

ILLINOIS STATE
UNIVERSITY



Volume 33, No. 3
May 2013

ILLINOIS STATE
EDUCATION LAW AND POLICY
JOURNAL

IN THIS ISSUE

SCHOOL FUNDING	<i>page 45</i>
SPECIAL EDUCATION	<i>page 45</i>
STUDENTS' RIGHTS	<i>page 48</i>
EMPLOYEE RIGHTS	<i>page 51</i>
LEGISLATION	<i>page 52</i>
ILLINOIS LEGISLATION	<i>page 53</i>

Editor

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

Publications Manager

Andrea J. Rediger

Mission Statement

The primary purpose of the *Illinois State Education Law and Policy Journal* (formerly *Illinois School Law Quarterly On-Line*) is to provide a forum for the interchange of ideas, theories, and issues on various aspects of school law among practitioners, professors, and attorneys. The emphasis is on analyzing issues in school law for the purposes of developing new theories to explain current and past developments in the law and to provide the theoretical framework which can be used to anticipate and predict future developments in school law.

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

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

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

SCHOOL FUNDING

Louisiana Federation of Teachers v State of Louisiana, Nos. 2013-CA-0120/2013-CA-0232/2013-CA-0350 (La. May 7, 2013): The Constitution of the state of Louisiana requires that the legislature to annually develop and adopt a formula to determine the cost of a Minimum Foundation Program of education in all public elementary and secondary schools. In 2012, the Louisiana Legislature passed legislation—Act 2 and SCR99—commonly referred to as the “voucher program,” which required the payment of Minimum Foundation Program funds to nonpublic schools on behalf of the responsible city or parish school district. A group of plaintiffs, comprised of teachers’ unions as well as one parent and one teacher, sued for injunctive relief on the grounds that the legislation was an unconstitutional diversion of public funds away from public schools to private schools, parochial schools, private “course providers,” post-secondary institutions, and corporations that offer vocational or technical course work in their field, to parents who choose home schooling, and to new charter schools outside of the parish or city school system. The district court entered a judgment declaring the voucher program unconstitutional; that it unconstitutionally diverted public funds constitutionally mandated to be allocated to public schools. On expedited appeal, the case went directly to the Louisiana Supreme Court on the sole issue of whether the educational funding mechanisms or other content of two legislative instruments, SCR 99 and Act 2, violate constitutional restrictions. A six justice majority affirmed the district court’s finding that Act 2 and SCR 99 (the voucher program) unconstitutionally diverted public funds. The court concluded that it could find no circumstances under which the voucher program could be freed from the constitutional restriction prohibiting the diversion of state funds to nonpublic schools. In the words of the court, “There is no question that state MFP funds are diverted under the challenged legislative instruments and that the diversion of state MFP funds is unconstitutional.”

SPECIAL EDUCATION

Muskrat v Deer Creek Pub. Sch., No. 11-6194 (10th Cir. Apr. 23, 2013): This case presented two different issues. The first issue was whether, under the IDEA, parents are required to exhaust all of their administrative remedies before resorting to the courts to seek redress for alleged physical abuse of their child. The second issue was whether there was a sustainable §1983 action on grounds of a violation of the child’s 14th Amendment substantive due process. J.M. was a special education student at Deer Creek Elementary School. When he would become disruptive, he was placed in a “timeout room” which, although small, had enough room for a student and a teacher, had a light fixture and a door without a lock. The longest that J.M. was held in the room was 4 minutes. J.M.’s parents told school officials that the timeout room should not be used for J.M. because it frightened him. J.M.’s IEP was modified to prohibit placing J.M. in a timeout room; however, the principal instructed at least one staff member that the room could be used if absolutely necessary. The timeout room continued to be used on J.M. In addition to the timeout room, J.M.’s parents also alleged that J.M. had been physically abused by school staff—slapping and restraints. The parents withdrew J.M. and after a year filed suit in federal district court alleging §1983 violations. The school filed a motion to dismiss on the ground that the parents had failed to exhaust administrative remedies prior to filing the suit. The school also moved for summary judgment, arguing that their behavior stated no constitutional violation under a 14th Amendment “shocks the conscious” analysis. The district court rejected the motion to dismiss

