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IN THIS ISSUE

RELIGION AND EDUCATION	<i>page 36</i>
STUDENTS' RIGHTS	<i>page 37</i>
ADMINISTRATION	<i>page 37</i>
EMPLOYEE RIGHTS	<i>page 38</i>
SPECIAL EDUCATION	<i>page 39</i>
LEGISLATION	<i>page 39</i>

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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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RELIGION AND EDUCATION

Freedom From Religion Found v Connellsville Area Sch. Dist., No. 12-1406 (W.D.Pa. Mar. 7, 2013): Since 1957 a stone monument containing numerous religious and secular inscriptions, including the Ten Commandments, has stood outside the front entrance of the Connellsville Area Junior High School. The Freedom From Religion Found (FFRF) filed suit alleging that the monument violated the Establishment Clause of the First Amendment. It sought an injunction ordering the school district to remove the monument. CASD, citing *Van Orden v Perry*, 545 U.S. 677 (2005) as precedent, moved for dismissal. *Van Orden* was the United States Supreme Court case that upheld a similar monument on the grounds of the Texas State Capitol. The district court denied CASD's motion to dismiss. In its opinion, the court opined that the numerous First Amendment "tests"—The *Lemon* Test, the endorsement test, the coercion test, and the legal judgment test—had created confusion on the subject. In the end, the court stated that all "Establishment Clause challenges are unique and driven by the particular facts of the case," so therefore a motion to dismiss was inappropriate at this time; the case should continue to the discovery phase so that the "particular facts" could be determined.

K.A. v Pocono Mountain Sch. Dist., No. 12-1728 (3d Cir. Mar. 12, 2013): K.A. was an elementary student who wanted to distribute flyers to her classmates promoting the Christmas party at her church. She was informed that school policy required that non-school related flyers had to be approved by the superintendent. K.A.'s flyers were not approved by the superintendent. K.A.'s father filed a lawsuit alleging that the school district had violated K.A.'s First and Fourteenth Amendment rights by failing to approve her flyer, and requested a preliminary injunction to allow the flyers to be distributed. The district court granted the preliminary injunction after concluding that K.A. would likely prevail on the merits of her case because the school district could not "articulate a specific and significant fear of disruption if K.A. was allowed to pass out her flyers." On appeal, the Third Circuit affirmed. The court agreed that *Tinker v Des Moines*'s Material and Substantial Disruption test was the appropriate standard of review, not a forum analysis as had been argued by the school district. According to the court, *Tinker* applied to student speech, while forum analysis applied to speakers from outside the school. The question did arise as to whether the *Tinker* test applied to elementary schools. Looking at its prior decisions the court concluded that "prior precedents seem to recognize that the *Tinker* test has the requisite flexibility to accommodate the age-related developmental, educational, and disciplinary concerns of elementary school students." The court also noted that other recognized exceptions to *Tinker*—the *Bethel* obscenity exception, the *Kuhlmeier* school-sponsored speech exception, and the *Morse* illegal drug use exception—did not apply because the school district in the instant case had shown no such vital interest in regulation of student speech. "[The regulation is] broader than what is allowed under *Tinker* and its progeny, which state that student expression can be regulated only if it causes disruption or interferes with the rights of others, or if it falls into one of the narrow exceptions to this rule (i.e. it is lewd, it promotes illegal drug use, or it is school-sponsored)."

STUDENTS' RIGHTS

Burlison v Springfield Pub. Sch., No. 12-1382 (8th Cir. Mar. 4, 2013): The Eighth Circuit upholds the constitutionality of using drug-dog searches in public schools. C.M. was freshman at Central High School. In April, C.M.'s classroom was randomly selected to be searched by drug-sniffing dogs brought in by the County Sheriff's Department. Students were instructed to place their backpacks by their desks and exit the room. Prior to leaving, C.M. claimed to have zipped all of the pockets of his backpack. When C.M. returned he "felt like the pockets had been unzipped and stuff," even though the dogs had not alerted on anything in the room. His parents filed suit in federal district court alleging a violation of his Fourth Amendment rights by the school district. Both the Burlisons and the school district filed for summary judgment. The defendants, Springfield Public Schools, were granted summary judgment because the "written policies and procedures appear to be reasonable and not in any way a deprivation of a federal right." There was no individual liability for school employees because they did not conduct the search, nor had the backpack been seized. The parents appealed. The Eighth Circuit affirmed, holding that the conduct was part of a reasonable procedure to maintain the safety and security of the students.

