

# School Case Law

Missouri Department of Elementary and Secondary Education

August 6, 2007

## *Independence-National Education Association v. Independence School District (Mo. 2007)*

- Three school district employee associations representing teachers, bus drivers, and custodial workers, brought suit against the district when the board unilaterally adopted a new “Collaborative Team Policy” that changed the terms of employment. Initially, the Jackson County Circuit Court ruled in favor of the district. The Court of Appeals reversed and remanded, which sent the case back to circuit court, which found again for the district. The associations appealed to the Missouri Supreme Court.
- The Court posited two questions:
  - 1) Do public sector employees have the right to collectively bargain?
  - 2) May a public employer unilaterally impose a new employment agreement that contradicts the original agreement in effect?

## *Independence-National Education Association v. Independence School District (Mo. 2007)*

- The Missouri Supreme Court ruled that Article I § 29 of the Missouri Constitution guarantees all employees, regardless of whether they are public or private, the right to collectively bargain. The section states *that employees shall have the right to organize and to bargain collectively through representatives of their own choosing.*
- Applying the “plain meaning” argument, the Court concluded that “[under the express words of the constitution, this provision is not limited to private-sector employees.”
- In response to the second question, the Court concluded that written agreements mutually entered into by the parties cannot be unilaterally repudiated.

## *Independence-National Education Association v. Independence School District (Mo. 2007)*

### Impact of the decision:

- The holding in this case overrules *City of Springfield v. Clouse*, 206 S.W.2d 539 (1947) and *Sumpter v. City of Moberly*, 645 S.W.2d 359 (Mo. banc 1982).
- The Court repeatedly stated that this ruling does not mean that the public employer is required to reach an agreement with its employees. However, it does mean that an existing agreement cannot be rescinded without the parties to the agreement meeting and conferring.
- Currently there is no enabling legislation that would allow for public sector collective bargaining with school districts.

*Winkelman v. Parma City School District,*  
*No. 05-983 (U.S. 2007).*

- Parents in disagreement with the placement offered in a public elementary school, maintaining it did not provide a FAPE. The parents filed an administrative appeal. When they did not prevail at the due process hearing they filed a *pro se* action, on their own behalf and on behalf of the child, with the federal district court. The district court found that the school district had provided the child a FAPE.
- Parents appealed *pro se* to the Court of Appeals for the 6th Circuit. The Court of Appeals entered an order dismissing the appeal unless the parents obtained counsel to represent the child. The Court of Appeals held that the right to a FAPE belongs to the child alone, so that parents bringing IDEA claims are not appearing on their own behalf. The Court of Appeals also held that non-lawyer parents cannot represent their minor children. Because this result conflicted with a ruling from the First Circuit Court of Appeals, the U.S. Supreme Court granted certiorari.

## *Winkelman v. Parma City School District, No. 05-983 (U.S. 2007).*

- The Supreme Court found that parents have independent, enforceable rights under IDEA following areas:
  - (1) the procedures,
  - (2) the costs implicated in the process, and
  - (3) the substantive issues including the right to a FAPE for their children.
- As the parents had an independent right to the FAPE of their child, they could proceed *pro se* advancing their own interests.
- The dissent acknowledges that parents have a right to reimbursement and certain procedural protections, but held that the FAPE belongs to the child. The dissent notes that parents have an interest in their child's education, but not the independent right to the education.

## *Morse v. Frederick, No. 06-278 (U.S. 2007).*

- An Alaska public high school senior displayed a 14-foot banner proclaiming “BONG HiTS 4 JESUS” during a parade for the Olympics. The student positioned himself across the street from the school so students could easily see the sign. The parade had been authorized as a school-approved activity and teachers were supervising the students.
- The student refused to remove the banner, after being asked to do so by the school principal. The principal suspended him for 10 days. The suspension was upheld by the superintendent and the school board. The student filed a § 1983 action in federal district court alleging that his First Amendment right to free speech had been violated. \
- The district court granted summary judgment to the school district, finding no First Amendment violation and granting qualified immunity to the principal. The Ninth Circuit Court of Appeals reversed, finding a First Amendment violation, because the school did not demonstrate that the speech gave rise to a risk of substantial disruption. The Court of Appeals also denied school officials qualified immunity.

