Clearinghouse

School Law Bulletin *looks at recent court decisions and attorney general's opinions*

Edited by Ingrid M. Johansen

Cases and Opinions That Affect North Carolina

Female place kicker obtained substantial degree of success in her discrimination claim against Duke University, despite receiving only nominal damages; court awards her attorney fees. Mercer v. Duke University, 301 F. Supp. 2d 454 (M.D.N.C. 2004).

Facts: Heather Sue Mercer, a female student who was a place kicker on Duke University's football team, won $1 in compensatory damages and $2 million in punitive damages on her claim that the football coach discriminated against her on the basis of her sex and that Duke should be held liable for that discrimination under Title IX. As the prevailing party, the court also awarded her attorney fees and costs of nearly $390,000. [See digest in "Clearinghouse," *School Law Bulletin* 33 (Spring 2002): 18].

Duke appealed the award of punitive damages and attorney fees and costs to the Fourth Circuit Court of Appeals. The court held that punitive damages were not available under Title IX and vacated the award. The court also vacated the award of fees and costs and remanded the issue to the federal court for the Middle District of North Carolina. [See digest in "Clearinghouse," *School Law Bulletin* 34 (Winter 2003): 19].

The question for the court on remand was whether, even though she was left with only $1 in damages, Mercer still qualified as a prevailing party entitled to attorney fees and costs.

Holding: The federal court for the Middle District of North Carolina found that despite the nominal damage award, Mercer was a prevailing party.

In limited circumstances, a party may be considered to have prevailed even when only nominal damages are awarded. The first issue to be considered is the degree of success the claimant achieved. Mercer argued that she had prevailed because establishing Duke's liability, not recovering damages, was the heart of her claim. This assertion was borne out by the fact that at trial Mercer offered significant evidence that Duke discriminated against her but did not offer any evidence that she had suffered physical or psychological harm as a result of this discrimination.

The second consideration is whether the successful claim involved significant legal issues. Mercer's case established that Title IX prohibits gender discrimination against a female athlete who is permitted to try out for a traditionally male contact sport team, an issue recognized as novel and significant by several prominent legal commentators.

A third consideration is whether the claim served some public goal. In remanding the issue to this court, the Fourth Circuit noted that Mercer's claim against Duke was the first of its kind and that the jury's finding that Duke had violated Title IX might serve as guidance for other schools facing similar issues. And, as Mercer argued, the case expanded the reach of Title IX and brought national attention to women's intercollegiate athletics. Finally, the court found that denying Mercer adequate fees in this case would undermine future efforts to enforce Title IX.

Considering all these factors, the court awarded Mercer attorney fees and costs, reducing the award to $350,000 in consideration of attorney time spent arguing the punitive damage claim (on which Mercer did not prevail).

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Court reverses order placing student with disabilities in private school at the expense of the county school board. A.B. v. Lawson, 354 F.3d 315 (4th Cir. 2004).

Facts: DB, mother of AB, a student in the Anne Arundel (Md.) county public schools (hereinafter AACPS), had a protracted dispute with the school system about (1) the diagnosis of her son's disability and (2) the individualized education plan (IEP) necessary to address it. Before AB started fourth grade at the Millersville Elementary School, DB asked AACPS to evaluate AB to determine whether he had a disability entitling him to special education; the IEP team concluded that he did not. DB then obtained an independent evaluation, which concluded that AB had superior intellectual abilities but suffered from learning disabilities in reading and writing.

The IEP team reconvened and identified AB as a student with a learning disability in writing but expressed some doubt as to the appropriateness of special education services for him, given what it perceived as his satisfactory achievement to date. Nonetheless, the team prepared an IEP for AB. DB rejected it, believing that mainstream public school education would not sufficiently address AB's disabilities but also that—because of his high intelligence—it was inappropriate to place him solely in the public school's special education system. The only appropriate placement, she and her experts contended, was in a specialized private school for intelligent children with significant learning disabilities, such as the Summit School. They also urged the IEP team to reconsider the issue of whether AB was learning disabled in reading as well as in writing—not by conducting further testing but, rather, by accepting the evaluation of DB's experts. Nonetheless, the IEP team conducted its own evaluations and determined that AB was also learning disabled in reading.

