January 2006(#’s 512 & 513)

# Legal Up Date For District School Administrators

## January 2006

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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 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 **Johnny R. Purvis** (researcher and writer) at **501-450-5258**. In addition, feel to contact me student discipline/management issues; and concerns pertaining to gangs, cults, and alternatives beliefs.

Topics:

- Abuse and Harassment
- Civil Rights
- Labor and Employment
- Records
- Security
- Student Discipline
- Torts

Commentary:

- .No Commentary

# Topics

**<u>Abuse and Harassment:</u>**

***K.M ex rel. D. G. v. Hyde Park Cent. School Dist.( S>D>N>Y., 381 F. Supp. 2d 343), August 11, 2005.**

A 13-year-old student ( who had been diagnose with Pervasive Developmental Disorder, dyslexia, and normal intelligence) was subjected aggressive and intimidation behaviors by fellow students akin to the following: called stupid, idiot, and retard; thrown to the ground; body slammed; held down and hit on his head and back with his own binder: school books thrown into the garbage in the cafeteria on five to eight different occasions; and physically beaten by two boys. Based on instances such as the aforementioned, the student's mother sued the school district under Section 504 and ADA. The United States District Court, S.D., New York, held that school officials' deliberate indifference to persuasive, severe disability-base harassment deprived disable students access to the school's resources; and such deliberate indifference was discrimination and actionable under section 504 of the Rehabilitation Act of 1973 and the American Disability Act (ADA).

***Tesoriero v.Syosset Cent. School Dist. ( E.D.N.Y., 382 F. Supp. 2d 387), August 8, 2005**

Twin sisters ( both were track and field athletes while in high school) stated the following about their high school history teacher: "Would look at my body up and down and tell me that I look terrific"; Would touch my hip and tell me I look nice"; "He kissed me on the top of my head and hugged me"; "Would look me over and tell me he like girls with an athletic figure"; " Told me that I was beautiful"; "Would tell me I look fantastic or terrific in particular outfit"; "Would ask me to stay after class"; " He would often touch my shoulder, hip, or waist when he talk to me"; " Gave me two CDs and a bottle of skin lotion on my birthday"; Sent letter stating : "It's early in the morning and I'm awakened by the thought of you …my heart beats in anticipation of seeing you again. I miss you smile, your beautiful eyes, your laughter, and your touch." Accordingly, they brought a sexual harassment suit against teacher and school district. The United State District Court, E.D., New York , ruled: Fact issued in the complaint precluded nonliability under Title IX; there were fact issues as to whether district was liable for negligent retention of teacher; and there were fact issues as to whether district was liable for negligent supervision. The court partly based their ruling on the fact that there was very little, if any, following up after the sisters and their parents met with the administration about the teacher's action toward them.

**Civil Rights:**

***Knight v. Haywood Unified School Dist. ( Cal.App.1 Dist., 33 Cal Rptr. 3d 287), August 24,2005**

Teacher sued school district, alleging disability discrimination under Fair Employment and Housing act (FEHA), in that health insurance provided by district did not cover cost of in vitro fertilization (IVF), which teacher and his wife were obliged to obtain at their own expense. A California court of appeals held school district's provision of health insurance to employees which did not include coverage of IVF treatment did not constitute disability discrimination under FEHA because the excursion applied uniformly to all covered employees. Thus, there was no discrimination.

***Shuman v. Penn Manor School Dist. (C. A. 3 {P.a.}, 422 F.3d 141), September 7, 2005.**

High school male student inappropriately touched a female classmate during their agricultural-science class and was called the assistant principal's office, where he was held for several hours. The United States Court of Appeals, Third Circuit, held that seizure of the student, who was being investigated for all alleged nonconsensual sexual touching of another student , was reasonable in light of circumstances. Detention of plaintiff in a small conference room lasted no more than four hours, during which time he was allowed to do agricultural-science work; leave the room to eat lunch in cafeteria; get a drink of water ; and go freely ( including attending his regularly scheduled classes).

**Labor and Employment**

***Sanzo v. Uniondale Union Free School Dist. (E. D. N. Y., 381 F. Supp. 2d 113), August 8, 2005.**

Head school custodian (responsibilities included the maintenance, safety, cleanliness of the entire facility, and the direct supervision of four custodians) with narcolepsy and sleep apnea failed to show that district's articulated legitimated reasons for his termination were untrue or pretext for disability discrimination. Custodian did not present " strong evidence" that hearing officer's decision sustaining 15 of the 19 specifications of poor performance and misconduct was "wrong as a matter of fact" insofar as none of the specifications for which the custodian was found guilty had anything to do with his sleeping disorder. Furthermore, the consideration of the sleeping disorder was not " new evidence" because hearing officer was aware of it, and even took notes that custodian failed to raise it as a defense.

***Dockery v. Unified school Dist. No.231 (D. Kan., 382 F. Supp. 2d 1234), August 12, 2005.**

School employees, an African-American custodian whose employment with school district was terminated because he complained about racial bullying and harassment of his children and that he was forced to watch a movie that he viewed as offensive. The United States District Court, D. Kansas, held that employee failed to state claim for retaliatory discharge, absent allegation that district had policy or custom which caused him to be fired for opposing racial bullying and harassment of his children. Furthermore, plaintiff did not have reasonable good faith belief he was the victim of sexual harassment based on an isolated incident of viewing an inappropriate and offensive movie (scene involved sexual activity) while cleaning the classroom of a graphic arts and photography teacher.

**Records:**

***Medley v. Board of Educ., Shelby County (Ky. App., 168 S. W. 3d 398), August 17, 2005.**

Students of a special education teacher complained she had treated them inappropriately, so school officials installed cameras to monitor her performance. Thereupon, teacher request videotapes of her performance for review and was denied by the district's superintendent. The Court of Appeals of Kentucky (discretionary review denied by the Kentucky Supreme Court) ruled that the teacher's request for videotapes, which were educational records, should not have been considered as made by a member of the public. Thus, teacher's request should have been judged in light of her position as a teacher with respect to the Family Educational Rights and Privacy Act (FERPA) and the Kentucky Family Educational Rights and Privacy Act because the teacher had a legitimate educational interests. Teacher was present in classroom when videotapes were recorded and since she was present there was no confidentiality issue.

**Security:**

***Curcio v. Watervliet City School Dist. (N.Y.A.D.3 Dept., 800 N.Y.S. 2d 466), August 11, 2005.**

School district that owned high school where basketball tournament sponsored by nonprofit entity was held had no duty to supervise student who participated in tournament and allegedly punched referee in eye. Thus, district was not liable for referee's alleged injuries. School district had no responsibility for organizing tournament in his capacity as one of participation. Student did not plat in tournament in his capacity as one of the school district's students. Employees of district who were involved in tournament participated on behalf of the nonprofit entity (Amateur Athletic Union) and not in their roles as district employees.

***Leake v. Murphey (Ga. App., 617 S. E. 2d 575), July 7, 2005.**

On February 21, 2002, a paranoid schizophrenic (who heard voices telling him to kill people) walked through the front doors of an elementary school and past the principal's office. When he came upon a group of fourth-grade students lined-up in the walkway, he swung a hammer and embedded the claw end in the skull of 10-year-old female student. The metal claws penetrated her brain, leaving her permanent neurological deficits as well as post-traumatic stress disorder. Parents of the youngster brought negligence action against the school board, superintendent, school principal, and teachers. The Court of Appeals of Georgia held that the principal and teachers could not be held liable for not preparing the safety plan; thus, they were entitled to official immunity. However, both the school board and superintendent could be held liable because Georgia law mandated that every public school shall prepare a school safety plan. Accordingly, the state legislature conferred a statutory duty to prepare school safety plans and address security issues upon school superintendents and board of education.

## Student Discipline:

***Posthumus v. Board of Educ. of Mona Shores Public Schools (W. D. Mich., 380 F. Supp. 2d Supp. 2d 891), January 27, 2005.**

High school senior, who near the end of the school year received a 10 day suspension for inappropriate and disrespectful behavior toward school officials and as a result missed commencement and other senior events sued school officials violated his First Amendment free speech rights and his Fourteenth Amendment substantive and procedural due process rights. Note: Plaintiff, a senior honor student, was waiting in line prior to the school's honor assembly. While waiting in line, he took out a package of graham crackers and began eating them. One of the school's assistant principals took the crackers from him and kept walking on down the line inspecting student. Plaintiff yelled out, "You are the biggest dick I know" while following him down the hallway outside of the school's auditorium.

***Collins v. Prince William County School Bd. (C. A. 4 {Va.}, 142 Fed. App. 144), July 15, 2005.**

Provision of high school's code of providing that students were subject to discipline for offenses occurring off school grounds if those offenses were "connected in some way with the school" was not void for vagueness. Thus, expulsion of high school student for making and using explosive devices off-site did not violate due process. Student learned to build the explosive device (involved placing aluminum foil in a plastic bottle, adding an over-the-counter cleaner, and recapping the bottle. The cleanser and the foil created a chemical reaction, releasing gas into the capped bottle and causing the bottle to explode) in science class.
Furthermore, school personnel spent a significant amount of time dealing with parents, police, and the media due to the incident. Additionally, instructional time was affected because students to talk about the incident.

**Torts:**

***Ciccone v. Bedfort Cent. School Dist. (N. Y. A. D. 2 Dept., 800 N. Y. S. 2d 452), August 15, 2005.**

School district made prima facie showing on motion for summary judgment in action by a high school lacrosse player to recover for injuries allegedly sustained during collision with another player while executing a body check during a lacrosse game. Player fully appreciated and voluntary assumed risk of injury in playing lacrosse. Furthermore, school officials demonstrated that player was highly skilled and trained athlete who had been playing lacrosse since the sixth grade. He was well aware of the potential for injury resulting from collisions and presented deposition testimony indicated that he had executed body checks approximately 20 to 30 times during each time game. Additionally, he was employing a proper body at the time of injury.

**Commentary**

No commentary

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

March 2006 (# 516 & 517)

# Legal Up Date For District School Administrators March 2006

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- Abuse and Harassment
- Administrators
- Athletics
- Attorney Fees
- Civil Rights
- Criminal Trespass
- Disabled Students
- Labor and Employment
- Property and Contracts
- Religion
- Student Discipline
- Torts

Commentary:

- No commentary

## Topics

Abuse and Harassment

**"Bus Driver Has Sex With Student"**
*State v. Clinkenbeard (Wash. App. Div. 3, 123 P. 3d 872), November 29, 2005.
State statute (Washington state: 11 RCW 9A.44.093 {1} [b]) makes it a class C felony for any school employee to have sexual intercourse with a registered student of that school who is at least 16 years old, if there is an age difference of five years or more between the employee and the student. By its terms, this statute **can be applied** to criminally prosecute a public school employee who has sexual intercourse with a student who is legally an adult (over the age of 18), and **does not require** the school employee to be in a position of authority or supervision over the student. **Note:** The case arose out of a sexual relationship between a 62-year-old school bus driver and an 18-year-old high school student. Actually sexual intercourse did not occur until the student turned 18. However, the male bus drive began the romantic relationship with the female student when she was only 12.

Administrators:

**"Superintendent and Principal Retaliated Against Teacher"**
*Evans-Marshall v. Board of Educ. of Tipp City Exempted Village School Dist. (C. A. 6 {Ohio}, 428 F. 3d 223), November 1, 2005.

High school language arts teacher filed a Section 1983 action against board of education, superintendent, and high school principal, alleging that they retaliated against her by recommending the nonrenewal of her contract for exercising her First Amendment rights. The United States Court of Appeals, Sixth Circuit, held that: (1) In determining whether public employee's speech is a "matter of public concern", **the court examines content, form, and context of statements made as they relate to matters of political, social, or other concerns to the community (as opposed to matters of only personal interest).** If such statements refer to the former, then the speech **is** "a matter of public concern"; (2) Teacher's speech, in form of assignment and in-class use of three novels and movie adaptation of a Shakespearean play, **touched on "matters of public concern"** for purposes of teachers' First Amendment retaliation claim. One work dealt with race and justice in the American south; another with spirituality; a third with the intersection of love and politics; and the fourth with government censorship of books; (3) Nonrenewal of public high school teacher's contract **was injury that would likely chill** a person of ordinary firmness from continuing therein, for purposes of First amendment retaliation claim; and teacher **adequately alleged** that her nonrenewal was motivated **at least in part** by retaliation for exercise of her free speech rights; and (4) School superintendent and high school principal were **not** entitled to qualified immunity for Section 1983 liability to teacher whose contract was not renewed as a result of public outcry produced by assignment of protected materials that **had been approved** by the school board. Their conduct clearly **violated** the teacher's constitutional rights under the First Amendment.

Athletics:

**"Schools' Classifications Not Arbitrary and Capricious"**
*Suburban Scholastic Council v. Section 2 of New York State Public High School Athletic Ass'n, Inc. (N. Y. A. D. 3 Dept., 803 N. Y. S. 2d 270), November 3, 2005.

High school athletic association's adoption of classification (AA, A, B, C, and D) to govern football games among high schools which belonged to association (in which schools were divided into classes based on the number of students enrolled) was **not** arbitrary and capricious. These division **were valid** even though association's constitution, bylaws, rules and regulations did not contain language specifically allowing for classifications. Furthermore, such classifications were **not** prohibited by documents; and association had statutory authority as a not-for-profit corporation to exercise all powers necessary to affect its purpose so long as it was not restricted by another statute or its own bylaws.

Attorney Fees:

**"Student Entitled to Post-Judgment Attorney Fee"**
*Blackman v. District of Columbia (D. D. C., 390 F. Supp. 2d 16), September 29, 2005.

Representation of former student by counsel **was necessary** in a Section 1983 action under IDEA and Rehabilitation Act (Section 504) after district court entered consent order resolving student's contempt motion alleging that the District of Columbia Public Schools (DCPS) **had failed to comply** with preliminary injunction requiring DCPS to determine an appropriate placement for student. Thus, student **was prevailing party** in post-consent-order proceedings. The consent order **was a judicially sanctioned change** in the legal relationship of parties, **sufficient** to afford student prevailing party status. In addition, **representation by counsel was necessary to persuade DCPS to comply with existing law and court orders.**

Civil Rights:

**"Sex Survey of Elementary Students Did Not Violate Parents' Rights"**
*Fields v. Palmadale School Dist. (C. A. 9 {Cal.}, 427 F. 3d 1197), November 2, 2005.

Parents at a California elementary school brought action against school district when they learned their children (first, third, and fifth graders) had been questioned about sexual topics (e.g. frequency of thinking about sex; frequency of thinking about touching other peoples' private parts; and number of times of not trusting people because they might want sex) in a school survey. The United States Court of Appeals, Ninth Circuit held that school district's inclusion of questions about sexual topics in survey given to elementary school children, in an effort to identify psychological barriers to learning, **was rationally** related to school district's legitimate interest in effective education and mental welfare of its students. Thus, parents' substantive due process (14th Amendment) or privacy (1st Amendment) rights were **not** violated.

**"Student Suspended for Writing and Reading to Classmates a Fictional Horror Story"**
*D. F. ex rel. Finkle v. Board of Educ. of Syosset Cent. School Dist. (E. D. N. Y., 386 F. Supp. 2d 119), September 12, 2005.

