Legal Up Date For District School Administrators February 2004

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The **Legal Up Date 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 Initiative** located in the Graduate School of Management, Leadership, and Administration at the University of Central Arkansas. If you have any questions or comments about these cases and their potential ramifications, please phone me at **501-450-5258**. In addition, feel free to contact me regarding educational legal concerns; school safety and security issues; student discipline/management issues, and alternative beliefs.

Topics:

- Abuse and Harassment
- Disabled Students
- Extracurricular Activities
- Free Speech
- Labor and Employment
- Security
- Student Discipline
- Torts

Commentary:

- Student Violence and Harassment
- Reasonable vs. Reasonableness

Topics

Abuse and Harassment

*Mulvey v. Jones (VA. App., 587 S.E. 2d 728), October 28, 2003.

An eleven-year-old student was misbehaving and being disruptive in his teacher's classroom. The teacher asked the student to leave the classroom three times and the student refused. The teacher placed the youngster's book bag on a desk in the hallway. Thereupon, the student went into the hall, refused to sit, kicked the desk, and called his teacher a "butthead". The teacher grabbed the student from behind with a strong grip on his shoulder and slammed him into the desk. Consequently, the student had abrasions on his left shoulder and bruises under his right underarm. A Virginia court of appeals held that there was substantial evidence that the injury inflicted on the student by the teacher was not accidental and, in fact, constituted physical abuse, regardless of the teacher's lack of intent to injure the youngster. The court went on to say that the teacher acted intentionally when he grabbed the student and slammed him into the desk; and there was no evidence to indicate that the teacher was acting to prevent the student from harming himself or others.

Disabled Students

*Berger v Medina City School Dist. (C.A. 6 {Ohio}, 348 F. 3d 513) September 9, 2003.

Failure of hearing-impaired student's parents to give public school adequate notice before removing student from school precluded reimbursement for private school tuition. Parents had arranged to enroll the child at private school before requesting due process hearing or advising school district of their specific objections to IEP and the intent to remove the child. Note: the youngster had a profound hearing loss; however, the fourth-grader was assigned to a regular classroom and received speech and language therapy and pre-tutoring for new vocabulary both in therapy and at home.

*County School Bd. Of Henrico County, Vir. V.Palkovics ex rel. Palkovics (E.D. Va., 285 F. Supp. 2d 701), September 26, 2003

School board sought judicial review of hearing officer's determination that its IEP had failed to offer an autistic child free and appropriate public education (FAPE) as required under IDEA. Parents sought a review of the placement of their son in a preschool autism class at an elementary school. A United States district court in Virginia held that: (1) Failure to include "behavioral intervention plan" in IEP for the autistic child did not deprive the student of FAPE. Deprivation would have occurred only if such plan was not added to IEP, once the need for intervention was demonstrated; (2) school board's failure to include evaluation methods that would be used to evaluate the child's progress toward four of five IEP goals, though error, was mere technical defect which did not deprive youngster of FAPE.

Extracurricular Activities

*Angstadt ex. Rel. Angstadt v. Midd-West School Dist. (M.D. Pa., 286 F. Supp. 2d 436), September 3, 2003.

Public school district's refusal to allow student enrolled in cyber charter school to practice, play, or compete in interscholastic basketball (based on determination that she did not meet requirements that district placed on student athletics) did not violate Fourteenth Amendment's Due Process Clause. Even if district permitted student to participate in basketball in previous years, and state public school code provided that school district could not prohibit students of charter schools from participating in any extracurricular activity of school district of residence, student did not have a constitutionally protected interest in playing sports. In addition, the student did not satisfy school code's provision of fulfilling all of district's requirements of participation in an extra curricular activity.

School district requirements for interscholastic athletic participation included the following: (1) achieve at least the 9th grade level academically; (2) meet the district's curriculum requirements for physical education; (3) meet the district's all-day attendance policy; (4) maintain an above-average citizenship grade; and (5) maintain passing grades.

Free Speech

*Smith v. Mount Pleasant Public Schools (E.D. Mich., 285 F. Supp. 2d 987), September 30, 2003.

A high school junior, while eating lunch with friends in the high school's cafeteria, read aloud a three-page typewritten commentary criticizing the high school's tardy policy. The commentary stated that the tardy policy was made by a Nazi; and it gave the names of some teachers who the student believed supported the policy, referring to them as "teacher gestapos". The student devised a crude abbreviation for the tardy policy, calling it "turd.lic", which he designated as turd licking". Aside from criticizing the tardy policy, the commentary discussed the belief that the high school principal had divorced her husband after having an affair with another school principal (whom she later married). The principal was referred to as a "skank" and "tramp". The commentary also stated that the assistant principal was confused about his sexuality.

The Michigan statute stated: "The school board shall…expel a student in grade six or above for up to 180 school days if the student commits a physical assault at school against another student, commits verbal assault against a district employee, volunteer, or contractor or makes a bomb threat directed at a school building, [property, or a school-related activity.

A United States district court in Michigan held that the statute requiring school boards to suspend or expel students for committing "verbal assaults" and delegating to individual school boards the task of defining that term, and school district policy enacted there under, where unconstitutionally overboard

Labor and Employment

*Justice v. Pike County Bd. of Educ. (C.A. 6 {Ky.}, 348 F. 3d 554), November 4, 2003.

School employee's position of grants development director was not exempted from First Amendment protection of freedoms of political belief and association from dismissal on the basis of her political affiliation or support. The situation arose when the previous superintendent came under public scrutiny after a local newspaper published articles alleging that he had closed down a public school to enhance the business of a competing private school run by his son. Shortly thereafter, the superintendent resigned his position. The employee repeatedly defended the superintendent and published an article in the newspaper defending and praising him. The board appointed a new superintendent. Shortly thereafter, the grants department was abolished and its functions returned to other administrators. The plaintiff was notified that she would be assigned back to classroom teaching duty with the same per diem salary. However she was expected to work 185 days compared to the 240 days as grand director. Thus, there was a significantly reduction in her annual salary.

*Vallandigham v. Clover Park School Dist. No. 400 (Wash. App. Div. 2, 79 P. 3d 18), November 12, 2003.

Although approximately 150-160 episodes of violence (e.g. throwing things, kicking, grabbing the face of teachers, shoving, biting, and general intimidation and assaults on both teachers and students) committed by handicapped (autistic and seizure disorder) middle school student during the school year may have put school districts on notice that injury to special education teachers was possible or even likely, school officials did not willfully disregard its actual knowledge of certain injury as required for exception to exclusive remedy provision of Industrial Insurance Act. School officials did take many steps to alleviate the risk posed by the student.

The following represents a sample of the steps the school district took: contacted student's physician about a change in medication; performed a functional behavioral analysis; called IEP meeting; hired permanent one-on-one aide to work directly with student; created a separate area outside the classroom for use as an isolation or time-out space; offered restraint training; issued walkie-talkies to selected staff; placed student in half-day program; and considered alternative placements (but parents were unwilling to take student).

Security

*Rivera v. Houston Independent School Dist. (C.A. 5{Tex.} 349 F. 3d 244), November 7, 2003.

An eighth grader was killed by a seventh grader with a screwdriver during a gang fight an area of a middle school called "the tunnel" (a windowless hallway with no classrooms). Both had been involved in a similar gang fight the afternoon before the incident; however, that fight occurred off school grounds. The United States Court of Appeals, Fifth Circuit, held that, even assuming constitutional soundness of state-created danger theory for imposing Section 1983 liability on due process grounds lack of evidence that school board hand actual or constructive knowledge of middle school personnel's alleged custom of tolerating gang activity, or were deliberately indifferent to danger, precluded liability in surviving parents' action.

Student Discipline

*In re Juvenile 20030189 (N.H., 834 A. 2nd 271), October 14, 2003.

An eighth grader was suspended from school for eight days and had received five detentions due to his disruption of classes; failure to respect property and people; failure to follow directions; harassment of teachers and students; use of obscene language; and staling. The Superior Court of New Hampshire held that the school was not the student's "custodian" within meaning of New Hampshire's statute which permits a court to find that a child is in need of services if the child repeatedly disregards the reasonable and lawful commands of his parents, guardian, or custodian and places himself or others in unsafe circumstances. Thus, the court held that the school could not file "a child in need of services" petition as the custodian of the youngster.

Torts

*Steven F. v. Anaheim Union High School dist. (Cal; App. 4 Dist., 6 Cal. rptr. 3d 105), October 22, 2003.

School district had not duty to protect parents from emotional distress they suffered when they discovered their daughter was having a sexual relationship with one of her teachers. The relationship was a very closely guarded secret between the youngster and her teacher. In fact, the young lady's friends testified that it never crossed their minds that the teacher was molesting her, or that it was anything more than her being "a teacher's pet". The school district had done its part to prevent misconduct of this nature; and burden on district preventing relationships beyond what it was already doing would be intolerable. Note: The student, who had just completed the 11th grade, had been engaged in a sexual relationship with the male teacher since early in the 10th grade. The teacher was convicted of sexual molestation and sent to jail.

Commentary

Student Violence and Harassment

Student violence and harassment is a board category encompassing a variety of acts such as schoolyard fights, sexual harassment and assault, hazing, bullying, gang violence, graffiti, and school shootings. The effect to prevent and respond to student harassment and violence is fought on many different fronts, from the classroom to the central office. Similarly, a school district's effort to avoid legal liability for student harassment and violence is a multifaceted operation. For example, an incident of sexual assault could produce several different causes of action: One alleging that the school board was negligent in failing to adopt proper policies; another alleging that a teacher or school administrator negligently supervised the students; another that the teachers and school administrators failed to receive proper training and orientation regarding student verbal and physical conformations, another charging that the school violated the victim's constitutional rights; another charging that the school's victim's constitutional rights; and finally, charging that the school's response to the sexual assault is a form of gender discrimination.

When a student commits an act of violence against a fellow student, the victim will often sue, asserting claims of negligence or negligent supervision against the school district or its employees. However, the ability of a student to recover in such suits will vary widely, depending on the jurisdiction. Attempts to hold school officials accountable in federal court through Section 1983 action have, by and large, been unsuccessful. A small chink in the "armor of school district protection" has been exposed in recently Title IX cases; but it applies only to cases of sexual harassment and requires a standard of liability that is extremely difficult to meet. Accordingly, critics complain that the current state of the law produces no incentive for school districts to protect their students from harassment and violence. Regardless, the prevention and response to school violence and student harassment remains one of the top priorities of school officials. Perhaps, and most likely, a genuine concern for the well-being and safety of children, rather than the strong threat of legal action, serves as the primary motivator.

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Reasonable vs. Reasonableness

Despite many federal court decisions, the controversy over the interpretation of a free appropriate public education (FAPE) and least restrictive environment (LRE) for students with disabilities has not diminished. Some courts have decided cases emphasizing FAPE, while the emphasis in others have been on LRE. However, the two issues are so inextricably intertwined that it is often difficult to distinguish between them.

When deciding cases related to LRE and FAPE, courts have typically examined the following elements when it comes to analyzing an educational program for students with disabilities:

1. Has the school complied with the procedural requirements under IDEA?
2. Has the IEP been reasonably calculated to provide the child with some educational benefit?
3. Has the school provided supplementary aids and services?
4. Has the placement decision been collaboratative?
5. Has there been a good faith effort on behalf of the district to educate students with disabilities along side their nondisabled peers?
6. Have the needs of classroom peers and the effect of the student with disabilities on other students and the educational environment been considered?
7. Have the costs been considered?

Taking into consideration the preceding, even if parents or hearing officials have been mistaken, the central question is whether the school officials have been reasonable.

*** Possible implications for Arkansas's Schools.**

March 2004

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- Civil Rights
- Disabled Students
- Health
- Labor and Employment
- Property and Contracts
- School Districts
- Security
- Sex Offender Registration
- Torts

Commentary:

- Internet Censorship-CIPA Within the Schoolhouse

TOPICS

Abuse and Harassment

*Forrest v. Pawtucket Police Dept. (D. R. I., 290 F. Supp. 2d 215). October 22, 2003.

High school special education teacher sued city, police department, police chief, and police officers under Section 1983, alleging he was arrested without probable cause for alleged sexual assault of male student. Court held that city and police officers did not breach any duty to teacher in connection with arresting him for alleged sexual assault of student. Accordingly, they were not liable for negligence under Rhode Island law. City and officers conducted adequate investigation and had probable cause to arrest teacher. Note: Male student claimed teacher had rubbed his shoulder, legs, and penis during his "Life Skills" class. Subsequently, student and his mother filed a formal complaint against the teacher at the police department.

*Lifton v Board of Educ. City of Chicago (N. D. III., 290 F. supp. 2d 940), November 10, 2003.

Former kindergarten teacher sued principal, alleging violations of her speech and due process rights, defamation, and intention infliction of emotional distress. A United States district court in Illinois held that the teacher did state a cause of action in complaint for intentional infliction of emotional distress under Illinois law. Even though she did not specifically allege that the principal's conduct was extreme and outrageous, the principal knew that his conduct had a high probability of causing extreme emotional distress. Due to the principal's action the teacher had to undergo medical treatment for stress. Note: The teacher had expressed concern pertaining to the kindergarten classes being too large, the class periods were too long, and the program did not conform to state standards. Principal charged teacher with violation of the school district's discipline code and conduct unbecoming to a teacher. She was issued a warning and finally discharged from her teaching position.

*State v. Parsons (W.Va., 589 S.E. 2d 226), June 27, 2003

Former teacher and school administrator was convicted on 21 counts of third-degree sexual assault (sexual interactions ranged from fondling to sexual intercourse) stemming from his interaction with junior high female students, specifically the victim (now in her 30's) who initially filed the sexual assault charges. The incidents occurred (1977-1980) when the teacher was approximately thirty years of age and female victim was in the eighth and ninth grades. The Supreme Court of Appeals of West Virginia held that evidence of incidents from alleged victim and other victims was neither so distant in time or so excessively numerous as to deny defendant a fair trial.

