

What New/Aspiring Administrators Need to Know About School Law

CAS: School Law Series

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- Sexual Harassment Prevention and Anti-Discrimination Training in Employment
- Title IX Sexual Harassment Prevention Training
- Leave Issues: ADA, FMLA, Workers' Compensation, Paid Sick Leave
- The ADA/Connecticut Fair Employment Practices Act Interactive Process
- Employee Discipline and Teacher Non-Renewal and Termination
- "Dos and Don'ts" of Hiring, Including Background Checks, Public Act 16-67 and "Fair Chance" Legislation
- Social Media and the Workplace
- Workplace Investigations
- FERPA and Other Student Privacy Issues
- Special Education and Section 504
- Student Misconduct Investigations
- Anti-Bullying
- DCF Mandated Reporter Training
- Freedom of Information Act
- School Board Member Role and Responsibilities

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About Our School Law Blog

Alerts, commentary, and insights from the attorneys of Pullman & Comley's [School Law practice](#) on federal and Connecticut law as it pertains to educational institutions, whether those institutions be public school districts, private K-12 schools, or post-secondary colleges and universities.

What is “School Law”?

Special Education

Individuals with Disabilities Education Act (IDEA)
Section 504 of the Rehabilitation Act (504)

Student Rights

First Amendment, Search & Seizure, Privacy

Collective Bargaining

Teacher Negotiation Act (TNA)
Municipal Employees Relations Act (MERA)

Policy

Federal and State Mandates

Board Hearings

Student Discipline

Suspension and Expulsion

What We'll Cover Today

- Basic principles of school law
 - Roles of Board and Superintendent
 - General overview of student rights
- Nuts and bolts for administrators
 - Just cause and progressive discipline
 - Investigating employee conduct
 - Hiring considerations
 - Student Data Privacy Act compliance
 - SPED – PPT process/timelines

Roles of the Board and the Superintendent

- Education is **not** a fundamental right under the U.S. Constitution. *Rodriguez v. San Antonio Indep. Sch. Dist.* 411 U.S. 1 (1973)

HOWEVER . . .

- “There shall always be free public elementary and secondary schools in the state. The general assembly shall implement this principle by appropriate legislation.” Conn. Const. art. VIII, § 1
- Town boards of education are “dual agents” of the state when carrying out the educational interests of the state, but are also town boards subject to town requirements. *Cheney v. Strasburg*, 168 Conn. 135 (1975).

Who runs the schools?

Boards of Education

- Publicly elected officials
- “Each local or regional board of education shall maintain good public elementary and secondary schools, implement the educational interests of the state, as defined in section 10-4a, and provide such other educational activities as in its judgment will best serve the interests of the school district...” Conn. Gen. Stat. § 10-220.

The Superintendent

- Acts as chief executive agent for board of education. Conn. Gen. Stat. § 10-157.

Duties of the Board...

A board of education is primarily a policy-making entity. Its duties include:

- The maintenance of good public and elementary schools;
- The provision of adequate books and instructional materials;
- The provision of a safe school setting;
- Determining the number, age and qualifications of the pupils to be admitted into each school;
- Handling the care, maintenance and operation of the buildings, lands, apparatus and other property used for school purposes;
- Establishing policies for the management of the school district;
- Employing and evaluating a superintendent of schools; and
- Providing transportation under the policies enumerated by the Board.

Connecticut General Statutes Section 10-220 and 10-186.

Board Policy Basics

- **Conn. Gen. Stat. § 10-221, “Boards of education to prescribe rules, policies and procedures.”**
- Most boards have over 100 individual policies and by-laws – many of them mandated by law.
- Typical policy series’:
 - 0000 Series – Mission, Goals, Objectives
 - 1000 Series – Community Relations
 - 2000 Series – Administration
 - 3000 Series – Business
 - 4000 Series -- Personnel
 - 5000 Series – Students
 - 6000 Series -- Instruction
 - 7000 Series -- Construction
 - 9000 Series – Board Bylaws

