

Best School Law Cases



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A quick note on the transgender litigation and what it means

- DOL/DOJ/DOE/OCR are releasing many "DCL's" and "guidance" documents
- Transgender cases are challenging "agency deference" from *Auer v. Robbins* and rulemaking requirements from APA
 - Defers to agency's interpretation of ambiguous regulations unless inconsistent with the law
- *Foster v. Vilsak*, 820 F.3d 330 (8th Cir.): challenging "Auer deference" on different grounds, from our circuit
- The *Auer* deference outcome likely impacts other obligations under these DCLs and guidance documents

Attorneys after more money...

**Tina M. v. St. Tammany Parish
Sch. Bd.**

- Parents filed DP hearing regarding IEP modification decision
- Prior to hearing, requested "stay put"
- ALJ granted "stay put" but made clear it is "not a final adjudication of the merits"
- School and family settled through mediation
- Parents filed suit, arguing they were the "prevailing party" and entitled to fees

**Tina M. v. St. Tammany Parish
Sch. Bd.**

- District court awarded fees
- 5th Cir. Reversed
 - IDEA "stay put" is an "automatic" procedure
 - It is not a win on the "merits" of the case
- Important decision because it would impose attorney fees where automatic "stay put" was available
- Also discourages settling cases prior to hearing

Rappers...

Bell v. Itawamba County Sch.,
(5th Cir 2015)

- Student made offensive rap recording
 - “betta watch your back/Ima serve this n***a like I serve the junkies with some crack
 - “Run up on T-Bizzle/ I’m going to hit you with my rueger
 - You f***ing with the wrong one/going to get a pistol down your mouth
 - “middle fingers up if you want to cap that n***a
- Posted to Facebook, YouTube
 - 2,000 hits

Bell v. Itawamba County Sch.,
(5th Cir 2015)

- Principal heard recording (on a student’s phone)
- Student who made recording:
 - 7 day suspension
 - Assigned to the alternative school for the remainder of the quarter
 - No school activities
- Sued, arguing that:
 - Allegations against coaches were true
 - Lyrics were not “true threat”
 - First Amendment protection

Bell v. Itawamba County Sch.,
(5th Cir 2015)

- Court :
 - Since social media can be accessed on phones, all comments about school have potential to affect school
 - “paramount need for school officials to be able to react quickly and efficiently to protect students and faculty from threats, intimidation and harassment intentionally directed at the school community”

Teachers...

Munroe v. Cent. Bucks Sch. Dist.
(3rd Cir. 2015)

- Teacher blog: "Where are we going, and why are we in this handbasket?"
 - Called S's "dunderheads" and "whiny, simpering grade-grubbers"
 - Parents were "breeding a disgusting brood of insolent, unappreciative, selfish brats"
 - Others: "argumentative f***"; "I hate your kids"; "unrealistically high perception of [your kid's] ability"
 - Graphic of a school bus with a "Short Bus" sign and "I DON'T CARE IF YOU LICK THE WINDOWS, TAKE THE SPECIAL BUS OR OCCASSIONALLY PEE ON YOURSELF ... YOU HANG IN THERE SUNSHINE, YOU'RE FRIGGIN SPECIAL."

Munroe v. Cent. Bucks Sch. Dist.
(3rd Cir. 2015)

- Court applied *Pickering*
 - Employee speech protected only if made as a private citizen regarding a matter of public concern
 - Balancing test vs. school's interest
- Court found no violation for 1st Amendment
 - Disrupted effectiveness and trust by expressing "hostility and disgust against her students"
 - Some posts probably touched on "the truth" and "matters of public concern"
 - As a whole, it was "just rants"
 - District's interest in smooth operation outweighed Munroe's 1st Amendment rights

Digital Citizenship and Social Media Cases and Trends

Sextortion: it's happening!

Seward man gets prison time for trying to meet teen for sex

By the Lincoln Journal Star May 11, 2015



A 33-year-old Seward man who got arrested after going to Lincoln to have sexual contact with a 15-year-old boy went to prison Tuesday.

David L. Amherstberg pleaded guilty to sending an electronic device and text to a minor, after admitting that he was sorry if he could go back, for said, he wouldn't do it.

In court records, Lincoln police say Amherstberg began exchanging messages and texts on Nov. 17 with someone he thought was a 15-year-old boy. The exchange lasted several weeks.



Amherst man arrested, accused of wanting to meet girl for sex

By the Lincoln Journal Star Nov 21, 2015

We have more teacher cases, not fewer

Former Loup City teacher enters three no contest pleas

Filed: Thursday, Aug 13, 2016 10:07 am, By Jeff Bahr jba@lincolnjournal.com

Lincoln teacher, attorney among those arrested in sex-trafficking operation

Updated Aug 12, 2016



LINCOLN — The former teacher "assaulted" students in a girls' classroom in a no-contest plea. A judge in Lincoln County District Court ruled against a no-contest plea. A judge in Lincoln County District Court ruled against a no-contest plea.



Twelve people were arrested or cited in Lincoln on July 29 as part of the National Johns Suppression Initiative aimed at reducing sex trafficking.

They included a Lincoln Public Schools teacher, a man who taught classes at the University of Nebraska at Kearney and a Lincoln attorney, according to the Lincoln Police Department.

