

# ASSOCIATION OF WISCONSIN SCHOOL ADMINISTRATORS

## New Building Administrators Conference Series

December 3, 2009

### LEGAL UPDATE

*Michael J. Julka*

*Lathrop & Clark LLP*

*P.O. Box 1507*

*Madison, WI 53701*

*(608)257-7766*

[mjulka@lathropclark.com](mailto:mjulka@lathropclark.com)

## I. EMPLOYMENT AND LABOR

- A. **Freedom of Speech (Public Employees).** The plaintiff, Gregory Samuelson, was a teacher employed by LaPorte Community School Corporation (LCSC) and head coach of the girls' basketball team. LCSC has a "chain of command" policy that directs all staff members to "refer matters requiring administrative action to the person in charge of the department, who shall refer such matters to the next higher authority, when necessary." There is also a bylaw that acknowledges the right of staff to speak out on matters of public concern; however, it instructs staff to state that the views are personal and not necessarily the views of the school. The principal and athletic director recommended nonrenewal of Mr. Samuelson's coaching contract based on complaints by others, his poor fundraising, and his coaching ability. The school board approved the nonrenewal. In his resulting lawsuit, Mr. Samuelson cited four instances where he claims to have engaged in protected speech on a matter of public concern regarding: (1) treatment of the girls' sports programs as compared to the boys' sports programs; (2) his disapproval about the hiring of a middle school principal; (3) proposed changes in the school's computer platform; and (4) his objections to a proposed school redistricting plan. The U.S. Court of Appeals for the Seventh Circuit ruled that the teacher failed to establish that the nonrenewal of his coaching contract was in retaliation for his having exercised his free speech rights. The court also ruled that the school district's "chain of command" policy did not constitute impermissible prior restraint on his speech. It covered only "speech grounded in the public employee's professional duties," which the U.S. Supreme Court's ruling in *Garcetti v. Ceballos*, 547 U.S. 410 (2006), has made clear is not protected by the First Amendment. The court then concluded that the none of the speech cited by Mr. Samuelson supported his claim of retaliation. Even if his speech was protected, Mr. Samuelson failed to show that the nonrenewal was motivated by any of the instances. *Samuelson v. LaPorte Cmty. Sch. Corp.*, 526 F.3d 1046 (7th Cir. 2008).

- B. First Amendment Rights.** Bradley Johnson, a math teacher in the Poway Unified School District had for years displayed two banners in his classroom, one with the phrases “In God We Trust,” “One Nation Under God,” “God Bless America” and “God Shed His Grace On Thee,” and the other with the phrase “All Men Are Created Equal, They Are Endowed By Their Creator.” Under its policy allowing teachers to display personal messages on classroom walls, the district had allowed materials such as rock band posters, posters of professional athletes, posters with Buddhist and Islamic messages, and Tibetan prayer flags. Although no one complained about Mr. Johnson’s banners, his principal ordered him to remove them. Mr. Johnson sued the school district, alleging in part that the District violated his First Amendment rights. The district court concluded that Mr. Johnson’s claim was subject to a forum analysis, which is often used to evaluate free speech cases. The court viewed the classroom walls as constituting a “limited public forum” because the district had intentionally opened its property to expressive conduct by its faculty. The court noted that the district’s policy permitted teacher speech as long as the wall display did not materially disrupt school work or cause substantial disorder or interference with the classroom. Having created a limited public forum, the district could not exclude speech where its distinction is not reasonable in light of the purposes served by the forum. The court found that the district impermissibly restricted Mr. Johnson’s speech based on viewpoint, rather than based on a content-neutral reason or the boundaries the district had set for itself when it created the forum. *Johnson v. Poway Unified Sch. Dist.*, No. 07-783, 2008 U.S. Dist. LEXIS 107665 (Cal. S.D. 2008).
- C. School District Liability for Teacher’s Misconduct.** A teacher at Hamilton Southeastern High School engaged in a sexual relationship with a student. After the relationship was discovered, the teacher resigned and pled guilty to sexual battery. The student brought a Title IX claim for teacher-student sexual harassment against the school district. The student argued that the standard for finding liability is whether the school district “knew or should have known” of the misconduct. The U.S. Court of Appeals for the Seventh Circuit rejected that standard and followed a different standard. When a Title IX claim for damages against the school district is for a teacher’s conduct, the student would have to prove that a school official who could have taken corrective measures had notice of the teacher’s misconduct and was deliberately indifferent to it. In this case, the student failed to present evidence that any school officials had actual knowledge of the teacher’s misconduct. Once informed, the school took immediate action. *Hansen v. Bd. of Trs. of Hamilton Southeastern Sch. Corp.*, 551 F.3d 599 (7th Cir. 2008).

