January 2006 (#512 & 513)

SAFE, ORDERLY, AND PRODUCTIVE SCHOOL LEGAL NEWS NOTE

January 2006

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

Jack Klotz, SLMA Coordinator
**Johnny R. Purvis, Professor – School Leadership, Management, and Administration, UCA
Shelly Albritton, Technology Coordinator
Wm. Leewer, Jr., Editor, MSU

Graduate School of School Leadership, Management, and Administration
University of Central Arkansas
201 Donaghey Avenue
Main Hall
Room 104
Conway, Arkansas
Phone: 501-450-5258**

The ***Safe, Orderly, and Productive School Legal New Note*** is a monthly update of selected significant court cases pertaining to school safety-security and student management issues. It is written by Johnny R. Purvis for the **Safe, Orderly, and Productive School Initiative,** located in the Graduate School of Management, Leadership, and Administration at the University of Central Arkansas. If you have any questions or comments about these cases and their potential ramifications, please phone **Johnny R. Purvis** (researcher and writer) at **501-450-5258.** In addition, feel free to contact me regarding school safety and security issues; student discipline/management issues; and issues pertaining to gangs, cults, and alternative beliefs.

Cases

"School Officials Deliberate Indifferent Toward Student"
*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 diagnosed with Pervasive Developmental Disorder, dyslexia, and normal intelligence) was subjected to aggressive and intimidation behaviors similar to the following by fellow students: 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 official' **deliberate indifference** to pervasive, severe disability-based harassment deprived student's access to 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).

"Twin Sisters Win Sexual Harassment Suit Against Male Teacher"
*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 looked terrific"; "Would touch my hip and tell me I look nice"; "He kissed me on the top of my head and hugged me"; "Told me that I was beautiful"; "Would tell me I looked fantastic or terrific in a particular outfit"; "Would ask me to stay after class"; "He would often touch my shoulder, hip, or waist when he talked to me"; "Gave me two CDs and a bottle of skin lotion on my birthday"; Sent a letter stating: "It's early in the morning and I'm awakened by the thoughts of you… my heart beats in anticipation of seeing you again. I miss your smile, your beautiful eyes, your laughter, and your touch." Accordingly, they brought a sexual harassment suit against teacher and school district. The United States 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 actions toward them.

"Student Inappropriately Touched Classmate"
*Shuman v. Penn Manor School Dist. (C. A. 3 {Pa.}, 422 F. 3d 141, September 7, 2005.

High school male student inappropriately touched a female classmate during their agricultural-science class, and was called to the assistant principal's office where he was held for several hours. The United States Court of Appeals, Third Circuit, held that the seizure of the student, who was being investigated for 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 the cafeteria; get a drink of water; and go freely (including attending his regularly scheduled classes).

"High School Student Punched Referee"
*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 or for student's participation. Student did not play 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.

"Schizophrenic Hits Fourth Grader With Hammer'
*Leake v. Murphy (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 hallway, he swung a hammer and embedded the claw end in the skull of ten-year-old female student. The metal claws penetrated her brain, leaving her with 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 the teacher. The Court of Appeals of Georgia held that the principal and teachers could not be held liable for not preparing a school 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 to address security issues upon school superintendents and boards of education.

"Senior Honor Student Denied Participation in Graduation Activities"
*Posthumus v. Board of Educ. of Mona Shores Public Schools (W. D. Mich., 380 F. 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 board, superintendent, principal, and assistant principal. Student claimed 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 begin eating them. One of the school's assistant principals took the crackers from him and kept walking on down the line inspecting students. Plaintiff yelled out, "You are the biggest dick I know" while following him down the hallway outside of the school's auditorium.

"Student Disciplined for Off-Campus Conduct"
*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 conduct 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 wanted to talk about the incident.

* Possible implications for Arkansas's Schools

March 2006 (# 516 & 517)

SAFE, ORDERLY, AND PRODUCTIVE SCHOOL LEGAL NEW NOTE

March 2006

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

Jack Klotz, SLMA Coordinator
**Johnny R. Purvis, Professor – School Leadership, Management, and Administration, UCA
Shelly Albritton, Technology Coordinator
Wm. Leewer, Jr., Editor, MSU

Graduate School of School Leadership, Management, and Administration
University of Central Arkansas
201 Donaghey Avenue
Main Hall
Room 104
Conway, Arkansas
Phone: 501-450-5258**

The ***Safe, Orderly, and Productive School Legal News Note*** is a monthly update of selected significant court cases pertaining to school safety-security and student management issues. It is written by Johnny R. Purvis for the **Safe, Orderly, and Productive School Initiative,** located in the Graduate School of Management, Leadership, and Administration at the University of Central Arkansas. If you have any questions or comments about these cases and their potential ramifications, please phone **Johnny R. Purvis** (researcher and writer) at **501-450-5258.** In addition, feel free to contact me regarding school safety and security issues; student discipline/management issues; and issues pertaining to gangs, cults, and alternative beliefs.

