January 2008 (#s 554, 555, & 556)

Legal Update for District School Administrators January 2008

Johnny R. Purvis*

West's Education Law Reporter
July 26, 2007 – Vol. 219 No. 3 (Pages 886 – 1011)
August 9, 2007 – Vol. 220 No. 1 (Pages 39 – 452)
August 23, 2007 – Vol. 220 No. 2 (Pages 453 – 1004)

Terry James, Chair of the Department of Leadership Studies
Jack Klotz, Program Coordinator of Leadership Studies
Shelly Albritton, Technology Coordinator Leadership Studies
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 **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
- Civil Rights
- Desegregation
- Disabled Students
- Finance
- Freedom of Speech
- Records
- School Boards
- Torts

Commentary:

No commentary this month.

Topics

Athletics:

"State Athletic Association's Enforcement of Anti-recruiting Rule Did Not Violate Private School's First Amendment Rights"
Tennessee Secondary School Athletic Ass'n v. Brentwood Academy (U. S., 127 S. Ct. 2489), June 21, 2007.

Private high school brought Section 1983 action against state interscholastic athletic association, asserting free speech and due process challenges against rule prohibiting undue influence in recruitment of middle school students for athletic programs. The United States Supreme Court held that enforcement by state interscholastic athletic association of its anti-recruiting rule, which prohibited high schools from using undue influence to recruit middle school students for athletic programs, did **not** violate First Amendments rights of private high school. The case was created when a football coach at a private school, a voluntary association member, sent letters inviting selected middle school students to attend football spring practice sessions. Furthermore, the anti-recruiting rule **furthered** the association's **interests in managing an efficient and effective** state sponsored high school athletic league.

"Wheelchair Racer Not Discriminated Against During Track Meet"
McFadden v. Grasmick (D. Md., 485 F. Supp. 2d 642), May 12, 2007.

High school student-athlete, who used a wheelchair, sued state education officials and their agents and designees. She claimed they unlawfully discriminated against her in violation of Section 504 of the Rehabilitation Act (Rehabilitation Act), the Americans with Disabilities Act (ADA), and Section 1983 because their rules and protocols for assignment of team points in a state-wide track and field competition precluded her from earning points for her team. Plaintiff, a high school junior at the time of the suit, had spina bifida and was paralyzed from below the waist since early childhood. She used a wheelchair for mobility, and by all accounts was a highly skilled, indeed, a "world class' and Olympic wheelchair racer ("a wheeler"). Additionally, she was eligible for the interscholastic athletic program and was a full member of her high school's track team. Plaintiff participated in four track events (e. g. discus and shot put) at the 2006 regional and statewide track and field tournaments. However, plaintiff's name, unlike the names of other athletes, was not announced as she crossed the finish line during her race events. In addition, her name was not illuminated on the score board when she finished her races. Furthermore, the plaintiff was not permitted to earn points for her team in any of her races. The United States District Court, D. Maryland, ruled that plaintiff was **not** entitled to preliminary injunctive relief because it **was unlikely** she would be able to demonstrate that she was discriminated against under current statutes.

Civil Rights:

"Teacher Limited Lifting Was Not a Disability"
Stockton v. A. World of Hope Childcare Learning Center (S. D. Ga., 484 F. Supp. 2d 1304), April 20, 2007.

Plaintiff (26 years of age) was hired to work as a teacher in a childcare facility. When she was an infant, she had an allergic reaction to a "DPT vaccination", which caused her to develop problems in her leg muscles. During the summer of 2004, she was employed by the World of Hope Childcare Learning Center. During the employment process, she told the administration that she could perform all the work they had described for her. Furthermore, she indicated no physical limitations on her application for employment. In early 2005, she indicated to the administration of the childcare facility that she could no long perform duties such as the following without reasonable accommodation: lifting toddlers from their cribs; placing infants on a changing table; lifting and carrying a mop bucket; or lifting and carrying a vacuum cleaner. Additionally, she stated that she could no longer walk on uneven surfaces; stand or walk in the sand portion of the playground; nor physically run after children while supervising them on the playground. On May 12, 2005 she resigned from her teaching position. Plaintiff claimed that the school's administration constantly harassed her due to her physical limitations. She further claimed that the administration at the childcare facility did not make reasonable accommodations for her disability and created a hostile work environment. The United States District Court, S. D. Georgia, Augusta Division, held that: (1) Employee was **not** disabled under the American Disability Act (ADA); (2) Employer did **not** consider employee disabled; and (3) Employee was **not** qualified to perform the duties from which she was removed.

"Principal Confiscating Banner Stating 'Bong Hits 4 Jesus' <u>Not</u> Unconstitutional"
Morse v. Frederick (U. S., 127 S. Ct. 2618), June 25, 2007.

On January 24, 2002, the Olympic Torch Relay passed through Juneau, Alaska, on its way to the winter games in Salt Lake City, Utah. The torchbearers were to proceed along a street in front of Juneau-Douglas High School (JDHS) while school was in session. Deborah Morse, the school principal, decided to permit staff and students to participate in the torch relay as an approved social event or class trip. Students were allowed to leave class to observe the relay from either side of the street. Teachers and administrative officials monitored the students' actions. Plaintiff, Joseph Frederick, a JDHS senior, was late to school that day. When he arrived, he joined his friends (all but one of whom were JDHS students) across the street from the school to watch the event. Not all the students waited patiently. Some became rambunctious, throwing plastic cola bottles and snowballs, and scuffling with their classmates. As the torchbearers and camera crews passed by, Frederick and his friends unfurled a 14-foot banner bearing the phrase: "BONG HITS 4 JESUS". The large banner was easily readable by the students on the other side of the street. Plaintiff received a 10 day suspension for displaying the banner. Thereupon, he claimed that his First Amendment rights had been violated. The United States Supreme Court held that Frederick **was attending a school sponsored activity** and his suspension from school for did **<u>not</u> violate** his free speech rights under the First Amendment of the United States Constitution. The event **occurred during school hours, was an event sanctioned by the principal**, and teachers and administrators were interspersed among students providing supervision. Furthermore, the event **fell under school board policy** (student handbook) "as an approved social event or class trip". Therefore, school policies and associated school rules **applied**.

"School District <u>Not</u> Entitled to Summary Judgment Regarding Students' Harassment"

Bruning ex rel. Bruning v. Carroll Community School Dist. (N. D. Iowa, 486 F. Supp. 2d 892), April 19, 2007.

Parents (plaintiffs) of three female middle school students, on behalf of their daughters, filed a complaint against school district, district superintendent, middle school principal, and middle school assistant principal alleging sexual harassment in violation of Title IX and Section 1983. The plaintiffs alleged that three male students sexually harassed their daughters by grabbing their breasts, grabbing their buttocks, kicking their buttocks, poking them in their "lower private areas", spitting on them, pulling their hair, scratching their necks with staples, giving them "titty twisters", pulling their heads down to the boys' crotches, throwing spitballs at them, poking their crotches with pens and pencils, and calling them "sluts" and "whores". The United States District Court, N. D. Iowa, Central Division, held that: (1) Recipients of federal funding **may** be liable under Title IX for student-on-student sexual harassment, and plaintiff bringing such a claim **is required** to establish the following: (A) funding recipient **had actual knowledge** of sexual harassment in its program or activities; (B) funding recipient **was deliberately indifferent** to sexual harassment, and harasser is under funding recipient's disciplinary authority; and (C) harassment **was so severe, pervasive, and objectively offensive** that it effectively bars victim's access to an educational opportunity or benefit. (2) To establish a Title IX claim on the basic of sexual harassment, plaintiff **must show** (as applied to this case) that: (A) plaintiff **is a student** at an educational institution receiving federal funds; (B) plaintiff was subjected to harassment **based on her sex**; (C) the harassment **was sufficiently severe or pervasive** to create a hostile or abusive environment in an educational program or activity; and (D) there **is a basis** for imputing liability to the institution. Thus, (3) Fact issues as to reasonable foreseeability of injury to female students (plaintiffs) from male students' physical, verbal, and sexual misconduct on school property ***precluded summary judgment*** for school district on plaintiffs' liability claim.

Desegregation:

"Using Race As A Factor In Assigning Students To Schools Was Unconstitutional"
Parents Involved in Community Schools v. Seattle School Dist. No. 1 (U. S., 127 S. Ct. 2738), June 28, 2007.

Parents in the Seattle, Washington, school district brought action against school district challenging, under the Equal Protection Clause, student school assignments that rely on racial classification. In separate action, a Kentucky parent brought a similar suit against a school board in the state of Kentucky who used racial classification in their plan for elementary school student assignments. The United States Supreme Court **granted** certiorari (Supreme Court decided to hear both cases and directed the lower court to deliver the records for review) in both cases. After reviewing the two cases, the U. S. Supreme Court ruled: (1) Parents **had standing to challenge**, under the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution, school districts' use of racial classifications in student assignment plans that relied on racial classification to allocate slots and admission status; and (2) School districts **failed to demonstrate** that the use of racial classifications in their student assignment plans was necessary to achieve their stated goal of racial diversity. Furthermore, school districts **failed to show** that they considered methods other than explicit racial classifications to achieve their stated goals.

Disabled Students:

"Student Not Entitled to Special Services Based on "Specific Learning Disability"
Hood v. Encinitas Union School Dist. (C. A. 9 {Cal.}, 486 F. 3d 1099), May 11, 2007.

Student and her parents brought suit against school district in what they perceived as a violation of IDEA and deprivation of educational services. Plaintiffs sought reimbursement for private school education after withdrawing their youngster from public school. They assert that: (1) their daughter exhibited a severe discrepancy between her achievement and intellectual ability in one or more academic areas; and (2) their daughter had "other health impairments". The United States Court of Appeals, Ninth Circuit, held that student was **not** entitled to special education based on an "other health impairment", in the form of a seizure disorder or attention deficit disorder. Any "other health impairment" that student did suffer did **not** adversely affect her performance to the extent that she required education outside of the general classroom.

Finance:

"Legislative State Funding of Public Schools Unconstitutional"
Lake View School Dist. No. 25 of Phillips County v. Huckabee (Ark., 220 S. W. 3d 645), December 15, 2005.

The Supreme Court of Arkansas held that: (1) General Assembly (state legislature) *inaction* with respect to legislative act prescribing a framework for determining foundation funding amount for school year **violated** state constitutional funding requirements (Vital information relating to existing school district revenues, expenditures, and needs was *not* reviewed.); (2) Upon determination that the General Assembly *inaction* with respect to determining public education funding needs **violated constitutional school funding requirements**, the Supreme Court would **not** direct General Assembly to appropriate a specific increase in funding amounts. It **was** the duty of the General Assembly to determine funding levels; and (3) Under the constitution of the state of Arkansas, the state **must provide** a general, suitable, and efficient system of public education to the children of the state; and it is the **duty** of the Supreme Court to ensure constitutional compliance when that compliance is challenged.

Freedom of Speech:

"School Officials Violated Student's Freedom of Speech in Responding to His Editorial"

Smith v. Novato Unified School Dist. (Cal. App. 1 Dist., 59 Cal. Rptr. 3d. 508), May 21, 2007.

During the 2001-2002 school year, Smith was a senior at Novato High School, enrolled in a journalism class. As part of the class the students published a school newspaper called *The Buzz*. The class elected Smith "Opinion Editor" of the first issue of *The Buzz*. Smith wrote an opinion editorial on illegal immigration entitled "Immigration". It included statements such as the following: (1) "I'll bet that if I took a stroll through the Canal district in San Rafael that I would find a lot of people that would answer a question of mine with 'que?', meaning that they don't speak English and don't know what the heck I'm talking about." (2) "Seems to me that the only reason why they can't speak English is because they are illegal." (3) "If a person looks suspicious then just stop them and ask a few questions, and if they answer 'que?', detain them and see if they answer 'que?', detain them and see if they are legal." (4) "Criminals usually flee here in order to escape their punishment." Before publication, the teacher and principal reviewed the publication and allowed it to be published in *The Buzz*. Several Latino parents got upset over the publication and met with the principal and other school officials. In late January or early February 2002, Smith submitted a second editorial entitled "Reverse Racism". The piece contained many provocative statements about race relations. Both the teacher and principal approved the piece for publication in *The Buzz*. However, the principal thought it would be a good idea to publish a counter-viewpoint along with "Reverse Racism". Because there was insufficient time for someone to write a counter-viewpoint before publication of the February 2002 issue of *The Buzz*, the journalism students voted to move the editorial to the next issue of the paper. In the interim, "Reverse Racism" was published in the *Novato Advance*, a local newspaper not affiliated with the school district. "Reverse Racism" was published in the May 2002 edition of *The Buzz,* along with a counter-viewpoint entitled "It's About Time". Plaintiff filed suit alleging violation of his right to free speech under the United States and California Constitutions. He sought an injunction prohibiting further illegal infringement of speech and a nominal damage of $1.00. The California Court of Appeals, First District, Division 5, held that: (1) Student's editorial **was protected** speech; and (2) School officials **violated** student's constitutional and statutory rights to exercise freedom of speech. **Note:** The Court based it decision partially on the following concepts: (1) the editorial was not speech likely to incite disruption of the orderly operation of the high school; (2) it contained no direct provocation or racial epithets; and (3) piece did not incite other students to create a clear and present danger.

Records:

"Claims Filed by Student's Attorneys Pertaining to Janitor's Sexual Assault of Student Was Public Record"
Phoenix Newspaper, Inc. v. Ellis (Ariz. App. Div. 1, 159 P. 3d 578), June 12, 2007.

On August 25, 2006, police arrested a school janitor on suspicion of assaulting Doe, a 14 year-old student at a Scottsdale, Arizona, high school shortly after the end of the school day. The suspect was later indicted on charges of kidnapping, sexual conduct with a minor, public sexual indecency to a minor, and sexual abuse. The events were the subject of several articles in the Phoenix Newspapers, Inc. (PNI) newspaper. One of the articles reported that the school district held a public meeting to address parents' concerns about school safety and plans for new security procedures. The Court of Appeals of Arizona, Division 1, Department A, ruled that under Arizona's public records law, notice of claim that high-school student's attorney filed with the school district regarding her alleged sexual assault by a school janitor **was "public record"**, although notice was submitted in confidence. Furthermore, the school district's potential liability **was of great concern to the public**, along with the amount of money the plaintiff might consider in settling the suit, and **could have been of genuine interest to the public**.

"Newspaper Had Right to Inspect School Board's Records Pertaining to Imposition of Student Discipline"
Board of Trustees, Cut Bank Public Schools v. Cut Back Pioneer Press (Mont., 160 P. 3d 482), May 8, 2007.

On September 26, 2005, The Board of Trustees, Cut Bank Public Schools (Board), held a properly noticed meeting to determine whether two students of the Cut Bank Public Schools should be disciplined for their part in shooting other students with plastic BBs on school property; and, if so, what discipline should be imposed. Members of the public, including a representative of the Cut Bank Pioneer Press (Pioneer) attending the meeting. The Supreme Court of Montana, held that: (1) Newspaper (Pioneer) **had standing** to file petition to trial court to inspect school board's records concerning imposition of the discipline records regarding the two students who were involved in the shooting incident. The records **were necessary** for the newspaper's work, the newspaper **voiced a genuine interest in only** *redacted* (edited or arranged in proper form for publication) student disciplinary records, and school board's failure to provide records **injured** newspaper's ability to exercise its **constitutional right to know actions taken** by government and its freedom of the press to report such actions of government; and (2) Federal Family Educational Rights and Privacy Act (FERPA) does **not** prevent the public release of **redacted** student disciplinary records. **Note:** Newspaper did not request the names of the students and specifically asked that the student be identified by assigned numbers or that the names be redacted (edited out).

School Boards:

"School Board Not Liable For Teacher's Sexual Assault of Student"
Bailey v. Orange County School Bd. (C. A. 11 {Fla.}, 222 Fed. App. 932), April 5, 2007.

The United States Court of Appeals, Eleventh Circuit, held that school board was **not** liable under Title IX and Section 1983 for high school teacher's alleged sexual harassment of former student, *absent evidence* that a school board official *knew of* the teacher's misconduct with that student, or similar conduct with other students, and *was deliberately indifferent* to such conduct.

Torts:

"School Officials Failed to Exercise Reasonable Supervision and Care for Student's Safety"
Jerkins ex rel. Jerkins v. Anderson (N. J., 922 A. 2d 1279), June 14, 2007.

Third-grader attended an elementary school which was a "walking school" due to no school bus service. Thus, all students walked to and from school with an adult, family member, or a babysitter; were transported to and from school by a family member or another adult; or were enrolled in an after-school program. Normally, school dismissed at 2:50 p.m. However on the day of the accident, school was dismissed at 1:30 p.m. and Joseph (plaintiff) left school grounds, played with friends, and may have gone swimming. At 3:50 p.m. he was struck by a vehicle at an intersection several blocks from his school and in a different direction from his home. The accident severely injured Joseph, rendering him a quadriplegic. The Supreme Court of New Jersey held that: (1) School officials **have a duty to exercise reasonable care in supervising** students; and (2) School officials **have a duty** to create a reasonable dismissal supervision policy, provide notice to students' parents/guardians of that policy, and comply with their policy.

