

Tennessee School Law Quarterly

Spring 2017

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



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ROGELYN EMORY v. MEMPHIS CITY SCHOOLS BOARD OF EDUCATION, NOW KNOWN AS SHELBY COUNTY BOARD OF EDUCATION – Tennessee Supreme Court (January 2017)

Andrew Crockett was thirteen years old in July 2012 when he was This case arose out of the termination of a tenured teacher. After a three-day hearing, the school board concluded that there was ample evidence of the teacher's unsatisfactory job performance, so it terminated her employment.

In the trial court review of the school board's decision, the teacher argued that she should be reinstated with back pay because her school board hearing occurred well beyond the thirty-day period set forth in the Teachers' Tenure Act. The trial court affirmed the termination and the teacher appealed.

The Court of Appeals declined to reinstate the teacher based on the untimeliness of the school board hearing but it awarded her partial back pay.

On appeal, the Court first clarified the standard of judicial review for the termination of a tenured teacher under the Tenure Act. Second, and reversed the Court of Appeals' award of partial back pay to the teacher because the relief ordered is without basis in the Tenure Act. Finally, because the teacher failed to raise to the school board any objection as to the timeliness of her hearing, the Court held that the issue was not properly before the Court. Accordingly, the Court affirmed the trial court's decision to uphold the termination of the teacher's employment.

Full Opinion: https://www.tncourts.gov/sites/default/files/emoryrogelynn_order_and_opn.pdf

LINDA K. GUTHRIE v. RUTHERFORD COUNTY, TENNESSEE, ET AL. – Tennessee Court of Appeals (December 2016)

Plaintiff, a special education assistant, was injured at work when two middle school students were roughhousing in a school hallway and one was pushed into her, causing her to fall. She sued Rutherford County for negligence, pursuant to the Tennessee Governmental Tort Liability Act, alleging that, inter alia, her injuries were caused by the County's failure to properly supervise the students, whom she also sued. After a bench trial, the court rendered judgment in favor of the defendants. Plaintiff appeals the judgment with respect to the County, contending that the court erred in holding that the County was immune from suit, that the evidence preponderated against certain findings of the court, and that the court erred in concluding that the County's agents had not acted negligently. Discerning no error, the Court of Appeals affirmed the judgment.

Full Opinion: https://www.tncourts.gov/sites/default/files/guthri.linda_.opn_.pdf

TONI JONES v. METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY – Tennessee Court of Appeals (March 2017)

This is an appeal from the grant of Appellee's Tennessee Rule of Civil Procedure 12.02(6) motion to dismiss Appellant's 42 U.S.C. §1983 claim for alleged violation of her substantive and procedural due process rights to a public education. Appellant was removed from her Algebra I class and placed in a computer-based course. Because the right to a public education does not include a particular course placement or teaching method, Appellant's complaint failed to state a claim for relief. Affirmed and remanded.

Full Opinion: https://www.tncourts.gov/sites/default/files/jones.toni_.opn_.pdf

PATRICIA LAUREN TUMMINELLO v. FATHER RYAN HIGH SCHOOL, INC. – Sixth Circuit Court of Appeals (January 2017)

In his freshman year as a student at Father Ryan High School, Spencer Tate was bullied by several other students who called him "gay" and "fag" and suggested that he kill himself. Tragically, Tate later committed suicide. His mother, plaintiff Patricia Tumminello, brought claims against Father Ryan under both Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681-1688, and under Tennessee negligence law, alleging that Tate's suicide was caused by the harassment he experienced at school and by Father Ryan's failure to enforce the school anti-bullying policy.

The district court granted Father Ryan's motion to dismiss both claims. The district court also denied Tumminello's motion to amend her complaint. She now challenges the dismissal of these claims and the denial of her motion to amend. Because Tumminello's complaint fails to allege a plausible claim to relief under Title IX or under state negligence law. The Court affirmed.

