



AASPS Conference - Latest in School Law

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Just in U.S. Supreme Ct. Camreta v. Greene

- > Is it a 4th Amendment seizure if a school permits law enforcement & protective services to interview an alleged child abuse victim without parental notification or a warrant
- > The Ninth Circuit held that it was a seizure
- > The Supreme Court has been asked to clarify the school's role in protecting children
- > Otherwise schools could face the choice of a parental lawsuit or denying government access



Just in U.S. Supreme Ct. Camreta v. Greene

- > On May 26, 2011 the Supreme Court by a 7-2 opinion vacated the Ninth Circuit ruling of a 4th Amendment violation in the questioning
- > The successful qualified immunity defense did not prohibit a court review of the alleged constitutional violation, but the fact that it had become moot prevented a decision on the merits of the case since the student had moved out of Oregon ending jurisdiction



Just in U.S. Supreme Ct.
AZ Christian Sch. Org. v Winn

- > On May 26, 2011 the Supreme Court by a 5-4 opinion reversed the Ninth Circuit ruling that AZ taxpayers had standing to challenge tax credits funding scholarships to religious schools
- > The Court found that unlike direct payments from state's general treasury, tax credits are not a direct spending of taxes extracted from the taxpayers, but instead allows taxpayers to spend their own funds according to conscience
- > Presumes no shortfall induced tax increase



Just in U.S. Supreme Ct.
Staub v. Proctor Hospital

- > On March 1, 2011 the Supreme Court by a 8-0 opinion reversed and remanded a Seventh Circuit ruling that Proctor Hospital did not violate the Uniformed Services Employment and Reemployment Rights Act (URERRA)
- > The anti-military animus of a supervisor that violates URERRA and is the proximate cause of the ultimate unfavorable personnel office action; makes the employer liable for the resulting URERRA violation



Other notable cases pending
in the U.S. Supreme Ct.

- > In Duryea v. Guarnieri the Court will decide whether public employees may sue their employers for retaliation under the First Amendment when their petitions concern only matters of private interest vs. public concern
- > Guarnieri is a police chief that was fired by the Borough of Duryea, PA and is pursuing a retaliation claim for a series of job actions

● ● ● | Other notable cases pending in the U.S. Supreme Ct.

- > In Nevada Commission on Ethics v. Carrigan the Court is set to decide what level of scrutiny should be applied by a reviewing court in regard to when an elected official must recuse himself from a vote
- > Carrigan, a city council member, insisted on voting on a matter that financially benefitted his personal friend and campaign manager despite the admonition of counsel

● ● ● | Last year's late decided U.S. Supreme Ct. cases

- > On June 17, 2010 in Ontario v. Quon, the Sup. Ct. unanimously reversed the 9th Circuit and held that a reasonable but warrantless search of messages from a work provided device did not violate the 4th Amendment search & seizure rights of officer Quon (despite supervisor action)
- > The city had a policy restricting the devices for work related (police) purposes and an audit and subsequent search revealed that Quon had improperly sent sexually explicit messages

● ● ● | Last year's late decided U.S. Supreme Ct. cases

- > On June 28, 2010 in Christian Legal Society v. Martinez, the Sup. Ct. by a 5-4 vote found that the Hastings College of Law's denial of official recognition for student groups that don't accept all comers against its non-discrimination policy was valid, thus affirming the 9th Circuit
- > The Court found the all comers provision to be viewpoint neutral as targeting the act of rejecting prospective group members without considering their motivating behavior

- ● ● | **Student cell phone search invalidated**
- A federal court in Texas has ruled in *Mendoza v. Klein Ind. Sch. Dist.* that the search of the contents of a student cell phone creates a 4th Amendment claim
- The school was justified in confiscating the cell phone as a result of its prohibited use in school, but the offense was fully proven at that point
- The continued search of the phone contents by the school is not valid despite the fact that sexting was discovered