"School Board Entitled to Immunity Following Attack on Elementary Student"
Leake v. Murphy (Ga. App., 644 S. E. 2d 328), March 26, 2007.

Parents of 10-year-old elementary school student who was injured (hit in the head with a hammer) in an attack by a psychologically disturbed individual's entry into Mountain Park Elementary School brought negligence action against school board, its individual members, school principal, school staff members, and school superintendent. The Court of Appeals of Georgia held that Georgia's statute providing that school districts were to have school plans prepared with the involvement of parents, students, teachers, and others **created a discretionary duty, rather than a ministerial duty**. Therefore, any failure by school district, school board, or superintendent did **not** deprive them of official immunity from tort claims arising when student was injured in an attack by a stranger on school property. The elementary school had a school safety plan prepared and in place prior to the accident; but the plan was not formally adopted by the school board. However, the school's plan had been submitted and approved by the Georgia Emergency Management Agency (GEMA).

"School Did Not Breach Its Duty to Supervise Kindergarten Student Injured on Hay Ride"

David v. City of New York (N. Y. A. D. 2 Dept., 835 N. Y. S. 2d 377), May 1, 2007.

On October 16, 2003, the infant plaintiff, a kindergarten student in the defendant school district, was injured during a hay ride on a school field trip to the Green Meadows Farm in Floral Park. The plaintiff cut her eyelid when the large wagon in which she and others rode hit a bump and threw her from her seat to the floor of the wagon. One supervisor was sitting next to the student at the time of her injury, and another was sitting across from the plaintiff. In addition, there were 12 other adult supervisors present with the approximately 40 kindergarteners. The New York Supreme Court, Appellate Division, Second Department, held: (1) a school did **not** breach its duty of supervision; and (2) a school is **not** an insurer of the safety of its students. However, a school **is charged with the obligation** to exercise such care over students that "a parent of ordinary prudence" would exercise under comparable circumstances.

"City Was Not Entitled to Summary Judgment Suit Filed By Baseball Coach Who Was Struck in the Face by a Foul Ball"

Reyes v. City of New York (N. Y. Sup., 835 N. Y. S. 2d 852), March 12, 2007.

Triable (liable to a judicial trial) issues of fact as to whether city was chargeable with knowledge of the lack of protective fencing for baseball field dugout **existed**, as to the city's obligation to exercise reasonable care when a high school baseball coach was struck in the face by a foul ball while coaching from inside the third-base dugout. Therefore, summary judgment was **precluded** for the city.

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).

February 2008 (#s 557 & 558)

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September 6, 2007 – Vol. 221 No. 1 (Pages 1 – 457)
September 20, 2007 – Vol. 221 No. 2 (Pages 459 – 1028)

Terry James, Chair of the Department of Leadership Studies
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- Security
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Commentary:

- No commentary this month.

Topics

Civil Rights:

"Student's Free Speech Rights Violated"
M. B. ex rel. Martin v. Liverpool Cent School Dist. (N. D. N. Y., 487 F. Supp. 2d 117), March 30, 2007.

While in the third grade (Fall 2003), plaintiff handed out approximately 20 religious Halloween tracts to friends during lunch period. Once her teacher learned of the incident, the student was instructed not to do so again or she "would be in big trouble". The following April, the student handed out religious tracts entitle "Cleo" to her friends during recess or lunch time. Later on during the same day when the tracts were handed out, the student's principal called her mother and told her that her child could not hand the tracts out at school. Student's mother filed suit against the school district, claiming school officials violated her child's First Amendment right pertaining to freedom of speech, Equal Protection Clause of the Fourteenth Amendment, and Establishment Clause of the First Amendment. A United States district court in New York held that the student's free speech rights **were violated**, in that the student had the right to pass out the religious tracts during non-instructional time, and that school officials were not endorsing flyer's content by allowing her to give the tracts to her friends. Additionally, there was *no* evidence that the flyers caused any disruption of the school day, nor that the passing out of the flyers invaded the rights of others.

"Cell Phone Ban Upheld"
Price v. New York City Bd. of Educ. (N. Y. Sup., 837 N. Y. S. 2d 507), May 7, 2007.

Parents and parents' advisory council commenced declaratory judgment against the New York City Board of Education, seeking to strike down the board's policy that prohibited students from possession of cellular telephones ("Cell Phones Rules") in public schools without authorization from designated school officials. The Supreme Court, New York County, held that: (1) policy banning possession by students **had a rational basis**, since *possession ban* would lead to less disturbance of the educational mission of the school district than would an *use ban*; (2) policy did **not** violate any fundamental right of parents to make decisions concerning the care, custody, and control of their children, or their federal or state constitutional rights; and (3) banning cell phones on school property did **not** fundamentally prevent communications between parents and their children.

"Student Stated a Valid First Amendment Challenge Pertaining to Wearing Her Necklace"
Grzywna ex rel. Doe v. Schenectady Cent. School Dist. (N. D. N. Y., 489 F. Supp. 2d 139), March 7, 2006.

In early January 2005, middle school student wore to school a red, white, and blue beaded necklace that she made. According to the plaintiff, she wore the necklace to show her support for the soldiers serving in Iraq (including members of her family) and to demonstrate her love for her country. On January 4, 2005, school officials informed the plaintiff that she could not wear the necklace because it could be considered to be gang related. School district policy prohibited the wearing of gang related items. The student was advised that if she did not comply with school policy, she would be subjected to discipline. Thereupon, the student commenced action against the school district. The school district requested that the court dismiss the suit on grounds of the Eleventh Amendment and qualified immunity. A United States District court in the state of New York held that plaintiff's suit against school district would **not** be dismissed on the basis of: (1) qualified immunity due to the fact that the court ***could not determine*** whether school officials could have reasonably believed they were not infringing on student's First Amendment freedoms; and (2) the school district was **not** an "arm of the state", and thus **not entitled** to Eleventh Amendment immunity.

Compensation and Benefits:

"Teacher Aid's Back Injury Was Work Related"
Wyble v. Acadiana Preparatory School (La. App. 3 Cir., 956 So. 2d 722), May 2, 2007.

Ms Wyble was employed as a teacher's aid in the Acadiana Preparatory School in Opelousas, Louisiana. On October 21, 2004, and October 22, 2004, she lifted a heavy desk onto a rug and helped push the desk across the classroom as a component of the reasonable expectations related to her assigned duties as a teacher's aid. As a result of these actions, she suffered a degree of stiffness in her lower back that evening and the next morning. On the next day, she experienced immediate pain when she straightened up from bending over a low-to-the-ground, child-sized table while working on an art project with her students. Soon thereafter, she reported the pain in her back to the teacher with whom she was working. Afterward, she informed the administrator of the school of her injury, and that she was going to seek medical attention. After a visit to her family physician, she was referred for additional tests and evaluation pertaining to her medical condition. The plaintiff's MRI revealed a right-sided disc herniation at L 4-5, right paracentral disc protrusion/herniation, and facet joint hyperthropy in the lower lumbar region. Plaintiff requested that the school pay for her medical expenses, and was informed that the school was not responsible for the injury and would not pay any benefits to her or on her behalf. The Office of Workers' Compensation, District 02, St. Landry Parish, awarded plaintiff weekly benefits, medical expenses, and attorney fees. Thereupon, employer appealed. A Louisiana court of appeals ruled that: (1) evidence **supported** finding that plaintiff suffered accident at work; (2) evidence **supported** finding that plaintiff's back injury **was aggravated** by a work-related accident; (3) evidenced **supported** the awarding of penalties and attorney's fees; and (4) plaintiff **was entitled** to $5,000 in additional attorney fees for work performed on appeal.

Disabled Students:

"Disabled Student Attacked During Lunch"
Green v. San Diego Unified School Dist. (C. A. 9 {Cal.}, 226 Fed. App. 677), March 16, 2007.

School district and school officials did **not act with deliberate indifference** towards disabled black student who was attacked by classmates at lunch, as required to bring action under the Americans with Disabilities Act (ADA). School officials knew that student had been teased by classmates, and that several unrelated acts of violence had occurred on campus. Since this information did **not** create a *substantial likelihood* that the student would be attacked, and there was **no** evidence that school officials unreasonably or inadequately responded to the student's reports, the **case was dismissed**.

Labor and Employment:

"Teacher with Breast Cancer Was Not Insubordinate"
Brawner v. Marietta City Bd. of Educ. (Ga. App., 646 S. E. 2d 89), March 28, 2007.

Dr. Sharon Brawner, an elementary school teacher, was terminated after she attended a pre-planning day at her school while she was on extended long-term disability leave because of treatment and complications from cancer. Upon recommendation of the superintendent, the school board terminated the teacher's employment on "good and sufficient cause", and for insubordination for returning to work without the required "fitness-for-duty report" signed by a physician. The Court of Appeals of Georgia held that **evidence was insufficient** to support school board's finding of insubordination, based on teacher's alleged failure to provide a fitness for duty report before she was restored to duty. **Note:** The teacher attended part of the first day of a pre-planning session held at her elementary school, where she signed an attendance roster, attended a staff meeting, and introduced herself to the new principal after the meeting. She had gotten approval from her physician to attend the session for one day, if she sat down and did very little except listen to her principal and check her classroom. She was on extended leave until December 31 of that school year.

"Coach's Failure to Attend Summer Workouts Constituted Non-Renewal"
Smith v. Petal School Dist. (Miss. App., 956 So. 2d 273), September 19, 2006.

Plaintiff was employed as a physical education teacher and coach at Petal High School (Petal, Mississippi) for the 2004-2005 school year. His coaching duties spanned the entire calendar (i. e. 12 month) year, including the summer months. The reason for the plaintiff's nonrenewal was his failure to attend summer workouts for the football team. The Court of Appeals of Mississippi held that the teacher/coach's failure to perform his duties required in coaching rider by neglecting to attend eight of the 24 summer football workouts **provided a sufficient basis** not to renew the teacher's contract. The rider on the teacher's contract referred to the single position of teacher/coach.

"School District <u>Not</u> Negligent for Hiring or Retention of Teacher"
Doe ex rel. Brown v. Pontotoc County School Dist. (Miss. App., 957 So. 2d 410), May 15, 2007.

At the time of the case, Jeremy Wise was a high school math teacher and baseball coach. In addition, he had a wife (also a teacher), a two-year-old daughter; and, his wife was pregnant with their second child. Wise's relationship with the 14-year-old female (Jane) began as the student's teacher, family friend, and mentor, all with the endorsement of the student's family. It was not unusual to see them together at the girl's home, at church, at school, or attending extra-curricular activities at school. Throughout the spring and summer of 2002, there were five instances of undisputed physical contact (hugging, rubbing shoulders, fondling, laying in a bed, and kissing) between Wise and Jane; but no sexual intercourse occurred. Once Jane's family learned of the relationship, they attempted to have criminal charges issued against Wise; however, the grand jury did **<u>not</u>** return an indictment. On February 11, 2003, they filed civil action against the school district. The Court of Appeals of Mississippi held that the school district did **<u>not</u>** have either actual or constructive notice of the alleged inappropriate relationship between the student and teacher, as required to establish a claim for negligent hiring or retention. Furthermore, the Court stated that the unsubstantiated rumor about the teacher's inappropriate relationship with the student ***was insufficient*** to trigger the school district's duty to report the alleged abuse.

Security:

"School Was Not Liable for Student's Assault"
Bowman v. Williamson County Bd. of Educ. (M. D. Tenn., 488 F. Supp. 2d 679), May 18, 2007.

In October 2005, a black student (Devlin) who was two years older than plaintiff's son (Luke), threatened Luke on the school bus. Subsequently, Luke, who is white, became the target of other offensive behaviors by other black students. On November 30, 2005, several black students, including Devlin, committed battery on Luke's person. Devlin was subsequently arrested for assault (hitting Luke in the face), suspended from school, and sent to an alternative school for 30 days. School officials were not aware of any confrontation between the two students prior to this incident. Following the November 30, 2005 incident, Luke's mother had him placed on "homebound services", during which he did not attend classes at his assigned school for the remainder of the fall semester. At some point during the time while Luke was on homebound services, he or his mother received "hang-up phone calls" that originated from Devlin's house (according to caller identification). After Luke returned to school in January 2006, plaintiff informed the vice principal that "people were making fun" of Luke. The vice principal investigated the matter, interviewing each of the students identified and named by Luke. After Devlin returned to school, he either "rubbed his hands together" or shook Luke's hand on the school bus. Vice principal discussed the incident with both boys. Devlin stated that the "hand rubbing" had no meaning and that he "had no problem with Luke". Vice principal told Luke to report immediately any other bullying or harassment problems to him. A United States District Court in Tennessee stated that the school district was **not** liable under due process clause of the Fourteenth Amendment of the United States Constitution for injury to student, inflicted by fellow student, on grounds that there was a special relationship between school and student whose liberties were restrained. In addition, school officials took ***no*** **affirmative action increasing the risk** to student assaulted by fellow student, as required for state to create a danger exception to the general legal principle related to protection from a third party's conduct.

"Student Voluntarily Participated in Fight"
Williams v. City of New York (N. Y. A. D. 2 Dept., 837 N. Y. S. 2d 300), June 5, 2007.

The New York Supreme Court, Appellate Division, Second Department, held that elementary school student allegedly injured in a fight with another student in school's auditorium **was a voluntary participant** in the fight. Thus, any alleged inadequacy of supervision could **not** be considered a cause of the student's injuries as required for imposition of liability in her personal injury suit. In addition, the Court went on to state that school **are not insurers** of the safety of students, for they **cannot reasonably be expected to supervise and control continuously** *all* of the students' movements and activities.

Student Discipline:

"First Amendment Did Not Bar Student From Disciplinary Action for Leaving Campus"

Corales v. Bennett (C. D. Cal., 488 F. Supp. 2d 975), May 21, 2007.

On Tuesday, March 28, 2006, Anthony and three other middle school students left school after their first period class, without the prior permission or supervision of their parents or school authorities. It was their intent to walk to the high school and to participate in a protest pertaining to immigration reform; however, they found that the high school was on lockdown. Two days later, on Thursday, March 30, 2006, the assistant principal called the four students into his office after he learned of their absences from another student. He gave the students a stern lecture regarding their unexcused absences, and assigned them punishment. This consisted of all four students being precluded from attending an end-of-the-year school trip to an amusement park or dance. After the meeting with the assistant principal, all four students went back to their classes. At the end of the school day, Anthony went home and telephoned his mother to tell her he had gotten into trouble at school and had lost his end-of-the-year privileges. When Anthony's mother arrived home, she found that Anthony had attempted suicide by shooting himself in the head with a rifle. Anthony was pronounced brain dead the same day; however, he was kept on life-support equipment until donation of his organs could be arranged on April 1, 2006. Anthony left behind a suicide note that expressed regret to, and his love for, his family and friends. He apologized to his father for "making him mad", and that he killed himself because he had too many problems. In addition, he expressed contempt for the assistant principal (Bennett). Furthermore, he gave instructions to "tell Mr. Bennett he is a "mother#@(=)ker". A United States district court in California held that school officials, including Bennett, did **not** violate students' First Amendment by disciplining them for leaving campus to participate in a protest, because their First Amendment rights **were outweighed** by the need for school officials to ensure the safety of the students; there was **no** intentional infliction of emotional distress due to the lecture to the students by the assistant principal; and the student's suicide **was an unforeseen event**, thus precluding any negligence claim.

Torts:

"Basketball Player Injured When He Steps In Hole"
Casey v. Garden City Park-New Hyde Park School Dist. (N. Y. A. D. 2 Dept., 837 N. Y. S. 2d 186), May 22, 2007.

Ninth grade basketball player injured himself when he stepped in a hole in the surface of the basketball court located in a school yard playground. The plaintiff estimated that the hole was 1.5 feet wide and 2 inches deep. In addition, the plaintiff admitted that he generally played basketball several times a week on the same location where he was injured. Furthermore, he admitted that he has been playing at the location for approximately 40 minutes before the accident occurred. The New York Supreme Court, Appellate Division, Second Department, ruled that the plaintiff **consented to the risk** because he voluntarily participated in the game, and the hole was an open and obvious condition. Thus, the imposition of liability **was precluded** for the school district.

"Fourth Grader Sexually Assaulted In Boys Restroom"
Kim L. v. Port Jervis City School Dist. (N. Y. A. D. 2 Dept., 837 N. Y. S. 2d 241), May 29, 2007.

Notice of claim filed against school district by parents of a fourth grader, alleging that the student had been repeatedly sexually assaulted by another student, provided school officials **with sufficient information** to **satisfy** statutory requirements for a notice of claim. School officials **knew** of offending student's history of misconduct, but *nonetheless permitted him to have unsupervised contact with other students*. The school district asked that the case be dismissed; but the court **refused** the district's request and ruled that the district ***was liable/accountable*** for the student's assault.

"Substitute Teacher Physically Assaulted Elementary Student"
Todd v. Missouri United School Ins. Council (Mo., 223 S. W. 3d 156), May 29, 2007.

