SUMMER 2012 NEWSLETTER

SCHOOL LAW UPDATE

By John D. Husted

U.S. COURT OF APPEALS FOR THE FIFTH CIRCUIT

- ***Klein ISD v. Hovem*, 2012 U.S. App. LEXIS 16293 (5th Cir., August 6, 2012)**

For claims under the Individuals with Disabilities Education Act ("IDEA"), a school district's provision of a free appropriate public education ("FAPE") to a student qualified for special education is judged by the overall educational benefits received, and not solely by the remediation of the student's disability.

Per Hovem is a former Klein ISD student who suffers from several disabilities in the area of written expression. Per had better-than-average grades in mainstream general education classes and progressed toward graduation in a timely manner; however, his performance in areas of written expression, including on the SAT's remained significantly low. Mainstreaming disabled students into the curriculum with non-disabled students is an express objective of IDEA. The Hovems insist that Klein ISD failed to provide Per with a FAPE, where even though Per had success in areas allegedly not affected by his disability, his IEPs were not sufficiently individualized regarding his disability.

The court found that Klein ISD complied procedurally and substantively with IDEA where the student's IEPs enabled him to excel with accommodations for his disability, in a mainstream high school curriculum, even though it did not enable him to write and spell better. A school district is not required to provide an educational benefit defined exclusively or even primarily in terms of correcting the child's disability.

TEXAS COURT OF APPEALS

- ***Salley v. Association for the Development of Academic Excellence, d/b/a Girls and Boys Preparatory Academy*, 2012 Tex. App. LEXIS 6058 (Tex. App. – Houston [1st Dist.] July 26, 2012, no pet. h.)**

A quorum of the governing body of a non-profit, open enrollment charter school must comply with the Texas Education Code's prohibition against nepotism.

The Court of Appeals affirmed the district court's decision granting declaratory judgment and an injunction prohibiting Salley, who was the school's first superintendent, her husband, their daughter, and her aunt from operating as a board of the school. The Texas Non-Profit Corporation Act does not contain a prohibition against family members serving on the non-profit's board of directors; however, in Texas, a non-profit, open enrollment charter school also

operates under the Texas Education Code. Therefore, a quorum of the school's board must conform to the Education Code's prohibition against nepotism, which prohibits persons related to one another within the third degree by consanguinity or within the second degree by affinity from constituting a quorum of the governing body.

- ***Farran v. Canutillo ISD*, 2012 Tex. App. LEXIS 4674 (Tex. App. – El Paso June 12 2012, no pet. h.)**

For a Texas Whistleblower claim against an independent school district, a fact issue may exist regarding whether the whistleblowing employee had an objectively reasonable belief that the school district's superintendent, internal auditor and school board are appropriate law enforcement authorities to address reports of financial improprieties when the school district maintains an internal reporting structure and hotline for issues concerning waste, fraud, abuse, or unethical behavior.

However, the school district's superintendent, internal auditor, and school board are <u>not</u> appropriate law enforcement authorities for reports regarding violations of City Ordinances, City Public Services Board's Rules and Regulations, or Texas criminal theft laws, and even if a school district's Executive Director of Facilities and Transportation believed that they were appropriate authorities, he must produce evidence that his belief is reasonable in light of his training and experience to survive a plea to the jurisdiction.