ILLINOIS STATE
UNIVERSITY

Voume 32, No. 5
September 2012

ILLINOIS STATE EDUCATION LAW AND POLICY JOURNAL

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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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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.

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Special Education

***Ridley Sch. Dist. v M.R.,* 680 F. 3d 260 (3d Cir. 2012):** When E.R. was in kindergarten, her parents asked that she be evaluated for special education services. The school district performed several evaluations throughout E.R.'s kindergarten year at the request of her parents, and while E.R. was put in an extended-day kindergarten and given a Section 504 Service Agreement to provide OT services to address her severe allergies, it was determined that she was not eligible for special education services as her disabilities were not affect her academic performance. E.R. was re-evaluated in first grade and was found to be eligible for services. Two placements were offered the parents: a learning support room at her current elementary school, Grace Park, or a self-contained classroom at a different school. The parents did not think either was appropriate. From that point on, relationships deteriorated with the parents not signing off on any services suggested by the school. Finally, the parents informed the school that E.R. would be attending the Benchmark School, a private school specializing in students with learning disabilities, for second grade. At the end of E.R.'s first semester at the Benchmark School, her parents filed a due process complaint alleging that Ridley School District violated the IDEA and Section 504 by failing to timely identify E.R. as a child in need of special education services, failing to provide FAPE, and failing to adhere to the Section 504 Services Agreement. The parents asked for both compensatory education as well as reimbursement for tuition and transportation costs incurred by E.R.'s enrollment at the Benchmark School.

The Hearing Office found that the school district had not committed any violations during E.R's kindergarten year, but that the IDEA and Section 504 had been violated during first grade and the proposed IEPs for first and second grade were inadequate and denied E.R. FAPE because they "lacked appropriate, specially designed instruction in the form of a research based, peer reviewed reading program." Oddly enough, both the parents AND the school district were upset with the ruling. The school district filed a petition for review of the entire decision. The Parents challenged the Hearing Officer's conclusion that no violation had occurred during the kindergarten year and raised additional claims. The district court affirmed the decision that there were no violations during the kindergarten year, but reversed the Hearing Officer and found that there were also no violations during first and second grade either. The school district's motion for judgment on the administrative record was granted. Now just the parents appealed arguing (1) that the burden of proof was improperly placed on them to demonstrate that the school district violated the IDEA; and (2) that the district court erred in reversing the Hearing Officer decision.

The Third Circuit affirmed the district court's decision that the school had not violated the IDEA and that the parents were not entitled to relief. The court held that the party challenging the administrative decision bore the burden of persuasion on appeal to federal district court. In the instant case, however, even though the burden was mistakenly placed on the parents, such error was harmless and was not grounds for reversal because it was unlikely that it affected the outcome of the case. As regarding the issue of whether the school district failed to identify the child as a child in need of special education in a timely manner, the court pointed out that in the "child find" section of the IDEA, although there is a burden to "identify and evaluate," neither the IDEA, it implementing regulations, nor state law, provided a deadline by when the identification must be made. Using a "reasonable time" standard, the court found that the school district had acted appropriately and in a timely manner. Looking to the IEP, the court found that the IEP, though perhaps containing procedural mistakes, was not substantively flawed; that the reading program chosen was "reason-

ably calculated to enable E.R. to receive meaningful educational benefits in light of her intellectual potential." FAPE was not denied. Nor was she excluded from participation, denied educational benefits, or otherwise subjected to discrimination, such as to violate Section 504.

***Latham v Bd. of Educ. of the Albuquerque Pub. Schs.,* No. 11-2217 (10th Cir. July 12, 2012):** Latham was a substitute teacher for the Albuquerque Schools. She was a long term asthma sufferer. She had a registered service dog, Bandit, to help her with her chronic asthma. She brought Bandit with her to school when she was scheduled to teach. The school district told her she could bring Bandit with her and she filed a discrimination charge against the school. The New Mexico Human Rights Division issued a "Determination of Probable Cause" that the school district had discriminated against Latham because of her disability. She brought Bandit back to school. The school district suspended Latham for one week. Latham filed suit in state court alleging discrimination and retaliation. The schools district removed the case to federal court and moved for summary judgment on the discrimination claim. Based on its review of the evidence, the district court found that Latham was not disabled under the ADA or the Rehabilitation Act. Since she wasn't disabled under federal law, she was also found to not be disabled under the New Mexico law which was based off of the federal law. Latham appealed. The Tenth Circuit panel affirmed the district court's grant of summary judgment in favor of the school district. The basis of Latham's suit was that she should have had her case reviewed under new rules, effective 2009, which redefined "disabled" under the ADA. Her injury, however, happened in 2008. The court stated that the New Mexico courts "have overwhelmingly adopted the view that the ADAAA does not apply retroactively. Therefore, the rules in affect at the time of Latham's injury were the appropriate rules to use.

