

## **‘Cocaine’ by the can? Not in Texas**

DALLAS – A state court has banned the distribution of an energy drink named “Cocaine.” Also, the drink’s manufacturer, Redux Beverages L.L.C., must make clear on its Website that it’s not available in Texas.

That action came after the maker failed to show up for a court date and the judge slapped on a permanent injunction and civil penalties of \$825,000.

In a news release, the Texas Attorney General’s Office says sellers marketed the beverage as a legal alternative to illicit street drugs and as a dietary supplement which could cure diseases.

Additionally, the state says the maker claimed users could get “high” and have feelings of euphoria. In its advertisements, Redux Beverages marketed the Cocaine drink as a “legal alternative” and asked whether consumers could “handle the rush.” The AG says since the manufacturer made unproved health claims, it ran afoul of state laws. The Texas Department of State Health Services referred this case to the Office of the Attorney General.



## \$50 MILLION FOR INTERNET CRIMES AGAINST CHILDREN GRANT PROGRAMS

The Department of Justice recently announced that \$50 million is available through the American Recovery and Reinvestment Act of 2009 (Recovery Act) for Internet Crimes Against Children (ICAC) program initiatives, administered by the Department's Office of Justice Programs' (OJP) Office of Juvenile Justice and Delinquency Prevention (OJJDP). Eligible applicants may access the ICAC funding solicitations and deadline information at <http://www.ojp.gov/recovery>.

Resources: For information about these and other OJJDP funding opportunities under the Recovery Act, visit <http://ojjdp.ncjrs.gov/recoveryact.html>.

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## Mark your calendars....

Coordinated School Health Bi-Annual Forum  
Education Service Center, Region 20 Conference Center  
May 6, 2009 from 9:00 a.m. - 11:30a.m.

Please register at [www.esc20.net](http://www.esc20.net), Workshop # CF90506-K01.

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## Does compulsory attendance policy create constitutional obligations?

LRP Publications 2009

A 15-year-old student with autism disappeared from gym class at a magnet school. The paraeducator assigned to watch him and another student noticed that a gym door leading outside was open as class began. When she realized that student was missing, she searched outside that building but could not find him. She then informed the teacher, who closed the door and reported the incident to the school secretary. The paraeducator took no further action. The school notified the police. The student was found hours later, approximately three blocks from campus. The unharmed student was dirty and naked.

The student and his parents sued the district for violating the student's substantive due process rights under the 14<sup>th</sup> amendment. They claimed that the school violated his constitutional right to a public education and his right to be secure while enrolled at the school. With regard to the latter argument, they asserted that Kentucky statutory law compelled their child to attend the school and thus, the school has had a constitutional obligation to protect him while he attended.

### Is failure to keep autistic student secure in school a 14<sup>th</sup> Amendment violation?

- A. **Yes.** The student was denied his constitutional right to a public school education.
- B. **No.** Students have no federal constitutional right to a public school education or to be kept safe in school.
- C. **Yes.** Staff members breached their duty to protect the pupil by leaving the gym door open, despite the presence of students with disabilities.

### How the court ruled: B

The U.S. District Court, Eastern District of Kentucky dismissed the parents' claim, nothing that they dialed to identify a constitutional right of which the student was deprived. *A.P. v. Fayette County Public Schs.*, No. 5:06-247-JMH (E.D. Ky. 01/24/08). The Constitution does not grant individuals the right to be secure at school. Section 1983 allows an individual to sue a school district or other party for depriving his of a right or privilege secured by the U.S. Constitution or the laws of the United States.

In ruling against the student, the judge cited many other cases concluding that Kentucky's compulsory school attendance laws do not raise a school's general obligation to maintain a safe environment to the rank of a constitutional duty. Answer A was incorrect. The constitution does not grant individuals such a right. Answer C was incorrect, although these circumstances might subject the district or its employees to a negligence lawsuit, they were insufficient to create a Section 1983 claim in the absence of a Constitutional violation.

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## Decisions & Guidance

### Parents cannot blame football coach for son's heart-related death

Case Name: *Davis .v Carter*, 08-10162 (11<sup>th</sup> Cir. 2009). An LRP Publication, 2009.

