

Connecticut Association of Schools
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2003 Annual Legal Update

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The last session of the General Assembly brought forth new laws that affect school district operation. Several of these new laws implement requirements imposed by the federal No Child Left Behind Act. In addition, a number of new court decisions affect the operation of our schools. A summary of the most important new developments follows.

I. LEGISLATIVE CHANGES

GENERAL INTEREST:

Las Vegas Nights

Public Act 03-1 repealed the statutes that permitted schools to sponsor events including games of chance (Las Vegas Nights). Moreover, this new law specifically clarifies the definition of gambling under Connecticut law to include the “playing of a casino gambling games such as blackjack, poker, craps, roulette or a slot machine.” This repeal became effective January 7, 2003 and means that schools may no longer sponsor these types of events. This change does not prohibit schools from sponsoring all games of chance, subject to regulatory provisions, as it leaves intact the schools’ authority to conduct exciting activities such as bingo, bazaars and raffles.

No Child Left Behind

Testing and Schools in Need of Improvement

Public Act 03-168 aligns existing state law with the new testing requirements imposed by the No Child Left Behind Act of 2001 (NCLB). As required by NCLB, beginning with the 2005-06 school year, students in grades 3, 5 and 7 will be required to take statewide reading, writing and math exams and, beginning with the 2007-08 school year, students in grades 5, 8 and 10 will take statewide science exams. Starting with the 2005-06 school year, statewide testing will be conducted in April, rather than in the fall. This Act also requires that school district costs attributable to the NCLB testing requirements will be paid exclusively from federal funds received under the NCLB Act and requires that the Education Committee evaluate and report on the additional costs of, and estimated federal funding for, the implementation of NCLB.

Finally, Public Act 03-168 mandates that students attending schools found to be “in need of improvement” under NCLB be given preference in any lottery conducted when the number of students seeking to participate in the state’s interdistrict public school choice program (Open Choice) exceeds the spaces available. However, the Act maintains the current preference given to siblings of students already participating in the program and to students attending a school that has lost its accreditation.

Victims of a Violent Criminal Offense

Pursuant to the No Child Left Behind Act of 2001 (NCLB), starting with the 2003-04 school year, students who are victims of a violent criminal offense on school grounds must be offered, in a timely manner, an opportunity to transfer to a safe public school within their district. If there is no opportunity to transfer within the district, school districts may, but are not required, to seek alternative transfers to neighboring districts, charter schools or magnet schools.

The State Board of Education has defined a violent criminal offense as one in which 1) a student or staff member suffers bodily injury as a result of intentional, knowing, or reckless acts committed by another person, on school grounds; 2) the police have been notified and a report taken; and 3) the factual assertions contained in the police report are sufficient to constitute a crime described in the Connecticut penal code. School districts must use this definition when implementing this requirement of NCLB.

Persistently Dangerous Schools

NCLB requires the Connecticut State Department of Education (CSDE) to identify persistently dangerous schools by August 2003. Students attending identified schools must be afforded an opportunity to transfer to a safe school within the district. This identification will be based upon data submitted by schools from 1999-2002 regarding suspensions, expulsions, and incidences of serious offenses such as weapons violations and violent acts.

A recent circular letter (C-34) from Commissioner Sergi explains in detail the process by which the CSDE will identify persistently dangerous schools. First, it will categorize the serious offenses (weapons violations and violent acts) into one of three groups, each with an identified “tolerance level.” A school outside the tolerance level will be subject to a series of graduated interventions, the last of which is having to offer students opportunities to transfer to a school not identified as persistently dangerous.

The first group of offenses will include the number of students expelled for possessing a firearm or explosive on school property. A school having two or more such incidences would be outside the tolerance level, thus subjecting the school to the first level of intervention. The second group will include the number of students expelled for possession of other weapons, such as knives. If the number of expulsions per 200 students is three or greater, the school would be outside the tolerance level. Finally, the third group is the relative number of students expelled for violent criminal offenses, i.e. acts in which someone suffers bodily harm. If the number of expulsions for violent criminal offenses is three or greater, the school would reach the first intervention level.

If a school equals or exceeds the tolerances for any two of the three groups in a single year, it will be placed on notification status. If this status continues for two consecutive years, the school will be placed on a warning status. Upon the third consecutive year, the school will be identified as persistently dangerous and must offer transfer options.

Indoor Air Quality in Schools

Public Act 03-220 makes several changes to school construction and education statutes to improve and protect indoor air quality in schools. First, the Act amends Conn. Gen. Stat. § 10-220 to make boards responsible for proper maintenance of their facilities and requires boards to adopt and implement an indoor air quality program for ongoing maintenance and facility reviews. Under this change, boards must implement a uniform inspection and evaluation program of the indoor air quality for every school building that is, or has been, constructed, extended, renovated or replaced on or after January 1, 2003. This program must be implemented prior to January 1, 2008 and for every five years thereafter. New language added to Conn. Gen. Stat. § 10-220 details what must be included in this inspection/evaluation program. Boards must annually report to the Commissioner of Education on their indoor air quality program and make the results of their inspections and evaluation available to the public at a regularly scheduled board meeting.

Second, the Act adds projects to remedy a “certified school indoor air quality emergency” to the list of project grant applications that may be approved by the Commissioner of Education at any time without putting such applications on the annual priority list for legislative approval. A “certified school indoor air quality emergency” is defined as a building condition determined by the DPH to present a “substantial and imminent adverse health risk that requires remediation in an amount greater than one hundred thousand dollars.”

