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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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Students' Rights

***C.R. V Eugene Sch. Dist. 4J,* No. 12-1042 (D. Ore. Sept 12, 2013).** C.R. was one of several students who had verbally harassed a disabled student on the way home from school; behavior for which he was suspended for two days. The harassment contained inappropriate sexual comments which made the female student being harassed feel unsafe. After being punished, C.R. filed suit against the school district raising both federal and state claims. There were three federal claims: (1) that his First Amendment rights had been violated because the school district disciplined him for after hours, off-campus speech that was not offensive or harassing; (2) that his Fourteenth Amendment Liberty rights were violated; and (3) that he was retaliated against for exercising his First Amendment right to free speech. The district court granted the school district's motion for summary judgment on the federal claims and dismissed all of the state claims. In its ruling the court recognized that location of the speech can be relevant but stressed that in the Ninth Circuit "off-campus speech is within the reach of school officials." Using a more liberal interpretation of the *Tinker* "material and substantial disruption" test, the court stated, "For off-campus speech, the test still remains whether school officials may forecast substantial disruption of or material interference with school activities or whether speech collides with the rights of other students to be secure and to be let alone in the school environment." In the instant case, the court concluded that bullying and harassment could lead to substantial disruption or material interference at school; that such occurring on a known route that students use to walk home invaded the rights of other students. Moreover, regarding C.R.'s argument that the speech was not harassing, the court stated: "Vulgar, lewd, obscene, indecent, and plainly offensive speech may well impinge upon the rights of other students, even if the speaker does not directly accost individual students with his remarks."

Special Education

***B.M. v South Callaway R-II Sch. Dist.*, No. 12-3841 (8th Cir. Oct. 17, 2013).** B.M. began to have behavioral problems in school in the spring of 2007 when he was in second grade for which he was disciplined. As they became increasingly violent he was suspended more than once. Although B.M.'s mother took him to be evaluated for behavior disorders, she never requested the school district to evaluate or accommodate her son either §504 or the IDEA. As his behavior problems continued in third grade, the principal encouraged B.M.'s mother to seek outside counseling and finally attempted to get the mother to authorize the district to evaluate B.M. After attempting to obtain help from outside providers, finally in the fall of 2008 the mother requested that B.M. be evaluated. After eight weeks, it was determined that B.M. did not qualify for services under the IDEA a §504 evaluation was done with the mother's consent. Four weeks later a §504 plan was implemented. Because the mother did not like the plan she removed B.M. from school and filed a complaint with OCR. B.M. returned to school only when the district provided a revised plan that met with the mother's approval. In the spring of 2010 OCR completed its investigation and concluded that the district had failed to comply with two of the 14 regulations named by the mother regarding implementation of the §504 plan. Though not malicious intent was found, OCR did conclude that the school had used erroneous criteria in determining whether its suspensions of B.M. constituted a change in placement triggering a manifestation hearing. At the beginning of 2011 B.M.'s mother filed suit in federal district court against the school district,

once again raising claims under §504 and the IDEA. The school was granted summary judgment on the grounds that the mother had not exhausted administrative remedies. In response, B.M.'s mother filed a motion for reconsideration on the grounds that she should not be required to exhaust administrative remedies. The district court granted her motion in part, vacated its prior order, and against granted summary judgment. On appeal to the Eighth Circuit, the lower court's decision was affirmed. The court stated that B.M.'s mother had failed to provide evidence to show that the school district had acted in bad faith or gross misjudgment as was needed to sustain her case. Delays in conducting the §504 evaluation and providing accommodations were not enough to establish bad faith or gross misjudgment. At most, what was shown by the record was that there was a disagreement between a school and a concerned parent as both struggled to meet the needs of the child.

***Niehaus v Huppernthal,* No. 12-042 (Ariz. App. Ct. Div. One Oct. 1, 2013).** In 2011, the Arizona Legislature passed a law, SB 1553, the used public funds to provide scholarships for qualified students with disabilities, including attendance at private secular and sectarian schools. The scholarships were 90% of what the Arizona Department of Education (ADE) would pay a public school to educate the student. Plaintiffs file a motion seeking to enjoin the ADE from disbursing the scholarships alleging that they were in violation of the Arizona Constitution. The Maricopa County Superior court denied the motion stating, "The exercise of parental choice among education options makes the program constitutional." On appeal, the Arizona Court of Appeals affirmed the decision of the lower court. The court found that the scholarships did not result in a violation of the state constitution because it relied on parental choice; recipients of the scholarship had sole discretion on how to spend the money, with no requirement that it be paid to a sectarian school.

