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Supreme Court to Rule on Local Government Immunity

County of Los Angeles v. Humphries

The Supreme Court recently agreed to hear a case which is likely to impact school districts. The case, coming out of California and the Ninth Circuit Court of Appeals, involves the issue of local government immunity. This specific dispute arose after a fifteen year old girl falsely alleged that her parents abused her. As a result of this allegation, the parents were listed in a state child abuse index pursuant to California law. Although the parents were found innocent, they were unable to remove their name from the index. Consequently, the parents filed suit against several local government agencies and officials. The parents requested monetary damages and a judicial order mandating that their names be removed from the index as well as a decree that the state's indexing policy was unconstitutional.

The California courts were faced with determining whether the suit could properly be lodged against the local government agencies named as defendants, or whether the agencies were immune from liability. Central to the resolution of this issue was whether the United States Supreme Court's decision in *Monell v. New York City Department of Social Services* applied to claims for declaratory relief. In this decision, the Supreme Court noted that the federal civil rights law known as Section 1983 eliminated complete immunity from local governments by allowing individuals to sue the government for damages if it has used its authority to deny an individual a constitutional or statutory right. The Court's decision in *Monell* clarified the role of immunity in suits against local governments. Specifically, it determined that government agencies, such as school districts, cannot be held liable for the actions of an employee who violated an individual's civil rights. The local government, however, could be subject to liability if the alleged deprivation of rights resulted from a custom or official policy adopted by the local government agency.

How this impacts your district:

The principle announced in *Monell* is settled with respect to lawsuits seeking monetary damages. That is, in order to subject a local government to liability for monetary damages resulting from a constitutional or statutory violation, an individual must show that the deprivation of rights resulted from the policy or custom adopted by the local government. If the deprivation of rights resulted from the overreaching of a government official, rather than the custom or policy of the government agency in general, the government agency will be immune from liability and the plaintiff may only seek redress from the specific government official responsible for the conduct. The federal circuit courts, however, are split as to whether a similar suit seeking only declaratory relief, such as a court order to stop the inappropriate conduct, must also show that the conduct was a result of the local government's policy or custom in order to properly name a local government as a defendant. The Ninth Circuit, for instance, exempts claims for declaratory relief from the rule set forth in *Monell*.

This case clearly has the potential to impact school districts which are often named as defendants in lawsuits claiming constitutional violations. Typically

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the complaint will name the district as well as individual school administrators as defendants. Pursuant to the reasoning in *Monell*, districts frequently avoid costly litigation by successfully claiming that the challenged action did not result from the district's policies or customs, but instead was due to a school administrator who had overstepped his or her bounds. If the Supreme Court, however, should side with the Ninth Circuit's approach to declaratory claims, school districts are likely to be exposed to more costly litigation. The case will be heard in the next term, which begins in October, so a decision will likely not be rendered until 2011. Ennis, Roberts, & Fischer will keep you apprised of any developments in this case.

Third Circuit Rules on MySpace Parodies

The United States Court of Appeals for the Third Circuit recently issued opinions in two separate cases involving off-campus student cyberpseech. The two cases, *Layshock v. Hermitage School District* and *Snyder v. Blue Mountain School District*, both involved a consideration of whether a student could be disciplined for material posted on a MySpace page. Interestingly, the Third Circuit reached a different result in these two cases.

In *Layshock*, a student created a mock profile of his principal from his grandmother's computer at home. The mock profile incorporated a picture from the school website and characterized the principal as keeping a "big blunt" and a "keg" behind his desk. It also suggested that the principal was too drunk to remember his birthday. After the profile was discovered, the district suspended the student for ten days and barred him from participating in graduation ceremonies. The District Court decided that this punishment was unreasonable. It determined that although the speech was lewd and vulgar the school did not have the authority to punish the student because the speech occurred off-campus and it was not sufficiently disruptive to trigger disciplinary action.

On appeal, the Third Circuit agreed with the District Court's ruling. It determined that it was uncontested that the student's parody did not substantially disrupt the school and that the student was suspended solely for creating the profile rather than any effect it may have had on school operations. The Circuit Court determined that a school had no authority to discipline the student for this type of speech unless it results in a foreseeable risk of substantial disruption.

