

ILLINOIS STATE  
UNIVERSITY

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Volume 34, No. 1  
January 2014

*ILLINOIS STATE*  
*EDUCATION LAW AND POLICY*  
*JOURNAL*

**IN THIS ISSUE**

<b>EMPLOYEE RIGHTS</b>	<i>page 2</i>
<b>FEDERAL DEPARTMENT OF EDUCATION</b>	<i>page 2</i>
<b>STUDENTS' RIGHTS</b>	<i>page 3</i>
<b>SPECIAL EDUCATION</b>	<i>page 5</i>
<b>LEGISLATION</b>	<i>page 6</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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*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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## EMPLOYEE RIGHTS

***Craig v Rich Twp. Sch. Dist., No. 13-1398 (7th Cir. Dec. 3, 2013).*** Craig was a guidance counselor and girl's basketball coach at Rich Central High School. During the tenure of his employment, he self-published a book about male-female relationships. The board decided that the book was inappropriate and voted to fire Craig. He filed suit in federal district court alleging wrongful termination; that he was terminated for exercising his First Amendment right of free speech. The district court found that his book did not fall under the protection of the First Amendment because it was not speech regarding a public concern. Craig appealed. While agreeing with Craig that the book was protected speech, the 7th Circuit found that the school district had a compelling state interest in promoting effective and efficient public service which outweighed Craig's right to free speech, and therefore was justified in terminating Craig. Using the Connick/Pickering line of precedent, the court, the court found that the necessary balancing test fell on the side of the school district; that Craig's employment would create an intimidating educational environment, especially for female students.

## FEDERAL DEPARTMENT OF EDUCATION

The U.S. Department of Education has named **five priorities for charter school** operators applying for federal grants:

- (1) Improving efficiency through economies of scale
- (2) Improving accountability
- (3) Students with disabilities
- (4) English-language learners
- (5) Personalized technology-enabled learning

On January 8, 2014 the United States Departments of Education and Justice issued a **“Dear Colleague Letter”** on the topic of discriminatory practices in the administration of student discipline. This letter is intended to help public elementary and secondary schools administer student discipline in a manner that does not discriminate on the basis of race. The OCR possesses data that shows that students of certain racial or ethnic groups tend to be disciplined more than their peers. African-American students without disabilities are more than three times as likely as their white peers without disabilities to be expelled or suspended. The letter states two ways in which administration of discipline may result in unlawful discrimination: (1) if a student is subjected to different treatment based on the student's race (intentional); and (2) if the effect of a racial neutral policy creates a disparate impact on students of a particular race. The letter includes an appendix with recommendations for policy and practice.

On January 25, 2013, OCR issued a **“Dear Colleague Letter”** regarding the responsibilities of schools under Section 504 to ensure that students with disabilities have an equal opportunity to participate in extracurricular activities. In light of concerns articulated by the NSBA, some clarification was provided. As regarding equal opportunity, NSBA had been concerned that the letter expanded Section 504 far beyond existing statute and regulations and thereby creating new rights and responsibilities. In response, OCR stressed, “The DCL does not announce new obligations or rules, but rather clarifies how OCR applies provisions.” In the clarification provided, OCR stated that equal opportunity did not mean that every student with a disability has a

right to be on an athletic team, that the nature of the team must be altered, or that separate teams for the disabled must be created. “OCR is not articulating a legal requirement under Section 504 that such IEPs must address participation in extracurricular athletics...Furthermore, OCR is not stating that Section 504’s FAPE provisions require that a student’s participation in nonacademic services be addressed by the Section 504 team as part of delivering FAPE.

## **STUDENTS’ RIGHTS**

***K.P. v State of Florida*, No. 3D 12-1925 (Fla. App. Ct. Dec. 26, 2013).** An anonymous tip from the Miami-Dade County Police Department Gun Bounty Program was passed along to the school resource officer at Miami Northwestern Senior High School (NSHS). The tip stated that K.P. was in possession of a firearm. The assistant principal took K.P.’s book bag, and in the presence of both the assistant principal and K.P. the school resource officer (who was an employee of the Miami-Dade County Police Department who was assigned to the high school) searched the bag. A loaded, semi-automatic handgun was found. At his trial for carrying a concealed weapon, possession of a firearm on school grounds, and possession of a firearm by a minor, K.P. moved that evidence surrounding the handgun be excluded as obtained through an illegal search. The juvenile court denied his motion and K.P. appealed. The court of appeals affirmed the juvenile court’s denial of the motion to suppress. The court stated that normally an anonymous tip would only withstand scrutiny if “the tip contains sufficient details and information that can be independently corroborated by the police to establish a level of reliability regarding the information of the tip. However, the court added, “the level of reliability that an anonymous tip must demonstrate in order to satisfy the Fourth Amendment is lower both when an extraordinary danger is threatened and where legitimate expectations of privacy are reduced.” The extraordinary threat was a loaded gun. The lower expectation of privacy is found in the school. “[The] government’s interest in protecting students from gun violence is entitled to substantial weight when deciding whether a particular search at a school is reasonable under all of the circumstances...Given the reduced expectation of privacy, the relatively-moderate intrusiveness of search, the gravity of the threat, and the consequent reduced level of reliability necessary to justify a protective search, the decision to search K.P.’s book bag was reasonable.” On the argument that the search was somehow more intrusive because it was done by a school resource officer, the court stated, “This analysis is not altered because the search was conducted by a school resource officer assigned full time to work at the school because such an officer is more akin to a school official than an officer on the street and the purpose of the search was to protect students, not to establish guilt.”