Common Policies

- ✓ Administration of medication
- ✓ AIDS instruction exemption
- ✓ Alcohol and Drug Testing of Drivers
- ✓ Athletic coaches- evaluation and termination
- ✓ Attendance
- ✓ Bullying and safe school climate plan
- ✓ Directory Information
- ✓ Drug & alcohol use or possession by students
- ✓ Drug Free Workplace
- ✓ Education Records
- ✓ Family and Medical Leave
- ✓ Graduation
- ✓ Green Cleaning Program
- ✓ Hiring policy
- ✓ Homeless students
- ✓ Homework
- ✓ Internet Safety
- ✓ Line Item Transfers
- ✓ Management of life threatening food allergies and glycogen storage disease
- ✓ Minority staff recruitment
- ✓ Non-discrimination, grievance procedures
- ✓ Pesticide management
- ✓ Parental Involvement - Title I
- ✓ Parent-teacher communication
- ✓ Physical activity and discipline
- ✓ Pledge of allegiance
- ✓ Pool safety plan
- ✓ Prohibition of recommending the use of psychotropic drugs
- ✓ Promotion & retention
- ✓ Recruiters -military, commercial, nonmilitary
- ✓ Reporting Child Abuse and Neglect
- ✓ Restraint and Seclusion
- ✓ Sexual and other unlawful harassment
- ✓ Section 504 Procedural Safeguards
- ✓ Smoking prohibited
- ✓ Special Education
- ✓ Student conduct & discipline
- ✓ Student Privacy Rights
- ✓ Textbooks
- ✓ Transportation
- ✓ Truancy
- ✓ Weighted grading
- ✓ Wellness
- ✓ Youth suicide prevention

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Duties of the Board...

Other board of education duties include:

- Negotiating collective bargaining agreements with unionized employees;
- Adjudicating student hearings involving expulsions, residency, and transportation;
- Adjudicating board-level employee grievances;
- Deciding the termination of certified employees.



Boards of Education as Local Hearing Panel

Boards may act as hearing panel or designate a sub-committee or hearing officer

Hearings may be held for:

- Student Expulsion, Conn. Gen. Stat. § 10-233d(d)(3)
- School Accommodations, Conn. Gen. Stat. § 10-186(b)(1)
 - Transportation – e.g., bus stop location
 - Residency – Parent has burden to prove residency by a preponderance of the evidence, except in the case homelessness
- Employee grievance
- Public complaints

The Legal Status of the Board

1. The board is a legal entity that is **SEPARATE AND APART** from its individual board members.
2. The statutory powers reside in the board of education, **NOT** in individual board members.
3. Individual board members have **NO** legal authority as individuals.
4. A school board member has **NO** more right to bind the school district than does any other member of the community.

The Superintendent

- As the board's Chief Executive Officer, the **Superintendent** "shall have **executive authority** over the school system and the responsibility for its supervision." Conn. Gen. Stat. §10-157(a).
- A Superintendent's contract of employment can be no longer than three years at any one time.
- Boards typically evaluate the Superintendent's performance on an annual basis
- In fact, the Superintendent is the only board employee whom the Board evaluates. Responsibility for evaluating all subordinate employees is vested by state statute in the Superintendent or in those to whom the Superintendent has delegated this responsibility.

Student Rights

Constitutional Issues: The Breadth and Limits of Rights in the Schools

“It can hardly argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.” *Tinker v. Des Moines Independent School District*, 393 U.S. 503, 506, 89 S.Ct. 733, 736 (1969).

WHAT DOES THIS MEAN?

- Of course, the U.S. Constitution reaches into the schools.
 - However, similar to and in addition to the employment realm, the courts have balanced *Tinker’s* command with the special needs of the schools in maintaining discipline and order.

School districts **may restrict** the “free speech” rights of students in a more intrusive manner than in society as a whole.

- Schools **may prohibit** the use of vulgar, lewd, indecent, or plainly offensive speech. *Bethel v. Fraser*, 478 U.S. 675 (1986)
- May also restrict school-sponsored speech when the limitation is **reasonably related to legitimate educational concerns**. *Hazelwood School Dist. v. Kuhlmeier*, 484 U.S. 260 (1988). For example, school sanctioned publications and activities.
- Otherwise, school districts may prohibit student speech only if it causes a **substantial and material disruption** of the school's operation. *Tinker v. Des Moines School Dist.*, *supra*.

Fourth Amendment



School authorities may perform a warrantless search of a student or his or her possessions when it is "reasonable under all the circumstances." *New Jersey v. T.L.O.*, 469 U.S. 325, 105 S. Ct. 733 (1985).

