





## 2019-20 Legal Update for the McPherson County Staff



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"Apples are fine, but I find today's teacher prefers a nice latte."  
—M. J. Anderson

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## Agenda

- A Quick Update on Vaping/Juuling
- Social Media Issues
  - Regarding Students
  - Regarding Staff
- Special Education Issues for General Education Staff
- Supervision

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### Juuling

- What is a Juul?
  - Brand-name of a e-cig that looks like a USB flash drive
  - Charges in a USB port
  - Small enough to be concealed in a closed fist, backpack, sock, or undergarment
  - Hard to detect for teachers that do not know what they are looking for!

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### Juuling

- Hard to detect because the vapor a Juul emits does not smell like cigarette smoke
- Students can blow vapor into a backpack or sweater and teacher is none the wiser
- One pack of oil for a Juul contains the nicotine equivalent to 1-pack of cigarettes

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## Juuling

- Law enforcement and DREs report Juuls are used to inhale controlled substances
- Juul controls 72% of e-cig market
- FDA has stepped in to determine whether Juul is deliberately targeting minors as consumers
- FDA commission says Juuling has reached "epidemic proportions" in high schools and middle schools

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## LB 149

- Added "nicotine delivery systems"
  - any product or device containing nicotine, tobacco, or tobacco derivatives that employs a heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means, regardless of shape or size, to simulate smoking by delivering the nicotine, tobacco, or tobacco derivatives in vapor, fog, mist, gas, or aerosol form to a person inhaling from the product or device.
- Increased age to 19

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### Have Smartphones Destroyed a Generation?

More comfortable online than out partying, post-Millennials are safer, physically, than adolescents have ever been. But they're on the brink of a mental-health crisis.

