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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

"School Officials Not Liable for Teacher's Sexual Abuse of Student"
Thomas v. Board of Educ. of Brandywine School Dist. (D. Del., 759 F. Supp. 2d 477), December 30, 2010.

School officials **were not deliberately indifferent** to female sixth grade teacher's sexual abuse (e.g. kissing, hugging, after school hours texting, and sitting in their laps – no conduct indicating actual sex) of her sixth grade male students and did **not** maintain a policy, custom, or practice that lead to student abuse. Thus, school officials (e.g. principal and superintendent) were **not** subject to liability in their official capacities due to their failure to prevent the teacher from sexually abusing students. Furthermore, there was **no** evidence that the teacher or any of her colleagues had previously engaged in sexual misconduct with students and school officials took disciplinary actions against the teacher based on the teacher's improper conduct of which they were aware.

"School Officials Did Not Violate Parent's Nor Child's Due Process Rights Regarding the Child's Alleged Inappropriate Touching on a School Bus"
Porter v. Duval County School Bd. (C.A. 11 [Fla.], 406 Fed. App. 460), December 30, 2010.

Plaintiff **failed** to establish that school officials violated her or her child's due process rights based upon an alleged inappropriate touching on a school bus. School officials responded appropriately to the parent's complaint and school officials ***lacked requisite level of control over*** the parent's child to give rise to a constitutional duty to protect her from a third-party actor (male student who allegedly inappropriately touched the female child). **Note:** The Department of Child and Families prepared a report which stated: (1) the male student denied touching the plaintiff's daughter inappropriately, (2) school personnel have addressed the concern and now keep the children apart at the bus stop, and (3) there was no need for counseling services.

"School Board Not Liable for Teacher's Injuries from Disruptive Student"
Rivera v. Board of Educ. Of City of New York (N.Y.A.D. 1 Dept., 919 N.Y.S. 2d 154), March 24, 2011.

The defendant, the Board of Education of the City of New York, did **not** owe a special duty to a teacher who was allegedly injured while attempting to restrain a disruptive student whom she had previously asked the board to remove from her classroom. Furthermore, the board was **not** liable for the teacher's injuries even though it had referred the student for an evaluation, never assured the teacher that the student would be removed from her classroom, or that she would be provided with any particular security measures.

"School Safety Officer Had Reasonable Grounds to Search Student's Jacket"
In re Thomas G. (N.Y.A.D. 2 Dept., 922 N.Y.S.2d 453), April 26, 2011.

Search of student's jacket by a school safety officer, ***who had reasonable grounds to believe*** that a student was concealing a weapon in his jacket, **was permissible in scope and <u>not</u> excessively intrusive**. The officer requested that the student take off his jacket, which the student complied with the request; thereupon, the officer patted down the pockets of the jacket and did not feel anything. After patting down the pockets of the jacket, he ran his hand along the sleeves of the jacket and felt a small, hard object in one of the sleeves. After feeling the object, he observed a tear in the shoulder, turned the sleeve up, and discovered a bag containing a white pill which fell from the sleeve. The New York Supreme Court, Appellate Division, Second Department, stated that the officer **had reasonable grounds** to believe a search of the student's jacket would turn up evidence and **the search of the jacket was permissible in scope and was <u>not</u> excessively intrusive**. **<u>Note</u>:** The officer brought the student to the dean of students' office, while the officer and the student were alone in the dean of students' office; the student placed his hand down the front of the waistline of his pants. The officer asked the student to take his hand out of his pants and he complied. However, the student placed his hand down his pants again in the same manner, and the officer again asked the student to remove his hand from his pants. The student complied, but then put his hand down his pants for a third time; however, this time, the student slid his hand from his pants to the inside shoulder of his fleece jacket.

"Process Used to Temporarily Suspend Student was Sufficient – Plus, the Student's Mother Got Fired from the School District"
Harris ex rel. Harris v. Pontotoc County School Dist. (C.A.5 [Miss.], 635 F. 3d 685), March 10, 2011.

An eighth grade male student (plaintiff) and a friend emailed their computer teacher and told her that they had hacked into her computer, later in an email they stated that they were joking. About two weeks later, the student plaintiff sent his computer teacher during class the following message: "you might need to tell the administration that the school is vulnerable to DoS," which is an acronym for a denial of service attack. The computer teacher knowing that the student often used his mother's computer at an elementary school where she worked as the secretary for the principal, requested that the district's technology coordinator recover the all internet queries on his mother's school owned computer. Some of the queries related to hacking, key loggers, and denial of service attacks. Soon thereafter there were a number of network problems that occurred on school owned computers. The student was charged with the attack and was told that he would be suspended from school until the investigation was complete. He was later referred to the district's alternative school for 45 school days. The student's mother was reassigned to an assistant teacher's position for allowing her son to use her assigned school computer. Within and during all of the turmoil, the student's father and mother got involved, names were called, and forth; thereafter the student's mother was terminated from her employment. The United States Court of Appeals, Fifth Circuit, held that (1) The temporary suspension of the student was proper and both the student and his parents had numerous opportunities to meet with school officials; (2) School district superintendent was **<u>not</u>** acting outside the scope of his authority in terminating the school district employee for her actions; and (3) The employee was **<u>not</u>** terminated in retaliation for her speech.