***Klein Indep. Sch. Dist. V Hovem,* No. 10-20694 (5th Cir. Aug. 6, 2012):** Hovem was born in Norway but moved to Texas as a child. Although very intelligent, he had difficulty with written expression as well as showing symptoms of ADD. He was provided with an IEP to address those disabilities. Things went fairly smoothly until his junior year in high school when he was unable to past the written portion of the state-mandated TAKS test. His parents became concerned about his ability to perform college-level work, so they had him reevaluated and began looking into the Landmark School in Boston which specialized in educating students like Hovem. Because the Landmark School would not accept him if he had already graduated from high school, he dropped a class at school so that he had insufficient credits to graduate and enrolled in Landmark school. Hovem and his parents filed a claim under the IDEA alleging the failure of the school district to provide FAPE and seeking reimbursements of the costs of sending Hovem to Landmark School. The Hearing Office found that Hovem had been denied FAPE because of a lack of appropriate transitional services in his IEP. Hovem's parents were awarded reimbursement for their costs of sending Hovem to Landmark. The district court affirmed the denial of FAPE, but reduced the award to just reimbursement for tuition, but not residential costs. The school district appealed. On appeal to the 5th Circuit, a majority reversed the lower court finding that the school district had complied both procedurally and substantively with the IDEA. The court clarified that "educational benefit" should not be defined, as the lower court had, as "correcting or remediating a child's disability," but should be defined by examining the overall academic record and educational experience.

The court looked to the case of *Cypress-Fairbanks Independent School District v Michael F.,* 118 F.3d 245 (5th Cir. 1991) where the court had listed four factors that should be examined

when determining educational benefit: (1) whether the program was individualized on the basis of the student's assessment and performance; (2) whether the program was administered in the least restrictive environment; (3) whether the services were provided in a coordinated and collaborative manner by the key "stakeholders"; and (4) whether positive academic and non-academic benefits were demonstrated. In applying these criteria to the instant case, the court found that Hovem's IEP was individualized, including a transition plan, that was including mainstreaming, full participation by all stakeholders, and positive benefits as Hovem eventually enrolled in college.

***Ebonie S. v. Pueblo Sch. Dist. 60,* No. 11-1273 (10th Cir. Aug. 28, 2012):** Ebonie suffered from multiple disabilities. She was in a special classroom which contained special U-shaped desks designed with a wooden bar across the back to prevent the student from exiting the desk by pushing the chair out. Ebonie's mother filed suit claiming that the use of the desk violated Ebonie's constitutional rights, violation of the ADA and the Rehabilitation Act. The district court granted summary judgment to the school district on the constitutional issues but found that the ADA and Rehabilitation Act merited consideration by a jury. She appealed the summary judgment. On appeal, the Tenth Circuit affirmed the lower court's decision as to the constitutional claims. "[In order to] qualify as a seizure in the school context, the limitation on the student's freedom of movement must significantly exceed that inherent in every-day, compulsory attendance." Since the desk in question did not create that type of restriction, there was no seizure under the Fourth Amendment. The desk did not remove her from the classroom. She had the ability to remove herself from the desk's restraints. The restraints were not attached to her body. "In light of our conclusion that the restrictions placed on Ebonie did not substantially exceed those inherent in compulsory education, we conclude that Ebonie's liberty interest in freedom from bodily restraint was not implicated. Just as the Fourth Amendment allows restrictions in the school setting that would be untenable elsewhere, Due Process rights cannot be triggered by every time-out and after-school detention."

Equal Protection

***Hispanic Interest Coalition of Alabama (HICA) v Alabama,* Nos. 11-14535, -14675 (11th Cir. Aug. 20, 2012); *United States v Alabama,* Nos. 11-14532, -14674 (11th Cir. Aug. 20, 2012):** The Beason-Hammon Alabama Taxpayer and Citizen Protection Act was enacted to discourage illegal immigration within the state and maximize enforcement of federal immigration laws through cooperation with federal authorities. It provided for a process for schools to collect data about the immigration status of students who enroll in public school. Before it became effective it was challenged in federal district court. Both HICA and the USA moved for an injunction on the basis that the state law was preempted by federal law. The district court denied the motion for preliminary injunction finding that no one in HICA had standing. The Equal Protection issue was not reached. As regarding the USA, the district court denied the preliminary injunction finding that the United States would likely not prevail on its preemption challenge. Both side appealed. The HICA and the USA contested the denial of the preliminary injunction of Section 28 of the law. On appeal, the Eleventh Circuit reversed the district court and remanded it for entry of a preliminary injunction. Basically, in the war of injunctions, the Eleventh Circuit concluded that at least one organization within HICA was likely to succeed on its Equal Protection challenge to Section 28 of the law. The United States preemption question was never reached. The court rejected that argument that Section 28 was merely a data gathering clause, not implicating