A sixth grade student (through his parents) sued school official; claiming his 30-day suspension from school for writing and reading to fellow classmates a fictional story (modeled after the horror movie *Halloween*) about students in his school being killed and maimed was unconstitutional. A United State's district court in New York state that the student did **not** have a free speech right under the First Amendment to circulate to classmates work of fiction in which he named students who were either killed or sexually assaulted, or both. Furthermore, the story **interfered materially** with work of the school by disturbing students and teachers with possibility of physical injury.

**“Special Education Student Sexually Assaulted in School’s Restroom”**
*Teague ex rel. C. R. T. v. Texas City Independent School Dist. (S. D. Tex., 386 F. Supp. 2d 893), August 17, 2005.

Step-mother brought civil rights suit against school district as next friend of 18-year-old female special education student (Down’s Syndrome) who was sexually assaulted by a male student in the boy’s restroom between classes. The plaintiff claimed school officials failed to supervise students adequately and to train teachers and staff properly in student supervision. A United States district court in Texas ruled that a special relationship did **not** exist between school district and student so **as to give rise to duty to protect** under the Due Process Clause (14th Amendment) when school did not provide one-on-one supervision of student between classes. The court accepted the conclusion of school officials that the youngster functioned at the level of a 13-year-old, and the student did not need one-on-one supervision to make it safely from one special education classroom to another, just 30 feet away.

**“Students’ and Parents’ Rights Not Violated” By Anonymous Survey”**
*C. N. v. Ridgewood Bd. of Educ. (C. A. 3 {N. J.}, 430 F. 3d 159), December 1, 2005.

In the fall of 1999 school year, school officials in the Ridgewood School District administered a survey entitled “Profiles of Student Life: Attitudes and Behaviors” to students in grades seven through 12 in an effort to plan community and youth activities. The survey sought information about students’ drug and alcohol use; sexual activity; experience of physical violence; attempts at suicide; personal associations and relationships (including the parental relationship); and views on matters of public interest. The survey itself was designed to be voluntary and anonymous. Survey results were designed to be and actually were released only in the aggregate (combined data) with no identifying information. The United States Court of Appeals, Third Circuit, held that the privacy rights of **neither** students nor their parents **were violated** because: survey was anonymous; disclosure of information occurred only in aggregate; personal information was adequately safeguarded; and survey **did not** unduly intrude on parental decision-making authority.

**“Speaker’s Rights Not Violated”**
*Carpenter v. Dillon Elementary School Dist. 10 (C. A. 9 {Mont.}, 149 Fed. App. 645), September 19, 2005.

School district’s initial permission for plaintiff to speak at a public school assembly was **not** a “valuable governmental benefit”; and thus, its subsequent revocation of that permission **could not** violate plaintiff’s First Amendment rights to free speech, free exercise of religion, and related associational rights. Furthermore, the district did **not** have a contractual obligation to the plaintiff because they were not going to pay the speaker.

Criminal Trespass:

**“Student Had No Interest for Being on Campus”**
*Taylor v. State (Ind. App., 836 N. E. 2d 1024), November 10, 2005.

There **was sufficient evidence** to support conclusion that student did **not** have a contractual interest in public school property when he was asked to leave school premises, which, in turn, **supported conviction for criminal trespass** (a class D felony). Student finished his classes at 10:15 a.m. Around noon on that same day, school police officer saw student standing in hallway by front entry and told him that he could wait for city bus as long as he waited in the hallway by the front entry. However, the student walked around the building and refused to leave when the officer asked him to do so. In fact, the officer asked the student five times to leave the school facility and the student responded, “I am not leaving the building”.

Disabled Students:

**“Under IDEA the Burden of Proof is on the Party Seeking Relief”**
*Schaffer ex rel. Schaffer V. Weast (U. S., 126 S. Ct. 528), November 14, 2005.

Parents of learning disable student (learning disabilities and speech-language impairments) initiated due process hearing pursuant to IDEA to challenge IEP developed by the school district. The United States Court of Appeals for the Fourth circuit held that under IDEA, **the burden of proof** regarding the adequacy of learning disabled IEP **fell on the student who was the party seeking relief, not** the school district.

Labor and Employment:

**“Teacher Slaps Students”**
*Ketchersid v. Rhea County Bd. of Educ. (Tenn. Ct. App., 174 S. W. 3d 163), April 28, 2005.

For purposes of statute allowing school board to dismiss tenured third grade teacher for insubordination, teacher’s refusal to refrain from striking students **constituted “insubordination”.** Both principal and assistant principal of elementary school specifically instructed teacher to refrain from placing her hands on any of her students. Teacher admitted slapping students in their faces and hitting them on the top of their heads with a book. However, she stated that she did the aforementioned only when students were disrespectful and she was angry.

Property and Contracts:

**“Elementary Schools Closed”**
*Save Our Schools v. Board of Educ. of Salt Lake City (Utah, 122 P. 3d 611), August 30, 2005.

School board’s decision to close two elementary schools was **not** arbitrary and capricious. Thus, decision would not be overturned in action that was brought by parents and others who objected to closings. Board considered each factor in its school closing policy. Schools were closed in an effort to save money to build new schools in city’s west side. Board determined that it was underserving its west-side students and one of the closed schools was significantly underpopulated; plus, it was located on an undesirable site.

Religion:

**"Sticker Attached to Biology Textbooks Violated Establishment Clause"**
*Selman v. Cobb county School Dist. (N. D. Ga., 390 F. Supp. 2d 1286), January 13, 2005.

The establishment Clause **was violated** by sticker (affixed to school biology textbooks) which **impermissibly advanced** religion by providing that evolution was theory, not fact. Furthermore, the message on the sticker invited students to approach the material with an open mind, study it carefully, and give it critical consideration. There was no reference to religion; however, an informed responsible observer would know that many citizens voiced opposition to evolution on religious grounds. The school board was pushing the teaching of evolution; and the sticker **mirrored** viewpoint of religious evolution opponents. In addition, evolution **was the only scientific doctrine singled out for critical attention.** **Note:** The "sticker" read as follows: "This textbook contains material on evolution. Evolution is a theory, not a fact, regarding the origin of living things. This material should be approached with an open mind, studied carefully, and critically considered."

Student Discipline:

**"Conversion of Short-Term Suspension to Long-Term Suspension Required Due Process"**
*Waln By and Through Waln v. Todd County School Dist. (D. S. D., 388 F. Supp. 2d 994), September 16, 2005.

A 15-year-old ninth grader and his parent brought a Section 1983 action against a South Dakota school district and its school superintendent, alleging that his 31-day suspension deprived him of his right to a public education, without due process of law. The student was involved in a physical altercation (aggravated assault) involving at least three other students, along with members of the faculty. The plaintiff was given an immediate short term suspension and informed that he would probably receive either a long-term suspension or expulsion from school. He received a 31-day long-term suspension. A United States district court in South Dakota held that the school district **failed** to provide notice and a hearing to the plaintiff prior to his short-term suspension being converted to a long-term suspension, even though he was given notice of the possibility of a hearing. Student was not provided with anything that resembled a hearing until 13 days after the long-term suspension was imposed. Additionally, he was given only a one day notice of that hearing, along with a notice that he would remain suspended until after the conclusion of such hearing.

**"School Lunch Policy Did Not Violate Student's First or Fourteenth Amendment Rights"**
*LoPresti ex rel. LoPresti v. Galloway Tp. Middle School (N. J. Super. L., 885 A. 2d 962), July 19, 2004.

Middle school's lunch cafeteria policy which compelled all students to sit at their designated lunch tables and remain seated unless permission to leave was granted did not regulate expression or symbolic speech. Thus, plaintiff's First Amendment rights were not violated. Cafeteria's policy did not in any way limit content of student's expression of speech during lunch. It did not prohibit students from discussing particular topics or expressing their opinions as to any matter. The policy merely required that, during the 30-minute lunch session, students were to sit at a designated table, unless permission was granted otherwise.

Torts:

**“Woodshop Teacher Negligent”**
*Wells v. Harrisburg Area School Dist. (Pa. Cmwlth., 884 A. 2d 946), October 12, 2005.

Woodshop teacher’s conduct, which school district **characterized as negligent supervision** of student also **amounted to negligent care, custody, and control of machine;** and accordingly, evidence of teacher’s negligent supervision of student **was admissible** to determine whether real property exception to governmental immunity applied to personal injury claim against school district by student who severely injured his hand while using table saw. School district and teacher provided inexperienced or novice woodworking students with a table saw that **lacked adequate safety devices.** Therefore, if saw lacked blade guard that could be engaged during groove cut, the students **should not have been instructed** to make groove cuts with that saw.

**“Freshman Basketball Player Dies After Running Laps”**
*Livingston v. DeSoto Independent School Dist. (N. D. Tex., 391 F. Supp. 2d 463), May 12, 2005.

High School girls’ basketball coach and head athletic trainer **were entitled to qualified immunity** in a Section 1983 suit brought against them by parents of student who died following the completion of a run around the high school’s outdoor track. Plaintiff claimed that the coach and trainer violated the student’s substantive due process rights (violated her bodily integrity by not providing her with immediate and adequate medical care) by failing to provide the student with immediate and adequate medical care when she exhibited signs of illness upon completion of her run. Conduct of the coach, which including allegedly slapping the student, appeared more akin to negligence than any more culpable state of mind. The trainer apparently called 911 to request paramedical attention within minutes of the student’s arrival in the training room.

## Commentary

No commentary

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

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- School Districts
- Searches and Seizures
- Torts

Commentary:

- No commentary

## Topics

<u>Abuse and Harassment</u>

**"Same Sex Harassment is a Question for a Jury"**
*Theno v. Tonganoxie Unified School Dist. No. 464 (D. Kan., 394 F. Supp. 2d 1299), October 18, 2005.

Whether gender-based harassment of a student by other students was so severe, pervasive, and objectively offensive that it effectively deprived the student of access to educational opportunities or benefits **was a question for the jury** in the student's action alleging a violation of Title IX. The harassment continued for years with the same sexually derogatory themes (e.g. pussy, flamer, faggot, queer, Dylan sucks cock, Dylan likes men, masturbator, jackoff kid, and shove this banana up your ass), and medical and psychological testimony indicated that the male student suffered physical and psychological side effects as a result of the harassment. Furthermore, as the years passed, he was increasingly less able to tolerate or "laugh off" the same sex harassment and ultimately left school because of the harassment.

**"Student's Scolding of Teacher Did <u>Not</u> Constitute Simple Assault"**
*People ex rel. R.L.G. (S.D., 707 N.W. 2d 258), December 7, 2005.

Fifteen-year-old male high school student's (who was six-foot-five inched tall and weighed over two-hundred pounds) "scolding" of his biology teacher for talking about him behind back to the other students did not constitute criminal simple assault. The incident was triggered when the student's teacher asked him to stop "crunching" snack food and making noise with the wrapper during biology class. When the teacher asked him to stop eating the snack food, the student responded with a "smart aleck" remark, and he was sent to the principal's office. At the end of the school day, the student returned to the teachers class (she was seated at her desk working on her computer), stood in the classroom doorway, and preceded to "scold" her for explaining to the class why she sent him to the office.

<u>Civil Rights</u>:

**"Anonymous Letter Claims Coach Was Having An Affair With Student"**
*Blue v. Lexington Independent School Dist. (C. A. 5 {Tex.}, 151 Fed. App. 321), October 13, 2005.

In May 2001, the Superintendent of the Lexington School District received an anonymous letter alleging an affair between the plaintiff (the a student) and one of the school district's coaches. The former student and her mother complained that the superintendent and other school officials created a hostile environment, violated state law, and federal law (e. g. Family Educational Rights and Privacy Act, Fourth Amendment, and Fourteenth Amendment). The United States Court of Appeals, Fifth Circuit, held **mere allegations** that superintendent and school officials violated the student's legal rights or privacy was not enough to demonstrate any violation of the student's constitutional rights or state law, even though school officials involved the sheriff's department during the investigation.

**“Banning Male Teachers From Tutoring Female Students Did Not Inflict Emotional Distress”**

*Sherez v. State of Hawaii Dept. of Educ. (D. Hawaii, 396 F. Supp. 2d 1138), September 1, 20005.

High school had a policy which prohibited male teachers from tutoring female students. Thus, male teacher(non-Asian American or Caucasian) alleged that education officials denied him tutoring jobs on account of his sex and race, along with the infliction of emotional distress. The United States District Court, D. Hawaii stated that school officials were **not** liable under Title VII or IX, and there was **no** intentional infliction of emotional distress.

**“Teacher Did Not Harass or Molest Student”**

*Gilliam v. USD No. 244 School Dist. (D. Kan., 397 F. Supp 2d 1282), October 27, 2005.

High school English teacher’s alleged conduct of inappropriately putting his arm around female student; improperly touching her by leaning over her desk; and rubbing up against her one time when he pressed his torso into her back while she was making copies in the school’s administrative office did not rise to level of shocking the conscience so as to violate student’s substantive due process right to bodily integrity. As a footnote to this case, the male teacher had previously made comments and other activities similar to the following: told student the had put a gum in his mouth and knew what a gun barrel tasted like; stated that she was beautiful and more mature than other students; stated that the female student made his heart sing; and gave her three typewritten poems.

Disabled Students:

**“Homebound Student Received An Adequate Education”**

*Falzett v. Pocono Mountain School Dist. (C. A. 3 {Pa.}, 152 Fed. App. 117), October 11, 2005.

Parents of a student who was left homebound by illness (chronic sickness and fatigue) sued school district under IDEA, ADA, and Section 504 of the Rehabilitation Act, alleging their child was denied of free appropriate public education (FAPE). The United States Court of Appeals, Third Circuit, stated the following: Assuming student who was left homebound by illness had a disability and was entitled to a FAPE under IDEA, **substantial evidence supported the finding that the school district provided student with meaningful educational benefit despite some failures.** The hours provided by the district broke down substantially at the end of the student’s eighth grade year; however, the student’s parents were partly to blame for many missed hours. School officials did offer to make up the others. Additionally, student’s grades and test scores indicated that he maintained his high academic performance and abilities.

Attorney Fees:

**"Student Entitled to Post-Judgment Attorney Fee"**
*Blackman v. District of Columbia (D. D. C., 390 F. Supp. 2d 16), September 29, 2005.
Representation of former student by counsel **was necessary** in a Section 1983 action under IDEA and Rehabilitation Act (Section 504) after district court entered consent order resolving student's contempt motion alleging that the District of Labor

Labor and Employment:

**"Female Assistant Principal Failed to Prove Hiring Decision Was Discriminatory"**
*Straughter v. Vicksburg Warren School Dist. (C. A. 5 {Miss} 152 Fed. App. 407), November 1, 2005.
Female assistant principal brought Title VII sex discrimination action against school district after she was not promoted to principal of school district's alternative school and male candidate was promoted. The United States Court of Appeals, Fifth Circuit, held that female assistant principal failed to establish that district's opinion that successful male candidate was the more qualified candidate for the job was pretext for sex discrimination. Principal and male candidate had the job nearly identical academic credentials; and principal's completing key certification prior to application and having five more years of experience did not prove she was clearly better qualified than male candidate who had additional special education experience with other employers.

