


Illinois Association of School Administrators School Law Update



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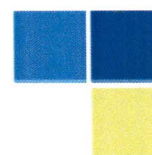
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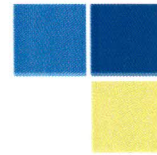
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Update On Legislation and Legal Issues In Illinois 2012

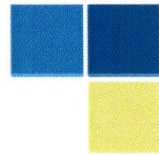
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Hinshaw thanks John Marshall Law School for allowing the inclusion of the article "Tinkering" With The First Amendment's Protection of Student Speech on the Internet, written by Hinshaw partner Steven M. Puiszis, in our program's written materials. It is anticipated that the article will be published in Volume 29 Issue 2 of the John Marshall Law School's *Journal of Computer and Information Law* later this year.



Legislative Update

This update summarizes some of the most recent changes in law, including effective dates, and is organized alphabetically for your convenience.

Activity Bus

SB3487 - Amends the School Code and the Illinois Vehicle Code. Allows a student in any of grades 9 through 12 (instead of a student in any grade) to be transported in a multi-function school activity bus. Makes technical corrections.

Approved by Governor 8/3/12; Effective 8/3/12; Public Act 97-0896.

Administrator Endorsement

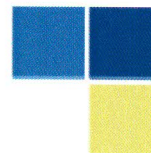
HB4993 - School Administrator Certificate Endorsement - Amends the School Code. With respect to administrative certificates, provides that a candidate (i) who has enrolled and began coursework prior to August 1, 2011 in an Illinois program approved by the State Board of Education for the preparation of administrators and (ii) who successfully completes that program prior to January 1, 2013 may apply for the general administrative endorsement until January 1, 2013 without his or her 2 years of full-time teaching or school service personnel experience having been accrued while the individual held a valid early childhood, elementary, secondary, special K through 12, special pre-school through age 21, or school service personnel certificate.

Approved by Governor 6/25/12; Effective 6/25/12; Public Act 97-0701

Alternative Teacher Certification

SB0638 - Amends the School Code. Provides that no one may be admitted to an Alternative Teacher Certification program or Alternative Route to Teacher Certification program after September 1, 2013 (instead of September 1, 2012), and those candidates who are admitted on or before September 1, 2013 (instead of September 1, 2012) must complete the program before January 1, 2015 (instead of September 1, 2013); makes related changes. Makes changes concerning the Alternative Educator Licensure Program for Teachers. With respect to certain references to public schools and school districts in provisions concerning an alternative provisional educator endorsement on an Educator License with Stipulations and a recognized institution offering the program partnering with a school district, provides that "public schools" and "school district" includes without limitation a charter school.

Approved by Governor 6/25/12; Effective 6/25/12; Public Act 97-0702.



Average Daily Attendance

SB2850 - Amends the State aid formula of the School Code. With respect to the compilation of average daily attendance, removes a provision allowing days of attendance to be less than 5 clock hours on the opening and closing of the school term, and upon the first day of pupil attendance, if preceded by a day or days utilized as an institute or teachers' workshop.

Approved by Governor 7/5/12; Effective 6/30/13; Public Act 97-0742

Autism

SB 679 - provides that if an individual has been diagnosed as having an autism spectrum disorder, meeting the diagnostic criteria in place at the time of diagnosis, and treatment is determined medically necessary, then that individual shall remain eligible for coverage under the provision concerning autism spectrum disorders even if subsequent changes to the diagnostic criteria are adopted by the American Psychiatric Association.

Public Act 97-0972, Effective January 1, 2013.

Bilingual Education

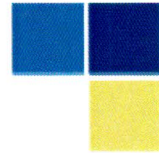
HB3819 - Transitional Bilingual Education – Provides that by no later than January 1, 2013, the Advisory Council on Bilingual Education shall submit a report to the State Superintendent of Education, the Governor, and the General Assembly addressing certain questions concerning the modification of bilingual education programs. Sets forth definitions for "parent academies" and "cultural competency program". Report must also address whether and how the bilingual parent advisory committees within school districts can be supported in order to increase the opportunities for parents to effectively express their views concerning the planning, operation, and evaluation of bilingual education programs. Further amends the Transitional Bilingual Education Article of the School Code. Provides that once established, parent advisory committees shall autonomously carry out their affairs, including the election of officers and the establishment of internal rules, guidelines, and procedures.