*Katz v. St. John Baptist Parish School Bd. (La. App. 5 Cir., 860 So. 2d 98), October 15, 2003.

Mother of male kindergartner brought negligence action against school board arising from sexual assault of student by three male classmates while making an unsupervised visit to the school's rest room. While in the rest room, the boys assaulted the youngster by pulling his pants down, attempting to perform anal intercourse, and forcing him to perform "sexually explicit oral behavior" with them. A Louisiana appeals court held that material issues of fact precluded summary judgment for the school board due to the foreseeability of the attack and the manner in which the district handled the situation, which subsequently lead to the youngster's psychological and medical problems. Youngster suffered debilitating emotional problems, post-traumatic stress disorder, loss of enjoyment of life, medical expenses, and lost time from school.

Civil Rights

*Barber ex rel. Barber v. Dearborn Public Schools (E.D. Mich., 286 F. Supp. 2d 847), September 30, 2003.

On motion for preliminary injunction, high school junior was substantially likely to succeed on merits of his First Amendment free speech claim in civil rights case, that high school principal was not justified in prohibiting him from wearing a t-shirt to school which displayed a photograph of President George W. Bush with caption "International Terrorist". Although principal felt that student's t-shirt was inappropriate, and fellow student was angry and threatened student, no harm was intended by the wearing of the t-shirt. The court concluded that all of the conclusions taken together did not constitute material and substantial disruption of

school activities. As a note of interest, Dearborn High School (Dearborn, Michigan) has the largest concentration of Middle East students (31.4%) anywhere in the world outside of the Middle East.

*Bell ex rel. Bell vs. Board of Educ. of County of Fayette (S.D.W. Va., 290 F. supp. 2d 701) November 10, 2003.

A twelve-year-old elementary school board was sexually molested and killed (teacher administered amitriptyline and/or chloroform to child which rendered him incapable of resistance). However, the child died either as a result of head injuries inflicted by teacher or as result of aspiration of his own gastric contents induced by the amitriptyline or chloroform by his male teacher (pedophile and sexual predator). A United States district court in West Virginia stated that absent evidence that school board or supervisor (who worked as both a teacher and principal) of elementary school teacher had actual knowledge that teacher was currently sexually abusing students, school officials could not be held responsible under Title IX theory of supervisory liability.

Disabled Students

In re Erich D. (N.Y.A.D. 3 Dept., 767 N.Y.S. 2d 488), November 26, 2003.

Principal's petition seeking to have disabled 16-year old student adjudicated as a person in need of supervision (PINS), based on his unexcused absences from school on 16 occasions within a two-month period, was not a change to student's IEP in violation of IDEA. PINS proceeding was commenced in order to compel student to attend school, and thus to participate in his IEP.

Lewis Cass Intermediate School Dist. V M.K. ex rel. J.K. (W.D. Mich., 290 F Supp. 2d 832), November 14, 2003.

Dispute relating to alleged IDEA violation which occurred while student was a resident of school district was not rendered moot by student's move outside the district. Michigan administrative code language providing that "the hearing shall be arranged or conducted by the district of residence" was not a jurisdictional bar against requesting a due process hearing in the student's former school district for incidents which occurred while he was a resident of that district. Note: Parents of a hearing-impaired student alleged their son's former school district did not provide a teacher endorsed in hearing impairments, necessary speech and language services, and an interpreter.

Health

*Theodore v. Delaware Valley School dist. (Pa., 836 A. 2d 76), November 20, 2003.

In 1998 the Pennsylvania school district passed a policy which required all middle and high school student seeking to participate in extracurricular activities or requesting permission to drive to school or park at school to sign, or have a parent sign, a "contract" consenting to testing for alcohol and controlled substances. The supreme Court of Pennsylvania held that school district's policy authorizing random, suspicionless drug and alcohol testing of students seeking school parking permits or participating in voluntary extracurricular activities would pass scrutiny under search and seizure provisions of State Constitution only if district made some actual showing of the specific need for the policy and an explanation of its basis for believing that the policy would address the need. Important Note: Nothing in the statement of purpose for the policy, or in any other pleading of record, suggested that the class of students targeted for random testing were the source of any existing and active drug problem in the school district or in the community. Furthermore, the court noted that the portion of the complaint alleging violation of parents' rights was not ripe for decision because students had tested negative.

Labor and Employment

*Larry v. Grady School district. (Ark. App., 119 S.W. 3d 528). May 14, 2003.

School principal who was terminated from his position was not entitled to damages, because by mitigating his damages, principal did not suffer any loss. At the time of his termination, he had one year remaining on his employment contract in which he would have earned $48,075.50. Upon his termination, he obtained employment in another school district where he earned $49,724.25. Therefore, he had a surplus income in the sum of $1,684.75.

*Bolyard v. Board of Educ. of Grant County (W.Va., 589 S. E. 2d 523), November 5, 2003.

Elementary school guidance counselor did not have a clear right to terminate her employment contract. Neither did she have the right to compel the school board to accept her resignation. Boards of education have substantial discretion in matters relating to the hiring, assignment, transfer, and promotion of school personnel. Note: The board voted 3-2 to not accept the guidance counselor's resignation because school was about to begin and her resignation would be too disruptive for the students. She had accepted a position in a vocation center prior to attempting to resign her position.

Property and Contracts

*JCM Const. Co., Inc. v. Orleans Parish School Bd. (La. App. 4 cir., 860 So. 2d 610), November 17, 2003.

School board brought action against contractor for failing to provide adequate insurance coverage for project involving relocation of two portable classroom buildings which were destroyed by arson, before school board had filed formal acceptance of the work. The insurance consultant for the school district approved the contractor's certificate of insurance (which contained general liability, automobile liability, etc., but not builder's risk coverage) on behalf of the board. Between the time in which the project was substantially completed, but before the board's formal acceptance, three juveniles broke into the classrooms and started a fire which destroyed the two buildings. The board refused to pay the contractor. A Louisiana appeals court held that the contractor met his performance obligations, and insurance consultant assured contractor his certificate of insurance was adequate. Accordingly, the contractor was awarded approximately $7000,000.

School District

*Daleiden v. Jefferson County Joint School dist. No. 251 (Idaho, 80 P. 3d 1067), November 24, 2003.

School district did not have duty to physical therapist who was providing services to school district under contract, to provide school bus with wheel chair lift, because district had already provided qualified and experienced school aid to help student off bus. It was not foreseeable to district that therapist would take it upon herself to assist student off bus, which resulted in therapist's back injury.

Security

*U.S. v. Aguilera (E.D. Cal., 287 F. Supp ed 1204), September 25, 2003.

An anonymous parent's telephone call to high school administration regarding a non-student visitor carrying a concealed weapon on campus provided sufficient information to create reasonable suspicion to stop and frisk the visitor. Parent identified herself as a parent of a student, revealed her location, explained that she had personally observed the visitor with the weapon, described the visitor's physical appearance, and provided contemporaneous surveillance of the visitor's movements. It is interesting to note that the caller reported that she saw the visitor lift his t-shirt above his waist to reveal a "sawed-off" shotgun tucked into his shorts. The gun turned out to be a 20-gauge Harrington and Richardson shotgun.

Sex Offender Registration

*State v. Knapp (Idaho App., 79 P. 3d 740), October 31, 2003.

A former high school science teacher who had sexually abused a 14-year-old female (who was a friend of his daughter) eleven years ago was not eligible for relief from requirement to register as a sex offender, even though he had successfully completed probation and a treatment program (Sexual Abuse Now Ended {SANE}). In addition, he had apparently refrained from further sexual abuse of children during the last decade; however, his own expert (state director of SANE) declined to describe as a "no risk" offender.

Torts

*Keaton v. Hancock County Bd. of Educ. (Tenn. Ct. App., 119 S.W. 3d 218), April 30, 2003.

Failure of kitchen manager (who suffered electric shock) to order repairs on her own authority after other employees in high school kitchen had received electrical shocks and fact that manager continued to work despite her knowledge of electric problems did not amount to negligence. Manager had done all she was required to do by reporting to director of schools. It was not her place to usurp employer's responsibility by seeking to arrange repairs on her own. She had every right to believe that the board would address its responsibility to provide a safe place to work. Note: While preparing breakfast, she had her left hand on a cool part of one of the kitchen's stoves and at the same time extended her right hand to check a warmer. Thus, contact was made and her right hand became bound to the warmer for a short period of time. The intervention of a coworker and a paramedic giving her CPR enabled her to maintain her breathing. She was awarded $50,000.

*Watkins v. Millennium School (S.D. Ohio, 290 F. Supp. 2d 890), November 18, 2003.

Parents of third-grade student subjected to search of her person by classroom teacher brought suit against teacher and school for alleged assault, intentional inflection of emotional distress, and violation of student's Fourth Amendment rights. A United States district court in Ohio stated that the minimal nature of privacy interests, implicated by teacher's request that three third-grade students turn down their waistbands, so that she could check whether the $10.00 missing from her desk was hidden in the students' waistbands were not such as to require any individualized suspicion of wrongdoing in order to satisfy Fourth Amendment requirements. However, teacher needed individualized suspicion in order to require one of the students to accompany her to supply closet and to hold open her pants so the teacher could look inside. The first search required only reasonable suspicion. Individualize suspicion was required for the second search. Teacher was not liable for the intentional infliction of emotional distress.

*Guerrero v. South Bay Union School Dist. (Cal. App. 4 Dist., 7 Cal. Rptr. 3d 509) December 12, 2003.

School district was immune, as a matter of law, from liability for injuries suffered by six-year-old first grad student when she was struck by car (after school) on an adjacent street. The accident was not attributable to school personnel's on-campus supervisory failure. Staff was not responsible for supervising students on street after they had been released from school. Note: The first grader was dismissed from school at 2:00 p.m. and the accident occurred at approximately 2:30 p.m. She was waiting with her siblings to be picked up from school when she crossed a street to look at another child's toy. While returning to the side of the street where the school is located she was struck by a car and seriously injured.

ACE Fire Underwriters Ins. Co. v. Orange-Ulster Bd. of Co-op. Educational Services (N. Y.A. D. 2 Dept., 768 N. Y. S. 2d 386), November 24, 2003.

Primary liability insurer brought action for judgment declaring that it had no duty to defend insured school board pursuant to a general liability policy in underlying action alleging claims of negligent hiring and supervision. Pennsylvania Supreme Court, Appellate Division, Second Department, held that insurer had no duty to defend school board on claims of negligent hiring and supervision after employee committed a "intentional" sexual assault on a student. Insurer "acts and omissions" policies covered only "negligent acts", not "intentional acts of negligence" by school district employees.

Commentary

Internet Censorship-CIPA Within the Schoolhouse

At the close of its June 2003 session, the United States Supreme Court issued several decisions with significant implications for school districts, school officials, and employees. A decision involving internet filtering (United States v. American Library Association (ALA), 1234 S. Ct. 2297 (2003) may have an extensive impact, because the law at issue affects public schools across the nation. The case pertained to the Children's Internet Protection Act (CIPA) which requires public libraries and school district receiving federal technology funds to enact a policy of internet safety for minors that includes measures to protect children from access to obscene or pornographic images or visual depiction that are harmful to minors. Accordingly, public libraries and schools must install filtering software on their computers as a condition of receiving federal monies. In a six-to-three decision, the United States Supreme Court fundamentally stated that such a provision is prudent and legal.

The Supreme Court's decision rejecting a facial challenge to CIPA lass not resolved all the questions about censoring internet transmissions for minors. Censoring internet access in public schools in troublesome because of the inherent tension among public schools' essential roles in "exposing young minds to the clash of ideologies in the free marketplace of ideas," community values. With the escalating use of the internet, legal challenges addressing this tension are bound to increase. Not only do legal issues pertain to freedom of speech and the protection of minors, but also to their privacy concerns related to the increasing ease of cyberspace access to personal information about individuals. The issues are indeed complicated and they are generating an interesting and expanding branch of school law. This, in-turn, offers an increasingly costly challenge to school boards and their employees.

***Possible implications for Arkansas's Schools.**

April 2004

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- Religion
- Standards and Competency
- Student Discipline
- Torts

Commentary:

- No commentary

Topics

Compensation and Benefits

*Public Employees' Retirement System v. Flinklea (Miss. App., 862 So. 2d 569), January 6, 2004

Former leader of her school's custodial crew sought judicial review of administrative denial of her request for permanent disability benefits by the Board of Trustees of Mississippi's Public Employees' Retirement (PERS). The former public school custodian could no longer perform the usual duties of her employment due to permanent decrease in cardiac function following quadruple bypass surgery. The Court of Appeals of Mississippi held that the plaintiff's denial of permanent disability due to her permanent medical condition was arbitrary and capricious. Thus, disability benefits were granted. The Court went on to say that PERS may not deny disability benefits when faced with apparently substantial objective evidence of a disability. She had previously applied for, and was approved for, Social Security disability benefits prior to applying to PERS.

Disabled Students

*Nieves-Marquez v. Puerto Rico (C.A.1 {Puerto Rico}, 353 F. 3d 108), December 24, 2003.

A hearing-impaired (moderate to severe bilateral hearing loss) youngster (12 year-old who did not know how to read), whose mother is a special education teacher, brought action under IDEA, ADA, and Section 504 to compel the Department of Education of Puerto Rico to provide a sign language interpreter as ordered by a hearing officer. The United States Court of Appeals, First Circuit, held that the youngster was likely to prevail for purposes of obtaining a preliminary injunction on claim that a sign language interpreter was necessary to provide him with a FAPE, as guaranteed him under IDEA and accommodations as required under Section 504. An interpreter had been provided by the Department in the past, and there was no evidence of a change in his condition.

Extracurricular Activities

*Priester v. Lowndes County (C.A. 5 {Miss.}, 354 F. 3d 414), January 7, 2004.

