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Safe, Orderly, and Productive School Legal News Note

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

"School Officials Not Deliberately Indifferent to Alleged Harassment of Student by His Peers"

Patterson v. Hudson Area Schools (E.D. Mich., 724 F. Supp. 2d 682), July 1, 2010.

School district was **not** deliberately indifferent to alleged sexual harassment of student by his peers, in violation of Title IX; whereas, teachers and school administrators responded to each incident of harassment for which they had notice. Furthermore, the district's *responses were prompt and effective, district had policies in place for preventing and responding to sexual harassment, and school officials promoted activities that addressed sexual harassment*. The student's parents agreed with arrangements made by the school district to deal with their son's harassment and there was **no** evidence that school officials were aware of any adverse consequences from its actions or inactions that cause the plaintiff additional harm. **Note:** The middle/high school student experienced behaviors such as the following from his fellow students: being called him names such as "fag," "faggot," "gay," "queer," "man boobs," "Mr. Clean,"; slapped by a female student; and generally bullied and teased.

"Display of Confederate Flag Would Have Resulted In a Substantial Disruption of the School's Learning Environment"

Defore ex rel. Defore v. Spiva (C. A. 6 [Tenn.], 625 F. 3d 324), November 18, 2010.

All schools within the plaintiff's school district have a student conduct code that fundamentally states "apparel or appearance, which tends to draw attention to an individual rather than to a learning situation, must be avoided." The police further states that "clothing and accessories such as back packs, patches, jewelry, and notebooks must not display (1) racial or ethnic slugs/symbols, (2) gang affiliations, (3) vulgar, subversive, or sexually suggestive language or images; nor, should they promote products which students may not legally buy, such as alcohol, tobacco, and illegal drugs." According to school officials, the school district has experienced a racially tense environment since 1956 when the school district was integrated. On October 30, 2006, the plaintiff, a high school student, wore a t-shirt to school bearing an image of the Confederate flag. School officials told the student he was in violation of the student code of conduct and he was asked to either turn the shirt inside-out or remove it; he refused to comply and was sent home. On November 6, 2006, the plaintiff wore a belt buckle to school that displayed an image of the Confederate flag. A school official informed the student that he was in violation of the code of conduct and when the plaintiff refused to comply with the school's dress and grooming code, he was suspended. Prior to the aforementioned two incidents, the plaintiff had wore clothing depicting the Confederate flag to school, but complied when school officials requested that he remove or cover the clothing. The United States Court of Appeals, Sixth Circuit, held that school officials **reasonably forecast** that permitting the displays of Confederate flag would result in a substantial disruption of the school's educational environment and/or material interference with schoolwork and school discipline. Thus, the suspension of the plaintiff for displaying the Confederate flag did **not** violate the student's free speech clause of the First Amendment due to the fact that there was a history of racial tension, violence, and threats of violence in the school; plus, the Confederate flag was a controversial racial and political symbol.

"Termination of Non-Licensed Employee after Disqualifying Criminal Background Check Did Not Violate State Constitution"

Doe v. Ronan (Ohio, 937 N. E. 2d 556), October 26, 2010.

Discharged plaintiff of a public school district sued the school district and the interim superintendent in federal district court, alleging that his termination that was based on a background check that revealed a drug related felony conviction violated Ohio's constitution. The plaintiff was convicted in 1976 for drug trafficking in violation of Ohio law and spent three years in a correctional facility. After being released, the plaintiff obtained a college degree, became a licensed social worker, and was certified as a chemical-dependency counselor. In 1997, the plaintiff's conviction record was expunged according to Ohio law and he had no other criminal convictions. The plaintiff was employed as a "drug-free-school specialist' with the Cincinnati Public School District. The Supreme Court of Ohio held that the state statute prohibiting the employment of a school district employee who had been convicted of a "enumerated non-rehabilitative criminal offense" did **not** violate the plaintiff's constitutional rights.

"Former Teacher Failed to Establish That She Suffered From Disability Due to Bipolar Disorder"

LaGatta v. Pennsylvania Cyber Charter School (W.D. Pa., 726 F. Supp. 2d 578), June 30, 2010.