The second case decided by the Third Circuit involved a similar scenario. In *Snyder*, eighth grade students created a false MySpace profile for their principal. The profile was full of insults, characterizing the principal as among other things, a pedophile and a sex addict. The profile was created in the student's home, but word soon spread to the school where it was being discussed by other students. The students ultimately received a ten day suspension for violating the code of conduct, which prohibited a student from making false accusations against school staff members, and for violating the school's copyright policy by appropriating a picture of the principal from the school's website. In support of its decision, the school district noted that on two occasions, teachers had to quiet down their classroom as a result of students discussing the profile. Furthermore, students decorated the lockers of the suspended students in support of their actions. The District Court ruled in favor of the school, finding that the school was disrupted by the vulgar and offensive profile.

The Third Circuit upheld this decision. It determined that although the actual disruptions identified by the district did not rise to a substantial level, the profile's potential to cause disruption was reasonably foreseeable. The Court found that the profile did not express a simple expression of frustration, but instead was created as a means to publicly humiliate the principal. The Circuit Court determined that the Constitution allows school officials to regulate this type of speech when it exceeds mere criticism and rises to a level aimed at undermining a school official's authority by using unfounded vulgar, lewd, and offensive language which creates a foreseeable risk of substantial disruption to school operations.

How this impacts your district:

Initially it should be noted that these decisions do not create precedent in Ohio state or federal courts. Nonetheless, these decisions are informative as to how future cases may be decided in this evolving issue. Courts across this country have been struggling with the appropriate standard to apply when deciding whether off-campus speech can be disciplined. The Third Circuit's approach incorporates the standard adopted in *Tinker v. Des Moines*, which has become the foundation for evaluating students' First Amendment rights with respect to on-campus speech.

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This standard allows a school to discipline speech which creates a foreseeable risk of substantial disruption. It is difficult to determine exactly when off-campus cyber-speech rises to this level, however, it is important for school officials to distinguish between mere criticism and speech that directly challenges the authority of school officials. When determining whether discipline is appropriate in these scenarios, school officials should examine whether there is a connection between the speech and school property, whether the speech involves baseless claims and vulgar language, and ultimately whether the speech creates a risk that the operations of the school are likely to be disrupted. School officials should be sure to document all evidence when making this determination. The school district should also maintain a detailed internet and computer usage policy, which will enable it to sanction this type of conduct when it occurs on school grounds or is created with school computers.

Until the Supreme Court decides to resolve this issue, schools must exercise caution when attempting to punish off-campus speech, which is likely to receive a greater amount of protection under the First Amendment than speech that occurs on-campus. However, if speech rises to a level that creates a foreseeable risk of substantial disruption, the school will likely be able to discipline the student pursuant to the *Tinker* standard.

N.J. Court Requires Reasonable Suspicion to Search Student Vehicle

State of New Jersey v. Best

The New Jersey Supreme Court recently upheld the legality of a school administrator's decision to search a high school student's automobile. The Court determined that in order to pass muster under the Fourth Amendment's prohibition on unreasonable search and seizures, the administrator must have had "reasonable suspicion" that the student's car contained drugs, which were the subject of the search.

The facts of this case are not atypical throughout many high schools across the country. School administrators learned that the student in question had sold a pill to another student, and as a result decided to search his car. Once inside the car, the administrators discovered drug paraphernalia, marijuana, and pain killers. The student was subsequently prosecuted based on the evidence obtained in this search.

The student sought to suppress the evidence discovered in his car by challenging the legality of the search. The New Jersey Supreme Court relied on its 1983 decision in *New Jersey v. T.L.O.,* which was subsequently upheld by the United State Supreme Court, to determine that a school administrator needs only "reasonable suspicion" to search a student's vehicle parked on school grounds. The *T.L.O.* case effectively determined that reasonable suspicion was the proper requirement when considering the standard for a search conducted by school officials, however, that case dealt specifically with the search of a student's purse. In this case, the Court was presented with the opportunity to adopt a more stringent standard to apply to searches of student vehicles. Specifically, the Court was urged to adopt a "probable cause" standard, which would place the burden on school officials to demonstrate tangible evidence that it was likely the student's car contained drugs, as opposed to the much lesser standard which requires only that school administrators have a "reasonable suspicion" that the car may contain drugs. Proponents of the probable cause standard argued that students have a greater expectation of privacy in their vehicles than they do in their lockers or purses which they carry into the school. The Court declined this offer, however, and in line with the majority of courts faced with this decision, determined that the overwhelming need to maintain safety, order, and discipline requires that the reasonable suspicion standard apply to searches within the school and outside the school on school property.

