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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
- Civil Rights
- Labor and Employment
- Parties
- Security
- Student Discipline
- Torts

Topics

Abuse and Harassment:

"Student Insult of a Teacher Did Not Violate State Statute that Made It a Crime to Abuse a Teacher"
In re Nickolas S. (Ariz., 245 P. 3d 446), January 10, 2011.

Student (plaintiff) was adjudicated a delinquent for violating an Arizona law that made it a crime for a person to "knowingly abuse teachers or other school employees. The first incident occurred when the plaintiff, who was assigned to a classroom for students serving on-campus suspension, called his teacher a "bitch" under his breath when she called school security when he refused to give her his cell phone (He was using the cell phone in class.). The second incident occurred two days later with the same teacher when the plaintiff wanted to go to another classroom and the teacher told him to wait until she received administrative approval. After about 10 to 15 minutes he yelled, "This is stupid, I want to go to room 205." The teacher asked him to wait and he immediately began playing with his cell phone. When the teacher asked him to put it away, he refused and began arguing. Other students noticed the disruption and some stood up and the "whole room basically lost control." The plaintiff yelled, "This is fucking bull shit" and "You're a fucking bitch" while challenging the teacher from about ten feet. In addition to the aforementioned, additions words and challenges occurred along with the plaintiff yelling "Get away from me you fucking bitch" left the classroom. In addition to the plaintiff's adjudication, he was suspended from school for 10 days for his outbursts. The Supreme Court of Arizona held that: (1) Although students do not shed their constitutional rights to freedom of expression and speech at the school house gate, school officials **may discipline** (in this case out of school suspension for 10 days) for certain speech that would be constitutionally protected if made by a non-student speakers outside of the school setting; (2) Analyzing whether speech constitutes fighting words under the First Amendment involves a three-step inquiry – (A) the words must be directed at a particular person or group of individuals, (B) the words must be personally abusive epithets or insults that when addressed to the ordinary citizen are likely to provoke a violent reaction, and (C) the words must be evaluated in the context in which they are used to determine it if is likely that the addressee would react violently; and (3) The student's actions and related speech/expression did **not** constitute "fighting words" in violation of state statute due to the fact that that his insults and related actions would ***not*** have likely provoked an ordinary teacher to exchange "fisticuffs" with the student or otherwise react violently.

"Teacher Failed to Exhaust Her Administrative Remedies Prior to Suing Under ADA"
Williams v. East Orange Community Charter School (C. A. 3 [N.J.], 396 Fed. App. 895), October 8, 2010.

Charter school teacher filed with the EEOC that the charter school in which she was employed and its board of trustees unlawfully discriminated against her in electing to not renew her contract on the basis of race, religion, and age with no mention of any failure to reasonably accommodate an injury they allegedly sustained when a student hugged her around her neck. The United States Court of Appeals, Third Circuit, held that the plaintiff's suit **was barred** based on her ***failure*** to exhaust her administrative remedies (fully employ all applicable due process procedures available to her by her employer) from bringing her suit within view of ADA.

"Evidence Supported Title IX Claims Against School District for Band Director's Sexual Relationship with Student"
J.M. ex rel. Morris v. Hilldale Independent School Dist. No. 1-29 (C.A. 10 [Okla.], 397 Fed. App. 445), September 10, 2010.

During the course of 2005-2006 school year and through November 2006, a high school band teacher and a J.M. (band student) maintained an inappropriate relationship, which included kissing, hugging, petting, and vaginal and oral sex. The activities occurred both on and off school property. After receiving a report by a band student during an out-of-state band trip, in which the youngster saw J.M. lying on the band teacher's hotel bed, the assistant high school principal informed the high school principal about the inappropriate relationship. However, the principal choose to do nothing until November 2006, when the parents of another female student reported evidence that they had discovered which indicated an inappropriate relationship between the band teacher and their daughter. The United States Court of Appeals, Tenth Circuit, held that evidence **was sufficient to support** the finding that school officials **were deliberately indifferent** to the report of a sexual relationship between high school students and a teacher **as required to sustain** a discrimination claim under Title IX. The high school principal took ***no*** steps to determine the credibility of the report that a female student was seen behind mostly a closed door on teacher's bed in a hotel room during an out-of-state trip. Therefore, there was **sufficient evidence to support** the claim that the school's administration **had actual knowledge** of the sexual relationship and therefore were **negligent in their supervision** of the band teacher.