Cases

"Bus Drives Has Sex With Student"
*State v. Clinkenbeard (Wash. App. Div. 3, 123 P. 3d 872), November 29, 2005.

A 62 year-old school male bus drive had a sexual relationship with an 18-year-old high school student. The romantic relationship with the female student began when she was only 12; however, actual sexual intercourse did not occur until the student turned 18. A Washington state statue (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 who is at least 16 years old. If there is an age difference of five years or more between the employee and the student. A Washington state court of appeals held that the statute **can be applied to criminally prosecute** the bus driver, although the student 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.

"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.

"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".

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

For purposes of statue 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 student 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.

"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 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.

*Possible implications for Arkansas's Schools

April 2006(#'s 518 & 519)

SAFE, ORDERLY, AND PRODUCTIVE SCHOOL LEGAL NEWS NOTE

APRIL 2006

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

Jack Klotz, SLMA Coordinator
**Johnny R. Purvis, Professor – School Leadership, Management, and Administration, UCA
Shelly Albritton, Technology Coordinator
Wm. Leewer, Jr., Editor, MSU

Graduate School of School Leadership, Management, and Administration
University of Central Arkansas
201 Donaghey Avenue
Main Hall
Room 104
Conway, Arkansas
Phone: 501-450-5258**

The *Safe, Orderly, and Productive School Legal News Note* is a monthly update of selected significant court cases pertaining to school safety-security and student management issues. It is written by Johnny R. Purvis for the **Safe, Orderly, and Productive School Initiative**, located in the Graduate School of Management, Leadership, and Administration at the University of Central Arkansas. If you have any questions or comments abous these and their potential ramifications, please phone me at **501-450-5258**. In addition, feel free to contact me regarding school safety and security issues; student discipline/management issues; and issues pertaining to gangs, cults, and alternative beliefs.

Cases

"Same Sex Student-On-Student Harassment was a Question for a Jury"

* Theory 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 a male student of access to educational opportunities or benefits **was a question** for a jury (return a $250,000 verdict against school district) in a 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 his banana up your ass); and medical and psychological testimony indicated that the students suffered physical and psychological testimony indicated that the students suffered physical and psychological side effect 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. Additionally, at time school officials appeared to have given meaningful attention to some of the plaintiff's complains of harassment; at other times apparently chose to turn a blind eye to harassment.

"**Student's Scolding of Teacher Did Not 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 students(who was six-foot-five inches tall and weighed well over two hundred pounds) "scolding" of his Biology teacher for talking about him behind his back to others students did not constitute criminal simple assault. The incident was triggered when the teacher asked him to stop " crunching" snack food and making noises with the wrapper during her biology class. When the teacher asked him to stop eating the snack food , the student responded with a " smart aleck" remark, and she sent him to the principal's office. At the end of the school day, the student returned to the teacher's classroom (she was seated at her desk working on her computer), and preceded to "scold" her for explaining to the class why she sent him to the office.

"**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 (then a student) and one of the school district's coaches. The former students and her mother complained that the superintendent and other school officials created a hostile environment, violated state law, and violated 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 of the alleged incident.

" **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 his 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 stated the 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 he had put a gun in his mouth and knew that a gun barrel tasted like; stated that she was beautiful and more mature than other students; stated that she made his heart sing; and gave her three typewritten poems with instructions for her not to read them unless she wanted to, she could just give them back unread.

"**Student Had Firearm on campus"**

*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 a school parking lot search, a drug dog alerted at the defendant's vehicle and a search was conducted. The search produced a firearm. The Supreme Court of Indiana held that a warrant less canine sniff of a high school defendant's unoccupied vehicle which was parked in school's 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 alerted.

" Teacher Had 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 and affirmative defense that student's voluntary participation in the sexual relationship " constituted 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 contributory fault asserted 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 asserted 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 teacher.

