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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

“High School Student Sends a Fellow Student a Threatening Message”

D. C. v. R. R. (Cal. App. 2 Dist., 106 Cal. Rptr. 3d 399), March 15, 2010.

High school student and his parents brought hate crime, defamation, and intentional infliction of emotional distress against another student (both students attended a private educational institution) and his parents for posting derogatory comments on the plaintiff's website and threatening him with bodily harm. A California Court of Appeals, Second District, Division 1, held: (1) offending student, who posted message on victim's website stating that he wanted to rip his heart out and pound his head with an ice pick, did **not** establish under the objective standard test that his message was protected speech and (2) offending student who claimed he establish his website to promote his entertainment career was **not** a public figure or a limited public figure and therefore California's hate crimes laws were applicable.

“Student's Calling a Teacher a Bitch and Other Epithets Amounted to Fighting Words”

In re Nickolas S. (Ariz. App. Div. 1, 226 P. 3d 1038), March 2, 2010.

The first incident occurred on January 27, 2009, a teacher (B. B.) was monitoring an on-campus high school student suspension class in a classroom when she saw one of the students “texting” on his cell phone and told him to put it away. The juvenile refused to put the phone away and she directed him to bring the phone to her desk. He refused to bring the phone and the teacher told him that she was going to call security. The student told her, “Go ahead and call them if they think they can take it away.” Thereupon, security arrived and removed both the phone and student from the classroom. The second incident occurred two days later when the same student entered the on-campus suspension classroom and demanded that he be sent to the “special needs student” classroom and he was told to sit down by the same teacher in the first incident until she secured approval from the school's administration. The student responded by getting out his cell phone and playing with it and he was told by the teacher to put it away. Thereupon, the student started yelling and calling the teacher all sorts of derogatory names. Due to his conduct the student was adjudicated a delinquent and he appealed his conviction. An appeals court in Arizona held that (1) Student's muttering the word “bitch” under his breath while not looking at the teacher after the teacher told him to hand over his cell phone did **not** amount to fighting words in order to demonstrate abuse of a teacher and (2) student's conduct in calling a teacher a “bitch”, shouting “this is fucking bull shit”, and “you're a fucking bitch” in a challenging manner approximately 10 to 12 feet from the teacher **amounted to fighting words as required in order to adjudicate the student as a delinquent for the abuse of a teacher.**

“Evidence Supported Finding That Teacher Did Engage in Sexual Misconduct in Student’s Presence”

Moro v. Mills (N. Y. A. D. 3 Dept., 896 N. Y. S. 2d 493), February 25, 2010.

Substantial evidence supported Commissioner of Education’s determination that teacher (taught band and marching band in grades 7 – 12) **had engaged in sexual misconduct** in the presence of a 14-year-old female student; thus, warranting revocation of his teaching certificate. Female student was the sole eye-witness to the incident; however, she was able to provide a very detailed description of the incident. In addition, her testimony was supported by additional evidence and the teacher’s conflicting testimony was inconsistent and contradicted by other testimony.

“School Administrators Failed to Take Action Regarding Teacher’s Sexual Abuse of First Grade Female Students”

Doe 20 v. Board of Educ. of Community Unit School Dist. No. 5 (C. D. Ill., 680 F. Supp. 2d 957), January 11, 2010.

Parents of elementary school students brought action against teacher, school district, county, and school administrators, alleging sexual harassment, sexual discrimination, and sexual abuse of female first grade students, in violation of the Fourth Amendment of the United States Constitution, Title IX, Section 1983, and Illinois law. The United States District Court, C. D. Illinois, held that: (1) Teacher had explicit and implied authority to control, direct, and restrain the movement of his students that are under his control, but he **exceeded his authority** when he unlawfully seized and detained students, deprived them of their liberty of movement, and blindfolded them under forced commitment to silence. Furthermore, the teacher used illegal and unreasonable force when, without consent, he inserted his fingers, objects, and other items in students’ mouths, and otherwise came into contact with them while they were isolated in his classroom; thus, **violating their Fourth Amendment rights**. (2) Parents of the victims notified the school administration of the abuse of their children by their youngsters’ teacher and the administration **failed** to take action regarding the teacher’s conduct; thus, **a Fourth Amendment claim is so stated against** the school administrators. (3) The school administrators were **not** entitled to qualified immunity from Fourth Amendment claims alleged by parents of elementary school students that the school’s administration **were personally aware of and turned a blind eye to known, obvious, and substantial risk of sexual abuse** that teacher posed to first grade female students; thus, violating their Fourth Amendment rights, Title IX, and Illinois law.

