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Legal Update for District School Administrators
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Johnny R. Purvis*

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Terry James, Chair, Department of Leadership Studies, University of Central Arkansas
S. Ryan Niemeyer, Editor, Co-Director, Mississippi Teacher Corps and Assistant Professor, Leadership and Counselor Education, University of Mississippi
Shelly Albritton, Technology Coordinator, Department of Leadership Studies, University of Central Arkansas
Wendy Rickman, Assistant Professor, Department of Leadership Studies, University of Central Arkansas
Safe, Orderly, and Productive School Institute
Department of Leadership Studies
University of Central Arkansas
201 Donaghey Avenue
230 Mashburn
Conway, AR 72035
*Phone: 501-450-5258 (office)
*E-mail: jpurvis@uca.edu

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:

- Athletics
- Civil Rights
- Juvenile Justice
- Labor and Employment
- Religion
- Security
- Speech
- Student Discipline
- Torts

Topics

Athletics:

"School Board Refused to Accept Parents' Signed but Altered Student Activity Permission Form Did Not Violate Parents' First Amendment Rights"
Doe v. Banos (C.A.3 [N.J.], 416 Fed. App. 185), November 30, 2010.

Plaintiff, father of a high school student brought legal action, individually and on behalf of his son, against school board and school officials, alleging defendants violated his First Amendment right to freedom of speech and expression by preventing his son from playing on his high school's lacrosse team after his father refused to sign an unedited student activities permission form, which referenced the board's anti-drug and anti-alcohol policy. The student's father crossed-out language on the permission form that pertained to the district's drug/alcohol policy and sign the form "under duress" while mandating that his son's high school allow his son to play on the school's lacrosse team. The Untied States Court of Appeals, Third Circuit, held that the defendants did **not** violate the plaintiff's First Amendment rights as so pertaining to his refusal to sign an unedited permission form that pertained to the school district's drug/alcohol policy.

Civil Rights:

"Middle School Not Liable to an African American Female Student under Title VI and Title IX"

Whitfield v. Notre Dame Middle School (C.A.3 [Pa.], 412 Fed. App. 517), January 12, 2011.

The United States Court of Appeals, Third Circuit, held that a private middle school did not act with deliberate indifference to an alleged harassment to have allegedly experienced by an African American female student as required to prevail on the plaintiff's claim under Title VI and Title IX. The administration of the school disciplined each student who was involved in each incident and implemented a racial sensitivity program. The series of events that led up to the litigation pertained to several students slapping, spitting, attending class without a shower and telling the plaintiff that if he did not take a shower he would look like her, scratching her arm, attempting to throw her book bag out a classroom window, spitting on her book bag, and placing gum between her books in her locker.

"Reasonable Law Enforcement Officer Reasonably concluded that Coach had In Loco Parentis Authority to Consent to Officers' Search of Soccer Players"
Lopera v. Town of Coventry (C.A. 1 [R.I.], 640 F. 3d 388), April 1, 2011.

Plaintiffs, former members of the Central Falls High School boys' soccer team filed litigation against defendants' city and police officers because they and their teammates were searched for possible missing contraband from a locker room at Coventry High School. By the way, *no* missing contraband was found. The United States Court of Appeals, First Circuit, held that a **reasonable** police officer **could have concluded** that the coach of a visiting high school soccer team **had in loco parentis authority to consent to officers' search of players** for items purportedly missing from the home school's locker room. Thus, the officers who conducted the search **were entitled** to qualified immunity from legal action alleging unreasonable search and seizure as so pertaining to the Fourteenth Amendment of the United States Constitution because the plaintiffs' coach was **undisputedly in charge** and he had already conducted his own search; this **implying perquisite authority to consent** to the players being search by officers.

"Elementary Principal Did Not Violate Equal Protection by Requiring African-American Parent to Prove Her Residency in School District Prior to Enrolling Her Child"
Wade v. Peterson (C.A.5 [Tex.], 416 Fed. App. 354), January 25, 2011.

The United States Court of Appeals, Fifth Circuit, held that an elementary school principal did **not** violate an African-American parent's equal protection rights (14th Amendment), absent any evidence of disparate treatment or discriminatory intent in connection with principal's requirement that the plaintiff prove her residency in the school district. *All* parents, regardless of race, *were required to submit proof of residency* in the school district. Furthermore, the principal *had cause to believe* that the plaintiff had moved out of the school district.

Juvenile Justice:

"The Search of Student's Locker was Reasonable"
In the Matter of S.M.C. (Tex. App-El Paso, 338 S. W. 3d 161), March 23, 2011.