Approved by Governor 8/9/12; Effective 1/1/13; Public Act 97-0915

Cell Phones

SB2488 - Amends the Illinois Vehicle Code. Provides that the Section prohibiting the use of wireless telephones in school speed zones and construction or maintenance speed zones does not apply to a person using a telephone in voice-operated (instead of "voice-activated") mode or to a person using a wireless telephone by pressing a single button to initiate or terminate a voice communication. Provides that voice-operated mode includes the use of a headset.

Approved by Governor 7/20/12; Effective 1/1/13; Public Act 97-0830



Consolidation

SB2706 - School Regions Consolidation under Section 5/3A – re: educational service regions (Regional Offices of Education) -Amends the School Code. Provides that after July 1, 2015, each educational service region must contain at least 61,000 (instead of 43,000) inhabitants. Provides that before June 30, 2013, regions may be consolidated voluntarily or by joint resolution of the county boards of regions seeking to join a voluntary consolidation, effective July 1, 2015, to meet these population requirements. Provides that the boundaries of regions already meeting these population requirements on the effective date of the amendatory Act may not be changed except to consolidate with another region or a whole county portion of another region that does not meet these population requirements. Provides that if, before January 1, 2014, locally determined consolidation decisions result in more than 35 regions of population greater than 61,000 each (instead of 45 regions of population greater than 43,000 each), the State Board of Education, before June 1, 2014, shall direct further consolidation, beginning with the region of lowest population, until the number of 35 (instead of 45) regions is achieved. Removes a provision that requires, if any region does not meet the population requirements, the State Board, within 15 days, to direct such consolidation of that region with another region or regions to which it is contiguous as will result in a region conforming to the population requirements. Provides that if, within 90 days after the most recent certified federal census, a region does not meet the population requirements, then regions may be consolidated voluntarily under specified provisions of the School Code or by joint resolution of the county boards of regions seeking to join a voluntary consolidation to meet the population requirements. Provides that if locally determined consolidation decisions result in a region not meeting the population requirements or result in more than 35 regions, then the State Board shall have the authority to impose further consolidation by order of the State Superintendent of Education, with the order being a final order subject to the Administrative Review Law.

Approved by Governor 6/25/12, Effective Date 6/25/12 - Public Act 97-0703 .

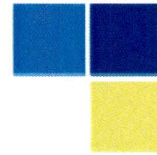
Contracts for Work

HB4029 - Amends the School Code. Restores current law with respect to the power of a school board to award contracts for work to the lowest responsible bidder. Provides that at no time shall a cause of action lie against a school board for awarding a pupil transportation contract per the standards set forth in the provisions of the School Code concerning the award of contracts to the lowest responsible bidder unless the cause of action is based on fraudulent conduct (instead of providing that at no time shall a contractor providing for the transportation of pupils execute a cause of action against a school board for accepting a bid meeting the lowest responsible bidder standard set forth in the provisions of the School Code concerning the award of contracts to the lowest responsible bidder). Removes the provisions amending the Section of the School Code concerning contracts for transportation.

Approved by Governor 8/13/12; Effective 8/13/12; Public Act 97-0951

Domestic Violence Education

HB 5689 - Creates the Eradicate Domestic Violence Task Force to develop a statewide effective and feasible prevention course for high school students designed to prevent interpersonal, adolescent



violence. One of the charges of the Task Force is to “evaluate the approximate cost per school or school district to implement and maintain school curriculum aimed at preventing domestic violence. The Illinois Association of School Boards, the Illinois Association of School Administrators, the Illinois Association of School Business Officials, and the Illinois Principals’ Association each will have representation on the Task Force.

Public Act 97-1037, Effective August 20, 2012.

Drivers Education

SB 3367 - (Garrett, D-Lake Forest) Makes significant changes regarding drivers’ education, including:

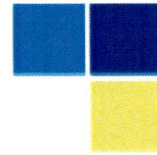
- Requires drivers’ education vehicles used by public high schools to undergo an annual safety inspection if the cars are over five years of age or have over 75,000 miles on the odometer;
- Requires school districts to post information about mandate waiver hearings on their websites, as well as posting the notice in the newspaper. If the mandate waiver requests an increase in the district’s drivers’ education fee, the amount of that increase must be included on the website and in the newspaper notice;
- Requires school districts requesting a waiver to contract with a private company to provide drivers’ education services, to provide evidence that the commercial driver training school employs instructors who hold valid teaching certificates;
- Requires the ISBE to adopt standards for drivers’ education; and requires the ISBE to annually report the approximate per capita drivers’ education cost for each school district.