DB enrolled AB in the Summit School for the 2000–2001 school year. In October of 2000, the IEP team proposed an IEP providing 9 hours of special education a week in addition to 31.25 hours of general education. DB rejected the IEP, as well as a second proposal that slightly increased the amount of weekly special education for AB, because it did not provide full-day special education for students of high intellect. She kept AB at the Summit School and requested a due process hearing.

The administrative law judge (ALJ) who heard AB's case ruled in favor of AACPS. The ALJ found, first, that AB had been properly evaluated and diagnosed by AACPS, although the process was a lengthy one. AACPS was not required, as DB had argued, to immediately diagnose AB as learning disabled based solely on evaluations she had obtained. Second, the judge ruled that both IEPs the team proposed were reasonably calculated to provide AB educational benefit; they also satisfied the mainstreaming mandate of the Individuals with Disabilities Education Act (IDEA). In so ruling, the ALJ noted that AB's reading ability had risen two grade levels while at Millersville, even without the intervention of special education, and that his report cards and teacher comments indicated he was making progress. The IDEA, she noted, does not require a program—such as the Summit School—that will maximize a child's benefit; it requires only an appropriate program.

DB appealed to the federal court for the District of Maryland, which granted judgment for DB before trial. The court held that neither of the IEPs provided AB a free appropriate public education (FAPE) and that the Summit School provided the least-restrictive means of providing it. Therefore the court ordered AACPS to reimburse DB for the costs of the Summit School for the 2000–2001 and 2001–2002 school years.

AACPS appealed.

Holding: The Fourth Circuit Court of Appeals (the federal court with jurisdiction over North Carolina, among other states, including Maryland) reversed the district court ruling.

The district court, the appeals court found, had wrongly dismissed the ALJ's findings. Findings and conclusions from an administrative hearing under the IDEA are entitled to a presumption of correctness. If a reviewing court is not going to follow them, it must explain why. In addition, a reviewing court must avoid substituting its own notions of sound educational policy for those of the school officials it reviews. In AB's case, the district court followed neither of these rules of review. Furthermore, in replacing the ALJ's findings with its own, the court ignored the basic principles underlying the IDEA: specifically, that an FAPE is one that provides a student with *some educational benefit*—not the best education available—and that a student with disabilities should be educated in the least-restrictive environment possible.

For these reasons, the court dismissed the ruling in favor of DB.

Court reinstates former administrator's free speech claim against her superintendent in his personal capacity. Love-Lane v. Martin, 355 F.3d 766 (4th Cir. 2004).

Facts: Decoma Love-Lane, an African American woman, served as assistant principal at Lewisville Elementary School, in the Winston-Salem/Forsyth County (WSFC) school system for three years. Before her appointment Love-Lane expressed misgivings about the assignment because of racial tensions at the school, which were apparently generated by white principal Brenda Blanchfield's interactions with black staff, students, and parents. Nonetheless, Superintendent Donald Martin placed her at Lewisville because, he said, it needed an "African-American presence."

Love-Lane noticed several things that gave her cause for concern about race relations at Lewisville: she noted, for instance, that black male students made up a disproportionate share of the population in the time-out room, that black stu-

dents suffered more frequent and more severe classroom discipline than other students, and that some staff members seemed insensitive to African American culture. However, during her first year at the school, she primarily spent time observing how things worked and establishing good relations with her colleagues. At the end of her first year, Principal Blanchfield gave her a superior evaluation.

During Love-Lane's second year at Lewisville she felt compelled to speak out about the issues listed above. After Blanchfield rebuffed Love-Lane's attempts to talk to her personally, Love-Lane raised the issues at faculty meetings and school improvement team (SIT) meetings. A number of parents and staff members present at the SIT meetings described her tone as respectful and professional, but her statements offended some teachers. She also spoke directly to Superintendent Martin, who appeared to want Love-Lane to keep the peace and not address the racial situation. Blanchfield's second-year evaluation of Love-Lane's communications skills was lower than the previous year's.

