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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
- Judgment
- Labor and Employment
- School Districts
- Security
- Student Discipline
- Torts

Topics

Abuse and Harassment:

"Former Student's Sexual Abuse Claim Pertaining to Sexual Abuse Was Time-Barred"
Walker v. Barrett (C.A.8 [Mo.], 650 F. 3d 1198), August 18, 2011.

Defendant, at the time his sexual abuse of the defendant, was a vocal music teacher in a school district's junior and senior high school. The plaintiff, who was 15-years- of age at the time when the defendant begin sexual abusing (continued throughout his high school years) him, filed his complaint three days prior to his 31st birthday. The United States Court of Appeals, Eighth Circuit, held that held that the former student's claims against his former teacher, principal, and school district for the breach of their fiduciary/confidential relationship, negligent failure to supervise students, intentional infliction of emotional distress, negligent infliction of emotional distress, and premise liability as so pertaining to his sexual abuse **fell within** Missouri's five-year statue of limitations rather than the 10-year statue of limitations for childhood sexual abuse.

"Police Department's and School District's alleged Failure to respond to the Bullying of a Kindergartner Did Not Violate the Student's 14th Amendment"
K.W. ex rel. Brown v. City of New York (E.D.N.Y., 275 F.R.D. 393), August 9, 2011.

Mother of a kindergarten student brought legal action against defendant and others, alleging that the public school failed to protect students from peer classroom bullying and therefore violated the United States Constitution and other similar rights. The United States District Court, E. D. New York, held that (1) police department's alleged failure to respond to her complaint pertaining to bullying, if proven, did **not** violate the Equal Protection Clause of the Fourteenth Amendment, (2) plaintiff **failed** to state a cause of action for the violation of the Equal Protection Clause, and (3) plaintiff **failed** to state a cause of action under Section 1985.

"Proof of Sex-Based Motivation is required for a Title IX Deliberate Indifference Claim"
Wolfe v. Fayetteville, Arkansas School District. (C.A. 8 [Ark.], 648 F. 3d 860), August 9, 2011.

High school student brought action against his former school district, alleging that he was a victim of sexual harassment in violation of Title IX. After a jury returned a verdict in favor of the school district, he appealed to the United States District Court for the Western District of Arkansas and his motion for a new trial was denied. The United States Court of Appeals, Eighth Circuit held that for the plaintiff *to recover on his Title IX deliberate indifference claim* against the defending school district he **had to prove the harassment amounted to more than the use of name calling and the spreading of rumors in an effort to debase his masculinity**. Furthermore, the plaintiff **was required** to show that the harassers *intended to discriminate against him* "on the basis of sex," meaning the harassment *was motivated* by either the student's gender or failure to conform with gender stereotypes. **Note:** The student alleged that between his sixth grade and tenth grade years he was ridiculed at the hands of his fellow students on numerous occasions. According to the student, he was ridiculed and harassed by his fellow students in ways such as the following: pushed, shoved, called names, falsely labeled as homosexual (e.g. faggot, queer bait, and homo), punched, had his head slammed into a window of a school bus in which he was a passenger, a Facebook page was created to make fun of him, offensive graffiti was painted on restroom walls and in textbook about him, and a classmate jumped out of a vehicle and punched him as he was walking home from school.

"Issues of Material Fact Existed Regarding Whether Basketball Coach Knew of Incidents Occurring in the School's Basketball Locker Room"
Mathis v. Wayne County Bd. of Educ. (M.D. Tenn., 782 F. Supp. 2d 542), March 1, 2011.

Mothers, who had sons playing basketball at a middle school, brought suit against the defendant, basketball coach, principal, and director (superintendent) of schools under Title IX and Section 1983 related to alleged misconduct that occurred in the school locker room prior to basketball practice. The United States District Court, M.D. Tennessee, Columbia Division, held that (1) issues of material fact **existed** regarding whether the middle school basketball coach knew of the incidents that occurred in the school's basketball locker room and (2) plaintiffs **failed** to identify an affirmative act in which a school official *created or increased the risk of violence* against students. Thus, the court granted in part and denied in part the school district's effort to secure summary judgment on its behalf. **Note:** The basketball coach taught a fifth grade language arts class, which ended at 1:30 p.m. and he would go to the school's gym immediately following his class and conduct basketball practice. He would usually make it to the gym on or about 1:45 p.m. (starting time for 6th period). During the 15 minutes between fifth and sixth period, the boys were expected to change into appropriate attire in the locker room and be ready to begin practice at the start of the 6th period. Testimony from the plaintiffs' sons demonstrated that when the coach was not in the dressing room, it was total "chaos, wild, insane, and crazy" environment in which the eighth-grade players pulled "pranks" on the seventh-grade players. It was very common for an eighth-grader to yell "lights out," another eighth-grader would turn off the locker room lights, and a number of eighth-graders would gather around various seventh-graders and begin "humping" and "gyrating" on them. The plaintiffs' sons also testified that "humping" activities also took place with the lights on.