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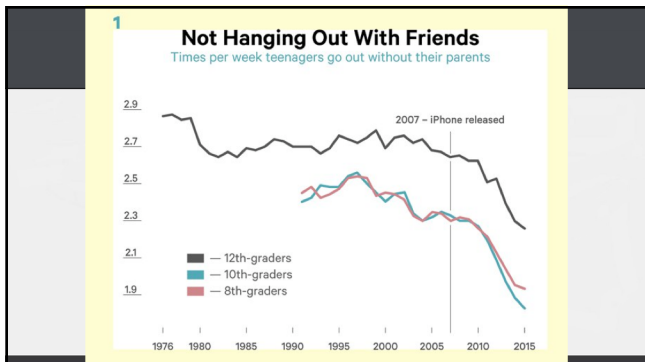
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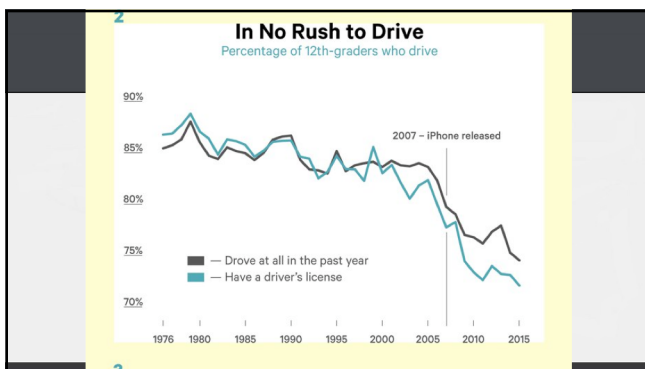
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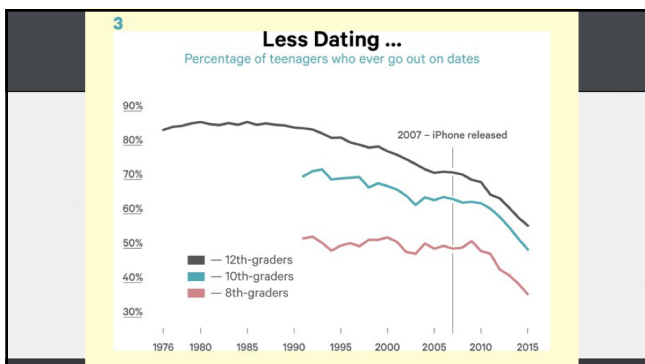
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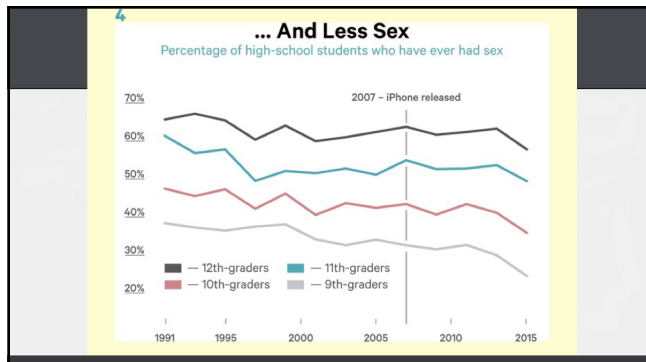
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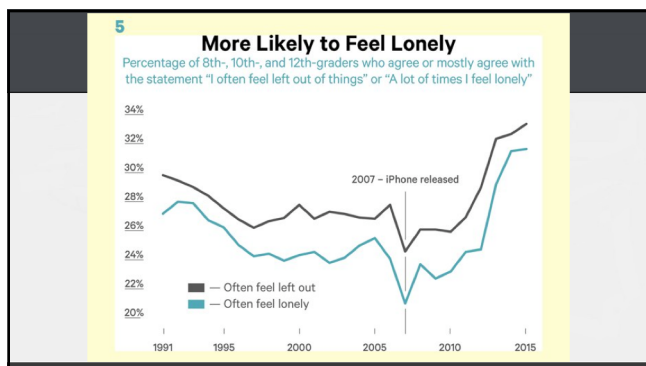
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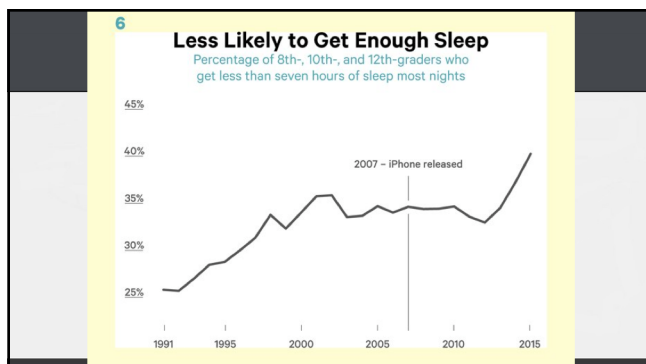
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**Legal Issues with Students' Social Media Usage**

- Harassing and bullying posts
- Sexting
- Ignoring basic internet safety

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**J.S. and Layshock (3rd Cir. 2011) (en banc)**

- Key legal points
  - School can't punish off-campus speech because it is vulgar, inappropriate or even criminal
  - School can only punish off-campus speech that is substantially disruptive

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**What About the Staff?**

- "We recognize that vulgar and offensive speech such as that employed in this case – even made in jest – could damage the careers of teachers and administrators and we conclude only that the punitive action taken by the school district violated the First Amendment free speech rights of J.S."
  - i.e. "We don't care."

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**Bell v. Itawamba County Sch.,**  
**799 F.3d 379 (5th Cir 2015) (en banc) cert. denied**

- Student made offensive rap recording
  - "Betta watch your back/Ima serve this n\*\*\*a like I serve the junkies with some crack"
  - "Run up on T-Bizzle/ I'm going to hit you with my ruger"
  - "You f\*\*\*ing with the wrong one/going to get a pistol down your mouth"
  - "Middle fingers up if you want to cap that n\*\*\*a"
- Posted to Facebook, YouTube
  - 2,000 hits

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**Bell v. Itawamba County Sch.,**  
**799 F.3d 379 (5th Cir 2015) (en banc) cert. denied**