At the beginning of her third and final year at Lewisville, Love-Lane and Blanchfield met with Martin, who gave each of them a copy of the same letter. In it, he noted that although no student's welfare or safety had apparently been affected by their conflict, their poor relationship had adversely affected school administration. The letter specifically warned Love-Lane that if she disagreed with any of Blanchfield's policies she should air her views to Blanchfield privately, not in front of others. The letter went on to warn her that she would have no future as an administrator if she did not learn to respect the authority of her principal. At the meeting, when Love-Lane attempted to express her concerns about race discrimination at Lewisville, Martin told her that he did not want to hear from her or from Lewisville that year. Nonetheless, Love-Lane continued to express her concerns.

At the end of her third year she received a poor evaluation from Blanchfield and notice from Martin that she would be transferred to a nonadministrative position at another school.

Love-Lane filed suit against the WSFC Board of Education and Martin, charging that they transferred her because of her race and in retaliation for speaking out against race discrimination at Lewisville. The federal court for the Middle District of North Carolina dismissed all Love-Lane's claims before trial [see digest in "Clearinghouse," *School Law Bulletin* 33 (Spring 2002): 21–22], and Love-Lane appealed.

Holding: The Fourth Circuit Court of Appeals affirmed the dismissal of all Love-Lane's claims except for her free speech claim against Martin in his personal capacity.

There are three elements to a successful claim of free speech retaliation: (1) the employee's speech must relate to a matter of public concern; (2) the employee's interest in speaking must outweigh the employer's interest in efficient operation of the workplace; and (3) the speech must have been a substantial factor in the employer's decision to take retaliatory action.

The court here took strong issue with the lower court's characterization of Love-Lane's speech as involving only a private personality conflict between her and Blanchfield. Indeed, said the court, her speech concerned an issue of major concern to many in the Lewisville school community, one that the U.S. Supreme Court has identified as a matter of public concern *per se*: racially discriminatory practices by a school district.

Because Love-Lane and the community had such a strong interest in the matter of her speech, the court held the WSFC and Martin to the heavy burden of showing that their interest in the school's efficient operation outweighed it. The WSFC and Martin failed to meet the burden. Love-Lane's statements did not appear to have caused very much disruption: As noted above, even Martin concluded that the speech had not negatively affected the safety or welfare of any student. In addition, although some staff members resented Love-Lane's statements, many characterized her manner of voicing them as professional and reassuring. Some disharmony in the face of such an important issue, the court noted, is perfectly acceptable.

The court concluded by finding that Love-Lane had offered sufficient evidence to go forward with her claim that her speech had played a substantial factor in the decision to transfer her. As her speech became increasingly critical of what she saw as racially discriminatory practices at Lewisville, her evaluations from Blanchfield became increasingly negative. Martin's assessment of Love-Lane also appeared to grow more negative and to culminate in his attempt to discourage her speech.

Having found that Love-Lane had presented a valid claim for violation of her free speech rights, the court turned to considering whether Martin was entitled, as a public official, to qualified immunity from her claim. The court concluded that at the time of Love-Lane's speech, the right to speak out in opposition to a school district's racially discriminatory practices was clearly established and that a reasonable person in Martin's position would have been aware of that right. Therefore, Martin was not entitled to qualified immunity.

Campus police officer's sexual harassment claims stand. Alston v. North Carolina A&T University, 304 F. Supp. 774 (M.D.N.C. 2004).