High school football player's mother brought action against school district, school officials, and son's teammate, arising from racially motivated attack (teammate {white} thrust his hands through youngster's helmet face guard and gouged his eye) on player (black) committed by teammate during practice. The United States Court of Appeals, Fifth Circuit, held that without evidence in addition to the alleged racial epithets, football player's mother failed to come forward with sufficient claim from which a reasonable juror could infer racial intent by a state official. Thus, plaintiff failed to establish that school defendants violated equal protection clause of the Fourteenth Amendment of the U.S. Constitution. While school officials may not have adequately responded to all of the mother's numerous complaints of racial harassment, record did not show that the officials' inaction on some of the complaints rose to the level of equal protection violation. The student's mother presented no evidence establishing that the alleged racial harassment went unpunished while other types of misconduct were punished, or that the school did not document the racial harassment in its records.

Labor and Employment

*Mataraza v. Newburgh Enlarged City School Dist. (S. D. N. Y., 294 F. Supp. 2d 483), December 4, 2003.

A school's program specialist brought age discrimination action against school district. However, the employee moved for leave to amend complaint to dismiss the age discrimination claim and assert a First Amendment retaliation claim. The situation arose when the program specialist expressed his concerns that the process of curriculum alignment would "eliminate instructional individuality"; "demoralize faculty members"; and might foster a habit of "teaching to the test" or other "educationally questionable methodologies". The court stated that public school district reasonably believed that employee's public criticism of board's curriculum alignment program was likely to interfere with the implementation of that program at the employee's school and affect the employee's ability to serve as assistant principal. Thus, district's failure to promote employee to assistant principal position did not constitute retaliation in violation of the employee's First Amendment rights.

*Macksel v. Riverhead Cent. School Dist. (N. Y. A. D. 2 Dept., 769 N. Y. S. 2d 585), December 22, 2003.

Termination of employee who was employed as a school bus driver for school district, based on misconduct for allegedly creating a hostile work environment under Title VII through sexual harassment of two female coworkers, was not supported by substantial evidence. The court's conclusion was due to the absence of evidence that the male employee's conduct interfered with females' work performance, or that the women communicated unwelcomeness of such conduct by their words or actions. Furthermore, both women did not miss work after alleged incidents and continued to interact with employee.

Religion

*Hansen v. Ann Arbor Public Schools (E. D. Mich., 293 F. Supp. 2d 780), December 5, 2003.

School district violated equal protection clause of the First Amendment by barring high school student who believed that homosexuality was sinful from participating in her school's diversity week panel on homosexuality and religion, or to have clergy to share her views placed on the panel. School officials allowed a discussion by a panel consisting of clergy (selected by the high school's gay students' association) believing that religion and homosexuality were compatible, but did not allow clergy with an opposing view to serve on the panel. Note: The high school senior who brought the suit was a member of her school's "Pioneers for Christ". Her high school also had a student organization called "Gay/Straight Alliance". The school's student council was responsible for the "2002 Diversity Week".

Standards and Competency

*Boguslawski v. Department of Educ. (Pa. Cmwlth., 837 A. 2d 614), December 4, 2003.

Substantial evidence supported hearing officer's findings of immorality and intemperance so as to revoke teacher's teaching certificate under the Professional Educator's Discipline Act. Students testified that they were abused (improperly touched), how they were abused, and the time of day which it occurred. The fourth grade male students were only inconsistent in the number of times that it happened and the date the abuse started. Testimony of the teacher and his witnesses was not credible. Note: The teacher was arrested and criminal charges were filed; however, he was found not guilty. (Remember, in criminal cases the charges must be proven "beyond reasonable doubt".) He had been teaching for 32 years, and had no prior record of any discipline problems. The teacher was undergoing cancer treatment at the time of the incident and thereafter.

Student Discipline

*In re Jason W. (Md., 837 A. 2d 168), December 5, 2003.

Middle school student's misconduct in writing on wall, without authorization, the words "there is a bomb," was not sufficiently disruptive to violate statute making it a criminal offense for any person willfully to disturb or otherwise prevent the orderly conduct of the activities, administration, or classes of a school. Therefore, the student could not be subject to juvenile delinquency adjudication. School principal did not take the writing as an actual threat, and was accurate in his assessment.

*Sherrell ex rel. Sherrell v. Northern Community School Corp. of Tipton County (Ind. App., 801 N. E. 2d 693), December 31, 2003.

Prosecutor's failure to determine whether 16 year-old student engaged in unlawful activity when he stated in the presence of two school friends that he was going to "get his dad's gun in Indianapolis, bring it to school, start with the seventh grade, and work his way up" did not preclude student's expulsion. School authorities could determine whether student's unlawful activity could reasonably be considered to be an interference with school purposes or an educational function, and whether student's removal was necessary to restore order or protect persons on school property.

Torts

*R. W. Manzek (Pa. Super., 838 A. 2d 801), December 9, 2003.

Harm to parents' child, who was sexually assaulted while selling candy for school fundraiser off school property, was not foreseeable to fundraising companies for purposes of parents' negligence claims against them. Harm was not foreseeable to school district, given mere act of allowing fundraiser to take place, and therefore not foreseeable to fundraising companies which merely supplied fundraising materials and brochures to school and made presentations which school representatives attended.

*Maracallo v. Board of Educ. Of City of New York (N. Y. Sup., 769 N. Y. S. 2d 717), December 22, 2003.

Mother whose 14-year-old son drowned in wave pool at water park while on a school field trip adduced sufficient evidence from which jury, in mother's action as administrator of son's estate against city board of education, could conclude that her son suffered a most terrible and prolonged demise over a period of approximately six minutes, during which he suffered physical pain, terror, and knowledge of his impending death. Accordingly the court awarded the deceased student's mother $2,000,000. Note: The teachers responsible for the field trip relied totally upon the water park's lifeguards to supervise the students while they wandered about the park.

*Taney v. Independent School Dist. No. 624 (Minn. App., 673 N. W. 2d 497), January 13, 2004.

Evidence supported finding that school district negligently maintained school and was thus liable to grandparent who, while visiting school to attend granddaughter's choir program, fell after stepping through doors and broke her hip. Even if nine-inch drop-off from glass double-doors leading to interior courtyard at school would have been open and obvious during daytime, there was evidence that grandparent's attention was distracted by people in hallway across courtyard, and accident occurred at night. Additionally, the courtyard was lit only by some light from interior of school, so that the danger would not have been open and obvious.

Commentary

No commentary.

***Possible implications for Arkansas's Schools.**

May 2004

Legal Up Date For District School Administrators May 2004

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The **Legal Up Date 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 Initiative** located in the Graduate School of Management, Leadership, and Administration at the University of Central Arkansas. If you have any questions or comments about these cases and their potential ramifications, please phone me at **501-450-5258.** In addition, feel free to contact me regarding educational legal concerns; school safety and security issues; student discipline/management issues; and concerns pertaining to gangs, cults, and alternative beliefs.

Topics:

- Civil Rights
- Labor and Employment
- Standards and Competency
- Student Discipline

Commentary:

- No commentary

TOPICS

Civil Rights

*Schroeder ex rel. Schroeder v. Maumee Bd. of Educ. (N.D. Ohio, 296 F. Supp. 2d 869), December 8, 2003.

High school student and his parents sued school board, high school principal and assistant principal, claiming that his rights under First and Fourteenth Amendments and Title IX were violated when officials showed deliberate indifference to verbal and physical harassment occurring as result of student's advocacy of tolerance toward gays. The plaintiff was not gay' but after he found out that his older brother was gay, he begin to speak out in favor of gay rights. Thereupon, he was both physically (e.g. peer slammed his head into a urinal and chipped his tooth and kicked him) and verbally (called queer, you're a bitch, little faggy queero, etc.) abused by his peers (both male and female students) at school.

A United States district court held that school officials did not violate the student's First Amendment rights; however, the court did **not dismiss** the student's Title IX claim against the school district.

Estate of Morris, ex rel. Morris, v. Dapolito (S.D.N.Y., 297 F. Supp. 2d 680), January 12, 2004.

Brian, a seventeen-year-old senior, was extremely popular and a star athlete who had won a sports scholarship to Conncordia College where he was to enter as a freshman in the fall of 2003. While assigned to a study hall in the school's cafeteria, he and another student were arm-wrestling when a gym teacher approached Brian from behind and placed a chokehold by clamping Brian's throat with his forearm. In addition, he lifted Brian off his chair and threw him into a metal cafeteria table that broke in half on impact. Brian suffered throat and back injuries. Both the gym teacher and Brian went to the principal's office, but the principal chose to do nothing about the incident. When Brian returned to the cafeteria, he attempted to apologize to the gym teacher. The gym teacher told Brian, "Don't come any closer or I'll drop you." Brian responded by pushing a chair toward the gym teacher. The gym teacher then yelled, "No one fuckin' embarrasses me in front of my children" and ordered Brian to return to the principal's office. Once back in the principal's office, the gym teacher attacked Brian and pushed him over the principal's desk while punching him in the face and stomach. Brian suffered numerous injuries, including cuts, bruises, and contusions. On the advice of the teacher union representative, the gym teacher then faked a heart attack.

To make a very long series of events short, events similar to the following occurred: Brian signed criminal charges against the gym teacher; the gym teacher published false allegations, pertaining to Brian's alleged threat to rape the gym teacher's daughter and wife, the principal encouraged false allegations concerning Brian's alleged threat to murder his girlfriend and her younger sibling, school officials met with Brian's parents and warned them not to pursue the assault charges because the news media would publicize the event, causing Corncordia College to rescind the athletic scholarship and ruin Brian's prospects for a professional baseball career; and Brian was suspended for the remainder of the school year (assigned to home schooling). Brian was so panicked and distraught that he committed suicide by jumping in front of a passenger train on the same day in which he was suspended.

A United States District Court in New York ruled that the estate of Brian **stated a conspiracy claim** (cover-up) involving both school and police officials, **stated a retaliation claim,** and school and police officials **did not have qualified immunity** from suit.

Note: This is a good example of how a sequence of events can go bad in a hurry, and how lying and covering-up is morally, ethically, and legally wrong! This tragedy could have been prevented and stopped at the beginning with just a little rational and professional judgment. It is so sad that a young man lost his life over such a minor incident (arm wrestling) and the ensuing sequence of misjudgments by both school and law enforcement officials.

Labor and Employment

*Rodriquez v. Cruiz (S.D. Tex., 296 F. Supp. 2nd 726), November 6, 2003.

At the time that a school district's superintendent allegedly demoted school administrator (assistant superintendent) for speaking out against administrator's speech involved a matter of public concern, so as to be protected by the First Amendment. Thus the superintendent **was entitled to qualified immunity** from administrator's claim. Form and content of administrator's speech is indicated that she **was speaking in her role as employee, and not** as private citizen.

Note: The administrator was reassigned to a previously non-existent administrative position, with responsibilities for textbooks and janitorial service. The administrator alleges she was reassigned because she made reports to the superintendent about the use of improper testing procedures by teachers during the administration of the Texas Assessment of Academic Skills (TAAS).

The superintendent based his reassignment of the assistant superintendent on her failure to comply with the following directives:

1. Developing a positive attitude in your department and with campus principals that fosters collaborative decision-making and improving communication.
2. Providing written documentation of your decision-making process for the issues with the Science Fair and the School Choice Program.
3. Providing written documentation on special education coding.
4. Providing written documentation on flexibility in the implementation of departmentalization.
5. Following my directives.

*Norton v. Deuel School Dist. #19-4 (S.D., 74 N.W. 2d 518) January 14, 2004.

School bus driver who claimed worker's compensation for injuries suffered while skiing could not have reasonably been expected to go skiing on school activity trip. Thus, injury did not arise out of employment. Contract only required driver to look after students when they were on bus. Driver was not cleared as chaperone by supervisor or trip coordinator; had acted as chaperone only once in ten years; acknowledged that "down time" on the trip was considered personal time; and stated she never intended to ski until offered free lift ticket on day of trip. **Note:** Bus driver was a full-time school bus driver for the school district and was driving a school district owned bus during a Future Farmers of America ski trip.

*Aberdeen Mun. School Dist. V. Baylock (Miss, App., 864 So. 2nd 955), January 29, 2004.

Failure of school board to properly notify teacher-coach of his right to a hearing following its decision to terminate teacher **was "harmless error"**. Teacher-coach testified and admitted that he had changed a football player's grade from failing to passing for the sole purpose of making him eligible to play football. He also testified and admitted that had he been given notice pursuant to state statute (Mississippi Employment Procedures Act), his defense could not been any different.

Standards and Competency

*Winters v. Arizona Bd. of Edu. (Ariz. App. Div. 1,83 P. 3 d 1114). February 12, 2004.

Off-campus conduct of high school teacher **related to his fitness as a teacher.** Teacher participated in five separate incidents (e.g. verbal altercation with a 21 year-old neighbor; his .357 revolver discharged and damaged a neighbor's air conditioning unit; and engaged in a verbal configuration with a former student at a convenience store) involving verbal or physical altercation (one of which involved threatening children, and two others involved young

adults about the age of high school seniors). Thus, teacher **established a tendency** to react with violence and aggression. The fact that the incidents did not occur on school premises did **not** negate the gravity of his behavior.

Student Discipline

*J.D. v. Com. (Va. App., 591 S.E. 2d 721), January 28, 2004.

Student was not "in custody", for purposes *Miranda* analysis, during questioning by high school assistant principal concerning multiple thefts of property from school premises. Student was not restrained during meeting, which took place in assistant principal's office. Assistant principal did not indicate that student was under arrest or was subject to arrest in future. SRO present at interview made no show of authority suggesting that student was under arrest or not free to leave. **Note** A series of thefts had occurred at school during the month preceding the incident, and the plaintiff was one of four students suspected in the thefts. He eventually admitted his participation in one of the thefts.

