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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:

- Administration
- Athletics
- Civil Rights
- Labor and Employment
- Speech
- Student Discipline
- Torts

Topics

Administration:

"High School Principal's Deactivation of Malfunctioning Fire Alarm System Warranted Suspension of License"
In re Certificates of Kramer by State Bd. of Examiners Suspension (N. J. Super A. D., 40 A. 3d 59), October 26, 2010.

The action of a high school principal disabling a malfunctioning fire alarm system at his high school **was conduct unbecoming a school administrator**. Thus, the principal's conduct **warranted** a 69 day suspension of the principal's school administrator certificate. In response to numerous false alarms caused by the malfunctioning of the school's fire alarm system, and after several attempts to repair the system had failed, the plaintiff deactivated the system function that automatically notified the fire department of an alarm; thus, the principal *was in violation of the state's fire and safety standards*. **Note:** After the incident, the board of education suspended the administrator, and in lieu of termination, the principal agreed to resign from his position. Shortly thereafter state examiners brought action to revoke or suspend the principal's teaching and administrator certificates.

Athletics:

"School District Proved a Mt. Healthy Defense Regarding Not Hiring Football Coach as Athletic Director"
Deep v. Coin (C. A. 2 [N. Y.], 453 Fed. App. 49), December 19, 2011.

The United States Court of Appeals, Second Circuit, held that the lower court's evidentiary rulings did **not** warrant a new trial in a football coach's legal action against a school district, superintendent, principal, and members of the board of education for First Amendment retaliation, based on allegations that the district refused to appoint him as interim or permanent athletic director due to his prior settled lawsuit against the district. Evidence pertaining to the case was **not** relevant to Mt. Healthy (Mt. Healthy City School Dist. Bd. of Educ. v. Doyle, 429 U. S. 274) defense that defendants refused to appoint the plaintiff for legitimate reasons independent of that were independent of his charge against the defendants. In addition, the lower court **adequately instructed** the jury that testimony about events outside of a designated time period were **not** part of the suit itself and came in for limited purposes of establishing a basis for the superintendent's decision for not hiring the plaintiff as the district's athletic director. **Note:** The U. S. Supreme Court ruled in the Mt. Healthy case that in a First Amendment retaliation claim, "even if there is evidence that the adverse employment action was motivated in part by protected speech, the government can avoid liability if it can demonstrate that it would have taken the same adverse action in the absence of the protected speech."

Civil Rights:

"School Had No Special Relationship with a Nine-Year-Old Student Who was Sexually Molested"
Doe ex rel. Magee v. Covington County School Dist. ex rel. Keys (C. A. 5 [Miss.], 675 F. 3d 849), March 23, 2012.

Parent and grandparent of a nine-year-old female student, who was checked out from her elementary school by an unauthorized individual, who then proceeded to molest, rape, and sodomize her prior to returning her to school filed suit against the defendants (school district, Mississippi Department of Education, and other officials) claiming a violation of the youngster's civil rights and other such laws (e. g. Mississippi's compulsory attendance laws, Section 1983, United States Constitution, "shocking the conscience" doctrine, and Mississippi's tort laws). The United States Court of Appeals, Fifth Circuit, held that: (1) Mississippi's compulsory attendance laws did **not** create a special relationship between the school and the student of a kind that imposed a constitutional duty under Section 1983 to protect the student from a third party and (2) The "shocking the conscience" doctrine did **not** provide an independent basis to hold the school liable under Section 1983 for harm inflicted on the youngster by a third party who sexually molested her after removing her from school grounds. **Note:** On six separate occasions during the 2007-2008 school year a man, who bore no relation to the nine-year-old student, checked her out from school without the knowledge or consent of her parents or guardians and sexually molested her. In addition, he returned her to school prior to the end of the school day each time he checked the youngster out of her elementary school. On the first five occasions, he signed out the child as her father. On the sixth occasion, he signed her out as her mother.

"Principal's Reporting a Student's Fluctuating Glucose Levels to Children Services was Not Illegal Retaliation Against Parents"
A. C. v. Shelby County Bd. of Educ. (W. D. Tenn., 824 F. Supp. 2d 784), November 1, 2011.