Facts: According to the allegations in her complaint, North Carolina A&T University campus police officer Valerie Alston was repeatedly sexually harassed by Bernard Cotten while working under the supervision of Cotten, Donald Lindsay, and Richetta Slade. Cotten asked her to have sex with him, intentionally exposed himself to her, touched her without her consent, made lewd and sexually discriminatory comments to her, and implied that her continued employment was

contingent on submitting to his sexual advances. Alston asked Cotten to stop and complained on numerous occasions to her superiors, including Lindsay and Slade. No one took any action to address her complaint. As a result of the harassment, Alston experienced humiliation and depression severe enough to require hospitalization, ongoing psychiatric treatment, and, ultimately, separation from her job.

Alston filed suit in state court claiming, most relevantly, violations of Title VII, 42 U.S.C. 1983 (hereinafter Section 1983), and several state laws. North Carolina A&T, Cotten, Lindsay, and Slade (the defendants) had the case removed to federal court and sought to have her claims dismissed before trial.

Holding: The federal court for the Middle District of North Carolina denied in part and granted in part the defendants' motion to dismiss.

In order to survive the defendants' motion to dismiss, Alston only needed to show that her complaint alleged facts that were legally sufficient to support her claims. Viewing Alston's allegations in the light most favorable to her—the standard for reviewing such motions—the court found that she had set forth facts that adequately supported her federal law claims.

In support of her Title VII claim for hostile work environment created by sexual harassment, Alston alleged facts showing that the harassment was severe and pervasive enough to create an abusive work environment. Cotten's conduct, as outlined in the complaint, caused Alston to fear for her physical safety and to suffer emotional distress significant enough to result in an inability to work.

In support of her Section 1983 claim that Lindsay and Slade should be held individually liable for failing to stop Cotten's harassing behavior, Alston stated that she had repeatedly complained about his harassment to them. This allegation allows an inference that they behaved with deliberate indifference to the unreasonable risk that Cotten's actions deprived Alston of her constitutional right to be free from sexual harassment.

The court dismissed Alston's state law claims, which included: (1) claims for battery, assault, and intentional or negligent infliction of emotional distress against Cotten; (2) similar claims against A&T on the basis of vicarious liability; and (3) claims against A&T for negligent supervision and retention of Cotten. These claims, the court found, were barred by the Eleventh Amendment. Although the U.S. Supreme Court held—in *Lapides v. Board of Regents of the University System of Georgia* [see digest in "Clearinghouse," *School Law Bulletin* 33 (Summer 2002): 15]—that a state may waive its immunity against state law claims by removing a case to federal court, this holding specifically addressed only cases in which the state had waived its immunity in state court before removal. In this case, as A&T had not waived its immunity from Alston's claims in state court, removal to federal court did not cause it to lose its immunity. Further, the court rejected Alston's argument that A&T had waived its immunity by purchasing liability insurance. North Carolina courts have declined to find that the General Assembly intended the purchase of liability insurance by a state institution to waive immunity; thus, the federal court in this case also so declined.

Finally, the court dismissed Alston's claims for punitive damages under Title VII, finding that they were not available under that statute.

Board's decision to change the placement of a student with disabilities from a Maryland school to an in-state school was appropriate. Cone v. Randolph County Schools, 302 F. Supp. 2d 500 (M.D.N.C. 2004).

Facts: From 1993 to 1999, Elliott Cone, a boy with Fragile X syndrome and other disabilities, received special education services in the Randolph County (N.C.) Schools (RCS). At the end of that period, his IEP committee determined that no in-state placement able to provide him a free appropriate public education (FAPE) was available. Elliott was placed, therefore, at a residential school for children with developmental disabilities in Maryland, where he made substantial progress in spite of having some difficulty adjusting to the new school.

In June 2001 RCS held an IEP meeting to consider a potential in-state placement for Elliott identified by state mental health officials. The program, known as "PATH" (Partners in Autism Treatment and Habilitation), is located in the Murdoch Center in Butner, North Carolina. At the meeting, the Cones raised several concerns about the appropriateness of a PATH placement. RCS held a second IEP meeting to discuss new information it had gathered and to address the concerns of some of Elliott's medical providers about his ability to handle a change in placement. At the third IEP meeting, the committee decided to place Elliott at PATH, over the objections of his parents.

