

Connecticut Association of Schools  
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## 2004 LEGAL UPDATE

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### I. LEGISLATION

In its 2004 session, the General Assembly passed a number of new laws affecting school districts. Except as otherwise noted, these changes are effective October 1, 2004. These new statutes are available online at <ftp://159.247.160.79/acts/Pa.>

#### General School District Operation

##### Preparation and Dissemination of Referendum Materials

Public Act 04-117 clarifies the procedure for the authorization and dissemination of printed materials to be distributed to electors at a referendum. Specifically, the Act amends Conn. Gen. Stat. § 9-369b to permit the board of selectmen in a town whose legislative body is a town meeting to decide by majority vote whether to authorize the dissemination of an explanatory text or other neutral printed material. For a regional school district referendum, the regional board of education must authorize the preparation and printing of concise explanatory texts of proposals or questions and the secretary of the regional board must prepare the texts, subject to the approval of the board's legal counsel. The secretary must also undertake any other duty normally assigned to the town clerk with respect to the questions, proposals, and texts. These provisions are effectively immediately.

Effective July 1, 2004, Public Act 04-117 also confers upon any person claiming to have been aggrieved in connection with a referendum the right to file a complaint with any Superior Court judge, who is required to deal with such claim expeditiously in accordance with a statutory timetable.

##### Regional School District Expenditures Before Budget Adoption

Public Act 04-117 Act also clarifies the appropriate procedures when a regional school district's annual budget is not approved by a majority of the voters of its member towns before the beginning of the fiscal year. As amended, Conn. Gen.

**Stats. §§ 7-405 and 10-51 now provide that the disbursing officer of each member town must make reasonable expenditures to the district until the budget is approved. These expenditures must be in an amount equal to the total of the town's total appropriation to the district for the previous fiscal year and the town's proportionate share in any increment in debt service over the previous fiscal year, until the regional school district budget is approved. Under this new provision, each town receives credit for such expenditures when the new budget is approved. Effective July 1, 2004.**

### **Birth-to-Three Programs**

**Conn. Gen. Stat. § 17a-248d requires the State's Birth-to-Three program of early intervention services to include a system for notifying school districts by January 1<sup>st</sup> of each year of any child receiving services who will turn three (3) during the next fiscal year. Public Act 04-54 will now require this system to include provisions to preserve the confidentiality of the child and of the parent/guardian. This confidentiality provision is effective May 4, 2004 and is consistent with existing federal law requirements concerning the confidentiality of student records under FERPA and IDEA.**

### **School Readiness Programs**

**Public Act 04-215 makes a number of changes affecting school readiness programs. These changes include: 1) increasing the amount of the per child grant for the school readiness component of the program from the current foundation amount (defined in Conn. Gen. Stat. § 10-262f as \$5,891) to \$6,400; 2) increasing the competitive school readiness grant from an amount not to exceed \$100,000 to an amount not to exceed \$107,000; 3) advancing the date by which towns must earmark grant funds from January 1<sup>st</sup> to October 1<sup>st</sup>, before the State Department of Education may reallocate a percentage of the amount not earmarked to other eligible towns; 4) increasing the percentage of funds not earmarked that may be redistributed to other eligible towns from 50% to 70%; 5) allowing the remaining percentage of un-earmarked funds (30%) to be used for professional development of school readiness staff; and 6) permitting programs to apply for waivers from certain scheduling requirements such as the minimum hours, number of days, or number of weeks the program must operate. Effective July 1, 2004. Please also note that Public Act 04-15, described under Employee Matters, changes staff qualifications for school readiness programs.**

### **Wireless Technology**

**Public Act 04-57 amends Conn. Gen. Stat. § 10-262n to permit school districts to use education technology program grants for wireless connectivity, in addition to previously authorized uses, such as for traditional wiring and connectivity. In**

addition, this new legislation amends the application process for school construction grants under Conn. Gen. Stat. § 10-283(a) to require that superintendents affirm in the application form that the school district considered the use and feasibility of wireless connectivity technology in their school building projects. This Public Act also amends Conn. Gen. Stat. § 4d-85 to provide that the State Department of Education is responsible, in cooperation with the Commission for Educational Technology, for updating standards for teacher and administrator competency in the use of technology for instructional purposes, and for updating the related statewide plan to achieve that goal.

