Ferrara, Fiorenza, Larrison, Barrett & Reitz, P.C.

School Law Matters

Latest legal developments and practical guidance for school officials & administrators August 2004

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Scheduling Girls Soccer for Spring Violates Title IX

The U.S. Court of Appeals for the Second Circuit recently determined that two Westchester County school districts violated Title IX of the Education Amendments of 1972 by scheduling girls high school soccer in the spring. *McCormick et.al. v. The School District of Mamaroneck and The School District of Pelham*, __ F.3d __ (2d Cir., 2004).

Title IX prohibits discrimination on the basis of sex by educational institutions receiving federal financial assistance. [20 U.S.C. §1681 (a) (2000)]. The parents of two girls who participated in the district soccer programs asserted that the scheduling of girls high school soccer in the spring and boys high school soccer in the fall, deprives the girls of the opportunity to compete in the New York State Regional and State Championships, which are held in the fall.

The court in *McCormick* held that scheduling girls soccer in the spring creates a disparity. Boys can strive to compete in the soccer Regional and State Championships while girls cannot. Girls soccer is the only sport the districts scheduled outside of the State Championship game season. The court held the disparity is substantial enough to deny equality of athletic opportunity to the girls at Mamaroneck and Pelham High Schools.

The court rejected the districts justifications for spring scheduling, including the argument that the scheduling was necessary due to the regional popularity of girls field hockey, which is played in the fall.

The school districts were required to submit to the court a compliance plan pursuant to which it would offer soccer to girls and boys in the same season, or offer soccer to girls and boys in the fall on a rotational basis, with the girls scheduled for fall 2004.

If you have any questions regarding this case, please contact our office at 315-437-7600.

Denying Religious Group's Request to Distribute Promotional Flyers Violates First Amendment

A federal appeals court has ruled that the refusal of the Montgomery County Maryland Public Schools to allow Child Evangelism Fellowship of Maryland (CEF), a Christian evangelical group, to distribute flyers promoting their after-school "Good News Club" violated their First Amendment rights. *CEF of Maryland v. Montgomery Co. Public Schools*, __ F.3d __ (4th Cir., 2004). Specifically, the Court held that since the District allowed other groups such as the 4-H and the Boy Scouts to distribute their promotional flyers in the District's elementary classrooms, denying CEF's request constituted impermissible viewpoint discrimination in violation of CEF's free speech rights.

The United States Court of Appeals for the Fourth Circuit, relying on the 2001 opinion of the U.S. Supreme Court in *Good News Club v. Milford Central School*, concluded that the District could not demonstrate a compelling governmental interest under the First Amendment's Establishment Clause to justify its viewpoint discrimination. In other words, the Court rejected the District's argument that a teachers' active role in distributing CEF's material raised serious issues concerning promotion

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Denying Religious Group's Request to Distribute Promotional Flyers Violates First Amendment (continued)

of religion under the Establishment Clause. The Court reasoned that the teachers' involvement was a minimal administrative activity that involved distribution of numerous school-related and non-school related materials on an equal basis.

The Court found that the fact that the flyers would be distributed during non-instructional time at the end of the school day obviated any suggestion that the distribution was part of the schools' curriculum. The Court also found that the distribution of the flyers did not result in preferential treatment for CEF because it was just one of many secular and religious organizations whose materials were distributed in the District. In addition, it stated that the flyers could not be characterized as a religious exercise since they were merely an invitation to participate in religious activities.

This case illustrates, once again, that when school districts allow community groups like 4-H and the Boy Scouts to use their facilities for promotional activity or instruction, they will be constitutionally obligated to allow religious groups to use them in similar ways.

If you have any questions regarding such matters, please call our office at 315-437-7600.

Protect Your Tax Base

July 30 is typically the last day for real property owners to file tax certiorari proceedings against school districts. The Real Property Tax Law imposes strict filing requirements on real property owners. Our law firm has been successful in getting proceedings dismissed from Court when the requirements have not been followed by the property owner. We recommend that school districts create a matrix of their open tax certiorari proceedings and calculate the amount of refund that is being demanded in each proceeding. We also recommend that school districts join into the proceeding when the refund demanded by the property owner exceeds $5,000 in tax payments. Once the school district intervenes in the proceeding, it can participate in the defense of the proceeding and, at a minimum, have a seat at the settlement table. If you have any questions about calculating the exposure or need assistance in intervening into the proceedings, please contact Joe Shields 315-437-7600 or email him at jshields@ferrarafirm.com.