the Equal Protection right of any individual therefore not open to heightened scrutiny. To support its conclusion, the court referred to the United State Supreme Court case of *Plyer v Doe,* in which the Court identified the "fundamental role [of education] in maintaining the fabric of our society … "requiring a heightened justification—substantial interest of the state—in order to sustain the debilitating effects that a lack of education can have on the specific community of individuals affected by the law and the country as a whole." To require children in the country illegally to produce proof of their immigration status would work as a deterrent for children to enroll in school. Because that fact would go against their rights as stated by the Supreme Court in Plyler, the state would have needed to show a compelling state interest to allow that contravention of those rights; not just provide a rational basis.

Free Speech

***Webber v First Student, Inc.,* No. 11-3032 (Aug 2, 2012):** Webber was a bus drive for First Student, Inc. While bus drivers are driving their routes, they park their cars in an employee lot at a particular facility owned by the school district with which First Student is under contract. The truck that Webber drove to work, and parked in the designated lot, had a confederate flag affixed to an antenna in the bed of the truck. This was the case for seven months until the superintendent of the school district visited the facility and saw Webber's truck. He asked that the flag be removed when Webber was parked in the lot because of past race-related student disputes at the school. Webber refused to remove the flag. He asked to see the school policy that forbid him from having the flag. This went back and forth, but ultimately Webber was suspended for one day. He was asked to take it down or park somewhere other than in the lot. Webber refused and he was suspended for 3 days. He was asked again to remove the flag. When he refused he was fired. Webber sued claiming violation of his First Amendment right to free speech. The school district and First Student moved for summary judgment. Summary judgment relies on that no material facts are in dispute. To state a claim for violation of First Amendment rights under Section 1983, Webber need to show that the action of firing was done under the color of state law since First Student, Inc. is a private employer. To meet this burden, Webber was unable to show that First Student was providing a public function (i.e. providing a service that is traditionally and exclusively provided by the state) or that there was a governmental nexus between First Student's decision to terminate Webber and the school district whose bus Webber drove. As far as the compulsion test and the joint action test, the court found that there was a dispute of material facts sufficient to deny summary judgment. To succeed under the "compulsion" test, Webber would have to show that First Student's decision to ask him to take down the flag and ultimately terminate him was sufficient linked to a state law or policy which was the driving force behind First Student's decision. Under the "joint action" test, Webber would need to show that there was sufficient agreement between the action of First Student and the action of the state; that they were acting as one.

To determine whether Webber's freedom of speech was violated, the court looked back to the criteria set forth in the United States Supreme Court decision in Pickering. The magistrate there was a question of material fact as to whether Webber's flying of the Confederate flag conveyed a message of public concern. Since Webber only displayed the flag on his private vehicle left parked in the lot, the magistrate found that the speech was attributable to Webber solely as a private citizen. He was suspended for not taking down his flag; not censoring his speech. The

magistrate rejected the school district's conclusion that under the substantial and material disruption test espoused by the Supreme Court in *Tinker v Des Moines Independent Community School District,* 393 U.S. 503 (1969), because under the recent Ninth Circuit case of *Johnson v Poway Unified School District,* 658 F.3d 954 (9th Cir. 2011) the *Tinker* standard applies only to in-school speech of students. Since Webber was neither in school nor a student, the Tinker standard did not apply. First Student and the school district "failed to show that Webber's speech actually disrupted or could reasonably be predicted to disrupt the workplace or otherwise interfere with the efficiency and integrity of their respective duties. Therefore, as a matter of law, neither have established that their legitimate administrative interest outweigh Webber's First Amendment rights." The magistrate recommended to the district court that the school district's and First Student's motion for summary judgment should be denied.

