



**ARIZONA**

**Arizona Senator Introduces Bill to Expand the Rights of Student Speech**

This session, Arizona Senate Majority Leader Kimberly Yee (R-Phoenix) introduced Senate Bill 1384 to expand the rights of student journalists. If passed would grant both high school and college level student journalists the ability to “exercise freedom of speech and freedom of the press in school-sponsored media,” thus lessening the impact of the landmark 1988 U.S. Supreme Court decision in *Hazelwood v. Kuhlmeier*, 484 U.S. 260 (1988). Included in the bill is a provision that would allow district and charter school governing boards to develop content guidelines for school-sponsored media, though the law prohibits content guidelines from restricting speech beyond content that is libelous, invasive of personal privacy rights, or “materially and substantially” disruptive to the operations of the school.

**Legislation**

By a razor thin one-vote majority in each chamber, the Arizona Legislature passed SB1314/HB2394 which was signed into law on April 6th by Gov. Doug Ducey. The law greatly expands program entitlement to Empowerment Scholar Accounts (ESA) in Arizona over the next four years. Now all students in poorly performing schools, as defined by the Arizona Department of Education (“Department”), are eligible for ESA’s voucher of 90-100% of private or parochial school tuition, based upon financial need. The law caps enrollment at approximately 5500 students until 2021-2022, when the Department will re-determine the enrollment numbers. The amount available to each non-handicapped student will be approximately \$4400 per year with slightly higher limits to students with special needs. The bill, promoted by the conservative Goldwater Institute, provoked much controversy. In the aftermath of its passing, a prominent leader of the Institute was quoted as saying that this Bill was only a beginning and that all of Arizona’s 1.1 million students would be permitted to enroll under future anticipated legislation. A stern rebuff of that statement followed, clearly indicating the sensitive nature of this law which was essentially passed along party lines.

**FLORIDA**

**Suit against Florida District Seeks \$25,000 for Intrusive “Robocalls”**

A resident of Broward County, Florida, Willie Willis, has filed suit against Broward County School District (BCSD) alleging that he has received

**May 2016 | Volume 1, Number 1**

**DICKINSON WRIGHT OFFICES:**

Arizona	Ohio
Florida	Tennessee
Kentucky	Texas
Michigan	Washington DC
Nevada	

*Disclaimer: Education Legal News is published by Dickinson Wright PLLC to inform our clients and friends of important developments in the fields of education law. The content is informational only and does not constitute legal or professional advice. We encourage you to consult a Dickinson Wright attorney if you have specific questions or concerns relating to any of the topics covered in Education Legal News.*

more than two dozen “robocalls” from the district even though he does not have a child attending school in the district and had informed the district that it had the wrong number. The suit, which was filed under the federal Telephone Consumer Protection Act, seeks damages of up to \$500 per phone call. Dickinson Wright will be monitoring this case as it develops.

**Federal Appeals Court Extends Equal Access Act to Allow Gay-Straight Alliance Clubs in Middle Schools**

The Eleventh Circuit Court of Appeals recently overturned the ruling of a lower court that prevented a group of Florida students from establishing a Gay-Straight Alliance (GSA) at their middle school pursuant to the Equal Access Act, a federal law that ensures that student groups are given equal access to school facilities and resources if the school allows extra-curricular organizations. In *Carver Middle School Gay-Straight Alliance v. School Board of Lake County Florida*, the Florida School Board argued that middle school students were not afforded the same guarantees under the Act as high school students because the Act’s protections only applied to “secondary schools.” Rejecting the District’s arguments, the appeals court determined that the Equal Access Act was applicable to public middle schools as well as high-schools, so long as the school provides some courses that count towards the attainment of a high school credit. It is unclear at this time whether the district plans to appeal the circuit court’s decision to the U.S. Supreme Court. Our office will continue to follow this case.

**Legislation**

Also in Florida, the hotly debated “Schools of Hope Bill” (HB 5105) passed the House 77-40 along party lines with Democratic opposition. The Bill incentivizes charter schools to operate in academically trou-



bled traditional school districts with a set-aside of around \$200 Million Dollars for qualifying schools. The Senate fast-tracked the proposed law, made some changes, however, has not yet passed the measure. An alternative proposal was recently released by a Senator proposing to replace the Schools of Hope bill with additional resources to traditional school districts, as opposed to incentives for charter schools.

The fight over a Florida plan to deny facilities funding to charter schools earning consecutive Ds on their state report card is continuing, with its second legal challenge.

## INDIANA

### Senate Passes Bill to Change Licensing Requirements for Charter School Teachers

Omnibus Bill 1382 was amended by the Senate to include changes to the licensure requirements of Indiana charter school teachers. Under current law, at least 90 percent of all teachers in a charter school must hold a valid Indiana teaching license or be in the process of obtaining one. Omnibus Bill 1382 would loosen that restriction by giving discretion to the Indiana State Board of Education to determine what state permits qualified as a teaching license under Indiana law. Among numerous other provisions, would also require all virtual charter schools to adopt a “student engagement policy” to help solve high student mobility problems and challenging learning issues plaguing virtual charters. The Bill would allow virtual charter schools to withdraw students who demonstrate low participation and poor attendance.