Parole Officer Parent Can't Bring a Gun to School Either, New York Appellate Court Says

How is a school district to deal with parents who are lawfully permitted to carry a gun and seek to do so while on district property? Some helpful guidance with respect to this issue comes from a recent judicial decision in a case which arose at an elementary school in Ulster County, *Cina v. Waters,* ___ A.D.2d ___ (3d Dep't, 2004). The parent here was a parole officer and, as such, was lawfully permitted to carry a gun on her person. On a school day she went to her child's elementary school for a parent/teacher conference. Upon arriving at the school, a school safety officer who knew her and that, as a probation officer, she often carried a gun, asked if she was armed at the time. When the parent answered that she did have a gun, the school safety officer informed the parent that she would need to leave the weapon in her car or secure it outside the school in some manner before entering the school for the parent/teacher conference. The parent refused to comply with the school safety officer's request and became belligerent. She was permitted to proceed to the principal's office where the principal told the parent that she could not remain in the building with her gun. The exchange with the building principal became extremely agitated with the parent refusing to comply with the principal's request. At one point she left the school building, went to her car in a school parking lot, and then decided to return to confront the principal again. On her second visit to the

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Parole Officer Parent Can't Bring a Gun to School Either, New York Appellate Court Says (continued)

school she still had the gun on her person and continued her emotional confrontation with the administrator. Eventually the parent left the school grounds without the issue being resolved.

The day after the incident, the principal sent the parent a letter advising that, in view of her demonstrated "lack of control" the previous day, and in the interest of the "safety and welfare of the students and staff," she was not to enter the school for any reason until further notice. She was advised that any further contact with respect to her child on school matters should be conducted by either telephone or mail. The principal also advised the parent that she could appeal his decision and outlined the procedure for doing so.

The parent was displeased with her treatment and litigation ensued. She claimed that the decision to prohibit her from school grounds are arbitrary and capricious, violated her right to free speech and deprived her of due process. Her claims were heard initially by a Justice of the State Supreme Court and were reviewed by the Appellate Division, Third Department. All claims were found to be "utterly without merit."

The case, however, offers some valuable guidance. One issue discussed by the Court is the distinction between an on-duty officer carrying weapons in a school while on official business as compared to an off-duty officer/parent bringing a weapon to a parent/teacher conference. While the parent here was in law enforcement and had authority to carry a gun, she was not at the time on-duty, nor was she conducting official police business. Had the facts been different on this point, the Court might have reached a different decision.

Another factor which influenced the Court was a written school district policy entitled "Public Conduct on School Property." This policy explicitly applied to parents and others on school property. It defined as prohibited conduct "knowingly have in his/her possession upon any premises to which these rules apply, any rifle, shotgun, pistol, revolver, or other firearm or weapon without written authorization of the chief administrative officer, whether or not license to possess same has been issued to such person; ... ." This same policy also provided that where there was a violation, the superintendent could direct the violator to leave school premises or face ejection or arrest.

The bottom line is ...

Even though a parent might be licensed to carry a weapon, they cannot bring it to school when they are (1) off-duty and (2) the school district has a policy against firearms at school (which is distributed to parents).

In reaching the decision to dismiss the parent's claims, the Court noted that the parent was aware of the Public Conduct on School Property policy. For school district officials, this should serve as strong reminder that dissemination of these and other policies to parents has a real value for the school district.

In light of the parent's knowledge of the policy and her irrational reaction to the request that she not bring her weapon to a parent/teacher conference, the Court found that the school district's decision to prohibit her from coming on school grounds after the incident was entirely reasonable. The Court cited prior legal precedent that a parent has no fundamental right to be physically present on school grounds and found that the requirement that she communicate with respect to her child's education by other means did not violate her rights as a parent.

If you have any questions regarding this case, please feel free to contact us at 315-437-7600.

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Teacher's Frivolous Lawsuits Barred by Court

In *Malley v. City of New York*, the City School District discharged plaintiff from a teaching position at one of the District's high schools in 1987. Since then, plaintiff had engaged in a prolonged campaign of frivolous litigation challenging his discharge. Since 1995, plaintiff had been subject to an injunction that required him to obtain the Court's permission before he filed a lawsuit in the District Court for the Southern District of New York challenging his dismissal. Notwithstanding that injunction, plaintiff filed five (5) further complaints in the District Court, the first of which resulted in dismissal and in the imposition of sanctions by the District Court and the 2nd Circuit Court of Appeals.

In June 2002, plaintiff filed a complaint in District Court alleging discrimination in employment *just before* his employment was terminated. As with the other lawsuits, the District Court dismissed the complaint. The Court also broadened the terms of the injunction to prohibit plaintiff from filing further complaints in any way related to his employment. On appeal, the 2nd Circuit ordered the Court Clerk to refuse to accept any further submissions from plaintiff unless he first obtained the Court's permission to file same.

Please feel free to contact us if you have any questions about this or any of the cases discussed in *School Law Matters*.

New Compulsory Attendance Law Signed by Governor

The Governor has signed Chapter 183 of the Laws of 2004, which, effective July 1, 2005, amends the compulsory attendance statute to now permit all school districts to adopt policies requiring students to stay in school through the year of their 17th birthday. Previously, only districts with a population of more than 4,500 inhabitants or more could utilize this option.

Districts should keep in mind that this requirement is still just optional and will not take effect until the 2005-2006 school year.

If you have any questions concerning this new law, please contact us at 315-437-7600.

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