SURVEY OF ILLINOIS LAW: SIGNIFICANT DEVELOPMENTS IN EDUCATION LAW 2007

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INTRODUCTION

This article provides a general overview of 2007 common law and statutory legal developments impacting elementary and secondary education in Illinois. The cases and statutory enactments reviewed in this article are ones that we believe have had, or will have, a significant effect on the field of education law. The materials below are organized into the following sections: First Amendment, finance, employment discrimination, special education, student issues, school boundary issues, tort immunity and statutory enactments.

I. FIRST AMENDMENT

Several interesting cases were decided in 2007 relative to the free speech rights of both students and teachers. Perhaps the most prolific of these cases is *Morse v. Frederick*,[1] decided on June 25, 2007. This case involves an eighteen-year-old student in Juno, Alaska, who was suspended for ten school days after he unfurled a banner reading "Bong Hits 4 Jesus" as the Olympic torch relay passed his school.[2] The incident occurred during the school day, as students were temporarily released to watch this event across the street from the high school.[3] The student, Frederick, unsuccessfully challenged the suspension through all levels of school district review, claiming throughout that the actions of the school district violated his freedom of speech under the

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1. Morse v. Frederick, 127 S. Ct. 2618 (2007).
2. *Id*. at 2622.
3. *Id*.

First Amendment.[4] The district court granted summary judgment for the school district and the Ninth Circuit reversed, not only siding with the student but also finding personal liability on the part of the building principal.[5]

The United States Supreme Court "granted certiorari on two questions: whether Frederick had a First Amendment right to wield his banner, and, if so, whether that right was so clearly established that the principal may be held liable for damages."[6] Before addressing the primary issues at hand, the court quickly established that the event in question was "an approved social event or class trip," thereby allowing the school district to treat the matter as if it happened on school property.[7] With respect to Frederick's First Amendment claim, the court found that the message displayed on the banner clearly concerned illegal drug use.[8] The court went on to carve out a new exception to student free speech in cases where such speech promotes illegal drug use. Specifically, the court stated that "[t]he First Amendment does not require schools to tolerate at school events student expression that contributes to those dangers."[9] The court quickly dispatched of the second issue, finding that the principal clearly acted reasonably in the situation.[10]

Also during 2007, the United States Supreme Court decided a constitutional claim made against a high school athletic association. In *Tennessee Secondary School Athletic Association v. Brentwood Academy*,[11] the high court was asked to decide whether rules against certain types of athlete recruitment adopted by the Tennessee Secondary School Athletic Association (TSSAA) violated both the First and Fourteenth Amendments to the United States Constitution.[12] The court initially found that the Plaintiff, Brentwood Academy, made a voluntary decision to join the TSSAA, and a requirement of such membership included abiding by the TSSAA's rules on recruitment.[13] The court then quickly dispatched of the defendant's First Amendment argument, holding that TSSAA only imposed conditions on speech that were reasonably necessary to maintain a state-sponsored high school athletic league and therefore "the First Amendment does not excuse Brentwood [Academy]

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4. *Id* at 2623
5. *Id*.
6. *Id*. at 2624.
7. *Id*.
8. *Id*. at 2625.
9. *Id*. at 2629.
10. *Id*.
11. Tenn. Secondary Sch. Athletic Ass'n v. Brentwood Acad.,127 S. Ct. 2489 (2007).
12. *See also*, Brentwood Acad. v. Tenn. Secondary Sch. Athletic Ass'n, 531 U.S. 288 (2001) (holding that a high school athletic association is not a private corporation, but a state actor, and thereby subject to constitutional scrutiny).
13. *Tennessee*, 127 S. Ct. at 2495.

from abiding by the same anti-recruiting rule that governs the conduct of its sister schools."[14]

The Plaintiff further argued that the TSSAA's hearing process, which resulted in a finding of guilt against the Plaintiff, violated notions of due process under the Fourteenth Amendment.[15] In particular, the Plaintiff complained that the inability to address and respond to witnesses during an administrative hearing of the TSSAA tainted the hearing process.[16] The court, however, sided with the Defendant, finding that even if the TSSAA's closed-door hearing procedures were unconstitutional, they were "harmless beyond a reasonable doubt."[17]

In another high profile case, a former public school teacher brought action against her employer, claiming that she was retaliated against for her political viewpoints. In *Mayer v. Monroe County Community School Corp.*,[18] a first-year probationary teacher sued, after the school district failed to renew her employment for the following academic year. Mayer claimed that the non-renewal stemmed from her political stance on the nation's military operations in Iraq.[19] The district court granted judgment to the defendant school district, after concluding that the employer's interests predominated under the analysis established in *Pickering v. Board of Education*.[20]

The Seventh Circuit affirmed the lower court's decision, finding that even if the teacher was indeed fired for the conduct in question, she was not entitled to constitutional protections.[21] In a strongly worded opinion, the U.S. Supreme Court agreed, concluding, "the school system does not 'regulate' teachers' speech as much as it *hires* that speech. Expression is a teacher's stock in trade, the commodity she sells to her employer in exchange for a salary."[22]

A case decided by the U.S. Court of Appeals for the Seventh Circuit has an interesting twist on student free speech rights, as delineated by *Tinker v. Des Moines Independent School District*[23] and its progeny. In *Brandt v. Board of Education of City of Chicago*,[24] several gifted eight grade students sued their school district, alleging that the district violated the First Amendment in

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14. *Id*. at 2496.
15. *Id*. at 2490.
16. *Id*.
17. *Id*. at 2497.
18. Mayer v. Monroe County Cmty. Sch. Corp., 474 F.3d 477 (7th Cir. 2007).
19. *Id*. at 478.
20. *Id*. (citing Pickering v. Bd. of Educ., 391 U.S. 563 (1968)).
21. *Id*. at 479.
22. *Id*. (emphasis in original).
23. Tinker v. Des Moines Independent Sch. Dist., 393 U.S. 503 (1969).
24. Brandt v. Bd. of Educ. of City of Chicaco, 480 F.3d 460 (7th Cir. 2007).

punishing the students for wearing certain T-shirts as a form of protest. More specifically, Beaubien Elementary School had an eighth grade class consisting of 99 students, twenty-seven of whom were gifted students, known throughout the school as "gifties."[25] When it came time to vote for an official class T-shirt, the gifties decided that they would vote in a block for a T-shirt designed by a fellow gifted student.[26] When that T-shirt design was not selected, the gifted students protested by wearing their rejected shirt design with the addition of the words "gifties 2003" incorporated on the back of the shirts.[27]

In wearing the shirts, the students were specifically defying the school principal, who had received word of their plan and had prohibited the gifted students from wearing the shirts, in part, because it could "create a risk to the good order of the school."[28] Nonetheless, the gifties wore the prohibited T-shirts on various school days, and each received punishment by being confined to his/her homeroom on the day the shirt was worn.[29] After a district crisis intervention team found no danger in the wearing of the T-shirts, the plaintiff students brought action against the school district and its board members claiming, in part, that their First Amendment rights had been violated.[30]

The students argued that the T-shirt, which did not otherwise express free speech,[31] became protected speech when worn to protest the results of the election.[32] In examining the issue, the court turned its attention to the right that the plaintiffs sought to vindicate through their protest, being an explanation from school officials as to how the T-shirt election process worked. The court found that the students had no right to such an explanation, and that even if an explanation were warranted, there were more conventional and less disruptive ways for the aggrieved students to stage their protest.[33] The court therefore concluded that the students had no cognizable constitutional claim.[34] The court noted, however, that even if the T-shirts in question were protected First Amendment speech, the school could still prohibit wearing of the T-shirts, as

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25. *Id*. at 462.
26. *Id*. at 462-63.
27. *Id*. at 463.
28. *Id*.
29. *Id*.
30. *Id*.
31. The court first recognized that Plaintiffs do not argue that the T-shirt itself is protected speech. The Court, in dicta, notes that such an argument would fail, as "the pictures and a few words imprinted on the . . . T-shirt are no more expressive of an idea or opinion that the First Amendment might be thought to protect than a young child's talentless infantile drawing which [Plaintiff's] design successfully mimics." *Brandt*, 480 F.3d at 465.
32. *Id*. at 466.
33. *Id*.
34. *Id*.

"a school need not tolerate student speech that is inconsistent with its 'basic educational mission.'"[35]

Lastly, worthy of mention in this category is a federal district court decision that has garnered statewide attention. In *Sherman v. Township High School District 214*,[36] the plaintiff challenged the constitutionality of Illinois' Silent Reflection and Student Prayer Act.[37] At issue was a 2006 amendment to the Act, which now requires all public school students to engage in a daily moment of silent prayer or reflection.[38] The district court judge issued an injunction only as it applies to the parties in the case, which prevents the school district from implementing the Act.[39] The judge's Order further prevents the State Superintendent of Education from enforcing the Act in the subject school district.[40]

II. FINANCE

The United States Supreme Court undertook review of one school finance case in 2007. In this case, *Zuni Public School District. 89 v. Department of Education*,[41] a New Mexico school district challenged a reduction in general state aid that it received due to the impact aid received from the federal government. Federal law provides monetary aid to local schools (1) whose ability to generate local tax revenue is adversely affected because of the presence of federal (tax exempt) land within the school district, or (2) due to an increased number of students because of a federal employer (*e.g.,* military base).[42] In some states, however, if this aid is applied without exception, it could interfere with programs that attempt to equalize per-pupil expenditures. Therefore, the law allows the state to compensate for federal impact aid where the U.S. Secretary of Education certifies the state does equalize per-pupil expenditures. Specifically, the statute instructs the Secretary to calculate the disparity in per-pupil expenditures among districts throughout the state, but "disregarding" school districts "with per-pupil

