

ILLINOIS STATE
UNIVERSITY



Volume 31, No. 2
March 2011

ILLINOIS STATE
EDUCATION LAW AND POLICY
JOURNAL

IN THIS ISSUE

SCHOOL REFORM	<i>page 7</i>
SPECIAL EDUCATION	<i>page 7</i>
EMPLOYEES' RIGHTS	<i>page 9</i>
STUDENTS' RIGHTS	<i>page 11</i>
RELIGION AND EDUCATION	<i>page 13</i>
LEGISLATION	<i>page 15</i>

Editor

Elizabeth Timmerman Lugg, J.D., Ph.D.

Publications Manager

Andrea J. Rediger

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.

Illinois State University is an Equal Opportunity/Affirmative Action institution in accordance with Civil Rights legislation and does not discriminate on the basis of race, religion, national origin, sex, age, handicap, or other factors prohibited by law in any of its educational programs, activities, admissions or employment policies. University policy prohibits discrimination based on sexual orientation. Concerns regarding this policy should be referred to Affirmative Action Office, Illinois State University, Campus Box 1280, Normal, IL 61790-1280, phone 309/438-3383. The Title IX Coordinator and the 504 Coordinator may be reached at the same address.

Illinois State Education Law and Policy Journal is published as a service of the Center for the Study of Educational Policy, Department of Educational Administration and Foundations, College of Education, Illinois State University, Campus Box 5900, Normal, IL 61790-5900.

If you quote or paraphrase, please credit author and *Illinois State Education Law and Policy Journal* in an appropriate manner. This publication is not produced for the purpose of rendering legal advice or services. Expressed points of view of the Editor and contributors represent personal opinion and not that of the University, College, or Department. All inquiries should be directed to Editor, *Illinois State Education Law and Policy Journal*, Illinois State University, Campus Box 5900, Normal, IL 61790-5900., phone 309/438-8989.

SCHOOL REFORM

Ever since the Federal Secretary of Education, Arne Duncan, started dangling money in front of the noses of state bureaucrats via the “Race to the Top” program, teacher tenure has become the favorite target of the day. According to a March 24, 2011 article in *The Commercial Appeal* out of Tennessee, the Tennessee Legislature has approved a teacher tenure bill extending the probationary period from 3 to 5 years, and allowing that tenure to be revoked if the teacher has at least two consecutive years of poor evaluations. Tennessee was one of the states which were awarded \$500 million dollars of Race to the Top funds. Much of a teacher’s evaluation will be based on standardized test scores, yet many teachers teach in areas for which standardized tests are not administered. Probationary teachers will be observed for evaluative purposes 6 times every year, and tenured teachers will be evaluated annually. Not surprisingly, the teachers are upset about have so much resting on a system which has yet to be proven fair or effective toward the goal of improving education.

Florida has passed legislation to tie teacher pay to student test scores, eliminate tenure for individuals hired after July 1, 2011, and end layoffs based on seniority. It is anticipated that the costs of this education reform will be covered by the \$700 million that the state of Florida was awarded under the Race to the Top federal grant program.

Race to the Top reform is not the only reform making its way through state legislatures. The changes in Wisconsin have been making the news. However, legislation limiting teacher collective bargaining rights are appearing in other states. In Idaho, legislation which eliminates tenure for new hires, restricts collective bargaining, and implements merit pay is headed to the governor. The push for reform came from the Idaho Public School Chief, Tom Luna, with the backing of Idaho Governor Otter. The legislation, which is largely financially driven, limits collective bargaining to salaries and benefits. Instead of earning tenure, teachers would be given one- to two-year contracts after first serving a three-year probationary period.

In Ohio, the Senate has approved a bill restrict the collective bargaining rights of public employees and is headed to a Republican controlled House where it is expected to pass. Republican Governor John Kasich supports the legislation. Again, finances seem to be a major force being this legislation which would restrict collective bargaining to wages and conditions of employment, outlaw strikes, require workers to pay at least 15 percent of health care premiums, and instituting merit pay while eliminating layoffs based on seniority.

