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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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## **HAVE YOU HEARD?**

According to the Milwaukee Journal Sentinel, a complaint has been filed with the U.S. Department of Justice's Civil Rights division by a group of parents, the ACLU and Disability Rights Wisconsin, alleging that the Milwaukee Parental Choice Program (a/k/a the Milwaukee Voucher Program) discriminates against children with disabilities. The complaint as requested an investigation. It seeks a halt to any expansion of the voucher program as is currently being proposed in the Wisconsin legislature. Current Governor Walker is advocating that enrollment caps be removed, income limits raised so as to include more students, and expansion of the program to the entire county. The complaint alleges that although a disabled student may qualify for a voucher and receive a voucher, participating private schools have adopted policies and procedures which prevent such students from enrolling in those schools. As a result, a dual system has arisen with the tacit encouragement of the state of Wisconsin, which segregates disabled students in the failing and critically underfunded Milwaukee public schools, while allowing the "cream of the crop" to attend exclusionary private schools with the costs being paid by the state. "That excludes children with disabilities from most of the participating voucher schools and that leads to their segregation with MPS with the clear effect of subjecting children with disabilities to discrimination." According to statistics only 1.6% of the voucher students attending private voucher schools receive special education services while 20% of the students in the MPS receive services for their disabilities.

Again in Wisconsin, judicial reprieve was short lived as the Wisconsin Supreme Court reinstated statutory restrictions on public employees' collective bargaining rights. The court held that the state trial court judge overstepped her authority when she attempted to void the law. Now Wisconsin is in step with Ohio and Indiana who have already, but out of the public idea, enacted legislation to change collective bargaining rights of public employees.

## **STATE LAW/LOCAL CONTROL**

### ***Madison Metropolitan Sch. Dist. v Circuit Ct. for Dane County, 09-2845 (Wis. Jul. 14, 2011):***

The Madison Metropolitan School District expelled a student, M.T., for three semesters after he was arrested on drug charges. In the delinquency hearing in Dane County Juvenile Court an order was issued which required M.T. to "attend school regularly without unexcused absences." To enforce this order, the judge of the juvenile court requested that the school district work with the court to provide those educational services. The school district declined the request, stating that it didn't provide such services to students who had been expelled, whereupon the court issued a show cause order for the district to appear in court to justify its refusal. The district stated that "defining the terms of a student's expulsion is within its authority" and that the district court could not usurp that authority. The juvenile court found that the district had contributed to the delinquency of a minor. Upon appeal to the Wisconsin Court of Appeals the district court was reversed on the grounds that the district court had no explicit authority to order the district to provide educational services. Upon appeal to the Wisconsin Supreme Court the focus was on whether the juvenile court had the authority to order a school district to provide educational services. Specifically, the question was whether the 1995 adoption of the Wisconsin's Juvenile Justice Code had altered the district's authority to expel, thereby making that authority subordinate to the juvenile court's discretion to require that educational services be provided. In holding for the school district, the court reaffirmed that the school district "had the explicit statutory authority to refuse to provide educational services

to a juvenile who has been expelled pursuant to a valid expulsion order” and that such authority was not overridden by the adoption of the Juvenile Justice Code. As regarding the district court’s determination that the school district was a “person” and guilty of contributing to the delinquency of a minor, the court found that a school district is a governmental entity not a “natural person” and therefore did not fall under the jurisdiction of the delinquency provision.