- Principal heard recording (on a student's phone)
- Student who made recording disciplined:
  - 7-day suspension
  - Assigned to the alternative school for the quarter
  - No school activities
- School's evidence of disruption
  - Students congregating in gym
  - Coaches uncomfortable with female students
  - Coach made team stay until he left parking lot at night

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**Bell v. Itawamba County Sch.,**  
**799 F.3d 379 (5th Cir 2015) (en banc) cert. denied**

- Court
  - Social media access via phones means all comments about school have potential to affect school
  - "It . . . goes without saying that threatening, harassing, and intimidating a teacher impedes, if not destroys the ability to teach ... Moreover it can even cause a teacher to leave that profession. In sum, it disrupts, if not destroys, the very mission for which schools exist - to educate."

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### 4<sup>th</sup> Amendment & Phones

- *Riley v. California (2014)*
  - When arrested, an individual has a diminished right to privacy. Law enforcement can pat down, and search personal items.
    - Bags
    - Address book
    - Wallets and purses
  - Supreme court rules that phone searches incident to arrest are unlawful
    - Saying because you can search a wallet you can search a smartphone is like saying a ride on horseback is the same as a ride to the moon.

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### 4<sup>th</sup> Amendment & Phones

- *Riley v. California (2014)*
  - “Modern cell phones are not just another technological convenience. With all they contain and all they may reveal, they hold for many Americans the privacies of life. The fact that technology now allows an individual to carry such information in his hand does not make the information any less worthy of the protection for which the Founders fought.”

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### 4<sup>th</sup> Amendment & Phones

- *Gallimore v. Henrico County Sch. Bd. (2014)*
  - Parents report a long-haired kid smoking weed on a school bus
  - Principal calls in long-haired kid that was on the bus and searches him
    - Pat down, backpack, Ziploc bags, Vaseline jar
    - ...and his phone

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**4<sup>th</sup> Amendment & Phones**

- *Gallimore v. Henrico County Sch. Bd. (2014)*
  - Search of the student, his bag, the Vaseline jar—all reasonable at their inception based on the report
  - Search of the phone is not reasonable. Principal was searching for drugs.
  - Also: federal civil rights claim for failure to train. Failed in this case.

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**4<sup>th</sup> Amendment & Phones**

- *DeCossas v. St. Tammany Parish (2017)*
  - Student tells principal that Decossas is selling prescription drugs on school grounds
  - Decossas is called in, principal searches his person, his bag, and confiscate his phone
  - Principal demands Decossas unlock the phone, which Decossas does
  - Principal prints a series of text messages

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**4<sup>th</sup> Amendment & Phones**

- *DeCossas v. St. Tammany Parish (2017)*
  - The court: search was reasonable in it's inception.
    - Report of drug possession and drug dealing on campus
  - Search was reasonable in it's scope
    - Evidence of drug dealing is what the school was after, that involves communications, which would be on the phone
- Circuits vary

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**Strip Searches**

- *D.H. v. Clayton County Schools (2016)*
  - A tells SRO that B has weed
  - B is brought in, bag is searched and released. Tells Principal: C is the one with weed.
  - C is searched. No weed is found. C tells principal D is the one with weed.
  - D comes in, SRO says give me the weed. D pulls bag of weed out of his underwear.

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**Strip Searches**

- *D.H. v. Clayton County Schools (2016)*
  - SRO gives C a pat down, finds blunts and weed in his sock
  - On second search of B's bag, weed is found
  - B says there is another student with weed: E
  - E is strip searched, no weed is found. E sues.
    - Reasonable at inception? Reasonable in scope?

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**Recommendations**

- Have a clearly worded board policy and handbook provision
- If you confiscate a phone:
  - Ask the student's permission to access information on it
  - If the student refuses, call parent to get consent
  - If parent refuses, call your lawyer before going further

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## Students and Sexting

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## Sexting: the Problem

- A 2018 study published in JAMA Pediatrics, summarized 39 studies with a total of about 10,300 students under age 18.
  - 15% of teens say they send sexts
  - 27% receive them
  - 1 in 8 have forwarded a sext

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## A recent example...