The operation by agencies across the country rescued 32 underage girls turned into human trafficking, helped 58 adult women escape their ordeal, and arrested 80 people trafficking.

Gering teen enters admit plea for felony intrusion charges



The South Buff County courthouse in Gering

By Denver Post Staff | Updated 11:16:02 AM, Jan 21, 2016



GERING, Neb. A Gering teenager facing 20 misdemeanor and 20 felony charges for allegedly photographing girls in a Gering High School locker room appeared in court this week.

According to court records on Tuesday, the teen entered an admit plea, similar to guilty, to one count of misdemeanor unlawful intrusion, and three counts of felony unlawful intrusion by photograph. The state dropped the remaining 19 misdemeanors and 17

Fremont Police Respond to Threats at Area High School

Posted: Thu 2:07 PM, Jan 21, 2016

By: Press Release

Home | Headlines List | Article

FREMONT, Neb. -- On Wednesday morning, at approximately 7:40 a.m., the Fremont Police School Resource Officer was contacted by Administration of the Fremont High School in reference to a posting by a student on Snapchat that indicated a possible threat against the school involved what appeared to be a firearm.

Snapchat is a video messaging application. Using the application, users can take photos, record videos, add text and drawings and send them to a controlled list of recipients.



The 17-year-old juvenile male suspected of posting the information was not in school and was contacted by police at his home in Fremont.

The firearm, later determined to be an airsoft gun, was located at another residence and collected as evidence.

The investigation determined that the complaint was valid and the juvenile was charged with Terroristic Threats Class IV Felony, Disturbing the Peace Class III Misdemeanor, and Disorderly Conduct a Misdemeanor City Ordinance violation.

Government Officials...

A quick note on "de minimis" use of public resources...

Ricketts calls for resignation amid allegations Sen. Kintner had explicit video on state computer

Sen. Kintner will pay fine, won't resign over computer cybersex

Governor Calls on Sen. Kintner to Resign

Kintner admits cybersex with state laptop; told woman, 'Let's end this, before I get in trouble'

General Use of Public Resources

49-14,101.01. Financial gain; gift of travel or lodging; prohibited acts; violation; penalty; permissible activities and uses.

(1) A public official or public employee shall not use or authorize the use of his or her public office or any confidential information received through the holding of a public office to obtain financial gain, other than compensation provided by law, for himself or herself, a member of his or her immediate family, or a business with which the individual is associated.

(2) A public official or public employee shall not use or authorize the use of personnel, resources, property, or funds under his or her official care and control other than in accordance with prescribed constitutional, statutory, and regulatory procedures or use such items, other than compensation provided by law, for personal financial gain.

"De Minimis"

49-14,101.03. Public official or public employee; incidental or de minimis use of public resources; permissible activities and uses.

(1) Any use of public resources by a public official or public employee which is incidental or de minimis shall not constitute a violation of section 49-14,101.01 or 49-14,101.02.

But if you're brave...

(2) For purposes of sections 49-14,101.01 and 49-14,101.02, a resource of government, including a vehicle, shall not be considered a public resource and personal use shall not be prohibited if (a) the use of the resource for personal purposes is part of the public official's or public employee's compensation provided in an employment contract or a written policy approved by a government body and (b) the personal use of the resource as compensation is reported in accordance with the Internal Revenue Code of 1986, as amended, and taxes, if any, are paid. If authorized by the contract or policy, the resource may be used whether or not the public official or public employee is engaged in the duties of his or her public office or public employment.

One "Other" Speech Case...

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**Mech v. Sch. Bd. Of Palm Beach Cty., Fl.
No. 15-10778 (Nov. 23, 2015)**

- "David Mech has a unique résumé."
- Mech called himself the "The Happy/Fun Math Tutor."

He has a bachelor's degree from Michigan State University, a master's degree from Arizona State University, and is enrolled in a Ph.D. program at Florida Atlantic University. He has taught mathematics at Palm Beach State College and is certified to teach secondary math in Florida.

Mech v. Sch. Bd. Of Palm Beach Cty., Fl.
No. 15-10778 (Nov. 23, 2015)

- School Board instituted "business banner" program
- Principals asked to make sure signs supported educational mission, community values, appropriateness for kids
- Some school employees encouraged Mech to apply because "he apparently is a very good tutor"
- School hung the banners



Mech v. Sch. Bd. Of Palm Beach Cty., Fl.
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Mech is also a retired porn star. He has performed in hundreds of pornographic films. And he owns Dave Pounder Productions LLC, a company that formerly produced pornography. The Happy/Fun Math Tutor and Dave Pounder Productions share a mailing address in Boca Raton, Florida.

Mech v. Sch. Bd. Of Palm Beach Cty., Fl.
No. 15-10778 (Nov. 23, 2015)

- In 2013, parents "discovered the common ownership of The Happy/Fun Math Tutor and Dave Pounder Productions."
- Mech filed suit, alleging 1st/14th Amendment and breach of contract
- Court:
 - If the banners are Mech's speech, he may win; if the banners are government speech, Mech loses.
 - Test: history of government messages; observers would think government agrees with message; approval/direct control over the message
 - Held: government speech, but it was a stretch...
 - "His redress lies with the political process."

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