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

Clearinghouse

edited by
Ingrid M. Johansen

Cases and Opinions That Directly Affect North Carolina

County ordinance exempting parochial schools from certain zoning requirements does not violate the Establishment Clause of the United States Constitution. Ehlers-Renzi v. Connelly School of the Holy Child, 224 F.3d 283 (4th Cir. 2000).

Facts: Birgit and Vincent Renzi lived across the street from the Connelly School of the Holy Child, a Roman Catholic girls' school in Montgomery County, Maryland. When the school announced plans to add new buildings and parking areas to its existing site, the Renzis asked the federal district court to rule that a county ordinance (discussed below) exempting parochial schools from certain zoning requirements violated the Establishment Clause.

Normally, the county zoning ordinance required nonresidential entities—including private educational institutions—located in residential areas to obtain "special exceptions" before constructing additions or improvements. The exceptions requirement ensured that the new uses would not constitute a nuisance, would not adversely change the character of the surrounding community, and would be architecturally compatible with other buildings in the neighborhood. However, the ordinance exempted parochial schools and private schools located on church premises from the special exceptions requirement.

The district court found the ordinance's disparate treatment of church-related and non–church-related schools unconstitutional: the ordinance did not have a secular purpose and impermissibly advanced religion in violation of the Establishment Clause. The school appealed.

Holding: The Fourth Circuit Court of Appeals reversed the district court ruling.

Governmental action violates the Establishment Clause only if it fails to meet all of the following requirements: (1) it must have a secular purpose; (2) its principal or primary effect must neither advance nor inhibit religion; and (3) it must not excessively entangle government with religion. The court found that the ordinance met all three requirements and thus passed constitutional muster.

There were plausible and legitimate secular purposes for the ordinance, found the court. For example, exempting parochial schools from the special exceptions requirement avoided governmental interference with the schools' religious missions. It also avoided creating a forum for citizens with anti-religious animus to attempt to halt the growth of such institutions.

The court next found that the ordinance did not impermissibly advance religion. Allowing religious schools to advance their goals is an *indirect* benefit of the ordinance that results only when a school takes

Ingrid M. Johansen is a research fellow at the Institute of Government.

advantage of the exemption. Therefore the county's creation of the exemption did not directly advance religion.

The court concluded its opinion by noting that the parties had agreed that the ordinance's effect was a disentanglement of government from religion, in satisfaction of the third requirement.

Fourth Circuit Court of Appeals votes to allow Charlotte-Mecklenburg school desegregation case to proceed through normal channels of appellate review. Belk v. Charlotte-Mecklenburg Board of Education, 211 F.3d 853 (4th Cir. 2000).

Facts: In 1999 the federal court for the Western District of North Carolina ruled that the Charlotte-Mecklenburg school system had achieved "unitary status"—that is, had achieved desegregation to the extent practicable. The court then dissolved a thirty-four-year-old desegregation order and prohibited the future use of initiatives that allocated educational benefits on the basis of race. [See "Clearinghouse," *School Law Bulletin* 30 (Fall 1999): 21–22]. The Charlotte-Mecklenburg Board of Education (CMBE) and the parents of minority students in the system appealed the court's decision, and a three-member panel of the Fourth Circuit Court of Appeals stayed the judgment until it could rule on the merits of the appeal.

The original plaintiffs in the case then requested that the appeal be heard *en banc*—that is, by the entire court—instead of by the usual three-member panel.

Holding: The active judges on the court voted on the request, and a majority of them voted against an initial en banc hearing. This result means that the same three-member panel that stayed the district court's order will hear the appeal and render judgment upon it.

The grant of a stay takes into account three factors: the likelihood of success on the merits, irreparable harm to the party seeking the stay if the stay is not granted, and the harm to the opponent of granting the stay. The weight given to any one of these factors varies from case to case. If, for example, the likelihood of success on the merits is great, the party seeking the stay need not show a great deal of harm. The difference of opinion among the judges in this case revolved around which factors were most important in granting this stay.

