Assessment: Analysis of Public Education Law

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1. Unsupervised children playing around broken fence

Upon contacting Sam Lightdeer, the principal of Nirvana Elementary School, I would discuss with him several possible issues regarding this circumstance and advise him to take action in order to avoid a law suit:

- **Tort Liability** - Children at the school early, unsupervised, and around a broken fence, could result in injury for which the injured party is entitled to compensation.
- **Negligence** – If the situation is not addressed, this could be seen as behavior that "falls below the standard established by law for the protection of others against unreasonable risk of harm" (The Restatement of Torts Section 282). Schools have an obligation imposed by the law to protect students from unreasonable harm.
- **Duty and standard of care** – "A school district owes a duty to its students to employ ordinary care and to anticipate reasonably foreseeable dangers" and act as a reasonable and prudent person in light of the circumstances. Depending on how early the students arrived, it may not be reasonable to have a cher on duty at that time; however other steps can be taken. Have parents been contacted regarding appropriate times to drop off their students (therefore they take on an **assumption of risk** if they still drop the children off early)? Can a morning program be established at the school for parents who work early? The broken fence is a hazard. Is there a work order in for the repair? Has Sam Lightdeer followed up to ensure it is fixed in a timely manner? Is there a sign placed on the fence to warn others of the missing link?
- **N.R.S. 41.510 –** Does the state where Nirvana School District is located have a similar limitation of liability for recreational activity as Nevada does? N.R.S. 41.510 states that an owner of any premises owes no duty to give warning of any hazardous condition, activity, or use of any structure on the premises to persons entering for recreational purposes. Depending on how early the children were dropped off, and if the parents were notified that supervision is not available at that time, this may be considered recreational activity therefore the school is not required to give warning about the fence.

2. Student on student sexual harassment

This case involves severe bullying and harassment. Bullying is defined by the U.S. department of education as "a repeated pattern of aggressive behavior that involves an imbalance of power and that purposefully inflicts harm on the bullying victim". The plaintiffs were bullied as there was an imbalance of power, since the upper classmen was harassing the lower classmen. Furthermore, the spanking incident was intentional and the pattern of harassment was repeated as even after the boys were suspended, they continued to harass Jim and Frank, including making comments about Frank's sexuality.

- **Section 1006.147** states that bullying and harassment is prohibited. Nirvana School District is in danger of losing this case based on several considerations:
- **Negligence** – The school district may be responsible by failure to exercise reasonable care, resulting in foreseeable harm to another person. The scenario states, "From the beginning of the season, the boys would roughhouse in the locker room, which *often* involved the older boys ganging up on the freshmen and engaging in various sexually-related pranks". If this was known, the acts against Jim and Frank Doe may

have been foreseeable. Furthermore, when Principal Atwood became aware of the harassment, he did not take formal disciplinary action right away. The boys conducting the harassment were later suspended, but continued to harass Jim and Frank Doe. To prevail on a negligence claim, the plaintiff will have to prove the existence of the following:

(1) The defendant must have owed a duty of care to the plaintiff
(2) The defendant must have breached that duty of care
(3) The defendant's action or inaction must have caused foreseeable harm to the plaintiff, and
(4) The harm sustained by the plaintiff must be compensable

Intentional tort through battery (unwanted and harmful or offensive bodily contact) and assault (intentional act that causes another person to believe he or she is in danger of imminent bodily harm or offensive contact) was inflicted on the plaintiffs in this case, possibly due to negligence.

- **Davis v. Monroe Cnty. Bd. of Educ.** – This case may be referred to as school officials failed to prevent sexual harassment at the hands of another student. Davis claimed that the school's complacency created an abusive environment that deprived her daughter of educational benefits promised her under **Title IX of the Education Amendments of 1972**. This case also led to **The Davis Deliberate Indifferent Standard** for student-on-student sexual harassment. With the scenario at Nirvana, Coach Elwood Lyons heard of the spanking and did not report the incident. This conscious or reckless disregard could be considered deliberate indifference.
  Under Title IX, the school may be held liable if the following is proven:
  (1) The school board exercised substantial control over both the harasser and the context in which the harassment occurred;
  (2) The school board had "actual knowledge" of the harassment;
  (3) The school board was "deliberately indifferent" to the harassment; and
  (4) The harassment was "so severe, pervasive, and objectively offensive that it [could] be said to [have] deprive[d] the victims of access to the educational opportunities or benefits provided by the school." Id. At 645, 650.
- **Venturella v. Town of Fair Haven** – may also be referred to, as the facts are similar. In this case the Venturella children were also repeatedly harassed and it escalated to the point where their parents removed them from the school as they were concerned their children would not be safe, in light of the perceived lack of action from the school district. The family notified various staff members of the harassment and the school district was charged with negligence.

