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REPORT

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Coming Together To Address Student Aggression and School Safety

by William C. Kling

I. Introduction

From Columbine to Decatur, from Oregon to Arkansas and across the nation, the headlines cry out.[1] We all recognize the high cost of lessons learned from violent events rocking our nation's schools. But the headlines do not necessarily reflect increasing *rates* of violence in our schools; rather, it is the *intensity* of the violent acts that shocks our collective conscience, driving us to find common solutions to curb, or at least deter, young people from committing extremely violent acts. According to United States Secretary of Education Richard Riley:

> Despite recent, high-profile cases . . . schools remain safe places. Less than 1% of homicides among youth aged 12-19 occur in schools and 90% of schools haven't reported any serious violent crime. There is a direct link between school reform issues and safe schools. Safe schools are schools where teachers are adequately trained, where the ratio between teachers and students is sufficient to ensure that no children fall between the cracks, where the instructional program is strong, where teachers and students treat each other with respect & civility, and where buildings are not over crowded or decaying. The most effective way to address school crime & violence is through a community-wide approach.[2]

Educators face the difficult challenge of ensuring safety in our schools while, at the same time, preserving our public schools as a forum for free speech, in this context, respecting First Amendment protections afforded students upon entering the "school house gate."[3] Students' fundamental rights to freedom of speech and expression carry into academics, athletics, extracurricular activities, and when necessary, the disciplinary process. With regard to the latter, the fundamental due process guarantees afforded students facing suspension or expulsion rest upon an opportunity for the alleged offender to be *heard*.[4]

Educators have long had the arduous task of balancing these sensitive interests. And, of course, teachers and administrators do not always agree upon the most effective means for dealing with aggressive students.[5] All would agree it is often extremely difficult to maintain positive teaching and learning environments in the face of aggressive students. Clearly, *all* interested parties—students, parents, board members, administrators, teachers, educational support personnel, and the community as a whole—will have strong opinions as to what interventions are most appropriate in their schools, given community-based standards: Should metal detectors be used? If security personnel are used, should they wear uniforms? Should security personnel carry side arms? Should students wear uniforms? Should other limitations be placed on the type of clothing students wear to school? What should the role of law enforcement be in the school setting? What is the proper role of school counselors, social workers and other social service agency staff?

A high school principal recently summed it up this way: "No matter where you are, parents want their students to be safe and secure . . . *that might even precede a quality education* . . . with drugs, gangs, and guns on the rise in many communities the threat of violence 'weighs heavily on most principals' minds these days . . .

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Anyone who thinks they are not vulnerable is really naïve."[6]

This article discusses issues involved in and approaches to the problem of school violence. It advocates a collaborative process between labor and management. Part II discusses the general benefits of collaboration. Part III examines student constitutional rights that any approach to school violence must consider. Part IV discusses non-collaborative approaches. Part V discusses collaborative solutions.

II. Coming Together: The Benefits of Collaboration

How should we respond to the seeming rise in violence among our society's youth? Clearly, educators (teachers and administrators, as well as school psychologists, social workers and health care professionals), working with board members, parents, social service agencies, community groups, and representatives of the legal system, can come together to develop strategies for identifying aggressive students early, and collectively intervening to curb these youngsters from using violence as their fundamental means of expression. And, of course, early and continuous intervention has proven effective in influencing positive learning experiences.[7]

Educators can also come together to solve the practical problems associated with creating a secure learning environment. The best administrators I work with recognize that teachers and other staff should have a role in defining the safety needs of their particular school district, and developing solutions to make each school building safe. They recognize that individuals working in school buildings day in and day out can provide valuable input into the specific safety issues at their facility.

While no solution or plan will prevent every violent act, one strategy has proven successful—a collaborative approach. Administrators, teachers, board members and educational support personnel, as well as parents and students themselves, are advised to put the sabers back in their sheathes, and instead, roll up their collective sleeves to develop solutions for curbing student aggression. Strategies effectively implemented include peer mediation, alternative programming, psychological counseling, positive reinforcement, and when absolutely necessary, punishment. The interested parties can also work together to establish practical and implementable school safety plans to deter acts of violence before they occur.

Schools are unique workplaces. Few other venues in our society provide the constitutional and statutory protections to both the service provider and the customer. At the same time, creating a quality "end product" brings labor and management together in ways not seen in other unionized venues. This relationship-building can, and should, carry over into the bargaining arena where more employee-centered issues impacting terms and conditions of employment are discussed. Utilizing the collaborative approach to address school violence provides an opportunity for educators to work together to create a more safe and secure teaching and learning environment.

The collaborative approach to problem solving in the school setting is not new. In 1996, a United States Department of Labor task force, co-chaired by former New Jersey Governor James Florio, issued a report entitled *Working Together for Public Service*.[8] The report laid down the following gauntlet:

> Challenge to Labor and Management:
>
> In view of [our] findings and the need for transformation in the way public services are delivered, the Task Force challenges labor and management leaders, both locally and nationally, to follow the lead of the examples in this report, to break some molds, forge new ground and seek a new approach.[9]

The paper endorsed dispute resolution models from the workplace which, according to anecdotal reports, were successfully integrated into strategies for addressing, among other issues, student behavior. Of course, work-based models cannot always succeed in the educational environment where the "customers" are students and parents. On the other hand, the anecdotal evidence set forth in the Florio Task Force Report demonstrates the capacity of educators to create flexible and workable environments fostering a quality educational product.

