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Legal Update for District School Administrators
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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 **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
- Disabled Students
- Labor and Employment
- Religion
- Searches and Seizures
- Student Discipline
- Torts

Topics

Abuse and Harassment:

"School Officials Not Liable for Teacher's Sexual Abuse of Student"
Thomas v. Board of Educ. of Brandywine School Dist. (D. Del., 759 F. Supp. 2d 477), December 30, 2010.

School officials **were not deliberately indifferent** to female sixth grade teacher's sexual abuse (e.g. kissing, hugging, after school hours texting, and sitting in their laps – no conduct indicating actual sex) of her sixth grade male students and did **not** maintain a policy, custom, or practice that lead to student abuse. Thus, school officials (e.g. principal and superintendent) were **not** subject to liability in their official capacities due to their failure to prevent the teacher from sexually abusing students. Furthermore, there was **no** evidence that the teacher or any of her colleagues had previously engaged in sexual misconduct with students and school officials took disciplinary actions against the teacher based on the teacher's improper conduct of which they were aware.

Civil Rights;

"Student's Prohibition from Distributing Materials Was Not Reasonable Under the First Amendment"
J. S. ex rel. Smith v. Holly Area Schools (E. D. Mich., 749 F. Supp. 2d 614), October 26, 2010.

Plaintiff, a second grade student, brought 25 sealed envelopes to school and attempted to distribute them to his classmates. The sealed envelopes contained invitations to a youth summer camp held at his church. Along with the flyers that briefly summarized the summer camp, the plaintiff's mother enclosed a letter to parents that described the camp in greater detail, recounted how much her children has enjoyed the camp in the past, and invited parents to contact her for further information. The plaintiff's teacher, upon learning about the contents of the sealed envelopes, stopped the distribution, secured the envelopes already distributed, and required the plaintiff to return the envelopes to his backpack. The plaintiff's mother followed-up with the school's principal regarding the incident and sought other measures though which the material could be distributed. The principal stated that such material could not be distributed at school because it was religious material. An important note: The school did allow outside individuals and groups to distribute materials, other than religious material at school once it had been preapproved by the school's principal. A United States District Court, E. D. Michigan, Southern Division, stated that school district's nearly across-the-board prohibition of student-to-student distribution of materials during the school day was **not** reasonable in regard to time, place, and manner; and therefore **was a restriction on speech under the First Amendment**. Student-on-student distribution of materials was limited to flyer rack located in the school's lobby, and such a **sharply circumscribed limit** on student speech **failed** to provide students with ***a reasonable opportunity to express their viewpoints*** to fellow classmates.

"School Officials Did Not Violate Parent's Nor Child's Due Process Rights Regarding the Child's Alleged Inappropriate Touching on a School Bus"
Porter v. Duval County School Bd. (C.A. 11 [Fla.], 406 Fed. App. 460), December 30, 2010.

Plaintiff **failed** to establish that school officials violated her or her child's due process rights based upon an alleged inappropriate touching on a school bus. School officials responded appropriately to the parent's complaint and school officials ***lacked requisite level of control over*** the parent's child to give rise to a constitutional duty to protect her from a third-party actor (male student who allegedly inappropriately touched the female child). **Note:** The Department of Child and Families prepared a report which stated: (1) the male student denied touching the plaintiff's daughter inappropriately, (2) school personnel have addressed the concern and now keep the children apart at the bus stop, and (3) there was no need for counseling services.

Disabled Students:

"Student Entitled to a Tailored Made Compensatory Education Award"
Henry v. District of Columbia (D.D.C., 750 F. Supp. 2d 94), November 12, 2010.

An elementary school student diagnosed with ADHD following an independent psychological examination **was entitled** to a tailored made compensatory education award under IDEA, where school initially found student not eligible for benefits. However, approximately five months later school officials found that the student was in fact eligible.

Labor and Employment:

"Accommodations Offered by School Board for an Art Teacher Were Reasonable"
Fink v. Richmond (C.A. 4 [Md.], 405 Fed. App. 719), December 16, 2010.

