

The logo for Shipman & Goodwin LLP, featuring the word "SHIPMAN" in white, bold, uppercase letters on a blue rectangular background. A small "TM" trademark symbol is located to the right of the logo.

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A pair of golden scales of justice is centered in the background. The scales are slightly tilted, with the right pan being lower. The background is a vibrant, abstract collage of colorful, overlapping shapes and patterns, including silhouettes of human profiles in various colors like purple, blue, green, and orange. A large, semi-transparent blue shape is overlaid on the bottom left, containing the title text.

# The 2022 Legal Landscape for Secretaries and Administrative Assistants

Presented by: Thomas B. Mooney  
and Gwen J. Zittoun

CAS Administrator Assistant's Virtual Conference  
April 29, 2022

# Agenda

Topics to be discussed



- Title IX: Recent Revisions
- Update on Connecticut Law
- Q&A

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# Title IX: Recent Revisions

# Title IX of the Education Amendments of 1972

*“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving Federal financial assistance.”*



# Title IX Enforcement

## OCR

- Federal DOE agency responsible for ensuring equal access to education and promoting educational excellence through enforcement of civil rights
- Investigates allegations of discrimination and obtains remedies for complainants to address discrimination

## Courts

- Federal government (DOJ)
- Individual legal claims
- Class claims

# 2020 Final Regulations



- On May 6, 2020 the United States Department of Education issued the 2,033 page document that amended the regulations implementing Title IX of the Education Amendments of 1972 and which contained the new Final Regulations.
- Final Regulations became **effective August 14, 2020**.
- New Title IX regulation **holds schools accountable for failure to respond** equitably and promptly to sexual misconduct incidents.
- These Final Regulations, unlike past guidance issued from the Office of Civil Rights (OCR), **have the full effect of law and override any past guidance**.

Final Regulations are a significant change to how Title IX is managed and include extensive procedural requirements.

# 2020 Final Regulations: What's New?



A **definition** of sexual harassment



A **duty** for schools to address complaints of **conduct that occurred within their program or activity**



Adoption of an “**actual knowledge**” and “**deliberate indifference**” standard

Under the Final Regulations, if a school district has actual knowledge of sexual harassment in a district education program or activity, the district must respond promptly in a manner that is not deliberately indifferent.



A **detailed grievance process** for formal complaints of sexual harassment – **specific roles** for administrators in grievance process

# General Response to Sexual Harassment

If the District has **actual knowledge** of sexual harassment in a District education program or activity...

The District must respond **promptly** and in a manner that is not **deliberately indifferent**.

The District's response must treat complainants and respondents **equitably** by offering supportive measures to the complainant and by following the grievance process outlined here *before* the imposition of any disciplinary sanctions or other actions that are not supportive measures.

The District is **deliberately indifferent** only if its response to sexual harassment is **clearly unreasonable** in light of known circumstances.



# “Sexual Harassment”

“ ...Conduct **on the basis of sex** that satisfies one or more of the following:

- An **employee** of the District conditioning the provision of an aid, benefit, or service of the District on an individual’s **participation in unwelcome sexual conduct** (i.e., *quid pro quo*);
- **Unwelcome** conduct determined by a reasonable person to be so **severe, pervasive, and objectively offensive** that it effectively denies a person equal access to the District’s education programs or activities; or
- **“Sexual assault”**\* (20 U.S.C. 1092(f)(6)(A)(v)), **“dating violence”**\* (34 U.S.C. 12291(a)(10)), **“domestic violence”**\* (34 U.S.C. 12291(a)(8)) or **“stalking”**\* (34 U.S.C. 12291(a)(30)).

\*These definitions can be found in Appendix A of the Shipman & Goodwin model Administrative Regulations.

# “Actual Knowledge”

“

In elementary and secondary schools, the District is deemed to have **actual knowledge** when notice of sexual harassment or allegations of sexual harassment:

1. is given to the Title IX Coordinator
2. is given to any official of the District
3. is given to **any employee of an elementary or secondary school.**

”

# “Employee”

## “Employee means:

- a teacher, substitute teacher, school administrator, school superintendent, guidance counselor, school counselor, psychologist, social worker, nurse, physician, school paraprofessional or coach employed by the District or working in a public elementary, middle or high school; or
- any other individual who, in the performance of his or her duties, has regular contact with students and who provides services to or on behalf of students enrolled in a public elementary, middle or high school, pursuant to a contract with the District.