Third, the Act amends Conn. Gen. Stat. § 10-291 to require school districts to conduct a Phase I environmental site assessment of proposed school construction sites prior to any new construction, extension, or replacement of a building to be used for school purposes. The State Department of Education may not approve any school construction project or site if certain conditions exist, such as when plans do not appropriately address moderate or high radon potential or plans for major alterations do not incorporate certain indoor air quality guidelines.

Fourth, in addition to requiring that boards ensure that their HVAC systems are maintained and operated in accordance with prevailing standards, Public Act 03-220 also requires HVAC maintenance and operation records to be kept for at least five years.

Finally, when determining the space allocated to HVAC systems, this Act increases the maximum square footage per pupil limit under prior law by up to 1% if necessary to accommodate a HVAC system. This change affects only projects authorized after January 1, 2004.

State Construction Contracts

Public Act 03-215 requires contractors to pre-qualify to bid on public building construction contracts estimated to cost more than \$500,000 and paid for in whole, or in part, by state funds. This Act also requires public agencies awarding contracts to evaluate contractors after construction is completed and to make annual status reports to the governor and legislature regarding the project.

Adult Education

Public Act 03-100 makes three significant changes to the operation of adult education programs. First, this Act requires a student who receives an adult education diploma on or after July 1, 2004 to have completed at least one-half credit in civics and American government as part of the minimum three credits in social studies already required for an adult education diploma. This new civics requirement is consistent with the existing civics requirement for regular high school diplomas. Second, the Act eliminates the existing cap on the amount of state-reimbursable adult-education expenses a board of education may devote to computer equipment. Under current law, eligible spending on computers is limited to 5% of a board's total eligible adult education spending for the year.

Third, this Act eliminates two bonus provisions from the adult education grant reimbursement formula. Conn. Gen. Stat. § 10-71 provides that the state may reimburse boards of education for up to 65% of their eligible expenditures for adult education programs. The percentage of reimbursement is based upon a statutory formula that, until July 1, 2003, included additional "bonus" increases in the percentage of reimbursement if a board had provided services to a specified number of students. Public Act 03-100 eliminates these bonus provisions.

In addition, Public Act 03-102 establishes a pilot program between July 1, 2003 and June 20, 2006 to make an existing adult education program available to “incumbent workers.” Incumbent workers are Connecticut employees who need additional skills, training or education to “upgrade employment.” This pilot program is to be developed by the Connecticut Employment and Training Commission, in cooperation with a consenting regional workforce development board, and must operate within available funding.

Other Revisions to the Education Statutes

Revisions made by Public Act 03-174 include: 1) allowing CAPT scores to be included on a student’s permanent record and transcript; 2) prohibiting schools from administering required statewide tests to students in grades 7-12 before 9 a.m.; 3) amending Conn. Gen. Stat. § 17-248d to require the statewide birth-to-three program to notify school boards annually of children in the program who will turn three during the next fiscal year; and 4) allowing priority school districts to charge students fees to participate in after-school programs funded by the state extended school building hours grants, provided that fees are charged on a sliding scale, no fee exceeds 75% of the average cost of participation and no student may be excluded from the program due to inability to pay a fee.

Finally, Public Act 03-174 contains miscellaneous provisions extending the deadline for submitting special education reimbursement claims for state-placed children from February 1 to March 1; limiting funding for summer school for sixth graders to “available appropriations;” and relaxing the requirement for obtaining an SDE technology grant by requiring that boards either develop or update their technology plans within three, not two, years, of the year in which they apply for the grant.

The majority of the provisions of Public Act 03-174 were effective as of July 1, 2003, with the most notable exception being the provision regarding birth-to-three services, which goes into effect October 1, 2003.

SCHOOL HEALTH AND OTHER STUDENT ISSUES:

Special Education Procedures

While not a statutory change per se, the State Department of Education has announced that hearing officers may not enforce Conn. Gen. Stat. § 10-76h(a)(1), which provides that neither party to a due process hearing may raise an issue that was not previously presented to a planning and placement team meeting. In addition, the SDE has announced that local and regional school districts should not seek to override parent refusal to provide initial consent to special education services, notwithstanding the provisions of Section 10-76h(a). The Office of Special Education Programs of the United States Department of Education insisted on these procedural changes as a condition for

continued eligibility for Part B funds under IDEA. Related changes were made in the rules for presenting evidence in appeal of special education matters to the superior court. *Circular Letter C-1, Series 2003-2004, July 3, 2003.*

Child Abuse Reporting

Last year, the General Assembly passed Public Act 02-138. A little-noted change was removal of the language from the statute that limited the reporting obligation to acts “by a person responsible for such child's health, welfare or care or by a person given access to such child by such responsible person.” This change raised the question of whether mandated reporters are now obligated to report sexual conduct by a student as possible abuse by the other student. The Department of Children and Families clarified this issue in a letter to Dr. David Larson dated January 29, 2003. There, DCF clarified that it considers sexual activity by young people to be potential abuse (requiring a report) only if (1) one individual is being exploited because the relationship is non-consensual, hostile, or includes use of force or threats, (2) the child has emotional or intellectual disabilities that may preclude the child from consenting or of understanding the consequences of understanding (regardless of age), or (3) the child is under 16 years of age and the partner is 21 years of age or older.