Plaintiff, a former teacher and call center representative, for the Pennsylvania Cyber School (serves approximately 9,000 students) brought action against defendant alleging disability discrimination due to her disability (depression and bipolar disorder) under ADA. However, the employment issues that were used to dismiss the plaintiff were as follows: (1) talking on her cellular phone at work for extended periods of time; (2) taking two breaks in one afternoon; (3) complaints from other employees; and (4) not getting along with her supervisors. The United States District Court, W.D. in Pennsylvania held that the plaintiff **failed** to establish that she suffered from an actual disability due to her alleged bipolar disorder and depression, as required to maintain a claim under ADA. Plaintiff may have had difficulty at work with her fellow employees and supervisors; however, there was **no** evidence that her disorder was the cause of those difficulties, **nor did** the plaintiff demonstrate the inability to work a range of jobs.

"Temporary Expulsion of Student Did Not Violate Her Due process Rights"

Anderson v. Hillsborough County School Bd. (C.A. 11 [Fla.], 390 Fed. App. 902), August 3, 2010.

Plaintiff, a former high school student, was expelled for ten school days for fighting and battery on an assistant principal prior to being placed in an alternative school rather than back into a "regular" high school. The plaintiff claimed that the temporary removal from her home high school and ultimate placement in an alternative school violated her due process rights under the Fourteenth Amendment. The Untied States Court of Appeals, Eleventh Circuit, held that the plaintiff was **not** expelled without notice and a hearing, but was temporarily expelled until an administrative hearing could be held. Thus, school officials did **not** deprive the student of a property right to a public school education in violation of her due process rights by expelling her from school.

"Superintendent Hearing Required Prior to Assigning Student to an Alternative Learning Center"
Rone v. Winston-Salem/Forsyth County Bd. of Educ. (N. C. App., 701 S. E. 2d 284), November 2, 2010.

County board of education policy requiring a superintendent-level hearing before a high school student is confined to an alternative learning center (ALC) **applied** to plaintiff who was assigned to an ALC until a risk assessment was completed and deemed *not* to be a threat to himself or others. The plain language of the policy revealed that it **applied** all students assigned to the ALC *as an alternative to a suspension or expulsion*. The plaintiff was suspended from school for refusing a risk assessment and therefore assigned to the ALC as an alternative to suspension. **Note**: The ninth grader had threatened students at his high school and drew a picture depicting a female student being stabbed.

"Student's Appeal of Her Expulsion from School Dismissed"
M.L.R. v. Pontotoc City School Dist. Bd. of Trustees (Miss. App., 46 So. 3d 874), November 2, 2010.

School officials along with police officers conducted a canine search of vehicles parked in a high school's parking lot; thereupon, a drug dog alerted at a vehicle belonging to a eleventh grade female student. The student was called to the scene and officers asked her for permissions to search the interior of her car; she consented to the search. When asked before the search if there were drugs in the vehicle, she said no. During the search the officers found marijuana (.6 gram) in the plaintiff's vehicle. She told officers that she had no knowledge of the marijuana and volunteered to take a drug test. Furthermore, she told officers that she had lent her vehicle to other students over the weekend that the bag in which the marijuana was found was not hers. School officials expelled the plaintiff for one school year for the possession of drugs' in her vehicle on her high school's campus. The Court of Appeals of Mississippi held that the expulsion of the plaintiff **was warranted**.

"Teacher Exceeded Her Scope of Authority in Administering Corporal Punishment"
Ex parte Monroe County Bd. of Educ. (Ala., 48 So. 3d 621), May 14, 2010.

Fifth grade teacher **exceeded** the scope of her authority in administering corporal punishment to a student when she did **not** administer the corporal punishment in the presence of an other school district employee as required by the school district's policy regarding corporal punishment. Due to the aforementioned conclusion, she was **not** entitled to state immunity in the tort action against her on behalf of the student who was subjected to the corporal punishment. **Note:** The teacher took the 12-year-old fifth grader, who was two years older than his classmates, into the school's hallway and attempted to "hand-paddle" him using rulers taped together, who resisted by pulling his hand away several times. Thereupon, she retrieved her paddle from her classroom, took him into an empty classroom, and attempted to paddle him. The student repeatedly moved to avoid the spanking and at one point grabbed the paddle and attempted to take it away from the teacher. She made no further attempts to paddle the student, who then disobeyed her request for him to return to her classroom. The teacher then struck the student on one of his arms and one of his legs. Claims were filed against the teacher for negligence, wantonness (e.g. senseless and unjustifiable), and assault.

Books of Possible Interest: Two recent books published by Purvis –

1. Leadership: Lessons From the Coyote, www.authorhouse.com
2. Safe and Successful Schools: A Compendium for the New Millennium-Essential Strategies for Preventing, Responding, and Managing Student Discipline, www.authorhouse.com

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