for failure to exhaust administrative remedies, but did agree with the lack of a constitutional violation and entered summary judgment on that count for the school. The Tenth Circuit affirmed the lower court. On the grounds of needing to exhaust administrative remedies, the court saw the allegation of abuse as a common law tort. The court found no evidence that Congress meant to funnel isolated incidents of common law torts into the IDEA exhaustion regime, therefore the IDEA imposed no obligation on the parents to exhaust their physical abuse claims administratively. As regarding the use of the timeout room, the court found that the IDEA's exhaustion requirement did not bar the suit. Even though the parents had not formally requested a due process hearing, "they nonetheless worked through administrative channels to obtain the relief they sought, namely, preventing J.M. from being put in a timeout room in the future" by having the IEP modified. As to the issue of 14th Amendment substantive due process, the court found that none of the incidents demonstrated a "brutal and inhumane abuse of official power," and therefore none arose to the level of a constitutional tort.

South Carolina v Dep't of Educ. Duncan, No. 12-1764 (4th Cir. Apr. 26, 2013): Does a U.S. Circuit Court of Appeals have jurisdiction to review a U.S. Department of Education determination regarding a state's request for a waiver from its "maintenance of effort" requirement under the IDEA? Under the IDEA, a state must meet a number of eligibility requirements in order to receive full funding from the federal government. One of those numerous requirements is that the state must not reduce the amount of its own financial support for special education below that amount it spent in the previous year; "maintenance of effort" condition. If this happens, then federal dollars will be proportionately reduced. The state, however, can apply for a waiver from the "maintenance of effort" condition under certain circumstances. South Carolina applied for such a waiver. The Federal Department of Education granted the waiver in part, but still reduced federal funding to the state by \$36.2 million. When the state requested a hearing, the Department of Education said that the IDEA does not allow for such a hearing. Regardless, the State of South Carolina filed an appeal from the ruling. After receiving no response, South Carolina filed a motion to expedite. Almost a year later, the Department of Education issued an order denying the request for a hearing that while the IDEA provides for notice and an opportunity for a hearing "prior to (1) issuance of the Department's final agency decision rejecting the eligibility of a State for IDEA grant funding or (2) a withholding of IDEA funds" the partial denial given to South Carolina was neither of those so no hearing was provided for under the IDEA. South Carolina filed a petition for review with the Fourth Circuit in which it challenged the Department of Education's denial of its request for a full waiver and its request for a hearing, and requested a stay in the reduction of federal funding. The Department of Education filed a motion to dismiss for lack of jurisdiction. South Carolina's appeal present the court with two procedural questions: (1) whether the court has jurisdiction to consider South Carolina's petition for review; and (2) whether South Carolina is entitled to an opportunity for a hearing. The Fourth Circuit held (1) that it did have jurisdiction under the IDEA to review the state's petition for review; and (2) under the IDEA that the state is entitled to a hearing PRIOR to the Department of Education's determination as to whether the state has met its maintenance of effort requirement. The court possessed jurisdiction because the Department of Education's waiver determination was a determination whether to remove an eligibility condition and a reduction of the State's eligibility for future funding; it therefore constituted action with respect to the eligibility of the State under section 1412. "Under §1412(d)(2), South Carolina was entitled to notice and an opportunity to be heard before a final determination on its waiver request was made; because the

determination could not be final until after the Department of Education provided the State with notice and opportunity for a hearing ... South Carolina remains eligible for its full funding until the final determination is made.”

