THE DEMONSTRATION OF NEED, BENEFITS, AND OUTCOMES OF IN-HOUSE COUNSEL FOR A MID-SIZED URBAN SCHOOL DISTRICT IN THE STATE OF TEXAS

by

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Submitted to the Graduate Faculty of the
College of Education
Texas Christian University
in partial fulfillment of the requirements
for the degree of

Doctor of Education

December 2008

ACKNOWLEDGEMENTS

Dr. Susan Simpson for encouraging and supporting me during my doctoral studies and for continued mentoring, guidance, and friendship.

Dr. Mike Sacken for making my doctoral experience all about *my* learning.

Dr. Dan Powell for helping me navigate academia and ultimately achieve my academic goals.

Tom Dyar, Esquire, for lending me his brilliant mind, grammatical prowess, and mastery of composition.

Dr. Ron Caloss for his wise counsel helping me to begin my doctoral studies.

Rhonda Crass, Esquire, for affording me professional opportunities enabling me to pursue my doctoral studies.

My Dad for being the administrator I aspire to be.

DEDICATION

To my girls

Paige, Grace, and Abigail

Your unwavering encouragement, support, and sacrifice
brought about my academic success.
I love you all so much.

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INTRODUCTION

This dissertation examines whether in-house counsel for a mid-sized urban school district in the State of Texas constitutes a valuable resource or an unnecessary expense. Existing literature on the topic of in-house counsel for Texas school districts neither specifically analyzes the true value of counsel for mid-sized urban school districts nor uses a case study method to analyze the value by moving legal counsel in-house. This dissertation will supplement existing literature by performing a series of case studies at the Grand Prairie Independent School District to measure the value added from having in-house counsel.

The case studies are structured to examine four separate issues faced by GPISD. The issues range from those where GPISD did not have any legal advice to situations in which in-house counsel was involved at each and every step:

Chapter 1 surveys the literature relevant to this study inclusive of a discourse on anticipated outcomes and added-value of in-house counsel to organizations.

Chapter 2 analyzes the potential added-value of in-house counsel to mid-sized urban school districts in the development of search and seizure policies, procedures, and practices.

Chapter 3 examines the perils of not having in-house counsel involved early in a dispute and the added-value of consulting in-house counsel late in a dispute.

Chapter 4 reviews the added-value of involving in-house counsel from the beginning of a matter to its conclusion.

Chapter 5 analyzes the added-value of having in-house counsel directly handle a matter from start to finish.

Chapter 6 concludes the study with a summary of observations from the case studies and its implications for mid-sized urban school districts.

CHAPTER 1

Review of the Literature

Current literature suggests that Texas school districts will lower their legal costs, reduce turn-around time in answering questions, provide answers to questions that are not currently being asked, and better manage the district's legal risk by enabling the district to minimize exposure to liability before it arises by hiring in-house counsel.[1] In essence, when utilized in a preventive manner, literature suggests in-house counsel will prove to be very cost effective for school districts.[2] However, the literature does not specifically address the degree of potential value to school districts according to size and demographics. Moreover, the literature is limited to philosophical conclusions and opinions with limited financial analysis and empirical data. Even further, existing literature does not offer in-depth case study analysis of any mid-sized urban school districts.

In the article "Navigating the Legal Maze: A Practical Guide For Controlling the Cost of School District Legal Services," the Texas Comptroller of Public Accounts advises school districts to consider hiring in-house counsel as a common sense solution to help them address the challenges of managing legal services.[3] The Comptroller also advises school districts in the article "Balancing the Budget-101 Ideas for Cutting Costs and Maximizing Revenues" to consider

hiring in-house counsel as a way "to help districts become more cost effective and efficient."[4] By way of example, the Comptroller points to Austin ISD, which, some estimates suggest, has saved approximately $400,000 annually through hiring of in-house counsel.[5]

Regarding employees, Etherton says "the old rule of thumb is that a company should consider hiring an attorney as an employee when its annual revenue reaches about $75-$100 million."[6] Most mid-sized urban school districts' revenue exceeds this range. Etherton also opines that "the effective hourly rate of in-house counsel is usually 25%-30% of outside counsel."[7]

Moreover, Seckler reports, "regarding employees, historically companies have considered hiring in-house counsel when headcount has reached 250 employees."[8] Most mid-sized urban school districts have many times more employees.

Still, the scholarship struggles to fix the monetary savings in absolute terms. One author inquires, "how do you put a dollar value on a lawsuit that never comes into being, because in-house counsel enacted some compliance procedure that prevented someone from making a mistake?"[9] How do you put a dollar value on elimination of unnecessary risk and exposure? How do you put a dollar value on peace of mind for mid-sized urban school district administrators and staff?

The critical question, at least for Corporate Legal Times' Roundtable, is whether a mid-sized urban school district is willing to embrace prevention over

cure? It's the difference between unenlightened and enlightened management.[10]

An Ounce of Prevention

> Preventive school law is a philosophy of using legal services on behalf of school boards that focuses on controlling legal issues whenever possible by anticipating problems and potential solutions in advance of unwanted litigation (including administrative hearings, grievance arbitrations and other related adversarial proceedings).[11]

According to Chidester and Ferrara, preventive school law requires communicating on a regular basis with a school attorney. It makes the attorney part of the school district's issue spotting and problem-solving administrative team early in the analysis of a legal issue, rather than waiting until an issue has reached its boiling point to seek legal guidance. Chidester and Ferrara espouse that a key advantage of in-house counsel is that he will be "living with the client" during the initial thinking about projects, initiatives, programs, and issues. They maintain that, in a district where legal counsel is considered part of the administrative team, counsel is on hand to steer the district toward safer approaches to potentially risky propositions before significant time and resources are committed.[12]

> [I]f you are going to do preventive law, you need somebody who is extremely familiar with the corporate culture. They have to understand the corporation, what it's trying to achieve, where its big risks lie and so forth. Almost by definition it's difficult for outside counsel to have that kind of appreciation.[13]

The literature suggests that uses of in-house counsel by mid-sized urban school districts as a member of the administrative team for prevention purposes can be seen in a variety of contexts, including, by way of examples, examination and counseling on proposed personnel actions, student issues, public

information, contracts which the district may enter or wish to rescind, and providing analysis and legal advice in connection with school policy modifications which may affect students, parents, and employees.

> Generally, the outside counsel won't be in a position to know where the sweet spot is; that is, where the real preventative work should be done. . . . It's very hard for an outside attorney, even one who is familiar with the company, to know where you should be focusing.[14]

By virtue of having more direct and continuous contact with principals and administrators throughout the district, the literature indicates that in-house counsel will identify and focus on issues that district employees might never have brought to the attention of outside counsel (or only when it was “too late”). Conversely, the literature suggests that outside counsel is often consulted only after a matter has attained a “critical mass” and the expense becomes clearly justified.

Only Timely Advice is Good Advice

The literature intimates that legal advice is only "good" advice from a business standpoint when given at a timely point so as to effectively facilitate resolution of a matter.[15] The literature asserts that that same advice when given late in a matter may be perceived as an impediment to the situation and will likely reflect poorly on both the legal and business acumen of mid-sized urban school districts. One commentator said, “to give timely advice, the general counsel must be an integral part of the senior management team.”[16] In such an environment, literature maintains that legal hurdles can be lowered before they are reached

and potential transactions can be steered in optimum directions before commitments are made and positions hardened.

> Staff attorneys . . . must be attuned to and insert themselves into situations, transactions, and emerging issues as early as practicable. While good lawyers have the common sense not to over-step their bounds, they also realize that maximum value can be obtained when they have early involvement in the formative stages of activities and issues so that they can direct strategies and energies in a constructive way. [17]

Literature also suggests that the presence of in-house counsel will lend more time to mid-sized urban school district administrators.[18] Administrator time is a scarce resource, and if they are dealing with legal issues, chances are they are not focusing on curriculum and instruction, they are not visiting campuses and classrooms, and they are not engaging students and teachers. Are mid-sized urban school districts at a point where the size of the organization and the complexity of educational issues are causing a significant portion of administrator time to be spent on legal affairs and not on improving student achievement?

Relationships Matter

Literature suggests that the mission of the in-house counsel should be to build trust and constructive working relationships throughout the organization. In order to have access to decisions at their formative stages, employees must feel comfortable with their attorney as part of the core team.[19] This does not happen through edict.

One author pointed out that the in-house counsel should involve himself with personnel on a regular basis and fully appreciate the business implications

of legal alternatives at strategic decision-making points--and most definitely before the implementation phase. By doing so, counsel will be recognized as having the same goals as administration. The author further states, “if the business people do not see their lawyer in this role, they will not integrate that lawyer into the decision-making processes.”[20]

Corporate Legal Times propounds that all legal advice needs to be put into a business context and perspective.[21] Practicing law is not just answering questions or stamping approvals. The practice of the in-house counsel should be to understand the objectives and implications behind the questions posed by personnel, so that the most constructive input can be made by the legal function.[22] In many situations, a question is asked and answered, but related and more difficult questions never get posed. It should be the in-house counsel’s job to make certain that issues are fully explored within the context of emerging operational strategies and relationships.[23]

Finally, literature proposes that serving as in-house counsel and being an integral part of administration go hand-in-hand.[24] It gives administration a different insight than they might get from the normal, day-to-day administrator. One commentator asserts, “when you're part of the management team, there's a real incentive to find legal ways to accomplish business objectives, presumably at the least risk to the company. . . . You won't sit there and be a nay-sayer.”[25] The literature suggests that the in-house counsel will bring the administrator perspective to legal judgment easier than an outside counsel can, and, likewise,

can bring the legal perspective to the administrative decision and work both sides of the fence.

Quantity, Quality, and Cost of Work

Regardless of how diverse the legal work is, it has to be done well across the board. Many organizations reach the point where the work isn't being done well. The literature emphasizes that the presence of in-house counsel will elevate the level of the work. As one law partner stated, "When there is a general counsel reviewing your work and your bill, you're more likely to make absolutely certain it is done to the best level of skill."[26]

Non-lawyer administrators do not have a good framework for judging whether they are getting quality legal services. According to the literature, the in-house counsel can and should judge whether legal services rendered to mid-sized urban school districts is good. It further states that he will also ensure that the quantity of work performed by outside counsel is minimized to only that which is truly necessary. Hence, the literature maintains that outside lawyers performing unnecessary work to meet monthly billing quotas will cease. One attorney said, "you have a much better chance with somebody inside. . . . You call outside counsel and the meter starts running. . . . It's like buying life jackets: You must have them even if you don't want to use them."[27]

Literature says that the in-house counsel should control costs by selecting both the legal tasks to be performed and the sequencing of those tasks.[28] Because he will be an effective part of that decision-making process, the in-

house counsel will be sufficiently involved in matters at an early stage to take on the risk of not turning over every stone. A commentator explained it this way, "good business lawyers and good trial lawyers both have a keen sense of what is important--what issues and facts are on the critical path and when the risk of inattention is warranted."[29]

Additionally, as an employee, the in-house counsel should provide better work product.

> Every attorney at any level–senior partner, mid-level partner, associate, new lawyer–is probably a better lawyer for a client when that lawyer is in-house. The reason being the closeness of the client, the ability to focus fully on that client's matters and the experience with the business side which you inevitably get being in-house.[30]

Conclusion

Literature suggests that the in-house counsel should enable mid-sized urban school districts to lower its legal costs, reduce turn-around time for getting answers to questions, provide answers to questions that are not currently being asked, and better manage the mid-sized urban district's legal risk by enabling the district to proactively avoid liabilities instead of reacting to legal trouble after they arise.

But, these scholars admit that quantifying savings is a formidable, if not impossible task. Thus, the question remains: does a mid-sized urban school district actually benefit from having in-house counsel?

This dissertation will test the general, positive conclusion by performing case studies at a mid-sized urban school district.

CHAPTER 2

Student Search and Seizures

This case study involves observations from student search and seizure issues typically facing mid-sized urban school districts. Grand Prairie ISD conducts numerous drug and weapons searches throughout the school year. At no point in either development of search procedures or implementation of search practices did GPISD have any legal advice. This case study analyzes the potential value to GPISD had in-house counsel been involved in development of search procedures and implementation of search practices.

Legal Framework

While the United States Supreme Court has yet to address the issue of metal detectors specifically, all of the lower courts, including Texas, have unanimously approved the use of metal detectors in public schools.

The Fourth Amendment of the United States Constitution provides that "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search and seizure, shall not be violated . . . " U.S. CONST. AMEND. IV. In 1985, the U.S. Supreme Court, in *New Jersey v. T.L.O.*, stated that school officials, as state actors, are bound by the Fourth Amendment's prohibition against unreasonable searches. 469 U.S. 325 (1985). The Supreme Court then assessed the standards which should govern school searches and determined that a balance must be struck between the student's

legitimate expectations of privacy and the school's equally legitimate need to maintain an environment in which learning can take place. The Court concluded that the accommodations of these competing interests "does not require strict adherence to the requirement that searches be based on probable cause to believe that the subject of the search has violated or is violating the law. Rather, the legality of the search of a student should depend simply on the reasonableness, under all the circumstances, of the search." *Id*. at 341.

The Supreme Court established a two-part test to assess the reasonableness of a school search. First, the search must be justified at its inception. Second, the search, as conducted, must be reasonably related in scope to the circumstances that justified the interference in the first place. While the use of a metal detector in public schools is certainly a "search" within the meaning of the Fourth Amendment, in the case of metal detectors, there is no "individualized suspicion." Instead, every student, or randomly-selected students, is subjected to a search, without any "justification at its inception." It is necessary, therefore, to address the exceptions to the general rule requiring individualized suspicion to determine whether a metal detector search in a public school is reasonable. *Id.*

Special Needs Searches

In *New Jersey v. T.L.O.*, the Supreme Court determined that, ordinarily, a student search is justified at its inception when "there are reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is

violating either the law or the rules of the school." However, the Supreme Court in *T.L.O.* did not decide whether individualized suspicion is an essential element of the reasonableness standard. In fact, the Supreme Court has long held that "the Fourth Amendment imposes no irreducible requirement of individualized suspicion." *Board of Education v. Earls*, 536 U.S. 822, 829 (2002), citing *United States v. Martinez-Fuerte*, 428 U.S. 543, 561 (1976). In 1995 and again in 2002, the Supreme Court clarified that individualized suspicion is not always required for school searches, when it upheld random drug testing of high school athletes. *See Vernonia Sch. Dist v. Acton*, 515 U.S. 646 (1995) and *Board of Education v. Earls*, 536 U.S. 822 (2002). Specifically, the Supreme Court has held that "in certain limited circumstances, the Government's need to discover such latent or hidden conditions, or to prevent their development, is sufficiently compelling to justify the intrusion on privacy entailed by conducting such searches without any measure of individualized suspicion." *Treasury Employees v. Von Raab*, 489 U.S. 656, 668 (1989).

Therefore, in the context of safety and administrative regulations, a search unsupported by individualized suspicion may be reasonable "when 'special needs, beyond the normal need for law enforcement, make the warrant and probable-cause requirement impracticable.'" *Griffin v. Wisconsin*, 483 U.S. 868, 873 (1987)(quoting *T. L. O.*, 469 U.S. at 351). Such suspicion-less searches are referred to as "special needs" or administrative searches. These searches do not require individualized suspicion. Instead, "designed to prevent the

occurrence of a dangerous event, an administrative search is aimed at a group or class of people rather than a particular person." *Gibson v. State*, 921 S.W.3d 747, 758 (Tex. App. – El Paso 1996, pet. denied); *People v. Dukes*, 580 N.Y.S.2d 850, 851-52 (City Crim. Ct. 1992).

