School Law Update



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**I. Student Issues**

1. Introduction

A. The Standard of Deference (S.Ct.)

“it is not the role of the Federal Courts to set aside decisions of school administrators which the court may view as lacking, a basis in wisdom or compassion” (Bethel, Hazelwood, Vernonia)

B. Tinker v. Des Moines, 393 U.S. 503, 89 S.Ct. 733 (1969) – students have First Amendment Rights, material and substantial disruption. See: Lowry v. Watson Chapel Sch. Dist. 540 F3d &52 (8th Cir. 2008) Students wore black armbands to protest the dress policy.

C. Bethel School District No. 43 v. Fraser, 106 S.Ct. 3159 (1986) – Student’s lewd and indecent speech is not protected by First Amendment.

D. Hazelwood School District v. Kuhlmeier, 108 S.Ct. 562 (1988) – School may regulate the content of school newspaper. Curriculum implication. Court said, “Legitimate pedagogical concern.”

E. Morse v. Frederick, 127 S. Ct. 2618 (2007). Principal did not violate student’s free speech rights by confiscating banner, “Bong Hits 4 Jesus,” at off-campus activity since she viewed it as promoting illegal drugs.

F. Thus, because of Tinker, Bethel, and Hazelwood Morse, freedom of expression in school can be described as follows: “First, ‘vulgar’ or plainly offensive speech ([Bethel]-type speech) may be prohibited without showing … disruption or substantial interference with the schoolwork. Second, school-sponsored speech (Hazelwood-type speech) may be restricted when the limitation is reasonably related to legitimate educational concerns. Third, speech that is neither vulgar nor school-sponsored (Tinker-type) may only be prohibited if it causes a substantial and material disruption of the school’s operation or a reasonable forecast of disruption.” Fourth (Morse-type) may take action regarding activities.

G. J.D.B. v. North Carolina 131 S.Ct.2394(U.S. NC, 2011)

Juvenile, a 13 year old, seventh grader, delinquent was adjudicated for committing felonious breaking and entering and larceny. Was taken out of his classroom in school and interrogated by juvenile police officer, while SRO, Asst. Principal and administrative intern watched. The Supreme Court, in a 5-4 decision, held that a child’s age properly informs Miranda custody analysis, so long as the child’s age was known to the officer at the time of police questioning, or would have been objectively apparent to a reasonable officer.

H. Raker v. Frederick County Public Schools, 470 F. Supp. 2d 634 (W. D. VA 2007). A student wanted to distribute anti-abortion material during non-instructional time. This would include before and after school, in between classes and in the school cafeteria at lunch. The school policy allowed the distribution of material before and after school but not in the cafeteria or between classes. The court applied the Tinker standard and ruled that the policy was over broad and infringed on the student’s freedom of speech. The school could prohibit the distribution if there was disruption as per the Tinker test.See: M.A.L. ex rel. M.L. v. Kinsland 2007 WL 313283(E.D. Mich. 2007) and C.H. v. Brighton Bd. of Ed. 2010 WL 1644612(D.N.J. 2010), Morgan v. Swanson 659 F 3d 359 ( C.A. 5 ( Tex.) 2011).

I. J. D. v. Commonwealth, 591 S. E. 2d, 721, 184 Ed.Law Rep. 1049 (Ct. App. VA 2004). A fourteen year old Albemarle High School student, upon questioning by the assistant principal, acknowledged being involved in the theft of a video camera. The student was charged and found guilty of petty larceny. J. D. argued that the admission of his statement in the office was admitted at trial in violation of his Miranda rights. The court ruled the student was not entitled to Miranda warnings prior to questioning by the assistant principal; therefore they were voluntary and admissible.

J. Newsom v. Albemarle County School Board, 354 F. 3d 249, 184 Ed.Law Rep. 24 (4 CA (VA) 2003). Newsom wore a purple t-shirt, “which depicted three black silhouettes of men holding firearms superimposed on the letters ‘NRA’ positioned above the phrase ‘Shooting Sports Camp.’” Court ruled that school rule that prohibited “messages on clothing…and personal belongings that relate[d] to…weapons” was overbroad. Court used Tinker test that t-shirt was not disruptive.

K. Bar-Navon v. Brevard Co. Sch. Bd. 290 Fed. Appx. 273( C.A. 11( Fla.) 2008)

High school student sued alleging that school board policy prohibiting the wearing of non-otic pierced jewelry violated her First Amendment right to free speech. The Court of Appeals held that: (1) student’s desire to wear non-otic jewelry was not protected speech, but (2) even if it were, dress code did not violate free speech. Affirmed. At issue is a School Board written policy that prohibits the wearing of non-otic pierced jewelry by students in the Brevard County public school system. The Dress Code sets out this standard: Pierced jewelry shall be limited ot the ear. Dog collars, tongue rings, wallet chains, large hair picks, chains that connect one part of the body to another, or other jewelry/accessories that pose a safety concern for the student or others shall be prohibited. Student has piercings located on her tongue, nasal septum, lip, navel and chest. Palmer v. Waxahachie Ind. Sch. 579 F3d 502 (C.A. 5 (Tex.) 2009)

L. Broussard v. School Bd. of Norfolk 801 F. Supp. 1526 (ED VA 1992). Student wore T-shirts with eight inch letters saying "Drugs Suck." The principal disciplined the student when student did not change clothing. The Court upheld the administration.

M. Griggs v. Fort Wayne School Bd. 359 F. Supp. 2d 731 (N.D. Ind. 2005) The student came to school wearing a T-shirt that reads:

  “My Rifle

  The Creed of a United States Marine

  This is my rifle.  There are many like it, but this one is mine.

My rifle is my best friend.  It is my life.

  I must master it as I must master my life.

  My rifle, without me, is useless.  Without my rifle, I am useless.

I must fire my rifle true.  I must shoot straighter than my enemy who is trying to kill me.  I must shoot him before he shoots me.  I will ... “

A large picture of an M16 rifle (the standard weapon of the Marines) appears between the two stanzas of the creed, and the seal of the Marines is beneath the last line of text. Administrators at Elmhurst felt that Griggs's T-shirt was "inappropriate for the educational setting," and they forbade him from wearing it to school again.  The student believes that the school's dress code, which prohibits students from wearing "apparel depicting ... symbols of violence," is an impermissibly broad restriction on student speech.  The court upheld the student using the Tinker test. If he had a T-shirt with just the M16, then school could ban.

N. H. v. Easton Area Sch. Dist. 827F. Supp. 2d 392(E. D. Pa. 2011), also: 2011 WL 1376031, (E. D. Pa. 2011) Injunction against punishing students. Middle School girls wore bracelets against breast cancer, “I < heart> Boobies (Keep a Breast).”

O. Doe v. Silsbee 402 Fed. Appx. 852 (C.A. 5 (Tx.) 2011), Student had no property right in participation in cheer leading.

P. Madison Metro. Sch. Dist. v. Circuit Court of Dane County, 800 N. W. 2d 442( S. Ct. Wis. 2011), Court cannot make school take student who has been legally expelled.

2. True Threats

A. Cuff ex rel. B.C. v. Valley Central School District 677 F. 3d109 (C.A.2 (N.Y.) 2012). School officials reasonably could have concluded that student’s drawing would substantially disrupt.

1. Latour v. Riverside Beaver School District 2005 WL 2106562 (W.D., Pa. 2005)

This action arises out of the disciplinary action taken against Anthony Latour ("Anthony"), a student at Riverside Beaver Middle School. On May 5, 2005, Defendant, Riverside Beaver School District, suspended Anthony from school, and then on May 17, 2005, expelled him for two years because of four rap songs that he wrote and recorded in his home over a two-year period. None of these songs and recordings was brought to school by Anthony. The four songs consist of the following:

  1. A song written in 2003 that mentions another middle school student (Jane Smith);

  2. The first track on a CD recorded in November 2004, titled "Murder, He Wrote";

  3. A battle rap song with John Doe titled "Massacre"; and

  4. Another battle rap song he wrote and uploaded onto his personal internet website titled "Actin Fast ft. Grimey."

On July 17, 2005, Defendant's School Board ratified the expulsion decision.

"True threats" are "those statements where the speaker means to communicate a serious expression of intent to commit an act of unlawful violence to a particular individual or group of individuals...." To determine if a statement is a true threat, I will consider the speaker's intent, how the intended victim reacted to the alleged threat, whether it was communicated directly to its victim, whether the threat was conditional, and whether the victim had reason to believe that the maker of the threat had a propensity to engage in violence.

The evidence at the hearing shows that Anthony's songs were written in the rap genre and that rap songs are "just rhymes" and are metaphors. Thus, while some rap songs contain violent language, it is violent imagery and no actual violence is intended.

Furthermore, there is no evidence that Anthony communicated these songs directly to Jane Smith, John Doe, or Defendant. Rather, they were published on the internet or sold in the community.

Furthermore, I find that John Doe was not threatened by "Massacre." As he admitted, he did not think Anthony's song was a threat, but that it was just a "bluff" and "a question of, you know, flexing your lyrical muscle...."

Moreover, there is no evidence that Anthony had a history of violence.

Additionally, I find Defendant's argument that the songs were true threats is weakened by the fact that it failed to do any type of its own investigation, regardless of the police involvement, from the end of March of 2005, until the time of the expulsion hearing on May 17, 2005. Defendant claims that it feared Anthony might cause imminent harm to Jane Doe, John Smith, and or the school, in general. Yet, it did not search Anthony's locker to determine whether he had any types of weapons, did not refer Anthony to counseling, did not talk to Anthony or his parents, did not remove John Doe from school, and did not talk to Jane Smith. Therefore, based on the testimony at the hearing and the exhibits presented, I find that there is a likelihood that Plaintiffs will prevail on the issue of whether the songs were true threats.