***Stewart v Waco Indep. Sch. Dist.*, 11-51067 (5th Cir. Mar. 14, 2013):** Stewart, a student at Moore Academy, was a special education student under both the IDEA and §504. After a sexual incident involving Stewart, her IEP was modified to provide that she be separated from male students and remain under close supervision while at school. Stewart was involved in three other sexual incidents with male students where her level of complicity was in question. Stewart claimed that she was sexually abused and filed suit in state court claiming that the school district did nothing to prevent such abuse. The district removed the case to federal district court on federal-question grounds. The district court dismissed all claims on the ground that Stewart was attempting to hold the school district liable for the actions of a private actor. Stewart borrowed wording from Title IX claiming “deliberate indifference” on behalf of the school district. The district responded that Stewart was trying to transform a disagreement over legitimate disciplinary and educational decisions into a civil-rights action. The Fifth Circuit reversed the lower court’s decision, reinstating Stewart’s §504 claim that the district acted with gross misjudgment in failing to further modify her IEP. However, it rejected Stewart’s §504 claim for deliberate indifference because it did not meet the standard set forth in earlier Supreme Court cases. Deliberate indifference is a very high hurdle to clear, and Stewart’s allegations fell short.

***A.C. v Shelby Cnty. Bd. Of Educ.*, No. 11-6506 (6th Cir. Apr. 1, 2013):** A.C. was an elementary student who suffered from Type I diabetes. Because of A.C.’s age and the nature of the disease, she required close supervision from the school nurse and her teacher. The parents requested a number of accommodations. Because of inappropriate comments by the principal which became known to the parents, OCR was called. Under the pressure of OCR’s intervention, almost all of the accommodations requested were granted. One request, that A.C.’s blood sugar be tested in the room rather than in the school clinic was denied. Bottom line was that the relationship between the parents and the school started off badly and never got any better. Accusations flew that A.C.’s wildly fluctuating blood sugar levels were because of inappropriate parental care. The teacher became distraught. Nurses resigned. Ultimately DCS was called, but the complaint was determined “unfounded” and the case was closed. The parents filed suit in federal district court, but the court granted summary judgment for the school district stating that the parents had not proved that the DCS report was a “adverse act.” On appeal, the Sixth Circuit reversed and remanded. The court emphasized that the parent’s relation claim was based solely on the principal’s report DCS, not the ultimate outcome of the DCS investigation. What the parents had to prove was that (1) the district engaged in a protected activity under the IDEA and §504; (2) the district knew of this protect activity; (3) the district took an adverse action against them; and (4) there was a causal connection between the protected activity and the adverse action. At that point the burden shifts and the district needed to show that it had a legitimate, non-discriminatory basis for the DCS reports. If that is done, then the burden shifts back to the parents to “prove by a preponderance of the evidence that the legitimate reasons offered were not its true reasons, but were a pretext for retaliation.” The fact of the district making a DCS report was an adverse action. In any event, these were questions of fact for a jury, therefore granting of a summary judgment was improper.

STUDENTS' RIGHTS

***N.C. v Kentucky*, No. 2011-SC-000271 (Ky. Apr. 25, 2013):** If a school resource officer is present during questioning of a student by the assistant principal in the assistant principal's office, is the student entitled to *Miranda* warnings? The Kentucky Supreme Court, in a 4-3 split said "yes." N.C. was questioned regarding whether he had given a fellow student some prescription drugs (hydrocodone that he had received after having wisdom teeth pulled.) After questioning by the assistant principal, in the presence of the school resource officer, he admitted to doing so. He was ultimately expelled from school as well charged with possessing and dispensing a controlled substance, a Class D felony. At trial, N.C. moved to suppress the statements he made to the school resource officer. The juvenile court denied N.C.'s motion to suppress. On appeal to the circuit court, the decision of the lower court was affirmed. The Kentucky Court of Appeals denied a motion for discretionary review, but the Kentucky Supreme court granted review.