#### **International Studies Programs**

Public Act 04-153 encourages the development of international education opportunities and programs. In particular, this Act amends Conn. Gen. Stat. § 10-27 to set forth more specifically the duties of the International Education Advisory Committee. These duties now include the setting of guidelines and standards for approving such programs and the establishing of criteria for sister school partnership programs, as well as the encouragement of such programs. This Act also authorizes the State Board of Education to recognize international studies programs and sister school partnership programs that meet these standards, and provides foreign schools in such a partnership program access to state professional development and technical assistance within available appropriations on the same basis as Connecticut schools. Effective July 1, 2004.

#### **Vocational Agricultural Education**

Public Act 04-197 restates in Conn. Gen. Stat. § 10-64 the current provision located in Conn. Gen. Stat. § 10-97(b) requiring local and regional boards of education that do not operate a vocational agricultural (“vo-ag”) to designate a school or schools for their students to attend and to pay for tuition and reasonable and necessary transportation costs, subject to additional state reimbursement. This Act also increases the amount of tuition a center may charge from 102% to 120% of the foundation amount set forth in Conn. Gen. Stat. § 10-262f(9), which is currently set at \$5,891 per student through June 30, 2005. As a result, this legislation effectively permits vo-ag centers to increase tuition from \$6,009 to \$7,069. Effective July 1, 2004.

#### **Voice Mail**

In the face of the now-withdrawn proposal for a declaratory ruling by the Freedom of Information Commission on e-mail and voice mail, the General Assembly passed Public Act 04-171, which amends Conn. Gen. Stat. § 1-213. That statute now provides clearly that the Freedom of Information Act does not require public agencies to transcribe or retain voice mail messages. Effective from passage.

## **Student Matters**

### **Administration of Medication**

Once again, the legislature has revised Conn. Gen. Stat. § 10-212a governing the administration of medication to students. Pursuant to Public Act 04-181, boards of education now have a statutory obligation to adopt written policies and procedures for administering medication in schools, and such procedures must be approved by the school district's medical advisor or other qualified physician. Previously, the requirement that boards of education adopt policies and procedures regarding the administration of medication had been part of the state regulations only, which stated that districts had to submit such policies and procedures to the Department of Public Health for approval. In addition, the revised § 10-212a now explicitly states that the administration of medication must conform to these policies and procedures. Finally, the Act requires that the board's policies and procedures conform to any regulations that the Commissioner of Public Health may adopt concerning the circumstances when a coach of interscholastic or intramural athletics may administer medication to participants. Effective July 1, 2004.

### **Nutrition, Recess and School Lunches**

Public Act 04-224 requires that boards of education must now require each school to offer all full day students a daily lunch period of not less than 20 minutes and to include "a period of physical exercise" in the regular school day for all students in grades K-5. Notably, the statute does not define the length of such a period of physical exercise. Also, different schedules may be developed for students eligible for special education in accordance with decisions made by the student's planning and placement team ("PPT"). In addition, school boards are now required to make nutritious, low-fat foods and drinks available for purchase by students whenever any food and/or drink are available for purchase by students during the regular school day. Such nutritious options must include, but are not limited to, low-fat milk, 100% natural fruit juice, water, fresh and dried fruit and low-fat dairy products. Effective July 1, 2004.

### **Scholarship Contributions**

Public Act 04-112 amends Conn. Gen. Stat. § 9-333s to permit a town political committee to contribute to a high school scholarship, provided that the scholarship is awarded on the basis of objective criteria, presumably so that a "favored son" cannot be given the scholarship.

