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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

"Teacher Failed to Establish Emotional Stress Due to E-Mails"
Juzwiak v. Doe (N. J. Super. A.D., 2 A. 3d 428), August 3, 2010.

High school teacher, who received harassing e-mails, filed a complaint seeking damages for the intentional infliction of emotional distress (e.g. depression, anxiety, and insomnia) and harassment. Due to the fact that the plaintiff did not know the identity of the author ("subscriber") of the e-mails, the plaintiff named the defendant as "John/Jane Doe" and served a subpoena on the internet service provided listed on the e-mails to provide him with the author's identity. The Superior Court of New Jersey, Appellate Division held that the teacher (plaintiff) who had received e-mails from an anonymous author stating that he did not deserve to be allowed to teach, **failed** to establish a prima facie (production of enough evidence) case of intentional infliction of emotional distress and therefore the trial court's **should have** granted the subscriber's motion to quash the subpoena, which was served on the subscriber's internet service provider. The e-mails sent to the teacher did **not** accuse the teacher of vile or criminal acts and e-mails did **not** contain racial insults or obscene language. On the other hand, the author of the e-mails was angry with the teacher; however, the expressions of anger were **not** extreme or outrageous and the teacher did **not** submit any objective documentation of his distress. **Note**: The teacher did certify (He received treatment and prescribed medication form a psychiatrist.) that he suffered from depression, anxiety, and insomnia; plus, had thoughts of hurting himself.

"School District Failed to Establish Reasonable Forecast of a Disruption for a Student Wearing "Be Happy, Not Gay" T-Shirt"
Zamecnik v. Indian Prairie School Dist. N. 204 Bd. of Educ. (N.D. Ill., 710 F. Supp. 2d 711), April 29, 2010.

School officials **failed** to establish *a reasonable forecast of a substantial disruption* from high school student wearing a t-shirt bearing "Be Happy, Not Gay" message, as so required to justify the banning of the shirt. Although some students had negative reactions to the phrase written on the t-shirts, there was **no** evidence that the reaction was violent, that any student's schoolwork suffered, or that any other type of 'substantial disruption" occurred. Some students later joined a website opposed to the conduct of the student who wore the t-shirt; however, it was **not** *reasonable to infer* that this was a direct response to the student wearing the shirt. Thus, school officials' limited anecdotal evidence was **not** sufficient to ban the plaintiff from wearing her t-shirts.

"Black Female Student Could Not Sustain Equal Protection Claim Arising Out of an Assault on School Property"

Watkins v. New Albany Plain Local Schools (S.D. Ohio, 711 F. Supp. 2d 817), May 10, 2010.

Black female former (graduated in 2008) high school student brought civil action in state court against school principal, assistant principal, girls' track and field coach, athletic director, security officer, dean of students, village, and village police officer alleging that defendants violated her Fourteenth Amendment rights in connection with her being physically assaulted by her ex-boyfriend on school property. Furthermore, the plaintiff claimed that defendants conspired to violate her civil rights and state laws pertaining to negligence as so related to her assault and battery. A United States District Court, S. D. Ohio, Eastern Division, held that even assuming that the juvenile court action was dismissed against plaintiff's ex-boyfriend because the school failed to provide the plaintiff with a videotape of the assault (The assault occurred out of view of security cameras.), and further assuming that there was a connection between the juvenile court dismissal the plaintiff's failure to obtain a permanent protective order in civil court, plaintiff **failed** to offer any evidence that she was denied meaningful and effective access to the courts under the Fourteenth Amendment of the United Stated Constitution.

"Gym Teacher's Rough Housing with Special Education Student Did Not Constitute Corporal Punishment"

Mahone v. Ben Hill County School System (C.A. 11 [Ga.], 377 Fed. App. 913), May 5, 2010.

Gym teacher's actions in "rough housing" with a special education student did **not** constitute corporal punishment. The student did **not** suffer any physical injury and there was **no** evidence that the teacher acted with malice or with the intent to harm the youngster. **Note**: The teacher frequently engaged in "horseplay" with students during his gym classes and on this particular occasion, the teacher shoved the plaintiff's son's head in a trash can ("Trash Can Incident"). The student suffered from poor motor skills, asthma, and "ADHD."

"Fake Shooting in School a Joke – No Workers' Comp for Teacher"

Delrie v. Peabody Magnet High School (La. App. 3 Cir., 40 So. 3d 1158), June 2, 2010.

Evidence **was sufficient** to support worker's compensation judge's (WCJ) finding that high school home economics teacher **failed** to show that practical joke by a student in her class pertaining to an "alleged" shooting inside her school was an extraordinary event in the course of her employment as a teacher. Therefore, the plaintiff was **not** entitled to benefits for mental injury or illness resulting from work-related stress, even though the teacher found the event to be extraordinary and violent, even though the assistant principal and students present in her classroom at the time found "the joke" to be obvious. A psychologist found that the teacher seemed to be more susceptible to experiencing post traumatic stress disorder (PTSD); however, the PTSD experienced by the teacher was actually a result of a culmination of events that continued for a number of weeks after the "hoax" was perpetrated by the student.

"High School Security Officer's Conduct in Provoking another Officer into a Fight was Gross Misconduct"

Brown v. Hawk One Sec., Inc. (D.C., 3 A. 3d 1142), September 9, 2010.