Accommodations offered by county board of education for an art teacher found disabled because of eating, bending, and other limitations resulting from the surgical relocation of her stomach, which included the teacher's placement as a full-time art teacher in a high school setting rather than elementary and middle schools **were reasonable and sufficient** within the ADA and Rehabilitation Art (504). In addition, the board's *denial* of the teacher's request to be placed in a "foxed" classroom **was reasonable**. **Note:** The teacher had been diagnosed with Barrett's Esophagus with High Grade Dysplasia. Because of the condition, she had to undergo a surgical procedure in which her esophagus was removed and her stomach was relocated under her throat. As a result of the surgery, she cannot bend over without vomiting. In addition, she is also unable to lift excessive weight or eat large meals; plus, has severe bouts of diarrhea.

"School Board Not Liable for Teacher's Injuries from Disruptive Student"
Rivera v. Board of Educ. Of City of New York (N.Y.A.D. 1 Dept., 919 N.Y.S. 2d 154), March 24, 2011.

The defendant, the Board of Education of the City of New York, did **not** owe a special duty to a teacher who was allegedly injured while attempting to restrain a disruptive student whom she had previously asked the board to remove from her classroom. Furthermore, the board was **not** liable for the teacher's injuries even though it had referred the student for an evaluation, never assured the teacher that the student would be removed from her classroom, or that she would be provided with any particular security measures.

"Board Member's Statement to Superintendent, "You Hired Gays?" Satisfied Superintendent's Burden of Demonstrating Discriminatory Intent"

Flaherty v. Massapequa Public Schools (E.D.N.Y., 752 F. Supp. 2d 286), November 9, 2010.

Former school superintendent brought suit against school district, board of education, and board members, alleging discrimination based on gender and perceived sexual orientation and violation of the Equal Pay Act. The issue that really prompted the former superintendent legal action occurred approximately two months after the board had informed the superintendent that her contract would not be renewed. At a special called board meeting in which the board discussed with the superintendent a situation in which two of her former employees (who identified themselves as lesbians) from her previous school district were accused of making "terrorist threats"; and the board wanted to know if she was involved in any way with such employees. During the board meeting one of the board members said to the superintendent, "You hired gays?" A United States District Court in New York held that: (1) Evidence of board member's alleged statement to superintendent, "You hired gays?" **was sufficient** to satisfy (The board supplied 45 specific reasons to support the superintendent's termination.) superintendent's burden of discriminatory intent; (2) Board's reasons for suspension and nonrenewal of the superintendent's contract, which was based on her poor job performance, was **not** a pretext for discrimination; and (3) Issues existed as to whether the higher pay received by the newly hired male superintendent, after the plaintiff's contract was not renewed, **precluded summary judgment** in female superintendent's claim against the school district.

"Principal's Decision Not to Renew Teacher's Contract was Not a Pretext for Pregnancy Discrimination"

Silverman v. Board of Educ. of City of Chicago (C.A.7 [Ill.], 637 F. 3d 729), March 21, 2011.

High school principal's decision to not renew the plaintiff's contract was because she was the least effective probationary special education teacher at the school was **not** a pretext for pregnancy discrimination in violation of the Pregnancy Discrimination Act or Title VII. The plaintiff did perform well enough to meet the expectations of her job; however, the principal was told by his school board that she had to choose one probationary special education teacher (The school had seven probationary teachers.) for nonrenewal. All of the school's probationary teachers were meeting the district's expectations, and there was no indication that the principal's negative evaluation of the plaintiff's performance was dishonest. **Note:** The principal decided not to renew the teacher's contract two or three weeks after the teacher told her that she was pregnant.

"Custodian's Speech Was Made Pursuant to His Official Duties and Therefore Was Not protected Under the First Amendment"

Morey v. Somers Cent. School Dist. (C.A.2 [N.Y.], 410 Fed. App. 398), February 9, 2011.