**"Counselor's Letter of Intent to Retire Was Unambiguous Notice of Retirement"**
*Cross v. Monett R-I Bd. of Educ. (C. A. 8 {Mo.}, 431 F. 3d 606), December 9, 2005.
Under Missouri law, guidance counselor's letter of intent to retire, wherein counselor stated unambiguously that she would not be signing her contract for the following school term because she was retiring at the end of the present school term, **was an unambiguous notice of retirement terminating her employment contract.** The counselor had a long history of confrontations with a fellow guidance counselor, which turned physical on a couple of occasions.

**"School District Not Obligated to Accommodate Teacher's ADHD"**
*Hess v. Rochester School Dist. (D. N. H., 396F. Supp. 2d 65), October 18, 2005.
Former middle school teacher sued school district, alleging violations of the Americans with Disabilities (ADA); the Family and Medical Leave Act (FMLA); and state law, arising from the termination of his employment. The United States Court, D. New Hampshire, held that teacher: (1) **Failed** to establish that his hyperactivity disorder (ADHD) and anxiety substantially limited him in major life function of learning, teacher completed secondary school, college, college, a master's degree, and other post-graduate work. (2) School was under **no** obligation too accommodate his ADHD and anxiety by permitting him to pacify students by allowing them to listen to music and play games for as much as half of their class time, rather than performing essential function of teaching his assigned students. (3) Teacher **failed** to offer evidence that school district's decision

to terminate him for failing to properly and appropriately supervise hiss students was pretext for retaliating against him because of his requests for accommodation. **<u>Note:</u>** Several of inappropriate acts of the teacher include: leaving students in his classroom unsupervised for extended periods of time; leaving entire classes in the school's corridors; and slapping students in the face.

**"Male Bus Mechanics' Employment Terminated"**
*Ysleta Independent School Dist. V. Monarrez (Tex., 177 S. W. 3d 915), August 26, 2005.

Time card violations, for which school district terminated male bus mechanics, were **<u>not</u> of comparable seriousness** to time card violations for which female bus drivers and bus attendants were merely reprimanded, such that male bus mechanics could prevail on gender discrimination. One male bus mechanic had clocked-in and clocked-out other mechanic, who never showed up for work, while female employees who committed time card violations had actually appeared for work. Female employees occasionally clocked-in for one another for the sake of convenience, rather that to conceal absenteeism.

<u>School Boards</u>:

**"School Board Held Accountable for Students' Hazing"**
*Vinicky v. Pristas (Ohio App. 8 Dist., 839 N. E. 2d 88), September 29, 2005.

High school student and others brought action against board of education and others, alleging numerous claims, including civil hazing. An Ohio court of appeals stated student's complaint **stated cause of action for hazing** against board of education. Complaint alleged that high school student was victim of sexual assault that took place during or after a school organized or sanctioned event at high school. Furthermore, the board allegedly negligently supervised event, and failed to undertake appropriate measures to deter or prevent sexual hazing activities.

<u>School Districts:</u>

**"Student Struck By Drunk Driver at Hand Game Tournament"**
*Bordeaux v. Shannon County Schools (S. D., 707 N. W. 2d 123), November 30, 2005.

Student's guardian brought negligence action against school district, seeking to recover for personal injuries that student sustained when he was struck by a drunk driver while going to a convenience store on a Saturday during a hand game tournament. The Supreme Court of South Dakota stated that the school district **<u>did</u>** not accept a duty to control and supervise its students at a privately sponsored hand game tournament that was held on a Saturday in a public building that was not owned or operated by the district. Thus, district was **<u>not</u>** liable for injuries students sustained while crossing a street from building to convenience store. Although the teacher, who was the hand game coach, was at the tournament, s/he did **<u>not</u>** act as agent of school district at tournament.

Searches and Seizures:

**"Search for Handgun Reasonable"**
*Myers v. State (Ind., 839 N. E. 2d 1154), December 21, 2005.

High school student was charged with possession of a firearm on school property, which is a class "D" felony in Indiana. School officials initiated the search of all student vehicles parked in the school's student parking area in an effort to find and deter drugs being brought on the school's campus. While conducting the search, a drug dog alerted to defendant's vehicle and a search was conducted. The search produced a firearm. The Supreme Court of Indiana held that a warrantless canine sniff of high school defendant's unoccupied vehicle that was parked in school parking lot during a drug sweep **was reasonable**. The search was also **reasonable in its inception** because it was conducted after the dog alerted to defendant's vehicle. Furthermore, the search **was reasonably related in scope** because school officials limited searches to areas where the dog had alerted.

Torts:

**"School Not Liable for Student's Fall From Playground Equipment"**
*Newman v. Oceanside Union School Dist. (N. Y. A. D. 2 Dept., 805 N. Y. S. 2d 100), November 28, 2005.

Law suit was brought against school district to recover damages for personal injuries sustained by student in fall from playground equipment. The Supreme Court, Appellate Division, Second Department, held that district's alleged lack of supervision was not the proximate cause of the youngster's fall. The accident occurred in a manner that could not have been reasonably been prevented by closer monitoring. Furthermore, the design of the equipment **was appropriate** for the student's age; **complied** with relevant safety guidelines; and was not defective.

**"County Not Liable For Injuries Sustained by Student Crossing Street"**
*Vandwinckel v. Northport/East Northport Union Free School Dist. (N.Y.A.D.2 Dept., 805 N.Y.S. 2d 133), December 5, 2005.

There was **no** special relationship between county and middle school student who was struck by a car as he crossed a street directly in front of his school. The county had placed a crossing guard at an intersection approximately 200 yards west of the school entrance; and this was the assigned street crossing point.

**"Teacher Has Sex With a 13-Year Old Student"**
*Christensen v. Royal School Dist. No. 160 (Wash., 124 P. 3d 283), December 8, 2005.

Middle school student and her parents filed action against school district and a principal arising from a teacher's sexual relationship with the student. Defendants (school district) asserted an affirmative defense that student's voluntary participation in the sexual relationship "continued contributory fault". A United States district count in Washington certified (referred) the question to the Washington Supreme Court. The question was as follows: "May a 13-year-old victim of sexual abuse by her teacher on school premises, who brings a negligence action against the school district and her

principal for failure to supervise, or for negligent hiring of the teacher, have a contributory fault assessed against her under the Washington Tort Reform Act for her participation in the relationship?" The Washington Supreme Court held that contributory fault could not be assessed against a 13-year-old student who brought a civil action against a school district and school principal for sexual abuse by her teacher. Middle school student **lacked the capacity to consent** to the sexual abuse and was under **no duty to protect herself from being abused** by the teacher.

**"Inappropriate Supervision Caused Student's Injuries"**
*Oliverio v. Lawrence Public Schools (N. Y. A. D. 2 Dept., 805 N. Y. S. 2d 638), November 28, 2005.

Running and playing tag on the school's playground equipment was against the school's rules because it was unsafe to play tag on the equipment. The school lunch monitors, however, allowed the injured student to play tag on the school equipment for well over twenty minutes with seven or eight other six-year-olds. It was during this time in which the student sustained his injuries when he struck his mouth on a metal step on a piece of playground equipment during a lunch recess period. A division within the Supreme Court of New York held that facts **existed** as to whether more appropriate supervision would have ended the game of tag which allegedly caused the first-grader's injury. Thus, **precluding summary judgment** in favor of the school district.

**"Special Education Student Falls Scholl Bus Emergency Door"**
*Montoya v. Houston Independent bus driver negligently failed to maintain a reasonable lookout, which led to a mentally handicapped student (eight-year-old diagnosed with mental retardation and other mental handicaps, plus aggressive behavior) freeing himself from his restraints (special childproof harness) and exiting bus using emergency exit; **related to driver's duty to supervise passengers** and did not concern actual operation or use of the bus. Thus, allegation was **not** sufficient to establish waiver of school district's immunity under state statute.

## Commentary

No commentary

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

June 2006 (#'s 522 & 523)

# Legal Up Date For District School Administrators June 2006

**Johnny R. Purvis***

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The **Legal Update For District School Administrators** is a monthly update of selected significant court cases pertaining to school administration. It is written by Johnny R. Purvis for the **Safe, Orderly, and Productive School Institute** located in the Department of Leadership Studies at the University of Central Arkansas. If you have any questions or comments about these cases and their potential ramifications, please phone Johnny R. Purvis at **501-450-5258**. In addition, feel free to contact Purvis regarding educational legal concerns; school safety and security issues; crisis management; student discipline/management issues; and concerns pertaining to gangs, cults, and alternative beliefs.

Topics:

- Abuse and Harassment
- Athletics
- Attorney Fees
- Civil Rights
- Disabled Students
- Extracurricular Activities
- Labor and Employment
- Religion
- School Districts
- Torts

Commentary:

- No commentary

# Topics

Abuse and Harassment:

**"Teacher's Report of Sexual Abuse of Student Upheld"**
Martin v. Texas Dept. of Protection and Regulatory Services (S. D. Tex., 405 F. Supp. 2d 775), December 16, 2005.

Parents of disabled student (autistic nine year old, nonverbal, and not toilet trained) brought action against child protection services (CPS), school district, teacher and CPS employees, stemming from removal of student from home, based on teacher's report of suspected sexual abuse. A United States District Court in Texas held that teacher's actions in reporting her observations and concerns regarding suspected sexual abuse of disabled student to CPS **were objectively reasonable**. Accordingly, the teacher **was entitled to qualified immunity** as to substantive due process claim brought by the student's parents. Evidence demonstrated that other teachers saw student exhibit seemingly sexual behavior before teacher placed any calls to CPS, teacher saw red mark on student's breast.

Athletics:

**"Injured Baseball Player Assumed Risks"**
Sanchez v. City of New York (N. Y. A. D. 2 Dept., 808 N. Y. S. 2d 422), January 31, 2006.

Baseball player **assumed the risks inherent** in playing baseball in a school gymnasium where she sustained injuries, **including those risks associated with any readily observable defect or obstacle in the place where the sport was played**. Thus, her negligence claims against the school district and school officials **were defeated**.

Attorney Fees:

**"Parents of Special Education Child Not Entitled to Attorney Fees"**
James T. ex rel. A. T. v. Troy School Dist. (E. D. Mich., 407 F. Supp. 2d 827), August 23, 2005.

Parents of disabled student, on behalf of their minor son, moved for attorney fees and costs in their suit against school district and board of education under IDEA. A United States District Court in Michigan held: (1) Terms of settlement letter, incorporated by references into order of dismissal, **barred** IDEA plaintiffs from collecting reasonable attorney fees and costs, even though they were the "prevailing party"; (2) settlement agreement **is a contract like any other** (both an offer and an acceptance were presented, along with a meeting of the minds occurred); and (3) IDEA **only guarantees the right to a free public education (FPE)** and does **not** guarantee that IDEA plaintiffs will recover attorney fees.

Civil Rights:

**"Denying Student's Attendance At Graduation Ceremonies Did Not Violate Due Process Rights"**
Nieshe v. Concrete School Dist. (Wash. App. Div. 1, 127 P. 3d 713), July 5, 2005.

Student, who was not permitted to graduate with her class, sued school district under Section 1983, alleging discrimination and violation of her due process rights. During her senior year, plaintiff became pregnant. In order to graduate from high school, she had to pass a course called "Current World Problems" (CWP). She needed a grade of D, or 60 percent to pass CWP. However, her grade at the end of the course was 58.8 percent; thus, she did not pass and was not permitted to participate in the school's graduation ceremonies. The following month, a new superintendent was selected for the district and she stated that the district could use a Section 504 plan to increase the student's grade in CWP. According to the new superintendent, pregnancy could be used as a "temporary disability". Thus, the student's grade in CWP was adjusted to allow her to graduate. However, almost three years after the plaintiff was prevented from attending her graduation, she, her husband, and parents filed suit against the school district. A Washington state court of appeal stated: (1) Student had **no** protected interest in graduation required to bring a Section 1983 claim; and (2) A graduation ceremony is **not** within the scope of any property right which might exist for the reason that commencement ceremonies are only symbolic of the educational end result, not an essential component of it.

Disabled Students:

**"Disabled Student Entitled to Educational Services at His Private School"**
Bay Shore Union Free School Dist. v. T. ex rel R. (E. D. N. Y., 405 F. Supp. 2d 230), December 21, 2005.

School district brought action under IDEA, seeking review of a New York state administrative decision holding that school district was obligated by state law to provide student with ADHD (high average intellectual ability, and no learning disability) with special education services at his private school. Assessment committee recommended 40 minutes a day in a resource room where the student would receive help with organizational skills and learn to compensate for his difficulties in focusing. In addition, the committee recommended a one-on-one aide for three hours a day during the academic school year. A New York district court stated that where a child requiring special education services is attending an appropriate private school for his core elementary education, and a requisite service can be effective only in that private school, under New York law the school district **must deliver the service on the premises of the private school**.

**"School Not Liable for Disabled Student's Fall On Icy Sidewalk"**
Ms. K v. City of South Portland (D. Me., 407 F. Supp. 2d 290), January 3, 2006.

Mother of special education student, a 15-year-old with a number of disabilities, including cerebral palsy and cognitive deficits, brought action against school district, alleging violations of federal and state law resulting in injuries to student who slipped and fell on a patch of ice on the school's sidewalk after exiting his school bus. A United States district court in Main held that: (1) Icy sidewalk did **not** constitute a violation of ADA because the icy sidewalk constituted a possible hazard to both disabled and disabled alike. Furthermore, the icy sidewalk did not rise to the level of a permanent barrier to the disabled; and (2) school district was **not** liable under Section 1983 since there was **no** showing that alleged constitutional violation was a direct link to an actual school district policy, custom, or failure to train school district employees.

**"Out-of-State Tuition Not to be Reimbursed to Student's Parents"**
A. K. ex rel. J. K. v. Alexandria City School Bd. (E. D. Va., 409 F. Supp. 2d 689), December 20, 2005.

Parents of middle school student, with multiple behavioral problems (including not getting along with other students) and multiple disabilities, were **not** entitled to reimbursement for tuition paid to place student in out-of-state school. Local school district had offered a FAPE to student through an IEP calling for his placement in a private school within the immediate area.

Extracurricular Activities:

**"Student Allowed to Play Lacrosse Despite Refusal to Get Tetanus Shot"**
Hadley v. Rush Henrietta Cent. School Dist. (W. D. N. Y., 409 F. Supp. 2d 164), January 10, 2006.

Parents of a high school student who had played lacrosse for several years and wished to play his final year of school brought action against school district, claiming it violated their constitutional right to freedom of religion for school officials to prevent their child from participating in the sport due to his refusal to have a tetanus vaccination. The school district claimed that there is no constitutional right for a student to participate in school sponsored extra-curricular activities. The school district moved to dismiss the parent's claim, and the student's parents moved for a preliminary injunction. A United Stated district court in New York decided that: (1) the student **would suffer irreparable** harm if he was wrongfully denied an opportunity to participate in lacrosse; and (2) balancing of hardships between the two parties **favored issuance** of a preliminary injunction.

Labor and Employment:

**"Teacher Was Not Disabled Under ADA"**
Samuels v. Kansas City Missouri School Dist. (C. A. 8 {Mo.}, 437 F. 3d 797), February 14, 2006.