### **Senate Approves “ILEARN”**

The Indiana Senate passed legislation to create a new state testing system called the Indiana Learning Evaluation Assessment Readiness Network or “ILEARN.” This measure, which already passed in the House, was approved by the Senate in a 32-16 vote. The new testing system would be in place by 2019, though the State has yet to select a specific assessment to use as a part of the ILEARN scheme. Critics of the ILEARN suggest that uncertainty about which assessment will be used by the state could result in problems with the test’s rollout, leading to poor student performance. ILEARN would continue to test students in grades 3-8 and at least once in high school in Algebra, English, and Biology, though under the new law Indiana schools would also be required to administer a “nationally recognized” college or career readiness assessment to high school students. Testing periods would also be limited to the end of the year, rather than twice a year as required by ISTEP, though assessments would continue to be administered digitally. The Bill will return to the House to concur on minor changes made by the Senate before being sent to the Governor’s desk to sign into law.

### **Indiana Increases Protection for School Prayer**

The Indiana legislature recently passed House Bill 1024 with bipartisan

support. The Bill would require that the State Attorney General’s Office author a model policy protecting religious expression in schools. The law would also permit Indiana school corporations (commonly known elsewhere as districts) to develop an elective course focusing on world religions. The Bill goes on to prohibit discrimination against students and parents—though note that this was already protected under federal and Constitutional law. House Bill 1024 also requires that schools permit students to engage in the voluntary expression of religious viewpoints in homework, artwork, and other assignments to the same extent that secular viewpoints are allowed and to engage in religious activities and expressions, such as prayer, before, during and after school hours. The Bill is expected to be signed by the Governor in the coming weeks.

### Indiana Schools Credit Rating at Risk of Downgrade

The national credit rating agency Standard & Poor’s issued a notice to Indiana school corporations that it has placed a 90-day watch on the ratings for all school districts in the state. If S&P’s concerns are not resolved, school corporations across Indiana face lowered credit ratings likely increasing interest rates on district debts. Representatives from the Indiana Office of Management and Budget are looking into solutions to address S&P’s concerns in order to remove the Indiana schools from the watch list. The credit watch does not affect Indiana charter schools at this time. Dickinson Wright is monitoring this situation.

## KENTUCKY

### State Judge Rules FERPA Protects Some Employment Records from Release

A judge sided with the University of Kentucky in a lawsuit against the University’s student newspaper. The requested records derived from the personnel file of a former University professor who allegedly sexually assaulted and harassed female students. Citing concerns for victim privacy and pointing to the restrictions of the Family Education Rights and Privacy Act (FERPA), the University refused to release the professor’s personnel file to the student newspaper because information regarding the student accusers was contained therein. The student newspaper argued that FERPA was not intended to protect the personnel files of school employees and criticized the University for utilizing student privacy laws to mask information that may be harmful to the University’s reputation. However, the University alleged that the records, even when redacted, would still be likely to disclose the identities of student accusers. The Court agreed with the University holding that, because the requested records could not reasonably be redacted of private student information, release of the records would violate FERPA.

### **Senate Bill 520**

Senate Bill 520 passed, allowing charter schools to be established any-



where in the Commonwealth of Kentucky, after a long, passionate and vitriolic debate. Kentucky is the 44th state to permit charter schools. The parties allowed to authorize the optional public schools are the mayors of Louisville and Lexington, and the local school districts. The legislature looked to Indiana, a state whose charter school law has been increasingly touted as a model, for guidance.

## MICHIGAN

### **Former student's Title IX sexual harassment suit alleges she was expelled after reporting sexual assault by "star athlete"**

A federal lawsuit was filed by a former student of Warren Cousino High School against Warren Consolidated Schools stemming from the student's sexual assault allegations. In the law suit, the student alleged that the district sexually discriminated against the student and failed to properly train its staff to deal with sexual assault allegations. The complaint alleged that the district never launched an investigation under Title IX of the Education Amendments of 1972. The U.S. Department of Education, Office for Civil Rights is also investigating these allegations.

### **Academic Performance**

Efforts to reform school intervention methodologies by the State continue in the midst of the State's finalization of its soon to be submitted ESSA plan. Threatened school closures have stimulated legislative efforts to reform existing law. In addition, at least three lawsuits have arisen challenging the State's authority to close schools.

