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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
- Criminal Sexual Conduct
- Labor and Employment
- Religion
- Torts

Topics

Abuse and Harassment:

"School District Could Not be Liable Under Title IX for Teacher's Sexual Harassment of a 15-Year-Old Student"

Douglas v. Brookville Area School Dist. (W. D. Pa., 836 F. Supp. 2d 329), December 8, 2011.

Mother of a female 15-year-old sophomore high school student who had sexual relations with a female teacher (mathematics teacher and girls' softball coach) brought legal action against school district, superintendent, and teacher alleging violations of the victim's Fourteenth Amendment, Title IX, and common law of Pennsylvania associated with tort liability. The United States District Court, W. D. Pennsylvania, held that: (1) Music teacher who overheard conversations about inappropriate text messages between the teacher and student was **not** the "appropriate person;" (2) Failure of the principal and superintendent to prevent the meetings between the student and teacher could **not** serve as the basis for Title IX liability; (3) School district's failure to conform its conduct in reporting abuse to specific requirements of Pennsylvania law did **not** constitute actionable discrimination; (4) Superintendent was **not** personally liable for alleged substantive due process violations; (5) School district was **not** deliberately indifferent to constitutional rights of its students in its training of its employees to detect and report signs of sexual abuse, as would support municipal liability claim; and (6) School district did **not** cause teacher to violate student's constitutional rights, as would support municipal liability claim.

"School District Did Not Act Clearly Irresponsibly to Known Instances of Racial Harassment in Title VI Action"

C. S. v. Couch (N. D. Ind., 843 F. Supp. 2d 894), December 28, 2011.

School district and school officials' decision to expel a multi-racial student for one semester following an investigation regarding an incident of sexual harassment of a female student on a school bus was **not** deliberate indifference to harassment against the plaintiff student as so required to support a Title VI claim for a hostile environment based on race. School officials *carefully considered* all relevant evidence in reaching their decision to expel the student and their investigation and subsequent decision to expel the student was **not** clearly unreasonable, rather, the decision **was warranted** by the plaintiff's violation of the school district's code of student conduct. **Note:** The plaintiff student had been harassed a number of times by fellow student and school officials responded to each incident and in most instances took disciplinary action against the offending student. On March 9, 2009, the high school administration received a complaint from a female student who accused the plaintiff of touching her inappropriately on the school bus ride home on March 6th. She stated that the plaintiff touched her breast and repeatedly put his fingers and hand down her shirt. In addition, he sexual comments to her and tried to slide his hand over her crotch. After an investigation, an expulsion hearing was held on April 10, 2009, and the plaintiff was expelled for one semester. Shortly thereafter, the student's parents enrolled him in a private Christian school.

Civil Rights:

"Substantive Due Process Clause Did Not Impose a Constitutional Duty on the School to Protect Student From harm Inflicted by Classmates"
Doe v. Big Walnut Local School Dist. Bd. of Educ. (S. D. Ohio, 837 F. Supp. 2d 742), July 27, 2011.

Parents of a disabled (cognitive disorder, which included difficulty in social interaction) student who was bullied and harmed by fellow classmates, brought action against school board, middle school principal, and the superintendent, alleging violations of their substantive due process rights, the ADA, and state law. The United States District Court, S. D. Ohio, Eastern Division, held that the school district could **not** be held liable because there was **no** evidence of an existence of a clear pattern of interaction or abuse by any school employee nor any evidence that the board *tacitly* approved the alleged unconstitutional conduct especially considering that it had anti-bullying polices in place both before and after the incident. Even if school employees acted contrary to any school board anti-bullying policies the school district could **not** be held liable for such behavior. **Note:** On April 17, 2007, the plaintiffs' son was involved in a fight with two other students in which his nose was broken. Prior to the aforementioned incident the student was involved in several other incidents that included teasing, pushing, punching, name-calling, and throwing food. In some of the incidents the student was the aggressor or initiator and in others he responded or mutually engaged in the behavior. At all times, appropriate action was taken by school officials depending upon the circumstances including, but not limited to, talking to students, lunch detention, after-school detention, separation of the students in their classrooms, and suspension from school.

