

● ● ● | Latest in School Law
A to Z
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● ● ● | ADHD Guidance – Section 504

➤ The U.S. Dep’t of Educ. Issued guidance in July of 2016 clarifying that students diagnosed with attention-deficit/hyperactive disorder (ADHD) are guaranteed equal educational opportunities under Section 504 of the Rehabilitation Act of 1973. The guidance explains ADHD evaluation; discusses service obligations; addresses behavioral challenges; and reminds of due process requirements. It is available online.

● ● ● | Breathalyzer Tests of Students

➤ The Eleventh Circuit Court of Appeals upheld a school district’s use of breathalyzer tests on prom attendees (and the search of a “party bus”) finding no violation of the Fourth Amendment prohibition of unreasonable searches and seizures. The students were required to sign a “zero tolerance policy” for use of alcohol, drugs, or tobacco; including a potential breath test when buying tickets to the school prom. (*Ziegler v. Martin Cnty. Sch. Dist.*)

● ● ● Concussion Laws/Protocols

➤ A Washington state appeals court ruled that parents brought a valid cause of action for negligence against a school based upon a football coach's alleged failure to follow concussion protocols developed under state law. While violation of the concussion law does not definitively establish negligence, the coach's failure to follow the law constitutes evidence of negligence and supported the case against the school. (*Swank v. Valley*)

● ● ● Diversity and Desegregation

➤ The U.S. Supreme Court upheld the admission policy of the Univ. of Texas at Austin to consider race, along with numerous other factors, in determining admission. Note this is a Higher Ed. case. (*Univ. of Texas at Austin v. Fisher*)

➤ A 2016 GAO report showed that the number of public schools that were classified as poor and racially segregated (75% of student population) more than doubled over a 13 year period thru 2014 and now constitute 16% of public schools.

● ● ● Equal Access Act – Student Clubs

➤ The Equal Access Act (EAA) dealing with student led, non-curricular clubs (during non-instruction time) is generating a new round of school disputes and litigation. The law was passed in 1984 and was focused on religious clubs, after a time most of the disputes and litigation focused on gay-straight alliance clubs. There is currently a flurry of disputes and court actions focusing on pro-life clubs. All such clubs must be provided with equal opportunities.

● ● ● | Family Educ. Rights & Privacy Act

➤ The Family Educational Rights & Privacy Act (FERPA) was passed in 1974 and is the primary federal law protecting student records. In January of 2017, the U.S. Dept. of Educ. found that a NC school district violated a parent's FERPA rights when it refused access to a child's educational records despite the fact that the child was in foster care at the time of the request. It was noted that no court order had revoked parental rights under FERPA.

● ● ● | Graduations in Religious Facilities

➤ The Fourth Circuit Court of Appeals held that a claim against a SC school district could continue based upon the district's past practice of holding graduation ceremonies in religious facilities. Similar cases have occurred around the country and most have held that public school use of religious facilities constitutes a violation of the Establishment Clause of the First Amendment. (*Amer. Humanist Ass'n. v. Greenville Cnty. Sch. Dist.*)

● ● ● | Hazing – It's Still Happening

➤ It was recently reported that an IL. school district agreed to pay \$1 million to settle a lawsuit brought by five former high school student-athletes and members of a boys' soccer team. Similar suits have occurred across the country brought by current and former members of wide range of teams. There are laws and policies prohibiting hazing nearly everywhere; but those edicts alone don't seem to stop the practice. This is an adult problem.

● ● ● | Immigration – Under the Spotlight

- The ACLU brought suit against five NJ school districts claiming that their school registration process requires documents that demonstrate immigration status in order to enroll.
- A very recent trend has been to declare school districts as sanctuaries for immigrant students.
- The 1982 U.S. Supreme Court case of *Plyler v. Doe* clearly establishes that public schools are to enroll students without regard to immigration status and to take no action to chill attendance.

● ● ● | Journalism – Schools Losing Control

- There is a nationwide campaign to pass laws and regulations "protecting" student journalists and journalism teachers from school "censorship" and from "retaliation" for the contents of school sponsored publications.
- This limits the 1988 Supreme Court ruling in *Hazelwood v. Kuhlmeier* which held that schools have a right to exercise some control over publications that appear to represent the school and their under-age student population.

● ● ● | Knowing the Students

- (Yes, I know the letter K is a stretch, sue me) Fingerprint, handprint, and retina scanners have become more common in public schools around the country. These biometric devices are used to handle everything from lunchroom transactions to attendance and can add an attractive level of convenience and efficiency.
- Civil libertarians are often sceptical of these types of technology and raise various privacy concerns. At least two states regulate their use.

● ● ● | Labor – Fair Labor Standards Act

➤ The Fair Labor Standards Act (FLSA) of 1938 affects public schools with regard to overtime rules. Teachers fall under an overtime exception for professional employees, although other school clerical, janitorial, and food service employees may be subject to the law's overtime provisions. A December 2016 federal rule change would have significantly increased the number of employees affected; but a TX U.S. District Court has enjoined implementation.

● ● ● | Marijuana in schools

➤ Only a few of the growing number of states permitting recreational marijuana use or the prescription use of medical marijuana have adopted policies that allow students to use it in schools.