A.M. Taconic Hills Central Sch. Dist., No. 12-753 (2d Cir. Jan. 30, 2013): A.M., co-president of the Taconic Hills Middle School, was scheduled to deliver a speech during the annual 8th Grade Moving Up Ceremony. When her speech was reviewed by the faculty advisor, she was told that she need to remove religious references or she could not give the speech. She removed the religious references, delivered the modified speech, and then filed suit in district court. The district court granted summary judgment in favor of the school district. On appeal the Second Circuit affirmed. The court agreed with the school district that the Moving Up ceremony was a school sponsored expressive activity governed by *Hazelwood v Kuhlmeier*, 484 U.S. 260 (1988). Although the court did find content based discrimination, it also found legitimate pedagogical concerns in compliance with the *Hazelwood* standard.

ADMINISTRATION

Taxpayers for Public Education v Douglas Cnty. Sch. Dist., Nos. 11CA1856/11CA1857 (Colo. App. Ct. Feb. 28, 2013): In March 2011, the Douglas County school board adopted a school choice program, the Choice Scholarship Program (CSP). Under the terms of the CSP, a family could receive a voucher from the school district to send their children to a private school outside of Douglas County. The Taxpayers for Public Education (TPE) filed suit, alleging that the CSP violated the Colorado Public School Finance Act of 1994 (PSFA), and asked for a preliminary injunction. The district court found that the CSP did violate the PSFA because it "effectively resulted in an increased share of public funds to Douglas County School District, rather than to other state school district." TPE was granted a permanent injunction blocking implementation of the CSP. On appeal, the district court was reversed and the case was remanded for entry of judgment in favor of the school district. The court found that the TPE lacked standing and that the CSP did not violate any constitutional provisions. Regarding standing, under Colorado law a plaintiff must show that he incurred an injury-in-fact to a legally protected interest to have standing to sue. The court found that the PSFA did not expressly authorize a private cause of action to enforce its provisions; such enforcement power is expressly given to the State Board. Regarding

the merits of the case, the court concluded that decisions of school boards, an arm of the state, merited the same presumption of constitutionality as legislative acts. Putting the burden of proof of lack of constitutionality beyond a reasonable doubt on the TPE, the court found that the TPE failed to carry the burden that the CSP did not reasonably further its mandate to provide a thorough and uniform system of free public schools. Moreover, once the state distributes money from the Public School Fund “to the counties and school districts, the money from the Public School Fund belongs to the counties and school district” and therefore is no longer state money under Article IX, Section 3 of the Colorado Constitution. Finally on the topic of religion, since CSP vouchers could be used at private religious schools, the court found sufficient checks and balances built in to the program to guard against violation of Colorado constitutional provisions.

McCoy v Bd. Of Educ., Columbus City Sch., No. 12-3040 (6th Cir. Feb. 13, 2013): Stroup was employed by the Columbus City Schools (CCS) as an elementary teacher. He was accused several times of inappropriately touching students, but nothing was ever determined to be founded during investigations. Finally, in 2005 an investigation by law enforcement and child services revealed that McCoy, as well as other students, had been victims of Stoup. McCoy’s parents filed suit against CCS, the school board, various school officials, and Stroup alleging violation of Title IX and Section 1983. The district court granted summary judgment in favor of all the defendants except Stroup. It found no evidence that the CCS had been deliberately indifferent to Stroup’s conduct or had the requisite knowledge or acted unreasonably to incur liability under either Section 1983 or Title IX. The Sixth Circuit affirmed the lower court. In order to prevail under Title IX, the plaintiff needs to show that school officials had actual notice of the harassment and had shown deliberate indifference. The fact that the school district’s attempt at ending the behavior was largely unsuccessful was not the standard to show Title IX liability. The McCoy’s Section 1983 claim failed for the same reason.

EMPLOYEE RIGHTS

Craig v Rich Township High Sch. Dist., No. 12-7581 (N.D. Ill. Feb. 19, 2013): Craig was a guidance counselor at Rich Township (RTHSD) when he self-published a book entitled “It’s Her Fault,” which he portrayed as a “self-help” book about relationships between men and women. The school board, however, said the book was inappropriate and dismissed him. Craig filed suit in federal court alleging a violation of his First Amendment right to free speech and retaliation in violation of the Fourteenth Amendment. RTHSD filed a motion to dismiss. The court granted RTHSD’s motion to dismiss. Regarding the First Amendment right to free speech, the court found that Craig was talking as a private citizen when he published the book and therefore applied a three-part *Mt. Healthy* test: (1) whether the speech was constitutionally protect; (2) whether plaintiff could prove that defendant’s actions were motivated by his constitutionally protected speech; and (3) whether the defendants could successfully show that such speech was not the substantial part for plaintiff’s termination. To determine whether the speech was protected, the court used the two-prong *Connick-Pickering* test: (1) did the speech address a topic of public concern; and if so (2) whether the employee’s interests as a citizen in commenting upon matters of public concern outweighed the interests of the employer in promoting the efficiency of the public services it performs through its employees. The court found that it did not have to go past the first prong of the test because it was determined that the speech was not of public concern. “The bare legal conclusion that the book