"Sexual Relationship Between Teacher and Student Did Not Violate Student's Right to a Free Public Education under North Carolina's Constitution"
Fothergill v. Jones County Bd. of Educ. (E. D. N. C., 841 F. Supp. 2d 915), January 8, 2012.

Former high school student and his parents stated that the county school board failed to protect the male student from sexual exploitation, assault, and abuse at the hands of his former female science teacher. In addition, the plaintiffs stated that the board's refusal to provide educational and emotional support and rehabilitation for their son in the aftermath of the teacher's sexual relationship with their son caused them to incur substantial medical and rehabilitation expenses, lost time from work, and mental and emotional anguish, **failed** to state a claim against the defendant board under the equal protection or due process clauses of the North Carolina constitution. **Note:** In fall of 2007, Matthew (plaintiff) was a junior in high school and in Ms. Rajput's science class when she began asking Matthew to stay after class, inviting him to her home to do yard work, calling him on the phone, and providing gifts and money. By March 2008, Ms. Rajput was having sexual intercourse with the student in her home. In addition, she provided him with alcoholic beverages, gifts, money, cell-phone, and in early May 2008 bought him a car. During the aforementioned time period the student began to develop stomach pains, digestive tract illnesses, and began exhibiting various behavioral problems at home and school. Matthew's parents became suspicious of his story of how he acquired the car and his mother called the dealership on the car's sticker and the dealership identified Ms. Rajput as the purchaser of the car. In May 2008, Ms. Rajput was charged with numerous sexual offenses for her contact with Matthew.

Criminal Sexual Conduct:

"Mandatory 25-Year Minimum Sentence for Female Teacher Who Had Sex with a 12-year-old Male Student was Not Cruel or Unusual Punishment"
People v. Benton (Mich. App., 817 N. W. 2d 599), September 22, 2011.

Mandatory 25-year minimum sentence for first degree sexual conduct committed by a person 17 years of age or older against an individual less than 13 years of age was **not** *cruel or unusual punishment* under federal or state constitution. Defendant, a female elementary school teacher (taught the sixth grade) who engaged in sexual intercourse with a 12-year-old male former student, could **not** be considered a less culpable offender that most persons convicted of first degree sexual conduct against a child victim. The unique ramifications of sexual offenses against a child ***precluded*** *a purely qualitative comparison of sentences* for other offenses under state law to assess whether the mandatory 25-year minimum sentence was unduly harsh. Furthermore, several other states had laws that also imposed a mandatory 25-year minimum sentence for an adult offender's sexual offense against a preteen victim. **Note:** The 12-year-old victim called the offender from his home and accidently recorded the call on his home phone. His mother heard the recording and notified school officials. As a footnote regarding the phone call, the victim referred to the teacher as his girlfriend and stated that he was proud to be involved with a grown woman.

Labor and Employment:

"Female Teacher-Coach *Failed* to Establish a Case of Discrimination After She was Removed as Girls' Basketball Coach"
Fuhr v. School Dist. of City of Hazel Park (E. D. Mich., 837 F. Supp. 2d 675), September 19, 2011.

Female teacher-coach **failed** to demonstrate a causal connection between her *successful lawsuit* alleging that the school district discriminated against her by failing to hire her as the varsity boys' basketball coach and the district's subsequent decision to remove her as the varsity girls' basketball coach, as required to establish a successful case of retaliation under Title VII, Title IX. It had been nearly five years between the plaintiff's previously successful lawsuit and her removal as the coach of the girls' basketball team. **Note:** The plaintiff claimed that her law suit was gender-based, she had been harassed, her authority had been undermined, and she had not been supported as the girls' basketball coach. As an additional note pertaining to the previous law suit that she won, the plaintiff secured a successful verdict from the jury based on the defendant not hiring her as the boys' basketball coach due to her gender.

"Offer of Reemployment to Public School Teacher was Reasonable and Made in Good Faith – Not Requiring a Notice of Nonrenewal"

Lynch v. New Public School Dist. No. 8 (N. D., 816 N. W. 2d 53), May 3, 2012.

