

# ***MSU COMMUNITY OUTREACH***

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## **MICHIGAN SAFE SCHOOLS INITIATIVE WORKGROUP November 7, 2007**

**LEGAL UPDATE  
(Covering the time period from  
September 8, 2007 to November 1, 2007)**

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# MICHIGAN SAFE SCHOOLS INITIATIVE

November 7, 2007

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## SAFE SCHOOLS CASE LAW UPDATE

The following cases are summarized because of their potential applicability and relevance to Michigan Safe Schools' law.

### *Costs of State Mandated Criminal Background Checks Not Violative of Headlee Amendment*

*Owczarek v. State of Michigan*, 2007 WL 2609756 (Mich App, 2007)

In a declaratory ruling issued on September 11, 2007, the Michigan Court of Appeals held that the State is not required under section 29 of the Headlee Amendment of Michigan Constitution to reimburse school districts for expenses incurred in requesting and securing criminal background checks for prospective and current employees or contract workers, or for expenses related to providing back-pay to teachers who are suspended and subsequently reinstated under the Revised School Code.

In *Owczarek*, a group of 465 taxpayers who lived within the geographical boundaries of 461 public school districts, one charter school, and three intermediate school districts, sought a declaratory judgment that the State had failed to honor its funding obligations under section 29 of the Headlee Amendment to the State Constitution. Section 29 of the Headlee Amendment provides in relevant part that:

The state is hereby prohibited from reducing the state financed proportion of the necessary costs of any existing activity or service required of units of Local Government by state law. ***A new activity or service or an increase in the level of any activity or service beyond that required by existing law shall not be required by the legislature or any state agency of units of Local Government, unless a state appropriation is made and disbursed to pay the unit of Local Government for any necessary increased costs. (Emphasis added).***

Under section 34 of the Headlee Amendment, the Legislature has the constitutional authority to implement sections 25 through 33. Pursuant to this authority, the Legislature enacted 1979 PA 101, MCL 21.231 *et seq.*, which includes definitions for terms used in the Headlee provisions. According to MCL 21.232(1), "activity," means "a specific and identifiable administrative action of a local unit of government. The provision of a benefit for, or the protection of, public employees of a local unit of government is not an administrative action." According to MCL 21.234(1), "service" means "a specific and identifiable program of a local unit of government which is available to the general public or is provided for the citizens of the local unit of government. The provision of a benefit for, or the protection of, public employees of a local unit of government is not a program."

The plaintiffs asserted that the defendants violated section 29 of the Headlee Amendment by failing to reimburse the plaintiff school districts for the “necessary increased costs” associated with carrying out activities and services mandated by 2005 PA 129 and 2005 PA 130 (the criminal background check provisions of the Revised School Code, MCL 380.1230). Prior to the amendment by 2005 PA 129, MCL 380.1230 required pre-employment criminal background checks on an individual offered a position as a teacher or administrator or for a position requiring state board approval. The 2005 amendment expanded the scope of persons subject to criminal background checks to include any individual offered “any full-time or part-time employment or when school officials learn that an individual is being assigned to regularly and continuously work under contract in any of its schools...”

The plaintiffs contended that 2005 PA 129 and 2005 PA 130 mandate “activities” or “services” under section 29 of the Headlee Amendment, and requested summary disposition asserting that the defendants have failed to state a valid defense. In response, the defendants asserted that the complained of requirements imposed on plaintiff school districts are not within the purview of section 29 of the Headlee Amendment.

In denying the plaintiff’s motion for summary disposition, the Court found that pursuant to the definitions of “activity” and “service” defined above, “the legislative mandate to request and secure criminal background checks was not an “activity” or “service” under section 29 of the Headlee Amendment.” The Court reasoned that the mandate requires school districts to request an activity on the part of prospective and current employees, but does not direct the school districts nor the applicants or current employees to pay the fee. Rather, the Court found that although section 1230g(1)(b) of the Revised School Code authorizes the State Police to “charge a fee for conducting the criminal records check,” “the onus is on the prospective and current employees as a condition of employment to supply the State Police with fingerprints and written consent to conduct the background check.” The Court reasoned that *“the absence of legislative direction as to which party must pay the fees associated with the background check reflects the fact that “conditions of employment” fall within the traditional scope of collective bargaining...and acknowledges that the issue of who pays the fees must be decided by the parties engaged in collective bargaining.”* Therefore, the Court concluded that the legislative mandate to request and secure criminal background checks was not an “activity” or “service” within the meaning of section 29 of the Headlee Amendment.”

The Court further concluded that the State is not required to reimburse school districts that, pursuant to section 1535a(4) of the Revised School Code, are mandated to pay lost compensation to employees whose wages were discontinued during or after criminal proceedings but subsequently reinstated. The Court found that this form of employee “back-pay” was not a state-mandated “activity” or “service.” The Court reasoned that this mandate creates nothing more than an entitlement to back-pay, a traditional remedy awarded to employees who are wrongfully discharged or disciplined.

The Court notes that “Headlee, at its core, is intended to prevent attempts by the Legislature ‘to shift responsibility for services to the local government...in order to save the money it would have had to use to provide the services itself.’” The Court concluded, however, that the lost compensation requirement of the amended provisions to the Revised School Code does “not result in any shifting of state responsibilities to the local school districts.”