***Child Evangelism Fellowship of Minn. V Minneapolis Special Sch. Dist. No. 1,* No. 11-3225 (8th Cir. Aug. 29, 2012):** Child Evangelism Fellowship (CEF) conducted weekly "Good News Clubs" for children ages 5–12 typically at public schools after the school day. CEF received a permit from the Minneapolis Special School District (MSSD) to hold meetings at one of its elementary schools. Five years later, MSSD rewrote their policies regarding community access to its facilities for after school activities. Under the new policy, groups wishing to use the facilities had to apply to become a "Community Partner" which would give access to the facilities. Then, a sub-set of these Community Partners would become part of the "after school enrichment program." By statute, the enrichment program was designed to encourage social, mental, physical, and creative abilities, promote leadership development and improve academic performance. CEF became a community partner and part of the enrichment program. The newly hired site coordinator became concerned about the "prayer and proselytizing" and removed it from the enrichment program. CEF meeting attendance decreased greatly. CEF filed suit seeking injunctive and declaratory relief on the basis that its removal from the enrichment program violated free speech and equal protection under the First and Fourteenth Amendment. The district court denied CEF's motion. On appeal, the Eighth Circuit panel reversed, finding that MSSD had engaged in impermissible viewpoint discrimination. It had removed CEF from the enrichment program because of the content of its speech without showing a compelling state interest which would arguably allow such restraint. It rejected the district court's conclusion that the compelling state interest was to avoid violation of the Establishment Clause. Because MSSD's policy on after-school programs states that participants are "non-school" and non-district-sponsored organizations, the speech of those organizations is private rather than state sponsored speech. "Given that the content of the CEF meetings was not government speech, MMDS had no compelling interest in avoiding an Establishment Clause violation, and there is no other basis upon which it can justify its viewpoint discrimination."

Board of Education

***Doe-3 v McLean Cnty. Unit Dist. No. 5,* Nos. 112479/112501 (Ill. Aug. 9, 2012):** Jon White was employed by the Urbana School District as a teacher. While there, he sexually abused two female students, was tried, and is now in prison. Prior to working at Urbana, White and been an elementary teacher at Unit 5 School District in Normal. White had been disciplined while at Unit 5 for sexual misconduct. He ultimately entered into a severance agreement with Unit 5. Plaintiffs sued Unit 5 on the theory of respondeat superior, that Unit 5 acting willfully and

wantonly by providing false information. They claim that White was "passed" to Urbana by Unit 5 while concealing his past sexual misconduct by intentionally giving Urbana false information regarding White's employment. Included in this information was a positive letter of reference which was alleged to have been part of the severance agreement which White had with Unit 5 as well as falsifying a Verification of Employment form so as to not show that he was terminated prior to the end of the academic year. The trial court dismissed the lawsuit on the ground that Unit 5 owed no legal duty to the students. The appellate court reversed the trial court, finding that Plaintiffs adequately alleged that Unit 5 owed them a duty of care either through voluntary undertaking through the positive letter of reference or negligent misrepresentation through the falsified employment form. The Illinois Supreme Court affirmed the appellate court, and remanded the case for further proceedings, however the court's decision on different grounds. The court did not find a duty based on failure to warn, failure to report White's conduct to the appropriate state agency, or through sending a false letter of recommendation. "In the instant case, plaintiffs' claims are not based on the tort of fraudulent misrepresentation or negligent misrepresentation, but on willful and want conduct. . . whether the misstatements on the verification form gave rise to a legally recognized duty to plaintiffs here depends upon the 'relationship' between the parties, that is, the reasonable foreseeability of the injury, the likelihood of the injury, the magnitude of the burden of guarding against the injury, and the consequences of placing the burden on MCUD5." In the view of the court, if a teacher sexually abuses students in one school, it is reasonably foreseeable that he or she will sexually abuse children in another school. "Having undertaken the affirmative act of filling out White's employment verification form, MCUD5 had a duty to use reasonable care ensuring that information was accurate." As regarding whether the Tort Immunity Act precluded the Plaintiff's claims, the majority found that it did not apply because the allegation of the Plaintiff was not that Unit 5 failed to protect them, as required under the Tort Immunity Act. The liability of Unit 5 came from the common law doctrine of negligence. A previous employer "is obliged to use reasonable care in passing along whatever information it chooses to give regarding the former employee's character when so asked if the employee presents a risk to third parties."

***R.K. v Board of Educ. of Scott Cnty.*, Nos. 11-5070/11-5700 (6th Cir. Aug. 16, 2012):** At four years old, R.K. was diagnosed with Type I diabetes. When his parents enrolled him in kindergarten at their neighborhood school, they informed the school that he would need insulin injections during the school day. They were told that there was no full-time nurse at this school so R.K. would need to attend a different school where there was a full time nurse. R..K.'s parents filed suit alleging that R.K.'s assignment to a different school was discrimination in violation of Section 504, the ADA, and the Fourteenth Amendment Due Process and Equal Protection Clause. While the suit was pending, R.K.'s parents informed the school that R.K. was now using an insulin pump so would no longer need injections and that a non-nurse could be trained to assist R.K. with monitoring the pump and counting carbohydrates. They requested that R.K. be returned to his neighborhood school. The school district refused to do so saying that Kentucky law required that such monitoring of insulin pumps were required to be done by a nurse. The district court granted summary judgment to the school district stating that the accommodations provided by the district were not shown to have prevented R.K. from receiving an adequate and beneficial education. The parents appealed.