Commentary

No Commentary

*** Possible implications for Arkansas's Schools.**

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Topics:

- Abuse and Harassment
- Athletics
- Civil Rights
- Labor and Employment
- Security

Commentary:

- A summary of the Similarities and Differences Between NCLB and IDEA

Topics

Abuse and Harassment

*Guda v. Com. (Va. App., 592 S.E. 2d 748), February 17, 2004.

A jury convicted Guda of taking indecent liberties with a fifteen-year-old female student that he, while employed as a "security specialist" took: As a condition for receiving a hall pass she had to show him her breasts. He took the high school student into the boy's locker room (where his office was located) and sexually molested her. He pulled the girl's shirt and bra down and put his mouth on one of her exposed breasts, while groping her viginal area. The victim reported the incident to the principal and principal immediately confronted the security specialist. Guda was placed on administrative leave pending a complete investigation. The young lady was immediately taken to the hospital, where a nurse swabbed her right breast for DNA, which matched the security specialist's. A jury found Guba **guilty of taking indecent liberties with a person in a custodial or supervisory relationship.** He was sentenced to three months of incarceration, along with six months of post-released supervision.

*Cockerham ex rel. Cockerham v. Stokes County Bd of Educ. (M.D.N.C., 302 F. supp. 2d 490), February 3, 2004.

Male middle school student, who alleged that he was forced to wear a pink sign which posed the question "will you go with me?" did not plead facts sufficient to support his allegation that his treatment was based on his sex, and therefore **failed** to state a Title IX claim against the school board for any sexual harassment by teacher of principal. Although the sign he wore was pink and posed the question "will you go with me?", those facts did not establish that the harassment was based on the student's sex.

Athletics

*Kelly v. McCarrick (Md. App. 841 A 2d 869), February 5, 2004.

Doctrine of "assumption of risk" barred claim of student and her parents for negligent instruction and training against Catholic school, arising out of an incident during a fast pitch softball game in which a player from an opposing team slid into second base and collided with the youngster. The collision caused a severe fracture of the student's ankle. The court went on to say that the student's parents were familiar with the sport as it was commonly played, and they must have understood and appreciated the danger that a player could be hurt. Thus, they **knowingly assumed that risk,** and that training and instruction would not prevent all action or mistakes that could result in injury.

Civil Rights

*Moore v. Board of Educ. of City of Chicago (N. D. III., 300 F. Supp. 2d 641), January 21, 2004.

High school student (diagnosed with atlantoaxial instability, i.e., abnormality of the upper cervical spine and a visible scar at the nape of his neck where he had had surgery fusing some of his cervical vertebrae) and his mother brought state court action alleging that his chemistry teacher mistreated him on the basis of his race. During the student's junior year, the teacher made several public statements concerning the youngster's Caucasian and African-American ancestry. Afterward, the student was removed from the teacher's room. However, during his senior year, the same teacher told the student's history teacher, after the student had caused an interruption in the history teacher's class: "That's the Caucasian blood in him makes him think he can say whatever he wants." When the youngster tried to leave the history teacher's classroom, upon direction of the history teacher, the chemistry teacher grabbed the student and put him in a choking headlock, which broke two wires in his spine causing vertebrae compression. A United States district court in Illinois ruled that the school board and school administration **were immune** from liability because there was no evidence that the board or administration had a practice or custom of racial discrimination.

Porter ex rel. LeBlanc v. Ascension Parish School Bd. (M.D. La., 201 F. Supp. 2d 576), January 21, 2004.

Expression of student who brought a graphic and violent drawing to school that depicted a public school being soaked with gasoline, a missile aimed at it, obscene and racial expletives written on it, and students holding guns and throwing a brick at the principal was **not** entitled to First Amendment protection, despite the fact that the drawing was created off-campus and when the youngster was 14-years-of-age. The drawing **did materially and substantially interfere** with the requirements of appropriate discipline and the operation of the school. Additionally, it **was a true threat of an intent to harm or cause injury to others or school property.**

The incident arose two years after the drawing was made, when the student's younger brother brought the sketchpad, which contained the drawings to school. While riding home from school on a school bus, he allowed another student to see the drawings. Therefore, the student told the bus driver, "They are going to blow up the high school." The younger brother was suspended from school for the incident. However, the older brother, who drew the sketches, was expelled and sent to an alternative school. As a footnote, after learning of the sketches, school officials searched the older brother's book bag and found a notebook containing references to death, drugs, sex: gang signals etched on the notebook; a fake ID; and a box cutter.

*Yap v. Oceanside Union Free School dist. (E.D.N.Y., 303 F. Supp. 2d 284) February 2, 2004

Comments that school lunchroom monitor allegedly made in presence of another monitor regarding Asian-American elementary student, which included referring to student's "crazy lies" about his reports of racial harassment by other students who called him a "freakin' Chinese liar," were not sufficiently extreme or egregious so as to shock the conscience. Thus, monitor was not liable under Section 1983.

Labor and Employment

*Thomas v. Troy City Bd. of Educ. (M.D.Ala., 302 F. Supp. 2d 1303) February 9, 2004.

School board's purported reason for the decision not to hire African-American assistant superintendent for superintendent position **was legitimate and nondiscriminatory.** School board chair testified that his main criterion for choosing the new superintendent was his ability to improve academics in the city's school. Complainant's primary experience was in the area of administering federal programs, student discipline, and physical plant issues. The white candidate selected as superintendent had experience with academic programs as teacher and elementary school principal; had attained a higher level of education; and did not have a questionable credit history.

Security

*Carestio v. School Bd. of Broward County (Fla. App. 4 Dist., 866 So. 2s 754), February 18, 2004**.**

School security officers were called to escort a disruptive student to the school's detention room. The student testified that the officers assaulted him by kicking and punching him while he was being escorted. Plaintiff further alleged that one of the officers told him that he was "going to learn the hard way" and begin to beat him about the head and body. According to a Florida court of appeals **a genuine issue of material fact <u>existed</u>** as to whether the security officers acted outside the course and scope of their employment in allegedly assaulting the plaintiff, thus precluding summary judgment on the student's battery claim against the school district.

Commentary

A Summary of the Similarities and Differences Between NCLB and IDEA/505

The following is a brief **summary-analysis** of No Child Left Behind (NCLB) and Individuals with Disabilities Education Act (IDEA/Section 504 of the Rehabilitation Act (504):

Similarities Between NCLB and IDEA/504

1. Both are funding statutes, with strings attached.
2. Both contain a focus on students with disabilities.
3. Both are outcomes-oriented, with an empirical emphasis.
4. Both emphasize measurable goals and objectives
5. Both emphasize annual progress
6. Both emphasize parental-guardian participation and choice.
7. Both are channeled through the states, with some latitude for variation.
8. Both have requirements for personnel and assessments.

Differences Between NCLB and IDEA/504

1. NCLB is collective, whereas IDEA is individual.
2. NCLB is district and school based, with emphasis on all children.
3. IDEA is individual orientation, with emphasis on eligible children.
4. NCLB addresses all children, along with students with disabilities as one of four disaggregated groups, whereas IDEA exclusively addresses this single group.
5. NCLB has only collective enforcement, whereas IDEA creates an individual entitlement, with individual enforcement.
6. NCLB has funding termination, plus school sanctions.
7. IDEA has one or two tiered impartial administrative adjudication plus judicial review.

***Possible implications for Arkansas' Schools.**

JULY 2004

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Topics:

- Administrators
- Alternative Education
- Athletics
- Civil Rights
- Crimes
- Disabled Students
- Disorderly Conduct
- Insurance
- Labor and Employment
- Teachers
- Torts

Commentary:

- No commentary

Topics

Administrators

*Howard v. Columbia Public School Dist. (C.A. 8 {Mo.}, 363 F. 3d 797, April 12, 2004.

Failure to rehire elementary school principal who spoke out on rights of disadvantaged students did not violate her First Amendment rights. The district's action was based on low morale and tension among faculty members under her leadership; and any connection to her statements on matters of public concern **was purely speculative. Note:** School district leadership began to become aware of the principal's problems after they received a letter from a concerned citizen; a letter signed by seventeen faculty members who had worked at the principal's school the previous year; a letter from the school's PTA president; two letters from concerned parents; and a letter from one of the principal's teachers stating that she could no longer work under the plaintiff.

*In re A.D. (Pa. Super., 844 A. 2d 20), February 19, 2004.
Assistant high school principal's search of student **was reasonably related in scope** (as required for a valid search under Fourth Amendment) to his belief that student and a small group of other students had committed a theft of money from purses of two student victims while victims attended gym class. Record indicated that assistant principal escorted student and other suspected students into a private area where he searched their pockets and book bags. Assistant principal limited his search to those individual students who were seated near the purses. Additionally, assistant principal summoned a female hall monitor to assist him in inspecting the female students, in an effort to limit the invasion of the girls' privacy. Police officer, while remaining in the gym while the searches were being conducted, did not assist with the searches in any manner. There was also no evidence suggesting that the police sergeant initiated or in any way guided the assistant principal's investigation.

Alternative Education

*Turley v. Sauquoit Valley School Dist. (N.D.N.Y., 307 F. Supp. 2d 403), April 28, 2003.

While attending an alternative school for students with academic and behavioral problems, the plaintiff was cut on her nose and forehead when shards of glass struck her when a male student kicked a classroom door, causing glass from the upper portion of the door to break and strike her. She was permanently scarred both mentally and physically. A United States district court in New York held that the decision of segregate certain types of students into alternative school programs away from their peers **was rationally related** to legitimate stated objectives of helping students with behavioral and academic problems. Accordingly, the school district did not violate the plaintiff's federal equal protection or due process rights by their charged failure to supervise, monitor, control, and observe students in an effort to prevent injury to students by others. Thus, there was **no** violation of federal and state constitutional rights.

Athletics

*Florida High School Athletic Ass'n v. Melbourne Cent. Catholic High School (Fla. App. 5 Dist., 867 so. 2d 1281), March 26, 2004.

High school football player sought to enjoin state high school athletic association from declaring him ineligible to compete for recruiting violation. A Florida district court of appeals held that the athlete did **not** exhaust administrative remedies available through the athletic association prior to filing suit. The young man had an excellent academic record and was talented enough to be considered for college football scholarship. However, the young man transferred from a Catholic high school to a public high school at the end of the first semester of his junior year. When school begin the following fall, he returned to the Catholic high school.

Civil Rights

*Shaul v. Cherry Valley-Springfield Cent. School Dist. (C.A.2 {N.Y.}, 363 F. 3d 177), March 25, 2004.

High school math teacher was found guilty of having an inappropriate relationship with two female students and was suspended from his teaching position. Thereupon, school officials begin sorting and removing items from the suspended teacher's classroom in an effort to prepare the classroom for a replacement teacher. The suspended teacher filed federal civil rights suit against the school district for unreasonable search and seizure of personal property. The Untied States Court of Appeals, Second Circuit, ruled that school officials **had reasonably investigatory and non-investigatory grounds** for searching and organizing classroom for new teacher. Additionally, the search and seizure of items within the classroom **was reasonably necessary** as part of the investigatory aspect of obtaining information to support teacher's suspension.

*Doe ex rel. Doe v. Warren Consol, Schools, (E.D. Michigan., 307 F. Supp. 2d 860), February 13, 2003.

Three young girls were sexually molested by an elementary school teacher, and action was brought against the school district and various school administrators. A United States district court in Michigan held that **genuine issues of material fact existed** as to whether school district had actual knowledge of a substantial risk of abuse to children based upon Numerous complaints lodged against the offending teacher. Additionally, **material fact existed** as to whether school officials could have prevented teacher's sexual abuse of students. Thus, the existence of material fact **could** amount to **deliberate indifference, precluding summary judgment** in favor of school district on students' Title IX claim of sexual harassment.

Crimes

*People v Gibble (N.Y.City Crim. C., 773 N.Y.S. 2d 499), November 3, 2003.

During a noon break, a female student (under the age of 17) observed male defendant (assumed to be a teacher) setting behind his desk, with his pants down, on hand on his genitals with his arm moving up and down to make it appear that he was masturbating, and one hand on his desk. The Criminal Court, City of New York, held that criminal liability for endangering the welfare of a child is imposed when defendant engages in conduct knowing that it will present likelihood of harm to a child, i.e. with awareness of potential for harm.

Disabled Students

*Lt. T.B. and E.B. o/b/o their minor son N.B. v. Warwick School Committee (C.A. 1 {R.I.}, 361 F. 3d 80) March 18, 2004.

School district **had adequate basis to prepare** an interim IEP for autistic student who was transferring to the school district, not withstanding district's failure to meet with the student prior to preparing the IEP. Parents delivered to the school district a packet of materials that contained evaluation of student made by experts, which the school district reviewed. School officials met with the youngster's parents for well over six hours over two different days. Additionally, the district assembled a team with considerable expertise in autism who read the prior evaluations of student and heard from parents and special education lawyer.

*Keith H. v Janesville School Dist. (W.D. Wis., 305 F. Supp. 2d 986). September 25, 2003.

Emotionally disabled 4fourth grader **received free appropriate public education** (FAPE) as mandated by IDEA, despite parents' claim that student's diagnosis of social phobia and posttraumatic stress disorder precluded attendance at school. Parents **failed** to explain why diagnosis precluded public school attendance, or how any problems would not carry over into any alternative private school placement. Accordingly, parents were not entitled to reimbursement of the youngster's private school tuition. **Note:** Beginning in kindergarten, the student was found to have a disability that caused difficulties in the areas of reading, math, written language, and spelling. In addition he had very serious emotional, social, and behavioral problems interacting with both peers and adults. In fact, he was arrested in third grade for disorderly conduct after he went our of control at school and left.

*New Paltz Cent. School Dist. V St. Pierre ex rel. M.S. (N.D.N.Y., 307 F. Supp. 2d 394). February 4, 2003.

