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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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No Child Left Behind (NCLB)

Coachella Valley Unified Sch. Dist. v. State, No. A120667 (Cal. App. July 30, 2009): This case dealt with the legality of testing non-English speaking students in English. A group of districts decided to sue over the California State Board of Education policy requiring English only testing, alleging that the policy violated the terms of the NCLB because the NCLB requires that students be tested in a "valid and reliable manner…including, to the extent practicable, assessments in the language and form most likely to yield accurate data." The schools felt that testing non-English speaking students in English did not comply with this requirement and requested relief in the form of an injunction against any sanctions which the districts may be facing based on the test scores in question. The appellate court affirmed the ruling of the lower court which stated that the NCLB does not mandate how limited-English proficiency students are to be tested, leaving that decision to the discretion of the state. Looking of the specific history of the state of California, including Proposition 227 which provides that California students "be taught English as rapidly and effectively as possible" and to be taught only English support the state's policy decision.

Special Education and Disabilities

Mary Courtney T. v. Sch. Dist. of Philadelphia, No. 08-2676 (3d Cir. July 31, 2009): Though the coverage of the IDEA is broad, according to the U.S. Court of Appeals for the Third Circuit it doesn't extend to psychiatric medical facilities. Mary was a student in the Philadelphia schools. While a student she had received special education services at an out-of-state residential educational institution. When she was brought back to the public school, her condition worsened and she was then admitted to an out-of-state long-term psychiatric facility. Once her condition improved enough that she could be provided educational services, the district prepared to provide the services. However, Mary's parents wanted the school to pay for her entire hospitalization and provide compensatory education for that period of time during which she was unable to receive services. The Third Circuit ruled that the IDEA did not cover the cost of placement in a psychiatric facility because "[o]nly those residential facilities that provide special education…qualify for reimbursement under…IDEA." The services which Mary received at the psychiatric facility were solely for the management of her medical condition and the U.S. Supreme Court has stated that "physician services other than those provided for diagnostic purposes are excluded, [which] specifically exclude[s] hospital services." Because the school district was prepared to provide services as soon as Mary became able to receive those services, the court also found that FAPE had been provided and the claim for compensatory education was also denied.

Richardson Indep. Sch. Dist. v. Michael Z., No. 08-10604 (5th Cir. Aug. 21, 2009): In a case very similar to the Third Circuit case of *Mary Courtney T. v. Sch. Dist. of Philadelphia,* No. 08-2676 (3d Cir. July 31, 2009) summarized above, the Fifth Circuit came to a much different decision. Like Mary in Philadelphia, Leah's mental and emotional problems ultimately caused her to be admitted to a psychiatric hospital. While an in-patient, Leah's special education services were provided by an on-site public charter school. Leah's parents had made the placement without notifying Leah's public school district. After the fact they went back in an attempt to get the school district to agree that the psychiatric hospital was the appropriate placement and thereby having the public school district pick up the costs of the hospitalization. The district refused claiming that it could provide the services needed by Leah and that the placement was unnecessary. Leah's

parents sued claiming denial of FAPE. Both the hearing office and the district court found in favor of the parents. Upon reaching the Fifth Circuit, the court agreed that the IEP proposed by the district was insufficient relying on an earlier Fifth Circuit case, *Cypress-Fairbanks Indep. Sch. Dist. v. Michael F.,* 118 F.3d 245 (5th Cir. 1997) in which four factors were developed to determine whether an IEP is reasonably calculated to provide a "meaningful education" under the IDEA, specifically: (1) whether the program is individualized on the basis of the student's assessment and performance; (2) whether the program is administered in the least restrictive environment; (3) whether the services are provided in a coordinated and collaborative manner by the key "stakeholders"; and (4) whether positive academic and non-academic benefits are demonstrated. The evidence presented was fairly conclusive that Leah was not having "positive academic and non-academic benefits" under the IEP and therefore it was inappropriate. Placement in a residential facility, however, was another matter than just determining that the current IEP was inappropriate. For that the Fifth Circuit established a new two prong test.: "In order for a residential placement to be appropriate under IDEA, the placement must be 1) essential in order for the disabled child to receive a meaningful educational benefit, and 2) primarily oriented toward enabling the child to obtain an education." While the first prong had been met by placement in the psychiatric hospital, the second prong had not been addressed by the lower courts. "The district court has not made any factual findings regarding the second prong, namely whether Leah's treatment at [the psychiatric facility] was primarily oriented toward, i.e. primarily designed for and directed to, enabling her to receive a meaningful educational benefit." The case was remanded to the lower court to make that decision.

