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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:**

- Civil Rights
- Disabled Students
- Labor and Employment
- Religion
- Security
- Student Discipline
- Torts

# Topics

**Civil Rights:**

**"Emotionally Disturbed Student Who Had Sex with Teacher Did Not Adequately Plead Title IX Claim against School District"**
Blue v. District of Columbia (D. D. C., 850 F. Supp. 2d 16), March 8, 2012.

Eighteen-year-old student at a school within the District of Columbia Public Schools (DCPS) for emotionally disturbed students sued teacher with whom she had sexual relations, as well as the District of Columbia, DCPS, and former DCPS chancellor, alleging claims under Section 1983 and Title IX as well as common law claims for negligent supervision, negligent hiring and retention, intentional infliction of emotional distress, and breach of fiduciary (entrusted) duty. The United States District Court, District of Columbia, held that: (1) Student **failed** to adequately plead the existence of school district policy or custom that caused the violation of her substantive due process right (14th Amendment) to bodily integrity; (2) Student's allegations were **insufficient** to state claim of municipal liability on the part of the defendant for claimed violation of her right to equal protection (14th Amendment) based either on her gender or her status as an emotionally disturbed student; (3) Student **failed** to adequately plead her Title IX claim against defendant; and (4) Student **failed** to adequately plead the existence of school district policy or custom that caused the violation of her substantive due process right to bodily integrity ***absent factual support*** for her claim that the school district was afraid to report abuse in schools and school officials cultivated an atmosphere that created a fear to not report or underreport abuse.

**"School District's Blocking of Website That Provided Supportive Resources for LGBT Youth Likely Violated First Amendment"**
Parents, Families, and Friends of Lesbians and Gays, Inc. v. Camdenton R-III School Dist. (W. D. Mo., 853 F. Supp. 2d 888), February 15, 2012.

Publishers of website that provided supportive resources directed at lesbian, gay, bisexual, and transgender (LGBT) youth and students brought legal action against school district and its superintendent alleging that the district's internet filtering software employed by the school district violated their First Amendment right to freedom of expression. Based thereon, the plaintiffs' moved for a preliminary injunction. The United States District Court, W. D. Missouri, Central Division, **granted** the plaintiffs' a preliminary injunction because the plaintiffs ***were likely to succeed*** on the merits of their claim that the internet filtering software employed by the defendant on school computers both *stigmatized and violated* their First Amendment right to freedom of expression. In addition, the court stated that the plaintiffs **had standing to bring their action** even if there was no evidence that any student in the school district actually attempted to access their website.

**Disabled Students:**

**"School District's General Education Class Failed to Provide FAPE"**
Ka. D. ex.rel. Ky. D. v. Nest (C. A. 9 [Cal.], 475 Fed. App. 658), April 6, 2012.

School district's general education class **was an inappropriate** educational setting for autistic student; thus the district's bifurcated placement, which included a half-day placement in its general education class, **failed** to provide a FAPE. The district's outside evaluator found that the student required a program with a smaller number of students; however, the district's placement required the student to interact with approximately 42 children from the general school population and her special education class.

**Labor and Employment:**

**"Sixty-four Year Old Teacher was Not Subjected to a Hostile Work Environment Based on Her Age That Would Violate ADEA"**
Diab v. Chicago Bd. of Educ. (N. D. Ill., 850 F. Supp. 2d 899), Feb. 7, 2012.

Teacher, a 64-year-old Arab-American woman and observing Muslin of Palestinian national origin, brought legal action against board of education and high school principal, alleging discrimination on basis of age, national origin, race, and religion. Furthermore, the plaintiff stated that defendants violated her rights under Title VII, Age Discrimination in Employment Act (ADEA), and Section 1981 and 1983. The United States District Court, N. D. Illinois, Eastern Division, held that (1) Plaintiff was **not** subject to a hostile work environment even though a coworker asked the teacher three or four times when she planned to retire. In addition, the younger coworker refused to collaborate with the plaintiff, rejected her mentoring, and told the teacher to "shut-up" in departmental meeting and (2) Job performance of the plaintiff did **not** meet the school district's legitimate expectations, as required to establish a prima facie (production of enough evidence) Title VII case of discrimination on the basis of race, religion, or national origin. The principal identified numerous problems with the plaintiff's effectiveness and classroom management skills. In addition, the assistant principal identified weakness with her teaching, and two coworkers ranked the teacher in the bottom 10% of all teacher in the school.

**"Board of Education Failed to Prove That a Teacher Had a Mental Disability That Would Render Him Unfit to Teach"**

In re Board of Education of Unadilla Valley Cent. School Dist. (McGowan) (N. Y. A. D. 3 Dept., 949 N. Y. S. 2d 518), July 26, 2012.