## **Abuse and Neglect of Persons with Mental Retardation**

**Consistent with the trend in recent years of expanding the list of mandated reporters, Public Act 04-12 adds licensed professional counselors to the list of mandated reporters required under Conn. Gen. Stat. § 46a-11b to report cases of suspected abuse or neglect of persons with mental retardation. School teachers and administrators and other school personnel are already mandated reporters for such suspected abuse or neglect of persons with mental retardation. This new law also shortens the time within which such mandated reporters must make an initial report to the Office of Protection and Advocacy for Persons with Disabilities (“OPA”) from five days to “as soon as practicable but not later than 72 hours” after the person has reasonable cause to suspect or believe that a person with mental retardation has been abused or neglected. The Act further clarifies that a written report must be filed “not later than five calendar days after the initial report.” These changes align the reporting laws pertaining to persons with mental retardation with the existing state requirements for reporting cases of suspected child abuse and neglect.**

## **Employee Matters**

### **Teacher Evaluation Grievances**

**Public Act 04-137 amends Conn. Gen. Stat. § 10-151b to allow teachers and administrators below the rank of superintendent to file grievances if a school district fails to follow the established procedures for the district’s evaluation programs. Such grievances may be filed only according to grievance procedures set forth in collective bargaining agreements negotiated after July 1, 2004. It is important that boards address this provision in upcoming teacher and administrator negotiations. Effective upon passage.**

### **Termination of Coaches**

**Public Act 04-243 requires boards of education to evaluate athletic coaches on an annual basis and to provide such coaches with copies of these evaluations. An “athletic coach” is defined as “any person holding a coaching permit who is hired by a local or regional board of education to coach for a sport season,” and apparently does not include volunteer coaches. Evaluations must be conducted by the coach’s “immediate supervisor.” If a board of education terminates, or decides not to renew, the coaching contract of an athletic coach who has served in the same coaching position for three or more consecutive school years, the coach must be notified of that decision “no later than ninety (90) days after the completion of the sport season covered by the contract.” The coach may then**

appeal such decision to the board of education under procedures to be established by the board. Boards are still able to terminate coaching contracts for any coach at any time 1) for reasons of moral misconduct, insubordination or a violation of the rules of the board of education; or 2) when a sport has been cancelled by the board. Effective July 1, 2004.

### **State Certification for Nationally Board Certified Teachers**

Public Act 04-138 allows nationally board certified teachers with teaching experience in another state, including the District of Columbia and Puerto Rico, to qualify for certification in Connecticut, if the teacher has taught for a minimum of three years in the preceding ten years in another state. Under this Act, the teacher will be issued a provisional educator certificate, unless the teacher has completed thirty (30) credits of coursework beyond a bachelor's degree, in which case the teacher will receive a professional education certificate. Effective July 1, 2004.

### **Teacher Preparation Programs**

Public Act 04-75 amends Conn. Gen. Stat. § 10-145a to require that, on and after July 1, 2006, any program of teacher preparation leading to professional certification must include, as part of the curriculum, instruction in literacy skills and processes that reflect current research and best practices in the field of literacy training. Similarly, Public Act 04-227 requires any teacher preparation program leading to certification to include, on and after July 1, 2006, instruction in second language learning and acquisition as part of the program curriculum. Both of these subjects must be incorporated into requirements for student majors and concentrations. Effective July 1, 2004.

### **English as a Second Language Instruction**

Public Act 04-227 also amends Conn. Gen. Stat. § 10-220a to require school districts with bilingual education programs to provide in-service training to its teachers, administrators and pupil personnel staff on second language acquisition. Effective July 1, 2004.

