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Mission Statement

The primary purpose of the *Illinois State Education Law and Policy Journal* (formerly *Illinois School Law Quarterly On-Line*) is to provide a forum for the interchange of ideas, theories, and issues on various aspects of school law among practitioners, professors, and attorneys. The emphasis is on analyzing issues in school law for the purposes of developing new theories to explain current and past developments in the law and to provide the theoretical framework which can be used to anticipate and predict future developments in school law.

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Students' Rights

***Bryner v Canyons Sch. Dist.,* No. 20130566** (Utah App. Ct. May 29, 2015). Bryner filed a records request as allowed under Utah state law after his son was involved in a fight at the middle school. The school district denied his request on the grounds that the videotape from the surveillance camera which recorded the fight was an "educational record" under FERPA. Because it contained "identifiable information" of children other than Bryner and could not be redacted, it could only be released if the consent of the parents of the other students was obtained. Bryner filed suit asking the court to determine that the videotape was required to be produced under state law and that it was not covered under FERPA. The trial court found in favor of the school district, stating that because other students were identifiable that the video tape was subject to FERPA. The district said that it would cost $120 to provide Bryner a redacted copy but would do so if Bryner paid for it. Bryner failed to do so. The case was dismissed and Bryner appealed. The Utah Court of Appeals affirmed the trial court's decision regarding nondisclosure of an unredacted version and who had the burden to pay for a redacted version. As regarding whether the video tape was subject to FERPA, the court stated that FERPA covered more than just academic records, and that a video tape containing individually identifiable information about students was subject to the disclosure restrictions of FERPA.

***Burge v Colton Sch. Dist. 53,* No. 14-605** (D.Or. Apr. 17, 2015). Burge was a student at Colton Middle School. He became angry with his health teacher, Bouck, and posted a series of derogatory comments about her on his Facebook page. The comments ended with "Ya haha she needs to be shot." Within 24 hours his mother told him to delete the entire post, which had not been visible to the school district or the teachers. Burge never intended for Bouck to see the post or threaten her. About six weeks later a parent anonymously placed a copy of the post in the principal's mailbox. Burge received a three and one-half day in-school suspension. Burge filed a §1983 action alleging violation of his First Amendment right to free speech and his Fourteenth Amendment right to due process. The district court granted summary judgment to Burge on his free speech claim and to the school district on the due process claim. The court concluded that Burge's comments did not raise a serious threat of violence, rather they merely caused personal offense and discomfort. "Without taking some sort of action that would indicate it took the comments seriously, the school cannot turn around and argue that Braeden's comments presented a material and substantial interference with school discipline."

Church and State

***Duehning v Aurora East Unified Sch. Dist. 131,* No. 13-5617** (N.D.Ill. Apr. 20, 2015). Duehning often traveled to high schools and colleges to hand out religious pamphlets and engage students in conversations about Christianity. One place that he frequented was the sidewalk outside of East Aurora High School, routinely ignoring requests to cross the street. In August 2014 when he was asked to move across the street, instead he moved on to school property to talk to a group of students. Joy Chase, Dean of Students, called the school's resource officer who required Duehning to identify himself and instructed him to leave the sidewalk in front of the school. Duehning refused and was physically restrained, arrested and searched, during which a knife was found. Duehning filed suit in federal district court claiming that his freedom of speech

had been violated along with an equal protection claim. Both sides filed motions for summary judgment. The district court granted summary judgment to the school district stating that, in the Seventh Circuit, the mere attempt to deprive a person of First Amendment rights is not actionable under §1983. Therefore, since there was no First Amendment violation based on Chase's actions, there could be no municipal liability. Rejecting Duehning's class-of-one equal protection claim, the court stated "A plaintiff alleging a class-of-one equal-protection claim must establish that (1) a state actor has intentionally treated him differently than others similarly situated, and (2) there is no rational basis for the different in treatment. Duehning failed to establish this basis.

***American Humanist Ass'n v South Carolina Dep't of Educ.,* No. 13-2471** (D.S.C. May 18, 2015). Since 1951 Christian prayers have been included at graduation for elementary school children, delivered by school-selected fifth graders. The AHA filed suit against the district claiming a violation of the Establishment Clause. The school district revised its policy to say that the practice would not be prohibited so long as it was student initiated and student led. The district court granted the AHA a permanent injunction in regard to the original policy. As regarding the revised policy, the court concluded that allowing student led and initiated prayer at school events absent school district supervision and control did not violated the Establishment Clause.

