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

Topics

Abuse and Harassment:

"Hearsay Evidence Employed to Terminate Teacher Engaged in a Sex Scandal"
Crosby v. Holt (Tenn. Ct. App., 320 S. W. 3d 805), December 28, 2009.

High school male teacher sought the review of his employment termination by a county board of education following allegations pertaining to unprofessional conduct and insubordination. A Tennessee appeals court held that hearsay evidence pertaining to the plaintiff's sexual relationship with a sophomore female student, including statements obtained from other students (including the teacher's son), **were admissible** in the school district's administrative hearing pertaining to the teacher's termination. Evidence used to terminate the plaintiff was corroborated by other students, including a student's testimony that he saw the teacher and female student hugging and kissing at the teacher's residence.

"School's Response to Student-on-Student Sexual Assault Did Not Violate Victim's Equal Protection Rights (14th Amendment) In Association with Title IX"
Schaefer v. Las Cruces Public School Dist. (D. N. M., 716 F. Supp. 2d 1052), April 30, 2010.

Neither the school district nor various school officials had actual knowledge of any sexual assault against male student before it occurred, **precluding** student's parents' Title IX action against the school district and officials as so related to preventing the attack. Although there had been other similar assaults perpetrated against other students in the middle school, until this particular incident occurred, there had not been any assaults against the plaintiff's child. Furthermore, the student's alleged attacker was an unknown student, who the plaintiffs alleged was not the same attacker in prior assaults that had occurred at their child's school. **Note:** The attack that occurred on the plaintiff's youngster was called "racking", which involved a male student kicking or punching another male student in the testicles. An ultrasound revealed that the youngster suffered epididymitis with scrotal wall endema (swelling of the scrotal wall), hydrocele, and two epididymis cysts that was caused by the incident.

"Principal Did Not Have Actual Notice of Basketball Coach's Sexual Relationship with Student"
Doe v. Flaherty (C. A. 8 [Ark.], 623 F. 3d 577), October 19, 2010.

Principal did **not** have actual notice of the high school girl's basketball coach's sexual relationship with one of his players, as so required to impose a Section 1983 supervisory liability for the coach's sexual abuse of the student at an institution that received Title IX funding. The principal knew that the coach had sent inappropriate comments to students in text messages; however, such comments did *not* alert the principal that the coach was involved in a sexual relationship with the victim. Furthermore, there were *no* allegations during the relevant time period of any physical contact between the coach and any student.

Athletics:

"Collision between Two Students Was a Spontaneous and Unforeseeable Act"
Lizardo v. Board of Educ. Of City of New York (N. Y. A. D. 1 Dept., 908 N. Y. S. 2d 395), October 12, 2010.

The collision between two male fourth graders while playing kickball during a physical education class *was spontaneous and an unforeseeable act*, and therefore, the alleged negligent supervision by the students' physical education teacher was **not** the approximate cause of the plaintiff's child's injuries (a twisted ankle) that he suffered during the collision.

Civil Rights:

"Student Natives from Somalia and Ethiopia Sue School District"
Mumid v. Abraham Lincoln High School (C. A. 8 [Minn.], 618 F. 3d 789), August 25, 2010.

Public alternative high school for immigrants did **not** discriminate against former students on the basis of national origin, in violation of Title VI and the Minnesota Human Rights Act (MHRA), when it delayed special education testing for three years for English learners. The school's policy pertaining to "delayed testing" did **not** apply to all foreign-born students in the school district; however, the policy did apply to students with limited English proficiency. Furthermore, there was **no** evidence of similarly situated students whom the school treated more favorably. **Note:** All 13 plaintiffs were natives of either Somalia or Ethiopia and all lived for some time in Kenyan refugee camps prior to coming to the United States; also, all arrived in this country between the ages of 14 and 20 with little or no formal education and very limited facility with English.

"Elementary School Closure Did Not Violate Establishment Clause"
Incantalupo v. Lawrence Union Free School Dist. No. 15 (C. A. 2 [N. Y.], 380 Fed. App. 59), June 7, 2010.

Parents of public school students **failed** to plausibly allege that their village education board's plan to reduce taxes by closing an elementary school had the primary effect of advancing religion, as would state a rational claim for the violation of the Establishment Clause of the First Amendment of the United States Constitution. The plaintiffs' charged, based on the fact that the majority of the board's membership were Orthodox Jews, that the school closure plan that was adopted by the board was done in order to make more money available for the Orthodox families to send their children to private religious schools. Even if a large number of Orthodox Jewish taxpayers chose to spend their tax savings from the plan on religious education for their children, the plan itself did nothing to reward or even encourage such an education/financial choice, even among taxpayers of different or no religious beliefs.

