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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
- Attorney Fees
- Civil Rights
- Disabled Students
- Labor and Employment
- Religion
- Security
- Student Discipline
- Torts

Topics

Abuse and Harassment:

"Offensive E-Mails Did Not Rise to the Level of Sexual Harassment"
R. S. v. Board of Education of Hastings-On-Hudson Union Free School Dist. (C. A. 2 [N.Y.], 371 Fed. App. 231), April 9, 2010.

Trio of offensive e-mail messages sent to a female ninth-grade student over a 10-day period on an e-mail account maintained by the school district, which belittled the student's appearance and declared in explicit terms that the male sender's intent was to have sex with her, did **not** rise to the level of sexual harassment actionable under Title IX, Section 1983, or the Equal Protecting Clause associated with the Fourteenth Amendment of the United States Constitution. For a plaintiff to prevail under Title IX, the plaintiff must demonstrate the following: (1) the school district acted with "deliberate indifference" to sexual harassment and (2) the harassment was "so severe, pervasive, and objectively offensive that it effectively bared plaintiff from access to an educational opportunity or benefit.

Attorney Fees:

"$600.00 per Hour Was a Reasonable Rate for Lawyers in IDEA Legal Action"
LV v. New York City Dept. of Educ. (S. D. N. Y., 700 F. Supp. 2d 510), March 31, 2010.

Given two senior lawyers' considerable experience, the value of their firm's resources, and the complexity of the class action law suit under IDEA and New York education laws, $600 **was a reasonable hourly rate** for both senior attorneys. In addition, a former associate attorney with the firm **was entitled** to the rate of $375 per hour given his seniority and substantial contributions to the case. Furthermore, junior associates with the legal firm **were entitled** to hourly rates between $275 and $100 per hour for their services. **Note:** Parents of the students involved in the suit **were entitled** to the aforementioned attorney reimbursement fees following the settlement of their class action suit against the defending school district.

Civil Rights:

"Teacher Injured in Student Fight Failed to Plead a State-Created Danger Claim"
Moore v. Dallas Independent School Dist. (C. A. 5 [Tex.], 370 Fed. App. 455), March 12, 2010.

Teacher **failed** to plead sufficient facts to establish that defendant school district's actions rendered her more vulnerable to danger of being injured by a student fight as a prerequisite element of a liability claim against defendant. **Note:** Two middle school students got into a fight and a teacher intervened in an effort to stop the two students from fighting. During the struggle, the two students and the intervening teacher careened across the school's hallway and collided with the plaintiff, who was not intervening in the fracas, which caused her to suffer injuries to her knees, neck, and back.

"Elementary School Principal Not Entitled to Immunity for Barring the Distribution of Religious Items"

Morgan v. Swanson (C. A. 5 [Tex], 610 F. 3d 877), June 30, 2010.

It ***clearly established*** that the *First Amendment's free speech guarantees* applied to the distribution of non-curriculum materials in public elementary schools and that an elementary school student had the First Amendment right ***to be free from religious-viewpoint discr*imination** while at school. Thus, an elementary school principal was **not entitled** to qualified immunity from liability for prohibiting the distribution of religious items at school, where there was no indication that a student's speech bore school's approval or that any students were confused as to the speech's source. **Note:** Each elementary school in the Plano Independent School District hosts a "winter break" party at which students, if they choose, may exchange "goodie bags" containing gifts. At the December 2001 winter break party at Thomas Elementary School, one of the plaintiff's daughter gave each of her classmates a goodie bag containing, among other items, a pencil inscribed with the phrase "Jesus is the Reason for the Season." Before allowing the student to distribute her goodie bags, school officials searched her goodie bags in order to determine whether they contained any "religious materials." Upon discovering the pencils, school officials confiscated and banned them from school property.

"Teacher's Conduct in Restraining a Student in a Toddler Chair Did Not Violate Student's Substantive Due Process Rights"

D. D. ex rel. Davis v. Chilton County Bd. of Educ. (M. D. Ala., 701 F. Supp. 2d 1236), April 6, 2010.

Teacher's alleged conduct in sitting a four-year-old student in a toddler chair (which include restraints around his waist and feet), without shoes, facing the wall, and unsupervised in the school's interior hallway did **not** ***shock the conscience***; and, thus, did **not** rise to the level of violating the student's substantive due process rights to liberty and bodily integrity under the Fourteenth Amendment of the United States Constitution. Student was restrained for a relatively short period of time (approximately 10 minutes) for his safety and so that he would *not* continue his disruptive behavior, which included kicking his teacher and other students. **Note:** The student's IEP was based upon his diagnosis of pervasive development disorder, attention deficit/hyperactivity disorder (ADHD), impulse control disorder, and mood disorder.