J.L. v. Mercer Island Sch. Dist., No. 06-494 (9th Cir. Aug. 6, 2009): In the United States Supreme Court case, *Board of Education of the Hendrick Hudson Central School District v. Rowley,* 458 U.S. 176 (1982), the standard for a free and appropriate public education is that the district's services "confer some educational benefits." The parents of K.L. had decided that the services offered by Mercer Island School District were not appropriate and had unilaterally place their child in a private placement which they believed was appropriate. They then instituted a due process hearing to obtain reimbursement for the costs of K.L.'s education. The U.S. District court reversed the lower court and found in favor of the parents on the grounds that the 1997 amendments to the IDEA which added "transitional services" had supersede the "educational benefit" standard established by *Rowley.* Now rather than provide "some educational benefit" the standard was that a "meaningful educational benefit" be provided. On appeal to the Ninth Circuit, the court stated that "there is no plausible way to read the definition of "transition services" as changing the free appropriate public education standard." Specifically, the court identified "three omissions" [that] suggested that Congress intended to keep *Rowley* intact": (1) Congress did not change the definition of a free appropriate public education in any material respect; (2) Congress did not indicate in its definition of 'transition services,' or elsewhere, that a disabled student could not receive a free appropriate public education absent the attainment of transition goals; and (3) Congress did not express disagreement with the 'educational benefit' standard or indicate that it sought to supersede *Rowley* and, in fact, did not even mention *Rowley.*"

In the state of Illinois at least one county court has ordered a local school district to allow an autistic elementary student to bring his service dog to school. Carter Kalbfleisch used a service dog. The local school district had a policy not allowing any animal in the school building ex-

cept in very limited circumstances, and never all day every day. Moreover, Carter's service dog was not included on his IEP. The court, however, found that state law is clear that service dogs are allowed in school, period. The school district was given a period of time to work out issues of accommodations for children allergic to or scared of dogs as well as the daily upkeep of the dog (feeding, watering, pottying) could be worked out. Eventually a temporary comprise was reached—Carter is being educated at a residential facility outside of the district. The district chose to pay over $30,000 for the academic year rather than have a dog in the school. While the parents agreed to the placement they say that they will continue to have Carter back attending school in his regular school. Stay tuned for ActII!

Disability Law Ctr. of Alaska, Inc. v. Anchorage Sch. Dist., No. 08-35057 (9th Cir. Sept. 9, 2009): The Disability Law Center (DLC) of Alaska received numerous complaints about abuse of special education students at an elementary school in Anchorage. Being the designate investigator under federal law, the DLC requested information from the Anchorage School District regarding the parents/guardians of the special education students. The school district refused to provide the information so the DCL filed suit in federal court to compel the district to provide the information. The district court dismissed the case with prejudice on the grounds that the DCL failed to establish probable cause to investigate and that the documents requested were protected under FERPA and the IDEA. The Ninth Circuit reversed holding that the lower court had erred in determining probable cause when it required a showing of on-going abuse. Looking at the enable legislation the court stated that "[t]he DD Act does not protect such a vulnerable population only for future harm and systemic neglect…[t]he language of the DD Act, by employing the past tense, makes clear that P&As have authority to investigate past incidents." Relying again on the wording of the legislation, the court also found that the Family Educational Rights and Privacy Act (FERPA) and the provisions of the Individuals with Disabilities Education Act (IDEA) incorporating FERPA's privacy protections do not bar a Protection and Advocacy (P&A) agency from exercising its authority under the Development Disabilities Act (DDA) to obtain from school officials contact information for the parents/guardians of disabled students the P&A has probable cause to believe are being abuse or neglected. Rather the DDA is a limited exception to the provisions of FERPA