1. Ponce v. Socorro Independent School District, 508 F.3d 765 (C.A. 5 (Tex.) 2007). Student diary contained allegedly fictional story of student as leader of Nazi group, planning takeover of school. Court held that speech threatened a Columbine style attack on a school property not protected by the First Amendment.
2. D. J. M. V. Hannibal Pub. Sch. Dist. # 60, 647 F. 3d 754(C. A. 8 (Mo.) 2010, Student’s statements were not protected speech under either “true threat “ or substantial disruption analysis. Instant message shooting someone.

3. Off-Campus Discipline (Internet)

A. Rule of Law—If there is nexus between the outside activity and the school that materially and substantially disrupts then the student may be disciplined.

B. Wisniewski v. Board of Education of the Weedsport Central School District, 494F. 3d 34, 223 Ed. Law 34 (C.A.2 (NY) ) cert. denied 128 S. Ct. 741 ( 20080 Aaron’s Instant Message was a drawing of a pistol firing a bullet at a person’s head, above which were dots representing splattered blood. Beneath the drawing were the words “Kill Mr. Vander Molen” a teacher. Court upheld suspending the student ruling based on Tinker it disrupts the school environment.

C. Layshock v. Hermitage 650 F.3d 205 (C.A. 3(PA) 2011), cert denied 132 S.Ct. 1097 (2012)

Student on grandmother’s computer created fake profile of high school Principal on My Space. Profile was very unflattering of principal. The Court ruled (14-0) that the First Amendment prohibits a school from reaching beyond the school yard to impose what might otherwise be appropriate discipline. Student’s conduct did not disrupt the school.

D. J. S. v. Blue Mountain School District, 650 F.3d 915, (C.A.3 (Pa.) 2011) cert denied 132 S.Ct. 1097(2012)

The same court that handed down Layshock handed down J. S. on the same day. The Judges voted 14-0 on Layshock but voted 8-6 to uphold the student in J.S. J.S. created a My Space profile making fun of her middle school Principal. The profile contained adult language and sexually explicit content. Profile caused no school disruption.

E. Clements v. Board of Trustees of Sheridan County School No. 2, 585 P.2d. 197 (Wyo. 1978). Student punished for impeding a school bus enrooted to school by pulling in front and slowing down. Court upheld school.

1. Beussink v. Woodland R-18 School District, 30 F.Supp.2d. 1175, 170 Ed.Law 30

(Ed. Mo. (1998) – did not materially disrupt school. Court upheld student.

1. J.S. v. Bethlehem Area School District, 807 A 2d 847 (S.Ct. PA 2002). Student

created at home and posted on the internet a web site, which contained derogatory, profane, offensive and threatening statement directed at one of his teachers. Court upheld expulsion.

1. Emmett v. Kent School District No. 415, 92 F.Supp.2d. 1088, 143 Ed.Law 878 (W.D.

Wash., 2000) – Student created web page at home, “Unofficial Kent Lake High Home Page,” No disruption.

I. Mahaffey ex rel. Mahaffey v. Aldrich, 236 F.Supp.2d 779 (E.D. Mich., 2002) – Student suspension violated First Amendment rights, absent proof of disruption to school by website or that website was created on school property.

J. Flaherty v. Keystone Oaks School District, 247 F.Supp.2d 698, 175 Ed.Law 188 (W. D. Pa., 2003) – Post three internal messages on website message board from home and one from school. “The mere fact that someone might take offense at the content of speech is not sufficient justification prohibiting it.”

K. Killion v. Franklin Regional School District, 136 F.Supp.2d 446 153 Ed.Law 90 (W.D. Pa., 2001) – Student complied a “Top Ten” List about the athletic director, made statement about his appearance and the size of his genitals. Student used his computer at home to compose the list. Weeks later it was discovered when it had been reformatted by another student and distributed on school grounds. Did not disrupt school or interfere with anyone’s rights.

L. Requa v. Kent School District No 415 492 F. Supp. 2d. 1272, 222 Ed. Law 178 (W.D Wash. 2007) - Student surreptitiously took motion pictures footage on at least two occasions and posted on YouTube.com. The YouTube commented on teacher’s hygiene habits and organization skills. One student stood behind the teacher making faces, putting two fingers up at the back of her head and making pelvic thrusts. One showed the buttocks of teacher with caption “Caution Booty Ahead,” all to music. YouTube was picked-up by local news channel. This could uphold the suspension citing Bethel, and Tinker disruptive.

M. Doninger v. Niehoff, No 527 F 3d 41, 233 Ed Law 30 (C.A. 2 (Conn) 2008) , also see: 642 F. 3d 334 ( C.A. 2( Conn. ) 2011), Student disagreed with Principal and Superintendent for postponing “Jam Fest”, “Battle of the Bands”. Student posted on her Blog that the ‘Jam Fest” was cancelled by the “douchbags” and to send e-mails and phone calls to Principal and Superintendent, these actions would “piss off” the Superintendent. The Principal refused to have the student run for Senior Class Secretary. She received most votes by write-ins but Principal refused to acknowledge her as Secretary. The court citing Tinker ruled that this was disruptive and did not violate student’s constitutional rights.

N. O.Z. Board of Trustees \_\_\_ F. Supp. 2d \_\_\_ 2008 WL 4396895 (C.D. Calif. 2008)

Middle school student created slide show. Later put on You Tube depicting killing 7th grade English teacher. Student suspended. Court upheld school.

O. A.B. v. State of Indiana 885 N.E.2d 1223 (St. Ct. Ind. 2008).

A profile was created on My Space which was a vulgarity-laced tirade directed at

principal. Delinquency proceedings were initiated against student. Evidence was

insufficient to prove that juvenile had intent to harass.

P. J.C. ex rel R.C. v. Beverly Hills Unified School 711F. Supp. 2d 1094

(C.D.Cal. 2010) Video clip off campus, no disruption or reasonably foreseeable risk.

Q. Evans v. Bayer 684 F.Supp. 2d 1365 (S.D. Fla. 2010). Evans created a group on

Facebook, Teacher, Worst Teacher I ever met. Not obscene.

R. D.C. v. R.R. 182 Cal. App.4th 1190 (Ct.App. 2 Dist., Div.1, Calif. 2010), 254 Ed.Law rep. 05(2010) Posted message wanted to rip student’s heart out and pound head with ice pick, not protected speech.

S. T. V. v. SmithGreen Comm. Sch. Corp. 807 F. Supp. 2d 767( N. D. Ind. 2011) Court ruled that school could not punish girls who posted provocative photos taken during a summer slumber party.

T. Kowalski v. Berkeley Co. Schools, 652 F. 3d 565, ( C. A. 4 ( W. Va ) 2011), cert denied 132 S.Ct. 1095( 2012) Court upheld suspension of student for posting bullying on MySpace of another student.

U. Wynar v. Douglas Co. Sch. Dist. 2011 WL 3512534 (D. Nev. 2011) Student suspended for sending threatening instant message. Court upheld school

V Bell v. Itawamba Co. Sch. Bd. 799 F.3d 379 ( C.A.5 ( Miss.) 2015) Students rap song on Facebook threatened , harassed and intimidated teachers and coaches.

W R.S. v. Minnewaska Area Sch. Dist. \_\_F.Supp.2d\_\_, 2012 WL 3870868 ( D.Minn. 2012) Administrators required involuntarily student to give Facebook password. Sex related conversation on Facebook. Court found for student administrators did not have immunity.

X S.J.W. v. Lee’s Summit R-7 Sch. Dist. 696 F.3d 771 ( 8th Cir. 2012), Twin brothers suspended for 180 days for NorthPress.blog mocked Black students. Court found for school, Tinker case.

4. Sexting

A. Virginia “Guidelines for Prevention of Sexual Misconduct and Abuse in Virginia Public Schools” Guidelines prompted by 2008 Legislation requiring school boards to develop ways to address sexual abuse complaints. The policy does not address use of personnel e-mail accounts. VDOE reports 120 of 129 actions against teachers since 2000 were in response to misconduct involving minors. VDOE also reports 46 educators or school employees were arrested in the past 3 years because of misconduct with students or other minors. At least 23 of the cases involved electronic communications. Policy Passed. March 24, 2011.

B. Ten states have enacted bills to address teenage sexting. In 2010, at least 16 had introduced or were considering sexting legislation. National Conference of State Legislators.

C. More than half of the Tennessee teachers who lost their teaching licenses last year were censured for inappropriate relationship with students. Among the incidents sexual texting, nude photos, statutory rape. “Technology is making it easier to engage in inappropriate communications with students . . . it’s easier to say something in a text message than in person.” Attorney Tenn. Bd. of Ed. 27 teachers lost license in 2010, 11 in 2009 inappropriate contact and texting. The Tennessean, <http://www.tenessean.com>

D. A 2009 survey by MTV and the Associated Press found 24 percent of young people between 14 and 17 had been involved “in some kind of naked sexting.”

E. It is not against Georgia law for 2 consenting adults, 18 or older, to send sexual messages to each other. If an adult has a sexual image of a child they could be charged with sexual exploitation and receive a sentence of 10 years. The problem is when a 12 year old sends a naked image to another 12 year old. There are no statutes in most states for teenagers. <http://www.romenews-tribute.com>

F. “In 2006, 61 percent of 13 to 17 year-olds surveyed by the National Center for Missing and Exploited Children and Cox Communication reported having a personal profile on a social networking site; half of those reported having posted a picture of themselves. Older teen (16 and17 year olds) represented a majority of the youths who use the internet for social networking.”

73 Tex. B. J. 132 (Fed. 2010 West Law)

G. 37 No. 6 QNLNSL 6

37 No. 6 *Quinlan School Law Bulletin*, Art. 6 (West Law). *The News Tribune*, Washington.

Three teens were charged with a class C felony that has a penalty of 30 days in juvenile detention and registration as a sex offender.

