

# Clearinghouse

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The Clearinghouse digests recent state and federal opinions that affect North Carolina. The facts and legal conclusions contained in the digests are summaries of the facts and legal conclusions set forth in judicial opinions. Each digest includes a citation to the relevant judicial opinion, so interested readers may read the opinion's actual text. Neither the Clearinghouse editor nor the School of Government takes a position as to the truth of the facts as presented in the opinions or the merits of the legal conclusions reached by any court.

### Cases That Directly Affect North Carolina

**Local boards of education have the power to convert traditional-calendar schools to year-round schools and to assign students to them on a mandatory basis.** *Wake Cares, Inc. v. Wake County Board of Education*, 2008 WL 1945158 (N.C. App.).

**Facts:** Eight parents of public school students in the Wake County School System (the plaintiffs) filed suit against the Wake County School Board (WCSB), seeking an order to stop the board's plan to convert traditional-calendar schools to year-round schools and assign students to them on a mandatory basis. At trial, the court ruled that WCSB did not have the authority to create mandatory year-round schools but was authorized to operate year-round schools on a voluntary basis and with informed parental consent. WCSB appealed the ruling.

**Holdings:** The North Carolina Court of Appeals reversed the trial court's ruling, holding that the WCSB has the power to create year-round schools and to assign students to them without parental consent.

The General Assembly, in North Carolina General Statutes 115C-36 (hereinafter G.S.), granted local school boards general control and supervision of the schools within their administrative units. Any duty not specifically assigned to the state or some other official falls to the local boards. G.S. 115C-47(11) provides that the local boards shall determine the school calendar in accordance with G.S. 115C-84.2. This statute requires that each local board adopt a school calendar with a minimum of 180 days and 1,000 hours of instruction covering at least nine months; local boards are to decide how to meet these requirements. The statute concludes by encouraging local boards to use calendar flexibility to determine the best way to meet state educational standards.

Although G.S. 115C-84.2 imposes some limitations—in terms of earliest starting dates, latest ending dates, and consecutive days of teacher vacation—for traditional-calendar

schools, the statute explicitly recognizes year-round schools and exempts them from these limitations. The trial court therefore appropriately recognized local boards' authority to convert traditional-calendar schools to year-round schools.

The court of appeals went on to refute the lower court's conclusion that local boards could not make assignment to such schools mandatory. G.S. 115C-366(b) states that the authority of each local board to assign students is full, complete, and final (unless assignments are based on prohibited grounds of race, national origin, etc.). The trial court had interpreted Article IX, § 2(1) of the North Carolina Constitution and its codification in G.S. 115C-1 to mean that every student is entitled to a uniform school term of nine months. In fact, the term *uniform* modifies (as the Court of Appeals has held in the past) the "equal opportunities" clause of the constitution. Further, the constitution itself does not guarantee a uniform term of nine months; it guarantees that a uniform system shall be maintained for *at least* nine months.

**Court of Appeals affirms jury verdict in favor of board of education in its suit against county commissioners for inadequate public school system funding.** *Beaufort County Board of Education v. Beaufort County Board of Commissioners*, \_\_\_ N.C. App. \_\_\_, 656 S.E.2d 296 (2008).

**Facts:** The Beaufort County Board of Education (the board) filed suit against the Beaufort County Board of Commissioners (the commissioners) under G.S. 115C-431(c), which provides a scheme for resolving budget disputes between school boards and county commissioners. In June 2006 the board submitted its budget request to the commissioners for the 2006–2007 school year. The commissioners' budget ordinance allocated an amount that was approximately \$2.7 million less than the board's request. The board then adopted a resolution stating that the amount of money appropriated by the commissioners for the local current expense fund was inadequate to support a system of free public schools. Attempted mediation between the parties was unsuccessful and the board filed suit, seeking a jury trial to resolve the dispute.

The commissioners mounted several attempts to have the case dismissed, but the court allowed the dispute to go to the jury. For the jury the issue to be decided was the amount of money needed from sources under the control of the commissioners to maintain a system of free public schools in Beaufort County. The jury returned a verdict in the amount of approximately \$10 million. The commissioners appealed.