FOOTBALL  
**Husker RB Maurice Washington faces child porn charges in California after sending video of ex-girlfriend**  
By Sam McKewen / World-Herald staff writer · 6 hrs ago · 6



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**State Obscenity Law– old  
(NEB. REV. STAT. 28-807 to 28-829)**

- NEB. REV. STAT. 28-813.01
  - Makes sexting (images) a class IV felony for offenders under 19
  - Class IIIA felony for 19 and up
  - Minors offense punishable by:
    - Up to 2 years in prison and/or
    - \$10,000 fine
    - Require sex offender registration

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**State Obscenity Charges – new  
(NEB. REV. STAT. 28-807 to 28-829)**

- NEB. REV. STAT. 28-813.01
  - (1) It shall be unlawful for a person nineteen years of age or older to knowingly possess any visual depiction of sexually explicit conduct which has a child as one of its participants or portrayed observers. Violation of this subsection is a Class IIA felony.

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**State Obscenity Charges – new  
(NEB. REV. STAT. 28-807 to 28-829)**

- NEB. REV. STAT. 28-813.01
  - (2) It shall be unlawful for a person **under nineteen years of age** to knowingly and intentionally possess any visual depiction of sexually explicit conduct which has a child other than the defendant as one of its participants or portrayed observers. Violation of this subsection is a Class I misdemeanor. A second or subsequent conviction under this subsection is a Class IV felony.

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**New Obscenity Affirmative Defenses  
(NEB. REV. STAT. 28-813.01(3))**

▪First affirmative defense:

- Defendant was less than **nineteen** years of age;
- Child in the picture is at least **fifteen** years of age
- Picture is knowingly and voluntarily generated
- Picture is knowingly and voluntarily provided
- Only one child in picture
- Defendant hasn't shared the picture
- Defendant did not coerce the taking or sending of the picture

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**New Obscenity Affirmative Defenses  
(NEB. REV. STAT. 28-813.01(3))**

▪Second affirmative defense:

- Defendant was less than **eighteen** years of age;
- **Difference in age** between the defendant and the child portrayed is **less than four years**
- Picture knowingly and voluntarily generated
- Picture knowingly and voluntarily provided
- Only one child in picture
- Defendant hasn't shared the picture
- Defendant did not coerce the taking or sending of the picture

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**Child Pornography Prevention Act  
(NEB. REV. STAT. 28-1463.01 to 28-1463.06)**

(1) It shall be unlawful for a person to knowingly **make, publish, direct, create**, provide, or in any manner generate any visual depiction of sexually explicit conduct which has a child as one of its participants or portrayed observers.

(2) It shall be unlawful for a person knowingly to purchase, rent, sell, deliver, **distribute**, display for sale, advertise, trade, or provide to any person any visual depiction of sexually explicit conduct which has a child as one of its participants or portrayed observers.

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**Neb. Rev. Stat. 28-707 (Child Abuse)**

- A person commits child abuse if he or she knowingly, intentionally, or negligently **causes or permits a minor child** to be...
  - "Placed in a situation to be **sexually exploited by allowing [or] encouraging such minor child to ... engage in ... obscene or pornographic photography, films, or depictions**"

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**So, two 16-year-olds exchange nudes**

- They both could be charged under 28-813.01
  - but they both will have an affirmative defense
- They both could be charged under 28-1463.03,
  - But they both will have an affirmative defense
- They BOTH can be charged and convicted under 28-707 for abusing one another.