- D. **FMLA Regulations.** The Department of Labor has issued final regulations under the Family Medical Leave Act of 1993. The final regulations are over 200 pages long and cover numerous topics that affect school districts including: the definitions of serious health condition; continuing treatment and chronic condition; use of intermittent leave; substituting paid leave for unpaid FMLA leave; consequences for interfering with FMLA rights; waiver of FMLA rights; employer notices; consequences of employer's failure to designate leave as FMLA leave; medical certifications; and fitness for duty requirements. The final regulations also address the new military leave entitlements which provide additional leave to employees who provide care to covered service members with a serious injury or illness or because of qualifying exigencies arising out of a covered servicemember's call to active duty. The final rule became effective January 16, 2009.

## II. PUPILS AND CURRICULUM

- A. **Student Rights & Discipline (Search/Seizure).** After an eighth-grade female student was implicated in providing prescription drugs to her classmates in violation of school rules, the vice principal ordered that the girl be searched for pills in the nurse's office. She was ordered to pull her bra out and shake it and to pull the elastic out on her underpants. No pills were found. The student subsequently brought an action against the school district, alleging that the search violated her Fourth Amendment rights. The district court found that there was no Fourth Amendment violation and determined that officials had complied with the requirements for a reasonable search of a student. The Court of Appeals for the Ninth Circuit reversed and ruled that the student's Fourth Amendment right to be free from an unreasonable search was violated. The court of appeals also held that the vice principal, who directed the search, was not entitled to qualified immunity, but the school nurse and administrative assistant who followed the vice principal's instruction were immune. The United States Supreme Court used a "reasonable suspicion" standard as set forth by *New Jersey v. TLO*, 469 U.S. 325 (1985) to determine that the student's Fourth Amendment rights were violated. Under this standard, the search needs to be justified at its inception and permissible in its scope. The knowledge component of the test requires that the administrator believes there is a moderate chance of finding evidence of wrongdoing. In this case, the strip search of the student was neither justified at its inception nor reasonable in scope to the circumstances giving rise to its initiation. The Court stated that a search of her outer clothing would have been justified, but there was no evidence that indicated that the drugs were concealed in her underwear. *Redding v. Safford Unif. Sch. Dist.*, 129 S.Ct. 2633 (2009). [Note: § 118.32, Wis. Stats., prohibits any official, employee, or agent of a school district from conducting a strip search of any pupil.]

- B. The Use of Drug Dogs in Searches.** After a student survey revealed that there may be a drug problem at the school, the Contoocook Valley School District implemented a drug sweep using drug-sniffing dogs at the school. The students were not alerted that it was a drug sweep, but rather were told it was a drill. The students were forced onto the football field and were told to leave their personal items in the school. Meanwhile, the dogs alerted to eight different bags, none of which yielded to an illegal substance. A group of parents sued the school district, alleging a violation of the students' Fourth Amendment freedom from unreasonable searches and that holding them on the field was an unreasonable seizure. The U.S. District Court for the District of New Hampshire held that there was no unreasonable search conducted. It stated that existing precedents "leave little doubt that the mere use of trained drug dogs on school grounds to sniff students' personal items does not qualify as a search within the meaning of the Fourth Amendment." The court further emphasized that the dogs were not sniffing the students, which would be more intrusive, but rather the dogs were sniffing their personal belongings. Regarding the unreasonable seizure, the court stated that the traditional definition of seizure is not applicable in a school setting, where "students are generally not at liberty to leave the school building when they wish;" the students' rights must be viewed in that context. In order for the action to qualify as a seizure, "the limitation on the student's freedom of movement must significantly exceed that inherent in every-day, compulsory attendance." Confining the students to the football field was not such a limitation because students were periodically confined when emergency evacuation drills were conducted. Lastly, the court noted that the evacuation was not done in a stigmatized manner because no student or group of students was singled out. *Doran v. Contoocook Valley Sch. Dist.*, 616 F.Supp.2d 184 (D.N.H. 2009).
- C. Investigations of Student Misconduct.** School officials at Homestead High School were alerted by an anonymous informant that a student, Schloegel, was in possession of drugs on school grounds. Schloegel had been arrested for possessing marijuana on school grounds three years prior to this incident. Based on the tip, two assistant principals, with assistance of the school liaison officer and a Mequon police officer, conducted an investigation and called Schloegel into the office. Schloegel consented to searches of his person and book bag, however no contraband was found. A locker search revealed no contraband either. An assistant principal asked Schloegel if he would mind if they looked in his car. He had received a student handbook at the beginning of the year that contained a parking form that included a "consent to search" clause. Upon a search of his car, the assistant principal found marijuana, a pipe, Oxycontin, and cash. The school liaison officer asked a series of questions, which led to the school liaison placing Schloegel under arrest and taking him to the police station, where he was read his *Miranda* rights.