The administrative law judge (ALJ) who heard the Cones' challenge to the change concluded that the placement decision had been procedurally flawed and was inappropriately tainted by influence from persons outside the IEP process. A state review officer reversed the ALJ and found for RCS. The Cones then filed their claim in the federal court for the Middle District of North Carolina. RCS moved for judgment before trial.

Holding: The federal district court ruled in favor of RCS.

The court found, first, that the IEP committee's decision was not procedurally flawed. The Cones argued that all the necessary parties were not present at the IEP meetings. Under the IDEA, an IEP meeting has to include the following: the child's parents, at least one regular education teacher (if the child is or may be participating in regular education), at least

one special education teacher, a representative of the local education agency, the child (when appropriate), and—at the discretion of the parents or agency—other individuals with knowledge of the child. No regular education teacher was present at the IEP meetings because Elliott was not being considered for regular education; nor was Elliott himself present—an omission no one challenged. Otherwise, all statutorily required parties were there. The ALJ had chided RCS for failing to have a representative of PATH or the state mental health department present at the first IEP meeting, but their attendance was not required. Any relevant information the PATH representative could have provided was available to and offered by the RCS officials who had visited the PATH site and were present at the meeting.

The court also rejected the Cones' contention that the outcome of the IEP meetings had essentially been predetermined by state mental health officials, thus depriving the parents of meaningful participation in the decision-making process. Although state officials alerted RCS to the possible appropriateness of the PATH program for Elliott and encouraged RCS personnel to visit the site, the ultimate decision on placement remained with the IEP team.

The court also found that the placement was not substantively flawed. The IDEA's regulations require that a placement be based on a child's IEP, be as close as possible to the child's home, and take into account any potential harmful effects from the placement. The evidence in this case, said the court, confirms that Elliott's IEP can be implemented at the PATH program. And, though Elliott may suffer some ill effects from the transition to PATH, the court concluded that the balance of the evidence indicated that these effects would be relatively short-lived.

The court went on to dismiss other claims made by the Cones. First, it dismissed a discrimination claim brought under Section 504 of the Rehabilitation Act and the Americans with Disabilities Act (ADA). To prove a claim in the education context under either statute, the Cones would have had to show that RCS acted in bad faith or exhibited gross misjudgment. Because the court found that the PATH placement decision met the IDEA's procedural requirements and was substantively appropriate, the Cones failed to meet this requirement. The court also dismissed a discrimination claim under the IDEA, finding that the act was intended to redress inappropriate educational placement decisions, not discrimination. Finally, the court dismissed the Cones' discrimination claim brought under the North Carolina Persons with Disabilities Protection Act, because the act prohibits concurrent jurisdiction with Section 504 or ADA claims.

Court dismisses student's sexual harassment claims. Cockerham v. Stokes County Board of Education, 302 F. Supp. 2d 490 (M.D.N.C. 2004).

Facts: Scarlet Mooney, a middle school teacher in the Stokes County school system, disciplined her student Christopher Cockerham by requiring him to wear a sign around his neck throughout several school days. The sign was pink, approximately nine inches by five inches, and read (in black letters approximately one inch high) "I am single! Will you go with me? (Circle one): Yes, No, Maybe." When Cockerham entered the cafeteria wearing the sign, the school principal, Joe Childers, laughed and said "Ain't that cute?" Other students taunted Cockerham and some physically abused him, behavior witnessed by Mooney and Cockerham.

Cockerham's mother requested Mooney to find some other method of disciplining Christopher, but Mooney declined. Principal Childers refused to accept a note from Cockerham's physician stating that wearing the sign was not in the boy's best interest. Other students continued to ridicule Cockerham, and it subsequently became necessary for someone to escort him from class to class.

