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Safe, Orderly, and Productive School Legal News Note

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The **Safe, Orderly, and Productive School Legal News Note** is a monthly update of selected significant court cases pertaining to school safety-security and student management issues. 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

"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.

"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.

"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 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.

"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.

"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.

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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