For example, the Florio Commission noted that at one urban school, "[t]he annual dropout rate has gone from 21 percent of the student body to 3.5 percent; suspensions have dropped from 400 cases to 40," and student scores on a comprehensive test of basic skills in math, reading and language have improved to near state average after the introduction of a "Leadership Council...bring[ing] together administrators, teachers, parents and commu-

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nity members."[10]

The report detailed the experiences at Foshay School in south-central Los Angeles, "surrounded by fences and drug deals," where the chapter chair of the United Teachers of Los Angeles told the Task Force, "No one was able to focus on education here until this principal arrived. Now we have a partnership."[11] Faced with an 80 percent student turnover rate, the union president and the principal worked together to institute a school-based management program and a Leadership Council to govern the school. As Task Force members toured the school, they saw "a safe environment with halls and classrooms filled with active, well-behaved students and teachers excited about their work."[12]

The report also related the experiences of the Cincinnati Public Schools where "the partnership between the teachers and the administration did not happen overnight."[13] The Cincinnati Public Schools faced severe financial shortages affecting the total learning environment. It was no longer possible to spare classroom and other student services from the budget axe. "Secondary librarians, guidance counselors, nearly all extracurricular activities and popular magnet programs were cut."[14]

But, according to a senior administrator, "the Cincinnati Federation of Teachers and the administration of the Cincinnati Public Schools have not allowed the cuts to pit us against each other... Instead, we have joined forces to seek additional revenue from state, city and county government," funding used for, among other things, student support services including student counseling.[15]

Examples of "shared decision-making" strategies developed by the teachers and administrators in Cincinnati included a Teacher Allocation Committee to oversee compliance with class size provisions in the collective bargaining agreement, a Budget Commission to analyze and make recommendations regarding percentages spent on instruction and other direct services to students, Curriculum Councils to maintain high quality instruction, a Peer Review Panel and Career in Teaching Panel, and the Employee Benefits Committee monitoring utilization of health benefits and insurance policies.[16] The overall objective of the Cincinnati plan was to have a collaborative, positive impact upon the entire school environment, including the students.

Another example of effective collaboration can be found in the Department of Education "toolbox" for educators, *Early Warning, Timely Response: A Guide to Safe Schools*.[17] The Department of Education advises us, together, to look for early warning signs in students like social withdrawal, apathy, poor performance, and a history of disciplinary problems or aggressive behavior. Moreover, other professionals, such as psychologists and social workers, can be called in to assist in developing methods for collaborative problem solving through mediation, facilitation and conciliation to address student violence. These models, with proper training and implementation, can be effectively integrated into schools.[18]

III. Collaborative Solutions Must Respect Student Rights

Before embarking on site-based solutions to student aggression and school safety, however, teachers, administrators and other educational support personnel should have an understanding of the constitutional rights afforded students. Even with the best intentions, school officials who do not consider these basic concepts may end up in situations like the one that faced the Decatur school system earlier this school year.

With that caveat in mind, Illinois school officials should recognize that they are given broad latitude in meting out student discipline.[19] Illinois courts have been reluctant to overturn decisions to suspend or expel students, particularly concerning matters of student safety.[20] In one case the court succinctly stated:

> School discipline is an area which courts enter with great hesitation and reluctance and rightly so. School officials are trained and paid to determine what form of punishment best addresses a particular student's transgression. They are in a far better position than is a black robed judge to decide what to do with a disobedient child at school.[21]

One concept often used in defending lawsuits brought by students against educators is the doctrine of *in loco parentis*, which literally means "[i]n the place of a parent."[22] The common law doctrine provides that a parent "'may . . . delegate part of his parental authority, during his life, to the tutor or schoolmaster of his child; who is then *in loco parentis*, and has such a portion of the power of the parent committed to his charge, viz. that of restraint and correction, as may be necessary to answer the purposes for which he is employed.'"[23] In *Vernonia School District 47J v. Acton*, the Supreme Court characterized the doctrine as "not entirely 'consonant with compulsory education laws'" and as inconsistent with earlier decisions treating school officials as State actors for purposes of the due process and free speech clauses.[24] What the *Vernonia* case tells us is that the awesome power given school officials through the *in loco parentis* doctrine also brings with it the responsibility to act with the child's best interest at heart. Nonetheless, the Court has emphasized that the State has a substantial interest in maintaining a proper educational environment for the schoolchildren entrusted to its custody and tutelage. As the Supreme Court stated in its seminal *T.L.O.* decision:

> Even in schools that have been spared the most severe disciplinary problems, the preservation of order and a proper educational environment requires close supervision of schoolchildren, as well as the enforcement of rules against conduct that would be perfectly permissible if undertaken by an adult.[25]

On the other hand, students are entitled to the protection of the broad principles found in the United States Constitution. These include the Fourteenth Amendment's right not to be

deprived of liberty or property without due process of law, the First Amendment's right of free speech and press, and the Fourth Amendment's right to be free of unreasonable searches and seizures.

A. Due Process Guarantees

As with public employee rights, at the core of student rights is the guarantee of fundamental due process. Students suspended from school have property and liberty interests of which they cannot be deprived without due process, including oral or written notice of the charges, an explanation of the evidence and an opportunity to tell their side of the story.[26] The procedural safeguards required in a particular case vary, depending on: (1) the significance of the private interest which will be affected, (2) the risk of the erroneous deprivation of that interest through the procedures used, and (3) the significance of fiscal and administrative burdens that the additional or substitute procedural safeguards would entail.[27] At a minimum, notice and a meaningful opportunity to be heard are required.[28]

These standards were most recently discussed at length in *Fuller v. Decatur Public School Board of Education*.[29] In that case, the court held that the school board did not violate the due process and equal protection rights of the students who it expelled for engaging in a brawl at a high school football game.[30] Still, the school board and its administration had to endure a highly publicized media blitz, and serious charges of constitutional violations.