The Court noted that “[l]ocal school districts traditionally bear the financial burden of paying lost wages and salaries in cases involving the wrongful discharge or suspension of an employee.” The Court explained that public school employees are traditionally covered by collective bargaining agreements, which govern wages, hours and other terms and conditions of employment...and which likely contain provisions governing remedies for wrongful discharge or disciplinary suspension.” The Court therefore rejected plaintiffs’ assertion that the application of MCL 21.232(1) and 21.234(1) renders them unconstitutional.

***“Deliberate Indifference” and School District Liability for Student on Student Sexual Harassment:***

*i. Fitzgerald v. Barnstable School Committee, No. 06-2596 (1st Cir. 2007)*

In *Fitzgerald v. Barnstable School Committee*, No. 06-2596 (1st Cir. Oct. 5, 2007), the First Circuit Court of Appeals (the “Court”) affirmed the lower court’s opinion that a school district cannot be liable for peer on peer sexual harassment under Title IX unless the school district is found, among other things, to be “deliberately indifferent” to the situation.

In *Fitzgerald*, Jacqueline, a kindergarten student in Massachusetts, informed her parents that each time she wore a dress to school an older student on her school bus would bully her into lifting her skirt. Jacqueline’s parents, Lisa Ryan and Robert Fitzgerald, immediately called the principal of Jacqueline’s school, to report the allegations. The principal and a prevention specialist met with Jacqueline and Jacqueline’s parents later that morning. Because school officials were unable to identify the alleged perpetrator due to Jacqueline’s vague account of the incidents, they arranged for Jacqueline to observe students disembarking from the school bus.

Jacqueline identified Briton Oleson, a third grader, as the alleged perpetrator. That same day, the principal and prevention specialist questioned Briton, who steadfastly denied the allegations. The prevention specialist then interviewed the bus driver and a majority of the students who regularly rode the bus. Despite these extensive interviews, the prevention specialist was unable to confirm Jacqueline’s version of the relevant events.

Shortly thereafter, the Fitzgeralds informed the principal that Jacqueline told them that, in addition to coercing her to lift her dress, Briton had bullied her into pulling down her underpants and spreading her legs. The principal immediately scheduled a meeting with the Fitzgeralds in order to discuss this new information. He also re-interrogated Briton and followed up on some of the interviews that the prevention specialist had conducted.

At this point, the local police department had also launched an investigation into the matter. After interviewing Briton, the police detective found him to be credible and the police department ultimately decided that there was insufficient evidence to proceed criminally against Briton. Relying in part on the police department's decision and in part on the results of the school's own investigation, the principal decided to refrain from imposing any disciplinary measures against Briton.

Nonetheless, the school offered to place Jacqueline on a different bus than Briton or, alternatively, to leave rows of empty seats between the kindergarten students and the older pupils on the original bus. The Fitzgeralds rejected these suggestions. They countered with a series of other alternatives, such as placing a monitor on the bus or transferring Briton to a different bus. The superintendent declined to implement any of these proposals.

Although there were no other incidents aboard the school bus, Jacqueline asserted that she had several unsettling interactions with Briton during the rest of the school year. Some were casual encounters in the hallway. The most notable interaction was an episode in which a gym teacher randomly required Jacqueline to give Briton a "high five." Each incident was acknowledged by the principal as soon as it was reported, and there was no claim that he failed to address these incidents.

In April of 2002, the Fitzgeralds sued the elementary school's governing body (the Barnstable School Committee) and the superintendent in federal district court claiming that (1) the School Committee violated Title IX of the Education Act Amendments of 1972, 20 USC §§ 1681-1688 and (2) claims against both the School Committee and the superintendent under 42 USC § 1983. The district court granted the defendants' requests for summary judgment and dismissed the Fitzgeralds' claims.

Title IX provides, in pertinent part, that "no person... shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance." Although the statute does not contain an explicit private right of action as a mode of enforcing its regime, the Supreme Court has interpreted it to confer such a right. An educational institution may be liable under Title IX for peer on peer sexual harassment under limited circumstances. If the educational institution receives federal funding, a student must prove the following: *(1) severe, pervasive, and objectively offensive harassment occurred; (2) the harassment deprived her of educational opportunities or benefits; (3) the educational institution had actual knowledge of the harassment; and (4) the institution's deliberate indifference caused the student to be subjected to the harassment.*

In the instant case, the presence of the first three factors were not in dispute, which led the Court to focus its analysis upon the question of whether the school district acted with deliberate indifference to the Jacqueline's claims of sexual harassment. *Deliberate indifference "requires*

*more than a showing that the institution's response to harassment was less than ideal. In this context, the term requires a showing that the institution's response was clearly unreasonable in light of the known circumstances.*" Further, to "subject" a student to harassment, "the institution's deliberate indifference must, at a minimum, have caused the student to undergo harassment, made her more vulnerable to it, or made her more likely to experience it."

