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Safe, Orderly, and Productive School Legal News Note

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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

“School Police Officer Had Probable Cause to Arrest Student for Criminal Trespassing”

Williams v. Underhill (C. A. 9 [Nev.], 337 Fed. App. 688), July 7, 2009.

Under Nevada law, high school students did **not** have contractual right to remain on school property after the period of compulsory attendance ended, or to remain on school property after they were asked to leave. Therefore, school police officer **had probable cause** to arrest high school students for criminal trespassing.

“School’s Dress Code Ban on Racially Divisive Symbols Did Not Violate Student’s Free Speech Rights”

Defoe, ex rel. Defoe v. Spiva (E. D. Tenn., 650 F. Supp. 2d 811), August 11, 2009.

High school’s dress code’s ban on racially divisive symbols, including the Confederate flag, did **not** violate students’ free speech rights; especially in light of a reasonable potential of such symbols causing a material and substantial disruption to school work and school discipline. The high school had a history of racial tension and conflict, including one incident in which a large confederate flag was hung in the school’s hallway two days after two African-American students enrolled along with racial graffiti written within and around the high school’s facilities. **Note:** Plaintiff violated the school’s dress code on a number of occasions by wearing a t-shirt with a Confederate flag, wearing a belt buckle depicting the Confederate flag, and other articles of clothing depicting the aforementioned flag and related symbols. He was suspended from school for his offenses and stated that his father had told him about his ancestors and heritage and that the flag represented his heritage.

“Officers Who Searched High School Soccer Team Had Qualified Immunity”

Lopera v. Town of Coventry (D. R. I., 652 F. Supp. 2d 203), September 9, 2009.

On September 28, 2009, the Central Falls School boys’ soccer team played an away game against Coventry High School. After arriving at Coventry High School several of the Central Falls team members used the restroom inside the Coventry boys’ locker room. After the soccer game approximately 20 members of the Coventry High School’s football team stopped the Central Falls soccer coach as he was about to board the team’s bus and accused members of his soccer team of stealing electronic devices (iPods and cell phones) from their locker room. Thereupon the Central Falls coach and his assistant coach searched all the members of their team, who had already boarded the team’s bus; however, they did not find any of the missing items. In the mean time, a rather large crowd gathered around the team’s school bus and shouted racial (several of the Central Falls team members were Hispanic) epithets and accusations of theft. Soon thereafter police arrived on the scene and in an effort to demonstrate that his players did not steal the missing items, agreed to allow the police officers search each member of his soccer team. The search of the team by the police lasted approximately one hour and none of the missing items were found. Thereupon several members of the Central Falls soccer team filed suit against the town, police chief, and the police officers who participated in the search claiming that their civil rights were violated and they were humiliated in front of the large crowd that had gathered around their school bus. The United States District Court, D. Rhode Island, held that neither the officers nor any of the other defendants violated the plaintiffs’ civil rights and all defendant parties **were eligible for qualified immunity** under both Rhode Island and federal laws.

“School District Employee’s Complaints Were Not Protected by the First Amendment”
Converse v. City of Oklahoma City (W. D. Okla., 649 F. Supp. 2d 1310), July 23, 2009.

A school district employee’s complains about a campus police officer’s treatment of students at a high school in her school district and about an African-American student’s suspension were made **pursuant to the employee’s official duties**, and as such, was **not protected speech** under the First Amendment of the United States Constitution. The complaints were made during working hours; the comments about the officer were made at a meeting scheduled by the employee’s supervisor for the purposes of discussing the officer’s conduct. The complaint about the student’s suspension was made when the plaintiff notified the school district’s legal counsel that the student’s rights had been violated; such complaint was made in the employee’s capacity as a school district employee who was charged with the responsibility for assuring a safe learning environment for students and that students receive their due process rights. **Note:** Shortly after the aforementioned occurred, the plaintiff was transferred from the position of Executive Director of Student Performance (Plaintiff supervised principals at 15 schools.) to Executive Director of School and Community Services. Employee complained that the transfer was in retaliation for the exercise of her First Amendment rights and her attempt to assist an African American student.