“Banning the Confederate Flag Clothing Was Reasonable”

Hardwick ex rel. Hardwick v. Heyward (D. S. C., 674 F. Supp. 2d 725), September 8, 2009.

School district and high school officials **had a reasonable basis** for determining that a ban on Confederate flag clothing was necessary to prevent disruption or interference with school activities. Thus, school officials did **not** violate the middle school student’s First Amendment free speech rights by prohibiting her from wearing clothing (t-shirts) that displayed images of the Confederate flag. This was despite the student’s contentions that incidents of racial conflict were too remote to support the ban, and that no disruption occurred while she wore the flag. The school had a long history of racial conflict and the testimony of both students and school administrators demonstrated that tension existed between black and white students during the time in which the plaintiff attended the school, including at least one classroom disruption. In addition, several more racially motivated incidents has occurred sine the plaintiff left school.

“Probable Cause Existed to Arrest Student”

Fitzpatrick v. City of Ft. Wayne (N. D. Ind., 679 F. Supp. 2d 947), December 22, 2009.

Father, whose juvenile son was arrested for allegedly attacking another student at a middle school, brought suit against city and police officer for false arrest and imprisonment. A United States District Court, N.D. Indiana, Forth Wayne Division, held that (1) In determining whether probable cause existed to arrest a juvenile for his alleged assault of another student in a school bathroom, police officer **could consider the fact** that the juvenile was seen on video tape recorded on a security camera fleeing the scene of the beating, as well as the officer’s **knowledge that the juvenile returned to class without reporting the incident, but whether the juvenile provided aid to the victim was not part of the probable cause analysis** and (2) the fact that the juvenile was identified and reported to have fled the scene of a crime **is part of the “trustworthy information”** a prudent police officer **is entitled to consider** when determining if probable cause exists to arrest an individual.

“Principal Can Be Held Liable for Music Teacher’s Sexual Abuse of Elementary Students”

T. E. v. Grindle (C. A. 7 [Ill.], 599 F. 3d 583), March 17, 2010.

Student victims of music teacher’s sexual abuse, and their parents, brought Section 1983 action against teacher, school district, and individual school officials, alleging violations of the Fourth Amendment, substantive due process (14th Amendment of the United States Constitution), equal protection (14th Amendment of the United States Constitution), Title IX, and state law claims for intentional infliction of emotional distress. The United States Court of Appeals, Seventh Circuit, held that an elementary school principal **could be held liable**, as a supervisor, for participating in or deliberately turning a blind eye to music teacher’s sexual abuse of students in violation of their equal protection rights, which **were clearly established** at the time of the teacher’s abusive conduct. Thus, the principal could **not** claim qualified immunity from plaintiff’s equal protection and other such claims.

“Evidence Supported Conviction for Underage Consumption of Alcohol”

State v. Hoe (Hawaii App., 226 P. 3d 517), February 25, 2010.

Circumstantial evidence **was sufficient to support** conviction for under-age consumption of liquor, although there was no direct testimony that a witness saw the student consume liquor or a blood alcohol content reading. The high school principal and vice-principal both testified that they smelled alcohol emanating from the student from a distance of about two feet and ranked the smell as probably an eight on a ten-point scale. The police officer who was called by the school administration to secure the student stated that he smelled alcohol on the student’s breath and possibly from his pores. In addition, he also observed the youngster engaging in behavior that demonstrated that he had recently consumed alcohol, including his unsteadiness on his feet, his belligerent and defiant behavior, which was out-of character for the student. In addition, the student attempted to prevent the officer from obtaining a reading (preliminary breath test – PBT) on the defendant’s blood-alcohol content.

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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