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**So, two 16-year-olds exchange nudes**

- Does the school have to call the cops? Yes
  - Child abuse = mandatory report
  - Principal may also have independent reporting obligation under 79-293

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**Sexting Among Middle and High School Students:**



**59%** knowledge of legal consequences "would have" deterred them from sexting.

According to 2014 Northeastern University Youth Sexting Study

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**They did WHAT? 19-20 Edition**



©GLASBERGEN

"I finally found a social networking site worth joining. It's called Leave-Me-The-Hell-Along-Book!"

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**Daniel Rapp: Math and Sexting**

- Rapp is a JH math teacher
- Created a unique algebra lesson

**"Tony can send 5 texts and 3 nudes in 19 minutes. He could also send 3 texts and 1 nude in 9 minutes. How long would it take him to send one text and one nude?"**

- School gave written reprimand, 2nd in file
- Because I know you're curious:  $T=2$  and  $N=3$

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### Staff First Amendment Rights



"I love reading. I read about 3 hours a day. My favorite book is Facebook."

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### First Amendment

*Pickering*, 391 U.S. 563 (1968)

"If a employee speaks *as a citizen* on a *matter of public concern* the district must show it had an adequate justification for treating the employee differently from any other member of the public."

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### First Amendment

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### First Amendment

*Garcetti*, 547 U.S. 410 (2006)

"When public employees make statements pursuant to their official duties, the employees are not speaking as citizens for First Amendment purposes, and the Constitution does not insulate their communication from employer discipline."

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### Munroe v. Cent. Bucks Sch. Dist. 805 F.3d 454 (3<sup>rd</sup> Cir. 2015)

- Teacher blog: "Where are we going, and why are we in this handbasket?"
  - Called S's "dunderheads" and "whiny, simpering grade-grubbers"
  - Parents were "breeding a disgusting brood of insolent, unappreciative, selfish brats"
  - Others: "argumentative f\*\*\*"; "I hate your kids"; "unrealistically high perception of [your kid's] ability"
  - Graphic of a school bus with a "Short Bus" sign and "I DON'T CARE IF YOU LICK THE WINDOWS, TAKE THE SPECIAL BUS OR OCCASSIONALLY PEE ON YOURSELF ... YOU HANG IN THERE SUNSHINE, YOU'RE FRIGGIN SPECIAL."

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### Munroe v. Cent. Bucks Sch. Dist. 805 F.3d 454 (3<sup>rd</sup> Cir. 2015)

- Teacher goes on maternity leave
- School received more than 200 opt-out requests from parents
- Teacher allowed to return from maternity leave, given remediation plan, ultimately noticed for termination
- Employee sued claiming First Amendment violations
- Court:
  - Comments not protected, even if she was speaking as a private citizen
  - "In this case, Plaintiff's speech, in both effect and tone, was sufficiently disruptive so as to diminish any legitimate interest in its expression, and thus her expression was not protected."

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### Some cases are too obvious...



**Maine football coach resigns after accidentally posting naked photo of himself on Facebook**

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### In re Lynn Miller Warrensburg, Mo (2017)




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### In re Caitlin Cormack Bedford City, OH (2017)




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Papillion La Vista High School employee terminated for inappropriate relationship with student

Former South Sioux School employee sentenced for sending nude pictures to student

Married Nebraska schoolteacher, 27, is jailed for 90 days after having sex with a male student on his 16th birthday

Omaha teacher who had sex with 13-year-old pleads guilty to sexual assault

Former Nebraska teacher accepts plea deal in child sex case

**Teacher accused of sex with student, giving her alcohol**

UPDATE: Engleman employee placed on leave after allegations

Former teacher sent to prison for sex with student

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### Former teacher, softball coach accused of sexual assault jailed again

By Todd Cooper // World-Herald staff writer Jan 6, 2017



A former middle-school teacher is back in the Douglas County jail after, prosecutors allege, he asked his daughter to remove bedding from a camper he owns in Iowa.

Prosecutors allege Daryl D. Clark, 46, who lives in Crescent, Iowa, made the request in order to conceal evidence of a sexual relationship he had with an underage player on a softball team he used to coach.