*Possible implications for Arkansas's school

June 2006 (#'s 522 & 523)

Safe, Orderly, and Productive School Legal News Note June 2006

Johnny R. Purvis*

Terry James, Chair of the Department of Leadership Studies
Jack Klotz, Program Coordinator of Leadership Studies
Shelly Albritton, Technology Coordinator
Wm. Leewer, Jr. Editor, Mississippi State University
Safe, Orderly, and Productive School Institute
Department of Leadership Studies
University of Central Arkansas
201 Donaghey Avenue
316 Torreyson West
Conway, AR 72035
*Phone: 501-450-5258 (office)

The **Safe, Orderly, and Productive School Legal News Note** is a monthly update of selected significant court cases pertaining to school safety-security and student management issues. It is written by Johnny R. Purvis for the **Safe, Orderly, and Productive School 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

"Teacher's Report of Student's Sexual Abuse of 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. In addition to the teacher's observations (e. g. student's inappropriately touching herself and other staff member under their shirts and skirts, removing her clothes in class, throwing herself on the floor and spreading her legs, and grabbing a staff member by the neck in an attempt to "French" kiss her), there was demonstrated evidence that several fellow teachers saw student exhibit seemingly sexual behavior before teacher placed three separate phone calls to CPS. Furthermore, teachers observed red marks on the student's breast that had the appearance of hickeys.

"Denying Student's Attendance At Graduation Ceremonies Did <u>Not</u> Violate Student's 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 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 (3) 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 did **<u>not</u>** have a claim under Section 1983 against school district for violating her due process rights by not permitting her to attend high school graduation ceremony; given she had **<u>no</u>** life, liberty, or property interest in attending graduation ceremony and (2) a graduation ceremony is **<u>not</u>** within the scope of any property right which might exist for the reason that commencement ceremonies are only symbolic of the educational end result, **<u>not</u>** as essential component of it.

"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 jointly 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. Subsequently, 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 setting and occurred well after normal school hours. Accordingly, defendants were **not** negligent in failing to prevent shooting. As a footnote to this case, the Cooperative Learning Center (CLC) administered a special school for behaviorally and emotionally handicapped children. CLC adhered to an unwritten policy of not reporting violent or criminal student activities unless those activities were likely to expose offending students to substantial incarceration. CLC employees were instructed "to look the other way" when students engaged in, or made plans to engage in, violent or criminal acts.

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)

Safe, Orderly, and Productive School Legal News Note July 2006

Johnny R. Purvis*

Terry James, Chair of the Department of Leadership Studies
Jack Klotz, Program Coordinator of Leadership Studies
Shelly Albritton, Technology Coordinator
Wm. Leewer, Jr. Editor, Mississippi State University
Safe, Orderly, and Productive School Institute
Department of Leadership Studies
University of Central Arkansas
201 Donaghey Avenue
316 Torreyson West
Conway, AR 72035
*Phone: 501-450-5258 (office)

The **Safe, Orderly, and Productive School Legal News Note** is a monthly update of selected significant court cases pertaining to school safety-security and student management issues. It is written by Johnny R. Purvis for the **Safe, Orderly, and Productive School 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

"Student's Schizophrenia Disclosed By School Nurse"
M. P. ex rel. K. and D. P. Independent School Dist. No. 721, New Prague, Minn. (C. A. 8 {Minn.}, 439 F. 3d 865), March 8, 2006.

The genesis of the case arose when a school nurse disclosed the plaintiff's schizophrenia to several students, prompting students to harass him verbally and physically. This created an inappropriate academic and unsafe educational environment for the youngster. A United States Court of Appeals, Eighth Circuit, held that school officials ***acted in bad faith or with gross misjudgment*** when the plaintiff's medical condition was disclosed. Therefore, the plaintiff **stated a valid claim of disability discrimination** under the Rehabilitation Act (Section 504).

"Teacher Grabs Student By the Back of His Neck"
Wilson v. Department of Social Services (Mass. App. Ct., 843 N. E. 2d 691), March 10, 2006.