Copyright

***Ward v Knox Cnty. Bd. of Educ.,* No. 14-5939** (6th Cir. May 11, 2015). Since 1989 Knox County students have sold coupon books as a fundraiser. In 1994 the district awarded the contract to print the booklets to Feredonna Communication. In 1997 Feredonna filed a trademark application for "School Coupons" as a fund raising service. It was rejected by the U.S. Patent and Trademark office for the Principal Register, but was later accepted for the Supplemental Register. When Feredonna's contract with the district expired, Knox County awarded the contract to a new publishing company, Walsworth. The "School Coupon Campaign" became the "Knox County Schools Coupon Book." Feredonna filed suit in federal district court against the Knox County Board of Education claiming trademark and copyright infringement. Feredonna's case was dismissed and Feredonna appealed. On appeal, the Sixth Circuit panel affirmed the lower court's decision stating that registration on the Supplemental Register did not entitle Feradonna to a presumption of valid trademark ownership. The fact that Feradonna had tried to first to get it registered on the Principal Register, was rejected, and then amended the application to be included on the Supplemental Register was proof in and of itself that the term was not "inherently distinctive." The court also did not agree that the "School Coupons" mark had acquired a secondary meaning by the length of exclusive use.

Special Education

***Fairfield-Suisun Unified Sch. Dist. v State of Calif. Dep't of Educ. and Yolo Cnty. Office of Educ. v State of Calif. Dep't of Educ.,* Nos. 12-16665/12-16818** (9th Cir. Mar. 16, 2015). In both cases, parents of disabled students filed complaints against their respective school districts with the California Department of Education alleging violation of the IDEA by failing to provide FAPE. They pursued their complaints through a "complaint resolution proceeding." In both instances, the proceedings ended with a written decision in favor of the parents. The two

school districts were upset, not only with the outcome, but with the whole manner in which the proceedings were held. Instead of appealing to state court, the school districts sued the California Department of Education in federal court seeking declaratory and injunction relief. The district court dismissed both suits for lack of standing. The districts appealed and the Ninth Circuit consolidated the appeals. Affirming the lower court, the court held that the school districts lacked "a statutory right of action to seek declaratory and injunctive relief regarding alleged violations of certain procedural requirements of the IDEA and its implementing regulations regarding complaint resolution proceedings."

Open Meetings

***Thomas v New York City Dep't of Educ.,* No. 100538/2014** (N.Y. Sup. Ct. Apr. 23, 2015). Under state law, every New York school must have a School Leadership Team (SLT) composed of a school administrator, teachers, and parents. The purpose of these teams is to develop the school's comprehensive education plan and other tasks involving collaborative decision-making. Thomas wanted to attend one of the meetings but was told he couldn't because the by-laws allowed attendance only by members of the school community and Thomas had no affiliation with the school. Thomas sued stating that the meetings fell under the New York Open Meetings Law (NYOML) and should be open to members of the public. The New York City Department of Education contended that the STLs do not fall under the NYOML. The court found that the SLTs are "public bodies" within the meaning of the NYOML and therefore must be open to the general public. Because the meetings involve "a public body performing governmental functions" the public should be able to observe the meetings.

Discrimination

***Hutchens v Chicago Bd. of Educ.,* No. 13-3648** (7th Cir. Mar. 24, 2015). Hutchens, who was black, and Glowacki who was white were assigned to the CPS Professional Development Unit (PDU). When the unit was reorganized both Hutchens and Glowacki lost their jobs and they were placed on the lay-off list. Before it became final, however, their supervisor, Rivera, recommended that Glowacki not be laid off. Consequently only Hutchens was laid off. Hutchens filed a complaint with the EEOC and ultimately brought suit against the Chicago Board of Education in federal court. Summary judgment was granted to the CBOE because the court found that the decision was based on performance not race. The Seventh Circuit reversed stating, "Having hired Glowacki, Rivera had to choose between the black woman she had hired and the white woman she had hired and she may have picked the white woman on racial grounds in the face of that woman's seemingly inferior credentials. The question is whether a reasonable jury could so find on the basis of the evidence submitted in pretrial discovery. If so, summary judgment should not have been granted in favor of the defendants." The court went on to state that even if the jury found that all the facts favored Hutchens, it was not automatic that the decision was based on race. "Hutchens [could have been] a victim not of racism but of error, ineptitude, carelessness, or personal like or dislike, unrelated to race." The case was remanded back for trial