**Ruling:** The 11<sup>th</sup> U.S. Circuit Court of Appeals blocked a couple's constitutional claim against their deceased son's former high school football coaches. The coaches were entitled to qualified immunity, and remanded the case for entry of judgment in the coaches' favor.

**What it means:** Qualified immunity shields government employees who perform discretionary functions from liability for civil damages, insofar as their conduct does not violate a clearly established statutory or constitutional right. The use of excessive corporal punishment in the school setting may give to a substantive due process violation if it is administered in a way that harm is intended. Here, high school football coaches were not constitutionally liable for a player's heart-related death. Their alleged failure to provide proper care to the player after he showed signs of distress suggested poor judgment rather than an intent to do harm.

**Summary:** The parents of a high school football player, who suffered a heart-related death following a vigorous practice session, could not pursue a substantive due process claim against three football coaches. The coaches sought to dismiss the couple's suit, arguing that they were shielded from liability by the qualified immunity doctrine. To establish the defense of qualified immunity, a district employee must first establish "that the allegedly unconstitutional conduct occurred while he was acting within the scope of his discretionary authority." That the coaches were acting within their discretionary authority during the workout was not disputed. The coaches' eligibility for qualified immunity turned on whether the constitutional right that they allegedly violated was clearly established. Reasoning that it was not, the 11<sup>th</sup> Circuit ruled that the coaches' were entitled to qualified immunity.

The coaches supervised a voluntary workout session where, the parents contended, their son was subjected to an intense and unreasonable practice that caused his death early the next day. In a Section 1983 suit, the parents alleged that the coaches violated their son's substantive due process rights by: 1) depriving him of water when he exhibited signs of overheating; and 2) choosing not to assist him or summon medical assistance when he collapsed on the football field.

"Conduct by a [district employee] will rise to the level of a substantive due process violation only if the act can be characterized as arbitrary or conscience-shocking in a constitutional sense," the 11<sup>th</sup> Circuit explained. To rise to the conscience-shocking level, conduct most likely must be "intended to injure in some way unjustifiable by any government interest," the court added.

The parents did not allege that the coaches engaged in corporal punishment or physically contacted him. In a school setting case, "allegation of deliberate indifference without more, do nor rise to the conscience-shocking level required for a constitutional violation," the court concluded.

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### High Court: Title IX not exclusive remedy for peer sexual harassment

**Case Name:** *Fitzgerald v. Barnstable Sch. Committee*, 07-1125 (U.S. 2009) An LRP Publication, 2009.

**Ruling:** The U.S. Supreme Court concluded that parents whose kindergartner was allegedly subjected to peer-to-peer sexual harassment on her school bus could pursue both statutory and constitutional claims against the school district. The Court did not disturb the decision of the 1<sup>st</sup> U.S. Circuit Court of Appeals, dismissing the parents' Title IX claim, but it reinstated the parents' equal protection claim against the district.

**What this means:** Improper handling of student-on-student sexual harassment complaints can expose a district to liability for both statutory and constitutional violations. The civil remedies provided by Title IX do not preclude individuals from pursuing additional remedies under Section 1983.

Here, the parents of a kindergartner failed to establish that their daughter's school violated Title IX. The Supreme Court's ruling enabled them to have their equal protection claim considered.

**Summary:** A Massachusetts district that success fully fended off a Title IX claim now faces further litigation over whether its handling of a student's sexual harassment complaint violated the Equal Protection Clause. A kindergarten student's parents reported that a third-grader who rode the same school bus repeatedly bullied their daughter into lifting her skirt and pulling down her underpants. The parents argued that the school's mishandling of the investigation and failure to discipline the third grader subject their daughter to further harassment in violation of Title IX. The parents also asserted constitutional violations under Section 1983. The Supreme Court held that the District Court improperly dismissed the parents' 1983 claim on the basis that Congress intended Title IX to be the exclusive mechanism for addressing sex discrimination in school. Reasoning that Title IX was not meant to be a substitute for 1983 suits as a means of enforcing constitutional rights, the Court remanded the parents' 1983 claim for consideration by the District Court.

Section 1983 may be used to redress the deprivation of a right guaranteed by a federal statute or the U.S. Constitution. Section 1983 equal protection claims may be brought against individual government employees as well as municipalities and certain other state entities, like school districts. On the other hand, Title IX applies to educational institutions and programs that receive federal funds, which may include private institution. It does not, however, authorize suits against school officials, teachers or other individuals. These differences in standards for establishing liability support the conclusion that, in certain circumstances, a defendant may be subject to claims under Title IX and Section 1983.