Teacher brought action against school district alleging violation of her rights under the American Disabilities Act (ADA) and the Family and Medical Leave Act (FMLA). Teacher worked as a special education case manager for the school district, which required frequent travel to several different schools, extensive walking and stair-climbing, and repetitive handwriting. On November 6, 2000 plaintiff slipped and fell while entering a high school, sustaining injuries to her knees, neck, and back. A few weeks later, she was involved in a auto accident, injuring her back and ribs and aggravating her existing fall injuries. In January 2001, she slipped and fell on ice outside a restaurant, again aggravating her prior injuries. In April 2001, the plaintiff returned to work and was assigned light duty clerical work on a reduced schedule of 20 hours per week. In addition, she requested and received intermittent leave to attend physical therapy and other medical appointments relating to her injuries. On May 21, 2001, plaintiff submitted a formal request for job accommodations due to her disabilities and limitations. She asked to be assigned to a building with one floor or an elevator; accessible handicapped parking or one requiring minimal walking; a room to perform stretching exercises; and time for therapy and medical appointments. Independent medical examinations determined that plaintiff's impairments were resolved without any lasting effects, and she did not qualify for an accommodation. The United States Court of Appeals, Eighth Circuit, held that employee was **not** disabled within meaning of ADA, since lingering physical problems from fall did not substantially limit major life activity of working. Employee's medical doctor released her to work on a part-time basis for approximately six months, and did not diagnose any chronic health conditions during or following her limited work schedule. Two other physicians examined plaintiff and concluded that she did not suffer from a disability and did not require accommodations. Furthermore, the court stated that the school district did **not** willfully violate employee's rights under FMLA upon her return from her leave of absence.

Religion:

**"Nativity Scene Not Allowed In Schools"**
Skoros v. City of New York (C.A. 2 {N. Y.}, 437 F. 3d 1), February 2, 2006.

Parent on behalf of herself and her two minor children brought civil action against municipality under free exercise and establishment clauses of the First Amendment regarding the City of New York's holiday display policy for its public schools. The United States Court of Appeals, Second Circuit ruled that New York's holiday display policy for its public schools, which permitted menorah, Christmas tree, star and crescent, Santa Claus, and other holiday symbols to be used in combination, but *completely prohibited nativity scene*, **had actual and perceived secular purpose of promoting pluralism, tolerance, and respect for diverse customs** through holiday celebrations. Accordingly, **neither** the parent's or her children's First Amendment rights **were violated.**

School Districts:

**"Student Falls From Monkey Bars"**
Botti v. Seaford Harbor Elementary School Dist. 6 (N. Y. A. D. 2 Dept., 808 N. Y. S. 2d 236), December 12, 2005.

Student brought negligent supervision action against school district to recover for personal injuries incurred when she fell from monkey bars in playground during school recess. The plaintiff stated that an aide saw her fall from the apparatus (monkey bars' swing rings) on two prior occasions, and may have actually encouraged her to continue to use the apparatus. The New York Supreme Court, Appellate Division, Second Department, ruled that the school district established there **was adequate playground supervision** at the time of the accident, and the primary school aged child **was engaged in normal play** at the time of the accident.

Torts:

**"Mental Health Authority Not Liable for Shooting by Students"**
Stein v. Asheville City Bd. of Educ. (N. C., 626 S. E. 2d 263), March 3, 2006.

On March 17, 1998, a student from the Cooperative Learning Center (administered jointing with the Asheville City Board of Education), along with three other males, approached the plaintiff and her husband at an intersection at 8:15 a. m. and shot her in the head (The bullet entered just under her left ear, struck her second cervical vertebra, pierced an artery, and lodged in her right jaw.). As a result of the shooting, plaintiff suffers from vascular problems, a spinal fracture, nerve damages, and post-traumatic stress disorder. All four assailants pled guilty to charges stemming from the shooting. Shooting victim brought negligence action against county school board, city board of education, and area mental health authority. The Supreme Court of North Carolina held that the defendants' **had neither the ability nor the opportunity to control** students that were involved in the shooting that took place outside of the school and occurred well after normal school hours. Accordingly, defendants were **not** negligent in failing to prevent shooting.

## Commentary

No commentary

Note: Johnny R. Purvis is currently a professor in the Department of Leadership Studies at the University of Central Arkansas. He retired (30.5 years) as a professor, Director of the Education Service Center, Executive Director of the Southern Education Consortium, and Director of the Mississippi Safe School Center at the University of Southern Mississippi. Additionally, he serves as a law enforcement officer in both Arkansas and Mississippi. He can be reached at the following phone numbers: 501-450-5258 (office) and 601-310-4559 (cell).

July 2006 (#'s 524)

# Legal Up Date For Community Colleges
# July 2006

**Johnny R. Purvis***

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**Topics:**

- Labor and Employment
- Security

# Topics

Labor and Employment:

**"College Presented Legitimate Reasons For Not Hiring Middle Eastern Applicant"**
Amini v. Oberlin College (C. A. 6 {Ohio}, 440 F. 3d 350), March 10, 2005.

College **presented legitimate reasons** for not hiring Middle Eastern applicant for a faculty position. He was not one of the most qualified candidates; the successful candidate was most likely to succeed in the position. Thus, there was **no** pretext associated with discrimination under Title VII, Age Discrimination in Employment Act (ADEA), and Section 1981. Furthermore, it was **not** illegal for college to base its hiring decision on successful applicant's personal and family connections to college. **Note:** The plaintiff was an Iranian-born Muslim who lived in the Untied States since 1977 with a doctorate degree in statistics from the University of Iowa. The successful applicant had a doctorate in statistics from Carnegie Mellon University, and he was hired to succeed in his father's position as professor of statistics. Applicant's father had taken the college's director of athletics position.

Security:

**"Campus PD Within Jurisdiction When Motorist Arrested Off Campus"**
Simic v. State ex rel. Dept. of Public Safety (Okla. Civ. App. Div. 2, 129 P. 3d 177), December 30, 2006.

Oklahoma State University campus police officer **was acting within his jurisdiction** when he arrested motorist outside state university's campus, at approximately 1:45 a. m., based on motorist's driving behavior (running a stop sign), appearance, and failure of field sobriety test. Plaintiff's refusal to take blood or breath test **warranted automatic revocation** of his driver's license under the Oklahoma's implied consent law. University's agreement with city gave campus police officers jurisdiction over roads adjacent to campus, and allowed completion of enforcement begun within their jurisdiction. Motorist **was adjacent to campus** when officer saw him drive through a stop sign.

# Legal Update For District School Administrators August 2006

**Johnny R. Purvis***

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Topics:

- Athletics
- Civil Rights
- Finance
- Student Discipline
- Torts

Commentary:

- No Commentary

# Topics

Athletics:

**“Basketball Players Call For Resignation of Coach Protected Speech”**
Pinard v. Clatskanie School Dist., 6J (C. A. 9 {Or.}, 446 F. 3d 964), May 1, 2006.

Eight players on a high school basketball team submitted the following petition to the school’s administration: “As members of the varsity boys basketball team, we would like to formally request the immediate resignation of the boys basketball coach. As a team we no longer feel comfortable playing for him as a coach. He has made derogative remarks, made players uncomfortable playing for him, and is not leading the team in the right direction. We feel that as a team and as individuals we would be better off if we were to finish the season with a replacement coach. We, the undersigned, believe this is in the best interest of the team, school, town, and for the players and fans. We would appreciate the full cooperation of all the parties involved.” The United States Court of Appeals, Ninth Circuit, affirmed in part, reversed in part, and remanded the case back to the lower court. In so doing, the Court stated: (1) Players’ petition requesting resignation of their coach and their complaints to district officials during ensuring meetings, **constituted protected speech**; (2) assuming that players’ refusal to board the team bus was expressive conduct, it was **not** protected speech; and (3) players’ suspension from the team **would lead** ordinary student athletes in their position to refrain from complaining about abusive coach.

Civil Rights:

**"Athletic Director's Comments Protected Speech"**
Cioffi v. Averill Park Cent. School Dist. Bd. of Ed. (C. A. 2 {N. Y.}, 444 F. 3d 158), April 4, 2006.

A parent of a high school football player sent a letter to the president of the school board, complaining of a incident in which a group of football players "shoved a shampoo bottle up a players rectum" in the football locker room. Another school administrator and the school's athletic director investigated the incident. In doing so, they discovered a 14-year-old freshman was "tea-bagged" (victim is pinned to the floor by several players while another player rubs his genitalia in the victim's face) by a group of football players. The athletic director sent a letter to the superintendent about the lack of supervision provided by the football coach at the time of the "tea-bagging" incident, along with other unsupervised incidents and the lack of adequate investigation on behalf of the school district. Plaintiff (athletic director) suggested that the superintendent forward the letter to the school board, which he did. A couple of months later, the board met in executive session and abolished the athletic director's position as part of the budget for the coming year. A United States Court of Appeals, Second Circuit, held: (1) Athletic director's comments about hazing incident and school board's investigation of incident **involved protective speech** under the First Amendment; and (2) **fact issue existed** as to whether athletic director's position would have been eliminated due to budgetary crisis in absence of his speech.

**"Student Did Not Prevail For Wearing Anti-Gay T-Shirt"**
Harper v. Poway Unified School Dist. (C. A. 9 {Cal.}, 445 F. 3d 1166), April 20, 2006.

Plaintiff's high school had a history of conflict among its students over issues of sexual orientation. The student "Gay-Straight Alliance" was allowed by the school's administration to hold a "Day of Silence" at the school to "teach tolerance of others, particularly those of a different sexual orientation". A week or so after the "Day of Silence" a group of heterosexual students informally organized a "Straight-Pride Day", during which they wore T-shirts which displayed derogatory remarks about homosexuals. The following school year, and on the anniversary of the "Day of Silence", the plaintiff wore a T-shirt on which was written on the front "I Will Not Accept What God Has Condemned", and on the back was "Homosexuality Is Shameful – Romans 1:27". The next day, the plaintiff wore another T-shirt which had written on the front "Be Ashamed Our School Embraced What God Has Condemned"; on the back was "Homosexuality Is Shameful – Romans 1:27". The assistant principal told the student if he would remove the T-shirt, he could return to class. He refused and asked to be suspended from school. Assistant principal refused to suspend the plaintiff, but required him to spend the rest of the day in the school conference room doing his homework. Following the incident, the student filed a law suit against the school district alleging that right to free speech, his right to free exercise of religion, and his equal protection rights were violated. The United Stated Court of Appeals, Ninth Circuit, held that: (1) student was **not** likely to prevail on his claim that school officials' violated his First Amendment free speech rights; (2) student was **not** likely to prevail on his claim that school violated his First Amendment right to free exercise of religion; and (3) student was **not** likely to prevail on his claim that school violated Establishment Clause of the First Amendment.

**“Student Wears T-Shirt Depicting One-Handed Boy”**
Brandt v. Board of Educ. of City of Chicago (N. D. Ill., 420 F. Supp. 2d 921), March 13, 2006.

Eighth-grade students in a gifted education program in an elementary school, through their parents, brought a class action suit against the school board and school officials, alleging defendants violated students’ free speech rights in punishing them for wearing t-shirts portraying a one-handed boy (image consisted of a boy giving a thumbs-up signal with one hand, with the other arm ending in a handless nub from which a leash extended to a dog labeled the school mascot). The primary plaintiff in the suit submitted the aforementioned t-shirt in the school’s annual eighth grade class t-shirt contest. His entry was not selected by the eighth grade class. Thereupon, 19 students in the eighth grade gifted class wore the one-handed boy t-shirt to school, which violated the school’s student dress code (“Clothing with inappropriate words or slogans is not permitted.”). The gifted program coordinator and the school principal testified that the gifted students’ design on the t-shirt insulted students with physical deformities. A United States district court in Illinois stated: (1) Rule prohibiting students from “failing to abide by school rules and regulations” was **not** overbroad; and (2) the student dress code was not void for vagueness.

**“Student Suspended for Wearing ‘anti-Nazi’ Patch”**
Governor Wentworth Regional School Dist. v. Hendrickson (D. N. H., 421 F. Supp. 2d 410), March 15, 2006.

A high school senior was suspended from school after refusing to remove a “patch” consisting of a swastika on which was superimposed the international “no” symbol, a red circle with a diagonal line through it. The student called the patch a “tolerance patch”, signifying values of diversity and acceptance; but it might be more objectively be described as a “No Nazi patch”. A United States district court in New Hampshire held that school officials **acted reasonably** in suspending the student, and their actions did **not** violate student’s First Amendment rights. Furthermore, school authorities prohibited the patch based **upon reasonable forecast** that allowing it to be worn **would likely** have caused substantial disruption of, or material interference with, school activities.

**“Search of Students Declared Unconstitutional”**
Carlson ex rel. Stuczynski v. Bremen High School Dist. 228 (N. D. Ill., 423 F. Supp. 2d 823), March 29, 2006.

Former high school students brought suit against a former superintendent, a dean, and a physical education teacher, claiming defendants violated their Fourth and Fourteenth Constitutional Amendments when they were strip searched by the school’s dean of students. Plaintiffs alleged the dean forced them to take off all of their clothing, in her presence and in each other’s presence, in order to determine whether they had stolen $60 from a fellow student. The dean’s suspicions were solely based on her belief that the plaintiffs were the last students in the locker room before the money was reported missing. A United States district court in Illinois held that the students **stated a claim against** the dean, but **not** against the former superintendent and the physical education teacher because they had no knowledge of the search, nor were they involved in the search.

**“School Board Not Indifferent to Teacher’s First Amendment Rights In Approving Termination”**
Sherrod v. Palm Beach County School Dist. (S. D. Fla., 424 F. Supp. 2d 1341), March 26, 2006.

High school teacher contended he was retaliated against for having spoken out publically about perceived deficiencies in the school district’s effort to comply with a state law requiring the infusion of African and African-American studies in the school’s curriculum. The school district defended itself by declaring the teacher was terminated for unsatisfactory performance which was observed during two different site-assistance plans in two different schools. A United States district court in Florida held that the school board did **not** act with deliberate indifference to teacher’s First Amendment rights in approving his termination. Furthermore, the court stated that the teacher had been observed by school administrators and professional staff over an extended period of time during site-assistance plans at two different high schools. Both site-assistance plans indicated the teacher’s job performance did **not** meet professional standards.

Finance:

**“Not Including School Capital Outlay Cost Did Not Violate State Constitution”**
Jones v. State Bd. of Elementary and Secondary Educ. (La. App. 1 Cir., 927 So. 2d 426), November 4, 2005.

Plaintiff (on behalf of her minor daughter) and seven local school boards filed petitions seeking injunctive relief in order to include the cost of capital outlay funding for school buildings and related facilities for elementary and secondary schools in the funding formula for determining the minimum foundation program (MFP) for public elementary and secondary schools. The plaintiffs alleged the omission of costs for capital outlay from the current MFP denied equal protection guarantees under both the Louisiana and the United States Constitutions by requiring property owners and taxpayers in one city or parish to pay substantially more than property owners and taxpayers in other cities or parishes in order to fund the cost of public school facilities. A Louisiana court of appeals held that the formula developed by the Louisiana State Board of Elementary and Secondary Education (BESE) to determine the cost of a minimum foundation program of education **was suitably/rationally related** to appropriate/legitimate state interest in providing equal treatment of students with similar educational needs and establishing programs and learning opportunities.

Student Discipline:

**"Student Who Fought Classmate and Pushed a School Administrator Was Not Guilty of Disrupting an Educational Institution"**
A. M. P. v. State (Fla. App. 5 Dist., 927 So. 2d 97), April 13, 2006.

