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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
- Athletics
- Attorney Fees
- Civil Rights
- Immunity
- Labor and Employment
- Search and Seizure
- Security
- Student Discipline
- Torts

Topics

Abuse and Harassment:

"Student Stated Title IX Claim against School District for Harassment Based on Nonconformity with Sex Stereotypes"
Pratt v. Indian River Cent. School Dist. (N. D. N. Y., 803 F. Supp. 2d 135), March 29, 2011.

High school student and his younger sister, through her parents and next friends, brought action against school district, board of education, superintendent, high school principal, and several other school district employees alleging the violation of the Equal Access Act and Title IX. The United States District Court, N. D., New York, held that (1) Student's allegations **were sufficient** to show that defendants enacted a classification based on sexual orientation and created a hostile educational environment and thus student's **stated a claim** for the violation of the Equal Protection clause under the Fourteenth Amendment. Student **correctly stated** that defendants discrimination against him based on his sex and sexual orientation, **were deliberately indifferent** to anti-gay harassment he suffered at the hands of classmates and faculty, that harassment **was severe and pervasive enough** to cause him to withdraw from school, and that individual defendants **had actual knowledge** of harassment and yet ***failed*** to take corrective action; thus, defendants also violated Title IX and (2) Plaintiffs' allegations **were sufficient** to state claims under the First Amendment and the Equal Access Act.

Athletics:

"Parents Could Not Obtain a Preliminary Injunction to Allow Their Children Athletic Interscholastic Eligibility after Their Transfer"
McGee v. Virginia High School League, Inc. (W. D. Va., 801 F. Supp. 2d 526), August 11, 2011.

Parents of children whose school was closed under a school consolidation plan and who sought a preliminary injunction that would allow their children temporary eligibility during the pendency of a lawsuit to participate in sports and other interscholastic activities after their transfer to a new school in another school district were **not** likely to succeed on the merits of their claim against the Virginia High School League's "transfer rule." The League's transfer rule rendered students ineligible from participation in the League's sponsored interscholastic competition for one calendar year following their transfer to another high school did **not** fall within the rule's exceptions. Furthermore, the League's rule did not deprive the plaintiffs of their "parental right to raise their children and to make decisions about their children's welfare" as view within the substantive due process rights associated with the Fourteenth Amendment.

Attorney Fees:

High School Cheerleader's First Amendment Claim against School Officials Was Not Frivolous"

Doe v. Silsbee Independent School Dist. (C. A. 5 [Tex.], 440 Fed. App. 421), September 12, 2011.

In October 2008, plaintiff, a student and member of her high school's varsity cheerleading squad was allegedly sexually assaulted at a private party by two classmates, one of which was a member of the school's basketball team. Both students were arrested on criminal charges of sexual assault and released on bail. Plaintiff obtained a protective order against both alleged offenders who were removed from regular classes and extracurricular activities. After a grand jury declined to indict either alleged offender, there were permitted to return to their regular classes and the basketball player was permitted to rejoin the varsity basketball team. In February 2009, the plaintiff refused to cheer for the alleged offender when he was shooting free throws and so forth during basketball games, but she did cheer for the team as a whole. The plaintiff symbolically protested and expressed herself by either quietly folding her arms or going to sit by the cheerleader sponsor. The alleged purpose of the plaintiff's protest was to signal her disapproval of the alleged offender and also "to warn others of his dangerous propensities." The plaintiff was removed from the cheerleading squad by the school's administration but was allowed to try out the following year, and she did make the squad. Alleging various violations of her First and Fourteenth Amendments rights the plaintiff filed suit against the school district. She was not successful in her suit, and the school district moved for an award for all of its attorney fees ($38,903.64). The United States Court of Appeals, Fifth Circuit, held that the plaintiff's First Amendment claim against the defendant based on her removal from the cheerleading squad for refusing the cheer for a basketball player who allegedly had sexually assaulted her was **not** frivolous and thus could **not** support an award of attorney fees to the school district.

Civil Rights:

"School Officials were enjoined from denying Permission to Distribute Flyers Regarding Church Sponsored Activities"

Wright ex rel. A. W. v. Pulaski County Special School Dist. (E. D. Ark., 803 F. Supp. 2d 980), March 25, 2011.