Cockerham filed suit, charging that Mooney's and Childers's conduct deprived him of the constitutional right to be free from sexual harassment (in violation of 42 U.S.C. 1983), and that the Stokes County Board of Education's failure to take corrective action subjected him to sex discrimination in violation of Title IX. Mooney, Childers, and the board (hereinafter the defendants) asked the federal court for the Middle District of North Carolina to rule that Cockerham failed to state a legally viable claim.

Holding: The district court ruled in favor of the defendants and dismissed Cockerham's claims.

The Fourth Circuit Court of Appeals has enunciated a pleading standard that is considerably more stringent than—and, according to the district court, at odds with—that required by the U.S. Supreme Court and several other federal jurisdictions. Whereas the general rule is that, in order to avoid dismissal, a party's complaint need only allege facts sufficient to give the opposing party notice of the nature of the claim against it, the Fourth Circuit requires the complaint to allege specific facts in support of each element of a prima facie case.

A prima facie case under Title IX consists of the following elements: (1) the plaintiff is a member of a protected group; (2) the plaintiff has been subjected to unwelcome sexual harassment; (3) the harassment was based on sex; (4) the harassment was sufficiently severe to create an abusive educational environment; and (5) there is some rational basis for imputing liability to the educational institution. The court found that although Cockerham's complaint asserted each of these elements, it failed to plead facts sufficient to support all of them. Specifically, in support of his claim that

his treatment was based on his sex, Cockerham stated only that the sign he was forced to wear was pink and asked "Will you go with me?" These facts, the district court ruled, are too general to suggest that Cockerham was singled out for harassment because of his sex.

Because Cockerham did not allege facts sufficient to support his claim that he was subject to sexual harassment, his claim that Mooney and Childers deprived him of the constitutional right to be free from sexual harassment also failed.

Court allows employee charged with felony larceny to go forward with her malicious prosecution claim against school board member. Beatenhead v. Lincoln County, 519 S.E.2d 599, unpublished (N.C. App. 2004).

Facts: While working as a cafeteria manager for the Lincoln County school system in 1997, Suzanne Beatenhead was charged with felony larceny by an employee. The charges stemmed from an investigation conducted by the Lincoln County Board of Education and one of its members, Martin Eaddy. The charges were dropped shortly after prosecution began, but in 2001 Beatenhead filed suit against the board and Eaddy (in both his personal and professional capacities) alleging malicious prosecution, intentional infliction of emotional distress, and negligent infliction of emotional distress.

Before trial, the court dismissed both of Beatenhead's emotional distress claims because they had been filed beyond the three-year statute of limitations for such claims; but it rejected the board's and Eaddy's request to dismiss her malicious prosecution claims on the basis of immunity. The defendants appealed.

Holding: In an unpublished opinion, the North Carolina Court of Appeals affirmed the lower court's refusal to dismiss the malicious prosecution claim against Eaddy in his personal capacity but dismissed the remaining malicious prosecution claims.

Governmental immunity protects municipal entities, such as a board of education, from civil liability; it also protects their agents from liability in their professional capacity. Therefore, because there was no evidence that the board had waived its immunity, the lower court should have dismissed the claims against it and against Eaddy in his professional capacity. However, public officials may be held personally liable for actions that are malicious or corrupt, or that are beyond the scope of official duty. The malicious-prosecution claim necessarily requires an inquiry into Eaddy's subjective state of mind, thus making it an inappropriate claim for pretrial dismissal.

[Editor's note: *This digest is very similar to one for the same case appearing in the last issue of the "Clearinghouse" (see* School Law Bulletin *34 (Fall 2003): 35). After the unpublished ruling reported there, the board and Eaddy petitioned the Court of Appeals for rehearing, which the court granted. The above digest, therefore, summarizes the court's second ruling in this case.]*

The Office of Administrative Hearings does not have jurisdiction to hear reduction-in-force cases alleging lack of just cause or procedural violations. The University of North Carolina at Chapel Hill v. Feinstein, 161 N.C. App. 700, 590 S.E.2d 401 (2003).