The Sixth Circuit affirmed summary judgment in favor of the superintendent but vacated the summary judgment in favor of the school board. As regarding the superintendent, the court

found that nothing in the filed complaint supported a cause of action against the superintendent. As regarding the school board, the court found that the lack of factual underpinnings to support its decision for summary judgment was reversible error, "especially because the paucity of facts in the record shows that genuine issues of material fact are in dispute with respect to how the Board decided to assign R. K. to the second school rather than his neighborhood school, and why it denied a subsequent request to transfer him." The court remanded the case to the district court with specific instructions as to the facts that the parties should seek in discover. "Without such facts, resolution of the complicated, fact-intensive inquiries involved in an ADA or Section 504 case would be impossible."

***Doe v Wood Cnty. Bd. of Educ.,* No. 12-4355 (S.D. W. Va. Aug, 29, 2012):** Van Devender Middle School (VDMS) began a single-sex program for its sixth graders in 2010–11. The program was expanded to the seventh grade in 2011–12 and will include the eighth grade in 2012–13. The ACLU sued the school district alleging that the single-sex classes violated the Equal Protection Clause of the Fourteenth Amendment and Title IX asking for a temporary restraining order (TRO) and a preliminary injunction. The TRO was denied. The preliminary injunction was granted in part and denied in part. The court agreed that the "opt out" option in the plan did not satisfy the Title IX requirement that the program be "completely voluntary." The court, however, denied the request that the district should be barred from putting the program in place. The court found that the district could initiate a single-sex program so long as it required an affirmative assent by parents or guardians before placing children in such programs. The court stated that it was not deciding the question of whether single-sex classes violate the Equal Protection Clause.

***N.R. Doe v St. Francis Sch. Dist.,* No. 12-1039 (7th Cir. Sept. 10, 2012):** Sweet was a 26-year old middle school teacher employed by the St. Francis School District. She pursued one of her 8th grade students to be her boyfriend. He came to her apartment where they engaged in kissing, but no further physical contact. The boy's mother found some of their texts and Sweet was eventually fired. Prior to this final incident, however, the Superintendent had already interviewed several eighth grade teachers about improper behavior. Although the teachers had "seen" things, there was no hard evidence that anything illegal had occurred. The student filed suit in federal district court against the school district and Sweet. The district court granted summary judgment to the school district. On appeal the Seventh Circuit affirmed the lower court's decision, focusing its analysis on whether actual knowledge of sexual abuse had been demonstrated. Although the administration had its suspicion, it was not shown that they any actual knowledge prior to the culminating incident. "To know someone suspects something is not to know the something and does not mean the something is obvious." In other words, just because the student's mother found out that the administration was suspicious that something was going on is not the same as proving that the administrators had actual knowledge of actual illegal acts.

***Jefferson Cnty. Bd. of Educ. v Fell,* No. 2011-658 (Ky. Sept. 20, 2012):** This is a continuation of the prior case *Parents Involved in Community Schools v Seattle School Dist. No. 1,* 551 U.S. 701 (2007) where the United States Supreme Court struck down the Jefferson County Public School's (JCPS) race-conscious student assignment plan. JCPS developed a new plan that did not take race into account when assigning students to schools. Although parents could list their neighborhood school as one of their four choices, there was no guarantee that they would be assigned to that school. Parents who were not assigned to their neighborhood school filed suit claiming that the school district was in violation of the requirement that parents would be per-

mitted to enroll their children in the public school nearest their home. JCPS filed a motion to dismiss. The trial court granted the motion stating that the right to enroll was not the same as the right to attend. On appeal the Kentucky Court of Appeals found that the JCPS plan violated the plain language of the law. The court read the law as mandating that parents had the right to have their children attend their neighborhood school. It said the "enroll" was interchangeable with "attendance." In a 5-2 split, the Kentucky Supreme Court found that the words "enroll" and "attendance" were not synonymous and reversed the appellate court, reinstating the trial court's dismissal of the case. The court found the law in question to be ambiguous, so it turned to the legislative history. In 1976 the law had been amended to add the phrase "for attendance," which "unequivocally granted the 'enroll for attendance' right which Plaintiffs claim continues to exist." After a 1990 amendment, however, that language had been removed. The fact that the General Assembly by an affirmative act removed that wording, and later attempts to reintroduce it were unsuccessful, would show intent by the legislature that "enroll" and "attend" were not interchangeable. "The assignment of pupils to schools within a school district is a matter our General Assembly has committed to the sound discretion of the local school board. If Plaintiffs seek change in the JCPS student assignment plan, their recourse is at the ballot box when members of the Jefferson County Board of Education are elected by the voters."