Glucose Self-Testing in Schools

Public Act 03-211, “An Act Concerning the Provision of Medical Care for Students’ Health Care Needs,” requires schools to permit diabetic students to test their own glucose levels in school as long as there is a written order from a physician or advanced practice registered nurse stating that the student needs to conduct such testing and is capable of conducting the self-testing. The Commissioner of Education, in consultation with the Commissioner of Public Health, is responsible for establishing guidelines for policies and practices governing blood glucose self-testing by children.

Administration of Student Medication in School

Public Act 03-211 adds physical and occupational therapists to the list of school personnel able to administer medication to students in the absence of a school nurse, and under the nurse’s general supervision, provided there is 1) a written order from an authorized medical provider and 2) written permission from the student’s parent or guardian. Previously, the list of school personnel permitted to administer medicine under these circumstances was limited to licensed nurses, principals, teachers or coaches.

School paraprofessionals are also now permitted to administer medication, including medication administered with a cartridge injector (epi-pen), to a student with a diagnosed allergic condition that may require prompt treatment to protect against serious harm or death.

Immunity for liability for personal injuries resulting from acts or omissions of school personnel when administering medication under these circumstances is extended to cover licensed physical or occupational therapists and school paraprofessionals. As stated under current law, this immunity does not extend to conduct that constitutes gross, willful, or wanton negligence.

This act also immunizes from civil liability volunteers associated with certain nonprofit organizations working with children if the volunteer administers a cartridge injector to a child apparently in need of an injection while the child is participating in the organization's program. The volunteer will not be liable as long as he or she 1) has been trained in the use of a cartridge injector and 2) has parental permission to use an injector on the child.

Under a new provision contained in Public Act 03-211, boards of education cannot deny students access to school transportation solely due to a student's need to carry a cartridge injector while on a vehicle used for school transportation.

Finally, prior law allowed the Commissioner of Public Health to adopt regulations governing the administration of medicine to students by coaches. Public Act 03-211 shifts the authority for adopting regulations pertaining to the administration of medication by school personnel and the self-administration of medication by students to the State Board of Education, in consultation with the Commissioner of Public Health.

Reporting Immunizations and Health Assessments

Public Act 03-211 requires health care providers to report to school districts when they immunize or conduct a health care assessment on a child seeking to enroll, or already enrolled, in a public school. School boards must annually designate a representative to receive these reports. Health care providers covered by this provision include physicians, registered nurses, APRNs, nurse midwives, and physician assistants.

Orders Restricting School Physical Activity

Public Act 03-211 requires boards to honor a written notice from an advanced practical registered nurse (APRN) restricting a student's physical activity in school. Under prior law, only notices from medical doctors, surgeons, osteopaths, naturopaths, and podiatrists needed to be honored by school districts.

Policies Regarding Recommendations for Medical Evaluations and Psychotropic Drugs

In 2001, the legislature enacted Conn. Gen. Stat. § 10-212b, requiring boards to have policies prohibiting school personnel from recommending the use of psychotropic drugs for any child, but allowing school "medical staff" to recommend medical evaluations for students. Public Act 03-211 expands and clarifies this statutory provision by defining psychotropic drugs as prescription medications, including stimulants and anti-

depressants, for behavioral or social-emotional concerns such as 1) ADD, 2) impulsivity, 3) anxiety, 4) depression, and 5) thought disorders. The Act also replaces the term “medical staff” with “school health and mental health personnel” and defines these persons to include nurses, nurse practitioners, medical advisors, school psychologists, social workers, school counselors, and other school personnel identified by a board policy as responsible for communicating with parents about a child’s need for a medical evaluation. The Act specifies that a special education planning and placement team (PPT) may also recommend a medical evaluation and specifically requires board policies to address procedures for recommending all medical evaluations. Boards should review and revise their policies to reflect the changes made by Public Act 03-211.

Special Education Students in the Juvenile Justice System

Conn. Gen. Stat. § 46b-134 currently requires a probation officer to investigate, among other facts, a child’s school attendance, adjustment and behavior when a child is convicted of delinquent act. Public Act 03-86 further adds that if the child has been identified as eligible for special education and related services, the probation officer must also examine the child’s individualized education program (IEP) as part of this required investigation. School districts should follow appropriate policies regarding student records when releasing such information pursuant to this new provision.

Student Voter Registration

Public Act 03-54 authorizes the establishment of a statewide student voter registration drive to take place between January 1st and May 31st. This Act goes into effect October 1, 2003. Although the Secretary of State is responsible for coordinating and publicizing this registration drive, schools may be asked to assist in these efforts.

Public Act 03-108 permits a sixteen or seventeen year-old to be appointed as a checker in a polling place at an election or primary without first having to serve as an unofficial checker or a candidate checker. A high school student wishing to work in this capacity on a day when school is in session must obtain written permission from a parent or the principal of his or her school.

Driving Licenses

Although Public Act 03-171 does not directly affect schools, districts should be aware that the legislature has made significant changes to the requirements and restrictions pertaining to 16 and 17-year olds driving under learners’ permits and newly issued licenses. In particular, the required driving course has been expanded from 5 to 8 hours, with an additional 2 hours of instruction regarding alcohol and drug impact. Once a 16 or 17-year old receives his or her license, he or she may also transport only one passenger for the first three months, and that passenger must be a parent, guardian or licensed driving instructor. Moreover, for the next three months, the driver may transport only immediate family members. Finally, this Act prohibits such drivers from carrying more passengers than can be accommodated by seat belts in the vehicle.