### **Criminal Records Checks**

Public Act 04-181 amends Conn. Gen. Stat. § 10-212 to require that school nurses and nurse practitioners who provide health services to students in a public or private school submit to criminal background checks, even if such nurses are not directly employed by the school district. Also, this Act revises Conn. Gen. Stat. § 10-221d to require regional education service centers (RESCs) to arrange for the fingerprinting of school personnel upon request of an endowed or incorporated

**school or special education facility approved by the State Board of Education. Effective July 1, 2004, except for the provision regarding background checks for nurses, which was effective immediately upon passage.**

### **Sexual Assault**

**In recent years, the Connecticut legislature has expanded the criminal definitions for second- and fourth-degree sexual assault to include sexual activity between certain school staff, including coaches and other persons providing intensive, ongoing instruction to a secondary school student in a school setting. Public Act 04-130 continues this trend by making it second- or fourth-degree sexual assault for an adult to have sexual intercourse, or sexual contact, respectively, with a person under the age of 18 if the adult's "professional, legal, occupational or volunteer status" places the adult in a position of "power, authority, or supervision" over the other person. Although this Act was intended to target authority figures such as police officers, firefighters and mentors, the language is quite broad and may be applicable to a variety of analogous relationships within the school context.**

### **Payment Schedules for Noncertified Employees**

**Conn. Gen. Stat. § 31-71b requires employers to pay all wages on a weekly basis, on a regular pay day, and no more than eight days after the end of the pay period covered by the wages. However, under subsection (c) of that statute, through the collective bargaining process, boards of education and unions are allowed to establish different wage payment schedules for certified employees, such as teachers and administrators. In 2003, the legislature extended this provision to paraprofessionals, and Public Act 04-13 further expands this provision by substituting "noncertified employees" for "paraprofessional." Now boards of education and the appropriate union for any non-certified employees (*e.g.*, paraprofessional, cafeteria or maintenance staff) may agree on a wage payment schedule that is other than weekly. This change is effective July 1, 2004.**

### **Sexual Harassment Investigations**

**While referencing only voice mails in its title, Public Act 04-171 also amends Conn. Gen. Stat. § 46a-70 to provide that the identity of the complainant in an internal investigation of sexual harassment by a public agency is confidential, but may be disclosed to the accused and otherwise only as ordered by the superior court.**

### **Licensure of Personnel Transporting Students**

**Public Act 04-217 makes numerous changes to the laws governing the issuance of, and qualifications for receiving a commercial driver's license ("CDL"). In**

particular, this Act expands the definition of school bus to include any commercial vehicle used to transport students (pre-school through secondary school), “from home to school, from school to home, or to and from school-sponsored events,” excluding a bus used as a common carrier. This legislation also modifies the endorsement necessary for driving a school bus and creates three new endorsements related to the school bus endorsement, including one for transporting students in a school “activity vehicle.” A school activity vehicle is defined as a student transportation vehicle that is used only to transport students in connection with school sponsored events and activities, and not in connection with transportation to and from school itself. Finally, this Act permits the Commissioner of Motor Vehicles to waive the skills test for an applicant for a school bus endorsement if the person meets the federal waiver requirements. Effective January 1, 2005.

### **School Readiness Staff Qualifications**

Public Act 04-15 changes the staff qualifications required for persons employed by school readiness programs as set forth in Conn. Gen. Stat. Section 10-16p. Previously, school readiness programs have been required to have a person in each classroom who has, at minimum, the following qualifications: 1) nine or more credits in early childhood education or child development from an accredited higher education institution and a credential from an organization approved by the Commissioner of Education; or 2) an associate’s degree in early childhood education or child development; or 3) a four-year degree in early childhood education or child development. Effective July 1, 2004, anyone holding an associate’s degree or a four-year degree must have at least nine (9) early childhood education or child development credits, and as of July 1, 2005 this number increases for all three groups listed above nine (9) to twelve (12) credits. However, under amended Section 10-16p, the associate’s or four-year degree may be in any field, provided that the staff person has earned the requisite early childhood education or child development credits as outlined above. Finally, as an alternative to the qualifications listed above, a staff member will be considered qualified if he or she holds a Connecticut teaching certificate with an early childhood or special education endorsement. Except where noted, these changes are effective July 1, 2004.