While on school premises and while serving in his capacity as a substitute teacher, James Patterson physically assaulted Kodey Todd (Todd) by grabbing him by the neck and lifting him off the ground. Patterson subsequently pleaded guilty to one count of third degree criminal assault, and one count of endangering the welfare of a child. Thereupon, plaintiff (Todd) brought suit against the school district's liability insurer (Missouri United School Insurance Council {MUSIC}), seeking payment of judgment against the school district for negligent hiring and retention of Patterson. The Supreme Court of Missouri held that teacher's intentional assault on student was *not* an "occurrence" as defined as defined in school district's insurer (MUSIC). MUSIC defined an "occurrence" as an *accident* occurring during the coverage period. Therefore, substitute teacher's intentional assault on student was **not** an "occurrence".

"School Nurse's Report Did Not Establish School's Knowledge of Facts"
Scolo v. Central Islip Union Free School Dist. (N. Y. A. D. 2 Dept., 838 N. Y. S. 2d 577), May 29, 2007.

On November 9, 2004, female infant petitioner was first grader attending Central Islip Union Free School District. During gym class that day, a fellow classmate came into such forceful contract with the infant plaintiff that she needed five or six stitches above her upper lip. That day, the school's nurse filled out an accident report, in which she wrote that the infant petitioner "was trying to pick up a ball when another student did not see her and ran into her." Some time after a medical examination on August 13, 2005, the infant petitioner allegedly "developed" a scar above her upper lip. A medical doctor then recommended that she undergo surgery to repair that scar. On January 18, 2006, the infant petitioner and her father filed a notice of claim upon the school district. The infant plaintiff stated that the classmate who "violently struck" her in her face during gym class had violent propensities, and school officials were aware of the offending student's propensities and past behavior. Therefore, school officials demonstrated negligent supervision of the offending student. The New York Supreme Court, Appellate Division, Second Department, held that the nurse's accident report **was insufficient** to give school officials *actual knowledge* of the essential facts underlying the claim; and the plaintiff's excuse for the delay in filing the notice of claim (that they were not aware of the extent of the student's injuries) **was inadequate**.

Commentary:

No commentary this month.

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).

April-May 2008 (#s 561, 562, & 563)

Legal Update for District School Administrators April - May 2008

Johnny R. Purvis*

West's Education Law Reporter
November 1, 2007 – Vol. 223 No. 1 (Pages 1 – 480)
November 15, 2007 – Vol. 223 No. 2 (Pages 481 – 1023)
November 29, 2007 – Vol. 224 No. 1 (pages 1 – 585)

Terry James, Chair, Department of Leadership Studies, University of Central Arkansas
S. Ryan Niemeyer, Editor, Director, University of Mississippi – Grenada and Assistant Professor, Leadership and Counselor Education
Shelly Albritton, Technology Coordinator, Department of Leadership Studies, University of Central Arkansas
Safe, Orderly, and Productive School Institute
Department of Leadership Studies
University of Central Arkansas
201 Donaghey Avenue
230 Mashburn
Conway, AR 72035
*Phone: 501-450-5258 (office)
*E-mail: jpurvis@uca.edu

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:

- Civil Rights
- Crimes
- Injunction
- Labor and Employment
- Religion
- Standards and Competency
- Student Discipline
- Torts

Commentary:

- No commentary this month.

Topics

Civil Rights:

"Student's Dream of Shooting Teacher Caused Her Suspension from School"
Boim v. Fulton County School Dist. (C. A. 11 [Ga.], 494 F. 3d 978), July 31, 2007.

A high school student who was suspended for 10 days based on violation of three school rules in connection with a story she wrote about her "dream" of shooting her math teacher. Her mother, serving as her daughter's conservator, filed suit against the school district, its superintendent, and the high school principal alleging violation of student's free speech rights under the First Amendment of the United States Constitution. The United States Court of Appeals, Eleventh Circuit, held that student's 10 day suspension for violating school rules in connection with her writing about the "dream" she had of shooting her teacher did **not violate** her free speech rights under the First Amendment. The student's writing of a passage in her class notebook about a dream, where she described taking a gun into her sixth period classroom and shooting her math teacher in front of the entire class, and then giving the notebook to another student to read the passage, **clearly caused and was reasonably likely to further cause a material and substantial disruption to maintenance of order and decorum** within her high school. **Note:** The passage *("Dream")* read as follows: "As I walk to school from my sisters car my stomach ties itself in nots. I have nervousness tingeling up and down my spine and my heart races. No one knows what is going to happen. I have the gun hidden in my pocket. I cross the lawn and hed to my locker on A hall. Smiling sweetly to my friends hoping they dont notice the cold sweat that has developed on my forehead. Im walking up to the front office when the bell rings for class to start. So afraid that I think I might pass out. I ask if my mother dropped off a book I need. No. My first to classes pass by my heart thumping so hard Im afraid every one can hear it. Constantly I can feel the gun in my pocket. 3rd period, 4th, 5th, and then 6th period my time is coming. I enter the class room my face pale. My stomach has tied itself in so many knots its doubtful I will ever be able to untie them. Then he starts taking role. Yes, my math teacher. I lothe him with every bone in my body. Why? I don't know. This is it. I stand up and pull the gun from my pocket. BANG the force blows him back and every one in the class sits there in shock. BANG he falls to the floor and some one lets out an ear piercing scream. Shaking I put the gun in my pocket and run from the room. By now the school police officer is running after me. Easy I can out run him. Out the door, almost to the car. I can get away. BANG this time a shot was fired at me. I turn just in time to see the bullet rushing at me, almost like its in slow motion. Then, the bell rings, I pick my head off my desk, shake my head and gather up my books off to my next class."

"Student Raped Following Attempt to Reenter Locked School"
King ex rel. King v. East St. Louis School Dist. 189 (C. A. 7 [Ill.], 496 F. 3d 812), August 7, 2007.

A mother brought Section 1983 claim on behalf of her daughter against school district, school principal, and former superintendent of the district alleging defendants had violated student's rights under the Due Process Clause of the Fourteenth Amendment by failing to protect her from a state-created danger. At the end of the school day on May 4, 2004, Jerica King, a student at East St. Louis Senior High School, went to see her guidance counselor. The meeting lasted less than an hour; however, Jerica missed her school bus. After the meeting with her counselor, Jerica exited the school to check if a public bus was waiting near the school. When she did not see a bus, Jerica attempted to reenter her school to call her mother, but the school's doors were locked. A hall monitor met Jerica at the door and denied her reentry to call her mom because to reenter the school after the closing of the school day violated school policy. Jerica proceeded toward a nearby public transportation bus stop. As she approached the bus stop, she was abducted at gun-point by two men. The men took her to a house where she was raped. She was released the next morning. The United States Court of Appeals, Seventh Circuit, held that (1) the school district's policy preventing unsupervised students from returning to school at the end of the day did **not** violate the student's due process rights and (2) school counselor keeping the student in a meeting until after school buses had left for the day did **not** create a danger to the student.

"Players Circulate Hate Football Coach Petition"
Lowery v. Euverard (C. A. 6 [Tenn.], 497 F. 3d 584), August 3, 2007).

High school students brought action against school principal, football coach, and board of education, claiming that their removal from the team violated their First Amendment rights. The United States Court of Appeals, Sixth Circuit, ruled that it **was reasonable** for high school officials to believe that a petition ("I hate Coach Euvard and I don't want to play for him.") circulated among the school's football team (Jefferson County High School) members by students (N=4) who were members of the football team would disrupt the team by eroding the coach's authority and dividing players into opposite campus. Thus, school officials did **not** violate students' First Amendment free speech rights by removing them from the team.

"Police Officer Used Excessive Force on Student"
Harris v. City of Cadillac (W. D. Mich., 499 F. Supp. 2d 904), March 19, 2007.

A fourteen-year-old female student enrolled at Cadillac Junior High School was disciplined for a verbal confrontation with another student. Part of her punishment was to eat her lunch in the school's office rather than the cafeteria. However, one day following her imposed punishment, she was observed by the school's principal in the school's cafeteria. Thereupon, the principal called the City of Cadillac Police Department, which dispatched a female officer. The officer approached the student with pepper spray in hand. The student was compliant with the officer's demands; however, the officer sprayed the plaintiff in the face and pushed her into a wall. After the student fell to the floor, the officer grabbed her by her clothing and hair and dragged her to the ladies' restroom. The United States District Court, W. D. Michigan, Southern Division, stated that police officer was **not** protected by qualified immunity, and any reasonable officer **should have known** that her conduct was objectively unreasonable in light "the manner in which a reasonable prudent law enforcement officer would have responded in like circumstances."

Crimes:

"Student Put Water from a Urinal into Teacher-aide's Water"
In re P. D. (Ariz. App. Div. 1, 166 P. 3d 127), September 4, 2007.

Fifteen-year-old eighth grader collected water from one of the urinals in the boy's restroom in a empty water bottle. He thereupon brought the liquid to his classroom and poured the contents into a teacher-aide's cup of soda that she has sitting on her desk when she left the classroom to copy papers. When she returned to the classroom she noticed some liquid has been spilled around her cup, which had not been there before. She took a sip and noticed the drink did not taste right; it was watered down and tasted of salt and chlorine. Charges were filed against the juvenile for committing aggravated assault by adding a harmful substance to the teacher-aide's drink. The student was adjudicated a delinquent by the Superior Court of Maricopa County for committing one count of aggravated assault. Thereupon, plaintiff appealed the lower court's decision to the Court of Appeals of Arizona. The Court of Appeals of Arizona, Division 1, Department C, stated that "touching" occurred within the meaning of Arizona's assault statute when the student put the water from the urinal into the teacher-aide's soda, and she subsequently drank from it.

Injunction:

"Freshman Touches Teachers Buttocks"
Brown v. Plainfield Community Consol. Dist. 202 (N. D. Ill., 500 F. Supp. 2d 996), August 8, 2007.

On April 23, 2007, a male high school freshman brushed his teacher's buttocks with the back of his hand. When the teacher reported the incident to the school's administrator, she also stated that the student had done the same thing about a week earlier. The first time she assumed it had been an accident, but after the second incident she concluded his actions were not accidental and thereupon reported him to school officials. Thereupon, the student was subsequently expelled for the remainder of the school year and for the entirety of the 2007-2008 school year. The United States District Court, N. D. Illinois, Eastern Division, held that the student was **not** entitled to a preliminary injunction requiring school officials to reenroll him, given the unlikelihood of success on the merits of his claims. Even though the student would undoubtedly suffer harm from not attending school, school officials **had an overriding responsibility** to maintain a school setting in which students, teachers, and staff had a right to be free of harassment and intimidation. Furthermore, school officials **needed latitude** to punish students for their misconduct in a manner they deemed appropriate.

Labor and Employment:

"School District Did Not Have to Accommodate Disabled Teacher"
Kurek v. North Allegheny School Dist. (C. A. 3 [Pa.], 233 Fed. App. 154), May 1, 2007.

School district's requirement that teachers work a 7-3/4 hour day **was essential function of a teacher's job**. Thus, school district was **not required** under Rehabilitation Act (Section 505) to accommodate disabled English teacher (suffered from "polycystic kidney disease) by allowing her to be released early from school, where collective bargaining agreement (CBA) stated that teachers "shall work where assigned a schedule of 7-3/4 consecutive hours on site." Furthermore, the teachers' handbook specified that teachers who were tardy, or who took unauthorized early departure, would be subject to discipline, up to and including dismissal. In addition, the plaintiff's unavailability at the end of the school day on a regular basis **would effectively increase other teachers' workloads**. **Note:** The teacher's physician proposed the following accommodations: (1) teacher take a break between periods; (2) teacher be allowed to sit while teaching; (3) teacher be assigned to teach 2 subjects that she had previously taught; (4) teacher be allowed to be released early from school. The school district agreed to the first 3 accommodations, but was unwilling to allow Kurek to leave school early.

"School District Did Not Have Just Cause to Terminate Custodian for Smoking Marijuana While Off-Duty"

Loyalsock Tp. Area School Dist. v. Loyalsock Custodial Maintenance (Pa. Cmwlth., 931 A. 2d 75), July 17, 2007.

Plaintiff worked as a custodian for approximately 28 years prior to being struck in the face by a piece of equipment (January 14, 2005) while she was working. The following day, she went to an emergency room for treatment and had to undergo a drug and alcohol screening because the injury involved a workers' compensation claim. The screening indicated a positive test regarding marijuana use. At first she denied using marijuana, but finally admitted that she took a few puffs on a marijuana cigarette while she was off-duty and off school property. She went on to state that she was not a regular user of marijuana. She was later retested and the results were negative. However, the school board voted to terminate the custodian's employment with the school district. The Commonwealth Court of Pennsylvania held that the school district **lacked just cause** regarding her employment termination.

"Teacher Deprived of Due Process When School District Terminated Her Employment Because Her Teaching Certificate Lapsed"

Rettie v. Unified School Dist. 475 (Kan. App., 167 P. 3d 810), September 28, 2007.

Plaintiff was a tenured teacher qualified to teach early childhood handicapped classes; however, on July 7, 2004, her teacher's certificate lapsed due to her failure to complete the prescribed continuing education requirements. She received a letter dated July 19, 2004, indicating that her teaching position with the district had been terminated. However, the school board had not passed a resolution authorizing or approving the teacher's termination. The teacher appealed the decision of the Geary District Court which stated that the teacher was not entitled to a due process hearing by the board because she had allowed her teacher's certificate to lapse. The Court of Appeals of Kansas *reversed and remanded* the decision back to the district court because the school board could **not** deprive the teacher of her property interest in her employment without providing her a due process hearing under the state of Kansas's Teacher Due Process Act. However, the Court went on to state that the board *had the authority* to terminate the employment of the teacher because she had allowed her teaching certificate to lapse. However, the board **must now go back and provide the teacher with a hearing** in order to determine, if in fact, the lapse in the teacher's certificate was in fact the cause of her termination.

"Teacher Failed to Exhaust Her Administrative Remedies Because She Failed to File a Timely Grievance"

Hitchcock v. Board of Trustees Cypress-Fairbanks Independent School Dist. (Tex. App.-Hous. (1 Dist.), 232 S. W. 3d 208), May 24, 2007.

Plaintiff was employed as a physical education teacher and was required to be at school from 7:30 a. m. until 3:30 p. m. This time period was defined by the school district as a teacher's "workday". At the same time, the school day began for students at 8:10 a. m. and ended at 3:10 p. m. This time period is referred to as the "instructional day". The plaintiff's planning period was scheduled from 7:30 a. m. until 8:25 a. m. At some point during the school year a newly-hired teacher informed the plaintiff that "planning periods" outside of the instructional day were illegal. Under Texas Education Code, each classroom teacher was entitled to as least 45 minutes ever day, "within the instructional day" for instructional planning, parent-teacher conferences, evaluating students' work, and planning. The plaintiff brought action against the school district, alleging that the district breached her employment contract because her planning period was scheduled within the working day but outside of the instructional day. Accordingly, she sought payment for the time in which her planning period was illegally scheduled. The Court of Appeals of Texas, Houston (1st Dist.), held that the teacher **failed** to exhaust her administrative remedies when she **failed** to timely bring her grievance against the school district, alleging that the district illegally scheduled her planning period within the working day but outside of the instructional day, because of the school district's policy requiring grievances to be filed within 15 business days of the date the employee first knew of the action giving rise to the grievance.

"Discharged Teacher-Coach Entitled to Unemployment Benefits"

Greenwood Public School Dist. v. Mississippi Dept. of Employment Sec. (Miss. App., 962 So. 2d 684), February 27, 2007.

Rodney Major (plaintiff) was employed as a physical education teacher and head basketball coach by the Greenwood Public School District from 2001 until 2005. Nearing the end of the 2005 school year, the plaintiff was approached by the principal of Greenwood High School and informed that his contract would not be renewed for the 2005-2006 school year. Major's principal encouraged him to resign, advising him that a resignation would afford him better future employment opportunities. The plaintiff resigned prior to the beginning of the 2005-2006 school year. Soon thereafter he applied for unemployment benefits from the Mississippi Department of Employment Security (MDES) and received such benefits. The school district objected to the MDES decision. The Court of Appeals of Mississippi held that **substantial evidence supported** the MDES finding that the teacher-coach's "discharge" was **not** due to his misconduct so as to disqualify him from receiving unemployment benefits. The teacher was informed by the school district that his contract would not be renewed and the principal gave the teacher the option of resigning or being non-renewed, in which teacher resigned. The rationale behind not renewing the teacher's contract was based upon the district's dissatisfaction with the direction of the basketball program and with the overall handling of the school's physical education program. The aforementioned reasons did **not** amount to the required types of misconduct necessary to preclude unemployment benefits.

"Teacher's Discharge Must Be Based Primarily on Student Performance on Tests"
Sherrod v. Palm Beach County School Bd. (Fla. App. 4 Dist., 963 So. 2d 251), September 19, 2007.

