SCHOOL LAW JEOPARDY!

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I. Recent Legal Updates

A. Open Meetings Act

On July 1, 2015, the Nebraska Attorney General issued a letter in response to an open meetings complaint involving the University of Nebraska. The University's presidential search included two committees of the Board of Regents: the "Outreach Committee" and the "Selection Committee." The Outreach Committee identified prospective candidates and the Selection Committee evaluated the candidates. Both Committees evidently conducted their work "primarily in closed sessions."

The Nebraska Attorney General concluded that the Board of Regents violated the Open Meetings Act for a variety of reasons, including (1) the Committees never took any formal action in open session; (2) the Committees could have (but did not) discussed the qualities and credentials of an ideal presidential candidate in open session, but did not do so; and (3) the Committees did not satisfy any of the requirements for holding a closed session under the Open Meetings Act. Most notably, the Attorney General concluded that the University should not have evaluated candidates in closed session under the Open Meetings Act. The Attorney General seemed to recognize the tension between the Open Meetings Act and other personnel and privacy laws, but nonetheless elected to determine that the University violated the Open Meetings Act.

TAKEAWAY: Before your Board moves into closed session to discuss personnel matters or an open employment position (especially to find a Superintendent replacement), you should consult your legal counsel to ensure compliance with the Open Meetings Act, as interpreted by the Nebraska courts and the Nebraska Attorney General.

B. Liability for Reporting Child Abuse – *Wenk v. O'Reilly*

In the case,[1] Peter Wenk advocated for changes in his daughter's IEP. Wenk's constant advocacy irritated school employees, including Nancy Schott, the Director of Pupil Services. After receiving reports from other school employees, Schott made a report of suspected child abuse, as required under Ohio law. The facts that Schott knew to be true included: (1) the daughter said that Wenk put tampons on her; (2) the daughter said that Wenk put cream on her vagina; and (3) the daughter said that Went showered with her to help her wash her hair and, in

[1] 783 F.3d 585 (6th Cir. 2015).

doing so, Wenk removed his clothes so they would not get wet. There were other facts that Schott included in her report, but the Court concluded that these facts were not known to be true.

Wenk sued Schott for filing the child abuse report, allegedly in retaliation for exercising his rights of free speech related to his daughter's IEP. The 6th Circuit Court of Appeals held that Wenk's lawsuit could proceed, even though Schott is a mandatory reporter under Ohio law.

TAKEAWAY: Nebraska school districts are bound by holdings by the 8th Circuit Court of Appeals, not the 6th Circuit Court of Appeals. But if the 6th Circuit's holding remains unchanged, the result could be problematic for Nebraska educators who are mandatory child abuse reporters.

C. Proposed FLSA Changes

On July 6, 2015, the Department of Labor filed proposed rules to the exemptions from the minimum wage and overtime provisions for executive, administrative, professional, outside sales, and computer employees. Unless there is an extension of the deadline, comments are to be submitted by September 4, 2015. Thus, the proposed rules may be put into effect sometime after September 4, 2015.

To be considered exempt, employees must meet certain minimum tests related to their primary job duties and be paid on a salary basis at not less than a specified minimum amount. The salary required for exemption is currently $ 455 a week ($23,660 for a full-year worker). Under the proposed regulations, for each of the exemptions, the minimum salary would be increased to $921 a week ($47,892 for a full-year worker). Going forward, the proposed rule would index the overtime threshold to income, rather than inflation.

TAKEAWAY: If the proposed FLSA regulations become effective, your district will need to identify which formerly exempt employees are no longer exempt. These formerly exempt employees will be eligible for overtime pay. You should contact your school's attorney for assistance in this area.

D. LB 627

Last July, the EEOC issued guidance related to discrimination and accommodation of pregnant employees in the workplace. This guidance was partially incorporated by the US Supreme Court's decision of *Young v. UPS* and was essentially adopted by the Nebraska Legislature's recent enactment of LB 627.

