

# SCHOOL LAW NEWSLETTER

## It's the End of the World As We Know It!

There are some cases we just cannot make up. Here is one of them. In the case of *Painesville City Local Schools Bd. of Edn. v. Ohio Assn. of Pub. School Employees* (July 14, 2006), 2006-Ohio-3645, Crow, a bus driver, was terminated following an altercation between herself and Zagar, another bus driver. Upset with the bus route assigned to Zagar and the manner in which Zagar secured the assignment, Crow proceeded to hail and board the bus driven by Zagar as it pulled into the Transportation lot. Crow then proceeded to confront Zagar in a verbally abusive and belligerent manner. On the next day, Crow continued the confrontation with Zagar and even pushed/bumped into the supervisors who attempted to intervene. Crow then proceeded to follow Zagar home and both verbally and physically assaulted Zagar while stopped at a traffic signal.

A perfect example of "just cause," correct? If you answered, "yes," you are indeed eating crow - bad pun intended.

An arbitrator found in favor of Crow and ordered reinstatement because, while Crow's conduct could have amounted to just cause, the failure to (1) supervise Crow every three years and (2) make a police report constituted mitigating circumstances. Both the trial and appellate courts refused to vacate the arbitrator's decision as it drew its essence from the collective bargaining agreement.

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**EHOESC Honors  
Matthew John Markling  
and  
McGown & Markling Co., L.P.A.**



The law firm of McGown & Markling Co., L.P.A. is proud to announce that Matthew John Markling and

McGown & Markling Co., L.P.A. have each been accorded the status of *Partner in Education* by the Erie-Huron-Ottawa Educational Service Center for his outstanding service to the Educational Service Center and the children of North Central Ohio.

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"Education is not filling a pail but the lighting of a fire."

William Butler Yeats

## The Federal Regulations of the 2004 IDEIA



On August 14, 2006, the United States Department of Education issued its much anticipated regulations to the 2004 IDEIA. Your ENTIRE school district can attend a presentation by Susan McGown on these regulations for one registration price of \$1,250 at your own school district.

Simply call **1.888.OHEDLAW** to arrange a mutually convenient time and location.

## Give Us Your Opinion

If you have an issue or question that you feel should be addressed in a future *School Law Newsletter* edition or want information on our school law practice, please contact us at **1.888.OHEDLAW** or visit our website, [www.servingohioschools.com](http://www.servingohioschools.com).

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“My alphabet starts with this letter called *yuzz*. It’s the letter I use to spell *yuzz-a-ma-tuzz*. You’ll be sort of surprised what there is to be found once you go beyond ‘Z’ and start poking around!”

Dr. Seuss



## More Legal Briefs

In the case of *Golden v. Rossford Village School Dist.* (N.D. Ohio July 31, 2006), N.D. Ohio Case No. 3:05 CV 7052, a school board cancelled the student assembly performance of Pawn, a Christian musical band, in spite of the fact that Pawn promised that the performance would not include proselytizing conduct. Pawn was subsequently replaced by Blind Ambition, a secular band. Pawn sued the Board for violating Pawn’s freedom of speech and equal protection. In dismissing Pawn’s claims, the United States District Court for the Northern District of Ohio held that the student assembly was not a public forum as the Board “did not open the school as a space for public debate, but rather intended only to present a single performer at an assembly before the December holidays.” The federal trial court went on to state that the Board “is entitled to lend out its microphone to whomever it wishes to speak on the Board’s] behalf” and, “[i]n that situation, the [Board] need not remain viewpoint neutral.” The federal court further found that no equal protection violation existed because avoiding a potential Establishment Clause violation amounted to a compelling state interest.

In the case of *Ellis v. Cleveland Mun. School Dist.* (C.A.6 July 24, 2006), C.A.6 Case No. 05-3192, the United States Court of Appeals for the Sixth Circuit found Ohio’s Political Subdivision Tort Liability Act to be constitutional.

In the case of *Greater Hts. Academy v. Zelman* (S.D. Ohio July 28, 2006), S.D. Ohio Case No. C2:06-CV-498, two community schools initiated a lawsuit against the Ohio Department of Education asserting that its funding procedures deprives them of procedural due process under the Fourteenth Amendment to the United States Constitution. The United States District Court for the Southern District of Ohio dismissed the federal claim because, as a political subdivision, a community school cannot state a cognizable claim against the State of Ohio or its officials under the Fourteenth Amendment.

In the case of *Schnarrs v. Girard Bd. of Edn.* (July 28, 2006), 2006-Ohio-3881, a female basketball player was injured while participating in a rebounding drill with a volunteer, male basketball player graduate. The injured player filed a lawsuit asserting that her injuries resulted from the coach’s negligence. The Ohio Eleventh District Court of Appeals held that the school board was not entitled to immunity under R.C. 2744.03(A)(5) because the volunteers do not constitute “personnel.” However, the Eleventh District went on to hold that the Board was nonetheless entitled to immunity under R.C. 2744.03(A)(3) because the coach’s practice methods constituted discretion with respect to “policy making, planning, or enforcement powers by virtue of the duties and responsibilities of the office or position of the employee.”

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