

THE
Extra Mile
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Federal Appellate Court for Illinois Finds Possible Constitutional Violation in Discipline of Teacher for Filing Criminal Complaint Against Student--

The Seventh Circuit Court of Appeals has recently held that the First Amendment's freedom of speech doctrine may protect a teacher from discipline for filing a criminal complaint against a student.

In *Gschwind v. Heiden*, 2012 WL 3776025 (7th Cir. 2012), the court determined that a teacher, Sean Gschwind, could have a First Amendment, free speech right to file

a complaint against a student who threatened him.

Gschwind was a sixth-grade teacher in Harvard, IL who observed the student in question beat up one student and threaten another. Gschwind met with the student's parents twice, once after each occasion.

During the second meeting, the student's father threatened Gschwind with a lawsuit and said that the father's older son, who previously assaulted the assistant principal, should have assaulted Gschwind

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Illinois Trial Court Issues Major Freedom of Information Act Ruling Involving School E-mails--

In a ruling with major implications for school districts and public bodies throughout Illinois, a Lake County judge has issued a 43-page ruling upholding the vast majority of exemptions claimed by Township High School District No. 113 in response to *Freedom of Information Act* ("FOIA") requests involving thousands of e-mails.

The case, *Hauser v. Township High School District #113*, No. 11 CH 1157, successfully defended by HLERK attorneys **Nancy Krent**, **Steve Richart** and **Jeff Goelitz**, was filed by a citizen who had generated controversy by publicly and repeatedly complaining about the district's curriculum choices.

Later, concerned that she was being defamed, she submitted FOIA requests for years' worth of communications including e-mails mentioning her or certain advocacy groups by name. The district produced thousands of pages of documents, many of which were redacted, and withheld approximately 1,800 pages of documents based on a number of FOIA exemptions. The plaintiff later filed suit in court under FOIA to challenge the district's claimed exemptions.

The judge's ruling began with a thorough discussion of the definition of a "public record,"

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Consumer Price Index

Percent change for the month of **August 2012**, for the urban wage earners & clerical indices as reported by the Bureau of Labor Statistics.

	All Urban (CPI-U)	Workers (CPI-W)
Chicago Mthly	0.6	0.8
12 Mth	1.5	1.2
St. Louis, 1st Half		
6 Mth	1.4	1.5
12 Mth	2.6	2.7
U.S. Mthly	0.6	0.7
12 Mth	1.7	1.7

September CPI figures will be released October 14, 2012. For the most recent CPI, visit our website at: www.hlerk.com.

The Extra Mile is intended solely to provide information to the school community. It is neither legal advice nor a substitute for legal counsel. The Extra Mile is intended as advertising but not as a solicitation of an attorney/client relationship.

Reminders & Notes

- The filing period for nominating petitions for board of education positions is December 17-24 this year. ***The Illinois Election Code requires that the office in which petitions must be filed remain open for the receipt of such petitions until 5:00 p.m. on the last day of the filing period.***

House Bill 6224, filed September 10, 2012, seeks to amend the *Election Code* to require nominating papers to be filed during the 7-day period beginning on the first Tuesday of December; this would change the filing period to December 4-11. The legislature is not expected to address this bill until late November. **Contact Heather Brickman or Steve Richart with inquiries.**

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First Amendment Cont. instead. Later, the student, during a class presentation, sang a song with the words, “I stabbed Gschwind.”

Gschwind reported the incident to the principal, Linda Heiden, and assistant principal. Gschwind also filed a juvenile criminal charge against the student for disorderly conduct. Heiden allegedly did not support Gschwind’s filing of the charge.

After filing the charge, Gschwind received an unsatisfactory evaluation rating and alleges that he was forced to resign. Gschwind filed suit, arguing that Heiden and the school district acted unconstitutionally in punishing him for exercising his First Amendment right to file the charge.

The Court referenced the existing legal analysis on public employees’ freedom of speech rights, saying that a public employee only has a First Amendment right to speak out on matters of public concern. A

public employee who speaks or acts on matters of private concern does not have constitutional protection. Here, the court did not rule on the merits of the case because the lower court had not yet held a trial. Instead, the court determined that Gschwind *could* have been speaking out on a matter of public concern.

Gschwind stated in his lawsuit that he filed the criminal complaint not only out of concern for his personal safety, but also out of concern for the public safety and because he wanted the public to be aware of the incident.

Gschwind’s argument, along with the fact that the public has an interest in school violence, persuaded the court that Gschwind could have been speaking on a constitutionally protected matter of public concern.

Please contact Nancy Krent with your First Amendment inquiries or any of our personnel or labor attorneys with your employee discipline inquiries.

FOIA Cont. which is defined under FOIA in relevant part as documentary materials “pertaining to the transaction of public business.” The judge noted that in other states, a consensus has developed that government employees’ e-mails do not necessarily become “public records” under FOIA simply because they are found on a public body’s servers. Rather, the content of the e-mails must have a substantial nexus to the public body’s business and cannot solely relate to employees’ private business or views. In this case, the judge found that some of the e-mails that plaintiff found most disparaging did not have a substantial nexus to public business and, thus, did not have to be produced.

Next, the judge analyzed the applicability of seven claimed exemptions to the e-mails and upheld the district’s exemption claims for student records, insur-

ance, performance evaluations, “predecisional” and privacy issues. While the judge disagreed with a few of the district’s attorney-client privilege claims, he upheld the majority of such claims and only ordered a small fraction of the e-mails to be disclosed.

Most importantly, the judge found that the plaintiff was not entitled to the names of dozens of private citizens who submitted e-mails concerning the district’s challenged curriculum, because these citizens’ privacy interests outweighed the plaintiff’s interest in the information.

For further information concerning the Freedom of Information Act and its impact on your school district or for a copy of this ruling, contact Bob Kohn or Steve Richart.