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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
- Disabled Students
- Extracurricular Activities
- Labor and Employment
- Religion
- Security
- Standards and Competency
- Student Discipline
- Torts

Topics

Abuse and Harassment:

"School's Implementation Against Student of 'Team Rules' for Tennis Team Did Not Violate Anti-Harassment Provision of School Handbook"
Cook v. Kudlacz (Ohio App. 7 Dist., 974 N. E. 2d 706), June 28, 2012.

Private religious high school's (Roman Catholic Diocese of Youngstown Foundation and Cardinal Mooney High School) enforcement of "team rules" against student who was a member of the school's tennis team that addressed absences from team events, resulting in the student's suspension from three tennis matches due to unexcused absences from team events as a result of her family vacation did **not** violate anti-harassment provision of the school's handbook. The school's handbook did not speak to the issue of whether family vacations were an excused or unexcused absence; the school tennis team coach's *exercise of her discretion* to deem the student's absences unexcused was **not** unreasonable. Furthermore, the student was *not* treated differently than similarly situated students and the rules were *not* strictly enforced against the student, but were bent to benefit her.

Civil Rights:

"Teacher was Entitled to Qualified Immunity on Claim That She was Deliberately Indifferent to Racially Motivated Physical and Verbal Misbehavior Directed at Student"
"DiStiso v. Cook (C. A. 2 [Conn.]), 691 F. 3d 226), August 21, 2012.

Plaintiff, on behalf of her biracial son filed suit against teacher, principal, and various school administrators claiming that they discriminated against her biracial son by being deliberately indifferent while her son was enrolled in kindergarten and first grade. The plaintiff alleged that her son's teacher and others allowed students to call her son names (blackie, nigger, etc.) and physically abuse (punched, pinched, and hit) him. The United States Court of Appeals, Second Circuit, held that genuine issues of material fact **existed** as to whether student experienced severe student-on-student racial harassment. Furthermore, as to whether the principal, teacher, and others had actual knowledge of such harassment and the reasonableness of their responses **precluded summary judgment** in favor of the defendants as to whether they were deliberately indifferent.

"School Employee's Reports of Financial Malfeasance were Not Protected by the First Amendment"

Ross v. Breslin (C. A. 2 [N. Y.], 693 F. 3d 300), September 10, 2012.

When a payroll clerk-typist for a school district reported financial malfeasance, she *was speaking pursuant to her official duties* and **not as a private citizen**; therefore, her speech **was not protected** by the First Amendment. The plaintiff claimed that she was speaking as a private citizen because she first went outside of the chain of command by first bringing her concerns to the school district superintendent instead of her supervisor and then by writing to the board of education. The duties associated with her position included bringing payroll irregularities "to the appropriate person's attention," as she frequently brought such issues to the superintendent and she never communicated her concerns to the public. **Note:** The discharged employee had worked for the school district since 1983.

"Officer Did Not Violate Substantive Due Process of Student Who Shot Himself at School under the Created Danger Theory"

Thayer v. Washington County School Dist. (D. Utah, 858 F. Supp. 2d 1269), February 2, 2012),

Police officer, who was assigned to a high school as a special resource officer, did **not** violate substantive due process rights (did not violate any constitutional, state, federal, administrative policy, or common law) of a 16-year-old student who died when he shot himself with a blank from a revolver at school, under *state created danger theory*. The officer did **not** fail to ensure that the rules created for the use of the revolver in a school play, including to never allow the student or any other student to handle the gun. Someone (Michael Eaton the school's drama coach) other than the officer made the decision to allow the use of the gun during a school play and rehearsal. There was **no** showing that the officer conduct was reckless or put the student at risk of any serious injury or immediate harm. The officer did *not* know that the gun would be fired by the student and he expected that the rules that were devised for the use of the gun in the play would be followed. **Note:** The drama coach wanted to employ the use of a blank to be fired in a gun in order to create an appropriate sound effect for a production of the play "Oklahoma." He ask the police officer assigned to the school for conditions in which to use such a firearm in the play. The officer provided such with the approval of the school's assistant principal (the principal was absent). The drama coach took it upon himself to not abide by the conditions so agreed upon and thereupon the student shot himself in the head with a blank that was fired from a .38 caliber revolver.