"Student's Suspension Did Not Violate First Amendment"
Brown ex rel. Brown v. Cabell County Bd. of Educ. (S. D. W. Va., 714 F. Supp. 2d 587), May 26, 2010.

School administrators **acted in response to a reasonably anticipated disturbance** at their high school when they suspended a high school student for writing "Free A-Train" on his hands, and thus, the student's suspension did **not** violate the student's First Amendment right to freedom of speech. The "Free A-Train" slogan referred by nickname (street name) to a recently expelled student who was widely perceived to be a gang member ("Black East Thugs" – "BET") who had been charged with attempted murder and armed robbery, and there was widespread concern about gang presence on the school's campus. Even if the student's particular display of the slogan was passive and peaceful, it took place in a large context of hostility and intimidation, in which both students and their parents expressed fear over the use of the slogan at the school. **Note:** On March 4, 2009, "Free A-Train" was accused of shooting a police officer while fleeing an arm robbery. He was charged with attempted murder and two counts of armed robbery, in which he has since pled guilty to the attempted murder charge.

"Principal Did Not Intercept Phone Call between Father and His Son"
Walsh v. Krantz (C. A. 3 [Pa.], 386 Fed. App. 334), July 12, 2010.

School district and middle school principal did **not** intercept second telephone call between father and his son, thereby **precluding** claims under the Federal Wiretapping Act and Pennsylvania's Wiretap Act. Father spoke with the principal and asked him to relay a message to his son, which the principal did relay, the plaintiff's message. The plaintiff placed a second phone call and spoke directly to his son who was allowed to take the call either in the principal's office. The principal left his office where the plaintiff's son took the call and went out into the outer office area and talked to the school's secretaries. **Note:** The plaintiff alleged that the principal, with the assistance of another staff member, and without his authorization, eavesdropped on his telephone conversation with his son; plaintiff sought $600,000.00 in damages due to the breach of fiduciary trust and for the intentional and negligent infliction of emotional distress. The plaintiff had alleged that the principal knew about "an extra class credit math assignment" pertaining to his son and by eavesdropping on his phone conversation with his son was the only way the principal could have known about the assignment.

Disabled Students:

"Autistic Student's Dog Was a Service Animal"
K. D. ex rel. Nichelle D. v. Villa Grove Community Unit School Dist. No. 302 Bd. of Educ. (Ill. App. 4 Dist., 936 N. E. 2d 690), August 24, 2010.

Parents of an elementary school student with autism filed a complaint for injunctive relief, alleging that the school district had denied their youngster's use of a service animal in violation of school law. An Illinois appellate court held that an autistic student's dog **was** a "service animal" individually trained to perform tasks for the benefit of the student. Therefore, school law required that the dog **be permitted** to accompany the student at all elementary school functions. The dog (a Labrador retriever named "Chewey") performed specific tasks to benefit the student by preventing him from running away through tethering and by apply deep pressure to calm the youngster when he experienced a tantrum.

Labor and Employment:

"Reasons for Not Selecting Black Female Applicant for Federal Program Director Position Were Not Pretextual"

Bryant v. Dougherty County School System (C. A. 11 [Ga.], 382 Fed. App. 914), June 15, 2010.

Black female teacher sued a school system and school officials, claiming race and gender discrimination and retaliation in violation of Title VII and Section 1981 in connection with her four unsuccessful applications for the federal program director position with the school district. The United States Court of Appeals, Eleventh Circuit, held that the teacher's failure to obtain any of the three federal program director positions within a school system could **not** have been discriminatory, so as to violate Title VII or Section 1981 due to the fact that the positions were *not* filled.

"Teacher's Lesson Plan Analysis Sufficient for Not Renewing Teacher's Contract"

Angstadt v. Red Clay Consol. School Dist. (Del. Supr., 4 A. 3d 382), July 30, 2010.

Drama and stage technical teacher filed a complaint against her former school district alleging wrongful termination based on the district's decision not to renew her teaching contract. The Supreme Court of Delaware held that (1) e-mails and letters indicating problems the teacher had with students were not "properly placed" in the plaintiff's personnel file prior to giving the plaintiff notice of the district's intent to terminate her services and (2) lesson plan analysis *constituted "other documented material"* that the school district **could rely upon in its decision** to terminate the teacher's services.

Security:

"School Violated Parent's Due Process Rights by Failing to Inform Her of Her Right to Appeal Trespass Notice"

State v. Green (Wash. App. Div. 1, 239 P. 3d 1130), September 27, 2010.

