Clearinghouse

Edited by Ingrid M. Johansen

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

Cases That Directly Affect North Carolina

The Individuals with Disabilities Education Act grants parents rights of their own, which they can pursue in court without the assistance of counsel. Winkelman v. Parma City School District, 127 S. Ct. 1994 (2007).

Facts: The Winkelmans, parents of a child with autism named Jacob, believed that the individualized education plan (IEP) created for their son by the Parma City (Ohio) School District did not provide him a free appropriate public education (FAPE) as required by the Individuals with Disabilities Education Act (IDEA). After exhausting their administrative remedies without success, the Winkelmans filed a complaint in federal court—without the aid of an attorney.

The federal district court dismissed the complaint before trial, finding that the district had provided Jacob an FAPE. The Winkelmans appealed to the Sixth Circuit Court of Appeals, which entered an order dismissing the appeal unless the Winkelmans obtained an attorney to represent Jacob. The right to an FAPE provided by IDEA, the court found, belongs to the child alone; any right the parents may have is derivative. Because of a common law rule prohibiting nonlawyer parents from representing their minor child in court, the child must be represented by an attorney. Only an attorney, the reasoning goes, has the knowledge and skill necessary to successfully represent the child's interests in court. The Winkelmans sought review of this issue in the U.S. Supreme Court.

Holding: The U.S. Supreme Court ruled in favor of the Winkelmans.

IDEA grants specific rights to parents, as parents, in particular instances. For example, parents are entitled to certain procedural protections when contesting the adequacy of a child's IEP; they are also entitled to seek reimbursement for educational expenses incurred because of an inadequate IEP. But the Winkelmans contended that they are not merely guardians of Jacob's rights for all other purposes, they are also real parties in interest to the IDEA action. Looking at IDEA's statutory scheme, the Court agreed.

One of IDEA's purposes is to "ensure that the rights of children with disabilities and the *parents of such children* are protected."[1] The Court rejected the district's argument that this—and other IDEA provisions involving parents—are merely an accommodation to the fact of a child's incapacity. On the contrary, the Court said, parents have a recognized, well-established legal interest in the education and upbringing of their children. Furthermore, under IDEA, parents are granted the right to obtain a *free* appropriate public education for their children.

In conclusion, the Court noted that even when parents pursue IDEA cases without the assistance of counsel, their relative legal inexperience is counterbalanced by their interest in their child's education and by the benefits that increased parental participation bring to the education of children with disabilities more generally.

Decision not to renew probationary teacher's contract was reasonable and the process used to reach that decision was legally sufficient. Moore v. Charlotte-Mecklenburg Board of Education, ____ N.C. App. ____, 649 S.E.2d 410 (2007).

Facts: Alicia Moore taught in a Charlotte-Mecklenburg Board of Education (CMBE) middle school on a year-to-year contract. In January 2005 her principal notified her of complaints that she had hit students with a ruler and used profanity in front of them. While suspended from her teaching duties during an investigation, she sent a letter in her own defense, saying that she used the ruler to slap the desks of students who were not paying attention; although she confessed to the occasional use of profanity, she contended that she did not swear in the presence of students. The investigators concluded that Moore was guilty of the described behavior. She received a formal reprimand and returned to work.

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1. 20 U.S.C. 1400(d)(B) (emphasis added).

Two months later, at the usual time for renewal decisions, Charles Head, CMBE's human resources specialist, sent the school board a letter stating that the superintendent did not recommend renewing Moore's contract for another year because her continued employment might pose a safety threat. Among the documents accompanying the letter were her 2004–2005 performance evaluations containing a "below standard" rating in the area of managing student behavior and an "unsatisfactory" rating for communicating within the educational environment; the initial 2005 complaint; the principal's letter to Moore detailing the complaint; Moore's letter in response; the investigation report; and records of two insubordination accusations from the 2002–2003 school year.