School district brought suit under IDEA, challenging an administrative determination that it was required to pay parent for emotionally disturbed high school student's placement in a private residential school. A United States district court in New York stated that district **failed** to provide FAPE and **is liable** for cost of the placement. **Note:** Student scored 99th percentile on CTBS and was recommended for accelerated classes in the seventh grade. However, just prior to enrolling in the 9th grade, his parents began divorce proceedings and the youngster begin to exhibit drug abuse and uncontrollable behavior at home and school.

Disorderly Conduct

*People v, Banuelos (III, App. 2 Dist., 281 III. Dec. 705, 804 N.E. 2d 670). February 4, 2004.

Sufficient evidence supported conviction of high school student for disorderly conduct. The student broke into the district's computer network and transmitted a message which said, "Terrorist going to blow ncch wright now boom in 15 seconds". In addition, the bomb was "concealed" (one way any explosive device can be concealed is that its location is unrevealed) for purpose of state statute defining disorderly conduct. No bomb was found. Thus, the message was a hoax. As a footnote to the case, the threat was transmitted from a computer in a classroom in which a teacher was present while the message was transmitted.

Insurance

*Ambrosio v. Newburg Enlarged City School Dist. (N.Y.A.D. 2 Dept., 774 N.Y.S. 2s 153), March 8, 2004.

Additional insured endorsement on insured kennel club's general liability policy, naming school district as additional insured with respect to liability arising out of kennel club's use of school or a dog show, **provided coverage for district** when kennel club member fell on sidewalk outside front entrance to school while walking from hospitality room within school to dog show. Although sidewalk was not specifically named in endorsement as leased premises, its use **was incidental** to covered premises as a means of getting from rooms within school to fields where the dog show was held.

Labor and Employment

*Fuhr v. School Dist. Of City of Hazel Park (C.A. 6 {Mich.}, 364 F. 3d 753), September 16, 2003.

Evidence **was sufficient** to support jury verdict that, in denying female basketball coach the position of head coach of the boys' varsity team, the school district **intentionally discriminated** against coach on the basis of gender. **Evidence demonstrated** that the school board president had stated that he was "very concerned about a female being made head boys' basketball coach. The superintendent **admitted** that members of the board had indicated that they did not want the female coach to get the job. Additionally, the high school principal **confirmed** that the reason the coach did not get the job was her gender.

*Public Employees' Retirement System v. Henderson (Miss. App., 867 So. 2d 262), November 18, 2003.

Evidence supported decision of PERS that former school district employee (Prentiss County School District), who worked as a teacher assistant was not disabled despite claims of arthritis, fibromyalgia, fainting spells, and depression. Officials from PERS noted that the former employee did not appear in pain for the approximately one hour long hearing she attended. She had not had any special tests for arthritis or x-rays to diagnose her condition. Her physician reached his diagnosis only by ruling out every other possible cause of the symptoms.

Teachers

*Atwater Elementary School Dist. V. Department of General Services (Cal. App. 5 Dist., 10 Cal. Rptr. 3d 795), March 8, 2004.

The commission on Professional Competence (PC) **lacked** statutory authority to consider any sexual misconduct charges against credentialed teacher occurring more than four years before date of notice of intention to dismiss teacher. The charges alleged that teacher had engaged in sexual misconduct with five separate students during the period between 1992 and 1998.

Torts

*Tate v. Board of Edu., Prince George's County (Md. App., 843 A 2d 890), March 5, 2004.

Fifteen-year-old high school student who was sexually assaulted by her uncle-in-law with whom she left school without permission, brought negligence action against board of education. The 10th grader left school with the uncle-in-law knowing of his intention to have sex with her. Facts demonstrate that the school secretary refused to allow the youngster to leave school with the uncle without parental permission. However, the student somehow left school grounds prior to making her way back to her assigned classroom, and left with her uncle. She returned back to school about 10 minutes before dismissal time. The uncle was convicted and sentenced to two years in prison.. A Court of Special Appeals in Maryland held that the girl **consented** to being with the uncle-in-law knowing his intentions; thus, defense of assumption of risk **precluded recovery** in student's negligence action against board of education for permitting her to be taken from school by someone other that her parent. In addition, student **deceived** school staff about her intention to leave school property with uncle.

*Ex parte Hudson (Ala., So. 2d 1115), May 30, 2003.

In 1997 the plaintiff and two other students were asked by their gym teacher to close the gym's bleachers by pushing them toward the wall. The bleachers slipped off their track and fell onto one youngster, breaking his back. The Supreme Court of Alabama held that the school district's purchasing foreman did not have state-agency immunity as to the claim he negligently or wantonly failed to forward to job site a maintenance manual sent by contractor.

Commentary

No commentary.

***Possible implications for Arkansas's Schools.**

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The **Legal Up Date 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 Initiative** located in the Graduate School of Management, Leadership, and Administration at the University of Central Arkansas. If you have any questions or comments about these cases and their potential ramifications, please phone me at **501-450-5258.** In addition, feel free to contact me regarding educational legal concerns; school safety and security issues; student discipline/management issues; and concerns pertaining to gangs, cults, and alternative beliefs.

Topics:

- Abuse and Harassment
- Athletics
- Attendance
- Civil Rights
- Disabled Students
- Injunction
- School Districts
- Torts

Commentary:

- Dangerous Games: Student Hazing and Negligent Supervision
- Local School Officials' Legal Duty to Prevent Ant-Gay Student Harassment
- High Stakes Testing

Topics

Abuse and Harassment

*Lyon v. Department of Children and Family Services (Ill., 282 Ill. Dec. 799, 807 N.E. 2d 423), March 18, 2004.

On February 9, 2000, the Illinois Department of Children and Family Services received a report that a high school choral director had abused two students (sexual exploitation and sexual molestation). Thereupon the Department sent the choral director an official notice that his name had been entered in the central registry pertaining to child abuse. Teacher requested that the Department remove his name from the central registry of suspected child abusers. The Department refused, and he went to court. The Supreme Court of Illinois held that damage to one's reputation alone is insufficient to claim deprivation of a due process liberty interest; but **stigma, plus the loss of present or future employment, is sufficient.** The Court went further and stated that listing a report of an "indicated child abuse" in the central registry maintained by the Department **implicated a teacher's protected due process liberty interest.** Although the record did not reveal whether teaching certificate was affected, the teacher lost two teaching jobs following the entry of the "indicated report" into the central registry. Thus, **a substantial risk existed** that the teacher would be barred from pursuing his chosen occupation.

Athletics

Cery v Ceder Bluffs Junior/Senior Public School (Neb., 679 N.W. 2d 198), May 7, 2004.

Football player fell while attempting to make a tackle during the second quarter of a football game, striking his head on the ground. Initially he felt dizzy and disoriented after the fall, but remained in the game for several plays. Thereupon, he took himself out of the game. Subsequently, he returned to the game during the third quarter. The following Tuesday, he re-injured himself when his helmet struck another player during a tackling drill. A neurologist concluded that he had suffered a concussion on Friday night, plus a closed-head injury with a second concussion on Tuesday. The supreme Court of Nebraska held that evidence supported conclusion that coaches' conduct in evaluating high school football player following head injury suffered during a high school football game, and decision to permit player to reenter game, **were actions that would have been taken by reasonable state endorsed football coaches under similar circumstances.** Coaches evaluated players at intervals for symptoms of concussion. Expert testified that evaluation of player and decisions during game were actions that **would have been taken by reasonable state endorsed football coaches under similar circumstances.**

Attendance

S.H. v. State (Ala. Civ. App., 868 So. 2d 1110), June 27, 2003.

High school principal was not required to investigate the cause of high school student's unexcused tardiness before reporting her to the truancy officer. No state statute requires such an investigation on the part of the principal. **Note:** The student had accumulated 10 unexcused tardies and was in violation of Alabama's Compulsory Attendance Law. Accordingly, the student was ordered to juvenile court and adjudicated "a child in need of supervision" (CHINS) and was placed on probation.

Civil Rights

*Caudillo ex rel. Caudillo v. Lubbock Independent School Dist. (N.D. Tex., 311 F. Supp. 2d 550), March 3, 2004.

Refusing gay-straight student association's requests to post and distribute fliers containing its web site address at high school to use the school's public address (PA) system for announcements; and to be recognized as student group with the right to meet on school campus did not violate association's and individual's First Amendment free speech rights. Association's stated goals clearly included discussing subject matter banned by "abstinence-only" policy endorsed by the school district. Abstinence-only policy **was reasonable subject matter limitation** imposed upon limited public forum including students as young as 12 years-of-age. Requested action by the gay-straight student association **would have exposed** students to material banned from secondary school campuses that was **inappropriate** for the affected age group. **Note:** Material discussed by the group and group's website included such topics as: (1) why am I having an erection problem? (2) How safe is oral sex? (3) First time with anal sex? (4) Kissing and mutual masturbation; and (5) How safe are rimming and fingering?

Disabled Students

*Schoenbach v. District of Columbia (D.D.C., 309 F. Supp 2d 71), March 25, 2004.

Parents of elementary school student suffering from Asperger's Syndrome **failed** to give school district advance notice of their intention to enroll their child in a private school. At least, advanced notice was **required** before school district became responsible for tuition reimbursement under IEP. Parents' letter submitted following meeting to formulate IEP indicated only general dissatisfaction with proposed IEP and did not indicate that the youngster was going to be enrolled in a private school.

Injunction

*Matos ex rel. Matos v. Clinton School Dist. (C.A. 1 {Mass.}, 367 F. 3d 68), May 11, 2004.

High school student sued school, principal, vice principal, and teacher under Section 1983, alleging that 10 day suspension from school violated due process; that individual defendants had abridged her right of free expression; invaded her right of privacy; and conducted an unlawful search and seizure. The United States Court of Appeals, First Circuit, held that former high school student: (1) **failed** to establish realistic prospect of irreparable harm required for preliminary injunction prohibiting school officials from tampering with hard drive of school owned computer on which student drafted allegedly inappropriate and profane document for which she was suspended from school for ten days; and (2) **failed** to establish prospect of irreparable harm required for preliminary injunction requiring school officials to expunge references to 10-day suspension from student's records. **Note:** During a journalism class, the student claimed she lapsed into some private thoughts (which involved sexual dalliances (flirtations) between her teacher and the principal of her high school), typed her thoughts into her computer, and printed her lapsed thoughts with her assignment.

School Districts

*Ellis v. Cleveland Mun. School dist. (N.D. Ohio, 309 F Supp. 2d 1019), March 10, 2004.

Incident reports related to substitute teacher's alleged corporal punishment of students, student and employee witness statements, and information related to subsequent discipline of substitute teacher did not contain information directly related to a student, **so as to be protected from discovery** under Family Educational Rights and Privacy Act (FERPA).

*Summers v. Cambridge Joint School dist. No. 432 (Idaho, 88P. 3d 772), April 5, 2004.

School district did not have student under its control or custody when he was struck and injured by truck shortly after school bus left. Thus, school district did not have duty to protect student. Student exited and crossed in front of the bus, reached his driveway on opposite side of the highway, and walked about 20 feet up the driveway toward his home. Afterward, student and his brother stopped and became preoccupied with papers blowing in highway. School bus driver re-extended the bus's stop arm and motioned for student and his brother to reenter highway. Both the student and his brother refused, and school bus driver drove away when student was safely in driveway, which was about 20 feet from the highway. **Note**: After the school bus left, one of the brothers crossed the highway to retrieve his papers. While the one brother ran across the highway, the other brother (five years old) ran into the highway to collect some Easter grass that had blown from the basket he was carrying. Thereupon, a pickup truck traveling in the opposite direction of the school bus struck the five-year-old.

Torts

Albers v. Breen (Ill. App. 4 Dist., 282 Ill. Dec. 370, 806 N.E. 2d 667), March 2, 2004.

Parents, individually and on behalf of their child, brought action against social worker, social worker's employer, principal, and school board, contending that the youngster suffered emotional distress and was forced to attend different school because social worker revealed to principal names of students who had been bullying him. The court held that the principal's decision to tell school bully that the child had complained about bullying **was protected act** under state's Tort Immunity Act. Principal's decision **was a policy decision,** and **he had discretion** in how to handle the situation.

*Anderson v. Anoka Hennepin Independent School Dist. 11 (Minn., 678 N. W. 2d 651), May 6, 2004.

Wood shop teacher did not commit a willful or malicious wrong by intentionally committing an act that he had reason to believe was prohibited when he instructed student to make rip cuts on a table saw with the blade guard disengaged in accordance with the protocol established by the high school technology education department. Thus, the teacher **was protected** by official immunity from liability for student's injuries. There was no clearly established law or regulation that prohibited his conduct. **Note:** The teacher had watched the student cut four or five strips of wood prior to moving on to another section of the class. Thereupon, the student reached over the blade with his left hand to move scrap wood. As he reached over the blade, his left index finger hit the blade, amputating the finger to the knuckle.

Commentary

Dangerous Games: Student Hazing and Negligent Supervision

On a Sunday in early May 2003, students from Glenbrook North High School near Chicago attended an annual off-campus "powder puff" football game, where someone videotaped several senior girls "hazing" junior girls in front of Glenbrook students, alumni, and others. The brutality captured on that videotape would be shown for days by news media around the world. The senior girls punched, slapped, and dumped paint, feces, and trash on the junior girls. Five girls went to the hospital as a result: one with a broken ankle; and another requiring stitches in her head.

As a result, 31 seniors were suspended and later expelled. In return for signing agreements to accept the school's disciplinary action, 28 of the 31 were allowed to complete course work and receive their diplomas.

Two of the girls who initially refused to sign the agreement filed a complaint in federal court to force the school board to vacate their suspensions, and then moved for a temporary restraining order (TRO) against the board's disciplinary action (Glendelman v Glenbrook North High Sch., No. 03 C 3288, 2003 WL 21209880 (N.D. Ill. May 21, 2003). The court denied the motion, holding that the students were unlikely to prevail on the merits; that they would not suffer irreparable harm from a ten-day suspension; and that the public interest would not be served by granting of the TRO.