Elementary school student (3rd grader) and student's parent **were likely to succeed** on the merits of their claim that school officials' denial of permission to distribute flyers regarding church-sponsored activities violated their First Amendment free speech and free expression rights. Based thereon, the United States District Court, E. D. Arkansas, Western Division, ***issued a preliminary injunction barring*** school officials from prohibiting student and parent from distributing flyers **was warranted** where there was **no** evidence that disseminating flyers regarding church sponsored activities would substantially interfere with the school's work. Furthermore, the school district *has a history of permitting* almost any organization with the exception of churches to circulate materials. **Note:** The plaintiff requested permission to send home with students and post in the school's literature rack, flyers for a church sponsored swimming event.

Immunity:

"Teachers and School Nurse were Not Officially Immune from Wrongful Death Action Brought by Parents of a 11-Year-Old Female Student"
Nguyen v. Grain Valley R-5 School Dist. (Mo. App. W. D., 353 S. W. 3d 725), December 13, 2011.

On December 3, 2008, plaintiffs' daughter was participating in a physical education class at her middle school when she tripped while skipping and struck her head on the cinderblock wall of the school gym and feel to the ground. Classmates helped the student to her feet and escorted her to the gym teacher. The gym teacher noted that the youngster was crying hysterically, unable to speak, and was bent over holding her head. The gym teacher asked another teacher to escort the student to the school nurse's office. A health aide in the nurse's office provided the student with an ice pack and shined a light into her eyes to make sure that her pupils' got larger when the light was shined into her eyes. The health aide contacted the student's parents and told them that their daughter had suffered a minor head injury and they should wake her up at midnight to make sure she was normal. The health aide left the youngster with a receptionist in the school's front office and went to lunch. The next morning the youngster told her mother that she did not feel like going to school and her mother told her to go back to bed. On or about 10:30 a.m. the youngster turned blue and was not breathing and neither her mother nor paramedics were able to revive the young lady. An autopsy revealed that the youngster died as a result of blunt head trauma that had caused skull fractures and hemorrhaging. The Missouri Court of Appeals, Western District held that (1) the school nurse was **not** officially immune from liability, (2) teachers who assisted the student were **not** officially entitled to official immunity, and (3) superintendent, principal, and nurse supervisor **were protected** from liability due to their official immunity.

Labor and Employment:

"Former Employee Failed to Demonstrate Denial of FMLA"
Yanklowski v. Brockport Cent. School Dist. (W.D.N.Y., 794 Supp. 2d 426), June 22, 2011.

Former school district school bus driver **failed** to demonstrate that she was denied benefits to which she was entitled under FMLA, as so required to establish a prima facie claim (not produce enough evidence) for interference under FMLA despite the contention that she was disciplined and subsequently fired for allegedly exercising her rights under FMLA. The plaintiff took leave three times during the school year and reported the majority of those days off as "sick days" rather than FMLA leave. Furthermore, the plaintiff was allowed to return to her position after each of her leaves and made no additional requests for leave thereafter. **Note:** Former school bus driver took sick leave once for her son's surgery and twice for a medical condition.

"School Board Failed to Provide Teacher Written Notice of Her Right to A formal Hearing"

Gardner v. School Bd. of Glades County (Fla. App. 2 Dist., 73 So. 3d 314), October 21, 2011.

School board **erred** when it failed to provide a teacher written notice of her right to a formal hearing about the alleged incident for which the board disciplined her and of the time limits for requesting such a hearing; furthermore, the teacher did *not* waive her right to request a formal hearing. Therefore, the plaintiff ***sustained prejudice*** caused by the lack of notice because she lost the opportunity to request a hearing before the board decided to discipline her. **Note:** The teacher had been placed on a "fourth year probationary contract status" for the 2010-2011 school year.

"School District Employee Could Not Sustain a Hostile Work Environment Claim Based on National Origin Discrimination"

Flores v. Verdugo (C. A. 9 [Ariz.], 441 Fed. App. 454), June 30, 2011.

