February 2012 (636, 637, & 638)

Legal Update for District School Administrators
February 2012

Johnny R. Purvis*

West's Education Law Reporter
October 14, 2010 – Vol. 259 No. 1 (Pages 1 – 379)
October 28, 2010 – Vol. 259 No. 2 (Pages 381 – 991)
November 11, 2010 – Vol. 260 No. 1 (Pages 1 – 491)

Terry James, Chair, Department of Leadership Studies, University of Central Arkansas
S. Ryan Niemeyer, Editor, Co-Director, Mississippi Teacher Corps and Assistant Professor, Leadership and Counselor Education, University of Mississippi
Shelly Albritton, Technology Coordinator, Department of Leadership Studies, University of Central Arkansas
Wendy Rickman, Assistant Professor, 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 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:

"Teacher Failed to Establish Emotional Stress Due to E-Mails"
Juzwiak v. Doe (N. J. Super. A.D., 2 A. 3d 428), August 3, 2010.

High school teacher, who received harassing e-mails, filed a complaint seeking damages for the intentional infliction of emotional distress (e.g. depression, anxiety, and insomnia) and harassment. Due to the fact that the plaintiff did not know the identity of the author ("subscriber") of the e-mails, the plaintiff named the defendant as "John/Jane Doe" and served a subpoena on the internet service provided listed on the e-mails to provide him with the author's identity. The Superior Court of New Jersey, Appellate Division held that the teacher (plaintiff) who had received e-mails from an anonymous author stating that he did not deserve to be allowed to teach, **failed** to establish a prima facie (production of enough evidence) case of intentional infliction of emotional distress and therefore the trial court's **should have** granted the subscriber's motion to quash the subpoena, which was served on the subscriber's internet service provider. The e-mails sent to the teacher did **not** accuse the teacher of vile or criminal acts and e-mails did **not** contain racial insults or obscene language. On the other hand, the author of the e-mails was angry with the teacher; however, the expressions of anger were **not** extreme or outrageous and the teacher did **not** submit any objective documentation of his distress. **Note**: The teacher did certify (He received treatment and prescribed medication form a psychiatrist.) that he suffered from depression, anxiety, and insomnia; plus, had thoughts of hurting himself.

"School District Failed to Establish Reasonable Forecast of a Disruption for a Student Wearing "Be Happy, Not Gay" T-Shirt"
Zamecnik v. Indian Prairie School Dist. N. 204 Bd. of Educ. (N.D. Ill., 710 F. Supp. 2d 711), April 29, 2010.

School officials **failed** to establish *a reasonable forecast of a substantial disruption* from high school student wearing a t-shirt bearing "Be Happy, Not Gay" message, as so required to justify the banning of the shirt. Although some students had negative reactions to the phrase written on the t-shirts, there was **no** evidence that the reaction was violent, that any student's schoolwork suffered, or that any other type of 'substantial disruption" occurred. Some students later joined a website opposed to the conduct of the student who wore the t-shirt; however, it was **not** *reasonable to infer* that this was a direct response to the student wearing the shirt. Thus, school officials' limited anecdotal evidence was **not** sufficient to ban the plaintiff from wearing her t-shirts.

Civil Rights:

"School's Mailbox Policy Requiring Teachers to Seek Permission Prior to Distributing Personal Mail Was Constitutional"

Policastro v. Tenafly Bd. of Educ. (D.N.J., 710 F. Supp. 2d 495), May 7, 2010.

High school mailbox policy requiring teachers to seek permission before the distribution of personal correspondence through the school's mailboxes ***was a valid time, place, and manner restriction***, and thus reprimand a teacher received for his willful violation of that policy did ***not*** violate his First Amendment Rights. The school's internal mail system was **not** a public forum, policy *applied equally to all* teachers at the school regardless of the views/opinions expressed in their communication, policy was *not* unreasonable in that it served to ensure that teachers remained focused on their mission of teaching students, and there were *substantial alternative channels of communication* open to all teachers, including the plaintiff. An example of an alternative channel of communication was the school's e-mail system that was established by the school to allow teachers to send any communication involving any subject matter to any other teacher at any time without seeking permission from the school's administration.

"Black Female Student Could Not Sustain Equal Protection Claim Arising Out of an Assault on School Property"

Watkins v. New Albany Plain Local Schools (S.D. Ohio, 711 F. Supp. 2d 817), May 10, 2010.