Disabled Students:

"Disabled Student's IEP was Sufficient to Comply with IDEA"

Klein Independent School Dist. v. Hovem (C. A. 5 [Tex.]), 690 F. 3d 390), August 6, 2012).

School district's IEP for a student with disabilities in areas of written expression were **sufficient** to provide him with a FAPE incompliance with IDEA. The student's IEP accommodated his disabilities by providing him with hard copies of his class notes and permitting him to use a computer in class for essays and written responses to assignments. In addition, the school's accommodation allowed him to achieve better-than-average grades in his mainstream general education classes, he was making timely progress toward high school graduation, and he was making progress in his written expression.

Extracurricular Activities:

"Locker Rooms, Practice, and Competition Facilities were of Better Quality for Male Athletes than Female Athletes"

Ollier v. Sweetwater Union High School Dist. (S. D. Cal., 858 F. Supp. 2d 1093), June 21, 2012.

Locker rooms and practice and competitive facilities **were of better quality, size, and location** for male high school athletes than female athletes **in violation of Title IX**. The football team had its own separate locker room that was rated superior in size and quality. Female athletes had access only to a generic locker room with lockers too small to store equipment and which was shared by all other girls' athletic teams and all other female physical education classes. Female athletes were required to carry all their equipment with them during the school day. Superior or adequate team meeting facilities were provided to 58% of male athletes, but only 30% of female athletes. The girls' softball dugouts were chain link and did not have a roof most of the time while boys' baseball dugouts were cinderblock and had roofs as well as being painted in school colors. The girls' softball coaches maintained their assigned field because it did not have anyone designated to care for it and the field was not secured from other use. In addition, the girls' softball field was hard and uneven and had no dedicated bullpen, unlike the boys' baseball field, softball players and spectators suffered injuries because of the poor conditions. Concessions were offered less at female athletic events than male events.

Labor and Employment:

"School District was Not Entitled to Summary Judgment Regarding Former High School Teacher's FMLA Retaliation Claim"

Donnelly v. Greenburgh Cent. School Dist. No. 7 (C. A. 2 [N. Y.], 691 F. 3d 134), August 10, 2012.

Genuine issue of material fact, as to whether high school teacher had demonstrated a causal connection between his medical leave for gallbladder surgery and denial of tenure, **precluded summary judgment** for the defendant on his FMLA retaliation claim based on his failure to show that adverse employment action occurred under circumstances giving rise to an inference of retaliatory intent. *There was a close temporal proximity* pertaining to the teacher's medical leave and his performance evaluations prior to his leave, which were extremely positive, and after his medical leave, which were negative and penalized him for excessive absences. Furthermore, the administration included his absences taken during his FMLA eligible absences. Accordingly, the aforementioned **was in fact direct evidence** that his arguably FMLA-protected leave *was held against him* in regard to his tenure process.

"African-American Teacher Failed to Exhaust Administrative Remedies with Regard to Title VII Hostile Work Environment Claim"

Turner v. Department of Educ. Hawaii (D. Hawaii, 855 F. Supp. 2d 1155), February 29, 2012.

Plaintiff, a high school teacher in Hawaii took a group of students on a field trip to Hawaii's Volcano National Park. One of the students (K.K.) on the trip was a "504" student who had a history of running away, cutting classes, and disruptive behavior. While at the park K.K. went to the bathroom and never returned. The plaintiff and the other students looked for K.K. unsuccessfully for an hour, ate lunch, and then returned to school. The plaintiff did not inform park rangers, school administrators, or K.K.'s guardian that she was missing. That night K.K.'s guardian called the plaintiff because K.K. had not returned home; afterward, the plaintiff called the police to report K.K. missing. The teacher's rationale for not reporting the student missing was because K.K. was 18 years old and he wanted to respect her adult decision. An investigation of the incident concluded that the plaintiff (1) Improperly allowed K.K. to participate in the field trip; (2) returned from the field trip without K.K.; and (3) Failed to immediately report K.K. missing to school administrators, guardian, and proper authorities. Based thereon, the plaintiff's employment was terminated with the state of Hawaii. After his employment termination, the plaintiff filed suit against the defendant for racial discrimination based on race and in violation of Title VII. The United States District Court, D. Hawaii, held that: (1) Teacher **failed** to exhaust his administrative remedies with regard to his claim for a hostile working environment under Title VII; (2) Teacher **failed** to show that similarly situated individuals outside his protected class were treated more favorably; (3) Teacher **failed** to establish that defendants' submitted reasons for his termination that were a pretext for discrimination; and (4) School officials did **not** aid, abet, incite, compel, or coerce discrimination against the teacher.