One of the allegations made by the students was that a provision in the student discipline code prohibiting "gang-like activity" was void for vagueness, and thus, violated due process guarantees. The students relied on the recent decision in *Morales v. City of Chicago*,[31] where the United States Supreme Court struck down the Chicago Gang Loitering Ordinance. The *Fuller* court distinguished *Morales*, noting, "[G]iven the school's need to be able to impose disciplinary sanctions for a wide range of unanticipated conduct disruptive of the educational process, the school disciplinary rules need *not* be as detailed as a criminal code which imposes criminal sanctions."[32] The court found the students' behavior during the altercation was directly related to gang activity, and thus, clearly violated student conduct rules. According to the court, since there was a clear violation of those rules, the students could not challenge the constitutional validly of the student conduct code provision.[33]

B. First Amendment Protections

Another fundamental right afforded to students arises from the First Amendment's guarantees of free speech and expression. In general, freedom of speech is protected if school officials have no reason to believe that the activity would substantially interfere with school activities.[34] In *Tinker v. Des Moines Independent Community School District*, the Supreme Court found that a school policy prohibiting students from wearing black armbands to school to protest the Vietnam war was an unconstitutional restraint on the students' freedom of expression.[35]

In a more recent case, however, the Court held that a student who delivered a lewd and obscene political speech was not constitutionally protected. In that case, the Court noted that public schools are purveyors of "fundamental community values of habits and manners of civility essential to a democratic society."[36] In another important case, where a principal cut articles from the student newspaper, the Supreme Court ruled that school districts have authority to control the content of school newspapers.[37]

Courts have considered other forms of student expression. Courts have held that school districts may regulate hair length and pierced ears.[38] The Seventh Circuit Court of Appeals has held that administrators must justify such regulations by demonstrating necessity.[39] Thus, for instance, a federal district court in Illinois upheld a school policy that prohibited male students from wearing earrings which clearly demonstrated gang affiliations.[40] In a case from another jurisdiction, a ban on professional sports insignia was upheld for high school students because of a demonstrated connection to gang activity, but was ruled unconstitutional for middle and elementary school students because the school district could not prove gang activity.[41] In yet another recent case, a school district dress code regulation prohibiting sagging pants was upheld. The court found that the student's defiant behavior exhibited towards school officials justified the regulation.[42]

C. Fourth Amendment Protections

With regard to students' rights to be free from unreasonable searches and seizures, the Supreme Court has stated: "Fourth Amendment rights are different in public schools than elsewhere; the 'reasonableness' inquiry cannot disregard the schools' custodial and tutelary responsibility for children. For their own good and that of their classmates, public school children are routinely required [to do a variety of things]. '[S]tudents within the school environment have a lesser expectation of privacy than members of the population generally.'"[43]

Thus, for instance, in balancing the competing interests of a school's need to maintain a proper educational environment and the child's legitimate expectations of privacy, courts have ruled that teachers and school officials do not need a warrant before searching a student and need not adhere to the requirement that searches be based on probable cause. "Rather, the legality of a search of a student should depend simply on the reasonableness, under all the circumstances, of the search."[44]

In that regard, a growing trend involves school district/municipal partnerships to establish a law enforcement presence in schools.[45] Police officers in school settings are generally grouped into three categories: (1) those where school officials initiate a search or where police involvement is minimal, (2) those involving school police or liaison officers acting on their own authority, and (3) those where outside police officers initiate a search.

Where school officials initiate the search or police involvement is minimal, most courts have held that the reasonable suspicion test applies.[46] The same is true in cases involving school police or liaison officers acting on their own authority. In one Illinois Supreme Court case, the court held that the reasonable suspicion standard, and not the probable cause standard, applied to a search conducted by a police liaison officer, who was a staff member at an alternative school for students with behavioral disorders. The search was permissible since it involved the liaison officer conducting the search on his own initiative and authority in furtherance of the school's attempt to maintain a proper educational environment.[47] However, where outside police officers initiate a search, or where school officials act at the behest of law enforcement agencies, the probable cause standard has been applied.[48]

IV. The Shortcomings of Non-Collaborative Approaches

Even under the Constitutional rubric described above, some strategies for addressing aggressive students and school safety rely upon a more authoritarian approach. No doubt, these powers approved by the courts and provided in statutes give educators important tools to perform their professional responsibilities; on the other hand, punishment and deterrence alone will not provide long-lasting solutions to creating safe and secure schools.

A. Corporal Punishment

Many states including Illinois provide blanket civil and criminal immunities to teachers who use corporal punishment to "improve the learning environment." The Illinois School Code, for instance, permits teachers to use reasonable force in order to maintain discipline in the classroom.[49] Teachers may be protected even in some instances where they exceed school policies regarding the use of force. For example, in one case, the court upheld an Illinois State Board of Education hearing officer's ruling that a teacher's conduct in disciplining a student resulting in harm to the student, was remediable, and thus, the court reinstated the teacher.[50] The student suffered a contusion to his chest and possible fracture of his rib and, as a result, sought medical treatment and missed a day of school. The teacher had a clean disciplinary record and no prior complaints of corporal punishment from parents or teachers. While the court did not condone the teacher's actions, it reinstated the teacher even after harm was inflicted on the student.

It is questionable, however, whether immunity for teachers "curbs violence or teaches it."[51] According to one commentator, "the United States actually remains one of the few industrialized nations that permit teachers to strike children."[52]

B. The Rise of Zero Tolerance Policies

Another, more recent, intervening factor is the popularity of "zero tolerance"policies. In one study, administrators were asked about whether their schools had "zero-tolerance" policies, meaning a school or district policy mandating *predetermined* consequences for various student offenses. The proportion of schools that had such policies ranged from 79 to 94 percent for acts of disobedience involving violence, tobacco, alcohol, drugs, weapons other than firearms, and firearms.[53]

Zero tolerance policies, however, raise concerns with respect to student due process rights. For example, in the Decatur football game brawl case, the court held that the school board's official action adopting a resolution mandating zero tolerance did not deny the students due process because school board members testified that they did not even consider the "policy" when determining the disciplinary sanctions they imposed against the students.[54] Thus, the court upheld the School District's zero tolerance policy against due process attack because the board, in actuality, did not rely on it.

C. Teachers as Plaintiffs

Some teachers who have alleged that they have been harmed by aggressive students have sought compensation. Some have filed civil lawsuits against students seeking damages.[55] In one such case, after counseling, disciplining, and meeting with the a student's mother, a teacher found herself on the wrong end of a "smear" campaign. The student wrote his fellow students a note: "I am afraid that now that I am gone, the class will no longer be disruptive and may even begin to do their homework. This cannot be permitted to happen. From this day forward, if the person sitting next to you is being quiet or doing their home work, cuss them out in Spanish and cause a huge disruption. To frighten teacher, speak each day about different methods of murder."[56] The teacher claimed she suffered emotional distress as a direct result of the note.