School district's offer of reemployment, under which a teacher who had taught fifth grade at one school for 18 years would teach second and third grades at another school within the district, **was reasonable and made in good faith**. Teacher had **no** statutory right to a notice of nonrenewal and the district's failure to provide such a notice did **not** entitle her to a renewed contract with the same terms and conditions of her current contract. The teacher's reassignment resulted from the district's decision to reconfigure its three elementary schools to regain accreditation and the teacher was qualified to teach in the offered position. In addition, there were several other teachers who were also reassigned. **Note:** The plaintiff had taught fifth grade at Stony Creek for 18 years. In June 2008, the plaintiff was informed that she was being transferred to Round Prairie to teach second grade, which was within her area of certification and with no reduction in salary or benefits.

"School Board's Affirmation of Elementary School Teacher's Termination for Refusing to Submit to a Drug Test was Not Arbitrary and Capricious"

Smith County School Dist. v. Barnes (Miss. App., 90 So. 3d 77), September 20, 2011.

School board's decision to affirm the superintendent's termination of an elementary school teacher based on her *refusal to submit to a drug test* was **not** arbitrary and capricious, but *was done according to reason or judgment*. The board *relied on the clear language in the school district's drug and alcohol testing policy* when affirming the teacher's termination. As a long term employee of the school district the teacher was aware of the policy for drug and alcohol testing and she knew that she could be requested to take a test based on reasonable suspicion or drug or alcohol use, and that termination was a possible disciplinary action. On May 6, 2009, the first grade teacher was found lying on her classroom floor with her eyes closed and the lights off. The children were still in the classroom and several of the students informed other teachers that Barnes "fell out."

"Female Teacher Did Not Experience Objectively Hostile Work Environment Sufficiently Pervasive to Alter Conditions of Her Employment"

Cristofaro v. Lake Shore Cent. School Dist. (C. A. 2 [N.Y.], 473 Fed. App. 28), April 2, 2012.

High school female teacher did **not** experience objectively hostile work environment based on sex that was sufficiently pervasive or severe to alter conditions of her employment so as to constitute a hostile work environment under Title VII. The alleged conduct *had consisted of only limited, infrequent, and, at worst mildly offensive conduct* that fell short of severity and frequency required to constitute a hostile work environment based on sex. Furthermore, the conduct by the alleged offender had not been based on sex. **Note:** The plaintiff alleged that the following incidents associated with her former supervisor occurred between 1999 and 2006: (1) occasionally commented on her physical appearance; (2) participated in a bet with three other male employees as to when the supervisor would be able to engage her in sexually explicit conversation; (3) once made a nonsexual sarcastic or derogatory remark to her in front of a colleague; (4) beckoned to her in the halls by yelling "hey," curling his finger in her direction, and engaging her in conversation unrelated to her work once a month for three-and-a half years; (5) threw a piece of paper in her direction at a faculty meeting; (6) lied about her to a colleague; and (7) briefly made contact with the side of her body while standing next to her.

"Evidence Was Insufficient to Support a Finding That an Elementary School Teacher Had Engaged in Immoral Conduct"

Bonatesta v. Northern Cambria School Dist. (Pa. Cmwlth., 48 A. 3d 552), July 13, 2012.

Evidence was **insufficient** to support the finding that an elementary school teacher was intoxicated and let an intoxicated person drive her vehicle *as required to support* a school board's finding that the teacher committed immoral conduct, as grounds for her suspension. The police officer who stopped the teacher abbreviated and unexplained "yeah" response at a board hearing to question at to whether the teacher was intoxicated was contradicted by his own prior testimony under oath at a court suppression hearing that teacher did *not* violate any law related to intoxication. In fact, her breathalyzer test showed that she was fit to drive and the officer allowed her to drive away from the scene. In addition, the driver was *not* charged with driving under the influence (DUI) and was *not* tested at the scene to see if he was intoxicated. **Note:** On the night in which the incident occurred, the teacher's former boyfriend picked her up after she had completed her shift as a cook at her parents' restaurant and bar and was driving her vehicle when it was stopped by a police officer. The officer recognized the teacher's boyfriend who was not allowed to drive a vehicle that was not equipped with an ignition interlock device due to an order from a judge. Upon searching the vehicle the officer found a handgun registered to the teacher, marijuana, and drug paraphernalia in the vehicle. Thereupon, both were charged with the possession of drugs and drug paraphernalia. Neither was charged with driving under the influence; however the former boyfriend was charged with an interlock violation.