**Holdings:** The North Carolina Court of Appeals affirmed the jury verdict, over numerous objections from the commissioners.

Before addressing the commissioners' objections, however, the court addressed the issue of mootness: that is, given that the 2006–2007 fiscal year was then over, had the funding dispute ended? Under G.S.115C-431(d) such a controversy does not end if an appeal is pending, as in this case, when the fiscal year ends. As the issue was still alive, the court went on to address the merits of the commissioners' arguments.

First, the court addressed the plaintiffs' arguments concerning why the trial should not occur in the first place. The commissioners' primary objections on this point stemmed from language in the North Carolina Constitution and the *Leandro* cases suggesting that local governments have limited, and discretionary, responsibility for funding public schools, whereas the bulk of the responsibility rests with the state. [See "Clearinghouse" digests in *School Law Bulletin* (Spring 1996): 26–27 and (Fall 1997): 35–36 (*Leandro v. State*) and (Winter 2001): 30–31 (*Hoke County Board of Education v. State*).] Because its contributions were discretionary, the commissioners argued, the county could not be forced to contribute any more than it already had and the court was not empowered to hear any dispute about that contribution. In addition, the commissioners argued, the school board could not state with any specificity the amount needed from the commissioners to adequately fund its school system without knowing how much the state would supply for local current expenses. In fact, continued the commissioners, the suit should have been dismissed for the board's failure to join the state and the State Board of Education as necessary parties.

*Leandro* and its progeny did place primary responsibility for funding a sound basic education with the state, the court agreed. However, alongside these cases is an extensive statutory scheme for school financing: the School Budget Act (G.S. 115C-431). This law gives local governments some responsibility for school funding and provides a way to resolve any resulting disputes—including the right to have the matter expeditiously reviewed in court. The statute deals only with the issue of "what amount of money is needed from sources under the control of the board of county commissioners to maintain a system of free public schools." It contains no provision dealing with the state's contribution and does not give the state a role in the budget resolution process.

As the School Budget Act sets out this cause of action with some specificity and the school board presented evidence concerning how much money it needed from sources under the commissioners' control, the case was within the court's jurisdiction. It provided all the information necessary for a jury ruling and joined all necessary parties.

The court addressed one procedural point among the substantive ones discussed above: the court's order starting the trial on July 20, 2006, six days after the board had filed suit. The commissioners had asked the court to delay the start of trial until January of 2007. Resolution of this point hinged on the meaning given to the phrase "succeeding term," because G.S. 115C-431 provides that trial shall commence within the first succeeding term of the superior court in the relevant county. Ordinarily, a court's "term" is a six-month period during which judges maintain their assignments, as the commissioners argued. However, the court said, given the rest of the Budget Act's emphasis on speedy resolution of budget disputes, it made more sense to interpret the statute's phrase to mean "next session,"—the typical one-week assignments within the longer, six-month session. The statute directs that once the budget process has begun, and for a sufficiently long time before a dispute reaches court, the commissioners be given access to all information relevant to the financial operation of the county's schools. Thus the court found unconvincing the commissioners' argument that the starting date for the trial did not give them sufficient time to conduct discovery.

**Court affirms Industrial Commission ruling in favor of former students on their sexual harassment claims against university professor.** *Gonzales v. North Carolina State University*, \_\_\_ N.C. App. \_\_\_, 659 S.E.2d 9 (2008).

**Facts:** Shuaib Ahmad began working as a professor at North Carolina State University (NCSU) in 1980. During the 1987–1988 school year, Martha Brinson, an NCSU employee, reported to her supervisor and to two (successive) deans of the college of engineering that Ahmad had sexually harassed her; she did not, however, file a written report with the sexual harassment officer because of NCSU's dismissive attitude regarding her earlier report of a Peeping Tom and her desire to maintain privacy.

