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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
- Athletics
- Civil Rights
- Disabled Students
- Labor and Employment

Topics

<u>Abuse and Harassment</u>:

"Award of $1,000,000 for School's Failure to Properly Address Harassment <u>Not</u> an Abuse of Discretion by a Magistrate Judge"
Zeno v. Pine Cent. School Dist. (C. A. 2 [N. Y.], 702 F. 3d 655), December 3, 2012.

Plaintiff (student) filed action alleging that school district violated Title VI by allowing his fellow high school students to harass him for three and one-half years. The award of damages from $1.25 million to $1 million for a school district's violation of Title VI in failing to properly address student on student racial harassment was **<u>not</u>** an abuse of discretion where high school student, his mother, and third-party testified of student's increasing frustration, loneliness, other emotional anguish, and student's ability to attend college or enter the workforce was significantly and adversely impaired by prolonged harassment. Furthermore, the award *was located within the range of permissible decisions*. **<u>Note</u>:** The plaintiff was a dark-skinned and biracial (half-white and half-Latino) student and attended a high school where minorities represented less than five percent of the student population. Students in the high school committed such behaviors as the following toward the plaintiff: called him "nigger," told him to go back where he came from, charged toward him and screamed that they would rip his face off and kick his ass, stripped a necklace from his neck, and stated to him that he was so ghetto. In addition to such behaviors and the aforementioned, a student tampered with his locker and filled his locker with garbage, which spilled on him and the floor.

Athletics:

"Parents' Right to Control Individual Components of Son's Education was Not Protected by Due Process"

Bailey v. Virginia High School League, Inc. (C.A.4. [Va.], 488 Fed. App. 714), July 18, 2012.

Parent's right to control individual components of their son's education, including his participation in interscholastic sports and other activities, was **not** protected by due process or their fundamental right to make decisions associated with their son's best interest; thus, precluding the parents' claim that transfer rule of state high school league, which denied their son's eligibility to participate in interscholastic and athletic activities at the school of the parents' choice.

Civil Rights:

"There was No Evidence That Police Officer used Excessive Force in Handcuffing and Restraining Disabled Middle School Student"

EC ex rel. RC v. County of Suffolk (E.D.N.Y., 882 F. Supp. 2d 323), March 30, 2012.

Police officer's seizure and restraint of disabled 11-year-old sixth grade Hispanic middle school student by handcuffing him **was justified at its inception and reasonable in scope** under the Fourth Amendment, where officer arrived at the immediate school's parking lot and saw security guards struggling to restrain the student in the school's playground area. The action of the police officer **was justified at its inception and reasonable in scope under the Fourth Amendment**, where officer arrived at the school's parking lot, saw security guards struggling to restrain the student and saw student kicking his feet, flailing his arms while yelling, and trying to headbutt and bite bystanders. The police officer and security guards tried to calm the student by talking to him, and thereupon, the student tried to bite one of the guards and bent the guard's finger back. The officer then restrained the student by himself while the student continued to scream, yell, and kick. After about five to seven minutes after arriving at the scene, the officer told the principal that he could not control the student and he would have to handcuff him, which he did. The student's mother was notified and she arrived at the scene approximately five minutes after the student was handcuffed and the handcuffs were removed as soon as the mother asked the officer to take them off of her child.

"Principal May 'Not' be Entitled to Qualified Immunity Based on Action by a Student's Claim Alleging Unreasonable Search"
Hotchkiss v. Garno (E.D. Mich., 883 F. Supp. 2d 719), July 12, 2012.

Middle school principal was *"not"* entitled to qualified immunity in a Section 1983 civil action by the parents of an African-American student, alleging an unreasonable search. The principal alleged strip search of student, ***if proven****, would have violated the Fourth Amendment and offended the student's legitimate expectation of privacy. The school's interest in confiscating a laser pointer and recovering stolen property, although legitimate, did *"not"* justify an *adult woman* forcing a young man to strip to his undergarments. **Note:** The first alleged search occurred on January 26, 2010, when a laser pointed from confiscated from the then sixth grade student during a basketball game. The second alleged search occurred (October 13, 2010) when the student enter a visiting team's locker room, went through team members stuff and was found with a visiting team member's MP3 player. ***** When the material facts are not disputed, a court can decide the case as a matter of law, rendering a trial unnecessary. However, when the facts are disputed, *a trial is required to decide who is being truthful*. This particular case is a civil rights case (Title VI, Title IX, and 14th amendment) – literally, a case of *"he-said-she-said"* – is of the latter type.