In its discussion, however, the court noted something that should make schools sit up and take notice: **"It was asserted that these powder puff events have been a staple at Glenbrook North for Years and that school officials were well aware of the events that were taking place. However, they never lifted a finger to prevent them, punish anyone for participating in them, or concluded that such events constituted improper acts of harassment or hazing".**

In schools whose reactions to known hazing are so cavalier as Glenbrook North's, the students may not be the only ones playing a dangerous game. School officials who turn a blind eye to hazing may find themselves answering to the victims in front of courts and juries perfectly willing to impose liability on school officials for failure to supervise their students properly. That the injuries took place off campus during non-school hours may be of no consequence if school officials knew, or had reason to know, that such hazing was occurring and they did nothing to stop it.

Recommendations:

At the onset, all school districts should have anti-hazing policies in place and should make them known to the students, students' parents/guardians, and all school district employees.

School officials who know or suspect their students are engaged in hazing activities should move quickly to stop further hazing by disciplining the students and organizations involved. They should also evaluate their current disciplinary policies and practices to be certain that future incidents are unlikely to occur.

Local School Officials' Legal Duty to Prevent Anti-Gay Student Harassment

The frequency of student discrimination, harassment, and physical abuse based solely on sexual orientation is becoming a serious and growing issue in many of today's elementary, middle and senior high schools. Thus, school officials may want to consider the following **ten guidelines** to reduce their risk of liability for failing to address, and remedy student harassment issues based on sexual orientation within the school setting.

1. Review school district anti-discrimination policies to make sure that they expressly prohibit student discrimination and harassment on the basis of sexual orientation.
2. Explicitly define discrimination and harassment based on sexual orientation to include verbal, non-verbal, written, or physical conduct.
3. Establish formal procedures for addressing discrimination and harassment complaints based on sexual orientation.
4. Identify a specific local school official(s) who will be responsible for addressing complaints of discrimination or harassment based on sexual orientation. For example, designate a school-level compliance coordinator to investigate every suspected complaint based on sexual orientation.
5. Ensure that all students have a clear and meaningful opportunity to report instances of discrimination and harassment.
6. Require all school district employees to report discrimination and harassment based on sexual orientation immediately to the appropriate school official(s).
7. Actively prevent retaliation against those students who report harassment or who take part in disciplinary proceedings.

8. Follow-up with students who have been discriminated against or harassed in the past to make sure that they have not suffered additional discrimination or harassment in the intervening period
9. Require referral to law enforcement officials when a reported incident of student discrimination or harassment appears to be a crime.
10. Provide introductory and ongoing training through staff development for all school district employees on addressing the needs of lesbian, gay, bisexual, and transgender youngsters.

High Stakes Testing

Although the policy of testing has a lengthy history filled with controversy, the use of high stakes tests in education, as we know it today is relatively new. High stakes tests are examinations that are used to grant rewards for passing, or impose extreme sanctions for failing. The stakes can be high for a school district, school, teacher, school administrator, board of education, and student. In essence, high stakes testing is the practice of hinging a significant educational decision on the results of a single assessment tool. Typically, the high stakes tests in vogue in many states today focus on reading and mathematics; but some states have chosen other academic areas as well.

It is a common misperception that No Child Left Behind (NCLB) mandates that states implement tests of individual accountability, high stakes or otherwise; however, NCLB has certainly facilitated the process. States are required to develop a system whereby state standards are aligned with and measured by a state determined system or criteria. NCLB does <u>not</u> require an exit exam; but it does require testing in reading and mathematics as specified grade levels. NCLB requires that each state develop a system whereby schools are held accountable for the annual yearly progress {AYP} of students.

High stakes tests are the backbone of accountability systems implemented by policy makers to address public education systems. Theoretically, high stakes tests will lead to: (a) better teaching and learning; (b) more motivated students; (c) lower drop out rates; (d) increased graduation rates; (e) fewer student discipline problems; (f) a more productive workforce; (g) greater confidence in public education; and (h) a more competent potential military recruit. High stakes testing policies tend to enjoy academic standards; holding educators and students accountable for meeting those standards; and boosting public confidence

in public schools. Regardless of the research pertaining to high stakes testing, high stakes testing permits proponents and opponents alike an opportunity to argue at length on the benefits or demerits of high stakes testing.

Policymakers across the nation are captivated with the scheme of establishing standards and testing students to measure their progress toward those standards. The next logical extension of that particular practice is to hold someone accountable for the students' performance. In some instances, the school district, school, teacher, school administrator, or school board is held accountable. However, the current trend is to hold the individual student accountable. This individual accountability is in the form of high stakes test, which results in grade retention, withholding a diploma, or preventing the student from participating in graduation exercises.

Legally, students have the expectation that: (a) the high stakes test is an accurate and appropriately used evaluation instrument; (b) the high stakes examination tests only the material that is taught; (c) the students' level of preparation and the high stakes test meet professionally acceptable standards; (d) the students have been adequately prepared to take, and given a fair opportunity to pass the test; (e) remediation if students score below expected levels.

Although publicly popular, discussions of high stakes testing policies often generate strong feelings akin to religious fervor. Jennifer Mueller (Facing the Unhappy Day: *The Aspects of the High Stakes Testing* Movement) admonishes this is neither the first nor the last time that politics and common sense instincts have hijacked good policy and serious research. We know that no single measurement can ever sum up an individual's potential; yet we have allowed test data to frighten us enough about the condition of public education that we seem to feel the only cure is more testing. The result has been a breakdown in communication, a loss of a common language. This discussion has become to test or not to test, not necessarily how to test better or more responsibly.

***Possible implications for Arkansas's Schools**

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- Athletics
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- Extracurricular Activities
- Labor and Employment
- No Child Left Behind Act
- Student Discipline
- Torts
- Trespass

Commentary:

- No commentary

Topics

Abuse and Harassment

*Yates v. Mansfield Bd. Of Educ. (Ohio, 808 N. E. 2d 861), June 2, 2004.

Parents of high school student who was sexually abused by a teacher/coach brought tort claims against a school board based in part on their failure to report the teacher/coach's alleged abuse of another female student years earlier. Plaintiff was sexually abused by the teacher/coach during the 2000 school year. The teacher/coach was convicted of sexual battery, a third-degree felony. However, during the 1996-97 school year, a ninth-grade student informed the principal that she had had sexual contact with the same teacher/coach. The principal conducted his own investigation and concluded that the student was lying. He expelled her for harassing a staff member. Additionally, no action was taken against the teacher/coach by the school's administration; and the alleged sexual abuse was never reported to the police or to a child service agency. A lower court ruled in favor of the board. However, the Supreme Court of Ohio reversed and remanded the case back to the lower court, employing the legal premise that a school board may be liable when it fails to report the abuse of a minor by a teacher when state statute requires such reporting.

*Duitch v. Canton City Schools (Ohio App. 5 Dist., 809 N. E. 2d 62), April 26, 2004.

High school student (who was a band member) was not subjected to "hazing" when on "Freshman Friday", two upperclass students told him there was a jazz band meeting in the boy's rest room. When the student entered the rest room, several students punched and kicked him causing numerous bruises and injuries to his neck and back. The attack was merely due to student's status as a freshman, and actions of the attacking students did not constitute initiation into any student or other school sponsored organization.

Athletics

*McCormick ex rel. McCormick v. School Dist. Of Mamaroneck (C.A. 2 {N. Y.}, 370 F. 3d. 275), June 4, 2004.

Scheduling decisions for high school soccer by two school districts which resulted in girls' teams, but not boys' teams being unable to compete in regional and state championship games created disparity in treatment between boys' and girls' athletic opportunities for purposes of Title IX challenge to school officials' decisions. Note: The two school districts scheduled boys' soccer in the fall and girls' soccer in the spring; thus, giving boys a chance to compete in the regional and state championships for boys' soccer, which were held at the end of the fall season. Two girls from the defending school districts qualified in 2003 for the Olympic Development Program (ODP), a program for girls with exceptional ability in soccer. ODP scheduled practices and tournaments in the spring based on the assumption that there would be no conflicts with high school soccer, which is typically scheduled in the fall. Boys from the two school districts did not face the same conflict between ODP and high school soccer because they played soccer in the fall. Both plaintiffs expressed that they wanted a chance to compete in regional and state championships. Boys got to compete, and the girls felt that they should also be able to do the same. Furthermore, the plaintiffs pointed out that boys at their schools did not have to juggle ODP soccer and high school soccer because they got to play high school soccer in the fall.

Civil Rights

*Elk Grove Unified School Dist. v. Newdow (U.S., 124 S. ct. 2301), June 14, 2004

The Elk Grove Unified School District requires each elementary school class to recite daily the Pledge of Allegiance. Respondent Newdow's daughter participated in this exercise. Newdow, an atheist, filed suit alleging that, because the Pledge contains the words "under God", it constitutes religious indoctrination of his child in violation of the Establishment and Free Exercise Clauses. In addition, he alleged that he had standing to sue on his behalf and on behalf of his daughter as "next friend". The United States Supreme Court held that the father lacked prudential standing as a non-custodial parent to bring action in federal court challenging the constitutionality of school district's policy requiring teacher-led recitation of the Pledge of Allegiance. Mother, who possessed final authority over decisions concerning the health, education, and welfare of her daughter, disagreed with the father and had no objection to her either reciting or hearing others recite the Pledge.

*Williams ex rel. Allen v. Cambridge Bd. Of Educ. (C. A. 6 {Ohio}, 370 F. 3d 630), June 4, 2004.

Probable cause existed to believe that two male junior high school students who had made threats indicating that the students planned to commit acts of violence at the school, thus justifying their arrest or detention. The incident occurred three days after the Columbine High School shooting in which one teacher and fourteen students were killed by two students who attended Columbine. Three female students reported to school officials, along with presenting written statements, that they learned from a note ("We are going to bring a gun to school and shoot us all because he was sick of bitchy preps".) The note was passed to one of the girls who shared it with two of her friends. In addition, the vice-principal vouched for the female students' credibility.

Disabled Students

*Johnson ex rel. Johnson v. Olathe Dist. Schools Unified School Dist. No. 233, Special Services Div. (D. Kan., 316 F. Supp. 2d 960), December 9, 2003.

Parents of a sixth grade autistic student sued school district alleging violations of IDEA. The united States District Court, D. Kansas, held that: (1) School district did not deny student a free appropriate public education (FAPE) by not bringing a member on the student's IEP team with the title of special education teacher; (2) school district's failure to include in IEP measurable criteria that would help student achieve annual goal of lowering aggressive behaviors did not deprive student of a FAPE; (3) student's placement at junior high school, rather than home schooling, was reasonably calculated to provide student with FAPE; and (4) school district's use of redirection to control autistic student's aggressive behaviors, as opposed to parents' preferred method of planned ignoring, did not deny student a FAPE.

Extracurricular Activities

*Phillips v. Oxford Separate Mun. School Dist. (N. D. Miss., 314 F. Supp. 2d 643), September 22, 2003.

Seventh grade student council candidate was not likely to prevail on merits of claim that school district's removal of election poster containing religious imagery violated her free speech rights for purposes of obtaining a preliminary injunctive relief. The election was a school sponsored activity, and school district had legitimate pedagogical interest in responding to complaints both by those who found the poster to be "sacrilegious" and by others who found it to be in violation of the Establishment Clause of the First Amendment of the United States Constitution. Note: Poster read: "He chose Mary…You should, too. Mary August for Student Council!" Between the words "Mary" and "You" was a color reproduction of a Renaissance painting of the subjects generally recognized as "Madonna and Child".

Labor and Employment

*Smith v. Dunn (C. A. 7 {Ill.}, 368 F. 3d 705), May 11, 2004.

Retired (June 2002) elementary school teacher, who was reprimanded and disciplined on several occasions, sued principal and school board alleging violations of her rights associated with free speech and association. While teaching fifth grade, she failed to submit electronic grades; failed to properly supervise her students on a number of occasions; physically abused a student (grabbed fifth grade female by the neck and forced her to her feet); failed to sit with her students during lunch; and refused to decorate a bulletin board. The United States Court of Appeals Seventh Circuit, held that the teacher failed to establish that her speech was the substantial or motivating factor for disciplinary action taken against her.

*Crager v. Board of Educ. Of Knott County, KY. (E. D. Ky., 313 F. Supp. 2d 690), April 8, 2004.

A tenured elementary teacher with 14 years of experience filed action seeking to enjoin (forbid) the school district's drug testing policy for school district employees. The school district's policy called for both random and individualized suspicion drug testing of employees in a "safety sensitive" position. Furthermore, special needs can arise when the job being tested is "safety sensitive", meaning that the job involves "discharge of duties fraught with risks of injury to others (e. g. students and employees) that even a momentary lapse of attention can have disastrous consequences". The eastern section of Kentucky, where the school district is located, has experienced a serious problem with prescription drug abuse, as well as other illegal substances, such as marijuana, cocaine, and methamphetamines. A United States district court in Kentucky held that random suspicionless drug testing of teachers did not violate teacher's Fourth amendment rights; procedures (testing outsourced to a private company specializing in drug testing) for drug testing of teachers provided safeguards which are constitutionally permissible; drug testing is not a medical exam within the meaning of Americans with Disabilities Act (ADA); and random suspicionless drug testing of teachers did not violate ADA.

*Gebremicael v. California Com'n on Teacher Credentialing (Cal. App. 3 Dist., 13 Cal. Rptr. 3d 777), May 27, 2004.

Unsuccessful applicant for teaching credential filed action against the California Commission on Teacher Credentialing. Commission had denied teaching credential on grounds that the applicant was a convicted felon. He was convicted for discharging a firearm in a grossly and negligent manner; and was placed on probation. The trial court later reduced the felony conviction to a misdemeanor. Thereupon, a California court of appeals held that the "statutory bar", which applied to the plaintiff, did not apply since the felony conviction had been reduced to a misdemeanor. Thus, the case was reversed and remanded back to the Superior Court of Sacramento County.