A school board's **failure** to base its decision to discharge a career contract teacher *primarily on student performance on annual tests,* **required reversal** of final order for discharge. Florida's statute *required* that student performance on annual tests *must be the "primary basis"* for a teacher's evaluation and *required* that annual assessment primarily use data and indicators of improvement in student performance assessed annually. The school district presented **no** evidence pertaining to student performance on prescribed annual tests, and the district's assessment did **not primarily use** data and indicators of improvement in student performance assessed annually.

Religion:

"School Board Can Pray at Meeting"
Doe v. Tangipahoa Parish School Bd. (C. A. 5 [La.], 494 F. 3d 494), July 25, 2007.

A plaintiff on behalf of his two sons challenged several prayer events permitted by the Tangipahoa Parish School District. The challenged prayer events included: pre-game prayers over the public-address system at athletic events; prayers including student athletes prior to, and after completion of, such events; prayers by students to the student body over the public-address system, and the school board opening its meetings with a prayer. All but the challenge to the board's prayer practice were resolved by a consent judgment in August 2004. The United States Court of Appeals, Fifth Circuit, held that plaintiff **lacked standing** to bring Establishment Clause (1st Amendment of the United States Constitution) to challenge parish school board's recitation of Christian prayers before opening of board meetings. *Standing* could **not** be based solely on injury arising from mere abstract knowledge the invocations were said prior to the start of official board meetings. There was **no proof** on record that parent or students were exposed to and could thus claim to have been injured by invocations given at any parish school board meeting.

"Distribution of Bibles during Class Time Prohibited"
Doe v. South Iron R-1 School Dist. (C. A. 8 [Mo.], 498 F. 3d 878), August 21, 2007.

The United States Court of Appeals, Eighth Circuit, ruled that a preliminary injunction against school district's policy of allowing the distribution of Bibles to fifth grade students on school property, and during "instructional time", was **not** invalid content-based violation of protected religious speech.

"Open Air Preacher Arrested Outside of Middle School"
Carr v. City of Hillsboro (D. Or., 497 F. Supp. 2d 1197), July 9, 2007.

On March 19, 2004, plaintiff, Michael Carr, was arrested in front of J. B. Thomas Middle School in Hillsboro, Oregon. Carr, dressed in full military fatigues and wearing a sandwich board, approached the school just as students were being dismissed for the day, and were boarding approximately ten school buses parked in front of the school's main entrance. He stood in front of the school and began preaching in such a manner that he could be heard throughout the area in and around the front of the school. A school security guard asked him to cross the street. The plaintiff said "no" and kept on yelling and screaming. An assistant principal approached the plaintiff and asked him to cross the street and notified him that he was on school property. He stated "no" and turned around toward the students and yelled that the vice principal and their teachers wanted them to "burn in hell". The school's administration called police, who came and arrested Carr for trespassing. A United States District Court, D. Oregon, stated that the arrest of the preacher did **not** violate his First Amendment rights; the police **had probable cause** to arrest and detain the preacher; and the city of Hillsboro was **not deliberately indifferent** to providing police officers with First Amendment training.

Standards and Competency:

"Boards Decision to Not Renew Teacher's Contract Was Not Arbitrary"
Moore v. Charlotte-Mecklenburg Bd. of Educ. (N. C. App., 649 S. E. 2d 410), September 4, 2007.

A middle school teacher appealed the board of education's decision to not renew her teaching contract due to complaints that had been received pertaining to the teacher's use of a ruler to hit students and the use of profanity in front of students. In a letter to her principal, she admitted to the use of a yardstick or ruler "to awaken students or get their attention by slapping it down on a desk and to prod them to get in a straight line by showing them what a straight line is." The Court of Appeals of North Carolina stated that the board's decision to not renew a teaching contract of a probationary teacher was **not** arbitrary *"under the whole record test"*. The school's administration investigated allegations that the teacher inappropriately used a ruler and profanity while teaching, and found the allegations to be supported by evidence. Thereafter, the administration communicated its findings to school board, along with its evaluation of the teacher's performance which contained evaluations of "below standard" and "unsatisfactory". Furthermore, the superintendent recommended non-renewal of the teacher's contract.

Student Discipline:

"Student's Internet Message Depicting Shooting of Teacher Posed Reasonable Risk"
Wisniewski v. Board of Educ. Of Weedsport Cent. School Dist. (C. A. 2 [N. Y.], 494 F. 3d 34), July 5, 2007.

A middle-school student's sending of instant messages over internet to classmates displaying drawing of pistol firing bullet at person's head, above which were dots representing splattered blood and beneath which appeared word "kill" followed by the name of the student's English teacher, **posed a reasonable foreseeable risk**. The drawing would **come to the attention of school officials and would materially and substantially disrupt work and discipline within the school**. Therefore, school officials did **not violate** student's First Amendment free speech rights by suspending him. Although the student created and transmitted the drawing off school property, the drawing's *potentially threatening content and its distribution* to fifteen recipients, including classmates during a 3 week period; ***made it a reasonably foreseeable it would come to school authorities' attention***.

"Student's Speech Rights Violated by School Officials for Creating Internet Mockery of Principal"
Layshock ex rel. Layshock v. Hermitage School Dist. (W. D. Pa., 496 F. Supp. 2d 587), July 10, 2007.

Plaintiff was a 17-year-old high school senior. On or about December 10, 2005, plaintiff created "the profile" of his high school principal on a website entitled "MySpace.com" (www.myspace.com). The student created the profile of his principal by using his grandmother's computer, at her home, during non-school hours. No school resources were used to create the profile except for a photograph of the student's principal, which was copied from the school's website by performing a smile "copy and paste". The mockery of the student's high school principal consisted of a photograph of the principal with a series of silly and crude questions and answers similar to the following: Question – In the past month have you smoked? The profile states "big blunt". Question – Alcohol use? Profile states "big keg behind my desk". Question – Have you been beaten up? Profile states "big fag". Question – Have you gone on a date this past month? Profile states "big hard-on". The United States District Court, W. D. Pennsylvania, held that **no nexus** (connection) **existed** between the student's creation of internet parody (mockery) of high school principal and a substantial disruption of the school environment. Therefore, the school district's suspension of plaintiff **violated** his *free speech rights under the First Amendment of the United States Constitution*. There were **no** classes canceled. **No** widespread disorder occurred. Furthermore, the only in-school conduct in which student engaged in relation to "the profile" was showing it to other students in a classroom. Additionally, the only charges made by school officials *were directed **only** at the student's off-campus conduct*.

"High School Student's Due Process Rights Violated"
Rigau ex rel. Rigau v. District School Bd. of Pasco County (Fla. App. 2 Dist., 961 So. 2d 382), August 3, 2007.

School board suspended high school student for 10 days based on the fact that 2 or 3 other boys stated that plaintiff was involved in consuming alcohol before arriving at a school sponsored "Grad Bash" at Universal Studios-Orlando, Florida. Student submitted evidence that an Orlando police officer conducted a field sobriety test prior to his admittance to the Universal Studios. A Florida district court stated that the student's due process rights **were violated** because the only evidence used by the board in arriving at their decision to suspend the student came from unnamed accusers who stated that plaintiff was in close proximity to alcohol throughout the evening.

"Tip From Student Sufficient To Establish Reasonable Suspicion"
D. G. v. State (Fla. App. 3 Dist., 961 So. 2d 1063), July 25, 2007.

A statement from middle school student-informant that another student "may have been in the possession of marijuana" **was sufficient** to give assistant principal reasonable suspicion to order plaintiff to empty his pockets. The student-informant was **not** an anonymous informant, and while the student-informant had previously given information pertaining to a similar incident (which proved to be incorrect), such did **not** rebut presumption of reliability or reasonable basis of assistant principal's conclusion that the information was sufficient.

"Search of Students Locker Legal"
In re Juvenile 2006-406 (N. H., 931 A. 2d 1229), September 25, 2007.

Juvenile, a high school student, was adjudicated a delinquent for committing a drug-related offense. The juvenile appealed the decision based on the premise that the search of his locker was unreasonable. The Supreme Court of New Hampshire held that the search of the high school student's locker (Found a backpack containing a pot pipe which smelled of burnt marijuana, vegetable matter believe to be marijuana, a lighter, and thirty-two dollars in cash.) by the school's assistant principal **was reasonable.** The search **was justified** at its *inception* based on a report that the student was in possession of a large pot pipe, which *provided* assistant principal with **reasonable grounds** for suspecting that a search of places where a large pot pipe might be located would turn-up marijuana. The assistant principal did not know the identities of the students who provided the information about the juvenile and his pot pipe; however, he *did know* the teacher who reported the information to him and the teacher *knew the circumstances* under which he obtained that information.

"Student Suspension Upheld for Possession of Toy Guns"
Moore ex rel. Moore v. Appleton City R-II School Dist. (Mo. App. S. D., 232 S. W. 3d 642), September 6, 2007.

A high school student shot a fellow student with an "Air Soft brand toy gun" (Uses a simple spring for propulsion of a plastic projectile very similar to a BB.) while sitting in his vehicle in a school parking lot on February 5, 2006. Then on February 7, 2006, the plaintiff was found with two Air Soft toy guns locked inside his vehicle while on school property. A Missouri court of appeals held that substantial evidence **supported** trial court's finding that the "weapons" guidelines adopted by the school board **were applicable** to the offending student, who was suspended (one school year-180 days) from school for violation of the school's weapons policy. The court went on to state that the toy guns **were properly considered weapons** under the school districts weapons policy because the "guns" were **designed to imitate a firearm**.

Torts:

"Independent Contractor for School Security Not Covered Under Torts Claims Act"
Knight v. Terrell (Miss., 961 So. 2d 30), July 26, 2007.

Eljean Knight and her son Keith Knight were both school teachers at Heidelberg High School. A student began a confrontation with Mrs. Knight. Her son attempted to intervene, but at some point Mrs. Knight was pushed or fell to the ground. The injury she suffered caused her death. Keith Knight alleged that Greg Terrell (Terrell Security Services) failed in multiple ways to perform his duties, which resulted in the death of his mother. The Circuit Court of Jasper County granted independent contractor (Greg Terrell) summary judgment based on the fact that he served as a constable and was entitled to immunity be virtue of Mississippi's Tort Claim Act. However, the Supreme Court of Mississippi reversed and remanded the case back to the circuit court because the Mississippi Tort Claim Act did **not** provide sovereign immunity to an independent contractor who was appointed by the Heidelberg school board to act as a peace officer for the school district.

"Mother Slipped and Fell Due to Puddle of Water"
Durrant v. Board of Educ. Of City of Hartford (Conn., 931 A. 2d 859), October 2, 2007.

Plaintiff went to West Middle School (Hartford Public Schools) to pick up her six-year-old son from an after school day care and homework study program conducted by the Boys and Girls Club at the school. As she exited the school, she slipped and fell due to a puddle of water that had accumulated on the backdoor stairs. The Supreme Court of Connecticut stated that the plaintiff was **not** a member of an identifiable class of foreseeable victims as pertaining to "an exception to governmental immunity for discretionary acts." Thus, the school board and school officials **were shielded** from liability. The court went on to state that **no** state statute or legal doctrine required the plaintiff to enroll her child in the after school program, **nor did any law require** her to allow her child to remain after school on that particular day.

"Pedestrian Fell Over Cement Dividers in School's Parking Lot During Power Outage"
Solan v. Great Neck Union Free School Dist. (N. Y. A. D. 2 Dept., 842 N. Y. S. 2d 52), September 18, 2007.

Plaintiff arrived at the faculty parking lot of the Great Neck North High School minutes after a power failure had extinguished the lights illuminating the parking lot. While attempting to walk across the parking lot to attend a school board meeting, plaintiff tripped and fell over a cement parking space divider, which she was unable to see due to the darkness. The New York Supreme Court, Appellate Division, Second Department, held that while a power outage *did not relieve a school district of its duty to address the dangerous condition* created by the loss of power when an otherwise open and obvious cement divider in a parking lot was obscured from view by darkness, the school district did **not** *have a reasonable time to address* the darkness in the parking lot in the matter of minutes between the power outage and the pedestrian's fall. Therefore, the imposition of liability was **precluded** on behalf of the school district.

"Teacher's Fear of Bodily Injury Warranted Stalking Injunction Against Student's Parent"
Abernathy v. Mzik (Utah App., 167 P. 3d 512), July 27, 2007.

An English teacher (Abernathy) at Snow Canyon High School lowered defendant's daughter's grade in an Advanced Placement Literature and Composition class (December 2004) from an "A-" to an "Incomplete" due to her and several other students participation in a form of academic dishonesty. Thereafter. the defendant (student's father) protested the teacher's decision and threatened to take legal action if his daughter's grade was not changed to an "A" (Any grade less than an "A" would keep student from being the class valedictorian.). On January 3, 2005, a three hour meeting was held with the teacher, principal, and the student's parents. During the meeting the father became very hostile and threatening (first incident). On or about January 4, 2005, for reasons that are unclear, the teacher changed the student's grade from an "Incomplete" to the original "A-". Still not satisfied because any grade less than an "A" meant his daughter would not be class valedictorian, the student's father confronted teacher in front of the office at the high school. The police had to be called and the defendant was instructed to leave and not return to the school (second incident). On May 26, 2005, the defendant and his wife were attending his daughter's high school graduation ceremonies, when the defendant decided to confront the teacher and her husband in a very threatening and intimidating manner. One of the statements he made toward the teacher was, "You are the most disgusting excuse for a teacher." Abernathy became so upset by the provocation that she later sought medical attention at a local hospital, where she was diagnosed as having elevated blood pressure and emotional trauma. The Court of Appeals of Utah stated that the conduct of the student's father ***caused*** the teacher **to reasonably fear bodily injury**, such that issuance of civil stalking injunction against the defendant **was warranted**. Defendant was so angry at the teacher for lowering his daughter's grade that he thrust a tape recorder in the teacher's face and caused her to feel that her privacy and work environment had been invaded. In addition, the defendant verbally attacked the teacher and then threatened the teacher's husband. Thus, these acts **were sufficient** to cause the teacher to reasonably fear bodily injury.

Commentary:

No commentary this month.

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).

Special Note:

The "Legal Update for District School Administrators" is dedicated to the memory of **Dr. Wm. (Bill) Leewer** (November 17, 1950 – May 26, 2008) and **Dr. Jack Klotz** (February 26, 1943 – May 20, 2008). Dr. Leewer was a professor at Mississippi State University-Meridian, Mississippi and editor of the Legal Update for District School Administrators. Dr. Klotz was a professor in the Department of Leadership Studies at the University of Central Arkansas and a former professor of educational administration at the University of Southern Mississippi. Both of these gentlemen and educators will be greatly missed by their families, friends, and their students. They were not just colleagues of mine, but very dear friends. Their memory and legacy will live on through their students and their writings. Strength and honor

June-July 2008 (#'s 564, 565, & 566)

Legal Update for District School Administrators June - July 2008

Johnny R. Purvis*

West's Education Law Reporter
December 13, 2007 – Vol. 224 No. 2 (Pages 587 – 1018)
December 27, 2007 – Vol. 225 No. 1 (Pages 1 – 1004)
January 10, 2008 – Vol. 226 No. 1 (pages 1 – 537)

Terry James, Chair, Department of Leadership Studies, University of Central Arkansas
S. Ryan Niemeyer, Editor, Director, University of Mississippi – Grenada and Assistant Professor, Leadership and Counselor Education
Shelly Albritton, Technology Coordinator, Department of Leadership Studies, University of Central Arkansas
Safe, Orderly, and Productive School Institute
Department of Leadership Studies
University of Central Arkansas
201 Donaghey Avenue
230 Mashburn
Conway, AR 72035
*Phone: 501-450-5258 (office)
*E-mail: jpurvis@uca.edu

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
- Civil Rights
- Compensation and Benefits
- Crimes
- Disabled Students
- Labor and Employment
- Security
- Student Discipline
- Tort

Commentary:

- No commentary this month.

Topics

Abuse and Harassment:

"Superintendent Possibly Indifferent Regarding Substitute's Sexual Misconduct"
A. G. ex rel. K. C. v. Autauga County Bd. of Educ. (M. D. Ala., 506 F. Supp. 2d 927), May 11, 2007.

On October 29, 2004, six minor plaintiffs (five females and one male), who were fourth grade students at Prattville Elementary School in Autauga County, Alabama, alleged that they suffered sexual harassment at the hands of a substitute teacher (a retired Air Force Colonel). The students alleged that the perpetrator, among other things, did the following: placed female student in his lap, touched female student's butt, held female student around her waist, touched female student between her legs, touched female student's breast, and rubbed male student on his back and chest. One of the students told the assistant principal about the incident, and the assistant principal relayed the information to the school's principal. The principal informed the perpetrator to immediately leave campus, while the assistant principal stayed with the class. In addition, the principal immediately informed the Prattville Police Department. On October 31, 2004, the superintendent revised the school district's "Teachers' Substitute List", along with a memo stating that the perpetrator was not to be called as a substitute and was not to enter any school facility. Action was brought on behalf of the fourth-grade students against the school board and superintendent. The United States District Court, M. D. Alabama, Northern Division, held that **fact issues existed** as to whether the school district's superintendent acted with deliberate indifference to reports of sexual abuse and harassment of substitute teacher. Thus, **summary judgment was precluded** on behalf of the board of education and superintendent under Title IX. On April 28, 2006, the perpetrator pled guilty to seven counts of sexual abuse of a minor. **Note:** The courts will examine the case further subject to plaintiffs' efforts to extend their legal efforts.