Religion:

"School Policy of Conferring Academic Credit for Off-Campus Religious Instruction Did Not Violate Establishment Clause"

Moss v. Spartanburg County School Dist. Seven (C. A. 4 [S. C.], 683 F. 3d 599), June 28, 2012.

Public school district's policy of conferring academic credit to high school students for off-campus religious instruction did **not** violate the Establishment Clause of the First Amendment. The policy *expressly prohibited* the use of public school staff or funds for its execution, academic credit was only provided for participation in accredited programs or if off-campus coursework was approved by an accredited institution, and the policy was administered in neutral terms. Students could petition for release time for religious instruction and obtain academic credit regardless of the specific religion or denomination, and the school district did *not* actively promote any particular religion by allowing a Christian school to bring informational flyers into the public school and to host a table at an annual student registration fair. Furthermore, other religious and nonreligious organizations were accorded the same privileges.

Torts:

"High School Vice Principal Did Not Have a Duty to Protect Student from Harm Due to Assault by Other Student"

Burns v. Gagnon (Va., 727 S. E. 2d 634), April 20, 2012.

High school vice principal (defendant) did **not** have a special relationship with plaintiff student so as to impose a duty on the vice principal to protect the student from harm arising from an assault by another student. Vice principal had been informed by a third student that an internet social website (MySpace) indicated that there was going to be a fight involving plaintiff later that school day. There was **no** evidence that the vice principal *knew or should have known* that the plaintiff was in great danger of serious bodily injury or death. The third student who reported the potential fight to the vice principal did **not** know the name of defendant student, where the fight was to take place, or what time the fight was to occur. Furthermore, the defendant was **not** present at the location of the fight at the time it began. **Note:** A third student met with the vice principal around 9:00 a.m. on December 14, 2006, that his friend, the plaintiff, was going to get into a fight with another student sometimes that day. The defendant told the third student that he would alert school security and he would take care of the problem; however, he did not act on the third student's report. The plaintiff was approached by another student in the school's cafeteria who punched the plaintiff in the face, knocking his head back into a brick pillar.

Fact Issue as to Whether School District Properly Supervised Infant Student during Physical Education Class Precluded Summary Judgment"
Talyanna S. v. Mount Vernon City School Dist. (N. Y. A. D. 2 Dept., 948 N. Y. S. 2d 103), July 5, 2012.

Fourth grade student and her mother brought a personal injury action against their school district seeking damages for an ankle injury the student allegedly sustained when she fell from a balance board during a physical education class. The New York Supreme Court, Appellate Division, Second Department, held that genuine issues of material fact **existed** as to whether the school district *properly supervised* the infant plaintiff during the "fitness station" portion of a physical education class or whether the district's alleged negligent supervision *was not the proximate cause* of the student's ankle injury; thus, **precluding summary judgment** on behalf of the defendant.

"Accident in Which Student was Injured was Caused by Unforeseen Act That Could Not Have Been Prevented by Any Reasonable Degree of Supervision"
Rosborough v. Pine Plains Cent. School Dist. (N. Y. A. D. 2 Dept., 948 N. Y. S. 2d 373), July 11, 2012.

An accident in which an eighth-grade student was struck in her eye by a stick thrown by a fellow student during a fire drill **was caused by a spontaneous and unforeseen act** that could **not** have been prevented by any reasonable degree of supervision. Therefore, any lack of supervision by the school district was **not** the proximate cause of the injury the student allegedly sustained as a result of the accident for purposes of imposing liability on the defendant.

"An Alleged Lack of Supervision by School District was Not the Proximate Cause of Student's Injuries"

Gibbons v. Pine Bush Cent. School Dist. (N. Y. A. D. 2 Dept., 948 N. Y. S. 2d 664), July 18, 2012.

High school student who was struck in the right eye by shuttlecock while playing badminton during physical education class was injured by an errant shot of the shuttlecock that occurred in such a short period of time that *any alleged lack of supervision* by the school district was **not** a proximate cause of 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

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