# SAFE, ORDERLY, AND PRODUCTIVE SCHOOL LEGAL NEWS NOTE

## February 2004

## School Leadership, Management, and Administration's Safe, Orderly, and Productive School Initiative

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**"Student Kicked and Called Teacher Butthead"**

*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 shoulders and slammed him into the desk in a sitting position. According to a medical report, the student suffered abrasions on his left shoulder and bruises under his right underarm due to the incident. A Virginia court of appeals held that **there was substantial evidence** that the injury inflected 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.

**"Student States School's Tardy Policy Made by a Nazi"**

*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 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 state of Michigan's 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 thereunder, **were unconstitutionally overboard.**

## "Autistic Student Violent Toward Teacher and Others"

*Vallandigham v. Clover Park School Dist. No. 400 (Wash. App. Div 2, 79P. 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 district 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 steps to alleviate the risk posed by the student.

The following represents a sample of the steps the school district took: contacted student physician about a change in medication; performed a functional behavioral analysis; called IEP meetings; 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 students in half-day program; and considered alternative placements, but parents were unwilling to take student.

**“Eighth Grader Killed by Seventh Grader”**

*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 in an area of a middle school called “the tunnel” (a windowless hallway with not classrooms). Both students had been involved in a similar gang fight the afternoon before the incident; however, that fight had 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 had 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.

**“School is Not Custodian of Student”**

In re Juvenile 2003-189 (N.H., 834 A 2d 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 stealing. The Supreme 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.

**“District Did Not Have Duty to Protect Parents From Distress”**

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

School district had no 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 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 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 of preventing relationships beyond what it was already doing **would be intolerable.**

As a footnote to the case, the teacher was convicted of sexual molestation and sent to jail.

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

**March 2004**

# SAFE, ORDERLY, AND PRODUCTIVE SCHOOL LEGAL NEWS NOTE

# March 2004 School Leadership, Management, and Administration's Safe, Orderly, and Productive School Initiative

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**"High School Teacher Arrested for Molestation"**

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

Male student claimed teacher had rubbed his shoulder, legs, and penis during his "Life Skills" class. Thus, student and his mother filed a formal complaint against the teacher at the police department. Thereupon, high school special educational teacher sued city, police department, police chief, and police officers under Section 1983, alleging he was arrested without probable cause for his alleged sexual assault of special education student. A Rhode Island district court held that city and police officers did not breach any duty to teacher in connection with arresting him for the alleged sexual assault. Accordingly, they were not liable for negligence under Rhode Island law because they had **conducted an adequate investigation of the incident and had probable cause** to arrest the offending teacher.

**"Teacher's Conviction of Sexual Assault Incident Which Occurred 30 Years Ago Stands"**

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

Former teacher and school administrator was convicted of 21 counts of third-degree sexual assault (sexual interactions ranged from fondling to sexual intercourse) stemming from his interaction with a junior high female student (now in her 30's). The incidents occurred (1977 – 1980) when the teacher was approximately thirty years of age and the female victim was in the eighth and ninth grades. The Supreme Court of Appeals of West Virginia held that the 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.

**"Male Kindergarten Student Sexually Assaulted by Classmates"**

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

Mother of male kindergartner 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 troom, 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.

**"Student's T-Shirt with President's Photo"**

*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 junuior 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.

**"Twelve-Year-Old Molested and Killed by His Teacher"**

*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). Subsequently, 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.

**"Anonymous Call Leads to Arrest of Visitor"**

*U.S. v. Aguilera (E. D. Cal. 287 F. supp. 2d 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 waw 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.

**"Teacher Remains Registered as a Sex Offender"**

*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.

**"Teacher Searches Third Grader"**

*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.

**"Insurer Not Required to Cover School Board for Negligent Hiring and Supervision of School District Employee"**

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.

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

April 2004

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# Cases

## "Football Player Gouged in His Eye"

*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 an alleged racially motivated attack on her son by a white teammate when teammate thrust his hand through the youngster's face guard and gouged the youngster in his eye 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 officials' inaction on some of the complaints rose to the level of an 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.

## "Evidence Supported Immorality and Intemperance"

*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 Pennsylvania's Professional Educator's Discipline Act. Students testified that they were abused (improperly touched), how they were abused, and the time of day when the abuse 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.

The teacher was **arrested and criminal charges were filed**; however, he was found not guilty of all charges. (Remember in criminal cases the charges must be proven "beyond reasonable doubt". Administrative hearings have a much lower standard or burden of proof.) 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.

## "There is a Bomb"

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

Middle school student's misconduct in writing on wall near a stairway, 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**.

"I Am Going to Get My Dad's Gun"

*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 **had the authority to determine** whether student's unlawful activity could reasonably be considered to be an interference with school purposes, an educational function, and whether student's removal was necessary to restore order, or to protect persons on school property.

"Elementary Student Sexually Assaulted While Selling Candy"

*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 was **not foreseeable** to fundraising company which merely supplied fundraising materials and brochures to school and made presentations which school representatives attended.