SPECIAL EDUCATION

Ector County Indep. Sch. Dist. v V.B., No. 10-50709 (5th Cir. Mar. 25, 2011): Even if the parents of a special education student refuse to attend a settlement meeting, they can still be considered the prevailing party for purposes of the IDEA. That is exactly what happened in the Ector County case. V.B.’s parents had become concerned with their child’s IEP and held meetings regarding their concerns. After being unable to reach a satisfactory conclusion, they requested a due process hearing. Prior to that hearing, a settlement offer was discussed at a resolution meeting. Another meeting was schedule to put the settlement into effect, but V.B.’s parents, on advice of counsel, chose not to attend. The due process hearing was held as scheduled and V.B.’s parents prevailed. Ector County appealed arguing that VB should be denied “prevailing party”

status because he had refused to proceed with the settlement talks thereby needlessly prolonging litigation. In response, VB argued that all Ector County kept offering were more meetings, not any of the requested services, therefore there was no binding agreement prior to the due process hearing. In affirming the lower court, the Fifth Circuit found that V.B. did fit the definition of a “prevailing party” because he had obtained (1) “a remedy that alters the legal relationship between the parties and fosters IDEA’s purposes (having the hearing officer rule in his favor at the due process hearing); and (2) “some judicial imprimatur on a material alteration of the legal relationship,” (the actual order issued by the due process hearing officer.) That having been decided, the court stated that the student has no duty to notify the district and give it “one last chance” before filing a request for a due process hearing. Furthermore, no evidence was provided that Ector County was amendable to providing the services ultimately ordered by the due process hearing officer prior to V.B. actually going to a due process hearing. In short, it appears that Ector County gambled on the hope that V.B.’s parents would continue to meet indefinitely so long as Ector County held a carrot in front of them. Once V.B.’s parents talked to an attorney, however, they called Ector County’s bluff.

S.H. v New York city Dep’t of Educ., No. 09-6072 (S.D.N.Y. Feb. 18, 2011): From 2003 to 2006, J.G. who has ADHA, was classified as “other health impaired” and was placed in a private school at public expense. For the 2006-07, 2007-08 school years J.G.’s parents placed J.G. in an out-of-state private residential school and NYCDE agreed to pay part of the tuition. In June 2008, NYCDE determined that J.G. was no longer eligible for special education services and placed him back in a general education program within the district. When J.G.’s parents re-enrolled him in the out-of-state resident school NYCDE would no longer help with tuition, so J.G.’s parents requested a due process hearing. At the hearing, NYCDE stipulated that they had not provided J.G. with FAPE during the 2008-09 school year, but that the parents had failed to prove that the residential school was the most appropriate placement and therefore were not entitled to tuition reimbursement. The hearing officer found in favor of the NYCDE. While granting NYCDE’s motion for summary judgment, the district court agreed that the parents had failed to meet their burden of proof that the residential school was the most appropriate placement. In a prior decision in *Sch. Comm. of Burlington v Dep’t of Educ.* 471 U.S. 359 (1985), the court laid out a three-part test to determine whether reimbursement is appropriate: (1) did the school district provide FAPE; (2) was the private school placement appropriate; and (3) does equity demand reimbursement. The NYCDE stipulated that it did not provide FAPE so the court moved to the second criteria; appropriateness. To satisfy this prong the parents needed to show that “the placement provides educational instruction specially designed to meet the unique needs of a handicapped child, supported by such services as are necessary to permit the child to benefit from instruction,” and that “special education and related services must be provided in the least restrictive setting consistent with a child’s needs.” In the words of the court, “[Since the parents] chose a private school for [J.G.] that educated learning disabled students only [they had] the burden of proof that such a restrictive non-mainstream environment was needed to provide [J.G.] with an appropriate education.” Simply stated, the parents did not provide sufficient evidence that the highly structured and isolating nature of the residential school was necessary for J.G. to benefit from instruction. If J.G. could benefit from the services being provided at the public school in a less restrictive environment, that less restrictive environment will be presumed the “appropriate” placement.