***N.W. v Poe,* No. 13-07 (E.D. Ky. Nov. 4, 2013).** When N.W. was three, he was deemed eligible for special education services and was placed at St. Rita School for the Deaf in Ohio. When N.W. was six, his parents unilaterally enrolled him in Applied Behavioral Sciences (ABS) school in Ohio. The parties agreed to a settlement regarding tuition, transportation, and attorney's fees as well as N.W.'s transition back to public school. There were meetings regarding transitioning N.W. during the summer before second grade. The parents were ultimately unhappy with the district's plan, and at the end of October 2012 they requested a due process hearing. The hearing was finally held in the spring and the hearing officer that there had not been a denial of FAPE, that the staffing group was in compliance with the IDEA, and ordered the parties to continue working on a transition plan. However, until one was finalized, ABS would be the "stay-put" placement and the school district would pay for transportation and tuition. Both parties appealed the decision to the Exceptional Children's Appeal Board, which affirmed the decision of the hearing officer as regarding FAPE, but stated that ABS was not the "stay-put" placement and therefore no costs were to be borne by the district. N.W.'s parents appealed to federal district court. The district court upheld the appeals board's decision on FAPE, the proposed transition plan, the membership of the staffing committee, the placement decision, and the continuum of placement options. It reversed the appeals board's ruling on "stay-put" and reinstated reimbursement to the parents.

Teachers' Rights

***Brown v Chicago Bd. of Educ.,* No. 12-01112 (N.D. Ill. Sept. 25, 2013).** Brown was employed by the CPS as a teacher at Murray Language Academy (MLA). In an attempt to provide a lesson on the bullying effect of the "N-word," Brown read out-loud rap lyrics that he found on a note that students had been passing around his sixth grade class. He explained the use of the controversial word in rap music; that the word was distasteful and historically offensive to African-Americans. Part of the discussion was witnessed by the building principal. Brown was suspended without pay for five days on the grounds that by uttering the "N-word" he had violated school policy. His appeal to the Director of Employee Relations was denied. He then filed suit in federal district court against the Chicago Board of Education (CBOE), alleging that his First Amendment free speech rights and his Fourteenth Amendment due process rights had been violated. The district court granted the CPS's motion to dismiss in part and denied it in part. The court found that the United State Supreme Court decision of *Garcetti v Ceballos,* **547 U.S. 410 (2005)** was controlling, stating that it had supplanted *Pickering v Bd. of Educ.,* **391 U.S. 563 (1968)** when the governmental employee's speech was made pursuant to his job duties. The court stated that Brown's discussion of the "N-word" was made pursuant to his employment duties as a teacher, therefore *Garcetti* and not *Pickering* was applicable. This was despite the fact that the Court in *Garcetti* had specifically stated that *Garcetti* did NOT apply to "classroom instruction." The court explained this discrepancy by stating the K–12 teachers' classroom speech can be regulated by the employing school district. In the instant case, the court found that Brown had not been given sufficient notice that the use of the "N-word" in an effort to teach about the power of language was prohibited, therefore that portion of the motion to dismiss was denied. The court also left open a vagueness-as-applied challenge to the district's policy.

Administration

***Smith v Henderson,* No. 13-420 (D.D.C. Oct 20, 2013).** The District of Columbia Public Schools (DCPS) decided to close 15 schools in response to a drop in enrollment caused by population shifts and a rise in charter school enrollment. The cost savings would be reallocated to other schools throughout the district. The closed schools were predominantly African-American and Hispanic, and had a disproportionate number of children with special needs. A suit was filed. The plaintiffs claimed that they never received the required notice of the school closures, and that the choice of schools to close discriminated against poor, minority, and disabled students. They alleged that the decision was made without sufficient community input and therefore was in violation of several constitutional, federal, and state provisions. The Plaintiffs alleged breach of contract, fraudulent representation, and violation of the Equal Protection Clause, Title VI, the IDEA, the ADA, the Rehabilitation Act, the D.C. Human Rights Act, and the D.C. Sunshine Act. The court denied the plaintiff's motion for a preliminary injunction to forestall the closures, so the plaintiffs filed an amended complaint. The DCPS filed a motion to dismiss or, in the alternative, summary judgment. The district court granted DCPS's motion to dismiss except on the claims involving the Equal Protection Clause, Title VI, and the D.C. Human Rights Act. The IDEA, the ADA, the Rehabilitation Act claims were dismissed because the plaintiffs had failed to exhaust administrative remedies. Although the Equal Protection Clause and Title VI claims were not dismissed, the court emphasized that such claims require proof of intentional discrimination

rather than just a showing of disparate impact. While the plaintiffs had put forward an arguable showing of intent by comparing the decision of the DCPS to close the schools instead of rehabilitating them, as was done in 1970 with primarily white schools, the court was not optimistic about the chances for success on summary judgment; "harmful discrimination may be hard to find where students are being transferred to more integrated, better performing schools."