A 30-year-old tenured teacher employed as a social studies teacher and coach was investigated for sexual harassment after the school district had received numerous complaints of inappropriate conduct toward seventh grade female students. After an intensive investigation of the teacher it was concluded that the teacher had engaged in a pervasive pattern of inappropriate conduct, such as touching and sexual harassment, of a great number of female students on numerous occasions in the prior three to five years. After the investigation, the parties agreed to a retroactive suspension without pay, to a reassignment, to forgo his voluntary coaching of school sports, and to the placement of a letter of reprimand in his personnel file in which he admitted to engaging in unspecified inappropriate activity and admonishing him for misconduct and conduct unbecoming a teacher. In addition, the teacher agreed to undergo and cooperate with a "psychiatric/psychological examination." In exchange, the school district agreed to not bring disciplinary charges against the teacher. As a note, the psychiatrist issued a report tentatively diagnosing the teacher as having a narcissistic personality disorder and adjustment disorder with anxious mood, and recommended further psychological tests and therapy. The New York Supreme Court, Appellate Division, Third Department, held that the evidence **failed** to establish that the teacher had a mental disability that would render him unfit to teach.

**"The Selection of a Male Candidate for the Position of Transportation Supervisor Due to More Bus Driving Experience was Not Pretext for Gender Discrimination"**

Pate v. Chilton County Bd. of Educ. (M. D. Ala., 853 F. Supp. 2d 1117), January 4, 2012.

A board's selection of a male candidate for the district's transportation supervisor over a female teacher due to more school bus driving experience was **not** a pretext for gender discrimination under Title VII. Both the selected candidate and the teacher were qualified for the position. The position was supervisory and required experience across a variety of fields, including route planning and automotive knowledge, and the selected candidate also had both bus driving and teaching experiences. **Note:** The plaintiff was a sixth grade teacher with over 20 years of teaching experience, approximately four years as a licensed substitute bus driver, had an education specialist degree, and holds a certification in school administration. The selected candidate was an agriscience teacher with over 14 years of experience as a regular school bus driver.

**"Male Elementary School Principal Alleged Conduct Did Not Create a Hostile Work Environment Based on Gender Discrimination"**

Holleman v. Colonial Heights School Bd. (E. D. Va., 854 F. Supp. 2d 344), February 23, 2012.

Male public elementary school principal's alleged discriminatory conduct, including rubbing one female employee's back, grabbing another female employee's arms for a few seconds, cursing, yelling, and reprimanding was **not** sufficiently severe or pervasive as to alter the conditions of female employees' employment or create an abusive work environment. Therefore, the plaintiffs' legal action would **not** support a gender-based hostile work environment claim under Title VII. **Note:** The plaintiffs were a kindergarten teacher and a paraprofessional.

**Religion:**

"**School District's Practice of Holding High School Graduation Ceremonies at a Christian Church Violated the Establishing Clause of the First Amendment"**
Doe ex rel. Doe v. Elmbrook School Dist. (C. A. 7 [Wis.], 687 F. 3d 840), July 23, 2012.

A school district's practice of holding high school graduation ceremonies and related events at a Christian church rented by the district for the occasions **violated** the Establishment Clause. The defendant's practice *conveyed* a message of religious endorsement due to a 15 to 20 foot-tall Latin cross that towered over the graduation proceedings in the church sanctuary and the church lobby greeted attendees with numerous religious materials. Therefore, *the implied endorsement carried with it an aspect of coercion* because the only way attendees could avoid the proselytizing environment was to leave the ceremony.

**Security:**

**"School Resource Officer (SRO) Did Not Need a Search Warrant to Search Student's Backpack"**
State v. Meneese (Wash., 282 P. 3d 83), August 2, 2012.

In February 2009, Fry, the school's SRO was conducting a routine check of the boys' restroom at his assigned high school when he discovered a student standing at a sink holding a bag of marijuana in one hand and a medicine vial in the other. Thereupon, he confiscated the marijuana and the student's backpack and escorted the youngster to the school dean's office. While in the dean's office the SRO became suspicious that the student's backpack might contain additional contraband because it had a padlock on the handles. After obtaining the key from the student, he opened the backpack and found a replica Beretta air pistol (BB gun). The Supreme Court of Washington held that SROs **are school officials** who are subject to the well-established "school search exceptions" ***when their conduct relates to school policy and is not a subterfuge (a trick or device used to conceal or evade) for unrelated law enforcement activity***. In addition, the SRO **had reasonable suspicion** to search both the student and his possessions, including his backpack.

**Student Discipline:**

**"Student was Not Likely to Prevail on Claim That His Transfer from One School to Another Violated His Due Process Rights"**
J. K. ex rel. Kaplan v. Minneapolis Public Schools (Special School Dist. No. 1) (D. Minn., 849 F. Supp. 2d 865), July 29, 2011.