Employee Rights

Biliski v. Red Clay Consolidated Sch. Dist., No. 08-1742 (3d Cir. July 29, 2009): Minimal procedural due process requires that an individual be given notice of what he or she has done wrong, a chance to tell his or her side of the story (a/k/a a chance for rebuttal) in front of an impartial body. Biliski was terminated by the Red Clay Consolidated School District for repeated inferior job performance. He was notified of the reasons both in person and by letter. Although he did not have a chance to provide a rebuttal in person, he did provide a written rebuttal to all members of the school board which was reviewed and taken into consideration. Unfortunately for Biliski, the board voted to terminate his employment and notified him of such in a written letter. Biliski then filed suit claiming that his procedural due process had been violated because he had not had a chance to meet with the board and provide his rebuttal in person. In affirming a lower court's summary judgment, the Third Circuit found in favor of the school district. In doing so the court relied on a Supreme Court case, *Mathews v. Eldridge*, 424 U.S. 319, 334 (1976) which

established that when a due process claim has been made the court must look at the totality of the circumstances to determine "whether the totality of the administrative process Biliski received in connection with his termination, including the written presentation of his position to the formal decision-maker, satisfied the fundamental requirement of due process, [which] is the opportunity to be heard at a meaningful time and in a meaningful manner." In the instant case it was determined that Biliski had been given appropriate notice, a chance to rebut to an impartial hearing body.

Anderson v. Douglas County Sch. Dist., 0001, No. 8-1682 (8th Cir. Aug. 14, 2009): Employee speech made during the course of employment is protected under the First Amendment. Anderson was employed by the Omaha Public Schools as a coordinator of technical support for the information management services department. He made several statements to other Omaha Public Schools employees questioning some of the financial and budgetary dealings of the school district. Ultimately he was terminated. Upon reaching the U.S. Court of Appeals for the Eighth Circuit, the court relied on the recent Supreme Court decision in *Garcetti v. Ceballos,* 547 U.S. 410 (2006), along with two Eighth Circuit cases, in holding that "no First Amendment protection arises if employee speaks upon matters only of personal interest, or speaks on matter of public concern in course of duties as government employee."

C.F. v. Capistrano Unified Sch. Dist., No. 07-1434 (C.D. Cal. Sept. 15, 2009): Corbett made statements in his AP history class that C.F. found to be hostile to religion. C.F. sued citing a violation of the Establishment Clause because the school district policy allowing the teacher to make such statements favored irreligion over religion. The court found that only Corbett's statement that creationism was "superstitious nonsense" rose to the level of a Establishment Clause violation. Even having made that determination, however, the court found that the school district could not be held liable for Corbett's remarks and that the teacher was protected by a qualified immunity. In granting immunity, the court used the two-prong test enunciated in *Saucier v. Katz,* 533 U.S. 194 (2001). The first prong asks whether a constitutional right has been violated. In the instant case the court determined it had. Having answered in the affirmative, the second prong asks whether the right was clearly established at the time of the violation. In answer the question posed by prong two, the court stated that the question was "whether a reasonable teacher in Corbett's position teaching a semester or year-long high school course would understand that making a comment condemning creationism as superstition violated the Establishment Clause." The court concluded that it was not reasonable therefore immunity was properly allowed.

McAvey v. Orange-Ulster BOCES, No. 07-11181 (S.D. N.Y. Aug 28, 2009): McAvey was employed by the school district as a social worker. A student reported that a teacher had made inappropriate comments to him. McAvey reported the same to the principal who assured McAvey that he was aware of the situation and would handle it. McAvey also reported the information to the school resource officer. About a week later the principal accused McAvey of contacting the student's father with what had happened and that now the father had told the newspaper that the school was covering up sexual abuse. McAvey denied talking with the father. When it started to appear that the district was attempting to discredit her, McAvey pointed out the inaccuracies in a conversation with the local newspaper. From that point on McAvey suffered continuous retaliation by her employer. Eventually she filed a lawsuit alleging retaliation by the school district for

exercising her First Amendment right to free speech. The district moved for dismissal but was denied. The court found that McAvey's speech was protected because it was made as a private citizen speaking on a matter of public concern, specifically the attempt by the district to hide teacher to student sexual harassment. The school district claimed that the speech was made as an employee during her official duties, relying on the Supreme Court's decision in *Garcetti v. Ceballos*, 547 U.S. 410 (2006). The court, however, found that the "employee" speech was when McAvey reported the incident to her building principal but her subsequent actions—talking to the police, talking to the newspapers, and filing a FOIA request—were done as a private citizen concerned that the school district was hiding sexual abuse and that the Supreme Court case of *Pickering v. Bd. of Educ.*, 391 U.S. 563 (1968) was controlling.