The Court in this case conducted an inquiry into the actions taken by the School Committee after it had been put on notice of Jacqueline's sexual harassment complaint. The Court found that, although there may have been other and better avenues that the School Committee could have explored or other and better questions that could have been asked during the interviews, however, Title IX does not require educational institutions to perform flawless investigations or craft perfect solutions. *Contrast Vance v. Spencer County Pub. Sch. Dist.*, 231 F.3d 253, 259 (6th Cir. 2000) (the Sixth Circuit concluded that a school could be found to be deliberately indifferent in the absence of evidence that it "took any other action whatsoever" besides talking with the supposed perpetrator). Rather, *the test is whether the institution's response, evaluated in light of the known circumstances, is so deficient as to be clearly unreasonable.*

The Court emphasized that the school acted promptly to Jacqueline's complaint, meeting on the very morning in which they were notified of the potential wrongdoing. It also approved of the school's extensive investigation, which consisted of multiple interviews of both Jacqueline and Briton (the accused), an interview of the bus driver, and individual interviews of between 35 and 50 children who regularly rode the bus. After this extensive interviewing process, given the School Committee's inability to corroborate Jacqueline's allegations and the termination of the police investigation, the Court found that it was reasonable for the School Committee to refuse to impose disciplinary measures against Briton.

The Fitzgeralds also argued that the School Committee's response was inadequate because it offered unsuitable remedial alternatives to the situation. The Fitzgeralds insisted that their proposal to place a monitor on Jacqueline's school bus, which the school rejected, would have been accepted by any school acting in good faith. The Court responded by pointing out that *the Title IX statute "does not require an educational institution to either assuage a victim's parents or to acquiesce in their demands."* Instead, *"a court's inquiry is limited to whether the school's actions were so lax, so misdirected, or so poorly executed as to be clearly unreasonable under the known circumstances."*

Finally, the Court found that even though subsequent interactions took place between Jacqueline and Briton after the incident in question, this did not render the School Committee deliberately indifferent. *The School Committee's responsibility was to act reasonably to prevent future harassment even if it does not actually succeed in doing so. Accordingly, the Court concluded that "no rational factfinder could supportably conclude that the School Committee acted with deliberate indifference."*

ii. Porto v. Town of Tewksbury, 488 F.3d 67 (1st Cir. 2007)

In another federal case examining whether a school district was “deliberately indifferent” to a student’s sexual harassment of one of his peers while on school property, the U.S. Court of Appeals for the First Circuit similarly found that the school district was not liable for the student’s conduct under Title IX because it had not acted with deliberate indifference. Indeed, the U.S. Supreme Court recently denied review of a decision issued by the U.S. Court of Appeals for the First Circuit in May 2007, in which the Court held that the Town of Tewksbury (“Tewksbury”), Massachusetts, did not act with deliberate indifference in failing to address inappropriate sexual behavior between two male special education students.

In *Tewksbury*, the Court addressed the question of when a school system may be liable under Title IX of the Education Amendments of 1972 for student-on-student sexual harassment. The plaintiffs, Ann Marie Porto and Nicholas Porto, foster parents of a minor student, SC, sued Tewksbury on behalf SC, alleging that the school system had been deliberately indifferent to the sexual harassment of SC by a peer. Following a trial at the district court level, a jury found in favor of the plaintiffs and awarded compensatory damages of \$250,000 and punitive damages of \$1.

SC suffered from fetal alcohol syndrome and “generalized development delays.” SC entered Tewksbury public schools when he was eight years old and, after a month in a standard first grade class, was ultimately placed in special education classes. SC met another boy, RC, in his first grade special education class. Between first and fifth grade, SC reported to Ann Marie Porto various sexually-charged incidents with RC. Porto testified that she reported these incidents to Tewksbury teachers and administrators.

In 1999, when SC was in fifth grade, he met with Dr. Bradford Smith (“Smith”), a psychologist, for counseling related to inappropriate sexual behavior at home. Dr. Smith informed the Portos that SC had told home that he and RC had been engaging in oral sex on the school buses since October 1998. The Portos reported this to the Tewksbury public school administrators and to the Massachusetts Department of Social Services. In response, the school put SC and RC on different buses and instructed teachers and school aides to keep SC and RC separated and to monitor their interactions.

While SC was in the sixth grade, school officials received a report of an incident involving SC and RC, in which RC allegedly touch SC on the buttocks. In response to this action, school officials separated SC and RC and gave SC a detention.

In the fall of 2000, SC entered the seventh grade at Wynn Middle School, and spent a large part of his time in a life skills class with six other children, one of whom was RC. According to school officials, in October 2000, there were three incidents that involved inappropriate touching between RC and SC. Two of the incidents occurred in the life skills classroom and involved RC touching SC’s leg while the boys sat next to each other. Following each incident, the classroom

aide took steps to ensure that the boys were separated from each other. The third incident occurred during gym class, when the two boys were touching each other while they sat in the bleachers. After the third incident, school officials sent the boys to the school guidance counselor, William Traveis (“Traveis”), who instructed the boys that this type of behavior was inappropriate. According to Traveis, the boys apologized and told him that they would not do it again. Traveis told teachers and aides to monitor the boys and to keep them separated. No additional incidents were reported to the school until January 2001.

On January 11, 2001, RC asked Eleanor Edelstein (“Edelstein”), RC and SC’s language arts and math teacher, for permission to go to the bathroom and Edelstein excused him. A short time later, SC asked Edelstein if he could retrieve a book from his locker. Edelstein allowed SC to leave the classroom, and after two or three minutes, she noticed that neither boy had returned. Edelstein stepped out into the hall but did not see the boys. While in the hall, Edelstein spotted Robert Ware (“Ware”) the Behavior Management Facilitator at Wynn Middle School, and asked Ware to go into the bathroom to investigate. Ware entered the bathroom and discovered SC and RC in a stall, pulling their pants up. Upon Ware’s questioning, SC told Ware that he had engaged in sexual intercourse with RC, and that he and RC had been touching each other on a weekly basis for some time. Ware informed the Wynn Middle School Principal James McGuire about the incident, who subsequently called SC’s parents, told them about the incident, and asked them to collect SC from school.