The members of the court who voted in favor of hearing the appeal en banc (and presumably the plaintiffs, as well) argued that the three-member panel that stayed the district court order would be predisposed to reverse it on appeal because the decision to grant the stay was based, in part, on the panel's belief that CMBE had a decent chance of success on appeal. If CMBE did prevail on appeal, the plaintiffs would once again be entitled to ask for an en banc review, thus causing litigation about, and uncertainty over, this important issue to carry on for years.

Not surprisingly, the majority of the court did not agree that the panel had predetermined the merits of the appeal. The application for the stay addressed the merits of the claim only briefly, focusing primarily on the gravity of the harm the school system and its students would suffer if they were compelled to obey the district court's order, and that order was later overturned. Thus the majority vote rejected the presumption that the panel had prejudged the case and concluded that normal procedures for review should be observed.

Court affirms dismissal of retaliatory discharge claim but reverses verdict against disability discrimination claim. Johnson v. Trustees of Durham Technical Community College, ___N.C. App.___, 535 S.E.2d 357 (2000).

Facts: Susan Johnson taught literacy skills classes at the Durham County (N.C.) Jail Annex under a series of five short-term contracts with Durham Technical Community College (Durham Tech). Johnson, who walked with a crutch because of polio she contracted as a child, suffered a spinal injury during her second contract term when she fell from her crutches while opening a security door at the jail. She received workers' compensation benefits for this injury and was unable to fulfill the rest of her teaching duties during this term. Johnson returned to the jail, relying solely on a wheelchair for mobility, for her third and fourth contract periods. However, she missed approximately two weeks of teaching during the fourth contract period because of a broken leg she suffered at home.

Although Durham Tech entered into a fifth contract with Johnson, administrators there began discussing the advisability of transferring her to another post; they feared she might suffer another accident at the jail and thus expose Durham Tech to liability. In addition, the administrators voiced concern about Johnson's absences and the accommodations she needed because of her disability. On June 16, 1995, Russ Conley, director of the Adult and Basic Skills Program at Durham Tech, informed Johnson that he had found someone to replace her at the jail.

On June 21, 1995, Durham Tech's dean of Adult and Continuing Education, Art Clark, received anony-

mous phone calls accusing Johnson of, among other things, supplying inmates with drugs and having sex with them. After an informal investigation allegedly substantiated some minor aspects of these allegations, Conley informed Johnson that her employment with Durham Tech would end in two days, when her contract expired.

Johnson filed suit challenging the nonrenewal of her contract as illegal under North Carolina's Retaliatory Employment Discrimination Act (REDA) and the Americans with Disabilities Act (ADA). The trial judge granted Durham Tech's motion to dismiss Johnson's REDA claim before trial and after trial directed a verdict in favor of Durham Tech on the ADA claim. Johnson appealed both rulings.

Holding: The North Carolina Court of Appeals affirmed the dismissal of the REDA claim but reversed the verdict on the ADA claim.

REDA, Chapter 95, Section 420, of the North Carolina General Statutes, prohibits employers from taking adverse employment action—including the failure to renew an employment contract—against employees in retaliation for filing workers' compensation claims. The statute does not prohibit adverse employment action against any employee who files a workers' compensation claim; rather, it only prohibits actions taken *because* the employee filed a claim. Where there is no close connection in time between the claim and the adverse action, the employee will be found to have failed to make a case of retaliation. In Johnson's case, Durham Tech renewed her contract three times after her workers' compensation claim, feared no claim regarding her second injury because it occurred at home, and did not refuse to renew her contract until more than a year after her claim. Johnson thus failed to make her case.