The search of a middle school student's school locker **was reasonable under all of the circumstances**, for the purpose of the juvenile's motion to suppress evidence found in his locker during delinquency proceedings. A student informed the middle school principal that the offender was "high," and a search of the student's person revealed red eyes and dilated pupils, but no drugs. It **was reasonable** for the principal to suspect that the youngster may have placed drugs in his locker. The search of the offender's locker revealed a set of "brass knuckles," which was a violation of Texas' penal code. Since school lockers are school property, the student did **not** have a reasonable expectation of privacy.

Labor and Employment:

"High School Biology Teacher Viewing Pornography on School Computer Terminated"
Zellner v. Herrick (C.A.7 [Wis.], 639 F. 3d 371), April 29, 2011.

High school biology teacher's internet search on his school issued classroom computer which produced pornographic images **was a legitimate and non-discriminatory reason (did not violate his First Amendment rights) for the teacher's termination**. It **was undisputed** that the plaintiff's search violated the school district computer use policy, and furthermore, the plaintiff admitted he performed the search and knew he violated school district policy. **Note:** The school district's policy specifically stated: "accessing, sending or displaying offensive messages, pictures, or child pornography is strictly prohibited."

"Cafeteria Worker's Symptoms were not related to Work Accident for Workers' Compensation Benefits"
Dunlap v. Madison Parish School Bd. (La. App. 2 Cir., 61 So. 3d 833), April 13, 2011.

Plaintiff, a school cafeteria employee (approximately 20 years) was injured while attempting to hang an iron mixing bowl (weighing approximately 13 pounds), which fell on her. Thereafter, she filed a workers' compensation claim seeking permanent total disability benefits, the payment of all medical expenses, and attorney fees. A Louisiana appeals court upheld the Office of Workers' Compensation ruling that the plaintiff's migraine headaches, vision problems, neck problems, depression, and obesity were **not** related to the work accident for workers' compensation purposes. The medical doctor who had treated the plaintiff for years prior to the accident stated that the plaintiff's symptoms were occurring as a result of her diabetic condition and her blood pressure. Furthermore, the plaintiff's doctor stated that, even if the plaintiff's headaches were aggravated by the work injury, those headaches would have been resolved by now, and another doctor stated that the plaintiff's symptoms **were pre-existing conditions**.

"Texas School District was Entitled to Summary Judgment on Discrimination Complaint by a Substitute Teacher from Mexico"
Garza v. North East Independent School Dist. (C. A. 5 [Tex.], 415 Fed. App. 520), March 23, 2011.

Substitute teacher from Mexico **failed** to establish a prima facie case of retaliation under Title VII, absent a causal link between her national origin discrimination complaint with the EEOC and her employment termination. Furthermore, the plaintiff did not approach the EEOC with her complaint until more that six months after her termination. **Note:** The at-will employee's employment termination with the school district occurred after two separate incidents of misconduct, which included a public and unsubstantiated confrontation with an assistant principal and taking pictures of students with her cell phone without the permission of the students' parents; plus in violation of the district's policy prohibiting the use of cell phones by substitutes.

"School Manager's Use of Work Computer for Non-Work-Related Work Did Not Violate State's Ethic Act"

Seropian v. State Ethics Com'n (Pa. Cmwlth., 20 A. 3d 534), April 7, 2011.

School district business manger's use of his work computer for non-work related purposes was ***de minimis*** (trifling – so insignificant that the court overlooked it in deciding the issue or case), and thus did **not** violate Pennsylvania's Public Official and Employee Ethics Act (Ethics Act). The district business manager used his work computer for non-work related purposes an average of only two minutes per day over a two year period and his non-work related use of the computer did not produce income or financial gain. **Note:** The business manager used his position to solicit campaign contributions from some of the district's vendors for his candidacy for school board director of another school district.

"Termination of Employment was the Proper Sanction for Teacher's Inappropriate Sexual Conduct and Remarks"

In re Watt (East Greenbush Cent. School Dist.) (N.Y.A.D. 3 Dept., 925 N.Y.S. 2d 681), June 9, 2011.

Termination of employment **was appropriate sanction** for tenured physical education teacher who twice touched a female student's breasts during basketball drills and made inappropriate comments regarding a male student's ethnicity. Furthermore, the teacher's disciplinary record indicated several prior situations in which he was warned for making inappropriate comments to students. **Note;** Situation #1: Female student testified that the teacher bumped into her while participating in basketball drills during a physical education class and said to her three times, "I'm going to get you" while moving his hands toward her in a grabbing gesture, twice touching her breasts. Situation #2: Male student testified that during an in-class soccer drill, after the teacher had a discussion with the student concerning his ethnicity and heritage, the teacher yelled, "Hey Hispanic kid, run like you're running to the border."

Religion:

"Parent Did Not Have a Fundamental Due Process Right to Refuse to Have Her Child Immunized"

Workman v. Mingo County Bd. of Educ. (C.A. 4 [S.C.], 419 Fed. App. 348), March 22, 2011.