## *Morse v. Frederick, No. 06-278 (U.S. 2007).*

- The U.S. Supreme Court, through Chief Justice Roberts, held that there was no First Amendment violation, because a school can restrict student speech at a school-authorized event when the speech promotes illegal drug use.
- The Court determined that deterring drug use is a compelling governmental interest. The Court also granted the principal qualified immunity, because she acted to enforce the school policy that prohibited promoting illegal drug use.
- This case generated a number of concurrences and dissents, from Judge Thomas contending that students have no free speech rights to Justices Stevens, Souter and Ginsburg, concluding that discipline wasn't justified in this particular case because the reference to illegal drug use was "oblique."

## *Letter to Abercrombie, U.S. DOE, 9 FAB 29 (FPCO 2006).*

- The Family Policy Compliance Office (FPCO) of the U.S. Department of Education monitors compliance with the Family Educational Rights and Privacy Act (FERPA). Pursuant to the No Child Left Behind Act, school districts are required to provide secondary students' names, addresses, and phone numbers to military recruiters upon request unless the student or parent of a student has opted out of providing this information.
- An inquiry to the FPCO stated that private non-profit groups, interested in sharing an "alternative perspective" to the military, should have access to the same directory information provided to military recruiters. In response, the FPCO concluded:
  - 1) Parents should be clearly informed of their right to have their child's information withheld;
  - 2) School districts must provide military recruiters with the same access to student information they provide universities, colleges, and prospective employers;
  - 3) Disclosure to outside entities, such as private non-profits, is subject to the district's directory information policy; and
  - 4) Training of school officials in this area ensures protection of parents' rights.

# *Houlihan v. Sussex Technical School District, 461 F. Supp. 252 (Del. 2006).*

- Houlihan, a school psychologist, alleged that immediately upon employment with the district, she began to bring to the attention of the school district instances of noncompliance with the Individuals with Disabilities Education Act (IDEA). When her efforts with her immediate supervisor were unsuccessful, Houlihan contacted a school board member to discuss her concerns. Houlihan alleges that she was given several written reprimands and negative evaluations by her supervisor and in 2004 was informed that her contract was not renewed in retaliation for her efforts.

Section 504 of the Rehabilitation Act includes an anti-retaliation provision for individuals engaged in a protected activity, regardless of whether he or she is disabled. A prima facie case of retaliation requires the plaintiff to show:

- (1) he or she was engaged in protected activity;
  - (2) the alleged retaliator knew the plaintiff was involved in protected activity;
  - (3) adverse action was taken by the employer either after or contemporaneous with the employee's protected activity; and
  - (4) a causal connection exists between the protected activity and the adverse action.
- The federal district court concluded that, based upon the pleadings, the case could go forward.

On the First Amendment claim, the district court cited *Garcetti v. Ceballos*, 126 S. Ct. 1951, 1958, 164 L. Ed. 2d 689 (2006) finding that a public employee's statement is protected activity when:

- (1) the employee is speaking as a citizen;
  - (2) the statement involves a matter of public concern; and
  - (3) the government employer does not have adequate justification for treating the employee differently from any other member of the general public as a result of the statement he or she made.
- When a public employee makes a statement pursuant to his or her "official duties," the public employee is not speaking as a citizen. The district court concluded that Houlihan's statements concerning alleged IDEA noncompliance were not in her role as a citizen, but in connection with her official duties as school psychologist and/or special education coordinator, and therefore, not a protected activity.