In another case, an elementary school teacher sought compensation under the Occupational Diseases Act. He had continuous difficulty keeping discipline in the classroom because of the nature of the students being taught and, although unruly children were sent to the principal's office, they were often returned to the classroom without being disciplined or counseled. The teacher maintained this was a violation of the union contract. The appellate court held that the teacher failed to establish that his depressive disorder was an "occupational disease," within the meaning of the Act.[57]

Teacher claims for compensation arise after the fact. Regardless of whether such claims are justified, they are no substitute for collaborative efforts aimed at preventing aggressive student behavior in the first place.

V. Progressive Collaboration

While the imposition of a more punitive approach such as metal detectors, firm discipline, and punishment may serve to prevent violence in the short term, true long term solutions are more likely to result when all parties work together.

Two components of long term collaborative solutions are peer mediation and teacher training.

A. Peer Mediation

A system of peer mediation for teaching students alternatives to violence has been proven to alleviate the underlying causes of violent acts committed by students.[58] Teachers, administrators and board members can draw from their mediation experiences in the labor relations context to assist students in developing effective peer mediation programs.[59] Significantly, peer mediation produces tangible results. In one survey, 200 New York teachers and administrators who used peer mediation reported "an astounding seventy-one percent decrease in classroom violence after the implementation of a peer mediation program."[60]

Most importantly, peer mediation gets to the root of student aggression—lack of student self-esteem. Students engaged in peer mediation report increased levels of self-esteem as they learn to resolve their problems and work out solutions for the betterment of the whole school environment. Generally, an increase in student self-esteem leads to a decrease in disciplinary problems.[61]

B. The Importance of Teacher Training

Once the parameters of each party's rights are clearly defined, the next step to effective collaboration is designing and implementing a school safety plan.[62] Crisis intervention/violence prevention training for teachers, administrators and other educational support personnel is critical for fully integrating necessary changes into schools. When developing in-service programs, administrators are wise to consult with teachers to determine what the key issues are on a site-by-site basis. Each school has its own personality, and what is appropriate for one school may not be appropriate for another, even in the same district.[63]

VI. Conclusion

School violence is one of the most important issues facing our communities and our policy makers. By joining forces to develop solutions for addressing student aggression and school safety, educators can lead the discussions at the policy bargaining table. And of course, we will continue to see more discussions of these issues in traditional-labor management negotiations. When developing strategies to promote a safe learning environment, educators can work together across traditional labor-management lines. As documented in the Florio Report, collaboration in the area of comprehensive school reform has proven successful. At the same time, teachers and other professional personnel, administrators and board members must work within the well-defined constitutional rubric protecting students in the school setting, and recognize that the student is at the heart of the educational workplace. ♦

Notes

[1]On May 26, 2000, a teacher was shot by a student in Lakewood, Fla. The prosecutor is requesting that the 13-year-old student be tried as an adult and charged with first degree murder for shooting and killing a teacher with a .25 caliber handgun he had taken from a friend's house a few days earlier. The student was sent home from school for playing with water balloons. He went home, retrieved the gun, and returned to the school. When the teacher did not allow him back into the classroom, the student fired a single shot at close range, hitting the teacher in the face and killing him. *See* Debra Sharp, *Honor Student Might Be Tried for Murder as Adult*, USA TODAY, May 30, 2000, at 6A.

[2]Richard W. Riley, Secretary, U.S. Dept. of Education, Testimony before the Senate Subcommittee on Labor, HHS, Education and Related Agencies on the Issue of School and Youth Violence (Sept. 14, 1999), *available at* <http://www.ed.gov/Speeches/09-1999/990914.html>.

[3]"Students do not shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Tinker v. Des Moines Independent Comm. Sch. Dist.*, 393 U.S. 503, 506 (1969). One commentator, in a succinct discussion of Supreme Court jurisprudence on the subject, characterized the *Tinker* decision as "[t]he Court's strongest statement of its belief that the First Amendment mandates that public school students be afforded substantial latitude in developing and expressing their thoughts and beliefs . . ." Alison G. Myrha, *No Shoes, No Shirt, No Education: Dress Codes and Freedom of Expression Behind the Postmodern Schoolhouse Gates*, 9 SETON HALL CONST. L.J. 337, 361-62 (1999).

[4] *Goss v. Lopez*, 419 U.S. 565 (1975). Adults taking time to *listen* to young people can only improve student self esteem— one key to curbing aggressive behavior.

[5]An enlightening "teacher's perspective" is gleaned from an article written by AFT President Albert Shanker in "Where We Stand", April 2, 1996:

> Suppose the violent, firebug child had brothers and sisters. Would their mother allow the problem child to endanger the lives and safety of the others? Would she say that separating the disturbed child from the others would unfairly label and stigmatize him? That it would destroy his self-esteem? Hell no! She would do what she could for her troubled son. She'd spend more time with him and she'd spend more on doctors. But she would also protect her other children from him. Why can't schools act more like rational loving parents?

President Shanker continues:

> "What would they do if a five-year-old comes to school with a gun?" asked a representative of Advocates for Children: "There are so many things to be concerned about, but suspending the child seems to me so far from what our concern should be."Enter George Orwell. Child advocate? Advocate for all the children or advocate for the right of a violent firebug to endanger the lives of other kids? Ignore a five-year-old with a gun? What are we teaching him? That its O.K. to bring a gun to school!

Albert Shanker, President, American Federation of Teachers, *The Most Important Lesson*, President's Column: Where We Stand (American Federation of Teachers, AFL-CIO, Washington, D.C.), (April 2, 1995), *available at* <http://www.aft.org/stand/previous/1995/040295.html>.