Following the bathroom incident, SC did not return to school but instead received ten hours of tutoring per week at home. In October 2001, SC was hospitalized for a month for behavioral problems, during which time he attempted to commit suicide. In February 2002, SC was sent to a residential treatment program outside of the Tewksbury school district.

The plaintiffs asserted that Tewksbury was told on multiple occasions that RC was harassing SC, but nonetheless failed to do more than temporarily separate the boys. The plaintiffs also asserted that despite Tewksbury’s knowledge of prior sexual harassment, RC and SC were permitted to have unsupervised access to each other at times. The plaintiffs contended that, given the history of sexual harassment between RC and SC that culminated in the fifth grade school-bus incident, SC should not have been allowed to go to his locker alone while RC was in the bathroom.

However, in examining whether Tewksbury acted with “deliberate indifference” to the inappropriate sexual behavior between SC and RC, the Court cited the standard established in *Davis* that “deliberate indifference” exists when the school district’s “response to the harassment or lack thereof is clearly unreasonable in light of the known circumstances.” The Court noted that ***“a claim that the school system could or should have done more [was] insufficient to establish deliberate indifference,” and that deliberate indifference was found by the Supreme Court to be “a stringent standard of fault, requiring proof that a municipal actor disregarded a known or obvious consequence of his action” or inaction.*** Thus, in an educational setting, the Court reasoned that a school might be deliberately indifferent to student-on-student sexual

harassment where it had notice of the harassment, and either did nothing or failed to take additional reasonable measures after it learned that its initial remedial measures were ineffective.

The Court noted that the plaintiffs had not claimed that Tewksbury took no action to stop the sexual harassment between SC and RC, but rather that the action it took was ineffective. While acknowledging that the bathroom incident is evidence that RC's inappropriate sexual behavior was not abated, the Court noted that "the fact that measures designed to stop harassment prove later to be ineffective does not establish that the steps taken were clearly unreasonable in light of the circumstances known by Tewksbury at the time."

The Court reasoned that the plaintiffs presented no evidence to suggest that Tewksbury knew or even suspected that when SC asked to go to his locker, he was really going to go to the bathroom to meet RC. In response to the plaintiffs' argument that, due to his mental disability, a teacher aide should have accompanied SC to his locker, the Court noted that the absence of such an aide only suggests that Tewksbury may have been negligent, not deliberately indifferent. To probe deliberate indifference, the Court reasoned, the plaintiffs would have had to establish that Tewksbury *knew that the failure to accompany SC to his locker would lead to SC following RC to the bathroom and that there was a high degree of risk that the two would engage in inappropriate sexual behavior*. The Court noted Edelstein's uncontradicted testimony that the boys had never given a reason for her to ever question that they could not be trusted going to the bathroom or to their lockers.

The Court also noted that there was no evidence that the school knew or that it was obvious that RC would continue to sexually harass SC after October 2000, and that between March 1999 and October 2000, "there was only one alleged minor incident of sexual harassment." With respect to the three incidents of inappropriate touching in October 2000, the Court found that it was reasonable for Tewksbury to conclude that the intervention it took at the time (i.e. immediately separating the boys from each other and requiring the boys to see the school guidance counselor) was sufficient to stop the inappropriate behavior. The Court concluded that, "[b]y all indications, until January 11, 2001, Tewksbury was not aware that RC had been engaging in any further sexual harassment after October 2000." The Court therefore found that the evidence failed as a matter of law to demonstrate that Tewksbury acted with deliberate indifference in failing to address RC's sexual harassment of SC, and reversed the judgment of the district court finding in favor of plaintiffs.

<p style="text-align:center"><b>MICHIGAN SAFE SCHOOLS INITIATIVE WORKGROUP</b> <b><u>ENACTED LEGISLATION</u></b></p>
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No new amendments have been adopted relating to existing school safety statutes since the last safe schools meeting of September 12, 2007. However, on October 31, 2007, the Legislature sent enrolled Senate Bill No. 571 to Governor Granholm for her signature.

*i. Senate Bill 571 – Mandatory Expulsion Provisions and Special Education Students*

In an effort to ensure compliance with protecting the rights of all disabled students under the Individuals with Disabilities Education Act, the Michigan Legislature has passed and sent to Governor Granholm amendments to sections 1311 and 1311a of the Revised School Code (i.e. the sections concerning student expulsion or suspension).

Under section 1311 of the Revised School Code, a student who is guilty of gross misdemeanor or persistent disobedience may be suspended or expelled from school if such action is deemed by the school board or its designee to serve the best interests of the school. Under the current provisions, if there is reason to believe that the student is “*handicapped*,” and the school district has not conducted an evaluation to determine if the student is handicapped, the student must be evaluated immediately. Senate Bill 571 would replace the term “*handicapped*” with “*eligible for special education programs and services*.”

Additionally, Bill 571 would amend the Revised School Code to say that certain sections of the law concerning student expulsion or suspension would not diminish “*any*” rights (rather than “*the due process rights*,” as currently provided) of a special education student under federal law.