LB 627 requires employers to treat employees who are pregnant or who are returning to work after giving birth as similar to an individual with a disability under the ADA. That is, employers must not discriminate against pregnant workers or applicants and must provide reasonable accommodations related to their pregnancy.

Reasonable accommodations that are set forth in LB 627 include:

- acquisition of equipment for sitting,
- more frequent or longer breaks,
- periodic rest,
- assistance with manual labor,
- job restructuring,
- light-duty assignments,
- modified work schedules,
- temporary transfers to less strenuous or hazardous work,
- time off to recover from childbirth, or break time and
- appropriate facilities for breast-feeding or expressing breast milk.

Employers are also required to permit pregnant employees to arrive later in the day if she suffers from "morning sickness" due to her pregnancy.

TAKEAWAY: Schools must now take steps to (1) reasonably accommodate pregnant employees and (2) be sure to avoid discriminating against pregnant employees—either intentionally or inadvertently. To this end, schools should review their policies, practices and procedures so as to incorporate these updates into their district.

E. Annual Training Requirements Beginning Fall 2015.

1. *Suicide Awareness and Prevention Training*. Under Neb. Rev. Stat. § 79-2,146, beginning in school year 2015-16, "all public school nurses, teachers, counselors, school psychologists, administrators, school social workers, and any other appropriate personnel shall receive at least one hour of suicide awareness and prevention training each year." NDE has the authority to promulgate rules and regulations in this area. NDE has provided some information on this topic at: http://www.education.ne.gov/safety/Docs/NE_LB_923_Five_Year_Plan.pdf.

2. *Nutrition Personnel Standards*. Beginning July 1, 2015, all food service managers (current and newly hired) must complete 6 hours of annual training. Beginning July 1, 2016, the required annual training increases to 12 hours. The training for managers is to include administrative practices, identification of reimbursable meals, nutrition, health and safety standards, and any other specific topics identified by Food Nutrition Services.

Beginning July 1, 2015, all staff with responsibility for school nutrition programs, other than directors and managers, who average at least 20 hours per week, must complete 4 hours of annual training. Beginning July 1, 2016, the required annual training increases to 6 hours.

The regulations provide that part-time staff who work less than 20 hours per week are to complete 4 hours of annual training, beginning July 1, 2015. The 4 hours is the same as that required for full-time staff in the first year, but is 2 hours less than that required for full-time staff in subsequent years.

The training for staff is to include free and reduced lunch eligibility, application, certification, and verification procedures, identification of reimbursable meals, nutrition, health and safety standards, and any other specific topics identified by FNS.

II. Personnel Issues

A. Teacher Goes AWOL

This was a real case[2] out of Kentucky. A teacher (Miller) twice requested an extended leave of absence. The district denied his requests. One month after his second request, Miller did not show for work. Months later, he reappeared and demanded that the school permit him to continue teaching.

The Kentucky Court of Appeals held that "an act of resignation occurred when the teacher took an indeterminate voluntary leave of absence without the consent of the Board. . . . The school board was under no obligation to take appellant back after he voluntarily absented himself from his position."

This type of case can be distinguished from two Nebraska court cases. In *Nuzum*,[3] the principal gave a letter of resignation on March 15, but subsequently withdrew his resignation. In April, the board passed a resolution stated that it had relied on the principal's replacement by placing an advertisement for the open principal position. The Supreme Court held that the principal's resignation had not been accepted by the board, and that the placing of an advertisement does not constitute sufficient board action to accept the resignation.

On the other hand, in *Hekmati*,[4] the teacher gave a letter of resignation on December 11, to be effective at the end of the spring semester. The provost and college president both informed the teacher that they accepted her resignation. The provost actually offered the teacher a "final contract" and the teacher accepted. Later, the teacher attempted to withdraw her resignation. The Nebraska Court of Appeals held that the board ratified the teacher's resignation by approving the teacher's "final" contract.

TAKEAWAY: To ensure that an employee's resignation is effective, ask your board to approve and accept the resignation.