A 13-year-old special education student, who had a number of behavior problems (e. g. disruptive in classes; cutting classes; spitting on other students; being disrespectful to teachers; and assaulting a student), was working on a computer and printed out a document. He crumpled the paper because it came out crooked and put it between his feet. He then picked up the paper with his feet and jumped up trying to toss it in the recycling box. In the process, he kicked the copying machine by accident. The student's teacher became upset, came up behind the student, grabbed him by the back of his neck, and yelled, "Do you have $15,000 to pay for the machine?" The student went home crying, and told his mother what had happened. Upon examining her son's neck, she noticed three red marks. An investigator for the Massachusetts Department of Social Services found there was reasonable cause to believe the teacher had physically abused the student. Thus, the teacher (plaintiff) sought a judicial review of the Department's decision. An appeals court in Massachusetts stated there **was substantial evidence** to support the conclusion of the Department. The court went on to state: "Unlike the student, who gave relatively consistent statements about the incident, the teacher presented inconsistent accounts of the incident, and at one point admitted to the student's mother and his principal that he might have grabbed the student around his neck."

"Student Sought Photo In Yearbook of Him Holding a Shotgun"
Douglass, ex rel. Douglass v. Londonderry School Bd. (D. N. H., 413 F. Supp. 2d 1), March 17, 2005.

High school student, by and through his father, sued school board, alleging that board's refusal to publish photograph of him wearing trap shooting attire and holding a shotgun in the school's yearbook violated his free speech rights. A United States district court in New Hampshire held that school district's policy of banning "props" from senior portraits in yearbook, which effectively precluded publication of photograph of high school senior wearing trap shooting attire and holding a shotgun, did **not violate student's speech rights**. Furthermore, the policy **was viewpoint and content neutral**, and **was applied even-handedly** to all students.

"Student's Rights Violated For Waving Banner"

Frederick v. Moore (C. A. 9 {Alaska}, 439 F. 3d 1114), March 10, 2006.

Students attending a Juneau, Alaska high school were released from school to watch a "Winter Olympics Torch Relay". A high school senior who had not yet made it to school because he had gotten stuck in the snow in his driveway, did make it to view the relay from the street across from his high school. While viewing the relay, he and some friends unfurled a banner with the following message: "Bong Hits 4 Jesus". The principal of the school grabbed the banner, crumpled it up, and suspended the plaintiff for 10 school days. The United States Court of Appeals, Ninth Circuit, held that the principal was **not** entitled to qualified immunity, and the student's First Amendment rights **were violated** when he was censured and punished for waving the banner.

"Student Violated School's Weapon Policy"

Rouleau v. Williamstown School Bd. (Vt., 892 A. 2d 223), December 15, 2005.

The plaintiff (a middle school student) accompanied by two other middle school students, removed two pellet guns from the plaintiff's house. Thereafter, they brought the pellet guns to a field at the school and one of the students shot another student in the leg. The school board prohibited the plaintiff from participating in any "co-curricular activities and/or attending school functions" through the end of the school year. In addition, the plaintiff was warned that if he participated in any subsequent incidents that warranted a suspension, he would be expelled from school for the remainder of the calendar year.

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).

August 2006 (#'s 525 & 526))

Safe, Orderly, and Productive School Legal News Note August 2006

Johnny R. Purvis*

Terry James, Chair of the Department of Leadership Studies
Jack Klotz, Program Coordinator of Leadership Studies
Shelly Albritton, Technology Coordinator
Wm. Leewer, Jr. Editor, Mississippi State University
Safe, Orderly, and Productive School Institute
Department of Leadership Studies
University of Central Arkansas
201 Donaghey Avenue
316 Torreyson West
Conway, AR 72035
*Phone: 501-450-5258 (office)

The **Safe, Orderly, and Productive School Legal News Note** is a monthly update of selected significant court cases pertaining to school safety-security and student management issues. It is written by Johnny R. Purvis for the **Safe, Orderly, and Productive School 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

"Student Suspended For Wearing An '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 or cover a "patch" (on his outer clothing) consisting of a swastika on which was superimposed the international "no" symbol, a red circle with a diagonal line through it. The student stated that the patch was 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. As a footnote to this particular case, school officials knew full well their obligation to provide a safe and violence-free educational environment and at the same time protect students' First Amendment rights pertaining to "freedom of expression".

"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 allege 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 based solely 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 valid 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 directly or indirectly involved in the search. As a footnote to this case, the court did state: "A strip search may be reasonable in circumstances in which it reveals evidence of more serious crimes such as those involving drugs or weapons, but a highly intrusive search in response to a minor infraction does not comport with the sliding scale (invasiveness of the search in relationship to the seriousness of the infraction) advocated by the Unites States Supreme Court.