Civil Rights:

"School District Did Not Have the Right to Punish Student for Expressive Conduct Outside of School"

Layshock ex rel. Layshock v. Hermitage School Dist. (C.A.3 [Pa.], 650 F. 3d 205), June 13, 2011.

Plaintiffs, parents of a high school student, brought legal action against school district, superintendent, principal, and co-principal alleging that they violated their youngster's First Amendment rights by disciplining the student for creating a fake internet profile of his high school principal on a social network site (MySpace). Furthermore, the plaintiffs charged that the defendants violated their Fourteenth Amendment substantive due process rights regarding the care and nurturing of their son. The United States Court of Appeals, Third Circuit, held that (1) the student's "entering" the school district's website to "take" the district's photo of his principal was **not** sufficient to forge a **nexus** between the school and the created profile and (2) school officials did **not** have the authority to punish plaintiffs' youngster for expressive conduct outside of the school that school officials deemed lewd and offensive. **Note:** The student was a 17-year-old senior and he used his grandmother's computer to create the "parody profile" of his principal.

"Substantial Disruption of School Could Not Have Been Reasonably Forecasted by Student's Creation of a Lewd Internet Profile"

J.S. ex rel. Snyder v. Blue mountain School Dist. (C.A.3 [Pa.], 650 F. 3d 915), June 13, 2011.

Plaintiff, parents of a middle school student, brought action against defendant, claiming that school officials violated their daughter's free speech rights, due process rights, and state law for suspending her for creating, from her home computer, an internet profile (use MySpace) of her principal containing his photograph misappropriated from the school district's website and laced with statements that he was a sex addict and a pedophile (laced with adult language and sexually explicit content). The United States Court of Appeals, Third Circuit, held that the (1) school district could **not** have forecasted a substantial disruption or material interference within the school in which the student was enrolled; (2) school district could **not** punish the student for the use of profane language outside of the school or during non-school hours; (3) student's lewd, vulgar, and offensive speech that had been made off-campus had **not** been turned into on-campus speech when another student brought a printed copy of that speech at the expressed request of the school's principal; (4) school district's polices **were limited** to in-school speech and were not overbroad; and (5) parents' due process liberty interest to make decisions concerning the care, custody, and control of their child had **not** been implicated by the suspension of their child. Therefore, the court affirmed in part, reversed in part, and remanded the case back to the lower court. **Note:** The profile that was created presented the principal as a bisexual Alabama middle school principal named "M-Hoe." The profile contained very crude content and vulgar language, ranging from nonsense and juvenile humor to profanity and shameful personal attacks aimed at the principal and his family.

Judgment:

"Principal and Superintendent were entitled to Qualified Immunity from Student's Claim of Negligent Hiring of Teacher"
Cole v. Shadoan (E.D. Ky., 782 F. Supp. 2d 428), March 2, 2011.

High school student brought action under Kentucky law against former teacher, school superintendent, and principal, alleging he was sexually harassed by one of his high school teachers. In addition, he alleged that the school district's superintendent and his high school principal were liable for negligent hiring of his former teacher, negligent supervision, and outrageous conduct. The principal and superintendent moved for summary judgment on their behalf. The United States District Court, E. D. Kentucky, Central Division at Lexington, held that the principal and superintendent (1) had **no** duty to perform a criminal background search prior to hiring the offending teacher; (2) **were entitled to qualified immunity** from the plaintiff's negligent hiring claim; (3) **were entitled to qualified immunity** from the negligent supervision claim; and (4) did **not** commit tort of outrange (intention infliction of emotional distress).