"Florida – Juvenile in Possession of a Folding Pocketknife Cannot be Convicted of Possession of a Weapon on School Property"
R. H. v. State (Fla. App. 4 Dist., 56 So. 3d 156), March 23, 2011.

After an incident at school, the plaintiff was brought to a school's assistant principal's office and a search of the plaintiff student revealed a knife hidden in his boxer shorts. The knife was a folding pocket knife with a wooden handle and a blade with the tip broken off that measured three and a quarter inches. The assistant principal estimated that the blade of the knife may have been four inches long prior to being broken off. The court stated that the knife fell within the range of a common pocketknife according to Florida law because it folded into the handle and can be carried in an individual's pocket. Therefore, the student cannot be convicted of the possession of a weapon on school property.

"Student Assaulted Teacher"
In re Isaiah W. (N.Y.A.D. 1 Dept., 922 N.Y.S. 2d 380), May 10, 2011.

Evidence that juvenile persisted in wearing a hat in a classroom, in violation of a school rule, and that he used force to prevent a teacher from retaining the hat, which the teacher confiscated, **supported** the determination that the juvenile had committed acts that, if committed by an adult, would have constituted the crime of *obstructing governmental administration* in the second degree. **Note:** The student grabbed, twisted, and shook his teacher's wrist while threatening to "deck" or "kill" him. The student was placed on probation for a period of 12 months.

"Juvenile Committed Batter"
K.S.H. v. State (Fla. App. 3 Dist., 56 So. 3d 122), March 9, 2011.

The state ***presented competent, substantial evidence*** to rebut the claim of defense of others, and proved beyond a reasonable doubt that a juvenile had committed misdemeanor battery by striking a classmate at school. The male juvenile hit a female classmate after an argument between his sister and another female student was broken-up and the injured student was walking away from the incident in company with other students. The offending student threw a running punch with his right hand that stuck the classmate in her left eye; thereupon, **evidence supported** that the juvenile used excessive force (misdemeanor battery) in the defense of his sister.

"Parents Could File a Late Notice of Claim Regarding Their Sixth Grade Daughter's Sexual Assault on School Grounds"
Mindy O. v. Binghamton City School Dist. (N.Y.A.D. 3 Dept., 921 N.Y.S. 2d 696), April 21, 2011.

Trial court did **not** abuse its discretion in allowing parents of sixth grade student who was sexually assaulted by fellow students on school grounds to file a late notice of negligent supervision claim against a school district. Plaintiffs allegedly first learned of the assault the following summer (2009 - The sexual assault occurred in September 2008.) after asking their daughter about certain drawings they found in her room. The plaintiff parents did not know their child had been sexually assaulted and ***was a reasonable excuse for their delay in filing their claim***. School officials contented that memories of children involved in the incident were likely to have faded; however, they were not able to put forth specific evidence toward their claim and could not demonstrate that the child's reluctance to report the incident was related to her infancy.

"Middle School Student Was in School Custody When Hit on His Head by Fellow Student on a School Bus"

Mareci v. Coeur D'Alene School Dist. No. 271 (Idaho, 250 P. 3d 791), April 20, 2011.

School district employees did **not** act recklessly, willfully, or wantonly in failing to prevent incident in which fellow student allegedly hit plaintiff student while students were on a school bus. The school district ***was entitled*** to statutory immunity even if plaintiff student had been injured by fellow student earlier in the day and has talked to the school secretary and counselor about the first incident. Fellow student had accompanied plaintiff student to school office after the first incident and there was ***no*** evidence of any prior conflict between the two of them or any evidence that fellow student bullied or intentionally harmed any other student. The plaintiff's account to the secretary and counselor of the manner in which he was injured did not indicate that he and fellow student were fighting or that fellow student intended to injure plaintiff, and plaintiff student did **not** indicate any animosity or fear toward fellow student. **Note:** The first incident occurred when the plaintiff student and the fellow student were playing outside during the school day. The fellow student ran and came up to plaintiff student and pushed him backwards and he hit his head on the ground. The incident on the school bus occurred when the follow student hit the plaintiff student on his head with his backpack. Plaintiff claimed that he suffered daily headaches due to his injuries.

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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