Athletics:

"No Metal Baseball Bats"
USA Baseball v. City of New York (S. D. N. Y., 509 F. Supp. 2d 285), August 28, 2007.

Coaches and parents/guardians of New York City high school baseball players, manufacturers of sporting goods, and others sued the city of New York; challenging the constitutionality of a ordinance prohibiting the use of metal baseball bats in high school baseball games. The case arose when the City Council of New York banned non-wood baseball bats because such bats posed an unacceptable risk for injury to children, particularly those who play competitive high school baseball. The United States District Court, S. D. New York, ruled that the ordinance did **not** violate either the due process clause or the equal protection clause of the Fourteenth Amendment of the United States Constitution because **a rational basis existed** for the determination that metal baseball bats could result in increased risk of injury for children.

"Powerlifter Assumed Risk of Injury at Powerlifting Meet"
American Powerlifting Ass'n v. Cotillo (Md., 934 A. 2d 27), October 16, 2007.

Powerlifting competitor (with 10 years of experience) brought negligence action against power lifting association that sanctioned the event, event organizer, and board of education that operated the high school where the event took place for injuries (shattered jaw and damage to several teeth) he received while attempting to bench press 530 pounds. Prior to the meet, all powerlifters were informed that they could provide their own spotters; however, the plaintiff elected to use the spotters (one 15-year-old and one 14-year old male students) provided by the organizers of the meet. The Court of Appeals of Maryland held that (1) competitor **assumed the risk of injury** that spotters might negligently fail to catch the lift bar when he participated in the meet and (2) alleged negligent training of the spotters **was irrelevant** to the plaintiff's **assumption of risk**.

Civil Rights:

"School District Not Liable for Former Teacher Molestation of a Student"
Dale v. Stephens County, Georgia School Dist. (C. A. 11 [Ga.], 237 Fed. App. 603), June 27, 2007.

In 2003, plaintiffs accused Joey Wilson of molesting their daughters while he was their teacher in a White County school. Wilson had worked as a teacher for the Stephens County School District (defendant) for several years prior to teaching in White County School District. It was an undisputed fact that Wilson was employed by the White County School District, not the Stephens County School District when the alleged conduct occurred. The United States Court of Appeals, Eleventh Circuit, held that the school district (Stephens County School District) which *had employed* the teacher (Joey Wilson) several years *before* he molested the plaintiffs' daughters while working for the White County School District was **not** liable under Section 1983. Local governments can **never be liable** under Section 1983 for the acts of those whom the local government has **no** authority to control.

"School's Administration Had Qualified Immunity from Liability Regarding Teacher's Molestation of Parents' Daughters"
Dale v. White County, Georgia School Dist. (C. A. 11 [Ga.], 238 Fed. App. 481), June 27, 2007.

School principal and assistant principal **had qualified immunity** from liability in parents' action under Section 1983 arising out of an elementary teacher's sexual molestation of their daughters who were in the fifth grade at the time of the molestation. **Neither** principal nor assistant principal **had notice** that the teacher was a threat to students or knew that the teacher would abuse students. Furthermore, **neither** school administrator **was deliberate indifferent** in regard to students' constitutional rights and Title IX claims.

"Students Wear Black Armbands to School Protesting School Uniform Policy"
Lowry v. Watson Chapel School Dist. (E. D. Ark., 508 F. Supp. 2d 713), August 22, 2007.

Students and parents brought action against school district and various school officials, alleging that school officials violated their freedom of expression in disciplining students who wore black armbands to school in protest of the district's mandatory school uniform policy. Students and parents handed out black armbands to be worn to school in protest of the student uniform policy on October 6, 2006. On October 6, 2006, several students wore black armbands to the junior and senior high schools. The students who wore the armbands were disciplined for violating the district's uniform policy. The United States District Court, E. D. Arkansas, Pine Bluff Division, held that mandatory school uniform policy restrictions on students' expressive conduct was **not** unconstitutionally overbroad under the First Amendment of the United States Constitution, given that the policy was adopted in accordance with Arkansas law. **No** evidence was presented that the uniform policy regulated any particular viewpoint help by either students or parents. The policy *merely regulated* the types of clothes that students could wear to school. Furthermore, the policy did **not** bar personal inter-communication among students necessary to an effective educational process.

"Banning Confederate Flag on Students' Clothing Did Not Violate First Amendment"
B. W. A. v. Farmington R-7 School Dist. (E. D. Mo., 508 F. Supp. 2d 740, August 10, 2007.

School district and officials did **not** violate high school students' First Amendment rights to freedom of speech and expression by banning students from wearing clothing that depicted the Confederate flag. School officials had reason to believe that students displaying the Confederate flag *would cause a substantial and material disruption*. The administration at Farmington High School had three previous incidents (White male student urinated on a black male student and two separate fights between white and black male students.) that they believed were racially motivated. In addition, the racial incidents had caused two black students to leave the school district and the local newspaper criticized school officials handling of race relations within its schools.

"Search of Student's Locker Reasonable"
Roy ex rel. Roy v. Fulton County School Dist. (N. D. Ga., 509 F. Supp. 2d 1316), March 7, 2007.

On November 3, 2005, school officials received a report that Mark, a 10th grade student, had stolen an MP3 player from another student's locker and attempted to sell it. School officials suspended the student for eight school days. The father of the student brought action against school officials and the school district for alleged violation of his son's Fourth and Fourteenth Amendments rights The United States District Court, N. D. Georgia, Atlanta Division, stated that: (1) High school assistant principal **had reasonable grounds** for the search of the student's locker because she received a tip from another student who was allegedly involved in the theft and (2) School officials **provided sufficient due process** to satisfy the Fourteenth Amendment because they informed the student of the accusations against him, explained the evidence, and took a written statement (obtained his side of the incident) from him.

"Motorists Seriously Injured In a Head-On Collision with Student Driver after High School Prom"
Watson v. Methacton School Dist. (E. D. Pa., 513 F. Supp. 2d 360), May 14, 2007.

School officials and after-prom celebration planning organization did **not** affirmatively use their authority in a way that created a danger to motorist or that rendered motorist more vulnerable to danger so as to create a state-created danger, when a student fell asleep while driving home after an all night high school prom. There was **no** action by school officials or prom committee member that required any party attendee to stay awake all night or that required an attendee to drive him/herself home in any condition, fatigued or not. All students were free to leave the prom and were never compelled to be there or to stay there, but could come or go as their parents permitted. However, defendants did *not* provide alternative transportation, such as a bus. Furthermore, prom officials did *not* individually evaluate each attendee as they left the prom. **Note:** On or about 6:00 a. m. student and his date left the prom and did not go directly home. Instead they eat breakfast at an IHOP, the driver took his date home, stopped and got gas, and while driving home fell asleep and crossed into plaintiff's oncoming lane of traffic.

"Students Entitled to "Preliminary Injunction" for Wearing Button Protesting School Uniform Policy"

DePinto v. Bayonne Bd. of Educ. (D. N. J., 514 F. Supp. 2d 633), September 17, 2007.

Two fifth grade students attending two separate elementary schools in the Bayonne School District wore buttons to protest the district's mandatory uniform policy. Both buttons included the phrase "No School Uniforms" and a slashed red circle. In addition, each of the writing overlays contained a historical photograph that appeared to portray Hitler's youth movement. Plaintiffs sought a preliminary injunction to prevent the school district from imposing sanctions on the offending students. The United States District Court, D. New Jersey, held that plaintiffs (1) **had reasonable probability of success** on their First Amendment claim under the ***Tinker analysis*** (Tinker v. Des Moines Indep. Cmty. Sch. Dist., 393 U. S. 503); (2) **established** that they would suffer irreparable harm if injunctive was denied; and (3) granting injunction **would *not* irreparably harm** school district and public interests.

Compensations and Benefits:

"Employee Not Permanently Incapacitated By Injury While Boarding School Bus"

Beckley v. New York State and Local Retirement Systems (N. Y. A. D. 3 Dept., 845 N. Y. S. 2d 464), September 27, 2007.

An automotive mechanic for a New York school district injured his left foot in January 2001 when he attempted to board a school bus. He applied for and was denied disability retirement benefits under New York state law. Both the hearing officer and comptroller denied the plaintiff's application upon finding that the petitioner was not permanently incapacitated from performing his duties, and he had unreasonably refused to submit to a reasonably safe and common surgical procedure that could potentially resolve his disability. The New York, Appellate Division, Third Department, ruled that **substantial evidence supported** both the hearing officer's and comptroller's determination that the employee was *not* permanently incapacitated.

"Denial of Teacher Assistant's Benefits Not Supported by Substantial Evidence"
Stevison v. Public Employees' Retirement System of Mississippi (Miss. App., 966 So. 2d 874), October 16, 2007.

Plaintiff worked for the Waynesboro Public School District for eleven and a half years. She resigned due to health problems on July 31, 2002, and, shortly thereafter, applied for non-duty related disability benefits. Both the Public Employees' Retirement System of Mississippi (PERS) and the Hinds County Circuit Court (Jackson, Mississippi) denied her requested disability benefits. The Court of Appeals of Mississippi held that the teacher assistant's denial of disability retirement benefits **was not supported by substantial evidence**. There was **no** evidence that the plaintiff's complaints had hysterical overtones. **No** medical professional expressed doubt about the legitimacy of her pain. The plaintiff's medical record **contained un-contradicted diagnoses** of fibromyalgia, piriformis syndrome, Sjogren's syndrome, and depression. Furthermore, **no** conflicting medical opinions appeared in the plaintiff's medical record and the physicians' opinions **tended to corroborate** the employee's experience of severe pain while performing functional capacity evaluation.

Crimes:

"Evidence Insufficient to Support Conviction for Possession/Intent to Distribute Cocaine within One-Thousand Feet of a School"
Smith v. State (Md. App., 932 A. 2d 773), September 13, 2007.

On July 19, 2005, at around 3:30 p.m., the Somerset County Narcotics Task Force executed a search warrant on an apartment in the Somers Dove apartment complex located in the city of Crisfield, Maryland. The plaintiff (John N. Smith) was apprehended as he ran out the back door of his apartment. After his apprehension, he was searched and crack cocaine was discovered in his right front pocket. The Woodson Middle School was located immediately behind the plaintiff's apartment, and his apprehension was within 1,000 feet of the school. Plaintiff was later convicted (Circuit Court of Somerset County) of possession with the intent to distribute cocaine, possession of cocaine, with the intent to distribute cocaine within 1,000 feet of a school, and carrying a concealed dangerous and deadly weapon. He was sentenced to 12 years of incarceration for possession with the intent to distribute cocaine and suspended all but six years. The court then imposed a consecutive three year sentence for possession with the intent to distribute cocaine within 1,000 feet of a school and another three years for carrying a concealed dangerous and deadly weapon. The Court of Appeals of Maryland held that evidence **was insufficient** to show that building on school property was being operated as a school at the time the crime was committed by John N. Smith (plaintiff). Evidence **was also insufficient** to conclude that the grounds of the school were being used by children at the time of the offense. Thus, evidence **was insufficient** to support plaintiff's conviction for possession with the intent to distribute cocaine within 1,000 feet of a school. The entire school facility and grounds was closed for renovations and remained closed for over a calendar year. In fact, photographs showed a high, chain-link fence surrounded the school building, a playground, and portions of the school's parking lot. **Note:** With the exception of the judgment pertaining to cocaine distribution within 1,000 feet of a school, all other judgments against John N. Smith **were affirmed**.

Disabled Students:

"Student Not A Child with a Disability"
Alvin Independent School Dist. v. A. D. ex rel. Patricia F. (C. A. 5 [Tex.], 503 F. 3d 378), October 4, 2007.

A high school student who had been diagnosed with Attention Deficit Hyperactivity Disorder (ADHA), receives medical treatment for his ADHA, including prescriptions for ADHD medications. He had attended Alvin Independent School District (AISD) since he was three years old. In the third grade, both his mother and school personnel agreed that he no longer qualified for special education services. Thereupon, he was dismissed from special education services throughout elementary school. Starting in the seventh grade, the plaintiff began to exhibit behavioral problems; however, he passed all of his classes and met statewide standards as required by the Texas Assessment of Knowledge and Skills (TAKS). The student's behavioral problems continued throughout the eighth grade. Around this time, he faced the tragic death of his baby brother. Additionally, he began to abuse alcohol, developed a strained relationship with his stepfather, and his mother was expecting a new baby. Plaintiff's behavioral problems continued and culminated in theft of property and robbery of a school sponsored concession stand. A. D. was placed in the school district's alternative education program where he passed the eighth grade with one A, three Bs, two Cs, one D, and passed the TAKS test. Soon thereafter, his mother requested special education services. The United States Court of Appeals, Fifth Circuit, held that the student was **not** a "child with a disability" under IDEA, and therefore **was ineligible** for special education services. The student had passing grades and demonstrated success on state mandated skills tests. Teachers testified that despite student behavioral issues, he did not need special education services because he was achieving both academic and social success in school.

"District Denied FAPE to Student Diagnosed with Hemophilia, Autism, and Other Conditions"
Heather D. v. Northampton Area School Dist. (E. D. Pa., 511 F. Supp. 2d 549), June 19, 2007.

Heather (plaintiff) is a resident of Northampton Area School District and is currently 18 years old. She suffers from Von Willebrand's disease, a type of hemophilia that causes her to bruise and bleed extremely easily. Plaintiff has also been diagnosed with Pervasive Developmental Disorder (PDD), a form of autism; borderline mental retardation; bipolar disorder; obsessive compulsive disorder (OCD); attention deficit/hyperactivity disorder (ADHD); possible fetal alcohol syndrome; and specific learning disabilities. The plaintiff entered first grade in the regular education program in the school district during the 1996-97 school year. At the end of each of the next five school years, Heather was promoted to the subsequent grade. Following her fifth grade year, on June 20, 2001, the plaintiff attempted suicide. This resulted in lengthy hospitalizations in various facilities, and Heather did not return to the school district. The plaintiff and her parents sought compensatory damages for the district's failure to provide her with a free appropriate public education (FAPE). The United States District Court, E. D. Pennsylvania, held that the school district **denied** Heather a FAPE for her first through eighth grade school years. **As a remedy**, she is **entitled to** 2,428 hours of compensatory education at an hourly rate of $75.00, which yields a compensatory education fund of $182,100. In addition, plaintiff is **entitled to reasonable legal fees** under IDEA.

"Parochial High School's Drug Policy Was Non-Disability Based"
Benedict v. Central Catholic High School (N. D. Ohio, 511 F. Supp. 2d 854), September 20, 2007.

Plaintiff, who had a learning disability, filed action against Central Catholic High School (CCHS) alleging disability discrimination under Section 504 of the Rehabilitation Act and violation of the 14th Amendment of the United States Constitution (due process) after he was suspended for possessing marijuana on the school's campus. The student was suspended for two days and the school's disciplinary board recommended expulsion pursuant to CCHS drug policy. *Note:* Plaintiff was allowed to remain at CCHS until the end of the school year with the understanding that he would execute a voluntary withdrawal at the end of the school's academic year. The United States District Court, N. D. Ohio, Western Division, stated that drug policy violation **was legitimate, non-disability based reason**, under the Rehabilitation Act and Ohio law, regarding disciplinary action taken against high school student's possession of marijuana.

"Third Grader Suffered Fatal Asthma Attack at School"
Taylor v. Altoona Area School Dist. (W. D. Pa., 513 F. Supp. 2d 540), August 23, 2007.

Mother (plaintiff) of a third-grader, who died following an acute bronchial asthma attack at school sued school district, school board, school principal, school nurse, and student's third-grade teacher, alleging violation of IDEA, Pennsylvania statute, and the 14th Amendment of the United States Constitution. The United States District Court, W. D. Pennsylvania, held that the school principal and the school nurse were **not** liable because neither were aware of the student's condition until it became a medical emergency. However, the student's teacher **was liable** because she prevented student from seeking medical attention during his asthma attack. *Note:* Teacher told the student to rest by laying his head on his desk; and she did not administer the child's inhaler, nor contact anyone else. Furthermore, the court stated that the school district **exhibited deliberate indifference** because of its policy preventing student from carrying his own medication or from administering the medication on his own. Additionally, the school district's policy pertaining to the administration of medication **was the moving force behind** the teacher's alleged refusal to allow student to seek medical attention during his asthma attack.

Labor and Employment:

"Evidence of Teacher's Offensive Language Did Not Support Poor Performance Rating"

Smith v. Board of Educ. Of City School Dist. of City of New York (N. Y. Sup., 844 N. Y. S. 2d 850), October 24, 2007.