***Beattie v Line Mountain Sch. Dist.*, No. 13-02655 (M.D. Pa. Jan 13, 2014).** A.B. had been wrestling on the school wrestling team since 3rd grade. Line Mountain Middle School policy prohibited female students from participating on male athletic teams because of safety concerns. This meant that when A.B. started 7th grade she was no longer allowed to wrestle. A.B.’s father filed a complaint with the Pennsylvania Human Relations Commission requesting a preliminary injunction. His request was denied, so he filed suit claiming a violation of the 14th Amendment Equal Protection Clause and the Pennsylvania Equal Rights Amendment. The district court granted A.B.’s motion for preliminary injunction pending a decision on the merits. Because the school policy involved a classification based on gender, the school must demonstrate that there is

an exceedingly persuasive basis for the classification. Using intermediate scrutiny, the court rejected the school's safety argument stating that it was a generalized assumption as no injuries had ever occurred. The school's arguments based on concern over inappropriate contact failed for the same reason. Because the school had not met its burden of showing a important government interest, the court concluded that A.B. was likely to succeed on the merits of her claim therefore a preliminary injunction was appropriate.

***Doe v Regional Sch. Unit 26, No. 12-582 (Me. Jan. 30, 2014).*** Susan was a transgendered student at Asa Adams Elementary school who was biologically male, but began to identify as female in third grade. In third and fourth grade Susan was allowed to use the girl's bathroom. In fourth grade the school implemented a § 504 plan to address Susan's gender identity issues which may arise in fifth grade, where the single stall bathrooms were replaced by communal bathrooms separated by sex. Susan continued to use the girl's bathroom in fifth grade. After some situations arose about the arrangement, the school had Susan use the staff bathroom. After Susan's family moved to a new school district, her parents filed a complaint with the Maine Human Rights Commission alleging a violation of Susan's rights by not allowing her to use the girl's communal bathroom. The Commission ruled for Susan, but when it instituted a suit in superior court on Susan's behalf, summary judgment was granted to the school district. On appeal the summary judgment was vacated. The court relied on two states laws: the Maine Human Rights Act (MHRA) and a state statute in the Sanitary Facilities subchapter of the state code that regulated restroom facilities in schools. Under the MHRA, the school stated that the school had made the determination that Susan was a girl, and "in keeping with the information provided to the school by Susan's family, her therapists, and experts in the field of transgender children, the school determined that Susan should use the girls' bathroom." When the school district changed that decision, it violated the MHRA because that decision was not made on the basis of a change in Susan's status, but on the grounds of complaints received from others. Looking at the sanitary code, the court stated that the law required that bathrooms be segregated by gender, but it did not speak to which of the bathrooms should be used by a transgendered individual. The court did include a qualification that may be important when using this case as precedent: "In vacating this judgment, we emphasize that in this case the school had a program carefully developed over several years and supported by an educational plan designed to sensitively address Susan's gender identity issues. The determination that discrimination is demonstrated in this case rests heavily on Susan's gender identity and gender dysphoria diagnosis, both of which were acknowledged and accepted by the school. The school, her parents, her counselors, and her friends all accepted that Susan is a girl. Thus, we do not suggest that any person could demand access to any school facility or program based solely on a self-declaration of gender identity or confusion without the plans developed in cooperation with the school and the accepted and respected diagnosis that are present in this case. Our opinion must not be read to require schools to permit students casual access to any bathroom of their choice. Decisions about how to address students' legitimate gender identity issues are not to be taken lightly. Where, as here, it has been clearly established that a student's psychological well-being and educational success depend upon being permitted to use the communal bathroom consistent with her gender identity, denying access to the appropriate bathroom constitutes sexual orientation discrimination in violation of the MHRA."