B. Teacher Having Sex with Students

Like the teacher gone AWOL, the facts of this question allegedly derive from real life:[5]

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[2] *Miller v Noe*, 432 S.W.2d 818 (Ky. 1968).
[3] *Nuzum v. Board of Education,* 227 Neb. 387, 417 N.W.2d 779 (1988).
[4] *Hekmati v. Board of Trustees*, 2 N.C.A. 650 (1993).
[5] http://www.nbcnewyork.com/news/local/High-School-Teacher-Nicole-DuFault-New-Jersey-Sex-Students-Brain-Condition-Police-Endangerment-Maplewood-Columbia-High-School-318150341.html

> *A high school teacher accused of having sex with six male students has a brain condition that left her defenseless to the students' aggressive behavior, her lawyer said Tuesday. . . . Her attorney. . . told [the newspaper] that the teacher suffers from "frontal lobe syndrome," a condition that experts say is associated with socially inappropriate behavior. It also leaves them unable to control their impulses, among other symptoms.*

This situation gives rise to the reminder that *all* school employees are required to notify the proper law enforcement agency or the Nebraska Department of Health and Human Services when the employee has (1) reasonable cause to believe that a child has been subjected to child abuse or neglect or (2) observes such child being subjected to conditions or circumstances which reasonably would result in child abuse or neglect.[6]

TAKEAWAY: Remind all of your staff (both classified and certificated) that they have a mandatory reporting obligation to report suspected child abuse or neglect.

C. Failing to Evaluate Probationary Teachers

Under Neb. Rev. Stat. § 79-828, all probationary certificated employees shall, during each year of probationary employment, be evaluated at least once each semester, unless the probationary certificated employee is a superintendent. In *Cox v. McCool Junction*,[7] the Nebraska Supreme Court addressed the issue of: "What happens if a school fails to evaluate a probationary teacher during at least one semester?" The Nebraska Supreme Court resolved this issue by holding that the district may not non-renew a probationary teacher where that district fails to evaluate, per the statutory requirements.

The issue not addressed by the Supreme Court is whether a school can remove a probationary teacher through a cancellation proceeding, for just cause, with a formal hearing and so forth. The Nebraska courts have not yet addressed this issue, and we recommend that schools avoid this issue by evaluating its probationary teachers each semester during this probation period.

TAKEAWAY: Do not forget to evaluate every probationary certificated employee at least once each semester, per Neb. Rev. Stat. § 79-828.

D. Copyright Issues

"Copyright trolls" (groups with the primary intent of pursuing monetary remedies for alleged copyright violations) seem to be more aggressive in recent years in pursuing potential copyright violations. A number of Nebraska school districts have run into this issue by placing copyrighted images on their website. As such, your district would be wise to review its website and remove any images that the district has not received permission to post.

[6] Neb. Rev. Stat. § 28-711.
[7] 252 Neb. 12, 560 N.W.2d 138 (1997).

E. Marijuana Use in Colorado

This issue has been raised on several occasions—namely, whether a teacher can be disciplined for engaging in activities that are legal in another location but illegal in Nebraska (such as smoking marijuana for recreational purposes). The Colorado Supreme Court loudly inserted itself into this discussion by holding that Colorado employers could terminate Colorado employees for smoking marijuana, even though Colorado state law permits recreational marijuana use.[8]

The practical effect of the Colorado Supreme Court's ruling regarding Nebraska school districts is that employees may be disciplined for marijuana use in Colorado or another location in which recreational marijuana is legal. If a Colorado employer may terminate an employee for smoking marijuana in Colorado, surely a Nebraska employer may discipline a Nebraska employee smoking marijuana in Colorado.

TAKEAWAY: The legalization of marijuana in certain states and cities have yielded interesting and evolving legal issues. However, marijuana is still illegal under federal and Nebraska law. As such, school employees should not engage in recreational marijuana use.

III. Student Issues

A. Searching for Drug Paraphernalia

According to the Nebraska Court of Appeals, the conversation underlying this Jeopardy! question went as follows:[9]

> [The school employee heard] Michael tell the other student that he had some "big bags." [The school employee] testified that Michael did not see him, but that the other student did. [The school employee] testified that when the other student saw him, the student began to wave Michael off and shook his head as if saying, "Not now."

