until she secured approval from the school's administration. The student responded by getting out his cell phone and playing with it and he was told by the teacher to put it away. Thereupon, the student started yelling and calling the teacher all sorts of derogatory names. Due to his conduct the student was adjudicated a delinquent and he appealed his conviction. An appeals court in Arizona held that (1) Student's muttering the word "bitch" under his breath while not looking at the teacher after the teacher told him to hand over his cell phone did ***not*** amount to fighting words in order to demonstrate abuse of a teacher and (2) student's conduct in calling a teacher a "bitch", shouting "this is fucking bull shit", and "you're a fucking bitch" in a challenging manner approximately 10 to 12 feet from the teacher **amounted to fighting words as required in order to adjudicate the student as a delinquent for the abuse of a teacher**.

"Evidence Supported Finding That Teacher Did Engage in Sexual Misconduct in Student's Presence"

Moro v. Mills (N. Y. A. D. 3 Dept., 896 N. Y. S. 2d 493), February 25, 2010.

Substantial evidence supported Commissioner of Education's determination that teacher (taught band and marching band in grades 7 – 12) **had engaged in sexual misconduct** in the presence of a 14-year-old female student; thus, warranting revocation of his teaching certificate. Female student was the sole eye-witness to the incident; however, she was able to provide a very detailed description of the incident. In addition, her testimony was supported by additional evidence and the teacher's conflicting testimony was inconsistent and contradicted by other testimony.

"School Administrators Failed to Take Action Regarding Teacher's Sexual Abuse of First Grade Female Students"

Doe 20 v. Board of Educ. of Community Unit School Dist. No. 5 (C. D. Ill., 680 F. Supp. 2d 957), January 11, 2010.

Parents of elementary school students brought action against teacher, school district, county, and school administrators, alleging sexual harassment, sexual discrimination, and sexual abuse of female first grade students, in violation of the Fourth Amendment of the United States Constitution, Title IX, Section 1983, and Illinois law. The United States District Court, C. D. Illinois, held that: (1) Teacher had explicit and implied authority to control, direct, and restrain the movement of his students that are under his control, but he **exceeded his authority** when he unlawfully seized and detained students, deprived them of their liberty of movement, and blindfolded them under forced commitment to silence. Furthermore, the teacher used illegal and unreasonable force when, without consent, he inserted his fingers, objects, and other items in students' mouths, and otherwise came into contact with them while they were isolated in his classroom; thus, **violating their Fourth Amendment rights**. (2) Parents of the victims notified the school administration of the abuse of their children by their youngsters' teacher and the administration **failed** to take action regarding the teacher's conduct; thus, **a Fourth Amendment claim is so stated against** the school administrators. (3) The school administrators were **not** entitled to qualified immunity from Fourth Amendment claims alleged by parents of elementary school students that the school's administration **were personally aware of and turned a blind eye to known, obvious, and substantial risk of sexual abuse** that teacher posed to first grade female students; thus, violating their Fourth Amendment rights, Title IX, and Illinois law.

"Banning the Confederate Flag Clothing Was Reasonable"
Hardwick ex rel. Hardwick v. Heyward (D. S. C., 674 F. Supp. 2d 725), September 8, 2009.

School district and high school officials **had a reasonable basis** for determining that a ban on Confederate flag clothing was necessary to prevent disruption or interference with school activities. Thus, school officials did **not** violate the middle school student's First Amendment free speech rights by prohibiting her from wearing clothing (t-shirts) that displayed images of the Confederate flag. This was despite the student's contentions that incidents of racial conflict were too remote to support the ban, and that no disruption occurred while she wore the flag. The school had a long history of racial conflict and the testimony of both students and school administrators demonstrated that tension existed between black and white students during the time in which the plaintiff attended the school, including at least one classroom disruption. In addition, several more racially motivated incidents has occurred sine the plaintiff left school.

"Probable Cause Existed to Arrest Student"
Fitzpatrick v. City of Ft. Wayne (N. D. Ind., 679 F. Supp. 2d 947), December 22, 2009.

Father, whose juvenile son was arrested for allegedly attacking another student at a middle school, brought suit against city and police officer for false arrest and imprisonment. A United States District Court, N.D. Indiana, Forth Wayne Division, held that (1) In determining whether probable cause existed to arrest a juvenile for his alleged assault of another student in a school bathroom, police officer **could consider the fact** that the juvenile was seen on video tape recorded on a security camera fleeing the scene of the beating, as well as the officer's **knowledge that the juvenile returned to class without reporting the incident, but whether the juvenile provided aid to the victim was not part of the probable cause analysis** and (2) the fact that the juvenile was identified and reported to have fled the scene of a crime **is part of the "trustworthy information"** a prudent police officer **is entitled to consider** when determining if probable cause exists to arrest an individual.

