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 and Opinions That Affect North Carolina

Title IX covers retaliation claims. Jackson v. Birmingham Board of Education, 125 S. Ct. 1497 (2005).

Facts: Roderick Jackson had served as a girls' basketball coach in the Birmingham (Ala.) school district since 1993 and at Ensley High School since 1999. In December 2000 he began complaining to his supervisors that the girls' basketball team was treated less well than the boys' team, but school officials did not respond to his complaints. Thereafter, Jackson received negative performance evaluations and was removed as coach in May 2001.

Jackson filed suit, alleging that the district violated Title IX (which prohibits sex discrimination by recipients of federal education funding) by retaliating against him for protesting the discrimination against the girls' basketball team. The federal court for the Northern District of Alabama dismissed his claim before trial, finding that Title IX did not cover retaliation claims. On appeal, the Eleventh Circuit Court of Appeals affirmed the dismissal and Jackson appealed to the U.S. Supreme Court.

Holding: The U.S. Supreme Court reinstated Jackson's claim, finding that Title IX does cover claims of retaliation for complaints about sex discrimination.

The Court first found that the text of Title IX supported Jackson's claim. Title IX's language prohibits "discrimination" on the "basis of sex." In the past, the Court has interpreted this prohibition broadly: it has found, for example that (1) although not mentioned in the statute, sexual harassment is prohibited discrimination; (2) a funding-recipient's deliberate indifference to a teacher-on-student sexual harassment constitutes discrimination; and (3) likewise, a recipient's deliberate indifference to student-on-student sexual harassment is discrimination on the basis of sex. Retaliation is a form of discrimination, found the Court, because it subjects the complainant to differential treatment on the grounds of a gender-based complaint.

That Congress did not specifically mention "retaliation" as prohibited conduct in Title IX is not a useful indication of congressional intent: Title IX does not list *any* specific prohibited discriminatory action. The historical context of Title IX's enactment does provide a guide to congressional thinking, however. In 1969—three years before Title IX was passed—the Court held that 42 U.S.C. § 1982, which prohibits racial discrimination in property transactions, covered retaliation against those who advocate the rights of groups protected by its prohibition. It is realistic to assume that Congress was aware of this decision when it enacted Title IX and intended to protect those who advocated against sexual discrimination.

Title IX objectives would be difficult, if not impossible, to achieve if recipients were allowed to retaliate freely against individuals who witnessed discrimination. Such witnesses would be discouraged from reporting discrimination. This disincentive to report discrimination would be especially harmful in cases of deliberate-indifference discrimination because a complainant in such a case must show that persons in authority knew of the discrimination and failed to take appropriate action. Furthermore, teachers and coaches are often in the best position to vindicate their students' rights, being better able to identify discrimination and bring it to the attention of administrators.

The Court was unpersuaded by the district's argument that it could not be held liable for retaliation under Title IX because it did not have notice that this was prohibited conduct. (The basis of this argument is that Title IX was enacted under Congress's spending power, which allows Congress to condition the receipt of federal funds on the recipient's agreement to abide by certain terms. The agreement is thus like a contract and requires a meeting of the minds as to its terms; in other words, a recipient cannot be held to contract terms that were not apparent at the time the agreement was made.) Any Title IX recipient should have

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been put on notice by the Court's past cases that the statute covers a broad array of intentional discriminatory conduct. Further, Title IX regulations have prohibited retaliation for nearly thirty years, and, at the time of the district's actions against Jackson, every federal court of appeals that had considered the issue had already interpreted Title IX to cover retaliation.

Court affirms award of attorney fees to female place kicker. Mercer v. Duke University, 401 F.3d 199 (2005).

Facts: The federal court for the Middle District of North Carolina awarded Heather Sue Mercer, formerly a place kicker on Duke University's football team, almost $350,000 in attorney fees in her Title IX case against the university and certain university officials (hereinafter "the defendants"). [See digest in "Clearinghouse," *School Law Bulletin* 35 (Winter 2004): 21.] Under Title IX and many other civil rights statutes, prevailing parties are allowed to collect reasonable attorney fees. But Mercer's award was unusual because she obtained only $1 in compensatory damages as a result of her suit. [See digest in "Clearinghouse," *School Law Bulletin* 34 (Winter 2003): 19.] Although not disputing that Mercer had prevailed, the defendants argued that the extent of her success as prevailing party was so limited as to make any fee award—but especially one as large as $350,000—an abuse of discretion.