Mr. and Mrs. A. v New York City Dep't of Educ., No. 09-5097 (S.D.N.Y. Feb. 1, 2011): D.A. was a special education student in the New York City schools. He suffered from Asperger's Syndrome, bipolar disorder, and ADHD. He attended public school from kindergarten through third grade. In fourth through sixth grade he attended a private school approved by the New York State Department of Education. In seventh grade, he attended a private school not approved by the NYSDE. For his eighth grade year, the NYCDE conducted a staffing to develop an IEP for him, however, they never provided him a placement for that school year so his parents decided to enroll him in the unapproved private school again and requested a due process hearing, alleging that the NYCDE had failed to provide FAPE and requested that they be reimbursed retroactively by the NYCDE for the cost of tuition at the private school. The hearing officer determined that the parents were entitled to future payments of tuition. The NYCDE appealed. The state review officer reversed the hearing officer stating "Where the parents are not requesting reimbursement for out-of-pocket costs or direct payment for compensatory education services, they are not entitled to funding of the student's tuition." The parents sued in federal court.

In granting the parents summary judgment, the district court first looked at "(1) whether the *Burlington* test applies to a case in which Plaintiffs are seeking retroactive direct funding of private school tuition, as opposed to reimbursement for out-of-pocket tuition expenses; and (2) whether Defendants have waived their right to challenge the SRO's determination that Plaintiffs satisfied the *Burlington* test." The court found that the *Burlington* test also applies to retroactive payments. Moving forward, the court found that the three part *Burlington* test had been met, specifically that FAPE had not been provided by the NYCDE, that the private school was the most appropriate placement, and that equity favored funding the tuition. Finally, the court found that the "theme of concern for children from low-income families that runs through IDEA and its legislative history counsels caution in adopting an interpretation of IDEA that would limit a private school tuition remedy to those who have the means to pay the tuition in the first instance." The United States Supreme Court jurisprudence was found to encourage IDEA's statutory purpose to assure that all disable children are provided with FAPE. Consequently, the court found that the court did have the authority in the appropriate circumstances to order retroactive direct tuition payment. "A contrary ruling would be entirely inconsistent with IDEA's statutory purpose, including the goal of ensuring a FAPE to the least privilege of the disabled children in our nation and would also be irreconcilable with decades of case law, summarized above, holding that the exercise of rights under IDEA cannot be made to depend on the financial means of a disabled child's parents."

EMPLOYEES' RIGHTS

Decotiis v Whittemore, No. 10-1242 (1st Cir. Mar. 24, 2011): Once again employers are reminded that retaliation is just as illegal as the activity which caused the employee to complain in the first place. Decotiis was a speech and language therapist with CDS-Cumberland, which was one of a system of intermediate educational units created under federal and state law to provide early intervention and special education services for children ages birth to 5 years. Whittemore was the Director of CDS-Cumberland. Under Maine law changed the mandate for full calendar year services for children ages 3 to 5, to mandating services just to the school year (September through June). In response to this change, CDS started offering an "extended school year (ESY)" as an exception to the rule. Decotiis was informed of the change in policy and was told that the vast majority of the children being served by CDS-Cumberland would not qualify for an

ESY, unless the child was severely disabled. After learning of this new practice, Decotiis starting telling the parents of the children she was serving that it might be in their best interest to contact an advocacy organization for guidance with their rights under the IDEA. Decotiis even went so far as to post names, address, and phone numbers of such advocacy organization in her office. Within a few weeks, Decotiis was informed that her contract with the agency would not be renewed. She sued alleging that her termination as based on her First Amendment right of freedom of speech; that the actual non-renewal was retaliation for her exercise of her right of freedom of speech. While the First Circuit affirmed the lower court that Whittemore was entitled to qualified immunity from suit, it did find that sufficient evidence did exist to raise a question of material fact as to whether the Constitution had been violated.

The court used a three part test to determine whether, as a public employee, Decotiis had a protected speech right in the instant circumstances.; (1) whether she spoke on an issue of general public concern; (2) whether she was speaking as an individual or in the process of her carrying out her job duties; and (3) was her speech the motivating factor in her dismissal? The first question was easily answered, in that the policy of a state agency which has an impact on the members of the public being served by the agency is a issue of general public concern. Where the difficulty arose was with the second question, especially in light of the Supreme Court's decision in *Garcetti v Ceballos*, 547 U.S. 410 (2006). The First Circuit had reviewed this question in two previous actions and had stated: "Nothing in *Garcetti* or the decisions interpreting it can fairly be read to suggest that all speech tangentially or broadly relating to the work of a public employee is per se unprotected." Following its prior precedent, the court found that "Decotiis's speech was made as a citizen...[that the public] had a non-trivial interest in the information Decotiis sought to convey, i.e. that a state supervised agency may have been illegally denying special education services to the children it was charged with serving." As to Decotiis's speech being the motivating factor in her non-renewal the court stated, "Accepting the complaint's well-placed facts as true, the sole motivation behind the nonrenewal was retaliation, not the furtherance of governmental interests."