Former head custodian of a school sued his former school district seeking damages for alleged violations of his First and Fourteenth Amendments rights. The United States Court of Appeals, Second Circuit, held that the plaintiff's speech ***was made pursuant to his official duties and his job description*** as head custodian at a school; therefore, it was **not** protected speech made as a private citizen and the First Amendment did **not** protect him from retaliation. The plaintiff first became aware of the fallen insulation in his school's gym and it was his duty to clean it up and to report the potential safety hazard to his supervisor. However, he continued to press his concerns about possible asbestos contamination even after his supervisor told him to leave the matter alone. In accordance to the manner in which he expressed his concern did **not** *transform his speech into protected speech made as a private citizen*.

"Teacher Did Not Have a Liberty Interest in Bodily Integrity Due to Alleged Mold and Bacteria Growth in her School"

Hood v. Suffolk City School Bd. (E.D. Va., 760 F. Supp. 2d 599), December 15, 2010.

Plaintiff, and elementary school teacher, did **not** have a liberty interest in bodily integrity, as would support her Section 1983 claim against school board and superintendent for the alleged violation of her substantive due process rights under the Fourteenth Amendment for the alleged dangerous condition in her assigned school that was allegedly caused by mold and bacteria growths before she was hired. **Note:** The teacher was seeking an award for personal injury, compensatory, and consequential damages in the amount of $1,500.000, attorney fees, costs and expert fees, and any other damages that the Court saw fit.

<u>Religion</u>:

"Legal Issues Existed as to whether the Reading of a Christmas Story Violated a Muslim Student's Equal Protection Rights"

Doe v. Cape Henlopen School Dist. (D. Del., 759 F. Supp. 2d 522), January 7, 2011.

Plaintiff's daughter, a Muslim, was enrolled in the fourth grade and her teacher taught from a textbook that purported to explain the events of 9/11. The book, which was approved by the school district's superintendent, provided a brief background of Judaism, Christianity, and Islam. The student testified that her teacher led class discussions about the book and made comments about the nature of the events of 9/11 that were not in the book, framing it as a war of Christians vs Muslims. In addition, between Thanksgiving and Christmas of 2003, the plaintiff stated that her daughter's teacher read Christmas books to her class every day. Plaintiff's child complained to her that she was upset about the books and did not want to go to school; thereafter, the plaintiff suggested that an apology be made to her daughter to make her feel welcome in her teacher's classroom and sought a positive comment from her child's teacher toward her daughter so that the youngster would feel that she did nothing wrong. The school district's supervisor of curriculum and instruction rejected the idea of apologizing because he believed that the child's teacher had done nothing wrong and interpreted the plaintiff's requests as being "stuck in the past" and "very negative." The United States District Court, D. Delaware, held in part and denied in part by stating: (1) Genuine issue of material fact **existed** as to whether the reading of Christmas stories violated the Muslim student's rights; (2) The teacher's reading of the text discussing the events of 9/11 did **<u>not</u>** violate the student's rights; (3) Genuine issue of material fact **existed** as to whether student's transfer to another class (Student was transferred to another class and began seeing a therapist.) was an adverse action; (4) The response by school administrators to the plaintiff's complaints was **<u>not</u>** unreasonable; and (5) Genuine issue of material fact **existed** as to whether school administrators were entitled to qualified immunity.

Searches and Seizures:

"School Safety Officer Had Reasonable Grounds to Search Student's Jacket"
In re Thomas G. (N.Y.A.D. 2 Dept., 922 N.Y.S.2d 453), April 26, 2011.

Search of student's jacket by a school safety officer, ***who had reasonable grounds to believe*** that a student was concealing a weapon in his jacket, **was permissible in scope and not excessively intrusive**. The officer requested that the student take off his jacket, which the student complied with the request; thereupon, the officer patted down the pockets of the jacket and did not feel anything. After patting down the pockets of the jacket, he ran his hand along the sleeves of the jacket and felt a small, hard object in one of the sleeves. After feeling the object, he observed a tear in the shoulder, turned the sleeve up, and discovered a bag containing a white pill which fell from the sleeve. The New York Supreme Court, Appellate Division, Second Department, stated that the officer **had reasonable grounds** to believe a search of the student's jacket would turn up evidence and **the search of the jacket was permissible in scope and was not excessively intrusive**. **Note:** The officer brought the student to the dean of students' office, while the officer and the student were alone in the dean of students' office; the student placed his hand down the front of the waistline of his pants. The officer asked the student to take his hand out of his pants and he complied. However, the student placed his hand down his pants again in the same manner, and the officer again asked the student to remove his hand from his pants. The student complied, but then put his hand down his pants for a third time; however, this time, the student slid his hand from his pants to the inside shoulder of his fleece jacket.