Holding: The Fourth Circuit Court of Appeals affirmed the lower court's ruling.

The defendants are correct in asserting that *in most cases*, when a prevailing party obtains only nominal damages, the reasonable fee award is no fee at all. However, that rule is not universal, and the amount of damages obtained is not the only measure of litigation success. Courts assessing a prevailing party's entitlement to a fee award look to three factors: (1) the extent of relief obtained; (2) the significance of the legal issue on which the party prevailed; and (3) the public purpose served by the litigation.

The extent of Mercer's relief was extremely limited, the Fourth Circuit found. Disagreeing with the court below, which looked to Mercer's subjective purpose in bringing the suit (i.e., to obtain a ruling that Duke had discriminated against her on the basis of her gender), this court believed that the appropriate measure of Mercer's success was a comparison between the amount of damages she sought and the amount she was ultimately awarded.

The significance of the legal issue on which Mercer prevailed, however, was great. Her suit established for the first time that Title IX's contact-sports exemption does not permit a school to discriminate against a woman once it has allowed her to participate in a contact sport. This precedent will serve as guidance to other schools and to other female athletes. In addition, Mercer's suit served the public interest by furthering Title IX's goal of eliminating gender discrimination in educational institutions. Thus the effect of Mercer's suit reaches well beyond her individual claim, and her victory was an important one that merited the fee award she received.

Court again sends special education case back to state hearing officer for rehearing, placing the burden of proof on parents. J.H. v. Henrico County School Board, 395 F.3d 185 (2005).

Facts: The parents of J.H., a student with autism in the Henrico County (Va.) schools, sought reimbursement for the costs of speech/language and occupational therapy services provided to J.H. over the summer. They contended that the individualized education plan (IEP) offered by the county for the summer did not provide services sufficient to prevent regression. At the state-level hearing, the hearing officer ruled for J.H. The county appealed, and the federal court for the Eastern District of Virginia reversed and entered judgment in favor of the county. On J.H.'s appeal, the Fourth Circuit Court of Appeals vacated the district court's judgment and remanded the case to the hearing officer for ruling in accord with the Fourth Circuit's newly announced standard for determining the appropriateness of extended-year (ESY) special education services: that is, whether they are adequate to prevent gains the student made during the regular school year from being significantly jeopardized. [See digest of *M.M. v. School District of Greenville County*, in "Clearinghouse," *School Law Bulletin* 33 (Fall 2002): 21.]

At the second hearing, the state-level hearing officer found that the ESY services offered by the county were not adequate to address the risk of significant regression and in so ruling placed the burden of proof on this matter on the county. (In other words, the county had not proven that the offered ESY services were adequate to prevent J.H. from regressing.) On appeal, the district court again ruled for the county, finding that the hearing officer had, among other things, failed to accord proper deference to the educational experts presented by the county. [See digest in "Clearinghouse," *School Law Bulletin* 34 (Spring 2003): 19.]

J.H. appealed again.

Holding: The Fourth Circuit Court of Appeals sent the case back to the state-level hearing officer for a third hearing, this time for a ruling in accord with its opinion in *Schaffer v. Weast* [see digest in "Clearinghouse," *School Law Bulletin* 35 (Summer 2004): 15], in which the Fourth Circuit held that in an IDEA hearing the burden of proof concerning an IEP's inadequacy falls on the parents. In rehearing the case, the court said, the hearing officer should be especially concerned with explaining why he or she credits the testimony of one witness over another—especially if the officer's ruling favors the testimony of J.H.'s experts.

Public duty doctrine does not protect school resource officer; public official immunity does not protect his superior at the sheriff's office. Smith v. Jackson County Board of Education, ___ N.C. App. ___, 608 S.E.2d 399 (2005).