The court framed the issue as "whether a student is entitled to the benefit of the *Miranda* warnings before being questioned by a school official in conjunction with a law enforcement officer, the SRO, when he is subject to criminal charges." In the view of the majority, the issue "presents a nexus between the rights of a juvenile accused of a crime and needs of school officials to maintain order in the schools and protection for the other children in their care on the school premises or during school activities." The court looked at a two-part threshold that must be satisfied before *Miranda* warnings are required: (1) questioning by law enforcement; and (2) being held in custody. As to the first threshold question, the court found that since the SRO did ask questions, that "being questioned by law enforcement" was obviously met. It was the second threshold question, whether the individual was in custody, is more subjective. It "requires a court to determine the circumstances surrounding the interrogation and, given those circumstances, to decide whether a reasonable person would believe he could terminate the interrogation and leave."

The court relied on the United States Supreme Court decision of *J.D.B. v North Carolina*, where Justice Sotomayor on behalf of the Court stated that the *Miranda* safeguards were put in place because, in the case of children, the voluntariness test alone could not adequately guard against the inherent pressures of a custodial interrogation; children respond differently than mature adults as they are particularly susceptible to the influence of authority figures and the effect of being in a controlled setting like a school. The Kentucky Supreme Court found that in the instant case, N.C. was "in custody" under the "all relevant factors test" set forth in *J.D.B.* "No reasonable student, even the vast majority of seventeen year olds, would have believed that he was at liberty to remain silent, or to leave, or that he was even admitting to criminal responsibility under these circumstances ... This case presents the Court with the opportunity to balance the important public policy concerns of educators and parents to provide an appropriate and safe school environment while still protecting the individual rights of a child when the child is embroiled in the juvenile justice system." The majority concluded, "School officials may question freely for school discipline and safety purposes, but any statement obtained may not be used against a student as a basis for a criminal charge when law enforcement is involved or if the principal is working in concert with law enforcement in obtaining incriminating statements, unless the student is given the *Miranda* warnings and makes a knowing, voluntary statement after the warnings have been given."

Taylor v Roswell Indep. Sch. Dist., No. 11-2242 (10th Cir. Apr. 8, 2013): A group of students at two of the district's high schools, who were members of a local church youth group known as the Relentless, distributed materials at school. At the time the district had two policies concerning the distribution of non-school related materials on campus. Policy 7110 required advance permission before distribution of non-school-sponsored materials. The Relentless students began to distribute small life-like rubber human fetus dolls. The distribution was stopped because of disruption to the educational environment (they were being used to plug toilets, stuck to ceilings, and set on fire, as well as disrupting classroom instruction.) A month later the groups tried to distribute the dolls once again, but were stopped before any were distributed. The students filed suit in federal district court seeking injunctive relief and alleging three counts: (1) violation of First Amendment Freedom of Speech; (2) violation of First Amendment Free Exercise Clause; and (3) violation of Fourteenth Amendment right to Equal Protection. Summary judgment was granted to the school district on all three counts. On appeal, the Tenth Circuit affirmed the lower court's grant of summary judgment on all claims. The free speech challenge failed because officials reasonably forecasted that the distribution would cause material and substantial disruption because a prior distribution had caused material and substantial disruption. The students argued that other students, not members of Relentless, were the ones causing disruption. The court stated, however, that under the *Tinker* test it doesn't matter who causes the disruption just that the disruption occurs. The court found that the policies were not unconstitutional on their faces, because they provide the procedural safeguard of appeals and they impose substantive constraints on official discretion to avoid content discrimination. It was not the content of the symbolic speech or its arguably religious nature that kept them from being distributed, but the disruption that was caused by their distribution, which is a constitutionally permissible reason for prior restraint on student speech.

