

# SCHOOLS ROCK

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## Farmer Smith & Lane, LLP

presents *SCHOOLS ROCK*, a semi-annual publication of select recent judicial opinions that could significantly affect California schools and community colleges. Although the publication attempts to summarize the cases in detail, it should not be read as a legal opinion or as a complete guide.

### **Ninth Circuit Holds That School Employees May be Sued in Their Personal Capacities under the False Claims Act.**

John Stoner filed a complaint against the Santa Clara County Office of Education (“SCCOE”), its employees, and the East Side Union High School District (“District”), claiming that defendants falsely certified compliance with the Individuals with Disabilities Education Act to induce the federal government to disburse more money for certain educational programs in violation of the False Claims Act (“FCA”). Defendants moved to dismiss the complaint, contending that SCCOE and the District are not “persons” subject to liability under the FCA. Individual employees, in turn, contended that Stoner failed to state an FCA claim against them in their personal capacities because Stoner could not allege that their actions exceeded the scope of their official responsibilities.

The Ninth Circuit U.S. Court of Appeals held that SCCOE and the District were state agencies and thus were not subject to liability under the FCA and were protected with immunity by the Eleventh Amendment. However, the court held that state employees sued in their personal capacities are “persons” who may be subject to liability for submitting

a false claim to the United States. The court noted that the FCA does not require a person to obtain a personal benefit from the submission of a false claim. (*United States ex rel. Stoner v. Santa Clara County Office of Education, et al.* (9th Cir. September 7, 2007) 502 F.2d 1116.)

### **AMICUS SUPPORT NEEDED**

The Ninth Circuit U.S. Court of Appeal’s latter holding is inconsistent with the Eighth Circuit U.S. Court of Appeal’s opinion holding that state officials could not be sued under the FCA in their individual capacities unless they were acting outside their official duties when they took the action alleged to violate the FCA. (See *United States ex rel. Gaudineer & Comito, LLP v. Iowa* (8th Cir. 2001) 269 F.3d 932.) Strengthened by the circuit split of authority and the significant impact of the Ninth Circuit decision on public employee liability risks, SCCOE employees will petition for a writ of certiorari from the United States Supreme Court. If you or your organization wishes to support overturning the Ninth Circuit U.S. Court of Appeals’ decision, please contact Emmanuel R. Salazar of Farmer Smith & Lane, LLP, telephone: (916) 679-6565 ext. 209, email: [esalazar@farmersmithlaw.com](mailto:esalazar@farmersmithlaw.com).

### **Agreement Releasing City’s Liability for Gross Negligence Violates Public Policy and Is Unenforceable.**

The city provided extensive summer recreational facilities and activities for children, including a camp for children with developmental disabilities. Camp activities

included swimming, arts and crafts, group games, sports, and field trips. The camp application form included a release of all claims against the city and its employees from liability, including liability based upon negligence. A mother of a developmentally disabled child just like in years before signed the release. The mother informed the city that her child suffered epileptic seizures, particularly in the water. The city trained and assigned a “counselor” for Katie. On the second swimming day at camp, where almost 300 children swam, the child drowned. The child’s mother sued the city in a wrongful death action.

The city argued that the release agreement protects it from any liability including liability based upon negligence. The California Supreme Court requested briefing on whether or not the release agreement protects the city from liability based upon gross negligence. The Court held that release agreements made in the context of sports or recreational programs purporting to release liability for future gross negligence generally violates public policy and is unenforceable, despite Civil Code section 1668’s omission of “gross negligence” from expressly listed types of liability that could not be contractually exempted. (*City of Santa Barbara v. Superior Ct.* (July 16, 2007) 41 Cal.4th 747 (Kennard, J., concurring and dissenting; Moreno, J., concurring; Baxter, J., dissenting).)

### **Injured Adult Male in District’s Truck Driving Program May Sue District for Negligent Supervision.**

An adult male enrolled in a school district’s heavy truck driving program. Part of the program was community service to meet the hands-on training and on-the-road program requirements. In a community service project,

unsupervised students loaded wooden bleachers on a flatbed truck. Adult male fell off the trailer. He sued the district for negligent supervision.

The court held that the district owed plaintiff a duty of care since the project was part of the school’s curriculum and under the facts the adult students required supervision. The court also held that loading wooden benches on a flatbed trailer is not an inherently dangerous activity. Thus, the court concluded that the doctrine of assumption of risk does not bar plaintiff’s negligence action.

(*Patterson v. Sacramento City Unified School Dist.* (Sept. 25, 2007) 155 Cal.App.4th 821.)

## **CONSTITUTIONAL RIGHTS**

### **College Handbook’s “To Be Civil To One Another” Is Overbroad and Cannot Trigger Disciplinary Proceedings.**

An organization sponsored an on-campus anti-terrorism rally. At the rally, students displayed reproductions of Hamas and Hezbollah flags that contained Arabic script including the word, “Allah”. At one point, members placed the posters depicting the flags on the ground and began stepping on them. Pursuant to a student code of conduct and handbook the university conducted an investigation and referred the matter to a panel for formal disciplinary proceedings (an investigation and hearing). The panel concluded that the organization had not violated university policy.

The students, however, filed a suit against the university, contending that the handbook words “civil”, “intimidation,” and “harassment” were imprecise and swept so broadly that, if left in place, would empower the university to punish students and their

organizations for engaging in a wide range of expressive activity that is protected by the First Amendment. The court found that a provision requiring students “to be civil to one another and to others in the campus community” was unconstitutionally overbroad. However, the words, “intimidation” and “harassment” were permissible because they appeared in the context of protecting the health and safety of any person and did not prohibit all forms of expressive activity. (*College Republicans v. Reed* (N.D. Cal. Nov. 19, 2007) 523 F. Supp.2d 1005.)

**Principal Did Not Violate Student’s  
Privacy Right When Discussing Reason for  
Suspension He Disclosed Student Was  
“Kissing Another Girl”.**

A female student’s parents were from Southeast Asia and spoke little English. The court found that the student’s home was an insular environment. Hence, the student had a reasonable expectation of privacy with respect to her sexual identity. The student several times engaged in inappropriate public displays of affection (IPDA), including heavy kissing and groping, with another female student. The school, similar with what it does with heterosexual couples, many times warned the students and ultimately suspended the students for violating previous orders. The principal informed the student’s Southeast Asian mother about her daughter’s “heavy kissing with another girl.” At issue was the student’s right to privacy with respect to her sexual identity.

The court held that under California Education Code the school has to provide an explanation why discipline was imposed. The court found that the school had a compelling interest in the *disclosure of the objective facts*

constituting and providing the context for the discipline imposed. By limiting disclosure to objective facts, the court adopted a workable standard in dealing with discipline-related disclosures involving sexual identity. (*Nguon v. Wolf* (C.D. Cal. Sept. 25, 2007) 517 F. Supp.2d 1177.)

**ADMINISTRATION AND  
GOVERNANCE**

A district misclassified a teacher that was assigned to teach a new class as a substitute rather than as a probationary employee. When the district offered to rehire teacher as a substitute, teacher claimed she was entitled to permanent employee classification. The district claimed it may classify teacher as a substitute. Teacher refused, so the district terminated the teacher.

Court held that district’s misclassification of employee as substitute teacher does not change statutory application that teacher was a probationary employee when she was assigned to teach a new class. Under the Education Code, district may terminate probationary employee for cause during the school year but may terminate probationary employee at the end of school year provided with apt notice. Since teacher received such notice, she was not entitled to permanent employment. (*Vasquez v. Happy Valley Union School Dist.* (Feb. 1, 2008) 2008 Cal.App.LEXIS 166.)

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