Facts: Joseph Brooks coached athletic teams and taught physical education and health classes at the Blue Ridge School in Jackson County (N.C.). During the second half of the 2000–2001 school year, according to the complaint, he encouraged one of his eighteen-year-old student athletes, Jeremy Stewart, to initiate a romantic/sexual relationship with a ninth grader, Brittany Smith, who was in one of Brooks's classes. Brooks offered Jeremy the use of his (Brooks's) office, home, and car to facilitate the relationship; and once the relationship began, he gave both students excused absences from class or study hall to have sex. The students later discovered that Brooks either had videotaped them having sex or was planning to do so.

At the time of these events, Charles Hess was the school resource officer (SRO) at the Blue Ridge School, and James Cruzan was his superior at the Jackson County sheriff's office. Sybil Smith, Brittany's guardian, charged that Hess knew about Brooks's arrangement and never reported it to the students' parents, school officials, the sheriff's department, or social services. She accused Hess of negligent performance of his law enforcement duties, negligent and intentional infliction of emotional distress, and civil conspiracy, among other things. She also accused Cruzan of negligent retention and supervision of Hess.

Before trial Hess sought to have Smith's charges dismissed on the basis that they were barred by the public duty doctrine; Cruzan argued that he was immune from the charges against him in his individual capacity because he was a public official. The trial court rejected both motions, and Hess and Cruzan appealed.

Holding: The North Carolina Court of Appeals affirmed the trial court's ruling, finding that the claims against Hess and Cruzan were not barred by the public duty doctrine or by public official immunity.

The *public duty doctrine* provides that a municipality and its agents act for the benefit of the general public, not individuals. Therefore, there is no liability for negligent failure to provide services to any one person or, as argued in this case, for failure to furnish police protection to specific individuals. As a general rule, this immunity applies only in a limited set of circumstances: first, it applies only to allegations of negligence by public employees; second, it covers only cases in which harm to a party results directly from the acts of a third party and only *indirectly* from the public employee's dereliction of duty. In her civil conspiracy claim, Smith alleged that Hess, in concert with Brooks and the older student, actively undertook to exploit and manipulate Brittany and to conceal their actions from school and law enforcement authorities. Therefore, Smith's claims of civil conspiracy, as well as her claim of *intentional* infliction of emotional distress, do not fall within the doctrine's confines.

Another limitation on application of the public duty doctrine is that it only bars liability for harm arising out of *discretionary* governmental actions. In her claims of negligent performance of law enforcement and negligent infliction of emotional distress, Smith focused her allegations on Hess's failure to report Brooks's actions in promoting the sexual relationship and his failure to report Brittany's absences from school to school officials. Performance of these duties is *not* discretionary, the court found. North Carolina General Statute (hereinafter G.S.) 7B-301 requires *any person* who has cause to suspect abuse of a juvenile to report it to the social services department of the appropriate county.

In regard to Smith's other negligence claims against Hess, the court ruled that the existence of a special relationship between him and Brittany removes his actions from the protection of the public duty doctrine. As an SRO, Hess undertook not a general duty to protect the public but a duty to provide police protection to an identifiable class of people—to which Brittany belonged—during identified hours and at a specific location. When he agreed to work at the school, Hess created a special duty—to both students and school officials—to perform his obligations in a professional manner and to protect students from criminal acts.

Cruzan, as a public official, is shielded from liability unless his discretionary acts are shown to be malicious, corrupt, in bad faith, willful or wanton, or outside the scope of his duties. The trial court found that Smith's complaint that Cruzan had acted with willful and wanton disregard of Brittany's safety by assigning Hess to the school—while concealing that Hess had previously assaulted a minor—alleged facts sufficient to remove the claim from the protection of public official immunity.

Former university employee did not receive salary overpayment. Mayo v. North Carolina State University, ___ N.C. App. ___, 608 S.E.2d 116 (2005).

Facts: Robert M. Mayo, a tenured faculty member of North Carolina State University's engineering department, notified his department head, Paul Turinsky, of his intent to resign effective September 1, 2001. Turinsky accepted the resignation but failed to notify Mayo that NCSU policy considered any salary paid between July 1 and August 14 as prepayment for the upcoming academic year and that Mayo would have to repay any money he received during that period. Mayo was at the office daily for the period between July 1 and August 14, 2001 and did, in fact, receive payment for that time.