Youths in Crisis and Jurisdiction in Juvenile Matters

Public Act 03-257 establishes a team to review a proposal to increase, by no more than two years, the current age limit of 15 for purposes of jurisdiction of juvenile justice matters. This Act makes additional changes to the procedures and interventions available when children are identified as “youths in crisis” under current law.

EMPLOYEES:

Reemployment of Retired Teachers and Teachers’ Retirement System

Public Act 03-232 increases the current post-retirement earnings limit for re-employed retired teachers from 45% of the entry-level salary to 45% of the maximum salary for the position, and it eliminates the earnings limit for such teachers in designated subject shortage areas. This Act further requires that re-employed retired teachers must be offered health insurance benefits, but may no longer contribute to the retirement system or accrue benefits during this time. These changes became effective July 1, 2003.

In addition, Public Act 03-232 allows for the purchase of additional credited service in the Teachers’ Retirement System (TRS) prior to the time of retirement and makes certain technical changes to provisions regarding the purchase of credited service for teachers under retirement incentive programs. An elected teachers’ representative in a state-wide, national or international bargaining organization may also now receive credit for such service under certain circumstances.

Finally, Public Act 03-232 classifies benefits in the retirement system as contractual in nature, such that they may not be modified by the state and, effective, July 1, 2004, teacher contributions to the retirement system will be increased from 7 to 7.25%. Other technical changes to the Teachers’ Retirement System are also included in this legislation.

Teacher Certification

Public Act 03-168 amends Conn. Gen. Stat. § 10-145d to 1) authorize all holders of an elementary education endorsement to teach kindergarten, in addition to grades 1-6; and 2) authorize holders of a comprehensive special education endorsement to teach kindergarten, in addition to grades 1-12; and 3) allow experience in the DMR’s Birth-to-Three program to count towards experience requirements for teaching certificates. This Act also delays the implementation of new teacher certification regulations, currently scheduled to take effect July 1, 2003, until January 1, 2005.

In addition, P.A. 03-168 postpones for one year the requirement that an applicant for an initial teaching certificate with either an early childhood through grade 3 endorsement or an elementary endorsement have completed a comprehensive reading instruction course

of at least six semester hours. These applicants will now have until July 1, 2004 to comply with this requirement.

Finally, this Act clarifies that certain existing statutory restrictions and requirements currently applying only to persons holding State Board of Education-issued teaching certificates also apply to persons holding SBE-issued permits and authorizations, such as athletic coaches and substitute teachers. Specifically, persons holding permits and authorizations are now subject to the 1) restrictions contained in Conn. Gen. Stat. § 10-145i against issuing or renewing credentials to applicants convicted of specified crimes and 2) procedural requirements under the mandatory child abuse reporting statutes regarding reports of suspected abuse by school employees.

Social Workers

Public Act 03-252 adds an alternative for clinical social workers holding a professional educator certificate to meet continuing education requirements.

Durational Shortage Area Permits (DSAPs)

Public Act 03-174, “An Act Concerning Minor Revisions to the Education Statutes,” may have more than a minor impact on school districts and deserves careful review. Most notably, this Act amends Conn. Gen. Stat. § 10-153b by making persons teaching under durational shortage area permits (DSAPs) issued by the State Board of Education members of teacher collective bargaining units, and thus subjecting their wages, hours, and working conditions to mandatory collective bargaining.

Teacher Evaluations and Assessments

Public Act 03-174 clarifies and extends the deadline for newly certified teachers to achieve a satisfactory evaluation on a professional knowledge clinical assessment as required under Conn. Gen. Stat. § 10-145f. Prior law stated that such evaluation must be achieved within two years after commencing teaching in a public school. Teachers now must complete this assessment “not later than the end of the second year of teaching if hired before January 1 or, if hired after January 1, not later than the end of the second full school year of teaching following the year in which the person was hired.” The Commissioner of Education may also now extend the time limit for assessment for up to two years, instead of for one year, as previously authorized.

Public Act 03-174 also amends the provision of Conn. Gen. Stat. § 10-220a that previously stated that a beginning teacher in the BEST program did not have to be assessed by a certified teacher holding a certification endorsement in the same general subject area as the beginning teacher. Under the new law, a beginning teacher must be assessed by an educator with teaching experience in the same general subject area, although the evaluator need not hold an endorsement in that area.

In-service Training

Public Act 03-211 amends Conn. Gen. Stat. 10-220a explicitly to require in-service programs on the growth and development of exceptional children to include information on students with attention-deficit hyperactivity disorder (ADHD) and learning disabilities. This requirement went into effect July 1, 2003.

Paraprofessionals

Public Act 03-11 allows boards of education and unions to negotiate a twelve-month payment schedule for paraprofessionals in lieu of the ten-month payment schedule currently required by law. Boards already have the authority under C.G.S. § 31-71b to establish different pay schedules for certified board employees such as teachers and school administrators. Public Act 03-11 extends this authority to paraprofessionals, defined as instructional or administrative assistants in positions that do not require certification. This Act went into effect July 1, 2003.

