



ARIZONA

Chandler, Arizona

In August and September reports came to light of victims of alleged hazing and sexual assault at Hamilton High School. The reported incidents were shocking. Assaults occurred between approximately 2015-17. At issue is how much the administration and coaches knew and for how long. Criminal charges are pending.

Glendale Elementary School District v State of Arizona School Facilities Board

In 2017, plaintiff school districts, through Glendale Elementary School District v. State, alleged that the State is out of compliance with the remedy in Roosevelt Elem. Sch. Dist. v. Bishop and is violating the Arizona Constitution. The Roosevelt Court held that local taxpayer-supported bonds inherently put disadvantaged neighborhoods behind in facilities funding. A one-time settlement of \$1.3 billion was awarded to bring school buildings up to state standards. Over the years the legislature has reduced the program significantly. The Roosevelt Court was clear in ruling the taxpayer funded bonds were unconstitutional; however, the state is arguing that districts must first be denied funding from the Facilities Board before suing, and the School Facilities Board has no power or authority to change the funding system.

FLORIDA

More on H.B. 7069, Palm Beach County, Orange County and Miami-Dade County

Last quarter we noted the passage of H.B.7069, a bill that allocates charter schools more equitable funding. Three lawsuits have been filed by traditional School Districts challenging the law. The Florida Department of Education recently asked a judge to dismiss one of the lawsuits, stating that the Palm Beach County School Board misinterpreted the Florida Constitution.

In October, the Orange County School Board joined 12 other districts in the challenge of H.B. 7069, in addition to the original 13 districts. Meanwhile, the new chair of the Miami-Dade County School Board was the only one on that board who voted against joining the lawsuit challenging H.B. 7069. Ultimately the Miami-Dade members decided to try additional negotiations with legislators to amend the law.

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EDITORS:

Amy J. Borman, 614-744-2571

Adam Schira, 614-744-2932

DICKINSON WRIGHT OFFICES:

Arizona	Florida	Indiana
Kentucky	Michigan	Ohio
Tennessee	Texas	Washington DC

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The Florida Supreme Court declined to hear the cases which was transferred to the Leon County Circuit Court. The State of Florida argues that the local school boards have no jurisdiction to challenge provisions of the new law.

Also, unrelated to the challenges to HB 7069, the State Board of Education recently approved the existence of a charter school that the Palm Beach County School Board had previously rejected.

INDIANA

Schools May Begin Stocking Naloxone

Like many other states across the nation, Indiana has been plagued by the opioid epidemic. In response to the growing number of opioid related deaths, Indiana recently enacted a law allowing for schools and school corporations to obtain the drug naloxone, which when used properly can be an antidote for an opioid overdose, for emergency purposes. IC 16-42-27. To procure naloxone, schools and school corporations must: (1) be prescribed the medication by an authorized prescriber; (2) ensure that the drug is dispensed to an individual who is educated on overdose treatments and able to properly assist a person who has overdosed; and (3) instruct that individual about the proper use of the drug. The law also requires that schools or school corporations register annually with the Indiana Department of Health or other designated local authorities.

U.S. Department of Education Rejects Indiana’s “General Diploma” From Graduation Counts

As a result of changes from the federal Every Student Succeeds Act (“ESSA”), beginning in the fall of 2018, Indiana’s “General Diploma” may no longer count towards the federal calculations of graduation rates.

Pursuant to federal law, each state must annually report graduation rates to the U.S. Department of Education. However, new language in ESSA requires states to utilize only “standard” diplomas awarded to a “preponderance” of students (or diplomas with more rigorous requirements) when calculating graduation rates. Despite what its name implies, Indiana’s General Diploma was established to set less rigorous graduation requirements than the state’s default college preparatory option, known as the Core 40 Diploma. Consequently, the General Diploma falls below this new “standard” diploma requirement and can no longer be included in the State’s reported graduation rates raising concerns about a drop in the State’s educational rankings.

General Diplomas, which are typically awarded to special education students or students who struggle academically, remain available under current state law; however, with the new changes from ESSA, it is unclear for how much longer this will be the case.

KENTUCKY

State Board of Education

The Kentucky Board of Education has proposed its rules and gathered comments from the public for the impending governance and oversight of its first charter school. Applications will begin in February for opening of schools in the fall of 2018. Kentucky’s first charter school might be Eastern Kentucky University’s Model Laboratory School, whose Board of Regents approved the submission of an application on November 15th.