Based on this conversation, the school employee reported to the administration and the administration searched Michael's person and vehicle. During the search of the vehicle, school employees found marijuana in Michael's glove compartment. During his criminal trial, Michael attempted to suppress the results of the search. The Nebraska Court of Appeals recalled the general search standard under the Supreme Court's *T.L.O.* case: (1) the search must be justified at its inception; and (2) the search must be reasonably related in scope to the circumstances that justified the interference in the first place. The Court ultimately concluded that the school met this two-part test and that the search was properly conducted.

[8] *Coats v. Dish Network*, 2015 CO 44, No.13SC394.
[9] *In re Michael R.*, 11 Neb.App. 903, 662 N.W.2d 632 (2003).

B. Bullying

The vulgar terms used in the Jeopardy! presentation came from a Nebraska case.[10] In the case, a minor ("Jeffrey K.") was convicted of criminal stalking. The question of whether Jeffrey was properly convicted of criminal stalking made its way to the Nebraska Supreme Court, which held that there was sufficient evidence to convict Jeffrey.

Jeffrey was not a sympathetic defendant in the criminal case. While a student at Westside, Jeffrey "carried out a continuing pattern of calling [the victim] names at school, such as 'fat ass,' 'fat penguin,' 'whore,' and 'fat bitch,'" "kicked a chair at [the victim] as she was walking in the lunch-room . . . causing her to stumble" and "threw food at her, yelling on at least one occasion "[e]at some more, fat ass . . . ."

Eventually, Jeffrey was charged with criminal stalking. Nebraska's criminal stalking statute defines the offense of criminal stalking as:

> Any person who willfully harasses another person with the intent to injure, terrify, threaten, or intimidate commits the offense of stalking.
>
> "Harass" [shall mean] "engag[ing] in a knowing and willful course of conduct directed at a specific person which seriously terrifies, threatens, or intimidates the person and which serves no legitimate purpose."

After interpreting and analyzing the statutory language, the Nebraska Supreme Court held that Jeffrey was properly convicted of criminal stalking and that:

> A reasonable person would be seriously intimidated by Jeffrey's conduct. . . . Jeffrey yelled at his victim close to 200 times, in front of her friends and other students at school. Moreover, he threw food at her and shoved a chair directly in the victim's path, causing the chair to hit her. A reasonable person could be expected to alter his or her course to avoid such intimidation.

TAKEAWAY: Not only may bullying be disruptive to the education environment, but bullying can also be criminal activity. For administrators who have difficulty dealing with bullies, reminding bullies that they could be subject to criminal proceedings may encourage them to reform their behavior. In addition, and as a friendly reminder, your district is required to have a bullying policy and review the policy annually.[11]

[10] *In re Jeffrey K.*, 273 Neb. 239, 2007 Neb. LEXIS 41.
[11] Neb. Rev. Stat. § 79-2,137.

C. Sexually Vulgar Speech

The events of this question follow the United States Supreme Court case of *Bethel v. Fraser*.[12] In that case, Matthew Fraser, a high school senior, gave a speech to nominate his friend for student body vice president. Fraser's speech was largely sexual in nature:

> *I know a man who is firm - he's firm in his pants, he's firm in his shirt, his character is firm - but most of all, his belief in you the students of Bethel, is firm. Jeff Kuhlman is a man who takes his point and pounds it in. If necessary, he'll take an issue and nail it to the wall. He doesn't attack things in spurts - he drives hard, pushing and pushing until finally - he succeeds. Jeff is a man who will go to the very end - even the climax, for each and every one of you. So please vote for Jeff Kuhlman, as he'll never come between us and the best our school can be. He is firm enough to give it everything.*

The school then suspended Fraser for three days. Fraser filed a lawsuit challenging the school's conduct, and the case was eventually appealed to the United States Supreme Court. The Supreme Court held that a school district could prohibit sexually vulgar speech, such as the speech given by Fraser.