Criminal History Records

Public Act 03-203 expands requirements to conduct criminal background checks by requiring such checks for all prospective DMR employees whose jobs would require the direct provision of care to persons with mental retardation. This Act also permits DMR to require criminal background checks of prospective employees of private providers licensed by DMR to provide these services. These changes go into effect October 1, 2003. These amendments to Section 31-51i maintain the prohibition against the disclosure of criminal history record information contained in employment application forms to persons outside of the personnel department (or, if there is no such department to the Superintendent and persons involved in job interviews), but now permit the disclosure of such information, in specified circumstances, by certain financial services institutions and professionals, to persons outside the hiring process. Finally, Public Act 03-203 permits police-sponsored athletic organizations to obtain state and national criminal history records checks prospective coaches who have direct contact with children under the age of 18.

Donation of Teaching Services by Private Sector Specialists

Conn. Gen. Stat. § 10-21c permits boards of education to solicit and accept the services of qualified private sector specialists, not necessarily certified to teach, whose services have been donated by business firms. Currently, boards may use such specialists to teach in identified teacher shortage areas. Public Act 03-66 expands a board's authority to accept these services by now allowing boards to solicit and use qualified private sector specialists when a board elects to expand academic offerings in areas identified as workforce shortage areas. By law, the Office of Workforce Competitiveness must annually forecast areas of workforce shortage for the succeeding two and five year periods.

Existing requirements governing the use of private sector specialists will continue to apply. For example, a private sector specialist does not need to be certified to teach, and may not have sole responsibility for a classroom. He or she may not work more than one-half of the maximum hours of a full-time teacher and no certified teacher may be terminated, transferred, or reassigned due to the use of a private sector specialist. Boards must continue to annually review the need for such specialists and may not renew or place a private sector specialist if a certified teacher is available.

Disclosure of Benefit/Claim Experience Data to Bargaining Agents

Public Act No. 03-119 includes a provision requiring that health insurance plans and/or third-party administrators (TPAs) provide the bargaining agent of a subgroup of a multi-bargaining unit with certain information. Upon the bargaining agent's written request the plans or TPAs must provide a description of available benefits, the claims experience related to the benefits, and the cost to the employer for coverage or administrative services for the entire multi-bargaining unit or for subgroups within the unit.

Address Confidentiality

Public Act 03-200 establishes an address confidentiality program for victims of family violence, injury or risk of injury to a child, sexual assault or stalking. This program, established by the Secretary of State's office, provides participants with a substitute mailing address and exempts a participant's residential, work and/or school address from disclosure under FOIA.

Commission on Human Rights and Opportunities

Public Act 03-143 eliminates the requirement that the CHRO adopt regulations to establish procedures and standards for alternative dispute resolution in connection with discriminatory employment practice complaints. The CHRO may now adopt such regulations in its discretion.

The Act also addresses representation of complainants at public hearings. An attorney for a complainant will be required to present all, or part of, the case in support of the complainant at a CHRO hearing if the attorney general or commission counsel determines that the interests of the state will not be adversely affected.

Volunteer Firefighters

Public Act 03-259 prohibits employers, including the state and political subdivisions, from discharging or discriminating against employees who serve as volunteer firefighters or volunteer ambulance company members for being late to or absent from work due to responding to an emergency call. If an employer fires or discriminates against such an employee in violation of the act the employee may bring an action in Superior Court for reinstatement, back pay, and lost benefits, costs and attorney fees. Within 30 days of the act's effective date or the date on which an employee is certified as a volunteer firefighter

or ambulance worker, whichever is later, employees must submit to their employers a written statement notifying the employer of the employee's status as a volunteer first responder. The head of a fire department or ambulance company must sign that statement.

An employee must also do the following: (1) make every effort to notify the employer he/she will be late or absent in order to respond to an emergency fire or ambulance call before or during work hours; (2) if unable to notify in advance, submit to employer a written statement signed by a fire chief or an ambulance company's medical director or chief administrator explaining why the employee could not provide advance notification; (3) at employer's request, submit a written statement from the fire chief or head of a volunteer ambulance company verifying that the employee responded to a fire or ambulance call and specifying the date, time and duration of the response; and (4) promptly notify the employer of any change in the employee's status as volunteer firefighter or member of a volunteer ambulance company.

II. JUDICIAL DECISIONS

Students

First Amendment

Sonkowsky v. Board of Education for Independent School district No. 721, 2002 WL 535078 (D. Minn. 2002)

A fourth grader's rights were not violated when (1) he was denied permission to wear Green Bay Packer jersey in class photo for a contest to win a trip to the Minnesota Vikings practice facility and (2) he was later excluded from the trip. Prior to the trip, he stated that he planning to tell Cris Carter that "the Vikings suck, Brett Favre rules." The court ruled that he did not have a constitutional right to wear the jersey or to go on the trip. The court also rejected his claim of disability discrimination (ADHD and emotional disorder), because the school district had legitimate, non-discriminatory reasons for his actions. The court noted that the United States Supreme Court has never held that the First Amendment rights of younger students are the same as high school students.

Walker-Serrano v. Leonard, 325 F.3d 412 (3d Cir. 2003)

The First Amendment rights of third grader were not violated when her teacher stopped her from circulating a petition on the playground. The student and her parents had expressed grave concern about the plan to take students to the circus for a school field trip, and the parents even called other families to protest. The student was given a chance to express her views to the class, but the court upheld the school district's decision not to permit the circulation of the petition, which protested the field trip.