[6] Diane Granat, *Hey, Mr. Durso . . .*, THE WASHINGTONIAN MAGAZINE, Sept. 1997, at 71 (quoting Springbrook High School Principal Michael Durso). In a similar vein, last year, Secretary Riley and Attorney General Reno jointly declared: "America's schools are among the safest places to be on a day-to-day basis, due to the strong commitment of educators, parents, and communities to their children. Nevertheless, last year's tragic and sudden acts of violence in our nation's schools remind us that no community can be complacent in its efforts to make its schools even safer. An effective and safe school is the vital center of every community whether it is in a large urban area or a small rural community". Letter from Richard W. Riley, Secretary, *U.S. Dept. of Education* & Janet Reno, Attorney General, *U.S. Dept. of Justice*, (Aug. 22, 1999), *available at* <http://cecp.air.org/guide/lettertext.htm>.

[7] Craig T. Ramey, et al., *Persistent Effects of Early Childhood Education on High-Risk Children and Their Mothers*, 4 APPLIED DEVELOPMENTAL SCIENCE, Jan. 2000, at 2-14.

[8] U.S. DEPT. OF LABOR, WORKING TOGETHER FOR PUBLIC SERVICE: REPORT OF THE U.S. SECRETARY OF LABOR'S TASK FORCE ON EXCELLENCE IN STATE AND LOCAL GOVERNMENT THROUGH LABOR-MANAGEMENT COOPERATION (May, 1996).

[9]*Id.* at 4.

[10]*Id.* at 19.

[11]*Id.*

[12]*Id.*

[13]*Id.* at 117.

[14]*Id.*

[15]*Id.*

[16]Interestingly, in the description of the Cin-

cinnati school experience, the Task Force used the word "student"only 4 times whereas the word "teacher" was used at least 30 times. Unfortunately, a close review of the team's strategies appeared to focus issues on the teachers, instead of the learners.

[17]UNITED STATES DEPT OF EDUCATION, EARLY WARNING, TIMELY RESPONSE: A GUIDE TO SAFE SCHOOLS (1999), *available at* <http://www.ed.gov/offices/OSERS/OSEP/earlywarn.html>.

[18]*See* Tia Schneider Denenberg, et al., *Reducing Violence in U.S. Schools: The Role of Dispute Resolution*, 53 DISPUTE RESOL. J. 28 (Nov.1998).

[19]The Illinois School Code grants boards of education the authority to:

> suspend or by regulation to authorize the superintendent of the district or the principal, assistant principal, or dean of students of any school to suspend pupils guilty of gross disobedience or misconduct...and no action shall lie against them for such suspension. The board may by regulation authorize the superintendent of the district or the principal, assistant principal, or dean of students of any school to suspend pupils guilty of such acts for a period not to exceed 10 school days.
> 105 ILCS 5/10-22.6.

[20]*See, e.g., Clements v. Board of Educ, Decatur Pub. Sch. Dist. 61*, 133 Ill. App.,3d 531, 478 N.E.2d 1209 (4th Dist. 1985); *Donaldson v. Board of Educ., Danville Sch. Dist. 118*, 98 Ill. App. 3d 438, 439 N.E.2d 737 (4th Dist. 1981); *Smith v. Board of Educ., Oak Park River Forest High School*, 182 Ill. App. 342 (1st Dist. 1913).

[21]*Donaldson*, 98 Ill. App. 3d at 424, 439 N.E.2d at 738. As related in one treatise, schools are a special kind of place in which serious and dangerous wrongdoing is intolerable.

> The state, having compelled students to attend school and thus 'associate with the criminal fewor perhaps merely the immature and unwise few–closely and daily, thereby owes those students a safe and secure environment." WAYNE R. LAFAVE, A TREATISE ON THE FOURTH AMENDMENT, § 10.11 (3d ed. 1996).

[22]BLACK'S LAW DICTIONARY.

[23]*Vernonia Sch. Dist 47J v. Acton*, 515 U.S. 646, 654 (1995)(quoting 1 W.BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 411(1769)).

[24]*Id.* at 655. "One of the things that makes *in loco parentis* such an erroneous phrase in this context is precisely the absence of a genuinely parental protective concern for the student who is threatened with the school's power. It is presumably a characteristic of the use of parental force against a child that the force is tempered by understanding and love based on a close, intimate, and permanent child-parent relationship. What so many of the courts persist in talking about as a parental relationship between school and student is really a law enforcement relationship in which the general student society is protected from the harms of anti-social conduct.' William G. Buss, *"The Fourth Amendment and Searches of Students in Public Schools,"*59 IOWA L. REV. 739, 768 (1974).

[25]*New Jersey v.T.L.O*, 469 U.S. 325, 339 (1985).

[26]*Goss v. Lopez*, 419 U.S. 565 (1975).

[27]*See Mathews v. Eldridge*, 424 U.S. 319 (1976).

[28] *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532 (1985). In *Colquitt v. Rich Township Sch. Dist. 222*, 298 Ill. App. 3d 856, 699 N.E.2d 1109 (1st Dist. 1998), the First District Appellate Court held student Colquitt was entitled, at a minimum, to be given "some kind of notice and afforded some kind of hearing" after an altercation involving knives and potentially gang-related activity The court observed, "Although an expulsion hearing is not a judicial or quasi-judicial proceeding and, therefore, common law rules of evidence need not be transplanted wholesale, certain protections, such as from witnesses 'motivated by malice, vindictiveness, intolerance, prejudice, or jealousy,' must be maintained. " *Id.* at 865, 699 N.E.2d at 1116 (quoting *Goldberg v. Kelley*, 397 U.S. 254, 270 (1970)). The court continued, "A basic tenet of our jurisprudence is that a person should receive a fair and impartial hearing, with an opportunity to offer evidence and cross-examine witnesses. Fundamental concepts of a fair hearing include the opportunity to be heard, the right to cross-examine adverse witnesses and to impartiality in rulings upon evidence. *Id.* It concluded, "In expulsion proceedings, the private interest is commanding; the risk of error from the lack of adversarial testing of witnesses through cross-examination is substantial; and the countervailing governmental interest favoring the admission of hearsay statements is comparatively outweighed." *Id.* at 866, 699 N.E.2d at 1116.