An elementary school, in issuing a notice of trespass against defendant prohibiting her from entering her child's school, **violated** the defendant's due process rights by *failing* to inform her of her statutory right to appeal the school's issued trespassing notice. Thus, at trial for violating her trespassing notice, defendant did *not* waive her right to challenge the lawfulness of the notice of trespass; notice did *not* refer to statute granting defendant a right to appeal; letters sent to the defendant did *not* refer to any right to appeal but instead directed defendant to contact school officials with concerns; and school officials did *not* orally inform the defendant of her appeal rights. **Notice:** Defendant's child attending Carriage Crest Elementary School from the first to the sixth grade. In October 2006, the school district issued the defendant a letter constituting a notice of trespass. The notice informed the defendant that she was restricted from entering the her child's elementary school without prior permission, with the exception of either picking-up her son or contacting the office with questions about her son. The incidents that prompted the trespassing notice were brought about because of the defendant's behavior during the school's "curriculum night" and at the school's school bus pick-up/drop-off area.

"School Failed to Demonstrate That Student Was Contributorily Negligent When He Choked on Food in the School's Cafeteria"

LaPorte Community School Corp. v. Rosales (Ind. App., 936 N. E. 2d 281), October 27, 2010.

School **failed to demonstrate** that a nine-year-old third grader, who began choking during lunch in an elementary school cafeteria, failed to exercise the reasonable care that an ordinary nine-year-old boy of like age, knowledge, judgment, and experience would exercise for his own protection and safety. Therefore, school officials **failed** *to rebut the presumption* that the defendant's child was *not* contributorily negligent as so pertaining to the defendants' wrongful death action against the school; the only evidence of the child's conduct was that he had laughed at another child who was sitting at the same cafeteria table as the defendants' youngster. **Note:** The youngsters was sitting at a cafeteria table eating lunch, along with joking and laughing with several other students sitting at his table, when he suddenly begin chocking. The custodian, school secretary, several teachers, and a police officer attempted to help him by employing the Heimlich maneuver, but to *no* avail. A paramedic arrived and opened the youngster's airway with a laryngoscope blade and removed a large piece of corn dog with forceps. The corn dog was *not* lodged in the youngster's trachea, but in his "oral cavity", which includes the throat. The youngster died later at the hospital.

Student Discipline:

"Student Suspended for Writing Violent Message on In-Class Assignment"

Cuff ex rel. B. C. v. Valley Cent. School Dist. (S. D. N. Y., 714 F. Supp. 2d 462), May 26, 2010.

The suspension of a ten-year-old fifth grader for writing "blow up the school with all the teachers in it" on an in-class assignment did **not** violate his First Amendment right to free expression. Furthermore, the student *had a substantial disciplinary history*, all of it tied to suggestions of violent tendencies, which *was known* to the elementary school principal as well as the school district generally. *No reasonable fact-finder could find that the prediction of the likelihood of a substantial disruption was unreasonable*. **Note:** The student had a rich history of misbehavior on school buses, in the school's corridors, in the school's cafeteria, and during recesses. In addition, he had been disciplined for violence related drawings and writings in the pass.

"School Officials Entitled to Qualified Immunity for Not Allowing an Expelled Student to Return to School"
DeFabio v. East Hampton Union Free School Dist. (C. A. 2 [N. Y.], 623 F. 3d 71), October 13, 2010.

School officials *had the reasonable belief* that the readmittance of an expelled high school student to whom a racially inflammatory comment (April 26, 2004) concerning the death of a Hispanic student was "allegedly falsely attributed" would cause substantial disruption or material interference with school activities. Therefore, school officials **were entitled to qualified immunity** from the plaintiff's civil action (Plaintiff claimed school officials violated his First Amendment rights.) for refusing to allow him to return to school to speak with classmates about his version of the comment that was allegedly attributed to him. The rationale of the school administration's decision to not allow the expelled student to return to school was based on events such as the following: the student received death threats, police were assigned to protect his home, and threats to bomb the student's house were overhead in the school hallways. **Note:** The comments that were allegedly attributed to the plaintiff pertaining to a Hispanic student from his high school that was killed in a motorcycle accident. In August 2004, the plaintiff and his family moved to California and he never returned to his former high school.

Torts:

"School District Did Not Have a Duty to Protect Student Murdered In His Home"
Stoddart v. Pocatello School Dist. #25 (Idaho, 239 P. 3d 784), September 20, 2010.