"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 school 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. In addition, the court stated: "This statute seeks to prohibit acts which are specifically and intentionally designed to stop or temporarily impede the progress of any normal school function or activity occurring on the school's property".

"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 a 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 an employer liable for the employee's wrongful acts committed within the course and scope of 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. As a footnote to this case: Midway through the first semester of his math class, the teacher advertised in an e-mail to all of his students that he and his wife were looking for a babysitter for their infant daughter. The plaintiff responded, and thereafter began babysitting for the teacher and his wife. During the next semester, when the student was no longer in his class, the relationship between plaintiff and teacher became sexually intimate.

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).

September 2006 (#'s 527 & 528)

Safe, Orderly, and Productive School Legal News Note September 2006

Johnny R. Purvis*

Terry James, Chair of the Department of Leadership Studies
Jack Klotz, Program Coordinator of Leadership Studies
Shelly Albritton, Technology Coordinator
Wm. Leewer, Jr. Editor, Mississippi State University
Safe, Orderly, and Productive School Institute
Department of Leadership Studies
University of Central Arkansas
201 Donaghey Avenue
316 Torreyson West
Conway, AR 72035
*Phone: 501-450-5258 (office)

The **Safe, Orderly, and Productive School Legal News Note** is a monthly update of selected significant court cases pertaining to school safety-security and student management issues. It is written by Johnny R. Purvis for the **Safe, Orderly, and Productive School 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

"Day Care Not Responsible For Sexual Assault of Student By A Classmate"
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, a five-year-old was using the restroom of a day care center operated by defendant (Small World), when he was sexually assaulted by a fellow classmate. The New York Supreme Court, 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 have reasonably anticipated the incident. Child who committed the assault had no history of physical or sexual violence.

"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 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 **no** valid 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 Not 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 underwear. The nurse expressed apprehension about conducting the strip search, so the principal called the student's mother to come to the school to conduct the search of her child. The student's mother and substitute nurse conducted 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 **not alone** support suspicion student was carrying marijuana in her underwear. Thus, school officials did **not** have reasonable suspicion required to justify the strip search of the student. Student who informed on the plaintiff had **past** disciplinary problems; there was no evidence informant had previously provided reliable information to school officials; there was no attempt to corroborate informant's tip; and **none** of the plaintiff's past misconduct involved misbehaviors pertaining to possession or use of drugs.

"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 defendants failed to comply with Idaho's 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.

"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 involves 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 noon, 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 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 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.

"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 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 an inflammatory manner. 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 and violent behavior which was 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 on 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 obtain medical care immediately 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 being physically 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 student 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.

"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 wrongful 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 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. 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 of 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.

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)

Safe, Orderly, and Productive School Legal News Note October 2006

Johnny R. Purvis*

Terry James, Chair of the Department of Leadership Studies
Jack Klotz, Program Coordinator of Leadership Studies
Shelly Albritton, Technology Coordinator
Wm. Leewer, Jr. Editor, Mississippi State University
Safe, Orderly, and Productive School Institute
Department of Leadership Studies
University of Central Arkansas
201 Donaghey Avenue
316 Torreyson West
Conway, AR 72035
*Phone: 501-450-5258 (office)

The **Safe, Orderly, and Productive School Legal News Note** is a monthly update of selected significant court cases pertaining to school safety-security and student management issues. It is written by Johnny R. Purvis for the **Safe, Orderly, and Productive School 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

"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 (predator) brought action against school district to recover damages. The incident occurred when the predator physically and verbally harassed a friend of the plaintiff during a class where a substitute teacher was present. The conduct of the predator did create a commotion in class; and the substitute teacher instructed the offending student to stop harassing the victim. However, the predator did not obey the substitute teacher's verbal command and continued to harass the victim as the substitute 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 asked the predator 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 predator had 10 reported disciplinary matters within the previous five months 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 predator's past behavioral history, plus his violent attack on the plaintiff **raised** the issue regarding **foreseeability** that the predator would engage in assaultive conduct. Thus, summary judgment in favor of the school district **was precluded**, due both to the school's and substitute teacher's **inadequate supervision**.

"School Officials <u>Not</u> Acting As Agents of The Police"

People v. Pankhurst (Ill. App. 2 Dist., 302 Ill. Dec. 329, 848 N. E. 2d 628), May 10, 2006.