The incident was where a 14 year old girl sent a nude photo to another girl who then sent it to many more students in the high school.

The senior prosecuting attorney said “this is a case where technology is ahead of legislation.” He further stated the law should be amended but since under current law the photo was sent without consent of the teen, it constituted “dealing” in depictions of a minor engage[d] in sexually explicit conduct, a felony charge that carries serious consequences for those found guilty.”

The district has started an education program informing the student about the seriousness of “sexting.”

1. 6 No.J Quinlan, Computer Crime and Technology in Law Enforcement, Art. 5 (May 2010, West Law)

In 2009 and 2010 approximately 14 states have proposed legislation that minors who are sexting is a juvenile offense. Currently the law has not caught up with the technology used by today’s teenagers. Some states have proposed legislation to educate teens about the risk of “sexting.”

1. Miller v. Mitchell 598 F. 3d 139 (C.A. (3) 2010)

School officials discovered nude and semi-nude photographs on student’s cell phones. Male students were exchanging images by cell phone. This information was turned over to the District Attorney.

The District Attorney determined that these inappropriate images of minors should be prosecuted under child pornography laws of Pennsylvania. The District Attorney gave the parents and children the option of enrolling in a 6 to 9 month education and counseling program or be prosecuted with felony child pornography. In the education program, the students had to write an essay of what they did and why it was wrong, how the actions impacted the victims and community, focusing on sexual violence, sexual harassment, and gender identity.

Several parents questioned the District Attorney’s actions, specifically saying that their children appeared in a photo with a bathing suit, another from the waist up with opaque brass and a third with an opaque towel wrapped around her, therefore, this was not pornography. The District Attorney said that the photos were “provocative: and the deal was the education program, a $100 fine, probation or being charged with a felony of child pornography when questioned. The District Attorney said “[T]hese are the rules. [I]f you don’t like them, too bad.”

Several parents refused and sued the District Attorney.

The court issued a preliminary injunction against the District Attorney, saying the parents had a likelihood of prevailing. The court said that this violated the constitution because it was among other things compelled or forced speech.

A note: the District Attorney Skumanick was defeated in the November 2009 election. A new District Attorney took office in January 2010.

J. Logan v. Sycamore Community School Bd. of Ed. 2012 WL 2011037 (S.D. Ohio 2012), 780 F.Supp.2d594 (S.D. Ohio 2011). Plaintiffs are parents of decedent Jessica Logan, (“Logan”), who committed suicide after allegedly suffering harassment from other high school students who were allegedly “sexting” a nude picture, from the neck down of Logan among themselves. Logan sought help from a school guidance counselor, who referred her to the School Resource Officer. The SRO allegedly told Logan he could ask the students to delete the photo from their cell phones, but there was nothing else he could do. The SRO further allegedly advised Logan to submit to a television interview on the subject of “sexting.” Students allegedly chastised her television interview with epithets and derogatory remarks, threw things at her while at school and at school-sponsored events, harassed her by phone and online, and even threw things at her during her graduation ceremony.

The SRO told her he could do nothing to help her after the harassment intensified. The SRO’s testimony shows that he was confronted with “sexting,” a recently developing issue, only one time prior to the time with Logan. The first time it happened, he contacted a prosecutor, who told him there was no criminal case to pursue, unless both the male student who had forwarded the image and the female student who had created the image were *both* prosecuted, because they both were involved in disseminating the nude image of a minor.

The Court finds the SRO entitled to qualified immunity. However, the defendant school board remains the defendant. The Court finds it appropriate to allow continued discovery as to the School Board’s policies and actions with regard to the issues of “sexting” and harassment in this case.

K. City of Ontario, California v. Quon 130 S. Ct 2619 (S. Ct. 2010) The City of Ontario acquired alphanumeric pagers for text messaging and issued them to employees. There was a limit on the number of characters each pager was allowed under the city contract per month. The chief noticed that several employees exceeded the character limit. At first he said that the employee could reimburse the department for overage but after several months of collecting money, he decided to do an audit. He requested the service provider send him two months of transcripts. His intent was to see if the employees who had character overage were subsidizing the city’s work. In other words, should the number of characters be increased per month so that employees were not reimbursing the city for official messages. The chief discovered that Office Quon sent or received 456 messages for the month of August 2002 of which 57 were work related; several of the others were sexually explicit.

The officer and the individuals texting Officer Quon sued saying that the reading and auditing of the messages violated the Fourth Amendment rights of these individuals.

Since electronic communication is a new area for the courts, the Supreme Court decided to tread lightly and not determine an opinion that was far reaching. In other words, the opinion was very narrowly drawn because of the unknown ramification of electronic communication.

“Prudence counsels caution before the facts in this case are used to establish far-reaching premises that define the existence, and extent, of privacy expectations of employees using employer-provided communication devices. Rapid changes in the dynamics of communication and information transmission are evident not just in the technology itself but in what society accepts as proper behavior. At present, it is uncertain how workplace norms, and the law's treatment of them, will evolve. Because it is therefore preferable to dispose of this case on narrower grounds, the Court assumes, that: (1) Quon had a reasonable privacy expectation; (2) petitioners' review of the transcript constituted a Fourth Amendment search; and (3) the principles applicable to a government employer's search of an employee's physical office apply as well in the electronic sphere.”

The Court ruled the chief had reasonable grounds to examine the officer’s text messages, therefore, there was no violation of the Fourth Amendment. The Court took this narrow approach and stated, “Rapid changes in the dynamics of communication and information transmission are evident, not just in the technology itself but in what society accepts as proper behavior.”

When addressing the privacy rights of those who Officer Quon sent or received messages, the court said “[i]t is not necessary to resolve this question …” but added if it is reasonable to look at Officer Quon’s text, then it follows that it is reasonable to view the individual’s text who sent or received from Officer Quon.

5. Teachers/Employees Internet Cases

A. San Diego Unified School District v. Commission on Professional Competence 194 Cal. Repr. 4th 1454( Cal. App, 4 Div. 2011) Tenured teacher dismissed for posting on Craigslist an ad soliciting sex that contained graphic photos of his genitalia and anus. Court upheld dismissal for immoral conduct, unprofessional conduct and evidence of unfitness.

B. Snyder v. Millersville University \_\_\_ F. Supp. 2d \_\_\_, 2008 WL 5093140 (E.D. PA 2008) Student teacher experienced difficulty with respect to her competency and over-familiarity with her students. Told not to refer to any students or teachers on personal web pages. Supervising teacher told how student was dismissed for posting information about school on personal web pages.

Student teacher then posted personal matter on her MySpace site. She told students in class she had MySpace web page. Warned not proper to discuss MySpace with students. Postings on web page included photo of student teacher wearing pirate hat and holding a plastic cup with caption “drunken pirate.” Also criticized her cooperating teacher on her web site. Student allowed to graduate but not certified as teacher – unsatisfactory rating as student teacher.

The Court held against the student teacher. The Court stated, “So long as employees are speaking as citizens about matters of public concern, they must face only those restrictions that are necessary for their employers to operate efficiently and effectively.”

In this case, the MySpace was a major issue but also she did not know her subject matter, grammar, etc.

1. Land v. L’Anse Creuse Public School Bd. of Ed. \_\_\_ N.W. 2d\_\_\_, 2010 WL 2135356 (Mich. App. 2010) A teacher was terminated after photos of her engaged in a simulated act of fellatio with a male mannequin appeared on the internet (not illegal). The photos were taken during a bachelor/bachelorette party without teacher’s knowledge and posted on the internet. Rumors started circulating and students gained access.

There are no Michigan decisions that a teacher’s legal, off-duty, off-premises, conduct not involving students constitute professional misconduct and renders teacher unfit to teach. “Conduct, while coarse, was not inappropriate for adult venue” conduct lasted three seconds, photos removed after it became common knowledge. Students who accessed the web site and distributed the photos did so in violation of the web site’s restriction. Note: excellent teacher who went above and beyond her responsibilities to help students and parents.

1. Spanierman v. Hughes 576 F. Supp. 2d 292 (D. Conn. 2008) Nontenured teacher’s contract was not renewed following discovery of her profile and activity on an internet networking site, alleged free speech.

Internet site did not speak out on a matter of public concern as required by First Amendment.

Web site “Mr. Spiderman” used to communicate with students had pictures of naked men. Told to use school e-mail system for communication with students. After meeting with administrators cite was deactivated, but then started new site, now Apollo 68, same content. Other teachers had MySpace accounts but no evidence that they were inappropriate. No having account but conduct on account.

Example: An exchange with a student, using the profile name “repko,” that went as follows:

*The Plaintiff*: Repko and Ashley sittin in a tree. K I S S I N G. t comes love then co9mes marriage. HA HA HA HA HA HA HA !!!!!!!!!!!!!!!!!!!! LOL”

*Repko*: “Don’t be jealous cause you can’t get any lol:)”

*The Plaintiff:* What makes you think I want any? I am not jealous. I just like to have fun and goof on you guys. If you don’t like it, Kiss my brass! LMOA”

In the Court’s view, it was not unreasonable for the Defendants to find that the Plaintiff’s conduct on MySpace was disruptive to school activities.

6. Cell Phones ( Students and Teachers)

A. Students:

1. Virginia Attorney General Opinion, 2010 WL 4909931, Nov. 24, 2010.21

“You ask in what circumstances middle and high school principals and teachers may seize and search students’ cellular phones and laptops to combat ‘cyber bullying’ and how school officials can address student ‘sexting’ without violating Virginia law themselves. Accordingly, it is my opinion that searches of students’ cellular phones and laptops by school officials are permitted when based on reasonable suspicion that the particular student is violating the law or the rules of the school and the search is ‘reasonably related to the objectives of the search and not excessively intrusive in light of the age and sex of the student and the nature of the infraction.’ In instances where a school official discovers sexually explicit material involving an identifiable minor the official should refrain from showing, transmitting, or distributing that material to any other person except an authorized agent of the appropriate law-enforcement agency.”