Schloegel asked the court to suppress his statements to the school liaison officer because he did not inform Schloegel of his *Miranda* rights before asking him

questions. The court refused the request and noted that *Miranda* warnings are required only when a person is “in custody.” To determine whether someone was “in custody,” the court looks to whether the suspect was formally arrested or suffered restraint or freedom of movement to the degree associated with a formal arrest. Here, the court said Schloegel was not in custody for the following reasons: the investigation was conducted primarily by the assistant principal rather than by the school liaison officer or the police officer; no more than fifteen minutes passed between the time Schloegel was summoned to the office and when the drugs were discovered; questions were asked in the school parking lot rather than a squad car or police station; and Schloegel was not cuffed.

Schloegel also asked to suppress the items discovered during the search of his car. The court refused this request after applying the standard for searches on school grounds by public school officials from *New Jersey v. TLO*, 469 U.S. 325 (1985). The standard states that a school search is legal when it satisfies the following two-prong test: (1) the search must be justified at its inception and (2) be reasonably related in scope to the circumstances which justified the interference in the first place. Regarding the first prong, the courts have accepted a student handbook regarding vehicle searches and a student’s consent to search the car as a condition of being allowed to park in the school parking lot as evidence of reasonableness. The court ultimately concluded that the search was reasonable at its inception in light of Schloegel’s prior drug arrest record and because the school officials were put on alert that Schloegel possessed drugs. Further, the court concluded that the search of Schloegel’s car was reasonably related in scope to the search of contraband. Students have many places to stash drugs, so after unsuccessfully searching the student, his book bag, and his locker, the next step was to search his car. *State v. Schloegel*, 2009 WI App. 85, 769 N.W.2d 130.

- D. Student/Student Harassment.** A kindergartener told her parents that whenever she would wear a dress, a third-grade boy would bully her into lifting up her skirt on the bus. Her parents immediately complained to the principal of the girl’s school. After identifying the male student, school officials questioned him and the boy promptly denied any wrongdoing. Officials also spoke with the bus driver and a number of students who frequently rode the bus. The majority of the people interviewed could not corroborate the young girl’s story. The police, conducting an independent investigation, determined that there was insufficient evidence to charge the young male criminally. The principal similarly decided that the case lacked sufficient evidence to impose any disciplinary measures against the student. Instead, he proposed to place the young girl on a different bus or to assign different sections of seating to the younger and older students, leaving a few rows of empty seats between the kindergartners and the older children.

The girl’s parents filed Title IX and § 1983 claims against the school committee and the superintendent, alleging that they were liable for peer sexual harassment. The U.S. District Court for the District of Massachusetts dismissed the parents’ claims determining that Title IX liability only attaches after a school district

receives actual notice of harassment and the district then causes the victim to be subject to further harassment. The U.S. Court of Appeals for the First Circuit affirmed the decision but stated a different test to determine whether a student will prevail on a Title IX claim. To prevail, the student must prove that severe, pervasive and objectively offensive harassment occurred; that the harassment deprived the student of educational opportunities or benefits; that the educational institution had actual knowledge of the harassment; and, finally, that the institution's deliberate indifference caused the student to be subjected to the harassment. The appellate court held that because the school district took immediate steps to identify the perpetrator, investigate the purported behavior, and propose possible solutions, the court could not sustain a Title IX action against the school. The appellate court noted that Title IX does not require institutions to take "heroic measures, perform flawless investigations, craft perfect solutions, or adopt strategies advocated by parents." To find a school liable, its response must be so deficient as to be clearly unreasonable. The response in this case could not be characterized as such. The Supreme Court heard the case solely to decide whether Equal Protection claims for gender discrimination are precluded by Title IX claims. It held that Equal Protection claims are not precluded by Title IX claims. Title IX was not meant to be the exclusive mechanism to address gender discrimination claims. *Fitzgerald v. Barnstable Sch. Comm.*, 504 F.3d 165 (1st Cir. 2007), *rev'd*, 129 S.Ct. 788 (2009).