"Principal Can Be Held Liable for Music Teacher's Sexual Abuse of Elementary Students"
T. E. v. Grindle (C. A. 7 [Ill.], 599 F. 3d 583), March 17, 2010.

Student victims of music teacher's sexual abuse, and their parents, brought Section 1983 action against teacher, school district, and individual school officials, alleging violations of the Fourth Amendment, substantive due process (14th Amendment of the United States Constitution), equal protection (14th Amendment of the United States Constitution), Title IX, and state law claims for intentional infliction of emotional distress. The United States Court of Appeals, Seventh Circuit, held that an elementary school principal **could be held liable**, as a supervisor, for participating in or deliberately turning a blind eye to music teacher's sexual abuse of students in violation of their equal protection rights, which **were clearly established** at the time of the teacher's abusive conduct. Thus, the principal could **not** claim qualified immunity from plaintiff's equal protection and other such claims.

"Evidence Supported Conviction for Underage Consumption of Alcohol"
State v. Hoe (Hawaii App., 226 P. 3d 517), February 25, 2010.

Circumstantial evidence **was sufficient to support** conviction for under-age consumption of liquor, although there was no direct testimony that a witness saw the student consume liquor or a blood alcohol content reading. The high school principal and vice-principal both testified that they smelled alcohol emanating from the student from a distance of about two feet and ranked the smell as probably an eight on a ten-point scale. The police officer who was called by the school administration to secure the student stated that he smelled alcohol on the student's breath and possibly from his pores. In addition, he also observed the youngster engaging in behavior that demonstrated that he had recently consumed alcohol, including his unsteadiness on his feet, his belligerent and defiant behavior, which was out-of character for the student. In addition, the student attempted to prevent the officer from obtaining a reading (preliminary breath test – PBT) on the defendant's blood-alcohol content.

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Topics

"Student's Website – Ms. Sarah Phelps is the Worst Teacher I've ever met"
Evans v. Bayer (S. D. Fla., 684 F. Supp. 2d 1365), February 12, 2010.

High school senior's protected speech right in the creation of a group social networking site ("Ms. Sarah Phelps is the Worst Teacher I've Ever Met") expressing a dislike for a high school teacher **was clearly established** for the student's Section 1983 action against her high school principal that alleged her suspension from school for the creation of the website violated her First and Fourteenth Amendments of the United States Constitution rights. The website **was an opinion of a student** about a teacher; **was published off-campus**; **was <u>not</u> accessed and did <u>not</u> cause any disruption on-campus; and was <u>not</u> lewd, vulgar, threatening, or advocating illegal or dangerous behavior**. The student posted the following on her website: "Ms. Sarah Phelps is the worst teacher I've ever met! To those students who have had the displeasure of having Ms. Sarah Phelps, or simply knowing her and her insane antics: Here is the place to express your feelings of hatred."

"Requiring Student to Leave Backpack in Classroom Subject to a Dog Sniff Was Reasonable"
In re D. H. (Tex. App. Austin, 306 S. W. 3d 955), March 5, 2010.

Police officers with the assistance of an assistant principal conducted an inspection of a number of his high school's classrooms for drugs. Upon entrance to each classroom the assistant principal instructed students to leave their property in the classroom and wait in the school's corridor; thereupon, law enforcement personnel and their dog were allowed to sniff the items left in each of the classrooms. When the dog sniffed the plaintiff's backpack, the dog alerted. The officers called the plaintiff into the classroom, read the plaintiff her rights, searched her backpack, and found a small bag of marijuana; she was adjudicated a delinquent by a district court. The Court of Appeals of Texas held: (1) **The Fourth Amendment requires only that searches and seizures by school officials be reasonable**; the public school context requires a relaxed standard of reasonableness because insisting on a search warrant requirement **would unduly interfere with the maintenance of swift and informal disciplinary procedures** that are necessary in a school setting. Furthermore, strict adherence to the requirement that searches within a school environment be based on "probable cause" **would undercut** the substantial need for school officials to maintain discipline and order in their schools. (2) Even assuming that a seizure occurred when the plaintiff, along with her classmates, were asked to leave her backpack in her classroom while she waited outside of the classroom as a police dog sniff was conducted, the school's actions **were both reasonable and constitutionally permissible**. The school's actions implicated *a relatively minor privacy inter*est in that the backpack was **<u>not</u>** opened until after the dog alerted to the drugs contained in the plaintiff's backpack. The dog sniffed only belongings, **<u>not</u>** people, and did so *outside the presence of students*. Furthermore, in light of the school's drug problem, the action by school and law enforcement officials **served an important governmental interest in protecting students' safety and health**.