Civil Rights:

"Graduating Student Had Free Speech Rights to Deliver Her Valedictory Speech with Passing References to Religion"
Griffith v. Butte School Dist. No. 1(Mont., 244 P. 3d 321), November 19, 2010.

The plaintiff, one of the valedictorians of her 2008 class was given an opportunity to speak at her graduation ceremony. Neither the school district nor her high school had written guidelines addressing the content of valedictory speeches. However, the students were told that their remarks had to be "appropriate, in good taste, grammatically correct, and should be relevant to the closing of their high school years." The style and topic of the speech was left to each speaker. After reviewing the plaintiff's speech, she was told that she would have to eliminate her references to "God" and "Christ" in her speech because religious references were not permitted in graduation speeches. The Supreme Court of Montana held that plaintiff's claim that the school district had violated her constitutional rights was **not** moot, though she had graduated from her high school; thus, the Court stated that the defendant **had violated** the youngster's First Amendment right to free speech.

"Mere Presence of School Resource Officer During the Search of a Student by a School Administrator Did Not Amount to Police Participation Implicating Exclusionary Rule"
Ortiz v. State (Ga. App., 703 S. E. 2d 59), October 27, 2010.

The plaintiff, a high school student, was observed by an assistant principal smoking a cigarette in the bus lane and she escorted the student to the nearest administrative office. Thereupon, she called the school SRO for assistance because she was concerned that the plaintiff was "not quite right because his eyes were going kind of wildly and they were red." It is customary for school administrators to ask for an officer's presence any time they "feel that there might be a threat." The SRO advised the student that "this is an administrative action and I am here for everybody's safety." The assistant principal asked the student to "dog-ear" his pockets so she could search him; thereupon, the plaintiff told her that he did not want her to cut herself and took a razor blade from his breast pocket. He was arrested for carrying a weapon on school property and sentenced to three years probation with the first six months under house arrest. The Court of Appeals of Georgia held that the exclusionary rule did **not** apply to the assistant principal's allegedly unlawful search of the student in a school administrative office, even though a SRO was *present only for safety rea*sons, officer did *not* physically conduct the search, and there was *no* evidence that the search was conducted at the officer's bequest.

"Evidence Supported Finding that the Search of a Student's Shoes was Not Reasonable"
State v. Taylor (La. App. 4 Cir., 50 So. 3d 922), October 13, 2010.

Evidence **supported** finding that the search of 18-year-old high school student's shoes, which occurred after the student was caught in a school bathroom smoking cigarettes, was **not reasonable**. Therefore, the motion to suppress the evidence (drugs—alprazolam and marijuana) found in the student's shoes **should be granted**. The student's shoes were apparently searched to determine whether the student possessed cigarettes, which were unlikely to be found in shoes being worn. The police officer who conducted the search did **not** testify at the trial as to the reason for the search. Furthermore, the State did **not** provide any evidence that students were routinely caught hiding cigarettes in their shoes or whether the police officer searched the remainder of the student's clothing or force him to empty his pockets before ordering him to remove his shoes.

Labor and Employment:

"School Secretary was entitled to Mileage Reimbursement for Travel between Her Two Half-Time Positions"
Jamison v. Board of Educ. Of County of Monongalia (W. Va., 702 S. E. 2d 840), October 14, 2010.

School secretary **was entitled** to mileage reimbursement for travel between her two half-time positions because the school district had a policy which allowed reimbursement for an employee traveling from workstation to workstation while on official duty. In addition, state statute provided that a school district *shall* reimburse school employees for each mile traveled when employees are required to use their personal vehicle in the course of their employment. Furthermore, the district's policy or the state statute *made any specific exception for an employee who held two half-time positions as opposed to one full-time positio*n.

"Principal's Transfer of Teacher Did Not Constitute an Unfair Labor Practice"
Koren v. School Dist. of Miami-Dade County (Fla. App. 3 Dist., 46 So. 3d 1090), October 27, 2010.