G.C. v Owensboro Pub. Sch., No. 11-6476 (6th Cir. Mar. 28, 2013): G.C. was an out-of-district student enrolled at Owensboro through a reciprocal agreement with his home district, Daviess County. G.C. was a bit of a discipline problem—drug use, anger issues, depression—while at Owensboro. The agreement under which G.C. attended Owensboro stated “The continued enrollment of non-resident students in the District's schools is subject to the recommendation of the school principal and the approval of the superintendent.” The principal made the recommendation that G.C. not be allowed to return based on his conduct, but the superintendent wanted to give him one more chance. G.C.'s parents were informed this was G.C.'s last chance. Right off the bat, G.C. was caught texting in class which violated the school's cell phone use policy. The phone was confiscated and taken to the assistant principal. Based on this incident, the principal recommended that G.C. be sent back to his home district, and the superintendent agreed. G.C.'s parents had the right to appeal. G.C. sued alleging violations of his First, Fourth and Fifth Amendment rights and state law. The district court granted summary judgment for Owensboro. On appeal the Sixth Circuit reversed the grant of summary judgment on G.C.'s due process and Fourth Amendment search claims and remanded the case to district court. The court noted that the Supreme Court case of *Goss v Lopez* was controlling; a student facing expulsion “has the right to a pre-expulsion hearing before an impartial trier-of-fact.” The question, however, was whether G.C. was actually expelled since he could continue to attend school in his home school. G.C. said it was the functional equivalent of an expulsion. Owensboro stated that it had merely revoked a privilege. The district court had agreed with Owensboro. The Sixth Circuit disagreed. It saw “enroll” and “attend” as two distinct actions. Owensboro had the authority under the

agreement to refuse to enroll a student at the beginning of the year, but did not have the power to unilaterally remove a student mid-year without providing appropriate *Goss* type due process. As regarding G.C.'s Fourth Amendment claims concerning the search of his cell phone, the court concluded "The defendant have failed to demonstrate how anything in this sequence of events indicated to them that a search of the phone would reveal evidence of criminal activity, impending contravention of additional school rules, or potential harm to anyone in the school." Therefore the court found the search to be unconstitutional.

Hardwick v Heyward, No. 12-1445 (4th Cir. Mar. 25, 2013): While attending high school in South Carolina Hardwick wore Confederate flag and protest t-shirts to which the administrators objected. She was told to change the shirts or face discipline. A history in the district which included various racial incidents was the justification given by the school district for the policy forbidding the wearing of such t-shirts. When they were unsuccessful in convincing the school to change its dress code policy, Hardwick's parents filed a lawsuit against the school district alleging her First Amendment right to free speech and expression was violated because she was not allowed to wear the Confederate flag shirts or protest shirts; her Fourteenth Amendment right to due process was violated because the schools' dress codes were overbroad and vague; and her Fourteenth Amendment right to equal protection was violated because the school officials specifically targeted her Confederate flag shirts while not punishing other racially-themed shirts. The district court granted summary judgment to the school district. On appeal the Fourth Circuit unanimously affirmed the lower court. Citing examples of racial incidents in the past, the court concluded that "the record contains ample evidence from which the school officials could reasonably forecast that all of these Confederate flag shirts ' would materially and substantially disrupt the work and discipline of the school'." The fact that the shirts never actually caused disruption was not what was important, but whether the district could reasonably forecast that a substantial disruption might occur. As regarding the over breadth or vagueness of the dress code, the court found that they comported with the standards in *Tinker* and *Fraser*; that Hardwick had enough information to conform to the requirements of the dress code. "School officials indicated that all racial symbols are banned under the dress codes" therefore there was no viewpoint discrimination.

Rhea v District Bd. Of Trustees of Santa Fe College, No. 1D11-3049 (Fla. App. Ct. Mar. 15, 2013): Is a student e-mail complaining about a professor's classroom behavior and teaching methods an educational record under FERPA? Rhea was employed by Santa Fe College and an adjunct associate professor. The chair of her department had received an e-mail from a student complaining of Rhea's inappropriate classroom behavior. Rhea received a copy of the e-mail with the name of the student redacted. His requests for an unredacted copy were denied by the Chair on the ground that it was a confidential document under FERPA. Rhea was fired and he sued. The trial court dismissed Rhea's claim. On appeal, the court determined that the e-mail constituted a public record under Florida law unless an exemption applied. The court next looked to see whether FERPA was such an exemption. The court determined that the student's e-mail met FERPA's "directly relates" element because the e-mail described that student's impressions of the classroom educational atmosphere, the context of Rhea's teaching and methodology. The student's knowledge of, and connection to, the information conveyed in the e-mail is not merely peripheral or tangential. As a member of the class, the student claimed to have experienced the treatment described in the e-mail, and the e-mail is the student's own words.