CMBE voted not to renew Moore's contract. Through her attorney, Moore requested a hearing before the board but was denied. She appealed the nonrenewal decision on the grounds that it was either made under an unlawful procedure (because she had not been granted a hearing) or was arbitrary. In response, CMBE submitted the documentation it had considered in deciding not to renew Moore. When Moore attempted to submit her own materials to supplement that record, the board objected, arguing that the record on appeal is limited solely to documents that were part of the CMBE's deliberations. The superior court granted the motion to strike, found that Moore was not entitled to a pre-nonrenewal hearing and that the board's decision was legitimate. Moore appealed.

Holding: The North Carolina Court of Appeals affirmed the lower court decision.

Moore was a probationary teacher because she had not served the four consecutive years necessary to become a career teacher. Career teachers are entitled to a statutorily mandated process before they may be demoted or dismissed. Under North Carolina General Statute 115C-325(h) through (j3) (hereinafter G.S.), career teachers have the right to receive notice of an adverse recommendation by the superintendent, to be heard before a case manager or the board of education, to present evidence, and, more generally, to defend themselves against the allegations in question. If a board seeks to dismiss a probationary teacher during the school year, he or she is entitled to the same protections as a career teacher. If, on the other hand, the board refuses to renew the contract of a probationary teacher at the end of the year, it may do so for any reason that is not arbitrary, capricious, discriminatory, or motivated by personal or political reasons. In that situation the statute requires no particular procedure.

A probationary teacher *is* entitled to court review of the nonrenewal decision. G.S. 115C-325(n) provides, however, that the record for the appeal is limited to the materials the board considered in reaching its decision. The plain language of the statute provides for no other process, concluded the court. It did note, however, that Moore had a legitimate point when she argued that allowing nonrenewed probationary teachers judicial review without a prior hearing to establish a complete record sets the stage for a review that is pro forma and incapable of policing nonrenewal decisions in any meaningful way. Nonetheless, continued the court, such issues are for the legislature to address—not the judiciary.

Moore was no more successful in arguing that the court should consider the documents she attempted to introduce—documents that would have shown that she had used the ruler for years without complaint, that she was generally lauded for her interactions with students, and that she was praised by many administrators for her effectiveness with the toughest kids in the system. Again, the court expressed some sympathy with Moore's contention that without the right to present the documents to either the board or the court, she was effectively prevented from defending herself. But, noted the court, it was bound by earlier precedent.

Finally, the court found that based on the record considered by CMBE, the decision not to renew Moore was not arbitrary.

Guilford Technical Community College immune from reimbursement claim brought by the North Carolina Insurance Guaranty Association. North Carolina Insurance Guaranty Association v. Board of Trustees of Guilford Technical Community College, 2007 WL 2362745 (N.C. App.).

Facts: Guilford Technical Community College (GTCC), operating under G.S. Ch. 115D, purchased workers' compensation liability insurance from Reliance Insurance Company. Reliance went bankrupt in 2001. Thereafter, the North Carolina Insurance Guaranty Association (NCIGA) covered worker claims as required by state law.

After several years NCIGA sought reimbursement from GTCC for all the workers' compensation claims it had covered through August 2005—a sum just over $324,000. NCIGA proceeded under a provision of the state's Guaranty Act (G.S. 58-48 to 50(a1)) that allows NCIGA to recover all sums paid for covered claims on behalf of an insured if the insured's net worth as of December 31 of the year preceding its carrier's insolvency exceeds $50 million. GTCC conceded that its net worth exceeded $50 million as of December 31, 2000, but argued that sovereign immunity shielded it from NCIGA's reimbursement claim.

Holding: The North Carolina Court of Appeals agreed with GTCC.

GTCC, as a state institution, is entitled to sovereign immunity unless the General Assembly has explicitly waived it. NCIGA's argument that the language of the Guaranty Act, which provides that NCIGA may recover all sums it has paid from *any* insured, simply does not meet the level of specificity required to create a waiver of immunity.

Further, although GTCC's purchase of workers' compensation liability insurance did waive immunity as to covered claims by its employees, the waiver does not extend to any outside entity.

Court retains some elements and dismisses others of student's claim arising from a disciplinary incident. W.E.T. v. Mitchell, 2007 WL 2712924 (M.D.N.C.).