The plaintiff, a naturalized citizen born in Mexico, brought suit against school district and principal alleging, among other things, that defendants created a hostile work environment and discriminated against him based on his national origin in violation of Title VII. The United States Court of Appeals, Ninth Circuit, held that (1) plaintiff could **not** sustain a hostile work environment claim based on his national origin; (2) conversation between employee and assistant superintendent for human services regarding the plaintiff's internal grievance did **not** create an inference of retaliation; and (3) there was **no** causal link between employee's lawsuit and his transfer to another school. **Note:** Plaintiff claimed that he heard his principal tell another employee that the plaintiff "knew nothing about his Hispanic background and that he had been fed with a silver spoon and acted like he was white." In addition, the plaintiff claimed that he heard a front-office staff member refer to Mexican board parents and students as "mojados" and Mexican born students as "mojaditos" or "wetbacks."

"Evidence Supported Board's Decision to Terminate Principal after His Arrest"

Sias v. Iberia Parish School Bd. (La. App. 3 Cir, 74 So. 3d 800), October 5, 2011.

Evidence **supported** school board decision to terminate the principal of the school districts alternative school. The officers from the sheriff's office arrested the principal after a raid on his home pursuant to a search warrant. He was charged with the possession of cocaine, possession of marijuana, possession of a firearm, monetary instrument abuse (possession of counterfeit money), and possession of drug paraphernalia. A former student who lived in the principal's home testified that the principal used drugs in front of him. Another school district employee testified that he gave drugs to the principal. In addition, the principal did not timely submit to a drug screen, and when he did show up, he refused one of two tests.

"School District Did Not Discriminate Against Principal Due to His Race in Violation of Title VII or the Age Discrimination in Employment Act"
Norman v. Reading School Dist. (C. A. 3 [Pa.], 441 Fed. App. 860), August 2, 2011.

School district **stated legitimate nondiscriminatory reasons** for filling positions that the 58-year-old black principal had applied for with younger individuals, namely, that each hiring decision was based on the fact that each of the younger individuals had comparable credentials, displayed a more comprehensive knowledge of the curriculum standards, and performed better in their interviews than the plaintiff. Therefore, the defendant's decisions regarding the hiring of other applicants were **not** a pretext for either age or race discrimination.

"Evidence Supported Directive That a Teacher Submit to a Psychiatric Examination"
Seraydar v. Three Village Cent. School Dist. (N. Y. A. D. 2 Dept., 935 N. Y. S. 2d 125), December 20, 2011.

School district's directive to a special education teacher at a high school to submit to a psychiatric examination was **not** arbitrary and capricious, an abuse of discretion, or unreasonable due to the fact associated with evidence pertaining to unprofessional conduct and questionable judgment exhibited by the plaintiff that may have rendered her unfit for her assigned teaching duties.

"Suspension of Teacher Who Engaged in Inappropriate Communication with a Student was Not Irrational"
City School Dist. of City of New York v. McGraham (N. Y., 958 N. E. 2d 897), November 17, 2011.

The Court of Appeals of New York held that disciplinary proceedings against a 36-year-old high school teacher who was found to have engaged in inappropriate communications of an intimate nature with a 15-year-old male student that included suspending the teacher for 90 school days and reassigning her to a different school upon her reinstatement was **not arbitrary and capricious or irrational**. Furthermore, the disciplinary actions against the teacher **were rational under the circumstances** because the teacher's conduct constituted serious misconduct; however, she was remorseful and her behavior was unlikely to be repeated. **Note:** The teacher corresponded with the student electronically outside of school hours, sometimes late at night, about a variety of personal matters and tried to discuss with him the nature of their relationship, which in her view, was potentially romantic. There was *no* physical contact or physical relationship between the two and none of the communications were of a sexual nature. In addition, they never met outside of school grounds.

"Genuine Issue of Material Fact Existed as to Whether Teacher Experienced a Hostile Work Environment from Her Students"

Berger-Rothberg v. City of New York (E. D. N. Y., 803 F. Supp. 2d 155), March 23, 2011.