"Plaintiff Could <u>Not</u> Maintain Claim that School District Violated FERPA"
Simpson ex rel. Simpson v. Uniondale Union Free School Dist. (E. D. N. Y., 702 F. Supp. 2d 122), March 31, 2010.

Plaintiff, individually and on the behalf of his son, brought action against school district, school principal, and others, alleging the violation of the Family Educational Rights and Privacy Act (FERPA) as well as negligent and intentional infliction of emotional distress and negligent hiring and supervision. The United States District Court, E. D. New York, held that: (1) plaintiff could **<u>not</u>** maintain a FERPA violation, (2) plaintiff **failed** to state claims associated with the negligent infliction of emotional distress, and (3) plaintiff **failed** to provide sufficient evidence associated with his negligent claim of hiring and supervision of school personnel. **<u>Note</u>:** The plaintiff's son participated in his middle school's sponsored art competition in which students could submit either a piece of art, sculpture, or poetry. Plaintiff's youngster did not win the competition, but he did receive a "certificate of participation". Upon bringing the certificate home, the student's parents became aware of the youngster's participation in the school sponsored activity. Thereupon, they became "annoyed" because they were not informed of any "ceremony" for the certificate of participation.

<u>Disabled Students</u>:

"Injured Occupational Therapist Knew of Severely Autistic Student's Propensity to Act Out Physically"
Johnson v. Cantie (N.Y.A.D. 4 Dept., 905 N.Y.S. 2d 384), June 11, 2010.

Plaintiff, a licensed occupational therapist, commenced legal action in an effort to secure damages for injuries she allegedly sustained when she attempted to avoid being hit and kicked by a female elementary school student who was severely autistic. The New York Supreme Court, Appellate Division, Fourth Department ruled that the school district and the parents of a severely autistic student **had <u>no</u> duty to warn** plaintiff, who was injured by the student while working in a classroom, of the youngster's tendency to use physical force to express herself. The plaintiff *had observed the student's behavior on previous occasions and should have expected the student to act out in the manner in which she did toward the plaintiff*.

Labor and Employment:

"School District Complied with Notice Requirements Associated with Teacher Fair Dismissal Act"

Russell v. Watson Chapel School Dist. (Ark., 313 S. W. 3d 1), February 19, 2009.

Former teacher brought action against school district and superintendent, alleging that her employment termination was void because the school district failed to comply with Arkansas' Teacher Fair Dismissal Act (TFDA) when it sent her a notice of nonrenewal. The Supreme Court of Arkansas held that the defendant **substantially complied** with the provisions associated with the TFDA, which stated that a notice of recommended nonrenewal of a teacher shall include a statement of reasons for such a recommendation. Furthermore, the notice must set forth reasons in separately numbered paragraphs so that a reasonable teacher would be able to prepare a defense. Therefore, the plaintiff's notice of nonrenewal **was sufficiently** based upon the fact that the teacher ***was able to defend on all issues raised***. **Note:** The nonrenewal notice to the teacher stated the following:

I am recommending that your current contract as Special Education Supervisor not be renewed. My reasons are:

1. You have responded evasively to questions from administrators, rather than clearly and honestly.
2. You have argued with administrators, rather than cooperate with their attempts to work with you.
3. You have neglected your duty by failing to improve your professional conduct as requested by administrators, even though administrators have attempted to assist you through discussions, memos, reprimands, evaluations, and individual improvement plans.
4. Your conduct materially interferes with your continued performance of the duties of Special Education Supervisor because success in this difficult position requires a person to behave in a cooperative, reliable, and diplomatic manner.

"School District 'Put on Some Evidence' That Social Worker's Fecal Incontinence Left Her Unable to Perform the Essential Duties of Her Job"

Hubbard v. Detroit Public Schools (C. A. 6 [Mich.], 372 Fed. App. 631), April 13, 2010.

School district **put on some evidence** that a school social worker fecal incontinence left her unable to perform the essential duties associated with her job **even with accommodation** as ***would support*** the jury verdict that the defending school district did **not** violate the Americans with Disabilities Act (ADA) and Michigan law. The plaintiff's position required her to meet students where they were, and the duties of the job could **not** be performed most of the time in her office. Furthermore, the school district might have provided her convenient access to an unoccupied restroom, if and when, she observed students in their classrooms. However, if a student was in a classroom or in some other area of the school that was of some distance from a restroom, such observations had to occur regardless of the availability restroom facilities.