The ADA, Title 42, Section 12101, of the United States Code, prohibits discrimination against qualified individuals with a disability. To prevail Johnson needed to show that she was qualified for the job at the jail and that Durham Tech did not renew her contract because of her disability. Durham Tech argued that the allegations made against Johnson, combined with her excessive absenteeism, rendered her unqualified for the job at the jail. The allegations against Johnson could not be used to support Durham Tech's argument, the court held, because director Conley informed Johnson that he would not renew her contract before the allegations were even made. As to excessive absenteeism, the court found that a reasonable jury could have concluded that Johnson's absenteeism did not make her unqualified for the job. Although Durham Tech pointed out that it was especially hard to find a substitute for Johnson during her absences because of the jail-site location of her job, the court noted that Johnson's absences were all disability-related unlike other cases where a disabled employee's non–disability-related absences properly serve as a basis for adverse employment action. Further, it was only during Johnson's second contract term that she missed a significant amount of time, and after that contract term, Durham Tech renewed her contract three more times.

The court also addressed Durham Tech's contention that because it refused to renew Johnson's contract at least in part because of concern for her safety at the jail, it had not discriminated against her *solely* because of her disability. The legal standard does not require that disability discrimination be the only factor motivating the adverse employment action, the court said, but rather that it be a determining or motivating factor. Because a reasonable jury could have reached that conclusion in Johnson's case, it was inappropriate for the trial judge to rule in Durham Tech's favor on this claim. The court sent this part of Johnson's case back to the trial court for new proceedings.

Workers' compensation claim not timely filed. Hunter v. Perquimans County Board of Education, ___ N.C. App. ___, 533 S.E.2d 562 (2000).

Facts: Patricia Hunter suffered a back injury during the course of her employment with the Perquimans County (N.C.) Board of Education. Hunter and the school board entered into a Form 26 agreement for compensation, which was approved by the Industrial Commission. Hunter then applied for a lump sum payment of the compensation, and on March 3, 1994, the school board paid Hunter her benefits. The commission approved this arrangement a month later. The school board, however, never filed a Form 28B notice of final compensation with the commission or with Hunter.

On March 21, 1996, Hunter filed a claim for additional compensation because of deterioration in her condition. Although she filed this claim more than two years after her last compensation payment, and thus acted outside the limitations period prescribed by statute, Hunter made two arguments as to why her claim was not time-barred: (1) the limitations period did not begin to run until the commission approved the lump sum payment, which occurred in April 1994, and (2) the board failed to file a Form 28B to close out her case and so was estopped from asserting the limitations period as a defense.

Holding: The North Carolina Court of Appeals rejected Hunter's arguments and dismissed her claim for additional benefits.

Chapter 97, Section 47, of the North Carolina General Statutes (hereinafter G.S.), provides that the Industrial Commission may not review an award on the grounds of change of condition after two years from the date of the last compensation payment. The court stated that the date that triggers the running of the limitations period is the date the claimant *actually receives* the last payment, not the date the commission approves the award.

Regarding the board's failure to file a Form 28B as required by G.S. 97-18, the court relied on statutory language and existing case law to determine that this oversight—though meriting the imposition of a $25 fine as provided for in G.S. 97-18—did not prevent the running of the limitations period and did not prejudice Hunter or cause her to delay filing her renewed claim in any way.

School board improperly terminated workers' compensation payments without Industrial Commission approval. Guthrie v. Buncombe County Schools, In the North Carolina Industrial Commission, I.C. No. 221183 (Mar. 13, 2000).

Facts: Lucinda Guthrie and the Buncombe County (N.C.) school system entered into an agreement, approved by Industrial Commission order, entitling Guthrie to the payment of lifetime workers' compensation benefits for work-related injuries. Two years later, a new insurance adjuster responsible for Guthrie's file assigned a private investigator to conduct surveillance to ascertain her physical abilities. As a result of this surveillance (during which it apparently was determined that Guthrie was engaged in selling Amway products), the adjuster filed an application with the commission to terminate Guthrie's benefits (Form 24). The commission denied the Form 24 application, but the system terminated Guthrie's benefit payments nonetheless. Guthrie asked the commission to compel the system to resume payments under the original consent order.

Holding: The commission granted Guthrie's request. Guthrie was entitled under the original order to a presumption of continued total disability. The system produced no evidence that she was earning wages and no evidence that her wage-earning capacity had changed since the time of that order. Thus the system was not entitled to unilaterally stop benefit payments. The commission ordered the system to pay a 10 percent penalty on all overdue benefits, a $1,000 penalty in addition to reasonable attorney fees, the costs of the action, and continuing lifetime benefits.