## SPECIAL EDUCATION

***K.A. v Fulton Cnty. Sch. Dist., No. 12-15483 (11th Cir. Dec. 20, 2013).*** K.A. had Down's Syndrome. K.A.'s parents met with the school district to establish an IEP for first grade. The IEP placed K.A. in the regular classroom for some subjects and in special education classes for others. When K.A. started to have behavior problems and difficulty keeping up with the work in the regular classroom, the school district met with K.A.'s parents in an attempt to modify the IEP to assign more hours for K.P. to be in the special education classroom; the district wanted to move K.P. to another elementary school and place her in a "mildly intellectually disabled" program. Over the objections of the parents, the district amended K.A.'s IEP. Her parents request a due process hearing to challenge the placement. Both the independent hearing officer and the federal district court found in favor of the school. On appeal the parents raised four arguments: (1) that when the parents objected, the school should have been the ones required to request due process in order to make the changes; (2) that they were deprived of prior written notice as required by the IDEA; (3) that the district court applied the wrong standard of review to the hearing officer's decision; and (4) that the parents were entitled to relief under § 1983 because the school district's actions violated their rights under the IDEA and the U.S. Constitution. The appellate court agreed with the school that it had the ability to amend the IEP even without the parents' consent if the amendment was done at an IEP team meeting. The court stated, "We are unable to identify anything in the statute that suggests Congress intended to require school districts to present a complaint and prevail at a due process hearing in order to amend an IEP if the parents do not consent." The court also found that any procedural errors did not violate the IDEA and no harm resulted. Finally, on the topic of the § 1983 claim, the court stated: "We join the First, Third, Fourth, Ninth, and Tenth Circuits, and hold that section 1983 actions for denial of rights conferred by the IDEA are barred because the IDEA's comprehensive enforcement scheme provides the sole remedy for statutory violations."

***T.F. v Fox Chapel Area Sch. Dist., No. 12-01666 (W.D. Pa. Nov. 5, 2013).*** T.F., a kindergartner at Fairview Elementary suffered from a severe tree nut allergy which is a recognized disability under § 504. Prior to T.F.'s enrollment, his parents met with the school district to develop a § 504 plan which proposed the following accommodations: (1) T.F. would be given no food unless provided by his parents; (2) emergency care plans would be given to his teachers; (3) a nurse or parents' designee would go on field trips with T.F.; and (4) in case of medical emergency the school would call (a) 911, (b) T.F.'s physician, and (c) T.F.'s parents. T.F.'s parents did not like the accommodations, so after several amendments the 504 plan included the following additional accommodations: (1) T.F. would be seated at lunch at a "tree nut free" table; (2) a treat box would be provided by the parents on occasions such as classroom parties and birthdays; (3) tree nut free snacks would be made available to T.F., (4) a staff directive, including the use of an EpiPen when necessary would be issued and followed; and T.F.'s lunch table would be cleaned with a cleaner that removed food allergens. The parents still had numerous complaints, so they withdrew T.F. from school, enrolling him in a private school. The parents filed a due process complaint seeking compensatory damages. The hearing officer found that T.F. was provided FAPE under § 504. The district court upheld the hearing officer's decision. In order to prevail on a § 504 action, the complainant has to prove (1) a disability; (2) was otherwise qualified to participate in the activity; and (3) was denied the benefits of the program. Moreover, in the

instant case, deliberate indifference to T.F.'s condition would need to be proven. The court found that the school district had not shown indifference, had taken reasonable steps to accommodate T.F.'s disabilities and include him in all class activities.

#### **LEGISLATION**

Some laws that officially took effect in Illinois on Jan. 1, 2014.

**Public Act 98-0556:** establishes that school districts may elect to have cameras on their school buses to track drivers who pass stopped school buses that have their stop-sign arms extended.

**Public Act 98-0129:** Makes it illegal for schools to ask for/demand a student's social networking password without cause; requires parental notification for elementary and secondary school students.

**Public Act 98-0304:** Permits school boards to designate the first Monday in October each year as "Bring Your Parents to School Day" to promote parental involvement.

**Public Act 98-0131:** Extends the time period school districts (other than CPS) may transfer money between specified funds.

**Public Act 98-0361:** Requires those seeking a Professional Educator License to pass a basic skills test after an educator preparation program. This requirement is instead of requiring the test before entering an educator preparation program.

**Public Act 98-0441:** Any public school sex-education course offered to 6th to 12th graders must cover abstinence and contraception.

**Public Act 98-0059:** Increases the interaction between a school's principal and law enforcement agencies involving gang activities.

**Public Act 98-0471:** Extends teacher and counselor training to include signs of mental illness and suicidal behavior.

**Public Act 98-0480:** Requires proof of meningitis vaccination before entering 6th and 12th grade.