Full Opinion: <http://www.opn.ca6.uscourts.gov/opinions.pdf/17a0084n-06.pdf>

BRAD HENDRIX V. DEKALB CTY. BD. OF EDUCATION – Sixth Circuit Court of Appeals (March 2017)

Brad Hendrix, a teacher employed by the DeKalb County Board of Education, alleges that the Board and former Director of Schools Mark Willoughby retaliated against him in violation of the First Amendment. In March 2011, in his capacity as an elected county commissioner, Hendrix voted against a purchase of land requested by the Board. Hendrix alleged that Defendants thereafter took several actions against him in retaliation for his vote, including not hiring him as the Supervisor of Attendance in June 2013. Hendrix filed suit in May 2014 under 42 U.S.C. § 1983. The district court granted summary judgment to Defendants. The Court Affirmed.

TRANSGENDER LITIGATION UPDATE

WHITAKER V. KENOSHA UNIFIED SCHOOL DISTRICT NO. 1 – Seventh Circuit Court of Appeals (May 2017)

A three-judge panel of the U.S. Court of Appeals for the Seventh Circuit has affirmed a Wisconsin district court's ruling granting a transgender student a preliminary injunction. The order prevents the school district from "(1) denying [the student] access to the boys' restroom; (2) enforcing any written or unwritten policy against [the student] that would prevent him from using the boys' restroom while on school property or attending school-sponsored events; (3) disciplining [the student] for using the boys' restroom while on school property or attending school-sponsored events; and (4) monitoring or surveilling [the student's] restroom use in any way."

The panel found that the student was likely to suffer irreparable harm, did not have an adequate remedy at law, and was likely to succeed on the merits under both Title IX and Equal Protection claims.

Full Decision: <http://media.ca7.uscourts.gov/cgi-bin/rssExec.pl?Submit=Display&Path=Y2017/D05-30/C:16-3522;J:Williams:aut:T:fnOp:N:1971382:S:0>

COSA Members you may wish to check out the following link:

[Transgender Litigation Chart \(https://www.nsba.org/my-account/login?destination=transgender-litigation-chart\)](https://www.nsba.org/my-account/login?destination=transgender-litigation-chart)

Attorney General Opinion

Attorney General Opinion 16-50/17-01 Authority of a Priority School to Add Additional Grades

Question

If the commissioner of education assigns a priority school that does not serve all grades pre-K through twelve to the Achievement School District, are there any circumstances under which the school may subsequently add grades other than those that the priority school served when it was assigned to the Achievement School District?

Opinion 1

No. Once a school has been placed in the Achievement School District the school itself may not add grades because it has no independent control over its operations while it is in the Achievement School District.

Full Opinion: <https://www.tn.gov/assets/entities/attorneygeneral/opinions/op16-50.pdf>

See Opinion 17-01 for a more thorough discussion of this and related issues: <https://www.tn.gov/assets/entities/attorneygeneral/opinions/op17-001.pdf>

See Opinion 17-19 for additional follow-up:
<https://www.tn.gov/assets/entities/attorneygeneral/attachments/op17-019.pdf>



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Disclaimer: The information in this issue represents the opinions of the writers and does not necessarily represent the official position of TSBA

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TENNESSEE SCHOOL BOARDS ASSOCIATION

SUMMER LAW INSTITUTE

Summer Law Jackson

June 23, 2017 - DoubleTree, Jackson, TN

Legislative Conference

July 20, 2017 (Free Event) - Park Vista, Gatlinburg, TN

Summer Law Gatlinburg

July 21-22, 2017 - Park Vista, Gatlinburg, TN

The annual Summer Law Institute sponsored by TSBA, in conjunction with the Tennessee Council of School Board Attorneys, is a seminar held each summer for school board attorneys, board members and superintendents. We will be hosting two institutes, one in East Tennessee and the other in West Tennessee.

Major topics covered during this seminar include:

- Student Speech Under the First Amendment
- I.D.E.A. and the Latest from the U.S. Supreme Court
- Custody Orders and Their Effect on Schools
- Late Breaking Legal Issues

Legislative Conference:

Each year, TSBA has a legislative conference for school board members and superintendents. This event is held in conjunction with our annual Summer Law Institute Gatlinburg. This year we are going to feature Tennessee's 2018 gubernatorial candidates.

Registration Fees

TSBA Board Members and TCSBA Members: \$175
Non TSBA & Non TCSBA Members: \$350

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

For registration and agendas visit <https://tsba.net/meetings-sba/>.