***Tarek ibn Ziyad Academy v Islamic Relief*, No. 11-1573 (D. Minn. Jun. 30, 2011):** TiZA Academy, an Islamic school sponsored by the California not-for-profit Islamic Relief, operated as a public charter school under Minnesota law. After a critical report from the Office of Legislative Auditor, the state amended its charter school law to require that organizations sponsoring a charter school must be incorporated in the state of Minnesota. As the TiZA Academy was searching for a new sponsor, as the Islamic Relief was now ineligible to be a sponsor, it was sued by the ACLU which alleged that TiZA Academy violated the Establishment Clause of the First Amendment. As a result, Islamic Relief refused to relinquish sponsorship. Without a sponsor in compliance of state law, TiZA Academy’s charter was not renewed. TiZA Academy sued Islamic Relief and the Minnesota Department of Education in state court but was unsuccessful. TiZA Academy sought injunctive relief in federal court making the following allegations: (1) The Minnesota incorporation provision violated the Due Process Clause of the US Constitution; (2) the Minnesota law interfered with a private contract; (3) Minnesota’s different treatment of in-state and out-of-state charitable organizations violated the Commerce Clause of the United States; and (4) changes to the Minnesota charter school law violated the Equal Protection Clause of the US Constitution. All four allegations were rejected by the court. Two were rejected on procedural grounds. As to the legality of the requirement that sponsors be incorporated in the state of Minnesota, the court stated, “The Minnesota incorporation provision is just one of several heightened requirements for authorizers and furthers the public interest in increasing oversight of Minnesota charter schools.” Therefore the provision was supported by a significant and legitimate public interest. As to the claim of a violation of the Equal Protection Clause, the court held that TiZA Academy had “not provided evidence, beyond speculation, that would allow the court to conclude that there was no plausible, non-discriminatory rationale for the 2009 Amendment.” The motions for a temporary restraining order were denied.

***Bronx Household of Faith v Board of Educ. of the City of New York*, No. 07-5291 (2d Cir. Jun. 2, 2011):** Starting in 1997 the Bronx Household of Faith started applying to hold their worship services in space at the NYCBOE. New York had a policy to forbid the use of school facilities for religious worship services, so the requests were always denied. BHF brought suit seeking to overturn the policy. The district court granted BHF a permanent injunction barring NYCBOE for enforcing its policy. In reviewing the policy the Second Circuit found that NYCBOE had created a limited open forum. As such, NYCBOE could engage in “content discrimination if it preserves the purposes of that limited forum but may not engage in viewpoint discrimination, which is presumed impermissible when directed against speech otherwise within the forum’s limitation.” By stating that facilities could not be used for religious worship services, NYCBOE policy did not run afoul of the Supreme Court’s decision in *Good News Club*, which prohibited “religious instruction” which was determined to be viewpoint discrimination. To exclude religious worship services in order to avoid even the appearance of an Establishment Clause violation was deemed to be “reasonable in light of the purpose served by the forum.” The court concluded that NYCBOE “could have reasonably concluded that what the public would

see, were it not to exclude religious worship services, is public schools, which serve on Sundays as state-sponsored Christian churches.” In the words of the court, “The reasonableness of the Board’s concern to avoid creating a perception of endorsement resulting from regular Sunday conversion of schools into Christian churches, together with the absence of viewpoint-based discrimination, distinguishes this case from the Supreme Court’s precedents striking down prohibitions of the use of educational facilities or funds by religious groups.”

## DESEGREGATION

***Fisher v Tucson Unified School District*, No. 10-15124 (9th Cir. Jul. 19, 2011):** A reminder that “separate is inherently unequal” is still not practiced in some areas of the country, the U.S. Court of Appeals for the Ninth Circuit found that the Tucson Unified School District in Arizona had failed to achieve unitary status as required under the Supreme Court decisions of *Green v Cnty. Sch. Bd. of New Kent Cnty, Va.*, 391 U.S. 430 (1968). Tucson has been under court ordered desegregation for 30 years. Although finding that Tucson had “failed to monitor, track, review and analyze the effectiveness’ of its programs and policies and therefore had not demonstrated a good faith adherence to the Settlement Agreement or the constitutional principles that underlie it,” the district county nevertheless granted Tucson unitary status based on approval of the Tucson Unified School District’s “Post-Unitary Status Plan.” Upon appeal the Ninth Circuit noted that good faith compliance and elimination of all vestiges of past discrimination were “mandatory prerequisites to a determination of unitary status.” The fact that the district court had openly admitted a lack of good faith and failure to eliminate the “effects of past de jure segregation,” dictated that unitary status could not be granted. “There is no authority for the proposition that a failure to demonstrate past good faith can be cured and federal jurisdiction can be terminated, if a plan that merely promises future improvements are adopted.”