An assistant principal walked into a restroom where she found two girls fighting. She asked them several times to separate, which they finally did. However, as the plaintiff walked by the assistant principal, she lightly - but purposefully - bumped into her with her shoulder and/or arm. A circuit court convicted the plaintiff of purposefully disrupting an educational institution, for which she was placed on six months of parental probation and fined $500. The District Court in Florida, Fifth District, held that the plaintiff's acts of fighting another student and pushing the assistant principal did **not** constitute a disruption of an educational institution because the student did not "knowingly" disrupt the functioning of an educational institution within the meaning of Florida's statute prohibiting such a disruption.

Torts:

**"Lack of Supervision Not Cause of Student's Injury When He Jumped Off A Swing"**
Reardon v. Carle Place Union Free School Dist. (N. Y. A. D. 2 Dept., 813 N. Y. S. 2d 150), March 21, 2006.

Parents of an 11-year-old student, who was allegedly injured on a school playground when he jumped off a swing in midair, sued school district for negligent supervision. The Supreme Court of New York, Appellate Division, Second Department, ruled that any lack of supervision of school playground by school monitors was **not** the proximate cause of the student's injuries. Furthermore, the court went on to state that the accident occurred in such a short span of time, even the most intense supervision could not have prevented the incident.
**Note:** The monitor was standing only about two car lengths away from where the student was using the playground swing when "he suddenly flew off the swing".

**"School Not Liable For Teacher's Use of School Computer to Pursue Sex With Student"**
Doe v. Lafayette School Corp. (Ind. App., 846 N. E. 2d 691), May 1, 2006.

Math teacher's (28-year-old) use of school-provided computer and school facilities during school hours to initiate a sexual relationship with a 15-year-old freshman **was insufficient** to establish that teacher's conduct was within the scope of employment for purposes of respondent superior (The doctrine holding employer liable for the employee's wrongful acts committed within the scope of the his/her employment.), even though school authorized teacher to send e-mails to students for school purposes. There was **no** indication that school officials authorized teacher to send e-mails to students for personal reasons. The algebra teacher's actions were **not** incident to any service provided by school, but were fueled entirely by the teacher's self-interest in a romantic relationship with the student.

## Commentary

No commentary

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# Legal Up Date For District School Administrators September 2006

**Johnny R. Purvis***

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The **Legal Update For District School Administrators** is a monthly update of selected significant court cases pertaining to school administration. It is written by *Johnny R. Purvis for the **Safe, Orderly, and Productive School Institute** located in the Department of Leadership Studies at the University of Central Arkansas. If you have any questions or comments about these cases and their potential ramifications, please phone Johnny R. Purvis at **501-450-5258**. In addition, feel free to contact Purvis regarding educational legal concerns; school safety and security issues; crisis management; student discipline/management issues; and concerns pertaining to gangs, cults, and alternative beliefs.

Topics:

- Abuse and Harassment
- Civil Rights
- Disabled Students
- Duty To Warn
- Labor and Employment
- Security
- Seniority and Tenure
- Standard and Competency
- Torts
- Transportation

Commentary:

- No Commentary

# Topics

Abuse and Harassment:

**"Day Care Not Responsible For Sexual Assault of Student By Another Student"**
Dennard v. Small World Center, Inc. (N. Y. A. D. 2 Dept., 815 N. Y. S. 2d 240), May 16, 2006.

On April 10, 2000, the five-year-old was in the restroom of a day care center operated by defendant (Small World), when he was sexually assaulted by a classmate. The Supreme, Appellate Division, Second Department, held that plaintiff **must establish** that school authorities had specific knowledge or notice of the dangerous conduct so that they could reasonably have anticipated the incident. **Note:** Child who committed the assault had no history of physical or sexual violence.

<u>Civil Rights:</u>

**"Parents Do <u>Not</u> Have A Due Process Right To Direct How A Public School Teaches Their Child"**

Fields v. Palmdale School Dist. (PSD) (C. A. 9 {Cal.}, 447 F. ed 1187), May 17, 2006.

Parents filed a complaint against school district, alleging school officials violated their fundamental right to control the upbringing of their children by introducing them to matters of and relating to sex not in accordance with their personal and religious values and beliefs by administering a psychological assessment questionnaire containing several questions that referred to subjects of a sexual nature. The United States Court of Appeals, Ninth Circuit, stated that the survey did <u>**not**</u> interfere with the right of parents to make intimate decisions. Before the survey was conducted, the parents were notified and their consent was sought. None objected, and all but one signed and returned the consent form. Making intimate decisions and controlling the state's dissemination of information regarding intimate matters are two entirely different subjects. With respect to the latter, no information of a private nature (indeed no information at all) regarding any individuals was disseminated. Moreover, no constitutional provision prohibits the dissemination of general information on subjects of public interest to children or to adults (unless it is the Establishment or Treason Clause). Thus, the right of the parents "to control the upbringing of their children by introducing them to matters of and relating to sex not in accordance with their personal and religious values and beliefs" (the right to privacy here asserted) does <u>**not**</u> entitle them to prohibit public schools from providing students with information that the schools deem to be educationally appropriate.

**"School Officials Seizure of Student's Cell Phone and Calling Other Students From the Seized Phone Considered An Invasion of Privacy"**

Klump v. Nazareth Area School Dist. (E. D. Pa., 425 F. Supp. 2d 622), March 30, 2006.

High school student's cell phone was confiscated by a teacher because he displayed it during school hours, in violation of a school policy prohibiting the use or display of a cell phone during school. After seizing the plaintiff's phone, the teacher and assistant principal called nine other students listed in the plaintiff's phone number directory to determine whether they were violating the school's cell phone policy. In addition, the teacher and assistant principal accessed the plaintiff's messages and voice mail. A United States district court in Pennsylvania held that: (1) student **stated** cause of action for false invasion of privacy; (2) alleged action of assistant teacher and principal calling other students from the student's cell phone **constituted** unreasonable search (teacher and assistant principal had <u>**no**</u> reason to suspect that such search would reveal that student himself was violating another school policy, instead they hoped to utilize student's phone to catch other students' violations); (3) student **stated** cause of action for unreasonable search and seizure by school officials; (4) student **stated** cause of action for negligence against teacher and assistant principal; (5) student **stated** cause of action for negligence against teacher and assistant principal under Pennsylvania law; and (6) student **stated** cause of action against school officials in their individual capacities.

**"Strip Search of Student Did <u>Not</u> Reveal Marijuana"**
Phaneuf v. Fraikin (C. A. 2 {Conn.}, 448 F. 3d 591), May 19, 2006.

High school seniors were getting ready to leave on their senior class picnic when one of the senior students reported to a teacher that plaintiff had told her she was hiding marijuana in her underwear. Principal checked the student's purse and found cigarettes and a lighter. Thereupon, the principal instructed the school's substitute nurse to conduct a search of plaintiff's underpants. The nurse expressed apprehension about conducting the strip search; so the principal called the student's mother to come to the school and conduct the search of her child. The student's mother and substitute nurse conducting the strip search, which consisted of the student dropping her skirt and pulling her underpants away from her body so her private areas could be examined. The search did not reveal any marijuana. The United States Court of Appeals, Second Circuit, held that discovery of cigarettes in the student's purse could **<u>not</u> alone** support suspicion that student was carrying marijuana in her in her underwear. Thus, school officials did **<u>not</u>** have reasonable suspicion required to justify the strip search of the student. Student who informed on the plaintiff had **past** disciplinary problems; there was <u>no</u> evidence that informant had previously provided reliable information to school officials; there was <u>no</u> attempt to corroborate informant's tip; and **none** of the plaintiff's past misconduct involved misbehaviors pertaining to possession or use of drugs.

<u>Disabled Students:</u>

**"IEP Team Had Background, Experience, and Training to Assess"**
Dick-Friedman ex. rel. Friedman v. Board of Educ. of West Bloomfield Public Schools (E. D. Mich., 427 F. Supp. 2d 767), April 11, 2006.

Parent of a middle school Down Syndrome child (IQ of 36) filed suit against school board and school district alleging defendants did not offer student a free appropriate public education (FAPE) in the least restrictive environment (LRE) and failed to ensure that procedural safeguards were observed, as required by state and federal law. Plaintiff's child was fully included in general education classroom in elementary school with supports, including a modified curriculum and a full-time paraprofessional classroom aide. However, when the student entered the middle school, the individualized education program (IEP) team recommended placement in a segregated categorical classroom with some general education electives. Plaintiff disagreed with the IEP team's conclusion, and requested that her child spend more time with his non-disabled peers in the general education setting. A United States District Court, E. D. Michigan, Southern Division, stated the IEP team, consisting of a school psychologist, general curriculum classroom teacher, special education classroom teacher, school social worker, school counselor, speech pathologist, student's mother, two parent advocates, and social worker and professor from Developmental Disability Institute at a state university **had adequate background, experience, and training** to assess student's condition and formulate a program to meet his needs under current federal and state laws.

Duty To Warn:

**"Student's Essay Did Not Create A Duty To Warn Of Student's Suicide"**
Carrier v. Lake Pend Oreille School Dist. (Idaho, 134 P. 3d 655), April 24, 2006.

Student attended Standpoint High School as a junior during the 1999-2000 school year. As part of an assignment on Hamlet (English class), the young man completed a written journal entry in April 2000, pertaining to "My Most Difficult Decision". The essay pertained to his decision not to kill himself. A few days later, his English teacher returned his essay to him with the following note: "I am glad to see you found a new perspective on your problem—Class and life would be a different place without you. Be sure to talk to someone (me) if these ideas return." At that time, the student's teacher did not tell the youngster's parents or school officials about the contents of the essay. Soon thereafter, the student and his family moved to another school district. On November 5, 2000, or some time thereabout, Brian committed suicide. The student's parents brought suit against the teacher and school district, alleging that defendants failed to comply with Idaho law to warn them of their son's behavior. The Supreme Court of Idaho held that student's essay did **not** trigger duty on part of teacher or school officials to warn of student's suicidal tendencies. Discussions of contemplating suicide **were all in past tense**; and student explained in essay that reasons for depression and suicidal ideation were gone. Moreover, his essay did **not** indicate present or future intention to commit suicide.

Labor and Employment:

**"Principal Neglected His Duty For Not Responding To Gun In School"**
Flickinger v. Lebanon School Dist. (Pa. Cmwlth., 898 A. 2d 62), May 3, 2006.

This case involved the handling of a "gun" incident at a middle school where the plaintiff served as the principal. On September 17, 2004, at approximately 12:00 p.m., there had been a fight between two students. One was bloody and in the school nurse's office, while the plaintiff had the other combatant in his office. On or about 12:30 p.m. the same day, a student told the assistant principal that several students had seen a student with a gun. Thereupon, the assistant principal told the plaintiff she needed his help because they might have a student with a gun, and she did not feel comfortable handling it alone. Over the next 15 minutes, the assistant principal asked the plaintiff at least three times if he was ready was ready to handle the gun report; and each time the plaintiff signaled for her to give him a few more minutes. He just kept putting her off. Finally, on or about 1:00 p.m., another assistant principal/assessment coordinator (assessment coordinator) returned to her office after making rounds. The assistant principal asked the assessment coordinator to go with her to deal with the possible gun report. As they left their office, they noticed the plaintiff's office door was shut. After getting "reported student" out of class, they found both a knife and a gun in his pocket. While in the hallway, the assessment coordinator told the guidance counselor to call the school's secretary to issue a "code red", find the principal, and call the police. While both administrators were trying to get into the student's locker (student present), the principal walked up and used his key to open the student's locker. On September 20, 2004, the superintendent issued a letter to the plaintiff that he had been dismissed from his duties because he "displayed a willful neglect of duty by his failure to respond to a crisis situation." The principal (plaintiff) responded, "Responding to the report of a bloody child who had been struck in the nose and was being cared for by the school nurse had equal priority to responding to the report of a gun in the school building. The Commonwealth Court of Pennsylvania, stated that the principal's failure to respond immediately to the report of a gun in the school **was a choice that he made and constituted a "willful neglect of duty"** so as **to warrant his dismissal**.

**"Teacher Suffered Injuries When Student Threw Desk"**
Payne v. Orleans Parish School Bd. (La. App. 4 Cir, 929 So. 2d 121), March 2, 2006.

While under the supervision of a substitute for another teacher in a middle school, several male students became unruly and disruptive in class. The boys were cursing and punching other students. Thereupon, one of the boys picked up a student desk and threw it at the teacher, which fell on her leg and foot, causing serious injury to her leg. Due to the incident, she started having nightmares and homicidal thoughts. She was diagnosed with a major depressive disorder, along with a psychotic and post-traumatic stress disorder as a result of the assault. A Louisiana court of appeals held that evidence **supported** finding that workers' compensation claimant suffered physical and mental injuries, and **was entitled** to penalties and attorney fees.

Security:

**“School Officials Not Liable for Student’s Death”**
Chalen v. Glen Cove School Dist. (N. Y. A. D. 2 Dept., 814 N. Y. S. 2d 254), May 2, 2006.

Parents of a 13-year-old student who cleaned out her locker, left her middle school building without signing out (she was present during the morning, was seen during lunch, but failed to attend her afternoon classes), and ingested poison while in a car in a secluded parking area in company of a man (who lived with the student and her family), filed a wrongful death action against school officials. The New York Supreme Court, Appellate Division, Second Department, held that school officials were **not** liable for negligent supervision because student’s parents **failed** to show that, at the time of her death, student was still within custody of school district; and district had **no** knowledge that man posed a danger to student and could **not** reasonably foresee what transpired. In addition, the Court stated: “Although schools are under a duty to adequately supervise the students in their charge and will be held liable for foreseeable injuries proximately related to the absence of adequate supervision, they are **not** **‘insurers’** of the safety of their students for they **cannot** reasonably be expected to continuously supervise and control **all** movements and activities of students.”

**"Absence of a Mandated School Safety Plan Warranted Judgment On the 'Pleadings' for Parents' Child Who Was Beaten At School"**

Bajjani v. Gwinnett County School Dist. (Ga. App., 630 S. E. 2d 103), March 30, 2006.

On August 19, 2002, student (plaintiff) responded to another student in his class in a inflammatory way. The fellow student then threatened to beat-up the plaintiff due to his inflammatory remark. Both the teacher and students in the class heard the remarks by both students. As soon as the plaintiff left class, the "offended student" severely attacked the plaintiff, including kicking him in the face and stomach, and stomping on his head while he lay unconscious on the corridor's concrete floor. Soon after the attack, the principal and assistant principal found plaintiff lying on the floor, unconscious, and bleeding profusely. They took him to the school nurse to clean his wounds. No additional medical attention was requested by school officials. The assistant principal attempted to phone the plaintiff's parents, but was unable to reach them; so he left a message. When plaintiff's mother arrived at school, she found her son covered with blood, writhing in pain, begging for help, and unable to say what had happened to him. The student's mother got on the phone with her husband and told him what had happened to her son, and his current condition. Thereupon, the plaintiff's father got on the phone with the principal and demanded that he immediately call 911. Thus, 40 minutes, after the attack the principal called 911. It was 49 minutes from the attack before medical assistance arrived; and during that time, spinal fluid was leaking out of the plaintiff's brain and he was vomiting blood. Plaintiff's injuries included severe head trauma, a subdural hematoma, temporal skull fracture, and three facial fractures. Thereafter, plaintiff underwent surgery and extensive dental work, and suffers from seizures, inability to sleep, and difficulty eating. The assailant had an extensive history of explosive, violent behavior known to school officials and his parents. School officials failed to take measures to prevent further occurrences by warning teachers of assailant's violent tendencies. As a result, the teacher ignored the threats made by assailant toward the plaintiff. The Court of Appeals of Georgia held that absence of statutorily mandated school safety plan in record for high school **warranted reversal** of entry of judgment on pleading (a judgment based solely on the allegations and information contained in the pleadings, and not on any outside matters) issued by the State Court, Gwinnett County for the school district. **Notes:** (#1) Pleadings is a formal document in which a party to a legal proceeding (esp. a civil lawsuit) sets forth or responds to allegation, claims, denials, or defenses. (#2) The Court went on to state that the issue as to whether school officials failed to immediately obtain medical care for the student who was assaulted **was for a jury**.