Student Rights

***State of Washington v Meneese,* No. 86203-6 (Wash. Aug. 2, 2012):** Fry was a law enforcement officer who had spent the last 15 years assigned to Robinswood High School as the School Resource Officer (SRO). It was his job to "create and maintain a safe, secure, and orderly learning environment for students, teachers, and staff through prevention and intervention techniques." His salary was paid, in part, by the school district. Fry found Meneese in possession of marijuana at school, confiscated the marijuana, and took Meneese and his backpack to the Dean of Students' office. Fry placed Meneese under arrest and called for backup to come take Menesse in for booking. While waiting for backup, Fry became suspicious that Meneese's backpack might contain more contraband because it was padlocked. Fry handcuffed Meneese and searched him for the key to the padlock. Upon finding it he opened the backpack. Inside he found an air pistol. Fry read Reneese his rights and charged him with unlawfully carrying a dangerous weapon at school and possession of a controlled substance. In court Meneese challenged the lawfulness of the search in which the air pistol was obtained. The question before the Washington Supreme Court was whether Fry was acting as a law enforcement officer or an employee of the school at the time he searched Meneese's backpack; did he need probable cause or just reasonable suspicion? The court concluded that "given the overwhelming indicia of police action, the 'school search' exception does not apply, a warrant supported by probable cause was required, and the weapon should be suppressed." Some of the facts that convinced the court that Fry was acting as a police officer and not a school official was that he had handcuffed Meneese before conducting the search, he was dressed in a standard-issue police uniform, he had no authority to administer school discipline, he had called for police backup, and his search did not further any education-related goals.

***Doe v Elmbrook Sch. Dist.,* No. 10-2922 (7th Cir. July 23, 2012):** For many years, Elmbrook School District has held their high school graduation ceremonies for two of its high schools at Elmbrook Church. The reason that graduation ceremonies were moved from the high school to

the church was that the student officers of the senior class of 2000 thought that the high school was too small, hot, and uncomfortable. The senior class voted and the church was chosen by the school principal. The superintendent approved. There is no argument that the church is "indisputably and emphatically Christian." In 2010 both high school moved their graduations to the district's newly completed field house but did not state that it would never go back to the church. Plaintiffs, all non-Christians, filed suit and moved for a preliminary injunction to bar the school district from holding the 2009 graduation ceremonies at the church. The district court denied the plaintiff's motion. Plaintiffs then sought a permanent injunction to bar the district from using the church or, in the alternative, to bar the district from using the church "unless all visible religious symbols were covered or removed." Plaintiff's motion was denied and the case was dismissed. On appeal a three-judge panel of the Seventh Circuit affirmed the district court. On a motion for a rehearing en banc, the Seventh Circuit vacated the panel's decision. On rehearing the court ruled that the school district violated the First Amendment Establishment Clause by conducting public school graduations in a church "that among other things featured staffed information booths laden with religious literature and banners with appeals for children to join 'school ministries." The court found such activity to convey a message of endorsement of a religion. "Displaying religious iconography and distributing religious literature in a classroom setting raises constitutional objections … the same problem attends pervasive displays of iconography and proselytizing material at a public secondary school graduation." The court saw such an environment as coercive when the school makes a decision which forces students to "attend a pervasively Christian proselytizing environment." Attendees of the ceremony were a captive audience; the only way to hold a minority view would be to leave the ceremony.

***G.D.M. v Board of Educ. of Ramapo Indian Hills Reg. High Sch. Dist.*, No. A-0953-10T1 (N.J. Super. Ct., App. Div. Jul. 24, 2012):** The high school adopted a rule that allowed the school board to deny participation in extracurricular activities based on students conduct off of school grounds. It was done in an effort to curtail student drug and alcohol use. A student and her parents refused to sign the consent form acknowledging receipt of the Handbook containing the policy. They challenged the policy alleging that it infringed upon their rights as parents to properly nurture, protect and punish their children. The parents were later informed that failure to sign the form would "likely" result in denial of access to the school district's on-line student information system. The parents filed a petition with the Commissioner of Education to invalidate the rule. The Commissioner ruled for the parent. On appeal, the district argued that the Commissioner had misapplied a two-prong test because it failed to take into account that the rule only applied to extracurricular activities which are a "privilege" rather than a "right." The parents argued in response that the Commissioner had ruled correctly because the rule in question authorizes a school district to discipline a student for conduct that occurs off school grounds, is unrelated to a school activity, and has no impact on the orderly administration of the school. The appellate court affirmed the Commissioner's finding that the rule was facially overbroad and exceeded the authority conferred upon boards of education by state law.