## SPECIAL EDUCATION

***Fort Osage R-1 Sch. Dist. v Sims*, No. 10-3419 (8th Cir. Jun. 17, 2011):** Special education student, B.S., who had been born with Down’s Syndrome, was receiving services from Fort Osage School District. In 2005, after a meeting at which concerns were raised, B.S. was evaluated and diagnosed as suffering from autism. Consequently, her 2005-06 IEP list her as “other health impaired,” based on the diagnoses of Down’s Syndrome and autism. When behavior issues arose, the IEP was revised to include a behavior plan to deal with the behavior issues. In May 2006, the parents of B.S. informed the district that B.S. was not receiving FAPE and that they were withdrawing her and placing her in a private school. When B.S. returned to Fort Osage District in January 2007 she was provided an IEP, however the parents once again claimed that the district was not providing B.S. with FAPE, and request a private placement along with tuition reimbursement. During the administrative hearing, the administrative panel ruled in favor of the parents stating that the school district had made a procedural error and ordered reimbursement for the 2006-07 school year. The panel, however, rejected the parent’s argument that the failure to identify B.S. as suffering from autism rendered the IEP substantively flawed. Fort Osage appealed the panel’s decision to federal district court. The district court reversed the decision of the panel stating that there was neither procedural nor substantive error on behalf of the school district. The Eighth Circuit affirmed the decision of the district court. The court stated that, in order for the parents to succeed on the argu-

ment that the failure to diagnose autism caused a substantive flaw, they must “show that the failure to include a proper disability diagnosis compromised the pupil’s right to an appropriate education, seriously hampered the parents’ opportunity to participate in the formulation process, or caused a deprivation of educational benefits.” The parents had failed to carry their burden of proof. They had presented no evidence that the IEP failed to adequately identify B.S.’s disability to the harm of B.S. by depriving her of any educational benefits.

***District of Columbia v Ijeabuonwu, No. 09-7092 (D.C. Cir. June 28, 2011):*** During the pendency of a due process hearing, the school district corrected its previous failure to provide a comprehensive psychological evaluation as recommended by its own multidisciplinary team. Consequently, the hearing office found that the issue was moot. The district filed suit in district court requesting attorney’s fees as prevailing party. The Court of Appeals held that the school district was not a “prevailing party” entitled to attorney’s fees because the case was not decided on its merits, it was found moot. “If the school district were considered a prevailing party under these circumstances, then it could ignore its legal obligations until parents sue, voluntarily comply quickly, file for and receive a dismissal with prejudice for mootness, and then recover attorney’s fees from the parents’ lawyers.” *What as the school district thinking?*

***Jefferson County Sch. Dist. R-1 v Elizabeth E., No. 10-741 (D. Colo. Jun. 29, 2011):*** As a result of a mediated settlement, Jefferson County School District agreed to pay half of Elizabeth’s tuition at a private school. Elizabeth suffered from a variety of psychiatric and emotional disorders. By the end of her second year at the private school, she did not have enough credits to advance. The school district entered into another settlement to pay Elizabeth’s tuition, but this time the district demanded that an IEP staffing occur. After agreeing to the IEP evaluation, Elizabeth’s parents hospitalized Elizabeth for psychiatric assessment and treatment. The district then informed Elizabeth’s parents that they were withdrawing her from the private school she had been attending. Elizabeth’s parents told the district they considered that a breach of the settlement agreement. The district stated that the settlement agreement was moot, because Elizabeth’s parents had unilaterally placed Elizabeth in an out-of-state facility and “as such, Elizabeth is not a District student, and the District has no on-going responsibility to Elizabeth under the IDEA.” The parents requested a due process hearing seeking reimbursement for Elizabeth’s out-of-state placement. The ALJ found in favor of the student and the school district appealed. The question before the court eventually became whether a local school district is required under the IDEA to provide reimbursement for a placement that is done primarily for medical, social, or emotional problems rather than for the educational benefit gained. The court reviewed the various rationales of the different circuit courts. Its final decision was that, although Elizabeth may have originally been placed in her current placement for non-educational reasons, “the crucial issue is not the initial motivation behind the placement, but instead whether the education provided by the private school is reasonably calculated to enable the child to receive educational benefits.” The school in which Elizabeth was enrolled was an accredited program, in which Elizabeth was working toward high school graduation. As such, the district court affirmed the ALJ’s determination that the district must reimburse Elizabeth’s parents.