A middle school principal's decision to transfer a teacher without explanation and allegedly false and misleading charges of misbehavior or malfeasance did **not** rise to the level of retaliation or employment discrimination for purposes of unfair labor practices complaint by the transferred teacher. The record did indicate that the two had disagreements, but those disagreements were **not** significant enough to indicate that the teacher had participated in a protected activity within view of the First Amendment of the United States Constitution. Note: The teacher did assist a security guard draft a charge of harassment for her sexual orientation against the school district.

"Teacher's Allegations Were Sufficient to State an Accommodation Claim under ADA"
Sepulveda-Villarini v. Department of Educ. Of Puerto Rico (C.A. 1 [Puerto Rico], 628 F. 3d 25), December 10, 2010.

Two teachers brought action against the defendant, alleging the violation of the Americans with Disabilities Act (ADA) and the Rehabilitation Act (504). Plaintiff number one alleged that she suffered a stroke while teaching and required heart by-pass surgery. Plaintiff number two claimed she suffered from a throat condition known as aphonia, which is associated with excessive coughing and shortness of breath, which is aggravated by dust and debris stemming from construction at the school site some years ago. The Untied States Court of Appeals, First Circuit, held that plaintiffs' allegations that they suffered medical conditions that required accommodations such as reduced class sizes, which was provided by the defendant for the last four or five years and where supported by medical documentation; however, the defendant decided to increased the plaintiffs' class sizes which caused the deterioration in the teachers' emotional and physical health. Therefore, there **was sufficient evidence to support** a claim for the failure to adequately accommodate the plaintiffs under both the ADA and 504.

"School District's Preference for Bilingual Employees Did Not Give Rise to Title VII Discrimination Claim"
Chhim v. Spring Branch Independent School Dist. (C.A. 5 [Tex.], 396 Fed. App. 73), September 22, 2010.

A school district's preference for bilingual employees did **not** give rise to a Title VII discrimination claim based on race or national origin by a non-bilingual applicant who was rejected for a custodial supervisor position based on his inability to speak, read, write, and translate fluently in Spanish.

"Teacher's Off Campus Behavior Disqualified Her for Unemployment Benefits"
Hutchison v. Kentucky Unemployment Ins. Com'n (Ky. App., 329 S. W. 3d 353), December 3, 2010.

A **sufficient relationship existed** between plaintiff's conduct and her employment as a teacher to disqualify her from unemployment benefits even though she did *not* engage in criminal behavior while performing her duties as a teacher, nor *did her criminal conduct* involve students or her fellow faculty members. However, her ***repeated failure*** to conform her behavior to the ***requirements of the law*** resulted in six criminal convictions, and the violent and threatening nature of her offenses in defiance of a domestic violence order ***seriously compromised*** her ability to be an example to the school community and her students. **Note:** Plaintiff was employed as a teacher the Jefferson County Board of Education from 1996 until Noverber 7, 2007, when she was discharged from her duties because she had engaged in conduct which rendered her ***unable to be a role model for her students***. The teacher was arrested for third-degree terroristic threatening and two counts of fourth-degree assault (all misdemeanors), and first-degree burglary (a felony). All of the aforementioned charges arose from the teacher's behavior following the breakup of a 16-year relationship. The charges were reduced to four misdemeanors; however, she was arrested again only one week after her guilty plea to the four misdemeanors and charged with the violation of a Domestic Violence Order (DVO), carrying a concealed deadly weapon, first-degree stalking, and the failure to illuminate the headlights of her vehicle. She pled guilty to second-degree stalking and the violation of a DVO, and the other charges were dismissed.

Parties:

"Teachers Had Standing to Bring Action Against School Board to Compel the Expulsion of Students Who Assaulted Them"
Lansing Schools Educ. Ass'n v. Lansing Bd. of Educ. (Mich., 792 N. W. 2d 686), July 31, 2010.

