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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
- Administrators
- Civil Rights
- Labor and Employment
- Security
- Student Discipline
- Torts
- Weapons

Topics

Abuse and Harassment:

"School District May Be Liable for Negligent Supervision of an Employee for Committing Sexual Abuse"
C. A. v. William S. Hart Union High School Dist. (Cal., 270 P. 3d 699), March 8, 2012.

A public school district **may be vicariously liable** for the negligence of administrators or supervisors in hiring, supervising, and retaining a school employee who sexually harasses and abuses a student. **Note:** Plaintiff, a high school student, sued his high school counselor and school district for damages associated with the counselor's harassment and sexual abuse of him when he was approximately 15-years of age. The plaintiff's relationship with his high school counselor began when she wished to help him do well in school and spent many hours with him both during school and after school hours, including driving him home on many occasions. The counselor engaged in sexual activities with the plaintiff that included sensual embraces, massages, masturbation, oral sex, and intercourse.

"Allegations were Sufficient to Plead a Custom, Practice or Policy of Deliberate Indifference by Policy Makers"
Dipippa v. Union School Dist. (W. D. Pa., 819 F. Supp. 2d 435), May 4, 2011.

Allegations by the parents of a minor high school female student that school officials, including the superintendent, principal, and athletic director, were on notice of some kind of relationship between the plaintiffs' daughter and a male teacher that was based on the high school faculty raising concerns with the defendants. Faculty concerns focused on the offending teacher's open and obvious physical contact with the student, including allowing her to sit on his lap during a school sponsored dance. School officials met with the teacher and student to discuss the situation and the student was instructed to not go to the teacher's classroom; however, school officials knew that contact continued between the teacher and student and ignored it. Therefore, plaintiffs' complaint **was sufficient** to plead a custom, practice, of policy of deliberate indifference by school district policy makers as required to allege a violation of the Fourteenth Amendment's substantive due process clause due to the teacher's sexual abuse of the student.

Administrators:

"Black Middle School Principals Failed to Establish That They were Demoted Based on Their Race"
Gibbons v. County Bd. of Educ. of Richmond County (C. A. 11 [Ga.], 454 Fed. App. 720), November 22, 2011.

Black principals (N = 2) who were replaced as middle school principals and assigned as assistant high school principals, but after one year were appointed as elementary school principals, **failed** to establish a prima face case (not produce enough evidence) that they were denied promotions based on race. Although the plaintiffs may have had differences in prestige and professional resources in their former positions they received the same job titles, work responsibilities and compensation as they previously received in their secondary school positions.

Civil Rights:

"Teacher and Counselor Did Not Interfere With Parents' Right to Decide Matters Concerning Daughter's Upbringing"

Reardon v. Midland Community Schools (E. D. Mich., 814 F. Supp. 2d 754), September 2, 2011.

High school teacher and guidance counselor did **not** interfere with parents' due process rights under the Fourteenth Amendment to decide matters concerning the growth, development and upbringing of their student-daughter, despite parents' contention that her teacher and counselor conspired with student to coordinate student's leaving parents' home on her seventeenth birthday. The plaintiffs' daughter had come to her high school teacher and counselor for assistance regarding her strained relationship with her parents. Both defendants provided several suggestions to the student, offered her counseling regarding her situation, and offered her financial assistance. **Note:** On May 8, 2010, the young lady's seventeenth birthday, she walked out of her parents' home, got into her boyfriend's waiting car, and drove away. To her parents' regret, she has never returned to her parents' home. The father of the youngster has not seen his daughter since she left and her mother saw her daughter only once since her midnight exit from her parents' home.

"School District and High School Principals did Not Violate Student's Due Process Right to Bodily Integrity"

Brown v. School Dist. of Philadelphia (C. A. 3 [Pa], 456 Fed. App. 88), September 20, 2011.

School district and high school principals promised to provide one-on-one adult supervision to a sophomore student who was mildly mentally retarded, as well as having a disorder that inhibited her ability to speak or comprehend the written and spoken word, was sexually assaulted by five fellow students during the lunch hour in the school's auditorium. The United States Court of Appeals, Third Circuit, held that the defendants were **not** liable under the Fourteenth Amendment for the violation of her right to bodily integrity under the state-created danger doctrine.

"African-American Principal Failed to Establish an Abusive Work Environment"

Hightower v. Easton Area School Dist. (E. D. Pa., 818 F. Supp. 2d 860), October 3, 2011.

African American principal who sued his school district **failed** to establish an abusive work environment due to purported racial remarks and comments directed at him by a co-worker, as required to maintain a hostile work environment claim under Title VII and the Pennsylvania Human Relations Act. Two comments with possible racist overtones and one-time requirement that the principal provide medical information **were insufficient** to alter the plaintiff's conditions of employment.

Labor and Employment:

"No Evidence That School Employee was Fired for Her Race, National Origin, or Gender"
Dellapenna v. Tredyffrin/Easttown School Dist. (C. A. 3 [Pa.], 449 Fed. App. 209), October 28, 2011.

