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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

"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.

"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.

"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 <u>not</u> 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. **<u>Note</u>:** The school district's policy specifically stated: "accessing, sending or displaying offensive messages, pictures, or child pornography is strictly prohibited."

"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. **<u>Note</u>;** 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."

"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.

"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."

"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.

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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