October 21, 2003, was the first day of the implementation of a new school policy at Far Rockaway High School, which consisted of sweeps of the corridors and restrooms as a means of forcing student to get to their classrooms on time. The new policy required that one minute after the late bell had rung, signaling that classes had changed, teachers were required to lock their classroom doors. The locked-out students would then have to report to an assigned place to get a special pass to be admitted to their assigned classrooms. The plaintiff implemented the policy as directed, but when the tardy students arrived at her classroom, they banged on her door in an effort for her to let them into her classroom. The plaintiff attempted to leave her classroom to obtain assistance, but two students in the classroom barred her way by holding the door closed. During the chaotic and desperate situation, the teacher was reported to have said, "This fucking language has to stop. I do not want abusive or profane talk in the class." Soon afterward, the assistant principal arrived and order was restored. After the incident, the plaintiff was given an unsatisfactory performance rating for her "abusive language". The New York Supreme Court, New York County, stated that substantial evidence did **not** support the board of education's decision upholding the teacher's unsatisfactory performance rating. Evidence pertaining to the incident was **not provided** the teacher in advance of the hearing and the assistant principal's conclusions pertaining to the incident **were hearsay** because he did not directly witness the incident. Furthermore, the teacher's acknowledgement of using inappropriate language in a very chaotic and disruptive situation did **not** demonstrate that language constituted the type of verbal abuse that would support an unsatisfactory rating.

Security:

"Deputy Sheriff Used Excessive Force When Frisking Student for Possible Firearm"
M. D. ex rel. Daniels v. Smith (M. D. Ala., 504 F. Supp. 2d 1238), August 27, 2007.

On January 16, 2004, a high school SRO requested backup based on an anonymous tip that someone would bring a gun to school after school had been dismissed for the day. Deputy Sheriff Lloyd Smith was dispatched to the school, along with three other officers. Upon arrival at the school, the school's SRO told them to clear the school's parking lot of all student vehicles. Thereupon, Deputy Smith encountered M. D. (student and plaintiff), who was sitting in his vehicle. Plaintiff refused to leave the school's parking lot because he claimed that another vehicle was blocking him from safely backing out of his parking space. Deputy Smith ordered M. D. out of his vehicle. As plaintiff was attempting to exit his car, Smith pulled him from his vehicle and slammed him against it. As a result, plaintiff's head hit the car, causing a dent on the trunk and a red mark on his forehead. In addition, Smith frisked plaintiff. At some point after being frisked, M. D. reached into his pocket for his cell phone to call his parents. Smith again restrained M. D. and frisked him. The entire incident lasted approximately 25 minutes. The United States District Court, M. D. Alabama, Eastern Division, stated deputy sheriff **used excessive force** in frisking student and deputy **lacked** qualified immunity from Fourth Amendment excessive force claim. The court went on to state that **every reasonable officer would consider that level of force unlawful**.

"Student <u>Not</u> Illegally Seized"
DeFelice ex rel. DeFelice v. Warner (D. Conn., 511 F. Supp. 2d 241), September 28, 2007.

Plaintiff (15-year-old high school student) and several students were called to the school security aid's office to be questioned (Assistant principal directed security aid to question students so they could advise the principal regarding the situation.) concerning "rumors associated with purchasing illegal drugs" at their high school. The plaintiff claimed that another school security aid kept his hand on the door knob for the duration of the meeting, which lasted between 20 to 30 minutes. Afterward, the students were allowed to return to class. The plaintiff claimed false imprisonment and unreasonable seizure of her person. The United States District Court, D Connecticut, held that the school security aid did **<u>not</u>** violate any constitution rights (specifically the 4th Amendment) of which a *"reasonable person would have known"* at the time of the incident.

"School Officials Not Liable for Sexual Assault"
Jennifer R. v. City of Syracuse (N. Y. A. D. 4 Dept., 844 N. Y. S. 2d 523), Septemeber 28, 2007.

School authorities had **no** reason to anticipate that a female high school student would be forcibly removed from school grounds and sexually assaulted by three male students when she went to her locker to retrieve her school books. Therefore, school officials were **not** liable for negligent supervision because there were no police reports of any prior sexual assaults at the school, there were no school records pertaining to any prior sexual assaults by students at the school, and there were no prior complaints by students pertaining to any fear that they might have had regarding their personal safety while attending the school.

Student Discipline:

"Student's Cell Phone Rings During Class"
Laney v. Farley (C. A. 6 [Tenn.], 501 F. 3d 577), August 28, 2007.

A one-day, in-school suspension of an eighth grade student after her cell phone rang during class **implicated neither** the student's due process property interest in a public education, ***nor*** were her due process liberty interest in her reputation violated so as to require procedural due process under the 14th Amendment. The student remained in the school setting and was required by Tennessee law to complete all academic requirements.

"High School's Unrest Supported Message T-Shirt Ban"
Madrid v. Anthony (S. D. Tex., 510 F. Supp. 2d 425), September 25, 2007.

Racial tension between Hispanics and African-American/Caucasian students was running high at Cypress Ridge High School (Cy-Ridge), which is located in Houston, Texas. On March 27, 2006, about 300 students walked out of school protesting pending immigration reform legislation in the United States Congress. Many of the students, most of whom were Hispanic,wore white t-shirts that read "We Are Not Criminals" to express their opinion of the pending legislation. On Tuesday, March 28, 2006, another walkout was planned by the students, and the administration learned that Caucasian and African-American students were going to wear t-shirts that read "Border Patrol" to antagonize Hispanic students. Thereupon, the principal banned students from wearing unauthorized t-shirts. If a student was observed wearing an unauthorized t-shirt, s/he was asked to change shirts or wear a t-shirt provided by the school for the remainder of the school day. Students and their parents filed action against school officials protesting their limiting of students' expressing their opinions under the First Amendment of the United States Constitution. The United States District Court, S. D. Texas, Houston Division, stated that school officials **could prohibit** the wearing of t-shirts containing messages expressing viewpoints pertaining to the immigration issue.

Tort:

"Student Injured When He Fell Over a Hurdle during Track Practice"
Morales v. Beacon City School Dist. (N. Y. A. D. 2 Dept., 843 N. Y. S. 2d 646), October 9, 2007.

Scott Morales (plaintiff), a high school student and a novice hurdler, was injured when he fell over a hurdle during a track practice conducted on an asphalt parking lot. According to the plaintiff, although he had never run hurdles before, he was directed by his coach to run varsity high hurdles, and was not given any prior instructions in regard to the correct technique for running hurdles. Furthermore, the plaintiff claimed that the hurdle over which he fell was not set up properly, in that the horizontal bar was uneven. The Supreme Court of New York, Appellate Division, Second Department, held that high school student *raised triable issue of fact* as to whether his coach failed to properly train and supervise him in running hurdles, and *whether the failure unreasonably increased the student's risk of injury,* **precluded summary judgment** in favor of the school district.

"Student Injured in Fight at School"
Ambroise v. City of New York (N. Y. A. D. 2 Dept., 843 N. Y. S. 2d 685), October 16, 2007.

Another junior high student (perpetrator) entered the plaintiff's classroom, challenged him to a fight, and threw the plaintiff's hat, which was resting on his desk, to the floor. The plaintiff's teacher immediately ejected the perpetrator from the classroom. On the following day, the perpetrator came to the plaintiff's homeroom door and again challenged the plaintiff to a fight. The teacher merely told the class to not pay any attention to the perpetrator. On the day of the fight, the perpetrator started staring aggressively at the plaintiff during lunch. Fearing that the perpetrator was about to strike him, the plaintiff attempted to tell the teachers in the lunchroom what was happening. However, they told the plaintiff that they were busy at that time and they could not do anything. Shortly thereafter, the perpetrator approached the plaintiff and pushed him. One of the school counselors observed the incident and informed the boys to use different stairs when leaving the basement (cafeteria was located in the school's basement). When the plaintiff returned to the school's second floor, where the plaintiff's classroom was located, he was approached by the perpetrator and three of his friend. The plaintiff took a swing at the perpetrator and missed. The perpetrator responded by punching the plaintiff in the mouth, breaking a tooth. Thereupon, the plaintiff brought action against the city of New York asserting a claim of negligent supervision. The New York Supreme Court, Appellate Division, Second Department ruled that *genuine issue of material fact existed* as to whether the plaintiff had been a voluntary participant in fight with another student, **precluding summary judgment** for the city.

"School Officials Failed To Adequately Supervise Substitute Teacher Who Had Sexual Relationship with Student"

Doe v. Greenville County School Dist. (S. C., 651 S. E. 2d 305), October 13, 2007.

In 2001, Mr. and Mrs. Doe (plaintiffs) discovered that their 14-year-old daughter was involved in a sexual relationship with a substitute teacher (perpetrator) from her school. The substitute teacher was charged and convicted of criminal sexual conduct with a minor as a result of his inappropriate relationship. The plaintiffs alleged that the perpetrator had prior complaints and warnings regarding the substitute teacher's inappropriate interest in young girls, and that school officials knew or should have known about the development of this relationship. The Supreme Court of South Carolina held that the plaintiffs **stated** a claim for negligent supervision **sufficient to survive** a motion to dismiss parents' claim. In addition, the court **dismissed** the plaintiffs' claims pertaining to the infliction of emotional distress, loss of consortium, breach of fiduciary duty, and breached of an assumed duty *in loco parentis*.

"School Officials Did Not Have the Necessary Knowledge of Student's Murder to Establish Foreseeability"

Edson v. Barre Supervisory Union # 61 (Vt., 933 A. 2d 200), July 20, 2007.

High school officials did **not** have the requisite (necessary or required) knowledge or notice of the 15-year-old student's premeditated murder to bring it within the realm of the foreseeable, for purposes of wrongful death action brought by the student's mother. The plaintiff alleged that the school administration and teachers breached their duty of care and supervision to student when she left school with a friend without authorization and was subsequently murdered. The student's death was a result of the premeditated criminal act of a third party and there was **no** allegation that school officials *was or should have been aware* of such criminal conduct perpetrated near its campus, let alone that school officials knew of the student's murderer or his propensity to commit such a heinous crime.

"School Officials Owed No Duty to Lessen Risk of Student Injuries by Preventing Them from Leaving Campus without Authorization"

Kazanjian v. School Bd. of Palm Beach County (Fla. App. 4 Dist., 967 So. 2d 259), September 19, 2007.

After their first period class Kaitlin Kazanjian and Carlos Pozo decided to skip school and go get breakfast. The students had no passes. They just walked to Pozo's vehicle and left school without being stopped by school officials. They had planned to go to Pozo's house to get some money prior to going to the restaurant. On the way to his house, Pozo was driving between 72 and 74 m. p. h. on wet roads in a residential area with a speed limit of 35 m. p. h. While fiddling with the radio, Pozo failed to navigate a curve in the road. He crashed his car into two trees, killing Kaitlin. The estate of Kaitlin brought negligence action against the school officials. A Florida district court held that school officials owed **no** duty to lessen the risk of injuries by preventing high school students from leaving campus without authorization. As a footnote, the court recognized a general duty of supervision, but stated that school officials had no duty to supervise *all* movements of *all* students *all* the time.

Commentary:

No commentary this month.

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).

Special Note:

The "Legal Update for District School Administrators" is dedicated to the memory of **Dr. Wm. (Bill) Leewer** (November 17, 1950 – May 26, 2008) and **Dr. Jack Klotz** (February 26, 1943 – May 20, 2008). Dr. Leewer was a professor at Mississippi State University-Meridian, Mississippi and editor of the Legal Update for District School Administrators. Dr. Klotz was a professor in the Department of Leadership Studies at the University of Central Arkansas and a former professor of educational administration at the University of Southern Mississippi. Both of these gentlemen and educators will be greatly missed by their families, friends, and their students. They were not just colleagues of mine, but very dear friends. Their memory and legacy will live on through their students and their writings. Strength and honor

August-September 2008 (#'s 567, 568, & 569)

Legal Update for District School Administrators August - September 2008

Johnny R. Purvis*

West's Education Law Reporter
January 24, 2008 – Vol. 226 No. 2 (Pages 539 – 1000)
February 7, 2008 – Vol. 227 No. 1 (Pages 1 – 504)
February 21, 2008 – Vol. 227 No. 2 (pages 505 – 1009)

Terry James, Chair, Department of Leadership Studies, University of Central Arkansas
S. Ryan Niemeyer, Editor, Director, University of Mississippi – Grenada and Assistant Professor, Leadership and Counselor Education
Shelly Albritton, Technology Coordinator, Department of Leadership Studies, University of Central Arkansas
Safe, Orderly, and Productive School Institute
Department of Leadership Studies
University of Central Arkansas
201 Donaghey Avenue
230 Mashburn
Conway, AR 72035
*Phone: 501-450-5258 (office)
*E-mail: jpurvis@uca.edu

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
- Administration
- Civil Rights
- Disabled Students
- Free Speech
- Property and Contracts
- Records
- Religion
- Standards and Competency
- Student Discipline
- Torts
- Transportation

Commentary:

- No commentary this month.

Topics

Abuse and Harassment:

"Kindergartner Alleges Sexual Harassment"
Fitzgerald v. Barnstable School Committee (C. A. 1 [Mass.], 504 F. 3d 165), October 5, 2007.

A kindergarten student told her parents that an older student (third grade male) bullied her into lifting her shirt, pulling down her underpants, and spreading her legs. This was repeated two to three times a week for several weeks prior to the time in which the kindergartner's parents began driving her to school. The victim was unable to initially identify the pervert, but finally recognized him through an arrangement in which school officials allowed her to observe students disembarking from her assigned school bus. The young pervert denied the allegations. School officials interviewed both the school bus driver and students who regularly rode the bus; however, they were not able to corroborate the victim's account of the events. Thereupon, suggestions regarding the situations were offered by both school officials and the kindergartner's parents. Finally, arrangements were made to ensure that the pervert sat in another area of the school bus. No more incidents occurred on the school bus for the remainder of the school year. However, during a mixed-grade gym class a gym teacher randomly required the victim to give the pervert a "high five" during class. The victim stopped participating in gym class and began to miss school with increasing frequency. The victim's parents filed action against the school district alleging student-to-student sexual harassment in violation of Title IX. The United States Court of Appeals, First Circuit, held that school officials **reasonably responded** in light of known circumstances to alleged student-to-student sexual harassment. In addition, school officials **reacted promptly** to each complaint, and each time the parents notified school authorities of new developments, **a full-scale investigation commenced**.

Administration:

"Board's Dismissal of Superintendent Was Not Arbitrary and/or Capricious"
Wilder v. Board of Trustees of Hazlehurst City School Dist. (Miss. App., 969 So. 2d 83), September 4, 2007.

The decision of a school board to dismiss a former superintendent of the school district was **not** arbitrary and/or capricious. Evidence demonstrated that the board made its decision to dismiss the superintendent based on continuous problems with the superintendent, which included a breakdown in communication between superintendent and district personnel, superintendent's withholding of certain student test scores from the board, superintendent's failure to meets the needs of staff members, superintendent's consistent interference with school employees (e. g. principals, coaches, and teachers) in their efforts to perform their duties, superintendent's manipulation of salary figures and presentation of false numbers to board regarding teacher's salary supplement, superintendent's refusal to work with board to create an agenda that would work to facilitate the needs of the school district, and superintendent's excessive absence from office.

Civil Rights:

"Strip Search of Middle School Student Was Reasonably Related In Scope to the Circumstances"
Redding v. Safford Unified School Dist. # 1 (C. A. 9[Ariz.], 504 F. 3d 828), September 21, 2007.

On October 1, 2003, Jordan (a middle school student) and his mother informed both the middle school principal and vice principal that a classmate had given him some pills. After taking the pills he became violent with his mother and sick to his stomach. He went on to say that Redding (plaintiff) and several other students were bringing drugs and weapons to school. On the morning of October 8, 2003, Jordan met with the vice principal and handed him a white pill (School nurse identified as "Ibuprofen 400 mg" (IBU 400s), a medication only available by prescription.) that another student had given him. In addition, he told the assistant principal that a group of students were planning to take the pills during lunch. Redding (female) was identified as the student with the IBU 400s. The assistant principal retrieved Redding from her class, and after questioning her, requested that the school nurse serve as an observer while an administrative assistant (both female) search Redding. The administrative assistant asked Redding to: (1) remove her jacket, shoes, and socks; (2) remove her pants and shirt; (3) pull her bra out and to the side and shake it, exposing her breasts; and (4) pull her underwear out at the crotch and shake it, exposing her pelvic area. The search did not produce any pills. At no point in the search was the student touched by either the school nurse or administrative assistant. Thereupon, student's mother brought action against school officials alleging a violation of the Fourth Amendment. The United States Court of Appeals, Ninth Circuit, held that (1) The search **was justified at its inception** due to the fact that the school administration was told by a student that a group of students were planning to take pills during lunch; and (2) The search **was reasonably related in scope to the circumstances** due to the strong interest that school officials had in regard to safeguarding students from harm posed by the misuse of prescription drugs, and enforcing school policy prohibiting the possession and use of such drugs on the school's property.

Disabled Students:

"Parent Could <u>Not</u> Recover Any Emotional Distress or Loss of Income Experienced Due to IDEA Proceedings"
Blanchard v. Morton School Dist. (C. A. 9 [Wash.], 504 F. 3d 771), September 20, 2007.

