SPRING 2013 NEWSLETTER

SCHOOL LAW UPDATE

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TEXAS COURT OF APPEALS

***Hairston v. Southern Methodist University*, No. 05-11-00860-CV, 2013 Tex. App. LEXIS 5366 (Tex. App. – Dallas April 30, 2013, no pet. h.)**

A university coach's alleged oral promise that the university would provide a 100% scholarship to a recruit during her sophomore year of high school does not survive the statute of frauds.

Emily Hairston appealed the trial court's summary judgment in favor of SMU on her claims for financial aid. Hairston alleges that while she was a sophomore in high school in 2007, the head coach of SMU's women's soccer team verbally offered her a "100%" scholarship. Based on that verbal offer, she continued to communicate with the coach throughout her high school career, graduated from high school a semester early, and enrolled at SMU during the Spring, 2009 semester and joined the soccer team. In February of that year, however, she received a call informing her that she owed SMU approximately $25,000 in tuition and fees.

Hairston and her father immediately complained to the athletic director, and, on April 11, 2009, they signed an agreement with SMU in which she received $17,585 in financial assistance for the semester, and acknowledged that the scholarship was for the Spring 2009 semester only, and that she would not be receiving an athletic scholarship for the next school year.

The Court affirmed summary judgment on the basis that, since there was no written promise of financial aid, Hairston's claim was barred by the statute of frauds, as the promise made in 2007 could not be completed within one year. Further, the agreement signed by Hairston and her father established the defense of accord and satisfaction.

***University of Texas at Arlington v. Williams*, No. 02-12-00425-CV, 2013 Tex. App. LEXIS 3985 (Tex. App. – Fort Worth March 28, 2013, no pet. h.)**

For a premise defect claim against a school, spectating at a sporting event at the school's outdoor stadium is not a recreational use.

Williams was attending her daughter's high school soccer game at UTA's Maverick Stadium. When the game was over, Williams stopped to wait for her daughter by a gate that had a chain and a padlock and that separated the stands from the field. Williams placed her hand on the gate, and it swung open, causing her to fall approximately five feet to the track below, breaking her arm and a rib.

Williams sued UTA alleging that the gate was secured only by a chain and faulty lock and that this was a dangerous condition that proximately caused her injuries. UTA filed a plea to the jurisdiction and motion to dismiss asserting, among other arguments, that attending a sporting event is a recreational use, so UTA's liability was therefore limited by the recreational use statute's trespasser standard. The trial court denied UTA's plea and motion to dismiss, and UTA appealed.

The Fort Worth Court of Appeals found that neither spectating at a sporting event nor exiting the premises after spectating is like the activities listed as recreation under the recreational use statute; nor do they fall under the statute's catchall of "any other activity associated with enjoying nature or the outdoors."

***Roma Independent School District v. Guillen,* No. 04-13-00133-CV, 2013 Tex. App. LEXIS 1791 (Tex. App. – San Antonio, February 25, 2013, no pet. h.)**

Courts have jurisdiction to consider a lawsuit challenging a school district's discretionary decision to modify its Board of Trustees' term lengths and election dates brought by potential Board candidates, even where they did not first exhaust administrative remedies.

The RISD's Board of Trustees ("the Board") passed resolutions changing the election dates for the seven-member board, such that the terms of the Board members were extended from three to four years, and the election dates for Board members was changed to May 15 of odd-numbered years and then later changed to November of even-numbered years. The result of these resolutions was that the current Board members' three-year terms were extended to between four and a half and five and half years.

Guillen, Moreno, Salinas, and Saenz (collectively, "Guillen") are voters and taxpayers who reside within the School District, and Moreno, Salinas, and Saenze had announced their intent to run for the Board in the May 2013 election. When the Board passed the resolution changing the election dates for the second time, Guillen brought suit against the School District under the Uniform Declaratory Judgments Act. In response, the School District filed a plea to the jurisdiction arguing that the Court did not have jurisdiction because Guillen failed to exhaust administrative remedies and courts are wholly prevented from regulating school districts on discretionary decisions concerning elections. The plea to the jurisdiction was denied and immediately appealed.

On appeal, the San Antonio Court of Appeals held that the trial court did not err in denying the plea, because several of Guillen's claims were brought under the Texas Election Code and Texas Administrative Code, which are not "school laws" for which administrative remedies must first be exhausted. Further, Guillen's claims under the Texas Education Code were excepted from the exhaustion requirement because the claims show that they will suffer irreparable harm and that the Commissioner of Education could not provide adequate relief. The Court further held that courts are not always precluded from weighing in on a school district's discretionary decisions regarding elections.