35. *Id*. at 467 (quoting Hazelwood Sch. Dist. v. Kuhlmeier, 484 U.S. 260, 266 (1988)).
36. Sherman v. Twp. High Sch. Dist. 214, 2007 WL 3446213 (N.D. Ill., Nov. 15, 2007), challenging Public Act 95–14, effective July 16, 2007. For a summary of this Act, see Section VIII, *infra* pp. 36–45.
37. *See*, 105 ILL COMP. STAT. 20/0.01, *et seq*. (1990).
38. *See*, P. A. 95–680 § 5 (effective Oct. 11, 2007).
39. *Sherman*, 2007 WL 3446213, at *4.
40. *Id*.
41. Zuni Pub. Sch. Dist. 89 v. Dep't of Educ., 127 S. Ct. 1534 (2007).
42. *Id*. at 1538. *See* Federal Impact Aid Act, 20 U.S.C. § 7701 (2007).

expenditures . . . above the 95th percentile or below the 5th percentile of such expenditures . . . in the State."[43]

The issue before the Supreme Court concerned whether the Secretary's method of calculation–determining the percentiles by district size and per-pupil expenditure–is consistent with the federal statute. In a 6–3 decision, the Supreme Court affirmed the U.S. Court of Appeals for the Tenth Circuit's ruling[44] to uphold the Secretary's calculation. First, the court examined the statute's background and purpose and found strong indications that Congress intended the Secretary to be free to use a reasonable calculation method, especially because this is the type of technical expertise Congress would delegate to an administrative agency. Moreover, this particular calculation method has been used since 1994, and it was originated by the then-current Secretary without modification from Congress.[45]

The court rejected the local school's argument that literal application of the statute would prohibit the Secretary's use of district size in the calculation method. According to the court's analysis, the phrase "above the ninety-fifth percentile or below the fifth percentile of such expenditures" does not tell the Secretary what specific calculation to use.[46] The court considered the technical definition of "percentile" and found that to have an accurate reading, the Secretary must construct a distribution of values, one of which would include population.[47] But since the statute is silent on what "population" is to be "distributed," there is no one single mathematical link between the data and the relevant population. Consequently, the court determined that the Secretary's calculation was not only plausible, but was reasonable under the statute.[48]

Writing for the dissent, Justice Scalia argued that the majority court blatantly ignored the plain meaning of the statute. He disagreed that "consideration other than language" was necessary in this case because the legislative intent was clear.[49]

In 2007, Illinois courts ruled in cases that touched upon issues relating to the financial aspects of school construction. First, in *Solai & Camercon, Inc. v. Plainfield Community Consolidated School District 202*,[50] a local

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43. *Id*.
44. Zuni Pub. Sch. Dist. 89 v. Dep't of Educ., 437 F.3d 1289 (10th Cir. 2006).
45. *Zuni*, 127 S. Ct. at 1540–41.
46. *Id*. at 1543.
47. *Id*. at 1544.
48. *Id*. at 1546.
49. *Id*. at 1551–59.
50. Solai & Camercon, Inc. v. Plainfield Cmty. Consol. Sch. Dist. 202, 374 Ill. App. 3d. 825, 871 N.E.2d 944 (3rd Dist. 2007).

school district was in the process of a massive school construction project, which included remodeling its older facilities along with the construction of new schools. In April 2001, the district entered a contract with a general contractor, who, in turn, subcontracted individual tasks to various other contractors. At issue was the subcontract for electrical work in all the buildings, which the general contractor would later agree was not performed in a timely nor satisfactory manner.[51] After repeated written warnings to the electrical subcontractor and its performance bond company (surety), the general contractor sought another electrical subcontractor to complete the work and ultimately terminated the original subcontractor. The original subcontractor and the surety both filed suit, and the trial court granted their motion for summary judgment.

On appeal, the Third District affirmed the trial court's grant of summary judgment. First, the appellate court determined that a performance bond typically incorporates the provisions of the contract by reference and becomes one document. However, in this case, there was no contractual requirement for the original subcontractor to even secure a performance bond. Nevertheless, the performance bond pre-dated the contract, so it could not be incorporated by reference.[52] Next, the court concluded that the general contractor's actions nullified the surety's obligation under the performance bond, as the general contractor did not allow the surety to attempt to mitigate the unresolved issues and failed to comply with the bond's term when it did not pay the remaining balance of the contract to the surety.[53] Specifically, the appellate court held that the general contractor violated the terms of the bond by hiring a new electrical subcontractor without any notice to the surety or allowing them reasonable time to exercise their legal options to remedy the situation.[54]

In the second case, a subcontractor filed suit in an Illinois federal district court after a local school district paid the general contractor for the work done at the school, but the general contractor ultimately went into bankruptcy before making payment to the subcontractor.[55] Specifically, the school district entered into a multimillion-dollar agreement for the general contractor to design and install an audiovisual system to store digital media.[56] The subcontractor, as a third party beneficiary, brought a breach of contract suit against the school district because it did not secure a payment bond from the

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51. *Id*. at 828–29, 871 N.E.2d at 947–48.
52. *Id*. at 834–35, 871 N.E.2d at 952–53.
53. *Id*. at 836–37, 871 N.E.2d at 953–54.
54. *Id*. at 842, 871 N.E.2d at 958.
55. Safari Circuits, Inc. v. Chicago Sch. Reform Bd. of Trustees, 474 F.Supp.2d 993 (N.D. Ill. 2007).
56. *Id*. at 995.

general contractor for the benefit of any subcontractors as required by the Illinois Public Construction Bond Act.[57]

At issue before the court was whether the contract was one for "public work," for only then would a payment bond be required under the Bond Act.[58] The school district and the subcontractor each filed motions for summary judgment, and the district court granted summary judgment for the school district.[59]

In its ruling, the court applied a three-part test, with the judge focusing on the third prong: whether the intended improvement would become a permanent part of the property.[60] The district court determined that if the school district ever decided to leave the building, it would take the equipment out of the building and transfer it into the new facility. Therefore, even though there might be great "educational" benefit from the audiovisual equipment, the court ruled that the intent of the contract was that the equipment not become a permanent fixture in the building, thus, the Bond Act did not apply.[61]

The final case, *Antioch Community High School District 17 v. Board of Education, Proviso Township High School District 209*,[62] deals with financial responsibility for services rendered between school districts. A student from Proviso school district was a patient in a private alcohol treatment facility located in a neighboring school district. He was placed there by a judge as part of his probation. The neighboring school district filed a three-count complaint seeking reimbursement for the educational component of the services provided to the student.[63] The neighboring school district claimed that the School Code[64] provides that Proviso should be financially responsible because the student's mother retained custody of the boy and she still resided in Proviso.[65] Proviso argued it had no input into the student's placement at the facility since a judge made the decision, thus implicating the Juvenile Court Act[66] and not

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57. *Id*. at 994. *See*, The Illinois Public Construction Bond Act, 30 ILL. COMP. STAT. 550/1 (2006) that provides, in part: "All officials, boards . . . of this State, or any political subdivision thereof in making contractor for public work of any kind costing over $5,000 . . . shall require every contractor for the work to furnish . . . a bond . . . with good and sufficient sureties."
58. *Id*.
59. *Id*.
60. *Id*. at 998–99.
61. *Id*. at 1000.
62. Antioch Cmty. High Sch. Dist. 17 v. Bd. of Educ., Proviso Twp. High Sch. Dist. 209, 373 Ill. App. 3d 544, 868 N.E.2d 1068 (2nd Dist. 2007).
63. *Id*. at 545–46, 868 N.E.2d at 1069.
64. *See,* 105 ILL. COMP. STAT. 5/10–20.12a (West 2007)(. . . educational services for an Illinois student under the age of 21 in a residential program designed to correct alcohol or other drug dependencies shall be provided by the district in which the facility is located . . . .).
65. *Antioch*, 373 Ill. App. 3d at 547, 868 N.E.2d at 1070.
66. Juvenile Court Act of 1987, 705 ILL. COMP. STAT. 405/1-1 (1987).

the School Code.[67] The trial court granted summary judgment for Proviso, and this appeal followed.[68]

The Second District unanimously affirmed the summary judgment ruling of the lower court. In reliance upon Illinois Supreme Court precedent,[69] the appellate court concluded the student's placement was not for "educational purposes"–he was not placed there as part of a special education plan, nor did the neighboring district cite any section of the School Code under which he might have been placed in the facility as a regular education student.[70] Therefore, the cost for such services should be governed by the Juvenile Court Act, which provides for possible reimbursement by the local county board. Nothing in the decision limited the neighboring district from pursuing any remedy under the Juvenile Court Act.[71]

III. EMPLOYMENT DISCRIMINATION

Kodl v. Board of Education School District 45, Villa Park[72] provides a textbook analysis of a plaintiff's burden in moving forward with a discrimination or retaliation lawsuit. Given the ever-increasing number of these cases filed each year, we have included *Kodl* in this article for purposes of illustrating the analysis Illinois federal courts will use to determine if a plaintiff has established a *prima facie* case.

In this particular case, the plaintiff, Kodl, was transferred from one school to another school within the school district after a series of incidents with fellow employees.[73] Immediately after her transfer, Kodl filed five grievances, including one such grievance for age and sex discrimination; however, union representatives concluded that her claims were without merit and refused to pursue them.[74] Shortly thereafter, Kodl filed her claims in federal district court, alleging age and gender discrimination and retaliation. The district court granted the school district summary judgment, finding that Kodl had failed to meet her burden of proof for each claim.[75]

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67. *Antioch*, 373 Ill. App. 3d at 548, 868 N.E.2d at 1071.
68. *Id*.
69. *See In re D.D.*, 212 Ill.2d 410, 819 N.E.2d 300 (2004) (the Supreme Court of Illinois ruled that since a student's out-of-state residential placement was not initiated under the School Code, but rather, exclusively under the Juvenile Court Act, no provision of the School Code could compel reimbursement).
70. *Antioch,* 373 Ill. App. 3d at 552–53, 868 N.E.2d at 1074–75.
71. *Id.* at 553–54, 868 N.E.2d at 1075.
72. Kodl v. Bd. of Educ. Sch. Dist. 45, Villa Park, 490 F.3d 558 (7th Cir. 2007).
73. *Id*. at 561.
74. *Id*.
75. *Id*.