Black female former (graduated in 2008) high school student brought civil action in state court against school principal, assistant principal, girls' track and field coach, athletic director, security officer, dean of students, village, and village police officer alleging that defendants violated her Fourteenth Amendment rights in connection with her being physically assaulted by her ex-boyfriend on school property. Furthermore, the plaintiff claimed that defendants conspired to violate her civil rights and state laws pertaining to negligence as so related to her assault and battery. A United States District Court, S. D. Ohio, Eastern Division, held that even assuming that the juvenile court action was dismissed against plaintiff's ex-boyfriend because the school failed to provide the plaintiff with a videotape of the assault (The assault occurred out of view of security cameras.), and further assuming that there was a connection between the juvenile court dismissal the plaintiff's failure to obtain a permanent protective order in civil court, plaintiff **failed** to offer any evidence that she was denied meaningful and effective access to the courts under the Fourteenth Amendment of the United Stated Constitution.

Disabled Students:

"Student Suffering From Severe Mental Retardation with Meaningful Educational Benefits"
A. G. ex rel. S.G. v. Wissahickon School Dist. (C.A. 3 [Pa.], 374 Fed. App. 330), March 11, 2010.

Plaintiff is a non-verbal, highly distractible 18-year-old who suffers from severe mental retardation, has static non-progressive encephalopathy, vision problems, and developmental delays. Furthermore, she is unable to identify letters, numbers, or colors, cannot match items, and has difficulty dressing, undressing, eating, grasping a pencil, and brushing her teeth. In addition, she is not toilet trained. The United States Court of Appeals, Third Circuit, held the school district **provided** the plaintiff with **meaningful educational benefits** and **within the guidelines of IDEA** by providing her with a special life skills curriculum and mainstreaming only for lunch, recess, physical education, homeroom, music, art, and one academic class. The student ***did receive meaningful education benefits as was evidenced*** by advances she made in life skills such as hygiene, toileting, eating, navigating the school, and acknowledging people, **so as to render any award of compensatory education improper**.

"Gym Teacher's Rough Housing with Special Education Student Did Not Constitute Corporal Punishment"
Mahone v. Ben Hill County School System (C.A. 11 [Ga.], 377 Fed. App. 913), May 5, 2010.

Gym teacher's actions in "rough housing" with a special education student did **not** constitute corporal punishment. The student did **not** suffer any physical injury and there was **no** evidence that the teacher acted with malice or with the intent to harm the youngster. **Note**: The teacher frequently engaged in "horseplay" with students during his gym classes and on this particular occasion, the teacher shoved the plaintiff's son's head in a trash can ("Trash Can Incident"). The student suffered from poor motor skills, asthma, and "ADHD."

"IEP Was Inadequate and Student Was Not Offered a FAPE"
N.S. ex rel. Stein v. District of Columbia (D.D.C., 709 F. Supp. 2d 57), May 4, 2010.

Parents of a disabled student **were entitled** to reimbursement of cost of placing their youngster in a private school, where IEP calling for calling for public school placement did **not** offer a FAPE and defending school district ***conceded*** that the private school placement was proper. **Note:** The eight-year-old youngster had a range of educational disabilities which included significant speech/language executive functioning, dyslexia, dysgraphia, and social/emotional difficulties, including a general dysregulation disorder.

Labor and Employment:

"Fake Shooting in School a Joke – No Workers' Comp for Teacher"
Delrie v. Peabody Magnet High School (La. App. 3 Cir., 40 So. 3d 1158), June 2, 2010.

Evidence **was sufficient** to support worker's compensation judge's (WCJ) finding that high school home economics teacher **failed** to show that practical joke by a student in her class pertaining to an "alleged" shooting inside her school was an extraordinary event in the course of her employment as a teacher. Therefore, the plaintiff was **not** entitled to benefits for mental injury or illness resulting from work-related stress, even though the teacher found the event to be extraordinary and violent, even though the assistant principal and students present in her classroom at the time found "the joke" to be obvious. A psychologist found that the teacher seemed to be more susceptible to experiencing post traumatic stress disorder (PTSD); however, the PTSD experienced by the teacher was actually a result of a culmination of events that continued for a number of weeks after the "hoax" was perpetrated by the student.

"Reasons for Not Hiring an Applicant Was Not a pretext for Race Discrimination"
Tucker v. New York City (C.A. 2 [N. Y.), 376 Fed. App. 100), May 10, 2010.

