Clearinghouse

Edited by Ingrid M. Johansen

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 Affect North Carolina

State Supreme Court addresses Article IX, Section 7 "clear proceeds" issue. North Carolina School Boards Association v. Moore, 359 N.C. 474, ___ S.E.2d ___ (2005).

Facts: Article IX, Section 7 (hereinafter Section 7) of the North Carolina Constitution provides that the clear proceeds of all penalties and forfeitures or fines collected for breach of state penal laws belong to the public schools in the various counties and are to be used to maintain free public schools. In 2003 the North Carolina Court of Appeals ruled on an action filed by the North Carolina School Boards Association (NCSBA), holding, in relevant part, that (1) various payments collected by the state belonged to the schools under Section 7; (2) penalties paid by local school systems are not within the purview of Section 7; and (3) Article 31A of Chapter 115C of the North Carolina General Statutes (G.S. 115C-457.1–457.3), which establishes a central civil penalty fund and directs that the funds in it be transferred to the School Technology Fund, did not violate Section 7. [For a fuller discussion, see digest in "Clearinghouse," *School Law Bulletin* 34 (Fall 2003): 30–31.]

Both the NCSBA and the defendants (represented in name by state treasurer Richard H. Moore but including many other chief executive officers of various state departments that assess, collect, or distribute payments from individuals or entities that fail to comply with certain statutory or regulatory requirements) appealed various portions of the court of appeals' ruling.

Holding: The North Carolina Supreme Court reversed in part and affirmed in part the judgment of the lower court.

The court first addressed whether several specific payments authorized under state law were subject to Section 7. In so doing, the court weakened the court of appeal's statement that the name given to a particular payment (e.g., fine or penalty) was not determinative of its nature: the plain words of a statute, said this court, are the first indication of the statute's meaning; thus the words used to describe a payment are important in deciding whether a payment comes within the purview of Section 7. The court went on to find that the following payments, which the court of appeals had found outside of Section 7's ambit, were subject to its provisions: (1) payments collected by the Department of Revenue for failure to comply with regulatory or statutory tax provisions; (2) payments designated as "civil penalties" collected by University of North Carolina campuses for traffic, parking, and vehicle registration violations; and (3) payments collected by the Employment Security Commission for overdue contributions to the unemployment insurance fund, late filing of wage reports, and tendering a worthless check.

With respect to payments from local public school systems to state agencies for various statutory and regulatory violations, the court reversed the lower court's ruling and found that they were subject to Section 7. The court of appeals had ruled that an offending school system should not be allowed to benefit from its violation of a penal statute by having returned to it through Section 7 some portion of penalties paid. The supreme court found that, as Section 7 and its implementing legislation made no exception for such cases, neither would the court. The nature of the penalty, not the identity of the wrongdoer, determines whether the payment is subject to Section 7.

Finally, the court agreed with the Court of Appeals, which found that Article 31A does not violate Section 7. In so ruling, the court rejected NCSBA's contention that Article 31A was inconsistent with the intent of Section 7 because Section 7 requires moneys collected under it to remain in the counties where they were paid, whereas Article 31A mandates that they be remitted to a central state fund. The

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court also rejected the NCSBA's argument that Section 7 vests decisions about use of the funds with local boards of education, while Article 31A requires that the funds be used exclusively for school technology.

Court refuses to dismiss most of Iranian professor's claims of discrimination on the basis of religion and national origin. Salami v. North Carolina Agricultural and Technical State University, 394 F. Supp. 2d 696 (M.D.N.C. 2005).

Facts: In 1998 Reza Salami, a Muslim of Iranian national origin, was appointed associate dean of the College of Engineering (COE) at North Carolina Agricultural and Technical State University (A&T). This promotion increased his salary, gave him year-round pay instead of nine-month pay, increased his employee benefits, and brought him to a higher level employment position within A&T. One of Salami's primary responsibilities was administration of federal Title III grants, which included reporting on his grant-management activities to the COE dean, Joseph Monroe, who then reported to Kenneth Murray, Title III director for A&T's graduate schools.