Evidence **supported** the finding that employer (plaintiff), a security officer at a high school, engaged in "gross misconduct" by her involvement in a fight with another uniformed, on-duty officer in a school hallway. Evidence supported the fact that the officer was **not** entitled to unemployment benefits *upon her termination* for "fighting." Another officer who was hit in the mouth by the plaintiff did **not** touch or attempt to touch the other officer. Plaintiff deliberately provoked a physical confrontation, following a threat by the other officer, by circling the other officer and taunting, "Who are you going to smack?" Both the defendant and the school district had a legitimate interest in having security personnel to both keep the peace and set a good example for students.

"Reasonable Supervision Was Provided to Middle School Student Who Was Sexually Assaulted on Her Way Home"

S. J. v. Lafayette Parish School Bd. (La., 41 So. 3d 1119), July 6, 2010.

Mother of a 12-year-old student brought negligence suit against school district and teacher seeking damages for the sexual assault her daughter suffered while walking home from school sometimes after 4:00 p.m. on a school day after attending a behavior clinic for misbehaving students. The Supreme Court of Louisiana held that the plaintiff's daughter was given access to the school's principal office and telephone during the afternoon behavioral clinic to arrange transportation home. Therefore, the defendant did **not** violate its duty to provide *reasonable supervision*. Numerous witnesses stated that the school's office remained opened on the day in which the incident occurred and other students used the office phone to arrange their transportation home. **Note:** On the day that the incident occurred the student's mother did not pick-up her daughter at the conclusion of the school's behavioral clinic; furthermore, she did not make arrangements for her daughter to be picked-up. The youngster was sexually assaulted while walking home through a crime infested area of town.

"Suspension of Student for Posting a Video Clip on a Website Violated the First Amendment"

J. C. ex rel. R. C. v. Beverly Hills Unified School Dist. (C. D. Cal., 711 F. Supp. 2d 1094), May 6, 2010.

Video clip which a high school student posted on a website, in which students made derogatory, sexual, and defamatory statements about a 13-year-old female classmate, did **not** cause a substantial disruption in school activities, **nor was there a reasonable foreseeable risk of a substantial disruption as a result of the video**. Therefore, the school's discipline (suspension from school) of the student for posting the video **violated** the plaintiff's First Amendment rights. School officials did have to address the concerns of an upset parent, a student who temporarily refused to go to class, and five students missing some undetermined portions of their classes. In addition, the fear that students would "gossip" or "pass notes" in class did **not** rise to the level of a substantial disruption. **Note:** Plaintiff recorded a four-minute and thirty-two second video of her friends talking about "the offended student" at al local restaurant. In the video they call her "slit", "spoiled", talked about "boners", and used profanity. On the evening of the same day, the plaintiff posted the video on the website "YouTube" from her home computer.

"Teacher Not Liable for Injuries Student Sustained When a Classmate Sexually Molested Her During Class -- School District Breached It's Duty When the Perpetrator Was Allowed Back Into School and Placed in a Class With the Victim"
Hood v. Ouachita Parish School Bd. (La. App. 2 Cir., 41 So. 3d 1253), June 23, 2010.

On March 18, 2005, the female student victim was sexually assaulted in a teacher's Algebra I class at West Monroe High School, when the male student perpetrator exposed himself to the victim and touched her with his hand. The teacher did not notice the assault, nor did the victim report it to her Algebra I teacher. However, one of the victim's friends reported the incident to the school's Family and Consumer Sciences (FCS) teacher. The FCS teacher reported the incident to the school's assistant principal. The student perpetrator was assigned to an alternative school for the remainder of the school year and for the first semester of the 2005-2006 school year, and then allowed back into the West Monroe High School. The Court of Appeals of Louisiana, Second Circuit, held that: (1) Teacher exercised **reasonable supervision** over her high school class and there was **no** possible way she could have seen the inappropriate behavior that occurred. Furthermore, the school district was **not** liable for the injuries that the student victim received when the student perpetrator assaulted her during class. The student perpetrator's conduct was **unforeseeable**, **not** constructively or actually known, and **not** preventable. (2) When the administrator at the high school permitted the student perpetrator to return to school, the school district (school board) *placed a heightened duty upon itself* to keep the student perpetrator out of the same classroom with his victim. Furthermore, the student victim relied on the board's duty for *reasonable supervision* to protect her since it was the only assurance that she had for her safety when the student perpetrator returned to school. The board **breached its duty of reasonable supervision** when the student perpetrator was placed in a class with the student victim, who immediately became upset and was subjected to laughter and mockery from other students. **Note:** The student victim withdrew from her high school and enrolled in a private Christian school, which created a financial hardship on her family. Furthermore, the student victim suffers from panic attacks and attends counseling.

"Sexual Assault of Five-Year-Old on a School Bus Was an Unforeseeable Act"
Brandy B. v. Eden Cent. School Dist. (N.Y., 907 N.Y.S.2d 735), June 10, 2010.

School district **lacked** specific knowledge or notice that an 11-year-old female student had previously engaged in sexually assaultive behavior, and thus the school district was **not** liable for the injuries the five-year-old student allegedly sustained when she was sexually assaulted on her school bus by the 11-year-old male student. The victim's mother had requested that the bus driver *not* allow the two children to sit together on the bus; however, the mother's statement to the bus driver did *not* identify the 11-year-old or attribute any misbehavior to him. School officials' documented behavioral history pertaining to the 11-year-old did *not* include any sexual aggressive behavior; however, the student's behavioral history did include such at risk behavior as verbal aggression, threats with weapons, fire setting, hyperactivity, impulsivity, auditory hallucinations, history of stealing, temper tantrums, academic problems, and a history of suicidal injurious behaviors.

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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