[29]78 F. Supp. 2d 812 (C.D.Ill. 2000).

[30] *Id.* at 815.

[31] 527 U.S. 41 (1999).

[32]78 F. Supp. 2d at 827 (emphasis added).

[33]*Id.* at 828.

[34]*Tinker v. Des Moines Independent Comm. Sch. Dist.*, 393 U.S. 503, 509 (1969).

[35]*Id.*

[36]*Bethel Sch. Dist. 403 v. Fraser*, 478 U.S. 675, 681 (1986).

[37]Hazelwood Sch. Dist. v. Kuhlmeier, 484 U.S. 260, 270-73 (1988).

[38]*See, e.g., Hines v. Caston School Corp.*, 651 N.E.2d 330 (In. App. 1995); Barber v. Colorado Independent Sch. Dist., 901 S.W.2s 447 (Tex. 1995).

[39]*Crews v. Cloncs*, 432 F.2d 1259, 1264-66 (7th Cir. 1970); *Breen v. Kahl*, 419 F.2d 1034, 1038 (7th Cir.), *cert. denied*, 398 U.S. 937 (1969). Section 10-22.25b of the Illinois School Code gives school board the power to adopt school uniform or dress code policy "necessary to maintain the orderly process of a school function or prevent endangerment of student health or safety." 105 ILCS 5/10-22.25b.

[40]*Olesen v. Board of Educ. of Sch. Dist. No. 228*, 676 F. Supp. 820, 823 (N.D. Ill. 1987).

[41]*Jeglin v. San Jacinto Unified Sch. Dist*, 827 F. Supp. 1459, 1461-62 (C.D. Cal.1993). Interestingly, as an expulsion hearing officer, I have seen gangs impacting students as early as the second grade.

[42]*Bivens v. Albuquerque Public Schools*, 899 F. Supp. 556, 561 & n.9 (D.N.M. 1995).

[43]*New Jersey v. T.L.O.* 469 U.S. 325, 326 (1985).

[44]*Id.*; *See generally Terry v. Ohio*, 392 U.S. 1 (1968); *People v. Dilworth*, 661 N.E.2d 310 (Ill. 1985).

[45]A recent forum on community policing sponsored by the West Cook Leaders included a roundtable discussion among police officers from Oak Park and South Holland, as well as community activists. An increasing police presence in school buildings was presented as one element of a total progressive community policing model.

[46]*Martens v. District No. 220 Bd. Of Educ.*, 620 F. Supp. 29, 32 (N.D. Ill. 1985).

[47]*People v. Dilworth*, 661 N.E.2d 310, 317 (Ill. 1996).

[48]*In re Boykin*, 237 N.E.2d 460, 462 (Ill. 1968).

[49]105 ILCS 10/24-24. See also *Wallace v. Batavia Sch. Dist. 101*, 870 F. Supp 222, 226 (N.D. Ill 1994) wherein the court stated: "[The teacher] may have used excessive force in his effort to eject [the student] from the classroom. Given the very limited nature of the disciplinary action taken, as well as the speed with which [the teacher] was required to evaluate the situation in his classroom, [the student's] claim can only rise to the level of a constitutional violation if it is grounded in evidence of malicious or sadistic purpose."

[50]*Board of Educ. of City of Chicago v. Johnson*, 211 Ill. App.3d 359, 570 N.E.2d 382, (1st Dist. 1991).

[51]Carolyn Peri Weiss, Curbing Violence or Teaching It: Criminal Immunity for Teachers who Inflict Corporal Punishment, 74 WASH. U.L.Q. 1251 (1996).

[52]*Id.* at 1255. The cruel and unusual punishment clause of the Eighth Amendment to the Constitution does not apply to corporal punishment imposed as discipline. *Ingraham v. Wright*, 430 U.S. 651 (1977.

[53]Shelia Heaviside, et al., Violence and Discipline Problems in U.S. Public Schools: 1996-97, NCES 98-030 (National Center for Education Statistics, March, 1998).

[54]*Fuller,* 78 F. Supp. 2d at 826.

[55]*See* Henry Reske, *When Detentions Fail*, 82 ABA J. 22 (Apr. 1996).

[56]*Id.* As I have often found when conducting expulsion hearings, some students, like the one in this article, demonstrate strong writing abilities. Alternative programs such as student newspapers, web page design, or debate may prove effective deterrents to aggressive behavior.

[57]*Chicago Bd. of Educ. v. Industrial Comm'n*, 169 Ill. App. 3d 459, 523 N.E.2d 912 (1st Dist. 1988).

[58]*See* Brian Koy Harper, *Peer Mediation Programs: Teaching Student Alternatives to Violence*, 1993 J. DISP. RESOL. 323.

[59]*Id.* at 327. Peer mediation should include board/staff orientation; informing parents; presenting the program to students; selecting and training peer mediators; implementing and evaluating program; and expanding the peer mediation program into the community and other schools.

[60]*Id.* at 328.

[61]See Pat Burson, *Going for the Goals; Georgians Aim at the U.S. Education Targets*, ATLANTA J. AND CONST., Nov. 23, 1991.

[62]The Illinois State Board of Education has developed *Safe at School: A Resource Manual for Self Assessment, Planning and Training*. It is available at <http://isbe.state.il.us/safeschools/pdf/safeschool.pdf>.

[63]Administration and teachers' unions can consult with experts in crisis prevention when determining appropriate interventions. One example is the Crisis Prevention Institute, Inc., which provides training in nonviolent crisis intervention to safely and effectively manage disruptive and assaultive behavior. *See* <http://www.crisisprevention.com>: "In nonviolent crisis intervention, the emphasis is always on the care, safety and welfare of student. Physical restraint is only recommended when all verbal and paraverbal techniques have been exhausted and the youth's actions are escalating toward physical aggression. Even when physical control is used, it is used in such a way

as to allow the student an opportunity to calm down at his own pace. Change the crisis moment to a teaching moment." The final steps in nonviolent crisis intervention involve verbal resolution and tension reduction for both the acting-out student and provider. You will go through a process of therapeutic rapport when communication with the student is possible, and a bridge to resolution can be explored."

