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

Topics:

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

Topics

Abuse and Harassment:

"School District's Building Maintenance Supervisor Not Discriminated Against Due to National Origin"
Abraham v. New York City Dept. of Educ. (C. A. 2 [N.Y.], 398 Fed. App. 633), September 22, 2010.

Plaintiff, a building maintenance supervisor, who was of Indian national origin, and who had been denied promotion to regional contract manager, filed legal action against his school district alleging racial discrimination in violation of title VII and New York state law. The United States Court of Appeals, Second Circuit, held that plaintiff **failed** to rebut the school district's legitimate non-discriminatory reason for deciding not to promote him to the position to which he applied. The Court went on to state that to survive summary judgment on the strength of his credentials, the plaintiff must demonstrate that his credentials are "so superior to the credentials of the person selected for the job that no reasonable person, in the exercise of impartial judgment could have chosen the candidate selected over the plaintiff for the job in question."

Civil Rights:

"Teacher's Right to Privacy Regarding Her Fibromyalgia Not Constitutionally Protected"
Matson v. Board of Educ. Of City School Dist. of New York (C.A. 2 [N.Y.], 631 F. 3d 57), January 11, 2011.

Former music teacher sued school board, city, and school officials, alleging that the defendants violated her right to privacy by publicly disclosing that she suffered from fibromyalgia. The United States Court of Appeals, Second Circuit, held that the plaintiff did **not** enjoy protected privacy right as to her condition, as required for a substantive due process claim under the Fourteenth Amendment of the United States Constitution. The plaintiff did *not* allege that she personally suffered discrimination or intolerance as a result of the disclosure, that she was embarrassed or humiliated by the disclosure, or that fibromyalgia had any adverse impact upon her alternative employment as an orchestra conductor. **Note:** In November 2004, the plaintiff requested three days of sick leave; however, her principal reminded her that she was scheduled to direct a school orchestra concert that the week in which she wanted to take sick leave. The sick leave nonetheless was granted. The principal learned that the plaintiff conducted the Scandia Symphony's concert (based at the Trinity Church in lower Manhattan) while on her granted sick leave from the defending school district. The record of the court does not reveal the manner in which the plaintiff's employment with the school district ultimately came to an end.

"Kindergarten Student Touches another Kindergarten Student Inappropriately"
Brooks v. City of Philadelphia (E.D. Pa., 747 F. Supp. 2d 477), October 5, 2010.

A school district's response to an incident in which a kindergarten student touched another kindergarten student's genitalia and later an incident in which the same student placed his genitalia on another student's back were **not deliberately indifferent**, and therefore the district was **not** liable for student-on-student sexual harassment under Title IX. After the first incident, school officials notified and met with both sets of parents and the school principal spoke to the school supportive service assistant and requested that the two students not be permitted in bathroom together, and following the second incident, the school district complied with the request of the victim student's parents to transfer their son.

Disabled Students:

"IEP Did Not Provide a FAPE for Student's Tenth Grade Year"
E. S. ex rel. B. S. v. Katonah-Lewisboro School Dist. (S.D.N.Y., 742 F. Supp. 2d 417), September 30, 2010.

Parents of a student who suffered from schizoaffective disorder and borderline intellectual functioning **were entitled** to reimbursement under IDEA for private school expenditures for the youngster's tenth grade school year. The public school district's IEP for the student's tenth grade school year *was inappropriate*. However, the private school's IEP *was appropriate* to meet the student's needs for that year due to the progress he had made socially, emotionally, and academically. Furthermore, the plaintiff's did *not* act in bad faith in paying tuition to the private school.

Labor and Employment:

"Teacher Had No Right to Privacy Regarding His Arrest Record"
Irwin v. Miami-Dade County Public Schools (C.A. 11 [Fla.], 398 Fed. App. 503), October 4, 2010.

Teacher applicant had **no** right of privacy in confidentiality of his arrest record because such disclosure did **not** violated any constitutional right regarding both multiple defendants' (N=37) refusal to hire him as a teacher and his termination from a teaching position following the disclosure of his arrest record. **Note:** The plaintiff's troubles began in 1998 during a heated argument with his 19-year-old daughter, he slammed a door and accidently cut her foot. She called 911 and police arrested him for misdemeanor battery. The state dropped the charge on the daughter's request and the record of the arrest was expunged pursuant to Florida code. Under Florida law, a person with an expunged record may lawfully deny the existence of the underlying arrest or conviction record, *except when seeking a teacher's license or applying for employment at a school or child care facility*.