<p style="text-align:center"><b>MICHIGAN SAFE SCHOOLS INITIATIVE WORKGROUP</b> <b><u>PROPOSED LEGISLATION</u></b></p>
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The Michigan House of Representatives has introduced the following bills affecting issues of school safety:

**HOUSE OF REPRESENTATIVES**

*i. House Bill 5162 – Teachers Carrying Concealed Firearms on School Property*

House Bill 5162, introduced on September 5, 2007 by Representative David Agema (D - Kent County; Ottawa County) and referred to the Committee on Judiciary.

Under existing provisions of the Michigan Firearms Act, individuals licensed to carry a concealed pistol are not permitted to carry the pistol in a school or on school property. MCL 28.425o.

If passed, House Bill 5162 would amend the Firearms Act to permit teachers, administrators and other school employees who are licensed to carry concealed pistols, to carry a concealed pistol in a school or on school property if the chief executive officer of the school has authorized that individual to carry a concealed pistol on that school or school property. Under the Bill, the CEO may condition his or her approval upon the requirement that the teacher, administrator or other school employee successfully complete training considered appropriate by the CEO.

The Bill defines “school” and “school property” as those terms defined in section 237A of the Michigan Penal Code, MCL 750.237A.

*ii. House Bill 5322 – Distribution of Information Regarding the Human Papillomavirus*

House Bill 5322, introduced on October 17, 2007 by Representative Brenda Clack (D - Flint) and referred to the Committee on Health Policy.

Under existing law, section 1177a of the Revised School Code, school districts and public school academies that provide information on immunizations, infectious disease, medications, or other school health issues to parents of students in at least grades 6, 9, and 12, are required to include information about meningococcal meningitis and the vaccine for meningococcal meningitis. The Department of Education, in cooperation with the Department of Community Health, is required to develop this information and make it available to school districts, public school academies, and nonpublic schools.

Bill 5322 would amend section 1177a of the Revised School Code by adding a new section requiring school districts and public school academies that provide information on immunizations, infectious disease, medications, or other school health issues to parents of students in or entering the sixth grade to also include information about the Human Papillomavirus (HPV) and the HPV vaccine. HPV is the name of a group of viruses, more than 30 of which are sexually transmitted (i.e. may be classified as STDs). The Bill provides that, at a minimum, the information would have to include the risks associated with HPV; the availability, effectiveness, and potential risks of immunization for HPV; and sources where parents and guardians could obtain additional information about HPV and could obtain vaccination of a child against HPV.

<b>SELECTED SAFE SCHOOLS PRESS SECTION SUMMARIES</b>
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***Legislative Proposal to Allow Teachers to Carry Guns in School:***

Saginaw News, *School Security Chief Opposes Arming Teachers*, September 15, 2007

(<http://www.mlive.com/saginaw/stories/index.ssf?base/news-24/118985186626870.xml&coll=9&thispage=3>)

- Arthur O’Neal, a former Marine and member of the Saginaw Police Department’s SWAT team, opined that allowing teachers to bring guns to school would not help stop crime.
- The proposed bill would allow teachers, administrators or other school employees to carry concealed weapons on school grounds if they have a state permit to carry one and have permission from their school administrator.
- David Agema, the Republican legislator sponsoring the legislation, argues that teachers would have been able to save lives at Columbine High School or Virginia Tech

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University had they had a concealed weapons permit and that arming teachers would make students and terrorists think twice before attacking a school.

- Jack Hoogendyk, a co-sponsor of the bill, also mentioned that research indicates that those who have had the required training for a concealed-weapons permit have “extremely low” accident rates.

The Grand Rapids Press, *Proposal for Weapons in Schools Strikes a Nerve*, September 12, 2007 (<http://www.mlive.com/grandrapids/stories/index.ssf?base/news-38/118962978792140.xml&coll=6>)

- James Ballard, executive director of the Michigan Association of Secondary School Principals, conducted an informal survey of his nearly 2,000 association members regarding the proposal to arm teachers finding that 1/3 of the members leaned toward armed schools.
- David Agema, the Republican legislator sponsoring the legislation, said that about 2/3 of the emails that he has received regarding the bill were in favor of it.
- Michigan Education Association Director Doug Pratt stated that he was “appalled” by the bill and that his organization has “always stood for weapons-free schools to keep our students safe.”

### ***Attempted Child Abduction from School Campus:***

Flint Journal, *Carman-Ainsworth elementary students drive off suspected would-be abductor*, October 12, 2007

- Authorities were asking for the community’s help identifying a suspect in an attempted abduction on Wednesday, October 10, 2007, at Woodland Elementary School in the Carman-Ainsworth School District.
- According to Flint Township police, a man wearing all black approached a 7-year old girl on the school’s playground at approximately 12:20pm during a lunch break. Students on the playground became alarmed when they saw the man and started yelling for help, driving him away.
- The school district’s website described the individual as a heavy set male about 5-foot-10. School officials provided updates to parents via newsletters sent home and through the school website, and also boosted the number of office staff to help field calls from concerned parents.
- Superintendent Bill Halley said that district officials plan to review safety precautions and procedures to determine if any modifications need to be made to prevent future incidents.