Monroe gave Salami favorable performance reviews and every indication that he would continue in his role as associate dean. Murray, however, criticized Salami's management of the Title III budget. According to Salami, Murray had always had a negative attitude toward him. He alleged that (1) in 1995, when Murray was COE dean, he had rejected Salami's application to become a full professor; (2) Murray rejected the application again the next year, but Salami nonetheless received tenure after his application was reviewed by a neutral third party; and (3) Murray told him that A&T was "first for blacks, then for whites, and then for you."

In August 2001 the U.S. Department of Education initiated a review of A&T's administration of the Title III program. Murray expressed concern about budgetary changes that he, Murray, had previously approved. He called Salami's report on the changes, prepared at Murray's request, "worthless" and removed Salami's administrative authority over the Title III program. (Murray's own management of Title III funds was later rescinded after the Department of Education report called for his removal.)

In September 2001 the World Trade Center bombing occurred.

In November 2001, Monroe gave Salami a contract renewal letter, and in December 2001 he met with Salami and told him he was doing excellent work. Less than a week later, Monroe gave Salami a letter informing him that he was being demoted because of a "reorganization" of the dean's staff. According to Salami, Monroe told him in person that the main reason for his demotion was that Murray could no longer stand to work with him. At approximately the same time as Salami's demotion, Monroe terminated three other Iranian Muslims.

Salami filed a complaint of discrimination on the basis of national origin and religion with the Equal Employment Opportunity Commission (EEOC). Thereafter, all work expanding the building he used for research stopped; his research space was taken away; he was instructed to cease and desist from using the name of a research center he had established; and the administration failed to approve his research proposals in a timely manner. Salami later brought his claims to the federal court for the Middle District of North Carolina. The defendants sought to have his claims dismissed before trial.

Holding: The court denied most of the defendants' motion, dismissing only one part of Salami's retaliation claim.

Despite the defendants' arguments to the contrary, Salami did plead a successful discrimination claim under Title VII: (1) he is a member of a protected class; (2) he suffered an adverse employment action insofar as he lost wages and benefits and was reduced to a lower position within A&T; (3) he was performing up to Monroe's expectations; and (4) he was replaced by a non-Iranian, non-Muslim person. The defendants, however, put forward several nondiscriminatory reasons for Salami's demotion: Monroe's sudden desire to reorganize his department, concerns about Title III administration, and relations between Salami and his colleagues.

Thus the burden shifted to Salami to present evidence that these nondiscriminatory motives were pretexts to hide discrimination. He succeeded. First, the court found, the inconsistencies within A&T's defense of its action and the after-the-fact rationalizations of it were highly probative of pretext. In addition, evidence of Murray's influence on Monroe, coupled with Monroe's termination of three other Iranians during the year following the Trade Center bombing, indicated intentional discrimination in Salami's demotion.

The court was similarly persuaded by Salami's retaliation claim. Salami engaged in protected conduct in filing his EEOC claim, suffered adverse employment action, and pled facts indicating a causal connection between the two. The only part of the claim the court dismissed concerned the failure to renovate Salami's research space, which the court found adequately explained by the defendants' nondiscriminatory response.

Court reinstates student's First Amendment and disability discrimination claims. Constantine v. Rectors and Visitors of George Mason University, 411 F.3d 474 (4th Cir. 2005).

Facts: Carin Constantine, a student in Nelson Lund's constitutional law class at George Mason University (GMU), suffered from intractable migraine syndrome. While taking

her final exam for the class, she suffered a migraine headache and alerted exam administrators, but they denied her the extra time she requested to finish the exam. She failed the course. GMU denied her requests for a grade appeal and re-examination. Constantine then complained to Lund, the law school dean, and other school officials. She also wrote an article about her complaints for the law school newspaper.