Humphries v. Pulaski County Special Sch. Dist., Nos. 08-2485/2594 (8th Cir. Sept. 3, 2009): Humphries was employed as an elementary school counselor. Humphries, who is white, applied for several administrative positions but was never selected. Finally she filed a complaint with the EEOC alleging reverse discrimination. After receiving a right to sue letter from the EEOC she took the matter to federal court. Humphries attempted to use the affirmative action plan of the district as evidence of reverse discrimination. The federal district court found the argument unpersuasive and granted summary judgment to the school district. The Eighth Circuit Court was not so convinced. As regarding an affirmative action plan as evidence of discrimination the court concluded "that evidence that an employer followed an affirmative action plan in taking a challenged adverse employment action may constitute direct evidence of unlawful discrimination." Citing *Ricci v. Destefano*, 129 S. Ct. 2658 (2009), the court stated "If the employer defends by asserting that it acted pursuant to a valid affirmative action plan, the question then becomes whether the affirmative action plan is valid under Title VII and the Equal Protection Clause." As a result, the lower court's summary judgment was reversed as the Eighth Circuit found that there were sufficient questions of fact that necessitated a trial.

Darchak v. City of Chicago Bd. of Educ., No. 2732 (7th Cir. Sept. 3, 2009): Darchak, a Polish immigrant worked for the Chicago Public Schools (CPS) as a Polish-bilingual teacher. In 2005, Principal Rosalva Acevedo of the Princeton Alternative Center hired Darchak as a full-time, probationary appointed teacher status, under a one year renewable contract. After a short while, Darchak told Acevedo that Hispanic students were being treated better than Polish students. Acevecdo responded, "[Hispanic students] are better than Polish and deserve more than Polish people…. [I]f you don't want to do whatever I tell you to do, you can leave my school." Darchak did not repeat the comments to anyone. When Darchak was given a "cautionary notice" about the way in which she was teaching English as Second Language, Darchak confronted Acevedo and was told, "I brought you to this school and you stupid Polack pushed the teachers against me." Again Darchak told no one about the comment. Next, Darchak was assigned to a largely hispanic ESL classroom. She told Acevedo that she was not qualified to teach Spanish speaking students and such an assignment would be in violation of NCLB. For that Darchak received a second cautionary notice. Ultimately her contract was not renewed. Darchak sued alleging retaliatory discharge under state law, retaliation for exercising her first amendment rights in violation of Section 1983, national origin discrimination under Title VII, and disability discrimination in violation of the ADA. The district granted summary judgment to the CSP on all counts. On appeal to the Seventh Circuit, the court remanded the case for trial on the Title VII claim of discrimina-

tion based on national origin. Under the Title VII claim, an individual can either present evidence of discrimination using the "direct method" of proof or by the "indirect method" of proof, the latter also known as burden shifting. The court found that Darchak's attempt an indirect method of proof failed because she was unable to prove that the reasons given for her dismissal were pretextual (i.e. that they were just made up and that the real reasons were discriminatory.) However, the court determined that Darchak had stated a valid claim using the direct method of proof, since either direct evidence or circumstantial evidence could serve as proof. Circumstantial evidence could serve as proof in three situations: (1) suspicious timing, ambiguous oral or written statements, or behavior toward or comments directed at other employees in the protected group; (2) evidence, whether or not rigorously statistical, that similarly situated employees outside the protected class received systematically better treatment; and (3) evidence that the employee was qualified for the job in question but was passed over in favor of a person outside the protected class and the employer's reason is a pretext for discrimination. The anti-Polish comments made by Acevedo satisfied the first situation since the first cautionary notice followed closely behind anti-Polish remarks. "A reasonable jury could find Darchak's report of Acevedo's remarks convincing, and it is undisputed that Darchak's contract was not renewed at Acevedo's recommendation and that contract nonrenewal is an adverse employment action. …Nothing more is needed to demonstrate that a plaintiff has established a prima facie case under the direct method of proof."