J.P. v Millard Pub. Sch., No. 11-777 (Neb. May 17, 2013): J.P. was a student at Millard High School. He parked his car off-campus on a street near the school. During the day, when trying to leave with another student, J.P. was detained on school grounds. Later in the day security saw J.P. getting something out of his car. The assistant principal became suspicious. No contraband was found on J.P. when he was searched. The assistant principal then told J.P. that his truck was going to be searched. J.P. did not give his consent to the search. Drug paraphernalia was found and he was recommended for a 19 day suspension. The hearing officer stated that, even though technically the car was off of school property, because of its close proximity to school property the search was justified. J.P.'s father sued alleging violation of J.P.'s rights under the 4th and 14th amendments. The suit sought expungement of the suspension. The district court found that the search was unreasonable and violated the 4th amendment. The school district appealed. On appeal the Nebraska Supreme Court affirmed the lower court's decision. The court concluded that school officials' authority to search does not extend to a student's vehicle parked off of school grounds. The suspension was removed from his school record.

EMPLOYEE RIGHTS

Hearing v Sliwowski, No. 12-5194 (6th Cir. Mar. 27, 2013): B.H., and elementary school student complained that it burned when she urinated. The nurse called B.H.'s mother and left a message informing her of the complaint. The mother returned the call and informed the school that B.H. had a history of chronic bladder infections. Two days later B.H. made the same complaint. The same procedure of notification was filed, but this time the nurse took B.H. to a private bathroom and did a visual check to see if the student had any reddened or irritated areas along her legs and inner thighs that could be causing the discomfort. There was no touching and there was not suspicion of child abuse. Since B.H.'s parents had not given consent, the visual examination did not follow the national and state nursing guidelines. The mother, Hearing, filed suit against both the nurse as an individual and against the municipality, alleging a violation of B.H.'s 4th amendment right against unreasonable searches. Both defendants filed a motion for summary judgment, the nurse claiming qualified immunity. The district court denied the motion. The Sixth Circuit reversed the lower court's decision. The court reiterated the two-part test used to determine qualified immunity: (1) whether, considering the allegations in a light most favorable to the party injured, a constitutional right has been violated, and (2) whether that right was clearly established. Since a 4th Amendment violation was already alleged, the court focused on the second part; whether that right was clearly established. The court agreed that there was precedent regarding unjustified strip searches, but this search was not a typical strip search. The visual inspection was not for contraband but to assess a possible medical condition. The court found that "the legal question, whether a visual examination conducted for medical purposes by a medical professional falls within the definition of 'search' for Fourth Amendment purposes, is critical, because the Fourth Amendment's protections are not triggered until a search occurs." Therefore, "is it clearly established that the Fourth Amendment applies to the actions of a school nurse when she attempts to provide medical care to a student?" Unable to find any definitive prior precedent, the court found that it was not "clearly established that the conduct was subject to the standard of reasonableness imposed by the Fourth Amendment."

***Bailey v Callaghan et al.*, No. 12-1803 (6th Cir. May 9, 2013):** In 2012 Michigan passed a law regulating a public school's ability to collect union fees. Under the law unions must collect their own membership dues from public school employees. Since the law only pertained to public schools, a number of unions filed suit claiming the Act violated their right under the First Amendment and the Equal Protection Clause of the 14th Amendment. The district court granted a preliminary injunction against the act and the State appealed. The union alleged that the law was unconstitutional on its face because it hampers the union's ability to collect dues and, by extension, diminishes their ability to engage in speech on behalf of their members. They also claimed viewpoint discrimination, violation of the Equal Protection Clause, and that the process was a non-public forum. The district court found that the act violated the First Amendment and the Equal Protection Clause, and entered a preliminary injunction to bar enforcement of the act. On appeal to the Sixth Circuit, the court reversed the order and remanded the case for further proceedings. The court found that the act did not "restrict the unions' speech at all, and they remain free to speak about whatever they wish." The court also quickly dismissed the claim that the payroll deduction process was a non-public forum, stating instead that it was nothing more than a ministerial act. The act was found to be facially neutral as to viewpoint. The court addressed and rejected the unions' Fourteenth Amendment equal protection claim. The court found that the Legislature had a rational basis for creating a separate classification.

