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Legal Update for Community Colleges

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The **Legal Update for Community Colleges** is a monthly update of selected significant court cases pertaining to post-secondary institutions. 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:

- Athletics
- Records
- Security

Topics

Athletics:

“Student-Athlete Assumed the Risk of being hit by Baseball during Baseball Practice”

Bukowski v. Clarkson University (N.Y.A.D. 3 Dept., 928 N.Y.S.2d 369), July 14, 2011.

Student-athlete’s participation in baseball practice, in which he sustained injuries after being hit in his face by a baseball during batting practice, was *not* compelled or involuntary; thus, **precluding** his claim that his *assumption of risk* was overrun by the inherent compulsion of his coaches. Although the plaintiff on the college’s intercollegiate baseball team purportedly had no option but to participate in practice without a protective screen, the plaintiff *was in fact aware that he was pitching without a screen*. **Note:** The plaintiff confirmed that he had been informed by his coaches that they intended to hold “live” practice without the use of a protective screen, known as an L-screen, in the indoor facility at least two weeks prior to the accident.

Security:

“University Police Officer Duty Not to Provide False Information during a Criminal Investigation was Not Subject to the Public Duty Immunity Doctrine”

Strickland v. University of North Carolina at Wilmington (N.C.App., 712 S.E.2d 888), July 19, 2011.

The duty of university police officers to *not* provide false information during a criminal investigation was **not** one owed to the public in general; rather it clearly benefited a certain, identifiable segment of the general public, i.e. subjects of criminal investigations. Therefore, the officers were **not** subject to the state’s public duty immunity doctrine. **Note:** The plaintiff, father of the victim, filed suit against the University of North Carolina-Wilmington Police Department for negligently providing false, misleading, and irrelevant information to a sheriff department’s emergency response team (ERT) in regard to assisting the university police in serving a warrant on the plaintiff’s son that pertained to an assault and theft on their campus. The university officers communicated to the ERT that the victim was known to be armed and dangerous, engaged in gang activity, and had been involved in two previous assaults; which caused the ERT to believe that they were entering into what the EAT believed to be a situation that involved a “severely dangerous environment that included a heavily armed suspect.” During the entry a member of the EAT mistook the noise of a battering ram hitting the door of the victim’s residence for the sound of gunfire and discharged his weapon through the victim’s front door, mortally wounding the plaintiff’s son.

Records:

“FERPA Did Not Prohibit the Release of Educational Records – University Did Not Have the Authority to Withhold Admission Records”

Chicago Tribune Co. v. University of Illinois Bd. of Trustees (N.D.Ill., 781 F. Supp. 2d 672), March 7, 2011.

A newspaper publisher brought action against state university board of trustees, seeking a declaration the Family Educational Rights and Privacy Act (FERPA) did not bar release of university admission records under Illinois’ Freedom of Information Act (FOIA). The United States District Court, N. D. Illinois, Eastern Division, held that FERPA did **not** prohibit the release of educational records, and thus did **not** provide the authority for state university to withhold university admission records requested by newspaper publisher under Illinois’s FOIA, even though FERPA set conditions on the university’s receipt of federal funds. FERPA did **not** impose any requirements on state officials or specifically prohibit state from doing anything, state could choose whether or not to accept FERPA’s conditions, and state could choose to reject federal education money and the conditions of FERPA. **Note:** The admission practices at the state university came into question regarding preferential treatment given to the relatives of certain influential individuals in regard to the admission process at the university. Included with the request was statements pertaining to the exemption of the disclosure of personal information as so pertained to students and so forth so as to be in compliance with FERPA.

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)