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Legal Update for District School Administrators
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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
- Extracurricular activities
- Free Speech
- Labor and Employment
- Police Interrogation
- Religion
- Security

Topics

Abuse and Harassment:

"Physical Education Teacher Failed to Demonstrate that School District Violated the Americans with Disability Act"
Larkin v. Methacton School Dist. (E.D. Pa., 773 F. Supp. 2d 508), February 23, 2011.

Plaintiff was hired November 2000 as a physical-education and health teacher at Methacton High School and on March 2007 she told school officials that she was an alcoholic. On February 8, 2008, she arrived at school drunk and thereupon drank a full bottle of cough syrup; her blood-alcohol level was 0.266, more than three times the legal driving limit. After the incident, she was suspended with pay for four days and during this time she checked herself into a treatment center for alcoholism. On March 12, 2008, the plaintiff requested a transfer to another school within the school district. Soon thereafter, an opening for a physical-education and health teacher became available at an elementary school. Another person was hired for the job and the plaintiff was therefore denied a transfer to the position. In addition, she was denied additional transfers for a number of reasons, including an unsatisfactory evaluation by her high school principal; however, she was eventually granted a FMLA leave of absence. The plaintiff eventually filed suit against the school district alleging discrimination and retaliation in violation of the Americans with Disability Act (ADA). A United States District Court, E. D. Pennsylvania, held that (1) the teacher was not disabled under ADA, (2) school district did not retaliate against the teacher, and (3) the teacher **failed** to demonstrate the districts non-discriminatory reasons for adverse employment action were pretext for retaliation.

Extra Curricular Activities:

"School District's Drug Testing Policy Did Not Violate Fourth Amendment"
Hageman v. Goshen County School Dist. No. 1 (Wyo., 256 P. 3d 487), June 6, 2011.

Students and their parents and guardians, who filed action seeking to have the district's policy requiring all students in grades 7 through 12 who participated in extracurricular activities to consent to random testing for alcohol and drugs declared unconstitutional, **failed** to demonstrate that the policy subjected students to searches that were unreasonable. Thus, the policy did not violate the Fourth Amendment of the United States Constitution, and furthermore, the **intent** of the policy was to further the district's interest in deterring drug and alcohol use among its students.

Free Speech:

"Cartoon Student Sought to Place in School Newspaper was Lewd"
R. O. ex rel. Ochshorn v. Ithaca City School Dist. (C.A. 2 [N.Y.], 645 F. 3d 533), May 18, 2011.

School administrators' prohibiting the appearance of a cartoon depicting stick figures in various sexual positions in high school newspaper **was reasonably related to legitimate pedagogical concerns**, and therefore, did **not** violate the First Amendment speech rights of students who wrote and edited the school's newspaper. During and prior to the time in which the students sought to publish the cartoon, the school's administration became aware that an increasing number of their students were engaging in "risky sexual" behaviors. Furthermore, the school's administration had written letters to parents informing them of their concerns. In addition, the administration felt that publishing the cartoon made light of sexual relations and both mocked and made fun of the school's health education program

Labor and Employment:

"Rationale for Selecting another Applicant for a Principal's Position was Legitimate and Nondiscriminatory"
Wolf v. New York City Dept. of Educ. (C.A. 2 [N.Y.], 421 Fed. App. 8), April 21, 2011.

After Caucasian plaintiff was not appointed the principal of a public school, she filed suit against defendant and superintendent under Title VII and the New York State Human Rights Law (SHRL), alleging discrimination on basis of her ethnic and racial background. The United States Court of Appeals, Second Circuit, held that the rationale for the selection of another applicant for the open principal position was legitimate and nondiscriminatory. Note: One of the reasons that the plaintiff filed the suit was due to the superintendent's commenting that "it was time for a minority to serve as principal."

Police Interrogation:

"Juvenile was "In Custody" for Miranda Purposes at the Time of His Initial Interview with Law Enforcement"
Kalmakoff v. State (Alaska, 257 P. 3d 108), July 29, 2011.

