

Jan Feb 2011 (#s 612 & 613)

Safe, Orderly, and Productive School Legal News Note

January - February 2011

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West's Education Law Reporter
November 12, 2009 – Vol. 248 No. 2 (Pages 527 – 1025)
November 24, 2009 – Vol. 249 No. 1 (Pages 1 – 545)

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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

“Elementary School Principal Turned Blind Eye to Teacher’s Sexual Abuse of Students”

Sandra T. E. v. Sperlik (N. D. Ill., 639 F. Supp. 2d 912), July 23, 2009.

Evidence that a public elementary school principal turned a blind eye to reports of a music teacher’s sexual abuse of his students **created fact issue** as to whether she had allowed such a climate to flourish where teacher was able to cause harm to students. Therefore, **precluding summary judgment** on behalf of the principal due to the fact that the principal provided victims’ parents with a watered-down version of the students’ allegations, allegedly lied to coworkers about the extent of the teacher’s actions, and allegedly *failed* to impose discipline beyond mere warnings to the pervert. Furthermore, the principal was **not** entitled to qualified immunity existing from substantive due process and equal protection violations existing under the Fourteenth Amendment of the United States Constitution, along with a Section 1983 claim. **Note:** The pervert bent on sexual gratification was focused on his fetish in bondage pornography.

“State’s Attendance Law Could Not be Used to Impose Criminal Liability on Parents Whose Children Came to School But Insisted on Cutting Her Classes”

In re Gloria H. (Md., 979 A. 2d 710), September 14, 2009.

Defendant, a mother who allegedly permitted her high school age child to miss school, was convicted in the Circuit Court of Prince George’s County, for violating the state’s public school attendance law; thereupon, the defendant appealed the Circuit Court’s decision. The Court of Appeals of the State of Maryland held that the defendant’s conviction for violating the state’s compulsory school attendance law **required proof beyond a reasonable doubt** that the child, rather than merely skipping a class, did not attend school. Upon entering school, the defendant’s child **was committed to the control of the state and local authorities** and although evidence showed that the student was marked as absent from her homeroom class, **no** evidence was presented indicating whether she was absent from school. **Note:** Defendant got her daughter up to go to school and either left the house with her daughter, paid for a cab to take her daughter to school, drove her daughter to school herself, or the daughter’s aunt took the youngster to school. The defendant never allowed her daughter to stay home from school. Furthermore, when the defendant received phone calls that her daughter was not at school she would leave work to go home to check in an effort to make sure she was not there, and then report to school officials. Her daughter just decided that she was not going to class once she got to school and she testified to that fact (recorded absent 74 out of 180 days).

“Banning Shirts with Printed Messages Did Not Violate Student’s First Amendment Rights Related to Free Speech”

Palmer ex rel. Palmer v. Waxahachie Independent School Dist. (C. A. 5 [Tex.], 579 F. 3d 502), August 13, 2009.

Public high school’s dress code banning all shirts with printed messages, except small logos on shirts and campus principal-approved shirts that promote school clubs, organizations, athletic teams, or school spirit, and allowing political buttons and pins, did **not** violate the First Amendment right to free speech under the immediate scrutiny analysis. The school’s dress code *promoted* important government interests in maintaining *an orderly and safe learning environment, increasing the focus on instruction, promoting safety and life long learning, and encouraging professional and responsible dress* for all students. The dress code was no more strict than necessary to achieve goals as it allowed speech through other mediums at school and did not restrict speech after school hours. **Note:** Student wore a shirt to school with “San Diego” written on it. Assistant principal told the student that his shirt violated the school district’s dress code. Student called his parents to bring him another shirt to wear, which they did, but it was a t-shirt with “John Edwards for President 08”. The student was not allowed to wear that shirt either, and process toward legal action pursued.

“Autistic Student Found Naked and Muddy After Wandering From School Was Not Deprived of His Fourteenth Amendment”

Parker v. Fayette County Public Schools (C. A. 6 [Ky.], 332 Fed. App. 229), May 22, 2009.

Sixth grade student who suffered from autism was **not** deprived of his due process rights to bodily integrity, in violation of the Fourteenth Amendment, by school or its employees when he wandered from his gym class through an open gym door into a surrounding neighborhood. With the help of local police, he was found several hours later laying naked and covered in mud a few blocks from the school. While the student was found dirty and unclothed, there was **no** evidence of any trauma or injury, physical or otherwise.

“Limited Force Used On Autistic Student Was Reasonable”

G. C. ex rel. Cosco v. School Bd. of Seminole County, Florida (M. D. Fla., 639 F. Supp. 2d 1295), June 10, 2009.

The limited incidents of physical restraint used on middle school autistic student by teacher did **not** result in an injury which rose to a level which shocked the court’s conscience so as to establish a substantive due process claim under the Fourteenth Amendment. The student’s teacher would restrain him to prevent him, a student known as a “runner”, from attempting to run away for safety purposes. The teacher restrained the student by placing her leg over the student’s legs while they waited at the school’s bus stop and the amount of force used to restrain the student was **not obviously excessive, nor did it present a reasonable foreseeable risk of bodily injury**, much less a severe injury.

