

WINTER 2012 NEWSLETTER

SCHOOL LAW UPDATE

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U.S. COURT OF APPEALS FOR THE FIFTH CIRCUIT

- ***Lewis v. Ascension Parish Sch. Bd.*, 2011 U.S. App. LEXIS 22222 (5th Cir. November 3, 2011) (per curiam)**

A district-wide student assignment redistricting plan that is made, at least in part, with the purpose of maintaining the district's post-segregation racial unitary status is impermissibly race-based and discriminatory.

The Ascension Parish School District operates four high schools, each with various "feeder" elementary and middle schools in the particular high school's "zone." In 2004, a federal court dismissed the District's longstanding desegregation case and declared the District unitary after finding that all vestiges of the prior compulsory dual school system had been practically eliminated.

Due to overcrowding in one of its middle schools in a challenged zone, the District adopted a redistricting plan. The District decided that one of their goals in rezoning should be to "maintain unitary status." Lewis, a father of a student affected by the reassignment plan, brought a Fourteenth Amendment equal protection claim on behalf of his child, arguing that the redistricting plan resulted in a denial of equal educational opportunities at his child's high school, because it placed a disproportionate number of at-risk students into that school's feeder system.

The Court found that the individual race of individual students was a factor in the redistricting plan. It also found that the plan disproportionately funneled minority and at-risk students into the challenged feeder zone. The Court noted that even though the school's race-based decisions for the rezoning were for the "benign" purpose of maintaining post-unitary "racial balance" among the schools in the system, the race-based decision was still constitutionally impermissible under the Supreme Court's decision in *Parents Involved in Community Schools v. Seattle Sch. Dist. No. 1*, 551 U.S. 701 (2007).

TEXAS COURT OF APPEALS

- ***Moore v. Miller*, 2012 Tex. App. LEXIS 941 (Tex. App. – Waco February 1, 2012, no pet. h.)**

For claims of negligence, assault and negligent discipline of a student against an educator, so long as sufficient facts are plead, the plaintiff need not explicitly state the exceptions to the educator's immunity or to the requirement to exhaust administrative remedies that may apply.

Miller, as next of friend to Stacie Woodberry, a student who suffers from Rubenstein-Taybi Syndrome (RSTS), brought claims of negligence, assault, and negligent discipline against Moore, a teacher's aide that assisted special-needs children in the Somerville ISD. Miller alleges that Moore, dissatisfied with Stacie's work, dislodged Stacie from her chair and threw her to the ground, causing severe injuries. Moore filed a plea to the jurisdiction asserting, among other things, that (1) Miller failed to exhaust the administrative remedies provided by the Somerville ISD Policies, and (2) Moore is immune from liability as a professional employee of a school district. The district court denied the plea, and the Waco Court of Appeals affirmed.

While TEX. EDUC. CODE §22.0514 requires the exhaustion of administrative remedies for complaints against an employee, the District's policies had several exceptions to the requirement, including complaints concerning the discipline of a student with a disability within the scope of the Individuals with Disabilities Education Act (IDEA). Even though Miller did not specifically plead entitlement to this exception, she did plead that Stacie was a special education student, was mentally incapacitated, and had been diagnosed with RSTS, and Moore did not dispute the characterization. The Court determined that Plaintiffs plead enough facts to demonstrate that a disputed fact question exists on whether the exception to the requirement to exhaust her administrative remedies applied.

TEX. EDUC. CODE §22.0511(a) generally provides professional immunity for Moore as a professional employee of a school district for acts that occurred within the scope of her employment. However, there is an exception to immunity for acts pertaining to the use of excessive force in the disciplining of a student. Since Miller plead that Moore committed the act because she was "dissatisfied with Stacie's work," the court concluded that she presented some evidence that Moore's alleged conduct comes within the exception to the professional immunity.

- ***Gomez v. Texas Education Agency*, 2011 Tex. App. LEXIS 9277 (Tex. App. – Austin November 23, 2011, pet. filed)**

When the State Board for Educator Certification (the Board) considers revocation of an educator's license due to conduct that lead to the educator's arrest, the Board may revoke the educator's license based on a witnesses' independent recollection of events, even if the educator was never convicted and the arrest records were expunged.

Gomez appealed the district court's judgment affirming the final order of the Board which revoked his Texas Educator Certificate after determining that Gomez was "unworthy to instruct or supervise the youth of the state" under its rules. In 2003, Gomez was arrested and charged with indecent exposure after a police officer caught him exposing himself at a dance club. Gomez held an active Texas Educator Certification at the time of the arrest and was employed by Donna ISD. Sometime later, the charges against him were dismissed. Gomez was never convicted and his arrest records were expunged.

Though no testimony regarding the expunged records was allowed at the hearing to revoke Gomez's education certificate, the arresting officer was allowed to testify regarding his independent recollection of events. Based on this testimony, the Board ultimately determined that Gomez was unworthy to instruct and revoked his certificate. The Court of Appeals affirmed the district court's judgment that there was no error in the Board's final order.

- ***Wu v. Texas A&M International Univ.*, 2011 Tex. App. LEXIS 8897 (Tex. App. – San Antonio November 9, 2011, no pet. h.)**

For purposes of a claim under the Texas Whistleblower Act, the EEOC is not an appropriate law enforcement authority to which a public employee would report a violation of the First Amendment, since the EEOC does not have the authority to regulate, investigate, enforce, or prosecute such a violation.