In October 2001 NCSU's payroll department contacted Mayo asking him to return roughly $4,600 in salary

overpayments. Mayo declined to repay the amount, though he did give NCSU a check for $500. Thereafter NCSU garnished Mayo's $450 state income tax refund. Mayo sought judicial review of the matter, and the trial court determined that NCSU could not claim the salary overpayment as debt but could keep Mayo's $500 and his tax refund. NCSU appealed and Mayo filed a cross appeal.

Holding: The North Carolina Court of Appeals ruled that Mayo did not owe NCSU any money and that he was entitled to the return of his $500 and his tax refund.

NCSU argued that the terms of Mayo's written employment agreement consisted of his appointment letter, annual salary letter, and written policies adopted by the University of North Carolina Board of Governors and the NCSU Board of Trustees. None of these documents contain any reference to the prepayment policy; in fact, NCSU's payroll department director admitted that the policy was not stated specifically anywhere. Therefore there is no basis for determining that Mayo was overpaid or owed NCSU a debt of any kind. He is entitled to the funds held by NCSU as partial repayment.

Court failed to give proper deference to hearing officer's findings in case brought under Individuals with Disabilities Education Act. County School Board of Henrico County v. Z.P., 399 F.3d 398 (4th Cir. 2005).

Facts: The parents of Z.P., a child with autism, contested the appropriateness of an individualized education plan (IEP) proposed by the County School Board of Henrico County (Va.) and sought reimbursement for private school tuition. The board's proposed IEP called for Z.P. to be placed in a preschool autism class at the Twin Hickory Elementary School. Z.P.'s parents found the IEP unacceptable, arguing that the class was too large and that Z.P. needed a fulltime one-on-one aide who would mitigate his aggressive tendency to self-stimulate when not receiving direct help and keep him focused and on task. Z.P. continued to attend the Faison School, a private school where he received this kind of one-on-one assistance.

After hearing and weighing testimony from experts on both sides of the issue, a state hearing officer found the board's IEP inappropriate for the reasons given by Z.P.'s parents; the officer also found the Faison placement appropriate and ordered the board to reimburse the parents for tuition. The board appealed, and the federal court for the Eastern District of Virginia entered judgment for the board before trial, concluding that the hearing officer's findings of fact and conclusions of law were so irregular as to be due no deference. Z.P.'s parents appealed.

Holding: The Fourth Circuit Court of Appeals reversed the district court and sent the case back for renewed consideration.

The district court concluded that the state hearing officer had not given appropriate weight to the testimony of the professional educators presented by the board. The Fourth Circuit disagreed: the hearing officer's decision cited testimony from witnesses on both sides and, through a carefully explained opinion, showed due consideration for all the testimony received. The officer's conclusion that Z.P.'s aggressive tendency to self-stimulate made a placement with a full-time one-on-one aide appropriate was reasonable given the facts.

Findings of fact by state hearing officers in IDEA cases are entitled to a presumption of correctness. When the findings are regularly made, as they were in this case, a reviewing court must give a reason for rejecting them. Here, the district court's conclusion—that the hearing officer substituted his judgment for that of professional educators and that his findings were thus entitled to no weight at all—is simply not supported by the record. Therefore the district court must reconsider its ruling under the appropriate standard. In addition, if it determines that the IEP offered by the board was inappropriate, the court must then consider the appropriateness of the Faison placement to determine whether Z.P.'s parents have a right to reimbursement.

Court rules on claims that a bus driver and a bus monitor failed to report students' plans to commit violent acts with a gun. Stein v. Asheville City Board of Education, ___ N.C. App. ___, 608 S.E.2d 80 (2005).

Facts: J.B. and C.N., teenagers with behavioral disabilities and identified anger and violence problems, were students at the Cooperative Learning Center (CLC). At the time of the actions described herein, Nancy Patton was a bus driver for the CLC, the Asheville City Board of Education, and the Blue Ridge Area Authority; and Gail Guzman was a bus monitor for the same entities. (Both were also employees of the Buncombe County Board of Education, but the claims against this entity were dismissed for untimely filing.)

