



2013 Case Law Update

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Agenda

- Case Law Update
 - First Amendment
 - Student Speech
 - Employee Speech
 - Public Records
 - OCR “Dear Colleague Letter”



FIRST AMENDMENT



S.J.W. v. Lee's Summit R-7 Sch. Dist., 8th Cir.

- Facts:
 - Two brothers attended the district high school and created a website named NorthPress
 - Website posts contained racist, offensive, sexually explicit and degrading comments
 - Files were uploaded to the website using a school computer, but records did not identify names
 - Brothers suspended and sued district seeking preliminary injunction to lift suspensions
 - Brothers argued that the website was protected by the First Amendment



S.J.W. v. Lee's Summit R-7 Sch. Dist., 8th Cir.

- Holding:
 - District court rules in favor of brothers
 - Found that brothers suffered irreparable harm
 - Injunction against district posed no material harm
 - School district appeals



S.J.W. v. Lee's Summit R-7 Sch. Dist., 8th Cir.

- Holding:
 - Court of Appeals rules in favor of district
 - Irreparable harm not established
 - Student speech that causes a substantial disruption is not protected
 - NorthPress could have been expected to impact the school



K.A. v. Pocono Mountain Sch. Dist., 3rd Cir.

- Facts:
 - K.A. attempted to pass out invitations to church Christmas party to classmates
 - K.A. was told she needed approval from an administrator
 - Invitations denied



K.A. v. Pocono Mountain Sch. Dist., 3rd Cir.

- Holding:
 - District court rules in favor of K.A.
 - No showing of fear of disruption if flyers passed out
 - Speech not lewd, vulgar or profane
 - Court of Appeals rules in favor of K.A.
 - K.A. will suffer irreparable injury
 - No harm to district as a result of invitation
 - *Tinker* sets out general rule to regulate student-speech while in school



Hardwick v. Heyward, 4th Cir.

- Facts:
 - Student prohibited from wearing Confederate flag shirts and other protest shirts
 - Parents approved shirts
 - Student alleges violation of First Amendment rights



Hardwick v. Heyward, 4th Cir.

- Holding:
 - District Court rules in favor of district
 - Court of Appeals rules in favor of district
 - *Tinker* framework used
 - Confederate flag shirts would materially and substantially disrupt work and school discipline
 - Protest shirts also likely to cause disruption



Taylor v. Roswell Independent Sch. Dist., 10th Cir.

- Facts:
 - Students who were part of a religious group distributed materials with religious messages at school
 - Educational disruptions caused by distributions
 - Administrators prohibited distributions
 - Lawsuits filed against district



Taylor v. Roswell Independent Sch. Dist., 10th Cir.

- Holding:
 - Magistrate judge rules in favor of district
 - Court of Appeals rules in favor of district
 - *Tinker* framework applies to distribution
 - Student speech that's not part of school-sponsored activities can only be regulated if it would materially and substantially interfere with appropriate discipline



Taylor v. Roswell Independent Sch. Dist., 10th Cir.

- Holding:
 - School policy regarding distribution of materials found constitutional
 - Free speech rights not violated because district reasonably forecasted that student distribution would lead to substantial disruption



Wynar v. Douglas Cty. Sch. Dist., 9th Cir.

- Facts:
 - Student made violent threats via social media
 - Threats dealt with weapons and shooting classmates
 - Classmates became concerned and notified school authorities
 - District expelled student



Wynar v. Douglas Cty. Sch. Dist., 9th Cir.

- Holding:
 - District court rules in favor of district
 - Court of Appeals rules in favor of district
 - Messages presented a risk of significant disruption to school activities
 - Safety of school and students threatened
 - District didn't violate student's First Amendment rights



McArdle v. Peoria Sch. Dist. No. 150, 7th Cir.

- Facts:
 - Principal placed on work performance improvement plan
 - Board considered early termination of principal's contract
 - Principal accused district academic officer of theft
 - Principal terminated and district academic officer prosecuted



McArdle v. Peoria Sch. Dist. No. 150, 7th Cir.

- Holding:
 - District court rules in favor of district
 - Court of Appeals rules in favor of district
 - Principal's First Amendment claims fail
 - Speech was considered speech of a public employee and was not protected



PUBLIC RECORDS



State ex rel. Anderson v. City of Vermilion

- Facts:
 - Former mayor made public records request for all itemized billing statements received from law firms providing legal services to the city
 - City denied request
 - City claimed itemized billing statements were exempt from disclosure based on attorney-client privilege



State ex rel. Anderson v. City of Vermilion

- Holding:
 - Court of Appeals rules in favor of city
 - Ohio Supreme Court rules that former mayor is entitled to certain statements after redaction of items covered by attorney-client privilege
 - Case remanded for further proceedings



State ex rel. Anderson v. City of Vermilion

- Impact:
 - "If a public record contains information that is exempt from the duty to permit public inspection or to copy the public record, the public office or the person responsible for the public record shall make available all of the information within the public record that is not exempt" RC 149.43(B)(1)



State ex rel. ESPN, Inc. v. Ohio State Univ.