Students' Rights

Jones v. Maloney, No. 08-1499 (Mass. App. Aug. 3, 2009): Jones was accused of inappropriately touching a female student. When questioned by the assistant principal, Jones admitted he had done so. The assistant principal then reported what Jones had said to the school resource officer who conducted his own questioning of Jones. The assistant principal was in attendance for part of the questioning by the resource officer but left before he was through. In the end, Jones provided a written confession and was found guilty of indecent assault and battery. Jones then sued the school district claiming that, by not staying in the room throughout the entire interrogation by the resource officer, the assistant principal and thus the school district had caused him emotional distress. The school had the following policies outlining procedures for student questioning:

"The schools have legal custody of students during the school day and during hours of approved extracurricular activities. It is the responsibility of the school administration to make an effort to protect each student's rights with respect to interrogations by law enforcement officials." "When law enforcement officials find it necessary to question students during the school day or periods of extracurricular activities, the school principal or his designee will be present. Every effort will be made to contact the student's parent/guardian so that the responsible individual will be notified of the situation. "If custody and/or arrest is involved, the principal will request that all procedural safeguards, as prescribed by law, and school policies, be observed by the law enforcement officials."

The court dismissed Jones' suit stating that the school district had immunity from such suits unless its behavior had been "extreme and outrageous." In short, the court told Jones that his misfortune was caused by his own inappropriate behavior not because the assistant principal had breached school policy by leaving the room prior to the end of questioning by the resource officer. The court refused to let Jones "retry" his criminal conviction through a civil lawsuit stating that he had had his day in court.

Palmer v. Waxahachie Indep. Sch. Dist., No. 08-10903 (5th Cir. Aug. 13, 2009): When Palmer wore a shirt with the words "San Diego" to school he was found in violation of a district policy which prohibited the wearing of shirts with printed messages except "campus principal-approved [District] sponsored curricular clubs and organizations, athletic teams, or school 'spirit' collared shirts or t-shirts." The shirt that changed into also violated the dress code because it had "John Edwards for President '08" printed on it. Palmer sued claiming that the district policy violated his freedom of speech. The U.S. Court of Appeals for the Fifth Circuit found the district policy to be constitutional because the regulation was content neutral. In making its decision the court relied on *Canady v. Bossier Parish Sch. Bd.*, 240 F.3d 437 (5th Cir. 2001) which held that district policies that were content neutral were a valid exercise of a districts ability to regulate the time, place, and manner of student speech. Quoting the United States Supreme Court case of *United States v. O'Brien*, 391 U.S. 367 (1968) the court found that dress codes will be found constitutional if (1) they further an important or substantial government interest; (2) the interest is unrelated to the suppression of student expression; and (3) the incidental restriction on First Amendment activities are no more than necessary to facilitate that interest. In the instant case, the court found that the district did have a important government interest, that the regulation did not suppress student expression, and that the policy was narrowly drawn so as to avoid over-breadth and/or a chilling effect on student expression.

DeFoe v. Spiva, No. 06-450 (E.D. Tenn. Aug. 11. 2009): DeFoe was sent home after wearing a t-shirt with a picture of the Confederate Flag in violation of the student dress code. Next, he wore a belt buckle with a Confederate Flag on it he was suspended for insubordination. DeFoe filed suit alleging that the school dress code violated his First Amendment freedom of speech. DeFoe claimed that he was wearing the Confederate Flag to show his pride in his southern heritage and a policy that forbids him from doing such was unconstitutional. The district testified that African-American students were offended by the display of the Confederate Flag and in fact several racially charged disruptions had actually occurred prior to the ban. In determining the constitutionality of the dress code, the court employed the "material and substantial disruption" test established in the Supreme Court case of *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503 (1969). The court stated that *Tinker* "does not require certainty that a disruption will occur, only a reasonable forecast of a substantial disruption," but that "undifferentiated fear or apprehension of disturbance" does rise to level of reasonable forecast. The fact that the school district had documented past racially charged disruptions centered on the display of the Confederate Flag met the burden of proof necessary under the "material and substantial disruption" test in *Tinker.*

Hardwick v. Heyward, No. 06-01042 (D. S.C. Sept. 8, 2009): This is another Confederate Flag case out of the south. Once again a student is disciplined for wearing clothing with pictures of the Confederate Flag in violation of school dress code policy forbidding the display of the Confederate Flag. Hardwick filed suit alleging violation of her First Amendment right to free speech and her Fourteenth Amendment right to equal protection and due process, as well as violation of her rights under the South Carolina State Constitution. As had been done by other courts on this issue, the district court applied the "material and substantial disruption test" found in *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503(1969), to the free speech claim. In the instant case, the court emphasized that actual disruption is not needed before restricting student speech in a specific situation. Rather the district could rely on previous instances of disruption caused by racial tension, even

if that tension was not violent, did not occur on school grounds, or disrupt any school activities or the educational atmosphere. On the Equal Protection claim the court found that the regulation was viewpoint neutral and narrowly tailored so as to avoid a chilling effect on protected speech.