Sypniewski v. Warren Hills Regional Board of Education, 307 F.3d 243 (3rd Cir. 2002) (cert. denied, 5/19/03).

The court considered a racial harassment policy, which read, “District employees and student(s) shall not racially harass or intimidate other student(s) or employee(s) by name calling, using racial or derogatory slurs, wearing or possession of items depicting or implying racial hatred or prejudice. District employees and students shall not at school, on school property, or at school activities wear or have in their possession any written material, either printed or in their own handwriting, that is racially divisive or creates ill will or hatred.” The court struck down one provision (prohibiting material that “creates ill will”) as constitutionally overbroad, but otherwise upheld the policy. However, the court further held that school officials went too far when they disciplined a student for wearing a T-shirt depicting Jeff Foxworthy’s definitions of a “redneck,” because they could not establish that the shirt might genuinely threaten disruption or violate any of the provisions of the harassment policy.

J.S. v. Bethlehem Area School District, 2002 WL 31119075 (Pa. 2002)

The Pennsylvania Supreme Court affirmed a lower court ruling, permitting a school district to expel a student for a personal website called “TeacherSux.” The site included comments directed at the student’s algebra teacher, including calls for her death and comparisons between her and Hitler. The teacher missed over a year of work after viewing the website. The court affirmed the ruling that discipline was permissible because the student’s speech caused a substantial disruption of the school.

Mahaffey v. Aldrich 236 F. Supp.2d 779 (E.D. Mich. 2002)

Student improperly disciplined for creating website, “Satan’s Web Page,” which included lists of people he wished would die. The court held that the school district was not able to establish any significant disruption, and that no reasonable person would infer a true threat from the statements on the website. Indeed, the website included the statement, “PS: Now that you’ve read my web page please don’t go killing people and stuff then blaming it on me. OK?” The court also held that the refusal to permit the student to cross examine witnesses at the expulsion hearing violated his due process rights.

Student Threats

In the Interests of C.C. H., 2002 WL 2026929 (S.D. 2002)

Student adjudicated a delinquent after he told a teacher twice in a serious tone that he wanted to kill a classmate. South Dakota Supreme Court decided that statement was not a true threat and that student should not have been adjudicated a delinquent.

Doe v. Pulaski, 306 F.3d 616 (8th Cir. 2002).

The Eighth Circuit held that a student could be expelled for a letter that he had written at home, which threatened to rape and murder a seventh grade girl. The court concluded that the letter was a “true threat” based on the following factors: (1) reaction of those who heard the threat, (2) whether the threat was conditional, (3) whether the threat was communicated to the object of the threat, (4) whether the speaker had a history of making threats, and (5) whether the recipient had a reason to believe that the speaker had a propensity to engage in violence. This case reversed a prior decision by the Eighth Circuit in this case (reaching the opposite conclusion), which it previously vacated.

Student Discipline

Camlin v. Beecher Community School District, 2003 WL 21213431 (Ill. App. Ct., 3d Dist. 2003)

Student’s due process rights were violated when he was expelled for a first time drug offense. A student handbook stated that first offenses would be addressed through drug education before discipline would be imposed. The court held that the school district’s own policy was binding. Also, the student’s due process rights were also violated when he was not given the identity of the student who provided information to the administration concerning his conduct.

Pelletier v. Maine Principals’ Association, 2003 WL 21068372 (D. Me. 2003)

Home-schooled children claimed that a Maine Principals’ Association rule prohibiting their participation in athletic activities of private schools violated their rights to equal protection and free exercise of religion. (Maine law requires that home-schooled children be permitted to participate in public high school athletic programs in their attendance areas). The court rejected these claims, holding that this rule did not burden the children’s free exercise of religion, because there is no constitutional right to participate in sports.

In the Matter of D.A.R., 2002 WL 501622 (Tex. App., April 4, 2002)

A security officer was told by several students that D.A.R. had a weapon, and he called student down to his office, where he confronted the student about the reports. Student finally admitted to having a weapon, but his statements were ruled inadmissible because the facts established that the student was in the custody of the security officer. His *Miranda* rights were therefore violated, because once in custody student should have been informed of his rights before he was questioned.

In the Interest of R.H., 791 A.2d 331 (Pa. 2002)

The conviction of student overturned, because he was questioned by school police officers about his involvement in vandalism incident without a prior *Miranda* warning. The student was in custody, and school police officers were considered law enforcement officials under *Miranda* because they had uniforms and badges and had the same authority as municipal police officers.

Shade v. City of Farmington, Minnesota, 309 F.3d 1054 (8th Cir. 2002)

A school liaison officer searched a student during an off-campus activity after he was seen in possession of a knife, and he found an expandable baton. The student claimed a Fourth Amendment violation, on the basis that the search was not reasonable and that the school liaison officer should be subject to a probable cause standard, rather than the reasonable cause standard that applies to school officials. The Eighth Circuit, however, disagreed, stating that the special needs of school districts to maintain order and safety made it appropriate to apply the more lenient school-official standard.

Religion in the Schools

Leebaert v. Harrington (2d Cir., June 13, 2003)

A parent objected to the school health curriculum, and he requested that his son be excused from attending health classes. When the request was rejected, the student refused nonetheless to attend health class, and he failed the course. The parent sued, claiming that he had the right to direct the upbringing of his son, including the decision that he would not attend health class because it offended their religious beliefs. The Second Circuit, however, affirmed the district court decision rejecting that claim. The court reviewed the mandatory curriculum under a rational-basis standard, because the plaintiff could make other arrangements for the education of his son. On that basis, the mandatory attendance requirement was upheld.