For example, the United States Supreme Court and courts across the country have permitted suspicion-less administrative searches when the intrusion involved in the search was no greater than necessary to satisfy the governmental interest justifying the search. In other words, the courts balance the degree of intrusion against the need for the search. Thus, courts have approved airport searches to protect the security of passengers, courthouse security measures to protect judges and litigants, license and registration inspections and sobriety checkpoints to protect roads and drivers; and border-patrol checkpoints to protect borders. *See Gibson v. Texas*, 921 S.W. 2d 747 (Tex. App. – El Paso 1996)(requiring attorney to walk through x-ray machine at courthouse did not violate the Fourth Amendment); *Texas v. Kurth*, 981 S.W.2d 410 (Tex. App. – San Antonio 1998)(same); *Michigan Dept. of State Police v. Sitz*, 496 U.S. 444 (1990)(upholding random sobriety checkpoints designed to locate drunk drivers); *United States v. Martinez-Fuerte*, 428 U.S. 543 (1976)(upholding vehicle stops to search for illegal aliens); *Camara v. Municipal Court*, 387 U.S. 523 (1967)(upholding searches of residences by housing code inspectors); *U. S. v. Wehrli*, 637 F.2d 408 (5th Cir. 1981)(upholding airport search).

Specifically, the use of metal detectors in airports, public buildings, and highway checkpoints has been upheld as constitutional special needs administrative searches. *United States v. Albarado*, 495 F.2d 799 (2nd Cir. 1974); *United States v. Davis,* 482 F.2d 893 (9th Cir. 1973); *United States v. Slocum*, 464 F.2d 1180 (3rd Cir. 1972); *United States v. Epperson,* 454 F.2d 769 (4th Cir. 1972). As one court explained, in regard to airport security, "the magnetometer [metal detector] requires an absolutely minimal invasion of privacy and does not annoy, frighten or humiliate those who pass through it. . . [It] is not a resented intrusion on privacy, but, instead, a welcome reassurance of safety. Such a search is more than reasonable; it is a compelling necessity to protect essential air commerce and the lives of passengers." *Gibson*, 921 S.E. 2d at 758.

Metal Detector Searches in Schools

Since 1992, the courts of Texas, New York, Pennsylvania, Illinois, Florida, Virginia and California, as well as the Eighth Circuit U.S. Court of Appeals, have unanimously approved the use of metal detectors in public schools as a special needs administrative search. *See In re: O.E.*, 2003 Tex. App. LEXIS 9586 (Tex. App. – Austin 2003); *People v. Dukes*, 580 N.Y.S.2d 850 (N.Y. Crim. Ct. 1992); *In re: F.B.*, 658 A.2d 1378 (Pa. Super. Ct. 1995), *aff'd* 726 A.2d 361 (Pa. 1999); *In re: S.S.,* 680 A.2d 1172 (Pa. Super. Ct. 1996); *People v. Pruitt*, 662 N.E.2d 540 (Ill. App. Ct. 1996); *Florida v. J. A.*, 679 So.2d 316 (Fla. Dist. Ct. App. 1996); *Smith v. Norfolk City School Board*, 46 Va. Cir. 238 (Va. Cir. Ct. 1998); *In re Latasha W.*, 60 Cal. App. 4th 1524 (Cal. Ct. App. 1998); *Thompson v. Carthage*

School District, 87 F.3d 979 (8th cir. 1996), but see *Illinois v. Parker*, 672 N.E.2d 813 (Ill. App. Ct. 1996)(finding that student was unconstitutionally seized when a police officer used his discretion in stopping the student and ordering him to walk through a metal detector, after student entered the building, saw the metal detector and turned around to leave). As noted by one such court, these school cases are simply part of the large body of law holding that "special needs" administrative searches, conducted without individualized suspicion, do not violate the Fourth Amendment where: (1) the government need is great, (2) the intrusion on the individual is limited; and (3) a more rigorous standard of suspicion is unworkable. *Latasha W.*, 60 Cal. App. 4th at 1527. Analyzing each of these factors, all the courts that have addressed this issue have upheld metal detector searches as constitutional in the school setting, even when boards require citizens at school board meetings to submit to such searches. *See Day v. Chicago Board of Education*, 1998 U.S. Dist. LEXIS 1376 (D. Ill. 1998) (holding that, because the school board's interest in the safety of those inside its administration building justified the minimal intrusion caused by the metal detector search, the citizen's unlawful search claim was without merit).

First, according to numerous courts, the need of schools to keep weapons off campuses is substantial, particularly in the wake of tragedies like Columbine and Jonesboro. Guns and knives pose a threat of death or serious bodily injury to student and staff. Schools must be able to protect the safety and welfare of their students. Thus, several courts have held that the need to protect students

is a compelling state interest. *See In re: O.E.*, 2003 Tex. App. LEXIS at *10 (holding that one of the objectives of public education in the Texas Education Code is that "school campuses will maintain a safe and disciplined environment conducive to student learning"); *Latasha W.*, 60 Cal. App. 4th at 1527; *Dukes*, 580 N.Y.S.2d at 300 (holding that "it is beyond peradventure that safety in our schools, and concomitantly, preservation of an atmosphere conducive to education, are of vital importance"); *Pruitt*, 662 N.E. 2d at 546 ("violence and the threat of violence are present in public schools; schoolchildren are harming each other with regularity").

Second, metal detector searches are minimally intrusive. As noted by several courts, although students are often asked to empty their pockets before being scanned, a metal detector search does not involve any form of undress or even direct contact with a student's body or bodily fluids. *See F.B.*, 726 A.2d at 366; *Dukes*, 580 N.Y.S.2d at 851 (scanning conducted "without actually touching the body"); *Latasha W.*, 60 Cal. App. 4th at 1526 (hand-held metal detector waved "next to the student's person"); *D. I. R. v. State of Indiana*, 683 N.E.2d 251 (Ind. Ct. App. 1997)(holding that while electronic wand searches may be constitutional, a manual search of a student's pockets without any reasonable suspicion is not justified). Moreover, unlike drug testing, which often necessitates disclosure of students' prescription drug use, random weapon searches do not involve any comparable privacy intrusions. Finally, in general, although students in public schools have an expectation of privacy in their

persons and belongings, because of the state's custodial and tutorial authority over students, public school students are subject to a greater degree of control and administrative supervision than adults. *See Board of Education v. Earls*, 536 U.S. 822, 830-31 (2002). Thus, with this reduced privacy expectation and the minimal intrusiveness of the search, metal detector searches infringe only nominally on a student's privacy rights.

Finally, no system of more suspicion-intensive searches would be workable to search for weapons at school. “Schools have no practical way to monitor students as they dress and prepare for school in the morning, and hence no feasible way to learn that individual students have concealed guns or knives on their persons, save for those students who brandish or display the weapons. And, by the time weapons are displayed, it may be too late to prevent their use.” *Latasha W.*, 60 Cal. App. at 1527. In addition, while teachers untrained in law enforcement may be capable of detecting signs of drug abuse among students, it is unreasonable to expect them to recognize students who are concealing weapons. Furthermore, under a "reasonable suspicion" regime, a teacher might arbitrarily and unjustifiably subject known troublemakers to weapon searches. As the *Earls* court reasoned, "A program of individualized suspicion might unfairly target members of unpopular groups." *Earls*, 536 U.S. at 837. Even worse, requiring individualized suspicion might open the door to racial profiling by school officials. Ironically, then, despite the criticism leveled against random searches, one of the main advantages of suspicion-less testing is the preservation of

student civil rights. This can be assured by limiting the discretion of the inspectors. As noted by the Supreme Court in *New Jersey v. T. L. O.*, "exceptions to the requirement of individualized suspicion are generally appropriate only where privacy interests implicated by a search are minimal and where other safeguards are available to assure that the individual's reasonable expectation of privacy is not subject to the discretion of the official in the field." 469 U.S. at 342 (emphasis added).

Based on this analysis and assuming that proper policy and procedural "safeguards" are in place, the use of metal detector searches in schools is probably constitutional.

Policy Guidelines

The following guidelines should be followed to minimize the intrusion on students' privacy rights:

1. School officials conducting searches should follow uniform procedures detailed in a district policy or regulation. The more discretion afforded local school staff in implementing the metal detector program, the more likely that intrusions on students' privacy interests will occur. *See In the Interest of S.S.*, 452 Pa. Super. 15, 21-22 (1996)(noting that the school district police "followed a uniform procedure when they searched each student," and that "this uniformity served as a safeguard, assuring that a student's expectation of privacy was not subjected to officials' discretion"); *People v. Pruitt*, 662 N.E.2d 540, 547 (Ill. Ct. App. 1996)("We are troubled

by the failure of the Chicago Board of Education to establish strict standards for the use of metal detectors . . . ")

2. Address, in the policy, the need for the policy. For example, state the importance of keeping weapons off campus and prior incidents, if any.
3. Searches should be carried out uniformly in all schools where there is a need.
4. Unless all students are searched, schools conducting random weapons searches should establish a method to ensure that students are truly randomly selected for a search and are not arbitrarily or unfairly targeted. *See In re Latasha W.*, 60 Cal. App. 4th at 1526 ("The searches were to be made at random, and persons to be searched selected on neutral criteria); *J.A.*, 679 So. 2d at 318 (noting that school officials roll dice to choose a sector of the school, and roll dice again to determine which classroom in the sector to search).
5. Students should be notified in advance that they may be subject to random metal detector searches at school, by way of the student handbook and Code of Conduct, announcement signs posted on campus, and letters distributed to parents and students. *See Latasha W.*, 60 Cal. App. 4th at 1526 ("Parents and students were given notice before institution of this practice, and again at frequent intervals."); *In re: F.B.*, 555 Pa. at 670-71 (noting that "the fact that notice is provided of the reason for the search policy and the manner of conducting the search

provides an additional safeguard"); *but see In re: S.S.*, 452 Pa. Super. At 22 ("Although it would be prudent to notify students and parents of the school's search policy, it is not requisite to a reasonable search.").

6. School officials carrying out a search during class time should make good faith efforts to minimize class disruption to the extent reasonably possible. For example, if only a portion of the students in a particular class are selected for a search, school officials should perform the search in a separate location so that instruction can continue while the search is being conducted.
7. Once students are randomly selected for search, they should be given the opportunity to remove metal objects from their pockets and bags, so as to minimize the number of students who activate the metal detector and are consequently subject to a pat-down or manual bag search. They should not be asked to remove non-metal items from their pockets and bags.
8. In conducting random weapons searches with wands rather than walk-through metal detectors, male school officials should search male students and female school officials should search female students. *See J.A.*, 679 So. 2d at 318.
9. School officials using a hand-held scanning device should avoid actually touching students' bodies. *See People v. Dukes*, 580 N.Y.S.2d at 851 (scanning conducted "without actually touching the body"); *Latasha W.*, 60 Cal. App. 4th at 1526 (hand-held metal detector waved "next to the

student's person"); *D. I. R. v. State of Indiana*, 683 N.E.2d 251 (Ind. Ct. App. 1997)(holding that while electronic wand searches may be constitutional, a manual search of a student's pockets without any reasonable suspicion is not justified).

Adherence to these criteria should help to insulate Grand Prairie ISD's search policies from successful constitutional attacks. While it is certainly a difficult balance to strike, schools can enforce safety policies that respect students' legitimate privacy expectations while advancing the equally legitimate need to maintain a safe learning environment.

Current Policy

GPISD Board Policy FNF (LEGAL) STUDENT RIGHTS AND RESPONSIBILITIES:

INTERROGATIONS AND SEARCHES, SEARCHES OF STUDENTS, states:

> Students shall be free from unreasonable searches and seizures by school officials. School officials may search a student's outer clothing, pockets, or property by establishing reasonable cause or securing the student's voluntary consent. Coercion, either expressed or implied, such as threatening to contact parents or police, invalidates apparent consent. *U.S. Const., Amend. 4.; New Jersey v. T.L.O., 469 U.S. 325, 105 S.Ct. 733 (1985); Jones v. Latexo ISD, 499 F.Supp. 223 (1980)*
>
> A search is reasonable if it meets both of the following criteria:
>
> 1. The action is justified at the inception; i.e., the school official has reasonable grounds for suspecting that the search will uncover evidence of a rule violation or a criminal violation.
>
> 2. The scope of the search is reasonably related to the circumstances that justified the search in the first place; i.e., the measures adopted are reasonably related to the objectives of the

search and are not excessively intrusive in light of the age and sex of the student and the nature of the infraction.

New Jersey v. T.L.O., 469 U.S. 325, 105 S.Ct. 733 (1985); GPISD Board Policy FNF (LEGAL)

GPISD Board Policy FNF (LEGAL) STUDENT RIGHTS AND RESPONSIBILITIES:

INTERROGATIONS AND SEARCHES, USE OF TRAINED DOGS, states:

Trained dogs' sniffing of cars and lockers does not constitute a search under the Fourth Amendment. The alert of a trained dog to a locker or car provides reasonable cause for a search of the locker or car only if the dog is reasonably reliable in indicating that contraband is currently present.

Trained dogs' sniffing of students does constitute a search and requires individualized reasonable suspicion.

Horton v. Goose Creek ISD, 690 F.2d 470 (5th Cir. 1982); GPISD Board Policy FNF (LEGAL)

GPISD Board Policy FNF (LOCAL) STUDENT RIGHTS AND RESPONSIBILITIES:

INTERROGATIONS AND SEARCHES, DESKS AND LOCKERS, states:

Desks, lockers, and similar items are the property of the District and are provided for student use as a matter of convenience. Lockers and desks are subject to blanket searches or inspections by District administrators. Searches or inspections may be conducted at any time and without notice. Students shall be fully responsible for the security and contents of desks and lockers assigned to them. Students shall make certain that lockers are locked and that the keys or combinations are not given to others. Students shall not place or keep in a desk or locker any article or material prohibited by law, District policy, or the Student Code of Conduct. Students may be held responsible for any prohibited items found in their desks or lockers.

GPISD Board Policy FNF (LOCAL)

GPISD Board Policy FNF (LOCAL) STUDENT RIGHTS AND RESPONSIBILITIES:

INTERROGATIONS AND SEARCHES, VEHICLES, states:

> Students shall be fully responsible for the security and contents of vehicles driven or parked on school property. Students shall make certain that their parked vehicles are locked and that the keys are not given to others. Students shall not place or keep in a vehicle on school property any article or material prohibited by law, District policy, or the Student Code of Conduct.
>
> If there is reasonable cause to believe that a vehicle on school property contains contraband, it may be searched by school officials or by personnel whose services have been engaged by the District to conduct such searches. Students shall be held responsible for any prohibited items found in their vehicles on school property.
>
> If a vehicle subject to search is locked, the student shall be asked to unlock the vehicle. If the student refuses, the District shall contact the student's parents. If the parents also refuse the search, the District may contact local law enforcement officials and turn the matter over to them, or the District may conduct the search.
>
> GPISD Board Policy FNF (LOCAL)

GPISD Board Policy FNF (LOCAL) STUDENT RIGHTS AND RESPONSIBILITIES:

INTERROGATIONS AND SEARCHES, USE OF TRAINED DOGS and NOTICE, states:

> The District shall use specially trained nonaggressive dogs to sniff out and alert officials to the current presence of concealed prohibited items, illicit substances defined in FNCF(LEGAL), and alcohol. This program is implemented in response to drug- and alcohol-related problems in District schools, with the objective of maintaining a safe school environment conducive to education.

Such visits to schools shall be unannounced. The dogs shall be used to sniff vacant classrooms, vacant common areas, the areas around student lockers, and the areas around vehicles parked on school property. The dogs shall not be used with students. If a dog alerts the trainer to a locker, a vehicle, or an item in a classroom, it may be searched by school officials. Searches of vehicles shall be conducted as described above.