The United States Court of Appeals, Ninth Circuit, held that plaintiff was **<u>not</u>** a "qualified individual with a disability" and thus could **<u>not</u>** recover, under Americans With Disabilities Act (ADA) Rehabilitations Act (Section 504), for any emotional distress or lost of income she experienced during her successful efforts to obtain benefits for her autistic son under Individuals With Disabilities Act (IDEA).

"Student's IEP Was Substantially Appropriate Under IDEA"
"Hjortness ex rel. Hjortness v. Neenah Joint School Dist. (C. A. 7 [Wis.], 507 F. 3d 1060), November 14, 2007.

School district's IEP for disabled student (exceptionally bright – IQ of 140), who at various times had been diagnosed with obsessive compulsive disorder, Tourette's disorder, attention deficit/hyperactivity disorder, autistic spectrum disorder, oppositional defiant disorder, and anxiety disorder, **was substantially appropriate** under IDEA. The school district *considered* the various medical diagnoses and educational assessments, *gathered information and visited* the private school the student attended, *observed* the student, and the school district's IEP had very *similar goals and objectives* as the student's previous IEP.

"School District Did <u>Not</u> Adequately Find and Place Students"
Jamie S. v. Milwaukee Public Schools (E. D. Wis., 519 F. Supp. 2d 870), September 11, 2007.

School district **violated** provision of IDEA that children in need of special education services be found and placed. Specifically, the court stated that identification of prospective referral prospects was **<u>not</u>** adequate. Statutory time period (90 days) following referral during which students were required to be evaluated **was exceeded** and deadline exceptions **were too readily granted. Excessive reliance** was placed on alternate behavior interventions such as suspensions, and parents were **<u>not</u>** sufficiently encouraged to attend evaluations.

"Bus Driver Sexually Assaulted Disabled Student"
M. Y. ex rel. J. Y. v. Special School Dist. No. 1 (D. Minn., 519 F. Supp. 2d 995), September 18, 2007.

A fifteen-year-old disabled student, through her parents brought suit against school district, alleging violations of federal and state laws; arising out of her sexual assault by her school bus driver. A United States District Court, D. Minnesota, held that the school district's immediate filing of state-required reports, cooperation with police investigation of student's alleged sexual assault by school bus driver, and the district's termination of driver **precluded substantive due process claim** that it maintained an inadequate system for investigating and remedial action regarding student-related sexual misconduct of district employees. **<u>Note:</u>** Student's IEP required curb to curb transportation with an educational assistant riding the bus to and from school. However, an alternation of the student's IEP, along with the student's mother's approval, allowed the student to use general education transportation when attending general education activities.

Free Speech:

"Student's Threatened Columbine-Style Attack Not Protected Speech"
Ponce v. Socorro Independent School Dist. (C. A. 5 [Tex.], 508 F. 3d 765), November 20, 2007.

A high school sophomore kept an extended notebook diary in which he created a pseudo-Nazi group. In his notebook he described several incidents which involved his pseudo-Nazi, including one in which the student ordered his group "to brutally injure two homosexuals and seven colored" people and another in which the student describes punishing another student by setting his house on fire and "brutally murdering" his dog. The notebook also details the group's plan to commit a "Columbine shooting" attack on Montwood High School (offender's high school) or a coordinated "shooting at all the district's schools at the same time." At several points in the journal, the author expresses the feeling that his "anger has the best of him" and that "it will get to the point where he will no longer have control." The student predicts that his outburst will occur on the day that his close friends at the school graduate. The principal determined that the student's writings should be classified as a "terroristic threat", which violated the school district's Student Code of Conduct. Thereupon, he suspended the offender from school for three days and recommended that he be placed in the school's alternative education program. Parents of the offender transferred him to a private school in an effort to ensure their son would retain a "clean record". In addition, the offender's parents sued the school district, alleging school officials violated their son's First, Fourth, and Fourteenth Constitutional Amendments. The United States Court of Appeals, Fifth Circuit, held that school officials did **not** violate the student's constitutional rights because the student's speech (writings) **posed a direct threat** to the physical safety of the school population.

Property and Contracts:

"Student Uses His Bicycle as a Ladder"
Biscotti v. Yuba City Unified School Dist. (Cal. App. 3 Dist., 69 Cal. Rptr. 3d 825), December 27, 2007.

A chain link fence on school property, separating the school grounds from adjacent residences, was **not** a "dangerous condition" that could subject school district to liability for injuries sustained by a child when he propped his bicycle against the fence, and stood on top of the bicycle in an attempt to grab oranges from a neighbor's tree. While standing on top of his bike, the child slipped and fell, cutting his arm badly on the metal prongs on top of the fence. The child's use of his bicycle as a substitute ladder to reach over the fence was **not** *a reasonable foreseeable use of the fence* and the risk of falling and being seriously injured ***should have been obvious***.

Records:

"School Bus Videotape Not Exempt From Disclosure Under State's Public Disclosure Act"
Lindeman v. Kelso School Dist. No. 458 [Wash., 172 P. 3d 329), November 15, 2007.

A school district's school bus surveillance videotape depicting a fight between students did **not** contain "personal information in any files maintained for students". Thus, the videotape was **not** exempt from disclosure under the state of Washington's Public Disclosure Act (PDA) exemption for "personal information in any files maintained for students in public schools, patients or clients of public institutions or public health agencies, or welfare recipients". Surveillance cameras serve as a means of maintaining security, and are different from records that public schools maintain in students' personal files, even if school officials ultimately use the videotapes as the basis for disciplining students. Furthermore, the videotape itself would *not* be converted into "personal information in files maintained for students," since the videotape did *not* reveal whether discipline was or was not imposed. **Note:** *No* mention was made regarding the federal law pertaining to student educational records entitled Federal Educational Rights and Privacy Act (FERPA).

Religion:

"Guidance Counselor's Contract Non-renewal Did Not Violate Her Religious Free Exercise Rights"
Grossman v. South Shore Public School Dist. (C. A. 7 [Wis.], 507 F. 3d 1097), November 15, 2007.

School district's decision not to renew a guidance counselor's contract, because of her conduct in praying with students, advocating abstinence, and disapproving of contraception; did **not violate** guidance counselor's rights under the free-exercise clause of the First Amendment. In addition, the school district **was within its right** to have and implement "controlling policy" for its employees.

"High School Wind Ensemble Not Allowed to Play 'Ave Maria' at Commencement"
Nurre v. Whitehead (W. D. Wash., 520 F. Supp. 2d 1222), September 20, 2007.

School district did **not** violate Establishment Clause of the First Amendment by denying permission for high school wind ensemble to play a composition with a religious title at commencement. The denial **had a secular purpose** of avoiding any establishment of religion litigation. Furthermore, there was **no** message of either hostility toward or approval of religion or a religious activity.

School Districts:

"School District Not Responsible for Strip Search of Students"
Beard v. Whitmore Lake School Dist. (C. A. 6 [Mich.], 244 Fed. App. 607), June 19, 2007.

During a coeducational gym class a student reported that several hundred dollars was missing from her purse. Eight students (between the ages of 15 and 18) were identified as possible suspects. A male teacher took the male students into the male shower room and required the subjects to drop their underwear to their ankles one at a time while the teacher conducted a visual examination. Meanwhile, a female teacher took the female subjects into the female locker room and required them to stand in a circle, pull up their skirts, and pull down their underpants while she conducted a visual examination. The missing money was not recovered. The students (plaintiffs) filed suit against the school district. As a note of interest, the school district had an extensive "student search and seizure policy" and the policy specifically stated that "strip searches are to be conducted only by law enforcement personnel". The United States Court of Appeals, Sixth Circuit, held that the school district **was not deliberately indifferent** to the rights of high school students to be free from unreasonable searches and seizures. Therefore, the school district was **not** liable for failure to train teachers how to search students. Furthermore, the school district was **not** liable for the teachers who conducted the strip search of students because school district policy did *not* allow strip searches, and it was *not* foreseeable that teachers would ignore district written policy. The court also went on to state that the school district did **not** have a pattern or practice of conducting unconstitutional searches of students, ***nor*** was the district deliberately indifferent to students' constitutional rights.

Standards and Competency:

"Teacher Entitled to Disability Benefits"
Public Employees' Retirement System v. McClure (Miss. App., 968 So. 2d 510), September 4, 2007.

Evidence **was *insufficient*** to support the Public Employees' Retirement System's (PERS) decision to deny special education teacher's request for regular age limited disability benefits. The teacher (Special education teacher for more than 28 years.) presented evidence that she suffered from bilateral adrenal hyperplasia, insulin dependent diabetes, and hypertension. She testified that she was no longer effective on her job. Furthermore, her principal testified, neither he nor the school district could offer the teacher reasonable accommodations regarding her employment. The teacher's physician recommended that she stop teaching because the high stress levels associated with her job were compromising her health. Furthermore, there was *no* testimony contradictory to the testimony of the teacher's physician presented during the teacher's hearing.

Student Discipline:

"Teacher's Use of Force Not Excessive When Student Attempted to Leave Classroom"

Peterson v. Baker (C. A. 11 [Ga.], 504 F. 3d 1331), October 25, 2007.

A fourteen-year-old eighth-grade student (plaintiff) was talking to another student during his remedial reading class. When the teacher told the other student to leave class the plaintiff also attempted to leave class. The teacher told the plaintiff to sit back down, but he refused and headed toward the classroom door. The teacher placed her arm across the doorframe, again instructing the plaintiff to take his seat. The plaintiff refused, grabbed the teacher's hand and knocked her arm from the doorframe. As the plaintiff reached for the doorknob, the teacher grabbed his neck. When the teacher relinquished her grasp, the plaintiff left the classroom. The plaintiff went to the principal's office and reported the incident. The principal did notice red marks on the student's neck. The plaintiff's mother reported the incident to police, who took photographs of the blue and red bruises, as well as a scratch on his neck. The United States Court of Appeals, Eleventh Circuit, stated that (1) teacher's use of force was **not** obviously excessive, (2) the amount of force used was **reasonably related** to the need for student's punishment, and (3) the teacher **was entitled** to official immunity under Georgia law. **Note:** The first year teacher was placed on administrative leave after the incident and later resigned.

"Principal Did Not Violate Student's Privacy Rights By Disclosing Student's Sexual Orientation to Student's Parent"

Nguon v. Wolf (C. D. Cal., 517 F. Supp. 2d 1177), September 25, 2007.

Although a female high school student had a protected privacy interest in nondisclosure of her sexual orientation within her home, a high school principal did **not** violate student's right to privacy under the First Amendment of the United States or California's Constitution by disclosing student's sexual orientation to student's mother. Such disclosure **was necessary** in the context of explaining the student's suspension for engaging in inappropriate public displays of affection (IPDA) with another female student to the student's mother. In addition, the principal **had a legitimate governmental purpose** in describing the context of the suspension in view of his **statutory duty** to make disclosures in the context of suspensions, and in view of the need to **ensure that the student was afforded due process**.

"Pellet Gun Considered a Weapon"
Picone v. Bangor Area School Dist. (Pa. Cmwlth., 936 A. 2d 556), November 15, 2007.

On December 13, 2006, shortly after 2:30 p. m. the plaintiff was sitting in his vehicle in his high school parking lot with two middle school students waiting to transport them to basketball practice. One of the students asked the plaintiff about a box of pellets that he noticed in the plaintiff's vehicle; thereupon, the plaintiff showed the students his "soft air pellet gun". The plaintiff decided that he would demonstrate two the middle students how the "soft air pellet gun" worked. Plaintiff noticed his girl friend (who was wearing gym shorts) walking across the parking lot toward his vehicle; he pointed the pellet gun at her through an open window and fired the gun. The pellet struck the plaintiff's girl friend in the thigh, which left a large welt. As she walked into the gym's lobby, with tears in her eyes, she reported the incident to her teacher. The school board expelled the plaintiff until the end of the third marking (grading) period, with readmission subject to the conditions (e. g. complete 50 hours of community service, participate in weekly psychological counseling, maintain a "C" or better average during expulsion, and no participation in school sponsored activities) set forth by the superintendent. The Commonwealth Court of Pennsylvania concluded that: (1) Pellet gun that discharged plastic pellets at a high velocity and capable of inflicting serious injury **was a "weapon"** within the meaning of Pennsylvania's public school code; and (2) Student's due process rights were **not** violated when the board discussed with the superintendent in closed session about modifying his recommendation to expel the plaintiff until the end of the third marking period rather than expelling the plaintiff for one calendar year.

"Student Suspended for One Year for Possessing Marijuana and a Weapon"
Scanlon v. Las Cruces Public Schools (N. M. App., 172 P. 3d 185), October 1, 2007.

In disciplinary hearing proceedings in which a school district sought to suspend a high school student (plaintiff) for a one-year period for possessing marijuana (He and three other boys were observed smoking marijuana in plaintiff's vehicle while parked in the school's parking lot.) and a weapon (A decorative sword was found in the vehicle's trunk.) on school property without disclosing the names of the students (denied the opportunity to confront his accusers) who informed school officials that the marijuana belong to the plaintiff; did **not** deny the accused procedural due process under either Federal or State Constitutions. The court went on to state that due to the fact that the district offered the plaintiff the opportunity to attend high school in an alternative setting during the period of suspension, and the burden imposed by a requirement that all student accusers must testify at school disciplinary hearings, and must be subject to cross-examination, **would significantly out-weight the benefits** to the accused student.

"Pat-Down of Student by Police Officer Was Justified"
D. L. v. State (Ind. App., 877 N. E. 2d 500), December 7, 2007.

Indianapolis Public School police officer came into contact with student (plaintiff) in the second-floor hallway of a high school during a "non-passing period". The student did not have a corridor pass, his schedule, or his identification card. Thereupon, the officer conducted a pat-down search of the plaintiff in an attempt to locate his identification card. Almost immediately after the officer began patting-down the plaintiff, he put something down his pants. Upon observing the plaintiff's behavior, the officer handcuffed the student and escorted him to the school's police office, where another officer conducted a search of the plaintiff; whereupon, a clear plastic bag containing 1.03 grams of marijuana was discovered on the student's person. The Court of Appeals of Indiana held that the search of the student **was justified at its inception and reasonably related in scope to the circumstances justifying it.** Furthermore, the search was **not excessively intrusive**.

Torts:

"Unforeseen Attack at Basketball Practice"
McCollin v. Roman Catholic Archdiocese of New York (N. Y. A. D. 1 Dept., 846 N. Y. S. 2d 158), November 27, 2007.

School **exercised ordinary reasonable care** in supervision of eighth-grade student who was unforeseeable kicked in the face during basketball practice by a spontaneous attack by a ninth-grader who was assisting the coach. Therefore, the school was **not** responsible for the student's injuries.

Transportation:

"Student Killed In Auto Accident While on a School Choir Retreat"
Jackson v. Putnam County Bd. of Educ. (W. Va., 653 S. E. 2d 632), May 24, 2007.

Plaintiff's son (Timothy), who was a member of the Winfield High School show choir, was on a retreat when he was killed in an auto accident while returning from the retreat as a passenger in another student's vehicle. The choir director received a note from the student's dad which stated that he would drive his son to the retreat; in the past the youngster's father drove him to and from past retreats and other choir events. However, the plaintiff and his son had reached a joint decision that Timothy would travel to and from the retreat with a classmate. The change in travel arrangements were never communicated to the choir director or any other school official. On the return trip, while driving at an excessive rate of speed on Interstate 77, the student driver lost control of his pick-up truck causing it to turn over on the highway. Timothy, who was not wearing a seatbelt, died as a result of the accident. The Supreme Court of Appeals of West Virginia held that breach of duty by school board to provide transportation to retreat for choir members was **not** the proximate cause of student's death while returning from a school sponsored choir retreat in a vehicle driven by another student. A note from the student's father informed the show choir director that he was going to provide transportation to and from the retreat; however, the student changed travel plans without notice to school authorities. Therefore, the change in travel plans without notice to school authorities, and classmate's negligent driving, **broke the chain of causation** with regard to any breach of duty committed by the board.

"School Bus Driver Negligent In Collision with Truck Driver"
Beard v. Coregis Ins. Co. (La. App. 3 Cir., 968 So. 2d 278), October 17, 2007.

The operator of a 66 passenger school bus belonging to the St. Landry Parish School Board was transporting students to their respective homes from school when she stopped at the home of an acquaintance to use the restroom. While backing out of the acquaintance's driveway, the school bus driver backed into an oncoming truck. The driver of the truck sustained multiple herniated discs in his neck and lower back as a result of the accident. The court awarded damages to truck driver, and the insurance company appealed. A Louisiana court of appeals held that the bus driver's negligence **was the sole proximate cause** of the collision with the truck. Furthermore, the truck driver was **not** traveling at a high rate of speed.

Commentary:

No commentary this month.