### **Miscellaneous Statutes of Interest**

#### **Vocational Technical Schools**

Public Act 04-212 encourages partnerships and collaborations between technology-based business and industry with institutions of higher education and regional vocational-technical schools in order to develop programs in emerging and interdisciplinary technology fields. This Act also requires the Office of Workforce



**Competitiveness to consult with the superintendents of regional vocational-technical schools, no later than October 1, 2005, to create an integrated system of state-wide industry advisory committees for each career cluster within the v-t schools as well as the regional community technical colleges. These committees are then to establish specific skills standards, a curriculum and a career ladder for each career cluster which are to be implemented as part of the core curriculum of these schools. Various effective dates.**

### **Student Loans**

**Public Act 04-225 expands the authority of the Connecticut Student Loan Foundation (“CSLF”) by authorizing it to grant loans for elementary, secondary, or postsecondary education expenses, regardless of where the intended recipient resides or attends school. Previously, Conn. Gen. Stat. § 10a-201 limited the awarding of CSLF loans to those persons enrolled in postsecondary education and who either attended eligible state schools, or were residents of Connecticut attending out-of-state schools. Effective July 1, 2004.**

### **Hate Crimes**

**Public Act 04-135 expands the scope of the prohibition against intimidation by bigotry or bias by adding to the list of protected characteristics (actual or perceived race, religion, ethnicity, sexual orientation) both disability and “gender identity or expression.” Depending upon the actions taken, such conduct is either a felony or a misdemeanor.**

## II. CASE LAW DEVELOPMENTS

### School District Operation

**Draft Declaratory Ruling # 94.** The Freedom of Information proposed a declaratory ruling on this subject that sets out various hypothetical situations on e-mail and voice mail and gave public officials a lot to think about. In April 2004, at the recommendation of its Executive Director, however, the Commission declined to adopt a declaratory ruling on the subject. **Report of Counsel, April 14, 2004.** The Commission will continue to address these issues on a case-by-case basis, and it is important to be aware that e-mail messages are public records. Note, however, P.A. 04-171, which provides that voice mail messages need not be retained or transcribed.

***Board of Education v. Town and Borough of Naugatuck*, 268 Conn. 295 (2004).**

The question was whether a new charter provision requiring a separate vote on the Board of Education budget is permissible. Reversing the Appellate Court, the Connecticut Supreme Court held that a separate vote on the board of education is not inconsistent with the statutory provisions for funding education. While education is a matter of state concern, the procedure for approving the related funding is a matter of local concern appropriately left to the voters in the school district. The Court did not disturb the Appellate Court's ruling affirming a new provision making the Mayor a member of the Board of Education

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

A group of parents sued the New York City public schools to enforce their rights (as they saw them) under the No Child Left Behind Act. The school district moved to dismiss, claiming that parents do not have the right to sue under NCLB. The court held that the NCLB does not create a private right of action for parents and others.

***Grutter v. Bollinger*, 539 U.S. \_\_ (2003).**

By a 5-4 vote the Court upheld the admissions procedure at the University of Michigan Law School, which gave special weight to race as one of the factors considered. The Court found first that assuring a diverse student body is a compelling state interest, a requirement of the "strict scrutiny" test. Then, it found that the School was not required to achieve that interest through less restrictive means, because racially-neutral criteria

(such as a lottery) would not assure diversity. Key to the Court's ruling was the fact that race was not a defining characteristic in the admissions process, but rather only one of several "diversity factors, such as socio-economic status that were considered.

*Gratz v. Bollinger*, 539 U.S. \_\_ (2003).

Here, the Court found that use of race at the University of Michigan in making undergraduate admissions criteria violated constitutional principles. The University considered African-Americans, Hispanics and Native Americans to be underrepresented, and under its guidelines for admission it automatically awarded members of these groups twenty of the one hundred points needed to guarantee admission, with the result that the University admitted virtually all such qualified applicants. By a 6-3 vote, the Court ruled that, while there can be a compelling state interest in assuring a diverse student body, the use of race here was not sufficiently narrow. The Court held that crediting such students with a specific number of points made it a decisive factor in the admissions process, akin to a quota system (which is unconstitutional because it precludes individual consideration of applicants).