A week before March 17, 1998, Guzman heard C.N. and J.B. discussing a plan to commit robberies with a gun C.N. possessed. Guzman reported this conversation to Patton, but neither reported it to anybody else. On March 17, C.N., J.B., and two others stopped a car driven by Kathlyn Stein, intending to rob her. One of the students shot her in the head. All four pled guilty to the shooting. Stein filed negligence claims against the Asheville City Board of Education and the Blue Ridge Area Authority as employers of Patton and Guzman.

At trial, the court dismissed the claims against the Asheville board, holding that the Industrial Commission had exclusive jurisdiction to hear them. The court also dismissed the claims against the Blue Ridge Area Authority, finding

that Stein had failed to allege any facts that would entitle her to legal relief. She appealed.

Holding: The North Carolina Court of Appeals affirmed the ruling as to the Asheville board but reversed it as to the Blue Ridge defendants.

G. S. 143-300.1 gives the Industrial Commission jurisdiction over claims against any county or city board of education that arise from an alleged negligent act or omission of a driver, assistant, or monitor of a public school bus. Stein's claim clearly falls into that category. In addition, the Asheville board cannot be sued on this claim in a court of law because of governmental immunity: the specific language of G.S. 115C-42, which provides for waiver of immunity through the purchase of liability insurance, makes it clear that the waiver provision does not apply to cases involving negligence by public school transportation employees.

The Blue Ridge defendants argued that Stein had failed to state a negligence claim against them because she did not establish that they had a duty to protect her from the acts of J.B. and C.N. Specifically, they argued that they had no ability or right to control the actions of J.B. and C.N. The court disagreed. G.S. 115C-245 provides that school bus drivers and monitors must promptly report misconduct on the bus to the school principal, who may handle such behavior as he or she would if it had occurred on school premises. Thus Patton's and Guzman's failures to report the conversation between J.B. and C.N. fit squarely within the provisions of this statute.

The Blue Ridge defendants argued, however, that they had no right to control the students' action after school hours. But Stein's allegation is not that the defendants were obligated to stop the shooting at the time it occurred but that they were obligated to take preventative action *before* it occurred, when their employees learned of the students' intentions. In other words, had the defendants not breached their duty to report the conversation, the shooting would not have occurred.

Court refuses to grant pretrial judgment to either party in claim concerning overtime pay. Massie v. Board of Trustees of Haywood Community College, 357 F. Supp. 2d 878 (W.D.N.C. 2005).

Facts: Charles Massie taught daytime welding classes on a year-to-year basis at Haywood Community College (hereinafter HCC) from 1978 to 1999. He entered into an additional contract with HCC to teach evening welding classes from the spring of 1999 until the fall of 2002. From the fall of 2002 until June of 2003 Massie continued to teach evening welding classes, but without a contract. According to Massie, he was first told he would be compensated for the classes at a later date but subsequently was compelled to sign a waiver of compensation for those classes or risk being terminated. According to HCC, Massie taught the night classes voluntarily to provide make-up opportunities for daytime students who had missed classes.

Massie filed suit against HCC, alleging that HCC and its officials had violated the Fair Labor Standards Act (FLSA) and the North Carolina Wage Act (NCWA), had discriminated against him for exercising his rights under these statutes, and also had breached their contract with him. Both parties moved for judgment before trial.

Holding: The federal court for the Western District of North Carolina denied all motions for pretrial judgment.

Pretrial judgment (called *summary judgment*) is appropriate only when the moving party can show that there is no evidence on which a reasonable jury could find for the non-moving party. In this case, there are numerous issues of fact that need to be explored at trial before judgment is appropriate.

