

Illinois School Law Quarterly

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Mission Statement

The primary purpose of the Illinois State School Law Quarterly 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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State Legislation

The Illinois General Assembly has passed several laws, which affect local school districts

SB 777 This bill which would have required school districts to place automated external defibrillators in all in-door physical fitness facilities did not survive a motion to override the Governor's amendatory veto. Though technically, because of a wording that was inserted into the bill it could be placed on the agenda for one more vote, in reality there were simply not enough days in the session to save it. Consequently, **this bill is dead.**

HB 79 [Public Act 93-0119]. This new law, which was effective July 10, 2003 allows Teachers' Retirement System members to elect to participate in Medicare coverage.

HB 210 [Public Act 93-0081] allows a standard teaching certificate to be renewed if the certificate holder has completed his or her agreed upon certificate renewal plan before July 1, 2002 was signed into law by the Governor. This can be done in lieu of the mandated 120 CPDUs required to be earned before the same date as was previously required for renewal.

Unfortunately, even this new law is in need of amendment because approximately 7,000 teachers who are currently in their fourth year of teaching on their initial certificates will not be able to meet the requirements of the law by June 30, 2004 thereby making them ineligible to teach in the public schools after July 1, 2004. The problem is that the required programs needed by these teachers to be in compliance have never been developed. A compromise is being worked on.

HB 765 [Public Act 93-0393], effective July 28, 2003, is a school finance bill, which allows a 2-year window during which school districts will have the ability to transfer funds among the Education Fund, the Operations and Maintenance Fund, and the Transportation Fund for any purpose.

HB 2298 [Public Act 93-0088] amends the School Code to require sex education materials to include instruction on the provisions of the Abandoned Newborn Infant Protection Act.

HB 2352 [Public Act 93-0426] deals with various aspects of standardized testing. Under this new law effective August 5, 2003, students in grades 3 through 8 will be tested annually in reading and math. Students in grades 3, 4, 6, and 8 will be tested annually in writing. Students in grades 4 and 7 will be tested annually in science. Students in grades 5 and 8 will be tested annually in social science. Other changes to standardized testing were also included such as the maximum time allowed for testing and the assessment instruments used.

SB 195 [Public Act 93-0320] allows certain retired teachers to continue to receive retirement benefits while teaching in certain designated subject shortage areas. In other words, the taxpayers of Illinois will pay these teachers twice.

SB 372 [Public Act 93-0547] now requires driver education courses to provide at least 30 minutes of instruction on organ and tissue donation.

SB 533 [Public Act 93-0355] deals with new teacher mentoring. Under this new law effective January 1, 2004, public schools are required to develop, establish, and implement a new teacher induction and mentoring program. The new law clearly states, however, that if the mentoring program is not fully funded, school district do not have to establish and implement the program required by the new law.

SB 878 [Public Act 93-0470] is the law required by the federal No Child Left Behind legislation. It lays out the steps a school district would be required to complete should it continue to fail to meet adequate yearly progress.

SB 1586 [Public Act 93-0523] amends the Open Meetings law to require that all closed sessions are either audio or video taped. The tapes must then be kept for a specified period of time.

Other Legislation to Watch

SB 1014 was passed by the House of Representatives on November 6th and it requires the ISBE to offer a non-public school recognition program. This is in response to the ISBE cutting such a recognition program when \$1.1 million was cut from its administration budget last session. Private schools need such recognition if they wish to participate in IHSA-sanctioned interscholastic academic and sports competition.

HB 1180 concerning significant changes to the extraordinary and private tuition components of the Special Education program included in the educational services block grants.

SB 191 concerning certain administrative expenses for special education classes for children from orphanages.

SB 192 concerning reimbursement for certain administrative expenses for residential placement

COURT CASES

Illinois State Courts

***Brugger v Joseph Academy Inc.*, 202 Ill. 2d 435, 2003**

Joseph Academy was a private, not-for-profit corporation serving special education students pursuant to contracts with various local school districts. The Academy requested in its appeal that the court reconsider the criteria of the Local Governmental and Governmental Employees Tort Immunity Act established in *Carroll v Paddock*, 199 Ill. 2d 16. The Academy felt that it qualified as a public entity under the act. The Illinois Supreme Court affirmed and remanded for further consideration after declaring that the Academy did fit the definition of a public entity.

***Puffer-Hefty School District No. 69 v School District No. 58*, 339 Ill. App. 3d 194, 2003**

Puffer-Hefty was dissolved and annexed to School District No. 58. Puffer-Hefty filed a complaint seeking administrative review of the Board's decision and a judgment declaring Section 7-2a(b) of the School Code unconstitutional. The trial court upheld the Board's decision, but did not comment on the constitutionality of the statute. The appellate court upheld the lower court's decision and upheld the constitutionality of Section 7-2a(b) of the School Code.

