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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
- Student Discipline
- Torts

Topics

Abuse and Harassment:

"Allegations were Sufficient to Plead Discriminatory Treatment of Homosexual Student Based on Membership in an Identifiable Class"

Walsh v. Tehachapi Unified School Dist. (E. D. Cal., 827 F. Supp. 2d 1107), October 28, 2011.

Mother of a student (decedent) who committed suicide brought action against school district, superintendent, and other school officials and teachers, alleging violations of Title IX, Fourteenth Amendment, and equal protection. Mother's allegations that she and her middle school child complained to his school's principal, vice principal, and other school officials that the youngster faced severe and pervasive harassment from peers for being homosexual and that they took *no* disciplinary action. The only solution that was offered by school officials was to remove the youngster from his school (home school) for a few weeks during his seventh and eighth grade years and as such **was sufficient to plead discriminatory treatment** based on his membership in an identifiable class. **Note:** At the beginning of the sixth grade the decedent informed others of his sexual orientation, and as a result, many students at his middle school were openly hostile to the decedent. During the decedent's seventh and eighth grade school years physical harassment become more confrontational and teachers made disparaging comments about the decedent. On September 19, 2010, the decedent and a friend encountered a student from his middle school and three students from a high school who taunted, threatened, and physically assaulted the decedent. That afternoon the decedent hanged himself from a tree in his own backyard. The youngster was later discovered by his mother and younger brother.

"School District was Not Liable under Title IX for Teacher's Sexual Harassment of and Sexual Contact with Middle School Student"

Doe v. St. Francis School Dist. (E. D. Wis., 834 F. Supp. 2d 889), December 5, 2011.

School district was **not** liable under Title IX for female teacher's sexual harassment of and sexual contact with a middle school student. Other teachers had advised the school principal and superintendent that they suspected that the teacher had an inappropriate relationship with the male student and that the student had a crush on the teacher; however, neither the middle school principal nor the superintendent had actual knowledge of the teacher's sexual harassment or sexual contact with the student. The principal investigated the allegations against the teacher and the teacher was suspended promptly when she informed the principal that she had sent flirtatious text messages to the student. **Note:** In October 2007, the student broke his leg and could not participate in physical education classes. When the rest of the class went to physical education, the student reported to the teacher's classroom. Over time a relationship developed, text messages were exchanged and contact was made both on and off the school's campus. On at least one occasion the teacher brought the youngster to her apartment to have dinner and watch a movie. During this particular visit the teacher had sexual contact with the student, although no clothes were removed; however, kissing and touching did occur. The teacher pleaded guilty to fourth degree sexual assault under Wisconsin statute.

Civil Rights:

"School District's Ban on Breast Cancer Awareness Bracelets Was Not Reasonable Exercise of Its Authority to Ban Lewd Speech"

H. v. Easton Area School Dist. (E. D. Pa. F. Supp. 2d 392), April 12, 2011.

School district's ban on breast cancer awareness bracelets that used the term "boobies" was **not** a reasonable exercise of its authority to prohibit lewd or vulgar speech under *Fraser* (Bethel Sch. Dist. v. Fraser, 478 U. S. 675). The term "boobies" was presented in context of the national breast cancer awareness campaign and was chosen to enhance effectiveness of communication to its target audience. **Note:** The rubber bracelets contained several slogans including: "I love boobies! (Keep a Breast)" and "Check yourself! (Keep a Breast)" and came in several colors. **Note:** In *Fraser* the U. S. Supreme Court noted that a school may categorically prohibit speech that is: (1) lewd, vulgar, or profane; (2) school-sponsored speech on the basis of a legitimate pedagogical concern; and (3) speech that advocates illegal drug use - if the school speech does not fit within one of those exceptions, it may be prohibited only if it would substantially disrupt school operations.

"Separation of Public School Students by Sex Did Not Give Rise of a Finding of Constitutional Injury as a Matter of Law"

Public middle school program of offering students an option to participate in single-sex classes did **not** constitute sex discrimination in violation of students' equal rights despite variations among teachers' classroom management styles, teaching methods used, pace of progress through materials, and class size. All students could choose to participate in coeducational classes and there was **no** evidence that any educational opportunity was offered exclusively to boys, exclusively to girls, or exclusively to coeducational classes. Furthermore, there was **no** supportive evidence that there was any disparity in content taught or that students' grades suffered.