♦

RECENT DEVELOPMENTS

by the Student Editorial Board

Recent Developments is a regular feature of T*he Illinois Public Employee Relations Report*. It highlights recent legal developments of interest to the public employment relations community. This issue focuses on developments under the two collective bargaining statutes.

IELRA Developments

Confidential Employees

In *Woodland Community Unit School District 5 and Woodland Education Association*, IEA-NEA, No. 99-UC-0003-C (IELRB 2000), the IELRB, held that a Technology Coordinator was a confidential employee as defined in Section 2(n)(ii) of the IELRA and should not be included in the bargaining unit.

The Technology Coordinator was responsible for the security, maintenance and repair of the District's computers and had access to all of the computers in the District, including the superintendent's computer, for the purpose of maintenance and repair. The superintendent assisted the Board of Education with matters relating to collective bargaining and stored documents related to the bargaining process, such as summaries of negotiation sessions and future negotiation proposals, on the hard drive of his computer.

In August 1998, the Association filed a unit clarification petition with the Board, seeking to include the Coordinator position in the existing bargaining unit. The District objected to the Association's request because of the confidential nature of the position. Section 2 (n)(ii) of the IELRA defines a "confidential employee" as an employee who, in the regular course of his or her duties:

(a)assists and acts in a confidential capacity to persons who formulate, determine and effectuate management policies with respect to labor relations; or (b) has access to information relating to the effectuation or review of the employer's collective bargaining policies.

This section of the Act is typically referred to as "the labor access test". The key inquiry under this test is whether the employee has unfettered access ahead of time to information pertinent to the review or effect of pending collective bargaining decisions.

The IELRB concluded that the Coordinator's job duties encompassed access to the information in the computers including the files containing confidential collective bargaining information. Additionally, the Coordinator's job description clearly stated that the incumbent will have access to confidential collective bargaining information. The Board rejected the Association's argument that the Coordinator did not have access to confidential information "in the regular course" of her duties as required by Section 2(n) of the Act. The Board reiterated that the standard is not merely a quantitative measurement, citing *Board of Education of Plainfield Community Consolidated School District No. 202 v. IELRB,* 143 Ill. App. 3d 898, 493 N.E.2d 1130 (4th Dist. 1986), where the court held that an employee performed a task in the regular course of his or her duties even when the employee spent a minimal amount of time performing the task or performed the task sporadically.

The Board determined that the Coordinator had access to all the computer files at all times, regularly accessesed the files to maintain the computer system, and had the capabilities of accessing all files without the superintendent's direction. Consequently, the Board affirmed the ALJ's decision that the Coordinator was a confidential employee within the meaning of Section 2(n)(ii) of the Act who should be excluded from the bargaining unit.

Discrimination

In *Bloom Township High School District 206 v. IELRB*, 788 N.E.2d 612 (Ill. App. Ct. 1st Dist. 2000), the Illinois Appellate Court for the First District affirmed the Board's decision that the School District violated sections 14(a)(1) and 14(a)(3) of the IELRA when anti-union motivation controlled its decision to discharge a active union member employed as a custodian.

Service Employees International Union, Local 1 represented custodians employed by the School Board. Vince Bove, an active union member, worked was a custodian at Bloom High School in Chicago Heights from 1985 until 1996. During this time period, he received multiple reprimands and was suspended on two occasions for improper conduct. Bove filed two grievances during his tenure; one grievance related to his suspension and the other dealt with a denial of a promotion. In December, 1995, John Romano, the District's supervisor of buildings and grounds, allegedly approached Bove during his shift and told Bove that he was checking on him because he had "orders from across the street." Romamo informed Bove that his surprise visit was essentially a "tit for tat because of the grievance Bove had filed."

In 1996, Bove assumed the responsibility of chief union steward and met with the District representatives to discuss the delay in posting and filling of vacant positions. The union members specifically rejected a District proposal

to combine a vacant electrician's position with a supervisory position, which essentially shifted the electrician's duties to Romano. In October, 1996, while Bove was working the night shift, two School Board members visited Bloom High School to investigate whether custodians remained in their work areas during the night shift. The Board members observed Bove entering the building during the middle of his shift and subsequently realized that he was 15-25 minutes late from his lunch break and had not followed proper procedures regarding punching in and out when he had left and returned to the premises. On November 12, 1996, the School Board voted to terminate Bove because of this specific incident in addition to his prior disciplinary record.

Following Bove's dismissal, the Union filed an unfair labor practice charge under Sections 14(a)(1) and 14(a)(3) of the Act, alleging that the District terminated Bove in retaliation for his active role in the union and his opposition to Romano's combined supervisory and electrician responsibilities. Following a hearing, the ALJ found no violation of the Act. Subsequently, the IELRB reversed the ALJ's finding, concluding that the District's discharge of Bove did violate the Act.

Section 14(a) of the IELRA prohibits educational employers, their agents or representatives from discriminating, restraining, or coercing employees in the exercise of their statutory rights or discriminating against employees with respect to terms and conditions of employment to encourage or discourage membership in any employee organization. Section 14(a)(3) encompasses discrimination based on union activity while section 14(a)(1) applies to adverse action against an employee based on protected concerted activity.

According to the Illinois Appellate Court for the First District, if an alleged violation of Section 14(a)(3) is based on the same conduct as the alleged Section 14(a)(1) violation, the Section 14(a)(1) violation is essentially a "derivative violation." In cases where an employer's conduct is alleged to violate both sections, the court determined, the test under section 14(a)(3), requiring proof of an employer's improper motivation, should be utilized. Under this test, a complainant can establish a prima facie case of discrimination by proving that (1) he or she was engaged in activity protected by section 14(a)(3) of the Act, (2) his or her employer was aware of that activity, and (3) he or she was discharged for engaging in that activity. This third element can be satisfied if the protected union activity was a substantial or motivating factor in the discharge. Anti-union motivation can be inferred from many factors, including but not limited to the following: "an employer's expressed hostility towards unionization, together with knowledge of the employee's union activities; and proximity in time between the employees union activities and his discharge." *City of Burbank v. Illinois State Labor Relations Board*, 128 Ill. 2d 335, 346, 538 N.E.2d 1146, 1150 (1989).