Approximately three months later, GMU agreed to re-examine Constantine sometime in June of 2003. However, on May 17, 2003, in the midst of her full-load of spring semester classes, Constantine received notice to present herself for re-examination on May 21. Constantine notified the dean and other officials that she had a conflict with another law school course and that she had been told the exam would take place in June. GMU denied her request to take it in June.

Constantine filed a request for a temporary restraining order in the federal court for the Eastern District of Virginia. The court denied her motion. Constantine declined to take the May exam. GMU later gave her the opportunity to retake the exam, but—according to allegations in Constantine's complaint—in retaliation for her complaints, decided in advance to give her an "F" on the exam. She did take the exam, and she did receive an "F".

Constantine sued GMU and various GMU officials, alleging discrimination in violation of the Americans with Disabilities Act (ADA) and the Rehabilitation Act (RA). She also alleged retaliation in violation of her First Amendment free speech rights. The district court granted the defendants' motion to dismiss Constantine's claims before trial.

Holding: The Fourth Circuit Court of Appeals reversed the dismissal of Constantine's claims.

The court first rejected the defendants' claim that the Eleventh Amendment protected them from ADA and RA suits. Title II of the ADA explicitly strips states of Eleventh Amendment immunity. Congress is empowered to enact statutes subjecting states to suit in federal court when the statutes are enacted to enforce rights guaranteed by the Fourteenth Amendment (e.g., due process and equal protection) and when the mechanisms of enforcement are congruent and proportional with the injury to be prevented. Title II of the ADA protects the right to be free from irrational discrimination on the basis of disability and requires reasonable accommodation of persons with disabilities in public services, programs, or activities. Requiring states to reasonably modify their programs of higher education to make sure that disabled citizens have access to them is a congruent and proportional response to the constitutional imperative to avoid irrational discrimination. Thus, at least as it applies to higher education, Title II's abrogation of Eleventh Amendment immunity is valid. The RA conditions the receipt of federal funds on the agreement not to discriminate on the basis of disability. It further provides that states that accept federal funds are subject to suit to enforce RA provisions. The court found that here, also, the abrogation of states' immunity was valid.

The court went on to find that Constantine had pled facts that, if true, could entitle her to relief on her legal claims. Under either the ADA or the RA, a plaintiff must show that she (1) has a disability; (2) is otherwise qualified to receive the benefits of the public service, program, or activity in question; and (3) was excluded from participation on the basis of her disability. The lower court found that Constantine had failed to show that she was "otherwise qualified" as a law student or had actually been denied the benefits of an educational service or program. The court of appeals disagreed.

Constantine's complaint stated that had she been given additional time as a reasonable accommodation of her disability, she would not have had any problem complying with GMU's exam policy. Further, she stated that she carried a full load of law school courses in the spring of 2003 and completed her other final examinations without incident. These allegations were sufficient to make out a basic case that Constantine was otherwise qualified as a law student and that the defendants denied her the benefit of Professor Lund's class.

As to her free speech claim, it is undisputed that her article in the law school newspaper about the exam policy constituted free speech protected by the First Amendment. The defendants argued, however, that their actions did nothing to deter her from engaging in such speech. The court rejected this argument, noting that actual freezing of speech is not the standard for determining whether a violation has occurred; instead, the standard is whether a defendant's retaliatory conduct would deter a person of "ordinary firmness" from the exercise of First Amendment rights. Here, Constantine alleges that her speech caused GMU to deny her requests to sit for re-examination, to have another professor review her original exam, or to have a hearing before an administrative committee. Further, she alleges that when GMU decided to let her retake the exam, they gave her only three days notice and determined in advance that she would receive a failing grade. Such conduct would tend to chill an ordinary person's exercise of free speech, the court determined.

Constantine's claim alleges facts sufficient to show that GMU was aware of her complaints. The temporal proximity of her complaints and GMU's actions lends credence to her contention that there was a causal link between her speech and GMU's retaliation.