**“Student Attacked On School Bus By Another Student Using a Razor”**
Mason ex rel. Mason v. Metropolitan Government of Nashville and Davidson County (Tenn. Ct. App., 189 S. W. 3d 217), September 30, 2005. (Permission to appeal denied by Tennessee Supreme Court on March 27, 2006.)

High school student, by and through her mother, brought negligence action against school system after she was attacked by another student on a school bus, with a razor that was issued as part of the school’s cosmetology curriculum. A Tennessee court of appeals held it was **not** foreseeable that high school student would use a razor from her cosmetology kit to assault another student. Cosmetology teacher’s negligence in permitting students to transport the cosmetology kits was **not** the proximate cause of student’s injuries. Student who initiated the assault had **no** previous indication of violence or aggressive conduct. Neither student had a disciplinary record indicative of violent behavior. The students did not know each other prior to the assault. Furthermore, the cosmetology teacher **instructed** cosmetology student on **safety** for all instruments in the kit; **tested** her on her knowledge of those safety instructions; and **informed** student that use of the kit’s tools for any reason other than as **instructed** in class **could subject** the student to the school district’s zero tolerance policy prohibiting razors on campus.

Seniority and Tenure:

**“Teacher Committed Immoral Conduct Through Illegal Purchases”**
Ahmad v. Board of Educ. of City of Chicago (Ill. App. 1 Dist., 301 Ill. Dec. 800, 847 N. E. 2d 810), March 31, 2006.

Board of education charged tenured teacher with misappropriating the merchandise of a nonprofit organization for the benefit of her unauthorized secondary business by falsely representing herself as an agent of the school district. Based upon the aforementioned charge, the school board terminated the teacher’s employment with the district. The teacher had ordered, and received, orders from a company that ran a little over $33,979 and shipping charges of $4,567.50. Teacher funneled the received supplies through her personal business (“Ology Parent-Teacher Supplies) for sale to parents to help them educate themselves on how to teach their children. An appellate court in Illinois held that evidence **demonstrated** that tenured teacher **engaged in immoral conduct** within the meaning of Illinois statute. Thus, school district termination of teacher’s employment **was valid**.

Standards and Competency:

**"Teacher's Conduct Constituted Neglect of Duty and Insubordination"**
Bellairs v. Beaverton School Dist. (Or. App., 136 P. 3d 93), May 31, 2006.

High school English teacher's employment was terminated by school district on grounds of insubordination and neglect of duty. He took it upon himself not to turn in his grades on time (e. g. nine week grades, term papers, and semester grades); willfully engage in aggressive and hostile communication (e. g. calling a computer technician a "peon", derisive comments toward classified employees, and failing to consult the school administration); and used disparaging comments toward students (e. g. making insulting remarks, use of derogatory language, and telling students 'not to run to complain to their 'mommies' about his improper language as they did in middle school'). The Court of Appeals in Oregon agreed that the teacher's conduct constituted neglect of duty and insubordination; and **ample evidence support** the school district's actions.

Torts:

**"School Not Liable For Death of Student Who Was Killed By Drunk Driver"**
Bassett v. Lakeside Inn, Inc. (Cal. App. 3 Dist., 44 Cal. Rptr. 3d 827), June 21, 2006.

Because a high school student who was killed by a drunk driver while she was walking to school was **not** injured **while on school property** or **under direct supervision of school**, school district **was afforded statutory immunity** from liability in wrong death to student's parents. Notwithstanding the fact, that the student was killed in a crosswalk at an arguably dangerous intersection where the school district had designated a school bus pickup point.

**"School Not Liable For Student Injured Playing Floor Hockey"**
Mayer v. Mahopac Cent. School Dist. (N. Y. A. D. 2 Dept., 815 N. Y. S. 2d 189), May 9, 2006.

Plaintiff was playing floor hockey in the school's gym (during physical education class) when he tripped over a hockey stick that another student had thrown in the direction of the ball. However, the hockey stick landed between the plaintiff's legs causing him to trip and fall. The New York Supreme Court, Appellate Division, Second Department, stated that school district was **not** liable for breach of its duty to provide adequate supervision, where its alleged inadequate supervision of students was **not** the proximate cause of an accident in which a student was injured while playing floor hockey in a school gym during a physical education class. School district did **not have any prior notice** of any similar conduct involving students **to suggest that the accident was foreseeable**; rather, accident was caused by a **spontaneous and unforeseeable act** committed by a fellow student.

Transportation:

**"School Bus Driver Tested Positive For Drugs"**
Wigginton v. White (Ill. App. 1 Dist., 847 N. E. 2d 646), March 24, 2006.

The 48 year-old plaintiff had been a bus driver for 24 years, and had been the subject of random drug tests many times. All of the plaintiff's drug tests in the past had proved negative, with the exception of one; and she was instructed to retest due to a break in the chain of custody of her and other drivers' samples. Her retest proved negative. On February 13, 2004, plaintiff and four other drives took random drug tests. On February 27, 2004, two weeks after the original drug test, plaintiff received a message on her home phone that she tested positive for marijuana. She immediately contacted the medical review officer (MRO) and advised him that she did not use marijuana; therefore, she wished to appeal the MRO's findings. During the telephone conversation, the MRO erroneously told her that the process of appealing a positive drug test was established by each employer. According to federal law, the MRO must inform an employee that s/he has 72 hours from the time (the MRO) provides notification (of the positive test) to him or her to request another test. The plaintiff informed her supervisor on February 29, 2004, of the MRO instructions. She was instructed to meet with her supervisor for a retest the next morning. The test results were negative. Notwithstanding the negative drug test on February 29, 2004, Secretary of State issued an order to suspend the plaintiff's bus driver's permit. An appellate court in Illinois held that the failure of the MRO to notify plaintiff of her right to request another sample test within 72 hours **was prejudicial**. Therefore, the plaintiff's permit suspension **must be rescinded**.

**"First Grader Assaulted On School Bus"**
Corona v. Suffolk Transp. Service, Inc. (N. Y. A. D. 2 Dept., 815 N. Y. S. 2d 254), May 16, 2006.

Bus driver and company (Suffolk Transportation Service, Inc.) did **not** have actual or constructive notice of student's alleged proclivity to assault other students. Thus, company was **not** liable under theory of inadequate supervision for injuries sustained by first-grader who was allegedly assaulted on three (3) different occasions while being transported on bus owned and operated by company. There had been **no** prior notice of any problems or complaints regarding offending student. Assaulted student did **not** inform anyone of the assaults until she told her mother about them, approximately six months after last incident.

**"Camera Operator Injured During Football Game"**
Bahrenburg v. AT & T Broadband LLC (N. D. Ill., 425 F. Supp. 2d 912), March 31, 2006.

School district hired Comcast to film high school football games. In turn, Comcast hired an independent contractor (plaintiff) to film the school district's football games. While plaintiff was standing near the end zone and filming a high school football game, a player collided into her. She fell to the ground and hit her head on the surface of an athletic track, which was located adjacent to the football field. As a result of the collision, plaintiff suffered severe brain injury. Thereupon, she filed a suit against Comcast, alleging that her injuries resulted from Comcast's failure to provide her with proper equipment, proper instructions, warnings regarding her equipment, and supervision relating to her assignment. Comcast in turn, filed suit against the school district, alleging the district acted willfully and wantonly by: (1) placing the football and track fields to close to one another; (2) permitting injured independent contractor to stand near the end zone; and (3) failing to warn independent contractor of the hazardous conditions the district created when it placed track near the football field. A United States District Court, N. D. Illinois, Eastern Division held that Comcast **stated a valid claim against** school district.

## Commentary

No commentary

Note: Johnny R. Purvis is currently a professor in the Department of Leadership Studies at the University of Central Arkansas. He retired (30.5 years) as a professor, Director of the Education Service Center, Executive Director of the Southern Education Consortium, and Director of the Mississippi Safe School Center at the University of Southern Mississippi. Additionally, he serves as a law enforcement officer in both Arkansas and Mississippi. He can be reached at the following phone numbers: 501-450-5258 (office) and 601-310-4559 (cell).

October 2006 (#'s 529 & 530)

# Legal Up Date For District School Administrators October 2006

**Johnny R. Purvis***

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The **Legal Update For District School Administrators** is a monthly update of selected significant court cases pertaining to school administration. It is written by *Johnny R. Purvis for the **Safe, Orderly, and Productive School Institute** located in the Department of Leadership Studies at the University of Central Arkansas. If you have any questions or comments about these cases and their potential ramifications, please phone Johnny R. Purvis at **501-450-5258**. In addition, feel free to contact Purvis regarding educational legal concerns; school safety and security issues; crisis management; student discipline/management issues; and concerns pertaining to gangs, cults, and alternative beliefs.

Topics:

- Abuse and Harassment
- Administrators
- Athletics
- Attorney Fees
- Civil Rights
- Desegregation
- Disabled Students
- Labor and Employment
- Religion
- Security
- Student Discipline
- Torts

Commentary:

- Discipline Elementary and Secondary Students for Misconduct Off School Grounds

# Topics

Abuse and Harassment:

**"Bully In the Classroom"**
Wood v. Watervliet City School Dist. (N. Y. A. D. 3 Dept., 815 N. Y. S. 2d 360), June 1, 2006.

Parents of a fifth grader who was injured when he was punched several times by a male classmate brought action against school district to recover damages. The incident occurred when the perpetrator physically and verbally harassed a friend of the plaintiff during a class in where a substitute teacher was present. The conduct of the perpetrator did create a commotion in class, and the substitute teacher instructed the offending student to stop harassing the victim. However, the perpetrator did not obey the substitute's verbal command and continued to harass the victim as the substitute teacher responded to a knock at the classroom door. The substitute walked through the door, leaving only an arm on the classroom-side of the door. During this time the plaintiff told the perpetrator to stop harassing his friend. Thereupon, the offending student punched and kicked the plaintiff, causing him to suffer a fractured nose and the loss of a tooth. It should be noted that the perpetrator had a history of physical attacks on others, which included misconduct such as the following: throwing a chair against a classroom wall; fighting a student in the school's cafeteria; physically pushing adults who attempted to restrain him; pushing students; and fighting on a school bus. The Supreme Court of New York, Appellate Division, Third Department held that the perpetrator's past behavioral history, plus his violent attack on the plaintiff **raised** the issue regarding **foreseeability**. Thus, summary judgment in favor of the school district **was precluded** due to the substitute teacher's **inadequate supervision**.

Administrators:

**“School Officials Not Acting As Agents of Police”**
People v. Pankhurst (Ill. App. 2 Dist., 302 Ill. Dec. 329, 848 N. E. 2d 628), May 10, 2006.

High school principal and deal of students were not acting as agents of the police in interrogating student suspected of drug (marijuana) and drug paraphernalia possession. Thus, they were not required to administer Miranda warning. The principal and dean had already initiated investigation into allegation of drug possession at time police officers arrived at school. School officials had already summoned students suspected of possession, searched them for drugs, and placed them in separate rooms prior to police officers arrival. Upon arrival, the police officers did **not** question students; and principal asked officers to leave the room prior to interrogating students. Thus, students were interrogated outside of the officers’ presence and without officers’ assistance or direction. **Special Note:** In *State v. Biancamano,* 284 N. J. Super. 654, 661, 663, 666 A.2d 199, 202-03. The court stated: “A school official must have leeway to question students regarding activities that constitute either a violation of the law or a violation of school rules. This latitude is necessary to maintain discipline, to determine whether a student should be excluded from the school, and to decide whether further protection is needed for the student being questioned or for others.”

Athletics:

**“Injunction Insufficient For Preventing Private School Student From Playing on Public School Volleyball Team”**
Florida High School Activities Ass’n v. Mander ex rel. Mander (Fla. App. 2 Dist., 932 So. 2d 314), February 1, 2006.

The Florida High School Activities Association (FHSAA) appealed an order from a Florida circuit court which temporarily enjoined it from prohibiting a private-school student from playing volleyball on a public middle school team. The middle school student attended East Pasco Adventist Academy (private school), but desired to participate in volleyball and any other activity offered by Centennial Middle School (public school). Student filed a verified motion for the temporary injunction on the date which volleyball practice commenced. A Florida district court of appeals **reversed and remanded** the temporary injunction back to the lower court because the injunction was entered **without reasonable notice** to association and with giving it sufficient time to respond. Thus, the injunction **was legally insufficient** because it did not give association (an out of town government agency with out of town lawyers), **practical opportunity** to present its opposition.

Attorney Fees:

**"Parents Not Entitled to Attorney Fees"**
Mr. L. v. Sloan (C. A. 2 {Conn.}, 449 F. 3d. 405), May 18, 2006.

Disabled student's parent was **not** prevailing defendant in administrative proceedings initiated by school board in response to his complaint about student's placement. Thus, parent was **not** entitled to recover attorney fees under IDEA, even though parent obtained desired result in private settlement with school board. Hearing officer dismissed proceeding because both parities were unable to agree on language for stipulation by deadline. The settlement between plaintiff and defendant was neither approved by hearing officer nor incorporated in order of dismissal.

Civil Rights:

**"Student Prevailed On Title IX Claim After Reporting Being Raped"**
Doe ex rel. A. N. v. East Haven Bd. of Educ. (D. Conn., 430 F. Supp. 2d 54), March 31, 2006.

Mother of a 14-year-old female high school student sued school board on behalf of her daughter, claiming her daughter's right to enjoyment of school facilities under Title IX was violated due to her gender. The student was harassed (e. g. verbally insulted, barked at like a dog, and a tennis ball was thrown at her) by other students after she reported to school officials she had been raped by two male students. Officials displayed deliberate indifference to her reported rape. Both perpetrators were allowed to attend school, even after their arrest on charges of sexual assault. However, they were provided with homebound instruction later on in the school year. A United States District Court in Connecticut held that there **was** jury question as to whether plaintiff was denied educational benefits in violation of Title IX due to the charge of deliberate indifference by school officials and their failure to deal with the students who harassed and taunted her.

Desegregation:

**"Be Careful What You Promise"**
Little Rock School Dist. v. North Little Rock School Dist. (C. A. 8 {Ark.}, 451 F. 3d 528), June 26, 2006.

