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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
- Administrators
- Disabled Students
- Labor and Employment
- Religion
- Standards and Competency
- Student Discipline
- Student Searches
- Torts

Topics

Abuse and Harassment:

"Preschool Teacher's Action Did Not Violate Special Needs Student's Rights"
Minnis ex rel. Doe v. Summer County Bd. of Educ. (M. D. Tenn., 804 F. Supp. 2d 641), March 29, 2011.

Preschool teacher's actions in grabbing a special-needs (autism-spectrum disorder) child's head and shaking it in the process of redirecting his attention and grabbing the child by his arm hard enough to cause bruises to stop him from running wildly in her classroom did **not** rise to the level of a conscience-shocking injury sufficient to give rise to a substantive due process (Fourteenth Amendment) violation. The teacher's actions *were pedagogically oriented or disciplinary in nature*; thus, the amount of force was **not** totally unrelated to the need for force. Furthermore, there was no indication that the student suffered psychological harm as a result of the teacher's use of force.

Administrators:

"Secretary Guilty of Specifications Which Warranted Her Termination"
Aiken v. City of New York (N. Y. A. D. 1 Dept., 938 N. Y. S. 2d 56), February 7, 2012.

Evidence **was sufficient** to show that school secretary with the city's department of education was guilty of charges that supported her employment termination. While tasked with entering staff work hours into the department's system the plaintiff entered into the department's system work hours in excess of hours she was permitted to work, she knew of the limitations on her work hours, she did not work the additional hours for which she gave herself credit, and after she was reassigned she improperly reentered the district's computer system to change her fraudulent entries.

Disabled Students:

"Student's Homebound Placement did Not Violate IDEA Mandate for Education in a Least Restrictive Environment"
Tindell v. Evansville- Vanderburgh School Corp. (S. D. Ind., 805 F. Supp. 2d 630), July 29, 2011.

Student's homebound placement did **not** violate mandate of IDEA that children be educated in the least restrictive environment (LRE) according to their individual needs. The plaintiff's physician suggested the possibility of pursuing residential placement for the student; however, all parties (parents, physicians, school, and student) were uncertain whether residential placement would be appropriate for the degree of anxiety evidenced by the plaintiff. **Note:** The student has the following health problems: ADHD, anxiety disorder-not otherwise specified, sensory processing disorder, migraines, asthma, GI reflux, foot pain, and food allergies.

Labor and Employment:

"Work-Related Ankle Injury Suffered by 'Job Coach' Aggravated Her Pre-Existing Injuries"

Cedar Rapids Community School Dist. v. Pease (Iowa, 807 N. W. 2d 839), December 16, 2011.

Substantial evidence **supported** workers' compensation commission's finding that claimant's work-related injury to her right ankle aggravated preexisting injuries to her left ankle and lower back. The physician who performed the independent medical examination on the claimant opined to a reasonable degree of medical certainty that the symptoms claimant experienced with her left ankle were aggravated by the increased weight-bearing requirements stemming from her work-related accident. In addition, the examining physician attributed the aggravation of claimant's lower back symptoms to her altered gait and use of crutches following her right ankle injury. In addition, the doctor's conclusions did not change after he viewed video surveillance footage of claimant, which showed that she did not always wear a brace and, on at least one occasion, wore sandals.

"School Counselor Failed to Establish Enough Evidence for Retaliation Under Title VII"

Harris v. Martinsville Independent School Dist. (C. A. 5 [Tex.], 448 Fed. App. 474), November 3, 2011.

Half-time school counselor (had retired from full-time position and returned as a half-time counselor) **failed** to establish a prima facie (enough evidence) case of retaliation under Title VII, absent a causal connection between her alleged protected activity and her employment termination. The plaintiff had chided (rebuked/chewed-out) a member of a committee given the task of interviewing applicants for a principal position and recommending three applicants to the school board for stating that a female applicant should not be recommended because she would e "all hormonal" after the birth of her child. The plaintiff admitted that she did not tell the district's superintendent about the committee member's discriminatory remark until after her termination.

"Employee's Statement That Supervisor Created a Hostile Work Environment Did Not Constitute a Protected Activity"

Davis v. Dallas Independent School Dist. (C. A. 5 [Tex.], 448 Fed. App. 485), November 4, 2011.

African American school district employee's (investigator in the district's Human Resources Investigation Department) discrimination grievance (gender and race) was **not** causally linked to the district's refusal to renew her contract, and thus was not retaliation in violation of Title VII. The district's decision not to renew her contract was made before she filed a grievance and the mere fact that the decision was made prior to the conclusion of any formal investigation or that it was finalized during the period after she filed her grievance.

