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Safe, Orderly, and Productive School Legal News Note

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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 **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

"Offensive E-Mails Did Not Rise to the Level of Sexual Harassment"
R. S. v. Board of Education of Hastings-On-Hudson Union Free School Dist. (C. A. 2 [N.Y.], 371 Fed. App. 231), April 9, 2010.

Trio of offensive e-mail messages sent to a female ninth-grade student over a 10-day period on an e-mail account maintained by the school district, which belittled the student's appearance and declared in explicit terms that the male sender's intent was to have sex with her, did **not** rise to the level of sexual harassment actionable under Title IX, Section 1983, or the Equal Protecting Clause associated with the Fourteenth Amendment of the United States Constitution. For a plaintiff to prevail under Title IX, the plaintiff must demonstrate the following: (1) the school district acted with "deliberate indifference" to sexual harassment and (2) the harassment was "so severe, pervasive, and objectively offensive that it effectively bared plaintiff from access to an educational opportunity or benefit.

"Teacher Injured in Student Fight Failed to Plead a State-Created Danger Claim"
Moore v. Dallas Independent School Dist. (C. A. 5 [Tex.], 370 Fed. App. 455), March 12, 2010.

Teacher **failed** to plead sufficient facts to establish that defendant school district's actions rendered her more vulnerable to danger of being injured by a student fight as a prerequisite element of a liability claim against defendant. **Note:** Two middle school students got into a fight and a teacher intervened in an effort to stop the two students from fighting. During the struggle, the two students and the intervening teacher careened across the school's hallway and collided with the plaintiff, who was not intervening in the fracas, which caused her to suffer injuries to her knees, neck, and back.

"Teacher's Conduct in Restraining a Student in a Toddler Chair Did Not Violate Student's Substantive Due Process Rights"
D. D. ex rel. Davis v. Chilton County Bd. of Educ. (M. D. Ala., 701 F. Supp. 2d 1236), April 6, 2010.

Teacher's alleged conduct in sitting a four-year-old student in a toddler chair (which include restraints around his waist and feet), without shoes, facing the wall, and unsupervised in the school's interior hallway did **not** ***shock the conscience***; and, thus, did **not** rise to the level of violating the student's substantive due process rights to liberty and bodily integrity under the Fourteenth Amendment of the United States Constitution. Student was restrained for a relatively short period of time (approximately 10 minutes) for his safety and so that he would *not* continue his disruptive behavior, which included kicking his teacher and other students. **Note:** The student's IEP was based upon his diagnosis of pervasive development disorder, attention deficit/hyperactivity disorder (ADHD), impulse control disorder, and mood disorder.

"Injured Occupational Therapist Knew of Severely Autistic Student's Propensity to Act Out Physically"
Johnson v. Cantie (N.Y.A.D. 4 Dept., 905 N.Y.S. 2d 384), June 11, 2010.

Plaintiff, a licensed occupational therapist, commenced legal action in an effort to secure damages for injuries she allegedly sustained when she attempted to avoid being hit and kicked by a female elementary school student who was severely autistic. The New York Supreme Court, Appellate Division, Fourth Department ruled that the school district and the parents of a severely autistic student **had no duty to warn** plaintiff, who was injured by the student while working in a classroom, of the youngster's tendency to use physical force to express herself. The plaintiff *had observed the student's behavior on previous occasions and should have expected the student to act out in the manner in which she did toward the plaintiff*.

"Student Had Protected Religious Beliefs That Placed Religious Significance on Having Long Hair"
A. A. ex rel. Betenbaugh v. Needville Independent School Dist. (S. D. Tex., 701 F. Supp. 2d 863), January 20, 2009.

Exemption to school district's dress and grooming code prohibiting boys from wearing their hair long, which allowed student to wear his hair in a tightly woven braid stuffed down the back of his shirt, **violated** the due process rights of the student's parents to raise their son in accordance with their own Native American religious beliefs. The school district's policy and related requirements ***interfered with the parents' right to direct their son's religious upbringing and effectively overrode their ability to pass their religion onto their child***.

"School Personnel Provided Reasonable Supervision"
Williams v. Smith (La. App. 2 Cir., 37 So. 3d 1133), May 28, 2010.

Parents, individually, and on behalf of their minor son, a student at an alternative school facility, brought damages against facility for injuries sustained by their son when another student punched him (Incident occurred in the school's cafeteria.), breaking the son's jaw. A Louisiana appeals court stated that evidence **was insufficient** to prove alternative school facility breached its duty to provide reasonable supervision of students in the school's cafeteria on the morning of the altercation between the two students. There were teachers present in the cafeteria, security officers in an adjacent room, and all responded to the altercation immediately. Furthermore, the fight was a spontaneous event that occurred without warning and arose within seconds of a verbal argument between the two students.

"Restraining Student for His Refusing to go to the School's 'Cool Down Room' Was Capable of Being Construed as an Attempt to Restore Order"
T. W. ex rel. Wilson v. School Bd. of Seminole County, Fla. (C. A. 11 [Fla.], 610 F. 3d 588), June 29, 2010.

Middle school's teacher's use of force against a student (diagnosed with separation anxiety disorder, major depressive disorder, dysthymic disorder, receptive expressive language disorder, and pervasive developmental disorder), in restraining him only after he refused to go to a "cool down room," along with calling the teacher names and threatening to have her arrested; **was capable of being construed as an attempt to restore order, maintain discipline and protect the student from self-injurious behavior**. Furthermore, the teacher's actions were **not** arbitrary, egregious, and conscience-shocking as required to violate the student's substantive due process rights under the Fourteenth Amendment of the United States Constitution.

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)