2. Price v. New York City Board of Education 855 N.Y. S. 2d 530, 231 Ed Law Rep. 856 (N.Y.A.D. 1 Dept. 2008).

The Chancellor of New York City School banned cell phones and other communication devices. There was an exception that student could have devices with prior approval for medical reasons. The court found for the Chancellor that this was a reasonable rule for safety and to decrease disruption. The court also said the Constitution “… did not embrace a right to communicate with children by cell phone.”

3. In the interest of T. M. 693 S.E. 2d 574 (Ct App GA 2010)

Possession of Marijuana by alternative schools minor student established probable cause for school’s police officer to arrest student and thus officer’s search of student’s cell phone, which contained razor blade, was valid search.

4. Laney v. Farley 501 F. 3d 577 (C.A. 6 (Tenn) 2007). Middle school student and her father brought action against county board of education, alleging that student’s right to due process was violated by in-school suspension. The Court of Appeals held that a one-day, in-school suspension of a middle school student after her cellular telephone rang during a class implicated neither the student’s due process property interest in public education nor her due process liberty interest in her reputation so as to require procedural due process; during her suspension, the student remained in the school setting and was required by Tennessee law to complete academic requirements.

5. J. W. v. Desoto County Sch. District 2010 WL 4394059 (N.D. Miss 2010). Student expelled when caught using his cell phone on school grounds. Administrator then opened phone pictures, which showed student at home in photos. Phone given to another administrator who opened phone and showed police officer, who said he recognized gang symbol, therefore student expelled. Did this violate 4th amendment? Court said since student was using the phone when confiscated the search was justified. Court questioned severity of punishment, therefore sent to a jury.

6. Klump v. Nazareth Area Dist. 425 F. Supp 2d 622 (ED PA 2006). School policy permitted students to carry cell phones but not use or display. Phone fell from student’s pocket, administrator took phone, then started calling numbers from directory to see if they could catch other students. They text messaged student’s younger brother without identifying themselves. Court said that Administrator went on “fishing expedition” into student life, violating Fourth Amendment.

7. Walters v. Dobbins – S.W. 3d - , 2010 WL 2131869 (S.Ct. Ark 2010). A senior was a speaker at class day, a school event, during which he played an audio clip from his cell phone. The clip was a female student saying “Oh my gosh, I’m horny.” The cell phone was confiscated; student suspended for 3 days and not allowed to participate in graduation ceremony. The court cited Bethel v. Fraser, lewd, indecent speech not protected by the Constitution.

8. In the matter of S.J.F. 2010 WL 4621816 (Ohio App. 11 Dist., 2010). Fourteen year old student “pressured a 12 year old girl into sending him a nude photograph of herself.” Principal became aware of situation and called police. Police took possession of both cell phones. S.J.F. charged and convicted of “complicity to disseminate matter harmful to a juvenile.” Student got 30 day suspended sentence, 48 hours community service, had to write essay and court held his cell phone for 90 days. Court discussed “prurient interest,” “shameful,” “morbid” interest in sex, what is obscene. A dissenting judge said you needed to consider all of the items. (See: In the Matter of J.P. 2012 WL 1106670

(Ct. App. Ohio 2012)

9. G.C. v Owensboro Schools, 711 F.3d 623 (6th Cir. (Ky.) 2013), School officials lacked reasonable suspicion to search student’s cellphone.

10. Gallimore v Henrico Co. Sch. Bd. 38 F. Supp. 3d 721 (E.D. Va. 2014), Search of cellphone for drugs unreasonable, Associate principal not entitled to qualified immunity.

B. Cellphones Teachers

1. Former school employee’s suit claims she was terminated after discovering assistant principal was “sexting” underage student.

Source: Courthouse News Service, 4/15/10 NSBA

An Administrative Assistant (AA) filed suit in an Arizona federal district court claiming she was fired after reporting that an assistant principal was “sexting” an underage student. According to (AA), she confiscated a cell phone from the student who was texting during school, which is forbidden, and “discovered sexually explicit text messages and photos between the student and [the assistant principal].” (AA) says she “observed what she believed to be inappropriate behavior between Assistant Principal and an under-aged student” on multiple occasions. AA says she reported the behavior to Principal and five days later Assistant Principal gave her an unexpected, negative job performance review. She says the Assistant Principal warned her to “keep things to herself” and to “follow the chain of command,” according to the complaint. AA says that before the cell phone incidents, she received positive job performance reviews and the “Outstanding Education Support Staff of the Year Award” for 2009. Assistant Principal was arrested on two counts of sexual exploitation of a minor and taken into police custody later that day, according to the complaint. AA is seeking a finding that the School District violated her First Amendment rights after she was fired for reporting and exposing “illegal conduct by Assistant Principal.”

2. Awah v. Bd. of Ed. Baltimore Co. 2010 WL 3002016 (D.MD. 2010) affirmed 408 Fed.Appx. 687 (4th Cir. (MD) 2011). Teacher dismissed one of the charges “talking on his cell phone during class.”

3 Hammond v. State 2010 WL 4241577 (Tex. App. Texarkana, 2010). Teacher convicted and sentenced to ten year imprisonment, sexually explicit text messages to a student. Text messages on her cell phone from teacher sexually explicit, one was “come on and F\*\*\* me…”

4. Golding v. Montgomery Co. Public Schools 2010 WL 1640161 (W. D VA 2010), affirmed 395 Fed.Appx. 946 (C.A. 4(Va.) 2010). Remove from substitute list one of the concerns was “making and receiving phone calls on your cell phone during instruction time.”

5. Garza v. North East Ind. Sch. Dist. 2010 WL 1189782 (W.D. Tex 2010). Substitute teacher terminated after she took photos of student with her cell phone. One principal also said she was verbally aggressive with school staff.

6. Gear v. Department of Education 2010 WL 5297850 (W.D. NY 2010).affirmed 2012 WL 2688680 (C.A.2 ( N.Y.) 2012) Paraprofessional terminated, various reasons: insubordination, unauthorized absences, repeated use of cell phone during class.

7. Koch v. Adams 361 S.W. 3d 817, 278 Ed.Law Rep. 1167, (S. Ct. Ark 2010). Teacher confiscated student’s cell phone. Policy prohibited possession and prescribed confiscating for two weeks. The court stated, “we …refrain from interfering with the school district’s decision about the best punishment to employ to enforce the cell phone policy.

8. State v. Hatcher 2010 WL 457491 (Tenn. Crim. App 2010). Twenty-five year old female teacher was indicted with statutory rape of a 17 year old male student. Student’s cell phone contained nude and partially nude photos of teacher, plus 300 text messages over a 3 month period, some during school hours.

9. Mayeaux v. Clear Creek Ind. Sch. Dist – F. Supp. 2d-, 2007 WL 1004241 (S.D. Tex 2007). A special education teacher’s contract was not renewed. At a hearing, two of her aides testified she paid them to complete her lesson plans, did not implement behavior programs, and spent sixty percent of her day on her cell phone, plus a series of other things, such as, improperly restraining student, etc.

7. Teacher E-mail

1. Schill v. Wisconsin Rapids School District \_786 N.W. 2d 177 (S. Ct. Wis. 2010)

The question was whether the contents of personal e-mails written by teachers, which

were created and/or stored on a government owned system are “public records” under the Wisconsin public records law. The court ruled that teacher’s personal e-mails sent on school e-mail accounts and district owned computers were not records under the Public Records Act.

The court said several states have addressed this question and each concluded that government employees’ personal e-mails were not information about government affairs, therefore, not open to the public. The court stated, “the court is asked in the instant case to apply the Public Records Law to e-mails, a technology not contemplated when the legislature enacted the Public Records Law.”

Courts are routinely required to interpret the meaning of statutory language and apply it to "complicated social questions" involving technology that was not contemplated when a statute was enacted. Cited in Mercycare Ins. Co. v. Wisconsin, Com’r of Ins. 786 N.W. 2d 785 (S. Ct. Wis. 2010) “ discussing how the public records law should be applied to email, a technology not contemplated when the legislature enacted the law. The question is, and should be, how the words of a statute apply to a new factual situation. If the legislature disagrees with our interpretation, it is free to debate the issue and pass legislation amending the statute.( See: Voice of Wis. Rapids v Wis. Rapids Sch. 867 N.W.2d 825 ( Ct. App. Wis. 2015 ) ( A.L.R. 4th 680)

1. Howell Education Association MEA/NEA v. Howell Board of Education 789 N.W. 2d 495 (Mich. App. 2010)

“Plaintiffs appeal as of right the trial court’s grant of summary disposition to defendants and dismissal of their “reverse” Freedom of Information Act (FOIA) … action. We reverse and remand for further proceedings consistent with this opinion. While we believe this question is one that must be resolved by the Legislature, and we call upon the Legislature to address it, we conclude that under the FOIA statute the individual plaintiff’ personal emails [of teachers] were not rendered public records solely because they were captured in the e-mail systems’ digital memory. Additionally, we conclude that mere violation of an acceptable use policy barring personal use of the e-mail system—at least one that does not expressly provide that emails are subject to FOIA—does not render e-mails public records subject to FOIA.”