This definition is taken from state law and is not included in the Final Regulations.

# Examples of Sexual Harassment

Unwanted sexual advances, requests for sexual favors, or other verbal, nonverbal, or physical conduct of a sexual nature including:

- Statements or other conduct indicating that a student's submission to, or rejection of, sexual overtures or advances will affect the student's grades and/or other academic progress.
- Unwelcome attention and/or advances of a sexual nature, including verbal comments, sexual invitations, leering and physical touching.
- Display of sexually suggestive objects, or use of sexually suggestive or obscene remarks, invitations, letters, emails, text messages, notes, slurs, jokes, pictures, cartoons, epithets or gestures.
- Touching of a sexual nature or telling sexual or dirty jokes.
- Making sexual comments, jokes or gestures (written or verbal).
- Distributing sexually explicit images such as drawings or pictures, or written materials (including cyber-distribution).
- Transmitting or displaying emails or websites of a sexual nature.
- Calling students sexually charged names.
- Spreading sexual rumors.

# Title IX Revisions: Final Thoughts



**Report** any conduct that *may* meet the definition of sexual harassment



**Remember** obligations under bullying law as well



**Ensure** policies and procedures have been updated since August 2020

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# Update on Connecticut Law

# Mental Health Wellness Days

Public Act No. 21-46, Section 19, effective July 1, 2021



- Requires boards of education to allow any student enrolled in grades kindergarten through twelve to take *two mental health wellness days* during the school year, on which a student is not required to attend school.
- The two mental health wellness days cannot be taken consecutively.
- “Mental health wellness day” describes a school day during which a student attends to the student’s emotional and psychological well-being instead of attending school.

# Excused and Unexcused Absences



- Since 2013, the SDE has provided guidance on “excused,” “unexcused” and “disciplinary” student absences as required by Conn. Gen. Stat. Section 10-198b. See [Guidelines for Implementation of the Definitions of Excused and Unexcused Absences](#) (April 2013).
- Section 18 of Public Act 21-46 requires that the State Board of Education amend that definition to “to exclude a student's engagement in (1) virtual classes, (2) virtual meetings, (3) activities on time-logged electronic systems, and (4) the completion and submission of assignments, if such engagement accounts for not less than one-half of the school day during virtual learning” as permitted for Grades 9-12 as of July 1, 2022.
- The addition of “mental health wellness days” is a new wrinkle, and such days should be “excused” no matter when they are taken. Taking them can affect how many other “excused” days are available. See [State Department of Education, "Mental Health Wellness Days"](#) (January 22, 2022).



# Excused and Unexcused Absences



- A student whose parent or legal guardian is an active duty member of the armed forces and has been called to duty for, is on leave from or has immediately returned from deployment to a combat zone or combat support posting, shall be granted ten days of excused absences in any school year and, at the discretion of the local or regional board of education, additional excused absences to visit such child's parent or legal guardian with respect to such leave or deployment. Conn. Gen. Stat. Section 10-198a(e). Such absences should be considered separately.
- When such excused absences occur, the student and parent or legal guardian are responsible for obtaining assignments from the student's teacher prior to any period of excused absence, and for ensuring that such assignments are completed by the student prior to his or her return to school from such period of excused absence.

# School Attendance Age Requirements

Public Act No. 21-199, Section 10, effective July 1, 2021



- The new law raises, from seventeen to eighteen, the age when a student may withdraw from high school, beginning in the school year commencing **July 1, 2023**.
- However, a parent or person having control of a child who is seventeen years of age may withdraw the child from school if the child is enrolled in an adult education program.
  - In order to do so, the parent or person having control of the child must personally appear at the district office and sign an adult education withdrawal and enrollment form.

# Enrollment of Children of Members of the Armed Forces in Public Schools

(Public Act No. 21-86)



- Effective July 1, 2021, the new law requires boards of education to accept, as proof of residency for any child of an armed forces member who is seeking to enroll in the district, the military orders directing the member to the state or any other armed forces' document indicating the member's transfer to the state.

