

Tennessee School Law Quarterly

Spring 2016

A TSBA Publication for School Board
Attorneys, Board Members, and
Administrators



Table of Contents

Volume 16, Issue 2

Pages 1-3	Harrison v. Shelby County Board
Page 3	HCEA v. Hamilton County Board
Page 4	Stiles v. Grainger County Board
Page 5	Attorney General Opinions
Page 6	Summer Law Institute: Gatlinburg and Jackson

Jacqueline Harrison v. Shelby County Board of Education Tennessee Court of Appeals at Jackson

Jacqueline Harrison was a tenured teacher with the Memphis City Schools, now the Shelby County Board of Education (SCBE) who taught for approximately twenty-seven years. She has a degree in English and is certified to teach English in grades seven through twelve. During her teaching career at Memphis City Schools, Ms. Harrison received only one unsatisfactory evaluation, which was for the 2011-2012 school year, the year at issue.

Ms. Harrison's last teaching assignment was at Wooddale High School, where she taught for approximately six years. In 2010, Mr. Michael Kyle became the principal at Wooddale. At the time, Wooddale was in the bottom five percent of schools in the City of Memphis. During the 2010-2011 school year, Ms. Harrison taught Language X, which was a literacy program for students that were significantly behind in reading. The goal of the class was to bring low tier students up two grade levels in reading. According to Mr. Kyle, the English department was one of his strongest departments in both 2010-2011 and in 2011-2012. Specifically, he testified that the literacy scores were the highest scores that Wooddale received in any subject. Although Ms. Harrison received a satisfactory evaluation for the 2010-2011 school year, Mr. Kyle noted on her evaluation that she needed to strengthen her classroom management.

Following the 2010-2011 school year, Memphis City Schools no longer offered the Language X program at Wooddale. Rather than move Ms. Harrison to another class, Mr. Kyle attempted to move Ms. Harrison to another school. Because she had more seniority than many of the other English teachers at Wooddale, Ms. Harrison filed a grievance regarding Mr. Kyle's attempt to reassign her. Ms. Harrison was successful in her grievance, and as a result, she returned to Wooddale for the 2011-2012 school year. She contends that she began having problems with Mr. Kyle after she successfully thwarted his attempt to have her reassigned to another school.

During the 2011-2012 school year, Ms. Harrison taught African-American Literature and English 10. According to Mr. Kyle, Ms. Harrison immediately began having problems with her classroom. Mr. Kyle testified

that Ms. Harrison was unable to control her classroom. He complained that Ms. Harrison made calls to the office for assistance with her students almost daily. Mr. Kyle further complained that she sent many students to the office for unruly behavior and disrupting class when she should have been able to manage these students without assistance from the office. Ms. Harrison responded that several of her students had emotional problems. She also had a block of low functioning students who could not read above a fourth grade level and therefore, it was difficult to create lesson plans that met the needs of all of her students.

The 2011-2012 performance evaluations were released in May 2012. After receiving a poor evaluation for the year, Ms. Harrison's first poor evaluation in twenty-seven years of teaching, Mr. Kyle recommended that Ms. Harrison's employment be terminated due to her lack of classroom management skills and her failure to adhere to district policies. On September 27, 2012, the Board of Education made its initial determination to approve Ms. Harrison's dismissal on the statutory grounds of "unprofessional conduct" and "inefficiency" as set out in TCA § 49-5-501(3) and (6).

As provided for by TCA § 49-5-512, Ms. Harrison requested a hearing on these charges before an impartial hearing officer. On February 12, 2013, the hearing officer reviewed the charges and concluded that SCBE did not prove that Ms. Harrison had engaged in unprofessional conduct; however, he sustained the charge of inefficiency by failing to maintain control of her classroom. Other than failure to control her classroom, the hearing officer made no other findings supporting the charge of inefficiency against Ms. Harrison. No state test scores or system wide test scores were introduced to show Ms. Harrison's students were performing below the level of other students in English 10 classes taught by other teachers in the Memphis City School System

On September 17, 2013, the SCBE heard Ms. Harrison's appeal and remanded the case to the hearing officer for further findings about "[t]he school district's policy and/or practice regarding professional development, including, but not limited to, who provides oversight/monitoring to ensure professional development is offered and what actually happened with that process in this case."