At the beginning of the school year, the District shall inform students of the District's policy on searches, as outlined above, and shall specifically notify students that:

1. Lockers may be sniffed by trained dogs at any time.

2. Vehicles parked on school property may be sniffed by trained dogs at any time.

3. Classrooms and other common areas may be sniffed by trained dogs at any time when students are not present.

4. If contraband of any kind is found, the possessing student shall be subject to appropriate disciplinary action in accordance with the Student Code of Conduct.

GPISD Board Policy FNF (LOCAL)

GPISD Board Policy FNF (LOCAL) STUDENT RIGHTS AND RESPONSIBILITIES:

INTERROGATIONS AND SEARCHES, USE OF METAL DETECTOR SEARCHES and EQUITABLE USE, states:

Students shall be notified at the beginning of each school year that they are subject to metal detector searches on a random basis.

If any weapons are found in a search, the student shall be subject to appropriate disciplinary action in accordance with the Student Code of Conduct.

To ensure that metal detector searches are conducted uniformly and equitably, school administrators shall:

1. Minimize inconvenience to students and interference with the educational process;

2. Maximize detection and determent value by regularly searching significant numbers of students;

3. Ensure that patterns are not established that would allow students to avoid searches by predicting the time and location of a search; and

4. Avoid the appearance that a particular student or group of students is either being favored or targeted by adopting schemes, well in advance of the search, that leave the operator of the metal detector an absolute minimum of discretion.

GPISD Board Policy FNF (LOCAL)

Current Practice

GPISD contracted with Interquest Detection Canines to provide 45 full day visits for the contract period of August 2007 through June 2008. The visits include random searches for alcohol, firearms, and prescription drugs. Interquest staff consists of two trainers and two dogs.

Interquest comes to the GPISD Education Center to pick up assignments from the secretary of the GPISD Student Affairs Office at the beginning of the month. A search day consists of one high school, two middle schools, or 1 middle school and either Lamar AEP or Boze Learning Center. The ninth grade centers are searched separately.

The secretary directs Interquest as to which campuses to visit. She keeps a calendar to track which schools have been searched and tries to keep them in random order. Once Interquest is given their assignment for the day, the secretary notifies the campus administrator the day of the search.

Each secondary school has a walk-through metal detector and metal wands. Interviews were conducted by the GPISD Legal Counsel's Office of administrators on all secondary campuses as to how each campus conducted searches and seizures using metal detectors and trained dogs. The following questions were asked of an administrator at each secondary campus:

1) When are metal detectors used on your campus?
2) Who is the designated person on your campus to assist Interquest with the searches? How many administrators are involved in assisting with the search?
3) Does Interquest first report to the main office? If so, how are you alerted or contacted of their visit?
4) Who selects the classrooms to be searched? Are they on a random basis?
5) How many classrooms are searched during one visit?
6) Is the SRO involved in assisting the administrator/s? If so, how is the SRO involved?
7) Who (if anyone) stays in the classroom with the staff of Interquest and the training dogs during the search?
8) Besides the teacher, who remains outside of the classroom with the students in the hallway?
9) Are the students asked to empty out their pockets so that their contents can be searched as well?

10) What is the process that takes place if the trained dog is alerting to something inside the classroom?

11) What is the process that takes place if the trained dog is alerting to something outside of the classroom/inside a locker/vehicle?

Again, an administrator from each school was interviewed using the stated questions.

GRAND PRAIRIE HIGH SCHOOL

Mr. Mario Herrera, Assistant Principal at Grand Prairie High School (GPHS), was interviewed. Mr. Herrera said that metal detectors were used once every six weeks for prevention measures. At the time of the interview, GPHS was using the detector wands due to the large metal detector not working. Mr. Herrera and other administrators use the detector wands on students whose classrooms are picked randomly to be searched. Once class begins, an administrator enters the classroom and begins the search.

Unless absent, Mr. Herrera was the designated person GPHS who assists Interquest with student searches. He explained that Interquest reported to the main office upon arrival. He said that the administrator assisting Interquest randomly selects the classrooms to be searched. Between four and six classrooms are searched during a visit by Interquest.

Mr. Herrera stated that the School Resource Officer(s) (SRO) do not assist administration during the searches unless asked to do so. Mr. Herrera stays in the classroom with Interquest during the search, while the teacher

remains outside of the classroom with the students in the hallway. Students are not asked to empty out their pockets, but their bags, purses, and belongings are checked.

If the dog alerts to something inside the classroom, they identify the item the dog hits on. Mr. Herrera takes the item outside into the hallway and asks to whom the item belongs. He then brings that student into the classroom by himself or herself where the Interquest representative explains the process and asks to check the student's item. If the student complies, the item is searched. If it is an illegal item, then the SRO is called and a citation is usually issued.

The process for searching lockers is similar. Should the dog alert to a locker, Mr. Herrera identifies the student to whom the locker is assigned and then asks the student to come to their locker. The student is then asked for permission to check the locker. If an illegal item is found, the SRO is called.

SOUTH GRAND PRAIRIE HIGH SCHOOL

Mr. Robert Holt, Assistant Principal at South Grand Prairie High School (SGPHS), was interviewed. Mr. Holt said that metal detectors are used when the "drug dogs" are on campus. Normally, he and another administrator use the metal detectors on students waiting outside the classroom being searched by the drug dogs. He said that he has not used metal detectors this school year, however, because the metal detectors have dead batteries.

Mr. Holt is the designated person to assist Interquest with student searches. Normally, Mr. Holt is accompanied by one additional administrator, a

security guard, and a SRO. He said the SRO is present in case drugs are found during the search. The SRO also keeps an eye on the students at the end of the line while the search is being conducted and he shares valuable information pertaining to the advantages of keeping our school drug free. If contraband is found, the evidence is confiscated and a citation is written by the SRO.

Upon arrival to the campus, Interquest first reports to the main office. The front office then contacts Mr. Holt by radio. Then, Mr. Holt randomly selects the rooms to be searched, which usually number four to six during a visit. The other Administrator or security guard stays in the classroom with the staff of Interquest and the trained dogs during the search. Besides the teacher, the SRO, security guard, Mr. Holt, or the other administrator remains outside of the classroom with the students in the hallway. While in the hallway, the students are required to empty out their pockets so that the contents can be searched as well.

If the dog alerts to something inside the classroom, an administrator is called into the room if one is not already in there. The administrator is notified as to what the dog was alerted to. The student is then asked permission to search his/her belongings. The matter is discussed with the student in private. It the dog alerts to something outside of the classroom, Mr. Holt identifies to whom the locker or vehicle belongs, calls the student down, and then asks for the student's permission to search the locker or vehicle.

GRAND PRAIRIE NINTH GRADE CENTER

Mr. Nassef Kourey, Assistant Principal at GP 9th Grade Center, was interviewed. He said that he had not used the metal detector wand at that point since they were informed of grey area in using them and probable cause is recommended. He said that each administrator on campus has a metal detector wand. They do use the big metal detector once a month. The metal detector was used during the day and classrooms are picked on a random basis. The SRO is involved in assisting the administrators with the use of the walk through metal detector.

Mr. Kourey is the designated person called upon when Interquest makes a visit. Mr. Kourey and another administrator, usually Mr. Christopher Jones, Assistant Principal at GP 9th Grade Center, both randomly pick the areas to be searched. Interquest first reports to the main office and then the campus secretary informs Mr. Kourey of their visit.

Both Mr. Kourey and Mr. Jones escort Interquest staff and dogs to classrooms to be searched. Mr. Kourey enters the classroom and announces for students to leave all their belongings at their desk and to line up outside of the classroom with the teacher. Between four and five classrooms are searched. The SRO, teacher, and an administrator wait outside the classroom with the students. Mr. Kourey remains inside the classroom to oversee the search. Mr. Kourey said that students are not asked to empty out their pockets so that their contents can be searched.

If the dog alerts to something inside the classroom, Mr. Kourey said he asks the students to whom the item belongs and that student is then escorted to another part of the building. The student's belongings are then searched. Anything found that the student is not supposed to have is turned over to the SRO officer and the student is sent to the office. The same process is used for items outside the classroom, such as a locker or car.

Once the search is complete, the students are asked to return to the classroom and the dogs are taken to sniff around the lockers in the hallway. Mr. Kourey made it very clear that no students are in the hallway while the trained dogs are sniffing lockers.

SOUTH GRAND PRAIRIE NINTH GRADE CENTER

Mr. John Young, Assistant Principal at SGP 9th Grade Center was interviewed. Metal detectors are used at SGP 9th Grade Center on a monthly basis. Both metal detectors are used during searches, the walk-through and the wands. Mr. Young said that all three assistant principals and the SRO are present during searches. If the SRO officer is available, he/she will wait outside the hallway with the teacher. The SRO also assists in the metal detector wand search. According to Mr. Young, no weapons had been found that year.

Upon arrival, Interquest first reports to the campus office, and Mr. Young is then notified of their visit by either the campus secretary or office aide. Mr. Young is the designated person called upon when Interquest makes a visit. Ms.

Apryl Baylor, another Assistant Principal at South GP 9th Grade Center, is also called to assist in the search.

Mr. Young said that he and Ms. Baylor “randomly” select the classrooms to be searched. He said they try to remember the last area that was searched and randomly pick other classrooms to search again. He said they do not specifically target a certain classroom.

Once an area is chosen, he or Ms. Baylor takes Interquest to the hallway of the classroom. Mr. Young will enter the room and excuse everyone from the classroom. While excusing students from the classroom, he requests students to leave purses and backpacks on their desk and are directed to line up outside of the classroom. All the girls line up one side of the hallway and the boys on the other. Mr. Young said a total of six or seven classrooms are checked during one visit. The search is completed within one class period.

Mr. Young remains in the classroom with the Interquest staff and dogs. The dogs search the backpacks and purses. Before allowing the students back into the classroom, the SRO and/or administrator asks students to empty their pockets out and hold the contents in their hands. The SRO and administrator will then go through the contents. Then, the students are asked to reenter the classroom and the dogs are then directed to sniff around the lockers right outside of the classroom.

Should a dog alert to something inside the classroom, the administrator reviews what the dog is alerting to. The student that owns the item is then directed inside the classroom to confirm ownership. The backpack/purse is searched by the dog's handler. If contraband is found, the item is turned over to the SRO and the student is sent to the office. If contraband is found among the contents of the items being searched in the students' hands, the student is taken out of the line, and the contraband is turned over to the SRO. The student is then escorted to the office.

BOZE LEARNING CENTER

Ms. Jan Heimann, Principal at Boze Learning Center, was interviewed. Ms. Heimann said that metal detectors are normally used one time out of the school year. She said that she has 130 kids and only one administrator (her). She only has a metal detector wand to use. The only reason she uses the metal detector is to conduct a random search for weapons and/or drugs. At the time of the interview, she had not used the metal detector.

Ms. Heimann said that she is notified via email from Dr. Vern Alexander when Interquest is headed to Boze. Upon arrival, Interquest checks in with the main office. Due to the size of Boze, all ten classrooms are searched. The SRO normally does not assist with the search. The principal or counselor at Boze remains in the classroom with the Interquest staff and dogs during the search. Only the teacher remains outside the classroom with the students, and the students are not asked to empty their pockets.

If the trained dog alerts to something inside the classroom, the student is called into the classroom and asked if he/she owns that article. The Interquest representative tells the student that the dog has recognized or been alerted, and that there could be something inside the article. Then, the Interquest representative asks the student for permission to search the article. She said that Interquest always gives examples of what the dogs are alerted to, from fireworks to drugs.

LAMAR DISCIPLINARY ALTERNATIVE EDUCATION PROGRAM

Mr. Kerry Rapier, Principal at Lamar AEP, and Mr. Jerod Preston, P.E./Health Teacher, were interviewed. Mr. Rapier explained that every morning they use the walk through metal detector, and the wand is used if a student sets off the walk through detector. No weapons or any type of contraband had been found. He reported that the majority of time cell phones set off the metal detector.

Mr. Antonio Williamson, Assistant Principal, is the designated person to assist Interquest with student searches. Mr. Preston confirmed that Interquest first reports to the main office and then he is made aware of their visit. Mr. Preston stated that because there are only 14 classrooms at Lamar, all fourteen classrooms are searched during each visit. The SRO does not assist with the student searches.

Mr. Preston stated that he escorts Interquest to each classroom and instructs the students to vacate the room. Before vacating the room, students

are required to empty out their pockets and leave all their belongings on their desk. Outside the classroom, students line up in the hallway. Mr. Preston stated that he waits at the doorway to keep out of the way of Interquest while still overseeing the search. No one else remains in the hallway with the students.

If a dog alerts to something in the classroom, the owner of the item is found and the SRO officer is called into the classroom. The dog handler will go through the item attempting to locate to what the dog was alerting. If contraband is found, the item is turned over to the SRO, and the student is then taken to the office.

Once the search is complete, the students are asked to return to the classroom and the dogs are taken to sniff around the hallways. Although Lamar AEP has no lockers, it has hooks for students to hang their jackets and personal belongings. The dogs are allowed to sniff around the coats/jackets hanging on the hooks in the hallway.

ADAMS MIDDLE SCHOOL

Ms. Sandra Davila, Assistant Principal at Adams Middle School, was interviewed. She reported that metal detectors are used only if a tip is given or on suspicion. At the time of the interview, Ms. Davila had conducted one student search. In that instance, Ms. Davila said she was given a “tip” by another student. The student was asked to come to her office, the SRO was called in, and the SRO asked the student to empty his/her pocket contents on a desk. Marijuana was found on the student. The SRO arrested the student and the

student's parent was notified. She went and searched the student's locker where she found a pipe. She then called the SRO from Lee Middle School who later picked up the paraphernalia and delivered it to the Police Station.

Ms. Davila is the designated person to assist Interquest with student searches. Upon arrival to the campus, Interquest first reports to the main office and Ms. Davila is contacted to meet them there. Ms. Davila said Mr. Harrison does not allow classrooms or students to be searched. The dogs only search lockers.

Should a dog alert to a locker, an administrator and the SRO are informed of possible drugs inside the locker. The student assigned that particular locker is identified, the locker is searched, and the SRO escorts the student to an administrator's office where the student is asked to empty his/her pockets on the desk. If contraband is found, the SRO either issues a citation or arrests the student. If the student is arrested, an administrator contacts the student's parent immediately.

ARNOLD MIDDLE SCHOOL

Mr. Gerald Muhammad, Assistant Principal at Arnold Middle School, was interviewed. Mr. Muhammad stated that the principal determines when metal detectors are used. Arnold Middle School has both the wand and the walk through detectors. At the time of the interview, neither had been used. In the past, the principal used the metal detectors twice during a school year and would do it on a random basis.

Mr. Muhammad is the designated person on campus to assist Interquest with the searches. Mr. Muhammad said that one administrator usually assists with the search. If there is more than one dog, however, an administrator is assigned to each dog.

Upon arrival, Interquest reports first to the main office. The school receptionist or secretary contacts administrators. Classrooms are selected on a random basis by the Interquest staff. According to Mr. Muhammad, the number of classes searched per visit was determined by the activities on campus. The SRO assists during the searches and often accompanies Interquest during the search. The SRO is contacted by one of the administrators upon Interquest's arrival.

When a classroom is searched, all students and staff members exit the class. Only Interquest and the assigned administrator remain in the classroom. The teacher monitors the class as they are lined in the hallway during the search.

Mr. Muhammad claimed that neither students nor the contents on them are searched by the dogs. The dogs are not allowed to sniff/search the students. Should the dog alert to something in the classroom, the administrator takes possession of the item and conducts a visual search. The same process applies to locker searches.