- E. **Religion.** Parents of school-aged children challenged a Texas law that required a moment of silence to be observed in schools every day, alleging that the law violated the First Amendment's Establishment Clause. During the mandatory minute of silence, students may "reflect, pray, meditate, or engage in any other silent activity that is not likely to interfere with or distract another student." The U.S. Court of Appeals for the Fifth Circuit looked to the three-prong test articulated in *Lemon v. Kurtzman*, 403 U.S. 602 (1971). *Lemon* has three prongs: (1) "the statute must have a secular legislative purpose;" (2) "its principle or primary effect must be one that neither advances nor inhibits religion;" and (3) "the statute must not foster an excessive government entanglement with religion." The court noted that the state had advanced three secular purposes: (1) fostering patriotism; (2) providing a period for thoughtful contemplation; and (3) protecting religious freedom. The court found that the statute's text served the first two purposes, but the third purpose did not appear on the face of the statute and had been addressed by a different law. Under the second prong of the *Lemon* test, the court determined that the parents had focused too narrowly on the addition of the word "pray" in the statute; the statute also gives students the option of "any other silent activity," so there is nothing in the record to suggest that the primary effect of the statute was to promote religion. Lastly, the court stated that this is not an excessive entanglement with religion, and therefore the law did not violate the First Amendment. *Croft v. Perry*, 562 F.3d 735 (5th Cir. 2009).

- F. **School Board's Authority to Remove Books.** After a complaint from a Cuban exile and a former political prisoner, the Miami-Dade County School Board voted to remove the book *¡Vamos a Cuba!* and the other twenty-three books in the series. The books portrayed a distorted picture of Cuba by ignoring the repressive nature of Cuba's totalitarian political regime. The American Civil Liberties Union brought both First Amendment and Due Process claims. The Court of Appeals for the Eleventh Circuit stated that school officials may not remove books "simply because they dislike the ideas contained in the books and seek by their removal to prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion." In this case, there was no evidence that the removal of the books was for that reason, but rather the evidence suggests that the removal was due to factual inaccuracies. It was held that the school board has authority to remove books based on educational unsuitability, and factual inaccuracy for a nonfiction book makes books educationally unsuitable. *ACLU v. Miami-Dade County Sch. Bd.*, 557 F.3d 1177 (11th Cir. 2009).
- G. **Student Speech (Student Newspaper).** School officials refused to allow student editors to use a sexually-explicit cartoon with an article about sexual education. The cartoon had a teacher pointing to a blackboard drawing of stick figures in sexual positions; the cartoon was to be placed under an article regarding how sex is being taught in class. The students subsequently created an independent newspaper, however, school officials did not allow the students to distribute the paper, stating that the cartoon was unfit. The students sued the school district and school officials, alleging several causes of action under the First Amendment. The U.S. District Court for the Northern District of New York determined that the school had created a limited public forum, and it was entitled to make reasonable viewpoint-neutral rules governing its content. It also said that the cartoon sends a contradictory message to students about the seriousness of risky sexual behaviors. Further, the school newspaper was school-sponsored speech because the school was providing funding, supervision, and some editorial control. The court determined that the school officials' decision was viewpoint-neutral and reasonable because the officials acted out of concern for the students and to prevent disruption. *R.O. v. Ithaca City Sch. Dist.*, No. 05-695 (N.D.N.Y. 2009).
- H. **Student Speech (On-Campus).** During "All About Me" week, a kindergarten teacher invited parents into class during their child's designated week. Parents were supposed to "share a talent, short game, small craft, or story" with the class. Busch, a mother of a student, wanted to read the Bible to her son's class. The principal did not allow this, stating it would be against the law. Busch and her son brought free speech, establishment, and equal protection claims against the Marple Newtown School District. The Court of Appeals for the Third Circuit entered judgment in favor of the school district. It stated it was not unreasonable for the school district to restrict the mother's speech. The court stated that classrooms are reserved for teaching students in a structured environment, and speech occurring during activities may be regulated under different standards in

order to maintain the structured environment. The appropriateness of the expression depends on several factors, including the type of speech, the age of the audience, the school's control, and whether the school solicits individual views from the students during the activity. Further, the court stated that generally, the younger the students, the more control the school can have. Lastly, the court held that the restriction on speech did not violate the Establishment Clause because the restriction was motivated by a permissible purpose to comply with the Establishment Clause. It did not evidence any hostility towards the mother's faith, and it is not excessively entangled with religion. *Busch v. Marple Newtown Sch. Dist.*, 567 F.3d 89 (3d Cir. 2009).