Principal of an elementary school where a seven-year-old student with Type I diabetes and a peanut allergy attended **had a legitimate, good-faith reason for reporting** student's parents to the Department of Children Services (DCS) to express her concern that the student would die at school because she was having high sugar levels followed by sudden crashes almost every day, and thus, her report was **not** an "adverse action," as required for parents to establish retaliation claims against the principal and the school district. Two of the student's teachers and the school nurse confronted the principal over the student's fluctuating glucose levels after an incident in which the nurse stated it was lucky the youngster did not pass out due to her low glucose level. Thus, the principal contacted DCS, who stated that school district employees were obligated under Tennessee law to report such an incident.

Labor and Employment:

"Evidence Did Not Support Termination of School Custodian for Conduct for Domestic Assault of His Girlfriend"
James v. Hoosick Falls Cent. School Dist. (N. Y. A. D. 3 Dept., 941 N. Y. S. 2d 335), March 29, 2012.

Substantial evidence did **not** support the decision of the board of education to terminate the school custodian for his conduct in connection with the domestic assault of his girlfriend. The plaintiff had been employed by the school district for 20 years, had *no* prior incidents of misconduct, the purported assault *occurred off the school's premises*, and the incident did *not* involve anyone associated with his assigned school or school district. In fact the prosecutor determined *not* to pursue criminal prosecution because the incident occurred when both the plaintiff and the girlfriend were intoxicated and the girlfriend admitted that she instigated the physical altercation. **Note:** Before the court, the girlfriend testified that they were arguing and she grabbed the plaintiff and fell, pulling him down on top of her as they hit the floor.

"Termination of a Teacher Who Engaged in Two Incidents of Physical Altercations with Students Was Excessive"
Principe v. New York City Dept. of Educ. (N. Y. A. D. 1 Dept., 941 N. Y. S. 2d 574), April 5, 2012.

The termination of a teacher's employment in connection with two incidents of physical altercations with students, as ordered by a hearing officer with an apparent unfair bias, **was excessive and shocking to the court's sense of fairness**. The teacher's actions were **not** premeditated and he had a spotless record as a teacher for five years and had been promoted to the dean of student discipline two years prior to the two incidents. Furthermore, the teacher believed that his actions were appropriate to protect both nearby students and faculty. **Note:** The first incident occurred when he was escorting a student who was fighting from the school's cafeteria. The second incident occurred when he was removing a belligerent student from a teacher's classroom.

"School Officials Reasonably Accommodated Teacher's Purported Disabilities – Precluding ADA Failure to Accommodate"
Farina v. Branford Bd. of Educ. (C. A. 2 [Conn.], 458 Fed. App. 13), November 18, 2011.

The board of education, school superintendent, school principal, and school assistant principal **reasonably accommodated** teacher's purported disabilities claim; thus ***precluding her failure to accommodate claim***. The plaintiff made **no** showing that she was disabled within the meaning of ADA, defendants granted her request to arrive at school five to ten minutes later than required of other teachers; however, even with the accommodation, the teacher was tardy to school. The teacher's request that school officials have someone on call for mornings on which she could not arrive on time **was patently unreasonable**. **Note:** The plaintiff had two back surgeries in 1988 and 1994; however, there was no evidence that these restrictions continued to affect her during the relevant time period asserted in her complaint. In addition, the plaintiff *failed* to offer medical evidence that her insomnia and fatigue were linked to her thyroid cancer and thyroid disease.

Speech:

"Requiring Students to Change Clothing Bearing an American Flag did Not Violate Students' First and Fourteenth Amendments"
Dariano v. Morgan Hill Unified Sch. Dist. (N. D., Cal. 822 F. Supp. 2d 1037), November 8, 2011.

School officials ***reasonably forecasted*** that high school students wearing bearing the American flag on Cinco de Mayo Day ***could cause a substantial disruption***, and therefore requiring students to change their clothing did **not** violate the students' Fourteenth and First Constitutional Amendments. The school had had ongoing racial tension and gang violence and a near violent altercation occurred the prior year on the same day over the display of the American flag.

Student Discipline:

"Student did Not Suffer Any Stigma from School District's Imposition of Indefinite Ban from School Properties"
Hannemann v. Southern Door County School Dist. (C. A. 7 [Wis.], 673 F. 3d 746), March 15, 2012.