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

May 2004

# Safe, Orderly, and Productive School Legal News Notes

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## Cases

**"High School Senior Commits Suicide After Arm-Wrestling Incident"**

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

Brian, a seventeen-year-old senior, was extremely popular and a star athlete who had won a sports scholarship to Concordia 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 contact. 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 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 publicized the event, causing Concordia 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 the 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.

## "Miranda Warning Not Required by Assistant Principal's Search of Student"

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.

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. The student did make oral and written statements acknowledging his involvement in the theft of a video camera. He also assisted in the recovery of the camera.

*** Possible implications for Arkansas's schools**

# SAFE, ORDERLY, AND PRODUCATIVE SCHOOL LEGAL NEWS NOTES

# June 2004

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# Cases

## "Conditional Hall Pass"

*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.

## "Male Student Forced to Wear a Pink Sign"

*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.

June 2004

**“Student Mistreated by Teacher Due to His Mixed Race Ancestry”**

*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.

June 2004

## "Student Brings His Brother's Violent Drawings to School"

*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 drawing 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.

## "Lunchroom Monitor's Racial Remarks Not Extreme"

*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.

June 2004

## **“Security Guards Punch and Kick Student”**

*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. Plaintiffs 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 existed** 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.

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

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# July 2004

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The ***Safe, Orderly, and Productive School Legal News Note*** is a monthly update of selected significant court cases pertaining to school safety-security and student management issues. 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 school safety and security issues, student discipline/management issues pertaining to gangs, cults, and alternative beliefs.

# Cases

## "Assistant Principal's Search of Students Reasonable"

*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.

## "Student Cut on Nose and Forehead by Shards of Glass"

*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.

**"Search of Teacher's Classroom Was Reasonable"**

*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.

**"Three Elementary Students Molested by Their Teacher"**

*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.

**"Teacher Discovered Masturbating in Classroom"**

*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.

**"Student Makes Terrorist Threat Over Computer Network"**

*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.

**"Uncle-In-Law Sexually Assaults Student"**

*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.

## *Possible implications for Arkansas's Schools.

# SAFE, ORDERLY, AND PRODUCTIVE SCHOOL LEGAL NEWS NOTES

# August 2004

# School Leadership, Management, and Administration's Safe, Orderly, and Productive School Initiative

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# Cases

## "Check and See If Your Name Is On Your State's Central Register for Suspected Child Abusers"

*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.

**"Gay-Straight Group Denied Permission to Distribute Materials on Campus"**

*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 groups 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?

**"Possible Student Mental Lapse May Have Caused Her to Write Note About Her Teacher and Principal"**

*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 drafter 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.

**"Principal Revealed Name of Student Who Was Bullied to the Student Bullying Him"**

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.

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

September 2004

# *SAFE, ORDERLY, AND PRODUCTIVE SCHOOL LEGAL NEWS NOTE*

## September 2004

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# Cases

## "School Principal Fails to Report Alleged Sexual Abuse of a Student"

*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.

## "Freshman Friday"

*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.

## "Junior High Students Sick of Bitchy Preps"

*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.

## "Drug Testing of Teachers Ruled Constitutional in Kentucky"

*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.

## "Student Harassed Over His Perceived Sexual Orientation"

*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.

## "Five Students Plan Armed Attack on Their High School"

*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.

## "Student Pushes Another Student During a Frisbee Relay Race"

*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.

## "School Officials Found Not Negligent But Had to Pay $15,000"

*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.

## **“Student Had Legitimate Business on His School’s Campus”**

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.

## * Possible implications for Arkansas’s Schools.

# SAFE, ORDERLY, AND PRODUCTIVE SCHOOL LEGAL NEWS NOTES

# October 2004

# School Leadership, Management, and Administration's Safe, Orderly, and Productive School Initiative

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# Cases

## "Student Raises Fist During Flag Salute: School Officials Chilled His Fist Amendment Rights"

*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 and 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.

## "School Officials Did Not Have Duty to Protect Student Participating in 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.

## "**Student Discipline Forms and Video Tapes Were Confidential and 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.

## **"Crime Stoppers" Tip Did Not Provide Probable Cause for Search"**

*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. **Note:** According to the court, the deciding issue was as follows: Crime Stoppers could have called school officials directly, or called the police station and requested that the police dispatcher relay the information to school officials. But the fact that the information flowed through the "officer" **tainted** the basis under which school officials responded.

**"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's Challenge of His Suspension For Fighting Lead to a Preliminary Injunction on His Behalf"**

*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.

**"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.

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

# SAFE, ORDERLY, AND PRODUCTIVE SCHOOL LEGAL NEWS NOTES

## November-December 2004

## School Leadership, Management, and Administration's Safe, Orderly, and Productive School Initiative

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# Cases

## "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 Legos 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.

**"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.

**"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.**

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 **failed** to establish that the poem constituted a criminal threat. The word "can" in the poem did **not** mean "will" and while the poem's protagonist declared that he had potential to kill given the dark, hidden feelings, he did **not** actually threaten to do so. Thus, disclosure of the poem did **not** constitute actual threat to kill or to inflict harm.

## 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 not 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.

**"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.

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