Public Act 97-1025 , Effective January 1, 2013.

Graduation - Commission for High School Graduation Achievement and Success

SB3259 - Amends the School Code. Creates the Commission for High School Graduation Achievement and Success to study the issue of high school graduation in this State, with the goals of increasing educational attainment, increasing high school graduation rates, and ultimately improving the workforce in this State. Sets forth what the Commission is tasked to examine and evaluate. Includes provisions concerning Commission members, the conduct of business, administrative support, and other laws and administrative rules. Requires the Commission to submit a final report of its findings and recommendations to the Governor and the General Assembly on or before November 1, 2012. Permits the Commission to submit other reports as it deems appropriate. Provides that the Commission is abolished on November 2, 2012. Repeals these provisions on November 2, 2012.

Approved by Governor 8/8/12; Effective 8/8/12; Public Act 97-0911.



Illinois Municipal Retirement Fund

HB 4622 - Under the Illinois Municipal Retirement Fund (IMRF) statute, removes obsolete Social Security procedures, including clarifying that taxes levied for IMRF purposes can only be used for IMRF employer contributions. It extends from 90-180 days for election of an optional form of retirement benefit.

Effective 8/10/12; Public Act 97-0933.

Immunization Data

HB5013 - Amends the School Code. Provides that, on or before December 1 of each year, every public school district and registered nonpublic school shall make publicly available the immunization data they are required to submit to the State Board of Education by November 15. Provides that the immunization data made publicly available must be identical to the data the school district or school has reported to the State Board of Education.

Approved by Governor 8/8/12; Effective 1/1/13; Public Act 97-0910.

Institute Day

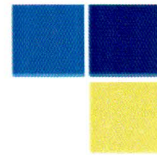
SB1578 – Teacher Institute – Support Personnel – Amends School Code. Relates to school's institute days – allows exempting educational support personnel from a Workshop if the workshop is not relevant to the work they do.

Approved by Governor 8/3/11; Effective 1/1/12; Public Act 97-0525.

Lapsed Certificate

SB3393 - Amends the Certification of Teachers Article of the School Code. Changes provisions concerning the reinstatement of a lapsed certificate by providing that lapsed certificates may be immediately reinstated upon payment by the applicant to the State Board of Education of (1) any and all back fees, including without limitation registration fees, owed from the time of expiration of the certificate until the date of reinstatement; and (2) a \$500 penalty or the demonstration of proficiency by completing 9 semester hours of coursework from a regionally accredited institution of higher education in the content area that most aligns with the educator's endorsement area or areas; provided that, until September 1, 2012, certificates that have lapsed solely for the failure to pay a registration fee may be immediately reinstated upon payment only of any and all back fees, including without limitation registration fees, owed from the time of expiration of the certificate until the date of reinstatement. Provides that any and all back fees and penalty amounts shall be deposited by the State Board of Education into the Teacher Certificate Fee Revolving Fund.

Approved by Governor 5/8/12; Effective 5/8/12; Public Act 97-0682



Local Debt Recovery

HB0384 - Local Debt Recovery Program – Law authorizes the Illinois Comptroller to enter into intergovernmental agreements with local governments, school districts, and public universities to collect debts such as unpaid school fees, and other types of outstanding local obligations. It allows the school districts to utilize a system referred to as the Comptroller's Offset Program which is used for the collection of those debts owed to a school district by persons receiving payments from the State (such as tax refunds...)

Approved by Governor 12/16/11; Effective 12/16/11; Public Act 97-0632

Math Curriculum

SB3244 - Amends School Code— originally required an additional year of math for high school students. As amended, it requires the Illinois State Board of Education (ISBE) to work with stakeholders to develop a model mathematics curriculum that must be available to school districts, though districts would not be required to implement the curriculum.

Approved by Governor 6/25/12; Effective 1/1/13; Public Act 97-0704

Open Meetings Act

HB4687 - Posting of Certain Materials Pursuant to Open Meetings Act – Amends Open Meetings Act - Requires the posted agenda to set forth the general subject matter of any resolution or ordinance that will be the subject of final action at the meeting (rather than to be sufficiently descriptive to give the public reasonable notice of the items that will be considered or will be the subject of final action at the meeting).

