

McGown & Markling Co.

A LEGAL PROFESSIONAL ASSOCIATION

Serving Ohio Schools

McGown & Markling Co., L.P.A.
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Akron, Ohio 44333
Telephone 330.670.0005
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www.mcgownmarkling.com

SCHOOL LAW NEWSLETTER

\$50,000 Sexual Harassment and Negligent Retention Claim Affirmed

In *Southerland v. Sycamore Community School Dist. Bd. of Edn.* (Dec. 17, 2004), 2004 U.S. App. LEXIS 26619, the United States Court of Appeals for the Sixth Circuit affirmed a jury verdict against a school board in the amount of \$50,000 for failing to adequately respond to an employee's report of sexual harassment ranging from sexual comments and glances to stalking. According to the opinion, the school district responded to these allegations through a series of verbal and written reprimands. The harassing employee subsequently resigned in the middle of a due process hearing.

This case serves as a reminder that school districts must demonstrate that the response to reports of sexual harassment are proportionate to the allegations. As additional reports are made, new types of remedies must be considered - obviously the prior discipline approach did not remedy the harassment if another substantiated report is being made.

While school districts are not required to provide in-service training in response to instances of sexual harassment, that may be an appropriate response in some situations.

For additional information on how to respond to instances of sexual harassment, please feel free to contact a McGown & Markling Co., L.P.A. school attorney.



Registration for the School Law Seminar is limited to the Cleveland, Ohio location at this time. Registration material can be found on [Pages 4-5](#). If you would like a school attorney to present to your organization, please contact us at info@mcgownmarkling.com.

Man Jailed for Meeting Disruption

In *City of Columbus v. Doyle* (Dec. 14, 2004), 2004-Ohio-6731, the Ohio Tenth District Court of Appeals affirmed a trial court's decision to sentence Jerry L. Doyle, a regular school board meeting attendee, to 90 days in jail for obstructing official business and disturbing a lawful meeting. The school district allows public comments at two points during a meeting. Comments on agenda items can be made at the "agenda item" portion of the meeting. Comments on non-agenda items can be made at the "non-agenda" items portion of the meeting. Mr. Doyle decided to use his time to complain about the fact that he could not talk about non-agenda items in the "agenda item" section of the meeting. When Mr. Doyle was told he would need to register that complaint during the "non-agenda" items portion of the meeting, he refused to leave the podium and forced the school board to adjourn the meeting without completing the scheduled agenda. This case serves as a reminder that school boards do, in fact, have the authority to control their own meetings.

Please route this newsletter to:

- Principals
- Pupil Services
- Special Education
- Board Members
- Other Administrators



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Volume II, Issue I January 2005



The IEP Team must Consider Everything

School members on IEP teams are again reminded that every parental idea must be considered by the IEP team no matter how absurd the proposal may be. If parents want their child placed in a bowling camp to increase math skills, consider it. Ask who, what, when, where, why, and how questions. There simply can be no evidence of predetermination on the part of the school members.

School members are again warned that a regular education teacher of the disabled child must be present at every IEP meeting. Beware of the parental waiver. No such waiver exists in the IDEA.

What is the minimum FAPE standard? The IDEA requires that an IEP confer a meaningful education benefit gauged in relation to the potential of the child at issue.

These friendly reminders come courtesy of the United States Court of Appeals for the Sixth Circuit in *Deal v. Hamilton County Bd. of Edn.* (C.A.6 Dec. 16, 2004), 392 F.3d 840.

For information on our "Bringing the New IDEA Directly to You!" In-Service, please refer to [Page 6](#).

[More Legal Briefs on Pages 2 and 3](#)

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The Ohio Supreme Court has announced that it will clarify “[w]hether an abuse of discretion standard of review applies in the context of an appellate review of a trial court’s decision to determine whether a public school district board of education has satisfied the statutory requirements of R.C. 3319.111 in non-renewing an employee’s limited teaching contract.” Stay tuned!



More Legal Briefs

In *Board of Edn. of North Olmsted City School Dist. v. Board of Edn. of the Cleveland Mun. School Dist.* (Dec. 2, 2004), 2004-Ohio-6422, the county auditor improperly assessed property taxes due the North Olmstead City School District to the Cleveland Municipal School District. Nonetheless, the Ohio Eighth District Court of Appeals found that North Olmstead was not entitled to recover those tax dollars on a theory of unjust enrichment because the amount improperly collected by the county auditor was based upon a Cleveland tax levy - not a North Olmstead levy.