JACKSON MIDDLE SCHOOL

Mr. Michael Brinkley, Principal at Jackson Middle School, was interviewed. Jackson Middle School uses both detectors–the wand and the walk through. At

the time of the interview, the walk through had been used once at a school dance. The wand is only used if a student sets off the walk through.

One of the assistant principals assists Interquest in the search. If they are not available, then Mr. Brinkley assists in the search. Only one administrator is involved in the search. Mr. Brinkley reported that Interquest always reports to the office first. Mr. Brinkley is usually notified by e-mail a few hours before Interquest arrives.

Classrooms are not usually searched at Jackson, but the administrator occasionally selects a class to be searched. If classrooms are searched, then only two or three are to be done. When conducting a classroom search, the teacher usually asks all of the students to come out of the room while the administrator remains in the classroom with the Interquest staff. The SRO is not involved in searches. Students are not asked to empty their pockets.

If the dog alerts to something inside the classroom, the student to whom the item belongs is identified. Then, the student and the item are taken to an administrator's office. The SRO is called to witness the search. The student is asked if the item could be searched. If the student consents, the item is searched. If nothing is found, the student is allowed to go back to class. If contraband is found, the SRO is then involved. In either event, the student's parents are notified of the search.

When the dog alerts to a locker, it is not searched until the student is located and brought to the locker. If there is a lock on the locker, the student is

asked if that is his/her lock. If the student says yes, then he/she is asked if anyone else has access to the lock and to the locker. If the student says yes, then the other student will be brought down to the locker as well. If the student says no, then the student is asked if there is anything in the locker that should not be there. If the student says yes, then he/she is questioned about the item in the locker that should not be there. If the student says no, then the student is asked if the locker may be searched.

If the student says the locker may be searched, then he/she is asked to remove the lock and step back away from the locker. If the student says no, then he/she is questioned again about any item that should not be in the locker. If the student provides no additional information, then the student is informed that because the locker is school district property, it can be searched at any time by the administration. The student is asked to remove the lock and step away from the locker while an administrator conducts a search.

If the locker does not have a lock on the locker, the student is asked if anyone else uses the locker. If the student says yes, then that student is brought to the locker to participate in the search. If the student says no, then the student is asked if the locker may be searched. The process continues as recited above.

If contraband is found during a search, the student is questioned further about ownership of the item. The SRO is involved in the questioning and is usually done in the administrator's office. If nothing is found, the student is sent back to class. In either case the parent is notified. Mr. Brinkley stated that

discovery of an illegal substance or item in a locked locker is handled differently than the discovery of an illegal substance in an unlocked locker.

KENNEDY MIDDLE SCHOOL

Ms. Mary Smith, Assistant Principal at Kennedy Middle School, was interviewed. At the time of the interview, metal detector wands had been used eight times. The wands are usually used on a random basis. Mr. Paul Smith, another Assistant Principal, keeps a schedule of classes searched and time frame of each search. The classes searched are elective classrooms. The metal detectors are used every week and between four and five classes are searched randomly.

Paul Smith is the designated person on campus to assist Interquest with the searches and he is the only administrator involved in assisting with searches. Mr. Smith is notified by the campus secretary upon Interquest's arrival. The code is "you have visitors."

With the exception of gyms, classrooms with students present are not searched. Gym locker rooms are searched as long as students are not present. All common areas, lockers, and inside and outside perimeters are searched. Approximately two or three unoccupied elective classrooms are searched per visit. Mr. Smith stays in the classroom with the Interquest staff during searches. The SRO is not involved unless there is a known or suspected issue.

Should the dog alert to something inside the classroom, the dog and handler is withdrawn. The SRO is notified. The administrator determines whose

possessions alerted the dog. The student is brought in to verify ownership. The student and the student's belongings are taken to the discipline office where a thorough search is conducted.

If the dog alerts to a locker, the administrator determines who is assigned the locker and notifies the SRO. The administrator questions the student and then searches the locker.

LEE MIDDLE SCHOOL

Ms. Chandreia Owens, Assistant Principal at Lee Middle School, was interviewed. A walk through metal detector is used twice a year at Lee Middle School. It is also used at school dances in the main entrance as students are walking into the building. Because fights between students often occur during the last week of school, the metal detector is used throughout the last week of school to search students for weapons. The metal detector is set up at one of the main entrances in the mornings.

Upon arrival to the campus, Interquest checks in with the school secretary. The secretary then notifies an administrator. If there is a suspicion of drugs, the administrator selects the specific area to search. Otherwise, the administrator randomly selects the classrooms. The SRO is called only if something is found by the dogs.

An administrator stays in the classroom with the Interquest staff during the search. Besides the teacher, another administrator, paraprofessional, or teacher remains outside of the classroom with the students in the hallway. Students are

asked to empty their pockets onto a desk prior to leaving the classroom. If the dog alerts to something inside or outside the classroom, the SRO is contacted by the administrator.

REAGAN MIDDLE SCHOOL

Mr. Rich Laffey, Assistant Principal at Reagan Middle School, was interviewed. Metal detectors are used on a random basis at Reagan Middle School as determined by Mr. Laffey. At the time of the interview, the walk through metal detector was used at a school dance. No contraband was found.

An administrator always accompanies Interquest during the searches. The campus receives an email notification of Interquest's visit prior to arrival. Upon arrival, Interquest staff reports to the main office and signs in. An administrator randomly selects the classrooms to be searched. Usually, one classroom in each grade level hallway is searched. The SRO is not involved in the searches.

The administrator stays in the classroom with the Interquest staff during the search while the teacher remains outside of the classroom with the students in the hallway. Students are not required to empty out their pockets.

If the dog alerts to something inside the classroom, the student and belongings are taken to an empty, separate classroom. If the dog alerts to a locker, the administrator opens the locker and searches the contents.

TRUMAN MIDDLE SCHOOL

Mr. Robert Wallace, Assistant Principal at Truman Middle School, was interviewed. At Truman Middle School, both detectors–the walk through and the wand-are used. The walk through had been recently used at a school dance. The wand is used only if the walk through is triggered. Mr. Wallace said the walkthrough detector will be used in the future when the drug dogs visit the campus. He said the students of the classroom being searched by the dogs will be asked to walk through the metal detector.

Truman does not have a designated person to assist Interquest with searches. Upon arrival to the campus, Interquest comes to the main office. Presently, Interquest only searches lockers. If the dog alerts to a locker, an administrator searches the locker. Most of the time, the administrator has a student locker list with lock combinations. If the list does not reflect a combination, the administrator pulls the student from class to open the locker.

<u>Observations and Conclusions</u>

- School officials conducting searches do not follow uniform procedures detailed in district policy or regulation–because there is no policy or regulation describing *how* searches are to be conducted. Because no procedures exist, school staff must exercise their discretion wisely. Under law, the more discretion local school staff have in implementing the metal detector program, the more likely that intrusions on students' privacy interests will occur. Hence, because local staff have considerable

discretion, intrusions on students' privacy interests are likely occurring.

- GPISD policy does not address why such a policy is needed. It does not identify the importance of keeping weapons off campus and prior incidents, if any.
- Searches are not carried out uniformly in the GPISD schools where there is a need.
- No particular need has been established at any GPISD campus.
- Not all students are searched, which means schools conducting searches should establish a reliable method to ensure that students are truly randomly selected for a search and are not arbitrarily or unfairly targeted. No such identifiable methods exist at any GPISD campus.
- Once students are selected for search, they should be given the opportunity to remove metal objects from their pockets and bags, so as to minimize the number of students who activate the metal detector and are consequently subject to a pat-down or manual bag search. GPISD students are required to remove all items from their pockets, including non-metal items.
- In conducting random weapons searches with wands rather than walk-through metal detectors, GPISD school officials search both male and female students indiscriminately. Male school officials should search male students and female school officials should search female students.

In sum, the Fourth Amendment rights of GPISD students are being trampled

regularly, because administrators lack the legal expertise to follow the guidance articulated in the myriad court opinions construing the Constitution.

CHAPTER 3

Construction

This case study involves observations from a construction issue typically facing mid-sized urban school districts. Grand Prairie ISD entered into an agreement to construct a new elementary school. Construction was deficient and late. A controversy arose involving both contract interpretation and application of common law. At the time of contract formation, and throughout much of the subsequent dispute between GPISD and the General Contractor, GPISD did not have the advice or services of in-house counsel. In addition, outside counsel was not timely retained through most of the construction of the facility aside from reviewing the initial construction contract documents. This case study analyzes the potential value to GPISD had in-house counsel been involved from the beginning.

The construction contract for the new Camp Wisdom Elementary, which would later become known as Moseley Elementary, was signed on March 9, 2006, naming Hisaw Construction Company as the General Contractor (GC). The contract established June 1, 2007 as the date of Substantial Completion. Substantial Completion is the point in the construction when the building, or some designated portion of it, is sufficiently complete in accordance with the contract documents, so the building owner can occupy or use the facility for its

intended use. The Final Completion date deadline is thirty days after the designated or extended date of Substantial Completion. Construction began soon after contract formation. At this point, in-house counsel had not been involved.

Behind Schedule

Approximately ten months into construction, on January 8, 2007, the GC called a meeting to request that the date of Substantial Completion be pushed back to June 27, 2007. GPISD rejected the request in writing on January 18, 2007, citing numerous performance issues and/or deficiencies that could be corrected without the need for postponing Substantial Completion. Among the correctable performance issues cited by GPISD administrators were short workdays (ending at 3:30 p.m.) and some subcontractors were not accomplishing an equivalent amount of work.

The Owner's Field Observation Report indicated that although one of the subcontractors had two men on site for approximately three weeks, the men were routinely observed sitting in their trailer throughout the day. The Architect's Field Observation Report stated:

> [I]t appears that the job is basically shut down around 3:30 p.m. It's unfortunate that the contractor is not taking advantage of this good weather and continuing with the steel erection and the exterior wall erection while he has daylight considering the upcoming bad weather. Hisaw advised us that they would be working overtime to expedite the project.

GPISD administrators demanded that the GC increase its work hours and workweeks to include Saturdays, and it asked the GC to obtain performance

improvement from the subcontractors. GPISD administrators also asserted that minutes of the weekly project meetings reflected that it had been stating these and other concerns to the GC for some time, so the GC had notice of the problems. GPISD administrators remained firm on the original date of Substantial Completion. GPISD administrators did not have the legal wherewithal to leverage their position with the GC based on the contract's liquidated damages provision. Their only source of expert advice, including legal interpretation of the construction contract documents, was the architect. As a result, GPISD's bold insistence on keeping the contract date, without supporting legal analysis could have appeared arbitrary and unjustified.

The GC responded via letter on January 24, 2007, disputing GPISD's conclusions of deficient performance and protesting GPISD's refusal to accommodate the requested changes in schedule. It claimed that certain conditions beyond its control necessitated an extension of the date of Substantial Completion. It also claimed that it had met with many of the subcontractors and obtained their acceptance of an accelerated schedule. It stated that it was implementing new ways of working various subcontractors in new starting locations in order to expedite the overall work and completion of work. The GC also asserted that it had been impacted by substantial inclement weather days that affected the work. The GC concluded by assuring GPISD that it would meet with key subcontractors to ensure they had proper manpower available and that

it would continue to maintain its level of quality and convey this message to all subcontractors working on the project.

Numerous meetings and disagreements subsequently continued between GPISD administrators and the GC. During this time, the GC requested that the date of Substantial Completion be pushed back to July 10, 2007, which was rejected by GPISD. At this point, GPISD administrators still had not sought the advice of legal counsel.

Finally, when the date of Substantial Completion arrived, the project was not close to Substantial Completion. Consequently, the architect notified the GC via letter dated June 13, 2007, that the GC was in breach of contract for failure to achieve Substantial Completion by June 1, 2007. The architect further stated:

> Pursuant to Article 3.3.1 of the Contract, the failure to achieve Substantial Completion is a breach of contract. Pursuant to Article 3.4 of the Contract, that breach results in Grand Prairie ISD deducting liquidated damages in the amount of $1,000 per day for each day beyond the agreed date of Substantial Completion. In addition, as provided in Section 2.4 of the Supplementary Conditions, should Hisaw fail to prosecute the remaining work with promptness, the Owner may carry out the work with only one day notice to Hisaw.

Reaching an Impasse

The GC responded via letter dated June 14, 2007, asserting that GPISD failed to clearly state a consistent position with respect to performance issues and completion deadlines. Specifically, the GC said that the architect's letter was "arbitrary, capricious, and unacceptable." It claimed that the letter was also a "momentum killer" at a critical stage of the project. The GC maintained

that the July date was reasonable, that it had communicated the conditions necessitating the extension multiple times at various meetings, and that at no time prior to the letter had anything ever been "mentioned about the 7/10/07 date not being acceptable" or that liquidated damages would be assessed. It further claimed that had it known the July 10, 2007, Substantial Completion date was unacceptable to GPISD, "then Hisaw would have taken steps to ensure that the 6/1/07 date was achieved." Finally, the GC requested that the architect's letter be rescinded and revoked by Friday, June 15, 2007.

GPISD's position and contract interpretation was not subject to legal scrutiny. Rather, the architect alone determined that its letter communicating GPISD's position was appropriate. As a result, the architect did not rescind or revoke its letter.

A meeting was held on June 28, 2007, between the GC and the GPISD administrators to resolve the conflicts. Once again, the conflicts were not resolved. And once again, the advice of counsel had not been sought.

On July 5, 2007, the GC submitted a 136-page claim of entitlements, which would justify modification of the Substantial Completion date. The GC based its claim for additional time on two reasons. First, the GC claimed that the GPISD architect arbitrarily rejected multiple mechanical subcontractors proposed by the GC. The GC claimed that all of the proposed subcontractors were demonstrated to be reasonably capable of performing the work. Second, the GC claimed the default of an approved mechanical subcontractor that went

out of business after executing an agreement to perform the mechanical work on the project warrants additional time. GPISD administrators did not grant the GC's claim for additional time still having not sought the advice of legal counsel.

Work continued at a snail's pace. Workers did not show up to the job site. When they did show up, only a handful could be found. As the first day of school drew closer, more and more workers should have been seen on the work site. Instead, fewer and fewer workers showed up.

Enough is Enough

At this point, the GPISD superintendent determined that the situation with the GC would not improve without the intervening representation of legal counsel. GPISD in-house counsel reviewed the district's legal position and the history of the dispute with the GC. He concluded that GPISD had not consistently and firmly communicated its position to the GC. He also concluded that there were legal tactics available to GPISD that had not been employed during the ongoing dispute. In-house counsel also determined that GPISD administrators' decision-making had been clouded by a combination of legal ignorance and hubris.

GPISD in-house counsel implemented a plan to end the dispute based upon GPISD's legal rights and weaknesses—preferably leading to a mutually agreeable resolution without incurring significant, perhaps even six-figure, legal expenses. To start, and over the objections of GPISD administrators, in-house

counsel directed administrators to make no more payments to the GC, and to inform the GC that liquidated damages would be assessed.

On August 27, 2007, some eighty-four days beyond the contract schedule, the architect reported that Substantial Completion was achieved. In-house counsel informed GPISD administrators that under the terms of the contract GPISD may be entitled to liquidated damages from the GC. In-house counsel explained that the contract provides for two different measures of liquidated damages: (1) $1000 per day for each day beyond Substantial Completion, and (2) $2000 per day for each day beyond final completion. In other words, though Substantial Completion had been achieved, GPISD still retained the contract leverage to force the GC to achieve final completion within 30 days after Substantial Completion or face double liquidated damages.