*Pannoni v. Board of Trustees (Mont., 90 P. 3d 438), May 18, 2004.

Teacher appealed decision of the Montana Human Rights Commission affirming the Department of Labor and Industry's rejection of his disability discrimination claim and upholding school district's termination of his employment. Teacher worked for the school district for a total of sixteen years at both the elementary and middle school levels. After being transferred from the elementary to middle school, he (according to his physician) suffered from intermittent depression. Thereupon, the teacher's physician recommended that the teacher be transferred back to the elementary grades. A second medical opinion was secured by the school district. It concluded that the teacher did nit suffer from a serious medical condition that rendered him unable to perform his current duties at the middle school. During the ensuing years, the teacher worked sporadically (e. g. 1997-2000 was absent 137 ort of 178 work days). Accordingly, the conclusion was drawn that the school district had a legitimate reason (the need for teacher attendance to teach students) to terminate the teacher's employment. The Supreme Court of Montana held that the teacher was not a qualified individual under the Montana Human Right Act, and teacher did not qualify at the time of his employment termination as a person with a disability.

*Cowan v. Unified School Dist. 501 (. Kan., 316 D. Supp. 2d 1061), February 19, 2004.

School district's legitimate, nondiscriminatory reasons for hiring race discrimination against unsuccessful black male applicant, as required to support for violation Title xxx and Kansas Act Against Discrimination. Successful white applicant had record of 250 wins and 34 losses in years as head boys' coach at other high school; had been named coach of the year in the state; won four state championships and ten league titles; had previously been named school district's Teacher of the Year; and taught German. Unsuccessful black applicant had coached junior high and middle school football, track, boys' basketball, girls' basketball, and taught physical education teacher. Both had bachelor's and master's degrees.

<u>No Child Left Behind Act</u>

Center for Law and Educ. V. U. S. Dept. of Educ. (D. D. C., 315 F. Supp. 2d 15), March 26, 2004.

Parent of two students whose school received funds pursuant to No Child Left Behind Act (NCLBA) lacked standing to challenge composition of a negotiated rule-making committee assembled by the United States scope of the court's remedial powers, since NCLBA did not confer on parent an enforceable right to have the committee constituted in a certain way. In addition, the parent had not shown that the rule had put her children in danger of imminent harm. Note: The parent objected to the Department's designation lf some educators as representatives of parents and students.

Student Discipline

*Doe v. Perry Community School Dist. (S. D. Iowa, 316 F. Supp. 2d 809), April 29, 2004.

Eighteen-year old high school student (member lf the school's football and wrestling teams), who sought preliminary injunction preventing school and city defendants from taking any adverse action against him for engaging in a fight with another student in response to hate-based (perceived sexual orientation) harassment or threats, failed to demonstrate a likelihood of success on his equal protection claim based on the school's failure to protect him from harassment based on his sexual orientation. Student made credible assertions that he had been subjected to numerous incidents (called gay, queer, homo, pussy, and faggot) of harassment, threats, and physical assaults over a period of more than three years. However, school officials read harassment policy to the entire student body at the beginning of the school year; and when complaints were received from student, officials met with the offending students, discussed the incidents, and gave warning that future harassment would not be tolerated.

*Smith v. Barber (D. Kan., 316 F. Supp. 2d 992), February 13, 2004.

Five students who were arrested for plotting an armed attack on their high school sued city and its former police chief, county, former county attorney, sheriff, detective, undersheriff, school district, superintendent, and high school principal under Section 1983, alleging violations of Fourth Amendment relating to searches and arrests, malicious prosecution, and violations of Eighth Amendment. The United States District Court, D. Kansas, held that: (1) Chief of police, sheriff, superintendent, and principal did not participate in arrest of students; (2) information was reliable; (3) individual officers were entitled to qualified immunity; (4) police had probable cause to arrest students for conspiracy to commit murder; (5) county attorney was immune from suit; and (6) students' suspensions from school did not violate due process.

Some of the details of the plan included the following: (1) The boys planned to wear black clothing or law enforcement uniforms; (2) they had drawn a map of the school for the attack and then burned it in an ash tray; (3) one student was to sit atop a building to the east of the school and shoot people as they emerged; (4) someone would drive a demolition derby car onto the school's campus; and (5) the assault was planned for Monday.

Torts

*Siegell v. Herricks Union Free School Dist. (N. Y. A. D. 2 Dept., 777 N. Y. S. 2d 148), May 10, 2004.

School district was not negligent in failing to supervise high school student who ran into or pushed another student from behind during a "Frisbee relay race" in physical education class when both were going for the same Frisbee. Student's injuries were caused by a spontaneous and unforeseeable act committed by a fellow student, whose prior disciplinary problems were insufficient to place school district on notice that he would intentionally run into or push the plaintiff into a wall during a relay race. The New York Supreme Court, Appellate Division, went on to state where an accident occurs in so short a span of time that even the most intense supervision could not have prevented it, summary judgment will generally be in favor of school officials.

*Cooper v. Paulding County School Dist. (Ga. App., 595 S. E. 2d 671), February 25, 2004.

After picking up her daughter at her high school, the plaintiff drove toward the main exit where her car collided with the school's entrance gate. The gate came through the windshield and struck plaintiff, causing her to lose consciousness and control of her car. On the morning of the day of the accident the high school principal asked school custodians to clean up debris in the roadway at the school entrance from another vehicle that apparently had hit the gate over the weekend. The district's director of maintenance also received a phone call to repair the gate, and did send a crew who realigned the hinges on the gate and secured the gate. The Court of Appeals of Georgia held that the high school principal was entitled to official immunity because the principal's actions in handling the repair of the broken gate was a discretionary function, not a ministerial task.

*Olson v. Alexandria Independent School Dis. #206 (Minn. App., 680 N. W. 2d 583), June 8, 2004.

Jury concluded that school district was negligent; however, the negligence was not a direct cause of any injury to the student. Accordingly, $15,000 would compensate student who was assaulted in school by other students. School officials were inconsistent in following up the student's mother's reporting of harassment incidents in the past, along with her concern for her below-average mental functioning child who also suffered from attention deficit disorder (ADD). The trial court did not abuse its discretion in reconciling the inconsistent findings by awarding the student $15,000 for pain, embarrassment, and emotional distress.

Trespass

E. W. v. State (Fla. App. 1 Dist., 873 So. 2d 485), May 13, 2004.

Fourteen year old student could not legally comply with the directions of the dean of the school to leave the school's premises. The policy of the school district stated that no student under the age of 18 could lawfully leave the school campus unless s/he had previously received parental consent. Attempt at contacting the student's mother were unsuccessful; and the policy states that an underage student who leaves school property without such permission is subject to a ten day suspension. Accordingly, a Florida appeals court held that the juvenile had legitimate business on the school's property and did not violate criminal statute prohibiting trespass on school property.

Commentary

No commentary.

***Possible implications for Arkansas's Schools.**

Legal Up Date For District School Administrators October 2004

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The **Legal Up Date 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 Initiative** located in the Graduate School of Management, Leadership, and Administration at the University of Central Arkansas. If you have any questions or comments about these cases and their potential ramifications, please phone me at **501-450-5258.** In addition, feel free to contact me regarding educational legal concerns; school safety and security issues; student discipline/management issues; and concerns pertaining to gangs, cults, and alternative beliefs.

Topics:

- Administrators
- Civil Rights
- Property and Contracts
- Records
- Searches and Seizures
- Student Discipline
- Tort

Commentary:

- No commentary

Topics

Administrators

"Principal Denied Certification"
Davenport v. Department of Educ. (PA. Cmwlth, 850 a. 2d 802) May 14, 2004.

Applicant was not entitled to administrative certificate as secondary principal. State statute provided that Department of Education will issue an administrative certificate to persons who have had minimum of five (5) years of professional school experience and have completed an approved program of graduate study. The applicant had only one (1) year of creditable experience teaching Spanish, and she could not receive credit for any of her experience as a principal of a charter school while under an emergency permit for a secondary principal.

Civil Rights

"Student Raises Fist During Flag Salute"
*Holloman ex rel. Holloman v. Harland (C.a. 11 {Ala.}, 370 F. 3d 1252). May 28, 2004.

Former Alabama high school student filed suit against his economics-governing teacher, high school principal, and board of education, claiming his First Amendment's Speech Clause rights were violated when teacher and principal punished him with a paddle in lieu of detention that would have delayed his graduation. He was punished for silently raising his fist during a daily flag salute, instead of reciting the Pledge of Allegiance with the rest of the class. The United States Court of Appeals, Eleventh Circuit, **reversed and remanded** the case back to the United States District Court for the Northern District of Alabama on the following grounds: (1) Principal **was engaged in a legitimate discretionary function** for purposes of determining his entitlement to qualified immunity, and spanking student was legitimate part of principal's arsenal for enforcing such discipline: (2) any reasonable person would have known that disciplining student for refusing to recite the pledge **impermissible chilled** the student's First Amendment rights; (3) genuine issue of material fact **existed** as to whether student who silently raised his fist during flag salute to protest another student's discipline for remaining silent with his hands in his pocket during flag salute the day before, **precluded summary judgment** on qualified immunity for classroom teacher and principal.

"Kindergarten Teacher's First Amendment Rights Not Violated"
*Lifton v. Board of Edu. Of City of Chicago (N.D. III., 318 F. Supp 2d 674), May 18, 2004

School officials' issuance of warning resolution to kindergarten teacher for insubordination was not pretext for retaliation against teacher for exercising her First Amendment free speech rights (objected the early renewal of the principal's contract and criticized the current kindergarten program), even though warning was issued soon after teacher expressed her opinions regarding school matters. Teacher **failed** to submit lesson plans, **failed** to submit grades, and **repeatedly sent unauthorized** letters to parents. Discipline of teacher **was consistent** with school district's personnel policies. There was no evidence that other teachers committed same or similar infractions without discipline.

Property and Contracts

"Student Sexually Abused While Participating In An After School Program"
*Jonathan A. v. Board of Educ. Of City of New York (N.Y.A.D. 1 Dept., 779 N.Y.S. 2d 3), June 10, 2004.

School board, by permitting a community-based organization (Police Athletic League or PAL) to run an after-school program at school and making hiring suggestions to the organizations, was not liable for any negligence of the organization for hiring and supervising employee who sexually abused an elementary school youngster. No special relationship existed that would have placed the board, as opposed to the organization, in the best position to protect against the risk of harm.

Records

"Student Discipline Forms and Video Tape Confidential Exempt from Public Records Act"
WFTV, Inc. v. School Bd. of Seminole (Fla. App.5 Dist., 874 So. 2d 48), May 14, 2004.

Transportation (school bus), student discipline forms and surveillance videotapes **were both confidential and exempt** from Florida's Public Records Act. Thus, school board could not release the records to a television station, even with personally identifying information removed.

Search and Seizure

"Crime Stoppers' Tip did Not Provide Probable Cause"
In re Doe *Hawaii), 91 P. 3d 485), June 2, 2004.

An anonymous Crime Stoppers' tip, relayed by an officer from the city's police department to a high school vice principal, that a student had marijuana and was selling on campus did not provide "probable cause" to justify search of minor by school security personnel, due to lack of evidence of reliability as to illegality. Although the tip identified the minor, the principal was **not** aware of any of the circumstances under which the tip came in (other than it was a Crime Stoppers' tip). The law enforcement officer who passed the tip to the high school's vice principal was assigned to the school as a school resource officer (SRO). School security personnel did search the student and found a plastic bag containing two marijuana cigarettes and some cash.

Student Discipline

"Student's Song: I am Gonna Kill My Pregnant Teacher's Baby"
*Wilson ex rel. Geiger v. Hinsdale Elementary School Dist. 181 (Ill. App. 2 Dist., 284 Ill. Dec. 847, 810 N.E. 2d 637), May 27, 2004.

An eleven-year-old sixth grader sought a temporary restraining order (TRO) to prevent his expulsion for the 50-days remaining in the school year after he distributed, at school, two compact discs (CD's) with recordings of a song he wrote and performed stating he was "gonna kill" his pregnant science teacher's unborn baby. The Appellate Court of Illinois, Second District, ruled that the sixth grader **was unlikely** to succeed in showing that his conduct did not affect the delivery of educational services to other students. Teacher **required a day off from work to recuperate from her emotional distress;** the police department was called to investigate; concerned teachers were briefed by the administration regarding what had occurred and what action the school was taking; and parents of students telephoned the school to find out what was happening. **Note:** The song had the following lyrics: "Gonna Kill Mrs. Cox's baby, gonna kill Mrs. Cox's baby. I don't care, I don't care. Gonna Kill Mrs. Cox's baby, gonna kill Mrs. Cox's baby.(sequel), rock n' roll. I love Detroit, man. I'm done. We're done.

"Special Education Student Challenged His Suspension For Fighting"
*Coleman v. Newburgh Enlarged City School Dist. (S.D.N.Y., 319 F. Supp. 2d 446), May 17, 2004.

High school student with a learning disability **was likely to succeed** on merits of his claim challenging discipline imposed due to student's engagement in an altercation with another student, i.e., his suspension from school and extracurricular activities for the remainder of the school year. Thus, the merits of his claim **supported** student's request for preliminary injunction against suspension. Additionally, there was **no** finding by school officials as to whether the student was responsible for causing the altercation; school officials did not adequately address the connection between the student's disability and conduct leading to the altercation; and **no** functional behavioral assessment of the student was conducted prior to the manifestation hearing.

Tort

"School District Did Not Owe a Duty of Care to Teacher Injured While Breaking-up a Fight Between Students"
Azure v. Belcourt Public School Dist. (N.D., 681 N.W. 2d 816), June 30, 2004.