According to the United States Court of Appeals, Eighth Circuit, the Little Rock School District (LRSD) was **not** entitled to full unitary status, for purposes of establishing compliance with consent decree governing school district's desegregation plan. Evidence **demonstrated** the LRSD had **not** fulfilled its obligations under provision requiring it annually to assess academic programs in order to determine effectiveness of such programs in improving African-American academic achievement. **Note:** The Eighth Circuit went on to state, "In commenting upon LRSD's duty to ensure that a significant number of African-American students score at or above the proficient level in reading, math, and science, the district court concluded its remarks by stating, To this end, LRSD *must* do what it promised to do, and it has been ordered to do because of this promise. In the words of the poet of the Yukon, Robert Service, 'a promise made is a debt unpaid.'"

<u>Disabled Students:</u>

**"IEP Sufficiently Tailored To Meet Student's Unique Needs"**
T. F. v. Special School Dist. of St. Louis County (C. A. 8 {Mo.}, 449 F. 3d 816), June 2, 2006.

Ninth grade student suffered from a psychological condition diagnosed as including pervasive developmental disorder, oppositional defiant disorder, obsessive compulsive disorder, and attention deficit/hyperactivity disorder. His educational assessments included language impaired, learning disabled in written expression, and "educational autism". The parents of the youngster placed their son in an out-of-state private residential school after school officials refused to place the student in a full-time residential program. The United States Court Appeals, Eighth Circuit, held that the student's IEP developed by the school district **was sufficiently tailored** to his unique needs. <u>**Note:**</u> School district's IEP called for the student to spend 14 hours per week in Project Achieve at the student's home high school; 12 1/2 hours at a private facility (Epworth Center); and an additional four hours of language therapy, social work, and psychological counseling.

**"Student's IEP Was Reasonably Calculated"**
David T. v. City of Chicopee (D. Mass., 431 F. Supp. 2d 180), May 22, 2006.

Hearing officer for the Massachusetts Department of Education (DOE), Bureau of Special Education Appeals (BSEA) **properly determined** that IEP developed by school district for the 17 year old student with a language-based learning disability for the school year **was reasonably calculated** to provide a FAPE in the least restrictive setting. Even if the hearing officer's due deference (a yielding of an opinion, judgment and wishes) court would have found sensitivity and care in his memorandum compelling and affording due deference. Accordingly, there was <u>**not**</u> a shred of error in hearing officer's decision.

**"School District <u>Not</u> Liable For Student's Death By Asphyxiation"**
Ortega v. Bibb County School Dist. (M. D. Ga., 431 F. Supp. 2d 1296), May 5, 2006.

Three-year-old pre-kindergarten attended a facility that served children with special needs. He was born prematurely and suffered various physical aliments which caused him to be developmentally delayed, including having a trachea tube which allowed him to breath. While on the playground at the pre-kindergarten facility, his trachea tube became dislodged. School officials were unable to reinsert the tube, and the youngster died of asphyxia due to the displacement of the trachea tube. The United States District Court, M. D. Georgia, Macon Division, held that the student's parents **were required to prove intentional discrimination** in order to maintain their claims under the Rehabilitation Act (Section 504) and the Americans With Disability Act (ADA) in regard to their charge that school officials determined which employees would oversee their child's care, and the level of training each received regarding such care.

**"School District Developed and Implemented Appropriate IEP"**
Ariel B. ex rel. Deborah B. v. Fort Bend independent School Dist. (S. D. Tex., 428 F. Supp. 2d 640), April 20, 2006.

School district **developed and implemented an appropriate** IEP for middle school student who had sleep disorder (caused her to sleep late in the day and to stay awake late at night), attention deficit disorder, and depression. School officials adjusted her schedule and suggested night high school; allowed student to leave class to visit nurse; and sought opinion of independent professional before offering placement in residential facility.

Labor and Employment:

**"No Justification For Adverse Employment Action Against School District's Secretary"**
Branham v. May (E. D. Ky., 428 F. Supp. 2d 668), April 17, 2006.

Former long-time secretary for county board of education filed a Section 1983 suit against board and school superintendent, individually and in his official capacity, claiming deprivation of her rights to due process and equal protection. In addition, she filed under Kentucky's constitution and statutes, alleging her suspension without pay and termination were void. She sought reinstatement, lost wages and benefits, damages for emotional distress and harm to her reputation, punitive damages, costs and attorney fees, and a due process hearing. A United States District Court in Kentucky stated: (1) Secretary was **not** afforded the due process she was entitled in connection with her suspension without pay and subsequent termination; (2) There was **no** justification for school superintendent's suspension without pay and subsequent termination of secretary for entering his office in his absence, and removing board member's resignation letter which superintendent had indicated over a week earlier he was going to mail to Commissioner of Education after preparing a cover letter. **Note:** Secretary received a telephone call from the Commissioner of Education's office requesting that they immediately needed the letter, due to placing the vacancy on the county's election ballot. Based on the Commissioner's request, she entered the superintendent's office, secured the letter of resignation, and faxed a copy of the letter to the Commissioner's office.

**"Superintendent and Board Member Stated Bus Driver Was Too Old"**
Cox v. U. S. D. 255 (D. Kan., 428 F. Supp. 2d 1171), April 25, 2006.

Former school district bus driver/custodian, who was 70 when his contract was not renewed, sued former employer for alleged violation of the Age Discrimination in Employment Act (ADEA) and Fair Labor Standards Act (FLSA). **General issues of material fact**, as to whether school board would have decided not to renew older bus driver/custodian's contract even if it had not taken his age into account, **precluded summary judgment** for school district on age discrimination claim. It **was unclear** whether information about plaintiff's job performance was actually presented to board members when they were making their decision, and whether this information came from the superintendent or another person. **Note:** School board member was alleged to have commented, "Older custodian's contract was not renewed because of his health and he might fall off a ladder". In addition, the superintendent was alleged to have said, "He was too old and wasn't getting his work done".

**"Teacher Threatened to Kill Students"**
Macy v. Hopkins County Bd. of Educ. (W. D. Ky., 429 F. Supp. 2d 888), May 1, 2006.

Evidence offered by middle school physical education teacher in ADA action, including evidence that she was terminated because of her outburst of anger toward students (e. g. threatened to kill them; made remarks about the marital status of students' family members; made and inappropriate sexual remarks), and that she had entered into a plan with school district to accommodate symptoms (e. g. headaches, difficulty with attention and concentration, short term memory deficits, disrupted sleep, depression and/or anxiety, irritability, and outbursts of anger) resulting from her closed head injuries (bike accident in 1987, and automobile accident in 1995), did **not rebut** school district's proffered legitimate and non-discriminatory reason for termination of her employment.

**"Assistant Principal's Termination Upheld Due to His Angry Outbursts"**
Mickens v. Polk County School Bd. (M. D. Fla., 430 F. Supp. 2d 1265), April 4, 2006.

School board did **not** discriminate against assistant principal because of any or real or perceived disability when the board terminated plaintiff's employment because he refused to report to work. Thus, plaintiff **failed** to establish a valid case under the ADA. School board ordered plaintiff to undergo psychological evaluation in an effort to understand his unprofessional conduct; demoted him his assistant principal's position; and offered him a classroom teacher's position due to his numerous emotional outbursts. The plaintiff's unprofessional conduct was characterized as being insubordinate, disrespectful, confrontational, combative, defensive, agitated, irrational, loud, irate, angry, unhappy, threatening, unpredictable, and difficult.

Religion:

**"School Board Member Not Entitled To Separate Counsel"**
Dobrich v. The Indian River School Dist. (D. Del., 432 F. Supp. 2d 445), June 2, 2006.

School board member was **not** entitled to separate counsel from rest of school board in action against board being challenged regarding the school district's prayer policy. Board member supported the district's prayer policy and his interests in the litigation were aligned with the other members of the school board. Thus, he could **not** claim a potential constitutional violation of his rights or any conflict with his official duties. As a citizen and taxpayer of the school district he was could consult with any counsel of his choice on matters relating to the case as any other individual. However, he was **not** entitled to a separate attorney to represent his special interests in the case; nor was such legal representation to be paid by the school district apart from their official legal counsel.

Security:

**"Teacher Makes Bomb Threat Against School"**
Rizzo v. Edison, Inc. (C. A. 2 {N. Y.}, 172 Fed. Appx. 391), March 24, 2006.

There **was probable cause** for science teacher's arrest and subsequent prosecution for making bomb threat against school. Teacher could **not** establish claims for false arrest, false imprisonment, malicious prosecution, and violation of her civil rights. School secretary informed arresting officer that caller identified herself as a teacher, and the secretary recognized teacher's voice. Officer knew the plaintiff had recently been in an altercation with a student and was on leave from her teaching position. **No** exculpatory evidence (evidence tending to establish a criminal defendant's innocence) was discovered after teacher's arrest.

**"Patdown Search By Officer Was Proper"**
In re Jose Y. (Cal. App. 2 Dist., 46 Cal. Rptr. 3d 268), July 21, 2006.

Patdown search of minor on high school property **was proper** when officer had cause to believe minor was not authorized to be on campus; minor did not identify himself; and minor did not explain his reason for being on campus. Additionally, the officer **was alone** as he prepared to escort the minor and his two companions to the principal's office. Thus, governmental interest in preventing violence on campus **outweighed minimal invasion** of minor's privacy rights. **Note:** Neither plaintiff nor his two companions had any type of identification; and for officer safety, a patdown search of each individual was conducted by the officer. Thereupon, the plaintiff was found to posses a locking blade knife in his pants' pocket.

Student Discipline:

**"School Board Required To Hear Student's Expulsion Appeal"**
In re P. F. (Ind. App., 849 N. E. 2d 1220), July 6, 2006.

High school student brought action against school board after it refused to hear his appeal of his expulsion form school. During the 2004-2005 school year, the tenth grader wrote the following statement on a table in the staff office of the student newspaper: "There's a bomb in here. Fear the Magpie." School maintenance personnel discovered the writing and informed the school's administration. The plaintiff did admit to writing the statement and the student was suspended from school, pending an expulsion hearing. Under Indiana law, the governing body of a school district may vote not to hear a student's appeal of an expulsion. The Indiana Court of Appeals held that under state statute regarding student expulsion, school board could refuse to hear a student's appeal of an expulsion **only if it had previously voted not to hear any expulsion appeals**. Therefore, board **was required** to hear appeal, where it voted not to hear student's appeal four days after student initiated his appeal.

**"Suspended Student Assigned to Alternative School"**
Tyson ex rel. Jefferson v. School Dist. of Philadelphia (Pa. Cmwlth., 900 A. 2d 990), June 2, 2006.

Mother of a suspended high school student filed a notice of appeal from a school district's hearing officer's decision to transfer the suspended student to an alternative school for disruptive students. The Commonwealth Court of Pennsylvania held that an informal hearing **was all that was due** to student who was transferred to the school district's alternative school. A formal due process hearing **was <u>not</u>** applicable because student had **not** been expelled. A finding that student had a right to a full judicial due process hearing **would overburden** the public school system and the courts. **<u>Note:</u>** The incident giving rise to the student's suspension occurred when the $11^{th}$ grader attempted to enter the lunchroom at the same time $8^{th}$ grade students were leaving. A teacher told the student that she did not belong there and that she should leave. Thereupon, the student told the teacher, "to get the fuck out of her face" and continued entry into the school's cafeteria. The teacher pulled the student away from the door by her book-bag, at which point the student punched the teacher in the arm and pushed him in the chest.

**"School Officials Conduct An Illegal Search"**
State v. Pablo R. (N. M. App., 137 P. 3d 1198), June 12, 2006.

A campus service aid (security personnel) suspicion that high school student who was out of class without a pass, and observation that student appeared nervous and fidgety, did **<u>not</u>** provide reasonable basis to search student and his belongings for contraband. Campus service aid admitted he did <u>not</u> suspect student of engaging in any criminal activity; did <u>not</u> smell marijuana on him; and had <u>no</u> knowledge or information concerning any wrongdoing by student, other than being out of class without a pass. Accordingly, campus service aid **failed to articulate** any specific reasons why he believed student's nervous demeanor caused him to believe his safety would be compromised. **<u>Note:</u>** When campus service aid patted plaintiff down, he found a pipe containing marijuana residue, a black magic marker, a lighter with the initials "BST" ("Bud Smoking Thugs" – a known group on campus) itched on it, and a pair of brass knuckles.

<u>Torts:</u>

**"Student Burned By Hot Tea Water"**
McClean v. National Center for Disability Services (N. Y. A. D.) 2 Dept., 816 N. Y. S. 2d 551), June 6, 2006.

A paraplegic student brought action against vocational training school and its caterer for personal injuries sustained when he burned both his legs after being served with excessively hot water to make tea in the school's cafeteria. The New York Supreme Court, Appellate Division, Second Department, stated that both the school and caterer **failed to prove** the tea water served plaintiff in school's cafeteria had not been heated beyond reasonably expected limits.

**“Spectator Falls From School’s Bleachers”**
Funston v. School Town of Munster (Ind., 849 N. E. 2d 595), June 28, 2006.

Spectator **was negligent** to some degree, when, after sitting in gym for about four hours (watching two basketball games) he moved from a lower row to the top row of bleachers; which clearly had no back railing. In an effort to get comfortable, plaintiff crossed his legs and learned back, falling backwards off the bleachers and sustaining injuries. Thus, his negligence **was enough to establish the common law defense of contributory negligence** as a matter of law. **Note:** “*Contributory negligence*” is the failure of a person to exercise for his/her own safety that degree of care and caution an ordinary, responsible, and prudent person in a similar situation would exercise.

**“Principal Accusing Teacher of Adultery Not Slander”**
Williams v. Lancaster County School Dist. (S. C. App., 631 S. E. 2d 286), May 30, 2006.

Principal accusing teacher-coach (head football coach and athletic director) of committing adultery with school secretary in separate meetings with teacher and secretary on afternoon of the incident involving them in a bathroom was **not** slander. Teacher could **not** establish defamatory statement published by principal to a third party. In addition to the principal, there were numerous individuals who were aware of the bathroom incident. Thus, any one of those individuals could have been responsible for the rumor of a improper relationship between the teacher and the school’s secretary. **Note:** Prior to the incident in which plaintiff and school secretary were observed by the school’s assistant principal coming out of the same bathroom (located in the school health room), there had been rumors circulating around the school about teacher and secretary spending an inordinate amount of time together behind closed doors.

**“Kindergarten Student Left On School Bus”**
Elgin Independent School Dist. v. R. N. (Tex. App.-Austin, 191 S. W. 3d 263), March 2, 2006.

Kindergarten student’s injuries allegedly resulting from being left on school bus for an afternoon due to the failure of bus driver’s and bus monitor’s failure to unload and ensure the child was in the bus upon her arrival at school, was **a failure to provide adequate supervision**. Thus, the school district **was liable** and could **not** claim immunity under Texas’ Tort Claims Act. **Note:** While on route to her school, the kindergartener fell asleep and was not discovered until approximately 3:00 in the afternoon. The plaintiff awoke and tried to exit the bus, but found herself locked inside the bus. She cried, screamed, and tried to get the attention of school district employees in the immediate area, but her calls went unheard and unanswered.

**"Agency Not Negligent In Retaining Youth Case Worker"**
Ernest L. v. Charlton School (N. Y. A. D. 3 Dept., 817 N. Y. S. 2d 165), June 1, 2006.