Mother, individually and as parent and guardian of her minor child field civil action alleging that various state and county officials had violated her constitutional rights in refusing to admit her daughter to a public school without immunizations that were required by West Virginia law. The United States Court of Appeals, Fourth Circuit, stated that (1) West Virginia **had a compelling interest** to require children to be vaccinated before allowing them to attend public school; (2) West Virginia statute requiring vaccinations as a condition of admission to school was **not** facially invalid under the Equal Protection clause of the Fourteenth Amendment on the basis that it did **not** provide any exception from a general coverage for parent's particular religious belief; (3) Parent did **not** have a fundamental substantive due process right (Fourteenth Amendment*) to refuse* to have her child immunized before attending public school where immunization was a precondition to attending school.

Security:

"Dangerous Weapon is given a Common-Law Meaning for Purposes of Offense of Carrying a Dangerous Weapon on School Grounds"
Com. V. Wyton W. (Mass., 947 N. E. 2d 561), May 19, 2011.

High school student who was charged with the possession of a dangerous weapon (pocket knife with a two inch blade) on school grounds filed a motion to dismiss his case. The juvenile court department requested that a Massachusetts appeals court to report on a question of law as pertaining to the classification of a pocket knife as so pertaining to being a dangerous weapon. The Supreme Judicial Court of Massachusetts, Middlesex, answered and remanded to case back to the juvenile court department. In so doing the appeals court stated: (1) In state statute rendering it a criminal offense to carry a firearm or other dangerous weapon on the grounds of a school, **the phase "dangerous weapon"** is given its common law meaning **to include objects that are dangerous per se**, i.e., designed and constructed to produce death or great bodily harm and for the purpose of bodily assault or defense, **as well as those objects that are dangerous as used, i.e. items that are not dangerous per se but become dangerous weapons** because they are used in a dangerous fashion; and (2) Knives that are designed and constructed to produce death or great bodily harm, but that are not necessarily stilettos, daggers, dirk knives, or the other objects so stated in statute governing the offense of carrying a dangerous weapon, **are dangerous per se under the common law and are thus "dangerous weapons" prohibited from schools under the state statute governing offense of possession of a dangerous weapon on the grounds of a school**. **Note:** The high school student's father has given him the small folding pocket knife with a blade approximately two inches long with a black plastic and metal handle three days before his sixteenth birthday. The knife has fallen out of his pocket in shop class and has been seen on the floor by the teacher who reported the juvenile to the dean of his school. The youngster admitted that the knife was his and that his father has given it to him.

Speech:

"Teacher's Reporting of Sexual Harassment of Her Step-Daughter by Another Teacher was Not in Her Capacity as a Citizen"

Condiff v. Hart County School Dist. (W.D. Ky., 770 F. Supp. 2d 876), January 27, 2011.

Plaintiff, a sixth and eighth grade language arts teacher, was informed (January 28, 2008) by her step-daughter, a senior high school student, that one of her teachers made inappropriate statements of a sexual nature to her; thereupon, the plaintiff phone her husband, who was working out of town, and told him about the incident. On January 29, 2008, the plaintiff's husband telephoned the high school principal about the incident. On the same day, the principal talked to the teacher about the incident and he admitted that the inappropriate conversation occurred and apologized for the incident. On April 24, 2008, the plaintiff received a formal note that her teacher contract would not be renewed for the 2008-2009 school year. In part the letter stated the following: State law requires all non-tenured certified staff to receive notification of their employment status annually. This letter certifies that your employment contract with Hart County School District will not be renewed for the 2008-2009 school year. As changes in staff occur during the summer and funding sources become more definite, employment opportunities may become available. The United States District Court, W. D. Kentucky, Bowling Green Division, held that: (1) teacher engaged in protected speech activity; (2) teacher suffered materially adverse employment action; (3) teacher established a causal connection; (4) school district offered a legitimate, non-discriminatory reason for actions; (5) proffered reasons were not pretext; (6) teacher's reporting of sexual harassment of her step-daughter by another teacher was not in her capacity as a citizen; and (7) even if protected by the First Amendment, speech was **not** a motivating factor in adverse employment actions.

Student Discipline:

"School Officials Barred Student from Running for Class Office Due to Internet Speech"
Doninger v. Niehoff (C.A. 2 [Conn.], 642 F. 3d 334), April 25, 2011.