Workers' compensation claimant failed to show change in condition warranting additional benefits. Montford v. Carteret County Schools, No. COA99-7 (N.C. App. July 18, 2000) (unpublished).

Facts: Rita Montford sustained several compensable injuries during her employment as a teacher's aide in the Carteret County (N.C.) school system. Under a Form 21 agreement approved by the Industrial Commission, the system agreed to pay Montford disability benefits for twenty-two weeks. Montford left work some eighteen months later, complaining of renewed, increased pain originating from her earlier injuries. A physician could find no cause for Montford's pain and recommended that she return to light-duty work. Montford returned to work but again left because of alleged pain. Thereafter Montford was approved for short-term state disability benefits of a year's duration.

After her state benefits ended, Montford inquired about re-employment in the school system but was told there were no positions within the restrictions indicated by her physician. Montford sought no other employment, instead filing a claim for additional workers' compensation benefits due to a change in physical condition affecting her ability to earn wages. A deputy commissioner denied her request, the full commission affirmed the denial, and Montford appealed.

Holding: In an unpublished opinion, the North Carolina Court of Appeals affirmed the denial of additional benefits.

Montford could have shown that she was entitled to additional benefits due to a change in condition in four ways, said the commission: (1) medical evidence that, as the result of her work-related injury, she was incapable of any employment; (2) evidence that though she was capable of some work, she was unable to obtain employment after reasonable effort to obtain it; (3) evidence that though capable of some work, it was futile for her to seek other employment because of pre-existing conditions such as age, inexperience, or lack of education; or (4) evidence that she had obtained work but at a wage less than she earned before the injury. She failed to produce evidence supporting any of these factors, the court found. Medical evidence showed that her condition was unchanged and her complaints of pain not credible. Further, she failed to show reasonable effort to obtain other employment after her one inquiry

to the school system. Finally, a thirty-four-year-old high school graduate with some computer training has no pre-existing condition preventing her from obtaining other light-duty work, according to the court.

Other Opinions

Court affirms dismissal of adult student's claim of sexual harassment against professor and university. Waters v. Metropolitan State University, 91 F. Supp. 2d 1287 (D. Minn. 2000).

Facts: Randi Waters, a "mature" student at Metropolitan State University (Metropolitan) in Minnesota, took a class from philosophy professor Mark Matthews during the winter quarter of 1995. Matthews gave Waters an "A" in the course and encouraged her to major in philosophy. During the spring quarter, Waters took an independent study course with Matthews but never finished it due to a personal tragedy that interfered with her ability to complete course work. In fact, Waters either failed or took an incomplete in all of the classes she took thereafter during 1995 and 1996.

According to Waters, in the fall quarter of 1995 she planned to major in philosophy, and Matthews became her advisor. She wanted to take several classes taught by Matthews that term, but stated that Matthews discouraged her from doing so in order to pursue a sexual relationship with her. Waters also said that Matthews offered to give her a grade for the incomplete independent study course even though she had not finished the work.

Although not enrolled in his classes,Waters spoke to Matthews on several occasions during the fall 1995 quarter concerning her personal problems. In January 1996 Matthews asked Waters to take a trip with him to Las Vegas. Waters declined, but before leaving on a trip of her own, she named Matthews as decision-maker for her children in the event that something should happen to her while she was away. In March 1996 Matthews told Waters he wanted to have a sexual relationship with her. He was afraid, however, that a sexual relationship with a student would threaten his ability to obtain tenure, so he encouraged Waters to withdraw from Metropolitan. The next month Waters did so, and the sexual relationship began.

Approximately one year later, Waters ended the relationship and filed a sexual harassment claim against Matthews. Waters later complained that she was pressured into describing the relationship as "consensual" when she gave her statement to Metropolitan officials. After interviewing Waters and Matthews and no on else, Metropolitan found insufficient evidence of sexual harassment. Waters filed suit in federal court under Title IX of the Education Amendments of 1972.