Facts: Martin Feinstein, Howard Gorman, and Pearl Wilkins (hereinafter the plaintiffs) filed claims with the Office of Administrative Hearings (OAH) concerning their reduction-in-force (RIF) dismissals from the University of North Carolina at Chapel Hill and North Carolina State University (the defendants). They alleged that their dismissals were without just cause and in violation of procedural rules. The defendants moved to dismiss the claims, arguing that the OAH did not have jurisdiction to hear them, but the motion was denied. They then asked the trial court for Wake County to intervene and stop the OAH hearings, but this motion was also denied. Finally, the defendants asked the North Carolina Court of Appeals to rule on whether the OAH had jurisdiction to hear the plaintiffs' RIF claims.

Holding: The North Carolina Court of Appeals agreed with the defendants that the OAH did not have jurisdiction to hear RIF claims alleging lack of just cause and procedural violations.

Section 126-34.1 of the North Carolina General Statutes (hereinafter G.S.) lists the specific employee appeals the OAH may hear, preceded by language providing that it may not hear appeals based on any other grounds. The statute allows RIF-based appeals to the OAH only in two narrowly defined circumstances: (1) when a complainant alleges that the RIF is in retaliation for an employee's opposition to alleged discrimination; and (2) when the RIF is in conflict with the veteran's preference. As the plaintiffs in this case do not fall into either of these two categories, the OAH does not have jurisdiction to hear their claims.

Parents of student with disabilities must complete administrative review before seeking an order and reimbursement for out-of-state placement. Morgan v. Greenbrier County West Virginia Board of Education, 83 Fed.Appx. 566 unpublished (4th Cir. 2003).

Facts: When the Morgans concluded that the Greenbrier County (W.Va.) school system's proposed 2000–2001 IEP for their dyslexic son Bradley was inappropriate, they immediately requested a due process hearing and enrolled Bradley in an out-of-state residential program. At the due process hearing, the review officer agreed with the Morgans that the proposed IEP was not reasonably calculated to provide their son educational benefit and also that there had been serious procedural deficiencies in the county's IEP development process.

However, she also found that the Morgans' immediate request for a due process hearing had deprived the county of the opportunity to develop a new IEP. She also found that their unilateral placement of Bradley in a residential program had ignored the IDEA's preference for educating children in the least-restrictive environment possible. Therefore the Morgans were not entitled to reimbursement for the expenses of their placement; nor were they entitled to an order placing Bradley in a residential program forthwith. The hearing officer ordered the county to develop a new IEP within fifteen days and delineated the process the county was to follow in doing so.

The Morgans sought review of this decision in the federal court for the Southern District of West Virginia, which affirmed the hearing officer's decision. The Morgans appealed again.

Holding: In an unpublished opinion, the Fourth Circuit Court of Appeals affirmed the district court's ruling.

In reviewing a state administrative officer's decision, a court presumes that its findings are correct; the party challenging the decision bears the burden of showing that they are not. The Morgans failed to show why the hearing officer's ruling was unreasonable. Moreover, they failed to present reasons why (1) only an out-of-state placement was appropriate; (2) Bradley was entitled to extended school year services; and (3) the expenses they incurred and would incur for their chosen placement were reasonable.

Once the Morgans have followed the procedures outlined in the state hearing officer's decision, the court noted, they may yet be entitled to some relief; but at this stage such a ruling is premature.

Trial court properly affirmed board's decision not to renew administrator's contract. Bryant v. Cumberland County Board of Education, 590 S.E.2d 23 unpublished (N.C. App. 2003).

Facts: Cynthia Bryant served for two years as supervisor of the Exceptional Children's Programs in the Cumberland County school system under James McKethan. During the first year of her contract, Bryant and McKethan had a good working relationship, but tensions arose in the second year that led McKethan to give Bryant unsatisfactory ratings in major functional areas of her performance evaluation. Superintendent William Harrison decided not to renew Bryant's contract. On appeal by Bryant, the Cumberland County Board of Education upheld the nonrenewal decision and found no grounds on which to substantiate her various grievances against McKethan—including that he had retaliated against her for exercising her free speech rights. The board addressed both the nonrenewal and the retaliation complaints at one hearing, although Bryant sought to have them heard separately.