Nurre v. Whitehead, No. 07-35867 (9th Cir. Sept. 8, 2009): The Henry A. Jackson High School Wind Ensemble wanted to play an instrumental composition of "Ave Maria" by Franz Biebl at graduation. The school district said no because the performance of a spiritual song at a previous graduation had caused such a disruption that the district had decided that all performances had to be strictly secular. A member of the wind ensemble sued. The district court granted summary judgment to the school district. In affirming the lower court, the Ninth Circuit in a 2-1 split did find that instrumental music did constitute expression protected by the First Amendment and reviewed the facts on the basis of whether the "strictly secular" restrictions imposed by the school district were "reasonable in light of the purpose served by the forum and all the surrounding circumstances." Given the controversy surrounding the playing of sectarian music at previous graduations, combined with the compulsory nature of the ceremony, the court found that the district policy was reasonable. Turning to the allegation that the district had violated the Establishment Clause by "inhibiting" religion, the court applied the three-prong Lemon Test established in *Lemon v. Kurtzman*, 403 U.S. 602 (1971). There was a secular purpose for the restriction, that being to avoid conflict. Next, the court found that a " reasonable person, informed as to the history of the District's prohibition on the Wind Ensemble's performance, would understand that the action had the secular effect of maintaining neutrality and ensuring the District's continued compliance with the Establishment Clause." Finally the court found neither administrative nor political entanglement with religion caused by the district's decision to allow only secular music. The district's policy was upheld.

Diversity and Discrimination

Fisher v. University of Texas, No. 08-263 (W.D. Tex. Aug. 17, 2009): The University of Texas uses a two-tier approach to undergraduate admissions. The first tier consists of those individuals who, under Texas state law, are admitted because they were ranked in the top 10% of their high school graduating class. The second tier consists of all other applicants. The procedure used for this tier rates the applicants on several socio-economic factors, including race. The purpose of this rating procedure to is promote diversity in the student body by increasing the number of underrepresented ethnic and racial groups. White students who were denied admissions sued alleging reverse discrimination. In finding the University of Texas' policy constitutional, the court found that it fit the criteria set out in the U.S. Supreme court case of *Grutter v. Bollinger,* 539 U.S. 306 (2003). Namely, the institution had shown a compelling state interest, diversity of the student body, as the purpose for the policy and then had narrowly tailored the policy using race as just one factor among many to achieve the compelling state interest. The suit was dismissed.

Technology

Sutliffe v. Epping Sch. Dist., No. 08-2587 (1st Cir. Sept. 17, 2009): This case arose out of a disagreement as to the use of government channels (i.e. a school district website) by non-governmental personnel during an on-going debate over governmental spending. Epping Residents for Principled Government (ERPG) wanted to reduce government spending. It tried to gain

access to government fliers and mailings to air its viewpoint in rebuttal to the viewpoint of the government. The suit alleged that both the town and the school district had violated both the New Hampshire and the United States Constitution by "expend[ing] public monies for purposes of promoting or advocating a particular position on an election measure or issue." Meeting no success in state courts, ERPG filed suit in federal district court. With that filing the group also alleged a violation of its First Amendment Right to free speech claiming that the government had allowed another outside group access to its website via a hyperlink while denying the same to ERPG. Ultimately, in a 2-1 split of a three judge panel from the U.S. Court of Appeals for the First Circuit, ruled that the school district was engaged in governmental speech which is not subject to First Amendment scrutiny. Relying on the U.S. Supreme Court's holding in *Pleasant Grove City v. Summum,* 129 S. Ct. 1125 (2009 The court stated that "defendants' actions, in setting up and controlling a town website and choosing not to allow the hyperlinks, constituted government speech." The court declined to be drawn into a forum analysis stating instead that, "there is absolutely no evidence that the Town intentionally open[ed] a nontraditional forum for public discourse…analyzing the government's decision to place certain hyperlinks on its website in terms of a doctrine rooted in the government's historic regulation of speech, by private citizens, on real, public property would require a highly strained analogy."