The appellate court first examined the issue of age and gender discrimination. The Court indicated that in order to prevail in these types of cases, a plaintiff must show that the discriminatory actions were a pretext, or a "deliberate falsehood."[76] Further defined, plaintiffs are required to "show more that [defendant's] decision was mistaken, ill conceived or foolish, [and] as long as [the employer] honestly believes those reasons, pretext has not been shown."[77] In the instant case, the court determined that the plaintiff had offered no evidence to show the defendant's actions were a pretext for discrimination.[78]

Turning its attention to Kodl's retaliation claim, the court found that the plaintiff had also failed to establish a *prima facie* case.[79] The court noted that retaliation claims can be either direct or indirect. For a case of direct retaliation, a plaintiff must show a statutorily protected activity, an adverse employment action by the employer, and a causal connection between the two.[80] For indirect retaliation, a plaintiff must show a statutorily protected activity, that the employer's legitimate expectations were met, an adverse employment action by the employer, and that the employee was treated less favorably than similarly situated employees who did not engage in the statutorily protected expression.[81] The court quickly dispatched of Kodl's case, finding no evidence of either direct or indirect retaliation.[82]

In *Grossman v. South Shore Public School District*,[83] the Seventh Circuit was asked to rule on whether a Wisconsin school board's nonrenewal of a probationary guidance counselor was in violation of Title VII[84] as well as her First Amendment religion rights. At school, the guidance counselor discarded literature that instructed students on the use of condoms and ordered new literature advocating sexual abstinence. Later that year, the counselor twice prayed with distraught students during the school day. The school administration believed she took these actions based upon her religious beliefs, but otherwise her performance was excellent.[85]

A federal district court in Wisconsin granted summary judgment to the school district, and the Seventh Circuit unanimously affirmed. The appellate

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76. *Id*. at 562 (quoting Forrester v. Rauland-Borg Corp., 453 F.3d 416, 419 (7th Cir. 2006)). *See also*, McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973).
77. *Id*. (quoting Hague v. Thompson Distrib. Co., 436 F.3d 816, 823 (7th Cir. 2006)).
78. *Id*.
79. *Id*.
80. *Id.* (citing Moser v. Ind. Dep't. of Corr., 406 F.3d. 895, 903 (7th Cir. 2005)).
81. *Id*. (citing Tomanovich v. City of Indianapolis, 457 F.3d 656, 663 (7th Cir. 2006)).
82. *Id*. at 563.
83. Grossman v. South Shore Pub. Sch. Dist., 507 F.3d 1097 (7th Cir. 2007).
84. 42 U.S.C. § 2000e (1964).
85. *Grossman*, 507 F.3d at 1098.

court stated that the issue was whether the counselor's specific religious beliefs were the grounds for her nonrenewal. The court concluded that she was released because of her "conduct," not because of her "beliefs."[86] It further noted that the board's action must have been based upon the counselor's conduct because her "views" were almost certainly shared by the Christian school administrators who decided not to renew her contract.[87] The court went on to state that public school employees have no right to make religion a part of their job description "and by doing so precipitate a possible violation of the First Amendment's establishment clause," even if the chances of the community making such a challenge are unlikely.[88] Lastly, the Seventh Circuit affirmed that school authorities have a right to control the school curriculum as well as the policies of its counselors and other staff.[89]

On July 30, 2007, the First District issued the first of its two employment decisions during this review period. First, in *Russell v. Board of Education of City of Chicago*,[90] a tenured teacher with twenty years of service in the Chicago Public Schools was terminated by the school board for irremediable conduct. In this case, the teacher had a series of unprofessional incidents that lead to multiple suspensions since the early 1990s. In 1999, the school board formally warned her and provided directives for improvement, but discharged her one year later for failure to comply with the warning.[91] The teacher challenged her discharge, and a hearing officer reinstated her and expunged all disciplinary records from her personnel file.[92]

Since that time, the troubled relations between the teacher and the school board continued. She was later required, per the contract, to submit to a "fitness for duty" examination by a psychologist and was ultimately found fit to teach. Unsatisfied with this finding, the school board ordered her to submit to a second fitness evaluation, but she refused and was consequently terminated for insubordination.[93] A hearing officer upheld her dismissal, and she filed an appeal claiming that the hearing officer's consideration of previously expunged evidence was unfair.

The First District reversed and remanded the hearing officer's ruling, thereby reinstating the teacher. First, the appellate court reviewed the district's reasons to see if the teacher's conduct was irremediable *per se*, those reasons

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86. *Id*.
87. *Id*. at 1100.
88. *Id*. at 1099–1100.
89. *Id*. at 1100.
90. Russel v. Bd. of Educ. of City of Chicago, 379 Ill. App. 3d 38, 883 N.E.2d 9 (1st Dist. 2008).
91. *Id*. at 39, 883 N.E.2d at 11.
92. *Id*.
93. *Id*. at 41–42, 883 N.E.2d at 12.

being: (1) she attempted to get her teaching assistant to file a false statement to police, and (2) she had her students prepare witnesses statements, which caused them psychological harm.[94] The court quickly rejected both claims because there was no evidence in the record that the teaching assistant was asked to make a false statement, nor was there evidence from students or parents about any injury caused by the teacher asking the students to prepare a statement.[95]

Since the teacher's conduct was not immediately irreparable, the First District then looked at the aggregate of her behavior. In so doing, the court applied the two-part *Gilliland* test:[96] (1) whether the teacher's actions have caused damage to the faculty, students, or school; and (2) whether a warning would have correct the teacher's behavior.[97] The appellate court quickly determined that the hearing officer and school board considered aspects of the teacher's employment record that were expunged from her personnel file. Therefore, the school board did not provide the teacher with prior written warning that her conduct was irremediable, and she was reinstated.[98]

Five months later, the First District issued another employment-related decision in *Niles Township High School District v. Illinois Educational Labor Relations Board*.[99] In this case, the appellate court was asked to rule on whether the contractual grievance that challenged the district's dismissal of three probationary teachers was a proper subject of arbitration. The district's collective bargaining agreement provided that a nontenured teacher may challenge a decision not to renew a contract "only through the board level of the grievance procedure."[100] Consequently, the school district refused to arbitrate the issue through the grievance procedure and the teachers' association filed an unfair labor practice suit. The district argued that the grievances were not subject to arbitration because they pertained to the district's decision not to renew. The association countered that the grievance related to the district's failure to adhere to the procedural aspects of the contract, namely, the district's decision made the evaluation process meaningless and that it failed to properly document reasons for its decision in the employees' personnel files.[101] An administrative law judge and the Labor

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94. *Id*. at 46–47, 883 N.E.2d at 16–17.
95. *Id*. at 47, 883 N.E.2d at 17.
96. *See*, Gilliland v. Bd. of Educ. of Pleasant View Cons. Sch. Dist. No. 622, 67 Ill.2d 143, 365 N.E.2d 322 (1977).
97. *Russell*, 379 Ill. App. 3d at 47, 883 N.E.2d at 17.
98. *Id*.
99. Niles Twp. High Sch. Dist. v. IELRB, 379 Ill. App. 3d 22, 883 N.E.2d. 29 (1st Dist. 2007).
100. *Id*. at 24, 883 N.E.2d at 32.
101. *Id*. at 25, 883 N.E.2d at 33.

Board concurred with the teachers' association, and this timely appeal followed.

In a 2–1 decision, the First District reversed and remanded the decisions of the lower tribunals. After determining to use a *de novo* standard of review, the appellate court reviewed the merits of the case. The court determined that the Illinois School Code provides a school board with discretionary authority to dismiss a nontenured teacher during their probationary period.[102] However, a collective bargaining agreement can stipulate additional procedural aspects for dismissal as long as they are not in conflict with the School Code. After reviewing the contract, the First District concluded there was no contractual language that required the district to support its decision to dismiss a nontenured teacher through an evaluation.[103] Further, the contract was void of any language mandating the district have documentation in the personnel file that explains its decision to dismiss a nontenured teacher.

Justice Gordon filed a dissenting opinion in which he stated that these issues were subject to arbitration because the association was not challenging the district's ability to dismiss a nontenured teacher, but rather, was alleging that some reason must have existed that was not included in the teachers' personnel file and that would be a violation of the contract.[104]

IV. SPECIAL EDUCATION

In 2007 the United States Supreme Court decided an important case dealing with parent *pro se* rights. In *Winkelman v. Parma City School District*,[105] the court considered the issue of whether non-lawyer parents, who disagree with an administrative decision of an impartial due process hearing officer, may pursue a civil action in federal district court on their own behalf or as representatives of their child without representation of counsel.