"Two Alleged Uses of a Racial Epithet Could Not Meet the 'Severe and Pervasive' Prong of a Hostile Work Environment Claim"

Roberts v. Fairfax County Public Schools (E. D. Va., 858 F. Supp. 2d 605), February 6, 2012.

Two isolated uses of a racial epithet alleged by a teaching assistant **insufficient** to meet the "severe and pervasive" prong of a hostile work environment claim under Title VII. Although both comments were deplorable, their isolation was uncontroverted (not controversial) and such limited use of a racial slur **was insufficient** to permeate her work environment with discriminatory intimidation, ridicule, and insult that were severe or pervasive to alter the conditions of her employment or create an abusive working environment. **Note:** The assistant principal met with the plaintiff on a number of occasions to discuss her work performance and numerous unexcused absences prior to the plaintiff's employment termination. On one occasion the plaintiff alleged that the assistant principal whispered to her, "I am going to kill you nigger." On a second occasion the plaintiff alleged that the same school administrator said to her "that nigger can't hear, she can't hear."

Religion:

"Christian Organization Ousted from an After-School Elementary School Program was entitled to Preliminary Injunctive Relief"
Child Evangelism Fellowship of Minnesota v. Minneapolis Special School Dist. No. 1 (C. A. 8 [Minn.], 690 F. 3d 996), August 29, 2012.

A non-profit Christian organization brought action alleging that a school district revocation of its right to participate in an after-school program at an elementary school violated its First Amendment free speech rights. The United States Court of Appeals, Eighth Circuit, held that the school district **had engaged in "impermissible viewpoint discrimination"** by ousting a nonprofit Christian organization from an after-school program at an elementary school due to the fact that the only difference between the plaintiff and other groups participating in the after-school program was that "prayer and proselytizing" took placed during its meetings. All programs provided enrichment programming as described in Minnesota statute. The plaintiff also provided an enrichment program from a religious perspective while other groups participating in the after-school programs did not.

"School Board Policy Banning Religious Worship Services in School during Non-School Hours Violated the Free Exercise Clause"
Bronx Household of Faith v. Board of Educ. of City of New York Community School Dist. No. 10 (S. D. N. Y., 855 F. Supp. 2d 44), February 24, 2012.

The United States District Court, S. D. New York, held that church and its pastors, who sought a preliminary injunction against a school board so that the church could continue to hold Sunday religious worship services in public school building, **were likely to succeed** on the merits of their claim that board policy banning religious worship services in school during non-school hours *violated* the Establishment Clause of the First Amendment. The board did *not* engage in a mere act of inspection of religious conduct when enforcing the policy, rather, the board evidenced a willingness to decide for itself which religious practices rose to the level of worship services and which did not, *thereby causing the government's entanglement with religion to become excessive*.

Security:

"Evidence Supported School District Employee's Conviction of Attempted Extortion under the Color of Official Right in Violation of the Hobbs Act"
U. S. Watkins (C. A. 6 [Ohio], 691 F. 3d 841), August 17, 2012.

Evidence **was sufficient** to prove that defendant (supervisor of security-system contracts), who was a school district employee, knowingly accepted money (approximately $7,000.00 of a $182,000 annual contract) from a vendor in return for his official acts. Such acts by the employee supported his conviction of attempted extortion under the color of his official duties as so related to the Hobbs Act. The employee claimed that he understood the money was paid to him by the vender as a retainer for future consulting work and supported his argument by pointing out that the contract between the vender and the school district was already in existence when he received the money from the vendor's representative (contacts recorded by the FBI in cooperation with the vender). In addition, the employee claimed that the contract with the district was never actually delayed or hindered in any way; however, the employee did indicated that he retained power over how the contract was administered and indicated to representative that he could "start to nitpick the contract and make her jump through hoops."

Standards and Competency:

"Applicant Who Had a Conviction for a Disqualifying Offense Expunged was prohibited From Receiving a Teaching License"
Landers v. Arkansas Dept. of Educ. (Ark. App., 374 S. W. 3d 795), April 14, 2010.

