FALL 2021 NEWSLETTER

SCHOOL LAW UPDATE

By John D. Husted

SUPREME COURT OF THE UNITED STATES

***Mahanoy Area School District v. B.L.*, __ U.S. __, 141 S. Ct. 2038 (June 23, 2021)**

The public high school violated the student cheerleader's First Amendment free speech rights by suspending her from the cheerleading team for Snapchatting vulgar language and gestures criticizing the school and its cheerleading team while off campus and outside of school hours. The school's interest in prohibiting students from using vulgar language to criticize the school team or its coaches did not overcome the student's interest in free expression

Mahanoy Are High School student B.L. failed to make the school's varsity cheerleading squad. Over the weekend and off campus, B.L. posted two images to her friends on Snapchat. B.L.'s posts expressed frustration with the school and the cheerleading squad, and one of the posts contained vulgar language and gestures. Upon learning of the posts, school officials suspended B.L. from the junior varsity cheerleading squad for the upcoming year.

B.L. and her parents brought suit, arguing that punishing B.L. for her speech violated the First Amendment. The District Court granted an injunction ordering the school to reinstate B.L. to the team. The Third Circuit affirmed the judgment.

In an 8-1 decision with Justice Thomas dissenting, the Supreme Court held that while public schools may have a special interest in regulating some off-campus student speech, those offered in this case were not sufficient to overcome B.L.'s interest in free expression. The Court identified three features of off-campus speech that diminishes the leeway the First Amendment grants to schools: (1) a school rarely stands in loco parentis when a student is off campus, (2) unlimited regulation of off-campus speech would mean a student cannot engage in that kind of speech at all, and (3) the school itself has an interest in protecting a student's unpopular expression, especially when it occurs off campus, because America's public schools are "the nurseries of democracy." The Court also gave weight to the facts that though portions of B.L.'s speech were vulgar her posts encompassed criticism, her posts did not identify the school or target any member of the school community, and the speech was transmitted through a personal cellphone to an audience consisting of her private circle of Snapchat friends.

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

***T.O. v. Fort Bend Independent School District*, 2 F.4th 407 (Fifth Cir. June 17, 2021)**

Since the student's injuries allegedly sustained in an altercation with a teacher resulted from a disciplinary incident, the student's constitutional claims were dismissed.

While the minor child plaintiff T.O. was in first grade, he was alleged to have sustained injuries during an altercation with a teacher. Specifically, after his behavior disrupted the classroom, an aide took T.O. into the hallway and instructed him to remain there until he calmed down. Defendant Angela Abbott, a fourth grade teacher, happened to be walking by and offered assistance. During this interaction, T.O. eventually started yelling, tried to push Abbott away, and hit her in the leg. Abbott responded by seizing T.O.'s neck, throwing him to the floor, and holding him in a choke hold for several minutes. Abbott eventually released T.O. after his aide asked her "to release him…because he needed air and she was holding him the wrong way." The incident was investigated, but Abbott was not fired or otherwise disciplined.

Plaintiffs sued Abbott for violations of T.O.'s Fifth and Fourteenth Amendment liberty interests in his bodily integrity, and his Fourth Amendment right to be free from unreasonable seizure. Plaintiffs also sued the School District for disability discrimination in violation of the ADA and § 504. Abbott and FBISD moved to dismiss all claims. The district court determined Abbott was entitled to qualified immunity, that T.O. failed to state a claim for disability discrimination, and dismissed all claims. T.O. appealed.

The Fifth Circuit Court reasoned that even if Abbott's intervention were ill-advised and her reaction inappropriate, the Court could not say that it did not occur in a disciplinary context, and were not a "random, malicious, and unprovoked attack" justifying a deviation from precedent of dismissing substantive due process claims when the offending conduct occurred in a disciplinary, pedagogical setting. The Court indicated that Texas law provides adequate, alternative remedies in the form of both criminal and civil liability for school employees whose use of excessive disciplinary force results in injury to students.

SUPREME COURT OF TEXAS

***Texas Southern University v. Villarreal*, 620 S.W.3d 899 (Tex. April 16, 2021)**

For purposes of a student's due course of law claim under Article I, §19 of the Texas Constitution against a state university, an academic dismissal from higher education carries insufficient stigma to implicate a protected liberty interest.

Villarreal sued Texas Southern University's Thurgood Marshall School of Law after he was dismissed for failing to maintain the required 2.0 grade point average, alleging both breach of contract and a deprivation of his liberty and property interests without due course of law.

The school filed a plea to the jurisdiction asserting sovereign immunity. The plea was granted, but the First Court of Appeals reversed in part, holding that Villarreal had alleged viable procedural and substantive due course of law claims. Distinguishing dismissals for disciplinary reasons from academic dismissals and applying the stigma framework, the Court determined that an academic dismissal did not implicate a protected liberty interest. Assuming Villarreal had a property interest, the school provided sufficient process as is required under the Constitution. Villarreal had notice of the school's GPA requirements, had opportunities to appeal his grade, and ultimately, his dismissal.

TEXAS COURT OF APPEALS

***Doe v. Hurst-Euless-Bedford Independent School District*, 2021 Tex. App. LEXIS 464 (Tex. App. – Fort Worth January 21, 2021, op. filed)**

A student removing and consuming the medicated lotion of another student from an unlocked classroom cabinet where students' medications are kept without a teacher or other official's knowledge, incurring damages, does not constitute the "administration of medication" for purposes of the limited waiver of immunity for public school district liability under the Texas Education Code § 22.052.