1. Is the search justified at its inception?
1. Is the search reasonably related in scope to the circumstances which justified the interference in the first place?

Statutory Issues Impacting Student Rights

STUDENT PRIVACY RIGHTS are also a creature of and protected by statutes.

Family Educational Rights and Privacy Act (“FERPA”), 20 U.S.C. §1232g. Schools must safeguard the following rights or risk cut-off of federal funding:

1. **ACCESS-** FERPA provides right of parents to inspect and review educational records of their children;
2. **AMENDMENT-** FERPA provides parents right to challenge the contents of student educational records to insure that the records are not misleading, inaccurate or otherwise in violation of the privacy of the student; and
3. **DISCLOSURE-** FERPA restricts disclosure of student records and “personally identifiable information” regarding students.

Nuts and Bolts for Administrators

Just Cause and Progressive Discipline

The Golden Rule(s)

- **No good deed goes unpunished.**
- **If it's not in writing it doesn't exist.**
- **If it's not in writing it never happened.**
- **If it is in writing it's there forever.**
- **Your subordinates are a reflection on you and your management.**
- **When all else fails, think about what is in the best interests of District students.**

“If it’s not in writing it doesn’t exist!!!”

▪ The Importance of Documentation

Documentation, ***including formal performance evaluations***, demonstrates that an employee:

- Had or should have had knowledge of the District’s expectations;
- Was advised that his/her conduct was unacceptable;
- Was provided the opportunity to correct deficiencies and advised that failure to do so would result in additional discipline up to and including termination;
- Puts employee on notice of problem;
- Explains to employee how to correct conduct;
- Avoids legal exposure;
- Assists in any future dispute – including litigation.

- **Guidelines for Appropriate Documentation**

1. “The danger of forms.”
2. Include date and, if appropriate, time.
3. List all persons involved.
4. Describe conduct involved.
5. Describe method of curing issue.
6. Usually avoid time limitations for improvement in performance.
7. Be as thorough as necessary.
8. Avoid promises and words that create false expectations.

Appropriate Documentation

- Follow applicable Collective Bargaining Agreement and Board Policies:
 - Comply with Collective Bargaining Agreement and
 - Board policies or governance documents – if applicable.
- Comply with other legal requirements:
 - Don't include statements that may be discriminatory.
 - Don't include words that may create contractual obligations.
 - CC union as appropriate.

Consequences for Failing to Issue Discipline

- Why are supervisors sometimes reluctant to issue discipline?
 - The behavior may not affect the Administrator directly.
 - They have a friendly relationship with the employee that they do not wish to ruin.
 - They want to give the employee a “break.”
 - They dislike the confrontation and awkwardness of the disciplinary process.
 - Too time consuming.
 - They hope the matter will just “go away.”

Consequences for Failing to Issue Discipline

- What Happens When Supervisors Fail to Discipline?
 - Problem employees remain.
 - Problem employees continue with their behavior believing nothing is wrong.
 - You may wish to terminate a problem employee, but there is insufficient discipline (ie no “paper trail”) to support a termination.
 - You lose a grievance arbitration.
 - Poor morale of other employees and feelings of favoritism.
 - Civil litigation exposure. (Discrimination, wrongful discharge, etc...)

Discipline Do's and Don'ts

- **DO** communicate with your superior (and/or human resources) regarding any disciplinary problems.
- **DO** effectively document disciplinary problems.
- **DON'T** rely on FORMS without thinking through the purpose and effect of the disciplinary documentation.
- **DON'T** conduct a disciplinary interview without prior approval by management and/or human resources director.
- **DO** handle all disciplinary actions privately and confidentially.
- **DO** handle all disciplinary interviews privately and confidentially and interviewees should be advised of the confidential nature of the investigation.
- **DO** allow union member to have representation for a discipline meeting.
- **DON'T** tolerate behavior that negatively impacts the work environment and productivity.

The “Just Cause” Standard

- Many collective bargaining agreements and some individual contracts of employment provide that discipline (up to and including termination) must be supported by “just cause.”
- What “just cause” means is often subject to debate.
- The meaning of just cause is usually determined by an arbitration panel as set out in a collective bargaining agreement (i.e. American Arbitration Association; State Board of Mediation and Arbitration).
- Unions often advocate for use of seven-factor test to determine if discipline is supported by just cause.