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## **NCLB Maximum Entitlements for School Year 2008-2009**

Maximum entitlements for 2008-2009 have been calculated for the programs included in the NCLB Consolidated Application for Federal Funding (SAS#NCLBAA09) and may be accessed at <http://ritter.tea.state.tx.us/opge/formfund/NCLB/Maximums.html>.

Please note that roll forward is not included in the maximum entitlement. Therefore, the approved budget for the programs included in the NCLB Consolidated Application for Federal Funding (SAS#NCLBAA09) will be the maximum entitlement plus any roll forward.

If you have questions related to the use of specific NCLB program funds and amending the application, contact the Division of NCLB Program Coordination at (512) 463-9374.

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## **PR7000 Private Nonprofit School Participation for School Year 2008-2009**

The PR7000 - Private Nonprofit School Participation for the 2008-2009 school year is available in eGrants. This compliance report collects the following data from all school districts, regardless of whether PNP schools are located within the district's boundaries, or whether the PNP schools participate in the programs: \* number of PNP schools, \*number of students enrolled in those PNP schools, and \*number of low-income students enrolled in those PNP schools.

This data impacts eligibility and funding for the Title IV, Part A Program for school year 2009-2010. The submission deadline date is **April 30, 2009 at 5 p.m. Central Time. School districts that miss the deadline will not be funded for private nonprofit student enrollments for the Title IV, Part A Program.**

Note: Any districts that miss the deadline, and are therefore not funded for private nonprofit student enrollments, still must meet the PNP school participation requirement for any eligible PNP schools within their boundaries.

The school district is required to submit the PR7000 even if no PNP schools chose to participate, and even if there were no PNP schools located within the boundaries of the school district. The PR7000 can be located through the school district's Grantee Profile in eGrants. To locate the report, select 2008-2009 NCLB Consolidated Federal Grant Application from the drop-down list of Available Grant Programs in eGrants. If you have questions regarding the PR7000, please contact the Division of Formula Funding at 512-463-8525 or e-mail [formulafunds@tea.state.tx.us](mailto:formulafunds@tea.state.tx.us).

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## **Columbine - The 10th Anniversary**

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As much as we would like to treat Monday, April 20th as just another school day, it will be difficult to do so. There will be ample advance media coverage for the 10th anniversary of the second most violent act to ever occur at a U.S. school. Ironically, the most violent act perpetrated occurred in Bath, Michigan on May 18, 1927, just prior to another major economic downturn. Andrew Kehoe blamed a property tax increase initiated by the school district for the foreclosure on his farm. Kehoe killed 45 people, mostly children, when he detonated an explosive device at the school. While interviews leading up to April 20th are sure to include reflections on how the events at Columbine have affected overall school security, some should expect to be asked, ***“Does your school plan to take extra precautions on the anniversary date?”***

Barring a specific concern or threat, school administrators and staff should attempt to treat the anniversary as a normal school day. However, in advance of the anniversary, all school staff should be reminded to remain alert and report unusual behaviors or conversations indicating the presence of a threat. It is important to remember there are still disillusioned individuals, both young and old, who idolize the Columbine shooters. History has also taught us high profile anniversary dates can become a focal point for lashing out or making a statement. And lastly, as was illustrated in the Bath, Michigan tragedy, the effects of financial despair may drive some to commit irrational and violent acts. In visiting with media or others inquiring about changes since Columbine, the following talking points might serve as a guide for your school or district, assuming the strategies, procedures, and practices are in use.

**Student support groups and added counseling efforts** – In an effort to integrate new students into the school, including those that might be more prone to feeling disenfranchised, schools routinely provide services that include a wide variety of programs designed to intervene with students identified as at-risk for aggressive and/or violent behavior.

**Comprehensive Emergency Response Plans** - Schools now have event specific response plans for such occurrences as an armed intruder, active shooter, and a hostage incident. As a component of their partnership with law enforcement and other emergency responders, these plans and accompanying drill procedures are reviewed periodically by these agencies. In many cases, detailed plans, including site maps, are provided to local police.