### ***Student Shooting at a Cleveland High School:***

Associated Press, *Ohio school reopens after shootings*, October 16, 2007 (<http://ap.google.com/article/ALeqM5iM0VBwySx-A6z1E1pl6rpH-5iK6gD8SAM3PO0>)

- A fourteen year-old suspended student shot and wounded four people (two teachers and two students) in his high school, SuccessTech Academy in Cleveland, before he killed himself.
- Asa Coon, the shooter, was armed with two .38 caliber revolvers, and police found a duffel bag stocked with ammunition and three knives in a bathroom.
- Coon's classmates described him as a troubled, angry youth, who was fond of chess and reading. Authorities have said that Coon may have been targeting teachers.
- John Zitner, founder and president of E City Cleveland, a nonprofit group aimed at teaching business skills to inner-city teens, called SuccessTech Academy a "shining beacon for the Cleveland Metropolitan School system."
- School district officials said they would be installing metal detectors in every school building, and ensuring that a guard was on duty in every building.

### ***Students and Weapons in School:***

Kalamazoo Gazette, *Pellet Gun in School May Lead to Charges Against Student*, October 12, 2007

(<http://www.mlive.com/news/kzgazette/index.ssf?base/news-25/1192200970316670.xml&coll=7>)

- A student who brought an airsoft gun (a plastic gun that shoots pellets) into the Allegan County Area Technical and Education Center could face assault charges.
- The 17 year-old student, a junior at Fennville High School, was removed from his classroom and detained in the tech center's office following discovery of the weapon, which was a nonfunctioning "plastic toy gun" with an orange tip and missing parts.
- Allegan County sheriff's investigators said he reportedly made threats to other students.
- Fennville Public Schools Superintendent Mark Dobias told reporters that the student was suspended pending the findings of a police investigation and an investigation by school officials.

The Flint Journal, *Quest Student Arrested for Knife Assault*, September 29, 2007

([http://blog.mlive.com/flintjournal/newsnow/2007/09/north\\_branch\\_student\\_arrested.html](http://blog.mlive.com/flintjournal/newsnow/2007/09/north_branch_student_arrested.html))

- A 16 year-old student at Quest High School, an alternative school located in North Branch, was arrested after another student reported he had been threatened with a knife.
- The suspect was reportedly upset about his car being broken into and asked another student to meet him outside the high school where he confronted him about the thefts.
- In a hearing the following day, Circuit Judge Michael Higgins ordered the student into detention in Shiawassee County pending an Oct. 15 hearing on felony charges of carrying a concealed weapon, assault with a dangerous weapon and a misdemeanor charge of possession of a weapon in school weapons free zone.
- School officials have suspended the student pending an expulsion hearing, and letters were sent home to parents following the incident.

The Flint Journal, *Gun-toting Student was New to District*, September 18, 2007

(<http://mlive.live.advance.net/news/flintjournal/index.ssf?base/news-4/1190119826301260.xml&coll=5>)

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- A 10 year-old North Branch elementary student who brought a semiautomatic handgun and bullets to school on September 14<sup>th</sup> was a new enrollee in the district and had previously attended school in Flint.
- The boy, who enrolled in the district on September 11<sup>th</sup>, was suspended from school and placed under house arrest by Lapeer Circuit Judge Michael Higgins. Prosecutors had requested that the boy be placed in detention because of the seriousness of the incident.
- Police authorities said that a teacher searching for a CD player found the unloaded handgun and 26 rounds of ammunition, though the location was not specified.
- Superintendent Al Piwinski mentioned that the boy did not threaten anyone, and that he was compiling information on the incident to present to the Board of Education at the boy's expulsion hearing.

MSNBC.com, *Pa. Student Arrested in 'Columbine-style' Plot*, October 11, 2007

(<http://www.msnbc.msn.com/id/21253029>)

- A 14 year-old Pennsylvania boy whose bedroom was filled with weapons, neo-Nazi anarchist literature, and DVDs about the massacre at Columbine High School was arrested after he asked a friend to join him in attacking a suburban Philadelphia high school.
- The boy was charged with solicitation to commit terror and other counts, and was being held at a youth facility.
- Montgomery County District Attorney Bruce Castor said that the boy was being home-schooled after his parents withdrew him from a middle school in the district 18 months before the incident because he had been repeatedly bullied by other students.
- Investigators questioned the boy's parents after they learned that his mother bought a 9mm rifle for her son.
- The suspect's MySpace page contained a tribute to the gunmen in the Columbine shooting and he listed his interests as "shooting, war and bank robbery."
- Castor blamed the boy's parents for his alienation and violent fantasies, and authorities told reporters that his father had a conviction for vehicular homicide in Oklahoma.

MSNBC.com, *Mom Charged with Buying Guns for Son*, October 12, 2007

(<http://www.msnbc.msn.com/id/21253029>)

- The mother of a 14 year-old boy who was suspected of plotting an attack on his school (see above referenced article entitled "Pa. Student Arrested in 'Columbine-style' Plot") has been charged with buying her son weapons.

### ***Student-on-Student Sexual Assault:***

Detroit News, *Schools staff queried on alleged sex assault*, October 15, 2007

(<http://www.detroitnews.com/apps/pbcs.dll/article?AID=/20071015/SCHOOLS/710150360/1026>)

- Legal counsel for Howell Public Schools is reviewing allegations of sexual assault of a 7-year-old boy by two older students on a Howell school bus in May 2007, as well as a

harassment complaint alleging a hostile work environment against Superintendent Chuck Breiner.

