Legal Update and Hot Topics

Indiana School Public Relations Association

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Topics from Recent Case Law

- First Amendment
- Employment law
- Liability for employees
- Care of students
- Collective bargaining
- Open Door
- Public Records

First Amendment - Off Campus Student Speech

- ***Mahonoy Area School District v. B.L.*** (U.S. Supreme Court 2021)
  - While off-campus and outside school hours, student posted on social media a photo with a caption containing profanity that expressed her displeasure with not making the varsity cheer squad and with school in general. Student was suspended from junior varsity cheer squad. The Court found this to be a violation of the First Amendment.
  - Court declined to set specific standard for off-campus student speech, but suggested that there may be times when a school can regulate some off-campus conduct (e.g. bullying or harassment targeting individuals, threats, use of school devices, etc.)

First Amendment -Employee Speech

- ***Trinidad v. School City of East Chicago*** (N.D. Ind. 2021):
  - Employee posted on her personal Facebook page (at home, after hours) about a strong odor in her building that she said was making her and others sick. School claimed the allegation that others were falling ill was false and the employee was suspended for 5 days and told to take the post down
  - Court denied School's motion for summary judgment on free speech claim. The Court determined that the employee spoke as a private citizen on a matter of public concern. Whether the statement was false was a question of fact to be determined by a jury – recklessly or knowingly false statements are not protected.

First Amendment –Board members

- **COMING SOON!**
- ***Houston Community College System v. David Buren Wilson*** – pending in U.S. Supreme Court, out of 5th Circuit (argued November 2, 2021)
  - Board censured member for social media comments about the Board and for suing the Board for violations of its bylaws. Member sued for violation of First Amendment rights.
  - Appellate Court found that the member's speech was on a matter of public concern (Board actions and use of public funds). Found that censure was a reputational injury, caused mental anguish.
  - Justices seemed to lean in favor of the school at oral argument – that the censure was merely counter-speech. But may issue narrow ruling that censure does not trigger a retaliation claim

Discrimination – Third Parties

- ***Johnson v. South Bend Community School Corporation*** (N.D. Ind. 2021)
  - White basketball coach resigned after several parents complained about playing time and treatment of black players. Coach felt like the school was not supporting him and sued claiming that he was discriminated against and harassed by the parents based on his race.
  - Court granted summary judgment in favor of the school. The Court found insufficient evidence of discrimination or harassment – evidence produced did not make any connection to the coach's race, "harassment" was not based on race and was not pervasive. Furthermore, there was no adverse employment action because he voluntarily resigned.

Employee Religious Accommodation

- ***Kluge v. Brownsburg Community School Corporation*** (S.D. Ind. 2021)
  - Teacher claimed that school policy requiring teachers to refer to students by their preferred names and pronouns conflicted with his religious beliefs. School attempted to accommodate was ultimately unable to do so. Teacher resigned, but then attempted to rescind it.
  - Court found no evidence that resignation was coerced, determined that failure to offer an alternative accommodation was not an adverse employment action, and found sufficient evidence of undue hardship justifying the School's refusal to accommodate. Inability to meet the needs of all of its students was more than a *de minimus* cost to the school mission and constituted an undue hardship.

Liability for Employee Conduct

- ***K.B. by Blade-Thompson v. Fies*** (N.D. Ind. 2021)
  - Student was solicited by teacher on dating app. When school found out, the teacher was removed and an investigation occurred. The student sued the school under Title IX
  - The Court granted summary judgment in favor of the school. Key elements were the school's control of the teacher's conduct and the school's response when it obtained actual knowledge of the conduct. The Court determined that the school did not have control of the conduct as it occurred outside of school hours, off-campus, on the teacher's own device, and not using his own name. The school acted appropriately by taking immediate action when it found out.

Negligent Supervision of Student

- ***Hopkins v. IPS*** (Ind. Ct. App. Jan. 31, 2022)
  - On student's second day of first grade, he was waiting in line to get on the bus at the end of the day, but the teacher removed him from the line and told him he was a walker (student had a bus rider tag on his backpack, which he showed the teacher). Student was 1.2 miles from home and did not know how to get there. He walked a mile in the wrong direction and was approached by a homeless man, chased by dogs, fell, and crossed a major street during rush hour. Eventually, a stranger intervened and contacted the police, the school, and the mother.
  - Parents filed a lawsuit alleging school violated duty of reasonable care and supervision. The School claimed it was immune under ITCA.

Negligent Supervision of Student

- Court noted that a school had a duty to exercise reasonable care and supervision for the safety of children under its control.
- School could not claim immunity for its own compliance or failure to comply with its own policies or procedures (this is not "enforcement" of a policy for the purposes of ITCA immunity)
- The Court found conflicting evidence regarding who was ultimately responsible for the misdirection of the student and, therefore, that the question of "third party" immunity could not yet be determined.

COVID and Special Needs

- ***Reinoehl v. St. Joseph County Health Dept, P-H-M Sch. Corp, et al.*** (Ind. Ct. App. 2021)
  - In November 2020, Parents brought 504, ADA, IDEA, negligence, and constitutional claims against health department, public health officials, and school district complaining about the closure of schools to in-person instruction. Their high school aged children have ADHD and mental health diagnoses, and both have 504 Plans with seating accommodations. Parents wanted in-person or asynchronous classes for their children.
  - Complaint was dismissed and the parents appealed.

COVID and Special Needs

- IDEA claim failed because students did not qualify for special education and failed to exhaust their administrative remedies
- 504/ADEA claims failed because no facts were alleged that showed intentional discrimination or disproportional impact. Accommodation sought would have fundamentally altered the educational program or imposed an undue burden – parents were seeking a completely different form of instruction. Conditions at home were out of the School's control and could not form the basis for a 504 violation.
- No private right of action to enforce Executive Orders on public health or the Home Rule Act.
- "[P]arents 'do not have a constitutional right to control each and every aspect of their children's education and oust the state's authority over the subject."