D. Tweeting From Home

The quotation used in the Jeopardy! presentation comes from a recent Oregon case. In the case,[13] a middle school student posted a social media message that his teacher was "the worst teacher ever, "She's just a b**ch" and "she needs to be shot." The school learned of the messages and suspended the student. The student filed suit against the school district and the court ruled in favor of the student, noting that the student's message did not constitute a "true threat" and that there was no evidence of the messages causing a disruption of school activities.

E. Egging the Superintendent's House

One of the earliest reported cases dealing with the scope of a school's authority to discipline is *Lander v. Seaver*.[14] The facts at issue in *Lander* involved a student who ridiculed his teacher outside the teacher's house. The facts were given by the court as follows:

> The plaintiff, whose age was about eleven years, was one of [the defendant's] pupils; that one day, about an hour and a half after the close of school in the afternoon, and after the plaintiff had returned home from school, and while he was driving his father's cow by the defendant's house, in presence of the defendant and of some of

[12] *Bethel School District v. Fraser,* 478 U.S. 675 (1986).
[13] *Burge ex rel. Burge v. Colton School Dist. 53,* 2015 WL 1757161 (D. Or., April 17, 2015).
[14] 1859 WL 5454 (Vt. 1857).

> his fellow pupils, the plaintiff called the defendant "Old Jack Seaver"; that the next morning, after school had commenced, the plaintiff having come to school as usual, the defendant, after reprimanding the plaintiff for his insulting language the evening before, whipped him with a small rawhide.[15]

The court held that the teacher had the authority to discipline the student for his after-school hours' conduct, stating: "Though a schoolmaster has in general no right to punish a pupil for misconduct committed after the dismissal of school for the day, and the return of the pupil to his home, yet he may, on the pupil's return to school, punish him for any misbehavior, though committed out of school, which has a direct and immediate tendency to injure the school and to subvert the master's authority."[16]

IV. Parents' Rights

A. FERPA

Under FERPA, "a parent is absent if he or she is not present in the day-to-day home environment of the child. Accordingly, a stepparent has rights under FERPA where the stepparent is present on a day-to-day basis with the natural parent and child and the other parent is absent from that home. In such cases, stepparents have the same rights under FERPA as do natural parents. Conversely, a stepparent who is not present on a day-to-day basis in the home of the child does not have rights under FERPA with respect to such child's education records."[17]

B. Disruptive Parent at Athletic Practices

In *Cunningham v. Lenape Reg'l High Dist. Bd. of Educ.*,[18] the parent of a high school wrestler was banned from all school property, including wrestling matches and graduation ceremonies. The school banned the parent because the parent engaged in a "persistent pattern of abuse, harassment and threats towards staff members" and that the parent "directed obscenities toward staff members." The parent asked a federal court to enjoin the school district from banning the parent from school property, but the court refused to enter such an order. Notably, the court stated:

> [S]chool officials are well within constitutional bounds in limiting access to school property where it is necessary to maintain tranquility. . . . The [school] made all reasonable efforts to notify [the parent] that his concerns had been or were being addressed and also that he was bound by safety procedures regulating access to the school and school officials. When [the parent] demonstrated a willingness to disregard these procedures, [the district] took

[15] Emphasis supplied.
[16] Emphasis supplied.
[17] August 20, 2004 FPCO Letter.
[18] 492 F. Supp. 2d 439 (D.N.J. 2007)

> further measures to restrict Plaintiff's access. Even after violations of these new policies, [the school] still allowed [the parent] access to the school and school administrators if he abided by the established guidelines. . . .

The court also listed the evidence that showed that the parent's behavior was disruptive, intrusive and intimidating towards staff members and the operations of the school. As such, the court refused to overturn the school's decision to ban the parent from school property.

C. Banning a Special Education Parent

A parent filed a complaint with the OCR claiming the district had barred him from district property in retaliation for his having filed a special education due process complaint on behalf of his child.[19] In addressing this issue, the OCR set forth the elements of a retaliation claim as follows:

> To establish a prima facie case of retaliation OCR must establish that (1) the parent participated in a protected activity; (2) the recipient was aware that the parent engaged in a protected activity; (3) the recipient subjected the parent to adverse action following the protected activity; and (4) there is a causal connection between the protected activity and the recipient's adverse action. All four of these conditions must be met.