Legislation

Following are bills signed by the Governor which may be of interest to educators in Illinois: *This legislative information is written and edited by the lobbyists of the Illinois Association of School Boards to provide information to the members of the organizations that comprise the Illinois Statewide School Management Alliance. The complete legislative report can be found at http://www.iasb.com/govrel/alr9632.cfm*

SB 1557 (Delgado, D-Chicago), in a Section requiring the history of the United States to be taught, requires that to reinforce the study of the role and contributions of Hispanics, such curriculum shall include the study of the events related to the forceful removal and illegal deportation of Mexican-American U.S. citizens during the Great Depression. The bill is now **Public Act 96-0629,** effective Jan. 1, 2010.

SB 1718 (Clayborne, D-E. St. Louis) clarifies expulsion and suspension requirements for weapons violations in schools, requiring compliance with the federal Gun Free Schools Act. It requires expulsion for having a firearm in school, but allows the superintendent to modify the expulsion period on a case-by-case basis. Further, the bill will require expulsion for other weapons (i.e. knives, billy clubs) but allows the superintendent to modify the expulsion requirement on a case-by-case basis for these violations. The bill is now **Public Act 96-0633,** effective Aug. 24, 2009.

SB 1956 (Demuzio, D-Carlinville) makes changes with respect to days that are used for an in-service training program for teachers and parent-teacher conferences regarding the compilation of average daily clock hours standard. It also allows a school board to hold school or schedule teachers' institutes, parent-teacher conferences, or staff development on certain school holidays under certain conditions. The bill is now **Public Act 96-0640,** effective Jul. 1, 2009.

HB 242 (Nekritz, D-Northbrook) provides that the debt service extension base must be increased each year by the Consumer Price Index percentage increase during the 12-month calendar year preceding the levy year, not to exceed 5%. The bill is now Public Act 96-0501, effective Aug. 14, 2009.

HB 353 (Winters, R-Shirland), on all newly purchased school bus signs, the bill changes the current wording of the sign to "TO COMMENT ON MY DRIVING, CALL (area code and telephone number of school bus owner)". It does not require a change in the sign until the next time the school bus owner was going to replace the sign. The bill is now **Public Act 96-0655,** effective Jan. 1, 2010.

HB 628 (Osterman, D-Chicago) provides that, after a mutually agreeable date and time has been established with a school district, a parent, an independent educational evaluator, or a qualified professional retained by a parent or child, must be afforded reasonable access to educational facilities, personnel, and to the child. The evaluator must also be afforded a sufficient duration of time to conduct an evaluation of the child and to review the child's current or proposed educational program, placement, or services. The bill is now **Public Act 96-0657,** effective Aug. 25, 2009.

HB 921 (Burke, D-Chicago) deletes the requirement that a physical fitness facility have a trained Automated External Defibrillator (AED) staffer present during all physical fitness activities and states that such a trained person need only be available during "staffed business hours." The bill is now **Public Act 96-0748,** effective Jan. 1, 2010.

HB 1335 (Schmitz, R-Batavia) provides that a school board does not have to comply with the Illinois Accessibility Code with respect to accessibility to press boxes that are 1,000 square feet or less and are on school property if the press boxes were constructed before Jul. 1, 2009. The bill is now **Public Act 96-0674,** effective Jul. 1, 2009.

SB 54 (Garrett, D-Lake Forest) contains a series of "ethics" provisions, mostly directed at the Executive and Legislative branches of government. It requires the Governor's Office of Management and Budget to provide quarterly financial reports containing: a review of the state's financial outlook; a review of general revenue fund performance; the outlook for future general revenue fund performance; an assessment of the state's financial position; and a review of statewide employment statistics. The bill also clarifies who qualifies as a registered lobbyist and increases the yearly lobbyist registration fee from $350 to $1,000. Under exemptions to required lobbyist registration, is listed "a unit of local government or school district" and "an elected or appointed official or an employee of a unit of local government or school district who, in the scope of his or her public office or employment, seeks to influence executive, legislative, or administrative action exclusively on behalf of that unit of local government or school district". The bill also requires ethics training for lobbyists and requires that lobbying expenditure reports be completed weekly during the legislative session and monthly the rest of the year. The bill is now **Public Act 96-0555,** effective Aug. 18, 2009 (and parts effective Jan. 1, 2010).

SB 269 (Demuzio) allows for an increase in fees for school bus driver training. The fees would be $6 per person in fiscal years 2010-2012; $8 per person for fiscal years 2013-2015; and $10 per

person for fiscal years 2016 and thereafter. The current fee is $4. The bill is now **Public Act 96-0616,** effective Jan. 1, 2010.