High school principal and dean of students were **<u>not</u>** acting as agents of the police in interrogating student suspected of drug (marijuana) possession and drug paraphernalia. Thus, they were **<u>not</u>** required to administer Miranda warnings. The principal and dean had already initiated investigation into allegation of drug possession prior to the 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. **<u>Special Note:</u>** 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 who may be involved."

"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. verbal; barked at like a dog; and a tennis ball was thrown at her) by other students after she reported to school officials that she had been raped by two male students; furthermore, 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 taunted her.

"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 school district's 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, ruled that the student's parents **was 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.

"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 American Disability Act (ADA) action, including evidence that she was terminated because of her outburst of anger toward students (e. g. threatened to kill them; remarks about the marital status of students' family members; and inappropriate sexual remarks) and that she had entered into a plan with school district to accommodate her 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 (non-school related bike accident in 1987, and automobile accident in 1995). However, she did **<u>not</u> refute** school district's 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 real or perceived disability when the board terminated his 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 from 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.

"Science 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 her 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) became known after the 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. Furthermore, 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. While conducting the patdown search of the plaintiff, a locking blade knife was discovered in his pants' pocket. As an additional note to the case, the court went on to conclude that the mere fact that plaintiff had **no** legitimate business on campus **created a reasonable need** to determine whether or not he posed a danger.

"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 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, when it voted not to hear student's appeal four days after student *initiated* his appeal. As a footnote to the case, the board's argument was that state statute allowed them to vote on whether to hear students' expulsion appeals on a case-by-case basis.

"School Security Personnel Conducted 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 a high school student who was out of class without a pass, and observation that student appeared nervous and fidgety, did **not** provide reasonable basis to search student and his belongings for contraband. Campus service aid admitted he did not suspect student of engaging in any criminal activity; did not smell marijuana on him; and had no knowledge or information concerning any wrongdoing by student, other than being out of class without a pass. Accordingly, the 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. As a footnote to the case, 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.

"School District Not Liable For Student's 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, and was still suspended from school on the date of the incident. 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. As a further note regarding this case, approximately one month prior to the attack, school officials learned that the attacker had made death threats against the plaintiff and her brother. In addition, the principal had met with both students and their parents to discuss the matter.

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).

November 2006 (#'s 531 & 532)

Safe, Orderly, and Productive School Legal News Note November 2006

Johnny R. Purvis*

Terry James, Chair of the Department of Leadership Studies
Jack Klotz, Program Coordinator of Leadership Studies
Shelly Albritton, Technology Coordinator
Wm. Leewer, Jr. Editor, Mississippi State University
Safe, Orderly, and Productive School Institute
Department of Leadership Studies
University of Central Arkansas
201 Donaghey Avenue
316 Torreyson West
Conway, AR 72035
*Phone: 501-450-5258 (office)

The **Safe, Orderly, and Productive School Legal News Note** is a monthly update of selected significant court cases pertaining to school safety-security and student management issues. It is written by Johnny R. Purvis for the **Safe, Orderly, and Productive School 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

"Search of Student and Use of Reasonable Force Was Justified"
Johnson v. City of Lincoln Park (E. D. Mich., 434 F. Supp. 2d 467), June 8, 2006.

A United States District Court in Michigan held that officer's search of a student **was justified** at its inception; search **was reasonable** in scope; officer **had qualified immunity**; officer **had probable cause** to arrest student; and officer **used reasonable force**. The case arose out of the following events that occurred at Lincoln Park High school on November 18, 2004. Fourteen-year-old plaintiff (ninth grader) had a history of disruptive and violent behavior throughout his educational career. On the aforementioned date, plaintiff had a hand-held Nintendo Gameboy video game in his possession, which was not permitted in school. His science teacher discovered the Gameboy and asked the student to surrender the game to him. Plaintiff refused. Thereupon, the teacher sent him to the assistant principal. Assistant principal asked plaintiff to turn over the Gameboy to him and told him he could have it back at the end of the school day. Student refused. Assistant principal even attempted to phone the student's mother for assistance, but she did not answer her phone. The student was asked again to turn over the Gameboy, and the student loudly and forcefully refused. Assistant principal called the liaison officer assigned to the school by the Lincoln Park Police Department to come to the office to assist him. Officer arrived and asked the student for the Gameboy. He refused, using more verbal force and intensity than with the assistant principal. The officer asked the student at least three times to surrender the Gameboy to him, or he would have to search him. He refused to cooperate. As the officer attempted to search the plaintiff, student took a swing at the officer, who was able to block the swing. Thereupon, he took student to the ground. During the struggle, the student kicked and bit officer twice (left wrist and left forearm). Additional police assistance was summoned and finally the student was subdued; however, he had to be tasered with a Taser in order for the officers to subdue him.