The plaintiff, a self-identified white Jewish woman, a special education teacher for approximately 18 years was transferred to a middle school and assigned to teach a class comprised of mostly severely emotionally disturbed students. The class contained approximately 10 students and she had two paraprofessional assigned to assist her with the class. A chronological record of student management-discipline issues included student misbehaviors such as the following: threw books in the classroom and at the plaintiff; called the plaintiff a "Jew bastard;" pushed desks and chairs at the plaintiff; sprayed the plaintiff in her eyes with air freshener and then hit her with the can; one student rubbed his penis against her body, one student pressed his lips and stuck his tongue into her ear; and on a regular basis said words or phrases such as the following to her "fuck you," "I will fuck you up," "bitch," "Hitler did not kill enough Jews," "Jews don't deserve to live," and "white Jew." During all of the plaintiff's classroom issues with her students, she believed that she did not received the assistance and support from her building administration; plus, mixed messages regarding the filing of charges against the offending student. The plaintiff filed legal action asserting claims of a hostile work environment, retaliation, and negligence under state and federal law. The United States District Court, E. D. New York, held that: (1) Genuine issues of material fact **existed** as to whether the teacher experienced a hostile work environment from her students on the basis of race, gender, and religion; (2) Genuine issue of material fact **existed** as to whether the school board and administration *failed* to take remedial action regarding a hostile work environment; and (3) Genuine issue of material fact **existed** as to whether *the hostility of the teacher's work environment worsened because school administrators allowed conditions to deteriorate after her complaints to the school's administration*.

<u>Search and Seizure</u>:

"School Officials had Reasonable Suspicion that Student Possessed Contraband that Posed a Risk to Students and Other"

State v. B.A.H. (Or. App., 263 P. 3d 1046), August 31, 2011.

Student who had a prior record of two tobacco violations and at least one drug violation was found with a cigarette lighter and methadone in a school restroom by a teacher who brought him to the school's administrative office. The Court of Appeals of Oregon held that (1) School officials **had reasonable suspicion** to believe that juvenile student was in possession of contraband that posed a risk to the health and safety of the juvenile and others; thus, justification for a warrantless search. Teacher's sighting of the student in possession of a cigarette lighter and his past school disciplinary history involving the possession of both drug and tobacco violations were critical elements in justification of the search. (2) When school officials perceive that there is an immediate threat to the safety of students, employees, or others they **must be able to take prompt and reasonable steps to remove that threat**. Furthermore, when school officials develop a reasonable suspicion based on specific and articulated facts that an individual is in possession of some item that poses an immediate threat to students or others they **must be allowed considerable latitude to take safety precautions**.

Security:

"School District's Duty to Supervise 14-year-old Student Who Was Sexually Assaulted by Another Student Ceased When He Left the School's Premises"
BL v. Caddo Parish School Bd. (La. App. 2 Cir., 73 So. 3d 458), September 21, 2011.

Plaintiff rode home on his assigned school bus and was discharged at his regular school bus stop. After being discharged another 14-year-old invited the plaintiff to his house so that they could exchange video games; however, after walking to the other student's house, he was told by the offending student that the games were at his aunt's house. While walking to the aunt's house the offending student threatened the plaintiff with a brick if he did not do as he was told; thereupon, the plaintiff was sexually assaulted by the offending student.

Student Discipline:

"Teacher's Use of Force against Student was employed in Good Faith"
Savoy v. Charles County Public Schools (D. Md., 798 F. Supp. 2d 732), July 26, 2011.

Waking of a 13-year-old student by a teacher by hitting the student on the back of his head while he slept in an alternative school room, teacher loosely gripping his arm to direct him toward another teacher's office, teacher pushing the student into a wall, two teachers carrying the student to the school doctor's office, and teacher throwing the student onto a chair with enough force to break the chair were **all done in a good faith effort to maintain and restore discipline**. Teachers' actions were **not** motivated by malice or sadism toward the student and therefore did **not** violate the student's Fourteenth Amendment substantive due process rights. The teacher woke the student out of the belief that the student did not belong on campus due to his out-of-school suspension; furthermore, the use of force by the teacher only slightly worsened a pre-existing headache. The teacher's use of force on the student by throwing him onto a chair only occurred after the student began yelling, cursing, and resisting efforts to make him sit down.