## **EMPLOYEE RIGHTS**

***Borough of Duryea v Guarnieri, No. 09-1476 (Jun. 20, 2011):*** As with all other speech, protection for an individual’s “right to petition” against employer disciplinary action, only arises if the

“petition” relates to a matter of public concern. Guarnieri, a county sheriff, was reinstated with back pay, after he filed a grievance following his dismissal. After his reinstatement, he was given a series of directives regarding his job duties and some overtime payments were withheld. Guarnieri filed a second grievance claiming that his employer was guilty of retaliation against him for his first union grievance, said grievance constituting a “petition” under the meaning of his constitutional right “to petition grievances,” and therefore constitutionally protected. The trial court found for Guarnieri. The Third Circuit affirmed. The United States Supreme Court, 8 to 1, vacated the decision and remanded it to the circuit court, after explaining the “public concern test” which needed to be applied. In order for speech to be protected, the employee must show that he or she was speaking on a matter of public concern. Once that is done, the court must balance the constitutional interests of the individual against the interests of the employer in efficient and effective operations. In the words of the Court, “That interest may require broad authority to supervise the conduct of public employees.” But Guarnieri chose to proceed under the Petition Clause rather than the Speech Clause. In order to maintain consistency, the Court found that the issue before it was “whether the history and purpose of the petition Clause justify the imposition of broader liability when an employee invokes its protection instead of the protection afforded by the Speech Clause.” In other words, had Guarnieri found a loophole in which to operate? The Court found that the Speech and Petition Clauses share “substantial common ground” and that applying the Petition Clause in employee grievance situations where public concerns are not involved would be unnecessary and disruptive. The Petition Clause does not “transform everyday employment disputes into matters for constitutional litigation in the federal courts.” A novel idea, but the Court did not buy it.

***Nichols v Dancer, No. 10-15259 (9th Cir. Jun 24, 2011):*** Nichols was an assistant to Washoe County School District (WCSD) General Counsel, Blanck. After a dispute, Blanck was suspended and Nichols was informed that she would no longer report to Blanck, but would report to Hager or Dancer. During the school board meeting in which Blanck was ultimately terminated, Nichols sat next to Blanck. The following day, Dancer informed Nichols that she would remain in the Human Resource office where she had been temporarily assigned rather than being returned to the Office of General Counsel, because there were questions as to her loyalty to the district. Dancer then told Nichols that her salary would be frozen, or she could take early retirement. Nichols chose early retirement and filed suit alleging she had been demoted because of exercising her constitutional right of freedom of association. The district court dismissed the suit stating that there was no First Amendment protection because it was not related to a matter of public concern. In reversing and remanding the district court decision, the Ninth Circuit turned the rationale espoused by the United States Supreme Court in *Pickering v Board of Education of Township High School District 205*, 391 U.S. 561 (1968) and *Commick v Myers*, 461 U.S. 138 (1983). Under the rationale of these cases, Nichols had the burden of showing “that her association with Blanck was constitutionally protected and that it was a substantial and motivating factor in her transfer from the General Counsel’s office.” The court found that Nichols’ attendance at the meeting constituted expressive conduct that touched on a matter of public concern – the termination of Blanck. The court found no evidence that Nichols’ association with Blanck caused disruption in the workplace. The claim of possible future conflict was not sufficient. The district “failed to produce adequate evidence to establish, as a matter of law, that its interests in workplace efficiency outweighed Nichols’ First Amendment interest in associating with Blanck.”