Labor and Employment:

"Assistant Principal's alleged Negative Comments about Veteran Teachers were Insufficient to Establish Age Discrimination"
Phillis v. Harrisburg School Dist. (C.A.3 [Pa.], 430 Fed. App. 118), June 10, 2011.

Assistant principal's alleged negative comments about veteran and returning teachers **were insufficient** to establish discrimination under Age Discrimination in Employment Act (ADEA). The comments were **not** necessarily directed at teachers over age 40, and specific comments directed at older teacher concerned her behavior, not her age. **Note:** In August 2005, the assistant high school principal stated to a group of teachers, including the plaintiff, that "if you are no longer an effective teacher, you should pack up your excess baggage and leave." In addition, the assistant principal stated, "an older teacher had retired and was at home taking a long nap."

"Black Assistant Superintendent Failed to Establish a Prima Facie Case of Race Discrimination under Title VII"
Alexander v. Brookhaven School Dist. (C.A. 5 [Miss.], 428 Fed. App. 303), June 8, 2011.

Black assistant superintendent **failed** to establish a *prima facie case* (production of enough evidence) of race discrimination against defendant school district under Title VII. There **was an absence of evidence** that she was treated less favorably because she belonged to a protected class than similarly situated employees who were not members of a protected class under nearly identical circumstances. Furthermore, the district court undertook an extensive analysis of each of the five white employees "who were not terminated for far worse actions" to whom the plaintiff made a passing analysis; however, **none** *of whom could even arguably constitute a legally sufficient comparison*.

"School Board's Requirement That Employees Submit to a Random Drug Testing Did Not Violate the Fourth Amendment"

Palmer v. Cacioppo (C.A. 6 [Ohio], 429 Fed. App. 491), June 28, 2011.

School board did **not** violate a school district's employee's Fourth Amendment rights against unreasonable search and seizure by demanding that she submit to drug testing as a condition for continued employment. Employee voluntarily entered into a "last chance agreement" in which she agreed to undergo random drug testing for one year. Furthermore, the board's one year random drug testing requirement **was reasonable**, especially in light of the employee's conviction for misdemeanor marijuana possession. **Note:** The former district employee had worked for approximately 13 years as an elementary school secretary. The plaintiff eventually tested positive for opiates and marijuana and her employment with the school district effective December 12, 2006.

"School Employee Who Struck Student Not Entitled to Legal Representation"

Thomas v. New York City Dept. of Educ. (N.Y.Sup., 929 N.Y.S. 2d 425), August 29, 2011.

On May 11, 2009, the plaintiff, a paraprofessional, was working with a kindergarten student on a lesson when she struck the student on his forehead with the back of her hand because he was doing the assignment incorrectly and had gotten the wrong answer. The Supreme Court, New York County, held that the state statue permitting the city to withhold indemnification for legal fees incurred by the plaintiff during pendency of disciplinary proceedings arising from some act or omission did **not** entitle the plaintiff to reimbursement for the legal fees she incurred in a civil action case arising out of an incident in which she allegedly struck a kindergarten student. The evidence against the plaintiff had been substantiated and she was disciplined for her actions.

School Districts:

"School District was Not Liable for Damage Student Wrestlers did to a Motel"

Middlesex Mut. Assur. Co. v. Main School Administrative Dist. No. 43 (Me., 26 A. 3d 846), August 25, 2011.

Sometimes during the night in which four high school members of the school's wrestling team was staying in a motel room, they turned on the shower, blocked the ventilation system, and used the motel's hairdryer to create a makeshift sauna to help one of their teammates "make weight" for the next day's wrestling match. As a result of the students' actions, the motel's sprinklers were activated which caused a repair damage valued at $10,693.68. The motel's insurer brought civil action against the school district seeking repayment for the damage to the motel while the students were lodged at the motel. The Supreme Judicial Court of Maine held that the school district was **not** liable for the damages caused during the school supported event.

Security:

"School District May be Liable for Releasing a Nine-Year-Old to a Pedophile Posing as Her Father"
Doe ex rel. Magee v. Covington County School Dist. ex rel. Bd. of Educ. (C.A.5 [Miss.], 649 F. 3d 335), August 5, 2011.