Teachers **had standing** to bring action against their school board for a writ of mandamus (A writ [written document] issued by a superior court to compel a lower court or a government office or officer to perform a mandatory or purely ministerial duty(s) correctly.) and injunctive relief to compel expulsion of students who assaulted them. Teachers **had substantial interest in enforcement of state statutes** which required permanent expulsion of students who have assaulted persons employed by a school board (school district) that would be detrimentally affected in a manner different from the citizenry at large if the state statutes were not enforced. **Note:** The teachers had been physically assaulted by a student in at least the sixth grade or higher the incidents were reported to school administrators. The students were suspended from school but not expelled. In all instances the students were not returned to their same classroom, but they were returned to the same school. In one incident a student in the seventh grade threw a leather wristband with metal spikes at a teacher's back and the wristband bounced off the chalkboard and hit her in the head. Other teachers had chairs thrown at them and several were intentionally slapped on their backs by students.

Security:

"Police Officer Who Was Working as a School Security Guard Had Reasonable Suspicion That Juvenile Was Trespassing on School Property"
State ex rel. K. M. (La. App. 4 Cir. 49 So. 3d 460), September 29, 2010.

Sufficient evidence supported adjudication of juvenile as delinquent on offense of illegal carrying of a weapon (knife) with intended concealment that could be used as a dangerous weapon on an individual's person. The officer asked the juvenile, who was not wearing a school uniform, for identification and she was not able to produce such identification. After the juvenile stated that she did not have any identification, she voluntarily opened her large purse and revealed a knife that "was in plain view" of the officer. Therefore, the officer **was justified** in conducting an investigatory stop because the juvenile was not wearing a school uniform and the evidence associated with the knife was **under the plain view doctrine**.

"School District's Regulation Requiring State-Issued Photo Identification Did Not Violate Due Process"
Meadows v. Lake Travis Independent School Dist. (C.A. 5 [Tex.], 397 Fed. App. 1), September 8, 2010.

School district regulation, pursuant to which all visitors had to produce a state-issued photo identification card as a condition of entering the secure areas of a school where children were present, and which card was photographed upon presentation, did **not** violate the due process rights (14th Amendment of the U. S. Constitution) of a student's parent to direct their youngster's education. Furthermore, parents do **not** have a constitutional right to unfettered access to all areas of a school when students are present.

Student Discipline:

"Evidence Was Insufficient to Establish that a BB Gun Carried Onto School Property Was a Deadly Weapon"
K. C. v. State (Fla. App. 4 Dist., 49 So. 3d 841), December 8, 2010.

Evidence **was insufficient** to establish that a BB gun was a deadly weapon, so as to bring it within a Florida law in which a juvenile was charged with possessing a deadly weapon on school property. There was **no** evidence that the BB gun was loaded and **no** testimony describing the BB gun's operation or the nature and character of the injuries that it was capable of inflicting. The BB gun could have been used as a bludgeon (hitting weapon); however the BB gun was found in the student's book bag and there was **no** evidence discovered that he use or threatened to sue the BB gun as a weapon.

Student Discipline:

"Teacher's Aide Did Not Cause Serious Physical Injury to Autistic First Grader"
JGS v. Titusville Area School Dist. (W. D. Pa., 737 F. Supp. 2d 449), August 26, 2010.

Teacher's aide **had** a pedagogical objective in allegedly forcing an *autistic first grade student* to ingest liquid hand sanitizer by placing her hands over the student's mouth and therefore she did **not** violate the student's Fourteenth Amendment substantive due process rights. At the time in which the teacher aide placed her hands over the student's mouth, the student was standing-up and screaming obscenities and threats at students and staff during class time; furthermore, the student had previously threatened to injure or kill other students. In addition, the student had previously stabbed a fellow student with a sharpened pencil. **Note:** The teacher aide initially attempted to verbally dissuade the student by instructing him to stop yelling and encouraged him to return to his prior activity. When the student failed to follow the teacher aide's directive she gently placed her hand over his mouth for one or two seconds and instructed him to "be quiet." The teacher aide normally cleans her hands several times a day during class with hand sanitizer and at the time in which she placed her hands over the student's mouth she had just cleaned her hands. As a further note, the offending student had previously exhibited outbursts similar to the following: threatened to kill staff and fellow classmates, kicked students and staff, bit students and staff, hit students and staff, and spit on both students and staff. There were times in which the student's conduct was so terrible that the staff had to remove the other students from the classroom to maintain order.

