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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
- Student Discipline

Topics

Abuse and Harrassment:

"Student's Alleged Harassment of another Student Was Not Severe, Pervasive, or Objectively Unreasonable under Title IX"
Sanches v. Carrollton-Farmers Branch Independent School Dist. (C.A.5 [Tex.], 647 F.3d 156), July 13, 2011.

High school student brought a Section 1983 suit against a school district, claiming the district violated Title IX because it had been deliberately indifferent to her alleged student-on-student harassment. Furthermore, the district violated the Equal Protection Clause of the 14th Amendment by engaging in a policy or practice that caused others to harass her sexually, and has retaliated against her in violation of Title IX for complaining about her harassment claim. The United States Court of Appeals, Fifth Circuit, held that one female high-school student's alleged harassment of another female student, which included calling the other student a "ho," slapping the buttock of the other student's boyfriend, perhaps starting rumors that the other student was pregnant, and that the other student has a hickey on her breast; was not severe, pervasive, or objectively unreasonable, as required to support a same-sex sexual harassment claim under Title IX. The harassing student ***was acting like a typical high school girl whose ex-boyfriend began dating a younger cheerleader***.

Civil Rights:

"School Board Member Had Qualified Immunity from another Member"
Stepien v. Schaubert (C.A.2 [N.Y.], 424 Fed. App. 46), June 13, 2011.

During his first year of his term as a board member of the Lewiston-Porter School Board, the plaintiff (Scott A. Stepien) disagreed with a majority of the board over a number of votes. He claimed that these disagreements created "two board factions," and that he and a fellow board member found themselves in the minority faction. The board held a hearing pertaining to both the plaintiff and the other minority faction (board member) failed to complete a state required fiscal training course and voted to remove both men from the board. Thereupon, the plaintiff brought legal action against the board and their attorneys alleging that the defendants conspired against him. The United States Court of Appeals, Second Circuit, held that (1) the board **had qualified immunity** and they *acted at all relevant times in their official capacities and in a manner that was not objectively unreasonable* and (2) attorneys for the board **hand qualified immunity** where they *performed their professional duties in a objectively reasonable manner in providing advice to the board*.

"Suspended High School Student Stated a Claim for Intentional Discrimination under Title VI against School District"

TC v. Valley Cent. School Dist. (S.D.N.Y., 777 F. Supp. 2d 577), March 30, 2011.

Plaintiffs, parents of a suspended high school student (diagnosed with severe ADHD at age 5 – has had a Rehabilitation Act 504 plan since seventh grade) brought suit against school district and school officials alleging state and federal civil rights violations. The following series of events lead up to his suspension: (1) May 2008, reprimanded by teacher for reading *Mein Kampf* - reading the book due to his interest in military affairs and was taking a class on military history – vice principal had the lock on his locker cut because he suspected student was drawing German military symbols in his locker – nothing was found; (2) October 28, 2008, student was confronted by black student and called "white-boy," "cracker," and other derogatory names and threatened to beat/kill him – principal accused student of using a racial epithet regarding black students – he denied but did knowledge saying in the cafeteria, "what are the black kids laughing at;" (3) October 29, 2008, two white student who witness the aforementioned event told the principal the plaintiff's son was truthful – no one punished for the incident; (4) October 30, 2008, SRO assigned to the school told the student not to attend the next Friday night football game because there were rumors of retaliation against him; (5) October 31, 2008, student's father had a meeting with the principal and expressed his concern about how the October 28 incident was handled; (6) December 5, 2008, the student was found in possession of the lyrics of a rap song that he and a friend wrote that had some racial statements; (7) student observed exhibiting disruptive behavior in his first period class by showing other students racial slurs, epithets, and inflammatory remarks in violation of school discipline code; and (8) student was suspended from school December 5 – December 12, 2008. The United States District Court, S.D. New York, ruled in part for the plaintiff and in part for the defendant school district by stating: (1) plaintiff **stated** a First Amendment claim, (2) plaintiff **stated** a claim for intentional discrimination under Title VI, (3) plaintiff **stated** a claim for hostile educational environment under Title VI, (4) plaintiff **failed** to state a defamation claim under New York law, and (5) student **failed** to state a claim for intentional infliction of emotional distress under New York law.

"School Officials' Search of Female Student's Bra Based on a Generalized Suspicion of Pills Was Unconstitutional"
In re T.A.S. (N.C.App., 713 S.E.2d 211), July 19, 2011.