The Winkelmans, who were dissatisfied with the individualized education program (IEP) offered to their son, Jacob, requested an administrative hearing pursuant to section 1415 of the Individuals with Disabilities Education Act (IDEA).[106] The hearing officer rejected the Winkelmans' claims and they appealed to a state-level review officer, who affirmed the decision of the hearing officer.[107] The parents then filed a *pro se* civil action in a federal district court challenging the administrative decision

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102. *Id*. at 33, 883 N.E.2d at 39; 105 ILL. COMP. STAT. 5/10–20.4 (2006).
103. *Niles*, 379 Ill. App. 3d at 32, 883 N.E.2d at 38.
104. *Id*. at 34, 883 N.E.2d at 38.
105. Winkelman v. Parma City Sch. Dist., 127 S. Ct. 1994 (2007).
106. 20 U.S.C. § 1415 (2008).
107. *Winkelman*, 127 S. Ct. at 1998–99.

and raising, among other things, issues concerning the appropriateness of the IEP written for Jacob. They asked the court to reverse the administrative decision and, in addition, sought reimbursement for private school expenses incurred subsequent to the administrative proceedings and attorney's fees incurred for part of the proceedings.[108] The court entered a judgment on the pleadings in favor of the school district, and the parents filed a *pro se* appeal with the Sixth Circuit.[109]

Relying on its decision in *Cavanaugh v. Cardinal Local School District*, the court dismissed the Winkelmans' appeal.[110] The Supreme Court granted *certiorari* in light of the disagreement among courts of appeal on the issue of whether a non-lawyer parent can pursue claims under IDEA in federal court. In a decision by Justice Kennedy, the court agreed with the parents and reversed the decision of the lower courts. The court based its ruling on the conclusion that under IDEA parents have independent enforceable rights, citing myriad provisions of IDEA that mandate parental involvement in the IEP development, implementation and review process and procedural rights and safeguards for parents at various stages of the process.[111] Accordingly, the court concluded that there is no question that parents can file a *pro se* action to enforce their own rights. Because the Court found that parents have independent enforceable rights under IDEA, it declined to address the issue of whether IDEA entitles non-lawyer parents to litigate issues on behalf of their child *pro se*.[112]

The Seventh Circuit decided three significant special education cases in 2007. In *Hjortness v. Neenah Joint School District*,[113] a split court affirmed a district court's order granting summary judgment in favor of the school district. The case involved a very bright child, Joel, who had been diagnosed at various times with obsessive-compulsive disorder, Tourette's disorder, attention deficit/hyperactivity disorder, an autism spectrum disorder, oppositional defiant disorder and anxiety disorder. After Joel attended public school in the district where the parents lived, the parents withdrew Joel and enrolled him in a private school, on the belief that the public school district

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108. *Id*.
109. *Id*.
110. Cavanaugh v. Cardinal Local Sch. Dist., 409 F.3d 753 (6th Cir. 2005). (In *Cavanaugh*, a panel of the Sixth Circuit held that the right to a free appropriate public education belongs solely to the child, not to the child and the parents. Consequently, non-lawyer parents cannot litigate claims under IDEA on behalf of their child because IDEA does not abrogate the common-law rule prohibiting non-lawyers parents from representing minor children).
111. *Id*. at 755–57.
112. *Id*.
113. Hjortness v. Neenah Joint Sch. Dist., 507 F.3d 1060 (7th Cir. 2007).

was not adequately addressing Joel's behavioral needs. Subsequently, the public school district conducted a re-evaluation of Joel's eligibility and educational needs and attempted to revise his IEP. The parents were dissatisfied with the proposed IEP and requested a due processing hearing, in which they sought reimbursement for the costs associated with the private school.[114]

The Administrative Law Judge (ALJ) found that the IEP offered by the school district met the substantive requirements of IDEA. However, the ALJ found that the district had committed a procedural violation under IDEA by insufficiently developing an IEP for Joel and by making a decision to place Joel back in the public school before the IEP meeting was held. Consequently, the ALJ ordered the district to reimburse the parents over $26,000.00 for the cost of private school.[115] Both parties appealed to the district court, which granted the school district's motion for summary judgment. Joel's parents appealed.[116]

On the issue of whether the school district had complied with the substantive requirements of IDEA, the appeals court found in favor of the school district. The court rejected the parents' claim that the district had failed to properly diagnose Joel's disability by finding that even medical professionals previously had difficulty pinpointing Joel's disorders and the school district had properly considered available medical assessments and educational evaluations in determining that Joel met the criteria for an autism spectrum disorder and other health impairments.[117] The parents' claim that the present levels of educational performance were insufficient was also rejected. The court concluded that the school district had insufficient information because Joel had not attended school in the district for almost a year and the private school staff was in the process of observing Joel's behaviors.[118] Joel's parents also argued that Joel would not benefit educationally from the goals in his IEP. However, the court concluded that the goals adequately addressed his social skills and would have provided Joel with some educational benefit.[119]

The majority of the court also held in favor of the district on the issue of whether the district's procedural violations rose to the level of denying Joel a free appropriate public education (FAPE) under IDEA.[120] The majority

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114. *Id*. at 1062–63.
115. *Id*.
116. *Id*.
117. *Id*. at 1064.
118. *Id*. at 1064–65.
119. *Id*. at 1065.
120. *Id*. at 1066.

concluded that even though a private school representative was not present at the IEP meeting, the IEP goals and objectives were written without the parents' participation and a placement decision was made before the IEP was written, the rights of the parents were not infringed upon in any meaningful way.[121] The court found that the district made quite an effort to ensure input from the private school and had no obligation to have a representative from the private school at the IEP meeting unless it was considering a placement in the private school.[122] As for the predetermined placement decision, the court found that the school district had no obligation to consider private placement as an option once it determined that a public school placement was appropriate. In support it cited the district's obligation to educate Joel with his non-disabled peers to the greatest extent appropriate[123] and deference to the ALJ's factual findings on the placement issue.[124]

Judge Rovner wrote a dissenting opinion in which she argued that two procedural violations warranted a reversal of the district court order granting summary judgment for the school district. First, she pointed to the school district's determination of Joel's placement before an IEP was completed, citing IDEA and its implementing regulations that require the placement decision be based upon the IEP.[125] Further, she cited the fact that the school district wrote most of Joel's IEP without the meaningful participation of the parents. This, she concluded, was a significant procedural violation that goes to the heart of IDEA's goals and requirements.[126]

Hjortness is an example of how courts and hearing officers continue to struggle with the issue of whether a procedural violation amounts to a denial of FAPE under IDEA. Given Judge Rovner's strong dissent and IDEA's clear preference for parental participation and express language about the IEP driving the placement determination, a different panel of the Seventh Circuit may very well have decided this case differently. At the very least we will probably see attorneys for parents and students distinguishing the facts in *Hjortness.*

The Seventh Circuit also considered allegations of substantive and procedural violations under IDEA in *Board of Education of Township High School District 211 v. Ross*.[127] This case involved the educational rights of Lindsey Ross, a student with Rett syndrome, a neuro-developmental disorder

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121. *Id*.
122. *Id*. at 1065.
123. *See*, 20 U.S.C.§ 1412(a)(5)(A).
124. *Hjortness,* 507 F.3d at 1066.
125. *Id*. at 1066–67. *See also*, 34 C.F.R.§ 300.116(b)(2).
126. *Id*. at 1066–67.
127. Bd. of Educ. of Twp. High Sch. Dist. 211 v. Ross, 486 F.3d 267 (7th Cir. 2007).

that mainly affects females. Lindsey is non-verbal and her cognitive and motor skills are impaired, but the court noted that she functions higher in those areas than many children with Rett syndrome. She engages at times in self-injurious behavior and loud vocalizations that sometimes last for over a minute. She sometimes strikes others, usually by butting them with her head.[128]

After Lindsey entered Conant High School in 2001, she was placed in five regular education classes with supports and related services. However, the parents and school district soon engaged in a lengthy dispute over Lindsey's educational placement. The parents wanted Lindsey to be educated in the high school with appropriate supports and related services. The district wanted her moved to a more restrictive special education program. Eventually the parties ended up in a forty-two-day due process hearing, which resulted in a sixty-one-page decision in which the hearing officer found in favor of the school district on the placement issue.[129] The parents appealed by commencing a civil action in federal district court. The district court granted the school district's motion for summary judgment and the parents appealed to the Seventh Circuit.[130]

On appeal, the parents raised procedural and substantive compliance issues. As to the procedural compliance issue, the parents claimed that the district violated their rights by holding meetings with the parents that were merely an elaborate effort to ratify a decision that had already been made by the district. After a thorough review of the facts, the court concluded that the district had not violated the procedural requirements of IDEA and that parents had been afforded a meaningful opportunity to participate in the IEP process for their child. Accordingly the court upheld the decisions of the district court and the hearing officer on the procedural claim.[131]

The parents also raised three substantive claims on appeal: (1) the district violated IDEA by failing to develop a transition plan for Lindsey, (2) it failed to consider all of the supplementary aids and services that could have been made available at the high school, thus failing to educate her in the least restrictive environment, and (3) it violated her rights under the Americans with Disabilities Act (ADA)[132] and Title V of the Rehabilitation Act of 1973 (Rehabilitation Act).[133]

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128. *Id*. at 271.
129. *Id*. at 271–73.
130. *Id*. at 273.
131. *Id*. at 274–75.
132. 42 U.S.C. § 12101, *et seq*.
133. 29 U.S.C. § 2093, *et seq*.

The court found that even though the school district erred by failing to include more specific transition goals in Lindsey's IEP, this amounted to a "procedural flaw" that did not result in the denial of a free appropriate public education. The court reasoned that the record showed that Lindsey was not ready to benefit from a detailed transition plan and this satisfactorily explained why the district did not develop such a plan. It noted that the hearing officer and district court found the school district's course of action acceptable.

On the claim that the school district failed to educate Lindsey in the "least restrictive environment,"[134] the court accepted the findings and decision of the hearing officer and of the district court and concluded that the record supported the conclusion that the school district met its obligations to Lindsey in regard to her educational placement.[135]

Finally, as to the discrimination claims alleged under ADA and the Rehabilitation Act, the court found that no reasonable finder of fact could conclude that the school district intentionally discriminated against Lindsey, and held that the underlying claim that the school district did not meet its obligations under IDEA, does not rise to a level sufficient to support a discrimination claim under the ADA and Rehabilitation Act.[136]

Similar to most cases under the IDEA, this case rests on its unique facts. It does, nevertheless, seem to make the point that courts are likely to refrain from making school districts go to extraordinary lengths to support students with disabilities in regular education classrooms, despite strong language in IDEA favoring the "mainstreaming" of students with disabilities, especially if the manifestation of the student's disability includes disruptive and injurious behavior. This case also reaffirms the deference given to the administrative record and findings of the hearing officer and, consequently, the importance of developing and presenting a compelling case at the administrative hearing level.