1. Easton Area Sch. Dist. v. Baxter 35 A.3d 1259(Pa.Comwlth. 2012) In matter of first impression, personal e-mails sent by or received from the e-mail addresses of school board members, school district superintendent, and the general school board address that did not document a transaction or activity of the school district were not records subject to disclosure under the Right to Know Law. l

D. District Attorney for the Northern District v. School Committee of Wayland, 918 N.E. 2d 796, ( Mass 2009) District attorney brought action against school committee, alleging violations of open meeting law. Court held that:

(1) school committee’s statement of reason for convening in executive session, i.e., to consider collective bargaining or collective bargaining and personnel, was improper under open meeting law as being inaccurate, and

(2) while some of e-mail messages between individual members of school committee to school committee chair to deliberate superintendent’s professional competence were not between a quorum of members, and therefore were not strictly “deliberation” under open meeting law, they had effect of circumventing requirements of open meeting law and had to be made available to public.

E. Hill v. Fairfax Co. Sch. Bd. 727 S.E.2d 75 (Va. 2012), Exchanges of e-mail messages between school board members did not constitute a “ meeting” under notice of FOIA.

F. Kentucky attorney general opined that parents have an absolute right to inspect all educational records, including emails, relating to their child.

Louisville Courier Journal 4/12/10

8. Searches (Lockers, Body, Cars, Canine, Strip, Drug Testing)

A. Reasonable suspicion v. probable cause.

B. T.L.O. v. New Jersey, 105 S.Ct. 1985 (1985). Reasonableness is based on justification at inception and related to scope and circumstance, particularized. Reasonable suspicion, individualized.

C. Vernonia School District 47J v. Acton, 115 S.Ct. 2386, 101 Ed.Law 37 (1995). Policy which authorized random suspicionless urinalysis drug testing of students who participate in its athletics program is constitutional under the Fourth and Fourteenth Amendment. Special need.

D. Board of Education of Independent School District No. 92 of Pottawatomie County v. Earls, 536 U.S. 822, 122 S.Ct. 2559 (2002) – The Supreme Court upheld random suspicionless drug testing for all extracurricular activities and this did not violate the Fourth Amendment.

E. York v. Wahkiakum School District No. 200 178 P.3d 995, 230 Ed. Law 425 (S. Ct. Wash. 2008). The Supreme Court of Washington ruled that random drug testing of high school athletes violated the Washington State Constitution. The court ruled that the “special needs” rationale adopted by the Supreme Court in Earls would not apply to the Washington constitution.

F. Des Roches v. Caprio, 156 F.3d. 571 (4th Cir. 1998) – Norfolk case, search backpack for missing tennis shoes, 19 students. Search upheld by court. Individualized suspicion was established when two (2) students out of the 19 refused to be searched and then after a threat of punishment only one refused to be searched. The court ruled this established individualized suspicion.

G. People v. Dukes, 580 N.Y.S.2d. 850 (N.Y. Co. 1992). The New York public school had set up metal detectors. Student was found to have a switch blade knife. The Court ruled the metal detectors wee “minimally intrusive” and therefore legal.

H. Willis by Willis v. Anderson Community School Corp. 158 F. 3d 415, 130 Ed.Law 89 (7th Cir. (Ind.) 1998). Drug testing students before they could return to school after a suspension for fighting was unconstitutional. No special need.

I. American Federation of Teachers –West Virginia, AFL-CIO v. Kanawha Co. Bd. of Ed. 592 F.Supp.2d 883 (S.D.W.Va.2009) School Board did not establish “special need”, ruled testing program violated constitution..

J. Knox Co. Ed. Assoc. v. Knox Co. Bd. of Ed. 158 F.3d 361(6th Cir. 1998), Upheld Teacher drug testing.

K. Jones v. Graham Co. Bd. of Ed. 677 S.E.2d 158 (Ct. App. N.C.2008), ruled teacher drug testing violated the State Constitution.

9. Strip Searches

1. Stafford Unified School District v. Redding, 129 S.Ct. 2633 (2009). Assistant

principal had reasonable suspicion to search for drugs, but reasonable suspicion did not justify a strip search. Administrator had qualified immunity because at the time law not clearly established.

B. Knisley v. Pike Co. Joint Voc. 604 F. 3d 977 (6th Cir. 2010), cert denied 131 S.Ct.498 (2010) School officials not entitled to qualified immunity for strip search, citing Safford. See: Hearring v. Sliwowski 2012 WL 246392(M.D. Tenn. 2012), In re T.A.S. 713 S.E.2d 211(N.C. app 2011) unreasonable search. Also: Pacheco v. Hopmeier 770 F.Supp. 2d 1174(D.N.M. 2011)

10. Zero Tolerance

1. Ratner v. Loudoun County Public Schools 16 Fed Appx 140 (4th Cir., VA). Court upheld zero tolerance policy.

11. Student Records

1. Family Education Rights and Privacy Act (FERPA)

“Buckley Amendment”

B. Purposes

* 1. Prohibits disclosure of private educational records
  2. Provides parents access to their children’s education records

C. Falvo v Owasso Independent School District, 534 U.S. 426, 122 S.Ct. 934 (2002). Children grading other children’s papers and reporting grades to teacher did not violate FERPA because the student assignment did not satisfy the FERPA definition of “education records.”

D. Gonzaga University v Doe, 536 U.S. 273, 122 S.Ct. 153 (2002). No individual right to sue under FERPA for damages, decided after Falvo.

1. No Child Left Behind

Military access—must provide directory information to military recruiters for secondary students, name, address, and telephone.

1. “it is beyond cavil that a non-custodial parent has not ‘abandoned’ his child simply by reason of non-custody and, … while legal custody may be in one or both of the parents, the fact that it is placed in one does not necessarily terminate the role of the other … .” Matter of Unido R. 441 N.Y.S.Ct. 325 (1981)

12. Confidentiality and Privileges Communications

A. Privilege communications (testimonial privileges) is a legal right granted, mainly by statutes, to certain professionals not to testify in a court of law regarding information obtained in a professional relationship.

**Code of Virginia - Section 8.01-400.2. Communications between certain mental health professionals and clients**

Except at the request of or with the consent of the client, no licensed professional counselor, as defined in § 54.1-3500; licensed clinical social worker, as defined in § 54.1-3700; licensed psychologist, as defined § 54.1-3600; or licensed marriage and family therapist, as defined in § 54.1-3500, shall be required in giving testimony as a witness in any civil action to disclose any information communicated to him in a confidential manner, properly entrusted to him in his professional capacity and necessary to enable him to discharge his professional or occupational services according to the usual course of his practice or discipline, wherein such person so communicating such information about himself or another is seeking professional counseling or treatment and advice relative to and growing out of the information so imparted; provided, however, that when the physical or mental condition of the client is at issue in such action, or when a court, in the exercise of sound direction, deems such disclosure necessary to the proper administration of justice, no fact communicated to, or otherwise learned by, such practitioner in connection with such counseling, treatment or advice shall be privileged, and disclosure may be required. The privileges conferred by this section shall not extend to testimony in matters relating to child abuse and neglect nor serve to relieve any person from the reporting requirements set forth in § 63.2-1509.

Some states provide privilege to school counselors: Idaho rules of evidence 516; Indiana Code Section 20-6.1-6-15; Iowa Code Ann Sect. 622.10; Kentucky Rules of Evidence 506; Maine Rev. Stat. 20-A Sect. 4008; 20-A Sect. 4008; Michigan Sect. 600.2165;

B. Confidentiality an ethical term, refers to a professional’s decision not to divulge what has been revealed in his contact with a client.

13. Student Suicides

1. Sanford v. Stiles, 456 F. 3d 298, 211 Ed.Law 104 (CA (3) 2006). Sixteen year old student committed suicide at his home. Mother sued school district and one of his guidance counselors, alleging they were liable under a state created danger theory and they were negligent under state law. Boy and girl broke up, boy wrote note to girl saying, I understand you are seeing someone else “…almost made me want to kill myself.” Girl gave note to guidance counselor, but did not believe boy was serious. Counselor talked to boy who said he was not upset with break-up. He also said he would never want to hurt himself. The court found for the counselor, also counselor was entitled to immunity under Pennsylvania Torts Claim Act for Negligence.
2. Carrier v. Lake Pend Oreille School District, 134 P. 3d 655, 209 Ed.Law 444 (S.Ct. Idaho 2006). Student wrote in journal that he had thought about suicide, but changed his mind because “but that means I would not be around anymore.” Teacher read journal and told boy he was he was glad student had changed his mind about suicide, but if he thought of suicide again to come back and talk to teacher. Student moves out of state, began his senior year and then committed suicide.

Idaho statue I. C. Sect. 33-512B “Suicidal tendencies” created a duty to warn. The statue required direct evidence that would include unequivocal and unambiguous oral or written statements by a student which would cause a reasonable teacher to assume the student was going to commit suicide. The court ruled for the school district.

C. Other cases: Brooks v. Logan, 944 P. 2d 709, 121 Ed.Law 358 (S.Ct. Idaho 1997) (Teachers and school district immune); Eisel v. Board of Education of Montgomery, 597 A. 2d 447, 70 Ed.Law 544 (Ct. App. MD 1991) held school counselor had duty to use reasonable means to attempt to prevent suicide when they are on notice or student suicidal intent. Mikell v. School Administrative Unit No.33, 972 A.2d 1050( S.Ct. N.H. 2009), Wyke v. Polk County School Board, 129 F. 3d 560, 122 Ed.Law 118 (11th Cir. 1997) (officials did have duty to inform mother of his suicide attempts and should be submitted to a jury on whether school was at fault for student’s subsequent suicide at his home). Question: Are school districts and district personnel liable for a student suicide? The answer depends on the specific liability and immunity statutes or case laws of each state, as well as the facts surrounding the suicide.