Bacus v. Palo Verde Unified School District Board of Education, 2002 WL 31724273 (9th Cir. 2002)

The Ninth Circuit reversed the district court decision permitting invocations with a consistently Christian theme at board of education meetings. The court held that this practice gave “privileged governmentally endorsed status to one religious faith.”

Child Evangelism Fellowship of New Jersey Inc. v. Stafford Township School District, 2002 WL 31769027 (D. N.J. 2002)

A religious group wanted to distribute flyers and parental permission slips regarding after-school meetings of religious club, post related materials on bulletin boards, distribute materials at “back-to-school” nights, and distribute materials to teachers to give to students during the school day. The court held that school district practice limited access to bulletin boards to groups directly related to the school. As to the other means of distribution, however, the court held that the school district violated the group’s rights. The district had created a limited public forum by distributing material through these means for a variety of other groups. Denial of that right to this group was discrimination based on the religious nature of the group, in violation of the First Amendment.

Rusk v. Crestview Local Schools, 220 F. Supp. 2d 854 (N.D. Ohio 2002)

Distribution in elementary school of flyers that advertised religious groups and activities violated Establishment Clause. Religious groups were given the same access rights as other groups including Little League, 4-H and the YMCA. The court held, however, that the students were too young to understand that the school was not endorsing any of the groups, including the religious groups. This case is directly contradictory to the *Stafford Township School District* case, above, reflecting the difficulty in steering between Free Speech claims and Establishment Clause claims in such cases.

Prince v. Jacoby, 303 F.3d 1074 (9th Cir. 2002), *cert. petition filed* 2003.

The Ninth Circuit held that the school district violated the Equal Access Act and the student's First Amendment rights by denying her Bible club the same rights and benefits as other school district student clubs and by refusing to allow the Bible club equal access to school facilities on a religion-neutral basis. Such rights and benefits included access to student funding, school facilities, publicity, free participation in fund-raising events, coverage in the school yearbook and the use of the public address system.

Lassonde v. Pleasanton Unified School District, 320 F.3d 979 (9th Cir. 2003)

The free speech rights of a student speaker were not violated by a requirement that overtly religious passages be removed from his speech for the graduation ceremony. The school district was not required to accept the alternative suggested by the student of a disclaimer that the speech did not represent the views of the school district.

Newdow v. United States Congress, 313 F.3d 495 (9th Cir. 2003)

Upon further review, the 9th Circuit decided not to rehear this case, in which it ruled that the words “under God” in the Pledge of Allegiance constitute an

improper advancement of religion. It has stayed enforcement of its decision, however, pending a petition for further appeal.

School District Operation

Grutter v. Bollinger, __ U.S. __ (2003)

The United States Supreme Court ruled that the use of race in school admissions decisions is permissible, provided that consideration of this factor does not result in the imposition of quotas. The Court affirmed the rule of the 1978 *Bakke* case and held (1) that diversity in school admissions is a compelling state interest, and (2) that the use of race by the University of Michigan Law School in admissions decisions was narrowly tailored to achieve that state interest. Consideration of race was one of many factors (including geographical distribution and income), and consideration of race in this manner was thus permissible.

Gratz v. Bollinger, __ U.S. __ (2003)

The University of Michigan granted minority applicants 20 points in the admissions process. While diversity is a compelling state interest, these bonus points were not a narrowly-tailored means to achieve that interest. The Court ruled that the automatic use of points for race precluded individual consideration of an applicant's qualifications and could result in minimally-qualified candidates being admitted automatically by virtue of the additional points.

Nevada Department of Human Resources v. Hibbs, __ U.S. __ (2003)

Congress acted within its authority in abrogating state immunity under the 11th Amendment when it adopted the FMLA. This decision is a departure from other recent decisions by the United States Supreme Court, in which the Court held that states are immune under the 11th Amendment from claims under the ADA and the ADEA.

Connecticut Department of Public Safety v. Doe, 123 S.Ct. 1160 (2003)

The United States Supreme Court reversed the decision of the Second Circuit, which had required the Department of Public Safety to shut down its Megan's Law website and had directed state and local police to stop giving public access to printed copies of the sex offender registry. This action will require school districts to review policies concerning Megan's Law and employee screening.

Weise v. FOIC, 2003 Conn. Super. LEXIS 1704 (2003) (Superior court 2003)

Disciplinary letter (last chance agreement) was imposed upon a teacher for showing an inappropriate video (“Damned in the USA”) in class. The teacher challenged the decision of the Freedom of Information Commission that the letter was subject to disclosure as a disciplinary record, claiming instead that the document was a record of teacher performance and evaluation, which is confidential. The court rejected the argument, holding that the disciplinary letter was a record relating to the personal misconduct of the teacher, notwithstanding that the misconduct occurred in a classroom setting. This case is especially interesting in light of the amendment to Section 10-151c last year, which expressly excluded from exempt “records of teacher performance and evaluation” any records relating to the personal misconduct of a teacher.