In *Ratini v. Windham Exempted Village School Dist. Bd. of Edn.* (Dec. 10, 2004), 2004-Ohio-6697, a teacher was terminated for “just cause” for having a loaded gun in his unlocked vehicle which was parked in the school parking lot. The employee filed an administrative appeal and a breach of contract claim. The trial court magistrate recommended that both actions be dismissed. No objection to the magistrate’s report was made by the employee. The trial court judge adopted the magistrate’s recommendation. On appeal, the Ohio Eleventh District Court of Appeals affirmed the trial court’s decision because (1) no appeal was made the magistrate’s report and (2) the administrative appeal process is the exclusive remedy available for breach of employment contract claims based upon alleged improper terminations.

In *Cohen v. Toledo Pub. Schools* (Dec. 17, 2004), 2004-Ohio-6889, the Ohio Sixth District Court of Appeals held that employment as a substitute teachers carries no guarantee of full-time or daily assignments. As a result, the substitute was not eligible for either total or partial unemployment benefits during the summer break between school years.

In *Grine v. Sylvania Schools Bd. of Edn.* (Dec. 17, 2004), 2004-Ohio-6904, the Ohio Sixth District Court of Appeals held that providing a written notice of an intent to suspend must be provided before the informal hearing itself. The Sixth District further held that IDEA administrative remedies must be exhausted before IDEA suspension issues may be heard by a court. Ohio’s two-tier IDEA administrative remedy process was found to not be futile.

In *In re Whittekind* (Dec. 17, 2004), 2004-Ohio-7282, the Ohio Fourth District Court of Appeals held that a student cannot be found to be chronically truant when the student’s parent refuses to allow the student to attend school. A parent’s refusal to allow his/her child to attend school provides the student with a legitimate excuse for being absent.

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SCHOOL LAW NEWSLETTER

More Legal Briefs

In *Massillon City School Dist. Bd. of Edn. v. City of Massillon* (Dec. 17, 2004), 2004-Ohio-6775, the Ohio Supreme Court held that the date a municipal corporation formally approves an enterprise zone agreement is the date on which the exemption effectively commences for the limited purpose of determining when a construction worker becomes a "new employee" under R.C. 5709.82(A)(1)(a).

In *Oak Hills Edn. Assn. v. State Empl. Relations Bd.* (Dec. 17, 2004), 2004-Ohio-6843, the Ohio First District Court of Appeals held that, because the collective bargaining agreement contained no midterm bargaining language, the school board could not force the union to engage in midterm bargaining over the school board's decision to provide a tuition-reimbursement plan. The current agreement contained absolutely no reference to tuition-reimbursement plans and, apparently, the union did not want \$1,200 per teacher.

In his December 20, 2004 opinion, 2004 Ohio Atty.Gen.Ops. No. 2004-049, Ohio Attorney General Jim Petro opined that an assistant county prosecuting attorney is prohibited from serving as a member of a city school district board of education.

In *Coleman v. East Cleveland City School Dist. Bd. of Edn.* (Dec. 23, 2004), 2004-Ohio-7019, the Ohio Eighth District Court of Appeals held that the employee was sufficiently provided written notice of her nonrenewal when that notice was (1) sent to her home via certified mail, (2) sent to her home via regular mail, and (3) hand delivered to the employee's spouse at the employee's residence.

In *Riser v. Ohio Dept. of Edn.* (Jan. 3, 2005), 2005-Ohio-175, the Ohio Court of Claims held that an employment relationship between a community school governing board member/superintendent and the Ohio Department of Education does not exist by virtue of a community school contract between the ODE and the community school itself.

In *Aycox v. Columbus Bd. of Edn.* (Jan. 11, 2005), 2005-Ohio-69, the Ohio Tenth District Court of Appeals affirmed the decision to dismiss a retaliation claim against the school district. The applicant alleged that the school district did not hire him because he assisted a former employee in filing an EEOC complaint over one year before the applicant applied for the position in question. The applicant alleged that the interviewer asked, "Weren't you the fellow that represented Bertha Bradley?" The school district denied any discriminatory intent in refusing to offer the position to the applicant. The Tenth District found that, in the absence any other compelling evidence of discriminatory intent, the significant lapse of time (more than one year) between the filing of the EEOC complaint and the hiring decision, negates any inference of discrimination.

In *Woodside v. Anchor Bay School Dist.* (C.A.6 Jan. 24, 2005), 2005 U.S. App. LEXIS 1127, the United States Court of Appeals for the Sixth Circuit held that a Michigan resident did not have a property interest in the Michigan school district's alternative education programs because participation in the program is entirely at the discretion of the district superintendent, and continues only so long as the participants abide by the program's rules and policies.

To request a free copy of an entire decision, please e-mail us at info@mcgownmarkling.com.