10. Academics

1. Sandlin v. Johnson 643 F.2d 1027 (4th Cir. 1981) Denial of promotion for failure to complete requisite reading level does not violate constitutional rights. (Bd. of Curators of Missouri v. Horowitz 435 U.S. 78, 98 S.Ct. 948, 1978).
2. Larson v. Burmaster 720 N.W. 2d 134(Ct. App. Wis. 2006). The school has authority to assign summer homework.
3. Dangler on Behalf of Dangler v. Yorktown Central Schools 771 F. Supp. 625, 69 Ed.Law 1078 (S.D., NY. August 14, 1991). High school student brought civil rights action against school after he was denied admission into National Honor Society. The Court held: (1) student did not have property interest in membership in HHS or in fairness of section process that was protected by due process. Attorney’s fees awarded against parent, frivolous, vexations, or meritless claim. Court awarded $60,000 judgment against parents to pay school board attorney’s fees.
4. Fields v. Palmdale School District, 427 F. 3d 1197, 203 Ed. Law 4 (CA (9) 2005), 447 F.3d 1187(C.A.9 (Cal.) 2006). Volunteer mental health counselor was enrolled in a master’s degree program at the California School of Professional Psychology. The school district, the Professional School, the Children’s Bureau of Southern California collaborated on a psychological assessment questionnaire for first, third and fifth grade students to establish a baseline for early violence trauma. A parental consent from was sent to parents, saying that the questions might make the child uncomfortable and psychological help would be available. Some of the questions were:

8. Touching my private parts too much

17. Thinking about having sex

22. Thinking about touching other people’s private parts

23. Thinking about sex when I don’t want to

26. Washing myself because I feel dirty on the inside

34. Not trusting people because they might want sex

40. Getting scared or upset when I think about sex

44. Having sex feelings in my body

47. Can’t stop thinking about sex

54. Getting upset when people talk about sex

The parents sued and the court held that parents had no fundamental right to be the exclusive provider of information about sex to their children, did not violate privacy rights, questionnaire had legitimate state interest for the welfare of students.

1. Brown v. Hot, Sexy and Safer Production, Inc., 68 F. 3d 525, 104 Ed.Law l06 (CA (1) Mass. 1995). The Chair person of the PTO and another member of the PTO, who was the school physician started to negotiate with Hot, Sexy and Safer Productions. They had seen a video of past performance and recommended the program to the school administration. The School Committee (School Board) executed an agreement. The program dealt with AIDS awareness.

After the show the parents sued alleging that students were compelled to attend, violated their privacy rights, due process, free exercise of religion, right to educational environment free of sexual harassment. The following is a quote regarding the allegations.

Plaintiffs allege that Landolphi gave sexually explicit

monologues and participated in sexually suggestive skits with several minors chosen from the audience. Specifically, the complaint alleges that Landolphi: 1) told the students that they were going to have a “group sexual experience, with audience participation”; 2) used profane, lewd, and lascivious language to describe body parts and excretory functions; 3) advocated and approved oral sex, masturbation, homosexual sexual activity, and condom use during promiscuous premarital sex; 4) simulated masturbation; 5) characterized the loose pants worn by one minor as “erection wear”; 6) referred to being in “deep sh—“ after anal sex; 7) had a male minor lick an oversized condom with her, after which she had a female minor pull it over the male minor’s entire head and blow it up; 8) encouraged a male minor to display his “orgasm face” with her for the camera; 9) informed a male minor that he was not having enough orgasms; 10) closely inspected a minor and told him he had a “nice butt”; and 11) made eighteen references to orgasms, six references to male genitals, and eight references to female genitals.

The court held for the School District. School had authority to determine the flow of information. The court stated: “If all parents had a fundamental constitutional right to dictate individually what the schools teach…the schools would be forced to cater a curriculum for each child whose parents had genuine moral disagreements with the school’s choice of subject matter.” See: Parker v. Hurley 514 F.3d 87(C.A.1 (Mass.) 2008), teaching about gays did not violate parents’ rights.

**II. Personnel**

1. Academic Freedom

A. Urofsky v. Gilmore, 216 F.3d 401, 145 Ed.Law 582 (4th Cir. 2000),cert denied 121 S.Ct. 759(2001) Statute restricting state employees from accessing sexually explicit materials on computers that were owned or leased by the state. Court held it does not violate employees First Amendment rights, does not violate First Amendment Academic freedom.

B. Boring v. Buncombe County Bd. of Ed., 136 F.3d 364, 124 Ed.Law 56 (4th Cir. VA, 1998). Teachers have a right to speak out on matters of public concern. “…public school teachers are not free, under the first amendment, to arrogate control of curricula.”

C. Newton v. Slye, 116 F.Supp.2d 677, 148 Ed.Law 179 (W.D. VA, 2000). The school’s decision to prohibit the teacher from displaying a list of banned books on the door of his classroom was not a violation of the First Amendment. The school had decided that the books exposed students to a host of issues that were inconsistent with the school’s curricular themes and programs. The teacher was allowed to keep the books in his classroom and discuss with students in a more controlled setting. “It is within the power of the school board to determine what shall be taught and how it shall be taught … when speech by a teacher runs contrary to the curriculum the school board is trying to teach, a legitimate reason exists for requesting a teacher to distribute the pamphlets in a more supervised way.”

D. Lee v. York County School Division 484 F. 3d 687, 219 Ed.Law Rep 413 (CA 4 2007), cert denied 128 S.Ct. 387( 2007). Citizen complained that teacher had overly religious postings in his classroom. After investigation teacher was told to remove items. The five items on the bulletin board were: (1) a 2001 National Day of Prayer poster, featuring George Washington kneeling in prayer; (2) a May 15, 2004, *Daily Press* news article entitled “The God Gap,” outlining religious and philosophical differences between President Bush and his challenger John Kerry; (3) an October 14, 2002, *USA Today* news article entitled “White House Staffers Gather for Bible Study,” describing how then Attorney General Ashcroft led staffers in voluntary Bible study sessions; (4) a November 1, 2001, *Daily Press* news article, detailing the missionary activities of a former Virginia high school student, Veronica Bowers, who had been killed when her plane was shot down in South America; and (5) a June 2001 Peninsula Rescue Mission newsletter, highlighting the missionary work of Bowers.” The teacher, a Spanish teacher, sued alleging a violation of his First Amendment Rights. The court held that materials in the classroom were curricular controlled by the school board.

1. Johnson v. Poway Unified Sch. Dist. , 658 F. 3d 954( C. A. 9 ( Cal. ) 2011), cert denied 132 S.Ct. 1807( 2012), School did not violate teachers free speech by making him remove religious banners from class room.

2. Teachers

1. Smith Co. Sch. Bd. v. Barnes 90 So. 3d 77(Miss. App. 2011), judgment affirmed 90 So.2d 63(S.Ct. Miss. 2012) , Termination of teacher who refused to take drug test was not arbitrary or capricious.

3. Virginia Teachers

1. Bird v. Bland County School Board, 205 F.3d 1332, 2000 WL 159317 (4th Cir. Va. 2000) (unpublished). School board violated tenured teacher’s due process. Teacher awarded $71,900 in lost wages and $5000 for emotional distress.
2. Colona v. Owings (Accomack Co. Sch. Bd.), 2000 WL 1528703, 52 Va. Cir. 421 (Cir. Ct. Va. 2000). Substitute teacher not informed student was HIV. Child attacked and bit teacher. School board had sovereign immunity, individuals did not have immunity. No duty to inform employee.
3. Perkins v. Commonwealth, 523 S.E.2d 512 (Ct. App. Va. 2000). Defendant, a deaf teacher, was convicted in the Circuit Court, Smyth County, of assault and battery in connection with touching of student on nape of her neck. Defendant appealed. The Court of Appeals held that evidence was sufficient to support conviction. Affirmed.( U.S. v. Vincencio-Martinez 404 Fed. Appx. 633(C.A.3(Pa.) 2010), Perkins out dated , not a good case)
4. Williams v. Augusta County School Board, 445 S.E.2d 118, 92 Ed.Law 686 (Va. 1994). Sister-in-law of member of school board sought declaration that Conflict of Interest Act did not preclude board from considering her employment. Teacher employed full-time from August 1969 until she left teaching in May 1975. Thirteen years later applied for a teaching position, but board refused to consider her application; board said she was ineligible because she was sister-in-law to the board chairman. The Supreme Court held that exemption contained in the Act was not applicable to sister-in-law because she was not regularly employed by board at time brother-in-law was appointed to board.
5. Lee-Warren v. Sch. Bd. of Cumberland Co., 403 S.E.2d 691, 67 Ed.Law 321 (Va. S.D. 1991). The United States District Court for the Western District of Virginia certified a question as to whether under Virginia law a school principal with continuing contract status retains that status upon accepting a job as a principal in another school division within the state. The Supreme Court held that school principal with continuing contract status does not retain that status upon accepting a job as principal in another school division within state. Question answered in the negative.See: 792 F.Supp.2d472 (.D.Va. 1991)

3. Virginia Cases

1. Cole v. Buchanan County School Board, 328 Fed.Appx.204,(C.A. 4 (Va.) 2009)

School Board passed resolution barring reporter from school grounds, except Board meetings for writing critical articles about the school board. Court held that under the clearly established prong of the qualified immunity analysis, a reasonable Virginia school board member could have believed that banning critical reporter from school grounds would not violate reporter’s first Amendment rights.

1. Cole v. Buchanan County School Board, 207 WL. 4613039 (December 29, 2007
2. Hibbitts v. Buchanan County Sch. Bd. 2010wl2570966 (W.D. Va. 2010) “ Virginia law specifically allows a tenured administrator to be reassigned to a teaching position with a salary reduction as long as the opportunity to have an informal meeting before demotion …the validity of the reasons for demotion are irrelevant because the law specifically permits for reassignment to a teaching position without cause” Affirmed 433 Fed.Appx. 203 (C.A.4 (Va.)2011)
3. J.S. ex rel. Duck v. Isle of Wight Co. Sch. Bd. 362 F.Supp. 2d 675 (E.D.Va. 2005)Student suspended for sexually assaulting girl in girl’s bathroom did not violate constitutional rights.