Parent and grandmother filed a complaint that an elementary school (due to the state's compulsory attendance law) violated its own check-out policy by allowing a nine-year-old female student to be taken off school grounds during the middle of the school day by an adult male claiming to be her father, and at least on one occasion her mother. Furthermore, the school did not verify the adult's identity. The school stands in a "special relationship" with the student, of a kind that imposes on it a duty **not** ***to be deliberately indifferent*** as so pertaining to the student's reasonable expectation of safety, especially due to the fact associated with the student's young age and placing the youngster in another adult's full and exclusive control and isolation from everyone she knew and trusted. **Note:** On six (6) different occasions the pervert checked the student out of school and brutally raped, sodomized, and molested her, and then returned her to school, where school employees checked her back into school.

Student Discipline:

"School Officials Did Not Violate Student's Free Speech Rights by Suspending Her for Creating a Webpage That Ridiculed Classmate"
Kowalski v. Berkeley County Schools (C.A.4 [W. Va.], 652 F. 3d 565), July 27, 2011.

School administrators did **not** violate a high school student's free speech rights under the First Amendment by suspending her for creating and posting to a webpage that ridiculed a fellow classmate, although the conduct occurred off-campus and on the student's home computer. It **was foreseeable** that the expression would reach the school and the student's conduct could create a substantial disruption of and interference with the work and discipline of the school due to the fact that the webpage contained defamatory accusations, insulting comments, and doctored photographs that was directed at a classmate; furthermore, the offending student invited many other students to view the webpage. **Note:** The offending student, a senior in high school posed the following statement on her webpage (MySpace) with the heading "S.A.S.H.": "No No Herpes, We don't want no herpes." She claimed that S.A.S.H. was an acronym for "Students Against Sluts Herpes," but a classmate stated that it was an acronym for "Students Against Shay's Herpes," meaning another student by the name of Shay N.

"School Board Exceeded the District's Policies when it imposed a Suspension of 34 School Days"

In re Keelin B. (N.H., 27 A. 3d 689), May 12, 2011.

Parents appealed the decision of the New Hampshire State Board of Education upholding a local school board's decision their daughter for 34 school days for sending emails containing sexually explicit language to her school's principal and a teacher, under the name of another student. The Supreme Court of New Hampshire held that (1) school board did **not** act in excess of their statutory authority when it imposed a suspension in excess of 10 school days and (2) school board exceeded the school district's policies when it imposed a suspension of 34 school days. **Note #1:** Plaintiff's daughter sent an e-mail to her principal at his school district email account which contained a sexually suggestive and vulgar message; thereupon the principal replied, informing the sender that he intended to notify the police and discover the identity of the sender, and encouraged the sender to come forward voluntarily. In addition, a teacher in the same school received a very similar message from the same sender; the teacher forwarded the message on to the principal in an effort to identify the sender. **Note#2:** In New Hampshire, petitioners have the right to appeal a local board's decision to the state board of education.

Torts:

"Student's Negligence Claim Fell Within the Limited Waiver of Governmental Immunity Provided by the Texas Tort Claims Act"

El Paso Independent School Dist. v. Apodaca (Tex. App.-El Paso, 346 S.W .3d 593), February 12, 2009.

Student's negligence claim **fell within the limited waiver of governmental immunity provided** in the section of the Texas Tort Claims Act (TTCA), which limited a school district's potential liability to claims involving the use or operation of motor vehicles. A student alleged that a school district employee negligently moved a student's wheelchair out of a school bus and onto a ramp before it was parallel the bus floor while attempting to lower the wheelchair youngster so she could exit her school bus. Consequently, in reference to the alleged charge, both the chair and the student fell forward and crashed into the ramp's platform.

"Parents of a High School Student Killed in an Auto Accident Failed to State a Claim against School District"

Grau v. New Kensington Arnold School Dist. (C.A.3 [Pa.], 429 Fed. App. 169), May 26, 2011.

Parents of a high school student killed in a vehicular accident **failed** to state a claim against a school district or school officials for willful misconduct under Pennsylvania law. There were **no** allegations giving rise to a plausible inference that they desired to injure the student or were aware that such an injury was substantially certain to follow from their failure to properly enforce the school's closed campus policy. **Note:** On January 21, 2009, plaintiffs' son and a second student exited their high school before the conclusion of the school day without authorization from school officials. Plaintiffs' son subsequently left the school's premises as a passenger in a vehicle operated by the second student. Shortly thereafter, the student driver lost control of his vehicle and collided with an oncoming pick-up truck.

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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