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School Law Seminar

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Winter 2005 Series

Remaining Available Date

Friday, January 28, 2005: Cleveland, Ohio

Registration

8:00 a.m. to 8:30 a.m.

Breakout Session 1 A: **Public Records and Public Meetings**

8:30 a.m. to 10:00 a.m.

Breakout Session 1 B: **IEP, Graduation, Transition Services, ESY**

8:30 a.m. to 10:00 a.m.

Breakout Session 2 A: **Employee Evaluation, Termination, and Renewal**

10:00 a.m. to 11:30 a.m.

Breakout Session 2 B: **Liability Insurance and Statutory Immunity Issues**

10:00 a.m. to 11:30 a.m.

IDEA Reauthorization Session

11:30 a.m. to 12:30 p.m.

Spring 2005 Series

Remaining Available Date

Friday, April 8, 2005: Cleveland, Ohio

Registration

8:00 a.m. to 8:30 a.m.

Breakout Session 1 A: **Student Discipline, Policies and Handbooks**

8:30 a.m. to 10:00 a.m.

Breakout Session 1 B: **Athletic Eligibility and Participation Issues**

8:30 a.m. to 10:00 a.m.

Breakout Session 2 A: **Employee Discipline**

10:00 a.m. to 11:30 a.m.

Breakout Session 2 B: **Residency, Custody and Divorce Issues**

10:00 a.m. to 11:30 a.m.

IDEA Reauthorization Session

11:30 a.m. to 12:30 p.m.

Summer 2005 Series

Remaining Available Date

Friday, June 3, 2005: Cleveland, Ohio

Registration

8:00 a.m. to 8:30 a.m.

Breakout Session 1 A: **Preparing for the Due Process Hearing**

8:30 a.m. to 10:00 a.m.

Breakout Session 1 B: **Hazing and Abuse of Students**

8:30 a.m. to 10:00 a.m.

Breakout Session 2 A: **FERPA, HIPAA and the IDEA**

10:00 a.m. to 11:30 a.m.

Breakout Session 2 B: **FMLA, FLSA, and other Labor Laws**

10:00 a.m. to 11:30 a.m.

IDEA Reauthorization Session

11:30 a.m. to 12:30 p.m.

Fall 2005 Series

Remaining Available Date

Friday, August 19, 2005: Cleveland, Ohio

Registration

8:00 a.m. to 8:30 a.m.

Breakout Session 1 A: **The New IDEA - Part One**

8:30 a.m. to 10:00 a.m.

Breakout Session 1 B: **Student Discipline, Policies and Handbooks**

8:30 a.m. to 10:00 a.m.

Breakout Session 2 A: **The New IDEA - Part Two**

10:00 a.m. to 11:30 a.m.

Breakout Session 2 B: **Residency, Custody and Divorce Issues**

10:00 a.m. to 11:30 a.m.

Question and Answer Session

11:30 a.m. to 12:30 p.m.

REGISTRATION INFORMATION ON THE NEXT PAGE

School Law Seminar



Seminar Fees

\$100 per series for single school registrant only
\$ 90 per series for two or more school registrants
\$350 for all four series for single school registrant only
\$325 for all four series for two or more school registrants

For One Graduate Credit for All 4 Sessions, Add an Additional \$347.68
For One CEU Credit per Session, Add an Additional \$150 per Session Attended

Registration Methods

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Remaining Open Seminar Location

Cleveland: The Holiday Inn Independence, 6001 Rockside Road, Independence, Ohio 44131

Names of Attendees

1. Name: _____ Title: _____
E-mail: _____ Session(s): _____
2. Name: _____ Title: _____
E-mail: _____ Session(s): _____
3. Name: _____ Title: _____
E-mail: _____ Session(s): _____

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**Bring the New
IDEA
Directly to You!**

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TODAY, December 3, 2004, President George W. Bush signed the Individuals with Disabilities Education Improvement Act. The new IDEA imposes different responsibilities upon educators - like you - in the provision of special education and related services to children with disabilities.

Learn about the new IDEA from Susan McGown, attorney with the school law firm of McGown & Markling Co., L.P.A. Susan will provide you with valuable real-life situations and applications that will assist you throughout your own school district.

When: You decide.

Time: You decide.

Location: Your own school district.

Your ENTIRE school district can attend for ONE registration price per location - no matter how many people are in the room - of \$950.

Registration includes:

- Access to the 4 hour seminar for as many people as you can fit in a room
- Specially prepared presentation handouts made available 48 hours in advance
- Q&A throughout the presentation

To register simply call 330.670.0005 or send an e-mail to registration@mcgownmarkling.com and arrange a mutually convenient time and location.

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