Fischer v. Rivest, 2002 Conn. Super. LEXIS 2778 (Superior court 2002)

A child was injured playing hockey for recreational league. In order to play in the program, the child and his parents had signed a “Waiver of Liability, Release Assumption of Risk & Indemnity Agreement,” which waived liability and released various parties, including the sponsoring agency, other participants and coaches. The court rejected the parents’ claim that the waiver was unenforceable as against public policy. “The injuries sustained by Gabriel Fischer were tragic. However, if courts did not enforce this type of exculpatory contract, organizations such as USA Hockey, Inc., little league and youth soccer, and the individuals who volunteer their time as coaches could well decide that the risks of large legal fees and potential judgments are too significant to justify their existence or participation. Thousands of children would then be deprived of the valuable opportunity to play organized sports.”

Association of Community Organizations for Reform Now v. New York City Department of Education, 2003 WL 21471910 (S.D.N.Y. June 30, 2003)

The plaintiffs filed suit, seeking to enforce their rights under the No Child Left Behind Act (as they saw them) in federal district court. The court, however, dismissed the lawsuit, holding that the No Child Left Behind Act does not confer a private right of action upon parents or others. It based its reasoning on the United States Supreme Court decision last year in *Gonzaga University v. Doe* that FERPA does not confer a private right of action because the legislation did not clearly set out such a remedy.

Special Education

M.D. v. Southington Board of Education, 39 IDELR 91 (2d Cir. 2003)

The Second Circuit enforced the two year statute of limitations for the presentation of claims under IDEA against parents who waited more than four years before making a claim after placing their child in a private school.

Interestingly, the law was passed *after* the parents had withdrawn the child. Accordingly, the parents were not able to make any claim with respect to tuition costs incurred for three and one-half years.

Taylor v. Vermont Department of Education, 313 F.3d 768 (2d Cir. 2002)

Non-custodial parent lacks standing to pursue an IDEA claim through a due process hearing. The parent retains, however, the right to access to all student records. The court held that parental rights under IDEA are determined in accordance with state law, and here the court awarded custody under state law to the father, including educational decision-making authority.

Calumet County Department of Human Services v. Randall, 653 N.W.2d 503 (Wis. 2002)

A student with mental illness was placed in a residential facility. When a parent contribution was assessed, the parent claimed that the charge violated the IDEA provision that placement be provided without cost to the parent. The Wisconsin Supreme Court looked at all facts and circumstances, and it held that a placement made for “medical, social or emotional problems . . . not the learning process” is not an educational placement.

S.W. v. Holbrook Public Schools, 221 F. Supp. 2d 222(D. Mass 2002)

A student was expelled for providing drugs to other students. Her file included a note that she took medication at home for ADD. When her parents requested a due process hearing, the district conducted a manifestation determination and found that she was not disabled. The hearing officer ruled that the “no-manifestation” determination meant that “stay-put” did not apply. The court reversed. It held that her status for stay-put purposes was determined at the time of the incident. Since the note was in the file and since the “no manifestation” determination was being appealed, the court held that she was entitled to “stay-put.” By this time, she was back in school, and the case continues simply on the question of damages and/or compensatory education.

Employees

McDermott v. Town of Windham Public Schools, 225 F.Supp.2d 180 (D. Conn. 2002)

The termination of a teacher was lawful, because it was based on the recommendation of an impartial hearing panel, and thus was not retaliation for speech on matters of public concern. Suspension with pay, but without a hearing, did not violate the teacher’s due process rights.

St. Ledger v. ACES, 228 F.Supp.2d 66 (D. Conn 2002)

An employee claimed that she was transferred and “denounced” for her refusal to give a negative evaluation to an African-American employee. The court ruled, however, that the change in her status did not constitute an adverse employment decision for purposes of the First Amendment, since her pay, benefits and opportunities for advancement were not affected.

Peters v. Baldwin Union Free School District, 320 F.3d 164 (2d Cir. 2003)

A non-tenure guidance counselor with medical problems told a colleague that she could commit suicide with her husband’s handgun (who was a police officer). When school officials heard this, they took precautions, including securing the gun and placing the teacher on leave. During the leave, errors in her work were discovered and her employment was not renewed. She sued for disability discrimination, and the Second Circuit held in her favor, reversing the district court. It held that, through her statements concerning possible suicide, the guidance counselor had raised an issue concerning her ability to care for herself and, as such, was entitled to protection under Section 504.

Melzer v. Board of Education of the City of New York, 2003 U.S. App. LEXIS 14231 (2d Cir. 2003)

This teacher was a member of the North American Man/Boy Love Association, and was even involved in producing its periodical. When the school board found out, it fired him. Mr. Melzer challenged his dismissal on the grounds that the school board had not proven any misconduct, and that the termination was thus solely for the exercise of his free association rights. The Second Circuit affirmed his dismissal, holding that the action was justified by the disruption that his presence in the school caused, notwithstanding his free association rights.

Calef v. Gillette Company, 322 F.3d 75 (1st Cir. 2003)

An employee was fired for threatening behavior, including a threat to punch a 60 year old woman. He claimed that his behavior was caused by ADHD exacerbated by stress. The court rejected this claim, holding first that it was unlikely that he was disabled, because his problem did not substantially limit him in a major life activity (because he had demonstrated the ability to do his job appropriately). Second, the court ruled that, if he were disabled, he was not an “otherwise qualified individual.” If his disability causes him to engage in threatening behavior, that disability cannot be reasonably accommodated.