- I. **Student Speech (Off-Campus).** Middle school student J.S. created a fake MySpace profile for James McGonigle, the principal of Blue Mountain Middle School. The profile did not identify Mr. McGonigle by name, but it identified him as a principal and included a photograph of him from the school district's website. The personal profile section depicted him as a pedophile and sex addict. Although the profile was created at J.S.'s home, word of its existence spread the next day at school. Mr. McGonigle learned of it and called J.S. into his office. J.S. initially denied any involvement, but then she admitted creating the profile with another student. Mr. McGonigle determined that J.S. had violated the school discipline code, which prohibited the making of false accusations against school staff members, and had violated the district's computer use policy, which informs students that they cannot use copyrighted material without permission from the agency or website from which they obtain it. J.S. received a ten-day suspension, and then later sued the school district alleging that the district violated her First Amendment rights by excluding her from classes for a profile that was non-threatening, non-obscene and a parody. The U.S. District Court for the Middle District of Pennsylvania rejected the claim, concluding that J.S.'s speech was akin to the lewd and vulgar speech that the U.S. Supreme Court ruled in *Bethel School District v. Fraser*, 478 U.S. 675 (1986) was not protected by the First Amendment, noting that the profile contained derogatory expletives. The court concluded that, even though the profile did not cause an on-campus disruption, the totality of the circumstances showed that the lewd and vulgar off-campus speech had an effect on-campus. *J.S. v. Blue Mountain Sch. Dist.*, 2008 U.S. Dist. LEXIS 72685 (Md. Pa. 2008).
- J. **Speech (Student Dress).** Heidi Zamecnik and Alexander Nuxoll, students at Neuqua Valley High School, were prohibited from wearing t-shirts bearing the legend "Be Happy, Not Gay," which school officials characterized as an offensive interference with the rights of other students and a risk of disruption. Heidi and Alexander had planned to wear the shirts during the "Day of Truth," an event promoted by the Alliance Defense Fund as a counter-demonstration to the Gay, Lesbian, and Straight Education Network's annual "Day of Silence," which promotes tolerance of gays. They sued Indian Prairie School District No. 204, alleging that their free speech right to express their religious views and their right to free exercise of religion were violated. The district court declined to issue a

preliminary order to force the district to allow the shirts. On appeal, the U.S. Court of Appeals for the Seventh Circuit unanimously concluded that the school's actions could not be justified as a foreseeable "substantial disruption" under *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503, 508 (1969). The court ordered the school district to allow the high school students to wear the t-shirts. While the court recognized that student speech is governed, with some exceptions, by the *Tinker* substantial disruption standard, it concluded that a school meets that standard by presenting "facts which might reasonably lead school officials to forecast substantial disruption." Avoiding violence is not the only type of substantial disturbance; the court noted "if there is reason to think that a particular type of student speech will lead to a decline in students' test scores, an upsurge in truancy, or other symptoms of a sick school—symptoms therefore of substantial disruption—the school can forbid the speech." In this case, however, the slogan "Be Happy, Not Gay" was only "tepidly negative" rather than "derogatory" or "demeaning." The Seventh Circuit stated that a school must only present facts which might reasonably lead school officials to forecast substantial disruption. The school need not prove that serious consequences would in fact occur. The court stated that if there is reason to think that a particular type of student speech will lead to a substantial disruption, such as a decline in students' test scores, an upsurge in truancy or other symptoms of a "sick school," the school can forbid the speech. The Court enjoined the district from enforcing its rule against a student who wears a t-shirt that says "Be Happy, Not Gay." *Nuxoll v. Indian Prairie Sch. Dist.*, 523 F.3d 668 (7th Cir. 2008).