"School Administrators Failed to Establish That School Board was So Biased Against Them as to Deprive Them of Due Process"

James v. Independent School Dist. No. I-050 of Osage County (C. A. 10 [Okla.], 448 Fed. App. 792), August 31, 2011.

School administrators (elementary school principal and high school principal) **failed** to establish that school board was so biased against them as to deprive them of their due process right to an impartial tribunal during their employment termination proceedings, despite evidence that one board member campaigned for the board on the platform for change. In fact, he stated that the administrators were not capable of performing their jobs and that he and other members of the board made statements about dismissing the plaintiffs. However, the board unanimously voted to renew the administrators' contracts and at or about the same time were informed that the school district's spending had exceeded its revenues and that the financial status of the district had reached a crisis level. The board thereafter eliminated the two administrative positions in the best interests of the district. **Note:** The district was a very small district with a total of approximately 310 students.

"Reasons for District's Discharge of an Alcoholic Teacher Was Not Pretextual for Purposes of Teacher's Claim of Disability"

Boyko v. Anchorage School Dist. (Alaska, 268 P. 3d 1097), January 27, 2012.

The reason for the school district's discharge of an alcoholic teacher was **not** pretextual for purposes of the teacher's claim of disability discrimination, where the teacher's termination was based on her failure to abide by a "last chance agreement" by successfully completing an alcohol rehabilitation program.

Religion:

"Free Speech Clause Did Not Give Right to Have Primary Religious Texts Included as Part of a Charter School's Curriculum"

Nampa Classical Academy v. Goesling (C. A. 9 [Idaho], 447 Fed. App. 776), August 15, 2011.

The United States Court of Appeals, Ninth Circuit, held that Idaho public charter schools were political subdivision of the state and therefore the Free Speech Clause of the First Amendment did **not** give Idaho charter school teachers, Idaho charter school students, or parents of Idaho charter school students the right to have primary religious texts included as part of their school's curriculum.

Standards and Competency:

"Teacher Lacked Due Process Protection Property Interest in a Hearing Prior to Derogatory Information Being Placed in His Personnel File"
Dougherty v. Cortez (C. A. 9 [Cal.], 446 Fed. App. 877), August 10, 2011.

Teacher **lacked** due process protected property interest entitling him to a hearing prior to derogatory information being placed in his personnel file under California law. The teacher's supervisors did **not** violate the teacher's due process rights by placing derogatory information in his file without a hearing. Furthermore, state law only provide that the teacher be given a written notice and an opportunity to correct his conduct before being discharged, and the teacher was not discharged.

"Board's Removal of Principal Due to School's Failure to Make Adequate Progress was Not Against the Weight of Evidence"
Young-Gibson v. Board of Educ. of City of Chicago (Ill. App. 1 Dist., 959 N. E. 2d 751), November 23, 2011.

School board's decision to remove high school principal from her position due to her school's failure to made adequate progress in correcting the deficiencies that resulted in it being placed on "academic probation" was **a valid** decision as so associated with the weight of the evidence presented. The principal ***failed*** to provide adequate leadership and consistently demonstrated an inability to work with other administrators and faculty to improve the situation at her school.

"Teacher Exposed Himself near the Dance Floor in A Bar"
Gomez v. Texas Educ. Agency, Educator Certification and Standards Div. (Tex. App. Austin, 354 S. W. 3d 905), November 23, 2011.

The finding of an administrative law judge (ALJ) that an educator engaged in conduct rising to the level of indecent exposure **was sufficient to support** the conclusion of the Board of Teacher Certification that the plaintiff ***was "unworthy to instruct"*** based on the commission of the act of moral turpitude. Base thereon, the educator's conduct warranted the revocation of his teaching certificate, even though the plaintiff was *not* convicted of the offense of indecent exposure in criminal court. The ALJ's findings of fact was based on a law enforcement officer's observation associated witnessing the plaintiff rubbing his exposed penis with his hand near a bar's dance floor with reckless disregard for whether others could see it and for purposes of sexual gratification.

Student Discipline:

"Teacher Holding Autistic Student in a Bear Hug Did Not Violate Fourth Amendment or Substantive Due Process"
MG ex rel. LG v. Caldwell-West Caldwell Bd. of Educ. (D. N. J., 804 F. Supp. 2d 305), June 30, 2011.

