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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

“Principal’s Sexual Display toward School Counselor Did Not Rise to the Level of Adverse Action under Title VII”

Steele v. Mayoral (Or. App., 220 P. 3d 761), November 4, 2009.

Plaintiff filed legal action against her principal and school district alleging sexual harassment, negligence, and retaliation. The plaintiff, a counselor in the high school in which the defendant served as her supervising principal began seeing each other during non-work activities which included going to dinner, seeing a movie, and shopping. According to the plaintiff, she explained to the defendant that she was interested in a social relationship and not a sexual relationship. However, on the night of March 4, 2002, the defendant allegedly physically and sexually assaulted the plaintiff at his home. Once school officials learned of the incident, the defendant was placed on paid administrative leave pending an investigation of the alleged incident. During the two months in which it took to complete the investigation, the plaintiff stated that she felt uncomfortable at work, perceived some conduct by her coworkers as retaliatory, and on one occasion found her office unlocked and the thermostat turned-up. In July 2002, after reading the written report of the investigation, the superintendent notified the defendant that she intended to recommend that the board terminate his employment with the school district. In the mean time, the plaintiff expected the defendant to fight his dismissal “vigorously” and return to his position as principal of the high school; thereupon, she resigned her position in July 2002. The defendant resigned the following month. The Court of Appeals of Oregon, held that plaintiff did **not** experience a materially adverse employment related action, as would support a retaliation claim under Title VII; furthermore, the school district **did** investigate and discipline her supervising principal.

“Evidence Supported Coach’s Use of Corporal Punishment”

Nolan v. Memphis City Schools (C. A. 6 [Tenn.], 589 F. 3d 257), December 11, 2009.

Evidence was sufficient to show that a public high school basketball coach’s use of corporal punishment against a basketball player was **not unreasonable or excessive** and therefore **would not support** assault and battery charges brought on behalf of the student against his coach. Testimony was presented that the coach paddled the player on several occasions because the student was referred to him by teachers based on misconduct during their classes, he paddled the youngster once or twice for a bad conduct grade on his report card, and paddled him occasionally for improper basketball technique when he perceived the improper techniques were the product of the player’s not paying attention or horsing around during basketball practice. In addition, the plaintiff stated that he was *not* seriously injured from the “corporal punishment” that he received from his coach. In addition, the court went on to state that the corporal punishment that the plaintiff received was **not** conscience-shocking, disproportionate, or inspired by malice or sadism. **Note:** The plaintiff never complained to the high school principal or anybody else about being paddled; furthermore, he never sought medical treatment for physical injuries resulting from the “board of education being applied to the seat of learning”.

“Fifth Grade Student Suspended for Writing ‘Blow up the School with All the Teachers in It’ During a Class Assignment”

Cuff ex rel. B. C. v. Valley Cent. School Dist. (C. A. 2 [N. Y.], 341 Fed. App. 692), July 21, 2009.

The United States Court of Appeals, Second Circuit, held that *allegations* by the parents of a ten-year-old student (5th grader) that their son’s suspension from school for 6 days, for writing “blow up the school with all the teachers in it” on an in-class assignment, *violated* his First Amendment free speech rights **were sufficient to state a claim** under Section 1983 (pertains to a federal law which enables an individual to file suit for monetary damages when one’s civil rights are violated). Furthermore, the court concluded that it was reasonable as a matter of law to *not foresee* a material and substantial disruption to the school environment. The student’s apparent threat was made in crayon in direct response to an in-class assignment. In addition, the student did *not* show the assignment to any classmates and handed it directly to his teacher after completing the assignment. In addition, the student had *no* other disciplinary history that would suggest a violent tendency.

“Assistant Principal’s Refusal to Engage in Professional Misconduct May Not Have Been Protected Speech”

Fierro v. City of New York (C. A. 2 [N. Y.], 341 Fed. App. 696), July 27, 2009.