"Teacher's Claims of Discrimination Did Not Amount to a Continuing Violation"
Valtchev v. City of New York (C.A. 2 [N.Y.], 400 Fed. App. 586), November 15, 2010.

Even though the plaintiff, a public school teacher, was denied various promotions to different positions, received an evaluation of "unsatisfactory" for both a math and an English class, and a number of reprimands for not following school procedures; such actions did **not** give rise to individual discrimination under Title VII (national origin) nor Age Discrimination (age) in Employment Act (ADEA). There *was ample evidence* from the plaintiff's evaluations to provide detail accounts pertaining to deficiencies in the plaintiff's classes to justify "unsatisfactory" markings.

"Employee's Multiple Sclerosis Did Not Render Her Disabled"
Shepherd v. Chambers (Neb., 794 N.W. 2d 678), January 28, 2011.

Evidence **was sufficient** to establish that a school district employee (an accountant) *was able to engage in substantial gainful activity* despite her diagnosed multiple sclerosis (M. S.); thus, **precluding finding** of a "disability" under the state's School Employees Retirement Act. The employee (plaintiff) **failed** to present an expert medical opinion on the issue whereas the Public Employees Retirement System presented an opinion from a neurologist that stated that there was "little if any neurological impairment" and testified that the employee *could maintain employment with the school district in some capacity* despite the physiological effects of her disease.

"Former Middle School Teacher Entitled to Reimbursement of Attorney Fees and Costs Associated with Her Successful Defense of Criminal Charges"
Acor v. Salt Lake City School Dist. (Utah, 247 P. 3d 404), January 28, 2011.

Criminal charges brought against plaintiff for alleged sexual abuse of a student (alleged to have occurred with the student beginning in the seventh grade until the middle of the student's senior year in high school) ***arose out of or were in connection with conduct within the scope of the former teacher's employment and during the performance of her duties and arose out of alleged acts committed under the color of here authority as a teacher***. The plaintiff was acquitted of all charges and therefore **was entitled** to the reimbursement from the school district of all attorney fees and related costs she incurred in her successful defense of the charges against her.

Security:

"Arrest of Security Guard Was Proper Even Though He Was Acquitted"
Castro v. County of Nassau (E.D.N.Y., 739 F. Supp. 2d 153), September 13, 2010.

On December 8, 2004, someone called 911 and stated that there was a bomb located at the Great Neck North High School where the plaintiff (Castro) worked as a security guard. No bomb was found during a search of the school. Another security guard at the school identified the 911 caller as the plaintiff after listening to the tape of the call, along with signing a sworn affidavit attesting to the identification. The plaintiff was arrested and charged with falsely reporting an incident; however, a jury acquitted him of the charges. Thereupon he filed a lawsuit pertaining to false arrest, malicious prosecution, the use of excessive force, First Amendment retaliation, and so forth. A United States District Court in New York held that (1) the officer **had probable cause** to arrest the plaintiff, (2) there **was probable cause** for criminal proceeding against the plaintiff, (3) the arresting officer **was entitled** to qualified immunity, and (4) fact issues **existed** as to the reasonableness of the officer's handcuffing of the plaintiff.

"Twenty-five Years of Confinement of Former Teacher Was Justified"
State v. Rice (Wash. App. Div. 2, 246 P. 3d 234), January 19, 2011.

Defendant (Rice) was a 4th grade teacher that had sexual relations with one of her students who was at the time was under 15-years-of-age. She also had sex with his brother who was 15-years-of-age at the time in which the defendant had sexual relations with him. The Court of Appeals of Washington, Division 2, ruled that the imposition of two concurrent life sentences with a mandatory minimum sentence of 25 years of confinement on the defendant's convictions for first degree kidnapping and rape of a minor less than 15-years-old and predatory first degree child molestation was **not inconsistent** with Washington state's sentencing reform act's intent to appropriately use state resources to protect children. This was especially appropriate where defendant ***abused her position as a public elementary school teacher*** to engage in multiple inappropriate sexual contacts with two child victims over a period of several months.

Student Discipline:

"Juvenile Not Guilty of Obstructing or Opposing an Officer without Exhibiting Violence"
M. W. v. State (Fla. App. 2 Dist., 51 So. 3d 1220), January 14, 2011.