Holding: The federal court for the District of Minnesota dismissed Waters's claims before trial.

Matthews's sexual advances were not actionable under Title IX, the court held, because Waters failed to prove that they were unwelcome. The evidence showed that Waters did not merely acquiesce to the relationship but voluntarily participated in it by designating Matthews decision-maker for her children in her absence and by repeatedly visiting his apartment. Further, there was no evidence to show that there was a power disparity between Waters and Matthews. Waters was an adult student, somewhat older than the average student. She was no longer taking classes from Matthews—and was not in fact, pursuing her studies at all—and he had never been named as her official advisor. At the time their relationship began, there was no legitimate academic relationship between the parties.

The court went on to state that even if there had been evidence that Matthews's sexual advances were unwelcome, it would still dismiss Waters's suit. Waters was not entitled to damages under Title IX because she failed to show that Metropolitan was deliberately indifferent to the alleged harassment. Despite her charge that Metropolitan's investigation of her complaint was a sham, Waters herself never asserted that the relationship was anything other than consensual. Metropolitan was entitled to rely on this characterization, especially when Waters was unable to produce any other evidence to support her claim to the contrary. Although Metropolitan did not, as Waters asserted, interview Matthews's ex-wife, who met the professor while she was an intern at Metropolitan, or another student with whom Matthews had had an affair, the depositions of these women taken before trial showed that both of the relationships were consensual.

The court deplored both Matthews's conduct and the less than complete nature of Metropolitan's investigation but stated that neither had violated the law.

University was not negligent in failing to inform student's family of his previous suicide attempt. Jain v. State of Iowa, 617 N.W.2d 293 (Iowa 2000).

Facts: University of Iowa freshman Sanjay Jain was prevented from committing suicide by dormitory resident assistants (RAs), who removed his moped from his room after he stated that he intended to inhale the exhaust fumes. One RA, Beth Merritt, met with Jain the day after the attempt and encouraged him to seek help at the university counseling service. She also gave him her home phone number and told him to call anytime. She reported the attempt and subsequent discussion to her supervisor, expressing her feeling that Jain was more tired than desperate and noting that Jain had refused her request to contact his parents.

No further action was taken, despite a university policy that provided that in the case of a suicide attempt the affected student's parents would be contacted. The responsibility for contacting a student's parents rested with Phillip Jones, the dean of students. However, no information concerning Jain was relayed to Jones. Two weeks later, Jain succeeded in killing himself by inhaling exhaust fumes from his moped.

Jain's father, Uttam Jain, filed a wrongful death action against the university, charging that the university was negligent in failing to notify Sanjay Jain's family of his earlier suicide attempt. The trial court dismissed the action, finding that the university had no duty to prevent Jain's suicide and thus had not acted negligently. Jain's father appealed.

Holding: The Supreme Court of Iowa affirmed the dismissal.

As a general rule, there is no obligation to protect a person from self-inflicted harm in the absence of a special relationship, usually one that is custodial in nature. Jain's father conceded that the university did not have custodial control over his son but alleged that the university's knowledge of his son's mental condition gave rise to a special relationship, and that the failure to follow through on the policy of notifying parents when a student engages in self-destructive behavior thus deprived Jain's son of the care he deserved and obviously needed. This argument was premised on the legal rule that once a person undertakes to provide services to another, he or she has a duty to perform those services in a reasonably safe fashion.

The court observed that to find liability under this concept, a defendant's negligent performance must have put the plaintiff in a worse position than he or she would have been in had the defendant never begun performance in the first place. Though noting the emotional appeal of Jain's argument, the court concluded that nothing in the university's response to the first suicide attempt either increased the chances that the younger Jain would commit suicide or induced him to abandon other avenues of help.

The suspicionless search of a student's locker, which revealed a knife and rolling papers, was legally reasonable. *In re* Patrick Y, 723 A.2d 523 (Md. Ct. Spec. App. 1999).