***Morey v Somers Cent. Sch. Dist.*, No. 10-1280 (2d Cir. Feb. 9, 2011):** Morey was a custodian at Somers Central School District. When some insulation fell in the gym, he was the individual who cleaned it up and reported a potential safety hazard to the superintendent of buildings. Morey continued to express concerns about possible asbestos in the gym even after his supervisor told him to stop. Eventually he was terminated because of his continued complaining. He filed suit alleging that he had been dismissed as retaliation for exercising his First Amendment rights to freedom of speech. In affirming the lower court's dismissal of Morey's suit, the court found that Morey's speech was made pursuant to his official duties and therefore was not protected by the First Amendment.

***Smith County Educ. Ass'n v Smith County Bd. of Educ.*, No. 08-0076 (M.D. Tenn. Feb. 14, 2011):** In face of two highly publicized arrests of two teachers on drug-related charges, the school board decided to institute a policy for random drug testing of teachers. The policy required all school district employees to sign a form stating that they had read and understood the policy and "consented to be tested for controlled substances and/or alcohol." The district began to randomly test 10 percent of its employees per year. Three years later the district amended the policy to more clearly out-line that all employees were subject to random drug testing, that at least 10 percent would be tested annually, and that the policy would no longer be subject to the

collective bargaining agreement. The SCEA filed suit alleging a violation of the teachers' fourth amendment right to privacy. While the district court did find that random drug testing serves as a deterrent to illegal drug use and the chance of a false positive was nearly impossible, it did raise two constitutional concerns. First, the policy lacked reasonable and adequate notice to the teachers as to what was being tested. Second, the manner in which it was implemented unreasonably intruded on the privacy of the teachers.

In explaining its second concern, the court stated that drug testing, because of its inherent intrusiveness, must as a general rule be based on individualized suspicion rather than mere employment. The exception to this rule would be when there exists a special governmental need. The court must "balance the individual's privacy expectations against the government's interest to determine whether it is impractical to require a warrant or some level of individualized suspicion in the particular context." Following precedent in the Sixth Circuit, the court determined that suspicionless drug testing is not per se unconstitutional and that deterring illegal drug use was a legitimate government interest. That being said, however, the policy must give adequate notice and that was not that case in Smith County's policy. If teachers are going to be subject to suspicionless drug testing, at the very least they must be given notice of what drugs are the subject of testing and how the policy is going to be implemented. In its current form, Smith County's policy lacked sufficient notice and therefore was unreasonably intrusive and violated the Fourth Amendment.

STUDENTS' RIGHTS

***Mendoza v Klein Ind. Sch. Dist.*, No. 09-3895 (S.D. Tex. Mar. 16, 2011):** Do students have a Fourth Amendment right to privacy in their cell phones? A. Mendoza thought so. A middle school student, Mendoza was observed by the building associate principal, Langner, viewing her phone. As the Langner approached her, Mendoza shut off the phone and stuck it in her pocket. The district had a policy forbidding the use of cell phones at school. Langner confiscated the phone over the protests of Mendoza who claimed she had not been using the phone at school. Langner turned the phone back on for the sole purpose of determining whether Mendoza was telling the truth; whether the phone had been used during school hours. She found that text messages had been sent during school hours. Upon opening the sent box, to see where the text messages had been sent, Langner discovered nude photos of Mendoza. Mendoza admitted that she had sent the nude photo to a male friend who had sent her a nude photo of himself. It was that photo that she was showing to her female friends. Langer reported the incident to the building principal, Crowe. Mendoza was suspending pending an investigation. Mendoza was also sent to the alternative school for 30 days for "incurable behavior." Mendoza's mother filed suit alleging a violation of her daughter's Fourth Amendment rights to be free from unreasonable searches. After reviewing federal case law, the magistrate found that Mendoza did have a privacy interest in her cell phone. That having been established, the appropriate test to be applied is the test from *New Jersey v T.L.O.*, 469 U.S. 325 (1985) requiring that searches be reasonable at their inception and reasonable in scope. Given the personal observation by Langner of Mendoza viewing her phone, there was reasonable suspicion that a school policy was being violated, thereby justifying the search. The magistrate, however, found that the search was not reasonable in scope. Langner had stated that she was looking at the text messages to see if they were sent during school hours. Once she had ascertained that fact, the magistrate found that Langer should have halted the search. Since knowing the content of the text messages was unnecessary for