- Facts:
 - ESPN made several public records requests for reports, emails and other correspondence related to certain individuals
 - Requests related to investigation of Jim Tressel
 - OSU denied requests claiming FERPA prevented release and some requests were too broad
 - ESPN claimed OSU violated RC 149.43



State ex rel. ESPN, Inc. v. Ohio State Univ.

- Holding:
 - Ohio Supreme Court:
 - OSU established that FERPA and attorney-client privilege prohibited disclosure of a majority of the requested records
 - OSU violated portions of RC 149.43 by not allowing ESPN to amend request that was too broad



State ex rel. ESPN, Inc. v. Ohio State Univ.

- Impact:
 - Records that cannot be released under state or federal law are exempt from release under RC 149.43 (A)(1)(v)



State ex rel. Lanham v. DeWine

- Facts:
 - Public records request for copies of records relating to state representative simultaneously holding two public offices
 - Some records withheld while others were redacted: claiming attorney-client privilege
 - Request was refined



State ex rel. Lanham v. DeWine

- Holding:
 - Ohio Supreme Court:
 - Attorney general's office properly withheld documents
 - Documents covered by attorney-client privilege
 - No statutory damages or attorney fees



State ex rel. Lanham v. DeWine

- Impact:
 - Attorney-client privilege arises:
 - “(1) Where legal advice of any kind is sought
 - (2) From a professional legal adviser in his capacity as such
 - (3) The communications relating to that purpose
 - (4) Made in confidence
 - (5) By the client
 - (6) Are at his instance permanently protected
 - (7) From disclosure by himself or by the legal adviser
 - (8) Unless the protection is waived” (*State ex rel. Lanham v. DeWine*)



State ex rel. Miller v. Ohio State Hwy. Patrol

- Facts:
 - Public records requests made for records related to traffic incidents involving a specific trooper
 - Some records provided and some withheld
 - Patrol claimed some records withheld because of pending investigation falling under RC 149.43 exception
 - Miller claimed nothing exempt from disclosure



State ex rel. Miller v. Ohio State Hwy. Patrol

- Holding:
 - Court of Appeals rules in favor of Patrol
 - Miller didn't establish a clear legal right to relief
 - Ohio Supreme Court remands case back to Court of Appeals
 - Patrol has the burden to establish exception
 - Exception claimed by Patrol is not within itself an exception, but part of a larger one



State ex rel. Miller v. Ohio State Hwy. Patrol

- Impact:
 - Public records custodian has burden to establish exception
 - Confidential law enforcement investigatory records exception found in RC 149.43(A)(2)
 - Two part test used to determine if record is a confidential law enforcement investigatory record



State ex rel. McCaffrey v. Mahoning Cty. Prosecutor's Office

- Facts:
 - Public records request made by McCaffrey for “attorney calendars, communications between the judge and members of the grand jury and communications between grand jury members and county prosecutors” pursuant to RC 149.43
 - Prosecutor’s office denied part of the request claiming McCaffrey didn’t specifically request certain documents
 - Action filed by McCaffrey



State ex rel. McCaffrey v. Mahoning Cty. Prosecutor's Office

- Holding:
 - Ohio Supreme Court denies most of McCaffrey's claims
 - Request for certain records wasn't specific enough for prosecutor's office to know what records were requested
 - McCaffrey entitled to attorney calendar information to the extent that such information contained work-related entries



State ex rel. McCaffrey v. Mahoning Cty. Prosecutor's Office

- Impact:
 - Ohio's Public Records Act liberally construed for broad access
 - RC 149.43 doesn't require a record to be created that doesn't exist



OCR “Dear Colleague Letter”



OCR “Dear Colleague Letter”

- January 25, 2013
- U.S. Department of Education Office for Civil Rights
 - Letter provides guidance on disabled students and extracurricular athletics
 - Districts providing extracurricular athletics must provide qualified students with disabilities an equal chance to participate



OCR “Dear Colleague Letter”

- January 25, 2013
 - Districts must make reasonable modifications unless a showing of a fundamental alteration to athletic program established
 - “Unnecessarily” separate or different services is discriminatory



Questions?

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