### **Firearms in School Zones**

As a result of what many consider a loophole in Michigan law, individuals who hold a concealed pistol license are able to open carry firearms in a school zone. Two recent high-profile Michigan circuit court decisions came to opposite conclusions on a local school districts' right to adopt policy affecting this right. One circuit court decision held that local school districts are prohibited from adopting board policies denying the open carry of firearms on school grounds, and another held that Michigan law does not prohibit local school boards from doing so. In *Michigan Gun Owners, Inc. v Ann Arbor Public Schools*, \_\_\_ Mich App \_\_\_ (Docket No. 329632, issued 12/16/16), and its companion case, the Michigan Court of Appeals determined that local school districts are not prohibited under Michigan law to adopt a local policy prohibiting the open carry of firearms on school grounds. Michigan Gun Owners, Inc. has filed an application for leave to appeal the Court of Appeals decision in the Michigan Supreme Court.

### **Labor laws**

Recent and dramatic changes to Michigan's labor laws include right to work, laws governing teacher tenure, bargaining subjects, privat-

ization, evaluation, dues collection, staffing and assignments. These laws continue to spawn mostly unsuccessful challenges in the form of grievances, arbitration and litigation.

## NEVADA

### **Federal Charter School Grant Received by Nevada Department of Education**

The Nevada Superintendent of Public Instruction lauded a grant of \$1.4 million in federal funds for the planning and development of three charter schools, stating that it increases the opportunities for educationally disadvantaged students to have access to high quality, effective programs in Nevada. The money was received from the federal Charter Schools Program to provide support for new charter schools

## OHIO

### **Sylvania Schools Settle Substitute Teacher Lawsuit over Facebook Post**

The Sylvania School District recently settled a matter brought by the American Civil Liberties Union on behalf of a district substitute teacher who alleged that he was terminated after making political statements on Facebook. The substitute teacher's allegations stem from a posting he made on the social media site in response to a viral video that depicted a South Carolina resource officer flipping a student out of her desk and throwing her to the floor after refusing to give up her cell phone. In his post, the substitute called the resource officer "cowardly, semi-sentient, pedophilic" and wrote that he was "ready to go to war for that little black girl." Though the District initially alleged that the substitute teacher's termination was performance based, the District later stated that "the parting of ways between the District and [the substitute] in no way reflects on his performance as a teacher."

### **Legislation**

In Senate Bill 3 the legislature passed a sweeping reform of Ohio's truancy law, effectively adding steps to avoid the criminalization of truancy. The law prohibits suspensions or expulsions based on truancy, and incorporates layers of preventative measures before reporting parents of truant and truants to the court for prosecution. The provisions in new law become in effect in the 2017-18 school year.

### **Federal Grant**

The State of Ohio Department of Education returned 22 million of its 71 million dollar federal grant for charter schools, stating that the money would not be used due to an insufficient number of sponsors being rated "effective" or "exemplary" under the State's system of ranking sponsors.

## TENNESSEE

### **Tennessee district's board votes to prohibit the use of corporal punishment**

*February 8, 2017*

The Wilson County school board voted to eliminate corporal punishment as a disciplinary option. Corporal punishment has largely been eradicated from practice in Tennessee and is a practice disfavored by many educators.

## WASHINGTON, DC

### **Federal Court Holds that IEP Must be Implemented Even When School Does Not Employ Special Education Instructor**

*June 21, 2016*

A federal district court found that the District of Columbia Public Schools failed to comply with an intellectually disabled student's individualized education program (IEP) requiring her to receive specialized instruction, even though the school did not have a special education teacher to provide it. *James v. D.C.*, No. 14-CV-02147 (APM), 2016 WL 3461185 (D.D.C. June 21, 2016). The court determined that the student's guardian was unaware that the district was not implementing the student's IEP, and thus allowed her to remain enrolled in the school throughout the academic year.

## FEDERAL LAW

### **EEOC Subpoenas**

In a recent decision by the U.S. Supreme Court the Justices held that appeals courts may defer to district court rulings as to whether the EEOC's subpoenas are irrelevant or too burdensome. The district courts standard as articulated by Justice Sotomayor of, in most cases, an "abuse of discretion" review, may make their decisions more difficult to overturn on appeal. Employers will have to challenge an EEOC subpoena based on a compelling burden, improper purpose or lack of relevance.

### **Michigan's Service Dog Case**

In a decision with a potentially narrow scope, the Supreme Court of the United States unanimously vacated and remanded a case back to the Sixth Circuit, stating that exhaustion of administrative remedies was not necessary under Individuals with Disabilities In Education Act. The issue of bringing a service dog to school to assist a student with disabilities was not a core provision related to a Free and Appropriate Public Education (FAPE) under the Individuals With Disabilities In Education Act (IDIEA). The case was also filed under the American With

Disabilities and the Rehabilitation Act, as well as the IDIEA, but did not focus on the "gravamen" of FAPE under the IDIEA. Consequently the discrimination against the student based on her disability was not barred under the rules of exhaustion of administrative remedies. *Fry v. Napoleon Community Schools*, \_\_\_ S. CT. \_\_\_\_ (Docket 15-497, issued February 22, 2017).