Court quashes subpoenas directing the University of North Carolina at Chapel Hill and North Carolina State University to identify and provide contact information for users of their Internet services. *In re* Subpoena to the University of North Carolina at Chapel Hill, 367 F. Supp. 2d 945 (M.D.N.C. 2005).

Facts: The Recording Industry Association of America (RIAA) determined that unknown persons using the screen names "hulk" and CadillacMan@Blubster.com were offering to download for users computer files containing songs copyrighted by RIAA members. The RIAA determined that these persons used Internet services provided by the University of North Carolina at Chapel Hill (UNC) and North Carolina State University (NCSU). RIAA obtained subpoenas under the Digital Millennium Copyright Act (DMCA) ordering the universities to reveal the identities and contact information of the users.

Both the users and the universities moved to quash the subpoenas.

Holding: The federal court for the Middle District of North Carolina quashed the subpoenas. The court determined that the DMCA did not authorize the issuance of subpoenas to Internet service providers (ISPs) like the universities and that the subpoena issued to NCSU was improperly served.

The DMCA protects copyright holders from infringement of their works while simultaneously providing safe harbor to ISPs whose systems are unknowingly used for copyright-infringement. The act protects four kinds of ISPs but distinguishes between ISPs that are merely pass-through systems allowing information to flow from one user to another and systems that also provide information storage capacity. The DMCA's subpoena provision allows certain aggrieved copyright holders to seek subpoenas directing relevant ISPs to reveal the identity of copyright infringers who use the ISPs' systems. However, this subpoena provision, the court concluded, applies only to ISPs that provide storage capacity, whereas the universities' systems are pass-through-only ISPs.

Further, the court found, the subpoena served on NCSU was improper. The DMCA authorizes a copyright holder to request a subpoena from the clerk of *any* U.S. district court. As the court pointed out, this could result in a completely inappropriate situation in which a copyright holder could get a subpoena in Oregon to serve a North Carolina ISP; to contest the subpoena, the North Carolina ISP administrators would have to travel to Oregon. In this case, because the NCSU subpoena was issued in the Middle District of North Carolina and NCSU is located in the Eastern District, the subpoena was improperly issued.

University of Maryland is an arm of the state for purposes of federal jurisdiction. Maryland Stadium Authority v. Ellerbe Becket, 407 F.3d 255 (4th Cir. 2005).

Facts: The University of Maryland filed suit in state court against an architectural and engineering firm, Ellerbe Becket (hereinafter E.B.), for breach of contract, negligence, and indemnification arising from construction of a new basketball arena. E.B., a Delaware corporation, removed the case to federal court on the basis of *diversity jurisdiction*, which allows a case between citizens of different states to be moved to a federal court when the amount in controversy exceeds $75,000. The university moved to have the case remanded to state court, arguing that it was an arm of the state, not a "citizen," for the purposes of diversity jurisdiction.

The federal court for the District of Maryland agreed with E.B., finding that although the university engaged in statewide, as opposed to local concerns, and was generally treated as an arm of the state by the state, it was not an arm of the state because it exercised a degree of autonomy—especially with respect to employee salaries—that was inconsistent with that status. The university appealed.

Holding: The Fourth Circuit Court of Appeals reversed the lower court's finding and remanded the case to state court.

Courts use a four-part test to determine whether an entity is an arm of the state for purposes of diversity jurisdiction. The first, and most important, issue is whether the award sought will inure to the benefit of the state. In this case the answer is clearly affirmative: by statute, all income generated by the university is deposited into the state treasury and is the property of the state. If there is excess revenue at the end of the year, it is used to offset the university's appropriations for the following year.

The remaining factors used to determine an entity's status are whether the entity exercises a significant degree of autonomy from the state, whether it is involved in local versus statewide concerns, and how it is treated as a matter of state law. As to operational autonomy, the court found that the university was closely tied to the state. All the members of the governing board are appointed by the governor (with the advice and consent of the senate) or are state officers. In addition, the state retains a veto over most of the university's actions, the university has no independent taxation power, and it is represented by the state attorney general in litigation. Concerning the scope of the university's concerns, even the district court conceded that they were statewide rather than local. Finally, state law unambiguously treats the university as an arm of the state.

