

ABA Government Law News

State and Local

A 60-Second Update on What's Happening

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Supreme Court Has an IDEA: The Individuals with Disabilities Education Act (IDEA) requires schools to develop an "individualized education program" for qualifying students. In [Schaffer v. Weast](#) the Court held the burden of proof is on the student who challenges the adequacy of his or her program, at least when state law does not provide otherwise. The New York Times, among others, have criticized the Supreme Court's 6-2 decision. www.supremecourtus.gov/opinions/05pdf/04-698.pdf

School Desegregation Plan May Factor in Race: The Ninth Circuit applied the Supreme Court's 2003 school admission affirmative action decisions, *Grutter v. Bollinger*, 539 U.S. 306 (2003) and *Gratz v. Bollinger*, 539 U.S. 244 (2003) to a Seattle high school desegregation plan in [Parents Involved in Community Schools v. Seattle School. Dist. No. 1](#). The *en banc* decision upheld Seattle's use of race to decide admissions to high schools that are "oversubscribed" by students who may seek admission to any school in the district. The Court found a compelling interest in "educational and social benefits of [racial] diversity unique to the public secondary school context" similar to the law school setting in *Grutter*.
[http://www.ca9.uscourts.gov/ca9/newopinions.nsf/3AFF1CF4980AD7EE882570A00055CAE6/\\$file/0135450.pdf?openelement](http://www.ca9.uscourts.gov/ca9/newopinions.nsf/3AFF1CF4980AD7EE882570A00055CAE6/$file/0135450.pdf?openelement)

Two New Books by the Section:

"[Legal Guide to Affordable Housing Development](#)" (Abbott and Hetzel, eds.) (product code 5330087) co-published by Section and the Forum on Affordable Housing. To order this book or for more information, call 800-285-2221 or go to <http://www.abanet.org/abastore/index.cfm?section=main&fm=Product.AddToCart&pid=5330087>

"[Legal Guide to Homeland Security and Emergency Management for State and Local Governments.](#)" (Iglesias and Lento eds.) (product code 5330086). To order or for more information, call 800-285-2221 or go to <http://www.abanet.org/abastore/index.cfm?section=main&fm=Product.AddToCart&pid=5330086>

Two Strikes for Tribes vs. Locals: This past spring, in [City of Sherrill v. Oneida Indian Nation of New York](#), 125 S.Ct. 1478, the Supreme Court "dramatically altered the legal landscape" of Indian land claims when it rejected tribal immunity from local taxes for reacquired lands. The tribes have lost again in [Cayuga Indian Nation of New York v. Village of Union Springs](#), 390 F.Supp.2d 203 (N.D.N.Y. 2005), as a federal trial court found no tribal immunity from state and local zoning laws and regulations. During the 1990s, the Cayuga Nation repurchased land it had sold in 1805 and then claimed exemption from local zoning. Relying on *City of Sherrill*, the court held that "the Nation is seeking relief even more disruptive than non payment of taxes."
<http://www.narf.org/nill/bulletins/dct/archives/unreported/cayuga.html>

New RLUIPA Decision a Good Read: The 10th Circuit considered the First Amendment and RLUIPA as applied to a church denied a variance for a daycare center in a residential zone in [Grace United Methodist Church v. City Of Cheyenne](#), 427 F.3d 775 (19th Cir.2005). It found the common variance is not a subjective individualized exemption deserving strict scrutiny. The court

found that the jury's finding that daycare was not a sincere exercise of religious belief came after an erroneous instruction but it found the error harmless. This discussion of jury instructions and evidence admissible as to sincerity of religious belief should be useful to litigators. <http://pacer.ca10.uscourts.gov/cgi-bin/getopn.pl?OPINION=03-8060.wpd>

Nickel Slots Pay \$600,000: The 6th Circuit found a Detroit casino's private security guards to be state actors for §1983 liability because Michigan law gives them public law enforcement powers. Detaining and interrogating a 72-year-old woman in a windowless room after she picked up an abandoned nickel token was malicious, justifying punitive damages against the employees and the casino. Cities are not liable for punitive damages under §1983 but the casino and its guards are not exempt. [Romanski v. Detroit Entertainment, L.L.C.](http://www.ca6.uscourts.gov/opinions.pdf/05a0429p-06.pdf)
<http://www.ca6.uscourts.gov/opinions.pdf/05a0429p-06.pdf>

Free Steak Knives: Duke Law School maintains "[Supreme Court Online](http://www.law.duke.edu/publiclaw/supremecourtonline/)," with recent Supreme Court opinions, full-text and edited versions for classroom use, and plain-English summaries and commentaries. The site is designed to serve "the general public and facilitate the classroom use of recent decisions." It may be useful to anyone needing to put together course material for classes or lectures to lay groups. <http://www.law.duke.edu/publiclaw/supremecourtonline/>

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