"Evidence was Insufficient to Support finding that Juvenile Possessed or Distributed Pills that came Into the Possession of School Officials"

J.M.A. v. State (Ala. Crim. App., 74 So. 3d 487), May 27, 2011.

High school student, a juvenile, was adjudicated as a delinquent in juvenile court upon a finding that he unlawfully possessed and unlawfully distributed a controlled substance to another student in his school. The Court of Criminal Appeals of Alabama held that the evidence **was insufficient** to support a finding that the juvenile possessed or distributed the two pills that came into the possession of school officials and were ultimately determined to be a controlled substance. A student testified that he saw the plaintiff give two pills to another student while he was standing 5 to 10 feet from the plaintiff. In addition, the student testified that the student offered him white pills in exchange for two dollars; which he refused and went to the school's administrative office and told the school's assistant principal. The student who bought the pills from the plaintiff understood the pills to be Adderall and he testified that he later took the pills. Later two students brought pills obtain from the plaintiff to the school's SRO, who turned them over to the assistant principal for an internal investigation; afterward, the assistant principal returned the pills to the SRO. The SRO placed the pills in the sheriff department's evidence locker and they were later picked-up by a narcotics officer. The pills were examined by a forensic scientist and determined that the pills were methylphenidate. **Note:** Any time school officials and/or law enforcement secure any evidence (e.g. drugs, weapons, and stolen items) label the items with an assigned number, log the item into an evidence log, secure the item in a paper bag if necessary, and log into a locked evidence room. In addition, be sure to have a log associated with the "chain of evidence" which logs in who has viewed and/or handled such evidence, including access to the evidence room or locker.

"Student Received Sufficient Notice of Expulsion Hearing to Meet Statutory and Due Process Requirements"

D. L. v. Pioneer School Corp. (Ind. App., 958 N. E. 2d 1151), November 29, 2011.

High school student **received sufficient notice** of hearing on whether to expel him for inappropriate sexual conduct with another student at his school to be in full compliance with both statutory requirements and the student's due process protections. The school's documents associated with the case included certified mail receipts from the notices sent to the student and his parents, which explained the procedure by which the expulsion hearing would be held, and that the student was subject to expulsion from school based on the five "inappropriate sexual behaviors" charged against him.

Torts:

"Parents of Child Allegedly Sexually Assaulted at Catholic School Adequately Pled Negligent Supervision Claim against Pastor"

Krystal G. v. Roman Catholic Diocese of Brooklyn (N. Y. Sup., 933 N.Y.S. 2d 515), October 14, 2011.

Roman Catholic pastor, as supervisor, **had sufficient relationship** with the assistant pastor, as pastor's subordinate, ***to create pastor's duty to supervise assistant pastor*** who allegedly sexually assaulted plaintiffs'' 12-year-old daughter. Pastor's oversight responsibilities for spiritual and material well-being of the parish including the oversight of its governance; thus, permitting the inference that pastor's duties encompassed supervision of his assistant pastor. **Note:** On May 28, 2008, the pervert touched, held, and fondled the 12-year-old girl's breast while the young lady was in attendance at the St. John the Baptist School.

"School Nurse Did Not Breach Her Duty when she released a student to His Mother during an Asthmatic Attack"

Martinez v. City of New York (N. Y. A. D. 2 Dept., 935 N. Y. S. 2d 45), December 13, 2011.

School nurse did **not** breach the duty that she owed toward an 11-year-old middle school student middle school student when she released him to his mother during an asthmatic attack. The student was ***not*** released without further supervision into a foreseeable hazardous setting, but into the care and custody of his mother who planned to take him home and administer a nebulizer treatment to him. None of the adults who observed the student prior to his departure with his mother considered his condition an emergency. The youngster's mother understood his condition and planned to treat it with medication at home and the mother *assumed control over him by taking physical custody of him* and removing him from school grounds. **Note:** The child's mother drove the youngster home, walked up four flights of stairs to their apartment and his breathing changed; thereupon, his mother began breathing treatments with a nebulizer and contacted emergency medical personnel. The youngster was transported to a hospital, where he died. The father of the child filed the suit against school district.

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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