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Serving Ohio Schools

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SCHOOL LAW NEWSLETTER

An Alert on the Duty to Report Child Abuse & Neglect - Matthew John Markling

The Ohio Supreme Court has ruled a school board may be held liable when its failure to report the sexual abuse of a minor student by a teacher proximately results in the sexual abuse of another minor by the same teacher. *Yates v. Mansfield Bd. of Edn.*, 2004-Ohio-2491.

Ohio law mandates that school districts provide in-service training in child abuse prevention. R.C. 3319.073; Ohio Adm. Code 3301-57-01(A). The Ohio Department of Education may even reimburse school districts the cost of such training. Ohio Adm. Code 3301-57-01(C).

The school law firm of McGown & Markling Co., L.P.A. is available to meet your child abuse in-service training needs.



To request your free copy of our 2004 Duty to Report Child Abuse & Neglect Material and/or May 2004 School Law Newsletter, please e-mail us at info@mcgownmarkling.com.

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Please route this newsletter to:

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

A Note on Workers' Compensation and Third Party Administrators - Sean P. Ruffin

In May of 2004, the *Board of Commissioners on the Unauthorized Practice of Law of The Supreme Court of Ohio* found that the actions of third party administrators or service companies for workers' compensation plans constituted the unauthorized practice of law. Specifically, TPAs, as they are often called, administer school district workers' compensation programs and, in doing so, appear before the Industrial Commission of Ohio. Hearings before the Commission are quasi-judicial and require cross-examination, preparation and filing of legal instruments, as well as legal counsel and representation. The Board found that these actions taken by TPAs was unlawful. The matter is currently on appeal to the Ohio Supreme Court.

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May 2004 Ohio School Case Briefs

In *Skilton v. Perry Local School Dist. Bd. of Edn.*, 2004-Ohio-2239, a teacher went on an unpaid medical leave of absence a couple of months into her one-year contract. R.C. 3319.111 requires school boards to conduct a minimum of two evaluations before non-renewing an employment contract. The school board was unable to conduct two evaluations of the teacher because she was on an approved leave. Nonetheless, the Ohio Supreme Court found that a teacher's medical leave of absence does not excuse a school board from complying with the two evaluation mandate of R.C. 3319.111.

In *Farhat v. Jopke*, 2004 U.S. App. LEXIS 10511 (C.A.6, May 28, 2004), a custodian with a lengthy history of threatening, intimidating, and disruptive behavior was given the option of attending an anger management course, plus a 10-day suspension without pay, or 15 days without pay if he did not attend the anger management course. The custodian was also instructed not to speak to other employees during his suspension. In response, the custodian provided the district with a "letter filled with vituperative remarks" about district officials. The custodian was subsequently terminated as a result of his remarks. The United States Circuit Court for the Sixth Circuit held that the custodian's speech was not a matter of "public concern" and, in the alternative, that "the disruptiveness of his speech in the workplace outweighed any value his expression might have had." The Sixth Circuit also held that the "gag order" was reasonable in light of the district's interest in protecting the workplace.

[More Briefs on Page 2](#)

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In *Wolf v. East Liverpool School Dist. Bd. of Edn.*, 2004-Ohio-2479, the Seventh District Court of Appeals held that the written notice requirement of Sunshine Law may be waived by actual notice when a board member had actual notice of a board meeting but was not provided written notice of the same meeting. The appellate court further held that a school board has discretion in determining what constitutes an "emergency" for the purposes of calling an emergency meeting.

In *State ex rel. MARCA Edn. Assn., OEA/NEA v. State Emp. Relations Bd.*, 2004-Ohio-2647, a collective bargaining agreement provided for mediation in lieu of the statutory dispute resolution procedures set forth in R.C. 4117.14. During the negotiation of a successor agreement, the parties pursued mediation. Part of that agreement provided that the mediator would continue to act in such a capacity and mediation would continue until one or both parties decided otherwise. The Employer made its final offer, ended mediation, and refused further negotiation. The Tenth District Court of Appeals affirmed the State Employment Relations Board's finding of no probable cause.

In *Uebel v. Board of Edn. of the Edgewood City School Dist.*, 2004-Ohio-2487, a treasurer's employment contract was terminated for just cause because her job performance was not satisfactory. The treasurer was subsequently replaced by a younger person. The treasurer asserted an age discrimination claim against the school board. The Twelfth District Court of Appeals held that the treasurer could not establish a prima facie case of age discrimination because there was no evidence that the treasurer was replaced by "a person of substantially younger age."

In *Hicks v. Floyd Cty. Bd. of Edn.*, 2004 U.S. App. LEXIS 9692 (C.A.6, May 14, 2004), a male special education teacher was terminated for providing students with unauthorized accommodations and answers to test questions. The teacher alleged that he was discriminated against based upon his gender because he, unlike similarly situated women, was consistently denied opportunities for teaching materials. The unemployment insurance commission agreed with the male teacher. A federal jury did not. The male teacher appealed the jury's decision based upon the fact that the trial judge refused to allow the teacher to submit the commission's finding to the jury. The United States Court of Appeals for the Sixth Circuit affirmed the trial judge's decision to exclude the commission's finding as irrelevant to whether the school board discriminated against the teacher based upon his gender.

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