In a companion case, *Ross v. Board of Education Township High School District 211*,[137] the Seventh Circuit rejected various additional claims brought by Lindsey and her parents against the school district, school officials and one of the outside experts retained by the district to assist in developing an IEP for Lindsey. The court concluded that the parents were simply re-litigating the

134. *See*, 20 U.S.C. § 1412(a)(5)(A).
135. *Ross,* 486 F.3d at 276–77.
136. *Id*. at 278.
137. Ross v. Bd. of Educ. Twp. High Sch. Dist. 211, 486 F.3d 279 (7th Cir. 2007).

same issues raised in their IDEA lawsuit.[138] As for the claims against the expert, the court suggested they should be litigated in State court.[139]

Lastly, *John M. v. Board of Education Evanston Township High School District 202*[140] involved an interpretation of the "stay-put" provisions of IDEA. The student had received co-teaching services in middle school, but the high school did not have a co-teaching program.[141] Co-teaching involves classroom collaboration between the general education teacher and special education teachers to facilitate the student's success in the regular education classroom. The student sought to carry over the co-teaching element of his IEP from the middle school to the high school during the pendency of a parental challenge to his high school IEP.[142] The district court issued a preliminary injunction in favor of the student and parents.[143] On appeal the court of appeals reversed and remanded to the district court for further proceedings.[144]

The court focused its review on the last middle school IEP, the last agreed upon IEP prior to the dispute between the parents and the high school. It first determined that the co-teaching methodology was not mentioned in the last middle school IEP.[145] Therefore, the court asked whether the record showed that co-teaching was regarded by the parties as "an essential part of the plan or simply one of several ways by which the plan could be implemented."[146] To answer that question, the court examined the record to determine precisely how this feature of the IEP was implemented at the middle school. If, according to the court, the methodology was simply one chosen by the middle school professionals, but it was not a fundamental part of delivering services under the IEP, the high school could choose alternative methodologies as long as they were as close as possible to the approach used in middle school.[147]

The court concluded that since co-teaching was not mentioned in the four corners of the IEP and the district claimed impossibility of providing co-teaching in the high school, the matter should be remanded to allow the district court to determine whether co-teaching was an essential element of delivering

138. *Id*. at 283–85.
139. *Id*. at 285–86.
140. John M. v. Bd. of Educ. of Evanston Twp. High Sch. Dist. 202, 502 F.3d 708 (7th Cir. 2007).
141. *Id*. at 711.
142. *Id*. at 712.
143. *Id*.
144. *Id*.
145. *Id*. at 716.
146. *Id*.
147. *Id*. at 715–16.

the services called for in the student's stay-put program or simply one methodology among others that could be used successfully.[148]

This case presents an interesting analytical approach to ascertain what the "stay-put" program is for a student. The bottom line is that the four corners of the IEP control, and if a parent wants a service or methodology for their child that is not mentioned in the IEP, a clear record must be made that the methodology is essential to the implementation of the IEP. This case also points out the problems that frequently occur when a child with a disability moves from middle school to high school, particularly if that entails enrolling in a different district.

V. STUDENT ISSUES

In 2007, the federal judiciary decided several interesting cases relating to student discipline and safety. First, in *King v. East St. Louis School District 189*,[149] the Seventh Circuit was asked to rule on a motion for summary judgment granted to an Illinois school district in a case where a female student was assaulted off-campus and after school hours.[150] Specifically, the student was talking with her guidance counselor after school, but after the meeting concluded, the school buses had already left for the day.[151] The student exited the school to check on the availability of public transportation, and upon finding it was unavailable, sought to reenter the school to contact her mother.[152] The school doors were locked and a hall monitor denied the student reentry stating it was against school policy to allow students to reenter the school after hours.[153] As the student left to go back to the public transportation station, two individuals assaulted her.[154]

The student and her mother brought suit alleging federal claims under 42 U.S.C. 1983 for creating a danger to the student as a result of an official school policy that resulted in the student being stranded outside the school.[155] The Seventh Circuit affirmed the summary judgment ruling, but upon different grounds.[156] The appellate court noted that even though the reentry policy was an unwritten school policy, there could still be liability for any policy or

148. *Id*.
149. King v. East St. Louis Sch. Dist. 189, 496 F.3d 812 (7th Cir. 2007).
150. *Id*. at 814–15.
151. *Id*.
152. *Id*. at 815.
153. *Id*.
154. *Id*.
155. *Id*.
156. *Id*. at 820.

custom that could be said to represent an official policy.[157] Nonetheless, the court concluded the plaintiffs did not meet the three-part test for establishing a state created danger, which imposes a duty upon the state to protect individuals against danger the state creates itself. Primarily, the plaintiffs could not establish that the school's actions "shock[ed] the conscience."[158] The court determined that the district's conduct had to be more than just negligent, and there was no evidence to show that the district's policy was "deliberately indifferent" to student safety.[159]

In the second case, *Brown v. Plainfield Community Consolidated District 202*,[160] an expelled student and his mother brought suit in federal district court alleging due process violations and various civil rights violations. Specifically, the school district initiated an expulsion hearing because the student allegedly touched the buttocks of his female teacher.[161] At the hearing, the student and his mother both testified, and the female teacher was cross-examined by the student's legal counsel.[162] Additionally, school administrators entered four anonymous student statements into the record, and these students were not available for cross-examination.[163] Later, a lawsuit was filed, and the district filed a motion to dismiss the substantive and procedural due process counts of the complaint.[164] The district court agreed that there was not sufficient evidence to support a due process violation and dismissed that part of the lawsuit.[165] First, the district court reviewed the U.S. Supreme Court's holding in *Goss v. Lopez*,[166] which afforded procedural protection to accused students.[167] However, the Seventh Circuit court later added that an expulsion hearing need not take the form of a judicial trial.[168]

The district court then turned to the issue of whether the student should have been able to cross-examine the students who submitted anonymous statements.[169] The court applied the three-part balancing test in *Mathews v. Eldridge*[170] in order to determine what process is due a student at an expulsion

157. *Id*. at 817.
158. *Id*. at 818.
159. *Id*. at 819.
160. Brown v. Plainfield Cmty. Consol. Dist. 202, 522 F. Supp. 2d 1068 (N.D. Ill. 2007).
161. *Id*. at 1070.
162. *Id*. at 1071.
163. *Id*.
164. *Id*. at 1072.
165. *Id*. at 1078.
166. Goss v. Lopez, 419 U.S. 565 (1975) (The U.S. Supreme Court ruled that a student be given notice of the charges against him as well as an opportunity to be heard).
167. *Brown,* 522 F. Supp. 2d at 1073.
168. *Id*. (citing Remer v. Burlington Area Sch. Dist., 286 F.3d 1007 (7th Cir. 2002)).
169. *Id*.
170. Mathews v. Eldridge, 424 U.S. 319 (1976).

hearing.[171] The court concluded that: (1) school attendance is an important state interest, (2) the risk of erroneous deprivation by not allowing cross-examination is minimized because school administrators have initially determined the veracity of the student statements, and (3) the state had a huge interest in the protection of students who come forward to report misconduct by their peers.[172] The district court determined that the student statements played a minimal role in the hearing, and it was the teacher's testimony that was essential.[173] Lastly, the district court analyzed the substantive due process challenge. Citing case law that such alleged action must "shock the conscience,"[174] the court stated that even though the punishment was severe, so was the alleged conduct.[175] Moreover, the court's role was not to substitute its judgment for that of the school regarding what constitutes an appropriate penalty.[176]

In *Wilson v. Cahokia School District*,[177] a middle school student was sexually assaulted on school grounds by a classmate who was serving an after-school detention.[178] The building principal and school resource officer were immediately notified along with the student's mother.[179] The mother requested that the male resource officer not interview the student without the mother's consent.[180] The next day, the resource officer interviewed the student without the mother's consent and had a female school employee examine the student for scratches on her body.[181] Later, the mother and student filed suit against multiple employees and entities, alleging Fourth Amendment search violations, Fourteenth Amendment substantive due process violations, as well as numerous state law claims.[182] The defendants filed a motion for summary judgment.[183]

The district court reviewed only the federal constitutional claims, but ultimately granted the defendants' motion for summary judgment. Regarding the substantive due process claim, the plaintiffs argued the district failed to

171. *Brown*, 522 F. Supp. 2d at 1073.
172. *Id*. at 1073–75.
173. *Id*. at 1074.
174. *Id*. at 1076–77.
175. *Id*. at 1078.
176. *Id*. at 1077–78.
177. Wilson v. Cahokia Sch. Dist. No. 187, 470 F. Supp. 2d 897 (S.D. Ill. 2007).
178. *Id*. at 899.
179. *Id*. at 899–900.
180. *Id*.
181. *Id*.
182. *Id*.
183. *Id*. at 901.

protect the student from the assault.[184] The district court rejected this claim because case law provides that the purpose of the constitution is to protect citizens from the "state," not from private citizens.[185] An exception to this general rule of protection occurs when the state has assumed custody over an individual,[186] but the Seventh Circuit has ruled that schools do not owe a constitutional duty to protect students, even though students have a compulsory obligation to attend school. Moreover, in the instant case, the student was not required to be on school grounds after school. Thus, even if there would be some school responsibility owed to the student, it would terminate at the end of the regular school day.[187]

The district court continued its Fourteenth Amendment discussion by noting that not every wrong committed by a state actor is a constitutional violation. In sum, it must be more than simple negligence; specifically, the state actor's conduct must "shock the conscience."[188] After weighing the evidence, the court ruled that the district did not show deliberate indifference to the student, and that even though the accused student was not a "model student," the district had no reason to believe he would commit a sexual assault.[189]

