



SHIPMAN & GOODWIN LLP™
COUNSELORS AT LAW

In conjunction with the

Connecticut Association of Schools

A Conference for School Office Personnel

Thomas B. Mooney
Gwen J. Zittoun

April 27, 2018

AGENDA:

9:05 a.m. to 9:40 a.m. Legislative and Legal Update (Tom)

9:40 a.m. to 10:15 a.m. New Standards and Guidelines in 2018 (Gwen)

10:15 a.m. to 10:30 a.m. Break

10:45 a.m. to 11:45 a.m. Questions and Answers (Gwen and Tom)

*** These materials are available on the CAS website.**

I. Legislative Update

- A. Student Expulsions: [Public Act 16-147](#) (Effective August 2017):
- Duty to provide written notification of the expulsion hearing at least five days in advance of the hearing.
 - Duty to include in the notification “information” about parents’ and students’ “legal rights.”
 - Parent right to postpone hearing for up to one week.
 - Alternative educational opportunity redefined, as discussed below.
- B. Student Data Privacy: Public Acts [16-189](#) and [17-200](#):
- Deadline for required contracts and postings pushed back to July 1, 2018.
 - Obligations of contractors and operators as to security measures and as to breaches remain as provided in 2016 Act.
 - Continued ambiguity regarding duty to provide electronic notification to students and parents “affected by” contracts -- can the duty be discharged by the posting on the school district website?
- C. Graduation Requirements: [Public Act 17-42](#):
- New requirements are more flexible than previous requirements.
 - Effective date of new requirements postponed again, now to the class graduating in 2023 (which class is entering high school in the fall of 2019).
 - Courses used for high school graduation credit will now have to meet “state-wide subject matter content standards” that the State Board of Education will now have to adopt (and review at least every ten years).
- D. Truancy and Families with Service Needs (FWSN): [Public Act 16-147](#) (Effective August 2017) and State Department of Education Guidance on Youth Service Bureaus:
- Courts will no longer accept Families with Service Needs (FWSN) petitions. Concern was that judicial intervention would contribute to possibility of incarceration.
 - New approach recommended by the State Department of Education is to refer children who are habitually truant or otherwise defiant against school rules to youth services bureaus.
- See [Charlene Russell-Tucker, Youth Services Bureau Referral for Truancy and Defiance of School Rules \(February 22, 2018\)](#).*
- See [Youth Service Bureau Referral Guide for Truancy and Defiance of School Rules](#) (State Department of Education, February 2018)*

See [Youth Service Bureau Referral Form for Truancy and Defiance of School Rules](#) (State Department of Education, February 2018)

E. Student Records:

- Public Act [17-194](#):

“An unaccompanied youth, as described in 42 USC 11434a, as amended from time to time, shall be entitled to knowledge of and have access to all educational, medical or similar records in the cumulative record of such unaccompanied youth maintained by a local or regional board of education.”

- Public Act [17-68](#), Section 4:

“(a) Either parent or legal guardian of a minor student shall, upon written request to a local or regional board of education and within a reasonable time, be entitled to knowledge of and access to all educational, medical, or similar records maintained in such student's cumulative record, except that no parent or legal guardian shall be entitled to information considered privileged under section 10-154a. ***Nothing in this section shall be construed to limit a parent who is incarcerated from being entitled to knowledge of and access to all educational, medical or similar records maintained in the cumulative record of any minor student of such incarcerated parent, except that such incarcerated parent shall not be entitled to such records if (1) such information is considered privileged under section 10-154a, (2) such incarcerated parent has been convicted in this state or any other state of a violation of section 53a-70, 53a-70a, 53a-71, 53a-72a, 53a-72b or 53a-73a, or (3) such incarcerated parent is prohibited from knowledge of or access to such student's cumulative record pursuant to a court order.***” (Emphasis added).

- Public Act [17-119](#) (amending Conn. Gen. Stat. § 46b-129a, which deals with hearings over the commitment or other custody of a child):

“In proceedings in the Superior Court under section 46b-129:

* * *

(2) (A) A child shall be represented by counsel knowledgeable about representing such children who shall be assigned to represent the child by the office of Chief Public Defender, or appointed by the court if there is an immediate need for the appointment of counsel during a court proceeding. If the child's parent or guardian has been accused by a competent witness of abusing the child, or of causing the child to be neglected or uncared for, ***upon the assignment or appointment of counsel, such counsel shall be granted***

immediate access to (i) records relating to the child, including, but not limited to, Department of Social Services records and medical, mental health and substance abuse treatment, law enforcement and educational records, without the necessity of securing further releases, and (ii) the child, for the purpose of consulting with the child privately. The court shall give the parties prior notice of such assignment or appointment. Counsel for the child shall act solely as attorney for the child.” (Emphasis added).

- Family Policy Compliance Office Clarification re “student records” and video records.