The defendants claimed that Massie was exempt from the overtime provisions of FLSA (and NCWA, which essentially incorporates FLSA standards). FLSA does not require overtime payments to employees who are employed in executive, administrative, or professional capacities. The professional exemption covers an employee whose primary duty consists of teaching and who is employed as a teacher in an educational establishment. The test for determining whether an employee meets this definition is whether he or she earns at least $250 per week and consistently exercises discretion or judgment in the performance of work duties—as opposed to performing work that is purely mechanical or routine. Massie argued that his duties as welding instructor never varied from the standardized procedures found in the textbook and mandated by the state. The defendants argued that maintaining his classroom in a safe manner and instructing and advising his students required the broad exercise of discretion and judgment. Given this factual conflict about a key legal issue, summary judgment is inappropriate at this time.

The same is true of Massie's breach of contract claim, as well as his other claims. Massie argues that HCC's Policy and Procedures Handbook, which set out policies concerning maximum course load, is incorporated into his contract with HCC. The defendants argue that the compensation waiver Massie signed makes this argument moot. Massie counters that he signed the waiver under duress.

Court dismisses former employee's race discrimination claim. Brooks v. Wake County Board of Education, ___ F. Supp. 2d ___ (E.D.N.C. December 8, 2004).

Facts: The Wake County Board of Education employed Verga Brooks, an African American woman, as a Student Information Management System (SIMS) technician at Jeffreys Grove Elementary School from 1997 to 2002. Throughout her tenure she received below-average

performance evaluations because of mistakes in her data entry. Vickie Brown, principal of Jeffreys Grove, placed Brooks on an "action plan"—a supervisory tool to improve performance. Rosalyn Lofton, assistant principal, helped Brooks with her data entry in order to make sure that the SIMS work was adequately performed. Lofton believed that, with her continued assistance, Brooks's work could have been adequate but would never be of a high quality. In addition, Brown paid for Brooks to go to the annual SIMS Symposium in 1999, 2000, and 2001.

In 2001 the North Carolina Department of Public Instruction decided to convert from SIMS to the North Carolina Window of Information for Student Education (NCWISE) system. The new program, a Windows-based software system, is more sophisticated than SIMS and includes interactive cross-checking and advanced trouble-shooting capabilities. Because of the new software, all SIMS technicians who wanted to continue working in the school system were required to apply for a new NCWISE data manager position.

Despite misgivings about her ability to work with NCWISE, Brown permitted Brooks to enroll in a two-week NCWISE training course. The course's instructor noted that Brooks had significant difficulty understanding the new system. After the training, Brown and Lofton interviewed Brooks and two other candidates for the NCWISE position. The candidate ultimately hired, a Caucasian woman named Barbara Drew, had served as a technology assistant at Stough Elementary. There she had trained teachers on the use of laptop computers, conducted technology workshops for staff members, and served as a backup SIMS/NCWISE person. Her evaluations were outstanding and her references glowing.

After giving Drew the NCWISE position, Brown offered Brooks a teaching assistant position, which Brooks refused. She filed suit against the Wake County Board of Education, alleging race discrimination in violation of Title VII. The board moved for summary judgment.

Holding: The federal court for the Eastern District of North Carolina granted the board's motion for judgment before trial.

To make out a basic case of race discrimination under Title VII, Brooks was required to show that (1) she was a member of a protected group; (2) she applied for the position in question; (3) she was qualified for the position; and (4) she was rejected under circumstances giving rise to an inference of unlawful discrimination. The court concluded that Brooks failed to show that she was qualified for the position, finding that her performance as a SIMS technician was, at best, marginal, and this only with repeated assistance from Lofton. Because the NCWISE system was more complicated than SIMS, and because Brooks displayed lack of understanding during training, the court decided that she could not have competently performed the job.

In an unpublished opinion, Court of Appeals rules that public school teacher is not entitled to public official immunity. Harper v. Doll, 609 S.E.2d 498 (unpublished, N.C. App., 2005).

Facts: Craig Harper, a student in John Hammet's weightlifting class at Rocky Mount Senior High School (N.C.), suffered a depressed skull fracture while cleaning up the weight room in Hammet's absence. Harper filed suit against Hammet and other school personnel, all of whom sought to have his suit dismissed on the basis of public official immunity. The trial court dismissed Harper's claims against Rocky Mount's principal and the superintendent of the Nash–Rocky Mount County Schools but declined to dismiss the claims against Hammet, finding that he was not a public official. Hammet appealed.