1: Warning?

- Was the Employee Adequately Warned of the Consequences of the Conduct?
- Considerations:
 - Policies?
 - Publication and Notice of Policies?
 - Direct Warnings and Notice.
 - “Common sense” i.e. the employee should know the consequences of serious misconduct.

2: Reasonable Rule?

- Was the employer's rule reasonably related to efficient and safe operations of the District?
- Considerations:
 - Common sense rules.
 - Rules for off-duty conduct.
 - Rules for social media. (First Amendment/Free speech issues).
 - Are the rules narrow enough such that they do not fringe on any legal rights of the employee?
 - Policies should have a “catch all” rule.

3: Investigation?

- Did the employer investigate before issuing discipline?
 - Discipline will likely not stand if it was administered by taking one employee's word and not investigating the matter.

4: Fair Investigation?

- Was the investigation fair and objective?
- Considerations:
 - Who did the employer interview about the conduct/incident?
 - Did the employer interview witnesses or just take the management employees' side of things?
 - Was the employee given the opportunity to present his or her side of the story?
 - Was the investigation open-minded or did the investigator have an “axe to grind” with the employee?
 - The Union will likely ask for substantial information about the matter along the way. Was the Union given information so that it could defend the charges?

4a: Investigation-Due Process for Public Employees?

- Public employees must be given sufficient due process before discipline may be administered. In addition to the just cause standard, a public union employee is entitled to the following:
 - The presence of a union representative.
 - Adequate notice of the charges against him or her.
 - Opportunity to be heard (i.e. given his or her side of the story).

4: Investigation – Other Considerations

- Considerations:

- Place the employee on leave pending the conclusion of the investigation? Usually depends on whether employee's continued presence at work presents a threat to others or would impede investigation.
- Direct employee not to interfere in the investigation.
- Give employee the opportunity to respond to the evidence you have gathered.
- Potential DCF issues or need to contact the police.

5: What Did the Investigation Conclude?

- Did the investigation produce substantial evidence of proof of guilt?
- Considerations:
 - He-said, she-said cases.
 - Evaluate the case honestly-could you prove the case at arbitration?
 - Who are your witnesses and what is your other proof?
 - Are the witnesses to the alleged misconduct credible?

6: Fair Application of the Rules?

- Were the rules and penalties applied evenhandedly?
 - Has the employer allowed other employees to violate the same rule that was used to discipline the employee at issue?
 - I.E. has the employer been lax in the enforcement of the rule?
 - This may lead to other claims outside of the grievance process. I.E. CHRO claims and/or other civil actions.

7: Was the Punishment Fair?

- Was the penalty reasonably related to the seriousness of the offense and the past record of the employee?
 - Just how severe was the conduct?
 - How long has the worker been employed?
 - Is the employee an otherwise “good worker” or valuable employee?
 - Has the employee been disciplined for this conduct before?
 - What is the employee’s overall track record?
 - Did something trigger the employee’s conduct ?(ex: another employer started a physical altercation).
 - Would the discipline violate the process in the collective bargaining agreement?
 - Are there mitigating factors?
 - Should the penalty be a warning, suspension or termination?

When considering the final discipline, consider the following factors:

- Is the discipline going to stand up at arbitration; why or why not?
- Do you see any vulnerabilities?
- Is this the type of discipline you feel you “have to” issue due to its impact on other employees. (I.E. an otherwise model employee assaults his or her supervisor).
- Would you consider resolving a grievance for a lower penalty later on in the grievance process?

- “Progressive discipline” is a disciplinary practice that calls for an elevated disciplinary action in response to each successive disciplinary infraction.
- Progressive discipline is designed to give employees the opportunity to correct misconduct.
- Typical progressive discipline sequence:
 1. Verbal counseling;
 2. Written warning;
 3. Short-term unpaid suspension;
 4. Long-term unpaid suspension;
 5. Termination.

Progressive Discipline, cont'd.

- An advantage of progressive discipline is that it can promote uniformity in terms of management responses to misconduct. This can be helpful in defending against discrimination and retaliation claims.
- The disadvantage is that “lock-step” progressive discipline deprives management of the flexibility to respond as it deems appropriate.
 - If progressive discipline is to be used be sure to provide a disclaimer allowing management to respond more severely to a particular incident where such a response is warranted.