"School Principal's Warrantless Search of Juvenile's Clothing was Subject to Reasonableness Standard"

State v. Alaniz (N. D., 815 N. W. 2d 234), April 10, 2012.

Police officer **was acting as a school official** when he observed juvenile and another student just off school property acting suspiciously and informed the school principal about what he saw, and thus, the principal's warrantless search of the student's clothing **was subject to the reasonableness standard**. The officer was a school resource officer (SRO), the school district paid the police department to fund the district's SRO program, and the officer *was assigned to the school district full time during the school year*. In addition, the officer was **not** involved in questioning or searching the student but *let* the principal decide how to handle the situation. **Note:** The principal did not physically search the student but merely requested that the student empty his pockets, which contained a glass pipe and synthetic marijuana. The student was charged with the possession of a controlled substance and in the possession of drug paraphernalia, both felonies under North Dakota law.

Labor and Employment:

"Substantial Evidence Supported Board's Determination That Employee's Work Performance Was Unsatisfactory"
Gibson v. Board of Educ. for City School Dist. of Albany (N. Y. A. D. 3 Dept., 945 N. Y. S. 2d 814), June 7, 2012.

Substantial evidence **supported** the board of education's determination that an account clerk's work performance was unsatisfactory, thus warranting her employment termination for incompetence in light of testimony that the clerk was warned about her inadequate job performance and excessive absenteeism. Furthermore, there were recurring problems with her work performance, including failing to take accurate or complete telephone messages, incorrect filing of paperwork, advising parents to submit inaccurate income information on their applications for free/reduced lunch program or misleading parents regarding eligibility for the same, failing to maintain accurate inventories, neglecting to timely pay vendors, and failing to maintain accurate and timely attendance records in order for the school district to obtain reimbursement for after school snack program. In addition, the clerk was habitually and excessively absent and that her inability to perform her job duties negatively affected her department's operations. **Note:** The plaintiff was employed for six years as an account clerk in the district's purchasing department prior to her transfer to the district's food services department. The district made the transfer in an effort to provide the clerk a new environment in an effort to assist her toward improving her job performance ratings and to reduce her excessive absences from work.

"Conduct by Male Supervisor at Public High School Did Not Support a Sex-Based Hostile Work Environment Claim"
LaMont v. Independent School Dist. No. 728 (Minn., 814 N. W. 2d 14), May 16, 2012.

Conduct by female custodian's male supervisor at a high school, including commenting that he did not want any women on his crew and that the only place for women was the "kitchen and the bedroom," requiring female custodians to check in via radio before taking breaks, and prohibiting female custodians from talking unless they were on a break was **not** sufficiently hostile or abusive to support a sex-based hostile work environment claim against a school district. In addition, the plaintiff **failed** to demonstrate that supervisor's conduct interfered with her ability to perform the duties and responsibilities associated with her job.

"Reason for Discharging Hispanic School Principal was Not Pretext for Racial Discrimination"
Jaramillo v. Adams County School Dist. 14 (C. A. 10 [Col.], 680 F. 3d 1267), June 12, 2012.

School district's stated reason for discharging Hispanic elementary school principal for insubordination was **not** a pretext for race discrimination in violation of due process as so pertaining to the Fourteenth Amendment, absent evidence of racial bias.

Student Discipline:

"High School Student Was Provided Due Process before School District Revoked His Conditional Expulsion"
Hannemann v. Southern Door County School Dist. (E. D. Wis., 833 F. Supp. 2d 1068), June 7, 2011.

High school student **was provided** due process before his expulsion for the possession of a knife, even though the state superintendent found that the school district's notice did *not* comply with state statute as a result of its failure to ensure that the student knew that the school board might consider student's possession of a knife on multiple occasions conduct warranting expulsion from school. The district **provided** the student with a written notice of the time and place for his hearing and the notice **did provide** the charge being considered by the board as "Gross misconduct: the possession of a 6 inch lock-blade knife and exposing the knife while on a school bus." The student admitted possessing a knife on two prior occasions, and state law required that the state superintendent make decisions on student's appeal within sixty days.

"Suspension of Student for Unauthorized use of Medication Did Not Violate Due Process"
Storie v. Independent School Dist., No. 13 (E. D. Okla., 834 F. Supp. 2d 1305), August 23, 2011.

School district's decision to suspend a middle school student and subsequently placed her in an alternative school program for taking unauthorized medication on school property was **not** a substantive due process violation. School officials **had a legitimate interest in protecting students** from the proliferation of any kind of medication on school property and the student *should have known* that taking medication of any kind from another student ***was a violation of school policy***.