Collective Bargaining

- ***Culver Education Association et al v. IEERB*** (Ind. 2021)
  - IEERB determined that CBAs of four schools included impermissible language on ancillary duties – contained definitions and conditions related to the assignment of the ancillary duty that exceeded the scope of permissible subjects of bargaining.
  - Court ruled in favor of IEERB finding that the relevant bargaining statutes prohibit bargaining over what constitutes an ancillary duty – subjects are limited to salaries, wages, and wage-related fringe benefits. Teachers can be paid for ancillary duties, but cannot bargain over the duties themselves. School can unilaterally define the duty and condition of assignment – the wage for those duties can then be bargained.

Association Dues

- ***Anderson Federation of Teachers v. Rokita*** (S.D. Ind. 2021)
  - Challenge to new law passed by Indiana General Assembly in 2021 regarding union dues deduction, claiming that it abrogated existing dues authorization agreements in violation of the U.S. Constitution and violated teachers' First Amendment Rights
  - Court determined that law terminating previous authorizations was unconstitutional
  - Court determined that the law does not violate First Amendment right of freedom of association
  - Court determined that required "rights" statement was a violation of First Amendment speech rights

Public Records – Employee Discipline

- Ind. Code § 5-14-3-4(b)(8)(C) requires disclosure of "the factual basis for a disciplinary action in which final action has been taken and that resulted in the employee being suspended, demoted, or discharged."
- ***WTHR-TV v. Hamilton Southeastern School District*** (Ind. 2022)
  - News station requested employee discipline records for the high school football coach. The school denied the request.

Public Records – Employee Discipline

- Court said APRA permits a public agency to compile required information in a new document (create a public record). "If it allows a requester to inspect and copy that record, it has satisfied its obligations. Agencies must only turn over public records that contain the required information." Not required to turn over underlying documents in a personnel file – but can elect to do so.
- Must provide sufficient information – "When an agency provides a factual basis for employee discipline, it does not have to provide every intricate detail about what caused it to discipline an employee, but it must provide some facts about the employee's actions…Those facts must be sufficient for a reasonable person to understand what an employee did to deserve discipline." Conclusions are not enough.

Executive Sessions

- PAC Opinion – 21-FC-18
  - School board met in executive session to discuss pending litigation – superintendent's breach of contract lawsuit against the Board. Board voted in the Executive Session to start a search for a new superintendent.
  - Vote should have occurred in a public session. Boards can <u>discuss</u> wide range of issues related to litigation, but a superintendent's search is not related to litigation even under these circumstances.

Executive Sessions

- PAC Opinion – 21-FC-124
  - Reporter complained that a school board had conducted an emergency executive session to discuss quickly rising COVID cases. The Board claimed that under the circumstances it was necessary to meet without 48 hours notice.
  - PAC concluded this was an ODL violation – discussion of pandemic plans is not a permissible topic for an executive session. The meeting should have been a public meeting.
  - Also, the ODL does not have a provision for an emergency executive session. There is some suggestion the PAC might allow it in cases of true imminent danger.

Public Meetings

- PAC Opinion – 21-FC-59
  - Patron complained that school board meeting was not conducted in a large enough venue to accommodate everyone who wished to attend. The Board had provided overflow space where patrons could observe the meeting on live-stream
  - PAC noted that the spirit of the ODL supports idea of moving a public meeting to a space able to accommodate the public when it is on notice of increased public interest in a particular meeting, but the ODL does not require that a meeting be relocated. No ODL violation, especially because of overflow space.
  - Patron also complained that masks were mandatory – PAC said this did not impede ability to observe and record the meeting and, therefore, was not a violation

Public Meetings

- PAC Opinion – 21-FC-89
  - Patron complained that school board limited capacity to a Board meeting and had security present. Patron wanted the meeting moved to a larger venue.
  - As has been noted in many opinions, PAC noted that a school board may have a duty to move the location of a meeting when it has a reasonable expectation of crowd size or advance notice of large interest.
  - In this case, there was nothing controversial on the agenda and there had been low attendance at previous meetings. Accordingly, the school board had no reason to know a large crowd was probable or likely.

Public Meetings

- PAC Opinion – 21-FC-87
  - Patron complained that school board limited public attendance at “Town Hall” meeting to five people at a time (54 people showed up, and people were rotated in and out 5 at a time)
  - PAC “had no quarrel with the procedure during a public health emergency” and also opined that the presence of security personnel was not a barrier to access or intimidation. No ODL violation was found.

Public Meetings

- PAC Opinion – 21-FC-73
  - Patron complained about school board requirement that members of the public pre-register to attend a public meeting (was a COVID-19 mitigation effort)
  - PAC determined this was a violation of the ODL – (1) the meeting room was historically adequate for public meeting capacity, (2) no masks or social distancing was required at the meeting, and (3) the school admitted the patron could have attended even he had followed the registration process.
  - PAC opined that the preregistration could result in abuse and barriers to public right to observe and record the meeting. Public should be able to show up without registering.

Public Meetings

- PAC Opinion – 21-FC-95
  - Patron alleged that school board had held an improper private meeting during a recess during a public meeting. During the public meeting, several patrons refused to wear masks despite masking requirement. Proceedings became heated and the meeting was recessed. The public meeting later resumed and was adjourned without further action.
  - PAC reviewed the video and noted that three of the five board members stayed in the meeting room, such that no meeting could have been conducted during the recess. The Superintendent, two board members, and the Board's attorney had a discussion during the recess that led to the adjournment. Because the majority of the Board was not a part of this discussion, it was not a meeting for the purpose of the ODL.

Questions?

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