***Tom Camlin v Beecher Community School District*, 339 Ill. App. 3d 1013, 2003**

While a freshman at Beecher Community High School, Kevin Camlin attended a function at a bowling alley. During that function, it came to the attention of the school the marijuana was smoked in the boy's bathroom. Three boys, Kevin Camlin, Mike Barton, and Miguel Savalez were present. Each was interviewed separately by the dean of students and two of the students, Barton and Savalez, admitted to being involved. Barton provided the marijuana for the two of them to smoke. Camlin maintained his innocence as to possessing or smoking the marijuana, and neither of the other two boys stated that Camlin had done anything more than be present knowing Barton and Savalez were smoking. As punishment Barton and Savalez were given a 10-day suspension pending expulsion, and Camlin was given a six-day suspension. Everyone thought the incident was finished.

During winter break, however, Barton struck a deal wherein he avoided expulsion if he implicated Camlin. Consequently, at the start of spring semester Camlin was called to the office of the dean of students and informed that because "further information" about Camlin's involvement had come to light, he was now being suspended for 10-days and recommended for expulsion. Camlin was told neither the nature of the "further information" nor was he given the name of the individual who provided such information. He requested to see his mother but the request was denied. Instead the dean of the students demanded that Camlin sign a disciplinary form admitting his guilt. Camlin refused and again asked to see his mother.

Camlin's parents were notified of the pending expulsion hearing for violation of the school drug policy. At that time, Camlin's parents repeatedly requested that the school follow its own policy and, since Camlin was a first offender, that he be enrolled in

the NEXT STEP PROGRAM, a program for drug abuse, rather than be expelled. The request was denied. For the first time at the expulsion hearing the parents asked again that the school district follow its own policy. Again they were denied.

When Camlin instituted this lawsuit, he did so on two main grounds. First, he stated that his due process rights were violated at the expulsion hearing. Second, he stated that his due process rights were violated by the school district failing to follow its policy for first-time drug offenders. As to the expulsion hearing, Camlin asserts that his constitutional rights were violated because (1) the hearing officer was not able to make findings of fact or judge the credibility of witnesses, thereby depriving the decision-maker of any direct or indirect basis to consider or determine the believability or persuasiveness of the evidence; and (2) he was denied any meaningful chance to cross-examine and thereby confront his accuser.¹ The court agreed with Camlin's assertion of denial of due process to the extent that there was a possibility that he could prevail on the merits should the case go to trial.

“This case does not involve a short suspension but rather an expulsion for a year. The Supreme Court in *Lopez* acknowledged that longer suspensions and expulsions require more due process protections than short suspensions. *Lopez*, 419 U.S. at 584. Here, in light of the serious deprivation he faced, the plaintiff was entitled to significant due process protections such as notice of the charges and evidence against him, a meaningful opportunity to respond to the evidence and charges, and a chance to rely on duly enacted school policy. The process that resulted in Kevin Camlin's expulsion did not satisfy these fundamental requirements.”²

Look at the facts of the case, the court had concluded that, because Camlin had been “denied any information about the identity of his accuser or the nature of the specific charge or of the new evidence he would be called up on refute” that he was denied adequate notice and thus a chance to meaningfully respond to those charges prior to the deprivation of his property right.³

As to following its policy, the school district argued that it was under no obligation to follow its own rules when punishing students. The court clearly disagreed, stating that “[t]he school board, by promulgating the rules, has created an entitlement and a right to certain procedures, on which a student may expect to rely. It may not refuse to apply the rules it has created.”⁴ Based on these ruling the court reversed the judgment of the lower court, stating that the preliminary injunction should have been granted.

This case is especially important to take note of because it is an abuse that happens more frequently than it should. The law on what level of due process is necessary – minimal for minimal deprivation of a student's right to an education (defined as 10 days or less by the United Supreme Court), and maximum due process for maximum deprivation of a student's right to an education through expulsion – has been set for approximately two decades. When a school district wishes to expel a student, according to the United States Supreme Court, the following procedures must be followed:

- (1) Written notice specifically outlining the reasons for the expulsion
- (2) Notice must be timely so as to allow the student to prepare and present and adequate and meaningful defense
- (3) Right to counsel

- (4) Right against self-incrimination
- (5) Right to cross-examination and to confront the accuser.

These criteria are neither new nor unknown, and yet the Beecher Community School District violated more than one of them. Always remember that it is easier to err on the side of providing too much procedural due process, than to attempt and provide due process after the student has already been deprived of his or her constitutional rights.