The State Board is pushing for a permanent formula for charter schools before they open, rather than the current idea that funds would follow the student from the district to the charter school, creating some insecurity as to what the funding will actually be for the charter schools in Kentucky.

Bevin v. Beshear

Kentucky Governor Matthew Bevin disbanded the University of Louisville Board of Trustees. Attorney General Beshear challenged the Governor’s authority and the circuit court permanently enjoined the Governor from instituting executive orders to further his efforts. The case was complicated by the intervening S.B. 107, which created a statutory path for a governor to reorganize a university board of trustees. Ultimately the Supreme Court of Kentucky deemed the matter moot due to the intervening statutory provision, stating that any future attempts to reorganize a university board must follow the statutory scheme.

MICHIGAN

Senate Bill 574 (passed by the Senate on October 18, 2017)

In Michigan, intermediate school districts may, upon the vote of its electors, collect a regional enhancement property tax intended to provide supplementary funds for the operation of local school districts. Currently, such funds are distributed directly to the local school districts located within the intermediate school district that receives the taxes. Public school academies are generally not eligible to receive any funds from the regional enhancement property taxes. Senate Bill 574 would make public school academies with sites located within an intermediate school district eligible to receive regional enhancement property tax funds.

Senate Bills 584 – 586 (passed by the Senate on November 8, 2017)

There is what many have labeled a “loophole” in Michigan law allowing person who holds a permit to carry a concealed weapon to openly carry in “gun free” school zones. Michigan courts have recently pronounced that local school districts are not prohibited from promulgating reasonable policies that may limit this ability to open carry on school district premises, although litigation over such policies is still ongoing. Senate Bills 584, 585 and 586 would (a) close the “loophole” and prohibit open carry in gun free school zones, (b) permit persons to obtain a concealed pistol permit and allow such permitted individuals to carry their concealed pistol in “gun free” school zones, and (c) prohibit local school districts from promulgating policies inconsistent with this law.

OHIO

Miller v. Ohio Dept. Educ., 2017-Ohio-7197

The Court of Appeals upheld a decision of the State Board of Education to deny a three-year pupil activity permit to Miller. The United States Air Force Office of Special Investigations sent ODE a summary of information pertaining to criminal case files for Miller that was not disclosed on his application for the permit. The court held that Miller was not denied due process during the administrative proceedings.

McKeny v. Middleton, 242 F. Supp. 3d 661 (S.D. Ohio 2017)

Granting summary judgment in favor of the defendant Ohio University, the Southern District Court of Ohio held that McKeny's claim of sexual orientation discrimination under Title VII was time-barred. At issue was the commencement of the 300 day limitation period for bringing claims. The court determined that the limitation period began at the OU Dean's denial of tenure, rather than subsequently during the appeal process, stating that the denial of tenure was not tentative, among other reasons.

Electronic Classroom of Tomorrow v. Ohio Department of Education

The Electronic Classroom of Tomorrow ("ECOT"), Ohio's largest e-school, challenged a decision by ODE to measure funding by attendance as opposed to enrollment. ECOT argued before the state trial court, appellate court, and during an ODE administrative hearing that ODE applied this funding methodology unconstitutionally and retroactively, that it failed to establish the methodology through a required administrative rule, and that the methodology conflicts with the plain terms of the statute. Each forum denied ECOT's requests for relief, and the state has begun deducting \$60 million from ongoing state foundation payments to ECOT to account for the overpayment. The Ohio Supreme Court accepted ECOT's appeal on the sole issue of whether the statute supports ODE's attendance-based methodology. ECOT sought a stay pending a decision, stating that they expect to close by March of 2018 without relief. The Supreme Court refused the stay, however, calling into question whether the matter will be decisional prior to ECOT's closure. The oral arguments are scheduled for February 13, 2018.

Spielman V. Ohio State

Chris Spielman's federal lawsuit against The Ohio State University is based on claims arising out of OSU's use of the name, image and likenesses of former football players is expected to prompt similar

claims across the country. Spielman recently expanded his suit to name 89 other schools, all of which contract with the IMG sports marketing agency, in part to prevent OSU from removing the action and avoid a motion to dismiss the Ohio Court of Claims. The matter is pending before the Federal District Court for Southern District of Ohio.