***Mathis v Wayne County Bd. of Educ.*, No. 11-5979 (6th Cir. Aug. 23, 2012):** 8th grade boy basketball players sexually harassed members of the 7th grade basketball team in the locker room. The harassment became increasingly physically aggressive, culminating with penetration with a marker. On October 26th , 2008 the coach learned about the incident but told no one while he investigated. On October 29th, Mathis' mother learned about the incident and

contacted the principal. The principal said that he could not take formal disciplinary actions until the Director of Schools returned from out of town. Basketball practice was cancelled for October 30 and 31. On November 3rd the students were suspended for ten days. They were placed in an alternative school, and suspended from the basketball team. On November 4th McGuire's mother met with the principal with concerns about the harassment in the locker room. From November 4th through 7th Mathis and McGuire were harassed at school, to the extent that McGuire removed her son from school concerned for his safety in light of the lack of action from the district. On November 7th parents met with the principal about the harassment. The coach was disciplined for not reporting the marker incident. On November 17th the district decided to reinstate the harassers to the basketball team on January 1, 2009. The Board of Education changed that date to December 1, at which time Mathis also removed her son from school. On July 14, 2009 Mathis and McGuire filed suit in federal court alleging that their sons were subjected to student-on-student sexual harassment. By the time the case went to trial, the only issue remaining was a Title IX issue. The school district moved for judgment as a matter of law, which was denied. The jury found in favor of the parents and awarded $100,000 each in damages. The school district appealed to set aside the jury verdict. On appeal, the court upheld both the verdict and the jury award. Under Title IX, an individual claiming student-on-student sexual harassment must establish that (1) the sexual harassment was so severe, pervasive, and objectively offensive that it could be said to deprive the plaintiff of access to the educational opportunities or benefits provided by the school; (2) the board had actual knowledge of the sexual harassment, and (3) the board was deliberately indifferent to the harassment. The court found that sufficient evidence has been presented that a reasonable jury could have come to the conclusion that it did.

Employee Rights

***Gschwind v Heiden,* No. 12-1755 (7th Cir. Aug. 31, 2012):** Gschwind was a middle school teacher in Harvard, Illinois. A student in his class performed a rap song as part of a class assignment which included lyrics about stabbing the teacher. This student had made threats of and engaged in physical violence before. The student's father's reaction was to threaten to sue Gschwind. The police liaison officer encouraged Gschwind to file a criminal complaint against the student for disorderly conduct. Under Illinois law a knowing threat of violence against a person at a school to be a form of disorderly conduct. Geschwind's administrators were not supportive of that action. After Geschwind filed the complaint he received an unsatisfactory evaluation. He resigned after being informed that he was going to be recommended for termination. Geschwind filed suit alleging that he was forced to resign because he recognized his freedom of speech. The district court granted the school district's motion for summary judgment on the ground that the speech in question did not involve a matter of public concern, therefore did not fall under the protection of the First Amendment. The Seventh Circuit panel reversed. They believed Gschwind's claim that his decision to file a criminal complaint (the speech involved) was in order to make the public aware of what was happening in the school's classrooms.

***Ross v Lichtenfeld,* No. 10-5275 (2d Cir. Sept. 10, 2012):** Ross was employed by the school as a payroll clerk typist. She spoke with the superintendent about payments to employees she believed were improper. This continued over a three-year period. After complaining to Superintendent Lichtenfeld that she was being retaliated against by other employees for reporting these improprieties. Lichtenfeld brought in a consultant from a neighboring district in an attempt to re-

solve these interpersonal matters among the staff. During this time it came to life that Ross had falsified her employment application. Ross was suspended with pay. Ross then went to a board member with the same information about inappropriate payments that she had taken to Lichtenfeld. A special board meeting was called and the board fired Ross. It realized it had failed to hold a pre-termination hearing as required first, so the board rescinded the vote, held the hearing, and then fired Ross again. Ross filed suit alleging retaliation. The Lichtenfeld and the school district moved for summary judgment. The district court denied the motion. On appeal to the Second Circuit the lower court was reversed, finding that Lichtenfeld was entitled to summary judgment because he was entitled to qualified immunity on the grounds that Ross's speech was not protected under the First Amendment. "Although Ross's speech was on a matter of public concern, it was made pursuant to her duties as a payroll clerk typist and is therefore not protected by the First Amendment." Part of Ross's job as a payroll clerk was to bring to the attention of the appropriate people mistakes with pay requisitions.