“School District Did Not Have Notice of Coach’s Alleged Sexual Discrimination Involving the Only Female Member on Football Team”

Elborough v. Evansville Community School Dist. (W. D. Wis., 636 F. Supp. 2d 812), June 23, 2009.

High school student who was the only female member of the school’s freshman football team, brought action against school district and school’s head football coach under Title IX, due process, and the equal protection clause of the Fourteenth Amendment. The United States District Court, W. D. Wisconsin, held that in order for the school district to be held liable under Title IX for injuries allegedly sustained by the plaintiff, who alleged that she was injured as a result of sex discrimination on the part of the head football coach. Plaintiff *was required* to show that the school district *had notice* that she was hurt as a result of intentional sex discrimination under the standard of *deliberate indifference*. The aforementioned means that *the plaintiff was required to show* that the school district made a deliberate choice to follow a discriminatory course of action from among various alternatives. Therefore, the school district did **not** have notice of alleged intentional acts of sex discrimination allegedly carried out by the high school’s head football coach. **Note:** The plaintiff charged that the head football coach discriminated against her by failing to keep the girls’ locker room unlocked, keeping snacks and the practice schedule in the boys’ locker room where she was not allowed, and telling her that she needed to get her hair cut “like a boy”.

“School District Employee Voluntarily Resigned His Position”

Brown v. Columbus Bd. of Educ. (S. D. Ohio, 638 F. Supp. 2d 856), June 30, 2009.

School district employee with an assault conviction voluntarily resigned from his job and thus could **not** maintain his legal action claim regarding a violation of his due process rights even though he was given a choice of resigning or being terminated. **Note:** While on vacation on September 24, 2005, in Washington, D. C., he was arrested for both a public disturbance and assault on a police officer; plus, disorderly conduct and simple assault.

“Teacher’s Employment Termination Due to Having Sex with a Student Twenty-Six Years Ago Was Valid”

Waisanen v. Clatskanie School Dist. # 6J (Or. App., 215 P. 3d 882), July 15, 2009.

Plaintiff taught metal shop in a high school from 1977 until his termination in 2005. The plaintiff’s termination was based on a complaint made in April 2005 by a former student who attended the high school in which the plaintiff taught from 1975 until her graduation in June 1979. The former student’s sexual encounters with the plaintiff came to light after her husband informed the superintendent of his wife’s sexual relationship with the teacher. The former student submitted to a polygraph exam to verify that she had sexual intercourse with her former teacher when she was 16 years old. The Court of Appeals of Oregon held that the results of the complainant’s polygraph examination indicated that she was truthful concerning her sexual encounters with her former teacher 26 years ago and such results were adequate grounds to dismiss the plaintiff from his teaching position.

“Teacher’s Odd Behavior Did Not Warrant Termination”

Ripley v. Anderson County Bd. of Educ. (Tenn. Ct. App., 293 S. W. 3d 154), May 4, 2009.

On May 17, 2006, one of the plaintiff’s eighth grade students walked into the school principal’s office and told the principal that she was very disturbed about the plaintiff’s behavior and how she had conducted her class. The principal went to the plaintiff’s classroom and found her very “visibly upset” and afterward the principal escorted the teacher to her office. Thereupon the plaintiff told the principal that she was on medication for depression and that she had a doctor’s appointment the next day. After the meeting the plaintiff’s principal told her to go home for the remainder of the school day, afterward, the principal secured statements from 40 students who had attended the plaintiff’s homeroom and reading class; plus, a compact disk entitled “The Future”. A Tennessee appeals court held that although the tenured teacher (approximately 15 years of experience) broke down student class projects that had not been taken home and disposed of them in the trash, tossed gym bags and books, and played a song that delved into controversial social topics, such as politics and religion, teacher’s conduct did **not** warrant the drastic action of termination. The teacher’s actions *were a unique deviation from her usual behavior* and she was attempting to deal with her emotional difficulties (She was on prescribed medication [Effexor- an anti-depressive medication] and was under great stress due to difficulties in caring for her elderly mother.) during the time in question, and shortly thereafter had sought medical assistance. Furthermore, the teacher did **not** attack any of her students nor were any students harmed.

“School Owed No Constitutional Duty to Protect Student from Being Raped”

Doe ex rel. Magee v. Covington County School Dist. ex rel. its Bd. of Educ. (S. D. Miss., 637 F. Supp. 2d 392), April 27, 2009.

