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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

"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.

High School Cheerleader's First Amendment Claim against School Officials Was <u>Not</u> 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 **<u>not</u>** frivolous and thus could **<u>not</u>** support an award of attorney fees to the school district.

"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.

"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*.

"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**.

"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.

"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.

"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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