The proffered explanation for not hiring an applicant for a position as a regional drug director for a school district was **not** a pretext for race discrimination as so pertaining to Title VII. The school district stated that the plaintiff performed poorly during an interview and was thought to be difficult to work with because of his abrasive style which was ascertained from the following conclusions: (1) did not demonstrate a leadership style that would make him successful in handling multiple responsibilities; (2) responded to hypothetical questions in a manner indicating "a non-inclusive leadership style", suggesting that he would not approach problems in a collaborative style; (3) did not embrace any alternative approach to problem-solving that involved discussion and feedback, nor did he seem to embrace a leadership style emphasizing consensus building or teamwork; and (4) seemed disinterested in making follow-up visits to counselors serving in the field or otherwise participating in on-site program assessments.

"School District Provided Legitimate Non-Discriminatory Reason for Hiring Minority Candidate as Principal"
Wolf v. New York City Dept. of Educ. (S.D.N.Y.), 708 F. Supp. 2d 327), April 15, 2010.

City board of education employee (assistant principal) who was Caucasian **failed** to demonstrate that employer's stated legitimate, nondiscriminatory reasons for hiring a minority candidate for an open principal position were justification for race discrimination in violation of Title VII. The only evidence presented by the plaintiff was that a regional superintendent within the district, who was not involved in the decision making process for the principal's position, allegedly stated that it was time to hire a minority administrator for the school in which the plaintiff made application. There was **no** evidence that the regional superintendent's statement was indicative of a culture of discrimination or that the decision-maker endorsed such an opinion.

"School District Not Required to Accommodate Disabled High School Counselor by Reducing Her Student Caseload"
Crabill v. Charlotte-Mecklenburg Board of Educ. (W.D.N.C., 708 F. Supp. 2d 542), April 14, 2010.

Accommodations requested by a high school guidance counselor (almost 30 years of experience) suffering from a variety of medical conditions (e.g. Chiari Malformation, lupus, fibromyalgia, arthritis, sleep apnea, and eye problems), namely to limit her student caseload, **was unreasonable**, under the ADA. Such an accommodation *would have shifted her duties* to other guidance counselors, thereby increasing their workload and disrupting the counseling services to all students within the high school.

Music Teacher's Physical Impairments Did Not Substantially Limit Any Major Life Activity"
Nyrop v. Independent School Dist. No. 11 (C.A. 8 [Minn.], 616 F. 3d 728), August 4, 2010.

Elementary school music teacher, who had multiple sclerosis (MS), brought suit against school district alleging that it failed to reasonably accommodate her disability, refused to hire her for an administrative position because of her disability, and retaliated against her for filing a charge of discrimination in violation of ADA, the Rehabilitation Act (Section 504), and the Minnesota Human Rights Act (MHRA). The United States Court of Appeals, Eighty Circuit, held that the plaintiff's physical impairments did **not** substantially limit any major life activity, as required for the teacher to have a disability as defined by the ADA. The teacher did complain of difficulty in projecting her voice at times; however, she stated that she could always make a sound if she put more breath into her speech. The teacher's sensitivity to heat could be treated with air conditioning, and a cooling vest and her fatigue and sensory loss did **not** impair her ability to care for herself. Lastly, the teacher **never** claimed she was unable to work.

"High School Security Officer's Conduct in Provoking another Officer into a Fight was Gross Misconduct"
Brown v. Hawk One Sec., Inc. (D.C., 3 A. 3d 1142), September 9, 2010.

Evidence **supported** the finding that employer (plaintiff), a security officer at a high school, engaged in "gross misconduct" by her involvement in a fight with another uniformed, on-duty officer in a school hallway. Evidence supported the fact that the officer was **not** entitled to unemployment benefits *upon her termination* for "fighting." A fellow officer who was hit in the mouth by the plaintiff did **not** touch or attempt to touch the other officer. Plaintiff deliberately provoked a physical confrontation, following a threat by the other officer, by circling the other officer and taunting, "Who are you going to smack?" Both the defendant and the school district had a legitimate interest in having security personnel to both keep the peace and set a good example for students.

Security:

"Reasonable Supervision Was Provided to Middle School Student Who Was Sexually Assaulted on Her Way Home"
S. J. v. Lafayette Parish School Bd. (La., 41 So. 3d 1119), July 6, 2010.