[Letter to Wachter dated December 7, 2017.](#)

[United States Department of Education, Family Policy Compliance Office, FAQs on Photos and Videos under FERPA \(2018\):](#)

FPCO has confirmed our understanding that both parents can view a video that is personally-identifiable as to more than one student (*e.g.*, a surveillance video showing two students fighting). This guidance leaves open the question of whether the parents may receive a copy of the video, but we continue to advise that the district should not share a copy with either parent.

FPCO has also clarified the scope of “student records” in this context, stating that “[a] photo or video should not be considered directly related to a student in the absence of [a specific interest in the student photographed or recorded] and if the student’s image is incidental or captured only as part of the background, or if a student is shown participating in school activities that are open to the public and without a specific focus on any individual.”

F. Protective Orders: [Public Act 17-163](#):

- Expands the obligation of the clerk of the court to send copies of restraining orders to schools if either the victim or (with this amendment) the victim’s child is enrolled in a public or private elementary or secondary school or an institution of higher education.

II. New Standards and Guidelines in 2018

A. Restraint and Seclusion Training: [Public Act 17-220](#) (amended Conn. Gen. Stat. § 10-236b)

1. Prior law required training of “school professionals, paraprofessional staff members and administrators” in the physical restraint and seclusion of students. “School professionals” was not defined.
2. 2017 Amendment: Boards must provide training to members of the crisis intervention team and **may** provide training to any “teacher, . . . administrator, . . . school paraprofessional or other school employee, as defined in section 10-222d, designated by the school principal and who has direct contact with students.”
3. Crisis intervention team (unchanged): Each school must identify a crisis intervention team consisting of any “teacher, . . . administrator, . . . school paraprofessional or other school employee, as defined in section 10-222d, designated by the school principal and who has direct contact with students.” Team members respond to incidents in which the use of physical restraint or seclusion may be required.
4. Training consists of (a) an overview of the laws concerning the physical restraint and seclusion of students; (b) the prevention of incidents leading to the use of physical restraint and seclusion; and (c) the proper means of using physical restraint and seclusion with students.

B. [Standards for Educational Opportunities for Students Who Have Been Expelled](#)

1. Background
 - a. Adopted by the Connecticut State Board of Education on January 3, 2018.
 - b. Stemmed from legislative changes in 2016 and 2017.
 - c. Connecticut General Statutes § 10-233d requires that an alternative educational opportunity be provided to:
 - (1) any student under 16 years old who has been expelled (regardless of the reason); and
 - (2) any student between 16-18 years old who has been expelled for the first time and wishes to continue his or her

education if the student complies with conditions established by the LEA.

2. Standards
 - a. Guiding Principles
 - b. Student Placement
 - c. Individualized Learning Plan
 - d. Review of Student Placement
 - e. Transition

C. **Guidelines Regarding Independent Educational Evaluations at Public Expense and In-School Observations**

1. Background
 - a. What is an independent educational evaluation (IEE)? At public expense?
 - b. Issued on March 28, 2018 by Connecticut State Department of Education, Bureau of Special Education.
 - c. Stemmed from November 2016 petition by parents to amend the State's special education regulations concerning IEEs and observations by evaluators and parents.
 - d. September 2017 report to the Connecticut State Board of Education resulted in Advisory Work Group.
2. Guidelines
 - a. IEEs
 - 1) What triggers a parent's right to an IEE?
 - 2) The school district is not required to hold a PPT meeting to receive or review an IEE request; however, the school district may hold a PPT meeting to review a request as long as such meeting does not unnecessarily delay the process.
 - 3) When an IEE is requested, the school district must provide:

- a) information about where an IEE may be obtained;
and
 - b) the school district's IEE criteria.
- 4) Best practice: Respond in writing to an IEE request, within 10 school days during the school year, or 14 calendar days during the summer.
 - 5) New option: Voluntary resolution period.
 - 6) Choosing the independent evaluator and contracting with the evaluator.
- b. In-School Observations (by parents and third parties)
- 1) Develop policies and procedures for in-school observations of students and proposed programs.
 - 2) Individual review should be conducted for each request to determine the length and scope of the observation.
 - 3) Policies and procedures must apply the same to regular and special education students.

III. Questions and Answers

A CONFERENCE FOR SCHOOL OFFICE PERSONNEL

**Connecticut Association of Schools
Shipman & Goodwin LLP**

April 27, 2018

Please forward me by e-mail the reference materials on the issues of Board operation and minutes, student attendance, liability, administration of medication, custody, subpoenas, and copyright law from Mooney, A Practical Guide to Connecticut School Law (9th Ed. 2018).

NAME: _____

SCHOOL
DISTRICT _____

E-MAIL
ADDRESS _____

Please either fill out this sheet or make a request by e-mail to lbadolato@goodwin.com.
Thank you.