Higher Education

Brewer v Bd. Of Trs. of the Univ. of Ill., 791 N.E.2d 657 (Ill. Ct. App. 2003)

This decision by the 7th Circuit interpreted the reach of sovereign immunity for state universities. When a research assistant at the University of Illinois was terminated, he claimed that the termination was unconstitutional discrimination and filed suit under the Illinois Human Rights Act and the Americans with Disabilities Act. The university asserted that it was immune from lawsuits in circuit court. The court agreed stating that the university, as an arm of the state, was immune from suit in circuit court including those suits for damages arising under federal antidiscrimination legislation. Moreover, the court found that there was no subject matter jurisdiction – the proper venue was the Illinois Commission on Human Rights.

Federal Courts 7th Circuit

Miraki v Chi. State Univ., 259 F. Supp. 2d 727 (N.D. Ill. 2003)

The plaintiff was a U.S. citizen of Afghani descent and a Muslim. He was an non-tenure track adjunct professor. The chair of the department for which he taught often made derogatory and negative statements regarding both his national origin and religion. When he applied for a tenure-track position he was denied, and was later even removed from the adjunct faculty list thereby losing the ability to be appointed to teach in future semesters. He brought suit under Title VII and 42 U.S.C. Section 1981 claiming discrimination on the basis of race, religion, and national origin. His case under Section 1981 was dismissed with the court stating that the university, as a state agency, enjoyed Eleventh Amendment immunity to such claims. In addition, he was unable to sue for punitive damages under Title VII, however his claim for employment discrimination under Title VII was allowed to proceed.

United States Supreme Court Cases decided

None

Cases Awaiting Decision After Oral Argument

None

Cases Set for Oral Argument

None

Certiorari Granted

***Locke v Davey*, 299 F.3d 748 (9th Cir. 2002)**

In May 2003 the Court agreed to hear this case, which deals with the ability of a state to deny theology students access to state-funded scholarships to institutions of higher education, even when those scholarships are awarded based on other objective criteria. The questions in this case revolve around the First Amendment's Religion Clause. More specifically, the Court must decide whether a regulation, which is neutral on its face, can discriminate on the basis of religion, whether such a regulation is justified by the state's desire to avoid violation of a state ban on the funding of religious education, and how, if at all, the Free Exercise Clause is implicated by such a restriction.

Cases Carried Over to the Court's 2003-04 Appellate Docket

***United States v Newdow*, 321 F.3d 772 (9th Cir. 2003); *Elk Grove Unified School District v Newdow*, 321 F.3d 772 (9th Cir. 2003).**

This is the infamous "Pledge of Allegiance" case. In this case, a non-custodial parent of an minor elementary school student brought suit against the school district for requiring his child to recite the words "one nation under God" during the saying of the Pledge of Allegiance. The non-custodial parent asserts that such a practice puts the minor student in an untenable situation of either feigning a belief in monotheism or attempting to protest the coercive practice. Besides the obvious First Amendment questions, there is also the question as to whether a non-custodial parent has legal standing to bring suit on behalf of his minor child.

***Jacoby v Prince*, 303 F.3d 1074 (9th Cir. 2002)**

In this case a high school student has challenged the practice of her school district of refusing her Bible club to meet and enjoy all of the benefits of other non-curriculum-related student clubs. The case is being brought under the Equal Access Act. The federal trial court held that the Equal Access Act and Establishment Clause of the First Amendment forbid offering the same advantages to a religious student group as are provided to non-religious student groups. On appeal the 9th Circuit reversed.

***Lautermilch v Findlay City Sch.*, 314 F.3d 271 (6th Cir. 2003)**

The issue before the Court in this case is whether the statement by a principal that a substitute teacher was "too macho" for assignment at the school was akin to telling an African-American teacher that he was "too black" to be assigned to a school or that a female teacher was "too feminine", therefore creating a prima facie case to support the allegation of sex discrimination.

***Lassonde v Pleasanton Unified Sch. Dist.*, 320 F.3d 979 (9th Cir. 2003)**

This is yet another case from the 9th Circuit dealing with religion in the schools which has been granted certiorari by the current Court. In this case, the salutatorian was not allowed to give a graduation speech in which he proselytized to the rest of the class. Both the federal trial court and the 9th Circuit Court of Appeals found that the principal's

decision was justified in order to avoid a violation of the Establishment Clause of the First Amendment.

***Buncombe County Bd. of Educ. v Roberts*, 563 S.E.2d 37 (N.C. Ct. App. 2002)**

The issue in this case was whether a student was denied procedural due process at a hearing on his long-term suspension. The issue arises because the district declined to allow him counsel at an initial investigative hearing. The North Carolina Supreme Court had dismissed this case with only a per curium opinion.

***Scott v Alachua County Sch. Bd.*, 324 F.3d 1246 (11th Cir. 2003)**

The question before the court is whether students have First Amendment protection for a non-disruptive display of the Confederate Flag on school grounds.

¹ Tom Camlin v Beecher Community School District et. al., 339 Ill. App. 3d 1013 at 1018.

² 339 Ill. App. 3d at 1020.

³ Id. at 1019.

⁴ Id. at 1020.