"Police Officers Interrogate and Obtain DNA Sample From Student"
Burreson v. Barneveld School Dist. (W. D. Wis. 434 F. Supp. 2d 588), June 8, 2006.

High school student brought action under Section 1983 against school district and principal, alleging that his constitutional rights were violated when principal summoned student from class in order to allow police officers to interrogate and obtain a DNA sample from him during school hours and on school property. The student was the prime suspect pertaining to an incident in which two stolen vehicles were driven into the front of the local golf clubhouse. An Untied States district court in Wisconsin held that: (1) student was **not** deprived of his right to receive an education without due process; (2) principal did **not** violate student's substantive due process rights; and (3) school district did **not** violate student's Fourth Amendment rights. **As a footnote to this case:** Plaintiff had a learning disability that caused him to process information slowly and he had trouble staying organized. None of the student's classmates asked him why he had been summoned to the principal's office; and the youngster was able to complete all class work he had missed while the officers interviewed him.

"School Did Not Violate Student's Due Process Rights Due to His Suicide"
Sanford v. Stiles (C. A. 3 {Pa.}, 456 F. 3d 298), August 2, 2006

The mother of a 16-year-old high school student (Michael) discovered that her son had hanged himself from a door in the basement of her house. Thereupon, she brought action against the school district and high school guidance counselor under Section 1983, alleging they were liable for her son's death. A little over a week prior to his suicide, he wrote a note to a young lady whom he had dated for a brief period of time. In the note he wrote the following, "I know I really haven't talked to you in awhile. Hopefully this note doesn't come out the wrong way. I've heard different stories about you and Ryan. The one I heard *almost made me want to go kill myself*." The note was passed on to the young man's guidance counselor. Michael's counselor called him in for a visit, and both discussed the situation. Michael stated that the breakup was two months ago and he was not upset about it now. In addition, he stated that he did not have plans to hurt himself and that he was fine. Therefore, the counselor believed Michael was not at risk and did not contact neither the school psychologist nor Michael's mother. The United States Court of Appeals, Third Circuit, held that: (1) the counselor was **not** deliberately indifferent in regard to her decision regarding the youngster's behavior; (2) the link between student's suicide and conduct of the school and counselor **was far too attenuated** (diluted) to have created a danger to student; (3) parent **failed** to prove school district disregarded a known or obvious consequence of its action in counseling student; and (4) counselor **was entitled** to immunity under Pennsylvania's Political Subdivision Tort Claims Act.

"Drug Dealer Did Not Possess Drugs For Sale Within 1,000 Feet of a School"
People v. Davis (Cal. App. 2 Dist., 46 Cal. Rptr. 3d 431), July 19, 2006.

A team of narcotics agents executed a search warrant at a single family residence located across a street from an elementary school where 50 to 115 children were attending an after school program. A search of the plaintiff revealed that he had $1,586 in cash in his pocket. Agents found bags containing 10 grams of cocaine and two and one-half pounds of marijuana in the garage that was not accessible to the general public. A California court of appeals held that California's drug trafficking enhancement penalty (an additional 3 to 5 years) was **not** applicable because the garage was not accessible to minors. California's enhance penalty applies only if the violation occurs "in any public area or business establishment where minors are legally permitted to conduct business which is located within 1,000 feet of any public or private elementary, vocational, junior high, or high school".

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).

December 2006 (#'s 553 and 554)

Safe, Orderly, and Productive School Legal News Note December 2006

Johnny R. Purvis*

Terry James, Chair of the Department of Leadership Studies
Jack Klotz, Program Coordinator of Leadership Studies
Shelly Albritton, Technology Coordinator
Wm. Leewer, Jr. Editor, Mississippi State University
Safe, Orderly, and Productive School Institute
Department of Leadership Studies
University of Central Arkansas
201 Donaghey Avenue
316 Torreyson West
Conway, AR 72035
*Phone: 501-450-5258 (office)

The **Safe, Orderly, and Productive School Legal News Note** is a monthly update of selected significant court cases pertaining to school safety-security and student management issues. It is written by Johnny R. Purvis for the **Safe, Orderly, and Productive School 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

"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 those who posed no safety concerns. **As a footnote to this case:** 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 and 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."

"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).

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).