Facts: Patrick Rooney, a security guard at the Mark Twain School (Md.), received an anonymous tip that there were drugs or weapons in the school. Rooney alerted the principal, who authorized a locker search. When Rooney searched Patrick Y's locker, he found a knife and some rolling papers. Patrick admitted to Rooney, while they were waiting alone together for the police to arrive, that the knife and papers were his.

At the hearing to adjudicate whether he was a delinquent child, Patrick argued that the evidence of the knife and papers should not be admitted because it had been obtained by a search that violated the Fourth Amendment to the United States Constitution, which prohibits unreasonable searches and seizures. The court admitted the evidence and adjudicated Patrick delinquent. Patrick appealed.

Holding: The Maryland Court of Special Appeals affirmed the lower court's ruling.

The Fourth Amendment's prohibition of unreasonable searches applies to searches of students conducted by school officials. However, the standard for determining reasonableness in the school context is not the probable cause standard used for searches conducted by law enforcement officials. Rather, the standard is reasonableness under all the circumstances. This inquiry is two-pronged: (1) was the search justified at its inception? and (2) was the search, as conducted, reasonably related in scope to the circumstances that justified it in the first place?

Although recognizing that students do have an expectation of privacy in the contents of their lockers, the court held that this expectation is limited by the need of school officials to maintain safety and discipline. This interest on the school's part, when weighed against a locker search—which is not as intrusive as a search of a student's person—trumps the student's privacy expectation. That the tip that spurred the search in this case was anonymous and of unverifiable reliability did not

matter. Rooney was presented with a report that no reasonable guardian or tutor could ignore.

If a school's football coach removed a student from the team for refusing to apologize for reporting an assault by teammates to the police, both the coach and school officials could be held liable for violating the student's right to free speech. Seamons v. Snow, 206 F.3d 1201 (10th Cir. 2000).

Facts: Brian Seamons, a member of the Sky View High School (Utah) football team, notified school authorities and police that four of his teammates had grabbed him as he exited the shower, restrained him, and then bound him to a towel rack with highly adhesive athletic tape. The team coach, Doug Snow, asked Seamons to meet with the team captains, two of whom had participated in the assault, to clear up any bad feelings. Dan Ward, one of the assailants, told Seamons that he had betrayed the team by reporting the assault and that he shouldn't be allowed to play until he apologized to the team. Snow backed Ward on this point and told Seamons he needed to "forgive and forget." When Seamons refused, Snow sent him home to think it over, thus preventing Seamons from playing in that evening's game. The next week Seamons told Snow that he would not apologize; Snow told Seamons that his attitude was unacceptable and that he was no longer a member of the football team.

Seamons filed suit against Snow and the Cache County school district, alleging several constitutional violations. After numerous legal proceedings, Seamons's claims were narrowed down to one charge, namely, that Snow had violated his First Amendment right to free speech. The trial court then granted judgment to Snow on the free speech claim before trial and, in the alternative, held that school officials were entitled to qualified immunity. Seamons appealed.

Holding: The Tenth Circuit Court of Appeals reversed the lower court rulings.

According to the court, the lower court improperly dismissed Seamons's First Amendment claim because summary judgment, or judgment before trial, cannot be granted when a party has raised genuine issues of material fact in support of a claim. The court deciding whether this standard has been met must view the facts in the light most favorable to the party who has not moved to dismiss the claim. Clearly there were disputed factual issues concerning whether Snow did violate Seamons's right to free speech. For instance, what was Snow's intent in asking Seamons to apologize? Was it merely an attempt to reconcile the team members, or did he intend to force Seamons to say he was wrong for reporting the assault? Also, was there a causal link between Seamons's refusal to apologize and his removal from the team? Viewing the facts in a light most favorable to Seamons, the court concluded that there was evidence to support his claim.

If Seamons proves his case against Snow, he also has a cause of action against the district, continued the court, because the district gave Snow full authority to make final decisions concerning team membership. Furthermore, neither Snow nor district officials would be entitled to qualified immunity in this case because the law was clear at the time of Snow's actions that school officials may not penalize a student for speech that is nondisruptive, nonobscene, and not school-sponsored. ■