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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

"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.

"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.

"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.

"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.

"Search of an18-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.

"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 county 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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