These two cases do not provide clear guidance as to how race may be used as a plus factor in school admissions decisions – we now simply know that race can be considered but not "too much." Moreover, these issues are also subject to review under state constitutional standards. *See Parents Involved in Community Schools v. Seattle School District No. 1*, No. 72712-1 (Wash. 2003). Race-based admissions decisions have not been a major issue in Connecticut to date, however, because (1) student admission to schools generally is typically based on geography, and (2) admission to interdistrict schools is by statute by lottery if seats are limited, and making such decision on the basis of race is prohibited. [Conn. Gen. Stat. § 10-266aa\(e\)](#); [Conn. Gen. Stat. § 10-15c](#)

## Student Matters

*Dunbar v. Hamden Bd. of Ed.*, 267 F. Supp.2d 178 (D. Conn. 2003).

Four students were disenrolled from the Hamden Public Schools after an impartial hearing officer found that they had not established bona fide residence in Hamden, even though there was not an express finding as to where the students did reside. The father sued *pro se*, claiming that the action of the school district violated the constitutional rights of the children. The court held, however, that the school district has the right to establish reasonable criteria to establish residence, and that application of such criteria to disenroll students after notice and hearing did not violate their rights.

*S.G. v. Sayreville Board of Education*, 333 F.3d 417 (3rd Cir. 2003).

A kindergarten student was suspended for three days for saying “I’ll shoot you” to a classmate. The Third Circuit reviewed the *Tinker* standard permitting restriction of student free speech only if there is a reasonable forecast of substantial disruption or material interference with the educational process, and it questioned whether *Tinker* protects the speech of a kindergarten student. Relying on *Bethel School District No. 403 v. Fraser* (1986), however, the court ruled that the suspension did not violate the student’s First Amendment rights.

*Counts v. Cedarville School District*, No. 02-2155 (W.D.Ark. April 22, 2003).

A school district in Arkansas adopted a policy that required students to present written parent permission to be able to read Harry Potter books. A group of parents sued, claiming a violation of the First Amendment. The court held that this requirement violated the First Amendment. There is no reasonable basis for the rule and it interfered with the students’ First Amendment rights.

*Angstadt v. Midd-West School District*, No. 03-3912 (3d Cir. 2004).

Cyber-student was denied request to participate in extracurricular activities, and her parents sued, claiming that this decision violated her Free Association, Equal Protection and Due Process rights. The Third Circuit disagreed, however, ruling that the student did not have constitutional right to participate in extracurricular activities if she was not enrolled in the school district. *See also Reid v. Kenowa Hills Public Schools*, No. 239473 (Mich. Ct. App. March 2, 2004) (no Equal Protection or First Amendment violation to deny opportunity to home-schooled children to participate in extracurricular activities).

*McCormick v. School District of Mamaroneck*, 379 F.3d 275 (2d Cir. 2004).

The Second Circuit ruled that a decision to offer girls’ soccer in the spring rather than in the fall (as is the case with boys’ soccer) can operate to deny female students their rights under **Title IX**. Critical to the court’s decision was the fact that the state championships in soccer come at the end of the fall season. The court ruled that the school district could submit an alternative compliance plan, such as alternating the scheduling of soccer in the spring between the boys and the girls teams. The original decision to schedule girls’ soccer in the spring, however, denied girls an important opportunity to compete for the state championship and was discriminatory under **Title IX**.

## Employee Matters

*Nonnewaug Teachers' Association Petition for Declaratory Ruling*, (St. Bd. Ed. May 7, 2003).

The State Board of Education considered the claim of the Nonnewaug Education Association that the assignment of teachers to grade student work done primarily through a program of computer-assisted instruction was a violation of the certification requirements. On its own, the State Board redefined the issue as one of whether the school district was complying with the requirements of Section 10-16b. While it found reason to be critical of the original implementation of the program, the State Board noted that the program had evolved so that there was greater direct teacher-student contact. The State Board held that the program was not a violation of the certification regulations and, as implemented, complied with Section 10-16b.