Approved by Governor 7/19/12; Effective 1/1/13 Public Act 97-0827

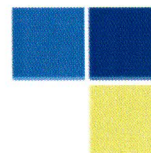
Physical Education

SB3374 - Amends the School Code. Establishes the Enhance Physical Education Task Force. Provides that the purpose of the task force is to promote and recommend (instead of implement) enhanced physical education programs that can be integrated with a broader wellness strategy and health curriculum in elementary and secondary schools in this State, including, among other strategies, identifying and seeking (instead of leveraging) local, State, and national resources to support enhanced physical education.

Approved by Governor 8/27/12; Effective 8/27/12; Public Act 97-1102

Prevailing Wage

HB 5212 - Provides that a public body may make required notifications regarding revisions in the prevailing wage rate by inserting in the written contract a stipulation that states the revised prevailing wage rates are available on the Department of Labor's website.



Public Act 97-0964, Effective January 1, 2013.

PTELL

SB 3314 - Amends the Property Tax Extension Limitation Law (PTELL). It specifies that the approximate amount of the tax extendable, as stated on the referendum question submitted to impose a new or increased limiting rate, shall be calculated by multiplying \$100,000 by (i) the percentage level of assessment prescribed for that property by statute, or by ordinance of the county board if applicable; (ii) the most recent final equalization factor certified to the county clerk by the Department of Revenue; and (iii) either the new rate or the amount by which the limiting rate is to be increased.

Public Act 97-1087, effective August 24, 2012.

Safety Education

HB5114 - School Safety Education; CPR Video - Amends the School Code with respect to safety education. Provides that the definition of "safety education" includes, for students enrolled in grades 6 through 8, instruction in cardio-pulmonary resuscitation and how to use an automated external defibrillator by watching a training video on those subjects.

Approved by Governor 6/28/12; Effective 6/28/12; Public Act 97-0714

Service Animals

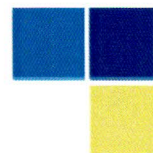
HB3826 - Amends the School Code. Permits a person accompanied by a service animal and the service animal access and use of a public place of accommodation even if the animal is not wearing a harness, backpack, or vest identifying it as a service animal; expands the definition of "service animal"; and adds to the types of disabilities that would allow a student to use a service animal in schools. Provides that "service animal" means a dog or miniature horse trained or being trained as a hearing animal, a guide animal, an assistance animal, a seizure alert animal, a mobility animal, a psychiatric service animal, an autism service animal, or an animal trained for any other physical, mental, or intellectual disability.

Public Act 97-0956, Effective August 14, 2012.

Trespass

HB0078 - Amends the Criminal Code by adding section 21-5.5, criminal trespass to a safe school zone. This crime is committed when student or employee who has been suspended, expelled or dismissed has been denied access to the safe school zone for specified period and has been given notice required under this section but disregards that notice; or when either remains on the premises when given required notice that their presence has been withdrawn – does not apply to action protected by the IELRB or the First Amendment.

Approved by Governor 8/9/12; Effective 1/1/13; Public Act 97-0547



Amendments to Juvenile Court Act of 1987 Affecting School Districts (With Information Sharing Table)

HB5602 - Amends School Code and Juvenile Court Act of 1987. Details what information furnished to appropriate school officials shall concern. If designated law enforcement and school officials deem it to be in the best interest of minor, student may be referred to in-school or community based social services if services available. "Rehabilitation services" may include interventions by school support personnel, evaluation for eligibility for special education, referrals to certain community-based agencies, and other interventions as deemed appropriate for the student. Adds definition of "investigation." Table of Information Sharing provisions on the following page.

Approved by Governor 8/27/12; Effective 1/1/13; Public Act 97-1104

Case Law Update

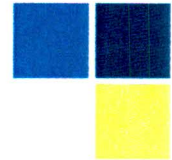
District's Duty of Care- Making Recommendations

Jane Doe-3 v. McLean County Unit Dist. No. 5 Bd. of Directors, 2012 IL 112479

Facts

Plaintiffs are parents of minor female elementary school students who reported sexual abuse by a teacher. The parents brought action against officials from school district in which teacher **had previously taught**, alleging willful and wanton conduct in allegedly providing false information to district where teacher was employed at time of sexual abuse in question. Supreme Court remanded for jury to determine whether school district breached a duty to the students, and if the district's act of providing false information was willful and wanton conduct.