Foster care agency was **not** negligent for hiring or retaining youth case worker who had sexual intercourse with 15-year-old female youngster. Agency received no reports of any inappropriate behavior of sexual nature between male employee and student until shortly before worker quit. Worker never touched student inappropriately at school; and school officials **immediately investigated** rumor that worker was having sex with student. However, student repeatedly and adamantly denied any such involvement with case worker.

**"School Not Liable For Student Assault In Her Home"**
Maldonado v. Tuckahoe Union Free School Dist. (N. Y. A. D. 2 Dept., 817 N. Y. S. 2d 376), June 20, 2006.

School district **owed no special duty** to student whom it allegedly negligently failed to protect from attack in her home by another high school student who had been suspended from school. District **assumed no affirmative duty** to protect the injured student outside of school premises. Thus, injured student could **not** have justifiably relied on school officials to protect her at her residence after school hours. **Note:** Approximately one month prior to the attack, school officials learned that the attacker had made death threats against the injured plaintiff and her brother. The principal met with both students and their parents to discuss the matter.

## Commentary

### Discipline Elementary and Secondary Students for Misconduct Off School Grounds

Probably since genesis of the "school house", school officials have had to respond to student misconduct both on and off campus. However, it recent years, much student misconduct has occurred off school grounds, particularly student use of the internet and websites such as "my space. com" to harass/intimidate or to disrupt school activities. These incidents have raised the question of whether school officials have jurisdiction to discipline public school students for engaging in such misconduct off school properties. Such misconduct has ranged from harassment/intimidation of both students and teachers, threats to school property, changing of grades, false impersonation of school administration, and spreading malicious and false rumors.

This very brief article will discuss several situations when the courts **have upheld** the discipline of students for misconduct off school properties and when the courts **have not upheld** such action. The current judicial trend indicates that when student misconduct poses a threat or danger to the safety of other students and/or school district employees, destruction of school properties, or disrupts the educational program of the school; school officials with sufficient documentation which demonstrates the misconduct is related to school sponsored activities or attendance, **may discipline the students involved**. Where there is insufficient documentation or an insufficient connection to school sponsored activities or attendance, First Amendment implications are often used by the courts to bar school officials from disciplining students.

Examples of Cases Upholding Discipline of Student for Off Property Misconduct

In Fenton v. Stear (423 F. Supp. 767, 773, {W. D. Pa. 1976}), the United States District Court upheld the discipline of a student who, on a Sunday evening (at a shopping center), called a teacher an obscene name, and held that the student's constitutional rights were not violated. The court stated, "It is our opinion that when a high school student refers to a high school teacher in a public place on a Sunday by a lewd and obscene name in such a loud voice that the teacher and others hear the insult it may be deemed a matter for discipline in the discretion of school authorities. To countenance such conduct even in a public place without imposing sanctions could lead to devastating consequences in the school."

In J. S. v. Bethlehem Area School District (807 A. 2d 847 {Pa. 2002}) the Supreme Court of Pennsylvania upheld the discipline of a student who created a website on his home computer and solicited donations for a hit man to kill his Algebra teacher. The web page also pictured the Algebra teacher decapitated with blood dripping from her neck, and also portrayed her face changing into that of Adolf Hitler. The court concluded that there was a sufficient connection between the website and the school campus to consider the conduct as being school related. The court noted that the off-campus website was accessed by the student and was shown to a fellow students. In addition, faculty members and the school's administration accessed the website at school.

In Howard v. Colonial School District (621 A. 2d 362 {Del. 1992}) the Supreme Court of Delaware upheld the expulsion of a student who sold cocaine to an undercover officer on three separate occasions during the summer. None of the sales were on school property and the student was not arrested until December. The school district was notified two days later and expelled the student. The school board determined that the student posed a threat to the safety and welfare of other students and the court upheld a policy against students dealing drugs off campus.

Examples of Cases Prohibiting Discipline of Student for Off Property Misconduct

In Shanley v. Northeast Independent School District (462 F. 2d 960 {5th Cir. 1972}) the Court of Appeals held that there was no material and substantial disruption justifying the suspension of five high school seniors suspended for violating the school board's policy prohibiting and distribution of an underground newspaper. The newspaper was authored entirely by the students during out of school hours without using any materials or facilities owned or operated by the school system. Also, newspapers were distributed outside the school premises. The students neither distributed nor encouraged any distribution of the papers during school hours or on school property, although some of the newspapers did eventually end up on the school campus. The court found that there was no disruption of class that resulted from the distribution of the newspaper nor were there any disturbances attributable to the distribution of the newspaper.

In Emmett v. Kent School District (92 F. Supp. 2d 1088 {W. D. Wash. 2000}) the District Court barred a school district from suspending a student who posted mock obituaries created from his home website. The student allowed visitors to the website to vote on who would be the subject of the next mock obituary. The court found that the school district presented no evidence that the mock obituaries and voting on the website were intended to threaten anyone.

From these cases and others, a clear trend emerges. School officials must demonstrate that there is a risk of substantial disruption to the educational process in order to discipline a student constitutionally. School districts must show that the misconduct is connected to a school activity. Where school officials are unable to demonstrate a connection to a school activity or disruption of the educational process, courts have held that the student's conduct is protected by the First Amendment.

Note: Johnny R. Purvis is currently a professor in the Department of Leadership Studies at the University of Central Arkansas. He retired (30.5 years) as a professor, Director of the Education Service Center, Executive Director of the Southern Education Consortium, and Director of the Mississippi Safe School Center at the University of Southern Mississippi. Additionally, he serves as a law enforcement officer in both Arkansas and Mississippi. He can be reached at the following phone numbers: 501-450-5258 (office) and 601-310-4559 (cell).

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# Legal UpDate For District School Administrators December 2006

**Johnny R. Purvis***

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The **Legal Update For District School Administrators** is a monthly update of selected significant court cases pertaining to school administration. It is written by *Johnny R. Purvis for the **Safe, Orderly, and Productive School Institute** located in the Department of Leadership Studies at the University of Central Arkansas. If you have any questions or comments about these cases and their potential ramifications, please phone Johnny R. Purvis at **501-450-5258**. In addition, feel free to contact Purvis regarding educational legal concerns; school safety and security issues; crisis management; student discipline/management issues; and concerns pertaining to gangs, cults, and alternative beliefs.

Topics:

- Athletics
- Disabled Students
- Labor and Employment
- School Boards
- Security
- Torts

Commentary:

- No commentary

## Topics

Athletics:

**"School Not Liable When Student Struck In Mouth While Playing Floor Hockey"**
Walker v. Commack School Dist. (N. Y. A. D. 2 Dept., 820 N. Y. S. 2d 287), July 25, 2006.

School district was **not** liable for injuries sustained by middle school student when she was accidentally struck in her mouth with the blade of a hockey stick by another participate while playing floor hockey in a physical education class. Despite expert testimony that mouth guards should be used while playing floor hockey, school district's expert testified that it was normal for school districts to require only eye protection. Furthermore, **no** amount of protection would have prevented the accident.

Disabled Students:

**"Parent Not Entitled To Attorney Fees"**
Drennan v. Pulaski County Special School Dist. (C. A. 8 {Ark.}, 458 F. 3d 755), August 14, 2006.

Parent of a disabled student (attention deficit hyperactivity disorder, oppositional defiant disorder, and depression) brought action for attorney fees and costs ($13,065) incurred in administrative proceedings pursuant to IDEA. The United States Court of Appeals, Eighth Circuit, held that order requiring school district to provide extended-year services in core academic courses to student for two calendar school years did **not** make parent "prevailing party" eligible for attorney fees incurrent in administrative proceedings under IDEA. Hearing officer conditioned limited relief on plaintiff discharging certain duties. Specifically, plaintiff was ordered to provide records to the school district so they could be used in formulating a new IEP. Plaintiff never discharged these duties and the relief was not received.

Labor and Employment:

**"Principal's Mental Condition Not Limit Major Life Activity"**
Cassimy v. Board of Educ. of Rockford Public Sch. Dist. # 205 (C. A. 7 {Ill.}, 461 F. 3d 932), September 5, 2006.

Former elementary school principal and teacher **failed** to establish that his mental condition (depression) substantially limited any major life activity, as was required to be disabled under the Americans with Disabilities Act. (ADA). Plaintiff never told his physician about either the pressure on his brain or his inability to eat. Evidence showed only that his condition **impeded**, but did not prevent his ability to work. He functioned well in both his teaching and administrative positions, and his bouts of depression **were isolated**. **Note:** Complaints such as the following were filed against the plaintiff: not being available to the staff, student discipline was out of control; did not adequately address or process student referrals; parent unhappy with the way he handled student discipline; and his inability to prepare a master schedule. Plaintiff claimed that his stress and depression was brought on due to the lack of support by his immediate supervisor and board of education.

**"School Employee Not Substantially Limited Under ADA"**
Weisberg v. Riverside Tp. Bd. of Educ. (C. A. 3 {N. J.}, 180 Fed. App. 357), May 11, 2006.

The plaintiff (Director of the Riverside School District Child Study Team) who suffered from "post-concussion syndrome" or "concussive brain injury" (Plaintiff's symptoms included fatigue, difficulty with concentration and memory, anxiety, stress, difficulty writing reports, forgetfulness, irritability, argumentative, and late for appointments) was **not** substantially limited, as compared to the average person in the general population in the major life activity of "cognitive function". Thus, he was **not** "disabled" within meaning of the Americans With Disabilities Act (ADA); although, he was impaired to the degree that he fell in the bottom quartile of the country on certain measures of cognitive function. He ranked high or in the average range on other measures of cognitive function as measured by various tests. Additionally, he demonstrated a very high intellectual capacity with only certain narrow and relatively minor limitations. **Note:** In June 1998, while sitting at his desk, a large wooden speaker fell of the wall behind him and struck him on the head, shoulder, and back.

**"Substantial Evidence Supported Charges Against Bus Driver"**
Turley v. Plaquemines Parish School Bd. (La. App. 4 Cir., 936 So. 2d 215), June 28, 2006.

School bus driver appealed decision of school board to dismiss him for insubordination and use of improper language. The incident which led to the board's decision to terminate the bus driver focused on her refusal to abide by supervisor's request to pick up children who stood off a roadway a little further than she thought was reasonable. After telling her supervisor that she was not going to pick up the children, she stated rather loudly (as she left the supervisor's office) that she was not going to cater to a bunch of "little N"word. A Louisiana appeals court held that **substantial charges supported** the school district's charges against school bus driver.

School Boards:

**"School Board Terminates High School Principal"**
Amite County School Dist. v. Floyd (Miss. App., 935 So. 2d 1034), November 15, 2005.
Evidence **was sufficient** to support school board's termination of high school principal for (1) improperly charging students a $75 fee for tobacco violations and suspending students until the fees were paid; (2) signing off on student records that contained numerous inaccuracies and white-outs; (3) removing a physical science course from the curriculum without authorization; (4) holding track and field events on school property for private groups without explaining the details of the events to the school board; (5) failing to fulfill the duties of a full-time principal by spending a inordinate amount of time on unrelated activities; and (6) failing to complete student schedules for the 2002-2003 school year in a timely manner.

Security:

**"Handcuffing of Nine-Year-Old Questionable and SRO Not Entitled To Immunity"**
Gray ex rel. Alexander v. Bostic (C. A. 11 {Ala.}, 458 F. 3d 1295), August 7, 2006.
Nine-year-old elementary school student brought Section 1983 action, by and through her mother, against deputy sheriff who served as a school resource officer (SRO), county sheriff, and others, arising from detention and handcuffing of student during a physical education class. The Untied States Court of Appeals, Eleventh Circuit, affirmed in part, reversed in part, and remanded back to the lower court. In doing so the court stated (1) SRO acted within the scope of his discretionary duties when he handcuffed the youngster; (2) SRO acted reasonably in stopping student to question her about her allegedly threatening conduct toward the teacher; (3) SRO's handcuffing of youngster **violated** her Fourth Amendment rights; and (4) SRO was **not entitled** to qualified immunity from student posed no safety concerns. **Note:** During a physical education class, the student's coach told the plaintiff that she was not doing "jumping jacks" along with the rest of the class. When the youngster failed to comply with the coach's request, he asked her to go over by the wall so he could talk to her. As they walked toward the wall of the gym, the student told the coach, I will hit you in your face or I will bust you in the head. The school's SRO witnessed the incident told the coach he would handle the student. Thereupon, he walked her out into the gym's lobby, told her to put her hands behind her, and he put handcuffs on her. He then told her, "This is how it feels when you break the law. This is how it feels to be in jail."

Torts:

**“Student Sustains Head Injury In Golf Class”**
Wu v. Sorenson (D. Minn., 440 F. Supp. 2d 1054), July 17, 2006.

Under Minnesota law, golf instructor (a member of the Professional Golf Association {PGA} and holder of an A-1 classification, meaning that he is “a head golf professional at a green grass facility”) **had entire duty** to protect minor golf students from risk of injury in golf class held indoors at school. Thus, 11-year-old student, who hit a golf ball that struck a 14-year-old student causing severe and permanent brain injury, was not subject to liability. Instructor **knew** the risk regarding possible injury from driven golf balls in golf class. Instructor was giving 11-year-old student a one-on-one lesson at the time of the accident; during which he directed student when to hit the ball. Additionally, instructor **was in custodial and authoritative position** over both students. Furthermore, the 11-year-old student stated that he struck the ball without looking because it was instructor’s job to look for others who would be in striking distance.

**“Student Learned Of His HIV Infection Received From Teacher After Graduation”**
R. L. v. State-Operated School Dist. (N. J. Super. A. D., 903 A. 2d 1110), August 14, 2006.

Former high school student, who allegedly contacted HIV as a consequence of a sexual relationship with a teacher during his junior and senior years of high school, moved to leave to file a late notice of claim (liability) against school district, as required under New Jersey’s Tort Claims Act. Student graduated from high school in 2004 and learned of his HIV infection status on May 5, 2005, which was a result of a sexual relationship with his high school band director during his junior and senior years of high school. The Superior Court of New Jersey, Appellate Division, held that: (1) student’s action did not accrue (to come as a natural growth) until he discovered that he was HIV positive; (2) trial court did not abuse its discretion in granting student leave to file late claim; and (3) school district’s liability to former student **would be based on any responsibility** it might have for its employee’s acts or its negligence related to the supervision, hiring, and retention of the teacher (band director).

**“School Board Is 75% At Fault For Student’s Fall In Restroom”**
Agnor v. Caddo Parish School Bd. (La. App. 2 Cir., 936 So. 2d 865), August 1, 2006.

Mother brought action after her third grader fell in the girls’ restroom at school and the pencil she was holding in her hand lodged into the area immediately beneath her right eye when she tried to break her fall. A Louisiana appeals court **appropriated the school board at 75% fault** and the child at 25% fault in part due to: (1) school board **was aware** of the dangerous, wet restroom floor; (2) bathroom monitor designated by teacher was a third-grader who **was unlikely** to tattle on her classmates for breaking rules; and (3) the third grader **acknowledged** she broke three rules: (A. playing in the bathroom {She was playing “sliding game” in which youngsters would run and see who could slide the furthest on the wet floor.}; B. failing to give the pencil to the monitor and/or keeping it on the restroom sink; and C. failing to promptly leave the restroom promptly after washing her hands).

**Commentary**

No commentary.

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