How this impacts your district:

This case highlights that the policy of maintaining safety, order, and discipline in schools extends to situations which arise on school property, even if outside of the confines of school buildings. These policy concerns override privacy interests protected by the Fourth Amendment. Whereas the police often need probable cause to search a suspect, school administrators are governed by a reasonableness standard when conducting student searches. The Supreme Court's decision in *T.L.O.* breaks this standard down into two factors. First, a student search must be justified at its inception. This means that at the time of the search reasonable grounds existed for suspecting that the search would yield evidence that the student was violating either the law or school policy. Second, the scope of the search must reasonably relate to the circumstances giving rise to the

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search. This means that the measures adopted for the search are reasonably related to the objective of the search and are not excessively intrusive in light of the age and sex of the student and the nature of the violation. As highlighted in this decision, the reasonableness standard governs the search of student vehicles. Therefore, in order to search a student's vehicle, school administrators must have received information from other students or the student's own behavior, which gives rise to a reasonable suspicion that the student has violated or is violating the law or school policy.

Taxing Authorities Not Responsible for Cost of Tax Bills

The Ohio Attorney General issued an opinion on February 17, 2010 stating that a county has no authority to recoup from taxing authorities within the county any portion of the cost of printing or mailing tax bills.

In reaching this conclusion, the Attorney General examined Ohio Revised Code section 323.13 to determine the duties attributed to the country treasurer. Among other things, the statute imposes upon the treasurer a mandatory duty to prepare the tax bills and to mail or deliver them accordingly. Although some counties charge the cost of printing and mailing tax bills to the individual taxing authorities such as school districts, the Attorney General was unable to find any statute conferring the power to recoup these costs to the board of county commissioners, the county auditor, or the county treasurer. Based on the absence of statutory authority, the Attorney General opined that these entities may not impose such a charge, and that the cost of printing and mailing tax bills should be considered part of the treasurer's operating costs.

The Attorney General then looked at R.C. 325.31(B), which creates the real estate assessment fund. This fund is designed to minimize costs incurred by the county auditor and treasurer. The Attorney General, however, noted that the cost of printing and mailing tax bills is not one of the expenses covered by the fund. The Attorney General reasoned that if the legislature had intended the county to recover the costs of printing and mailing tax bills to various taxing authorities, it would have included those expenses among those provided for in R.C. 325.31(B), or enacted legislation to otherwise authorize the charges. As a result, the Attorney General determined that a county has no authority to recoup the cost of printing or mailing tax bills from the individual taxing authorities.

How this impacts your district:

Your district should be aware of the Attorney General's opinion regarding charges for the printing and mailing of tax bills in case the county attempts to recoup these costs from the district. According to the Attorney General, it is the county treasurer's responsibility to incur the cost of printing and mailing your district's tax bills. Many districts are operating under tight budget constraints already, and it is important to ensure that funds are not improperly spent on costs that should be incurred by other government entities.

Upcoming Dates

MARCH

1 Last day to take action on expiration of superintendent's contract—R.C. 3319.01; last day to take action on expiration of treasurer's contract (contracts entered into after March 30, 2007) - R.C. 3313.22

31 Last day to take action on contracts of administrators other than superintendent—R.C. 3319.02

APRIL

5 Last day for voter registration for May election—R.C. 3503.01, 3503.19(A)

15 Last day for certain board members and administrators to file financial disclosure forms with the Ohio Ethics Commission—R.C. 102.02

30 Last day to give written notice of intent not to re-employ teachers—R.C. 3319.11; and non-teaching employees—R.C. 4141.29

MAY

4 Special Election Day—R.C. 3501.01 (first Tuesday after the first Monday)

10 Last day to submit certification for August income tax levy to Ohio Department of Taxation—R.C. 5748.02(A) (85 days prior to election)

Education Law Speeches/Seminars

Ennis, Roberts & Fischer regularly conducts seminars concerning education law topics of interest to school administrators and staff.
Popular topics covered include:

Cyber law
School sports law
IDEA and Special Education Issues
HB 190 and Professional Misconduct

To schedule a speech or seminar for your district, contact us today!

Upcoming Speeches

Bill Deters at the Northwest Board of Education on March 23, 2010:
Preparing for Expulsion Appeal Hearings

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