The remand hearing was held on November 8, 2013. Following the remand hearing, the hearing officer affirmed his initial determination that Ms. Harrison was inefficient as defined by statute. The decision by the hearing officer was upheld by the SCBE on February 25, 2014.

Ms. Harrison filed her appeal of the termination decision in Shelby County Chancery Court on April 10, 2014. On June 16, 2015, the trial court entered its findings of fact and conclusions of law. The trial court found that there was insufficient evidence to support the hearing officer's finding of inefficiency. Additionally, the trial court found that there was a disparity between Ms. Harrison's discipline and that of another teacher, Kristen Oshfeldt. Based on these findings, the trial court granted Ms. Harrison's writ of certiorari by order entered June 30, 2015. The trial court reversed the decision of the SCBE and remanded the case to the SCBE for entry of an order reinstating Ms. Harrison as a teacher with full back pay, seniority, and benefits. SCBE appealed.

The key question on appeal was whether there is sufficient evidence in the record to support the hearing officer's finding of inefficiency. To support the charge of inefficiency, Mr. Kyle testified extensively about books and papers found outside of Ms. Harrison's classroom. Mr. Kyle testified that this incident illustrated how Ms. Harrison was unable to properly supervise or control her students. However, both the hearing officer and the trial court found that no one knows who threw those items outside, and it is possible that the books and paper could have come from another classroom. Also, there were no names in the books to identify the books as being assigned to Ms. Harrison's students.

Harrison was observed four times over the school year and while three of the observations noted that Harrison had classroom management issues, only one of the four post observation reports suggested professional development. Three of the four did not detail any areas for growth or list any additional considerations for Ms. Harrison.

Board Policy 5.8034 provided that "principals and supervisory personnel are responsible for identifying professional development needs and developing individual professional development plans for their employees." During oral argument, SCBE's attorney conceded that MCS Professional Development Policy 5.8034 required the development of an individual professional development plan prior to termination of a tenured teacher.

The Court determined that it was clear that SCBE failed to abide by its own policies regarding professional development. In his opinion on remand from the SCBE, the hearing officer specifically noted that "Mr. Kyle did not recommend specific professional development to Ms.

Harrison.”The professional growth plan submitted by Mr. Kyle contains only boiler-plate catch-phrases about types of support available throughout the district. The plan submitted into evidence is not individualized to Ms. Harrison.

Additionally, the plan is not signed by Mr. Kyle, nor did he explain the omission of his signature during his testimony. This form was developed by the Memphis City Schools and has a block where the principal’s signature should appear. Based on the evidence, particularly the hearing officer’s finding noted above, the Court could not conclude that Mr. Kyle developed and implemented an individual professional development plan for Ms. Harrison as required by MCS Professional Development Policy 5.8034 before seeking termination of her employment.

After a careful review of the entire record, the Court agreed with the trial court that there is not sufficient evidence to support SCBE’s termination of Ms. Harrison’s employment. Having determined that the SCBE failed to follow its own policies before seeking termination of a tenured teacher and having determined that there is insufficient evidence in the record to support a finding of inefficiency and affirmed the order of the trial court.

<https://www.tncourts.gov/sites/default/files/harrisonjacquelineopn.pdf>

Hamilton County Education Ass’n. v Hamilton County Board of Education - Sixth Circuit Court of Appeals - (See Summer 2015 SLQ for more on this case)

During the final year of the last EPNA contract with HCEA, there was a concerted effort by the Association to convince principals to continue their membership even though principals and other administrators would no longer be a part of the “bargaining unit” for the purposes of the Professional Educators Collaborative Conferencing Act (PECCA), which replaced the EPNA.

When informed of this, Assistant Superintendent for Human Resources Stacy Stewart wrote a letter to Association President Sandra Hughes and stated:

- that the Association could not represent principals or count them among membership totals for the purposes of PECCA
- that she was concerned regarding other statements made by Association representatives at their

September 17 meeting that she worried “could be construed as intimidating” specifically referring to Association claims that, without the Association, teachers could be subjected to ten hour workdays and 100+ page code of conduct documents and could lose medical and retirement benefits

- she also referenced pejorative comments made regarding a competing professional organization; and
- she closed the letter by citing to the PECCA prohibition on professional organizations attempting to coerce employees. Stewart stated that continuing this conduct would “either result in an official request for a retraction of such statements or in clarification/correction of these statements by the district.”