School district did not owe a duty of care to teacher who was employed by the United States Bureau of Indian Affairs (BIA) as a special education teacher at the school, and who was injured when she attempted to break up a fight between two middle school students in the cafeteria. There was no evidence that established school district had control over the cafeteria, or BIA employees. BIA owned both the building that houses the middle school and cafeteria, and BIA maintained exclusive control over cafeteria supervision.

Commentary

No Commentary

***Possible implications for Arkansas's Schools**

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Topics:

- Admission
- Athletics
- Disabled Students
- Labor and Employment
- Security
- Torts

Commentary:

- No commentary

Topics

Admission

"Use of Race as a Tiebreaker In Assisting Students Is Unconstitutional"
***Parents Involved in Community Schools v. Seattle School Dis. No. 1 (C.A.9 {Wash}, 377 F. 3d 949), July 27, 2004.

Parents sued school district, alleging that "open choice" assignment plan, which used "race" as a tiebreaker in assigning students to oversubscribed high schools, violated Equal Protection Clause of the Fourteenth Amendment and Title VI of the Civil Rights Act of 1964. The District of Washington entered United States District Court for the District of Washington entered summary judgment for the school district; parents appealed. The United States Court of Appeals, Ninth Circuit, stated that racial diversity in education was a compelling interest; but using race as a tiebreaker was not narrowly tailored to further such interest. Thus, the Ninth Circuit **reversed and remanded, with instructions to issue an injunction. Note;** Each student may choose to attend any of the ten high schools in the Seattle School District, so long as there is room available in his/her selected high school. Once a school is "oversubscribed", when more students want to attend that school than there are spaces available, school officials use a series of "tiebreakers" to determine which students will be admitted to each oversubscribed school. The **"four tiebreakers"** are as follows: (1) preference to students with siblings already attending the requested school; (2) race as specified on their registration form; (3) distance (mileage) between their homes and the school to which they seek admission; and (4) random lottery (seldom used).

Athletics

"Scheduling of Girls' Sports Violates Equal Protection"
*Communities for Equity v. Michigan High School Athletic Ass'n, Inc. (C.A.6 {Mich.}, 377 F. 3d 504), July 27, 2004.

State high school athletic association's scheduling of girls' sports in less advantageous seasons than boys' sports **violated** equal protection clause of the Fourteen Amendment. In addition, evidence did not establish that separate seasons for boys and girls maximized opportunities for girls' participation. **Note:** Case focused on six girls' sports (basketball, volleyball, soccer, golf, swimming and diving, and tennis). All of the six sports, with the exception of golf, were scheduled during the nontraditional season (meaning a season of the year that differs from when the sport is typically played).

Disabled Students

"Muscular Dystrophy Student Suffers Muscle and Kidney Damage"
*McCormick v. Waukegan School dist. #60 (C.A.7 {Ill.} and emotional injury. 374 F. 3d 564), July 7, 2004.

Ninth grade student with muscular dystrophy alleged school officials' violation of his IEP resulted in physical (muscle and kidney) and emotional injury. The United States Court of Appeals, Seventh Circuit, held that the student's parents were not required to exhaust administrative remedies available under IDEA before filing a federal lawsuit for money damages. Student claimed his injuries were non-educational ones for which IDEA did not provide a remedy. The school had received notice from the youngster's physician (Director of Neuromuscular Disorders at Northwestern Medical Foundation) concerning his physical limitations and the dangers of exceeding those limitations.

"Impact of Student's Behavior On Other Students Could Be Considered Under IDEA"

*Alex R., ex rel. Beth R. v. Forestville Valley Community Unit School Dist. #221 (C.A. 7 {Ill.}, 375 F. 3d 603), July 15, 2004.

A special need third grade student suffered from Landau-Kleffner Syndrome (A rare neurological disorder that begins in childhood and affect parts of the brain that control speech and comprehension. Individual tends to display symptoms that include hyperactivity, poor attention, depression, and irritability). As a component of his IEP, the school district kept him in the regular classroom as much as possible. However, during the third grade (he was nine years-of-age and weighed 150 pounds) he begins to commit violent attacks on staff members, fellow students, and against school property. The attacks included behaviors such as: filling a glove up with rocks and hitting other students; leaving the school building running into a body shop and swinging a piece of sheet metal at staff who came to retrieve him; attacking and hitting his individual aid; charging his teacher and ramming her into the classroom door; pulling papers from classroom wall; kicking a bucket of Leggos across the room; rifling through other students' desks; taking students' pencils and biting them in two; kicking teachers and assistants; and leaving school and being found by rescuers stuck in a river bank (body temperature down to 92.7 degrees Fahrenheit – causing hypothermia). School officials placed him in a special classroom for students with behavioral disorders. The United States Court of Appeals, Seventh Circuit, held that the student's disruptive impact of the student **was a relevant consideration** in deciding whether the student received an appropriate education under IDEA. In addition, the court stated the district's IEP **was reasonably calculated** to enable the student to receive educational benefits.

"Emotionally Disturbed High School Student's IEP Was Inappropriate"

"Schorah v. District of Columbia (D.D.C., 322 F. Supp. 2d 12), June 11, 2004.

The United States District Court District of Columbia, stated that evidence did not support school district's finding that high school student's IEP and public school placement were adequate to meet his education and emotional needs, although there was evidence that his IEP contained goals that student needed. The school district's only witness was unable to speak personally to the student's particular needs and did not know whether goals and objectives provided in the IEP were appropriate. **Note**: The emotionally disturbed and learning disabled 17-year-old developed extreme anxiety about attending school became depressed, stopped doing his homework, and refused to go to school. He became fundamentally uncontrollable.

Labor and Employment

"Teacher With Lupus Not Disabled Under ADA"

*Temple v. Board of Edu. Of the City of New York (E.D.N.Y., 322 F. Supp. 2d 277), June 22, 2004

Teacher with systemic lupus erythematosus did not have a physical impairment that substantially limits her in a major life activity. Therefore, she was not disabled under ADA. Teacher testified that lupus did not affect her ability to perform her duties as a teacher, nor as an assistant principal. She could care for herself; do household and personal chores; bath and brush her teeth; wash her face; do laundry; cook; drive, using glasses; and garden. **Note:** The case came about after the teacher was terminated from her assistant principal's position, but continued her employment as a classroom teacher. Her duties and responsibilities as an assistant principal included; participate in professional development; oversee several grades; supervise numerous teachers; oversee several special school programs; creating work assignments; make the school's testing schedules; conduct staff development; conduct teacher observations; and oversee city art-essay contests.

"Four-Year-Old Found on School Bus"
*Napier v. Centerville City School (Ohio App 2 Dist., 812 N.E. 2d 311), June 10, 2004.

School district's decision to terminate school bus driver's employment for neglect of duty **was supported** by evidence. Driver parked his bus in the school transportation garage after morning route, but failed to inspect his bus for any children who may not have exited bus. A four-year-old child was heard screaming from inside the bus by another bus driver who boarded the bus and took the youngster to the Transportation Office. The terminated bus driver had been a school bus driver for 26 years, and was very much aware of the need to inspect his bus visually at the end of his route. Additionally, the child was left on the bus on an extremely hot day, and she was exposed to significant risk of harm from the high temperature. The fact that the youngster did not suffer physical harm did not negate the seriousness of the driver's negligence.

"Teacher's Transfer Was Not Adverse Employment Action"
*Bell v. South Delta School dist. (S.D. Miss., 325 F. Supp. 2d 728), January 29, 2004.

African-American teacher's transfer from her long-term (12 year) position as instructor of business and computer technology class for high school students to position as seventh grade career discovery instructor was not "adverse employment action" regarding teacher's Section 1983 discrimination claim. In addition, teacher claimed that the new position was equivalent to a demotion; it required less skill; and she had no recent experience teaching seventh grade students. However, the teacher's new position **was virtually identical to her former position** in terms of pay, benefits, working conditions, privileges, and status.

"Evidence Supported Teacher's Dismissal Due to Misconduct"
*Rivers v. Board of Trustees, FCAHS (Miss. App. 876 So. 2d 1043), June 29, 2004.

Substantial evidence ***supported*** decision of the board of trustees to dismiss high school teacher due to misconduct. A 15-year-old ninth grader testified that the teacher deliberately placed his hand on her leg and began to move his hand upward, which caused her to be very surprised and upset by the teacher's conduct. Student's version of events did not change from her initial interview pertaining to the events when her teacher "touched her in the wrong way". In addition, three other female students testified that they observed the male teacher appearing to look down the blouses or shirts of female student.

Security

"Search of Student's Backpack for Knife Was Reasonable"
*In re Cody S. (Cal. App. 4 Dist., 16 Cal. Rptr. 3d 653) July 29, 2004.

Because students' expectation of privacy in their persons and in their personal effects they bring to school must be balanced against the school's obligation to maintain discipline and to provide a safe environment for all students and staff, school officials may conduct a search of a student's person and personal effects based on **"a reasonable suspicion that the search will disclose that the student is violating or has violated a law or school policy". "Reasonable suspicion" is a lower standard than "probable cause", and the legality of the search depends on "reasonableness" under all circumstances associated with the search.**
Note: The preceding was based on the search of a 17-year-old high school student after a campus safety officer received an anonymous telephone call reporting that the minor had a knife in his backpack.. When the safety officer searched the student (with two male campus officers present) she found a knife (blade 3 & ½ inches); a baggie that contained what appeared to be marijuana; and $190.00 in his wallet.

"Student's Poem Had No Criminal Intent"

*In re George T. (Cal., 93 P. ed 1007), July 22, 2004.

Fifteen-year-old high school student handed a fellow student the following poem entitled *Faces*: "Who are the faces around me? Where did they come from? They would probably become the next doctors or lawyers or something. All really intelligent and ahead in their game. I wish I had a choice on what I want to be like they do. All so happy and vagrant. Each original in their own way. They make me want to puke. For I am Dark, Destructive, and Dangerous. I slap on face of happiness but inside I am evil!! For I can be the next kid to bring guns to kill students at school. So parents watch your children cuz I'm BACK!!" The student informed her teacher and the teacher informed both the school principal and police.

The Supreme Court of California held the **ambiguous nature** of the student's poem along with the **circumstances surrounding its dissemination <u>failed</u>** to establish that the poem constituted a criminal threat. The word "can" in the poem did <u>not</u> mean "will" and while the poem's protagonist declared that he had potential to kill given the dark, hidden feelings, he did <u>not</u> actually threaten to do so. Thus, disclosure of the poem did <u>not</u> constitute actual threat to kill or to inflict harm.

<u>Torts</u>

"Department of Education Not Protected by Sovereign Immunity In Sexual Molestation Case"

Ingram v. Wylie (Fla. App. 1 Dist. 875 So. 2d 680), May 18, 2004.

Sixteen-year-old high school student, who had a sexual relationship with a high school teacher, brought action against the Florida Department of Education (DOE). She alleged that the DOE negligently reissued the teacher's teaching certificate, which had been permanently revoked in 1988 for impregnating a minor student while employed as a teacher. The DOE issued the teacher a temporary teaching certificate in 1994 and he became fully certified in 1996. The District Court of Appeals of Florida, First District, stated that the DOE was <u>not</u> protected by sovereign immunity in connection with negligent action brought against it by the high school student. Accordingly, the District Court **reversed and remanded** the case back to the Circuit Court, Leon County, for additional consideration after it ruled in favor of the DOE.

"Student's Mother Not Liable for Son's Injuries When Struck By a School Bus"

*Jackson Public School Dist. v. Smith (Miss. App., 875 So. 2d 1100) June 22, 2004.

On the morning of January 21, 2000, the eight-year-old second grader was struck by a Jackson Public School (JPS) school bus after he exited his mother's van, which stopped short of the stop sign at the street's intersection. Additionally, there was no crosswalk or crossing guard present at the location of the incident. The youngster sustained scrapes on his chin, nose, lip, forehead, and back, plus injury to his right hand. The Circuit Court of Hinds County entered judgment for the student. Thereupon, JPS appealed the case to the Mississippi Court of Appeals. The Mississippi Court of Appeals held that the child's mother was not contributory liable for her child's injuries. However, the Court went on to say that the award of $850,000 **should be reduced** to $400,000. If **not** accepted by the plaintiff, the case is **reversed and remanded** for a new trial.

"First Grade Girl Sexually Abused by Sixth Grade Boy"

*Doe ex rel. Doe v. Board of Educ. of Morris Cent. School (N.Y.A.D.3 Dept., 780 N.Y.S. 2d 198), July 1, 2004.

During the course of a one to three week period in March 1997, plaintiff was inappropriately touched by a male 12-year-old sixth grade student while on the school bus to and from school, and in a bathroom attached to the school nurse's office at the school. The Supreme Court of New York, Appellate Division, Third Department, ruled a **genuine issue of material fact** existed as to whether ordinary prudence **should have alerted** school authorities to potential harm once it became apparent that an older student was devoting an inordinate amount of attention to first grade student. Thus, the court **precluded summary judgment** in action against school authorities for negligent supervision, **premised** on first grade student's sexual abuse by the older student.

"High School Student Wets His Pants While Returning From Basketball Game"

***Hinkle v. Shepherd School dist. #37 (Mont., 93 P. 3d 1239), July 1, 2004.

High school freshman's parents brought action on behalf of their child against school district, band instructor, and school bus driver, alleging that defendants' conduct during pep band bus trip to basketball game caused the young man to "wet" himself. Defendants refused to stop the bus to allow student to use a restroom; thus, the episode triggered or accelerated student's development of diabetes and caused student to suffer from post-traumatic stress disorder (PTSD). The Supreme Court of Montana stated that the physician's opinion (as medical expert) is admissible if it is based on an opinion that is more likely than not that alleged wrongdoing caused the plaintiff's injury. Based on the circumstances in which the incident occurred, the physician's opinion was <u>not</u> admissible. Thus, the court **ruled in favor of** the school district and personnel related to the incident.

Commentary

No Commentary

***Possible implications for Arkansas's Schools.**