Facts: W.E.T., a ten year old boy who suffers from severe asthma, partial blindness, and cerebral palsy, was a student in Jill Mitchell's "Resources" class in the Durham Public School system (DPS). He had been in this class, and Mitchell had been his teacher, for at least five years before the incident discussed in this digest. One morning in 2005 W.E.T. was speaking with a friend when Mitchell arrived. She informed the students that there would be no talking that day.

After several minutes of silence, W.E.T. leaned over to apologize to his friend for getting him in trouble. Hearing him speaking, Mitchell sharply rebuked him, then picked up a roll of scotch tape and forcefully placed a piece of it over W.E.T.'s mouth. Because of his asthma, W.E.T. began having difficulty breathing with the tape over his mouth and he attempted to get Mitchell's attention by speaking through the tape. This caused the tape to come loose, so W.E.T. told Mitchell that the tape was no longer sticking. Mitchell responded that the tape was not supposed to stick and forcefully ripped it from his mouth.

Through his parents, W.E.T. filed suit alleging extensive mental and emotional damages as a result of this incident. His complaint charged Mitchell, Ann Denlinger (superintendent of the DPS), and the DPS board with numerous federal and state law violations, all of which the defendants moved to dismiss before trial. The court addressed the claims against each person or entity in turn.

Holding: The federal court for the Middle District of North Carolina retained some elements of W.E.T.'s claims and dismissed others. For the purposes of evaluating the defendants' motion to dismiss, the court viewed W.E.T.'s allegations in the light most favorable to him, accepting as true all well-pleaded allegations.

Mitchell: The court declined to dismiss the federal claim against Mitchell, which alleged that her use of corporal punishment deprived W.E.T. of his substantive due process rights under the Fourteenth Amendment of the U.S. Constitution. W.E.T.'s complaint contained allegations that were sufficient to satisfy the three requirements of such a claim. First, the defendants themselves admitted that the force Mitchell used was disproportionate to that needed. Second, the allegation that Mitchell, despite having been W.E.T.'s therapist for at least five years and being well aware of his disabilities, used such forceful measures to keep him quiet is sufficient to raise an inference that her motivation was malicious or sadistic. Third, the complaint alleges that W.E.T.'s mental and emotional anguish was severe enough to cause him to be afraid to be alone with anyone other than his mother, reluctant to return to school, and withdrawn from friends and family. Injury need not be physical, noted the court, to satisfy the "severe injury" requirement.

The court also declined to dismiss W.E.T.'s state law claims against Mitchell. The first claim, false imprisonment, requires illegal restraint through force or threat of force against another person's will. Mitchell unlawfully and without W.E.T.'s consent taped his mouth shut and scared him enough that he remained in that position for several minutes. These facts sufficiently allege false imprisonment. W.E.T. also made out a preliminary case for intentional infliction of emotional distress. The facts alleged give rise to the inference that Mitchell engaged in outrageous conduct that was intended to, and did, cause W.E.T. severe emotional distress.

Under North Carolina law, punitive damages may be awarded when compensatory damages are awarded and at least one or more of the following factors are present: fraud, malice, or wanton and willful conduct. The facts above convinced the judge that W.E.T. had made out an adequate claim for punitive damages against Mitchell.

Denlinger: Here, too, the court began with W.E.T.'s federal claims against Denlinger, though these fared distinctly less well than those against Mitchell. W.E.T. charged Denlinger, in her official capacity, as well as DPS, with failure to train and properly supervise school employees, resulting in violation of his substantive due process rights. The court dismissed this claim against Denlinger because a claim against her in her official capacity is effectively a suit against DPS. Therefore the court dismissed the duplicative claims.

The court also dismissed W.E.T.'s federal claims against Denlinger in her personal capacity for failing to allege facts showing that Denlinger was aware of any of Mitchell's actions and was deliberately indifferent to them. In addition, there are no allegations that Denlinger had any supervisory responsibilities with regard to Mitchell.

