

SCHOOL LAW NEWSLETTER

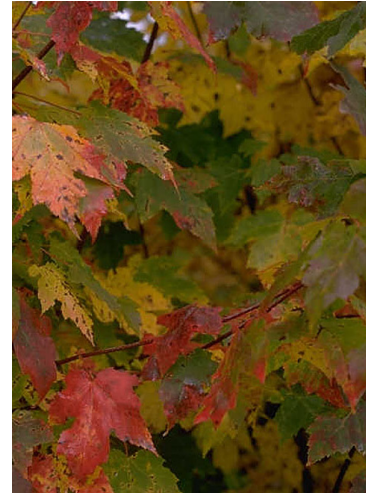
Ohio Supreme Court Split on Levy-Decrease Challenges

In *State ex rel. Choices for South-Western City Schools v. Anthony* (Oct. 10, 2005), 2005-Ohio-5362, voters approved a May 2005, 9.7 mil levy for current operating expenses and for improvements. In August 2005, a political action committee submitted a petition for a levy decrease to the board of elections requesting an election to be held on the question of **decreasing** the levy to **0.00 mills**. While the Ohio Supreme Court found that the political action committee complied with the timing requirements of R.C. 5705.261 and that their claims for extraordinary relief (the reinstatement of the ballot issue) were not barred by the doctrine of laches, the Court nonetheless held that R.C. 5705.261 does not permit **repeals** of levies and stated that “the ordinary definition of ‘decrease’ does not include a complete rescission of the levy.” Accordingly, the Court upheld the decision of the board of elections to remove the issue from the ballot.

In *Mason City School Dist. v. Warren Cty. Bd. of Elections* (Oct. 10, 2005), 2005-Ohio-5363, voters approved a May 2005, 9.94 mills, continuing operating levy. On May 24, 2005, the Citizens for Accountability and Results in Education (“CARE”) submitted a petition for a levy decrease to the board of elections requesting an election to be held on the question of decreasing the levy 2 mills. On August 22, 2004, and within the statutory timeframe, the School District submitted its protest. The Ohio Supreme Court nonetheless found that the School District’s protest was barred by the doctrine of laches because the School District should have acted sooner. The Court further found the protest to be deficient because it did not specify which specific signatures were being challenged. **GOOD NEWS:** The Mason City voters ultimately rejected all levy decreases on the November 8, 2005 ballot!

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“Thanksgiving, after all,
is a word of action.”

W.J. Cameron

Sleepy Student Sues

In *Slone v. University of Cincinnati* (Oct. 13, 2005), 2005-Ohio-560, a college student alleged that the university was responsible for the injuries he sustained when his fellow student fell asleep while driving home from a mandatory, out-of-state seminar. The student argued that the long hours spent study and working toward graduation deprived the fellow student driver of sleep and rendered him unsafe to drive. In dismissing the lawsuit, the Ohio Court of Claims pointed out that the university merely required the student’s attendance - the university did not prescribe the mode of travel.

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The Road To San Antonio!

Matthew John Markling will be presenting on *Getting the Most From Legal Counsel* at the November 14-16, 2005 AGRiP Governance and Leadership Conference in San Antonio, Texas.

For more information about Mr. Markling or any of our school law attorneys, please visit us at www.servingohioschools.com.

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“In spite of the seven thousand books of expert advice, the right way to discipline a child is still a mystery to most fathers and ... mothers. Only your grandmother and Ghengis Khan know how to do it.”

Billy Cosby



More Legal Briefs

In *Stancourt v. Worthington City School Dist. Bd. of Edn.* (Oct. 27, 2005), 2005-Ohio-5702, a student received special education and related services through a school district. During the student's sixth grade year, a dispute arose between the parents and the district over the student's IEP. Ultimately, the parents filed a due process action alleging that the district unilaterally changed the IEP and failed to comply with the requisite procedural safeguards when it implemented an addendum to the sixth grade IEP. The addendum apparently removed several of the goals relating to social skills from the IEP. During the course of preparing for the due process hearing, the parents repeatedly refused to release the student's medical and mental health records. As a result, the IHO dismissed the matter with prejudice. An appeal to the SLRO and the court of common pleas reversed this decision and directed the IHO to proceed with a hearing and ordered the parents to disclose the records. Although the IHO had the authority to dismiss a matter with prejudice, the appellate court found that result too draconian under the facts of this case. Regarding whether “stay put” applied to the IEP with the addendum, the court of appeals found that the lower court erred in finding that “stay put” did apply and that the implementation of the addendum was proper. The appellate court held that the IHO was required to determine whether the change reflected in the addendum implicated a detrimental change in the elements of the student's education program or whether it fundamentally changed or eliminated a basic element of the student's program before determining any “stay put” issues.

In *Herbick v. Salem City School Dist. Bd. of Edn.* (C.A.6, Oct. 25, 2005), 2005 U.S. App. LEXIS 23286, the United States Court of Appeals for the Sixth Circuit held that the school district did not discriminate against a former, part-time teacher by not awarding the teacher a full-time position which the teacher never applied for and, in fact, did not want.

In *Cincinnati School Dist. v. Board of Edn. of the State of Ohio* (C.A.6, Oct. 17, 2005), 2005 U.S. App. LEXIS 22497, the United States Court of Appeals for the Sixth Circuit affirmed the district court's dismissal of a school district territory challenge in federal court for want of ripeness. The Sixth Circuit agreed with the district court's conclusion that it was impossible to quantify the likelihood that the territory transfer would ever take place - as there are multiple steps at which the transfer could be rejected. And, in fact, after the case was dismissed, the State Board denied the petition for transfer.

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