**McArdle v Peoria Sch. Dist. No. 150, No. 09-1150 (C.D. Ill. Jun. 7, 2011):** This is another case regarding lack of protection for employee speech on subjects not of a public concern. McArdle was a principal in the Peoria School District. Her immediate supervisor, Davis, was the former principal of McArdle's school. Throughout her tenure as principal, McArdle had been the subject of numerous parental complaints regarding her conduct and performance, and was in the middle of a controversy with school officials regarding her performance. During that time, McArdle discovered some administrative and financial irregularities during the time Davis was principal. McArdle spoke with Davis about what she had found and Davis claimed that the issues had been cleared up during an audit. McArdle kept digging, and eventually Davis was charged with several felony counts in connection with those irregularities. Prior to the criminal charge, however, McArdle found out that the school board was planning to vote to terminate her. In response she e-mailed the superintendent and the board present the evidence which she had uncovered to date. She also filed a police report with local law enforcement. McArdle still was terminated and she filed suit alleging retaliation for her exercising her First Amendment rights. The court found the main issue to be "whether McArdle engaged in constitutionally protected speech and whether a reasonable factfinder could determine that her speech was the motivating factor behind her termination." The court turned to the United States Supreme Court decision in *Garcetti v Ceballos*, 547 U.S. 410 (2006) to determine that McArdle was not speaking as a private citizen for First Amendment purposes. Specifically, the court stated that "no reasonable jury could conclude the McArdle was acting as a private citizen when she discovered Davis' alleged criminal activity and reported this activity to District supervisors." Moreover, the court found that her speech was not on a matter of public concern, but was "a personal grievance in response to the District's announcement that it would be terminating her contract." Finally, as regarding whether the "speech" was the motivating factor for McArdle's termination, the evidence presented to the court showed that the decision to terminate had been made prior to McArdle's alleged exercise of her constitutional right to free speech; before her disclosure to school officials.

## **STUDENTS' RIGHTS**

**Doe v Clency, No. 09-201 (Me. Super. Ct. Apr. 1, 2011):** Does a transgendered student have the right to use a bathroom designated for the opposite sex? The Penobscot County Superior Court said not under the Maine Human Rights Act (MHRA). Susan Doe, a biologic male who self-identified as female, was allowed to use the girl's bathroom during elementary school. It only took one other little boy following Doe into the girl's bathroom for the issue to reach the media, at which time the superintendent ended that practice and had Doe use the staff bathroom. Doe's parents filed a complaint with the Maine Human Rights Council alleging violation of the MHRA. The Council found that the district had discriminated against Doe based on sexual orientation, whereupon the parents filed suit in Maine Superior Court. The court found that neither the wording of the MHRA or the internal regulations of the Council required such accommodation. The language in the relevant documents was limited to situations involving individuals with physical or mental disabilities, not for accommodations based on sexual orientation. The court could also find no Maine case law which would support a requirement of an affirmative duty to accommodate and individual's transgender status. The court also stated, "Nor is the court aware of any precedent-federal or state-implementing a rule that requires a place of public accommodation to reasonably accommodate a transgender person by specifically allowing that person to access and use the restroom facility of his or her 'gender identity or expression.'"



***Sanches v Carrollton-Farmers Branch Indep. Sch. Dist., No. 10-10325 (5th Cir. Jul. 13, 2011)***: This case was based on a dispute between two cheerleaders and the mothers of one of the cheerleaders and school district officials. As for the two cheerleaders, Sanches and J.H., there were incidents of bullying behavior, teasing, and name calling. J.H. was already a cheerleader. Sanches was trying out for the squad. Sanches mother expressed her concern that J.H. would keep Sanches from making the squad; that the tryouts would be fixed. Sanches did not make the squad, at which time her mother alleged sexual harassment of her daughter. The district investigated the complaints but found nothing. Ultimately a suit was filed in federal district court against the school district alleging violation of Title IX based on peer sexual harassment, violation of the Equal Protection Clause based on peer sexual harassment, retaliation for exercising Title IX rights, and retaliation for complaining about the harassment. Summary judgment was granted in favor of the school district on all four claims. The Fifth Circuit affirmed the lower court. As regarding the Title IX peer harassment claim, the court stated, “As a matter of law, J.H.’s conduct was not sexual harassment, it was not severe, pervasive, or objectively unreasonable, and the school district was not deliberately indifferent...the harassment must be more than the sort of teasing and bullying that generally takes place in schools...J.H.’s conduct may have been inappropriate and immature and may have hurt Sanches’s feelings and embarrassed her, but it was not severe, pervasive, and objectively unreasonable.”