Because the plaintiff's (juvenile) threats against a school administrative official occurred outside of an officer's (SRO) presence, the warrantless arrest of the plaintiff **was unlawful**, pursuant to state statute authorizing an officer to arrest a person without a warrant only when a person has committed a felony or misdemeanor in the arresting officer's presence. Therefore, the officer was **not engaged** in the lawful execution of a legal duty when the plaintiff obstructed or opposed the arrest. Thus, the plaintiff could **not** be found delinquent for obstructing or opposing an officer *without violence*. **Note:** A middle school administrator had to remove the plaintiff from a classroom for being disruptive. The plaintiff refused to enter the student affairs office and shouted profanities at the administrator. In addition, the plaintiff slammed his books onto the floor, told the administrator to get out of his "f---ing face" or he was going to hit him, and made 2 steps toward the administrator. Soon thereafter the school's SRO arrived to provide assistance to the administrator.

Torts:

"School District Not Negligent In Its Operation of School Bus"
Green v. South Colonie Central School Dist. (N.Y.A.D. 3 Dept., 916 N.Y.S. 2d 345), February 17, 2011.

School district was **not** negligent in its operation of a school bus, as would support a negligence claim brought by a kindergarten student's parents. The plaintiffs sought the recovery of damages for the injuries that their son sustained when he stood-up from his seat while his school bus was decelerating and his face struck the back of the seat in front of him. The bus, including the braking system, was functioning properly at the time of the incident; bus driver was qualified, experienced, and properly trained to operate the bus; and the bus was traveling within the speed limit. Furthermore, the bus did *not* decelerate in an improper manner, and was otherwise operated in accordance with applicable polices and procedures. **Note:** The student was ridding his assigned school bus home following his first day of kindergarten.

"Seventh Grader Stabbed Ninth Grader with a Knife"
Walley v. Bivins (N.Y.A.D. 4 Dept., 917 N.Y.S. 2d 461), February 10, 2011.

The defendant **breached its duty to adequately supervise** students in its charge, and therefore the school district **could be held liable** for personal injuries a ninth grade student sustained when she was stabbed in her leg by a seventh grade student on school grounds. School officials **had notice** of at least three previous altercations between the two students prior to the stabbing; thus, school officials **could have anticipated** that another altercation would occur when the students returned to school following a three-day suspension. Therefore, school officials **failed** to provide counseling to the aggressor student despite the concern over the student's violent nature, and the school district **failed** to comply with its pre-class security plan.

"Student Attacked Another Student at a Basketball Game"
Moffat v. North Colonie Cent. School Dist. (N.Y.A.D. 3 Dept., 917 N.Y.S. 2d 754), March 3, 2011.

Defendant **could not have reasonably anticipated** a student's impulsive and spontaneous attack on a high school basketball game attendee; thus, the defendant was **not** liable for an alleged breach of the defendant's duty to adequately supervise students in its care. The offending student had no history of engaging in dangerous or violent conduct.

"High School Student Stepped in a Large Hole While Playing Touch Football"
Simmons v. Saugerties Cent. School Dist. (N.Y.A.D. 3 Dept. 918 N.Y.S. 2d 661), March 10, 2011.

Genuine issue of material fact **existed** as to whether school's negligent maintenance of school bus circle, as to a hole that was approximately one foot in diameter and one foot that had been in existence for at least 18 months prior to a student being injured when falling into the hole while playing touch football in the circle. The existence of the hole created a dangerous condition over and above the usual dangers associated with the sport of touch football; thus, **precluding summary judgment** for the school district as so pertaining to negligent supervision.

"School Principal Did the Right Thing in Reporting Stepfather's Threats and Verbal Abuse to Police"
Phillips v. Lafayette Parish School Bd. (La. App. 3 Cir., 54 So. 3d 739), December 8, 2010.

In August of 2007, the plaintiff was dropping-off his stepson at an elementary school. The school principal, Louella Cook was on duty and noticed that the student's stepfather was unloading the youngster in the wrong area. Thereupon, she advised the plaintiff that he was dropping-off the student in the wrong area and directed him to the car drop-off area. Upon being advised by the principal, the plaintiff began screaming at the principal and told her that he would return and "get her." Fearing her safety and the safety of the school's staff, students, and visitors, she contacted the police. The plaintiff was arrested for disturbing the peace by making threats. The Court of Appeals of Louisiana, Third Circuit, stated that the principal's actions did **not** intentionally inflict emotional distress upon the youngster nor did such actions by the principal abuse any right or privilege associated with the plaintiff.

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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