Parents 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 before returning her to school filed suit against school district alleging that school officials violated their child’s constitutional rights under the due process clause. A United States District Court in Mississippi held that a “special relationship” did **not** arise between a public school student attending an elementary school in compliance with Mississippi’s mandatory attendance statute and school employees, solely by virtue of the fact that student was nine years old, owed **no** constitutional duty to protect the student from dangers posed by a non-state actor. **Note:** Between September 2007 and January 2009, student was checked-out of school on six occasions by a none-state actor who raped, molested, and sodomized her. The pervert had no relationship to the student and checked the victim out by representing himself to be different persons, several times as the father of the child and even one time as the child’s mother. The school had a “permission to check-out form” but it was *never* consulted to determine whether the pervert was an authorized individual to check-out the student.

“Rape of School Skipper Was Not Foreseeable”

A. B. ex rel. C. D. v. Stone County School Dist. (Miss. App., 14 So. 3d 794), July 28, 2009.

Alleged sexual assault of a perpetually truant high school student by a school bus driver’s nephew on the day that the student skipped school and went to the bus driver’s home in his truck was **not** a foreseeable result of the school district’s failure to exercise ordinary care in enforcing the state’s compulsory attendance laws through the reporting of student’s absences. The school district could **not** be held liable for the student’s injuries under Mississippi’s Tort Claims Act because the bus driver had been a model citizen before the incident, student’s prior absences involved her leaving campus on foot, and student had *no* pattern of remaining on her school bus.

Note: The 15 year-old had a habit of skipping some or all of her classes on an almost daily basis. She would ride the bus to school, walk to a nearby apartment complex to spend the day with her older boyfriend or other friends. She would return to the school in the afternoon to ride the bus home. The student’s parents were unaware that she was missing school.

“Drug Transaction Illegal”

Com. v. Marion (Pa. Super., 981 A. 2d 230), September 2, 2009.

The Superior Court of Pennsylvania found that the Commonwealth **established by a preponderance of the evidence** that drug transaction between defendant and confidential informant occurred within 1,000 feet of a state university, as necessary to support imposition of mandatory minimum sentence of two to four years on defendant. The defendant prosecution focused on the delivery of marijuana (Undercover police officer purchased ¼ ounce of marijuana for \$35.00 from defendant.) possession with the intent to deliver a controlled substance (PWID), possession of a small amount of marijuana for personal use, and criminal use of a communication facility (use of a phone to arrange purchase of illegal substance).

“Student’s Shouting at Teacher Did Not Support Finding of Disorderly Conduct”

In re L. E. N. (Ga. App., 682 S. E. 2d 156), July 15, 2009.

Juvenile’s shouting (“I better get my fucking Sharpie back.”) in school lunchroom to teacher, who had confiscated his marker, was **not** sufficient to constitute “fighting words” so as to support finding of disorderly conduct. The mere fact that juvenile used a curse word to emphasize his statement could *not* sustain a finding of disorderly conduct. Juvenile was rude, disrespectful, and angry in conjunction with the use of profanity, but the behavior was **not** sufficient to support finding of disorderly conduct because nothing he said during the incident threatened the immediate breach of the peace or would have incited the listener to react violently to the language.

“Teachers Lacked Constitutional Standing Regarding Action against School Board for Its Refusal to Expel Students”

Lansing Schools Ed. Ass’n, MEA/NEA v. Lansing Bd. of Ed. (Mich. App., 772 N. W. 2d 784), January 27, 2009.

Teachers **lacked constitutional standing necessary** to assert action against a school board for its refusal to expel students who allegedly assaulted a teacher, where injuries allegedly sustained by teachers were **not** caused by school board but by students who were *not* parties to the action. The lack of a constitutional standing both *prevented* teachers from establishing an injury-in-fact and causal connection elements for a constitutional standing. **Note:** According to plaintiffs, students hit two teachers with a chair, one student slapped one of the teachers, and one student threw a wristband toward one of the teachers and it struck the teacher in the face. Michigan law states that school boards have the sole power to determine whether a student physically assaulted a teacher and findings by a school board are generally deemed conclusive Michigan’s courts.

“Did a Teacher Use Excessive Force Against an Artistic Student?”

M. S. ex rel. Soltys v. Seminole County School Bd. (M. D. Fla., 636 F. Supp. 2d 1317), July 10, 2009.

Genuine issues of material fact as to whether force applied to a 12 year-old student (e. g. severely autistic, mentally retarded, unable to dress himself, could not shower alone, not able to tie his own shoes, not able to use the restroom without assistance, and basically nonverbal) by a teacher was conscience-shocking, and thus excessive, whether the student suffered physical, mental, and/or emotional injuries sufficient to constitute a constitutional deprivation, and whether the teacher acted maliciously **precluded summary judgment** for the teacher on her claim of qualified immunity. **Note:** On October 22, 2004, the student refused to put a magazine down and do his class work; thereupon his teacher jerked him out of his desk, flipped his body down on his desk, placed both his arms behind him, and held his head down on the desk. The teacher held the student head so tight against the desk that “his eyes were bulging” and “his lips started turning blue”. The teacher was convicted of a third-degree felony under the state of Florida’s criminal codes.

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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