W.E.T.'s state claims against Denlinger in her official capacity contained charges that alleged direct negligence on her part, as well as vicarious negligence. To the extent that W.E.T. alleged that Denlinger was negligent in her duty to mitigate the effects of the injury caused by Mitchell, the court demurred because the complaint contained no facts indicating that Denlinger was ever aware of the initial injury; she thus owed no special duty of care to W.E.T. To the extent that W.E.T. alleged that Denlinger, as her employer, was vicariously liable for Mitchell's actions, the court again demurred, finding that Mitchell was a DPS employee, not an employee of Denlinger.

Finally, the court dismissed W.E.T.'s state law negligence claims against Denlinger personally. As an individual she is shielded by public official immunity so long as her actions were within the scope of her duties and not corrupt or malicious. W.E.T.'s complaint does not contend that she was acting outside of her duties or with a corrupt or malicious motivation.

DPS: The court also dismissed all federal charges against DPS. To successfully allege that DPS unconstitutionally failed to train or supervise Mitchell, W.E.T. was required to show that it was an official DPS custom or policy to condone or fail to train employees against conduct such as Mitchell's. Necessarily, showing a custom or policy requires evidence of more than one incident of unconstitutional conduct, and W.E.T.'s complaint concerns only the one tape incident. His failure-to-supervise claim against DPS fails for the same reason as his claim against Denlinger: he presented no showing that DPS knew or should have known about Mitchell's behavior.

W.E.T. brought numerous state law claims against DPS (including assault, battery, false imprisonment, negligence, and negligent infliction of emotional distress), seeking to hold it vicariously liable for Mitchell's actions. Although DPS is, as a state institution, entitled to sovereign immunity against such claims, W.E.T.'s complaint asserts that this immunity was waived by the purchase of liability insurance; thus these claims may go forward for consideration on their merits. The court found that W.E.T. met the preconditions for holding DPS liable for Mitchell's conduct: the facts in his complaint indicate that Mitchell is a DPS employee and that she was acting within the scope of her duties when she engaged in the unconstitutional conduct. As the court had found sufficient allegations concerning the tort claims against Mitchell, all of these stand against DPS as well, determined the court.

The court declined, however, to retain W.E.T.'s state negligence claim against DPS in its own capacity. He asserted that DPS, like Denlinger, had breached its duty to mitigate the effects of the injury caused by Mitchell; and the court found, as it had with Denlinger, no indication in the complaint that DPS had any knowledge of Mitchell's conduct or W.E.T.'s injury and so dismissed the direct negligence claim against DPS.

Finally, the court dismissed the punitive damages claim against DPS because, as a municipality, it is immune from them.

Court dismisses negligence and state constitutional claims of sexually assaulted student. Craig v. New Hanover Board of Education, ___ N.C. App. ___, 648 S.E.2d 923 (2007).

Facts: Jon-Paul Craig, a fourteen year old boy with mental disabilities, was mainstreamed in the Roland Grise Middle School. Administrators contacted his mother to report that there had been some "sexual experimentation" between Craig and another student. The next day administrators suspended Craig for ten days and ultimately denied him placement at the Roland Grise School.

Through his mother, Craig brought suit against the New Hanover Board of Education (NHBE), alleging that its employees at the Roland Grise Middle School denied him the constitutional right to education free from harm and that they had negligently allowed the assault to occur. NHBE moved to dismiss Craig's claims, arguing that (1) the claim brought under the state constitution cannot stand, because Craig has other adequate state remedies available to him; and (2) the negligence claims must be dismissed because NHBE is immune from suit on them.

Holding: The North Carolina Court of Appeals agreed with NHBE.

Under North Carolina law, a state constitutional claim will survive only in the absence of an adequate state remedy. However, Craig's claim is essentially a common law negligence claim: that the NHBE negligently failed to provide him with adequate protection. And although most other state law remedies are doomed to dismissal because of the state's sovereign immunity, "adequate remedy" in this context means only "available, existing, or applicable" remedies, not potentially successful ones. In short, because Craig's claim could have been formulated as a negligence claim, that's the claim he should have made, even though the court, in all probability, would have dismissed it before trial.