- Jon White was an elementary teacher at McLean County Unit from 2002-2005.
- Plaintiffs allege that McLean became aware that White had acted inappropriately with minor female students and may have committed sexual abuse or sexual harassment in some form. Further allegations include that White was disciplined twice for this behavior, but it was never recorded in his personnel file and no mandatory sexual abuse report was filed. White was suspended from classroom duty and in 2005 McLean entered into a severance agreement terminating his employment before the end of the 2004-05 school year.
- When McLean was asked to submit a verification of employment form and recommendation letter to Thomas Paine Elementary School (Paine) in Urbana School District No. 116 (Urbana) on White's behalf, McLean indicated that White was employed for the entire school year, giving no indication of a suspension or the early termination. McLean did not indicate that White had ever been reprimanded for allegations of sexual abuse and made no indication that such allegations were ever made.
- Urbana hired White and he started teaching during the 2005-06 school year. Female students, at Paine, reported that they were sexually abused by White.



“...McLean administrators were well aware of multiple instances of White's sexual grooming and abuse of his students. In light of defendants' awareness of White's conduct and their false statements on the employment form, we cannot say, as a matter of law, that the injuries suffered by plaintiffs were unforeseeable.” *Jane Doe-3 v. McLean County Unit Dist. No. 5 Bd. of Directors*, 2012 IL 112479

Holdings

- Officials from first district owed duty of care to the sexually abused students to provide accurate information to second district if, as alleged, officials provided second district an employment verification form falsely stating that teacher had worked entire school year, when he had been removed from classroom twice after reports of sexual abuse or harassment, and his employment had ended before end of school year; and
- Public employee's statutory immunity from liability for negligent misrepresentation does not extend to willful and wanton conduct.

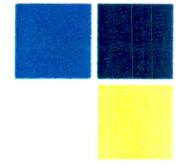
Communication with Superintendent and the ADA

Ekstrand v. Sch. Dist. of Somerset, 683 F.3d 826 (7th Cir. 2012)

Facts

Elementary school teacher who suffered from seasonal affective disorder brought action against school district under Americans with Disabilities Act (ADA) alleging the district failed to provide her with a reasonable accommodation and constructively discharging her when she became disabled. Specifically, the school district failed to move the plaintiff to a room with a window to accommodate her seasonal affective disorder. Jury decided in favor of Plaintiff. The Court denied the District's motion for Judgment as a Matter of Law (arguing that a reasonable jury would not have been able to decide the facts in favor of the Plaintiff.) The District appealed. The Court of Appeals decided that a reasonable jury could have found in favor of the plaintiff.

- Ekstrand taught kindergarten at Somerset Elementary School from 2000 to 2005. In the spring of 2005, she asked to be reassigned to teach a first-grade class, and the school agreed. She was relocated to a first-grade classroom with no exterior windows in a busy, loud area of the school. Ekstrand then requested a change of classroom, the principal denied her requests to switch rooms.
- In the fall of 2005, after the school year began, Ekstrand began to experience symptoms of seasonal affective disorder, a form of depression. Both her psychologist and primary care physician recommended that she take a leave of absence (three months) due to illness. The following winter, her doctor wrote to the school district to advise that Ekstrand would be unable to return to teach for the remainder of the 2005–06 school term. That leave of absence was then later extended to include the 2006–07 school term.
- A letter from plaintiff's psychologist, dated November 28, 2005, was delivered to the school district's office. The letter detailed the doctor's opinion that natural light was crucial to Ekstrand's recovery and that her classroom without windows had been a major cause of her condition. This letter supported plaintiff's requests for a change of class room, in which she had communicated the importance of natural light to her recovery.
- The school superintendent testified that although the doctor's November 28, 2005 letter was delivered to his office's business manager, **he never saw it** until he became aware of the lawsuit much later in 2006.



- Ekstrand won her case, in a jury trial and the school district appeals the denial of its Rule 50(b) motion.

Question

Considered by the Court: Whether there was sufficient evidence for a jury to find that Ekstrand was a qualified individual with a disability under the ADA, and whether there was sufficient evidence for a jury to find that the school district knew of that disability within the relevant time period.