***Harbaugh v Bd. Of Educ. of Chi.*, No. 11-3277 (7th Cir. May 17, 2013):** For the 2003–04, Harbaugh worked as a full-time substitute teacher in the Chicago Public Schools. After that school year, CPS eliminated the classification of "full-time substitute" and reclassified those individuals as appointed probationary teachers. Harbaugh was told that after 4 years of satisfactory probationary teaching she would receive tenure in her 5th year. In 2008, after 4 years as teaching as a probationary teacher in CPS, Harbaugh was not renewed. Harbaugh sued the board alleging that she had received tenure at the beginning of the 2007–08 school year and so could not be terminated except for cause. The district judge dismissed her case, finding that Illinois law did not support her argument that her one year as a full-time substitute counted toward her four years of probation. Harbaugh appealed. The Seventh Circuit affirmed the lower court's decision. The court held that Illinois state law, and interpretative precedent, distinguished between substitute teachers and probationary teachers in many aspects of employment, certification, hiring, and firing. Therefore, Harbaugh was one year short of gaining tenure, therefore could be non-renewed without reasons being given.

LEGISLATION

Uninterrupted Scholars Act (USA): The U.S. Department of Health and Human Services (DHHS) and the Department of Education (DE) have issued a letter to Chief State School Officers and Child Welfare Directors stating that the USA amends FERPA. The letter states that the amendment permits educational agencies and institutions to disclose education records, without parental consent, to a caseworker or other representative of a state or local child welfare agency or tribal organization authorized to access a student's case plan when the organization is legally responsible for the care and protection of the student. The USA amendments also delete the FERPA requirement that school districts notify parents before complying with a lawfully issued subpoena or judicial order for education records, in cases concerning child abuse and neglect where the parent is a party.

ILLINOIS LEGISLATION

Bills sent to the Governor:

HB 3: Extends the ability for school district to transfer monies from on fund to another to 2016

HB 494: Established a moratorium until April 2014 on the establishment of charter schools with a virtual-schooling component for all school districts other than CPS.

HB 2245: Once employed, school personnel who work directly with children must complete mandated reporter training once every five years.

HB 2675: If a school district provides education it must be medically accurate and developmentally and age appropriate; ISBE is required to provide resources

HB 3070: Teachers and counselors must receive in-service training on mental illness.

HB 3190: Student entering grades 6 and 12 must be immunized for meningococcal conjugate.

HB 3379: Requires new policies and instruction on teen dating violence.

SB 2178: Districts that have a high school must provide catastrophic accident insurance coverage with a maximum of \$3 million or 5 years of coverage for student athletes who sustain an accidental injury while participating in a school sponsored IHSA event.

HB 2420: Districts are allowed to employ a person who holds an active license issued by the State as a marriage and family therapist.

SB 2157: Authorizes a school board to excuse a pupil from engaging in physical education if the pupil has an IEP and is placed in an adaptive athletic program.

SB 2306: An employer may access a social network account of an employee if the social network account is used for professional purposes.

HB 64: Requires notification to student and his/her parents that the school may request or require a student to provide a password to gain access to an account or profile on a social networking website.

HB 2775: The second Wednesday of May is designated as the commemorative holiday for Mother Mary Ann Bickerdyke Day, to honor military nurses and the contribution of nurses to the State of Illinois

SB 1703: Designates October 7 Iraq and Afghanistan Veterans Remembrance Day.