Torts:

"School District Did Not Breach Its Duty to Provide Adequate Supervision"
Jake F. v. Plainview-Old Bethpage Cent. School Dist. (N. Y. A. D. 2 Dept., 944 N. Y. S. 2d 152), April 10, 2012.

School district did **not** breach its duty to provide adequate supervision in regard to an assault on a high school student, which caused serious injuries, by a fellow student. Assailant's disciplinary record did contain several instances of nonviolence, disruptive behavior, and a single incident of fighting two years and nine months prior to the assault on the plaintiff. Furthermore, evidence submitted indicated that the plaintiff and the offending student had *no* previous interaction and there was *no* knowledge of prior conduct similar to the assault involving the two students.

"City Department of Education was Not Liable for Injuries of a Second Grade Student on Whom a Classmate Fell"
Hunter v. New York City Dept. of Educ. (N. Y. A. D. 1 Dept., 945 N. Y. S. 2d 76), May 29, 2012.

Classmate's spontaneous act of stepping backwards, resulting in an injury to a second-grade student, was such a thoughtless or careless act that it could **not** have been prevented by reasonable supervision; therefore, the school district was **not** liable for the student's injury. **Note:** The seven-year-old student was sitting on a rug and playing cards when another student that was standing nearby tripped and fell on her fracturing her right arm. The student's second grade teacher had allowed three students to write at a chalkboard next to the rug where the plaintiff student was seated and one of the students stepped backwards, tripped on something, and landed on her.

"School District Not Liable for Negligent Supervision Regarding Injuries to a Sixth-Grader Caused by another Student"
Keith S. v. East Islip Union Free School Dist. (N. Y. A. D. 2 Dept. 946 N. Y. S. 2d 638), June 30, 2012.

School district was **not** liable for negligent supervision regarding injuries sustained by a sixth-grade plaintiff student who encountered another student with whom he was friendly and patted him on his back or pushed him slightly. In response the student turned, grabbed the plaintiff, and swung him so that he struck a nearby wall causing him to sustain injuries. Both students *were on friendly terms* and had *no* record of misbehavior or history of previous altercations that would have alerted the district to an actual or constructive notice of prior similar conduct. The incident *occurred in so short of a span of time that even the most intense supervision could not have prevented it*.

"Father Could Not Recover Medical Expenses Paid on Behalf of His Child Whose Comparative Fault Exceeded the Fault of School District"
M. M. v. Fargo Public School Dist. No. 1 (N. D., 815 N. W. 2d 273), April 10, 2012.

Father was **not** entitled to recover from his child's school district medical expenses paid on behalf of his child who was injured in his middle school's auditorium while practicing a bicycle stunt for a school performance. The jury determined that the youngster's **comparative fault** exceeded that of the school district. The father's medical expenses claim was derived from the child's injuries; thus, the comparative fault statute prevented the recovery. **Note:** The 15-year-old student was injured while practicing a bike stunt in his middle school's auditorium in preparation of a "60's Day," which was part of the curriculum for a history class. North Dakota law allows a parent without fault to recover medical expenses for a child's injury in proportion to the defendant's fault. The plaintiff was unable to collect his $85,500 medical expenses as so pertaining to his son's medical expenses.

"School Teacher was Immune from Suit Brought on Behalf of Injured Student"
Ex parte Montgomery County Bd. of Educ. (Ala., 88 So. 3d 837), January 27, 2012.

A third-grade student's teacher did **not** exceed the scope of her authority in permitting an elementary school student to go to the restroom unattended; therefore, the teacher **was immune** from liability in her individual capacity for the student's injuries acquired from falling while attempting to climb over a restroom stall door. ***It was well within the teacher's discretion to determine when and how to permit students to take restroom breaks during the school day***; furthermore, the student had previously gone to the restroom unaccompanied by the teacher without incident. The court went on to state that even assuming that the teacher had been informed that the student suffered from Attention Deficient Hyperactivity Disorder (ADHD), the student had **not** been assigned any special education program and was **not** designated as a student that needed additional monitoring. **Note:** The student claimed that when she attempted to leave the restroom stall, the stall door jammed. She further claimed that she attempted to climb over the door to get out of the stall but slipped and fell, cutting her face on a metal hook or hanger on the back of the door.

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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