High school student brought legal action against high school principal and school district superintendent, alleging the violation of her federal and state constitutional rights after defendants prohibited the plaintiff from running for senior class secretary based on her off-campus internet speech and from wearing a homemade printed t-shirt ("Team Avery" on the front [Avery - name of plaintiff] and "Support LSM Freedom of Speech" on the back [LSM – initials for the high school]) at a school assembly. The United States Court of Appeals, Second Circuit, held that (1) defendants **were entitled** to qualified immunity for prohibiting student from running for senior class secretary; (2) defendants **were entitled** to qualified immunity for prohibiting student from wearing t-shirt; and defendants did **not** selectively enforce the punishment against the plaintiff in violation of the Equal Protection Clause of the Fourteenth Amendment. The issue arose over the scheduling of an event entitled "Jamfest" that the student council helped to plan. From her home the plaintiff posted the following message on her blog: "jamfest is cancelled due to douchebags in central office, here is an email that we sent out to a ton of people and asked them to forward to everyone in their address book to help get support for jamfest. Basically, because we sent it out, Paula Schwartz is getting a TON of phone calls and emails and such. We have so much support and we really appreciate it, however, she got pissed off and decided to just cancel the whole thing all together. And so basically we aren't going to have it at all, but in the slightest chance we do it is going to be after the talent show on may 18th. And here is the letter we sent out to parents."

Torts:

"School District Was Not Liable for Cheerleader's Injury during Cheerleading Practice" Lomonico v. Massapequa Public Schools (N.Y.A.D. 2 Dept., 923 N.Y.S. 2d 631), May 17, 2011.

School district was **not** liable in cheerleader's personal injury action, arising from an accident during cheerleading practice in which a teammate fell on the plaintiff during the practice of a "liberty" stunt. The plaintiff ***voluntarily engaged*** in the activity of cheerleading, including the performance of various cheerleading stunts. Furthermore, the plaintiff was an ***experienced cheerleader*****, that** ***knew the risks associated with cheerleading***, cheerleading practice ***was adequately supervised***, and the plaintiff further ***assumed the obvious risk of injury*** associated with practicing on a bare (no mat) gym floor.

"Child Assumed Risk of Playing Handball on School Property"
Palladino v. Lindenhurst Union Free School Dist. (N.Y.A.D. 2 Dept., 924 N.Y.S. 2d 474), May 24, 2011.

Eleven-year-old child who had injured his leg while playing handball on school premises, which was open to the public, **assumed the risk of injury by voluntarily participating** in the handball game despite his knowledge that doing so could bring him into contact with an open and obvious, improperly placed metal grate on the handball court. **Note:** The youngster was playing on the middle court, where flush against the wall were ventilation gates on the top of a raised cement block. The grates allowed airflow from the exterior to the interior of the school building. The ventilation grates were ordinarily secured with bars because vandals had been known to lift the grates and enter the crawl space below. However, the security bar on the subject grates had been removed, and one of the grates was improperly placed, such that it was lying partially on top of another properly placed grate, leaving a three-to-six-inch uncovered space between the edge of the cement block and the edge of the improperly placed grate. In the course of play the youngster stepped onto the improperly placed grate and received a cut on his leg that was seven inches long and required 46 sutures.

"School's Failure to Notify Student's Mother of Fistfight Did Not Render It Liable for a Later Assault"
"Stephenson v. City of New York (N.Y.A.D. 1 Dept., 925 N.Y.S. 2d 71), June 16, 2011.

School was **not** subject to liability for injuries sustained by a middle school student when he was assaulted away from school, even though school officials had failed to notify the student's mother of an earlier fistfight between the student and his assailant. School officials had already taken disciplinary action, including suspension from school, against assailant and there was **no** evidence that notifying the youngster's mother would have prevented the assault. **Note:** The assault occurred before school and approximately two blocks from school when the assailant with the help of three other students punched the victim for several minutes and fractured his jaw in two places.

"City Not Liable for Injuries Sustained by a Student who was Pushed Down a Flight of Stairs during a Fire Drill"
Martinez v. City of New York (N.Y.A.D. 1 Dept., 925 N.Y.S. 2d 490), June 21, 2011.

Injuries allegedly suffered by a student when he was pushed down a flight of stairs by a classmate during a fire drill **were proximately caused by a sudden and spontaneous act of a classmate** and therefore could **not** be held liable for the student's injuries. The teacher led the class down the stairs and out of the building during the fire drill. Although the teacher was no longer in the stairwell when the incident occurred, the student was **not** without any supervision because another class and its teacher followed behind plaintiff's class down the stairs. Furthermore, there had been *no* prior incidents of students falling or being pushed down the school's stairs.

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

Note: Johnny R. Purvis is currently a professor in the Department of Leadership Studies at the University of Central Arkansas. He retired (30.5 years) as a professor, Director of the Education Service Center, Executive Director of the Southern Education Consortium, and Director of the Mississippi Safe School Center at the University of Southern Mississippi. Additionally, he serves as a law enforcement officer in both Arkansas and Mississippi. He can be reached at the following **phone numbers**: 501-450-5258 (office) and 601-310-4559 (cell)