"Evidence Was Sufficient to Support the Denial of Unemployment Compensation Benefits to School Maintenance Worker"

Nevels v. Mississippi Dept. of Employment Sec. (Miss. App., 39 So. 3d 995), July 20, 2010.

Evidence **was sufficient to support** the Department of Employment Security Board of Review's decision to deny unemployment compensation benefits to school maintenance worker, even though worker's behavior was not extreme. However, it was undeniable that once the plaintiff instructed his brother to lie about the reason for his request to be absent from work, he ***engaged in conduct that deliberately violated the school district's absenteeism policy***, and by lying to his supervisor, the plaintiff was terminated due to his misconduct.

"Teacher's Knee Injury While Climbing Stairs Was <u>Not</u> Caused by an 'Accident' Under Workers' Compensation Law"

Shay v. Rowan Salisbury Schools (N. C. App., 696 S. E. 2d 763), July 20, 2010.

Climbing stairs to reach her second-floor classroom had become part of the teacher's normal work routine, such that the knee injury she sustained while climbing the school's stairs was **<u>not</u>** caused by an "accident" within the meaning of North Carolina's Workers' Compensation Act. The plaintiff had been climbing the stairs since a month prior to the injury when the elevator she normally used to reach the school's second floor became inoperable; thus, the use of the school's stairs was *not* a new condition of employment. The stairs were *not* newly added to the building when the elevator broke down and the school district did *not* compel the teacher to use either the elevator or the stairs.

<u>Religion</u>:

"Texas Education Agency's Neutrality Policy Did <u>Not</u> Have the Primary Effect of Advancing Religion"

Comer v. Scott (C. A. 5 [Tex.], 610 F. 3d 929), July 2, 2010.

Terminated employee, who had served as the Texas Education Agency's (TEA) Director of Science for curriculum division, filed a complaint against the Commissioner of the TEA and TEA for declaratory and injunctive relief, alleging that her termination under the TEA's neutrality policy violated her due process rights and the Establishment Clause of the First Amendment of the United States Constitution. The United States Court of Appeals, Fifth Circuit, held that the TEA's neutrality policy, which required its staff to remain neutral and refrain from expressing any opinions on any curricular matter subject to the Texas State Board of Education's jurisdiction and under the Director of Science for the curriculum division was terminated for having forwarded an e-mail promoting an event critical of creationism, **did <u>not</u> have the primary effect of advancing religion as would violate the Establishment Clause of the First Amendment**. The fact that staff could *not* speak out for or against possible subjects to be included in the curriculum did **<u>not</u>** primarily advance religion, but rather, ***served*** to preserve the TEA's administrative role in facilitating the curriculum review process for the Board.

"Parents' Refusal to Vaccinate Their Child Was Not Based on Sincere Religious Beliefs"
Caviezel v. Great Neck Public Schools (E. D. N. Y., 701 F. Supp. 2d 414), April 5, 2010.

Although student's parents sincerely and genuinely opposed vaccinations for their child, **their objections were not religiously based**, as required for the exception from the state of New York's vaccination requirement for school attendance. The student's mother did ***not*** oppose vaccination, and her concern that vaccination might be harmful and cause autism, along with her moral and cultural beliefs regarding the necessity of vaccination were **not** based on religious beliefs.

"Student Had Protected Religious Beliefs That Placed Religious Significance on Having Long Hair"
A. A. ex rel. Betenbaugh v. Needville Independent School Dist. (S. D. Tex., 701 F. Supp. 2d 863), January 20, 2009.

Exemption to school district's dress and grooming code prohibiting boys from wearing their hair long, which allowed student to wear his hair in a tightly woven braid stuffed down the back of his shirt, **violated** the due process rights of the student's parents to raise their son in accordance with their own Native American religious beliefs. The school district's policy and related requirements ***interfered with the parents' right to direct their son's religious upbringing and effectively overrode their ability to pass their religion onto their child***.

Security:

"School Personnel Provided Reasonable Supervision"
Williams v. Smith (La. App. 2 Cir., 37 So. 3d 1133), May 28, 2010.