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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October-November 2008 (#'s 570, 571, & 572)

Legal Update for District School Administrators October - November 2008

Johnny R. Purvis*

West's Education Law Reporter
March 6, 2008 – Vol. 228 No. 1 (Pages 1 – 601)
March 20, 2008 – Vol. 228 No. 2 (Pages 603 – 1007)
April 3, 2008 – Vol. 229 No. 1 (pages 1 – 307)

Terry James, Chair, Department of Leadership Studies, University of Central Arkansas
S. Ryan Niemeyer, Editor, Director, University of Mississippi – Grenada and Assistant Professor, Leadership and Counselor Education
Shelly Albritton, Technology Coordinator, Department of Leadership Studies, University of Central Arkansas
Safe, Orderly, and Productive School Institute
Department of Leadership Studies
University of Central Arkansas
201 Donaghey Avenue
230 Mashburn
Conway, AR 72035
*Phone: 501-450-5258 (office)
*E-mail: jpurvis@uca.edu

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
- Civil Rights
- Disabled Students
- Labor and Employment
- Religion
- School Boards
- Security
- Standards and Competency
- Student Discipline
- Torts

Commentary:

- No commentary this month.

Topics

Abuse and Harassment:

"Learning Disabled Child Harassed"
Rost ex rel. K. C. v. Steamboat Springs R E-2 School Dist. (C. A. 10 [Colo.], 511 F. 3d 1114), January 4, 2008.

School district was **not** provided with actual knowledge that learning-disabled (early childhood brain injury) student was being sexually harassed, including performing oral sex. Thus, the school district was **not** liable under Title IX. Student's parents met with the school's principal and stated that their daughter was afraid to attend math class, did not want her aide (caused boys to tease her more) in math class anymore, and that student had told them that the boys were bothering her. Furthermore, school officials were **not deliberately indifferent** to student's harassment for purposes within preview of Title IX.

Administrators:

"Name Clearing for Former Superintendent Not Necessary"
Stodghill v. Wellston School Dist. (C. A. 8 [Mo.], 512 F. 3d 472), January 9, 2008.

Special administrative board (SAB – A three member panel appointed to run the school district after it lost accreditation due to the fact that its reading scores improved to greatly to be considered legitimate.) members' statement that cheating had occurred in the school district under the former superintendent's watch was not a direct assault on his honesty so as to create a level of stigma to implicate a liberty interest (14th Amendment) regarding the superintendent's reputation. Thus, a name clearing due process hearing was **not** necessary since the statement by the SAB merely challenged the superintendent's performance in effectively overseeing the school district. Furthermore, the SAB members did **not** publicly assert that former superintendent condoned or was even aware of the cheating.

Civil Rights:

"Chemistry Teacher Reassigned"
Burnett v. School Dist. of Cheltenham Tp. (C. A. 3 [Pa.], 248 Fed. App. 283), September 20, 2007.

A chemistry teacher brought action against school district alleging that the administration's reassigning him to teach other chemistry and science classes, rather than honors chemistry, was racial discrimination. The plaintiff had previously taught honors chemistry, but due to complaints about his harsh grading practices, inappropriate sexual advances toward students, inappropriate sexual comments in class, inappropriate touching of female students, and his general demeanor toward students; school officials placed him on an improvement plan and reassigned his teaching duties. In addition, he was placed on an intensive supervision program and suspended nine days without pay and one day with pay. The United States Court of Appeals, Third Circuit, held that the school district's reasons for assigning honors chemistry classes to another teacher and placing plaintiff on an intensive supervision program were **not pre-textual** for race discrimination against Native Americans.

Disabled Students:

"Parent Alleged Emotional Distress Due to IDEA Hearings"
Blanchard v. Morton School Dist. (C. A. 9 [Wash.], 509 F. 3d 934), December 3, 2007.

Parent (plaintiff) brought action against defendant (school district) under Section 1983, Americans with Disability Act (ADA), and Rehabilitation Act (Section 504); seeking damages for alleged emotional distress and lost of income she experienced during her successful effort to obtain benefits for her autistic son under IDEA. The United States Court of Appeals, Ninth Circuit, held that plaintiff was **not entitled** to damages under any of the aforementioned acts.

"Parent Not Entitled to Consultant Fees"
A. W. v. East Orange Bd. of Educ. (C. A. 3 [N. J.], 248 Fed. App. 363), September 14, 2007.

Parent of disabled student (hyperactivity) was **not** a "prevailing party" under IDEA's fee-shifting provision by virtue of having obtained an acceptable IEP. The fee-shifting provision within IDEA does not authorize a prevailing parent to recover fees ($22, 725.00) for services rendered by an expert educational consultant in IDEA proceedings. The school district had told the parent that her son could not attend school unless he was medicated for his hyperactivity.

Labor and Employment:

"Teacher Terminated Due to Fraudulent Course Credit"
Mitchell v. School Bd. of Miami-Dade County (Fla. App. 3 Dist., 972 So. 2d 900), February 7, 2008.

Just cause supported termination of public school teacher's employment, where teacher obtained credits for college courses for which he did *no* work and then used the credits to obtain his teacher certification. Note: The fraudulent academic credit and transcripts were from Eastern Oklahoma State College, and he was not the only teacher to obtain fraudulent credit from the aforementioned college.

Religion:

"Elementary School Violated Establishment Clause"
Doe v. Wilson County School System (M. D. Tenn., 524 F. Supp. 2d 964), November 9, 2007.

Parents of elementary school student sued school district, claiming violation of the Establishment Clause of the First Amendment of the United States Constitution due to school officials allowing a parental religious group ("Praying Parents") to conduct various religious activities on school properties and during the regular school day. The United States District Court, M. D. Tennessee, Nashville Division, held that **material issues of fact existed** as to whether school officials endorsed Christian religion by allowing parental prayer group to meet on school property, allowing the distribution of religious literature to teachers, allowing them to have a link to the elementary school's website, and holding a prayer event in a partitioned area of the school cafeteria. Therefore, the court **precluded summary judgment** for the school district because of the administration's violation of the Establishment Clause. In other words, the court ruled in favor of the plaintiff.

"Candy Canes with Religious Message Not Allowed"
Curry ex rel. Curry v. Hensiner (C. A. 6 [Mich.], 513 F. 3d 570), January 16, 2008.

Fifth grade student, by and through his parents, filed action against both the school district and his principal, alleging that student's free speech rights were violated when he was not allowed to sell candy canes with religious cards attached to them as part of a classroom assignment. The message attached to the candy canes (made of pipe cleaners and beads) promoted "Jesus". The United States Court of Appeals, Sixth Circuit, held that the student's free speech rights were **not** violated and principal's restriction of student's expression **was reasonably related to a legitimate pedagogical concern** as required in a ***Hazelwood analysis*** (refer to Hazelwood Sch. Dist. v. Kuhlmeier, 484. U. S. 260).

School Boards:

"Parents Not Welcome At School Board Meeting"
Lowery v. Jefferson County Bd. of Educ. (E. D. Tenn., 522 F. Supp. 2d 983), October 9, 2007.

School board's policy to limit appearances at public meetings that were "frivolous, repetitive, or harassing in nature" **was content-neutral regulation of speech** justified by board's interest in conducting orderly, efficient, and dignified meetings. Thus, board's invocation of the policy to justify denial of parents' request to address board regarding their son's dismissal from the high school varsity football team did **not violate** the First Amendment. Plaintiffs had been allowed to address board during its previous meeting and there was **no** indication that policy was applied in a manner that was anything but content-neutral and viewpoint-neutral.

Security:

"Parent Acted a Fool at Elementary School"
Toledo v. Thompson-Bean (Ohio App. 6 Dist., 879 N. E. 2d 799), September 21, 2007.

Parent was convicted in Toledo's Municipal Court for violating the city's Safe School Ordinance; and sentenced to 30 days of incarceration (suspended), a fine of $100 (suspended), and other costs were imposed. Thereupon, she appealed her conviction upon the grounds that the ordinance was constitutionally vague and overbroad due to the manner in which the words "disrupt" and "disturb" were used in the ordinance. The Court of Appeals of Ohio, Sixth District, Lucas County, held that **evidence was sufficient to support parent's conviction** for violating Safe School Ordinance prohibiting persons from disrupting school activities. Parent became outraged during a schedule meeting with an elementary school principal, expressed her displeasure at a closed door meeting with the principal, left the meeting, and walked down the hallway loudly yelling obscenities. Classroom teachers were forced to close their classroom doors and comfort some of the fearful children as the parent proceeded down the school's corridor. It was very obvious that school was in session and that children were present as defendant walked through the school. Thus, **evidence pointed to a deliberate decision** on the defendant's part to disturb school.

Standards and Competency:

"Coach-Teacher Whipped His Son"
Powell v. Paine (W. Va., 655 S. E. 2d 204), November 21, 2007.

Brian Powell (plaintiff) was a science teacher and head football coach at Moorefield High School in West Virginia. In addition, he is the father of five children. On September 26, 2004, his nine-year-old son showed him a disciplinary note that he received at school for inappropriate comments about two classmates that he made in front of his class. When questioned by his father, the son's response was, "I don't know." The plaintiff picked up a belt and repeatedly lashed his son across the back with the belt until the son disclosed the nature of the classroom conduct. The next day the son told several classmates and word reached the teaching staff. Thereupon, the youngster was called to the principal's office where he showed the welt marks on his left shoulder and back. The school's guidance counselor called the West Virginia Department of Health and Human Resources (DHHR). As a result, the son and two other children were removed from the Powell home. The 13-year-old was returned to the home within seven days and the two younger children, including the abused son, were returned approximately two months after the occurrence. A criminal investigation was held by the West Virginia State Police and the plaintiff was charged with felony child abuse for beating his son. Plaintiff later pled guilty to one count of the misdemeanor offense of domestic battery. He was sentenced to 30 days of incarceration, which the court allowed him to serve on weekends and holidays, and a fine. The school board suspended plaintiff and he was eventually returned to his teaching duties. The West Virginia Department of Education, through the Professional Practices Panel (PPP) suspended the plaintiff's license to teach for four years. The Supreme Court of Appeals of West Virginia held that clear and convincing evidence did **not** support the finding that the teacher's misconduct of beating his son rendered him unfit to teach. Furthermore, there was **no** rational nexus between plaintiff's misconduct of beating his son and his duties as a teacher.

Student Discipline:

"Student Inappropriately Touched Teacher"
Brown v. Plainfield Community Consol. Dist. 202 (N. D. Ill., 522 F. Supp. 2d 1068), November 27, 2007.

High school freshman student who was expelled for inappropriate touching his teacher (Student brushed his teacher's buttocks twice [week interval between the two incidents] with the back of his hand during class.) did **not** possess federal due process right to cross-examine at expulsion hearing three unnamed students who submitted witness statements. School officials had a strong interest in protecting the students who came forward to report the misconduct by their peer, and a great administrative burden would result from creating offending student the right to cross-examine witnesses at school disciplinary hearing. Therefore, the school district did **not** violate the offending student's due process rights during his expulsion hearing.

"Student Hacked Into School District's Computer"
M. T. v. Central York School Dist. (Pa. Cmwlth., 937 A. 2d 538), November 5, 2007.

High school student appealed the decision of the school board that expelled him for the remainder of the semester for violating the school district's computer use policy. The tenth grader admitted that he helped another student hack into the school district's computer system by "cracking the hash" or decoding encrypted information with "OPH Crack" software. In addition, the student further admitted that he supplied user names and passwords to the other student who used the information to enter non-student areas of the computer system to install software and to manipulate the school district's database. The Commonwealth Court of Pennsylvania stated that the school board **acted appropriately** in expelling high school student for the remainder of the semester for violating the school district's computer use policy and accessing extremely sensitive and private school district information. The suggested 10-day suspension associated with the policy **was only a guide** and that **an individual case could warrant modification** of listed penalties. Furthermore, the offending student had previously committed another serious violation of the computer use policy and his conduct was felonious under the state's criminal statutes.

"Student Disrupted ISS"
In re. J. D. (Ga. App., 655 S. E. 2d 702), December 12, 2007.

Evidence **was sufficient** to support delinquency adjudication on charge of disrupting a public school. The juvenile (13-year-old), a student at a middle school, was assigned to in-school suspension (ISS). The paraprofessional assigned to the ISS classroom testified that when the juvenile entered the classroom he was "very angry", "belligerent", refused to comply with her instructions, and was throwing papers off the teacher's desk. In addition, the paraprofessional testified that the juvenile's behavior was "getting the other kids riled up" to the point where she could not control the classroom and it became disorderly. Furthermore, when the school resource officer (SRO) arrived at the classroom, he observed the juvenile standing-up, making comments, and laughing while the rest of the class laughed at him.

Torts:

"Kindergarten Student Died Following Asthma Attack"
Williams v. Hempstead School Dist. (N. Y. A. D. 2 Dept., 850 N. Y. S. 2d 459), December 4, 2007.

A five-year-old kindergarten student with asthma died after his mother took him home after picking him up from school. The youngster began to have some difficulties breathing in his classroom and the teacher aide walked him to the school nurse. The nurse administered his Maxair inhaler medication and his breathing difficulties seemed to have ceased. Thereupon, the school nurse walked the youngster back to his classroom. Later that morning the youngster's mother picked him up at school and took him home. The youngster begin to have breathing difficulties on the way home and later died in a hospital emergency room. Student's mother sued the school district alleging that school officials were negligent for hiring the nurse. In addition, she sued the nurse for professional malpractice. The New York Supreme Court, Appellate Division, Second Department, stated that the school district and school nurse owed ***no*** duty of care to the asthmatic student because at the time of death, the student's mother had assumed control over him.

"Student Injured at Roller Rink"
Gaspard v. Board of Educ. of City of New York (N. Y. A. D. 2 Dept., 850 N. Y. S. 2d 550), January 22, 2008.

A nine-year-old student was injured at a roller skating center when she slipped and fell while participating in an after-school program which was a result of "a sudden and abrupt action" by an unknown skater which *"could not have been avoided by the most intense supervision."* Thus, **neither** the center, event sponsor, nor school district were liable for the student's injuries.

"Student Injured Using School's Weight Machine"
Murphy v. Fairport Cent. School Dist. (N. Y. A. D. 4 Dept., 850 N. Y. S. 2d 752), February 1, 2008.

Evidence existed as to whether a physical education teacher, who moved back and forth between two rooms supervising students while they used weight machines and free weights was liable when a student injured himself using a weight machine during the teacher's absence. The student's injury raised a number of legal issues as to whether the teacher and the school adequately supervised the students who were attending the class and *whether* the injuries sustained by the student *were foreseeable* as a result of *"absence of adequate supervision"*. Thus, **summary judgment *was denied*** for both the teacher and school district.

"Special Needs Student Slammed on Restroom Floor"
Johnson v. Ken-Tom Union Free School Dist. (N. Y. A. D. 4 Dept., 850 N. Y. S. 2d 813), February 8, 2008.

Four male special education students were playing (e. g. running, jumping, and making loud noises) in a school's restroom unsupervised for approximately four minutes prior to the plaintiff's son being picked-up by one of the students and dropped on the floor of the restroom causing him to fracture his tooth. The Supreme Court of New York, Appellate Division, Fourth Department, held that the school **failed** to establish that it did not have notice of students' dangerous conduct. Furthermore, the court stated that school officials **failed** to meet the burden of establishing that the injury sustained by the plaintiff's son took place within such a short time span that a greater degree of supervision would not have prevented it.

"Student's Backpack Contained Hit List"
Jachetta v. Warden Joint Consol School Dist. (Wash. App. Div. 3, 176 P. 3d 545), January 24, 2008.

A school bus driver found a backpack that was left behind on his bus. He looked though the backpack to find the owner's name. Thereupon, he found a handwritten list of names with the words "2 kill list" at the top. The list included 128 names, including the plaintiff's son. The principal interviewed the student (K. S.) and she admitted writing the list while she was on the phone with another student (S. M.). She indicated that neither she nor S. M. intended to harm anyone on the list and they simply created the list because they were bored. School officials expelled (S. M.) for three school days on an emergency basis. It was afterward converted to a 45 day long-term suspension. School officials provided notice to all parents, faculty, and staff about the incident and that corrective measures had been taken. After the offending student had received a mental health assessment, it was determined that he was not a risk to himself or others. Thereupon, he was admitted back into school. The plaintiffs' son's name was the first name on the hit list that K. S. and S. M. complied. Thereupon, they would not allow their son Billy to return to school so long as S. M. was in attendance. School officials worked with the plaintiffs and allowed their son to complete his studies at home. However, the plaintiffs wanted a full-time tutor, which was refused by school officials. A counselor retained by the plaintiffs diagnosed Billy with post-traumatic stress disorder (PTSD). Thereupon the plaintiffs sued the school district for negligence. The Court of Appeals of Washington, Division 3, held that (1) The school district did **not** owe a duty of care to protect the threatened student's parents and (2) It **was not foreseeable** to school officials that threatened student would develop PTSD as a result of being placed on a "to kill list" that was not intended to harm the youngster.

"Student Release Form Valid"
Krathen v. School Bd. of Monroe County (Fla. App. 3 Dist., 972 So. 2d 887), January 30, 2008.

Release ("release and hold harmless") executed by high school student's parent, which released the school board from liability for "any injury or claim resulting from student's athletic participation" **was binding against student**, who was subsequently injured during cheerleading practice. Student's parent **had the authority to waive student's rights** in order to permit student to participate in activity parent thought would be beneficial for student.

Commentary:

No commentary this month.

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