*Wiese v. Freedom of Information Commission*, 82 Conn. App. 604 (2004).

The appellate court interpreted [Conn. Gen. Stat. § 10-151c](#) as amended and affirmed a decision of the Freedom of Information Commission ordering disclosure of a “last chance agreement,” which set forth the discipline of the teacher for showing an inappropriate video in class. The court rejected the teacher’s claim that, since the record related to his decision to show a movie in class, it was perforce a confidential record of teacher performance, ruling that discipline records must be disclosed.

*Poole v. City of Waterbury* 266 Conn. 68 (2003).

The City made changes in the health insurance benefits provided to retirees. The retirees claimed that no changes were permissible. The Connecticut Supreme Court ruled that contract principles applied, and that a contract to provide retiree benefits could be binding. It rejected, however, the claim on behalf of retired employees that no changes could be made. It ruled that the City could make changes that did not change the essential nature of the benefits.

*Settlegood v. Portland Public Schools*, 362 F.3d 1118 (9<sup>th</sup> Cir. 2004).

A teacher claimed that she was not renewed because of her criticism of the district’s special education facilities and equipment. In a letter to her supervisor’s supervisor, she compared the plight of special education students to that of African-American students before the civil rights movement. She was not renewed after two years, despite mostly favorable evaluations. The Ninth Circuit reinstated a \$1,000,000 jury verdict in her favor.

*Conroy v. New York State Department of Correctional Services*, 333 F.3d 88 (2d. Cir. 2003)

An employer policy required that employees submit medical certification with general diagnoses after certain absences, typically but not always after four days of absence. An employee sued, claiming that this requirement violated the ADA prohibition against inquiries into disability. The Second Circuit reversed the district court, holding that the employee may have a case. The employer claimed that the requirement was justified by business necessity. The court rule, however, that business necessity requires more than a showing that the requirement is convenient or beneficial. Rather to justify inquiry into disability, the employer must show that the need is vital. The court remanded the case back to district court to determine whether this high standard was met.

## Religion in the Schools

*Elk Grove Unified School District v. Newdow*, 524 U.S. \_\_ (2004)

The words “under God” will continue to be a permissible part of the Pledge of Allegiance. After the Ninth Circuit ruled that inclusion of these words violated the Establishment Clause, the United States Supreme Court vacated the ruling on the basis that the plaintiff father did not have standing to make the complaint on behalf his daughter. *See also Conn. Gen. Stat. § 10-230(c)*, which provides that students should have the opportunity to say the Pledge. It further specifies, however, that it should not be construed to require anyone to say the Pledge.

*Bronx Household of Faith v. Board of Education*, 2003 US App. LEXIS 11379 (2d Cir. 2003)

Building on the recent trend in decisions of the United States Supreme Court to require that religious activities be treated in the same manner as other activities, the Second Circuit has ruled that the right to use school facilities equally even extends to religious worship, at least during non-school hours.

*Donovan v. Punxsutawney Are School Board*, 336 F.3d 211 (3rd Cir. 2003). Claiming rights under the Equal Access Act, students challenged ruling that they could not meet during the school day. The court ruled, however, that “non-instructional time” can include time during the school day when students are not in class.

*Caudillo v. Lubbock Independent School District*, (N.D. Tex., March 3, 2004)

The school district denied permission to organizers of a student gay-straight club to distribute flyers or to meet on school grounds. The students sued under the Equal Access Act. The court affirmed the decision of school officials because the district had general prohibition against discussion of sexual matters.

*Halls v. Scottsdale Unified School District*, 329 F.3d 1044 (9<sup>th</sup> Cir. 2003), *cert. denied* 124 S. Ct. 1146 (2004).

School officials refused the request of a summer camp operator to permit him to distribute flyers advertising flyers on “Bible Heroes” and “Bible Tales.” The district has a policy of permitting non-profit groups to distribute literature of interest to children, but school officials were concerned that they not be seen as supporting religion. The Ninth Circuit ruled that the district violated the First Amendment rights of the summer camp operator.

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