On September 22, 2006, the same day in which plaintiff's high school age daughter (Cassie Jo) was murdered by two of her classmates (Draper and Adamcik), the two perverts made a video recording of themselves talking about their plans to kill Cassie Jo and to carry-out a Columbine-style shooting at their high school. That night the two perverts (now convicted murders) entered Cassie Jo's home and stabbed her to death. The family of the young lady who was killed by the two perverts brought a law suit against the school district alleging wrongful death, negligence, the intentional infliction of emotional distress, and for property loss and loss of property value; all based on the school district's alleged failure to protect the victim despite repeated warnings that her killers had planned a school shooting. The Supreme Court of Idaho held that the school district did **not** owe a duty of care to the family in whose house a high school student was murdered by two classmates; *notwithstanding* any warning the school district had regarding the two murders (the aforementioned male students) involvement in a planned school shooting. The school district had **no** special relationship with the home-owning family *that would have created a duty* to take reasonable steps to avoid their emotional distress, property damage, and loss of property value. **Note:** On February 17, 2004, a middle school student reported that Draper and another student (C. N.) were planning a shooting at their middle school (Recorded telephone statement, ("Going to have a school shooting on Tuesday, February 17th, 2004"). The principal and SRO investigated the incident and warned the two male students not to make such statement again, even in a joking manner, the students agreed.

"Student with a Peanut Butter Allergy Fed a Peanut Butter Sandwich at School"
Pace v. State (Md. App., 5 A. 3d 1121), September 29, 2010.

Mother of a public school kindergarten student who suffered a severe allergic reaction to a peanut butter sandwich provided to her as part of the school's lunch program, brought action against the State, State Department of Education, and Superintendent of Schools for the State, alleging negligence in failing to ensure that student's school had an effective program in place to flag students with food allergies. The Court of Appeals of Maryland stated that **neither** the National School Lunch Program Act **nor** the regulations adopted pursuant thereto **imposed a duty** on the State to prevent a student from being fed a peanut butter sandwich by local school district personnel.

"School District Was Immune from Liability for Guidance Counselor's Sexual Misconduct with a Student"
C. A. v. William S. Hart Union High School Dist. (Cal. App. 2 Dist., 117 Cal. Rptr. 3d 283), November 5, 2010.

The plaintiff's complaint alleged that his high school guidance counselor sexually harassed, abused, and molested him on a number of occasions from January 2007 to September 14, 2007. The guidance counselor performed a variety of sexual acts on the plaintiff and required him to perform a number of sexual acts on her both on and properties associated with his high school. Due to the sexual abuse and harassment that he suffered he suffered extensive physical, psychological, and emotional damage. A California appeals court held stated the following: (1) The alleged sexual misconduct with the student by the guidance counselor was **not** within the scope of her employment; (2) Public entity immunity **precluded direct liability** for the school district's alleged negligence, negligent supervision, negligent hiring or retention, and negligent failure to warn, train, or educate the alleged abuser; and (3) State statutes defining the counselor's alleged torts did **not** authorize liability claims against public entities.

"School Board Not Liable for Employee's Sexual Abuse of Students"
Acosta-Rodriguez v. City of New York (N. Y. A. D. 1 Dept., 909 N. Y. S. 2d 712), October 21, 2010.

The New York Board of Education (BOE) employee who sexually abused two infant plaintiffs (students) was **not** negligently hired, supervised, or retained due to the fact that the plaintiffs **failed** to raise the factual issue as to whether, at the time of the employee's hiring, the BOE was on notice of any facts that would trigger the BOE's duty to inquire further into the employee's conduct. The BOE *conducted* its standard pre-employment investigation of the employee and the investigation did not yield any evidence that would place the BOE on notice pertaining to the employee's propensity for the sexual abuse of minors. Furthermore, the knowledge that the employee bought pizza for students and observed them at play did **not** constitute notice of the employee's proclivity for sexual abuse. In addition, the sexual abuse of the students occurred off school properties and nothing in the BOE records indicated that the BOE released the abused students to the employee or even knew that the employee had taken the students off school properties.

"Student Tripped or Slipped on Volleyball Net Lying Across the Exit Door to Gym"
Carson v. Baldwin Union Free School Dist. (N. Y. A. D. 2 Dept., 910 N. Y. S. 2d 117), October 26, 2010.

Although volleyball net lying across the floor in front of the exit doors of the school's gym was an open and obvious condition, the school district moving for summary judgment on student's claim for personal injuries sustained when he slipped or tripped on the net **failed** to establish a prima facie case (produce enough evidence to rule in the party's favor) that the condition was *not* inherently dangerous as a matter of law.

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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