After Substantial Completion, GPISD administrators suggested to in-house counsel that GPISD's strong-arm tactics be relaxed, i.e. pay the GC's pay applications. In-house counsel had investigated the work that ostensibly supported the architect's conclusion that the facility was substantially complete. The in-house counsel's investigation revealed that the "substantially completed" facility had significant non-conforming work. For instance, concrete on drives and parking lots was too thin and required removal and replacement. Structural concrete slab work had misplaced reinforcing bars, requiring extensive testing, structural analysis, and repairs.

At that point, the architect provided in-house counsel with an estimate that the project had over half a million dollars worth of either non-conforming or incomplete work. In-house counsel determined that the sentiments of the GPISD administrators to pay the GC were premature and unwise. In-house counsel determined that GPISD's firm stance should be maintained until the facility was completed and non-conforming work was corrected. In-house counsel realized that the combination of a GC not being paid for over three months and the value of $500,000 in losses to a school district would likely lead to litigation. As a result, in-house counsel retained the services of outside counsel to begin preparation of its litigation strategy.

The GC again requested that GPISD amend the contract's Substantial Completion dates based on seven areas of delay:

1. The GC claims its receipt of the building permit was delayed. Counsel found that the building permit was issued by the City of Grand Prairie after the school board voted to approve the contract, and the GC could have secured any requisite permits to begin work immediately.
2. The GC claimed a delay caused by the selection process related to the geothermal piping and drilling subcontractors. Counsel found that a list of approved drilling contractors was provided in the specifications and had the GC submitted one of them, the contractor could have started the drilling operations more timely.

3. The GC claimed a delay in the response time related to remedial repairs to the building slab. Counsel found that the delay was of the GC's own making. Had the structural concrete slab been constructed as detailed and specified in the contract documents, no delay would have occurred.
4. The GC claimed delay caused by inclement weather, including disputing the architect's method for computing lost days. Counsel concluded that the method of computing lost days was specified in the contract documents, and GPISD was owed a credit balance of weather days as agreed by the GC.
5. The GC claimed delay caused by incorrect elevations shown on the contract documents for site paving. Counsel found that although a revised site plan was issued with some grade changes, the GC took four months to respond after the revised site plan was issued.
6. The GC claimed delay caused by inclement weather as it applied to GPISD's ability to obtain a permanent Certificate of Occupancy (CO) for the building. Counsel determined that the City of Grand Prairie's final inspections of the facility were obtained August 24, 2007, which was approximately seven weeks late. The weather in June had no impact on the CO as it occurred after the contract date of substantial completion.
7. Finally, the GC claimed delay caused by excessive time required for the architect to prepare, distribute, receive, and finalize the signage package for the project. Counsel found that the signage package had no impact

on obtaining a permanent or temporary CO for the building. Moreover, even if required, signs can be purchased at any local hardware store.

Lawyered Up

In September, GPISD counsel was contacted by the GC's attorney. He requested a meeting with GPISD counsel in an effort to resolve the dispute. GPISD counsel met with the GC's counsel on September 26, 2007. During the meeting, GPISD counsel explained its concerns about the critical need for the GC to complete the construction project on time, and GPISD's many efforts to address its concerns about the project delay, lack of adequate workforce, and the tone of communications with the GC's management. GPISD counsel explained that completing the project was critically important, especially since it was almost four months past the contract substantial completion date. The GC's attorney claimed to understand the district's situation and committed to encouraging the GC to complete the project as quickly as possible. GPISD counsel explained that although it had no intention of being unreasonable, it had to retain the right to exercise all of its contract rights.

The GC's attorney represented to GPISD counsel that ample money was left in the project to complete the work, even if liquidated damages were assessed. Because the GC needed money to pay its subcontractors, both sides agreed to withhold liquidated damages from the Final Payment rather than from the July Application for Payment. Without waiving its contractual right to withhold liquidated damages, GPISD counsel agreed to pay the GC

$92,000 previously withheld as June and July liquidated damages from the July Application for Payment.

On October 5, 2007, the GC's attorney complained that GPISD had failed to pay the August Application for Payment and requested that it pay immediately. GPISD counsel responded to the GC's claim via letter dated October 10, 2007, explaining to the GC's attorney that he had been misinformed about the facts. The August Application for Payment was received by GPISD on October 1, 2007, so the payment was not yet past due. The application, however, contained misrepresentations and/or inaccuracies in that the GC sought compensation for incomplete, incorrect, and non-conforming work. The district's counsel explained to the GC's attorney that it was working with the project's architect to confirm the actual amount of work completed in accordance with the plans and specifications, and that the GC would then be asked to submit a correct pay application.

Moreover, GPISD counsel notified the GC's counsel that he may have been misinformed, and may in turn have misinformed GPISD, regarding the consequences of delaying the assessment of liquidated damages until the Final Pay application. GPISD had discovered that the money remaining in the project might not be enough to get the work completed and still cover liquidated damages. As such, GPISD counsel refused to delay assessing all accumulated liquidated damages on the August Application for Payment, especially in light of the GC's lack of cooperation in completing the project.

GPISD counsel provided as an example of the GC's lack of cooperation and commitment to finishing the project that construction did not occur on Monday, October 8. The GC was informed that October 8 was a school holiday, so the GC could have had unlimited access to the building and grounds. Instead, on-site reports are that only a "handful" of workers showed up, and none worked all day.

GPISD counsel reiterated to the GC's attorney that the GC's completion schedule had already been exceeded with no updated schedule being provided. It explained that there were still open ditches, huge piles of debris, dead trees, no landscaping, no name on the school building, no address on the school building, moisture in the slab and VCT flooring problems, incomplete irrigation, and inappropriate fiber fill on the playground, among many other issues. Moreover, some of those issues created safety hazards for children.

Finally, GPISD counsel reminded the GC's attorney that he pledged the GC's full cooperation in getting the project completed and that the GC was not following through on his promise. GPISD counsel also reminded him that the dedication of the building was in two weeks and would include many local and national dignitaries, including the building's namesake, United States Air Force Chief of Staff, General T. Michael Moseley, who was taking time out of his very busy schedule to fly in for the event. Due to his national status, GPISD expected the media to be in full attendance. GPISD remained uncertain whether it would have a fully complete, beautiful building and grounds at the

dedication, or whether it would have to explain to the parents, media, and dignitaries why the school was not complete.

Far from Complete

As a result of the pressure applied by GPISD counsel, the GC had the facility presentable by the time of the dedication. Signage and landscaping were installed and no obvious blights ruined the ceremony. The architect issued a Certificate of Substantial Completion for the exterior of the facility on October 24, 2007, immediately prior to the dedication ceremony.

On October 30, 2007, under the direction of GPISD counsel, the architect issued a letter to the GC reminding the GC that the contract date for Substantial Completion had been June 1, 2007. The architect pointed out that the interior portions of the building were not substantially complete until August 24, 2007, even though GPISD did not authorize any extended days. Similarly, the exterior of the building did not achieve Substantial Completion until October 24, 2007, despite no authorized extended days. Finally, under the contract, Final Completion date was to have been within thirty days of the designated or extended date of Substantial Completion.

The architect reminded the GC that the interior work was still not finally complete, despite the fact that the project was far beyond both the contractual and the actual date of Substantial Completion. The architect demanded that the interior of the building be immediately brought to Final Completion, and also

demanded that the exterior of the building be brought to Final Completion within the contractually-required time.

The GC informed the architect that withheld payments affected the subcontractors completing their obligations, which had caused further delay in completion of the project. Under GPISD counsel's direction, the architect retorted that the delays in payment to the GC were due to incomplete information submitted by the GC with the Applications for Payment.

By mid-December, the GC had made virtually no additional progress on completion of the project. As a result, on December 19, 2007, GPISD counsel directed its architect to notify the GC that all work on the project, including all necessary construction and correction, must be complete by December 20, 2007. The architect notified the GC that on December 21, 2007, GPISD would take over the balance of the work and that all expenses incurred for the completion of the work by GPISD would be charged against the final payment to be made to the GC.

Naturally, the GC's attorney responded with a letter claiming that GPISD's decision to take over the balance of the work was unwarranted and constituted a breach of contract. The attorney reiterated that the GC could not get subcontractors to perform due to lack of payment, etc. GPISD counsel countered with the fact that the GC has had very few workers on the site for a long period of time and that those workers who did show up disrupted operations, attempted to cover-up defective or non-conforming work, or failed to

follow requests to ensure that work is done correctly or the correct equipment is installed. GPISD counsel asserted that it was the GC, not GPISD, which had breached the contract between the parties.

Litigation Ensues

The GC sued GPISD for breach of contract. GPISD implemented its already prepared defensive strategy. Outside counsel, with advice and consent of in-house counsel, counter-sued for breach of contract. GPISD also filed a claim on the GC's performance bond.

Although outside counsel would have benefited from protracted litigation, in-house counsel maintained pressure upon outside counsel to seek alternative resolution. Consequently, the parties settled their claims before trial.

New contractors were brought in to complete the unfinished work and correct the non-conforming work. GPISD was also able to withhold $100,000 in liquidated damages and approximately $27,000 for its attorney's fees out of its retainage. GPISD's attorney's fees were approximately one-fifth of the potential fees estimated by in-house counsel to try the case to verdict.

Observations and Conclusions

- GPISD administrators lacked the expertise to interpret the contract documents, including the understanding of GPISD's legal rights throughout much of the early phase of the dispute. As a result, GPISD lacked a cohesive, responsive strategy to deal with a recalcitrant, financially struggling contractor. The disputations over conforming work

and completion deadlines lingered for months before in-house counsel intervened. During this time, as the struggle over payments continued, the GC became more belligerent, and the quality of work deteriorated. The response from GPISD administrators was merely the rejection for requests for extensions and the broadly stated demand for a completed facility. Not until in-house counsel threatened to assess stiff liquidated damages and, most importantly, ceased all payments to the GC until completion deadlines were honored and the quality of work improved, did the GC make progress on the facility. Within a couple of weeks of in-house counsel's aggressive position, the facility achieved Substantial Completion.

- Approximately ten months of bickering led to a legal standoff where only outside attorneys benefited. Had in-house counsel been consulted early in the dispute before positions hardened and relationships were irreparably damaged, the facility would have likely been complete long before school started, and long before subcontractors went unpaid. Moreover, thousands of dollars in attorney's fees would not have been unnecessarily expended.

CHAPTER 4

Personnel Practices

This case study involves observations from a contract employee issue typically facing mid-sized urban school districts. Grand Prairie ISD investigated claims made against a contract employee and concluded that the employee was a threat to student safety and should no longer be employed. From the very first allegation to resolution of the matter, GPISD was advised by in-house counsel. This case study analyzes the added-value to GPISD by having in-house counsel advise GPISD human resources personnel from the beginning.

The case involves a nurse who was investigated multiple times based on allegations of varying misconduct; including alleged sexual harassment, and alleged student safety and health violations. During the investigations, the nurse deployed a defensive strategy whereby he filed an EEO claim of racial discrimination to manufacture a retaliation claim should GPISD take adverse employment action.

Sexual Harassment

On August 24, 2007, a report was made to the GPISD Human Resources Department alleging harassment by the Rayburn Elementary nurse. Pursuant to GPISD Board Policy DIA (LEGAL), harassment on the basis of a protected characteristic is a violation of the federal anti-discrimination laws. GPISD has an

affirmative duty, under Title VII, to maintain a working environment free of harassment on the basis of sex, race, color, religion, and national origin. *42 U.S.C. 2000e, et seq.; 29 CFR 1606.8(a), 1604.11*. Harassment violates Title VII if it is sufficiently severe and/or pervasive to alter the conditions of employment. *Pennsylvania State Police v. Suders, 542 U.S. 129 (2004).*

Title VII, however, does not prohibit all verbal and physical harassment in the workplace. For example, harassment between men and women is not automatically unlawful sexual harassment merely because the words used have sexual content or connotations. *Oncale v. Sundowner Offshore Services, Inc., 523 U.S. 75 (1998).* Generally, conduct based on a person's sex, race, color, religion, or national origin constitutes unlawful harassment when the conduct:

> 1. Has the purpose or effect of creating an intimidating, hostile, or offensive working environment;
>
> 2. Has the purpose or effect of unreasonably interfering with an individual's work performance; or
>
> 3. Otherwise adversely affects an individual's employment opportunities.
>
> GPISD Board Policy DIA (LEGAL); *Pennsylvania State Police v. Suders, 542 U.S. 129 (2004); Nat'l Railroad Passenger Corp. v. Morgan, 536 U.S. 101 (2002); Meritor Savings Bank v. Vinson, 477 U.S. 57 (1986); 29 CFR 1604.11, 1606.8*.

Conduct of a sexual nature also constitutes harassment when:

> 1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; or
>
> 2. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting the individual.

29 CFR 1604.11(a).

> Moreover, a hostile work environment occurs when the conduct is so severe, persistent, or pervasive that it has the purpose or effect of unreasonably interfering with the employee's work performance or creates an intimidating, threatening, hostile, or offensive work environment.

GPISD Board Policy DIA (LOCAL).

GPISD Board Policy DIA (LOCAL) provides examples of sexual harassment, which include, but are not limited to, sexual advances; touching intimate body parts; coercing or forcing a sexual act on another; jokes or conversations of a sexual nature; and other sexually motivated conduct, communication, or contact.

Under law, GPISD has a duty to take steps necessary to prevent sexual harassment from occurring, such as affirmatively raising the subject, expressing strong disapproval, developing appropriate penalties, informing employees of their right to raise and how to raise the issue of harassment under Title VII, and developing methods to sensitize all concerned. *29 CFR 1604.11(f)*. GPISD is responsible for acts of unlawful harassment by fellow employees and by nonemployees if it, its agents, or its supervisory employees knew or should have known of the conduct, unless GPISD takes immediate and appropriate corrective action. *29 CFR 1604.11(d), (e), 1606.8(d), (e).*

When no tangible employment action is taken, GPISD may assert the following affirmative defense:

> 1. That the District exercised reasonable care to prevent and promptly correct any harassing behavior; and

> 2. That the employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise.
>
> *Burlington Industries, Inc. v. Ellerth, 524 U.S. 742 (1998); Faragher v. City of Boca Raton, 524 U.S. 775, (1998).*

An employee who believes that he or she has experienced sexual harassment is directed to immediately report the alleged acts to an appropriate administrator. GPISD Board Policy DIA (LOCAL). Any GPISD employee with supervisory authority who receives notice that another employee has or may have experienced sexual harassment is required to immediately report it and take whatever other steps are required by Policy DIA (LOCAL). Any other person who knows or believes that a GPISD employee has experienced harassment should immediately report the alleged acts to an appropriate administrator. Policy DIA (LOCAL).

> Upon receipt or notification of a report, the District official shall determine whether the allegations, if proven, would constitute sexual harassment or other prohibited harassment as defined by District policy. If so, the district official shall immediately authorize or undertake an investigation. . . . If appropriate, the District shall promptly take interim action to prevent harassment during the course of the investigation.
>
> GPISD Board Policy DIA (LOCAL).

Moreover, a "term contract employee may be suspended with pay or placed on administrative leave by the Superintendent during an investigation of alleged misconduct by the employee or at any time the Superintendent determines that the District's best interest will be served by the suspension or administrative leave." Policy DFBA (LOCAL).

In-house counsel reviewed the situation and then instructed the Executive Director of Personnel to immediately place the nurse on administrative leave with pay while the district investigated the allegation. In-house counsel also provided the blueprint for the investigation, e.g. who to interview, questions to ask, etc. The nurse was placed on administrative leave with pay pending the outcome of the district's investigation.

On August 29, 2007, the Assistant Superintendent of Human Resources and the Executive Director of Personnel met with the nurse to give him an opportunity to respond to the allegations made against him regarding alleged harassment.

