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## **Safe, Orderly, and Productive School Legal News Note**

**July 2011**

**Johnny R. Purvis\***

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Terry James, Chair, Department of Leadership Studies, University of Central Arkansas  
S. Ryan Niemeyer, Editor, Co-Director, Mississippi Teacher Corps and Assistant Professor,  
Leadership and Counselor Education, University of Mississippi

Shelly Albritton, Technology Coordinator, Department of Leadership Studies, University of  
Central Arkansas

Wendy Rickman, Assistant Professor, Department of Leadership Studies, University of Central  
Arkansas

### **Safe, Orderly, and Productive School Institute**

Department of Leadership Studies

University of Central Arkansas

201 Donaghey Avenue

230 Mashburn

Conway, AR 72035

\*Phone: 501-450-5258 (office)

\*E-mail: [jpurvis@uca.edu](mailto:jpurvis@uca.edu)

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

### “Search of Student Was Reasonable”

State v. Best (N. J., 987 A. 2d 605), February 3, 2010.

The search by a high school assistant principal of a vehicle belonging to “first student” **was reasonably related in the scope of circumstances** that had justified assistant principal’s search of the “first student’s” outer clothing. The search of the “first student’s” outer clothing occurred after the assistant principal had met with a “second student”, who appeared to be under the influence of drugs and who indicated that “first student” had given him a green pill, which the “first student” denied any wrongdoing. The search of the “first student’s” clothing revealed three white capsules in his pants pocket, but no green pills. Thereafter, the “first student” admitted that he sold a white pill for \$5.00, claiming the pill was a nutritional supplement. Next, the assistant principal extended the search to the “first student’s” locker, and, when that proved unproductive, to the “first student’s” vehicle. **Note:** The search of the passenger compartment of the “first student’s” car revealed a liquid-filled syringe, a fake cigarette with a hole in it that could be used as a pipe, a wallet, a bottle of pills, a bag of suspected marijuana, a bag containing a white powdery substance, and a vial.

### “Fourteen Year-Old Runs Away With School Security Guard”

Kach v. Hose (C. A. 3 [Pa.], 589 F. 3d 626), December 23, 2009.

Plaintiff was a 14-year-old student at the time in which she became intimate with a privately-employed school security guard at her middle school, ran away with him, and spent approximately 10 years clandestinely living with him; brought civil action against security guard, law enforcement personnel, and others after she disclosed her true identify to a friend (when she was approximately 24 years of age) and was removed by law enforcement from the security guard’s house. The United States Court of Appeals, Third Circuit, held that the plaintiff **failed** to present any evidence suggesting that the security guard’s actions in engaging in a impermissible relationship with her were committed on anyone’s initiative but his own or with anything other than his own interests in mind. Therefore, the security guard’s actions could **not** be fairly treated as actions of the state, so as to establish the security guard’s actions *as a state actor*. **Note:** While living with the security guard, the plaintiff did remain in his house much of the time; however, she walked around the neighborhood on foot, rode city buses around town, went shopping, and made frequent visits to convenience stores.

### “Etching Cream, Aerosol Pain, Etc. Not Allowed On Public School Properties”

In re Miguel H. (Cal. App. 2 Dist., 103 Cal. Rptr. 3d 884), January 12, 2010.

Public high school **was a “public place”** within meaning of a state statute prohibiting the possession of etching cream or aerosol container of paint in a public place, even though public access to the school was limited to some degree by state statute. **Note:** High school student was accused of drawing graffiti on school property (e. g. restroom, glass casing, classroom table, folder in his backpack, and classroom chalkboard), along with the school assistant principal finding black shoe polish, white shoe polish, yellow spray paint, and etching tool in the student’s backpack.

### **“Suspension of Student Did Not Violate Her Constitutional Rights”**

Ariz. (D. Ariz., 664 F. Supp. 2d 1070), October 8, 2009.

Thirteen-year-old student was **not** denied due process in receiving two temporary school suspensions of less than ten days each for her alleged use of alcohol and marijuana on high school premises due to superintendent’s alleged bias against her based on her mother’s prior Equal Employment Opportunity Commission (EEOC) charge against him. There was **no** personal involvement or animosity by the district’s superintendent, it was part of his job to maintain student discipline within the district’s schools and investigate possible disciplinary violations. The student’s short-term suspensions **were clearly based** on school policies that pertained to precluding the use and possession of prohibited substances on the district’s school campuses.

### **“Officer Had Probable Cause to Arrest School Bus Driver for Assault”**

Washington v. Blackmore (Conn. App., 986 A. 2d 356), February 2, 2010.

Town police officer **had probable cause** to arrest school bus driver. The officer arrived at a middle school in response to an emergency call (911) from a student on the bus stating that the bus driver had assaulted a passenger; furthermore, the officer observed on one of the passengers redness on his left cheek and a bleeding scratch in his mouth. In addition the school’s principal informed the officer that students exiting the bus punched a student, and a school security guard at the school told the officer that a student had alleged that the bus driver had yelled and spit at the student and had hit and punched the student while on the bus. **Note:** The bus driver was found not guilty on all the charges that were filed against him; thereupon, he commenced legal action against the officer claiming false imprisonment, intentional infliction of emotional distress, negligent infliction of emotional distress, malicious prosecution, municipal liability, and violation of his constitutional rights (e. g. unreasonable seizure, equal protection, and due process)

### **“School Not Responsible for Student’s Suicide”**

King v. Pioneer Regional Educational Service Agency (Ga. App., 688 S. E. 2d 7), November 5, 2009.

Parents of student who committed suicide at school for children with emotional disorders filed action against school system and the Georgia State Department of Education (DOE). Defendants could **not** be held liable in regard to alleged inadequate policies, procedures, and training of staff for student’s suicide while confined to a time-out room at a school for youngsters with emotional behavior disorders. Furthermore, there was **no** violation of the student’s constitutional rights.

**Books of Possible Interest:** Two recent books published by Purvis –

1. Leadership: Lessons From the Coyote, [www.authorhouse.com](http://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](http://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)