Sample Written Record of Verbal Counseling

Dear Employee:

This shall confirm the meeting held in my office on January 2, 2021. You appeared with your union representative John Smith.

During this meeting, I counseled you that you have been late to work five times this month and that you need to arrive to work on time. You stated that you have been late due to traffic. However, as I explained, you will need to make appropriate travel arrangements so that you arrive prior to your daily start time.

I further counseled you that if you do not correct this behavior, you could be subject to further discipline, which could lead to the termination of employment if it remains uncorrected. I trust that you will make the appropriate changes.

Thank you for your attention.

Sample Written Warning

Dear Employee:

This shall confirm that we met in my office on January 2, 2021. You attended this meeting with your union representative John Smith. The purpose of this meeting was to discuss your failure to properly clean the bathrooms on the second floor.

As we discussed, your supervisor informed me that he has spoken to you numerous times about your failure to clean these work areas which are your responsibility. You have also received a prior verbal counseling for these issues. During the meeting, you acknowledged that you have not been cleaning these areas despite the matter having been brought to your attention.

Based on the above, I am giving you this written warning that you must perform your job duties as directed, including making sure that you clean the bathrooms. If you fail to do so, you may be subject to further discipline, up to and including the termination of your employment.

Thank you for your attention.

Sample Suspension Letter

Dear Employee:

On January 2, 2021, you met in my office with your union representative John Smith. The purpose of the meeting was to discuss your repeated insubordination towards your supervisor James Jones.

I advised you that Mr. Jones has informed me that you have repeatedly been insubordinate by telling him that you refused to perform various duties that are your responsibility. An investigation was conducted and several witnesses confirmed that they have witnessed you make these types of comments on several occasions. You did not deny these allegations.

In addition to the above, you have been previously given a written warning/suspension on [insert dates of prior discipline] for your insubordination. You have also received prior written warnings for failing to clean your work area and for leaving work early. Therefore, due to your repeated actions, you are being suspended without pay for 10 days. The suspension period shall be effective immediately.

A suspension is a very serious matter and we have reached this level of discipline due to your repeated attempts to correct your behavior, despite several warnings. Therefore, you are further being warned that any further incidents may lead to the termination of your employment.

Thank you for your attention.

Documenting Discipline

- Place disciplinary letters in the personnel file.
- ***If the discipline is not documented, it did not happen.***
- If you fail to discipline, you may be deemed to have condoned the behavior. It will therefore be more difficult to justify issuing discipline for the same behavior in the future.
- If you wait too long, the discipline will grow “stale” and be questionable.
- Make sure the disciplinary letters are 100% accurate and inclusive; the reasons you set forth in writing will stay with the case through conclusion.

The Personnel File

- The “personnel file” is not a physical file or location of documents. The personnel file is instead an accumulation of a category of documents that relate to an employee’s employment.
- Sometimes collective bargaining agreement sets forth documents that must be in a personnel file; and/or whether an employee must receive notice of documents being placed there.
- There is no such thing as a “private file” or “separate file.” A personnel document (including a disciplinary document) is a personnel document.

The Grievance Process

- The Grievance Process is governed by the applicable collective bargaining agreement and typically consists of some form of the following procedures:
 - Step 1 – Informal Discussion with Supervisor.
 - Step 2 – Superintendent or administrative designee.
 - Step 3 – Board of Education.
 - Step 4 – Arbitration.

- So, why else is correct progressive discipline important?
 - It makes grievances less likely.
 - Grievances can be costly and time-consuming.
 - You may need to justify your discipline to the Board of Education and/or an arbitrator.
 - You may need to testify at arbitration?
 - If you do have to go to arbitration, you are more likely to win if you have followed fair progressive discipline process.
 - It gives less exposure in civil litigation.
 - It is fair to the employer and employee.

Investigating Employee Conduct

Key Themes for Investigations

- Why investigate????
 - To find the truth
 - To correct issues and prevent future misconduct
 - To comply with the law
 - To vindicate victims
 - To exonerate the falsely accused.
- Goals for investigations:
 - Prompt
 - Thorough
 - Objective

Key Themes for Investigations

- Investigation maxims:
 - One size does not fit all.
 - Don't let the perfect be the enemy of the good.
 - If it's not in writing it doesn't exist.
 - No good deed goes unpunished.