Approximately one month later, in-house counsel reviewed the evidence from the investigation and concluded that insufficient evidence existed to substantiate the claim of sexual harassment. In-house counsel then advised the Assistant Superintendent of Human Resources how to complete the investigation and what needed to be communicated to the nurse.

The nurse was removed from administrative leave with pay effective Friday, September 28, 2007, and he reported to the campus assignment as assigned by the Health Services Coordinator. Due to professional concerns identified during the investigation, however, the nurse was placed on a professional growth plan and assigned a different elementary campus.

On September 28, 2007, the nurse returned to work from administrative leave and was assigned to Eisenhower Elementary. He asked for another

assignment on the south end of town because he did not think he could arrive to work on time after dropping off his children. The nurse was informed that the assignment would remain the same and that he was expected to be at work on time.

Discrimination

On September 13, 2007, the GPISD Human Resources office received correspondence from the Equal Employment Opportunity Commission (EEOC), stating that the nurse had filed an allegation of discrimination against GPISD.

On September 14, 2007, GPISD received a letter from the nurse's attorney claiming racial and sexual discrimination due to his transfer request being denied.

The nurse's claim of discrimination was predicated on the theory of disparate treatment because, the nurse alleged, GPISD approved a transfer of a white female nurse on March 27, 2007. The nurse alleged that GPISD treated white female employees more favorably than black male employees.

In-house counsel opened an investigation into these allegations. In-house counsel reviewed GPISD Board Policy DK (LOCAL): TEACHER / EMPLOYEE REQUEST FOR TRANSFER, which states:

> The fundamental reason for transfer of a teacher from one school to another shall be for improvement of the District's instructional program. Term contract teachers shall be considered eligible for transfer only after two years or more in a particular school. Probationary teachers are not eligible to file voluntary requests for transfer or assignment. Teachers who receive a "Below Expectations" or "Unsatisfactory" rating on any domain of the two

most recent teacher summative evaluations are not eligible for voluntary transfer and can only be transferred administratively.

To request a transfer, a teacher must complete the District's Request for Transfer Form and submit it to his or her immediate supervisor.

GPISD Board Policy DK (LOCAL): APPLYING FOR TRANSFER requires:

The transfer request remains in effect until 45 days prior to the first contract day of the following school year. Notification shall be given only to approved transfer requests.

The procedure for requesting a transfer is as follows:

1. An employee may request a transfer by using the District's request for transfer form by April 1.

2. The current campus principal/supervisor must acknowledge the employee's request for transfer before it shall be considered by any campus.

3. The request for transfer form shall be submitted to the assistant superintendent of human resources.

4. The human resources department shall then submit a copy of the request for transfer form to the various campus principal(s)/supervisor(s) where the employee has requested to be transferred.

5. Following the selection and interview process, the campus principal(s)/supervisor(s) shall complete the recommendation for employment form and return it to the assistant superintendent of human resources. The campus principal shall ensure that transferring employees hold the appropriate certification for the new assignment, as applicable.

6. The human resources department shall then notify the employee, the employee's current principal or supervisor, and the principal at the new assignment that the transfer request has been approved.

The Superintendent shall be responsible for the final decision on an application for transfer submitted by a professional or paraprofessional employee.

In-house counsel's investigation revealed that the white female nurse timely submitted a request for transfer on March 27, 2007, four days before the policy deadline. By contrast, the black male nurse filed his request for transfer on April 30, 2007, twenty-nine days after the policy deadline. In-house counsel concluded that GPISD's treatment of the black male nurse was appropriate and not based on illegal, racial criteria. In-house counsel crafted a defensive administrative pleading, which was submitted to the EEOC. Subsequently, the EEOC dismissed the charges giving the employee his right to sue.

Under the Title VII regulatory framework, employees/claimants may not institute legal action in federal court until the EEOC issues a Notice of Right to Sue. An employee/claimant has ninety days to file suit after receiving the Notice of Right to Sue.

The nurse never filed a lawsuit.

Compromised Student Safety and Health

During the sexual harassment investigation and while the nurse was on administrative leave with pay, in-house counsel requested that the Rayburn Elementary clinic be audited. On August 27, 2007, an inventory audit of the Rayburn clinic was conducted and submitted to the GPISD Health Services Coordinator. The clinic inventory reported that (1) the medication cabinet was found unlocked; (2) three spacers were found with name labels and without medications; and (3) an Albuterol Inhaler was found without a name or label.

> Upon adoption of policies concerning the administration of medication to students by District employees, the District, the Board, and the District's employees are immune as described below, provided:
>
> 1. The District has received a written request to administer the medication from the parent, legal guardian, or other person having legal control of the student.
>
> 2. When administering prescription medication, the medication is administered either:
>
> a. From a container that appears to be the original container and to be properly labeled; or
>
> b. From a properly labeled unit dosage container filled by a registered nurse or another qualified District employee, as determined by District policy, from a container that appears to be the original container and to be properly labeled.
>
> GPISD Board Policy FFAC (LEGAL).

GPISD employees are not allowed to dispense student prescription medication, nonprescription medication, herbal substances, anabolic steroids, or dietary supplements of any type, except as provided by Policy FFAC (LOCAL). That policy states:

> Employees authorized by the Superintendent or designee may administer to students:
>
> 1. Prescription medication in accordance with legal requirements. [See FFAC(LEGAL)]
>
> 2. Nonprescription medication, upon a parent's and physician's or other health-care professional's (with authority to write prescriptions) written request, when properly labeled and in the original container.
>
> GPISD Board Policy FFAC (LOCAL).

> The District shall attempt to ensure student safety through supervision of students in all school buildings, at all school-sponsored events or activities, and on all school grounds through special attention to the following:
>
> 1. Maintaining a reasonably safe school environment. [See CK, CLB]
>
> 2. Observing safe practices in those areas of instruction or extracurricular activities that offer special hazards. [See CKB]
>
> 3. Developing age-appropriate safety programs and activities for students at each grade level.
>
> 4. Emphasizing safety education to students enrolled in laboratory courses in science, industrial arts, health, and physical education. [See CK]
>
> 5. Providing first aid for students in case of accident or sudden illness. [See FFAC]
>
> 6. Annually reviewing the adequacy of emergency procedures at each campus in the District and providing for staff training in such procedures. [See CKC]
>
> GPISD Board Policy FFF (LOCAL).

The status of the clinic violated GPISD Board Policy FFAC (LEGAL & LOCAL): WELLNESS AND HEALTH SERVICES MEDICAL TREATMENT and FFF (LOCAL): STUDENT WELFARE STUDENT SAFETY.

On August 30, 2007, the Health Services Coordinator personally inspected and inventoried the Rayburn Elementary clinic. She checked the permanent records files to ensure immunizations were recorded. Most of the records had nothing recorded in the designated immunization area. A check of the health cards was then conducted to see if screening was up to date. She

found that almost all were recorded as screened on 11-14-06. With a lone exception, there were no screening results on the Pre-K students. Another RN was present and helped the Health Services Coordinator look for Pre-K screening sheets for documentation, none of which were found. The Policy and Procedure book was up to date, however. The Health Services Coordinator reported her findings to human resources. She also informed them that that she may have to report the incident to the Peer Review Committee.

In-house counsel concluded that the nurse's conduct violated 22 T.A.C. 217 (Nurse Practice Act), which provides:

> The unprofessional conduct rules are intended to protect clients and the public from incompetent, unethical, or illegal conduct of licensees. The purpose of these rules is to identify unprofessional or dishonorable behaviors of a nurse which the board believes are likely to deceive, defraud, or injure clients or the public. Actual injury to a client need not be established. These behaviors include but are not limited to:
> (1) Unsafe Practice--actions or conduct including, but not limited to:
>
> > (A) Carelessly failing, repeatedly failing, or exhibiting an inability to perform vocational, registered, or advanced practice nursing in conformity with the standards of minimum acceptable level of nursing practice set out in Rule 217.11.
> >
> > (B) Carelessly or repeatedly failing to conform to generally accepted nursing standards in applicable practice settings;
> >
> > (C) Improper management of client records;
>
> (2) Failing to assess and evaluate a client's status or failing to institute nursing interventions which might be required to stabilize a client's condition or prevent complications;
>
> (3) Failing to administer medications or treatments or both in a responsible manner;

(4) Failing to accurately and completely record and document:

(A) the client's status including signs, symptoms and responses;

(F) contacts with other health care team members concerning significant events regarding clients status;

(5) Failing to implement measures to promote a safe environment for clients and others;

(7) Failing to provide client education and counseling based on client health care needs.

22 T.A.C. 217.12

The lack of proper documentation compromised student safety and violated GPISD Board Policy DH (LOCAL and EXHIBIT) EMPLOYEES STANDARDS OF CONDUCT and the Nurse Practice Act.

On September 5, 2007, a conference was held with the nurse, GPISD Health Services Coordinator, Assistant Superintendent of Human Resources, and the Executive Director of Personnel to discuss the issues regarding the clinical recording of records. The Health Services Coordinator asked the nurse about the screening of the Pre-K students and showed him the health cards. She asked him how he screened every grade level on the same day. He said he did a mass screening with two other nurses.

Both nurses verified that they helped him and that they screened many students, but neither remembered screening pre-k classes. The Health Services Coordinator informed the nurse that this could be a reportable incident to the

Peer Review committee. The committee could do an investigation and make recommendations or make a report to the Board of Nursing Examiners (BNE).

On September 10, 2007, the Health Services Coordinator spoke with the Region 10 Peer-Review chair persons and was informed that the incidents of medication and no documentation of screening of pre-k students were minor incidents. They explained that a nurse is allowed 5 such minor incidents in a 12 month period. Moreover, they explained that four separate minor incidents do not establish a pattern or require reporting.

As previously stated, upon the conclusion of the investigation into allegations of sexual harassment, the nurse was reinstated to Eisenhower Elementary on September 28, 2007. At that time, the nurse was placed on a professional growth plan.

More of the Same

On October 16, 2007, as a part of the nurse's professional growth plan, the Health Services Coordinator inspected the medication log book and medication cabinet at Eisenhower Elementary where she found an alarming error regarding a student with a severe food allergy. Student CR had an Allergic/Anaphylaxis Action Plan indicating she was allergic to all nuts. In the event of an allergic reaction, which usually began with an itching tongue, liquid Benadryl was ordered to be given first. For severe, generalized, allergy symptoms, Twinject 0.15 or Epi Pen Jr. was to be administered.

During her inspection, the Health Services Coordinator found:

1. the Benadryl was not in the medication cabinet;
2. no documentation of contacting the parent about the Benadryl existed, which the nurse later admitted that he failed to contact the parent about the Benadryl; and
3. the action plan showed that no staff members had been trained in administration of the Epi- Pen or how to follow the student's action plan, and only two teachers were on the list to be trained in the future.

The Health Services Coordinator also found that student JB had no written standard medication permit filled out with a parent signature authorizing the use of an inhaler by a student. There was also no documentation that the parent had been asked to fill out a permit or to clarify the order for the inhaler.

The Health Services Coordinator met with the nurse and the Eisenhower Elementary principal. The Health Services Coordinator informed the nurse of the deficiencies and directed him to immediately correct them. At that time, the Health Services Coordinator directed the nurse to immediately secure the Benadryl from the parent.

On the morning of October 17, 2007, the Health Services Coordinator directed the nurse to write a medication error report regarding the lack of Benadryl and the failure to train appropriate personnel how to follow the Allergy/Anaphylaxis Action Plan. The nurse refused to comply with her directive.

At lunch that same day, student CR had an allergic reaction to peanut butter sandwiches being eaten by other students sitting on either side of her.

The nurse failed to administer Benadryl as directed by the physician, notify the doctor, document the symptoms and the incident, or make out a medication/incident report. Fortunately, student CR's mother arrived minutes later, gave CR the Benadryl, and took the child to the doctor. Student CR was absent the next day.

A subsequent records review revealed no evidence that the nurse even attempted to contact the parent. Further, not all campus staff had received the appropriate training to administer medical treatment under such circumstances. The review also revealed that some staff had not been trained in Bloodborne Pathogens, which was a primary duty of the nurse to conduct the appropriate training for campus personnel.

On October 18, 2007, the nurse notified the cafeteria manager in a hand written, unsigned note that student CR was allergic to nuts and that two other students had food allergies. One of those students was allergic to strawberries, which had been served by the school cafeteria several times the preceding two months. Fortunately, the student did not eat them. The cafeteria had no knowledge of any food allergies prior to October 18, 2007.

On October 19, 2007, it was reported that student YB, who receives an inhalation treatment around her lunch time, was missing her lunch. She was spending most of her lunch time in the clinic receiving the treatment. Her mother reported that she was losing weight. Also, the staff reported that while the nurse was absent, they were unable to administer YB's treatment because they had not

been trained. Another nurse was called to leave her campus and administer the treatment to YB. The nurse's responsibility was to train the staff in medication administration. The nurse had a duty to confirm that the staff was trained when he began working at Eisenhower.

On October 22, 2007, in a medical matter with Student MJH, the nurse demonstrated a lack of knowledge regarding expiration of MJH's medication and administration of MJH's medication. The nurse could not produce any documented communication with MJH's parent regarding the management of MJH's medication.

On October 25, 2007, the Health Services Coordinator reported that Student JB was ordered to use a Maxair or Albuterol Inhaler 2 puffs as needed every four to six hours for cough/wheeze. The order was written on September 4, 2007. The order was unclear whether JB was to carry the inhaler on her person and self administer, or whether the school nurse was to administer the inhaler. There was no medication permit filled out with a parent signature authorizing the use of the inhaler. There was no documentation that the parent had been asked to fill out a permit or to clarify the order.

Further, the whereabouts of the inhaler was unknown. It was not in the medication cabinet. Moreover, the nurse stated that he had not contacted the parent, and he did not know if the child had the inhaler. Protocol requires the medication book and medications be checked on day one of reporting to work at

the Eisenhower Elementary clinic. The nurse's first day at the Eisenhower Elementary clinic was October 1, 2007.

Each of these incidents violated GPISD Board Policy FFAC (LEGAL and LOCAL) WELLNESS AND HEALTH SERVICES: MEDICAL TREATMENT and FFF(LOCAL) STUDENT WELFARE: STUDENT SAFETY and TEXAS NURSE PRACTICE ACT §217.12. UNPROFESSIONAL CONDUCT.

Safety Risk

After reviewing these facts, in-house counsel determined that the nurse posed a safety risk to students and should be removed from school while the district continued to investigate. On October 25, 2008, the nurse was once again placed on administrative leave with pay pending the investigation of misconduct compromising student safety and health. On October 29, 2007, a conference was held with the nurse to discuss the allegations of misconduct compromising student safety and health. Those in attendance were the Assistant Superintendent of Human Resources, Executive Director of Personnel, and the Health Services Coordinator.