- Superintendent Breiner has been under fire from the Howell community since early September when it was learned that two boys, aged 9 and 11, who had been charged in juvenile court with an assault on the 7-year-old boy, were still attending school. Since then, the 9-year old has been suspended, and the father of the 11-year old has voluntarily removed him from school.
- Parents were also upset at Breiner's statement that he was not informed of the May 2007 school bus incident until four months later. Two school board members have already called for Breiner's resignation.
- At least eight employees - two substitute bus drivers, two transportation administrators, two principals, and two central office administrators (including Breiner) are to be questioned in the investigation.
- Longtime school board members Mary Jo Dymond and Sue Drazic have recently vacated their school board seats, and the district was scheduled to interview replacement candidates on October 15 and October 22, 2007.
- Residents have also expressed concern over Breiner's employment contract after it was revealed that his employment termination could cost the district nearly \$1 million due provisions of his employment contract.

Ann Arbor News, *Boys, 9 and 11, face sex charges*, September 19, 2007

[http://blog.mlive.com/kzgazette/2007/09/boys\\_9\\_and\\_11\\_face\\_sexual\\_misc.html](http://blog.mlive.com/kzgazette/2007/09/boys_9_and_11_face_sexual_misc.html)

- Two boys who attend Howell elementary schools were accused of forcing a 7-year old boy to perform oral sex on them while they were on a school bus in May.
- The suspects, a 9-year old and 11-year old boy, face charges in Livingston County Juvenile Court. The 11-year-old was released on \$25,000 personal bond with requirements that he be monitored by an adult 24 hours a day. The 9-year old boy was charged in August and is awaiting a hearing in juvenile court.
- The 11-year-old boy's father said his son only witnessed the assault and did not participate.
- Howell Public School Superintendent Chuck Breiner said he was not informed of the incident or its investigation until Monday, September 17, which he called a mistake.
- Breiner said the elementary school principal was first advised of the incident in May, and alerted Livingston County Sheriff's Department and the district's transportation department, which provided investigators with some video from the school bus.
- According to Breiner, all three students involved in the incident are still enrolled in Howell Public Schools, but the 11-year old was not attending classes.

### ***Student-on-Teacher Sexual Harassment:***

Detroit News, *No school hugs allowed*, October 25, 2007

<http://www.detroitnews.com/apps/pbcs.dll/article?AID=/20071025/OPINION01/710250311/1007/OPINION>

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- An op-ed piece written by a senior fellow at the Future Focus 2020 center at Wake Forest University, who is also the parent of a public school pre-schooler in Maryland, expresses concern regarding the disciplinary action taken by school officials against pre-schoolers who hug their teachers or peers on the basis that such activity is found to constitute sexual harassment.
- The piece cites as an example how, in December 2006, a 4-year-old boy in Waco, Texas, was punished with an in-school suspension after a female aide accused him of sexual harassment for hugging the woman while getting on a school bus. The woman complained to school administrators that the child had put his face in her chest. School administrators refused to expunge the “inappropriate physical contact” charge from the boy’s school record.
- The author cites the Supreme Court’s decisions in *Franklin v. Gwinnett County Public Schools* and *Davis v. Monroe County Board of Education* as the basis for finding school districts liable in Title IX claims of teacher-on-student and student-on-student sexual harassment, and expresses her doubt “that the Supreme Court imagined that its decision in *Franklin* and *Davis* would be used to criminalize the behavior of pre-schoolers.”
- The author recommends that each school district develop a clear, widely publicized policy that explains what sexual harassment is, provides examples of unacceptable conduct, and clearly describes how discipline will be administered.

### ***School Personnel and Sex Offenders:***

The Bismark Tribune, *School Districts Debate How to Deal with Sex-Offender Parents*, September 30, 2007

(<http://www.bismarcktribune.com/articles/2007/09/30/news/state/140196.txt>)

- A new North Dakota law allows sex offenders to be on school property if they are there to vote or attend a public meeting, but it does not give them permission to attend extracurricular school activities. That decision is left up to school boards.
- Cullen Casey, an attorney for the National School Boards Association, said that school boards in most states now have policies dealing with sex-offender parents in schools, though they vary by state and district.
- Some North Dakota school districts have adopted a no-tolerance approach that bans convicted sex offenders from schools even if they are parents and others are considering allowing superintendents to make the call on a case-by-case basis.
- Brian Weigel, a specialist in North Dakota’s Parole and Probation Division, believes schools should consider sex offender parent cases individually.
- Weigel said that “there are sex offenders who are in a healthy place and are not hurting anybody — and if they’re there with another responsible adult, it’s not that risky.” However, he further stated that “there are offenders we would be adamantly against going to a school.”

The Flint Journal, *Hearing Set for Coach*, September 18, 2007

(<http://mlive.live.advance.net/news/flintjournal/index.ssf?/base/news-4/1190119837301260.xml&coll=5>)

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- A preliminary examination for North Branch High School varsity football coach and teacher Eric L. Hyde on charges related to child pornography was set for Oct. 4 before District Judge John Connolly.
- Hyde was charged in March with possession of child sexually abusive material, a felony that carries a maximum 4-year prison sentence.
- He was one of two teachers arrested in a federal investigation into a Fort Worth, Texas child pornography site and its credit card customers.
- Hyde is on paid leave pending a resolution of the case.