The District argued that it restricted the parent from District property because of the parent's disruptive behavior, not because of the parent's filing of a due process complaint. The parent's disruptive behavior included his failure to follow the school's visitation policy and his intimidating behavior toward District staff. Examples of the parent's disruptive conduct included verbal abuse towards District staff, refusal to comply with the Superintendent's directive to provide advance notice before visiting the school, and verbal abuse towards the Superintendent and the Principal. During these disruptions, the police were called. Eventually, the parent attempted to interrogate students and interrupted classes and the District issued a stay away letter.

The potential problem in the case was that the parent filed a special education due process complaint only days before the stay away letter was issued. The OCR, however, determined that District did not issue the stay away letter because of the parent filing the complaint. This conclusion was reached based on the fact that the District had made efforts to restrict the parent's access to school grounds before he filed the due process complaint. "This information supports the District's position that there were reasons unrelated to the parent's due process request for restricting his access to District property." The OCR dismissed the complaint, finding that the third element (causal connection) had not been met.

[19] *Sandoval (Ill.) Community Unit School District #501,* 30 IDELR 60 (OCR 1998)

D. Non-Custodial Parent Rights

Visitation rights in the divorce decree do not preclude the non-custodial parent from spending time at school just as any other parent would. However, if the non-custodial parent appears to be spending more time at school than other parents do, school staff may limit the time—not because of the divorce decree but because it is likely a distraction.

E. Limiting Speakers at Board Meeting

In *Cyr v. Addison Rutland Supervisory Union,*[20] a parent ("Cyr") had a long history of disruptive and intimidating behavior towards school officials, such as sending as many as 5,000 documents to the school regarding their criticisms, filing several administrative complaints against the school district, speaking loudly and with a clenched fist, driving by a teacher's house, and so forth. Cyr's son, an autistic student, told a therapist that he wanted to attack the school's principal with an ax. Subsequently, a psychologist was retained to evaluate Cyr's son but ultimately came to the conclusion that Cyr posed a threat to school staff. The psychologist pointed to a website posting made by Cyr regarding school officials:

> When dealing with snakes, you must expect them to twist and turn in an attempt to bite you, any way they can. The teachers will do anything to force there [sic] will on the taxpayer. Up to and including taking it out on the Kids. [T]he best way to deal with a snake is to remove the head. "If they strike fire them."

After this behavior continued, the school issued a notice against trespass to Cyr and banned him from all property owned by the district, including board meetings. However, the district offered Cyr the opportunity to attend board meetings via telephone or other "assistive technologies."

Cyr eventually sued the district. The district court quickly dismissed Cyr's argument that he had a First Amendment right to attend board meetings. The court noted that "there is no First Amendment right of access to a school board meeting." However, the court did hold that the district *did* violate Cry's First Amendment rights by limiting his right to speak at meetings, reasoning that: "the First Amendment does not permit the [district] to confine Mr. Cyr's speech to telephone or 'assistive technologies' by issuing a blanket notice against trespass when less burdensome alternatives exist."

TAKEAWAY: You should consult your school attorney prior to banning an individual. As the *Cyr* case suggests, the courts have held that there are different constitutional implications of banning an individual from school activities (such as athletic activities) and school board meetings.

[20] Case Number 1:12-cv-00105-jmg (U.S. Dist. Vermont, September 30, 2014).

V. Are You Kidding Me???

A. Pedophilia

Believe it or not, this case made its way to the 6th Circuit Court of Appeals.[21] The case involved a 63–year–old schoolteacher "who suffers from pedophobia, a debilitating fear of young children." The teacher worked as a high school foreign language teacher for many years without any problems. However, due to financial difficulties, the school district changed the offering of its French program from in-class to online—therefore eliminating the need for the teacher to continue teaching at the high school. As such, the district transferred the teacher to the middle school. After six months, the teacher retired, citing her pedophilia as the reason for her retirement.