satisfying the stated purpose of the search, such information was improperly obtained. *Editor's Note: This is fine as far as it goes. However, I am surprised that the argument was not raised that once Langner found that the text messages were sent during the school day, reasonable suspicion reemerged regarding whether those text messages were sent during school hours to another student who, upon responding, was also in violation of school policy. The fact that the content was a picture which could be interpreted without further effort does not make the search less reasonable. The magistrates reasoning is sound only in the instance where Langer knew by the phone number listed in the sent box would have informed her to whom the text was sent. It is highly unlikely that, although Langner would know student names, that she would not know individual student phone numbers therefore would need to open the text to gain sufficient information to determine whether additional school policies were being violated.*

Harris v Pontotoc County Sch. Dist., No. 10-60392 (5th Cir. Mar. 10, 2011): Harris, a student, was accused of using his mother's work computer to hack into the school district computer system. Harris' mother was the elementary school principal's secretary in the school district. Harris was suspended and assigned to the alternative school for 45 days and his mother was reassigned to another position in the district. When his mother discovered she had been reassigned she loudly voiced her disapproval to the superintendent and was immediately fired. Harris' parents sued alleging that Harris had been denied due process before he was suspended and reassigned, and that the mother was terminated in retaliation for exercising her right of freedom of speech. In affirming the lower court, the Fifth Circuit found that Harris had been accorded appropriate due process. In fact, because Harris was simply transferred from one school to another in the district, he had not been deprived of his property right in an education so the need for due process was never actually triggered. Even given that, the court found that Harris was given due process. He and his parents were given clear notice explaining the charges against Harris, and Harris had multiple opportunities to present his side of the story. As to Harris' mother's First Amendment claim, the court found that she was not speaking on a matter of public concern; therefore her speech was not protected speech. "The evidence in the record shows only a mother who complained about the treatment her child received in a discrete incident and an employee who was upset at being reassigned.

L.S. v Mount Olive Bd. of Educ., No. 09-3052 (D.N.J. Feb. 25, 2011): In this case, lack of care and attentiveness caused liability on behalf of school employees. S.S. was a student with an extensive counseling and medical history; diabetes, anxiety, depression, phobia of attending school. Johnson was a school social worker who would with S.S.'s parents to develop a §504 plan for S.S. Bosch was a special education teacher. Strahl was the general classroom teacher in whose class Bosch was assigned. The special education students in Strahl's class were given an assignment by Bosch to prepare a psychological or psychiatric evaluation of Holden Caulfield, main character in *Catcher in the Rye*. Prior to a meeting with S.S.'s parents, Bosch asked Johnson for a sample psychological or psychiatric evaluation to distribute to his students as a template. Johnson gave Bosch S.S.'s evaluation and told Bosch to redact any identifying information before handing it out to his students. Bosch complied and handed out a redacted copy. However, sufficient information still remained that the students very quickly identified that the evaluation belonged to S.S. S.S.'s parents filed suit under §1983 for violation of S.S.'s right to privacy under the Fourth and Fourteenth Amendments, his rights under the First Amendment, violation of the state constitution, violations of IDEA and FERPA, and general negligence. As regarding the §1983 claim, the court dismissed that claim based on the First and Fourth Amendments as filed

against the principal, the superintendent, the director of student services and the board of education, as no evidence was supplied support such claims. As for Johnson and Bosch, the court found for the parents under §1983. “[T]he disclosure of S.S.’s psychiatric evaluation was wholly intentional...[N]o reasonable juror could find that their conduct in disclosing S.S.’s evaluation amounted to mere negligence.” The court also found in the parents’ favor against Johnson and Bosch on the right to privacy claim under the state constitution, and under the general negligence claim. Bottom line is that even with this egregious behavior, it was only the employees who actually made the decision—the social worker and the special education teacher—who were found liable; not the entire district and all the administrators because they lacked actual knowledge.