# New Purple Star School Program



Public Act No. 21-86, effective July 1, 2021

- Directs the State Board to establish a “Purple Star School Program.”
- The State Board will award a Purple Star School designation to any school that:
  1. employs a staff member who serves as a military liaison for the school and who has duties specified within the law;
  2. compiles and makes available on the school’s website information and resources available to military-connected students and their families, including specified information and resources specified within the law;
  3. provides a transition program led by students, where appropriate, that assists military-connected students in transitioning to the school;
  4. provides in-service training or professional development for staff members on issues related to military-connected students; and
  5. offers at least one of the initiatives specified in the law, which include, among other things, a resolution showing support for military-connected students and their families.

*Boards of education can apply to the State Board for the Purple Star School designation.*

# Collecting Money for School Meals

- Section 20 of Public Act 21-46 amends Conn. Gen. Stat. Section 10-215 to impose new requirements to avoid identifying or shaming students over payment for their breakfast, lunch or other feeding:



1. a prohibition on publicly identifying or shaming a child for any such unpaid charges, including, but not limited to, delaying or refusing to serve a meal to such child, designating a specific meal option for such child or otherwise taking any disciplinary action against such child;
2. a declaration of the right for any child to purchase a meal, which meal may exclude any a la carte items or be limited to one meal for any school lunch, breakfast or other such feeding; and
3. a procedure for communicating with the parent or legal guardian of a child for the purpose of collecting such unpaid charges.

# Collecting Money for School Meals

- Amended Conn. Gen. Stat. Section 10-215 describes appropriate communication with parents over unpaid meals as follows:
  - (A) information regarding local food pantries;
  - (B) applications for the school district's program for free or reduced priced meals and for the supplemental nutrition assistance program administered by the Department of Social Services;
  - (C) a link to the Internet web site maintained by the town for such school district listing any community services available to the residents of such town.
- If “unpaid charges for school lunches, breakfasts or other such feeding due from any parent or legal guardian are equal to or more than the cost of thirty meals,” school district personnel are to refer such parent or legal guardian to the local homeless education liaison.

# Policy Concerning Grading

Public Act No. 21-199, Section 13, effective July 1, 2021

- Since 1999, boards of education have been required to establish a policy concerning weighted grading for honors and advanced placement classes.
- Boards are now required to establish, and update as necessary, a written policy concerning the manner in which students' grade point averages are calculated, including whether such grade point average is weighted or not weighted.
- This policy must state whether a grade in an honors class, advanced placement class, International Baccalaureate program, Cambridge International program, dual enrollment, dual credit, or early college is or is not given added weight for purposes of calculating grade point average and determining class rank.



# Remote Learning



- As a general matter, remote learning will be permissible effective July 1, 2022 only for grades 9 through 12 and only if such instruction is provided in accordance with [Standards for Remote Learning Grades 9-12 \(State Department of Education, February 2022\)](#). June Special Session, Public Act 21-2, Section 391.
- Under current law, remote learning is not permitted more generally, for example, for a snow day or other emergency day.



# Remote Learning

- Pursuant to guidance from the Commissioner of Education last December, remote learning is otherwise permissible only:
  - If a student must be in isolation due to a COVID-19 infection or in quarantine due to close contact with a confirmed case;
  - In rare and individualized cases, for students with live-in family members who have documented an unusual vulnerability to COVID-19;
  - In those rare cases when the PPT determines that instruction in the home provides the student with a free, appropriate public education in the least restrictive environment and revises the student's IEP accordingly.

See [Commissioner's Letter to Superintendents, "Remote Learning During the COVID-19 Pandemic" \(December 31, 2021\)](#).