On November 7, 2007, the Health Services Coordinator requested the members of the Region 10 Peer Review Committee investigate incidents involving the nurse. Specifically, she asked the Committee to investigate:

1. Absence from duty without notifying the Health Services Coordinator;

2. Improper delegation of the use of a pulse oximeter by an untrained teacher;

3. Lack of documentation of screening of the Pre-Kindergarten classes at Rayburn Elementary for the 06-07 school year;

4. Mismanagement of the medication of a student with a nut allergy, lack of parent education regarding the Allergy Action Plan, lack of training in use of the Epi Pen and Benadryl, and poor documentation of the reaction;

5. No clarification of the nurse practitioner's order for the use of an inhaler, no parent signature, no knowledge of the location of the inhaler;

6. Failure to follow a directive to dispose of used sharps containers;

7. Failure to communicate/document about the expiration of Xopenex for an inhalation treatment; and

8. Failure to progress in the Professional Growth Plan.

Upon completion of the investigation, in-house counsel advised the Assistant Superintendent of Human Resources that the nurse's actions established that the nurse compromised the safety and health of students, which was his primary responsibility as an employee of GPISD. On November 28, 2007, the Assistant Superintendent of Human Resources and the Executive Director of Personnel met with the nurse and informed him that the district concluded that the allegations of misconduct compromising student safety and health were true. As such, his actions violated GPISD Board Policy DBB (LEGAL and LOCAL): EMPLOYMENT REQUIREMENTS AND RESTRICTIONS MEDICAL EXAMINATIONS AND COMMUNICABLE DISEASES, FFF(LOCAL) STUDENT WELFARE: STUDENT SAFETY, FFAC (LEGAL and LOCAL)

WELLNESS AND HEALTH SERVICES: MEDICAL TREATMENT, and TEXAS NURSE PRACTICE ACT §217.12. UNPROFESSIONAL CONDUCT. The nurse remained on Administrative Leave with pay and benefits for the remainder of the 2007-2008 school year.

On January 7, 2008, the nurse submitted his letter of resignation to GPISD Human Resources Department effective the end of his 2007-08 contract. The resignation was accepted by the Superintendent according to GPISD Board Policy DFE (LOCAL) TERMINATION OF CONTRACT RESIGNATION.

Observations and Conclusions

In-house counsel advised and directed human resources about each aspect of the investigations into the nurse's poor performance. The situation was particularly complicated in that the nurse's job duties involved the health of students exposing GPISD to potentially broader aspects of liability than what GPISD might ordinarily face with other classes of employees.

Moreover, when the nurse learned that he was being investigated on grounds of misconduct, poor performance and/or student safety and health, he filed a preemptive claim with the EEOC. As a matter of legal strategy, the nurse was, in all likelihood, using his EEO charge to stop any adverse employment action upon threat of a subsequent retaliation claim.

In essence, this was no ordinary employee dispute. This situation involved varying degrees and types of legal exposure under several different laws. Because in-house counsel was involved at every interval of each

investigation, human resources had the benefit of making decisions and acting upon them after those decisions had been scrutinized for their potential legal repercussions.

The ultimate outcome could not have been resolved more favorably for GPISD. Student safety and health was addressed and improved by the replacement of the nurse, no students were injured and, as a result, no lawsuits were filed, employee morale improved upon the nurse's departure, the nurse's EEO claim was dismissed quickly prior to any outside legal expenses being incurred, and, finally, the nurse resigned without pursuing grievance rights.

Though the potential for legal exposure was great, in the end, GPISD incurred no outside legal expenses.

CHAPTER 5

Religious Instruction

This case study involves observations from a religious instruction issue typically facing mid-sized urban school districts. Grand Prairie ISD was accused of inappropriately teaching religious concepts in violation of the Establishment Clause contained in the First Amendment of the United States Constitution as made applicable to the states via the Fourteenth Amendment. From the first contact by the complainant's attorney to resolution, GPISD in-house counsel managed every aspect of the matter. This case study analyzes the added-value to GPISD by having in-house counsel represent GPISD throughout the entire controversy.

On December 8, 2008, GPISD in-house counsel received a fax from a Florida law firm notifying him that the parents of two GPISD students, Blake and Samuel, intended to appeal the disciplinary suspension of their sons. The fax indicated that the parents would appear at the principal's office on the following Monday to personally give notice of their intent to appeal the boys' suspensions. The fax also notified in-house counsel that the parents would be represented at the appeal by David Gibbs III of the Florida law firm, who is admitted to practice law in the state of Texas.

In addition to the fax, the notice was emailed to the superintendent and the president of the board of trustees. The fax indicated that it was sent to them because the parents were told they had ten days to appeal the suspension but were unclear as to the exact procedure they would be required to follow. The attorney said they were unable to find any clear procedure for this situation in the school's online material. The notice stated that the suspension occurred on November 10 and the parents met with the principal regarding the matter on December 3. The notice also stated that they were unable to reach the school's attorney on a Saturday but would contact him by telephone the following Monday regarding the matter.

In-house counsel immediately undertook an investigation of the matter beginning with the school principal. In-house counsel quickly ascertained the genesis of the problem and subsequent events leading up to the disciplinary action.

When the Teacher is Away

On November 30, 2007, two students, Blake and Samuel, were in their 1st period Social Studies class. Their teacher was absent from duty on that day and a substitute teacher was assigned to that class. The substitute teacher was Muslim and wears a barka.

The substitute teacher handed out an assignment to the class that had been left by the teacher in the lesson plan folder. Blake and Samuel were sitting next to each other in class and were talking instead of working. The substitute

teacher asked them to get to work several times and redirected their behavior. Both boys disregarded her requests and continued talking. Later, the boys asked the substitute teacher if they could go to the counselor's office. The substitute teacher denied their request and explained to them they needed to finish their assignment before she would let them go to the counselor's office.

Afterward, as she walked around the classroom she noticed that Blake and Samuel continued to be off task and continued talking to each other. She approached their table to see how much work they had completed and noticed on the answer worksheet that they wrote, "Islam is Stupid" and "Jews are Stupid" repeatedly. They also wrote, "Jews are pigs and murderers" on their worksheet.

The substitute teacher then proceeded to write a discipline referral explaining the inappropriate comments that had been written as their answer choices. She was offended by their written responses especially considering their answers had no relation to the questions that were being asked on the assignment.

In the principal's office, the principal asked the boys why they would make those comments. Blake indicated that the substitute teacher was teaching religion and her teachings were against his religious beliefs. Samuel indicated that Blake told him to write those comments because the substitute teacher was a mean Jew and would not let them go to the counselor's office. The boys were asked if they knew what they were doing was wrong. Both boys responded "yes."

The parents of both students were contacted immediately regarding the inappropriate behavior and were asked to pick their sons up from school. Samuel's grandfather picked him up immediately and was informed of the situation. He acknowledged that what his grandson did was inappropriate. Samuel was sent home for the remainder of the day and assigned two days of ISS on Dec. 3 and 4, 2007, for his conduct. Blake's father picked him up during his father's lunch hour. The father told the front office staff that he was in a hurry to return to work but would return the following Monday to meet with the principal.

Samuel's grandfather, who is also his guardian, returned with Samuel on Monday morning and went to the classroom. He made Samuel re-do the assignment and apologize to the teacher for his inappropriate behavior in responding to the questions that had been assigned. Samuel also did serve his 2 days of ISS.

Story of the Ignorant

The evening of Monday, December 3, Blake, Blake's father, and the pastor from their church came in to meet with the principal to discuss the substitute teacher's religious teaching and how it was contrary to their religious beliefs. Blake's father revealed that he did not blame his son for doing anything wrong. He has taught his son that "those" people are murderers, killers, and rapists. He also suggested that getting an education is not needed, and he continued to criticize race, women, and education in front of his son.

The principal interrupted the father in an attempt to stop the father from making inappropriate comments in front of his son and informed the father that the regular teacher was not in the classroom. The class was taught by a substitute teacher. The father was also informed that the substitute was not teaching religion but had only handed out the assignment in the substitute folder as required by the teacher. The principal showed the father the assignment from the book and that the answers Blake had written had no connection to the questions.

The father asked the pastor to look at the book to see if religion was taught in the textbook. The pastor looked at the book, reviewed the chapter that was in question, and indicated that religion was not being taught as far as he could see by reviewing the questions and answers that were in the book.

The father indicated that he still did not think his son should be punished for what the father had taught him and that all “those” people are terrorists and that we all should be worried about them. He then ranted about other races and other people. The principal told him that they would stay on the subject of his son’s behavior and that his decision of the 2 days of ISS would stand for his inappropriate behavior.

As previously stated, in-house counsel then received the fax notice from the Florida law firm on December 8, 2008. No meeting took place the following Monday as stated in the fax.

Thou shall not Study Religion

In-counsel had several telephone conversations with the parents' attorney. The discussions centered on the students' belief that GPISD had no business teaching religion in schools, especially those that contradicted the students' beliefs. In-counsel maintained that GPISD only taught what was required under the Texas Essential Knowledge and Skills (TEKS), which were tested on the Texas Assessment of Knowledge and Skills (TAKS). In-house counsel also asserted that its curriculum was aligned with the TEKS and that its instructional materials were acceptable.

On December 20, 2007, the parents' attorney emailed fax copies of material from the GPISD textbook. The attorney claimed to be "shocked" when she actually saw what the parents and the pastor were concerned about. The attorney asserted that the material describes Christianity in a way that does not align with the students' church's teachings and theology. The students attended an Independent Baptist church.

Further, the attorney said that she did not think the material would conform to the Vanderbilt University First Amendment guidelines for teaching religion in public school even in a voluntary comparative world religions class. Specifically, the attorney maintained that the information on Islam appeared to focus very heavily on just the positive and avoided the jihad concept altogether. Although she did think the information on Judaism seemed a bit more accurate, she believed that a Jewish person would think differently due to her belief that there

are as many different theologies there as there are in Christianity. She asserted that the materials make comparisons between the three religions which do not conform to Independent Baptist theology and what the boys learn in church.

Mean Old Teacher and Principal

The attorney explained that she thought we could resolve the matter, but in addition to getting them out of all present and future religion classes, the parents also wanted an apology from the teacher (the regular teacher, not the substitute). The attorney claimed that Samuel had had some emotional problems, had apparently just been getting on top of them and making friends at school, and had apparently now lost ground because he had been made to sit in the "naughty chair" because of the incident, which the parents said the principal had not correctly characterized or dealt with.

Samuel's grandmother (his legal guardian) wanted an apology from the teacher, not only to Samuel but to the whole class, for punishing Samuel for something he did not do, but only admitted to doing because the principal yelled and badgered the boys until they "confessed" to something they had not done. The attorney also said that Samuel had had some emotional repercussions from the whole incident and is coming home from school crying. In addition, she claimed that the pastor and Blake's father did not want this type of what they considered to be false religious material taught to anyone at the school in the future.

The attorney wanted in-counsel to find out if the curriculum and materials really were some sort of Texas standard material or if it was just something the school taught. She also thought that if the ACLU saw it, they might actually sue the school over it since it did not meet the Vanderbilt standards.

The attorney said that she did not promise the parents anything before Christmas, but let the in-house counsel know that Samuel's grandmother was very upset that it was an ongoing punishment for Samuel, which he did not deserve, and that the situation was emotionally damaging to him. She wanted to make sure that his punishment did not continue into the next year with regard to the "naughty" chair.

The grandmother was also particularly adamant that what the principal had told the in-house counsel was not accurate as to his interactions with them or with the boys about the issue. Blake's father concurred that the principal badgered the boys, "got in their faces," and made them confess to something they did not do before the parents got to the school. The parents were certain that the boys had not been disruptive prior to responding to the questions on the worksheet, that they did not believe the substitute teacher would ever see their worksheets, and that they just wanted to go to the counselor because they were sure that their parents would not want them in the class.

The attorney also pointed out that since the issue arose, when religion was taught again, and the boys asked to leave the classroom, they were not permitted by the regular teacher to do so. She also stressed that these were not

bad kids, although as a former teacher she knew there were always two sides to every story. She was interested to know if they had had any previous discipline issues.

She went on to explain that the pastor said they were respectful boys and is sure they never intended to disrespect their teacher, even though they apparently talked privately to each other about the course material and what they learned at church. Apparently, this may have been an issue for some time because the pastor had already copied pages from the book and the father had them all written down, too. Hence, the pastor or the father might have addressed the false impression of religion that the course was giving to the boys as the material was taught. The father gave the impression that it had been taught for some weeks and they had perhaps been discussing it at home or at the church. The attorney claimed that that may have been why the boys were upset that day and thought their parents would want them to leave the classroom.

The attorney reiterated that she still hoped that an amicable resolution could be achieved to the situation, but it was becoming more complicated rather than less, the more she learned. She pointed out that there was much “bad blood” between the families and the principal.

The attorney notified in-house counsel that she would not be in the office with any regularity until the Thursday after Christmas, so it would be best to call her on her cell number in hopes of resolving the matter before school began

again---primarily with regard to an apology to Samuel and getting him out of the "naughty" chair.

She acknowledged that the principal had already agreed to excuse the boys from any further religious instruction at school, which she asked that they be notified by the teacher before it occurred and that they would actually be permitted to leave the room. She indicated that they had not been allowed to leave the room the last time they asked. The attorney also suggested that she could fly out for a meeting with everyone to see what the facts really were and to resolve the matter.

Opting Out

On December 27, 2007, the parents' attorney again emailed in-house counsel with additional information. The attorney said that she had spoken with Blake's father and Samuel's grandmother again and hoped that when school reopened on January 3 the teacher would no longer have the boys in the "naughty" chair. She asked that when school opened, the issue would be addressed in the classroom at the very least. She also explained that both parents were under the impression that the teacher would be moving on from the topic of religion after the vacation, so the issue of opting out should go away for the moment.

Long term, she said the parents had talked with some other parents in the district who said they were also upset that their children were being taught religion in class. The attorney understood that there are some 700 pages in the

book, that the class was only on page 80 or thereabouts, that this school was not at the highest academic level in Texas, so it seemed odd to her that a teacher would spend 4 weeks on religion when there is so much else to learn.

She said the parents had indicated that they received notices about sex education courses with the option of opting their children out. To her, it seemed that, at the very least, given Texas law, parents should be informed that their children would be taught religion and also be given the opportunity to opt out. She claimed that these parents did not know what their children were being taught until this incident came up since the children were not permitted to bring their books home unless they checked them out like library books.

The attorney then claimed that this practice raised the question of whether the school was trying to hide the subject matter from parents although under Texas law and federal law parents have the right to inspect the textbooks. She surmised that if the majority of parents opted their children out from this religion instruction, the teacher would likely spend a lot less time on it. Because no teacher covers everything in the book, she claimed, it seemed like this would have been a good lesson for the teacher to omit.

Moreover, the attorney declared that had the parents known their children were being taught religion in the classroom, they would have asked to have them opt out (if they had known that was even an option). The parents were only made aware of the fact that the children were being taught religion when the

children got in trouble. So apparently, they only copied the pages from the textbook after the incident and not before as the attorney had previously thought.

The attorney also inquired as to whether the discipline records of these students had been checked. According to their parents, neither boy had a history of being disruptive in class nor had they been disruptive in this class. In any event, according to the parents, the boys certainly did not intend to be disrespectful to the teacher. The boys did not think the teacher would ever see their papers because the assignment was seat work that was not normally collected.

Blake's father also told the attorney that the principal had previously been the football coach and had treated the boys in the same intimidating manner. She explained that the principal used a tactic that a coach would use on a team in order to get the boys to confess to being disruptive even though they had not been.

Proposed Resolution

The attorney thought the matter could be settled if she could get the following for the parents:

1. Removal of the boys from the naughty chair;
2. A statement by the teacher of apology to the class that the incident had been misunderstood;
3. Removal of this incident from the boys' official record; and (more significantly)

4. A school board action that in the future parents will be notified whenever religion will be taught in the school.

The attorney also asked that parents be invited to come and review the textbook sections on religion and they be permitted to opt out their children in the same way that they may opt them out from sex education. Most threateningly, however, the attorney stated that the parents asked to have the subject matter of religion taken out of the school entirely. They also wanted the principal to step down because of the way he treated their children.

On December 28, 2007, the GPISD Director of Teaching and Learning reported to in-house counsel that the material used by the teacher was not from the GPISD curriculum, but that some of the worksheets came from History Alive, which is used by many districts. She reported that the TEKS from which the lessons came focused on the culture and religions from the major regions of the world. She pointed out that until she talked to the teacher and principal, she could not confirm this to be accurate. She and the social studies facilitator intended to interview the teacher when school opened.