### ***Student Bullying at School:***

The Flushing Observer, *Elementary Students Learn How to be FREE of Bullying*, October 7, 2007

([http://blog.mlive.com/flintjournal/newsnow/2007/10/elementary\\_students\\_learn\\_how.html](http://blog.mlive.com/flintjournal/newsnow/2007/10/elementary_students_learn_how.html))

- Flushing's four elementary schools hosted Joseph Savage of Soul Shoppe, an organization designed to help create bully-free communities.
- The anti-bullying program uses interactive video footage to teach children principles for avoiding being bullied or becoming a bully themselves.
- Savage used the acronym FREE as a way to remember techniques to avoid being bullied: Flow: Don't let it bother you; Radar: Find a way to stay safe; Express: Stand your ground and speak up; and Enough: Know when it's time to ask for help.
- Central Elementary Principal Adam Hartley reported that he had an opportunity to witness the program in use at a school in Toledo the previous year, and believed it would be a good fit for his school.
- Savage expressed his view that children of all ages seem to respond well to the interactive quality of the assembly.
- In addition to the assemblies, Savage held a district-wide meeting for parents and conducted more intensive classroom seminars with other students.

### ***Student Threats and Fighting at School:***

The Ann Arbor News, *Police Trace Internet Threat to Ex-Saline Student*, October 12, 2007

([http://blog.mlive.com/annarbornews/2007/10/police\\_trace\\_internet\\_threat\\_t.html](http://blog.mlive.com/annarbornews/2007/10/police_trace_internet_threat_t.html))

- A former Saline Schools student was placed in protective custody after he posted messages on the Internet threatening an attack on schools on October 12, 2007.
- Saline Police Chief Paul Bunten stated that the threats were not credible and did not specifically mention any school buildings, administrators or students throughout the district.
- School officials placed all buildings on secure status upon being notified by the police.
- A bomb-sniffing dog from the Ann Arbor Police Department swept through the alternative high school at Union School, where the student last attended classes as of a few weeks before the incident.

- The teen was reportedly upset over a court hearing where he faced a minor in possession of alcohol charge. Buntin said that the teen was placed in protective custody and referred to the University of Michigan for a psychiatric evaluation.
- The investigation is ongoing and a report is to be submitted to the Washtenaw County Prosecutor's Office for review.

The Jackson Citizen Patriot, *Student Suspected of Making Death Threat*, October 12, 2007  
<http://www.mlive.com/news/citpat/index.ssf?/base/news-23/1192203397133110.xml&coll=3>)

- Police detained a Michigan Center High School student after he allegedly made a death threat against another student after an alleged bullying incident.
- School officials had asked a Leoni Township officer and a Jackson County Sheriff's Department deputy to help them stop the student before he entered the high school to ask him about the threat allegedly made.
- The superintendent stated that rumors regarding the student carrying a gun were false.
- School officials have suspended the student until he can meet reinstatement guidelines.

The Ann Arbor News, *Stone School on Lockdown After Fights*, October 19, 2007  
<http://www.mlive.com/news/annarbornews/index.ssf?/base/news-24/1192803216201360.xml&coll=2>)

- Ann Arbor's Stone High School, an alternative high school, was locked down and placed on "heightened alert" on October 19<sup>th</sup> following fights between several students in and out of school that included one person pulling a gun and threatening to kill several people.
- The problems started on October 17<sup>th</sup> with a fight inside school that ended with one student being taken to the hospital with cuts on his face
- The following day, the matter spilled over into the streets. Police, after getting calls about the fight, stopped a car fleeing the scene and identified a passenger matching the description of a man who had pulled the handgun.
- The police arrested the man suspected of pulling the handgun and he remains in custody pending arraignment on felonious assault charges.
- In total, school officials suspended five students in connection with their involvement in the October 17<sup>th</sup> fights.

## ATTORNEY PROFILES

**W**illiam J. Blaha graduated with high honors from Michigan State University and received his Juris Doctorate degree from Wayne State University Law School. For the past twenty-two years, Mr. Blaha's expertise has been concentrated in representing educational institutions in the specialized area of labor relations and education law. Mr. Blaha's litigation practice includes representing public schools in state and federal courts and such administrative forums as the American Arbitration Association, Michigan Employment Relations Commission, Michigan Department of Civil Rights, and the Michigan Department of Education. Mr. Blaha frequently speaks at conferences for administrators and employees on current legal issues confronting schools. William J. Blaha co-authored the sixth edition of *The Michigan Teacher and Tenure* with Gary J. Collins. He is a member of the Labor Law Section of the State Bar of Michigan. Additionally, Mr. Blaha holds memberships with the National Council of School Board Attorneys and the Michigan Council of School Board Attorneys. Mr. Blaha also serves as the School Board attorney representative on the State of Michigan's Safe Schools Initiative Work Group which serves in an advisory capacity to the Michigan Department of Education's Office of Safe Schools. Mr. Blaha intends to continue monitoring safe school legislation and its impact on public schools. Mr. Blaha has been with the firm since 1983.

**K**evin F. O'Neill received his undergraduate degree from Simon Fraser University in British Columbia, Canada. He holds a Master of Laws from Lancaster University in the United Kingdom, and a Juris Doctor from Ave Maria School of Law in Michigan. While in law school, Mr. O'Neill served as a judicial intern for the Honorable Paul V. Gadola of the U.S. District Court for the Eastern District of Michigan, and also interned with the Toyota Technical Center in Ann Arbor. He served as Vice President of the Ave Maria School of Law Moot Court Board, and was a 2005 State of Michigan Moot Court Competition Champion. Prior to attending law school, Mr. O'Neill served as a legal research consultant with the Office of Indian Residential Schools Resolution in Canada. He is a member of the State Bar of Michigan. Mr. O'Neill has been with our firm since January 2006.