is on a matter of public concern is not enough to state a First Amendment claim. Stating that the book was about relationships, and relationships were of public concern was found to be too vague to state a constitutional claim. On the other hand, the book was shown to be detrimental to orderly administration of RTHSD's business. The court also found no violation of Craig's Fourteenth Amendment right to liberty because RTHSD had not publicly disclosed stigmatizing information causing Craig to suffer a tangible loss of other employment opportunities.

SPECIAL EDUCATION

J.T. v Dumont Pub. Sch., C-139-12 (N.J. Super. Ct. Dec. 20, 2012): A.T. suffered from autism. His mother filed a class-action suit against Dumont Public Schools (DPS) in state court alleging that DPS violated New Jersey law by requiring all disabled students eligible for special education service to one attendance center in the district. They sought an order that the students should be educated at their neighborhood schools. DPS argued that its policy of centralization of special education services was a common educational policy, was expressly permitted by federal decisions, and that it was not discriminatory. The parents argued that DPS has failed to "reasonable accommodate the students' disabilities by failing to make special education services available in all four schools at which DPS provides kindergarten services." Both parties filed motions for summary judgment. The court granted summary judgment to DPS "because the evidence did not support a finding that DPS failed to reasonably accommodate A.T.'s disability within the district, not because DPS has proven it would be an undue burden to grant the specific accommodation plaintiffs request ... [but] no evidence of any actual harm suffered by A.T. as a result of attending kindergarten at a school other than his neighborhood school [was provided.]" The court stated that centralization is lawful under the IDEA; neighborhood schooling is only one factor among many which may be weighed to determine the most appropriate placement.

LEGISLATION

HB 6193 also known as Erin's Law would require school districts to provide sexual assault awareness and prevention education for students in all grades, pre-kindergarten through 12. This is an increase in the mandate which currently requires such instruction only in high school. The problem this could cause schools is simple lack of time to fit it in. As a suggested compromise, **SB 1362** was introduced which would a district to opt out of any mandate of equal amount of instruction time and of lesser value than Erin's law in order to make room in the curriculum for the additional sex education instruction.

SB 84 would send "back fees" paid on teaching certificates to Regional Offices of Education.

SB 1221 would create a "State Seal of Biliteracy" to be awarded by the ISBE to high school graduates who have achieved fluency and literacy in a second language. This award would be in the 2014–15 school year.

SB 1248 would set up a pilot voucher program in Chicago, allowing "scholarships" to attend a private school.

SB 1274 would prohibit student athletes who show signs of sudden cardiac arrest from participate in sports without a doctor's release.

SB 1397 would establish a downstate residential campus for the Illinois Math and Science Academy in a county with a population of fewer the 400,000 residents.

HB 1205 would require school boards to adopt a policy limiting tackling in football practices to two days a week.

HB 2675 would make the content of sex education more comprehensive to include information about contraception as well as abstinence.

SB 1845 would allow school social workers services to include anti-bullying education.

HB 2245 would require school personnel to undergo mandated reporter training upon being hired, with a refresher program given at 5 year intervals thereafter.

HB 1058 would require all Illinois school boards to develop zero tolerance policies as part of their student discipline codes.

HB 1268 would require a day-long training session for teachers of English Language Learner students.

HB 1002 would add a school service personnel representative to the State Educator Preparation and Licensure Board.

HB 1324 would establish a pilot project to require that the top 20 percent of the lowest-performing schools in Chicago to keep school nurses on staff.

HB 1326 would mandate 10 minutes of recess each day for K-8 schools in Chicago.

HB 946 would create a task force to study the growing abuse of heroin in Illinois high schools.

HB 1288 would require the ISBE to develop a complaint procedure for parents if they believe there has been a violation of the education rights of student with disabilities.

HB 1373 would require that only licensed or certified school nurses could make recommendations for accommodation or interventions for a student as part of a special education evaluation.

HB 15 would create a three-year pilot program in Chicago for schools to provide EKGs for student athletes.

HB 16 would allow school boards to create a committee that would review decisions to hold students back a grade.