A suit has been filed in Mississippi by a student against a principal who disciplined him for posting a rap song he had composed on Facebook. Bell was suspended and sent to an alternative school after posting a rap accusing to coaches at the school of flirting and having inappropriate contact with female students. In the suit Bell states that the song was “produced off school property, without using school resources, never played or performed at the school, not performed at a school sponsored event, and never accessed by students on school property.” He claims that he witnessed the inappropriate contact. Bell’s suit claims violation of his First Amendment freedom of speech and seeks reinstatement to his regular classes, that his disciplinary record be cleared and that “defendants be enjoined from enforcing the school disciplinary code against students for expression that takes place outside of school or school-sponsored activities.”

Dariano v Morgan Hill Unified Sch. Dist., No. 10-2745 (N.D. Cal. Feb. 17, 2011): Three high school students were told that they could not wear t-shirts with a picture of the American flag on Cinco de Mayo day. They could wear the t-shirts on any other day, just not Cinco de Mayo. One student, whose shirt did not display a purely pro-U.S.A. message was allowed to keep his shirt on and return to class. The other two were suspended when they refused to change their shirts. The district based its decision on a school policy which stated, “Clothing or actions which disrupt school activities will not be tolerated. Such actions or the wearing and/or possession of these items may be cause for suspension.” After the fact, the Superintendent disavowed the actions of the building administrators and stated that the district had no policy which would keep students from wearing patriotic clothing. The parents filed suit alleging a violation of their First and Fourteenth Amendment rights to free speech, due process, and equal protection and their state constitutional right to free speech. The district filed a motion to dismiss alleging that the case was moot since the administrators responsible for the decision had left employment by the school district and the superintendent had disavowed their actions. In denying the motion to dismiss on the ground of mootness, the court stated, “[v]oluntary cessation of challenged conduct moots a case only if it is absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur.”

RELIGION AND EDUCATION

Zamechik v Indian Prairie Sch. Dist. #204, Nos. 10-2485/10-3635 (7th Cir. Mar. 1, 2011): Free speech is applicable to both sides of a message. Zamecnik and Nuxoll had t-shirts on which was written “Be Happy, Not Gay,” which they planned to wear during the “Day of Truth,” an event organized to by the Alliance Defense Fund as a counter-demonstration to the Gay, Lesbian, and Straight Education Network’s annual “Day of Silence,” which promotes tolerance of ho-

mosexuals. When they were prohibited from wearing the shirts they filed suit claiming that the district policy was an unconstitutional prior restraint on free speech. The district court upheld the district's policy. The Seventh Circuit reversed the lower court and ordered that the students be allowed to wear their shirts. The district appealed. On appeal the same Seventh Circuit panel considered whether the evidence presented by the school district was sufficient to meet the *Tinker* "Material and Substantial Disruption" test. The district had presented three types of evidence: (1) incidents of harassment of homosexual; (2) incidents of harassment of Zamecnik; and (3) testimony from an expert who stated that the slogan "Be Happy, Not Gay," was particularly insidious. The court dismissed the first type of evidence as too remote. As for the second type of evidence, the court found it to be a "heckler's veto." The court stated, "So the fact that homosexual students and their sympathizers harassed Zamecnik because of their disapproval of her message is not a permissible ground for banning it." Any disruption which had occurred was not because of the speech, but because Zamecnik had filed suit to protect her freedom of speech. In short, the school district had not shown material and substantial disruption of the educational environment sufficient to warrant a prior restraint on Zamecnik's speech.

