

## Case Summary

### Jones v. Bremen High School District 228

2010 U.S. Dist. LEXIS 51312 (N.D. Ill. May 25, 2010)

#### **Defendant Sanctioned for Failure to Issue Litigation Hold**

In a race discrimination case, the defendant high school was sanctioned for its failure to issue a litigation hold. After receiving notice of the plaintiff's filing with the EEOC, the defendant did not install a litigation hold but rather instructed several key players to maintain their own email relevant to the dispute. The key players did not have the assistance of counsel, and each was able to permanently delete email at his own discretion. A proper litigation hold was not installed for over one year, and potentially relevant emails were lost during this time.

#### **Decision**

The court found that the defendant had breached its duty to preserve evidence. The defendant had not shown that installing a litigation hold would have been a burden, and the incomplete production had harmed the plaintiff. Because the loss of evidence did not appear to be deliberate, the court found an adverse inference instruction inappropriate. Instead, the defendant was precluded from arguing that the absence of email containing discriminatory statements demonstrated that no such statements were made.