HB 17 would urge schools to allow students to wash their hands.

HB 64 would prohibit schools from asking students for the passwords to their social media accounts.

HB 76 would use lottery funds for a school voucher program for 1000 students to attend non-public schools.

HB127 would require high schools to provide catastrophic injury insurance for student athletes.

HB 160 would allow schools to make inter-fund transfers until 2016.

HB 197 would require businesses to start paying taxes to schools in their district three years after a redevelopment project area is established.

HB 1213 would prohibit the use of tobacco at school bus stops.

HB 1279; HB 1337 would require district to provide free transportation to school for pupils who live at least 2 miles from school, increasing the distance from the current 1.5 miles.

HB 24 would urge schools to encourage students to include at least 60 minutes of physical activity in the daily routines.

HB 1218; HB 1410 would require school boards to require adherence to the “prudent investor rule” by the managers of certain investment—403(b) plans.

HB 1152 would create a task force to determine whether it would be better for the Chicago Public Schools to be governed by a popularly elected school board rather than the current system of having the school board appointed by the mayor.

HB 1249 would district lottery revenue to school districts *pro rata* matching the lottery sales in each district.

HB 1264 would require that Chicago Teachers Union members not present be counted as voting “no” when authorizing a strike.

SB 1307 would lower the compulsory education age to 5.

HB 2762 would lower the compulsory education age to 6.

HB 2213 would give special services to students who are parents, expectant parents, or the victims of domestic or sexual violence.

HB 2386 would require school district and community college districts to submit a Fiscal Responsibility Report Card to the state comptroller.

HB 2670 would require schools to provide at least 20 minutes of recess each day for grades K–5.

HB 3312 would require a school district to post additional information on its website. Any documents maintained electronically on its website would be exempt from FOIA requirements.

HB 3379 would require school board to adopt a policy on teen dating violence.

SB 1190 would create the Illinois Family Care Provider Act to require employers to provide up to 12 weeks of unpaid family medical leave to an employee who is a grandparent.

SB 1711 would require school districts to assure that all PE teachers, trainers, coaches, and referees annually watch a training video on CPR and AEDs.

HB 1264 would require a $\frac{3}{4}$ vote of a teacher's union to approve a strike.

HB 2689 would require that the adopted collective bargaining agreement be placed on the school district's website.

HB 2846 would attempt to ensure that school district properly consider for employment and licenses persons previously convicted on one or more criminal offenses.

HB 3005 would prohibit employers from conducting a criminal history inquiry of a prospective employee until after the employee has been interviewed.

HB 2267, SB 1877 would make changes regarding reorganization, dissolution, and consolidation to facilitate consolidations.

HB 2660 would adjust the school funding formula for school districts with state-authorized charter schools.

HB 3232 would allow school board to choose a qualified bidder that is not the lowest responsible bidder if the bidder is located in the same county as the school district.

SB 1625 would require districts to conduct at least one school shooter drill per year.

SB 2321 would allow districts to exempt students in a show choir from PE requirements.

HB 2747 would allow the filing of a FOIA request electronically.

HB 2768 would require local district to use proper law enforcement resources when the safety and welfare of students and teachers are threatened by illegal use or possession of weapons or illegal gang activity.

HB 3053 would exempt a disabled student from PE requirements if the student is participating in an athletic program outside of the school setting.

HB 3090 would require that Title I funds be used only for supplemental education.

HB 3112 would provide that a National Board Certified teacher shall be automatically renewed for the period of time equal to the validity of the National Board certification with a requirement of receiving at least five hours of professional development each year.

HB 491 would require junior high and high school sports officials to complete and submit an injury report after each game if a player had to leave the field or court because of an injury.

HB 2880 would require the ISBE to establish a standard student expulsion policy for all school districts.

HB 3070 would require school guidance counselors, teachers, school social workers, and other school personnel to be trained to identify the warning signs of mental illness.

SB 1932 would require a school board to consult with law enforcement and safety experts when designing a new building.

HB 1446 would require that special education and related services be provided in accordance with the student's IEP no later than 10 school attendance days after notice is provided to the parents.

HB 2631 would allow school districts that share the same boundaries to combine transportation activities.

HB 2675 would provide that sex education must be medically accurate and developmentally and age appropriate and require the ISBE to provide resource materials for the curriculum.

HB 2966 would require ISBE to establish a bullying hotline.

SB 1622 would establish the Office of the Education Ombudsman within the Office of the Governor for the purposes of providing information to parents, students, and others regarding their rights and responsibilities with respect to public schools.