Parents, individually, and on behalf of their minor son, a student at an alternative school facility, brought damages against facility for injuries sustained by their son when another student punched him (Incident occurred in the school's cafeteria.), breaking the son's jaw. A Louisiana appeals court stated that evidence **was insufficient** to prove alternative school facility breached its duty to provide reasonable supervision of students in the school's cafeteria on the morning of the altercation between the two students. There were teachers present in the cafeteria, security officers in an adjacent room, and all responded to the altercation immediately. Furthermore, the fight was a spontaneous event that occurred without warning and arose within seconds of a verbal argument between the two students.

Student Discipline:

"Restraining Student for His Refusing to go to the School's 'Cool Down Room' Was Capable of Being Construed as an Attempt to Restore Order"
T. W. ex rel. Wilson v. School Bd. of Seminole County, Fla. (C. A. 11 [Fla.], 610 F. 3d 588), June 29, 2010.

Middle school's teacher's use of force against a student (diagnosed with separation anxiety disorder, major depressive disorder, dysthymic disorder, receptive expressive language disorder, and pervasive developmental disorder), in restraining him only after he refused to go to a "cool down room," along with calling the teacher names and threatening to have her arrested; **was capable of being construed as a an attempt to restore order, maintain discipline and protect the student from self-injurious behavior**. Furthermore, the teacher's actions were **not** arbitrary, egregious, and conscience-shocking as required to violate the student's substantive due process rights under the Fourteenth Amendment of the United States Constitution.

Torts:

"Superintendent's Conduct Did Not Constitute Extreme and Outrageous Behavior Supporting Emotional Distress Claim"
Ennett v. Cumberland County Bd. of Educ. (E.D.N.C., 698 F. Supp. 2d 557), March 21, 2010.

The alleged conduct of the superintendent, in asking that an action plan be developed for a middle school principal, in giving a negative evaluation regarding the principal's performance, in telling her that he wanted her to retire rather than attempt an action plan, in threatening to investigate the principal and start dismissal proceedings if she did not retire, and in informing the board of education that she had retired when she had not; did **not** constitute extreme and outrageous behavior in supporting the plaintiff's claim for intention or negligent infliction of emotional distress.

"School District Not Liable for Slip and Fall"
Pierson v. North Colonie Cent. Dist. (N.Y.A.D. 3 Dept., 903 N.Y.S. 2d 795), June 24, 2010.

School officials did **not** have actual notice of an alleged icy condition on a white-striped walkway in the school's asphalt parking lot, as would support the plaintiff's negligence claim arising from her slip and fall on the walkway after she had dropped-off her daughter at the school. At least three school district employees affirmed that they had traversed the area on the morning of and prior to the plaintiff's fall and did *not* observe any snow or ice within the striped walkway. The plaintiff acknowledged that she did *not* recall observing any ice or snow as she walked through the walkway on her way into the school. Furthermore, the plaintiff made *no* complaint as to any icy condition.

"Principal's Statements About Terminated Teacher Were Subject to Defamatory Interpretation"
Wilcox v. Newark Valley Cent. School Dist. (N.Y.A.D. 3 Dept., 904 N. Y. S. 2d 523), June 10, 2010.

Probationary physical education teacher and girls' field hockey coach brought action against defendant school district following her termination of employment, alleging libel and slander as well as violation of her state and federal due process rights, including the failure to provide her with a name clearing hearing. School principal's statement to students, as well as several parents, that plaintiff had acquiesced (e.g. caved-in, knuckled under, or gave-in) in her termination following the highly publicized scandal and investigation involving "a well-known filed hockey expert" with whom the teacher was in a romantic relationship **was subject to a defamatory (e.g. slanderous and defamatory) interpretation** that the teacher presented a risk of harm to the students and field hockey players in her care.

"Minor Assumed Risk of Injury While Playing Tennis on a Court Located on School Property"
Bendig v. Bethpage Union Free School Dist. (N.Y.A.D. 2 Dept., 904 N.Y.S. 2d 731), June 29, 2010.

Plaintiff and his 14-year-old daughter were playing tennis at a tennis court located on the grounds of Bethpage High School. The plaintiff's daughter had played on the court at least four times prior to her accident. During the course of her game with her father, she went to retrieve a ball and, as she went past the end of the net, she caught her thigh on the "fixed net winder handle (The handle of the "crank" protruded slightly from the end of the net pole.)," allegedly sustaining an injury. The New York Supreme Court, Appellate Division, Second Department, held that under the ***doctrine of primary assumption of risk, if the risks are perfectly obvious*** to the participant in a sporting or recreational activity, he or she consented to the risks, and *the property owner has discharged its duty of care by making the conditions as safe as they appear*.

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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