The court upheld the Board's inference of anti-union motivation based on Romano's statements to Bove as well as the close proximity in time between Bove's union activities and his discharge. Specifically, the court noted that in the fall of 1996, Bove, as acting chief union steward, took part in labor management meetings and opposed the District proposal to combine electrician's duties with those of a supervisor. Five days after the meetings concluded, the School Board recommended Bove's termination. Although the District demonstrated it had a legitimate reason for discharging Bove because of his record of misconduct, the court upheld the Board's conclusion that the District's anti-union motivation was the controlling factor in it's decision to terminate him.

IPLRA Developments

Judicial Employees

In *Chief Judge of the Eighteenth Judicial Circuit v. ISLRB*, 311 Ill. App. 3d 808, 726 N.E.2d 147 (2d Dist. 2000), the Illinois Appellate Court for the Second District held that probation officers of the Eighteenth Judicial Circuit were employees under the IPLRA. The court rejected the Chief Judge's arguments that the separation of powers doctrine required exclusion of the probation officers and that the probation officers were managerial employees.

The Chief Judge argued that the Illinois Supreme Court was a joint employer of the probation officers and, therefore, State Labor Board jurisdiction over the employees would violate the separation of powers doctrine. The court, however, found that the Chief Judge had authority to appont, discipline anbd discharge probation officers, subject only to minimum qualification standards set by the Administrative Office of the Illinois Courts AOIC). The Chief Judge also had complete discretion over promulgate work rules, job schedules, vacation and sick leave and grievance procedures. The court found that the AOIC's authority over probation officers was of such a secondary nature that the supreme court was not a joint employer with the Chief Judge. Consequently, the court held that the case was controlled by County of Kane v. Carlson, 116 Ill. 2d. 186, 507 N.E.2d 482 (1987), which had found no separation of powers violation in State Labor Board jurisdiction over Kane County Circuit Court probation officers.

The court also observed that the probation officers' predominant function was providing probation services in accordance with extensive and well-defined guidelines. Although they made independent decisions in carrying out their duties, they did not engage in policy formation or similar managerial functions. Consequently, the court upheld the State Board's determination that the probation officers were employees under the IPLRA. ♦

FURTHER REFERENCES

(complied by Margaret A. Chaplan, Librarian, Institute of Labor and Industrial Relations Library, University of Illinois at Urbana-Champaign)

Auger, Deborah A. PRIVATIZATION, CONTRACTING, AND THE STATES: LESSONS FROM STATE GOVERNMENT EXPERIENCE. Public Productivity & Management Review, vol. 22, no. 4, June 1999, 435-454.

The author surveyed both state officials and the written literature in order to ascertain the nature and extent of priviatization efforts in state government. "Privatization" in this context is broadly defined and includes contracting out, voucher programs, public-private partnerships, franchises, grants and subsidies, asset sales, volunteerism, and private donations. Although state governments have been slow in adopting privatization, evidence indicates that the voulme of activity is growing. Seven lessons that hav been learned from the experience regarding how to understand and manage privatization are offered.

Clarke, Cindy, and Mark J. Zak. FATALITIES TO LAW ENFORCEMENT OFFICERS AND FIREFIGHTERS, 1992-97. Compensation and Working Conditions, vol. 4, no. 2, Summer 1999, 3-7.

Police and firefighters are more likely than other workers to die violently. Their risk of a fatal accident is three times that of all other workers. This article presents statistics on police and firefighter fatalities from 1992-97, with details on the nature of the event or exposure, the location, and indexes of risk relative to other high-risk occupations.

Durst, Samantha. ASSESING THE EFFECT OF FAMILY FRIENDLY PROGRAMS ON PUBLIC ORGANIZATION. Review of Public Personnel Administration, vol. 19, no. 3, Summer 1999, 19-33.

Two hundred public executives, who are members of the International Personnel Management Association, were surveyed as to the extent that their agencies offered certain family-friendly programs: health insurance, child care, flextime, job sharing, resource and referral services for eldercare and child care, voluntary reduced hours, telecommuting, and medical savings accounts. The mean number of programs offered across all levels of govenent was 4.41, and an empirical analysis relates organizational characteristics to the number of programs offered. Finally, while administrators almost universally believe that such programs have positive effects on employee morale, staffing, and productivity, they do not systematically survey employee needs for services or evaluate the outcomes.

Haber, Lawrence J., Ahmad R. Karim, and J. Douglas Johnson. A COMPARATIVE SURVEY OF PRIVATE SECTOR AND PUBLIC SECTOR ARBITRATION CASES. Journal of Individual Employment Rights, vol. 7, no.4, 1998-99, 281-288.

This article expands an earlier article by the same authors by adding about 650 public sector awards to their analysis of private sector awards. Awards were grouped into eight categories and union win rates were calculated for both private and public sectors individually and compared. The analysis of the results reveals that the composition of the caseload differs considerably, with the preponderance of awards in the private sector relating to employment security issues while those in the public sector concern economic and working condition issues. Union win rates were generally greater in the public sector overall and particularly higher for cases involving promotions/demotions and discipline other than discharge.

Peterson, Donald J. NONDISCIPLINARY TERMINATION AND DEMOTIONS IN ARBITRATION. Journal of Individual Employment Rights, vol. 7, no. 4, 1998-99, 289-306.

A collection of 131 arbitration awards from 1986 to 1996 that involved termination for non-disciplinary reasons, such as failure to report for work, failure to return from layoff or leave of absence, loss of a job-related qualification, physical inability to perform the work, and demotions, is analyzed in this article. Patterns in arbitrator decision making in such cases are discussed.

(Books and articles anotated in Further References are available on interlibrary loan through ILLINET by contacting your local public library or system headquarters.)

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