Court finds that city's board of adjustment had no jurisdiction over school board's parking lot. Nash–Rocky Mount Board of Education v. Rocky Mount Board of Adjustment. 169 N.C. App. 587, 610 S.E. 2d 255 (2005).

Facts: The Nash–Rocky Mount Board of Education contacted the city of Rocky Mount about adding a parking lot for school buses to its property at Rocky Mount Senior High School, which is located next to a residential neighborhood. The school board obtained the driveway and fence permits the city said it needed and constructed the parking lot. Nearby residents complained about noise, dust, traffic, and trash from the new lot. The city then informed the school board that it would need to obtain a special use permit from the board of adjustment to continue using the parking lot. The board of adjustment denied the permit, and the school board challenged the denial in Nash County Superior Court.

The court concluded that the board of adjustment had no jurisdiction over the parking lot. The board of adjustment appealed.

Holding: The North Carolina Court of Appeals affirmed the trial court's ruling.

Generally, municipal zoning regulations do not apply to the state or its political subdivisions unless the legislature has made a specific exception. Section 160A-392 of the North Carolina General Statutes (hereinafter G.S.) provides that a city or town may exercise its zoning power over state entities insofar as they apply to the *erection, construction, and use of buildings* by the state. The parking lot does not fall within this grant of zoning power.

In construing statutory language, terms are to be given their plain and ordinary meaning. A parking lot is completely different from a building, which is a structure, generally with walls, a roof, and some assortment of permanent, immovable features. Nor is the parking lot covered by the "use of buildings" language contained in G.S. 160A-392: the phrase "use of" speaks to the purpose for which the building itself is designed, not to the use of land connected to the building.

Court dismisses school resource officer's racial discrimination claims. Phillips v. Mabe, 367 F. Supp. 2d 861 (M.D.N.C. 2005).

Facts: Dan Phillips, a Caucasian, was employed by Donald Whitt of the Chatham County (N.C.) sheriff's department. Phillips was assigned to work as school resource officer (SRO) at racially troubled Chatham Central High School (Central) and worked there until he was terminated by Whitt's successor in January 2001. He filed suit against Whitt and Chatham County Schools superintendent Larry Mabe, alleging that they violated his equal protection and due process rights by conspiring to prevent him from participating in an investigation of the racially hostile environment at the school. Whitt and Mabe (the defendants) moved to have his claims dismissed before trial.

Holding: The federal court for the Middle District of North Carolina dismissed Phillips's claims.

Phillips asserted claims under 42 U.S.C. 1981, 1983, and 1985. Section 1981 prohibits race discrimination in the formation and enforcement of contracts, Section 1983 provides a statutory mechanism for claims of constitutional violations by state officers, and Section 1985 gives procedural rights to protected classes for protesting equal protection violations.

Phillips first argued that the defendants violated Section 1981 by terminating him in retaliation for attempting to give evidence to federal officials investigating the racial environment at Central. The court first noted that though Phillips had no contract with either defendant, it was sufficient that the defendants interfered with his ability to contract with the sheriff's department. However, the court agreed with the defendants that Phillips had failed to allege protected conduct. To successfully plead a Section 1981 retaliation claim, the retaliation must be based on opposition to conduct that is itself a Section 1981 violation—that is, conduct that interfered with contractual rights on the impermissible basis of race. Here Phillips pled only that he was prevented from giving evidence in the federal investigation and that he was stymied in his efforts to provide equal protection to black students at Central. These actions by the defendants do not implicate any contractual rights, so this claim must be dismissed.