Teacher's conduct in holding a student with Autism Spectrum Disorder with possible Aspergers Disorder and Attention Deficit Hyperactivity Disorder in a bear hug and putting her hands on his shoulders after he repeatedly endangered himself and other students by running around the classroom and hitting and biting other students did **not** shock the conscience, and therefore did **not** violate the Fourth or Fourteen Amendments. The teacher *had an appropriate pedagogical reason for applying force to restrain the student* and the *force used to restrain the student was **no** greater that necessary.* The force used by the teacher *was applied in a good faith effort to maintain discipline and not to intentionally harm the student*.

"Conduct Depicted as provocative Photographs of High School Female Students was Speech within View of the First Amendment"
T. V. ex rel. B. V. v. Smith-Green Community School Corp. (N. D. Ind., 807 F. Supp. 2d 767), August 10, 2011.

Conduct depicted in internet-posted photographs (MySpace and Facebook) of female high school students (volleyball and cheerleading squads), featuring toy props (phallic-shaped rainbow colored lollipops) representing sex organs, **was inherently expressive and was considered to be speech** within view of the First Amendment. By the way, this was despite the fact that adult school officials did not appreciate the sexual themes the girls displayed. The conduct that was depicted in the photographs was intended to be humorous to participants and to those who would later see the images. In addition, the provocative context of the young girls horsing around with objects representing sex organs was intended to contribute to humorous minds of their intended teenage audience.

Student Searches:

"Search of an 18-Year-Old High School Student's Vehicle for Cigarettes Was Justified At Its Inception"
State v. Voss (Idaho App., 267 P. 3d 735), November 23, 2011.

Assistant principal's search of an 18-year-old high school student **was justified at its inception** and, thus, evidence of drug paraphernalia found within the vehicle **was admissible** in criminal trial against the student, even though the student could legally possess cigarettes. The assistant principal smelled cigarette smoke on the student and suspected that the student was in possession of tobacco in violation of school district policy, which banned all tobacco products by all students on school grounds. **Note:** The assistant principal found a glass pipe with marijuana residue and a set of brass knuckles in the student's vehicle.

Torts:

"School District May Have Unreasonably Increased Risk of Harm to Student during Preseason Lacrosse Practice"
Charles v. Uniondale School Dist. Bd. of Educ. (N. Y. A. D. 2 Dept., 937 N. Y. S. 2d 275), January 24, 2012.

Genuine issue of material fact **existed** as to whether a school district had unreasonably increased the risk of harm to a student by not providing him with head and face protection during preseason high school lacrosse practice; therefore, *precluding* summary judgment in action to recover damages for personal injuries, although being stuck with a passed ball was a well known inherent risk in the sport of lacrosse.

"School Board Exercised Care Required of a Reasonable Board for School Bleachers"
Davis ex rel. Gholston v. Cumberland County Bd. of Educ. (N. C. App., 720 S. E. 2d 418), December 20, 2011.

County school board **exercised the care required by a reasonable** school board with respect to the football bleachers located at their high school athletic field. A six-year old child fractured his skull when he fell through the bleachers while walking down them with his father. There **was no showing** of any notice to the board of any prior problems with the bleachers or what any reasonable board would have done under the circumstances to make the bleachers safe. In addition, the board **complied** with the state building code with regard to the bleacher's construction. **Note:** The bleachers were damp with condensation, and the child, while walking down them, slipped and fell through the 18-inch to 24-inch gap between the bleacher seat and floorboard. The youngster fell approximately 10 feet and struck his head on concrete, fracturing his skull. He underwent surgery to have a permanent metal plate and screws inserted into his head.

"Classroom Teacher Did Not Tortiously Interfere with Assistant Principal's Employment Contract"
Miller v. Theodore-Tassy (N. Y. A. D. 2 Dept., 938 N. Y. S. 2d 172), February 7, 2012.

City department of education did **not** breach contract of employment with a probationary elementary school assistant principal when she was discontinued from her position following an incident in which she allegedly disciplined a teacher's students in an improper manner. The teacher whose students were disciplined by the former assistant principal purportedly instructed her students to write fabricated accounts of the incident in which they accused the plaintiff of making derogatory remarks to them and disseminating a fabricated incident to the press did **not** constitute tortuous interference with the plaintiff's contract. **Note:** The assistant principal disciplined the defendant teacher's students by forcing them to eat their lunch on the cafeteria floor, did not allow them to retrieve eating utensils and thereby forced them to eat with their hands, and allegedly referred to them as "animals" and allegedly said disparaging remarks related to their country of origin. The former assistant principal was fined $10,000 and resumed duties as a teacher. She was not found guilty of referring to the students as animals.

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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