Student Discipline:

"Process Used to Temporarily Suspend Student was Sufficient – Plus, the Student's Mother Got Fired from the School District"

Harris ex rel. Harris v. Pontotoc County School Dist. (C.A.5 [Miss.], 635 F. 3d 685), March 10, 2011.

An eighth grade male student (plaintiff) and a friend emailed their computer teacher and told her that they had hacked into her computer, later in an email they stated that they were joking. About two weeks later, the student plaintiff sent his computer teacher during class the following message: "you might need to tell the administration that the school is vulnerable to DoS," which is an acronym for a denial of service attack. The computer teacher knowing that the student often used his mother's computer at an elementary school where she worked as the secretary for the principal, requested that the district's technology coordinator recover the all internet queries on his mother's school owned computer. Some of the queries related to hacking, key loggers, and denial of service attacks. Soon thereafter there were a number of network problems that occurred on school owned computers. The student was charged with the attack and was told that he would be suspended from school until the investigation was complete. He was later referred to the district's alternative school for 45 school days. The student's mother was reassigned to an assistant teacher's position for allowing her son to use her assigned school computer. Within and during all of the turmoil, the student's father and mother got involved, names were called, and forth; thereafter the student's mother was terminated from her employment. The United States Court of Appeals, Fifth Circuit, held that (1) The temporary suspension of the student was proper and both the student and his parents had numerous opportunities to meet with school officials; (2) School district superintendent was **not** acting outside the scope of his authority in terminating the school district employee for her actions; and (3) The employee was **not** terminated in retaliation for her speech.

"Florida – Juvenile in Possession of a Folding Pocketknife Cannot be Convicted of Possession of a Weapon on School Property"

R. H. v. State (Fla. App. 4 Dist., 56 So. 3d 156), March 23, 2011.

After an incident at school, the plaintiff was brought to a school's assistant principal's office and a search of the plaintiff student revealed a knife hidden in his boxer shorts. The knife was a folding pocket knife with a wooden handle and a blade with the tip broken off that measured three and a quarter inches. The assistant principal estimated that the blade of the knife may have been four inches long prior to being broken off. The court stated that the knife fell within the range of a common pocketknife according to Florida law because it folded into the handle and can be carried in an individual's pocket. Therefore, the student cannot be convicted of the possession of a weapon on school property.

"Student Assaulted Teacher"
In re Isaiah W. (N.Y.A.D. 1 Dept., 922 N.Y.S. 2d 380), May 10, 2011.

Evidence that juvenile persisted in wearing a hat in a classroom, in violation of a school rule, and that he used force to prevent a teacher from retaining the hat, which the teacher confiscated, **supported** the determination that the juvenile had committed acts that, if committed by an adult, would have constituted the crime of *obstructing governmental administration* in the second degree. **Note:** The student grabbed, twisted, and shook his teacher's wrist while threatening to "deck" or "kill" him. The student was placed on probation for a period of 12 months.

Torts;

"School Not Liable for Student's Injuries"
Walker v. City of New York (N.Y.A.D. 2 Dept., 918 N.Y.S. 2d 775), March 15, 2011.

A school's supervision of a student on its playground **was reasonable** for purposes of a negligent supervision claim brought by the mother of a student who was injured (tripped on an allegedly defective concrete playground) while playing a game of tag. Teachers ***were present*** at playground and the student was engaged in *normal play* at the time of her injury.

"Library Patron Tripped on a Book Cart"
Beck v. Bethpage Union Free School Dist. (N.Y.A.D. 2 Dept., 919 N.Y.S. 2d 192), March 22, 2011.