Deputy Douglas County Attorney Beth Beninato also said two other girls, former students of Clark, have come forward with

MAK HAPPY  
A Confer  
for Do

REGISTER

Daryl Clark

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### OPS principal arrested, accused of failing to report teacher's suspected sexual abuse

By Emily Nitcher, Joe Dejka and Rick Ruggles / World-Herald staff writers Feb 9, 2019 Updated Feb 9, 2019

TRY 1 MONTH FOR 99¢



The principal of an Omaha Public Schools elementary school was arrested Friday, accused of failing to report suspicious behavior by a teacher, authorities said.

That teacher was arrested and charged in December. [He is accused of sexually assaulting six students.](#)

Eric Nelson, 48, was arrested and booked into the Douglas County jail on Friday on suspicion of felony child abuse and neglect, police said.

YC  
TO A  
FBI  
\*MULTIPLE SCI  
80016 02018 3

Featured Bus

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### Scottsbluff Public Schools agrees to settle student's sex assault lawsuit for \$2.75M

"This outcome cannot erase the pain from what happened, but it will go a long way to helping our client move on with her life and pursue her goals," attorney Kathleen Fisher of Graves Garrett LLC of Kansas City, Missouri, said in a news release Monday. "It also provides much-needed accountability to officials who have a duty to protect our children."

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**How About a Little Special Ed?**

[Empty box for notes]

[Lined writing area]

**Child Find**

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[Lined writing area]

**Independent Sch. Dist. No. 283.,  
74 IDELR 19 (D. Minn. 2019)**

- Student starts missing school in 8<sup>th</sup> grade
  - Missed 18 days first semester, March stops attending
  - Hospitalized; diagnosed with anxiety disorder & depression NOS
  - SITT does not refer because grades excellent
- 9<sup>th</sup> grade – attendance irregular
  - readmitted to hospital two different times
  - School disenrolls
  - Tells school if she is referred to special ed, she can't take honors courses

[Lined writing area]

**Independent Sch. Dist. No. 283.,**  
 74 IDELR 19 (D. Minn. 2019)

- 10<sup>th</sup> grade
  - School creates 504 plan (without eval)
  - Disenrolled each semester because missed >15 days
  - Disenrolled
- 11<sup>th</sup> grade – family requests eval in June
  - Student verifies, placed in alternative program
  - Attends two days and never returns
- Family files DP alleging child find violation

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**Independent Sch. Dist. No. 283.,**  
 74 IDELR 19 (D. Minn. 2019)

- ALJ finds for family; school appeals
- Court:
  - “Although Student’s absenteeism was the primary barrier to conducting systematic observations, it has also been one of the most visible symptoms of the Student’s disability.”
  - “No one disputes that the Student excelled on standardized tests; neither can anyone dispute that her absenteeism inhibited her progress in the general curriculum.”

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**IEP Meetings**

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**In re Dekalb County Sch. Dist.,**  
119 LRP 28554 (Ga. SEA 2019)

- At meeting:
  - Mom raises residential placement; staff say "people who would make that decision are not here; that is not the purpose of the meeting."
  - Mom suggests adaptive living goals; classroom teacher says "unrealistic" and won't discuss
  - Teacher inaccurately reports student has mastered goals in his current IEP

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**In re Dekalb County Sch. Dist.,**  
119 LRP 28554 (Ga. SEA 2019)

- ALJ:
  - By not having necessary staff present who could approve residential placement, school predetermined
  - Team's exclusive consideration of teacher's goals and dismissal of mom's goals was also predetermination
  - "By failing to honestly report [student]'s lack of progress, mother was denied the opportunity to meaningful participation in the IEP meeting
  - Ordered reimbursement for residential placement

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**Teachers Leaving IEP Meetings Early**

- Parents must be notified IN WRITING IN ADVANCE
- Parents must consent IN WRITING
- Parents can withdraw consent AT ANY TIME

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**Lucia Mar Unified School District,  
119 LRP 25481 (Cal. SEA 2019)**

- Marathon IEP (3 meetings, 3-4 hours each)
- When scheduled second meeting, school told mom some staff couldn't be there
- SEA: "Although Parent stated she would excuse the general education dance teacher, Parent never consented in writing to the teacher's absence in future meetings."