"Student in High School Nursing School Class Striped Searched"
Knisley v. Pike County Joint Vocational School Dist. (C. A. 6, 604 F. 3d 977), May 14, 2010.

Eleven plaintiffs stated that they and every other student in their high school nursing class were striped searched after a student in their nursing class reported that a credit card and other items were missing. The United States Court of Appeals, Sixth Circuit, held that school officials violated student's constitutional rights under the Fourth Amendment of the United States Constitution and thus, they were **not** entitled to qualified immunity due to their unconstitutional strip search of their students.

"High School Principal Could Not Be Liable for Teacher's Sexual Harassment of Student"
Doe v. School Bd. Of Broward County, Fla. (C. A. 11 [Fla.], 604 F. 3d 1248), April 28, 2010.

Plaintiff was sexually assaulted by her high school math teacher in his classroom. Prior to the plaintiff's sexual assault there had been two other complaints of sexual harassment and misconduct by the offending teacher. The principal of the high school conducted an informal on-site investigation of the two previous alleged misconduct charges against the teacher and turned the investigations over to the school district's Special Investigative Unit ("SIU"). A formal investigation was completed by this investigative unit. The SIU determined that the evidence was inconclusive. The United States Court of Appeals, Eleventh Circuit, held that the principal could **not** be held individually liable for the teacher's sexual assault of the plaintiff where he did *not* personally participate in the teacher's sexual assault and he was **not** on notice of the history of the teacher's widespread abuse of female students. There was **no** basis for claiming that the two prior complaints against the teacher rose to the level of sexual harassment which could be considered obvious, flagrant, rampant, and of a continued duration.

"Teacher's DUI Conviction Supported Suspension of Teaching Credential"
Broney v. California Com. on Teacher Credentialing (Cal. App. 3 Dist., 108 Cal. Rptr. 3d 832), May 6, 2010.

The evidence supported the trial court's finding that teacher's conduct in being convicted for a third time for driving under the influence (DUI) was **not** remote in time; thus, denying the plaintiff's petition challenging the California Commission on Teacher Credentialing's suspension of her teaching license for unprofessional conduct. The elementary school teacher was convicted in 1987 at the age of 21 of one count of driving under the influence. In 1997 she was again convicted of driving under the influence with a blood-alcohol content of .08 percent or greater. On November 4, 2001, at approximately 1:50 a.m. she was arrested on suspicion of driving under the influence and failed all of the field sobriety tests given her by the arresting officer.

"Student Stated Procedural Due Process and Equal Protection Claims Based On Racially Disparate Discipline"

Heyne v. Metropolitan Nashville Public Schools (M. D. Tenn., 686 F. Supp. 2d 724), November 3, 2009.

White high school student who was subjected to a ten-day suspension for driving over a black student's foot **stated a plausible claim for the violation of his right to equal protection** (14th Amendment), where he alleged he was intentionally discriminated against because of his race, in that school officials had been instructed to "be more lenient in enforcing the school's student codes of conduct against black students because there were too many black students serving in in-school suspension." Furthermore, the plaintiff **contended** that the disciplinary action taken against him **was escalated to give an appearance of being sufficiently strict with white students and to improperly appease real or anticipated claims of racial bias** by parents of minority student. **Note:** Student got into his car after football practice and started moving slowing toward the exit of the school's parking lot when either because the student misjudged the clearance available or because the injured student shifted his foot forward at the last instant; the left front tire of the student's car made contact with the injured student's foot; which caused no serious harm. As soon as the student realized what happened he backed-up, jumped out of his car, apologized and attempted to make sure the student was not hurt. Thereupon, the injured student threatened to kill the student as he was attempting to apologize for the unintended accident.

"Insufficient Evidence Supported Student's Expulsion for Possession of Alcohol"

A.B E. v. School Bd. Of Brevard County (Fla. App. 5 Dist., 33 So. 3d 795), April 23, 2010.