Not surprisingly, the court went on to find that NHBE was, in fact, protected by immunity. NHBE had liability coverage in the amount of $150,000 from the North Carolina School Boards Trust. Past cases have established, and the parties here agreed, that the purchase of insurance through the NCSBT does not create a waiver of immunity because the policy sold by the NCSBT does not meet the definition of liability insurance contained in G.S. 115C-42.

However, NHBE also possessed an "excess insurance" policy of $850,000 for certain claims of negligence that exceeded the $150,000 limit of the NCSBT policy. The extent of NHBE's immunity waiver is defined by the terms and extent of the excess policy. NHBE quoted language from the excess policy that excluded claims arising from sexual acts, including negligent supervision. Given the policy's clear language, the court dismissed Craig's negligence claim.

Whistle-blower claimant failed to establish either that she blew the whistle or that those responsible for her termination heard it. Imbriano v. Charlotte-Mecklenburg Board of Education, 2007 WL 2344822 (W.D.N.C.).

Facts: Randi Imbriano served as assistant principal at Independence High School, in the Charlotte-Mecklenburg

school district (CMBE), from the 2001–2002 school year until the spring of 2005. During her tenure Imbriano, who was in charge of administering the substitute teacher program, had some problems with it. During 2003–2004, she allowed some number of substitute teachers to begin work before completing the necessary orientation and screening and before being entered into the district's payroll system. Imbriano also paid her son cash from her personal funds for a long-term substitute teacher assignment at Independence; she was supposed to use only school funds to pay substitute teachers.

Because of these problems, Principal Rick Hinson noted in her midyear assessment that Imbriano need to improve her management of the substitute teacher program. Near the end of the 2003–2004 school year, Hinson informed her that he would not recommend renewal of her contract; nonetheless, Barbara Jenkins, CMBE assistant superintendent for human resources, decided to renew the contract. Before the beginning of the 2004–2005 school year, Jenkins met with Imbriano to discuss Hinson's concerns about her performance, and Imbriano explicitly agreed not to pay substitute teachers from her personal funds in the future.

Nonetheless, Imbriano paid another substitute from her personal funds in September 2004. In addition, she was charged with mishandling a student drug possession situation: apparently believing that she had misclassified the student's offense, she went into his electronic record and changed it.

These two sets of problems formed the basis of Imbriano's discharge, which the CMBE approved during the spring of the 2004–2005 school year.

Imbriano, however, alleged that CMBE retaliated against her for whistle-blowing in a case that bore no relation to Imbriano's particular problems, produced no allegations against her, and resulted in no action taken against her. During the fall of 2004 a teacher at Independence High voiced concerns about the overreporting of student enrollment for purposes of receiving increased funding and teacher allocation from the state. As a result, Jenkins, another superintendent, and CMBE's legal counsel investigated the allegation extensively, including interviews with at least eleven Independence High employees—among them, Imbriano.

Holding: The federal court for the Western District of North Carolina dismissed Imbriano's claim, finding that she failed to establish even a basic case of whistle-blower retaliation.

Imbriano's sharing of information with CMBE officials during the investigation was not whistle-blowing. The discussions were initiated by CMBE officials, not Imbriano. In addition, officials spoke with many Independence High employees. Finally, in discussing these matters with CMBE officials, Imbriano was simply doing her job as an employee in a management position. That CMBE officials viewed this behavior favorably, not negatively, is demonstrated by their offer to let Imbriano assume a teaching position in lieu of resigning or being discharged.

Former community college employee did not establish a case for age or racial discrimination or retaliation. Weston v. Randolph County Community College, 2007 WL 2746777 (M.D.N.C.).

Facts: Debra Weston, a 49-year-old Caucasian female, served as director of special support services at Randolph County Community College. Her office provided tutoring and other services to disadvantaged students. She supervised a counselor, Joyce Branch, and a secretary, Judy Pemberton, both of whom are African American. Weston complained to her supervisor, Becky Megerian (a white woman), about the quality of the work done by Branch and Pemberton. She felt that she was doing the work of three employees by herself and that Branch and Pemberton were ignoring her requests and instructions—instead taking direction from Megerian.