Mother of a 12-year-old student brought negligence suit against school district and teacher seeking damages for the sexual assault her daughter suffered while walking home from school sometimes after 4:00 p.m. on a school day after attending a behavior clinic for misbehaving students. The Supreme Court of Louisiana held that the plaintiff's daughter was given access to the school's principal office and telephone during the afternoon behavioral clinic to arrange transportation home. Therefore, the defendant did **not** violate its duty to provide *reasonable supervision*. Numerous witnesses stated that the school's office remained opened on the day in which the incident occurred and other students used the office phone to arrange their transportation home. **Note:** On the day that the incident occurred the student's mother did not pick-up her daughter at the conclusion of the school's behavioral clinic; furthermore, she did not make arrangements for her daughter to be picked-up. The youngster was sexually assaulted while walking home through a crime infested area of town.

Student Discipline:

"Suspension of Student for Posting a Video Clip On a Website Violated the First Amendment"
J. C. ex rel. R. C. v. Beverly Hills Unified School Dist. (C. D. Cal., 711 F. Supp. 2d 1094), May 6, 2010.

Video clip which a high school student posted on a website, in which students made derogatory, sexual, and defamatory statements about a 13-year-old female classmate, did **not** cause a substantial disruption in school activities, **nor was there a reasonable foreseeable risk of a substantial disruption as a result of the video**. Therefore, the school's discipline (suspension from school) of the student for posting the video **violated** the plaintiff's First Amendment rights. School officials did have to address the concerns of an upset parent, a student who temporarily refused to go to class, and five students missing some undetermined portions of their classes. In addition, the fear that students would "gossip" or "pass notes" in class did **not** rise to the level of a substantial disruption. **Note:** Plaintiff recorded a four-minute and thirty-two second video of her friends talking about "the offended student" at a local restaurant. In the video they call her "slut," "spoiled," talked about "boners," and used profanity. On the evening of the same day, the plaintiff posted the video on the website "YouTube" from her home computer.

Torts:

"Teacher Was Protected from Liability Under the Doctrine of Official Immunity in Regard to Student's Eye Injury"
Grammens v. Dollar (Ga., 697 S. E. 2d 775), July 5, 2010.

Plaintiff's son suffered an eye injury during a science experiment performed in his eighth-grade science class taught by defendant. The experiment consisted of "launching" a two-liter plastic soda bottle by means of water and air pressure. The soda bottle lifted off the launch pad when air was pumped into the bottle and the U-shaped pin holding the bottle in place was removed. The student was hit in his eye by the metal pin when the student removed the pin by pulling on the string attached to the pin in order to launch the bottle. The Supreme Court of Georgia stated that the school district's eye protection policy required the teacher to perform "a discretionary act" (not a "ministerial act") to determine if the policy was applicable regarding science experiments being conducted in her class. Thus, due to the fact that the policy did *not* impose a ministerial duty upon the teacher, she **was protected from personal liability under the doctrine of official immunity** for the eye injury sustained by the plaintiff's son during the class's science experiment.

"Teacher Not Liable for Injuries Student Sustained When a Classmate Sexually Molested Her During Class -- School District Breached It's Duty When the Perpetrator Was Allowed Back Into School and Placed in a Class With the Victim"
Hood v. Ouachita Parish School Bd. (La. App. 2 Cir., 41 So. 3d 1253), June 23, 2010.

On March 18, 2005, the female student victim was sexually assaulted in a teacher's Algebra I class at West Monroe High School, when the male student perpetrator exposed himself to the victim and touched her with his hand. The teacher did not notice the assault, nor did the victim report it to her Algebra I teacher. However, one of the victim's friends reported the incident to the school's Family and Consumer Sciences (FCS) teacher. The FCS teacher reported the incident to the school's assistant principal. The student perpetrator was assigned to an alternative school for the remainder of the school year and for the first semester of the 2005-2006 school year, and then allowed back into the West Monroe High School. The Court of Appeals of Louisiana, Second Circuit, held that: (1) Teacher exercised **reasonable supervision** over her high school class and there was **no** possible way she could have seen the inappropriate behavior that occurred. Furthermore, the school district was **not** liable for the injuries that the student victim received when the student perpetrator assaulted her during class. The student perpetrator's conduct was **unforeseeable**, **not** constructively or actually known, and **not** preventable. (2) When the administrator at the high school permitted the student perpetrator to return to school, the school district (school board) *placed a heightened duty upon itself* to keep the student perpetrator out of the same classroom with his victim. Furthermore, the student victim relied on the board's duty for *reasonable supervision* to protect her since it was the only assurance that she had for her safety when the student perpetrator returned to school. The board **breached its duty of reasonable supervision** when the student perpetrator was placed in a class with the student victim, who immediately became upset and was subjected to laughter and mockery from other students. **Note:** The student victim withdrew from her high school and enrolled in a private Christian school, which created a financial hardship on her family. Furthermore, the student victim suffers from panic attacks and attends counseling.