Insufficient evidence supported school board's finding that student was subject to expulsion for possessing or being under the influence of alcohol while at school. The student had consumed alcohol at home approximately 45 minutes prior to the beginning of the school day; however, there was **no** evidence that the student was under the influence of alcohol while at school on the day the incident in which the student behaved in an impaired manner. Furthermore, school officials did **not** demonstrate sufficient evidence that the student's conduct actually disrupted the school's educational setting. **Note:** The incident involving the plaintiff occurred during the first period of the school day in which the assistant principal and a school nurse responded to all call in which they found the plaintiff, a middle school student, sitting on the floor outside of her assigned classroom with vomit all over her. The student and a classmate, who had spent the night with her, took an alcoholic beverage from the plaintiff's parents beverage cabinet and poured a little in two cups, along with some coke. Afterward, both girls drank some, but poured most of it out due to their dislike of the alcoholic beverage. In fact the plaintiff stated, "It was a horrible decision and I probably messed up my life, but I'm sorry."

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Topics

"History Teacher Showed Students Pictures of Naked and Dismembered Women In His Classroom"

Young v. Pleasant Valley School Dist. (M. D. Pa., 267 F. R. D. 163), April 12, 2010.

Student and her parents brought action against defendants (school district, school board, principal, and teacher) alleging that the plaintiff's high school history teacher created a sexually hostile environment in his classroom by showing students sexually explicit material and that the principal of the school retaliated against the plaintiff for complaining about the her teacher showing the materials during class. The United States District Court, M. D. Pennsylvania, held that pictures of naked and dismembered women **were relevant** to the issue as to whether a history teacher created a hostile environment in his classroom by showing students purportedly sexually explicit material. Accordingly, the pictures **were admissible** in plaintiff's suit against defendants so as pertaining to the creation of a sexually hostile environment and retaliation.

"Frisk Search of Student by Officer Was Reasonable"

In re D. L. D. (N. C. App., 694 S. E. 2d 395), April 20, 2010.

Officer's frisk search of a high school student in a school restroom **was <u>not</u> unnecessarily intrusive** in light of the juvenile's age, gender, and the nature of his behavior; therefore, the search **was reasonable**. Student's behavior, which included exiting the school's male restroom where other students had been arrested for drug offenses, observing the assistant principal and the officer in the corridor, turning and running back into the restroom, and placing an item inside his pants, provided ample suspicion to search the student. The officer frisked the student around his waistband and found a container which had three bags of marijuana.

"Anonymous Tip Did <u>Not</u> Give Rise to Reasonable Suspicion to Justify Warrantless Search of Student"

People v. Perreault (Mich. App., 782 N. W. 2d 526), January 10, 2010.

Anonymous tip by liaison police officer for a high school did **<u>not</u>** give rise to reasonable suspicion necessary to justify a warrantless search of a high school student's vehicle parked on school premises without the student's consent. The search was conduct by the officer and the school's assistant principal and was based on an anonymous tip that contained very little information about the alleged offender, including whether or not the informant had actually witnessed the alleged drug trafficking or was relaying information heard secondhand.

"Evidence Supported Delinquency Adjudication Based on Possession with the Intent to Distribute Marijuana on Campus"
In re T. M. (Ga. App., 693 S. E. 2d 574), April 1, 2010.

Sufficient evidence **existed to support** juvenile delinquency adjudication based on the possession with the intent to distribute marijuana on school property. The 16-year-old juvenile, who was a student at the school, denied giving the marijuana to a second student and testified that the second student actually attempted to pass the marijuana to him just before the school's campus security supervisor observed the plaintiff. **Evidence indicated** that the security supervisor was patrolling the school's parking lot shortly after the regular school day had been dismissed and observed the plaintiff approach the second student in the school's parking lot and hand the second student something, which turned-out to be a plastic bag containing marijuana.

"Elementary Student Suspended For a Bag Containing a White Substance"
Anthony v. School Bd. of Iberia Parish (W. D. La., 692 F. Supp. 2d 612), February 5, 2010.

An elementary school student's substantive due process rights **were <u>not</u> violated** due to the fact that he was suspended from school for disturbing his school's instructional environment in connection with his bringing a clear plastic bag containing a "white powdery" substance to school and allowing other students to handle and taste the substance. There **was a rational basis** for the student's suspension, namely, *protecting against the threat of illegal drugs and furthering the school's interest in providing a save and secure school environment that is free from disruption*. Furthermore, school officials **had sufficient and substantial evidence** that the student had been involved in ***drug-related role playing*** with other students within the school.

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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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