This case did not mention whether any of the boys who were suspended had disabilities or were on an IEP, however something that stood out in this case was the amount of time the students were suspended. Initially there was a ten day suspension and they were later suspended for an additional three days. According to **Individuals with Disabilities Education Act (IDEA)**, if any of the offenders were on an IEP, they could not be suspended for more than ten days during the school year. To see if this law would come up in court I would determine if any IEPs were in place.

3. Notice of nonrenewal

When I meet with Sarah Jane Humphries to discuss her notice of nonrenewal, I will tell her about a case that has facts extremely similar to her situation:

- **McArdle v. Peoria Sch. Dist. No. 150, 705 F.3d**: McArdle was terminated early from her contract due to low teacher moral and she accused the previous principal of being responsible for financial irregularities. In this case McArdle had a provision in her contract that allowed for early termination by either party after one year so long as she was paid for the remainder of her contracted time.
    - Although in this case the court ruled in favor of the defendant, as the school district followed the provisions in the contract, Sarah Jane's situation may be different. I would ask her if there are any provisions in her contract that the district was not abiding and whether due process was followed:
- **Breach of contract** – If the district fails to live up to terms in her contract, she may sue.
- **Due Process Clause of the 14th amendment** – Requires that "due process" be provided prior to the deprivation of life, liberty, or property, therefore school boards must follow certain procedures during a dismissal process including: written notice of charges, opportunity for remediation, pre-termination hearing, content of notice, timing of notice, powers of a hearing officer, etc.
    - Unfortunately for Sarah Jane, if the school district followed due process and did not breach her contract, they have the right to refuse reemployment:
- **NRS 391.31297** – A teacher may be suspended, dismissed or not reemployed and an administrator may be demoted, suspended, dismissed, or not reemployed for many reasons stated in this Nevada Revised Statute, including inadequate performance. Sarah Jane said one of the reasons for her nonrenewal was persistently low student test scores. This may be viewed as inadequate performance.

4. Termination of physically disabled employee

It is unlawful for a school district to not provide reasonable accommodation for an employee with a disability if the employee can perform the essential functions of the job, unless the school can demonstrate that the accommodation would impose undue hardship. A component that is considered when determining undue hardship is the costs and financial resources of the school. In this case the school district could claim that paying for an assistant or paying the disabled worker the extra hours it took to complete the task would be a financial hardship. The district claimed he was not otherwise qualified to meet the essential functions of the job, however other than needing more time, the maintenance worker could in fact complete all job functions. He would be protected under ADA and Section 504.

- **Americans with Disabilities Act of 1990 (ADA)** – Under this act no employer shall discriminate against a qualified individual with a disability in regard to job application procedures, the hiring, advancement, or discharge of employees. Additionally, the law states it is prohibited to discriminate against people with disabilities who are "otherwise qualified"; that is "who, despite their disability, have the training, experience, abilities, and skills to perform the essential requirements of the job".

- **The Rehabilitation Act (Section 504)** – in regards to employment, Section 504 states that "no otherwise qualified individual with a disability shall be excluded from participation in a program receiving federal financial assistance solely by reason of her or his disability." People who are covered by The Rehabilitation Act include:
  (1) They are a handicap person under the law,
  (2) They are otherwise qualified and participate *with* or without reasonable accommodation,
  (3) They have been excluded from the participation in, or being denied the benefits of, or subjected to discrimination under the program solely by reason of their handicap; and
  (4) The relevant program or activity is receiving federal funds.

The maintenance worker had been "certified with a disability"; therefore at this point it would be up to the courts to decide whether the accommodation he was requesting was reasonable, taking in to consideration what the district would have to pay out. Additionally, if H.R. instituted termination proceedings without due process, the worker may be able to file suit through violation of the Fourteenth Amendment.

5. Teacher with 2nd DUI

According to NRS 391.313, a letter of admonition must be written and given to the teacher who received the DUI. The admonition must include a description of the deficiencies of the teacher and the action that is necessary to correct those deficiencies. In this case, the description of the deficiencies would include breaking the law by driving under the influence of alcohol, and the action necessary to correct the deficiency would hopefully be to attend a treatment program, especially since this is the teacher's second DUI.

- **NRS 391.313** - Whenever an administrator charged with supervision of a licensed employee believes it is necessary to admonish the employee for a reason that may lead to demotion or dismissal, the administrator shall:
  (1) Bring the matter to the attention of the employee, in writing, stating reasons for the admonition and that it may lead to the employee's demotion, dismissal, or a refusal to reemploy him or her, and make a reasonable effort to assist the employee to correct whatever appears to be the cause for the employee's potential demotion, dismissal, or a potential recommendation not to reemploy him or her;
  (2) Allow reasonable time for improvement, which must not exceed 3 months for the first admonition.