Note: This case pertained to a 15-year-old juvenile who was convicted as an adult for raping and murdering his 27-year-old cousin in a small village in Alaska that contained a population of less than 100 people. The young lady's nude body revealed that she had been shot twice in her head and had injuries consistent with sexual penetration just prior to her death. A jury convicted the plaintiff of both raping and murdering his cousin and shortly thereafter the plaintiff appealed his conviction on the grounds that his constitutional rights were violated as so stated in Miranda v. Arizona, 384 U.S. 436 (1966). The Supreme Court of Alaska reversed and remanded the case for a new trial based on the following: The juvenile **was "in custody"** for Miranda purposes at the time of his initial interview with law enforcement officers. The juvenile was removed from school and transported to be interviewed in an officer's official issued vehicle and juvenile **likely believed** that he was to go with the officer for the interview. The interviewing officers were visibly armed and they did not tell the juvenile that he was free to leave or that he did not have to answer their questions. Furthermore, one of the officers repeatedly emphasized that the juvenile *needed* to tell them the truth.

Religion:

"Giving Public School Students Credit for Off-Campus Religious Instruction was Not Excessive Entanglement with Religion"
Moss v. Spartanburg County School Dist. No. 7 (D.S.C., 775 F. Supp. 2d 858), April 5, 2011.

Public school district's policy (South Carolina) of conferring "elective Carnegie credits" for released time religious instruction to high school students for off-campus religious instruction from accredited schools did **not** foster excessive entanglement with religion, so as to violate the Establishment Clause of the First Amendment. The power to issue academic grades was *not* a power reserved exclusively to governmental bodies, especially from accredited schools. The school district's policy *was designed to disentangle* the school district from having to review the religious content and the instructional program itself. In fact, the policy was cast in *neutral terms* which allowed the school district's students to petition for release time for religious instruction regardless of any specific religion or denomination.

Security:

"SRO was Acting as a School Official When He Searched Student's Locked Backpack"
State v. J.M. (Wash. App. Div. 1, 255 P. 3d 828), May 23, 2011.

High school student agreed to adjudication on the stipulated facts, and he was found guilty of possessing a dangerous weapon at school and the possession of less than 40 grams of marijuana. The juvenile appealed the ruling to the Court of Appeals of Washington, Division 1. The court held that the police officer on duty as a school resource officer (SRO) **was acting** as a school official when he conducted a warrantless search of the student's locked backpack on school grounds. The officer **needed only reasonable grounds for the search**, officer **was on duty as an SRO**, and **acting under his authority as an SRO** when he personally observed the activity that formed the basis for the search. Because the officer's primary duties as a SRO were to maintain a safe, secure, and orderly learning environment, **it was reasonable to infer** that his chief duty was **not** the discovery and prevention of a crime. Note: The officer observed the student standing at a sink in one of the school's restrooms, holding what appeared to be a baggie of marijuana and a medicine vial. Along with the discovery of the marijuana the officer also found an air pistol inside the student's locked backpack.

"Kindergartner Inappropriately Touches another Kindergartner on Her Butt"
Turner v. Nelson (Ky., 342 S.W. 3d 866), June 16, 2011.

Mandatory child abuse reporting requirement did **not** apply to require kindergarten teacher to report an alleged sexual abuse of one female kindergarten student by another female kindergarten student. Furthermore, Kentucky's mandatory reporting requirement did **not** apply when a child inappropriately touched another child unless a parent/guardian, or other person exercising custodian control or supervision, allowed such inappropriate touching to be committed or created or allowed such a risk of abuse. Upon learning of the incident (one student touched the other student's butt), the teacher forbade them from being together during school hours and, thus, the teacher did not allow the touching or create or allowed a risk to be created.

"School Security Guard Had Reasonable Suspicion to Make an Investigatory Stop of a Student Due to a Tip That He Previously had a Gun on School Property"
M. D. v. State (Fla. App. 1 Dist., 65 So. 3d 563), June 28, 2011.

Defendant (student) was convicted in the Circuit Court, Duval County, (Florida) of possessing a gun on school grounds. The student appealed. A Florida district court of appeals held that the search of the student by a school security guard, while under the supervision of a SRO, was **not** unreasonable. The student was brought to the school's security office to investigate a report that he had possessed a firearm on school property sometimes during the past 3 months. It was standard procedure for all students who were brought into the school's security office to be searched. Furthermore, it **was reasonable** to investigate the tip by separating the student from the general school population by taking him into a rather secure area of the school; otherwise, any other course of action would have subjected the school population to possible harm. Therefore, bringing the student into the school's security office **was the least restrictive means** to maintain safety. **Note:** The student did have a handgun in his possession at the time of the search.

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

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

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