"Parents of a Developmentally Disabled Student Who Died After Suffering an Anaphylactic Reaction at a Private School Failed to State a Claim of Gross Negligence"
Begley v. City of New York (N.Y. Sup., 907 N.Y.S. 2d 373), May 24, 2010.

Parents of a developmentally disabled child who died after suffering an anaphylactic reaction at a non-public school, **failed** to allege that school or independent nurse, who tended to the student's medical needs while on the school's premises, had engaged in wanton or malicious conduct, or behavior activated by evil or reprehensible motives as required to state a claim for gross negligence against school and nurse. There was **no** evidence whatsoever that indicated negligence on the part of either the nurse or school.

"School District Was Not Immune for Injury Allegedly Caused by a School Principal's Decision to Hold Recess in a Concrete Courtyard"
Gennari v. Reading Public Schools (Mass. App. Ct., 933 N. E. 2d 1027), September 22, 2010.

Elementary school principal's decision to hold recess in concrete courtyard *was the original cause* of the injury suffered by the plaintiff's first grade youngster when he fell onto a concrete bench. However, the defendant school district was **not** immune from liability for the injury under Massachusetts Tort Claims Act which provided that a public employer is **not** liable for an injury **not** *originally caused* by the public employer. Thus, even if a classmate pushed the student, causing him to fall, the principal's decision to hold recess in a courtyard containing concrete benches **materially contributed** to the condition or situation that caused the harm.
Note: The courtyard was not simply an empty area with a concrete surface. It was populated by several "bench-walls," essentially low, concrete-topped walls, each several feed long, that could be used as benches, and had sharp edges and corners.

"Defect in Bleachers Created a Unreasonable Risk of Harm"
Pryor v. Iberia Parish School Bd. (La. App. 3 Cir., 42 So. 3d 1015), June 16, 2010.

Defect in the school's football stadium bleachers **created an unreasonable risk of harm** despite the fact that the school board allegedly provided safe seating for handicapped persons on the home team side of the football stadium and there was a lack of a past accident history involving bleachers. The fact that there may have been safe seating on the home team side of the stadium did **not** outweigh *the great risk of harm caused by an obvious defect in the bleachers* where visitors were directed to find seating on the day of the football game. The plaintiff and her daughter testified that there were **no** signs where they entered the football stadium informing them that there was an area for handicapped seating on the home side of the stadium and there was **no** proof that there was available seating in that section for that particular football game. **Note:** The plaintiff was a 69-years-old and still recovering from hip replacement surgery that she had undergone approximately one year prior to the accident. The plaintiff had come to the defendant's high school to watch her grandson's team play in a state play-off football games against New Iberia High School. The visitor seating consisted of metal frame bleachers approximately 15 feet high and 250 feet long. The distance between the first bleacher board (seat) and the second bleacher was approximately 18 inches, the distance between the other bleacher boards were eight (8) inches. The bleachers had rails around the rear and the upper portions of the sides of the bleachers. There were no isles allowing spectators to walk up into the stands nor were there any rails to help balance someone walking up or down the rows of bleachers. While attempting to climb down from the bleachers to go to the restroom at half-time the plaintiff fell and broke her leg along with suffering other injuries.

"Sexual Assault of Five-Year-Old on a School Bus Was an Unforeseeable Act"
Brandy B. v. Eden Cent. School Dist. (N.Y., 907 N.Y.S.2d 735), June 10, 2010.

School district **lacked** specific knowledge or notice that an 11-year-old female student had previously engaged in sexually assaultive behavior, and thus the school district was **not** liable for the injuries the five-year-old student allegedly sustained when she was sexually assaulted on her school bus by the 11-year-old male student. The victim's mother had requested that the bus driver *not* allow the two children to sit together on the bus; however, the mother's statement to the bus driver did *not* identify the 11-year-old or attribute any misbehavior to him. School officials' documented behavioral history pertaining to the 11-year-old did *not* include any sexual aggressive behavior; however, the student's behavioral history did include such at risk behavior as verbal aggression, threats with weapons, fire setting, hyperactivity, impulsivity, auditory hallucinations, history of stealing, temper tantrums, academic problems, and a history of suicidal injurious behaviors.

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

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)