“Former At-Will Police Officer Did Not Have to Exhaust Administrative Remedies before Bringing Retaliatory Discharge Claim”

Larsen v. Santa Fe Independent School Dist. (Tex. App.-Hous. [14 Dist.], 296 S. W. 3d 118), July 28, 2009.

Plaintiff began working as an at-will police officer for the defendant October 16, 2003. He was injured while participating in *a work-related training exercise* on October 5, 2005 and took a leave of absence from his job. The defending school district reported the plaintiff’s injury to its workers’ compensation administrator on October 11, 2005. Plaintiff began receiving workers’ compensation benefits thereafter. On January 23, 2006, the school district’s superintendent sent a letter to the plaintiff informing him that his FMLA and other leave time expired on January 18, 2006, and due to such, he was terminated from his employment with the district due to his inability to return to work. A Texas court of appeals held that plaintiff’s retaliatory discharge claim against the defendant did **not** involve “*school laws of the state*” and therefore the former police officer did **not** have to exhaust the school district’s administrative remedies prior to bringing his claim to the courts.

“Facts Existed as to whether Strip-Search of Students for iPod violated Their Fourth Amendment Rights”

Foster v. Raspberry (M. D. Ga., 652 F. Supp. 2d 1342),

According to a United States District Court in Georgia, **genuine issues of material fact**, regarding whether school district officials violated clearly established federal rights of which *reasonable officials would have known* in conducting a strip-search of a high student to locate an electronic device (iPod), **precluded summary judgment on qualified immunity defense** to claim brought under the Fourth Amendment of the United States Constitution. **Note:** The situation arose after a junior ROTC instructor confiscated an iPod from one of his students and while he was using the restroom another student retrieved the contraband iPod from his desk drawer.

“Students Due Process Rights Were Not Violated Due to Their Long-Term Suspensions”

Hardy ex rel. Hardy v. Beaufort County Bd. of Educ. (N. C. App., 685 S. E. 2d 550), November 17, 2009.

Given that high school students admitted their involvement in an altercation that led to their long-term suspensions, students **could not prove** that the school board’s due process procedures violated their due process rights. Even if their due process rights were violated as alleged by the plaintiffs, *students admitted guilt, were provided ample opportunities to argue their case in administrative hearings* provided by both school officials and the district’s board of education; thus, prejudice by the board could **not** be demonstrated.

“Issues as To Whether District’s Employees Reasonably Suspected Child Abuse Barred Summary Judgment in Mother’s Defamation Action”

Biondo v. Ossining Union Free School Dist. (N. Y. A. D. 2 Dept., 888 N. Y. S. 2d 75), October 13, 2009.

While visiting the defending school district’s “Little School” classroom for two-year-old children, the coordinator of the program observed the plaintiff hit her son on his hand hard enough to leave a red mark when he threw a cookie during snack time. Soon thereafter, the coordinator reported the incident to the State’s Child Protective Services. The plaintiff reported that she merely tapped her son’s hand when he threw the cookie and told him softly, “Don’t do that, it’s not nice.” Thereupon, the plaintiff brought action against the school district and two of its employees alleging negligence and defamation arising from the report of mother’s alleged child abuse or mistreatment. The New York Supreme Court, Appellate Division, Second Department, held that **genuine issues of material fact existed** as to whether school district employees had *reasonable cause* to suspect possible child abuse or maltreatment of the child by his mother and if those defendants reported such alleged child abuse or maltreatment *in good faith*. Thus, summary judgment on behalf of the defending school district and employees was **precluding due to sufficient evidence presented** by the plaintiff in her negligence and defamation claim against defendants.

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 is currently a professor in the Department of Leadership Studies at the University of Central Arkansas. 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. Additionally, he serves as a law enforcement officer in both Arkansas and Mississippi. He can be reached at the following **phone numbers:** 501-450-5258 (office) and 601-310-4559 (cell)