Furthermore, although Bentley argues the convictions do not relate to his teaching effectiveness, under NRS 391.314 the school district can in fact place him on leave without pay pending the hearing.

- **NRS 391.314** – if the superintendent is of the opinion that the "immediate suspension of the employee is necessary in the best interests of the pupils in the district, the superintendent may suspend the employee without notice and without a hearing. A superintendent may suspend a licensed employee who has been officially charged, but not yet convicted of a felony or a crime involving moral turpitude or immorality. If the charge is dismissed or if the employee is found not guilty, the employee must be

reinstated with back pay, plus interest and normal seniority. The superintendent shall notify the employee in writing of the suspension".

Based on this statute, Mr. Bentley can be put on leave without pay due to the immorality of his crime. If the school board decides to not terminate Mr. Bentley, or Bentley and the board agree on a course of action to assist in his recovery, he would be reinstated and paid back pay. Many courts do not permit dismissal for non-violent or minor crimes unless the school board can establish a connection between the criminal behavior and teaching effectiveness, therefore most likely Mr. Bentley would be offered the help he needs and continue to teach if he abides by the steps outlined in a contract.

The letter of admonition that was drafted for Mr. Bentley has some issues as it is not specific and does not detail the crime, charges, expectations going forward, and how Mr. Bentley can be assisted in meeting the expectations. The letter should contain:

1. The law that was broken and the date which Mr. Bentley engaged in the unlawful conduct.
2. The specific citation under which his disciplinary action will take place.
3. Specific state statues and local policy and the date Mr. Bentley was advised to read these (as a principal I would read these with him or supply him with the statues and policies instead of leaving it up to him to find and read through them).
4. Specifically described the expectations and/or improvements he must make and by when.
5. Give resources to help him meet the expectations, including specific names, programs, and contact information.
6. Describe what you will do as his administrator to assist him.

6. Teacher expressing political views in class

As stated in this scenario, the Nirvana principal in the past has advised all teachers to keep their personal political views to themselves while in their classrooms or on school grounds. There could be a problem requesting this however because in disputes over teacher in-school, non-curricular speech, most courts have applied the approach developed with students in the Tinker case and state that "a teacher's speech is protected as long as it does not materially and substantially disrupt the school and its operations". The issue in question is whether Cohen's personal political comments in class is disrupting the school. Since there are several complaints from parents, it could be viewed as disruptive.

- **Garcetti v. Ceallos** – This is a good case to refer to as it deals with First Amendment Freedom of Speech as it relates to a public employee as well as speech restrictions when the speech has some "potential to affect the entity's operations."

With Cohen, we would also look at a six-part framework that was established as an outcome of several Supreme Court cases dealing with similar situations. The framework addresses:

(1) Whether they were subjected to an adverse employment decision
(2) Whether the employee spoke pursuant to his official duties or as a citizen
(3) Whether the subject of speech was a matter of public concern

(4) Whether the public interest in what the employee had to say outweighs the disruption
(5) Whether the protected speech was a substantial factor in the adverse employment decision
(6) Whether the employer can prove the same adverse employment decision would have been made in the absence of the protected speech.

7. Teacher with part-time stripping job

In regards to Lori Smith's other job, the outcome and procedure may depend on whether she is probationary or a tenured teacher. If the school board decides to dismiss her and she is probationary, they have every right to not renew her contract as long as any clause in her contract is withheld. If she is tenured there would be more steps. She would be entitled to oral or written notice of the charges against her, an explanation of the employer's evidence, an opportunity to present her side at a pre-termination hearing. These rights would be protected under the Fourteenth Amendment.

- **Due Process Clause of the Fourteenth Amendment** – To have a constitutional right under this clause, the employee must have a property interest in the job. It has been determined that a tenured teacher has a property interest. Probationary teachers have property interest in the job if they are dismissed in the middle of their contract, however not after the expiration date of their contract.

The district may decide to terminate Ms. Smith based on the following statutes:

- **NRS 391.330** – states that "The State Board may suspend or revoke the license of any teacher, administrator, or other licensed employee, after notice and opportunity for hearing have been provided for":
  (1) Immoral or unprofessional conduct
  (2) Evident unfitness for service
- **NRS 391.31297** – states a teacher may be suspended, dismissed or not reemployed for:
  (1) Immorality
  (2) Unprofessional conduct

In both statues, the school board may consider her other job to be immoral, unprofessional, or unfit for a teacher. I would suggest Ms. Smith contact the teachers union for more information.