Based on the letter, HCEA filed the complaint alleging unlawful acts under both EPNA and PECCA as well as a violation of the Association’s First Amendment rights. HCBOE responded by arguing that there was no violation of state or federal law and pointed to its own right in TCA 49-6-606(a)(5) to “express any views of opinions on the subject of employer-employee relations; provided however, that such expression shall contain no threat of reprimand, discharge or promise of benefits.”

After pointing out the obvious flaws in the Association’s arguments the Court found the letter did not violate any provisions of the EPNA or PECCA because it falls squarely within the protective space afforded to the Board in the law referenced in the previous paragraph. Additionally, the Court found that the letter did not burden the Association’s right to expressive Association and found for the district on the First Amendment violation claim granting summary judgment to the district on both claims and denying the HCEA motion for summary judgment.

The Sixth Circuit affirmed the district court’s decision holding that “(B)ecause the Board’s letter did not significantly burden HCEA’s right to expressive association, the district court correctly granted summary judgment to the Board on the First Amendment claim. As a result, we do not address whether HCEA is an expressive association entitled to constitutional protection or whether governmental interests in restriction outweigh HCEA’s right to association.”

Link to full opinion: <http://www.ca6.uscourts.gov/opinions.pdf/16a0098p-06.pdf>

Stiles v. Grainger County TN, et al. 6th Circuit Court of Appeals, March 25, 2016

DS and his mother, Kelly Stiles (“Stiles”) (collectively “Plaintiffs”), appeal from the district court’s order granting summary judgment to the Grainger County Board of Education, several school officials, and the police chief (collectively “Defendants”) in their action alleging violation of Title IX of the Education Amendments of 1972 and deprivation of DS’s constitutional rights to equal protection and substantive due process under 42 U.S.C. § 1983. All of Plaintiffs’ claims arise from various school and city officials’ allegedly inadequate response to DS’s complaints of student-on-student sexual harassment.

DS attended Rutledge Middle School (“Rutledge”) from August 2010 to January 2012 as a seventh and eighth grader. During that time frame, DS was involved in a string of verbal and physical altercations with other students. DS and his mother repeatedly complained to school Officials that other students were bullying DS. School officials investigated these complaints and responded by disciplining the students found culpable and taking other proactive measures such as placing DS in different classes from his alleged harassers. Despite these efforts, DS continued to have problems with other students, culminating in an attack in the school bathroom that led DS to transfer to another school.

DS’s case revolves around these school officials’ alleged failure to recognize and reasonably respond to a pattern of bullying incidents he allegedly suffered while attending Rutledge which include the following:

- DS was called names and pushed in the hallways and cafeteria but did not report the name-calling or shoving to school authorities with a few exceptions
- August 2010: A student, TK, pushed another student who then fell into DS and injured DS’s lip
- September 2010: Stiles complained that eighth graders had been demanding money from DS however DS refused to give them money and stated that eight graders had not call him names or hit him
- February 2011: CB and DS fought in class and the investigation indicated that DS was not an “innocent” in the altercation...both boys were given a warning
- February 2011: TL harassed DS in gym class and was given two days of in-school suspension
- May 2011 DS reported that five boys shoved him in the hallway and ultimately caused him to fall and hit his head...four of the five received in-school suspension

- Stiles called the school to report DS’s bullying problems and complain that administrators failed to alleviate the situation...administrators met with the alleged harassers and warned that they would face steeper punishment in the future
- None of DS’s teachers had witnessed any bullying and some indicated that DS would even instigate problems
- 2011-12: The name calling and pushing continued most of which DS did not report
- January 2012: The final and most serious altercation occurred when GM and AC attacked DS in the school bathroom when GM put him in a headlock and AC punched him in the stomach...DS ended up on the floor and both boys kicked him
- Administrators investigated and as a result GM received eight days of in-school suspension and AD received three

Plaintiffs filed suit in the United States District Court for the Eastern District of Tennessee, asserting multiple federal and state-law claims against various defendants associated with the Grainger County school system and the Rutledge Police Department. The district court granted Defendants’ motions for summary judgment on the federal claims and declined to exercise supplemental jurisdiction over the remaining state-law claims.