Smith v Jefferson County Bd. of Sch. Comm'rs., No. 06-6533 (6th Cir. Feb. 11, 2011): The school board of Jefferson county eliminated the alternative school along with all of the teachers and administrators because of inadequate financing. Instead, the board decided to "out-source" the alternative school to Kingswood School which was a religious school specializing in providing an education for students with behavioral and emotional problems. The principal and two teachers from the public alternative school filed suit alleging that the action of the board had violated the First Amendment Establishment Clause. The district court dismissed the court for lack of standing. On appeal, the Sixth Circuit found that the teachers and principal did have standing to bring suit under the Establishment Clause and remanded the case back to the district court. In determining whether there was standing, the court found that the individuals who were actually damaged by the board's action were the student assigned to the religious alternative school. While normally an individual cannot claim standing to protect the rights of a third party, the court stated that there was an exception if "the party asserting the right has a 'close' relationship with the person who possesses the right and there is a hindrance to the possessor's ability to protect his own interests." The teachers and principal could pass the first half of the test—a special relationship because of the student-teacher relationship—but could not satisfy the second half. There was no impediment that kept the students from suing on their own behalves. The court did find that two of the educators did have standing as municipal taxpayers who were damaged by having public funds paid to a private religious school. In the end, however, little came of the suit because the board was protected by legislative immunity and because the board was acting in a legislative role when it decided to close the alternative school for budgetary reasons; there was no violation of procedural due process.

Dydell v Taylor, No. SC90912 (Mo. Feb. 8, 2011): Dydell was a high school student in the Kansas City School District. Whitehead was a special education student who had been expelled from a charter school run by a different district for attempting to bring a knife to school. His IEP at Kansas City made no mention of the incident at the charter school, although the Kansas City superintendent, Taylor, was aware of Whitehead's psychiatric and criminal history. Whitehead attacked Dydell with a box cutter, slicing Dydell's neck. Dydell filed a negligence suit against Taylor alleging failure to supervise Whitehead or to inform Kansas City staff of Whitehead's his-

tory. Taylor raised the defense of immunity under the Coverdell Teacher Protection Act (CTPA). Upon reaching the Missouri Supreme Court, the lower court's finding of immunity was affirmed. The court was unpersuaded by Dydell's argument that the CTPA was an unconstitutional exercise of federal Congressional power. The court recognized that such legislation is fairly common under the Spending Clause of the Constitution. The court found that the law's stated purpose "to provide teachers, principals, and other school professionals the tools they need to undertake reasonable actions to maintain order, discipline, and an appropriate education environment" was an appropriate pursuit of the general welfare. The law was clearly written so that Missouri, in deciding to enter into the agreement fully understood the obligations required thereby. Finally, the court found that the CTPA's purpose was "rationally related to Congress' stated goal of strengthening and improving elementary and secondary education."

LEGISLATION

The following is legislation passed by the General Assembly which took effect on January 1, 2011:

- PA 96-1144 Amendment to the Notice By Publication Act and the Newspaper Legal Notice Act which provided publication in the newspaper of an adjoining county if no newspaper of general circulation is published in the county where the unit of local government is located.
- PA 96-1238 The first full week of January has been designated Emancipation Proclamation week
- PA 96-1473 The Open Meetings Act was amended to require that public bodies approve minutes within 30 days after the meeting or at the second subsequent regular meeting. Minutes must be made available and posted on the website within 10 days after the after their approval. The act also requires that individuals be permitted an opportunity to address public officials at open meetings.
- PA 96-1268 If there is no building at an outdoor facility where an AED is required by law, the person responsible for supervising the activity must ensure that one is available.
- PA 96-1414 An amendment to the Juvenile Court Act that allows the identity of a victim of aggravated battery, battery, attempted first degree murder, or other non-sexual violent crime to be release to school officials with the purpose being to attempt to prevent foreseeable future violence.
- HB 5863 Substitute teachers must register as a substitute teacher with the ROE of each region in which the individual will be employed. The registered substitute will be responsible for all fees. The ROE will keep a file for each registered substitute teacher and issue a certificate of authorization to the substitute teacher.
- PA 96-1264 Students enrolled in early education programs will be included in the number listed for a school district's transportation reimbursement.
- PA 96-1087 The Juvenile Court Act is amended to prohibit a minor from distributing or disseminating an indecent picture of another minor through technology such as a computer or cell phone.

- PA 96-1374 The ISBE must create an Instructional Mandates Task Force which will be charged to explore and examine all instructional mandates and make recommendations. The Act also establishes a moratorium on all further mandates until July 1, 2011 when the Task Force's Report is presented.
- PA 96-1229 The ISBE is required to establish 3-year competitive grants to school districts to assist in the administrative cost of serving homeless children.
- PA 96-1237 Student drivers must be "under the direct supervision of" an adult instructor and the adult instructor cannot be intoxicated.