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Legal Update for District School Administrators
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Johnny R. Purvis*

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

The **Legal Update for District School Administrators** is a monthly update of selected significant court cases pertaining to school administration. It is written by *Johnny R. Purvis for the **Safe, Orderly, and Productive School 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:

- Abuse and Harassment
- Civil Rights
- Labor and Employment
- Religion
- Torts

Topics

Abuse and Harassment:

"School District and Employees had No Duty to Report Suspected Child Abuse"
Diana G-D ex rel. Ann D. v. Bedford Cent. School Dist. (N.Y.Sup., 932 N.Y.S. 2d 316), October 21, 2011.

Mother of a child who had been sexually abused by the mother's former boyfriend sued the school district, former elementary school principal, and former school psychologist, alleging that defendants were negligent in failing to report the suspected abuse as required by state law. There are *two triggers* for mandatory reporting child abuse: (1) when a designated mandated reporter has reasonable cause to believe that a child coming before such a mandated reporter is being abused and (2) when the abuse is reported by a parent, guardian, or a person in charge of a minor who has knowledge of the abuse. The Supreme Court of Westchester County, New York, held that the child (3rd grader) did **not** provide defendants with the facts which gave them "reasonable cause" to suspect that she was being sexually abused, as so required to trigger New York's statute mandatory reporting requirements.

Civil Rights:

"Failure to Transfer Autistic Student Who Injured a Teacher Did Not Violate Teacher's Due Process Rights"
Jackson v. Indiana Prairie School Dist. 204 (C.A.7 [Ill.], 653 F. 3d 647), August 11, 2011.

School District's failure to transfer a nine-year-old autistic student from general education classrooms did **not** shock the conscience, and therefore, did **not** violate the substantive due process rights of a special education support teacher who was injured by the student. The student was prone to frequent and unpredictable violent outbursts, many of the outbursts were directed at the student himself and not toward other individuals. Reports did not indicate that the school faculty and staff feared harm from the student and prior the incident the student had been demonstrating a trend away form both physical and verbal outbursts. Note: The student had a long and extensive history of both physical and verbal aggressive behaviors against other students and teachers which included verbal outbursts, hitting, scratching, throwing objects, and so forth. In this particular case the student picked up a chair and attempted to hit the plaintiff. The teacher grabbed the legs of the chair in an attempt to protect herself, fell backward, and hit her head on the ledge of a chalkboard.

“”Mother Had No Fundamental Liberty Interest in Contacting Her Children at Their School”

Schmidt v. Des Moines Public Schools (C.A.8 [Iowa], 655 F. 3d 811), September 14, 2011.

Nonresident mother, who had joint legal custody of her three minor children, had no fundamental liberty interest in contacting her children at their schools; as required to support her claim that her substantive due process rights were violated. School officials restricted her access to her children during school hours on a visit to the children's resident state in which their father had primary physical custody. The divorce decrees restricted the mother's visitation with the children to a specific schedule and allowed her to exercise her visitation outside of that schedule *only* with her ex-husband's permission.

“Students playing in a School's Playground with a Cement-like Surface Did Not Violate Student's Due Process Rights under State's Created Danger Doctrine”

Goss ex rel. Goss v. Alloway Tp. School (D.N.J., 790 F. Supp. 2d 221), February 7, 2011.

Public school district's alleged policy of allowing students to play on a playground with a cement-like surface without proper supervision and its alleged failure to do anything to make the playground safer after students were injured from falling on the cement-like surface prior to the plaintiff's child's injury did **not** violate plaintiff-student's due process rights as so related to the Fourteenth Amendment. School officials did **not** create a dangerous condition and did **not** perform any function that was conscience-shocking conduct.

Labor and Employment:

“Teacher Asked 18-Year-Old Female Student to Go Out With Him”

Gongora v. New York City Dept. of Educ. (N.Y. Sup., 930 N.Y.S. 2d 757), November 23, 2010.

A tenured high school bilingual teacher telephoned an 18-year-old student who had completed all her requirements for high school graduation, but had not formally graduated from high school, at her home to inform her that she had passed her Regents Examination. The teacher's rationale for calling the student at her home to let her know that she did pass the Regents Examination was because of her concern that she would not pass the test due to her past struggles with English. During the conversation, the teacher asked the student to “go out” with him, but claimed he did so in a joking manner. The Supreme Court of New York County, stated that the teacher's single inquiry asking an 18-year-old to “go out” with him did **not** constitute soliciting a sexual relationship, serious or repeated verbal abuse of a sexual nature, requests for sexual favors, or other verbal or physical conduct of a sexual nature that warranted discharge from his teaching position. There was **no** evidence that the teacher intended “going out” to be of a sexual nature or to suggest a sexual encounter. Furthermore, **no** evidence indicated that the teacher's remark threatened to cause physical harm, mental distress, belittle, or ridicule the student.

Religion:

"Prayer at the Opening of School Board Meeting Fostered Excessive Government Entanglement in Religion"
Doe v. Indian School Dist. (C.A.3[Del.], 653 F. 3d 256), August 5, 2011.

School board policy regarding prayer at school board meetings **fostered excessive government entanglement in religion** since the board's prayers were not spontaneous, but were a formal part of the board's activities. The prayers were recited in official meetings that were **completely controlled by the state and the board composed and recited the prayers**. Although board members had flexibility in deciding what prayers to say, **they were government actors** composing and delivering prayers that **mostly referred to one particular religion**.

"Teacher Protected by Qualified Immunity from Liability for Discussing the Teaching of Creationism"
C. F. ex rel. Farnan v. Capistrano Unified School Dist. (C.A. 9 [Cal.], 654 F. 3d 975), August 19, 2011.

High school student brought suit against school district and his high school Advanced Placement European History class, alleging that the teacher violated his rights under the Establishment Clause of the First Amendment for making comments during class that were hostile to religion in general, and to Christianity in particular. The United States Court of Appeals, Ninth Circuit, held that high school teacher **was entitled to the protection of qualified immunity** under the Establishment Clause of the First Amendment for allegedly expressing hostility toward religion in discussing the teaching of creationism in the context of a classroom discussion in an advanced history course. The law was not clearly established at the time of the events and *there has never been any reported* case holding that a teacher violated the Establishment Clause by making statements in the classroom that were allegedly hostile toward religion. Note: The teacher's pedagogy is intentionally provocative in order to elicit responses from his students and to help them develop critical thinking skills. Furthermore, he encourages his students to disagree with him and to express a rational perspective for their disagreements and/or agreements.

Torts:

"School District Not Liable for Failure to Supervise Students Who Attacked another Student"
Buchholz v. Patchogue-Medford School Dist. (N.Y.A.D. 2 Dept., 931 N.Y.S. 2d 113), October 18, 2011.

School district did not have actual or constructive knowledge of dangerous conduct by two students who attacked another student in a school corridor. School officials could not have reasonably foreseen the attack and therefore would not support the foreseeability of such an attack and *negating* the plaintiff's negligent supervision claim. The student's assailants had never previously been involved in any violent altercations and none of their disciplinary infractions previously committed by the students involved violent conduct.

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

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

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