In 1996 Kathy Wood, an NCSU engineering student, served briefly as Ahmad's research assistant, until he harassed her, too. Wood reported the harassment to Leslie Dare, NCSU's sexual harassment officer at that time. After making her report, Wood discovered that Ahmad had harassed other students and employees in the past.

Evelyn Gonzales, another NCSU engineering student, subsequently applied to serve as Ahmad's research assistant. During discussions of the position, Ahmad sexually harassed Gonzales. Gonzales filed a report with Dare, who represented

to her that she was the first person to make a sexual harassment claim against Ahmad. Upon further investigation, however, Dare discovered at least eight additional women Ahmad allegedly had sexually harassed between 1986 and 1997. After notifying Ahmad of the charges and giving him the opportunity to respond (which he did not do), NCSU did not fire him. Instead, Ahmad was allowed to resign, and NCSU agreed to pay him his salary for the rest of the school year, as well as place a “neutral” letter of reference in his personnel file.

In the meantime, Gonzales and Wood, who had met through a mutual acquaintance, each filed suit against Ahmad and the university; their complaints charged Ahmad with negligent infliction of mental and emotional distress and NCSU with negligent supervision and retention of Ahmad. In the Industrial Commission, Gonzales and Woods were awarded \$150,000 each. NCSU appealed.

**Holdings:** The North Carolina Court of Appeals affirmed the commission’s ruling.

NCSU argued that it was not negligent in its duty to Gonzales and was not the proximate cause—without which the injury would not have occurred—of the harassment former students suffered. The court disagreed, finding that NCSU’s duty in this case, which it neglected, was to properly respond to the initial harassment claim made by Brinson. Even though she failed to file a written complaint, NCSU was not absolved of this responsibility. Nor does the fact that ten years elapsed between Brinson’s complaint and those of Gonzalez and Wood clear the university of liability; NCSU should not be allowed to escape liability merely because most of Ahmad’s subsequent victims failed to file reports. Having failed to take action, NCSU should have foreseen the possibility that Ahmad would sexually harass others.

The failure to take action on complaints of sexual misconduct and threatening behavior is part of a pattern by NCSU, found the court. The commission’s finding of facts referred to the university’s dismissive attitude toward the Peeping Tom incident Brinson reported; this Peeping Tom was allowed to haunt the campus for a total of sixteen years! Failure to promulgate and follow its own sexual harassment policy lead to this unfortunate state of affairs; NCSU was appropriately found responsible and ordered to pay damages to Gonzalez and Wood.

**Injured student’s second set of claims against school defendants was barred by a final judgment on the merits of her first set of claims; sanctions against her attorney for filing second set of claims were unwarranted.** *Herring v. Winston-Salem/Forsyth County Board of Education*, \_\_\_ N.C. App. \_\_\_, 656 S.E.2d 307 (2008).

**Facts:** Loryn Herring was struck by a car and injured on the way to her new bus stop. School officials had assigned

Herring to this stop because she had been assaulted by three boys on her former bus route. After the injury, Herring filed suit against the Winston-Salem/Forsyth County Board of Education (WSFCB) alleging negligence, breach of fiduciary duty, and constructive fraud. WSFCB asserted sovereign immunity, and the trial court entered an order dismissing Herring’s claims on this basis.

Herring later filed a second set of claims under the state constitution, alleging that WSFCB violated her rights to due process and equal protection. These claims were based on the same set of facts as her first set but came at them in a slightly different way: she argued this time that she was treated differently from the three boys who had attacked her (and had not been moved to a new bus stop), and differently from similarly situated victims insofar as WSFCB had settled other negligence claims without raising the sovereign immunity defense.

WSFCB moved to dismiss this second set of claims as barred by the judgment on her first set of claims. It also requested that the court impose sanctions on Herring’s attorney for filing a frivolous lawsuit. The trial court granted both of WSFCB’s motions; Herring appealed.

**Holdings:** The North Carolina Court of Appeals affirmed the dismissal of Herring’s claims, but reversed the imposition of sanctions on her attorney.