Weston took no formal action on her complaints because, she alleged, Megerian discouraged it. Megerian, she said, told her that the school "didn't fire blacks" and that Weston should not to give Branch or Pemberton a negative performance evaluation. The college did make efforts to address Weston's issues, but she refused to attend at least two meetings Megerian scheduled to discuss them. By January 2004 Weston felt that she must either resign her position or be fired, and in March Megerian told her that her contract would not be renewed. Weston received written confirmation of nonrenewal on June 26, 2004, and left the college at the end of July.

On October 5, 2004, Weston filed a complaint with the Equal Employment Opportunity Commission (EEOC), charging that the college had not renewed her contract because of age and race discrimination or retaliation. She received her right-to-sue letter and filed her complaint with the court on December 21, 2005. The college moved to dismiss her case.

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

The court found that her suit was time-barred. Under federal discrimination statutes, the complainant must file with the EEOC within 180 days of the alleged unlawful action, running from the time the employee becomes aware of the discriminatory decision, regardless of when that decision takes effect. Megerian told her in March that the college would not renew her contract, but Weston did not file with the EEOC until October, well outside the 180-day time limit. This tardiness was the official grounds for dismissal of Weston's complaint.

The court went on, however, to discuss the merits of her case—and found it wanting. The Age Discrimination in Employment Act (ADEA) prohibits discrimination on the basis of age and protects persons over the age of 40. Although Weston was 49 at the time of her nonrenewal, her replacement (Branch) was also over 40. In addition, during her deposition Weston stated that she believed her age was "not necessarily" the reason for the nonrenewal. Thus the age discrimination claim is deficient because Weston failed to identify someone from outside the ADEA's protected class who replaced her, and because she failed to establish that her age was the cause of her nonrenewal.

Weston's race discrimination claim had two prongs: first, that her nonrenewal was racially motivated, and second, that the college created a racially hostile work environment. As to the nonrenewal claim, Weston failed to show that the college's legitimate, nondiscriminatory reasons for not renewing her—insubordination relating to the two missed meetings that Megerian scheduled to discuss the issues Weston had raised—were mere pretexts for racial discrimination. She pointed only to Megerian's comment, made months before the decision not to renew her contract, that the college "didn't fire blacks." This was insufficient evidence to rebut the college's explanation of her nonrenewal.

Nor did Weston present sufficient evidence to sustain her hostile environment claim. The tensions and disruptions caused by uneven work distribution are the stuff of work-a-day life, the court said, and do not rise to the level of conduct severe enough or pervasive enough to create an objectively hostile work environment when judged by a reasonable person. In addition, it appears that Weston was not prevented from performing her job by the environment.

Finally, Weston's claim that her nonrenewal was motivated by race retaliation failed for the same reason as her age discrimination claim: insufficient evidence to rebut the college's explanation of her nonrenewal.

Court dismisses employee's discrimination claims. Szabo v. East Carolina University, 2007 WL 2226006 (E.D.N.C.).

Facts: Lazlo Szabo, a Hungarian male, alleged that East Carolina University (ECU) discriminated against him because of his age and ethnic origin in failing to promote him. Szabo served ECU as a library assistant and computer support technician. In 2002 he applied for a position as library technical assistant I, but a more senior ECU employee was chosen. In 2003 ECU told Szabo that he would not be considered for a position as head of Circulation and Reserve because there was such a large pool of qualified applicants. During a 2005 leave Szabo took under the Family and Medical Leave Act, ECU hired a new person in the Reference Department. In August 2005 Szabo brought suit against ECU.

The federal court for the Eastern District of North Carolina heard ECU's motion to dismiss Szabo's claim.

Holding: The court dismissed Szabo's complaint. Claims concerning promotions denied before October 2004 were time-barred by the law that gives complainants 300 days from the date of unlawful employment action to file a complaint with the Equal Employment Opportunity Commission. Szabo offered no allegations that he applied for any positions after that time. ■