High school student did **not** suffer any stigma from a school district's imposition of an indefinite ban from school grounds, which also included permanent expulsion from school. The student's due process rights had **not** been violated under the "stigma plus" theory of liability due to the fact that school officials did **not** make any statements that would have constituted defamatory statements. Furthermore, school officials did **not** publicize the ban and the student had **not** been harassed. The student was guilty of the following behavioral incidents: brought a knife to school, had written on his backpack "Only one bullet left, no one to kill but myself," grabbed another student by the collar and stated, "I am going to kick your ass. Stop writing in my locker," and punched another student.

"School District Had Broad Discretion to Decide the Punishment for Violating School Policy Prohibiting Cell Phones in Classrooms"
Koch v. Adams (Ark., 361 S. W. 3d 817), March 18, 2010.

High school student brought action against a school district, principal, and teacher, alleging conversion and trespass to chattels (movable or transferable personal property) arising out of the school's confiscation of his cellular phone. The Arkansas Supreme Court held that **broad discretion is vested** in a school board of each school district in the matter of directing the operation of their schools and courts have **no** power to interfere with such a board in the exercise of that discretion *unless there is a clear abuse of it*. **Note:** On September 4, 2008, a public high school teacher discovered that the plaintiff had a cellular phone in her classroom in violation of the school district's handbook.

"School Officials Reasonably Could Have Concluded that Student's Drawing Would Substantially Disrupt School Environment"

Cuff ex rel. B. C. v. Valley Cent. School Dist. (C. A. 2 [N. Y.], 677 F. 3d 109), March 22, 2012.

School officials **reasonably could have concluded** that a ten year old elementary student's drawing, depicting an astronaut with an expressed desire to "blow up the school with the teachers in it," would substantially disrupt the school environment. Therefore, their decision to suspend the student did **not** violate his First Amendment right of free speech. The student lacked the intent or capacity to carry out his threat; however, the student had a history of disciplinary issues and his other earlier drawings and writings also had embraced violence and his latest drawing had been see by other students in his class. **Note:** Some samples of the student's other drawings-writings are as follows: January 2006, he drew a picture of a person firing a gun and above it he had written, "One day I shot 4 people each of them got four blows, plus, they were dead. I wasted 20 bullets on them." In the spring of 2007, as part of a fourth grade in-class assignment he wrote a story about "a big wind that destroyed every school in America and everybody ran for their life and that all adults died and all the kids were alive."

"Evidence was Sufficient to Support Delinquency Adjudication for Committing the Offense of Assault on a Teacher"

State in Interest of L.A. (La. App. 4 Cir., 85 So. 3d 192), February 8, 2012.

Evidence **was sufficient** to support delinquency adjudication for committing an offense of assault on a school teacher. The teacher victim testified that the juvenile threatened to "get," "shoot," and "kill" him during an altercation. In addition, the teacher testified that ***he believed*** that the juvenile could follow through on those threats and that ***he was afraid***.

Torts:

"School Resource Officer Owed a Duty of Care (but did not breach duty) When Displaying Accident Scene Photos to Students Potentially Related to Victims"
Maria H. v. Knox County (Tenn. Ct. App., 361 S. W. 3d 518), June 29, 2011.

Mother of a middle school student brought action against city for the negligent infliction of emotional distress after the student viewed graphic photographs of her dead biological father during a presentation by a police officer on the dangers of drunk driving in a health seventh grade health class. The Court of Appeals of Tennessee, at Knoxville held that it was **"generally foreseeable"** that providing graphic accident scene photographs to seventh grade students could cause serious or severe emotional harm in a student related to a victim depicted therein. Thus, a school resource officer (SRO) from the city police department, who gave the presentation on the dangers of alcohol use and abuse, **owed a duty to exercise reasonable care** when displaying the photographs to a class that potentially included students related to the victims. **Note:** The young lady had been sexually molested by a biological father when she was four years old and the Tennessee Department of Children Services (DCS) terminated the biological father's parental rights and placed the youngster in foster care. The youngster had no contact with her biological father after her removal from her home. The child's mother filed for divorce from the youngster's biological father upon learning of his offense, but this did not prevent DCS from taking action against her. The child's mother fought for custody of her daughter over a two year period and finally regained full custody when the youngster was six-years-old. From that time forward the youngster lived a "pretty normal" life. The mother's current husband adopted the youngster and the state of Tennessee issued her a new birth certificate legally changing her last name to her adopted father's last name.

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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