- K. School District Liability.** After getting injured while doing a stunt, a Holmen cheerleader sued both the spotter and the school district for negligence. The court ultimately determined that the spotter was not liable. A Wisconsin statute grants immunity to any participant in a recreational activity that involves physical contact in an amateur sport as long as the participant did not act recklessly or with intent to injure. The court held that cheerleading is a physical contact sport, and participants will have immunity where there is no evidence of recklessness or intent to injure. Furthermore, the court held that there is no requirement that the sport be a competitive sport. Another Wisconsin statute provides immunity for municipalities and its officers and employees; discretionary acts are immune, whereas ministerial duties are not. In determining that the district also had immunity, the court held that the district is immune because no ministerial duty was violated by the cheerleading coach, and there was no known and compelling danger that gave rise to a ministerial duty. *Noffke v. Bakke*, 2009 WI 10.
- L. Distribution of Materials by Students.** Michael Lucas, a student at Jefferson Middle School, engaged in several pro-life activities on campus. The school, however, prohibited Michael from distributing literature during the school day, except for distributing them during the lunch hour at a table and posting them in the hallways and bulletin boards in connection with an event. Michael, however, still wanted to distribute materials in the hallway. As a result, he sued the district, arguing that the district's restrictions violated his First Amendment rights. He

asserted that, although the school can place reasonable restrictions on the time, place, and manner of distribution on non-school sponsored literature, the district failed to demonstrate the likelihood that the distribution of these materials would result in a material disruption. The district insisted, however, that its policy's content-neutral time, place, and manner restrictions were reasonable. The United States Court of Appeals for the Sixth Circuit concluded that the district's restrictions on distribution of materials did not violate the student's free speech rights because the restrictions were reasonable. The court noted that school areas such as hallways constituted nonpublic forums, and therefore, the district was justified in imposing time, place, and manner restrictions on hallway speech. The court noted that there was no evidence to show that the school's regulation was based on a desire to suppress Michael's anti-abortion viewpoint. *M.A.L. v. Kinsland*, 543 F.3d 841 (6th Cir. 2008).

- M. Student Expulsions.** In a Dane County Circuit Court decision, a judge ordered the Madison Metropolitan School District to provide educational services to a student who was expelled and is under a juvenile court order to continue his education. Students who are expelled from the District is typically given no services unless they are eligible for special education. However, Circuit Court Judge David Flanagan decided that the District remained obligated under state law to formulate an educational plan for a 16-year-old student who was expelled after his arrest on a misdemeanor drug charge. In his decision, the judge stated that state law permits him to issue orders to persons who contribute to the condition of a juvenile by any act or omission. In this case, the District's refusal to try to find some educational opportunity for the boy was ruled an omission which contributed to the delinquency of the boy. *In the Interest of M.D.T.*, Case No. 09 JV 419, (Order dated Oct. 19, 2009).
- N. Student Expulsions.** A pupil appealed an order of expulsion for a student who engaged in conduct while at school that endangered the property, health, or safety of others (possession of marijuana with intent to deliver). The order was reversed after the Department of Public Instruction concluded that the expulsion was based solely on information provided within a law enforcement officer's records. DPI stated that, based on a review of the record, it was clear that the board was provided only the police reports and the testimony of the officer at the hearings. In addition, the principal's information was based on the report filed by the police officer and nothing internally had been brought to his attention. As a result, the district violated Wis. Stat. § 118.126(5)(b) and did not comply with all of the procedural requirements of Wis. Stat. § 120.13(1)(c). *In the Matter of D.P.*, Appeal No. 09-EX-22 (Oct. 20, 2009).

### III. GOVERNANCE

**Public Records.** On April 16, 2007, Vesper resident Don Bubolz requested e-mail messages to and from five Wisconsin Rapids teachers between March 1 and April 13, 2007. In March 2008, Adams County Circuit Court Judge Charles Pollex ruled that all e-mail messages were public records and subject to disclosure. The teachers unsuccessfully attempted to block the release of these records based in part on the alleged personal nature of the e-mails. According to the attorney for the teachers, there were a handful of e-mails from the teachers to their spouses, kids, neighbors, and friends that had nothing to do with school business, and were purely personal in nature. The court of appeals stated that this issue, whether and to what extent personal e-mails of public employees are subject to open records law, is a question of first impression in Wisconsin; because of that, the Court of Appeals decided the question should be left up to the Wisconsin Supreme Court. The Supreme Court agreed to hear the case. *Schill v. Wis. Rapids Sch. Dist.*, No.2008AP967-AC, 2009 Wisc. App. LEXIS 408 (April 30, 2009).