➤ The possession of marijuana continues to be otherwise banned from school and a host of issues arise regarding the administration of the drug medicinally in the school setting.

● ● ● | Native-American Mascot Disputes

➤ In a switch from the usual demands that schools change their school athletic teams and school mascots away from Native-American names, mascots, logos, and symbols, a proposed MA law banning the practice is being challenged by a Native-American advocacy group. The Native American Guardians Association (NAGA) contends that it is discriminatory to ban Native-American imagery while allowing groups imagery such as Vikings.

● ● ● | OCR – Office for Civil Rights

- › Both the U.S. Departments of Education and Justice have an Office for Civil Rights that become involved with schools when there are claims of discrimination under federal law. Title IX investigations have occurred in many school districts in recent years pertaining to various allegations of discrimination based upon sex. Even more recently, OCR has begun to broadly investigate racially disproportionate student discipline under Title VI of the Civil Rights Act.

● ● ● | Police – SROs Under Fire

- › The Federal government in several Dear Colleague Letters has expressed its low regard for the growing presence of School Resource Officers (SROs) in many of your schools
- › Be on the lookout for additional efforts to limit the role of SROs in schools and expect lawsuits against school districts for any actions by SROs that are deemed too harsh regardless of whether the officers are actual school district employees or not.

● ● ● | Questioning the Board – Public Comment Periods in Meetings

- › There have been high profile lawsuits about the rules and operation of public comment periods at school board meetings in CA, GA, and PA and likely other states. These suits challenge the limits that boards of education place on public comment periods during their public meetings. Interestingly, in most places there is no right for the public to speak at a board meeting; but if public comment is allowed then questions arise about speakers speech rights.

● ● ● | Robocalls – Growing Use by Schools

- There has been a growing use of Robocalls by schools to provide announcements ranging from weather related closing or delays to reminders about conferences or the like.
- The FCC has ruled that schools can send automated calls and texts to the cell phones of student family wireless phones without violating the Telephone Consumer Protection Act.
- Conversely, a FL school district faces a lawsuit for “intrusive robocalls” to a wrong number.

● ● ● | Special Education – IDEA Issues

- Use of restraint and seclusion is one of the most disputed topics as a balanced position on the practice is elusive and passions run high.
- Perhaps most significantly, the Supreme Court in March of 2017 took a fresh look at the level of education (*Rowley* – 1982) required by IDEA in the *Endrew F. v. Douglas* case.
- Areas of dispute range from service animals to the links with IDEA and other disability statutes.

● ● ● | Transgender Issues

- It is beyond question that no area of education law generated more publicity over the last year than transgender and gender identity issues.
- Cases had popped up all over the country and a VA case was before the Supreme Court.
- On February 22, 2017 the 2016 Dear Colleague Letter on transgender issues was withdrawn, citing “regard for the primary role of the States and local school districts in establishing educational policy”.

● ● ● | Unions – Teachers Challenge Dues

➤ A group of CA teachers have once again filed suit challenging mandatory union membership dues (agency shop). The suit is attempting to re-litigate the issues that ended in a 4 – 4 deadlock before the U.S. Supreme Court last year seeking to overturn a finding in favor of the California Teachers Association by the Ninth Circuit Court of Appeals. (*Friedrichs v. Cal. Teachers Ass'n*) That case does not apply on a nationwide basis.

● ● ● | Vaccinations – Mandatory or Not

➤ Vaccination requirements are challenged periodically. California had in recent years relaxed its vaccination requirements resulting in a resurgence of a number of nearly non-existent childhood diseases. California tightened their vaccination regulations again in recognition of a public health problem. Suit has now been brought in federal court against the mandatory vaccination law as violating student and parent constitutional rights.

● ● ● | Websites – Are They Accessible

➤ The U.S. Dep't of Education has investigated school districts in multiple states related to school district and school websites that are not accessible to individuals with certain disabilities. The website accessibility failings pertain to the blind or visually impaired and the deaf or hearing impaired. The entities are entering into settlement agreements calling for voluntary monitoring, audits of website content, notices to users, and training for personnel.

● ● ● | IX - Title IX

➤ The U.S. Dep't of Educ. has pursued violation allegations of the 1972 law know as Title IX for decades. Up until the last decade nearly all of those alleged violations pertained to inequities between boys and girls athletic opportunities and facilities. In the last decade, Title IX has also been relied upon in sexual harassment cases, and most recently in matters such as single sex classrooms and schools, sexual violence, and transgender rights.

● ● ● | Yes – Schools Must be Open to All

➤ A federal district court in Ohio has issued a consent order finding that an OH school district violated the First and Fourteenth Amendments when it refused to allow a religious group to access and rent school facilities on the same basis as other community organizations. School buildings are public facilities and one group must be afforded access to those public facilities in the same manner as any other group desiring to use the school when available.

● ● ● | Zero Common Sense

➤ A CA school district settled a lawsuit with two students who were coaxed into participating in a drug sting for the sum of \$300,000.
➤ Another CA school district had a jury verdict rendered against them in the amount of \$1.5 million in the lawsuit of a former student that was denied a bathroom break and was forced to urinate in a bucket in a supply room.
➤ A suit just settled against a NY district that subjected a student to a body cavity search.