***Layshock v Hermitage Sch. Dist., No. 07-4465 (3d Cir. Jun. 13, 2011)***: The Third Circuit has ruled that free speech rights were violated by a school district which disciplined a student for posting a parody My Space page from his home computer. The court said that the district’s actions could not be supported by the Supreme Court decision in *Tinker v Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S.503 (1969), because there was not a sufficient nexus between off-campus speech and possible disruption to the educational atmosphere of the school. Schools do not have the same control when students speak outside of school that they have when the speech occurs inside of school. Layshock had created a parody profile of his high school principal on his home computer. When news of parody became known, students began accessing it through school computers. Layshock was suspended and put in alternative education. In upholding the district court’s ruling, the Third Circuit stated that, “We do not think that the first Amendment can tolerate the School District stretching its authority into Justin’s grandmother’s home and reaching Justin while he is sitting at her computer after school in order to punish him for the expressive conduct that he engaged in there.” The court, however, failed to set parameters as to when school district authority could reach beyond “the schoolhouse gate.”

***J.S. v Blue Mountain Sch. Dist., No. 08-4138 (3d Cir. Jun. 13, 2011)***: A companion case to the Layshock case discussed above, in the instant case J.S. created a parody My Space profile of her principal on an off-campus home computer as well. J.S.’s parody was somewhat more vulgar and patently false. However, the court held that the appropriate nexus still did not exist to extend the disciplinary power of the school district to off-campus, after hours student speech. As in *Layshock*, the court also held that the United States Supreme Court decision in *Bethel School District v Fraser*, 478 U.S. 675 (1986) did not apply to student speech that occurred off-campus. The court explained that, while it recognized the “comprehensive” authority of the public schools over students, that authority was not “boundless.” The court stressed that students retain free speech rights in school, even if those rights have been limited by decisions in *Fraser*, *Hazelwood*, *Tinker*, and *Morse*. The court pointed out that, “the profile was so outrageous that no one could

have taken it seriously, and no one did. . . it was clearly not reasonably foreseeable that J.S.'s speech would create a substantial disruption or material interference in school."

***Karalyos v Bd. of Educ. of Lake Forest Comm. High Sch. Dist. 115, No. 10 C 2280, March 9, 2011***: This case rose out of a spinal injury suffered by a student attending a swimming and diving program at Lake Forest High School. The school district filed a motion to dismiss asserting immunity under the Illinois Tort Immunity Act. (ILTIA). The district court denied the motion to dismiss. It started its review with a finding that the Illinois Supreme Court imposes a common law duty of reasonable care upon the school district. Looking to the specific provisions of the ILTIA, the court found that the school official's act – instructing the student to dive – was not a discretionary policy decisions that would be protected by the discretionary immunity doctrine in the ILTIA. In order to be discretionary, there is a need to balance competing interests. The instruction to dive, even when such instruction was against stated policy, did not require a balancing of competing interests therefore was not a policy decision that could be considered discretionary. The school had not alleged that the accident was caused by the condition of the pool itself. By the facts plead by the plaintiff; the court found that there was "willful and wanton" conduct, which is required for liability under the ILTIA. The ILTIA defines willful and wanton conduct as "a course of action which shows actual or deliberate intention to cause harm or which, if not intentional, shows an utter indifference to or conscious disregard for the safety of others or their property."

***State of Washington v J.M., No. 64699-1-1 (Wash. App. Ct. May 23, 2011)***: Fry was the SRO at Robinswood High School. One morning he observed J.M. holding what appeared to be a bag of marijuana. J.M.'s backpack was beside him. As Fry approached J.M. he could smell marijuana. He seized both the baggie and the backpack and took J.M. to the Dean of Students. After arresting J.M., Fry tried to search the backpack but it was padlocked. Fry retrieved the key from J.M.'s pocket and upon searching the backpack found an air pistol. J.M. was arrested, charged with possession of marijuana and a dangerous weapon, and was convicted on both counts. J.M. appealed the appropriateness of the search, stating that as a SRO, Fry was not a "school official" at the time of the search and therefore need probable cause to search the backpack. In upholding the conviction, the appellate court found that Fry, working in his capacity as an SRO was a school official and therefore only needed reasonable suspicion to search J.M.'s backpack. The evidence supported Fry's reasonable suspicion. Determining whether an SRO is a school official was a case of first impression for the court so it looked to precedent in Illinois and Indiana where such precedent existed. Among the deciding factors in the instant case is that Fry was acting under his authority as SRO, and his main concern was maintaining a safe, secure, and orderly learning environment. Once it was decided that Fry was a school official, and that he did have the requisite reasonable suspicion, the court went on to enumerate the four factors in determining the reasonableness of a search: (1) the student's age, history, and school record; (2) the prevalence and seriousness of the problem in the school to which the search was directed; (3) the probative value and reliability of the information justifying the search; and (4) the exigency to make a search without delay.