Disabled Students:

"School District Gave Parents a Meaningful Opportunity to participate in the Creation of Their Child's IEP"
M. M. v. District 0001 Lancaster County School (C.A.8 [Neb.], 702 F. 3d 479), December 28, 2012.

School district provided parents of an elementary school student with autism **a meaningful opportunity** to participate in the creation of the student's fourth grade IEP, as required by IDEA. Parents were given notice of the IEP meetings, they attended them, and shared their views about their youngster's behavior intervention plan. The district did not agree with the parent's request to stop putting the student in a calming room when he behaved aggressively, as urged by the rehabilitation facility that the parents had consulted. In addition, the district did not predetermine the student's IEP or behavior intervention plan and it did not refuse to listen to suggestions from the student's parents or the rehabilitation faculty.

"School's Failure to Arrange for Paraplegic Student to Play on Concert Stage was Not an Act of Bad Faith under Rehabilitation Act"
I. A. v. Seguin Independent School Dist. (W.D. Tex., 881 F. Supp. 2d 770), July 24, 2012.

Sixth grade school's band director did **not** exhibit bad faith or gross misjudgment in failing to make arrangements for paraplegic student to perform on stage during a concert or in suggesting the student play from the floor in front of the stage, as required to support a disability discrimination claim under the Rehabilitation Act. The band director *was merely negligent in failing to ensure that the concert venue would be wheelchair accessible*. **Note:** When the plaintiff was six years old, he was injured in an automobile accident that severely damaged his spinal column and caused paraplegia.

Labor and Employment:

"Candidate for Director of Schools Did Not Demonstrate That Board's Reasons for Not Hiring Her were Pretext for Gender Discrimination"

Battle v. Haywood County Bd. of Educ. (C.A.6 [Tenn.], 488 Fed. App. 981), July 18, 2012.

Unsuccessful candidate for the position of director of schools (superintendent) did **not** demonstrate that the reasons given by the county board of education for not hiring her were perpetual as so pertaining to gender discrimination in violation of Title VII and Tennessee's Human Rights Act. The plaintiff based her claim on the premise that the board had never selected a female to be the director of schools despite having female applications in the past. The plaintiff was **not** able to present statistical or other evidence that demonstrated that the board's prior hiring decisions pertaining to the district's director position were discriminatory toward women.

"Teacher's Use of Rewards Points Earned from Purchases with School Funds to Secure Personal Items Warranted Termination"

Timpani v. Lakeside School Dist. (Ark App., 386 S. W. 2d 588), November 11, 2011.

Classroom teacher's redemption of rewards points earned from purchases made with school funds, for personal items **warranted** employment termination pursuant to Arkansas's Teacher Fair Dismissal Act. Even though the school district did not have a written policy concerning the use of reward points, evidence was presented that other teachers employed in the school district understood that policy prohibited the use of rewards points for teachers' personal use. In addition, the plaintiff ***was*** dishonest, rude, and disrespectful when confronted with the allegations by the school district's administration. **Note:** The plaintiff, who was employed for more than 20 years with the school district and taught sixth grade, use "bonus points" or reward points earned from the Scholastic Book Club to secure items such as two twenty-seven inch televisions, a DVD player, and a microwave oven. The book club awarded bonus points based on several factors, including the dollar amounts spent on each order, for which the plaintiff used school funds, money from students and other teachers, and her personal money. When the middle school principal learned of the order by the plaintiff, she called the superintendent and asked for advice in dealing with the situation. Based on instructions from the superintendent, the principal ask the plaintiff about the manner in which she was going to use the items secured with the bonus points for instructional purposes within her classroom. In addition, plaintiff was told by her principal that she could not keep the items for her personal use because the items were acquired with money from students, other teachers, and the school district. The plaintiff stated that it was her belief that the bonus points belong to her and the items that she ordered with the bonus points belong to her, and refused to cancel the order.

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 (11 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) or **e-mail** jpurvis@uca.edu