"Action by Student's Parents to Stop Warrantless and Suspicionless Searches on School Property Was Moot"
Burbank v. Board of Educ. of Town of Canton (Conn., 11 A. 3d 658), January 5, 2011.

Action by high school student and her parents, seeking to enjoin a town board of education from implementing its policy of conducting warrantless, suspicionless drug sweeps on school property with drug-sniffing doges was moot because the plaintiff student had graduated. Thus, the plaintiff ***was no longer the subject*** of the board's policies. The legal action by the plaintiff did **not** fall within the *"capable of repetition, yet evading review"* exception to the mootness doctrine. Furthermore, there were many students and their parents with suitable standing to bring legal action seeking to enjoin the board from implementing its policy that would likely obtain a final resolution of the matter prior to such students' graduation.

"Factual Issue Existed as to Whether Tear in High Jump Mat Caused Student to Fall"
Bloomfield v. Jericho Union Free School Dist. (N.Y.A.D 2 Dept., 915 N.Y.S. 2d 294), January 18, 2011.

During a gym class, a substitute teacher took the student out to the school's football field and allowed them to either walk around the track or play touch football. The plaintiff and three of her friends decided to walk around the track; however, after one lap, she and her friends asked if they could go and play on the high jump mats on the other end of the football field. The substitute teacher honored their request, but did *not* give them any warnings or instructions about the mats. As the plaintiff walked near the edge of the mat, her foot became entangled in a hole or tear in the mat and she fell to the ground. The New York Supreme Court, Appellate Division, Second Department, held that *a genuine issue of material fact* **existed** as to whether a tear or hole in a mat which caused the plaintiff to fall *had existed for a sufficient time period for it to have been discovered and remediated, whether the tear/hole was open and obvious, and whether the tear/hole was inherently dangerous***, precluded summary judgment** on the premises liability claim against the defendant.

Torts:

"School Board could be Found Vicariously Liable for Alleged Inappropriate Touching of a Student by a School Janitor"
Booth v. Orleans Parish School Bd. (La. App. 4 Cir., 49 So. 3d 919), September 22, 2010.

School board **could be found vicariously liable** for alleged inappropriate touching of an eight-year-old student in an empty classroom before the start of the school day by a school janitor *based on the janitor's position and duties as a school district employee that allowed him unrestricted access to the victim and the classroom to which she was taken.* In addition, the janitor *possessed keys to his assigned school's premises and was allowed to have free access to school grounds and building as well as young children attending the school*. Given *his status and presence on the school's campus, as well as his adult status*, a young child would naturally view him as an authority figure, which would explain why the student did *not* question his directive to report to an empty classroom. Note: On the morning of February 5, 2001, the eight-year-old got to school between 7:15 a.m. and 7:20 a.m. According to the victim, she walked up to the school and was approached by the perpetrator and told that one of her teachers wanted to see her and she proceeded upstairs to a classroom. Once inside the classroom the perpetrator told her to take off her shoes and socks, she complied. He then placed a towel over her head and told her to get on her knees; thereupon, he began touching her foot with some part of his body that was not his hands. Shortly thereafter he told her to put her shoes and socks back on and not to tell anyone what happened. Two days later the victim told her aunt what happened and the aunt told her mother, who notified police.

"School Can Not Ensure Student's Safety and No Evidence Existed That Board Failed to Provide Reasonable Supervision"
Glenn ex rel. Glenn v. Grant Parish School Bd. (La. App. 3 Cir., 49 So. 3d 1049), November 3, 2010.

Regardless of knowledge that school personnel might have had concerning problems between a high school student and a classmate's cousin, there existed **no** evidence that suggested that the school board could have foreseen even the possibility of a physical altercation between a student and a classmate over complaints made by the classmate's cousin. Furthermore, the school board **cannot ensure** a student's safety and there was ***no*** *evidence that the school board failed in its duty of providing reasonable supervision*. At least four teachers were assigned in the area were the altercation took place, offending student had *no* disciplinary history, and there was *no* indication that the classmate might act as his cousin's protector.

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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