Holding: In an unpublished opinion, the North Carolina Court of Appeals affirmed the trial court's finding that Hammet was not a public official.

Public officials sued in their individual capacities for the performance of job-related duties may not be held liable for negligence with respect to those duties except in circumstances of bad faith, malice, or corruption. Public *employees*, however, may be held personally liable for injuries caused by negligence. In past cases, the court has held that teachers are public employees, not public officials, because their duties do not involve the exercise of sovereign power. That holding applies to this case. The court also rejected Hammet's contention that he was entitled to public official immunity because he also served as football coach for the Rocky Mount High School: at the time of Harper's injury, Hammet was serving in his role as weightlifting teacher, not coach.

Other Cases

Court considers claims of noncustodial divorced parent asserting denial of his constitutional right to participate in his children's education. Crowley v. McKinney, 400 F.3d 965 (7th Cir. 2005).

Facts: The Crowleys divorced in 1998. Under the terms of their divorce decree, Mrs. Crowley has sole care, custody, control, and responsibility for the education of their two minor children. However, another provision in the decree stated that the parties would have equal rights of access to educational records maintained by third parties, to information regarding the children's progress and activities, and to notice of functions open to attendance by parents.

The Crowley children attended Hiawatha Elementary School (Ill.), the principal of which was Donald McKinney. Daniel Crowley was critical of the leadership and direction of the school under McKinney and had expressed his criticisms at public meetings. In addition, he had privately

complained to McKinney about the school's failure to address the bullying of his children and to provide him with all the information sent to other parents. He requested copies of all documents received by custodial parents whose children attended the school and provided self-addressed, stamped envelopes for that purpose. School officials never honored his request and on certain occasions restricted Crowley's access to school grounds and functions.

Crowley (alone, without Mrs. Crowley) filed suit against McKinney and the school board, alleging that their actions deprived him of his right under the Constitution to participate in his children's education, denied him equal protection of the laws, and infringed his right to free speech. The federal court for the Northern District of Indiana dismissed Crowley's claims before trial. He appealed.

Holding: The Seventh Circuit Court of Appeals affirmed in part and reversed in part the lower court's ruling.

The court first affirmed dismissal of Crowley's claim that the defendants had deprived him of his constitutional right to participate in his children's education. Two U.S. Supreme Court cases established this right and are relevant to Crowley's claim. The first, *Meyer v. Nebraska*, 262 U.S. 390 (1923) invalidated a Nebraska law that forbade the teaching of foreign languages in private schools. The second, *Pierce v. Society of Sisters*, 268 U.S. 510 (1925), invalidated an Oregon law requiring children to attend public school (as opposed to private school). These cases involved abridgements of parental control—in effect, the right to choose private education—that are much more serious than Crowley's complaint that the defendants limited his involvement in activities at his children's public school. The rights he claims—to be sent school records, serve as a playground monitor, or attend school functions—are too broad and infringe the school's legitimate interest in limiting, to some extent, parental presence at school.

Further, Crowley's claim is much weakened by the fact that it involves limitations on only *one* parent's control—the parent without custodial rights—while leaving unimpaired the other parent's right to participate in her children's education. For these reasons, the court concluded that the Crowley's right to participate in his children's education at the level of detail he asserted did not exist.

The court went on to state that even if it was wrong and such a right did exist, it was still appropriate to dismiss his claim because such a right was not clearly established; thus McKinney is entitled to immunity. And, even though the school district is not entitled to immunity on this basis, Crowley's claim that the district failed to take action to address McKinney's conduct is insufficient to find it liable under 42 U.S.C. 1983.

The court did, however, reinstate two of Crowley's claims: these claims alleged that McKinney's personal animosity toward Crowley (because of Crowley's public complaints about school leadership) motivated McKinney to deny him equal protection of the laws and to retaliate against him for his exercise of free speech. If, at trial, Crowley can show that personal animosity was the reason McKinney treated him the way he did, then Crowley *may* prevail on these claims. On the other hand, if the evidence shows that McKinney, however much he disliked Crowley, would have behaved toward him in the same way—say, because he was disrupting the school's educational mission—then Crowley's claims will fail.