Juvenile was a student in the school district's alternative school (Academy) and was charged with the possession of "Percocet" a Scheduled III substance and drug paraphernalia after she was searched by the school's officials upon entering the Academy for the school day. To enter the Academy all students must pass through a metal detector, at which time their book bags, purses, and coats are searched for school security reasons. School officials "believed," but without "leads" (suspicion) that students were hiding drugs in places (e.g. shoe tongues, socks, bras, and underwear) not normally searched when they went through their daily search upon entering the school. All girls were required to perform a "bra lift" and thereupon it was discovered that the plaintiff possessed an illegal substance. The Court of Appeals of North Carolina held that school officials' generalized suspicion that "pills" were coming into the school, possibly by concealment in some students' undergarments, did not support officials' requiring the 13-year-old plaintiff to perform a "bra lift," whereby she was required to pull her shirt out, shake it, and pull out the middle of her brassiere with her thumb. Although, many students who had been assigned to the alternative school had been assigned because of disciplinary problems, school officials had **no** specific ground or reason to believe the plaintiff was in the possession of drugs prior to subjecting her to a search of her bra.

Disabled Students:

"School District Did Not Deny Special Education Student a FAPE"
K.E. ex rel. K.E. v. Independent School Dist. No. 15 (C.A.8 (Minn.), 647 F. 3d 795), August 3, 2011.

School district **provided** disabled 11-year-old student with a FAPE despite the student's contention that she did not make adequate progress academically during the relevant time period in which her IEP was in place. Furthermore, the student claimed that her IEP did not adequately address her behavioral disabilities and that the district did not provide her with an educational assistant (EA) in her classes as required by her IEP. In addition, the student contended that she failed to meet her IEP goals with respect to her writing skills and actually regressed in her ability to read, and that she was "losing ground" academically in all areas as compared to her peers. The court stated that the student's record did not support the plaintiff's characterization of her academic progress.

Labor and Employment:

"Teacher's Request for Assault Leave Was Not made Within a Reasonable Time"
Poole v. Karnack Independent School Dist. (Tex. App.-Austin, 344 S.W.3d 440), May 5, 2011.

Substantial evidence supported the conclusion that a public school teacher's for "assault leave" was not made with a reasonable time, thus justifying the Commissioner of Education's denial of the teacher's request for assault leave as timely. The teacher was injured in the course and scope of her employment when a student opened the metal door to a restroom stall while the teacher was inside. The door struck the teacher in the head, causing injury. She alleged that the incident constituted assault. As the result of the incident, the plaintiff was unable to return to work and received workers' compensation benefits. The plaintiff did not file her request for assault leave until 720 calendar days after the date of the incident, and her sole justification for her delay in filing her request was that "she was unaware of the availability of assault leave until shortly before she filed her request." The court went on to state: "ignorance of the law does not constitute good cause for the teacher's failure to timely request relief as provided by state statute."

"Employee Failed to State a Claim under the Rehabilitation Act"
Baptista v. Hartford Bd. of Educ. (C.A.2 (Conn.), 427 Fed. App. 39), June 21, 2011.

School employee **failed** to state a claim under the Rehabilitation Act (Section 504) or the ADA in connection with his termination, despite his conclusory (lacking any supporting evidence) allegation that his firing constituted discrimination on the basis of his alcoholism or HIV-positive status. In none of his complaints did he describe how either impairment limited any major life activity. Furthermore, ***nor did he clearly allege that the board of education which terminated him was aware of his alleged disabilities or that other employees who purportedly were subjected to lesser discipline for drinking infractions where not alcoholics or HIV-positive***.

"No Evidence existed that African-American School District Employee was subjected to Harassment On Account of His Race"
Young v. School Dist. of Philadelphia (C.A.3) [Pa.], 427 Fed. App. 150), May 11, 2011.

There was **no** evidence that an African-American male employee was subjected to harassment on account of his race, as required for a harassment claim against a school district under Title VII. Claims that a supervisor gave him faulty equipment, failed to respond to his calls for assistance, and made a false report about safety issues ***lacked any suggestion that any of the supervisor's actions were on account of his race***. In addition, the alleged failure to pay the plaintiff for leave time reflected on his pay statement at the time of his resignation and requirement that the employee undergo drug tests upon his return to work did **not** constitute harassment under Title VII of the Civil Rights Act of 1964. **Note:** Employee's position was considered a "safety sensitive" position and he was accused of stealing classroom supplies; plus, he admitted to using drugs (cocaine) and alcohol. In addition, he claimed that he was coerced into signing a letter of resignation, which entitled him to termination benefits.

"School District's Random Drug Testing Policy and Its Implications Were Unreasonably Intrusive"
Smith County Educ. Ass'n v. Smith County Bd. of Educ. (M.D.Tenn., 781 F. Supp. 2d 604), February 14, 201.