The court also dismissed Phillips's retaliation claim under 42 U.S.C. 1983. He alleged that the defendants violated his equal protection rights, secured by the Fourteenth Amendment, by terminating him after he attempted to help with the federal investigation. The Equal Protection Clause, noted the court, does not prohibit pure retaliation claims—that is, claims that the government acted against an individual, without an accompanying claim that the action was based on a prohibited consideration such as race or religion. Some courts have allowed equal protection claims in cases where the government selectively enforces a policy or regulation against an individual who is not a member of an identifiable group simply on the basis of animosity toward that individual. However, although Phillips successfully showed that the defendants were angry with his attempts to aid the federal investigation, he failed to identify any policy or regulation that was used against him in a discriminatory way.

Phillips's Section 1985 claim alleged that the defendants violated his right to be a witness in the federal investigation of the racially hostile learning environment at Central and

obstructed the course of justice with the intent of denying him, and the black students he served, equal protection of the laws. Because Section 1985 only applies to proceedings in state courts, Phillips's right-to-bear-witness claim is without legal merit. Nor can he claim an equal protection violation, because he has failed to show that he belongs to the class of people with standing to assert the equal protection rights of black students. Because he himself does not belong to a discriminated-against class, he has no claim here.

Community college is immune from age discrimination suit. Peterson v. Davidson County Community College, 367 F. Supp. 2d 890 (M.D.N.C. 2005).

Facts: Thomas Peterson asserted that Davidson County Community College terminated his employment in violation of the Age Discrimination in Employment Act (ADEA) and failed to pay him in full, in breach of his employment contract. The college moved to dismiss his claim on the basis of Eleventh Amendment immunity.

Holding: The federal court for the Middle District of North Carolina granted the college's motion.

The Eleventh Amendment prevents a federal court from hearing suits brought by citizens against a state or an instrumentality of the state. Peterson appropriately conceded that the college was an arm of the state entitled to Eleventh Amendment protection. As nothing in the record showed that the college had waived this immunity with regard to the ADEA, the court dismissed Peterson's claims.

Virginia's 180-day notice-of-claim period was not applicable to student's Rehabilitation Act claim. J.S. v. Isle of Wight, 402 F.3d 468 (4th Cir. 2005).

Facts: J.S. received special education services while attending school in Franklin City (Va.). In 1999, before the beginning of his fourth grade, J.S. and his mother, Sharon Duck, moved to Isle of Wight (IOW) County. On J.S.'s school registration form, Duck checked the "yes" box to indicate that he had been receiving special education services at his former school.

Despite several efforts by Duck to have J.S. evaluated for and placed in special education, IOW officials did nothing until three years later when—his schoolwork continuing to suffer—school officials evaluated him and determined that he qualified for special education services. He began to receive these services during the summer of 2002.

In January 2003 Duck filed a complaint in the federal court for the Eastern District of Virginia, alleging that the IOW school system violated the Individuals with Disabilities Education Act (IDEA) by failing to provide special education services to J.S. for three years. She also alleged that the IOW discriminated against him on the basis of his disability, in violation of the Rehabilitation Act (RA). Finally, she sought monetary damages for these violations under 42 U.S.C. § 1983.

Before trial Duck and IOW settled all claims involving the IDEA. The IOW moved to have her RA and Section 1983 claims dismissed before trial. The court granted the IOW's motion on both counts.

Holding: The Fourth Circuit Court of Appeals reversed the dismissal of the RA claim, but affirmed dismissal of the Section 1983 claim.

The RA, a federal statute prohibiting disability discrimination, contains no statute of limitations. In such cases, the *borrowing doctrine* allows courts to select a statute of limitations from the most analogous state law. Here the district court appropriately applied the one-year statute of limitations from Virginia's disability rights statute. However, the district court erred by going further to also incorporate the state statute's requirement that a claimant give a defendant notice of his or her claim within 180 days of the allegedly discriminatory action. Although the RA lacks its own statute of limitation, this deficiency does not justify the incorporation of state law elements above and beyond those necessary to fill this gap. The 180-day notice provision is not essential to serve the purposes of the RA, and its use in this context adds an unlawful precondition to a claimant's right to pursue this federal right of action.