The district court then analyzed the Fourth Amendment search allegation. First, it completed a thorough review of two key U.S. Supreme Court cases–*New Jersey v. T.L.O.*[190] and *Vernonia School District 47J v. Acton*[191]–to provide the basic structure for a legal search of public school students. Then, the court turned to the primary question: what legal standard of search should the resource officer utilize? The district court considered holdings from many other jurisdictions and concluded that a resource officer, when acting at the request of school officials on school grounds, is considered a school employee, thus, able to utilize a reasonable suspicion standard.[192] When applying the *T.L.O.* reasonable suspicion standard to these facts, the district court concluded the search was justified at its inception because a student reported she was

184. *Id*. at 901.
185. *Id*. *See*, DeShaney v. Winnebago County Dept. of Soc. Serv., 489 U.S. 189 (1989).
186. *See e.g.*, Estelle v. Gamble, 429 U.S. 97 (1976). (The U.S. Supreme Court held that the state must provide medical service to prison inmates).
187. *Wilson*, 470 F. Supp. 2d at 903.
188. *Id*. at 904.
189. *Id*. at 905–06.
190. New Jersey v. T.L.O., 469 U.S. 325 (1985). (The Supreme Court held that a public school employee may utilize the lower standard of reasonable suspicion to search a student, and that the search must be reasonable at its inception as well as reasonably related in scope to the circumstances which originally justified the search).
191. Vernonia Sch. Dist. 47J v. Acton, 515 U.S. 646 (1995).
192. *Wilson*, 470 F. Supp. 2d at 910.

assaulted, and was reasonably related in scope and not unreasonably intrusive. Lastly, the court noted that it could not imagine how the school could have conducted an effective investigation without interviewing the student victim, and that the parent's consent was not required to interview the student.[193]

Lastly, *Parents Involved in Community Schools v. Seattle School District No. 1*[194] is perhaps the most significant U.S. Supreme Court case to address race since *Brown v. Board of Education of Topeka*.[195] The instant case is a consolidation of two cases where race was used as a factor to determine student placement in each high school.

Specifically, Seattle Public School District No. 1 allowed incoming high school students to choose which school they wanted to attend.[196] In cases where schools would otherwise become overcrowded, the district used a system of tiebreakers to determine where students would be enrolled. One of these tiebreakers looked at the racial composition of the subject school and the race of the individual student.[197] In metropolitan Louisville Kentucky, Jefferson County Public School voluntarily implemented a system of desegregation that required all non-magnet schools to maintain a black student population between fifteen and fifty percent.[198]

After addressing matters of jurisdiction, the court first noted that the appropriate standard of review is one of strict scrutiny, where the school districts must demonstrate that the racial classifications were narrowly tailored to achieve a compelling governmental interest.[199] The court recognized two interests that meet the standard of compelling. The first interest allows for racial preferences as a remedy to address past intentional discrimination.[200] In the Seattle case, the court found that the district had never been under a court ordered discrimination plan.[201] In Jefferson County, the court found that the court ordered discrimination plan had expired.[202] Based on these facts, the court found no situations of past discrimination that could be addressed through racial classification plans.[203]

The second interest where the court found racial classifications to meet the strict scrutiny test are in higher education cases where race was used as

193. *Id*. at 911.
194. Parents Involved in Cmty Sch's. v. Seattle Sch. Dist. No. 1, 127 S. Ct. 2738 (2007).
195. Brown v. Bd. of Educ. of Topeka, 347 U.S. 483 (1954).
196. *Parents,* 127 S. Ct. at 2746–47.
197. *Id*. at 2747.
198. *Id*. at 2749.
199. *Id*. at 2751–52.
200. *Id*. at 2752.
201. *Id*. at 2747.
202. *Id*. at 2749.
203. *Id*. at 2752.

factor in order to attain a widely diversified student body.[204] In both of the instant cases, the court found that race was not part of a broader effort to achieve exposure to diversity among people, cultures, ideas, and viewpoints.[205]

The defendant school districts also assert their own additional compelling interests, which they argued justified the racial classifications. First, the defendants argued that "educational and broader socialization benefits flow from a racially diverse learning environment"[206] and because the diversity sought is only a racial diversity, and not a broader diversity, it makes sense to "promote that interest directly by relying on race alone."[207] However, the court quickly dismissed this argument, finding that it was only a subterfuge for maintaining racial quotas.[208]

Next, the defendants argued that the way in which they have employed race classifications achieved their purpose of diversity.[209] However, the court found that the methods imposed by the school district were not narrowly tailored and only really served "to shuffle a few handfuls of different minority students between a few schools . . . ."[210]

Based on the above findings the high court refused to let either system of race classifications stand.[211] The court did not, however, completely rule out race as a factor in student placement cases. The court highly suggested that race may still be used in cases where a school district is currently subject to a desegregation order and in cases where race is only one of the factors in desegregating students.

VI. SCHOOL BOUNDARY ISSUES

During this survey period, Illinois courts resolved one case dealing with school boundaries: *Joliet Township. High School District 204 v. Lincoln Way Community High School District 210*.[212] The case arose from a contested detachment/annexation petition between two Will County school districts. Landowners filed a detachment petition in 1998, but in 1999 the Illinois General Assembly amended the procedural aspects for approving a detachment

204. *Id*. at 2753.
205. *Id*.
206. *Id*. at 2755.
207. *Id*.
208. *Id*.
209. *Id*. at 2759.
210. *Id*. at 2760.
211. *Id*. at 2768.
212. Joliet Twp. High Sch. Dist. 204 v. Lincoln Way Cmty. High Sch. Dist. 210, 373 Ill. App. 3d 563, 868 N.E.2d 337 (3d Dist. 2007), *cert. granted*, 879 N.E.2d 929 (2007).

petition, while the 1998 petition was still pending.[213] Legislators specifically included in the amendment a provision that the modified procedures would only apply to future petitions. The issues before the court were two-fold: (1) whether the detaching landowners followed the correct statutory procedures in the Illinois School Code, and (2) whether federal law preempted a state law prohibiting evidence of segregation during a school boundary hearing.[214]

The Illinois State Board of Education (State Board) approved the detachment petition as did the Will County circuit court, which also held that the State Board's action did not create a constitutional violation or violation of federal law.[215] On appeal, the Third District affirmed the trial court's conclusion. First, the appellate court dealt with a jurisdictional matter and agreed that the State Board had authority to hear the petition because it was "pending" at the time of the legislative amendment. The court noted that it gave effect to the legislative intent since the statutory language was clear on this issue. Next, the court ruled that the State Board was correct in not hearing additional evidence about racial segregation brought by the detaching school district. Since the State Board is an administrative agency, it is somewhat limited as to its authority. Relevant here, is the fact that the School Code provides the State Board has no authority to hear any evidence, except that necessary to determine if the conditions of that section have been met.[216] Nonetheless, the Third District concluded that federal law preempted this particular provision because it effectively prevented parties from bringing evidence of legitimate issues related to school segregation and other possible topics of federal concern solely because the issues did not relate to the compliance of procedural issues for a boundary change.[217]

VII. TORT IMMUNITY

In 2007, the Illinois judiciary ruled on two cases that addressed issues of tort immunity in schools. In February, the Supreme Court of Illinois issued a ruling in *Murray v. Chicago Youth Center*[218] regarding the extent of immunities afforded by the Local Governmental and Governmental Employees Tort Immunity Act (Tort Immunity Act).[219] In this case, a student in the Chicago Public Schools was participating in an extracurricular tumbling class

213. *Id*. at 565–66, 868 N.E.2d at 340.
214. *Id*. at 565, 868 N.E.2d at 340.
215. *Id*. at 567, 868 N.E.2d at 341.
216. *Id*. at 568–69, 868 N.E.2d at 343.
217. *Id*. at 573, 868 N.E.2d at 346.
218. Murray v. Chicago Youth Ctr., 224 Ill.2d 213, 864 N.E.2d 176 (2007).
219. *See*, 745 ILL COMP. STAT. 10/1–101 (2006).

during the school's lunch period. The class, sponsored by the school and conducted by the Chicago Youth Center (CYC), was supervised by a CYC employee. A high school student was critically injured when he attempted to do a forward flip off a mini-trampoline.[220] The CYC supervisor did not "spot" the student, nor was a student spotter utilized during the activity. The student and his mother filed suit alleging willful and wanton misconduct on behalf of the school, the CYC and the supervisor for failure to supply safety equipments, failure to warn the student of the risk, and failure to stop him from using the trampoline unsafely.[221]

An Illinois circuit court granted summary judgment to the defendants pursuant to sections 2–201 and 3–108(a) of the Tort Immunity Act.[222] The court concluded that section 3–109 did not "trump" the blanket immunity provided by sections 2–201 and 3–108(a).[223] Upon review, the First District affirmed the trial court's grant of summary judgment because even though section 3–109 does have a "willful and wanton" exception, the appellate court concluded the facts the plaintiffs alleged did not constitute willful and wanton activity.[224] The parties appealed to the Supreme Court of Illinois.