In-house counsel personally reviewed the 6th grade TEKS and concluded that what was taught was in the 6th grade TEKS. He also reviewed the textbook adoption process and concluded that the textbook used in the class was on the state approved list.

On January 3, 2008, in-house counsel reported to the parents' attorney that the GPISD Director of Teaching and Learning and the Social Studies Facilitator were still looking into the matter. Because the district had been closed the previous couple of weeks, they were unable to investigate at the campus level. In the meantime, however, in-house counsel confirmed that GPISD intended to work with her on her proposed resolution and that the Executive Director of Secondary Education was currently working with the principal. In-house counsel stated that he would be in touch within a day or two.

The parents' attorney replied the next day. She thanked in-house counsel for his willingness to work with her on the issue and that she would be waiting to hear back from him on her proposed resolution. She reiterated her desire to clear things up with the boys' records and to get the school to commit to alerting parents when religious lessons were taught, even if this is something the state standards require. She said that she would "let the ACLU sue GPISD on that one" and, should the parents still want to do that, she would "send them to the ACLU herself." She concluded by asserting that she would be really surprised if the state standards required a religion lesson in a required course.

Required Teaching

On January 11, 2008, in-house counsel reported to the parents' attorney his findings as to the state TEKS standards and the textbook materials. In-house counsel explained that the Texas Essential Knowledge and Skills legally prescribe what Texas school districts must teach public school students and

when. To ensure that the TEKS are being taught, the Texas Assessment of Knowledge and Skills (TAKS) is an assessment instrument used to test public school students for knowledge of the prescribed TEKS. In short, the TEKS comprise the state curriculum.

In-house counsel then provided the legal standards for curricula in Texas. The TEKS require the following be taught during 6th grade in all Texas public schools:

> 19 T.A.C. Chapter 113. Texas Essential Knowledge and Skills for Social Studies
>
> Subchapter B. Middle School
>
> §113.22. Social Studies, Grade 6.
>
> (b) Knowledge and skills.
>
> (16) Culture. The student understands that certain institutions are basic to all societies, but characteristics of these institutions may vary from one society to another. The student is expected to:
>
> (A) identify institutions basic to all societies, including government, economic, educational, and religious institutions; and
>
> (B) compare characteristics of institutions in selected contemporary societies.
>
> (19) Culture. The student understands the relationships among religion, philosophy, and culture. The student is expected to:
>
> (A) explain the relationship among religious ideas, philosophical ideas, and cultures; and
>
> (B) explain the significance of religious holidays and observances such as Christmas and Easter, Ramadan, and Yom Kippur and Rosh Hashanah in selected contemporary societies.

Required Reading

As for the textbook, in-house counsel explained to the parents' attorney that it was chosen from the state-adopted textbook list. The list goes through a lengthy review process at the state level. In-house counsel quoted the prescribed process for textbook selection:

> Bids for new instructional materials from the publishing industry are solicited by means of a proclamation issued by the SBOE [State Board of Education]. The proclamation identifies subject areas scheduled for review in a given year and contains content requirements (Texas Essential Knowledge and Skills), maximum per-student costs to the state for adopted materials, an estimated number of units to be purchased during the first contract year for each of the subject areas and/or grade levels, and a detailed calendar of adoption procedures.
>
> Publishers who plan to offer instructional materials for adoption in the state provide finished-format review samples to the Texas Education Agency, each of the 20 regional education service centers, and members of the appropriate state textbook review panels appointed by the Commissioner of Education.
>
> Members of the state textbook review panels are charged with evaluating instructional materials to determine coverage of essential knowledge and skills and with identifying factual errors. At the close of the review period, panel members submit evaluations to the Commissioner of Education.
>
> The Commissioner then makes recommendations to the SBOE as to which books should and should not be adopted. Texas residents are allowed to file written comments regarding instructional materials submitted for adoption. In addition, a public hearing is held before the SBOE approximately two months before scheduled adoption. At the conclusion of the public comment and hearing period, the SBOE approves the "state-adopted" list.

In-house counsel explained that only books on the state-approved list would be purchased by the state on behalf of Texas school districts. He reiterated that the book used by Blake and Samuel was selected from the state-adopted list and was purchased by the state.

In-house counsel informed the attorney that Blake and Samuel would be given alternative assignments in the future. They would not be punished or retaliated against. In-house counsel asserted that the curriculum taught, however, was prescribed by law and the textbook used in the classroom was approved by the State of Texas.

Avoiding Controversy

On January 14, 2008, in-house counsel reviewed the instructional materials sent from the parents' attorney and discovered that not all of the materials were from the textbook. He read all of the material and discovered the following passage:

> Christians believe that a person achieves salvation in two ways. The first way is to follow Jesus' teachings about living a moral (good) life. The second way is to participate in the *sacraments* – sacred ceremonies in which Christians experience the Holy Spirit. Some Christian groups practice as many as seven sacraments. However, all groups recognize baptism and communion to be sacraments. Baptism is the ceremony of introduction into Christianity. The ceremony re-creates Jesus' own baptism in the River Jordan. Communion – commonly called the Lord's Supper – re-creates Jesus' breaking of bread and sharing of wine before His death, at the Last Supper.

Having grown up in a Christian home, in-house counsel was unfamiliar with any Christian teaching of two ways to salvation. In any event, he knew that

the great majority of Christians in the community would take exception to the above passage. He also knew that the board of trustees would not support this teaching and would certainly not support its continued use.

In-house counsel immediately called on the GPISD Director of Teaching and Learning. After a brief dialogue, the director realized the political implications of this passage. Because the materials used were ancillary (not a part of the approved curriculum or approved text), GPISD had little basis for supporting its continued use. The Director of Teaching and Learning was going to meet with the Social Studies Facilitator, the Executive Director of Secondary Education, and the school principal the next day; her goal being to prohibit the materials continued use and to institute a system of checking the quality of all materials used in the classroom.

The parents' attorney never contacted in-house counsel again, nor did the ACLU institute legal action.

Observations and Conclusions

In-house counsel was involved in this dispute as soon as notice of the disciplinary appeal and threat of legal action was received by GPISD. In-house counsel investigated the facts objectively and researched regulatory, statutory, and Constitutional law pertaining to state curricula standards as well as First Amendment rights.

In-house counsel concluded that the theory of a First Amendment violation proffered by the parents' attorney was without merit, and that GPISD need not submit to the parents' demands to apologize or refrain from instruction involving religious overtures.

In-house counsel was able to communicate and persuade the parents' attorney that GPISD's actions were legal and defensible. As a result, no legal action was taken and GPISD did not incur any unnecessary legal defense expenditures.

Moreover, in-house counsel seized the opportunity to evaluate ancillary instructional materials. In-house counsel realized that although the unapproved materials were not necessarily in violation of the First Amendment, use of them would likely encourage additional disputes. GPISD stopped using the indentified instructional materials without repercussion or expense.

CHAPTER 6

Conclusion

Other literature examining the value of in-house counsel for Texas school districts struggles to quantify the cost/benefit ratio from employing in-house counsel. As a result, literature is limited to theory and anecdote. The case study method, i.e. selecting a mid-sized urban school district and scrutinizing the activities of in-house counsel or the lack thereof, has not previously been utilized. This dissertation embraces the case study method, and examines issues faced by GPISD as a sampling of situations faced by similarly situated school districts across the State of Texas.

Specifically, issues involving students' rights to be free from unreasonable searches and seizures, construction and resulting disputes, personnel problems, and instructional controversies involving First Amendment rights were studied. The studies in this dissertation progress from a situation where in-house counsel was not involved or consulted; to a situation where in-house counsel was involved late as a last resort; to a situation where in-house counsel's advice and direction was repeatedly sought; and, finally, to a situation where in-house counsel was both the district's representative and decision-maker.

The case study method in this dissertation, like other literature on the subject, struggles to put a number on the benefit to school districts of having in-

house counsel, since it is difficult to value litigation that was forestalled. Nevertheless, this study reasonably supports the theoretical conclusions of the majority of other scholars: in-house counsel is a valuable asset to school districts.

When GPISD acted without legal advice in two of the four case studies, the result was observed to be violations of law and resulting contract disputes. The former could, and unless corrected, would likely lead to litigation whereby GPISD would face significant financial exposure, not only for defense costs, but also resulting damage awards since GPISD would have minimal defenses available. The latter did, in fact, result in outside legal fees, litigation, and construction delays the inconvenience of which cannot be reasonably measured.

In contrast, when GPISD acted either with the advice of in-house counsel or directly through in-house counsel, politically charged and potentially litigious situations were resolved with no outside legal fees or litigation of any kind. In fact, when in-house counsel was involved early and often, the challenges faced by GPISD quietly and quickly dissipated.

Although measuring actual cost savings is difficult, it is apparent that GPISD likely benefitted financially from the absence of litigation, and perhaps even more so from the absence of lingering classroom distractions. Based on this case study mid-sized urban schools in Texas should have the abiding advice of in-house counsel.

REFERENCES

Chidester, M. A., & Ferrara, B. J. (n.d.). *The School Attorney as a Preventive Law Practitioner.* Retrieved may 23, 2007, from National School Board Association: http://www.nsba.org/site/doc.asp?.

Corporate Legal Times. (1999). Conversations on the Business of Law-Adding Value Trough Early Involvement. *21st Century Partners Thirty-third in a Series* (pp. Vol 9, No. 86). Corporate Legal Times.

Corporate Legal Times. (1994). How to Build a Legal Department-In-House Attorneys Add Value Through Specialized knowledge of the Business. *Corporate Legal Times Roundtable* (pp. Vol 4, No. 36). Corporate Legal Times.

Etherton, S. L. (n.d.). *Time to Hire In-house Counsel?* Retrieved May 23, 2007, from Etherton Law Group, L.L.C.: http://www.ethertonlaw.com/TimetoHire.pdf.

Seckler, S. E. (n.d.). *Hiring Your First In-House Counsel.* Retrieved May 23, 2007, from BCG Attorney Search: http://www.bcgsearch.com/crc/hiring_your_first_inhouse_counsel.pdf.

Texas Comptroller of Public Accounts. (n.d.). *Legal Maze: A Practical Guide For Controlling the Cost of School District Legal Services.* Retrieved May 24, 2007, from Texas Comptroller of Public Accounts: http://www.window.state.tx.us/tspr/legal/.

Texas Comptroller of Public Accounts. *Balancing the Budget-101 Ideas for Cutting Costs and Maximizing Revenues*. Retrieved May 24, 2007, from Texas Comptroller of Public Accounts: http://www.window.state.tx.us/tspr/cutting/.

ABSTRACT

THE DEMONSTRATION OF NEED, BENEFITS, AND OUTCOMES OF IN-HOUSE COUNSEL FOR A MID-SIZED URBAN SCHOOL DISTRICT IN THE STATE OF TEXAS

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Examining whether in-house counsel for a mid-sized urban school district in the State of Texas constitutes a valuable resource or an unnecessary expense was the purpose of this study. Specifically, the study analyzed the true value of in-house counsel for mid-sized urban school districts in Texas via the case study method. The case studies were structured to examine four separate issues faced by a mid-sized urban school district. The issues studied involved students' rights to be free from unreasonable searches and seizures, construction and resulting disputes, personnel problems, and instructional controversies involving First Amendment rights. The issues ranged from those where the mid-sized urban school district had no legal advice to situations in which in-house counsel was involved at each and every step. When the mid-sized urban school district acted without legal advice in two of the four case studies, the result was observed to be violations of law and resulting contract disputes. The former could, and unless corrected, would likely lead to litigation whereby the mid-sized

urban school district would face significant financial exposure, not only for defense costs, but also resulting damage awards because the school district would have minimal defenses available. The latter did, in fact, result in outside legal fees, litigation, and construction delays the inconvenience of which cannot be reasonably measured. In contrast, when the mid-sized urban school district acted either with the advice of in-house counsel or directly through in-house counsel, politically charged and potentially litigious situations were resolved with no outside legal fees or litigation of any kind. In fact, when in-house counsel was involved early and often, the challenges faced by the mid-sized urban school district quietly and quickly dissipated. Although measuring actual cost savings is difficult, it is apparent that the mid-sized urban school district likely benefitted financially from the absence of litigation, and perhaps even more so from the absence of lingering classroom distractions. Hence, this study reasonably supports the conclusion that in-house counsel is a valuable asset to mid-sized urban school districts.

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ENDNOTES

[1] Etherton, Sandra L. "Time to Hire In-house Counsel?" Etherton Law Group, L.L.C. 23 May 2007 <http://www.ethertonlaw.com/TimetoHire.pdf>.
[2] Chidester, Margaret A. and Benjamin J. Ferrara. "The School Attorney as a Preventive Law Practitioner." National School Board Association. 23 may 2007 <http://www.nsba.org/site/doc.asp?TRACKID=&VID=2&CID=64&DID=5754>.
[3] Texas Comptroller of Public Accounts. "Legal Maze: A Practical Guide For Controlling the Cost of School District Legal Services." Texas Comptroller of Public Accounts. 24 May 2007 < http://www.window.state.tx.us/tspr/legal/>.
[4] Texas Comptroller of Public Accounts. "Balancing the Budget-101 Ideas for Cutting Costs and Maximizing Revenues." Texas Comptroller of Public Accounts. 24 May 2007 < http://www.window.state.tx.us/tspr/cutting/>.
[5] *Ibid.*
[6] Etherton, Sandra L. "Time to Hire In-house Counsel?" Etherton Law Group, L.L.C. 23 May 2007 <http://www.ethertonlaw.com/TimetoHire.pdf>.
[7] *Ibid*.
[8] *Ibid.*; Seckler, Stephen E. "Hiring Your First In-House Counsel." BCG Attorney Search. 23 May 2007 <http://www.bcgsearch.com/crc/hiring_your_first_inhouse_counsel.pdf>.
[9] Corporate Legal Times. "How to Build a Legal Department-In-House Attorneys Add Value Through Specialized knowledge of the Business." Corporate Legal Times Roundtable. Corporate Legal Times, 1994. Vol 4, No. 36.
[10] *Ibid.*
[11] Chidester, Margaret A. and Benjamin J. Ferrara. "The School Attorney as a Preventive Law Practitioner." National School Board Association. 23 may 2007 <http://www.nsba.org/site/doc.asp?TRACKID=&VID=2&CID=64&DID=5754>.
[12] Seckler, Stephen E. "Hiring Your First In-House Counsel." BCG Attorney Search. 23 May 2007 <http://www.bcgsearch.com/crc/hiring_your_first_inhouse_counsel.pdf>.
[13] Corporate Legal Times. "How to Build a Legal Department-In-House Attorneys Add Value Through Specialized knowledge of the Business." Corporate Legal Times Roundtable. Corporate Legal Times, 1994. Vol 4, No. 36.
[14] *Ibid.*
[15] Corporate Legal Times. "Conversations on the Business of Law-Adding Value Trough Early Involvement." 21st Century Partners Thirty-third in a Series. Corporate Legal Times, 1999. Vol 9, No. 86.
[16] *Ibid.*
[17] *Ibid.*
[18] *Ibid.*
[19] *Ibid.*
[20] *Ibid.*
[21] *Ibid.*
[22] *Ibid.*
[23] *Ibid.*
[24] Corporate Legal Times. "How to Build a Legal Department-In-House Attorneys Add Value Through Specialized knowledge of the Business." Corporate Legal Times Roundtable. Corporate Legal Times, 1994. Vol 4, No. 36.
[25] *Ibid.*
[26] *Ibid.*
[27] *Ibid.*
[28] *Ibid.*
[29] *Ibid.*
[30] *Ibid.*