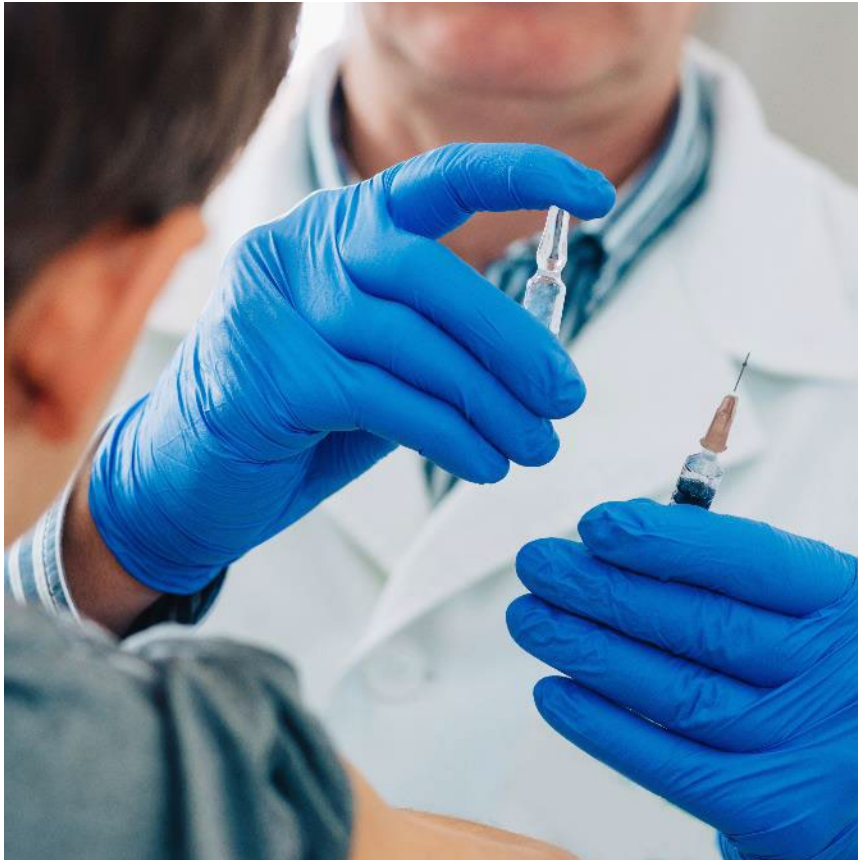
# Policy Concerning the Eligibility Criteria for Enrollment in an Advanced Course or Program

Public Act No. 21-199, Section 3, effective July 1, 2021

- The policy must provide for multiple methods by which a student may satisfy the eligibility criteria for enrollment, including, but not limited to, recommendations from teachers, administrators, school counselors, or other school personnel.
- The criteria cannot be based exclusively on a student's prior academic performance. Any use of a student's prior academic performance must rely on evidence-based indicators of how a student will perform in an advanced course or program.

# Immunizations and Religious Exemption

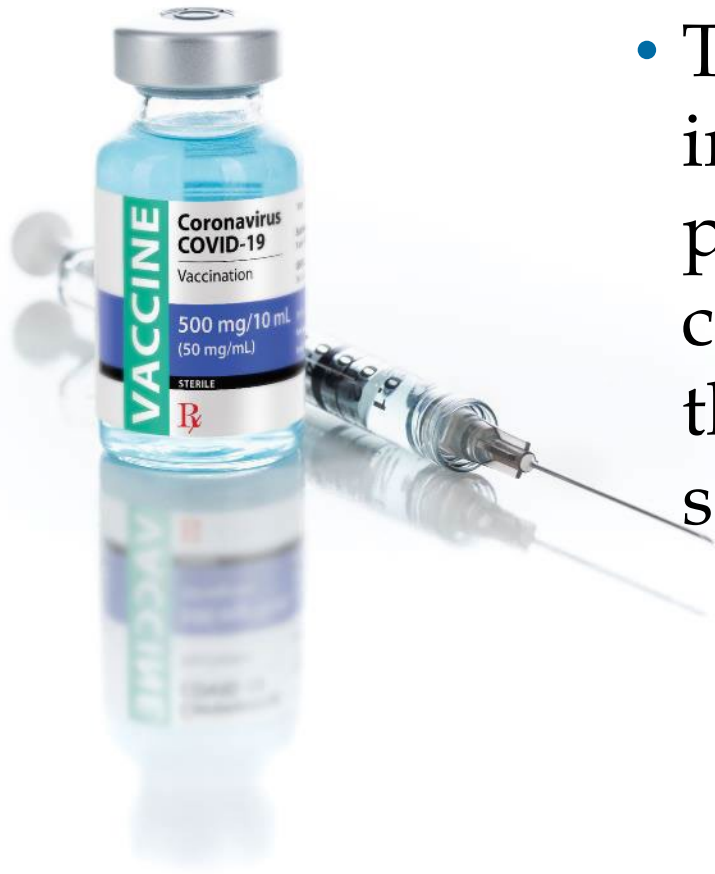
Public Act. No. 21-6, effective April 28, 2021



- The new law **eliminates the religious exemption** from statutory immunization requirements for certain students.
- Under the law's legacy provision, any child who:
  1. was enrolled in kindergarten through twelfth grade **on or before April 28, 2021 and**
  2. whose parents or guardian had obtained and presented a religious exemption to the applicable school **before April 28, 2021** may continue to rely on that exemption.
- This includes students who transfer from another district or private school in Connecticut with an exemption in place.

