2013 YEAR IN REVIEW

SIGNIFICANT DECISIONS IN 2013:
SCHOOL LAW UPDATE

By John D. Husted

SUPREME COURT OF THE UNITED STATES

***Fisher v. University of Texas at Austin*, 133 S.Ct. 2411 (June 24, 2013)**

Courts must apply the demanding burden of strict scrutiny when reviewing any admissions program that uses racial categories or classifications.

When Fisher, a Caucasian, was rejected for admission to the University of Texas's 2008 entering class, she brought an Equal Protection Clause claim against the University challenging its undergraduate admissions process. The University's current admissions process considers race as one of various factors. The University adopted the program after the Supreme Court decided *Grutter v. Bollinger*, 539 U.S. 306 (2003), which upheld the use of race as one of many factors in an admissions program.

The district court granted summary judgment to the University, and the Fifth Circuit affirmed, holding that while a strict scrutiny analysis, which requires a compelling governmental interest and a narrowly tailored means of achieving that goal, applies, courts are to give substantial deference to the University, both in the definition of the compelling interest in diversity's benefits and in deciding whether the University's specific plan was narrowly tailored.

The Supreme Court vacated the Fifth Circuit decision and remanded the case because under the strict scrutiny burden articulated in *Grutter*, a court may give some deference to a university's judgment that diversity is essential to its educational mission, so long as diversity is not defined as mere racial balancing; however, a university receives no deference on whether the means it has applied to achieve that goal have been narrowly tailored. Narrow tailoring requires a court to verify that it is necessary for the university to use race to achieve the educational benefits of diversity.

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

***Wyatt v. Fletcher*, 718 F.3d 496 (5th Cir. May 31, 2013)**

A student in a public secondary school does not have a clearly established Fourteenth Amendment privacy right that precludes school officials from discussing the student's private matters, including matters relating to sexual activity of the student, with the student's parent, nor

is there a clearly established Fourth Amendment right barring a student-coach confrontation in a closed and locked room.

As next of friend of her 16-year old minor daughter, Wyatt brought suit under 42 U.S.C. § 1983 against her daughter's high

school softball coaches because the coaches disclosed her daughter's sexual orientation to Wyatt during a disciplinary meeting. Upon hearing a rumor that the student was in a relationship with an 18-year old female student, the softball coaches confronted the student in a closed-door meeting, and later disclosed to Wyatt in an arranged meeting that her daughter was having an inappropriate relationship with another female. Wyatt's daughter had not previously disclosed to Wyatt that she was gay. Wyatt claimed that this disclosure constituted a Fourteenth Amendment invasion of her daughter's privacy. Wyatt also brought a Fourth Amendment claim based on the disciplinary confrontation between the coaches and Wyatt's daughter in a locked locker room.

The Fifth Circuit court reversed the district court's denial of the coaches' motion for summary judgment based on qualified immunity. The Fifth Circuit held that there is no clearly established law holding that a student in a public secondary school has a privacy right under the Fourteenth Amendment that precludes school official from discussing with a parent the student's private matters, including matters relating to the sexual activity or orientation of the student. Further, such students have no clearly established Fourth Amendment right that bars a student-coach confrontation in a closed and locked room.

***R.P. v. Alamo Heights Independent School District*, No. 11-50956, 2012 U.S. App. LEXIS 26452 (5th Cir. December 27, 2012)**

For a student's claim that a school district failed to provide a free appropriate public education (FAPE) as required by the Individuals with Disabilities Education Act (IDEA), even if a school district failed to provide a sufficiently individualized "Individualized Education Program" (IEP), so long as the student received an overall educational benefit when all relevant factors are evaluated together, the student received a FAPE.

R.P., a student at Alamo Heights School District, was essentially non-verbal, so a variety of communication methods, including sign language and voice communication devices ("assistive technology"), were used at school to help her communicate. When R.P.'s Admissions, Review, and Dismissal (ARD) committee convened during R.P.'s third grade year, the School District failed to discuss or incorporate a required assistive technology assessment into her IEP because school personnel did not timely complete a required assistive technology evaluation. As such, R.P. was not issued her own voice device. R.P., by and through her parents, brought suit alleging that she was denied a FAPE for various reasons, including because the School District delayed in providing R.P. with an assistive technology device.

The Court stated that whether a student demonstrates positive academic and non-academic benefits is one of the most critical factors when analyzing whether the substantive requirements for a student's IEP are met, and achieving one's maximum educational potential is not what is required by law. Considering all of the facts in light of the *Michael F*. factors for analyzing whether a student receives a FAPE, the Court held that R.P. demonstrated positive

academic and non-academic benefits from her IEP. Therefore, even though the School District's handling of the assistive technology assessment was not optimum, when all relevant factors were evaluated together, R.P. received a FAPE.

***Dixon v. Alcorn County School District*, No. 12-60515, 2012 U.S. App. LEXIS 24885 (5th Cir. December 4, 2012) (unpublished)**

The Fifth Circuit continued to decline to adopt the "state-created danger" theory for substantive due process claims. The Court dismissed the student's claims against the School District under the "state-created danger" theory where the student was physically attacked by a mentally disabled classmate at school and the school district failed to remove the mentally disabled child from the classroom despite his history of troubling and aggressive behavior. The Court declined to adopt the state-created danger theory as other Circuits have, but noted that even in light of the typical state-created danger factors, the student's case would not succeed.

TEXAS COURT OF APPEALS

***Damuth v. Trinity Valley Community College*, No. 12-12-00353-CV, 2013 Tex. App. LEXIS 9556 (Tex. App. – Tyler July 31, 2013, no pet. h.)**

For purposes of the Tex. Local Gov't Code § 271.151's limited waiver of governmental immunity for government contract claims for goods or services, a community college teacher/coach's employment contract does not fall under the category of "services."

Damuth entered into a written employment agreement with Trinity Valley Community College (TVCC) to coach and teach. Five months into the one year contract, he was discharged. He brought suit for breach of contract against TVCC. The trial court granted TVCC's motion to dismiss and plea to the jurisdiction, and Damuth appealed the order. Damuth contended that Tex. Local Gov't Code § 271.151's limited waiver of governmental immunity for a breach of contract claim based on an "agreement for providing goods or services to the local governmental entity," applied in this case, because his employment contract was a contract for services.

Though Chapter 271 provides no definition for the term "services," and though the Texas Supreme Court previously held that an employment contract between a city and fire fighters for fire protection services constituted "services," under Chapter 271, the plain language of the statute's limited waiver of immunity does not apply to a community college's teacher/coach employment contract.

***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."