Recent Bill Action

Public Act 97-0827 amends the Open Meetings Act to require that the posted agenda sets forth the general subject matter of any resolution or ordinance that will be the subject of final action at the meeting. It also requires that the public body conducting the meeting ensure that at least one copy of the agenda for the meeting is continuously available for public review during the entire 48-hour period preceding the meeting. Posting on the website satisfies this requirement. Effective January 1, 2013.

Public Act 97-0819 designates November 14, of each year as Diabetes Awareness Day. Effective July 17, 2012.

Public Act 97-0910 requires school districts to make publicly available, by December 1, of each year, the student immunization data that the district is required to submit to the ISBE each year. Effective January 1, 2013.

Public Act 97-0803 expands the definition of the term "neglected child" to include any child who is subjected to an environment injurious to his or her health and welfare an defines "blatant disregard". Effective July 13, 2012.

The Governor has recently signed the following bills into law:

Public Act 97-0975 changes the definition of "chronic truant" in the Juvenile Court Act to be the same as the definition in the School Code. Effective August 17, 2012.

Public Act 97-0956 provides that "service animal" means a dog or miniature horse trained or being trained as a hearing animal, a guide animal, an assistance animal, a seizure alert animal, a mobility animal, a psychiatric service animal, an autism service animal, or an animal trained for any other physical, mental, or intellectual disability. The bill expands the definition of "service animal" and adds to the types of disabilities that would allow a student to use a service animal in schools. Effective August 14, 2012.

Public Act 97-1125 codifies property tax assessor practices to ensure that general homestead exemptions are being received properly in leasehold property situations. Effective August 28, 2012.

Public Act 97-0933 under the Illinois Municipal Retirement Fund (IMRF) statute, removes obsolete Social Security procedures, including clarifying that taxes levied for IMRF purposes can only be used for IMRF employer contributions. It extends from 90-180 days for election of an optional form of retirement benefit. Effective August 10, 2012.

Public Act 97-0964 provides that a public body may make required notifications regarding revisions in the prevailing wage rate by inserting in the written contract a stipulation that states the revised prevailing wage rates are available on the Department of Labor's website. Effective January 1, 2013.

Public Act 97-0972 provides that if an individual has been diagnosed as having an autism spectrum disorder, meeting the diagnostic criteria in place at the time of diagnosis, and treatment is determined medically necessary, then that individual shall remain eligible for coverage under the provision concerning autism spectrum disorders even if subsequent changes to the diagnostic criteria are adopted by the American Psychiatric Association. Effective January 1, 2013.

Public Act 97-1078 liability insurance policies issued or renewed on and after January 1, 2013 shall comply with the following: (1) any vehicle that is used for a purpose that requires a school bus driver permit and is used in connection with the operation of private day care facilities, day camps, summer camps, or nursery schools shall carry a minimum of liability insurance in the amount of $1,000,000 combined single limit per accident; (2) all other vehicles which are used for a purpose that requires a school bus driver permit shall carry a minimum of liability insurance in the amount of $2,000,000 combined single limit per accident; and (3) any commuter van or passenger car used for a for-profit ridesharing arrangement shall carry a minimum of liability insurance in the amount of $500,000 combined single limit per accident. Effective August 24, 2012.

Public Act 97-1087 amends the Property Tax Extension Limitation Law (PTELL). It specifies that the approximate amount of the tax extendable, as stated on the referendum question submitted to impose a new or increased limiting rate, shall be calculated by multiplying $100,000 by (i) the percentage level of assessment prescribed for that property by statute, or by ordinance of the county board if applicable; (ii) the most recent final equalization factor certified to the county clerk by the Department of Revenue; and (iii) either the new rate or the amount by which the limiting rate is to be increased. Effective August 24, 2012.

Public Act 97-1025 significant changes regarding drivers' education, including:

- requires drivers' education vehicles used by public high schools to undergo an annual safety inspection if the cars are over five years of age or have over 75,000 miles on the odometer;
- requires school districts to post information about mandate waiver hearings on their websites, as well as posting the notice in the newspaper. If the mandate waiver requests an increase in the district's drivers' education fee, the amount of that increase must be included on the website and in the newspaper notice;
- requires school districts requesting a waiver to contract with a private company to provide drivers' education services, to provide evidence that the commercial driver training school employs instructors who hold valid teaching certificates;
- requires the ISBE to adopt standards for drivers' education; and

- requires the ISBE to annually report the approximate per capita drivers' education cost for each school district.

Effective January 1, 2013.

Public Act 97-1124 amends the State Commemorative Dates Act to designate the third Thursday in May of each year as Volunteer Emergency Responder Appreciation Day. Effective August 27, 2012.