The trial court for Cumberland County reviewed Bryant's complaint. Although it found substantial evidence in support of Bryant's nonrenewal and dismissed the retaliation claim against McKethan, the court also found that the board should have heard the two matters separately and so ordered. On remand, the board found Bryant's grievances against McKethan without merit. At the contract hearing, Bryant raised for the first time a claim that McKethan's performance evaluations did not conform to board policy or statutory requirements. The board rejected this contention and found that the nonrenewal was based on legitimate business considerations. Bryant appealed the contract ruling, and the trial court affirmed it without addressing Bryant's complaint about the performance evaluation. Bryant appealed again.

Holding: In an unpublished opinion, the North Carolina Court of Appeals affirmed the trial court's ruling.

The court first rejected Bryant's contention that the trial court erred in declining to rule on her performance evaluation claim. The trial court's remand order to the board specifically provided that the remand was for rehearing only, and that neither new evidence nor new issues would be addressed. Because Bryant did not raise the evaluation issue at the original hearing, it was not properly before the court.

Bryant's more general claim that her contract should have been renewed was subject to whole record review: The court could only reverse the board's decision if Bryant proved that there was no substantial evidence in the record to support it. However, the record revealed significant performance deficiencies that Bryant failed to refute. Thus the trial court's ruling upholding the board's nonrenewal was appropriate.

Other Cases

Three-day suspension of kindergarten student for saying "I'm going to shoot you" to his friends during recess did not violate his free speech rights. S.G. v. Sayreville Board of Education, 333 F.3d 417 (3d Cir. 2003).

Facts: After three separate incidents in which Wilson Elementary students threatened gun violence against a teacher and schoolmates, Wilson principal Georgia Baumann told the student body that she would take immediate disciplinary action against students who made statements referring to violence or weapons. That same day she sent students home with a letter to this effect for their parents.

A.G., a kindergarten student at Wilson, was absent the day of the announcement and letter. Five days later, while playing cops and robbers with friends at recess, A.G. said, "I'm going to shoot you." A student who overheard this statement told a teacher, and the teacher escorted A.G. and his friends to Baumann's office. Both the teacher and Baumann reported that children who were in the vicinity of A.G. and his friends

were disturbed and upset by the statement, though A.G. disputed this version of the facts. Baumann suspended A.G. and friends for three days. Unable to contact A.G.'s parents by phone, she sent a letter home with the boy informing them of his suspension.

A.G.'s father, S.G., contacted Sayreville (N.J.) county school superintendent, William Bauer, and protested the suspension, but Bauer stood behind Baumann's decision. S.G. then filed a suit in the federal court for the District of New Jersey, alleging (among other claims) that the Sayreville Board of Education, Bauer, and Baumann (hereinafter the defendants) violated A.G.'s right to free speech. The district court granted the defendants' summary judgment motion and dismissed the suit before trial. S.G. appealed.

Holding: The Third Circuit Court of Appeals affirmed the grant of summary judgment.

School officials cannot punish students for merely expressing their personal views at school, unless school officials have reason to fear that such expression will cause a substantial disruption of the educational process. However, school officials are allowed to determine what manner of speech is inappropriate in the school. Defendants acted within their authority in determining that threats of violence were inconsistent with their educational mission and unacceptable—even on the playground.

Additionally, speech that may be protected when uttered by adults is not necessarily protected when uttered by schoolchildren. This is especially so when the school child at issue is in kindergarten. Without deciding under what circumstances a school may violate an elementary school student's free speech rights, the court recognized that the authority to control student speech in an elementary school is undoubtedly greater than in a high school setting.

As there was no evidence that A.G. intended his statement to convey any particular viewpoint about the topic of guns in the schools, or that his statement otherwise constituted the kind of speech entitled to First Amendment protection, it fell within the defendants' discretion to punish it. ■