Specifically, the district court held that Plaintiffs did not offer sufficient evidence to support a Title IX claim against the Board of Education because Plaintiffs could not demonstrate that Defendants acted with the requisite deliberate indifference. As for the § 1983 claims, the district court held the Plaintiffs could not establish an equal protection violation because Plaintiffs failed to show that DS was treated differently from similarly situated students. The district court ruled that the due process claim also failed as a matter of law because DS was harmed by other students rather than government officials, and because no special relationship exists between schools and their students.

After extensive analysis the Court affirmed the judgment of the district court and ruled that the Plaintiffs could not show a violation of DS’s rights under Title IX or § 1983 by either the Board or the individual Defendants. Because there was no constitutional violation by any of the individual Defendants, the Court did not address the parties’ arguments regarding the defenses of qualified immunity or the statute of limitations.

<http://www.ca6.uscourts.gov/opinions.pdf/16a0072p-06>.

Attorney General Opinion No. 16-11

Proposed Constitutional Amendment to Public Schools Clause, Tenn. Const. art. XI, § 12

QUESTION

Would the language, if adopted, in HJR 493, 109th Gen. Assembly 2016, affect the equal protection provisions of article I, § 8, or article XI, § 8, of the Tennessee Constitution?

OPINION

No. The proposed amendatory language does not change the meaning of the public schools clause (article XI, § 12) of the Tennessee Constitution, and would not affect the equal protection provisions of article I, § 8 or article XI, § 8, of the Tennessee Constitution, which would still limit, as they do now, the authority of the General Assembly to determine how to provide for free public education in Tennessee pursuant to the public schools clause.

Link to Full Opinion: <http://attorneygeneral.tn.gov/op/2016/op16-11.pdf>

Attorney General Opinion 16-15

Effect of House Bill 2414, 109th General Assembly (2016), on Title IX Funding

QUESTIONS

1. Does House Bill 2414, 109th Gen. Assem. (2016), pose a risk of violation of Title IX of the Education amendments of 1972?
2. What is the likely effect of a violation of Title IX on federal funding for public education in Tennessee?

OPINIONS

1. Yes if only because the U.S. Department of Education, which is charged with enforcing Title IX, interprets Title IX to require that transgender students be given access to restrooms and locker rooms consistent with their “gender identity” instead of their anatomical gender.

2. If H.B. 2414 is enacted, a public school district or institution of higher learning that implements that law will be putting its Title IX funding at risk, because a recipient of federal funding that discriminates in violation of Title IX may lose its federal funding.

Link to Full Opinion: <http://attorneygeneral.tn.gov/op/2016/op16-15.pdf>

Tennessee School Law Quarterly

Published by:

The Tennessee School Boards Association
525 Brick Church Park Drive
Nashville, TN 37207

Phone: 615/815-3900
800/448-6465

Fax: 615/815-3911

Layout and Design by:

Katie Hock,
Director of Communications and
Member Services

Content by:

Randall Bennett
TSBA Deputy Executive
Director & General Counsel
rbennett@tsba.net
615/815-3902

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Summer Law Institute June 24 & July 22-23

Topics

- A Legislative Update - What Happened during the 109th General Assembly?
- Student Speech: When May Students Face Consequences for Online Behavior?
- Special Education Update: The Parents' Perspective
- Legal Realities of Transgender Students
- Crisis Management: Communication is Key
- The Equal Access Act and Limited Open Forums
- *Teacher Licensure Actions in 3D
- Case Update - A Round-up of School Law Cases
- *Ethics CLE

**Sessions offered in Gatlinburg only*

June 24, 2016 - Doubletree Hotel in Jackson, TN

July 22-23, 2016 - Park Vista Hotel in Gatlinburg, TN

The Jackson Summer Law Institute will be held June 24, 2016 from 8:00 a.m. - 4:00 p.m. Breakfast, breaks and lunch will be provided.

The Gatlinburg Summer Law Institute will be held July 22, 2016 from 7:00 a.m. - 5:30 p.m. with breakfast, breaks and lunch provided and on July 23, 2016 from 7:30 a.m. - 10:30 a.m. with breakfast provided.

Registration Fees

TSBA Board Members and TCSBA Members: \$150

Non TSBA & Non TCSBA Members: \$300

Registration fees must be received by TSBA prior to the meeting. Please make checks payable to the Tennessee School Boards Association.