Substantial evidence supported the State Board of Education's decision denying an application for a certified teacher's license and a request for a waiver regarding disqualifying conviction for theft of property in light of expungement of applicant's conviction. Evidence indicated that there was the lack of support from applicant's employer, which was the superintendent of the school district. The proposed area of licensure, which was prekindergarten through grade four, was not a high-need area of certification. Furthermore, the board expressed concern over the applicant's character due to her criminal conduct and lack of remorse. **Note:** The plaintiff pled nolo contendere (I do not wish to content/contest.) to theft of property (Class B felony) on August 25, 2005, in Faulkner County Circuit Court in connection with the misappropriation of approximately $36,000 from the Faulkner County Conservation District. She was sentenced to sixty months' probation and ordered to pay $36,808.22 in restitution.

Student Discipline:

"School Discipline of a Student for Attending a Party where Minors Consumed Alcohol did Not Violate His Substantive Due Process Rights"
Piekosz-Murphy v. Board of Educ. of Community High School Dist. No. 230 (N. D. Ill., 858 F. Supp. 2d 952), March 12, 2012.

High school student did **not** have a protected liberty or property interest in membership in his school's honor society, and thus his rights under the Fourteenth Amendment were **not** violated when he was expelled from the society for attending a party where alcohol was being consumed by minors. The high school's code of conduct stated that participation in co-curricular activities (e.g. clubs, organization, and athletics) *was a privilege* and *not* a right that was contingent on a student's adherence to the code and school district's written criteria for membership in such co-curricular activities. In this case the plaintiff was obligated to not violate the code of conduct for his particular honor society. **Note:** The 17-year-old high school student participated in interscholastic athletics and was a member of the National Honor Society.

Torts:

"Teacher did Not Negligently Supervise His Physical Education Class in Which Student was Injured by Teacher's Participation"
Godoy v. Central Islip Union Free School Dist. (N. Y. Supp., 950 N. Y. S. 2d 693), September 6, 2012.

High school teacher's participation in a game of floor hockey during a physical education class and taking a shot on a goal that resulted in an injury to a student's hand when he attempted to block the teacher's shot did **not** expose the student to an unreasonable risk of harm, as would violate the duty of the school and teacher to adequately supervise the student. The teacher took the shot very similar to any player and **not** as a result of superior skills. Furthermore, the teacher could **not** have prevented the sudden and unanticipated injury had he been supervising rather than playing.

"Genuine Issues of Material Fact Existed as to Whether Bleachers Constituted a Physical Defect, Precluding Summary Judgment"
Leasure v. Adena Local School Dist. (Ohio App. 4 Dist., 973 N. E. 2d 810), June 28, 2012.

Plaintiff testified that she had been to the school gym more than a dozen times before her accident to watch her nieces' volleyball games and on the date of her injury, the bleachers did not look any different than they had in the past. In addition, she testified that she was not aware that the bleachers had not been fully extended and locked into the intended position. The plaintiff fell while walking down the bleachers with her child in her arms. The Court of Appeals of Ohio, Fourth District, Ross County, held that (1) Genuine issues of material fact **existed** as to whether the bleachers at the school's gymnasium constituted a physical defect, *precluding summary judgment* based on the school district's tort immunity and (2) Discretionary defense did **not** apply so as to give the school district immunity from the plaintiff's negligence action.

"School District Officials Owed Duty on Claim of Willful and Wanton Conduct to Students Sexually Abused by the Teacher in another School District"
Jane Doe-3 v. McLean County Unit Dist. No. 5 Bd. of Directors (Ill., 973 N. E. 2d 880), August 9, 2012.

School officials from a school district where a teacher was previously employed **owed duty** to students whom he sexually abused in the school district where he was next employed to *provide accurate information to the second school district*. The previous school district's officials allegedly provided the second school district an employment verification form falsely stating that the teacher had worked the entire school year, when he had been remove from classroom duties twice after reports that he had sexually abused or harassed students, and his employment had ended before the end of the school year. **Note:** The teacher had been an elementary classroom teacher in both school districts involved in the suit where he sexually harassed, sexually abused, and sexually "groomed" minor first and second grade female students.

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)