TENNESSEE

Charter Schools Facilities Program

The Tennessee Charter School Center and the Low Income Investment Fund partnered to develop and sustain charter school buildings pursuant to an Eight Million Dollar grant from the United States Department of Education. The Federal Credit Enhancement Program for Charter Schools is a competitive grant that aims to invest both resources and capital for leveraging the growth of facilities.

The State Achievement School District

Last quarter we noted the records requests for student information sent to the Shelby County Schools public charter schools. A state law requires the sharing of student data known as directory information under the State's turnaround district legislation known as the Achievement School District. In August, the State Education Commissioner ordered the Shelby County Schools to release the designated information to the requestors. In October, both the Shelby County Schools and then, the Metro Nashville Public Schools voted not to release the information to the charter schools wishing to operate in the turnaround district, citing safety reasons. In late October the State sued Metro Nashville Public Schools for failure to turn over the designated public records of students zoned to failing schools.

TEXAS

First Amendment

Claiming retaliation by teachers for sitting through the Pledge of Allegiance, claimant/students in two separate Houston area districts sued their districts and various administrators for violation of their First Amendment constitutional rights. The Students filed when they allege bullying and harassing treatment became too harsh as the controversy continued to escalate nationally. See, e.g. Civil Action No.:4:17-cv-3234, [Arcaux v. Klein Independent School District](#), United States District Court for the Southern District of Texas, Houston Division.

**Eubank v. Lockhart Indep. Sch. Dist., 229 F. Supp. 3d 552
(W.D.Tex. 2017)**

Eubank produced a physician's letter stating that accommodations were required for a school counselor due to certain medical conditions. A parent complained about unrelated matters and Eubank responded that her accommodations had not been provided. An administrator requested further clarity from the physician while agreeing to accommodate Eubank. Eubank refused to obtain further documentation from the physician and filed grievances, and the district terminated her employment for performance issues regarding insubordination to superiors, documentation issues, misuse of personally identifiable information, requesting statements from students regarding their religious beliefs, and other matters. The Texas Education Agency hearing officer found evidence to support over two-thirds of the reasons for termination. After Eubank's further unsuccessful filing of an EEOC claim, the district court also dismissed her claims under the ADA and state law discrimination because she failed to establish the district's reasons for terminating her employment were pretextual.

WASHINGTON, DC

D.C. Public Schools

According to a report by Moriah Balingit in the Washington Post, on November 7, 2017, the graduation rates of the District of Columbia have risen from around 50% to over 70%, a 20 point gain from the year 2011, nearing the performance in graduation rate of the D.C.'s charter schools.

Howard University

Earlier in 2017, five women sued Howard University for discriminatory and retaliatory response to multiple complaints of sexual assault and harassment of sexual assault. Just recently, as reported by the Washington Post, a sixth woman has arisen claiming a botched investigation into an additional sexual assault on campus.

FEDERAL LEGISLATION

The Tax Cuts and Jobs Act

Non-profit public schools were to take a hit in the House version of the Tax Bill which would have significantly increased the cost of borrowing by non-profit organizations exempt from federal taxation, by barring them from Private Activity Bonds (including for new capital, refunding or advance refundings), New Market Tax Credits and Qualified Zone Activity Bonds. The Senate version repealed only the Advanced Refunding provisions, even though they play a major role in the bond market. Finally, the Committee of Conference in the final version of the The Tax Cuts and Jobs Act retains the availability of private activity bonds for 501(c)(3) organizations, and eliminates tax-exempt advanced refunding bonds, as did not Senate version.

THE SUPREME COURT OF THE UNITED STATES

Union Fees

In Janus V. American Federation of State, County, and Municipal Employees Council 31, ___ U.S. ____, 198 L.Ed.2d 780 (2017), the United States Supreme Court will revisit Abood v. Detroit Board of Education, a decision upholding "fair share" fees of employees in a bargaining unit who do not join the union. The complainant is Mark Janus, an employee of the Illinois Department of Healthcare and Family Services. Mr. Janus has approximately Forty Five Dollars deducted from his paycheck monthly, as a condition of Janus' employment. The matter will have a significant impact on union funding and contracts between unions and governmental entities if fair share fees violate the First Amendment Rights of public employees.