In a unanimous ruling, the Supreme Court reversed the appellate court's grant of summary judgment.[225] At issue before the Court was whether sections 2–201 and 3–108(a) were limited by section 3–109.[226] This section affords immunity for hazardous recreational activity, but also contains an exception for willful and wanton conduct. The Supreme Court noted that sections 2–201 and 3–108 contain a provision that states–"except as otherwise provided by statute"–thus concluding that immunity is not absolute.[227] Furthermore, section 3–109 provides that willful and wanton misconduct is an exception to immunity when dealing with hazardous recreational activity, therefore, holding public employees to a higher standard when dealing with hazardous recreational activities.[228]

After thoroughly reviewing the history of the term "willful and wanton," the Supreme Court rejected the defendants' argument and concluded that the 1986 amendments to the Tort Immunity Act did not impose a heightened legal

220. *Murray*, 224 Ill.2d at 217–18, 864 N.E.2d at 179.
221. *Id*. at 218, 864 N.E.2d at 179.
222. 745 ILL COMP. STAT. 10/2–201 and 10/3–108a (West 2006).
223. *Murray*, 224 Ill.2d at 225, 864 N.E.2d at 183.
224. *Id*.
225. *Id*. at 246, 864 N.E.2d at 195.
226. *Id*. at 226, 864 N.E.2d at 184.
227. *Id*. at 233, 864 N.E.2d at 187.
228. *Id*. at 234, 864 N.E.2d at 188–89.

standard.[229] Lastly, the Court stated that it is a question of fact for the jury to determine whether conduct is willful and wanton; thus, summary judgment was not an appropriate ruling. The case was reversed and remanded to the circuit court for further proceedings.[230]

In the second case, *In re Objections to Tax Levies of Freeport School District No. 145*,[231] an Illinois appellate court reviewed whether various local taxing bodies' expenditures of their tort levies were in compliance with the Tort Immunity Act. Specifically at issue was the public bodies' use of tort monies to partially pay employees' salaries, provide safety training and software, and fund a diversity sensitivity program. After a lengthy hearing, the trial court made multiple rulings–some in support of the tax objectors and some for the taxing bodies.[232]

On appeal to the Second District, the court affirmed and reversed in part. Regarding the expenditure for employee salaries, the court spent significant time reviewing sections 9–103 and 9–107 of the Tort Immunity Act. Section 9–107 provides that the purpose of the tort fund is for extraordinary expenses relating to tort liability, insurance and risk management program.[233] However, it has become apparent that some units of local government are using the tax revenue to "fund expenses more properly paid from general operating funds."[234] Section 9–103 adds that a local entity can protect itself against damages by means of "risk management directly attributable to loss prevention and loss reduction."[235] The appellate court quickly concluded there was no common usage for the term "risk management" and relied upon the four-part definition of an expert witness, who indicated there must be: (1) prior identification of loss exposures; (2) selection of a technique regarding how to handle each exposure; (3) implementation of the chosen technique; and (4) periodic monitoring of the technique.[236]

Addressing the issue about payment of salary from the tort fund, tax objectors argued that the Tort Immunity Act permits only the "development" of a risk management plan, but taxing bodies counter that the Act includes the cost of "implementing" the plan as well. Tax objectors argued that including implementation costs could lead to funding virtually any activity that is safety

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229. *Id*. at 242, 864 N.E.2d at 193.
230. *Id*. at 245, 864 N.E.2d at 194–95.
231. In re Objections to Tax Levies of Freeport Sch. Dist. No. 145, 372 Ill. App. 3d 562, 865 N.E.2d 361 (2d Dist. 2007).
232. *Id*. at 564, 865 N.E.2d at 364–65.
233. *Id*. at 574, 865 N.E.2d at 372.
234. *Id*.
235. *Id*.
236. *Id*. at 576, 865 N.E.2d at 373.

related.[237] The appellate court rejected the concept that payment of salary was impermissible. However, mere reference to employees' responsibilities in the risk management plan does not automatically make their salary payable from the tort fund, as the job responsibilities to reduce loss must be beyond the ordinary job duties performed by the staff.[238]

Regarding the issue of utilizing tort funds to pay for safety training and campus safety software, the Second District court relied specifically on section 9–107 to approve the expenditures as "educational services" directly relating to loss prevention. However, the appellate court denied payment for the campus safety software because it is considered a "good" and not a "service."[239]

Lastly, the Second District had to determine whether tort funds could legally be used to support a diversity sensitivity program created in response to a threatened lawsuit against the district. The district claimed the program should be considered "compensatory damages" covered under the Tort Immunity Act. The court rejected this argument and concluded that tort funds spent for compensatory damages must be in response to a court order or agreed to by the parties.[240]

VIII. STATUTORY ENACTMENTS

A. Driving Permits and Graduated Licenses

During the 2007 legislative session, four new laws were implemented dealing with the driving privileges of students and individuals under the age of twenty-one. Perhaps the most complex of these new laws is Public Act 95–310, which makes numerous revisions to Illinois' graduated driver's license. In particular, this new law requires that after January 1, 2008, a student driver under the age of eighteen may not be issued a graduated driver's license until the individual holds an instructional permit for at least nine (previously three) months.[241] The law, effective July 1, 2008, also disallows driving simulators to serve as a substitute for any of the six hours a student is required to drive in a car with an instructor, and further prohibits school districts from allowing students to proficiency out of any of the six hours of required driving instruction.[242]

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237. *Id*. at 577–78, 865 N.E.2d at 375.
238. *Id*. at 584, 865 N.E.2d at 380.
239. *Id*. at 586–87, 865 N.E.2d at 381–82.
240. *Id*. at 589, 865 N.E.2d at 384.
241. Pub. Act 95–310 (effective Jan. 1, 2008).
242. *Id*. (effective July 1, 2008).

This Act also changes the curfew requirements for permit and graduated license holders under eighteen years of age. For these individuals, the law establishes a curfew of 10:00 p.m. Sunday through Thursday until 6:00 a.m. the next day and 11:00 p.m. on Friday and Saturday until 6:00 a.m. the next day. The law makes exceptions for students who are driving with a parent or guardian or who are driving in limited other circumstances.[243] The new law also strengthens penalties for certain offenses committed by persons under twenty-one years of age.[244]

Public Act 95–201 authorizes the Illinois Secretary of State to, without a fee, allow the parent or guardian of a person under the age of eighteen to view their child's driving record online, if the child holds an instructional permit or graduated driver's license.[245] The law further provides that the parent or guardian's online access terminates when the license holder reaches the age of eighteen.[246] This new law went into effect on January 1, 2008.[247]

Public Act 95–337, which went into effect on June 1, 2007, provides that if a person is adjudicated under the Juvenile Court Act on the basis of an offense determined to have been committed in furtherance of gang activity and related to the operation of a motor vehicle or the use of a driver's license or permit, the court shall direct the Illinois Secretary of State to revoke the individual's drivers license. If at the time of the determination, the minor does not have a driver's license or permit, the court shall notify the Secretary of State that the minor shall not be issued a driver's license until his or her 18th birthday.[248] If the minor holds a driver's license or permit at the time of the determination, the court shall notify the Secretary of State that the individual's license or permit shall be revoked until his or her twenty-first birthday, or until a later date or occurrence, as determined by the court.[249]

Lastly, Public Act 95–338, effective January 1, 2008, provides that a person under nineteen (previously eighteen) may not drive a vehicle on a roadway while using a wireless telephone or device.[250] The law contains an exception for a person under nineteen using a telephone while driving for an emergency purpose.[251]

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243. *Id*. (effective Jan. 1, 2008).
244. *Id*.
245. Pub. Act 95–201 (effective Jan. 1, 2008).
246. *Id*.
247. *Id*.
248. Pub. Act 95–337 (effective June 1, 2007).
249. *Id*.
250. Pub. Act 95–338 (effective Jan. 1, 2008).
251. *Id*.

B. Educational Support Personnel

The General Assembly also made several changes in 2007 relative to the employment and working conditions of Educational Support Personnel, otherwise known as ESPs. Public Act 95–396, effective August 23, 2007, provides that if the work hours of an ESP employee are reduced, the employee must be given thirty days written notice before the work hour reduction can go into effect.[252] If, however, the reduction in hours is due to an unforeseen reduction in student population, the written notice must be mailed and given to the employee five days before the employee's hours are reduced.[253] The new law also provides that if a school district has any support personnel vacancies, the position must be tendered to any qualified ESP employee who was laid off during the past year (presently just ESP employees in that category of employment who were laid off during the past year).[254]

Public Act 95–148 provides that if a school district is deactivated, educational support personnel employed at the time of the deactivation shall be transferred to the control of the school district or districts receiving students of the deactivated district.[255] The law requires the new district or districts to employ these individuals based on seniority, and further requires the time the individual was employed with the deactivated district to count toward seniority. If there are not enough ESP positions available to absorb all of the ESP employees from the deactivated district, the receiving district or districts must lay off their current employees with less seniority than the ESPs from the deactivated district.[256]

Public Act 95–241, effective August 17, 2007, deals with the provision of non-instructional services by third party providers. Specifically, the new law states that if a school district wishes to contract with third party providers for non-instructional services, it must give any union employee holding such position at least ninety (formerly thirty) days notice.[257] The law also states that a change from union to non-union providers of non-instructional services may only take place after the expiration of an existing collective bargaining agreement and after other preconditions are met.[258] The law does allow a school district to supplement its current ESP workforce for up to three months with non-union workers in emergency situations that threaten the safety or

252. Pub. Act 95–396 (effective Aug. 23, 2007).
253. *Id*.
254. *Id*.
255. Pub. Act 95–148 (effective Aug. 14, 2007).
256. *Id*.
257. Pub. Act 95–241 (effective Aug. 17, 2007).
258. *Id*.

health of the district's students or staff, provided that the Educational Labor Relations Act[259] is fully complied with by the school district.[260] The new law does not apply, however, in situations where third party providers began providing non-instructional services before the effective date of this Act.[261]

C. Environment/"Green Schools"

Another theme of the General Assembly in 2007 was the environment and the requirement that school districts "go green." In this category there were four noteworthy bills enacted into law. Public Act 95–84 established the Green Cleaning Schools Act.[262] This Act requires each school to establish a green cleaning policy and purchase and use environmentally sensitive cleaning products, when it is economically feasible.[263] The Act further mandates the Illinois Green Government Coordinating Council to provide schools with a list of environmentally sensitive cleaning and maintenance products and to revise this list yearly.[264] For each year that it is not economically feasible for a school to use environmentally sensitive products due to an increase in overall cleaning costs, the school must provide a written notification to the Council.[265]