SB 1508 (Koehler, D-Peoria) amends the School Student Records Act to provide that nothing shall be construed to impair or limit the confidentiality of information communicated in confidence to a school social worker, school counselor, school psychologist, or school psychologist intern. It further provides that no school employee shall be subjected to adverse employment action, the threat of adverse employment action, or any manner of discrimination because the employee is acting or has acted to protect communications as privileged or confidential pursuant to applicable provisions of State or federal law or rule or regulation. The bill is now **Public Act 96-0628,** effective Jan. 1, 2010.

SB 1570 (Pankau, R-Roselle) creates the School Wind and Solar Generation Program to fund wind generation projects and solar generation projects for school districts and community college districts. The bill is now **Public Act 96-0725,** effective Aug. 25, 2009.

SB 1926 (Martinez, D-Chicago) makes vocational centers established by a joint agreement among school districts eligible for grants under the School Construction Grant Law. The bill is now **Public Act 96-0731,** effective Aug. 25, 2009.

SB 1977 (Meeks, D-Chicago) bill makes numerous non-substantive changes throughout the School Code, including changes to the Childhood Hunger Relief Act, the School Safety Drill Act, the Truants Alternative and Optional Education Program, the inspection and review of school facilities, State aid claims, teacher dismissal reports, driver safety courses, the summer food service provisions, etc. It also makes numerous technical and clarification changes throughout the School Code. The bill is now **Public Act 96-0734,** effective Jul. 1, 2009.

SB 2277 (Cronin, R-Elmhurst) authorizes the Illinois State Board of Education to implement a pilot program, subject to appropriation, to test digital technologies as an alternative to textbooks in three geographically diverse school districts. The bill is now **Public Act 96-0647,** effective Aug. 24, 2009.

HB 684 (Burns, D-Chicago) requires the Illinois State Board of Education to make grants available to fund and enhance programs at community schools. Community schools are traditional schools that actively partner with their community to leverage existing resources and identify new resources for community wide programming. The bill is now **Public Act 96-0746,** effective Aug. 25, 2009.

HB 740 (Graham, D-Chicago) requires the Illinois State Board of Education to establish a competitive grant program that develops 2-year pilot programs to assist in the creation and promotion of green career and technical education programs in Illinois public secondary schools. The bill is now **Public Act 96-0659,** effective Jul. 1, 2009.

HB 944 (Eddy, R-Hutsonville) disallows certification of a school district as in financial difficulty solely as a result of the failure of the State to make timely payments of general State aid or any of the mandated categorical grants. The bill is now **Public Act 96-0668,** effective Jul. 1, 2009.

HB 1108 (Eddy) provides that by Jul. 1, 2009, a regional office of education advisory board shall be established within each region serving Class I counties or within each group of regions participating in an intergovernmental agreement for the provision of professional development to advise the regional superintendent of schools of the region or regions involved concerning the planning and delivery of professional development programs and services. The bill is now **Public Act 96-0568,** effective Aug. 18, 2009.

HB 2448 (Miller, D-Dolton) allows a school district, by resolution, to establish a remote educational program (e.g. an educational program delivered to students in the home or other location outside of a school building). The bill is now **Public Act 96-0684,** effective Aug. 25, 2009.

HB 2664 (Currie, D-Chicago) increases the fine for violations of excessive idling of diesel engines (including school buses) from $50 to $250 for the first conviction and from $150 to $500 for a second conviction. The bill is now **Public Act 96-0576,** effective Aug. 18, 2009.

HB 2675 (Eddy) provides that, after consultation with a local health department, if a school district closes one or more recognized school buildings, but not all buildings, during a public health emergency, the district may claim a full day of attendance for those days based on the average of the three school days of attendance immediately preceding the closure of the school building, subject to certain conditions. The bill also makes various changes to teacher certificate regulations. The bill is now **Public Act 96-0689,** effective Jul. 1, 2009.

HB 3990 (Hamos, D-Chicago) creates the Local Food, Farms, and Jobs Act that encourages that by 2020, 10% of the food purchased by entities funded with State dollars (including school districts) be local farm or food products. The bill authorizes the Department of Agriculture to create a Local Food, Farms, and Jobs Council to promote local farm and food products. The council is also charged with facilitating the elimination of legal barriers hindering the development of local farm and food economy. The bill is now **Public Act 96-0579,** effective Aug. 18, 2009.