March 2014 (292 & 293)

Legal Update for District School Administrators
March 2014

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West's Education Law Reporter
November 20, 2012 – Vol. 284 No. 2 (Pages 629 – 192)
December 6, 2012 – Vol. 285 No. 1 (Pages 1 – 728)

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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
- Free Speech
- Labor and Employment
- Torts

Topics

Abuse and Harassment:

"School District's Anti-Bullying Policies Did Not Give Rise to a Duty to Protect Middle School Student from Bodily Harm"
Estate of Brown v. Cypress Fairbanks Independent School Dist. (S. D. Tex., 863 F. Supp. 2d 632), May 23, 2012.

School district's anti-bullying polices did **not** give rise to duty to protect a middle school student from bodily harm and threats to his bodily integrity. Therefore, the failure of middle school officials to enforce its policies did **not** violate the student's due process rights under the Fourteenth Amendment where alleged violations of the student's bodily integrity were caused by other students who bullied him and by the student's own actions in taking his life.

"There was No Evidence That Male Student Touched or Sexually Harassed Female Student or Harassed her Because of Her Gender"
McSweeney v. Bayport Bluepoint Cent. School Dist. (E. D. N. Y., 864 F. Supp. 2d 240), March 20, 2012.

There was **no** evidence that male elementary student touched or otherwise sexually harassed a fourth grade female student or harassed her because of her gender. Therefore, the plaintiff's claim of a Title IX violation was **not** supported by the evidence presented; although the male student allegedly bullied the female student, including bumping into to her several times, threatening to shoot her the head, and threatening to slit her throat. **None** of the alleged incidents were of a sexual nature or stemmed from the female student's gender.

Free Speech:

"Song High School Student Posted on Social Networking Websites was Not Protected by the First Amendment"
Bell v. Itawamba County School Bd. (N. D. Miss., 859 F. Supp. 2d 834), March 15, 2012.

Song that high school student posted on social networking websites, in which he used vulgar and threatening language to levy charges that two coaches had improper contact with female students, *caused a material and/or substantial disruption* and it *was reasonably foreseeable* that such a disruption would occur. Based thereon, the song was **not** protected by the First Amendment. One coach was angered and felt threatened by the references to killing him in the song, and the second coach testified that his teaching style was adversely affected out of fear that students suspected him of inappropriate behavior. **Note:** The vulgar rap song included verses such as the following: (1) "looking down girls' shirts with drool running down your mouth-messing with the wrong one and going to get a pistol down your mouth" and (2) "middle finger up if you can't stand that nigga middle finger up if you want to cap that nigga." The student was a senior and the student received a temporary five-week transfer to the district's alternative school and a seven-day out-of school suspension.

Labor and Employment:

"High School Principal's Death at a Hospital Did Not Preclude the Application of Unexplained-Death Presumption"

Wilkinson County Bd. of Educ. v. Johnson (Ga. App., 732 S. E. 2d 765), September 6, 2012.

That high-school principal died at a hospital did **not** preclude the application of unexplained-death presumption under which the death of an employee who is found dead in a place where he might reasonably be expected to be in the performance of his duties *arose out of his employment*; thus, his widow **was entitled** to obtained dependent's benefits. "The presumption" applied when the employee became ill at his place of employment and died from such illness at a hospital. **Note:** The principal had a medical history which included hypertension, obesity, renal insufficiency, and gout. While traveling to pick up some computers that had been donated to his school he became ill, but continued on to his school and thereupon was transported by an ambulance to a hospital. His death was caused by complications of the aortic dissection, specifically an ischemic bowel.

Torts:

"School District Owed a Duty to Provide Adequate Supervision to a Student Even After Normal School Hours"

Khosrova v. Hampton Bays Union Free School Dist. (N. Y. A. D. 2 Dept., 951 N. Y. S. 2d 235), October 3, 2012).

The fact that an incident in which a seventh-grade student was assaulted by a fellow student while waiting for a school bus and occurred outside of the school building and after normal school hours did **not** *preclude a determination that the school district owed a duty of adequate supervision* to the injured student. The duty that the school district owed to the injured student was derived from the simple fact that *a school in assuming physical custody and control over its students, effectively takes the place of parents/guardians* (in loco parentis) and the mere fact that the accident occurred after the formal end of classes for the day ***was without legal significance***.

"A Teacher Allegedly Injured by Exposure to Allergens at School Failed to Establish Causation"

Cleghorne v. City of New York (N. Y. A. D. 1 Dept., 952 N. Y. S. 2d 114), October 4, 2012.

Plaintiff, alleged that he was injured by the exposure to allergens at his school **failed** to establish causation to support his claims for negligence against the defendant. The expert for the plaintiff did **not** provide any scientific measurements to demonstrate that the teacher's alleged exposure to dust, bugs, rodent droppings, and carcasses injured him. Furthermore the expert did **not** postulate the level of exposure necessary for the causation of the plaintiff's alleged injury.

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 recently retired (10.5 years) as a professor in the Department of Leadership Studies at the University of Central Arkansas (UCA). Prior to retiring from UCA 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. In addition, he retired as a law enforcement officer having served in both Arkansas and Mississippi. He can be reached at the following **phone number**: 601-310-4559 (cell-phone)