The court found that the Section 1983 claim was rightly dismissed, as previous cases have held that the IDEA's comprehensive remedial scheme provides the sole mechanism of relief for such claims. Attempts to recover money damages under Section 1983 for IDEA violations are not allowed.

In an unpublished decision, court affirms that bus driver was not negligent in accident that killed student. Kearney v. Vance County Board of Education, 169 N.C. App. 456, 612 S.E.2d 445 (2005).

Facts: Kim Williams was a seven-year-old student at E.M. Rollins Elementary School. On June 1, 1999, he and his four siblings were dropped off at their usual stop by bus driver Jeffrey Strong. The location of the stop required them to cross a street to reach their home. As was his usual procedure, Strong counted all five of the Williams children as they disembarked, watched them cross the street, and counted them again after they had crossed the street. Having ascertained that all five had safely crossed, Strong turned his attention to the interior of the bus, where several students had left their seats. After instructing these students to resume their seats, he checked the mirrors that provided a view of the areas around the bus, saw nothing amiss, and started the bus forward. As he did so, he noticed one bump

and then another. In the rearview mirror, he saw Kim's body. Kim had apparently returned to the area of the bus to retrieve a dropped paper while Strong's attention was distracted by the unseated students. Kim suffered fatal head injuries.

Gale Kearney, administrator of Kim's estate, filed suit against the Vance County Board of Education under the state Tort Claims Act, alleging that Strong had negligently failed to ascertain that Kim had remained in a safe place after disembarking and that he had negligently failed to exit the bus and physically inspect the area surrounding it when Kim could not be accounted for. The North Carolina Industrial Commission found no negligence. Kearney appealed.

Holding: In an unpublished opinion, the North Carolina Court of Appeals affirmed the commission's ruling. Strong watched Kim and his siblings reach a place of safety and had no reason to suspect that any of them had returned to the zone of danger. Given this reasonable belief, Strong was under no obligation to exit the bus and inspect its surroundings.

Other Cases

Nonlawyer parents may not represent their child at Individuals with Disabilities Education Act (IDEA) hearings in federal court; IDEA does not grant parents any substantive rights to pursue in federal court. Cavanaugh v. Cardinal Local School District, 409 F.3d 753 (6th Cir. 2005).

Facts: The Cardinal Local School District sought to dismiss the Individuals with Disabilities Education Act (IDEA) claim of the Cavanaugh family for lack of jurisdiction: the district contended that the Cavanaughs, neither of whom are lawyers, could not represent themselves and their son without a lawyer (*pro se*) on an IDEA claim in federal court. The trial court agreed and dismissed the claim.

Holding: The Sixth Circuit Court of Appeals affirmed the dismissal.

The Cavanaughs argued two points in defense of their desire to appear *pro se*: (1) they were entitled under the IDEA to enforce their child's right to a free appropriate public education (FAPE); and (2) the IDEA granted them, as parents of a child with disabilities, substantive rights of their own to enforce. The court disagreed on both counts.

The IDEA gives the Cavanaughs the right to sue on their child's behalf, and federal statute gives the Cavanaughs the general right to represent themselves in federal court. However, neither of these statutes, alone or together, gives the Cavanaughs the right to act as legal counsel in their child's cause of action. This conclusion is implicit in the IDEA itself. The act expressly gives parents the right to present evidence and examine witnesses on their child's behalf during state administrative proceedings. In contrast, IDEA provisions granting aggrieved parties access to federal courts make no mention of parents at all. In addition, the term *pro se* means to represent oneself—not someone else. Several other federal circuits (not including the Fourth Circuit, which has jurisdiction over North Carolina) have similarly held.

The intended beneficiaries of IDEA are students with disabilities, not their parents. Although the IDEA does grant parents a narrow set of procedural rights, it does so to assist parents in protecting their child's substantive right to a FAPE. No substantive right to FAPE is conferred on the parents by these procedural rights. ■