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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 Was Not Deliberately Indifferent Regarding Biracial Harassment of Student”

DT v. Somers Cent. School Dist. (C. A. 2 [N. Y.], 348 Fed. App. 697), October 15, 2009.

School’s investigation of incident of alleged student-on-student racial harassment in the school’s cafeteria that involved one student tapping a biracial student on his head while sitting with a group of students who regularly sat together at the same lunch table was **not** unreasonable in light of known circumstances. Therefore the school was **not** deliberately indifferent to race discrimination as so prohibited under Title VI of the Civil Rights Act of 1964. The teacher who was supervising the cafeteria at the time of the incident did *not* believe that the incident involved any malicious intent, and thereafter, kept an informal eye on the biracial student for the rest of the school year, who continued to eat lunch with the same group of student. Furthermore, school officials advised the mother of the student that she has a right to file a complaint regarding the incident.

“Public High School Was Public Property”

People v. Ojeda (Ill. App. 2 Dist., 921 N. E. 2d 490), December 31, 2009.

A student was convicted of aggravated battery for using his fist to strike a classmate in the face causing a cut and severe swelling. Due to the incident occurring on school property the incident was upgraded from battery to aggravated battery and the student appealed his conviction. The Appeals Court of Illinois held that the public funded high school constituted “public property” and as such met the requirement for the offender’s conviction to be upgraded under Illinois’ enhancement statute from battery to aggravated battery.

“Probable Cause Was Not Required for Principal’s Search of Student”

State v. Burdette (Kan. App., 225 P. 3d 736), February 19, 2010.

Search of a student by a high school principal **was a school search** (based on reasonable suspicion), **not** a law enforcement search, even though two sheriff’s deputies were present in the room at the time of the search, and thus probable cause was **not** required to support the search. The principal did **not** conduct the search at the request of the deputies; and the search was conducted after a teacher noticed the student acting strangely and reported such to a school guidance counselor. The deputies only became involved after overhearing the teacher’s conversation with the counselor and the deputies did **not** initiate an investigation or search as so pertaining to the student. Furthermore, the deputies did **not** speak to the student prior to the search, and the principal, **not** the deputies told the student that he was required to empty his pockets. **Note:** The student’s pockets contained money in a clip and two “little baggies of weed” (marijuana).

“City Ordinance Barring Sex Offenders from Entering Schools Was Not Vague”

People v. Conti (N. Y. City Ct., 895 N. Y. S. 2d 660), January 26, 2010.

City ordinance barring sex offenders from entering schools, child care facilities, playgrounds, and parks **was sufficiently definite** to put a person of ordinary intelligence on fair notice that term “school” meant both school buildings and school grounds; thus, *satisfying* a constitutional analysis so related to the vagueness test. The offender was charged with violating the ordinance based on his alleged conduct of walking on a paved pathway from the south end of a high school property near a baseball field and north toward the school’s football field, while making stops along the way, including near the girls’ restroom.

“Student’s Suspension for Creating a Fake Internet Profile of His Principal Violated His First Amendment Rights”

Layshock ex rel. Layshock v. Hermitage School Dist. (C. A. 3 [Pa.], 593 F. 3d 249), December 10, 2010.

A school district’s suspension of a 17-year-old high school student who created, while using his grandmother’s home computer during non-school hours, a fake internet “unflattering profile” of his school’s principal on “MySpace” **violated** the student’s First Amendment right of free expression; even though the plaintiff accessed the profile from a school district own computer. There was **no** evidence that he engaged in any lewd or profane speech while in school and student’s speech did **not** result in any substantial disruption of his high school.