Genuine issues of material fact existed as to whether a school library was kept in a reasonably safe condition, and whether the wheel of the book cart over which a patron tripped and fell was an open and obvious condition which was *not* inherently dangerous, **precluded summary judgment** for the school district and library in the patron's personal injury suit. **Note:** The library book carts were for the use of employees of the library, known as pages, to return items to the bookshelves. At the time of the accident, a page was in the media room and the book cart in question had been placed perpendicular to the end of a bookshelf; thus, it was mostly obstructed from the view of a person walking down the aisle in the same direction as the injured plaintiff.

"Juvenile Committed Batter"
K.S.H. v. State (Fla. App. 3 Dist., 56 So. 3d 122), March 9, 2011.

The state ***presented competent, substantial evidence*** to rebut the claim of defense of others, and proved beyond a reasonable doubt that a juvenile had committed misdemeanor battery by striking a classmate at school. The male juvenile hit a female classmate after an argument between his sister and another female student was broken-up and the injured student was walking away from the incident in company with other students. The offending student threw a running punch with his right hand that stuck the classmate in her left eye; thereupon, **evidence supported** that the juvenile used excessive force (misdemeanor battery) in the defense of his sister.

"Parents Could File a Late Notice of Claim Regarding Their Sixth Grade Daughter's Sexual Assault on School Grounds"
Mindy O. v. Binghamton City School Dist. (N.Y.A.D. 3 Dept., 921 N.Y.S. 2d 696), April 21, 2011.

Trial court did **not** abuse its discretion in allowing parents of sixth grade student who was sexually assaulted by fellow students on school grounds to file a late notice of negligent supervision claim against a school district. Plaintiffs allegedly first learned of the assault the following summer (2009 - The sexual assault occurred in September 2008.) after asking their daughter about certain drawings they found in her room. The plaintiff parents did not know their child had been sexually assaulted and ***was a reasonable excuse for their delay in filing their claim***. School officials contented that memories of children involved in the incident were likely to have faded; however, they were not able to put forth specific evidence toward their claim and could not demonstrate that the child's reluctance to report the incident was related to her infancy.

"School District Breached Its Duty to Supervise Students Working on a Science Lab Project"
Nash v. Port Washington Union Free School Dist. (N.Y.A.D. 2 Dept., 922 N.Y.S. 2d 408), April 12, 2011.

School district **breached its duty** to supervise students while one student worked on a laboratory project for a science research program (SRP) after school; and therefore, **was liable** for injuries sustained by a student in an explosion in the high school science laboratory. The teacher left the school premises, leaving the students unattended in the laboratory; however, the teacher was aware that the student was using ethyl alcohol for sterilization and that there were spark lighters in the laboratory. In addition, the teacher testified that, if she had been present, she would not have permitted the student to use ethyl alcohol in the manner in which he used the product. **Note:** At approximately 4:15 p.m. the teacher left the school premises to go to a bagel shop within walking distance of the school to buy something to eat, leaving the two boys unsupervised. She anticipated that she would be away from the school for approximately 20 minutes.

"Middle School Student Was in School Custody When Hit on His Head by Fellow Student on a School Bus"

Mareci v. Coeur D'Alene School Dist. No. 271 (Idaho, 250 P. 3d 791), April 20, 2011.

School district employees did **not** act recklessly, willfully, or wantonly in failing to prevent incident in which fellow student allegedly hit plaintiff student while students were on a school bus. The school district ***was entitled*** to statutory immunity even if plaintiff student had been injured by fellow student earlier in the day and has talked to the school secretary and counselor about the first incident. Fellow student had accompanied plaintiff student to school office after the first incident and there was ***no*** evidence of any prior conflict between the two of them or any evidence that fellow student bullied or intentionally harmed any other student. The plaintiff's account to the secretary and counselor of the manner in which he was injured did not indicate that he and fellow student were fighting or that fellow student intended to injure plaintiff, and plaintiff student did **not** indicate any animosity or fear toward fellow student. **Note:** The first incident occurred when the plaintiff student and the fellow student were playing outside during the school day. The fellow student ran and came up to plaintiff student and pushed him backwards and he hit his head on the ground. The incident on the school bus occurred when the follow student hit the plaintiff student on his head with his backpack. Plaintiff claimed that he suffered daily headaches due to his injuries.

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)