**School personnel routinely practice a variety of responses to different types of violent school events** – Lockdown drills are now commonly scheduled at elementary and secondary schools across the United States. Based on the U.S. Department of Education’s recommendation to practice with tabletop exercises, schools also now train staff in appropriate responses to acts of school violence with scenario based instruction.

**Facility designs and critical procedures now take into account best practices for school security** - Renovations and new school facilities are designed by architects and others having an understanding of the generally accepted best practices in school. These strategies and procedures include limited public access points, ability to rapidly secure exterior and classroom doors, secondary methods of emergency egress from classrooms, multiple access points to school communication systems, and the strategic placement and design of office areas to aid in the early warning of intruders.

**Threat Assessment Teams are utilized to investigate and guide responses to serious threats of violence.** Schools have trained team members using the latest research from the U.S. Department of Education, Secret Service and the F.B.I. and follow a formal process in analyzing threats meeting designated criteria. The process includes collaboration with appropriate community agencies and is in addition to any immediate action necessary to ensure the safety of staff and students. While major acts of school violence continue to be a rare occurrence, schools should be conversant on what steps they have taken since April 20, 1999. For some school administrators, the next three weeks will present opportunities to reassure the community that schools continue to be a safe harbor for children. Take advantage of it, and continue to look for ways to be proactive.

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### **In the News** ***Columbine Style Attacked Thwarted –***

According to BBC News, two teenagers, ages 16 and 17 have been arrested in Tameside, England, and charged with planning an attack on their school to coincide with the anniversary of the April 20, 1999 siege at Columbine High School in Littleton, Colorado. The two students who have been charged with one count of *Conspiracy to Cause an Explosion* are alleged to have made detailed plans to attack their school.

Prosecutors in the U.K. indicate the two alleged conspirators had made and tested a homemade bomb, possessed detailed maps of the school and a nearby shopping center, and had conducted internet research on bringing down buildings with explosive devices. The plan had progressed to the point the suspects referenced their plan as “Project Rainbow”. Defense attorneys, already retained to represent the two youths, are indicating the students never intended to follow through with the act and that it was only “a fantasy”. The plot was apparently foiled when a friend of the two boys discovered information concerning the details of the planned attack and notified authorities.

## Upcoming Events and Trainings

### April

#### **411 on Drugs**

April 14, 2009

9:00 a.m. – 12:00 p.m.; ESC-20

Workshop # CA90414-K11

Fee: \$35; SDFSC Co-op: No Cost

#### **411 on Teen Relationships**

April 14, 2009

1:00 p.m. – 4:00 p.m.; ESC-20

Workshop # CA90414-K12

Fee: \$35; SDFSC Co-op: None

#### **411 on Bullying**

April 21, 2009

1:00 p.m. – 4:00 p.m.; ESC-20

Workshop # CA90421-K12

Fee: \$35; SDFSC Co-op: None

#### **411 on Gangs and Violence**

April 21, 2009

9:00 a.m. – 12:00 p.m.; ESC-20

Workshop # CA90421-K11

Fee: \$35; SDFSC Co-op: No Cost

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#### **SDFSC Co-op:**

If your school is located within the following district areas, then eligibility is granted unto the Office of Safe and Drug-Free Schools and Communities Cooperative for the 2008-2009 school year. Specific course offerings are listed at no cost.

Brackett ISD, Crystal City ISD, Devine ISD, D'Hanis ISD, Dilley ISD, Ft. Sam Houston ISD, Hondo ISD, Ingram ISD, Knippa ISD, Lackland ISD, La Vernia ISD, Lytle ISD, Natalia ISD, Pleasanton ISD, Poth ISD, Randolph Field ISD, Southside ISD, Stockdale ISD, School of Excellence, Guardian Angel Academy, Por Vida Academy, Southwest Preparatory, Gabriel Tafolla, John H. Wood, Jubilee Academy, Positive Solution, George I. Sanchez

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### **Office of Safe and Drug-Free Schools and Communities Education Service Center, Region 20**

#### **For more information, please contact**

Lucien Robert Costley  
Educational Specialist  
210-370-5493

Manuel Garcia  
Report Writer  
210-370-5624

Deanna Higginbotham  
Office Assistant  
210-370-5659