Conclusion

The Court pointed out that there are several conclusions that reasonable jurors may have drawn given the evidence in this case: they may have credited Ekstrand's own testimony over the superintendent's on key issues; they may have found Dr. Erickson convincing when he testified that Ekstrand could have returned to her teaching duties between October and December provided she had a classroom with natural light; and **they may have decided not to credit the superintendent's testimony that he was late in reading Dr. Erickson's letter regarding the importance of natural light to Ekstrand's recovery**...these determinations could lead a reasonable jury to conclude that Ekstrand was a qualified individual with a disability in October through early December and that the school district knew about it, but failed to accommodate her with a new classroom.

Holding

The Court of Appeals held that jury questions were presented as to whether teacher was a qualified individual with a disability, and whether school district was aware of her disability.

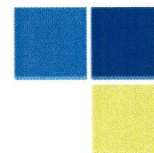
Graduation Venue- Establishment Clause of the First Amendment

Doe ex rel. Doe v. Elmbrook Sch. Dist., 687 F.3d 840 (7th Cir. 2012)

Facts

Former and current students, and their parents, proceeding anonymously, brought action against school district, alleging that the district's practice of holding high school graduation ceremonies and related events at a Christian church rented by the district for the occasion violated the Establishment Clause of the First Amendment. Appellate court reversed the district court's grant of summary judgment for the District, and reversed the district court's denial of summary judgment in favor of the Plaintiffs, and remanded to the district court for further proceedings.

- The District is a municipal public school district centered around Brookfield, Wisconsin, a suburb to the west of Milwaukee. Its two major high schools are Brookfield Central and Brookfield East. For part of the last decade or so, Central and East have held their high school graduation ceremonies in the main sanctuary of Elmbrook Church, a local Christian evangelical and non-denominational religious institution.
- Student officers at Central high school believed that the school's gymnasium—the previous venue—was too hot, cramped and uncomfortable. So the Church was chosen as a better alternative.
- Prior to 2006, students chose from several graduation venues by voting. In 2006, the principals of East and Central determined that holding a vote for the 2007 graduation venue would be pointless and simply selected the Church after it was recommended to them by the senior class officers of the two schools.



Holding

The Court of Appeals held that jury questions were presented as to whether teacher was a qualified individual with a disability, and whether school district was aware of her disability.

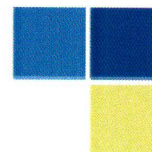
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- Student officers at Central high school believed that the school's gymnasium—the previous venue—was too hot, cramped and uncomfortable. So the Church was chosen as a better alternative.
- Prior to 2006, students chose from several graduation venues by voting. In 2006, the principals of East and Central determined that holding a vote for the 2007 graduation venue would be pointless and simply selected the Church after it was recommended to them by the senior class officers of the two schools.
- The District paid standard rental rate for use of the church.
- The atmosphere of the Church, both inside and outside the sanctuary, is indisputably and emphatically Christian. Crosses and other religious symbols abound on the Church grounds and the exterior of the Church building, and visitors encounter these symbols as they drive to the parking lot and walk into the building. The lobby contains tables and stations filled with evangelical literature.
- After the first graduation, the Church refused the Superintendent's requests to veil the cross, in keeping with a general Church policy against covering its permanent religious displays.
- In regard to use of the Church, complaints arose soon after the practice began, with the District receiving complaints from parents, the Freedom from Religion Foundation and the American Civil Liberties Union ("ACLU") of Wisconsin, The Anti-Defamation League, and Americans United for Separation of Church and State ("Americans United").



- In 2010, Central and East moved their graduation ceremonies to the District's newly completed field house. Additionally, in July 2009, Principal LaBonte declared his intention to move Central's 2010 honors night to its newly renovated gymnasium; in supplemental briefing before us, the District represented that the promised move had occurred. The District nonetheless refused to state that it would never again hold a graduation in Elmbrook Church.

Question Considered by the Court

Under the *Lemon* test, a governmental practice violates the Establishment Clause if it:

- Lacks a legitimate secular purpose;
- Has the primary effect of advancing or inhibiting religion; or
- Fosters an excessive entanglement with religion.