***M.K. v Delaware Valley Sch. Dist., No. 11-434 (Pa. Ct. Comm. Pl. July 21, 2011)***: Delaware Valley School District policy requires all middle and high school students who either participate in extracurricular activities or drive their car to school, to submitted to random suspicionless drug testing. The parents of two students refused to sign the consent form for the testing. When

their children were barred from extracurricular activities, they filed suit alleging a violation of their Fourth Amendment rights to be free from unreasonable searches and seizures. The Court of Common Pleas granted the parent's request for an injunction from enforcing the district suspicionless drug testing policy. To grant an injunction, the parents were required to show: (1) that the injunction was necessary to prevent immediate and irreparable harm; (2) that the injury resulting from refusing the injunction would be greater than from granting the injunction; (3) that the injunction would restore the status quo; (4) a likelihood of success on the merits; (5) that the injunction is reasonably suited to abate the offending activity; and (6) that the injunction would not adversely affect the public interest. In granting the preliminary injunction, the court relied on the Pennsylvania case of *Theodore v Delaware Valley Sch. Dist.*, 836 A.2d 75 (Pa. 2003) which stated that, before instituting a random suspicionless drug testing policy, a school district must show a specific need for such a policy. The court noted that the school district had provided no data on drug use in the district, and failed to show a drug problem in either the school or the community. The court also was not convinced that the random suspicionless drug testing policy had been shown to be an effective method of deterring drug use within the school district, if such use existed.

***Kolwalski v Berkeley County Sch., No. 1098 (4th Cir. Jul. 27, 2011):*** On her home computer, Kolwalski created a MySpace page which consisted primarily of a chat group. She named the chat group S.A.S.H., and acronym for Students Against Sluts Herpes. She invited about 100 classmates to join so that they could freely post items to the site. It quickly became apparent that the target of the site was to attack a fellow student, S.N. When S.N. and her parents learned of the website, they reported it to the school and asked that the site be shut down and disciplinary actions be taken. After an investigation, Kolwalski was given a 10-day suspension and barred from extracurricular activities for a period of time for violating the district policy against bullying. Kowalski filed suit alleging a violation of her First and Fourteenth Amendment rights. The court granted the school district's motion to dismiss. On appeal, the court granted the school district's motion for summary judgment. In deciding whether Kolwalski's off-campus speech lay outside of the reach of the school district, the court found *Tinker v Des Moines Indep. Community Sch. Dist.*, 393 U.S. 502 (1969) to be controlling. It found *Tinker's* language supported the school district's ability to regulate all student speech that was disruptive and caused interference with the administration of the school. Because this speech fell under the definition of student-on-student harassment and bullying, such speech was immediately of a legitimate concern of the public school and disruptive to the educational environment. The claim that the speech, regardless of nature, was protected by the First Amendment because it was done off-campus ignored the reality of the Internet. Anything posted on the Internet, regardless of the physical location of the individual making the post, "could reasonably be expected to reach the school or impact the school environment." The court acknowledged, however, that its ruling was very narrow and did not reach the question of whether the vulgarity standard established in *Bethel Sch. Dist. No. 403 v Fraser*, 478 U.S. 675 (1986) given the recent ruling in *Layshock v Hermitage Sch. Dist.*, No. 07-4465 (3d Cir. 2011). The court found further support for its decision in *Doninger v Niehoff*, 527 F.3d 41 (2d Cir. 2008), "Other courts have similarly concluded that school administrators' authority to regulate student speech extends, in the appropriate circumstances, to speech that does not originate at the school itself, so long as the speech eventually makes its way to the school in a meaningful way."