The teacher sued the district, arguing that the district should not have transferred her to the middle school. On appeal, the 6th Circuit rejected her ADA claims. The court held that the ADA does not require unreasonable accommodations, such as those requested by the teacher. In addition, the court reiterated that the high school no longer had a position for the teacher, and the ADA does not require the district to create a new job for the teacher.

B. Million Dollar Lawsuits

Concussion. A student had a pre-existing medical condition known as a "cavernous malformation" — a condition that included abnormally formed blood vessels in his brain. During football practice, his brain started bleeding after he suffered a head injury but he was allowed to continue practicing and playing. After a weeklong federal jury trial in Des Moines, the jury found that the district (including the school nurse) was negligent in failing to notify coaches of the student's potential concussion or brain injury and of failing to follow up with the student's grandmother, who was taking care of him, to make sure he was seen by a physician. The jury ultimately awarded the student damages in the amount of $990,000--$140,000 in past medical expenses and $850,000 in additional damages for pain and suffering.[22]

Coach Slandered by Parent. Rob Bloom, the varsity boys basketball coach at Westlake High School in Westlake Village, California, claimed that a parent of one of the team's players had a "personal vendetta" against him.[23] The lawsuit alleges that the parent was unhappy with how Bloom used his son and called for the coach to be fired. The coached alleged that the parent's activities were slanderous and ruined his good name—claiming damages of $1 million.

Track Team. The father of a high school track athlete filed a $40 million lawsuit against the school district for kicking his son off the track team. School officials said they removed the student due to the student's numerous unexcused absences from practices. The basis for the $40

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[21] *Waltherr-Willard v. Mariemont City Schools*, 601 Fed.Appx. 385 (6th Cir. 2015).

[22] "Football head injury case: Iowa player gets nearly $1 million," http://www.desmoinesregister.com/story/sports/high-school/2015/05/11/bullying-football-lawsuit-bedford/27157619/

[23] "High school basketball coach sues parent for $1 million," http://www.si.com/high-school/2014/11/17/high-school-basketball-coach-libel-lawsuit

million demand is his loss of college athletic scholarships now. The lawsuit also demands that the school district award the student his 2012 and 2013 varsity letters and championship jackets.[24]

Field Trip Illness. A student who travelled to China on a school-sponsored field trip suffered tick bites that left her partially brain-damaged.[25] A federal jury awarded her damages in the amount of $41.7 million. The jury concluded that the school was negligent in many aspects of planning, administering and supervising the field trip.

C. Startle Response Syndrome

The relevant portion of the medical opinion is as follows:

Accompanying this letter is the Psychological Evaluation of Mr. conducted by Dr. Derek Grimmell. As we discussed on the telephone this afternoon, I had an opportunity to visit with Dr. Grimmell today regarding his assessment of Mr. . Dr. Grimmell informed me that there is no question in his mind but that the event for which Mr. is being considered for cancellation was an unintentional, nervous system response caused by Mr. 's Post-Traumatic Stress Disorder. Mr. , due to his disability, suffers exaggerated startle response, which can cause him to easily overreact to situations that are actually harmless.

Wikipedia generally states that "startle response" syndrome is "a defensive response to sudden or threatening stimuli, and is associated with negative affect. Usually the onset of the startle response is reflectory. The startle reflex is a brainstem reflectory reaction (reflex) that serves to protect the back of the neck (whole-body startle) and the eyes (eyeblink) and facilitates escape from sudden stimuli. It is found across the lifespan of many species. An individual's emotional state may lead to a variety of responses."[26]

[24] "Father sues high school for $40 million because his son was kicked off New Jersey track team," http://www.nydailynews.com/news/national/dad-sues-school-40m-kid-kicked-team-article-1.1355848.
[25] "Jury awards $41.7 million to Connecticut teen who fell ill on school field trip to China," http://www.nydailynews.com/news/world/father-furious-conn-school-alleged-negligence-article-1.1303452.
[26] https://en.wikipedia.org/wiki/Startle_response#cite_note-1