# Immunizations and Medical Exemption

Public Act. No. 21-6, effective April 28, 2021



- The new law still permits exemptions from certain immunization requirements in the event a particular immunization is medically contraindicated because of the physical condition of the child, provided certain statutory conditions are satisfied.
  - Such certificate must comply with the requirements of a form prescribed by the Commissioner of Public Health. This form is available on the DPH website.

# State Law Contract Requirements – Students



- **Student Data Privacy**  
Conn. Gen. Stat. 10-234aa – 10-234dd
- **Contracts with Providers of Special Education Services**

# State Law Requirements – Student Data Privacy

Connecticut General Statutes 10-234aa – 10-234dd contain very specific definitions and require school district contracts with vendors in effect on or after July 1, 2018, to contain 10 specific contractual provisions, including, among others:



## Control of Student Data

A statement that student data are not the property, or under the control, of the contractor



## Description of Means for Deletion

A description of means by which a district may request the deletion of student data in the possession of the contractor



## Use of Student Data

A statement that the contractor will not use the student data for any purpose other than that authorized by the contract (such as targeted advertising)



## Security & Confidentiality

A statement that the contractor shall take actions designed to ensure the security and confidentiality of student data

# State Law Requirements – Special Education Contracts



- If a student is placed in a private school through the student's IEP, the district must enter into a written agreement with the private school in order for the school district to get excess cost
- Contract must describe how costs are calculated
- May include additional provisions
- Audits of private providers by state

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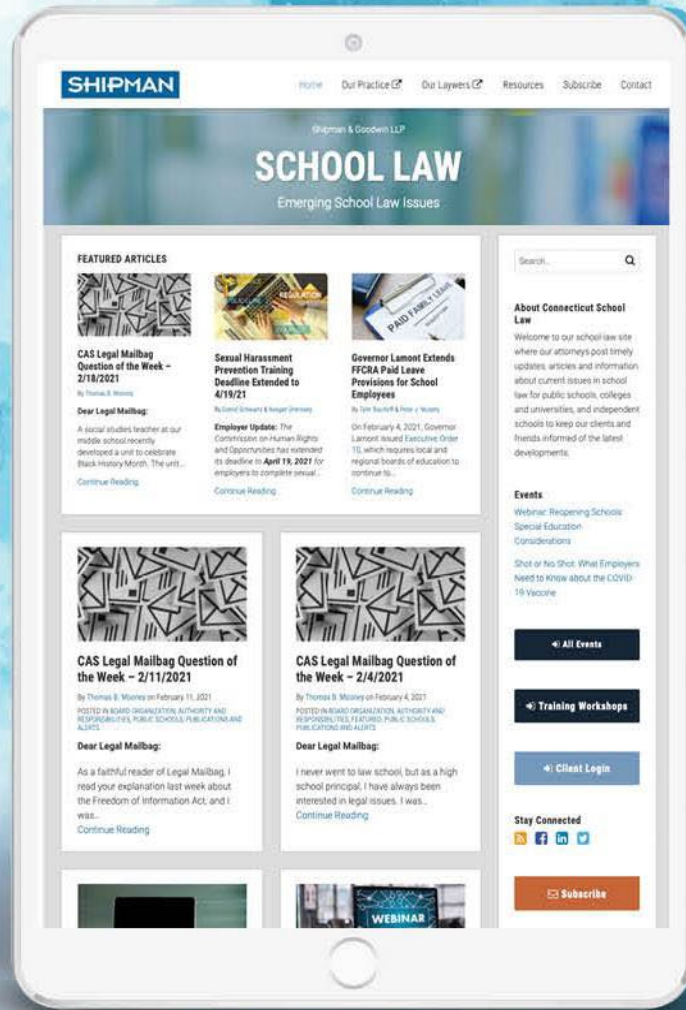
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