Two other approaches by which an Establishment Clause violation can be detected:

1. Under *Lemon*'s "primary effect" prong, "[w]hat is crucial is that a government practice not have the effect of communicating a message of government endorsement or disapproval of religion."-- under this test, we must "assess the totality of the circumstances surrounding the display to determine whether a reasonable person would believe that the display amounts to an endorsement of religion."
2. The coercion test —seeks to determine whether the state has applied coercive pressure on an individual to support or participate in religion.

Conclusion

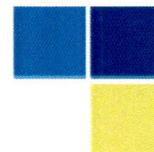
Conducting a public school graduation ceremony in a church, that among other things featured staffed information booths with religious literature and banners with appeals for children to join "school ministries," runs afoul of the First Amendment's Establishment Clause as applied to the states via the Fourteenth Amendment's Due Process Clause.

Reasoning

"...the Supreme Court requires us to examine the context in which government interacts with a religious organization. Here, the involvement of minors, the significance of the graduation ceremony, and the conditions of extensive proselytization prove too much for the District's actions to withstand the strictures of the Establishment Clause." *Doe ex rel. Doe v. Elmbrook Sch. Dist.*, 687 F.3d 840, 843 (7th Cir. 2012). The court did not consider the vast number of possible scenarios that could have made the District's practice constitutional; such as if the sanctuary were the only meeting place left after a natural disaster.

Holding

The District's practice violated the Establishment Clause by conveying message of religious endorsement that carried with it an aspect of coercion.



No Privacy Right for Emails on District Owned Property

Dombrowski v. Governor Mifflin Sch. Dist., CIV.A. 11-1278, 2012 WL 2501017 (E.D. Pa. June 29, 2012)

Facts

Plaintiff, was employed as the Assistant Director of Technology and eventually the Director of Technology for the Governor Mifflin School District ("GMSD"). Plaintiff brought four claims against GMSD including retaliation in violation of Title VII, a hostile work environment claim, claims for violation of federal and state rights to privacy, and a claim for violations of due process. GMSD moved to dismiss all of Plaintiff's claims except for a portion of the retaliation claim. Our analysis focuses on the privacy count, which was dismissed with prejudice.

- Plaintiff was deposed to testify another employee's lawsuit against GMSD.
- Plaintiff claims that GMSD violated her right to privacy when
 - it ordered an outside forensic investigator to search Plaintiff's work computer (which Plaintiff had turned over when she was suspended);
 - the forensic investigator produced Plaintiff's personal e-mails (including e-mails between Plaintiff and her attorney) which were found on her computer and a network server; and
 - it introduced many of the produced e-mails into evidence during Plaintiff's Loudermill and public School Board hearings.

Question Considered by the Court

Whether Plaintiff has a reasonable expectation of privacy in e-mails (including e-mails between Plaintiff and her counsel) that could be accessed by the forensic investigator solely by searching property owned by GMSD.

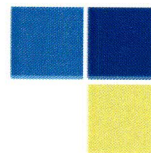
Conclusion

The court determined under the relevant critical factors, Plaintiff did not have a sufficient, reasonable expectation of privacy in the subject material to claim a violation of the right to privacy under federal law.

Reasoning

Four critical factors that a court should consider with respect to an employee's expectation of privacy in computer files and e-mail:

1. [D]oes the corporation maintain a policy banning personal or other objectionable use,
2. does the company monitor the use of the employee's computer or e-mail,



3. do third parties have a right of access to the computer or e-mails, and
4. did the corporation notify the employee, or was the employee aware, of the use and monitoring policies?

“...under the relevant factors, (1) GMSD had a privacy policy as set forth in the Technology Policy; (2) GMSD's privacy policy specifically contemplated the monitoring of employees' GMSD-owned computers and e-mail; (3) under the privacy policy GMSD had a right of access to employees' computers, including e-mail that could be found on the computers; and (4) Plaintiff was aware of the policy.” *Dombrowski v. Governor Mifflin Sch. Dist.*, CIV.A. 11-1278, 2012 WL 2501017 (E.D. Pa. June 29, 2012).

Search and Seizure

“...there is no credible allegation that GMSD searched or seized anything owned by Plaintiff (or even “personal” to her in a more general sense such that there could be an expectation of privacy (e.g., a personal, non-work e-mail account)), Plaintiff fails to allege that GMSD searched or seized anything that did not already belong to it.” *Id.*

Holding

Claims regarding privacy were dismissed with prejudice.