Plaintiff, a high school student, was an exemplary student who was on the honor roll, played varsity baseball and basketball, and had been selected by his coaches to be a co-captain of his high school's basketball team for the upcoming 2011-2012 school year. In March 2011, while his baseball team was on a spring-training trip in Florida he conspired with fellow baseball player to hold down another teammate while the co-conspirator placed his testicles near the victim's face. School officials concluded that the actions of the plaintiff amounted to sexual assault, bullying and hazing and based thereon, the plaintiff was temporarily suspended from school and then transferred to another high school within the school district. Thereafter the plaintiff sought an injunction to prevent the transfer. The United States District Court, D. Minnesota, stated that the student was **not** likely to prevail on the merits of his claim that his transfer to another school deprived him of his due process interests as so pertaining to receiving a free public education, participation in varsity interscholastic sports, and his reputation.

**Torts:**

**"Board of Education was Not Liable for the Sexual Abuse of Student Due to Negligent Hiring, Retention, and Supervision"**
S. C. v. New York City Dept. of Educ. (N. Y. A. D. 2 Dept., 949 N. Y. S. 2d 71), July 5, 2012.

The New York City's Department of Education and its board were **not** liable for the sexual abuse of a student by a middle school teacher on theories associated with negligent hiring, retention, and supervision. There was **no** evidence that the defendants knew or had reason to know of the teacher's propensity for sexual abuse of minors. **Note:** The plaintiff attended a middle school in which the teacher was employed as a paraprofessional and taught the plaintiff music. During the plaintiff's eighth grade school year he and his mother got into an argument and he ran away from home and began living with the Mr. Hammond (his music teacher). While a ninth grader he again got into an argument with his mother, ran away from home, and moved back into Hammond's home. It was during this particular time, approximately two months, Hammond and the plaintiff began their sexual relationship.

**"Middle School Cheerleader Assumed Risks Inherent in and Arising Out of Performing Shoulder Stand during Cheerleading Practice"**
Krisatina D. v. Nesaquake Middle School (N. Y. A. D. 2 Dept., 949 N. Y. S. 2d 745). August 15, 2012.

Middle school cheerleader **assumed risks** inherent in and arising out of performing a shoulder stand stunt during cheerleading practice, where cheerleader had been experienced and had performed the stunt many times in the past. In addition, the cheerleader **had voluntarily engaged** in the activity of cheerleading and had known the risks inherent in activities associated with cheerleading.

**School was Not Liable for Negligent Supervision of High School Student Who Sexually Abused First Graders"**

Geywits ex rel. Geywits v. Charlotte Valley Cent. School Dist. (N. Y. A. D. 3 Dept., 949 N. Y. S. 2d 834), August 16, 2012.

School district did **not** have constructive notice of prior similar conduct as would support liability for negligent supervision of male sophomore who allegedly sexually abuse three male first grade students on three separate occasions over the course of several months in the school's restroom, which was located next to the superintendent's and principal's offices in the prekindergarten through twelfth grade school. The abuse occurred between September and November 2005, while the first grade boys were walking unattended from the school's cafeteria to their classrooms after breakfast. The offending student accompanied the boys into the restroom and he exposed himself and touched their private parts.

**"Mother of Student Fatally Injured When Pushed in Front of a School Bus Failed to State a Claim against School Officials in Their Individual Capacities"**

Credit v. Richland Parish School Bd. (La. App. 2 Cir., 92 So. 3d 1175), May 23, 2012.

Mother who brought suit individually and on behalf of daughter who was fatally injured when she was pushed in front of a moving school bus by another student **failed** to allege any actions or omissions by the school board's employees. Such allegations as so stated by the plaintiff did **not** arise out of the course and scope of duties associated with the impacted school district employees. **Note:** The plaintiff's daughter had gotten into a fight with another female student and she was either pushed or fell off a sidewalk next to a school bus loading zone and was struck by an oncoming school bus.

**"School District's Activity in Overseeing High School Parking Lot as Students were Leaving School was a Discretionary Duty"**

J. S. v. Lamar County School Dist. (Miss. App., 94 So. 3d 1247), July 17, 2012.

Parents of a student who sustained neck injuries in a car wreck in high school parking lot brought negligence action against school district. The Court of Appeals of Mississippi held that the school district's activity in overseeing the high school's parking lot as students were leaving school at the end of the regular school day did **not** fall within the limited context of ministerial duties imposed by statutory provision that required superintendents, principals, and teachers to hold students to strict account for disorderly conduct while at school or on the way to and from school. Thus, the school officials duties as so pertaining to the aforementioned were discretionary, rather than ministerial as so required to satisfy part one of the two-part function test for governmental immunity from a negligence claim. Both the student who was injured in the auto wreck and the student who caused the wreck **were engaged** in permissible on-campus activity and there was **no** evidence that the school district knew that the driver who caused the accident was a careless driver or that school officials witnessed the driver driving erratically and failed to intervene.

**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 recently retired (10.5 years) as a professor in the Department of Leadership Studies at the University of Central Arkansas (UCA). Prior to retiring from UCA 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. In addition, he retired as a law enforcement officer having served in both Arkansas and Mississippi. He can be reached at the following **phone number**: 601-310-4559 (cell-phone)