On a broader basis, Public Act 95–657 establishes the Green Governments Illinois Act, and further establishes the Green Governments Coordinating Council.[266] The purpose of the Council, in part, is to serve as a resource for units of local government and educational institutions in environmental matters.[267] The Act also provides for the establishment of a website, managed by the Lieutenant Governor's office, for the purpose of allowing school districts and other entities to share environmentally friendly policies and similar information.[268]

Public Act 95–46 requires the Department of Commerce and Economic Opportunity to establish and operate a renewable energy grant program, subject to appropriation.[269] The purpose of the grant program is to assist

259. *See*, 115 ILL COMP. STAT. 5/1, *et seq.* (2007).
260. Pub. Act 95–241.
261. *Id*.
262. Pub. Act 95–84 (effective Aug. 13, 2007).
263. *Id*.
264. *Id*.
265. *Id*.
266. Pub. Act 95–657 (effective Oct. 10, 2007).
267. *Id*.
268. *Id*.
269. Pub. Act 95–46 (effective Aug. 10, 2007).

school districts in the installation, acquisition, construction and improvement of renewable energy sources in public schools.[270]

Lastly, Public Act 95–416 enacted environmental standards for new school construction projects.[271] In particular, the new Act amended the School Construction Law to provide that school districts that apply on or after July 1, 2007, for a school construction grant must receive certification for their project from either the Unites States Green Building Council's Leadership in Energy and Environmental Design Green Building Rating System, the Green Building Initiative's Green Globes Green Building Rating System or meet green building standards of the Illinois Capital Development Board's Green Building Advisory Committee.[272]

D. Taxation and Finance

In the area of school finance, very few bills were enacted in 2007, aside from the State budget and several new grant programs, including a grant for a renewal energy program in school districts.[273] Two noteworthy finance bills that were enacted into law are Public Act 95–675, establishing a sales tax for school district construction[274] and Public Act 95–244, dealing with the tort immunity tax that school districts can impose.[275]

Public Act 95–675 allows a county board to place a question on the ballot as to whether a sales tax should be implemented for distribution to school districts for facility needs.[276] Besides allowing a county board to place the sales tax question on the ballot, the law authorizes school boards that represent at least fifty-one percent of the student enrollments within the county to adopt a resolution to require the county to certify the referendum question of imposing the tax.[277]

Public Act 95–244 provides that the tort immunity tax that school districts and local public entities are authorized to levy may be used for the additional purpose of paying judgments and settlements under the federal

270. *Id*.
271. Pub. Act 95–416 (effective Aug. 24, 2007).
272. *Id*.
273. *See*, Pub. A. No. 95–46 (effective Aug. 10, 2007).
274. Pub. Act 95–675 (effective Oct. 11, 2007).
275. Pub. Act 95–244 (effective Aug. 17, 2007).
276. Pub. Act 95–675.
277. *Id*.

Comprehensive Response, Compensation, and Liability Act of 1980[278] and the Environmental Protection Act,[279] through December 31, 2010.[280]

E. Special Education

Several new laws were also enacted in 2007 with regard to the education of students with disabilities. In the area of special education administration, Public Act 95–555 requires the Illinois State Board of Education to issue an annual report to the General Assembly and the Governor, due not later than May 1 of each year beginning in 2008, showing each school district's special education expenditures, receipts from State, federal and local sources, and the net of expenditures over receipts.[281] The Act requires the expenditures and receipts to be calculated in a manner specified by the State Board of Education using data obtained from the Annual Financial Report, the Funding and Child Tracking System, and district enrollment information.[282] The new Act went into effect on August 30, 2007.[283]

Another special education law targeted the educational needs and procedural rights of students with disabilities. Public Act 95–257 attempts to address the needs of children who have disabilities on the autism spectrum, including Asperger's disorder, pervasive developmental disorder not otherwise specified, childhood disintegrative disorder, and Rett Syndrome, by requiring school district IEP teams to consider certain factors in developing individualized education programs for these children.[284] The factors to be considered are: (1) verbal and nonverbal communication needs; (2) social interaction skills and proficiencies; (3) needs resulting from the child's unusual responses to sensory experiences; (4) needs resulting from resistance to environmental change or change in daily routines; (5) needs resulting from engagement in repetitive activities and stereotyped movements; (6) the need for any positive behavioral interventions, strategies, and supports; and (7) other needs resulting from the child's disability, including social and emotional development, that impact the child's progress in the general education curriculum.[285] The Act expressly does not create any new

278. *See*, 42 U.S.C. § 9610 (1980).
279. *See*, 415 ILL COMP. STAT. 5/1, *et seq.* (2007).
280. Pub. Act 95–244.
281. Pub. Act 95–555 (effective Aug. 30, 2007).
282. *Id*.
283. *Id*.
284. Pub. Act 95–257 (effective Jan. 1, 2008).
285. *Id*.

entitlement to a service, program or benefit; however, it does not affect any current or future entitlement established by law.[286]

Public Act 95–372 addresses the needs of students with disabilities who reach the majority age of eighteen years.[287] First, the Act amends the School Code by incorporating the provisions of the federal Individuals with Disabilities Educational Improvement Act of 2004 (IDEIA 2004)[288] by providing that when a student who is eligible for special education reaches majority age, all rights accorded to the student's parents transfer to the student unless the student has been adjudged incompetent under State law.[289] The Act also requires, consistent with IDEIA 2004, that the school district notify the student and the student's parents of the transfer of rights in writing at a meeting convened to review the student's individualized education program during the school year in which the student turns seventeen years of age.[290] In addition to incorporating the requirements of IDEIA 2004 in regard to the transfer of rights, the new Act adds that a student cannot be denied his or her right to have another adult, including a parent, assist the student making decisions regarding the student's individualized education program.[291]

Public Act 95–372 also goes beyond IDEIA 2004 by addressing the situation in which the student has not been adjudged incompetent, but opts to have another adult make his or her special education decisions. The Act enables a student who has reached majority age to execute a Delegation of Rights giving another adult, including a parent of the student, the authority to make educational decisions for the student.[292] Under the Act the Delegation of Rights can be revoked or modified by the student at any time. Each Delegation of Rights expires by operation of law one year from the date of execution. Finally, the Act contains a Delegation of Rights template to facilitate its use by students, parents, advocates and lawyers.[293]

The General Assembly also clarified the age of eligibility for special education and related services. Public Act 95–14 provides that a student with a disability who requires continued public school educational experience to facilitate his or her successful transition and integration into adult life is eligible for services through age twenty-one, inclusive, which means up to the

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286. *Id*.
287. Pub. Act 95–372 (effective Aug. 23, 2007).
288. 20 U.S.C. § 1400, *et seq.* (2007).
289. *Id.* (*See*, 20 U.S.C. §1415(m) for the exact language incorporated into State law.)
290. Pub. Act 95–372.
291. *Id*.
292. *Id*.
293. *Id*.

day before the student's twenty-second birthday.[294] It should be noted that provisions similar to those in Public Act 95–14 have been adopted by the administrative rule of the State Board of Education.[295]

F. Student Issues

The General Assembly also enacted an amendment to the Silent Reflection and Student Prayer Act,[296] by making the observation of a brief period of silence with the participation of all students assembled at the opening of every school day mandatory instead of permissive.[297] Governor Blagojevich vetoed the legislation, but both houses of the General Assembly voted to override the veto during the 2007 fall veto session.[298]

With respect to student health issues, Public Act 95–422 requires the Illinois Department of Public Health to establish and administer a program commencing no later than July 1, 2011, that offers eligible young women the opportunity to receive, on a voluntary basis, a series of Human papillomavirus (HPV) vaccinations as medically indicated, at no cost.[299] The program is subject to appropriation of funds by the General Assembly to the Department of Public Health to operate the program. In order to be eligible for the HPV vaccination program, a young woman must be under the age of eighteen, a resident of Illinois, and not entitled to receive a HPV vaccination at no cost as a benefit under a health insurance plan, a managed care plan, or a plan provided by a health maintenance organization, a health services plan corporation, or a similar entity. The young woman must also meet any requirements established by the Department of Public Health by rule.[300]

Rulemaking authority is granted under the legislation to the Department. The rules must govern various aspects of the program, including the HPV vaccination formulation to be administered and the method of administration; eligibility requirements and eligibility determinations; and standards and criteria for acquisition and distribution of the vaccine and related supplies. The Department is also authorized to enter into contracts with public or private entities for the performance of duties under the program, as the Department may deem appropriate.[301]

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294. Pub. Act 95–14 (effective July 16, 2007).
295. *See*, 23 ILL. ADM. CODE § 226.50(c) (2007).
296. *See*, 105 ILL COMP. STAT. 20/1, *et seq*. (1990).
297. Pub. Act 95–680 (effective Oct. 11, 2007).
298. *See*, Governor's veto message entered Aug. 28, 2007.
299. Pub. Act 95–422 (effective Aug. 24, 2007).
300. *Id*.
301. *Id*.

Under the legislation the Department is also required to provide all female students entered in the sixth grade and their parents with written information about the link between HPV and cervical cancer and the availability of a HPV vaccine.[302] This legislation also requires group health plans and managed care plans issued or renewed after the effective date to provide coverage for HPV vaccine that is approved for marketing by the federal Food and Drug Administration.[303]

IX. CONCLUSION

As it is clearly evident, 2007 saw a significant number of important cases in the area of education law. Several of these cases reached far beyond the schoolhouse gate and delved into a number of other legal arenas. Many of the cases were helpful in resolving long-standing disputes between the various state and federal jurisdictions, while other cases, especially in the area of special education, produced more questions than answers. It appears that 2008 and beyond will continue to see a litany of cases, as parents, school districts and their employees attempt to resolve the myriad of issues still undecided.

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302. *Id*.
303. *Id*.