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**Implementation of IEP**

- ALL staff must implement IEP EXACTLY as written
- If the IEP is stupid?
  - STILL IMPLEMENT

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**Long Beach Unif. Sch. Dist.,  
119 LRP 12839 (Cal. SEA 2019)**

- Student's IEP said she was allowed to "undertake test corrections.
- Calculus teacher
  - only allowed Student to undertake full retakes of tests; i.e. taking a new, similar test in full, not just the questions similar to those previously answered incorrectly.
  - Also did not return work in a timely fashion

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**Troy Sch. Dist. v. K.M.,**  
65 IDELR 91 (E.D. Mich. 2015)

- 13 year-old with Asperger, ADHD and ODD
  - Became violent without warning
  - Disrupted gen ed environment on several occasions
  - Homebound to finish 6<sup>th</sup> grade; settlement agreement to start 7<sup>th</sup> grade
  - 4<sup>th</sup> day of school major assault with a "log"
- School recommended placement into specialized school for autism

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**Troy Sch. Dist. v. K.M.,**  
65 IDELR 91 (E.D. Mich. 2015)

- Mom: if student had proper support, he could be in gen ed classroom
- Parents' experts
  - Extremely bright, wants to be successful
  - Could be educated in a general education environment if he "were in a safe and welcoming environment"
  - "presented as ... child who was scared"

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**Troy Sch. Dist. v. K.M.,**  
65 IDELR 91 (E.D. Mich. 2015)

- ALJ
  - Numerous provisions in the BIP and IEP not implemented with fidelity
  - Because the district committed numerous procedural violations, "the court need not defer to the District's placement"
  - Court ordered school to provide a 1:1 psychologist with training in autism.

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**Fremont County Sch. Dist. #25  
71 IDELR 224 (Wyo. SEA 2017)**

- A student with intermittent explosive disorder and ADHD had a pattern of threatening and defiant behavior
- The student's IEP called for positive behavioral supports, to be triggered by behavioral issues including threats
  - Supports were not implemented with fidelity
- On several occasions, student directed threats and obscenities at staff members
  - Culminated in an incident with teacher, where student said he would "f\*\*\*\*\* kill him"

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**Fremont County Sch. Dist. #25  
71 IDELR 224 (Wyo. SEA 2017)**

- MDR found student's behavior to be volitional and not caused or directly or substantially related to his disability
- H.O.: IEP and BIP not implemented with fidelity
  - Directive to start day with positive reinforcement
  - Requirement that positive/negative ratio be 3:1
  - Corrected student in front of peers

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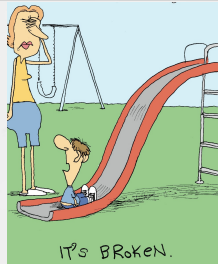
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**Even Stupid IEPs Must be Followed**




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### Failure to Follow IEP can Result in Individual Liability




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### MUST follow IEP

- IEP is staff's "safe harbor"
- District liable for failure to follow:
  - Due Process
  - OCR Complaint
  - Rule 51 Complaint
- Personal Liability
  - *Doe v. Withers*, (WV. 1993)
  - PPC claim

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### Other Interesting Stuff

- Parent claim that student took his own life because of stress caused by school's 504 implementation failures allowed to proceed.
  - *Whooley v. Tamalpais Union High Sch. Dist.*, 119 LRP 28552 (N.D. Cal. 2019)
- Private school that LEA contracted with cannot be sued for IDEA violations, but can be sued under §504 and IDEA
  - *P.G. v. Genesis Learning Centers*, 74 IDELR 223 (M.D. Tenn. 2019)

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## Basic Student Supervision



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## Negligent Torts: Duty

- Everyone has a duty to exercise due care all of the time.
- Due care is the amount of care that a reasonable person would exercise under the circumstances.
- A reasonable person is not any real person or even the average person, but an imaginary prudent person.