County board of education's random drug testing policy and its implementation **were unreasonably intrusive**, and thus **violated** teachers' Fourth Amendment right to be free from unreasonable searches. The policy contained no randomness component and employees were told that there would be no random testing, but the board decreed that 10% of the district's employees would be randomly tested each year. In addition, the policy called for testing only five types of drugs; however, the actual testing covered nine categories of drugs. In addition to all of the aforementioned, the policy provided that the presence of illegal drugs "in any detectable manner" constituted a violation. By the way, the court went on to state that the policy did not state how the tests would be performed nor the manner in which participants' privacy would be reasonably balanced as so pertaining to the requirement of the Fourth Amendment.

"Evidence Supported Specifications of Sexual Misconduct against Teacher"
Douglas v. New York Bd./Dept. of Educ. (N.Y.A.D. 1 Dept., 929 N.Y.S.2d 127), September 1, 2011.

Evidence **supported** specifications of sexual misconduct against a high school chemistry teacher, despite his claim that the testimony of students was incredible as a matter of law due to inconsistencies that hearing officer ignored. The hearing officer carefully considered **all** testimony and **resolved** any inconsistencies in favor of the students, as she was both charged and entitled to do. **Note:** A few of the specifications against the teacher included the following: (1) May 14, 2007, teacher asked a female student whether she liked anyone or had a boyfriend, told her that she was dressing sexy lately, asked her to touch her breast and demonstrated how he wanted her to do that, and touched his genitals in front of her; (2) February 14, 2007, teacher simulated a woman's breast with a balloon, which he squeezed while stating words to the effect that "we got some chemistry going on," and that the female student has "sweet stuff;" and (3) May 17, 2007, teacher said to female student words to the effect that the way she sat in class was sexy and turned him on.

"Teacher's Employment was terminated for Authorizing an Attempt to persuade Jailed Parent to Give-up Her Son for Adoption"
Homa v. Carthage R-IX School Dist. (Mo.App.S.D., 345 S.W.3d 266), June 28, 2011.

Evidence was **sufficient** to establish that tenured teacher's immoral conduct, when she authorized a trip by an educator in the school district's parents as teachers (PAT) program to visit a jailed PAT participant for the purpose of persuading the participant to give-up her 11-month old son for adoption. Thus, the teacher's actions ***rendered the teacher unfit to teach***, pursuant to state statute enumerating the grounds for the termination of tenured teachers. There **was evidence** that the teacher had a "casual attitude" regarding the violation of the PAT program guidelines, the teacher *concealed* the educator's actions, teacher would not protect vulnerable PAT clients from individual interested in promoting their own agenda while acting under the authority of a PAT educator, and that ***there was a likelihood that the teacher's conduct would be repeated***.

Student Discipline:

"Student's Threats to Shoot Classmate and Himself were Not Protected Speech"
D.J.M. ex rel. D.M. v. Hannibal Public School Dist. No. 60 (C.A.8 [Mo.], 647 F. 3d 754), August 1, 2011.

Tenth grade high school student's statements to a third-party student via computer "instant messaging" program were **not** in jest, but instead ***were serious expressions of intent to do harm to classmates***, and thus ***statements constituted "true threats"*** **not** protected under the First Amendment for purposes of his Section 1983 challenge to his suspension. Student had been suspended for ten school days and was later suspended for the remainder of the school year. The student was admittedly depressed at being rejected by romantic interests, described his access to weapons, and stated that his intent to bring a 357 magnum handgun to school to shoot everyone he hates, and then himself. Furthermore, he expressed the desire to kill at least five classmates and for his school "to be known for something;" and a third party (student) became concerned enough to contact a trusted adult and later the principal about the threats. **Note:** The student had a "Goth" appearance or style of dress and grooming or style which may have set him apart from some classmates, he did not have a history of threatening or violent conduct although he had participated in a mutual milk throwing incident with another student in the ninth grade. Police did take the youngster into custody, placed him in juvenile detention for the night and then took him to a regional hospital for a psychiatric evaluation. He was evaluated, discharged, and returned to juvenile detention.

"Student Seeking an Injunction for Reinstatement Back Into Her High School Did Not have Substantial Likelihood of Success"
S.B. ex rel. Brown v. Ballard County Bd. of Educ. (W.D.Ky., 780 F. Supp.2d 560), February 1, 2011.

An eleventh-grade high school student who sought a preliminary injunction that would have required a board of education to reinstate her back into her home high school, following her placement in an alternative school for 90 school days as discipline for possessing prescription narcotics on school grounds, did **not** have a substantial likelihood of success on the merits of her claim that her placement in an alternative high school deprived her of her due process rights. The plaintiff was *confronted with written statem*ents from students who implicated her, was *given an opportunity to explain her side*, *placed in an alternative school*, was *not* suspended or expelled, education received at the alternative school *was not significantly different or inferior* to that received at her regular high school, and the student's concern about losing a college scholarship to play softball *was speculative at best*.

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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