Assistant principal brought state court action against city, city department of education, former principal, and several superintendents and deputy superintendents, alleging hostile work environment, sexual harassment, retaliation, and violations of free speech rights in violation of federal law and the city’s human rights law. The plaintiff stated that he exercised his First Amendment rights as so associated with free speech when he refused to follow his supervising principal’s order to submit false and damaging information (sabotage) about two classroom teachers at his assigned school. Furthermore, the plaintiff stated that his principal subsequently retaliated against him in violation of the First Amendment by creating a hostile work environment for him and by transferring him to a location with inferior working conditions. The United States Court of Appeals, Second Circuit, held that it was **not clearly established** that an assistant principal’s refusal to abide by an alleged instruction to engage in misconduct *was protected speech* under the First Amendment of the United States Constitution. Therefore, the plaintiff’s supervising principal **was entitled to qualified immunity** on the assistant principal’s retaliation claim.

“School District’s Expungement of Teacher’s Employment File Rendered His Suit Moot”

Robinson v. Alief Independent School Dist. (Tex. App.-Hous. [14 Dist.], 298 S. W. 3d 321), August 25, 2009.

Plaintiff, a teacher with the defending school district during the 2004-2005 school year, contends that in the fall of 2004 he had a brief romantic relationship with a fellow female employee. In addition, the plaintiff claims that the female in which he had the romantic relationship and a male employee in the district’s human resources department began a campaign against him in an effort to tarnish his reputation as an educator. In August 2005, he resigned his teaching position due to a stress-related medical disorder. Upon receiving the plaintiff’s resignation, the school district expunged his employment records with the school district that had any reference to his alleged romantic relationship with a district employee along with any references or documents pertaining to other comments or statements by other school district employees. The Court of Appeals of Texas, Houston (14th District), held that the plaintiff’s action against his former school district and its superintendent seeking injunctive relief to expunge portions of his employment file relating to controversy over which he resigned his position **was rendered moot** upon the district’s decision to expunge portions of the plaintiff’s employment file; accordingly, there was *no more action* that a court enjoin to satisfy the teacher’s request in regard to expunging his employment records.

“Teacher Did Not Breach His Duty by Failing to Supervise Tardy Students Who Got Into an Altercation”

Medeiros v. Sitrin (R. I., 984 A. 2d 620), December 11, 2009.

High school marine occupations (e. g. boat building, painting, welding, and fisheries) teacher did **not** breach his duty to supervise students by failing to prevent an altercation between two tardy students that occurred in his marine occupations laboratory that adjoined his classroom, which resulted in the plaintiff fracturing his ankle. There was no evidence of a specific act or omission of the teacher that indicated that he deviated from proper standard of care or evidence pertaining to supervisory expectations of a teacher regarding tardy students. The teacher actively fulfilled his obligations when he took class attendance in his classroom and observed his student for any “signs” that would indicate that they would not be able to participate in class activities. On the other hand, while the teacher did not position himself to “maximize” his view of his lab, he still had a partial view of the lab; and he heard the “just seconds-long” altercation that occurred and immediately entered his lab to assist the injured student.

“Teacher Possesses Firearm at School”

Doe v. Medford School Dist. 549C (Or. App., 221 P. 3d 787), November 18, 2009.

Plaintiff’s school district adopted a policy that prohibited their employees from possessing firearms on school district property or at school-sponsored events. Plaintiff, a classroom teacher, wished to carry a handgun while teaching and thereupon initiated legal action to challenge the lawfulness of the policy. The plaintiff was licensed to carry a concealed handgun and desired to carry her firearm with her at all times because she feared a violent confrontation with her former husband. The Court of Appeals of Oregon held that school district’s policy of prohibiting school district employees from possessing firearms on school district property did **not** represent the sort of exercise of “authority to regulate” firearms that the state statute “preempted” (to take the place of or to supplant).

“School District Was Not Liable for the Alleged Sexual Molestation of a Kindergarten Student on a School Bus”

Andrew T. B. v. Brewster Cent. School Dist. (N. Y. A. D. 2 Dept., 889 N. Y. S. 2d 240), November 17, 2009.