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## School Tort Claim Cases



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**Johnson v. School Dist. of Millard,  
(1998)**

- First grade music class was taught the song "London Bridge" and the accompanying game
- After teaching the game, the teacher turned her back on the students playing
- Johnson was thrown into a book shelf, sustaining a cut above his right eye extending to the bone and requiring 50 stitches

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**Johnson v. School Dist. of Millard,  
(1998)**

- Johnson sued the school district, alleging negligent supervision
- School: direct supervision was not necessary, and there was no evidence of proximate cause
- Court: a reasonable person would directly supervise the early portions of the game, negligent supervision was a proximate cause

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**Brahatcek v. Millard School Dist.  
(1979)**

- 9th grade P.E. class was practicing golf in the school gymnasium
- Class was being instructed by two teachers
- One student was swinging a golf club and accidentally struck another student in the head
- The student never regained consciousness

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### Brahatcek v. Millard School Dist. (1979)

- Family: school's negligence led to the death
- School: no evidence to demonstrate the elements of negligence; deceased was "contributorily negligent"
- Court: harm was foreseeable; student was too unfamiliar with golf to be responsible for own supervision and care
- Award: ~\$54,000 (hundreds of thousands in 2017)

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### Lessons from Johnson and Brahatcek

- Instruction/demonstration are different than supervision
- The duty to supervise students exists at all grade levels and is heightened with new or unfamiliar activities
- "Foreseeability" may mean an individualized determination—"That Truhe kid is always goofing off"
- In failure to supervise cases, liability arises when the harm caused could have been avoided with adequate supervision

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**Hertzel v. Palmyra Sch. Dist.  
(2007)**

- Hertzel was a kindergarten student molested by a classmate in the school bathroom
- Hertzel told his mother of the incident, and she reported to the school counselor
- The school made no meaningful response to the reported incident
- Hertzel was again molested by the classmate

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**Hertzel v. Palmyra Sch. Dist.  
(2007)**

- Family: School was negligent in failing to protect Hertzel from bodily harm
- School: The risk was not foreseeable and no duty existed; case should be dismissed
- Court: Counselor knowledge could allow foreseeability; school's owe a RPP duty; case may proceed
- Lawyer Note: Title IX, 504, IDEA issues, too...

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**Mitchell v. Cedar Rapids Cmty. Sch. Dist.  
(2013)**

- 14 year old special education student left campus with her boyfriend, a 19 year old special education student
- The students left school without permission
- Their absences were noted internally but not investigated by the school
- The student was subsequently raped and shot at with a BB gun

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**Mitchell v. Cedar Rapids Cmty. Sch. Dist. (2013)**

- Family: School’s negligence in supervising the students and failing to investigate the absence proximately caused the harm
- School: There was no duty, and the harm was not foreseeable
- Court: The school was negligent, and the harm was within the scope of their duty and foreseeable

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**Lessons from Hertzell and Mitchell**

- Schools may be liable for harm caused to student’s by the intentional, wrongful acts of others
- School’s duty is heightened when special circumstances increasing risk are known
- The same is true for “attractive nuisances,” or areas where the danger itself should increase warning and supervision

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**A.W.v. Lancaster County Sch. Dist. 001 280 Neb. 205 (2013)**

- Student sexually assaulted by predator who had walked into the building
- Parents: school had a duty to protect from walk-ins and to supervise student
- Court: The school did have a duty to prevent foreseeable harm, questions of fact as to reasonableness

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### First Amendment

*Pickering*, 391 U.S. 563 (1968)

"If a employee speaks *as a citizen* on a *matter of public concern* the district must show it had an adequate justification for treating the employee differently from any other member of the public."

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### Questions?



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### Have a good rest of the year 😊



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