The Report Card Newsletter

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Early Retirement Program Saddles School District with $580,000 TRS Assessment

A school district gave 20 percent salary increases to seven administrators during their last two years of employment as a part of an early retirement incentive. While such increases may not have been problematic prior to the amendment to the Illinois Pension Code, the current Pension Code requires districts to pay an assessment for such increases. It also provides, "[i]f the amount of a teacher's salary for any school year used to determine final average salary exceeds the member's annual full-time salary rate with the same employer for the previous school year by more than 6%," the school district must pay the Teachers' Retirement System (TRS) "the present value of the increase in benefits resulting from the portion of the increase in salary that is in excess of 6%." The school district was unable to prove that it was exempt from this assessment, and was ordered to pay the TRS $586,387.81, plus interest of $1,245.81.

The school district tried to avoid the assessment by claiming a grandfather exemption. The Pension Code exempts from TRS contribution assessments payments made or salary increases given on or after June 1, 2005 but before July 1, 2011. For the exemption to apply, the contract allowing the payments and salary increases must be entered into before June 1, 2005. The school district argued that it qualified for the exemption because the retirement program was agreed to in the teacher's collective bargaining agreement entered on February 26, 2003, and approved by the district's board of education on March 18, 2004. Furthermore, the retirement program was available for retirements effective prior to June 30, 2011.

Among the school district's errors was its failure to show that the collective bargaining agreement governed the early retirement salary increases. Specifically, the administrators who received the salary increases were not parties to the teachers' collective bargaining agreement, and they lacked written employment contracts. The court concluded that under these circumstances the administrators were working under one-year term contracts created by operation of law under Section 10-23.8a of the Illinois School Code. Although the school district agreed to offer the benefits of the retirement program to the administrators prior to June 1, 2005, the retirement program was not compulsory. If participation in the program was not a term and condition of continued employment after the program's inception, the court reasoned that the date when an administrator submitted an irrevocable notice of intent to retire was the moment when a contract for the salary increase was entered. The notices of intent to retire were entered into between December 2006 and November 2007, thus the salary increases were deemed paid pursuant to a contract "entered into, amended, or renewed" after June 1, 2005, and the school district was ineligible for grandfather exemption.

Board of Education of Schaumburg Community Consolidated School District No. 51 v. Teachers' Retirement System, 2013 IL App (4th) 120419

http://www.state.il.us/court/Opinions/AppellateCourt/2013/4thDistrict/4120419.pdf

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$1 Million Award Granted to Victim of Student-on-Student Racial Harassment

The U.S. Court of Appeals for the Second Circuit affirmed a $1 million award against a school district for exhibiting deliberate indifference to student-on-student racial harassment in violation of Title VI of the Civil Rights Act of 1964. While not controlling in Illinois, this case may indicate a trend toward requiring greater accountability for school districts in addressing bullying and harassment of students.

In this case, a biracial student (the "Student"), transferred to a predominantly white high school in upstate New York as a freshman. The Student immediately became the target of racial epithets and threats of bodily injury. When the district disciplined known harassers, new students stepped-up to harass the Student throughout his high school career. In addition to daily racial epithets, the Student was almost assaulted with a chair, his locker was tampered with and filled with trash, he was taunted with references to lynching, and his sister and friends at the school were called names, threatened and physically attacked.

At the end of the Student's sophomore year he was placed on an individualized education program (IEP) because had been struggling with acceptance. He fell behind in school academically, and after his senior year, accepted an IEP diploma rather than stay at the school until he was 21 to earn a regular diploma. After graduating, the Student sued the school district, alleging violations of Title VI, which prohibits recipients of federal funds from discriminating on the basis of race color or national origin.

The court applied the same analysis used in sexual harassment cases under Title IX of the Education Amendments of 1974. Under this analysis, school districts can be held liable for student on student harassment only if it can be shown that: (1) the district had substantial control of the circumstances of the student conduct; (2) the conduct complained of was severe and discriminatory harassment; (3) the district had actual knowledge of the harassment; and (4) the district acted with deliberate indifference in response to the harassment.

The Second Circuit found that the Student had proved these elements. The conduct complained of occurred on school grounds or the school's buses, giving the school district control of the circumstances of the conduct. On a daily basis classmates called the Student "nigger" and "gangster," commented on his skin color and threatened to lynch him, which amounted to severe and discriminatory harassment. This harassment deprived the Student of educational benefits. In particular, he was denied a supportive, educational environment free of harassment and discrimination; he accepted an IEP diploma, which was less likely to be accepted by employers or four-year colleges; and he was forced to leave school before completing his education. The school district had actual knowledge of the harassment from the Student, his mother (who complained to the District 30 to 50 times over four years), staff members and the police.

The deliberate indifference holding offers guidance on corrective measures school districts should take to avoid liability for student-on-student harassment. In this case, the district suspended nearly every reported harasser, but the suspensions did not eliminate the harassment, which persisted and increased in severity throughout the Student's high school career. The district eventually attempted nondisciplinary measures, but the court held that these efforts were half-hearted. For example, the school district coordinated a program on bullying and general harassment prevention, but it did not focus on issues of race and discrimination. The school district also hired someone to train students, faculty, and staff on diversity issues, but the training sessions never took place. These nondisciplinary measures also were not implemented until a year after the district had knowledge of the harassment. In short, the district was held to be deliberately different because it should have done more under the circumstances sooner.

This case informs us that a school district faced with student-on-student harassment needs to respond in light of the known circumstances, which may require the use of a combination of disciplinary and nondisciplinary corrective measures to eliminate harassment. The measures selected should be a part of a prompt response to directly address the underlying misconduct and the specific nature of the harassment or discrimination.

Zeno v. Pine Plains Central School District, No. 10-36-4-cv (2d Cir. Dec. 3, 2012)

http://www.justice.gov/crt/about/app/briefs/zenoopinion.pdf

News of Note

On February 1, 2013, Hinshaw attorneys Anthony Ficarelli and Alex Breland gave a presentation to the DuPage Regional Office of Education. The presentation addressed strategies for implementing teacher evaluations and performance development plans under the education reform measures introduced under SB 7 and PERA, and emerging issues in collective bargaining for school districts. Hinshaw attorneys regularly present to clients, including school districts, on the full array of legal matters.

Please take notice that Hinshaw's attorneys in the firm's Joliet office have relocated to Hinshaw's Lisle office. The contact information for the Lisle office is: 4343 Commerce Court, Suite 415, 60532; phone: 630-505-0010.