“Student’s Suspension for Creating a Profile of Her Principal Was Not Unconstitutional”

J. S. ex rel. Snyder v. Blue Mountain School Dist. (C. A. 3 [Pa.], 593 F. 3d 286), February 4, 2010.

Middle school’s suspension of an eighth grader for creating a principal’s internet profile on MySpace of her principal, containing a misappropriated photograph of him and profanity-laced statements insinuating that he was a sex addict and pedophile, did **not** interfere with her parent’s substantive due process right to direct their youngster’s upbringing free from governmental intervention. Furthermore, such suspension did **not** usurp the child’s parents’ disciplinary authority due to the fact that they also punished their child for creating the profile. **Note:** The internet profile was created on a Sunday by the plaintiff and her friend and disseminated to at least 22 other middle school students prior to the opening of school on Monday morning. The profile was distributed to the 22 aforementioned students at off-campus locations due to the MySpace being blocked at school.

“School District’s Code of Conduct Pertaining to Prohibited Group Affiliations Was Unconstitutionally Vague”

Lopez v. Bay Shore Union Free School Dist. (E. D. N. Y., 668 F. Supp. 2d 406), November 9, 2009.

Hispanic high school student, whose suspension from school for allegedly making remarks related to a violent street gang, was reversed and expunged from his record by the New York State Commissioner of Education, brought action through his mother, against the school district, seeking damages pursuant to Fourteenth Amendment of the United States Constitution. A United States District Court in New York held that the school district’s code of student conduct pertaining to group affiliations, which provided that any activity, affiliation, or communication in connection with non-school sanctioned clubs or groups, including fraternal organizations or gang, was prohibited; **was unconstitutionally vague under the 14th Amendment.**

“School District Lacked Control Over Elementary Teacher’s Sexual Abuse of a Student”

Doe-2 v. McLean County Unit Dist. No. 5 Bd. of Directors (C. A. 7 [Ill.], 593 F. 3d 507), January 22, 2010.

From 2002 to 2005, Jon White was an elementary school teacher in McLean County and during such time he sexually harassed female students through methods that included hugging and holding student on his leg, having students massage him and wrap their legs around him, showing students sexually suggestive photographs, commenting on students’ sexual attractiveness, and students playing a “taste test game” in which the teacher would blindfold students and then place various foods in their mouths using a banana, his hand, or his penis. In 2005, Jon White entered into an agreement to resign from the McLean County School District with a positive letter of recommendation. In August 2005, the Urbana School District hired White to teach second grade in one of its elementary schools. While teaching in Urbana from 2005 to 2007, he harassed several of his female students using similar methods to those in McLean County. The plaintiff, the mother of a student that the teacher sexually assaulted in the Urbana School District filed legal action against the McLean County School District for not sounding an alarm about the teacher’s conduct and allowing him to simply resign and obtain a new teaching position in another school district. The United States Court of Appeals, Seventh Circuit, held that the McLean County School District **lacked requisite control over** the sexual abusive behavior committed by the teacher in the Urbana School District; thus, **precluding their liability**, even assuming the county school district had knowledge of the risk that the teacher would sexually abuse students in his new school district.

“School District Not Liable for Student’s Assault as He Walked Home”

Pistolese v. William Floyd Union Free Dist. (N. Y. A. D. 2 Dept., 895 N. Y. S. 2d 125), January 19, 2010.

School district was **not** liable for injuries sustained by a student who was allegedly assaulted by other youths as he walked home from school, rather than riding a school bus. The incident occurred at a time when the student was **no** longer in the district’s custody **nor** under its control; therefore, **outside of the orbit of its authority.** **Note:** The incident occurred in late June 2008, on the last day of school as the plaintiff walked home from school with friends rather than ride his assigned school bus.

“School Not Liable for a Student Who Was Shot With a BB gun on Negligent Security Theory”

Robinson v. Sacred Heart School (N. Y. A. D. 2 Dept., 895 N. Y. S. 2d 136), February 2, 2010.

School was not liable on a “negligent security theory” for injuries to an 11-year-old student allegedly sustained when he was shot with a “BB gun” by an unknown assailant as he was leaving a school building following an after-school basketball program. The school’s principal testified that the school had doors with buzzers, an alarm system, and security cameras; and that he had instructed the basketball coaches that all doors had to be closed at the end of the school day, with access to the building only by buzzers, and that only students on the basketball team were permitted in the building during practice.

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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