The legal doctrine of *res judicata* bars a second suit involving the same claim between the same parties when there has been a final judgment on the merits in the first suit. Herring argued that the dismissal of her first suit on the basis of WSFCB’s sovereign immunity did not constitute a final judgment on the *merits*, or the real grounds, of her suit, but rather a judgment based on an issue of practice or procedure. The court disagreed, noting that the assertion of sovereign immunity is an affirmative defense to the merits of the suit and a judgment based on it is on the merits. Further, case law in other jurisdictions has so concluded.

Herring next argued that the claims in her first and second suit were not the same—that at the time her first suit was dismissed an action under the state constitution did not even exist. The court refuted this argument, finding that when WSFCB asserted the defense of sovereign immunity, the possibility of raising a constitutional claim—against which WSFCB would not have had immunity—did exist and should have been added to the complaint, as it arose from the same set of facts as the original tort claims.

Under Rule 11 of the Federal Rules of Civil Procedure, an attorney’s signature on any pleading signifies that the pleading is well grounded in fact and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and not filed for any improper purpose. A breach of this rule can subject an attorney to sanctions.

The court of appeals reviewed Herring's filings and concluded that sanctions were inappropriate. The trial court had found that Herring's claim to have been discriminated against because of her gender was not well grounded in fact: in no case has the victim of an assault been allowed to claim discrimination because she did not like the punishment meted out to her assailants, found the trial court. There is no similarity between the position of the assaulted and the assailants, it concluded. The court of appeals found that the trial court mischaracterized Herring's claim: the gender discrimination claim was based on the facts that she and the boys were all students at the same school, riding in the same bus, and involved in the same altercation—yet she alone was required to use a new, more dangerous, bus stop. This claim accords with a reasonable interpretation of the facts.

The court of appeals also found that the claims were legally sufficient to satisfy Rule 11: at the time of Herring's second complaint, no North Carolina case had specifically held that a dismissal on the basis of sovereign immunity constituted a judgment on the merits barring subsequent actions. Although the court so held in this case, it was inappropriate to sanction Herring's attorneys for not predicting that result.

**Industrial Commission correctly held that bus driver negligence did not cause claimant's injuries.** *Coulter v. Catawba County Board of Education*, \_\_\_ N.C. App. \_\_\_, 657 S.E.2d 428 (2008).

**Facts:** Joshua Coulter was a student-passenger on a bus driven by Brenda Foster, an employee of the Catawba County Board of Education (CCBE). Foster began a turn into the school driveway but swerved to the right to avoid a car that was approaching fast and partially in her traffic lane, causing the bus's rear tire to go over a curb. As a result, Coulter was thrown against a window, which broke, and suffered cuts to his neck, chin, upper lip, and scalp.

Coulter filed a claim with the Industrial Commission, charging that Foster's negligent driving caused his injuries. The commission found no negligence in Foster's actions, and dismissed Coulter's suit. He appealed.

**Holdings:** The North Carolina Court of Appeals affirmed the commission's ruling. There was competent evidence in the record to support the ruling, including Foster's own, credible testimony about the way she approached the turn and at what speed, as well as the testimony of other bus drivers about how they approach the same turn and at what speed.

**Court dismisses former bus driver's claims concerning discrimination in his termination.** *Shaver v. Davie County Public Schools*, 2008 WL 943035 (M.D.N.C.).

**Facts:** William Shaver worked as a bus driver for the Davie County Board of Education for approximately one year before he was terminated because—according to his ter-

mination letter—his Internet web page and blog contained material that damaged his ability to serve as a role-model to the students he transported.

Representing himself, Shaver filed suit against multiple Davie County school officials, charging that they terminated him because he practices the Wiccan religion and engaged in unspecified protected free speech. He cited Title VII and the First Amendment as bases for his claims.

The defendants sought to have his claims dismissed before trial.

**Holdings:** The federal court for the Middle District of North Carolina granted the defendants' motion and dismissed Shaver's claims.