There was **no** evidence that school district's legitimate and nondiscriminatory reasons for firing female employee (Director of Finance) violated former employee's Title VII claim for race and sex discrimination. The plaintiff, who was originally from China, verbally abused her staff, intentionally misstated accounting records, and ordered her subordinates to exhibit very similar behaviors.

"School Cafeteria Employee's Alleged Disability did Not Substantially Limit Her Ability to Perform a Major Life Activity"
Stephan v. West Irondequoit Cent. School Dist. (C. A. 2 [N. Y.], 450 Fed. App. 77), December 13, 2011.

School cafeteria employee's alleged disability did **not** substantially limit her ability to perform a major life activity, and thus employee was not "disabled" within the meaning of the ADA. The employee's alleged impairment was an unspecified learning disability as opposed to a medically diagnosed impairment. The employee's alleged impairment consisted of difficulty remembering appointments and paying bills and such problems alone do not demonstrate that the plaintiff is substantially limited in a major life activity as compared to most people.

Security:

"Search of 14-year-old Juvenile was Not Justified at Its Inception"
In re Anthony F. (N. H., 37 A. 3d 429), January 13, 2012.

The search of a 14-year-old juvenile high school student conducted by two school administrators was **not** justified at its inception under the state constitution. The assistant principals searched the juvenile because it was school policy to search all students who returned to school after leaving an assigned area, but the plaintiff was leaving the school at the time of the encounter, rather than returning. Furthermore, there was **no** evidence linking the juvenile to the alleged infraction for which he was searched, namely, the possession of drugs, weapons, or alcohol. **Note:** When one of the assistant principals asked the student if he had anything on him that did not belong on school property, the student pulled a small bag of marijuana from the inside of one of his socks.

Student Discipline:

"Expulsion of Student for Possession of Alcohol did Not Violate Student's Due Process Rights"
Christy v. McCalla (La., 79 So. 3d 293), December 6, 2011.

Mother of former student brought legal action against parish school board and high school principal seeking damages for an incident in which her son was expelled for having a bottle of alcohol in his backpack in a classroom. The Supreme Court of Louisiana held that the expulsion did **not** violate the student's due process rights and the discipline of the student did **not** constitute an expulsion. **Note:** The student brought his backpack to his first period class and the two accounts varied in regard to what happened next. Account number one stated that the student opened his backpack and a fifth-sized whiskey bottle fell out and broke on the classroom floor. Account number two stated that the student retrieved an assignment from his backpack and had left his desk and was walking to bring the assignment to his teacher when the bottle of whisky rolled out of his backpack onto the floor and broke. After the whiskey bottle incident the plaintiff's son was assigned to the district's alternative school; however, the alternative school did not provide the college preparatory courses in which the youngster was enrolled. Therefore, the student elected to obtain his General Educational Development Certificate/Credential.

Torts:

"School District's Actions Were Not the Cause of Student's Injury"
Provinsal v. Sperry Independent School Dist. No. 8 of Tulsa County (Okla. Civ. App. Div. 3, 269 P. 3d 51), December 1, 2011.

Classmate's actions, in suddenly jumping up and going for the ball as a middle school student did, thereby causing the plaintiff's son to fall on the playground and suffer a broken shoulder, ***amounted to an intervening or supervening cause***. Therefore, the school district's actions were **not** the proximate cause of the student's injury; thus, the school district could **not** be liable for negligence as a matter of law. The student's mother could only speculate that a teacher standing nearby could have stopped the students before the fall and it was **not** reasonably foreseeable that the classmate would jump up and intentionally push the plaintiff's son to the ground. Furthermore, a teacher directly supervising the students could **not** have stopped the *unforeseeable act* in time to prevent the youngster's injury.

"Student's Spontaneous Act of Pushing another Student during a Game did Not Provide a Basis for a negligent Supervision Claim"
Kamara ex rel Kamara v. City of New York (N. Y. A. D. 1 Dept., 940 N. Y. S. 2d 53), March 8, 2012.

A student's spontaneous act of pushing plaintiff student during a lunch-time basketball game, while the plaintiff student was in the act of attempting to get the ball, ***was the type of incident that occurred in such a short span of time that it could not have been prevented by the most intense supervision***. Thus, the act did **not** provide a basis for the plaintiff student's negligent supervision claim against the defendant, although the plaintiff student presented evidence that school personnel had noticed that the student who pushed to plaintiff student had bullied him in the past. However, the aforementioned was **not** sufficiently specific to alert the defendants that the student would push the plaintiff student during a basketball game.

Weapons:

"Knife That Juvenile Possessed in School was a Weapon"
F. R. v. State (Fla. App. 3 Dist., 81 So. 3d 572), February 29, 2012.

The knife that a 12-year-old possessed in school **was a weapon and not an ordinary pocketknife** for purposes of his conviction for the possession of a concealed weapon. State law prohibited a person from carrying a concealed weapon on or about his person and excluded from that definition of a "weapon" a common pocketknife. The indelible characteristics of the student's knife were its notched grip, its locking blade mechanism, and its hilt guard; thus ***eliminating*** the plaintiff's knife from the realm of an ordinary pocketknife.

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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