

SCHOOL LAW NEWSLETTER

Disciplining Employees for Private Complaints

In the case of *Black v. Columbus Public Schools*, S.D. Ohio Case No. 2:96-cv-326 (Dec. 14, 2005), an assistant principal asserted that a school board violated her First Amendment rights by involuntarily transferring her to another building and refusing to promote her in retaliation for the assistant principal making complaints arising from an alleged affair between the principal and a parent volunteer. The assistant principal asserted that the principal abdicated his job duties onto her because the alleged affair was taking up so much of his time at school. The assistant principal further asserted that the alleged affair was affecting the operation of the school, the teaching staff, the office staff, and the children.

In determining whether a First Amendment violation occurred, the federal trial court was bound by the United States Court of Appeals for the Sixth Circuit's ruling that "official misconduct or wrongdoing is a topic of public concern." Moreover, "even if a public employee were acting out of a private motive with no intent to air her speech publicly . . . , so long as the speech relates to matters of 'political, social, or other concern to the community,' as opposed to matters 'only of personal interest,' it shall be considered as touching upon matters of public concern." And, "clearly, involuntary transfer from one job to another is action that 'would likely chill a person of ordinary firmness from continuing to engage in that constitutionally protected activity. [E]ven an involuntary job transfer where neither grade nor salary is affected qualifies as an adverse action for purpose of the First Amendment."

Applying the Sixth Circuit's limitations, the federal trial court found that the assistant principal (1) was engaged in a constitutionally protected activity and (2) was subjected to an adverse action. Nonetheless, the trial court found that a jury would need to determine (1) whether the protected speech was a substantial or motivating factor in the adverse action and (2) whether the adverse action would have taken place had she not engaged in the protected speech. The trial is scheduled to begin August 1, 2006.

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Ohio Supreme Court Agrees to Resolve Statutory Immunity Conflict

On December 28, 2005, the Ohio Supreme Court agreed to resolve the statewide conflict as to "whether a political subdivision's immunity from liability under R.C. 2744.03(A)(5) applies only to the acts of the political subdivision and not to the acts of the employees of the political subdivision." Stay Tuned!



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"Everybody can be great.

Because anybody can serve. You don't have to have a college degree to serve. You don't have to make your subject and your verb agree to serve.... You don't have to know the second theory of thermodynamics in physics to serve. You only need a heart full of grace. A soul generated by love."

Martin Luther King, Jr.

Portage County ESC Legal Hotline

The law firm of McGown & Markling Co., L.P.A. is proud to serve as legal hotline counsel for the Portage County Educational Service Center.

For more information as to how we can serve your ESC better through legal hotline services, please contact us at **1.888.OHEDLAW** or visit our website, www.servingohioschools.com.

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“If life was fair, Elvis would be alive and all the impersonators would be dead.”

Johnny Carson



More Legal Briefs

In the case of *ACLU v. Mercer County* (C.A.6 Dec. 20, 2005), 432 F.3d 624, the United States Court of Appeals for the Sixth Circuit held that a courthouse display that included a copy of the Ten Commandments **did not endorse religion** even in the wake of the recent United States Supreme Court’s Ten Commandments case of *ACLU v. McCreary County* (2005), 125 S.Ct. 2722. In *Mercer*, a display entitled “Foundations of American law and Government” was hung in the County Courthouse. The display included the Mayflower Compact, the Declaration of Independence, the Ten Commandments, the Magna Carta, the Star-Spangled Banner, the National Motto “In God We Trust,” the Preamble to the Kentucky Constitution, the Bill of Rights, and Lady Justice. The purpose of the display was that “all documents, including the Ten Commandments, have played a role in the formation of our system of law and government. . . . [The] display is not intended [to], nor does it, endorse or promote religion. It simply acknowledges our history.” The Sixth Circuit found no evidence that the stated purpose was a sham. The Sixth Circuit further found that a reasonable observer would not view the display as an attempt to establish religion, but rather a mere acknowledgment of history. The Sixth Circuit based its decision on the intent of the display, rather than perceptions. Specifically, the Sixth Circuit stated that “[w]ere we to focus on the perceptions of individuals, every religious display would be ‘necessarily precluded so long as some passerby would perceive a government endorsement thereof.’”

In the case of *Stancourt v. Worthington City Sch. Dist. Bd. of Edn.* (Dec. 20, 2005), 2005-Ohio-6750, the Ohio Tenth District Court of Appeals held that R.C. Chapter 119 procedural requirements apply to special education appeals (i.e., R.C. Chapter 3323 and Ohio Admn.Code Chapter 3301-51). Specifically, the Tenth District concluded that the 45-day appeal period provided under Ohio special education laws (i.e., R.C. 3323.05(F)) does not commence until the state level review officer complies with the procedural requirements set forth in R.C. 119.09 (i.e., the time period does not begin to run until the SLRO serves the parents, by certified mail, return receipt requested, both a certified copy of the order and a statement of the time and method by which the appeal may be perfected).

In the case of *Board of Edn. of the Cleveland Mun. School Dist. v. Cuyahoga County Bd. of Revision* (Dec. 21, 2005), 2005-Ohio-6434, the Ohio Supreme Court rejected a real property owner’s assertion that the purchase was the result of economic duress and, as a result, the presumption that the sale was an arm’s-length sale was not rebutted by the owner. Therefore, the decision of the Board of Tax Appeals in favor of the school district was affirmed. The result of this case, as with most property valuation cases, relied upon the evidence presented to the board of revision.

Qualified legal counsel is always important when protecting a school district’s ever narrowing tax base. To find out how the law firm of McGown & Markling Co., L.P.A. can serve your property valuation needs better, please contact us at **1.888.OHEDLAW** or visit our website, www.servingohioschools.com. The deadline for filing increase complaints for the 2005 tax year is March 31, 2006.

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