# *Weintraub v. Bd. of Educ. of N.Y., (E.D.N.Y., 2006).*

- Weintraub, a public school teacher, alleged retaliation based upon (1) speaking with an assistant principal privately regarding the teacher's dissatisfaction with how the assistant principal handled a student who threw books at the teacher, (2) discussing this situation with other teachers, and (3) filing a grievance through his union representative. It was alleged that these actions prompted an escalating series of retaliatory steps by school officials, which began with negative performance reviews and disciplinary reports that were placed in, and ultimately removed from, Weintraub's employee file, and culminated with false accusations of sexual abuse of a student, an arrest for misdemeanor attempted assault on allegedly false grounds, and Weintraub's termination.
- At issue was whether the teacher's speech was protected by the First Amendment, because the teacher's concerns about the lack of discipline and safety in the public schools pertained to a matter of public concern. In applying the U.S. Supreme Court's decision in *Garcetti v. Ceballos*, 126 S. Ct. 1951, 164 L. Ed. 2d 689 (2006), the federal district court found that the teacher's conversations with the assistant principal and his formal grievance were not protected by the First Amendment. It was determined that, even though the speech touched upon a matter of public concern, the teacher spoke as an employee, proceeding through official channels to complain about unsatisfactory working conditions.

## *Jane Doe et al. v. South Iron Co. R-1 School District et al., (E.D. Mo. 2007).*

- Parents of students attending the South Iron Co. R-1 School District brought suit seeking an injunction to stop a district policy of allowing Gideons to pass out Bibles to fifth grade students during class time and on school property.
- The federal district court granted a preliminary injunction finding that the parents showed a likelihood of success on the merits on their claim. The district court also found that school officials were not entitled to qualified immunity, because the school board was repeatedly warned by the superintendent, district counsel and the district's liability insurer that the district policy violated the Establishment Clause of the First Amendment to the Constitution. The district court noted that in every case that had considered this issue it was found that the United States Constitution did not allow distribution of Bibles to elementary students during school hours on school property.
- The court enjoined the district officials and any persons acting in concert with them from distributing or allowing distribution of Bibles to elementary school children on school property at any time during the school day. The federal district court's decision is currently on appeal to the Eighth Circuit Court of Appeals.

# Missouri Virtual Instruction Program (MoVIP)



## Missouri Virtual Instruction Program

- **2,500 students in the inaugural class**
- **109 of the 114 counties represented**
- **319 of the 524 school districts have student attending from within their district**

# Key Issues



**Full Time Attendance**

**Recognition of Credit**

**Eligibility for Activities**



# Applicable Law



# Section 161.670 RSMo.

**“any student under the age of twenty-one in grades kindergarten through twelve who resides in this state shall be eligible to enroll in the virtual public school regardless of the student’s physical location.”**

# Section 171.171 RSMo.

- Full credit to be given work completed in accredited schools.

“Work completed in schools accredited by the state board of education shall be given full credit in requirements for entrance to and classification in any educational institution supported in whole or in part by state appropriation”.

## *State of Missouri ex rel. Sageser v. Ledbetter*

*(Mo. App. Southern District 1977).*

- The student was denied a diploma on the basis of not completing an eight-semester attendance requirement due to his absence during approximately the last eight weeks of his junior year for his suspension or "checkout." The student to compel the school district issue his diploma. The trial court found in favor of the student.
- Respondents appealed. Court of Appeals held the requirement unreasonable because it not demand or necessitate any attendance.
- The student had already earned the 20 units of credit, satisfying the measure of academic achievement required for graduation. The additional requirement of enrollment for eight weeks was found to be an exercise in futility. The court affirmed the judgment compelling issuance of the diploma.

# MSHSAA Eligibility Standards

- *Letter to Membership, MSHSAA, May 3, 2007.*

*“Also among the significant changes passed by the membership is a provision to allow students participating in the newly-formed MoVip on-line education program sponsored by the State of Missouri to be eligible in interscholastic activities if they take at least two courses at the member school. The students would have to be enrolled at the member school and meet the other standard eligibility requirements, including the academic standards.”*

# Questions



# Contact Information

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