**III. Sexual Harassment**

1. Two types of sexual harassment: (1) *quid pro quo* (something for something), and (2) non *quid pro quo* (hostile environment).

2. Franklin v. Gwinnett Co. Public Schools, 112 S.Ct. 1028 (1992) – Damage remedy is available from action to enforce Title IX (money).

3. Gebser v. Lago Vista Independent School District, 118 S.Ct. 1989 (1998) – School district liable for teacher action if school official had knowledge and responded with deliberate indifference.

4. Davis v. Monroe County Bd. of Ed., 526 U.S. 629, 199 S.Ct. 1661 (1999) – School board may be liable for student-to-student sexual harassment, standard “deliberate indifference.”

5. Baynard v. Malone, 268 F.3d. 228 (4th Cir., VA, 2001) – Principal liable for deliberate indifference in sexual harassment case – $300,000+ damages.

* + 1. **Church/State**

1. Money

A. Mitchell v. Helms, 120 S.Ct. 2530 (2000)

Federal funds to secretarian schools for acquisition of instructional and educational materials. Does not violate the Establishment Clause.

B. Zelman v. Simmons-Harris, 536 U.S. 639, 122 S.Ct. 2460 (2002) – Supreme Court ruled that vouchers for religious school children did not violate the Establishment Clause.

2. Prayer/Religion

A. Santa Fe Ind. Sch. Dist. v. Doe, 120 S.Ct. 2266 (2000). Student led prayer at football game violates Establishment Clause of First Amendment.

B. Weisman v. Lee, 112 S.Ct. 2649 (1992). Prayer at graduation unconstitutional.

C. Mellen v. Bunting, 327 F.3d 355 (4th Cir. VA, 2003). Cert denied 124 S.Ct. 1750 ( 2004) Supper prayer at V.M.I. violated Establishment Clause.

D. Brown v. Gilmore, 258 F.3d 265, 155 Ed.Law 1031 (4th Cir. VA, 2001). Virginia statute mandating establishment of “minute of silence” in public schools did not violate Establishment Clause.

E. Roark v. South Iron R-1 School District 573 F. 3d 556 (C.A. 8 (Mo.) 2009). Gideon’s were allowed to distribute Bibles to fifth graders, during school day. The Court ruled the school district violated the Establishment Clause of the U.S. Constitution. Circuit Court issued permanent injunction.

F. Curry v. Hensiner, 513 F 3d 570, 229 Ed Law 30 (C.A. 6 (Mich) 2008) – Cert. denied 1295 S. Ct. 725 (2008) . Student not allowed to “sell” candy canes made out of pipe cleaners, with attached card that had religious message. The “sale” was part of her 5th grade curriculum which simulates the market place, using faux school currency. They could up hold the school using Hazelwood.

G. Grossman v. South Shore Public School District 507 F. 3d 1097 (C.A. 7 (Wis. 2007). New Probationary Guidance Counselor contract not renewed, threw out literature related to condoms. Counselor also prayed with students. Counselor claimed her religious rights were violated. Court held school did not violate her First Amendment Rights.

H. Doe v. Indian River Sch. Dist. 653 F.3d 256 (3rd Cir. 2011) School Board cannot pray at school board meetings.

I. Freedom from Religion Foundation, Inc. v. Connellsville Area Sch. 2015 WL 5093314 (W..D..Pa. 2015) Ten Commandments on granite monument at school, unconstitutional.

3. Equal Access Act (passed by Congress 1984 - secondary schools).

A. Christian Legal of the Univ. of Calif. v. Hastings 103 S,Ct. 2971(2010)

B. Board of Education v. Mergens, 110 S.Ct. 2356 60 Ed. Law 30 (1990). Equal Access Act ruled constitutional.

C. Forum Analysis (Free speech)

1. Traditional forum (open forum). Free speech sidewalks – compelling state interest to withdraw free speech.

2. Limited public forum (Equal Access – limited open forum). State intentionally creates or opens its property for public use – school generally closed forum – time, place, manner restrictions – view point neutral.

3. Closed forum (non-public forum). Time, place, manner – neutral standard elementary school generally.

D. Hsu v. Roslyn Union Free Sch. Dist., 85 F.3d 839 (2nd Cir.1996). Court upheld that club where only born again Christians could hold the office of President, Vice President and music coordinator was constitutional. The club could not require the treasurer to be born again.

E. G/S Alliance of Okeechobee 242 F.R.D. 644 (S.D. Fla. 2007) Principal wanted to

know sexual orientation of any student who wanted to form a sexual orientation tolerance club.

F. G/S Alliance of Okeechobee H.S. v. Bd. 483 F. Supp. 2d 1224. Also 477 F. Supp.

2d 1246 (S.D. Fla. 2007) Student sued school for refusing recognition of student

association promoting sexual orientation tolerance. Association demonstrated

Liklihood of success. Court issued preliminary injunction against school.

G. Gay-Straight Alliance of Yulee High School v. School Bd. of Nassau County 602

F. Supp. 2d 1233 (M.D. Fla. 2009) Student requested organization for combating, anti-gay harassment, school denied requests. Court ruled students were likely to succeed for violation of EEA.

H. Gonzalez Through Gonzalez v. Sch. Bd. of Okeechabee County 483 F. Supp. 2d

124 (S.D. Fla. 2007) Group sued for recognition. Group promoted tolerance of

those other than heterosexuals. School Board violated EAA, message was not materially or substantially disruptive. Students’ entitled to attorney fees. Discrimination.

4. Pledge of Allegiance

A. Nedrow v. U.S. Congress, United States of America, 292 F.3d. 597, 166 Ed.Law 108 (9th Cir. 2002) 524 U.S. 124, 1124 S. Ct. 2301 (2004). Statute inserting words “Under God” in the Pledge of Allegiance violated the established clause.

B. Myers v. Loudoun County School Board, 418 F. 3d 395, 200 Ed. Law 581 (C. A. 4 (VA. 2005) 2003 WL 21011172 (E.D. VA 2003). Court upheld Virginia’s statutes mandating that public schools hold daily recitations of the Pledge of Allegiance and post the national motto “In God We Trust.” Mr. Myers objected to the entire pledge and not “under God” like the Nedrow case. Court said participation was voluntary.

C. Freedom from Religion Foundation v. Hanover School Dist. 626 F.3d 1(CA.

1(NH) 2010) cert denied 131 S.Ct. 2992( 2011) New Hampshire School Patriot Act did not violate Establishment Clause, students exposure to recitation of pledge did not violate Free exercise.

D. Croft v. Governor of Texas 562 F. 3d 735 (C.A. 5 (Tex. 2009) Pledge. See: Croft v. Perry 624 F.3d137 (C.A.5( Tex.) 2010) Moment of silence upheld.

E. Frazier v. Alexandre 555 F. 3d 1292 (C.A. 11 (Fla.) 2009)

F. Frazier ex. Rel. Frazier v. Winn 535 F. 3d 1279 (C.A. 11 Fla. 2008) Can not make civilians stand.

Cert. denied 130 S. Ct. 69 (2009). To refuse pledge required parental permission and stand at attention. Court ruled parental permission ok, but requiring students to stand at attention violated Constitution.

G. Holloman v. Harland 370 F. 3d 1252 (C.A. 11 (Ala.) 2004)

H. Circle Schools v. Pappert 381 F. 3d 171, 191 Ed. Law 629 (C.A. 3 (Pa.) 2004)

I. Newdow v. Rio Linda Union School Dist. 597 F. 3d 1007,

(C.A. 9 (Calif.) 2010). Calif. Statute that required pledge with under God did

not violate establishment clause.

5. NCLB Constitutionally Protected Prayer

No policy that prevents or denies participation in constitutionally protected prayer. Webster’s dictionary—participation—“to have or take apart or share with others”

6. Intelligent Design

Kitzmiller v. Dover Area School District, 400 F. Supp. 2d 707, 205 Ed.Law 250

(M.D. PA 2005). Policy teacher would read required statement in ninth grade

biology class that Darwin’s theory is a theory and another explanation for evolution was Intelligent Design. Court ruled policy unconstitutional.

* + 1. **Liability**

1. Civil Rights Act of 1871 42 USC 1983

2. Torts

A. Introduction

B. The Legal Concept of Torts

C. Tort Law and Education (foreseeable, reasonable person)

1. Intentional Interference

a. Assault

b. Battery

c. Defamation

(1) Two types of privilege communications a) absolute and b) conditional (Privilege communications exist for clients, not counselors)

2. Strict Liability

3. Negligence (The Reasonable Person)

a. Elements of Negligence

(1) Duty

(2) Standard of Care

(3) Proximate or Legal Cause

(4) Injury or Actual Loss

b. Defenses for Negligence

(1) Contributory Negligence

(2) Assumption of Risk

(3) Comparative Negligence

(4) Accident

(5) Immunity

3. Virginia Tort Cases

A. Immunity

Linhart v. Lawson, 2001 WL 37849, 540 S.E.2d 875 (S.Ct. Va. 2001). Motorist injured in collision with school bus brought personal injury action against bus driver and school board. The Circuit Court of the City of Norfolk granted defendants’ special pleas in bar asserting defense of sovereign immunity and denied motorist’s motion for summary judgment. Motorist appealed. The Supreme Court held that: (1) sovereign immunity did not bar action against school board; (2) motorist could maintain negligence action against school board; and (3) bus driver was immune from action for simple negligence.