To pursue a Title VII claim in court, a claimant must verify that he or she first filed a written complaint with the Equal Employment Opportunity Commission (EEOC); this requirement is part of the government's attempt to conciliate cases before they get to litigation. Shaver conceded that he had failed to satisfy this prerequisite, and the court dismissed his Title VII religious discrimination claim.

The court next addressed Shaver's free speech claim. Shaver filed the claim under the actual free speech clause of the federal Constitution—the First Amendment. Courts generally will not create a federal remedy for constitutional violations when the Congress has already enacted such a remedial scheme: Section 1983 governs claims that public employees have acted to deprive someone of a constitutional right. However, even if Shaver had filed his free speech claim under Section 1983, it would still have suffered from another major defect: he failed to allege or show that the speech he uttered involved a matter of public concern. In cases brought by public employees, the First Amendment protects only speech that involves a matter of public concern.

Finally, the court denied Shaver's motion to amend his complaint. Shaver wanted to add a claim under the statute governing the military's "don't ask, don't tell" policy charging that the defendants dismissed him because of his wife's bisexuality. While courts generally grant motions to amend with liberality, they will deny them in cases where the amendments would be futile. As the statute Shaver sought to use governs only the military, his claim had no chance of success.

**Mother protesting school district's transfer of her children failed to exhaust her administrative remedies before filing in court.** *Hentz v. Asheville City Board of Education*, \_\_\_ N.C. App. \_\_\_, 658 S.E.2d 520 (2008).

**Facts:** Because her two children were being bullied at their school in the Buncombe County (N.C.) School District, Deondra Hentz applied for discretionary admission to the Asheville City School System (ACSS). Her request was granted, and her daughters began attending Asheville High School in the fall of 2006. During the fall semester, one of

the girls was involved in a fight. Before the beginning of the next semester, Robert Logan, superintendent of the ACSS, notified Hentz that he had decided to remove the girls from ACSS for the spring semester, and on January 31, the Asheville City Board of Education (ACBE) affirmed Logan's decision.

However, on January 25 Hentz filed an appeal of Logan's decision in Buncombe County Superior Court. She alleged, among other things, that the reversal of her daughters' discretionary admission into ACSS violated the board's own policy on such admissions. ACSS asked the court to dismiss Hentz's claim, citing G.S. 115C-45(c), which requires completion of an administrative review in cases alleging violation of board policy before a filing in court. Hentz never appealed to the ACBE.

**Holdings:** The North Carolina Court of Appeals agreed that Hentz was required to exhaust her administrative remedies before filing in court and dismissed her suit.

**Former student claims that the Department of Education wrongly garnished his Social Security disability benefits to repay an education loan on which he defaulted.** *Castillo v. U.S. Department of Education*, 2008 WL 1767060 (M.D.N.C.).

**Facts:** Milton Castillo attended college from 1994 to 1999. He obtained several student loans to finance his education

and later consolidated them into two loans. He defaulted on one, and the Department of Education (DOE) used the Treasury Offset Program (TOP) to begin garnishing Castillo's Social Security disability benefits, to the tune of \$128 a month.

Castillo argued that the DOE had no authority to garnish his Social Security benefits, and that, even if it did, it was taking too much from his benefits. The DOE sought to have his case dismissed before trial.

**Holdings:** The federal court for the Middle District of North Carolina granted the DOE's motion.

Social Security benefits are not subject to garnishment unless another provision of federal law expressly makes them so. The relevant legislation here, the Debt Collection Improvement Act, specifically allows the garnishment of Social Security benefits to collect unpaid student loan debt. The DOE thus has the authority to garnish Castillo's benefits.

As to the amount of the withholding, this too is governed by statute. A debtor's annual Social Security benefits are exempt from withholding up to \$9,000. Above and beyond that, the debtor's benefits may be garnished in the amount by which the monthly disability payments exceed \$750. As Castillo's monthly benefit before garnishment was \$878, the amount withheld is entirely in line with the statutory schedule. ■