- ● ● | **Mandatory vaccination as a condition of school attendance**
- The Fourth Circuit Court of Appeals has ruled in *Workman v. Mingo County Sch.* that a West Virginia law requiring mandatory vaccination of children as a condition of school attendance is constitutional
- The Court rejected Free Exercise, Equal Protection, and Due Process claims brought against the school district
- A good opinion to cite if this issue is not settled law in your state/circuit

- ● ● | **Curriculum Setting as Government Speech**
- The First Circuit Court of Appeals has ruled in *Griswold v. Driscoll* that a curricular guide dealing with genocide and human rights from the Massachusetts State Board of Elementary and Secondary Education is government speech that is not able to be challenged by an aggrieved group pursuant to the First Amendment
- The group sought to oppose the removal of certain curricular materials from the guide

● ● ● | Holding of Graduation Ceremony in Religious Facility

- The Seventh Circuit Court of Appeals has a pending case against the Elmbrook School District challenging the decision to hold their graduation ceremony in a church adorned with Christian symbols
- Is this similar to court rulings that prohibit prayers and religious activity at graduation
- Or is this allowable based on secular reasons such as comfort and convenience
- This is an issue that is popping up all over

● ● ● | Sexting leads to Bullying leads to lawsuit over suicide

- A Florida case is pending where a 13 year old female student texted a topless photo of herself to a boy that she liked
- The photo was shared with classmates and the girl was subject to intense bullying
- The girl told a school social worker and she signed a contract promising not to kill herself
- The parents were not notified of the suicide threat and the it was carried out that night
- A failure to warn lawsuit is now pending

● ● ● | Violation of Duty of Reasonable Supervision

- The Louisiana Supreme Court ruled in S.J. v. Lafayette Parish School Board that a school did not violate its duty of reasonable supervision when a student was raped while walking home from an after-school disciplinary program
- The "late activities bus" was not allowed for students leaving discipline programs
- Court held it was wrong to deny bus access but law had no safety purpose as intent

- ● ● | Confidentiality of student psychiatric evaluation

- A New Jersey school social worker was found to be negligent in using a poorly redacted copy of a current student's psychiatric report for training purposes when the student was easily identifiable
- The federal court in *L.S. v. Mount Olive BOE, et al* reiterated the duty to maintain confidentiality of student records by school personnel regardless of good intentions

- ● ● | Student Attire – Expression Rights

- The Seventh Circuit Court of Appeals has ruled in *Zamechik v. Indian Prairie Sch. Dist. #204* that the school district was permanently enjoined from banning students from wearing a t-shirt displaying the message "Be Happy, Not Gay"
- The school district was unable to demonstrate any disruption to the educational environment as a result of the wearing of the shirt on the "Day of Truth"

- ● ● | Student Expression Rights

- The federal judge in North Carolina issued a temporary restraining order in the case of *Iacono v. Croom* requiring school officials to readmit the female student who has been suspended on multiple occasions for wearing a nose stud in violation of the district's ban on facial piercings except on religious grounds
- The student claims to be a member of the Church of Body Modification

● ● ● | Student Expression Rights

- The federal judge in Pennsylvania issued a preliminary injunction in the case of H. v. Easton Area School District that prevents school officials from banning students from wearing bracelets inscribed with "I (heart) boobies" to raise breast cancer awareness
- The court found no disruption and further found that the connotation was not vulgar or lewd and in fact enhanced the effectiveness of the communication

● ● ● | Student Expression Rights

- On the other hand, the Second Circuit in the case of R.O. v. Ithaca City School District held that a school did not violate student speech rights when banning a sexually explicit cartoon that was displayed along with an article on sex education.
- The stick figure drawings in sexual positions with the caption "Test on Monday" was found to be lewd, indecent, or offensive and subject to banning by school authorities

● ● ● | Student Expression Rights

- The federal judge in California in the case of Dariano v. Morgan Hill Unified Sch. District ruled that students who were prohibited from wearing American flag t-shirts on Cinco de Mayo day may proceed to sue the school district and the employees in question for violations of their expression rights
- The fact that the administrators who prohibited the flag t-shirt had left the district did not act to render the case moot