1. Lentz v. Morris, 372 S.E.2d 608, 49 Ed.Law 996 (1988)

Immuned 1) Immunity for teachers (ordinary negligence, does

not cover gross negligence)

1. Harlow v. Clatterback, 230 Va. 490 (1986)

Immuned 1) Judicial Immunity for employees of Department of Corrections

1. Armstrong v. Johnson: Messina v. Burden, 321 S.E.2d 657 (1984)

Immuned 1) Superintendent of Buildings – Tidewater

Community College

2) Chief of the Operations Division of the

Department of Public Works of Arlington

County, Virginia

1. Banks v. Sellers, 294 S.E.2d 862, 6 Ed.Law 400 (1982)

Immuned 1) Division Superintendents

2) High School Principals

1. Lawhorne v. Harlan, 200 S.E.2d 569 (1973)

Immuned 1) Chief Administrator, the Assistant Administrator

and a surgical intern at University of Virginia

Hospital

1. Crabbe v. School Board and Albrite, 164 S.E.2d 639 (1968)

Immuned 1) School Board

1. Kellan v. School Board 117 S.E.2d 96 (1960)

Immuned 1) Norfolk City School Board

1. Koffman v. Garnett 574 S. Ed. 2d 258, (S Ct. VA 2003). A 260 pound coach “slammed” a 144 pound student in the ground while explaining a tackling technique in a football practice. Apparently the coach was upset with the defensive players’ tackling in a previous game. The student suffered a broken Humerus bone in the left arm. The court ruled the coach could be liable for actions in gross negligence and battery (intentional hurt).

1. No Immunity

Wagoner v. Benson, 505 S.E.2d 188 (S.Ct. Va. 1998). Minor hit by car while crossing road to board school bus. Court held that accident was covered under school board’s motor vehicle liability policy and thus school board and driver were not entitled to sovereign immunity.

1. Lentz v. Morris, 372 S.E.2d 608, 49 Ed.Law 996 (1988)

Immuned 1) Immunity for teachers (ordinary negligence,

does not cover gross negligence)

2. Harlow v. Clatterback, 230 Va. 490 (1986)

Immuned 1) Judicial Immunity for employees of Department

of Corrections

3. Crabbe v. School Board and Albrite, 164 S.E.2d 639 (1969) (overturned by Lentz)

Not immuned 1) Teacher

4. Lee v. Bourgeois, 477 S.E.2d 495 (S.Ct. Va. 1996). Infant, by her mother and next friend, filed motion for judgment against attending physician at university hospital. The Circuit Court dismissed physician with prejudice. Infant appealed. The Supreme Court held that attending physician was not entitled to sovereign immunity. Reversed and remanded.

C. Civil Immunity

1. Code of Virginia § 8.01-220.1:2 Civil immunity for teachers under certain circumstances (passed in 2007).

A. Any teacher employed by a local school board in the Commonwealth shall not be liable for any **civil damages** for any acts or omissions resulting from the supervision, care or discipline of students when such acts or omissions are within such teacher’s scope of employment and are taken in good faith in the course of supervisions, care or discipline of students, unless such acts or omissions were the result of gross negligence or willful misconduct.( Does not apply to Principals , Burns v. Gagnon 727 S.E.2d 634 ( S.Ct. Va. 2012)

B. No school employee or school volunteer shall be liable for any **civil damages** arising from the prompt good faith reporting of alleged acts of bullying or crimes against others to the appropriate school official in compliance with specified procedures.

C. This section shall not be construed to limit, withdraw or overturn any defense or immunity already existing in statutory or common law or to affect any claim occurring prior to the effective date of this law, or to prohibit any person subject to bullying or a criminal act from seeking redress under other provision of law (1997, cc. 349, 879; 2005, c. 462).

2. Tort Claim Act, Code of Virginia 8.01-195.1 (1982)

D. Other

1. Hinchey v. Ogden, 307 S.E.2d 891 (1983)

a. Liability Insurance does not waive sovereign immunity.

b. Tort Claim Act, Code of Virginia 8.01-195.1 (1982)

2. Sain v. Cedar Rapids Community School, 626 N.W. 2 d 115 (S.Ct. Iowa 2001). Sain gifted basketball player. In order to be eligible for a NCAA Scholarship he needed three approved English classes. He took the first class. He disliked the second English class so he met with the guidance counselor who was familiar with the NCAA requirements. The counselor suggested he take new class “Technical Communications” and assured the student it was NCAA approved, but school had not sent class to NCAA clearinghouse. Student was denied scholarship and sued. The Supreme Court of Iowa ruled that the counselor and student had special relationship, therefore counselor had duty to provide correct information, not to do so was negligent misrepresentation.

3. Brown v. Compton Unified School District, 80 Cal. Rptr. 2d 171 (App. 2d Dist. 1998). The facts are almost the same as Sain. High school recruited student and told him that he could satisfy NCAA eligibility requirements. Counselor told student to take science course because it satisfied NCAA requirement, the course did not meet NCAA requirement and student lost four year basketball scholarship to USC. Principal wrote letter to NCAA and said student was misadvised by counselor. The student sued for negligent misrepresentation. The Court ruled the school had no duty to the student, thus the student had no course of action.

**VI. Disabilities**

1. Introduction

A. Vocational Rehabilitation Act of 1973, Section 504 states: "No otherwise qualified handicapped individual in the United States . . . shall, sorely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." There are five mandates encompassed in Section 504 that pertain directly to the educational needs of handicapped children:

1. location and notification;

2. free appropriate public education;

3. educational setting;

4. evaluation and placement; and

5. procedural safeguards.

Section 504 children, child on crutches, child at home because of auto accident, Attention Deficit Hyperactive Disorder (ADD), OCR found diabetes child (glucose testing and diet assistance), child needed related services but not educational services, therefore not educationally handicapped.

B. 1975 Public Law 94-142 Education Act for Handicapped Children. The Individuals with Disabilities Act (IDEA) (P.L. 10-446, 20 U.S.C.A. 1400 (2004). This Act provided schools must provide for:

1. Free Appropriate Public Education

2. Procedural Safeguards

3. Least Restrictive Environment

4. Private Placement

5. Related Services

6. Discipline and "Stay Put"

7. Attorneys Fees

8. Tuition Reimbursement

C. America Disabilities Act, passed July 26, 1990, Public Law 101-356, 42 U.S.C.A. Section 12111. This act is to establish a clear and comprehensive prohibition of discrimination on the basis of a disability

2. Procedural Safeguards

A. Mills v. Board of Ed.

B. Board of Ed. of the Hendrick Hudson Central School District v. Rowley 458 U.S. 176, 102 S.Ct. 3034 (1982). The "Free Appropriate Public Education" Clause of the Education of the Handicapped Act does not require a state to maximize the potential of each handicapped child. The court stated that any reviewing court should make two inquiries: (1) Did the School Board procedurally comply with EHA and its regulations? (2) Is the IEP reasonably calculated to provide educational benefits to the child? "Noticeably absent from the language of the statute is any substantive standard prescribing the level of education to be accorded handicapped children."

C. Timothy W. v. Rochester, New Hampshire School District 875 F.2d 954 (1989). The EAHCA mandates the Education of All Handicapped and does require a child to demonstrate a benefit as a condition precedent to participation. Born two (2) months premature, severe respiratory problems, shortly thereafter experienced intracranial hemorrhage, subdural effusions, seizures, hydrocephalus and meningitis. Suffered from complex developmental disabilities, spastic quadriplegia cerebral palsy, seizure disorder and cortical blindness.

3. Least Restrictive Environment

A. Kruelle v. New Castle County School District 642 F.2d 687 (3rd Cir., 1981). Before ordering residential placement for a handicapped child, the court will weigh the mainstreaming policy, which encourages placement of the child in the Least Restrictive Environment.

B. DeVries v. Fairfax County School Board 882 F.2d 876, 55 Ed.Law 442 (4th Cir., 1989). Autistic child sought to overturn school board's proposed IEP. Court ruled IEP appropriate--Two-Step Inquiry: (1) Whether IEP developed through Act's procedures and (2) is the IEP reasonably calculated to enable child to receive educational benefits.

4. Private Placement/Cost

A. Clevenger v. Oak Ridge School Board 744 F.2d 514 (6th Cir., 1984). "Cost can be a legitimate consideration when devising an appropriate program . . . Nevertheless; cost considerations are only relevant when choosing between several options, all of which offer an appropriate education."

5. Related Services

A. Irving Independent School District v. Tatro 104 S.Ct. 3371 (1984). Catheterization falls within the definition of related services. The term "related services" means transportation, and such development, corrective, and other supportive services (including speech pathology and audiology, psychological services, physical and occupational therapy, recreation, and medical counseling services, except that such medical services shall be for diagnostic and evaluative purposes only) as may be required to assist a handicapped child to benefit from special education.

6. Discipline and "Stay Put"

A. Honig v. Doe 108 S.Ct. 592 (1988). "Stay Put" provision of EHA prohibits school authorities from unilaterally excluding disabled students from classrooms for dangerous conduct growing out of disability.

B. Board of Education of Township High School Number 211, Cook County, Illinois v. Corral 1989 W.L. 57041 (N.D. IL, 1989). Court issued injunction to keep a 17 year old autistic and behavior-disordered student out of school pending new placement. Student became overtly sexual and physically aggressive posing danger to himself and others.

C. Texas City Independent School District v. Jorstad 752 F.Supp. 231 (S.D. TX, 1990). Limited student participation to behavioral management class or home care because he was "ongoing major threat to others, as well as to himself." (See: Light v. Parkway C-2 School District, 41 Ed. 3d 122, 96 Ed.Law Rep. 98 (8th Cir., (Mo.) 1994).

D. Manifestation Determination Review

A.W. v. Fairfax County School Board 372 F. 3d 674, 189 Ed.Law Rep. 14 (4th Cir. (VA) 2004). Student eligible for special education assistance for emotional disability. A.W. persuaded another student to place threatening note in computer file of a student that A.W. disliked. Manifestation Determination Review (MDR) found that his disability did not prevent him from either understanding that his actions violated school rules or behaving appropriately.