The plaintiff’s kindergarten age son was allegedly sexually molested by two second or third grade students while seated toward the rear of a school bus on his way home from school. The plaintiff commenced legal action to recover damages for personal injuries, alleging negligent supervision, training, and hiring. The Supreme Court of New York, Appellate Division, Second Department, held that the school district ***had neither actual nor constructive notice of any prior conduct similar to that claimed*** by the kindergartener who was allegedly sexually molested by two students while seated in a school bus on his way home after the end of the regular school day; thus, **precluding the imposition of liability** against the defending school district.

“Student Hit by a Vehicle after Smoking a Cigarette across the Street from Her School”

Dalton v. Memminger (N. Y. A. D. 4 Dept., 889 N. Y. S. 2d 785), November 13, 2009.

Prior to the start of the school day, plaintiff crossed the street in front of her high school to smoke a cigarette and upon attempting to cross-back over to her school was struck by a vehicle. The plaintiff claimed that school officials failed to properly supervise her and ensure her safety. By the way, this happened despite the fact that the school district provided a traffic light, crosswalk, and a crossing guard at an intersection within a very short distance from the spot where the plaintiff’s injury. Supreme Court of New York, Appellate Division, Fourth Department, stated that the school’s duty to its students **is coextensive with physical custody and control over them** and when a student is injured off school premises, a school district **cannot be held liable for breach of their duty** which “*generally*” extends only to the boundaries associated with school properties.

“Pedestrian Slipped and Fell on School’s Sidewalk”

Gary Community School Corp. v. Roach-Walker (Ind., 917 N. E. 2d 1224), December 10, 2009.

On Saturday, February 5, 2005, plaintiff took her children to a middle school to attend enrichment classes that were being conducted by an independent nonprofit organization. As the plaintiff approached the entrance to the school, she slipped and fell on the walkway. A nearby witness described the area where the plaintiff slipped as “slick” and “wet looking”. No evidence established that there had been any recent rain, snow, or sleet; however, there was testimony that there had been no precipitation that day or the night before the accident. The Supreme Court of Indiana held that the school district was **not** entitled to immunity from liability under Indiana’s tort claims act *absent* any showing by the school district that the plaintiff’s injuries from her slip and fall incident occurred as a result of a temporary weather condition and prior to the time in which the school was reasonably required to respond to the condition by clearing the sidewalk or otherwise remedying its slick surface.

“Youth Director of Summer Program Slipped and Fell on School’s Restroom Floor”

Cotto v. Board of Educ. of City of New Haven (Conn., 984 A. 2d 58), December 15, 2009.

Youth director for the Latino Youth Development, Inc. that ran a summer program (The entity did not pay any rent or fees for the use of the facility.) at a public school brought negligence action against a board of education, superintendent, and the principal of the school at which the plaintiff slipped and fell on a wet bathroom floor. The Supreme Court of Connecticut held that all the defendants **had qualified immunity** from liability *because the risk of specific harm* to the director as a specific identifiable person *was not sufficiently immediate* because any person using the restroom could have slipped at any time.

“School Bus Driver Motioned For Motorist To Cross Intersection Which Resulted In A Fatal Accident”

Downing v. Kingsley (Kan. App., 221 P. 3d 115), December 24, 2009.

A school bus driver was traveling north and stopped at an intersection, while at almost the same time a vehicle was stopped at the same intersection facing east; thereupon the bus driver gestured with his hands for the motorist to cross the intersection so he could make a wide left turn with his school bus. Upon seeing the bus driver’s gesture, the motorist proceeded across the intersection and collided with a second vehicle that was traveling north in the outside lane. The motorist in the second vehicle died as a result of the collision. The Court of Appeals of Kansas held that the school bus driver’s hand gesture to motorist to proceed through the intersection *was not undertaking to render services* to another as necessary for the protection of a third person and provided **no** basis to impose liability on the bus driver for the resulting fatal accident.

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)