Setting the Parameters

- **The Who?**

- Who does your investigation involve?
 - Students?
 - Employees?
 - Third-parties (parents, vendors, etc.)?
 - All of the above?

- **The What?**

- What is the alleged or suspected conduct?
 - Suspected abuse/neglect – **REPORT IMMEDIATELY**
 - What Board policies are applicable or potentially applicable?
 - **MORE THAN ONE POLICY MAY BE APPLICABLE!**

Setting the Parameters

- **The When?**

- When did the alleged conduct occur?
- When are the *investigation timelines* if any???

- **The Where?**

- Conduct occurring outside the school setting with no real nexus to the school environment may not be an appropriate issue for administrators to investigate.

- **The Why?**

- Is an investigation mandated pursuant to Board policy and/or the law?
 - Nondiscrimination/harassment
 - Title IX
 - Bullying/Safe School Climate

- **The How?**

- How will the investigation be conducted?
 - Who will be the designated investigator?
 - What Board policies/administrative regs need to be followed?
 - Will an investigation report be prepared? If so, who is the intended audience and what is the need for confidentiality?
 - Is a hearing or other administrative proceeding likely to follow after the investigation has concluded?

The *Weingarten* Rule

Contact HR/Legal if these issues are present:

- *Weingarten* Rights

- Upon demand, unionized employees have a right to union representation at an interview requested or demanded by the employer **when the employee reasonably believes that the interview will result in a disciplinary action.**

- *Weingarten* is legally applicable only when the following elements are present:

- The interview in question is an **investigatory** interview;
- Employee **reasonably believes** interview will result in **discipline**;
- **Employee requests** union representation;

The *Weingarten* Rule

- *Weingarten* only gives employees the right to **union representation** – it does not give employees the right to the union representative of **their choice**.
- Union representative can only participate to extent his or her participation does not interfere with employer's right to legitimately investigate:
 - No right to object to questions;
 - No right to advise employee not to answer.
- Union representative does not have to remain silent but cannot disrupt the meeting either.

The *Garrity* Rule

Contact HR/Legal if these issues are present:

- **Garrity Warning:**

- An employee may be compelled to respond to questions about the performance of his duties if he is given notice that his answers will not be used against him in a subsequent criminal matter regarding the same conduct.
- As long as an employee is not compelled to waive his privilege against self-incrimination by the threat of using his statement against him in a subsequent **criminal** proceeding, a public entity is permitted to discipline or even dismiss an employee upon his refusal to answer the questions relating to performance of his official duties.



FOIA and Investigation Records

- Investigation records that are not otherwise exempt from FOIA are subject to disclosure upon request.

- Possible exemptions:
 - Preliminary drafts or notes
 - Personnel or medical files the disclosure of which would constitute an invasion of privacy
 - Collective bargaining records
 - DCF records
 - Records of teacher performance and evaluation
 - Attorney-client privileged records
 - FERPA-protected records

- FERPA prohibits the disclosure of personally identifiable information from a student's education record without prior consent except in limited circumstances:
 - **“Personally identifiable information”** – includes:
 - “Information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty.”
 - “Information requested by a person who the educational agency or institution reasonably believes knows the identity of the student to whom the education record relates.”
 - **“Education records”** – include records directly relating to a student that are maintained by the educational institution.
 - Records kept in sole possession of the maker and not disclosed or accessible to others are not education records.
- Key exemptions to prior consent requirement:
 - Directory information
 - Disclosure to other school officials with legitimate educational interest
 - Health or safety emergency

Initial Steps: Securing Evidence and Cooperation

- Make copies of documentary “evidence.”
- Take pictures if possible – **BUT DO NOT TAKE OR TRANSMIT SEXUALLY EXPLICIT IMAGES OF MINORS.**
 - Drugs, paraphernalia, lighters, etc...;
 - Weapons (place up against rulers);
 - Injuries;
 - Property damage;
 - Text messages, social media.
- Confiscate contraband and evidence. Possibly necessary to give to police.
- Notify the police/DCF as appropriate.

Initial Steps: Securing Evidence and Cooperation

- Confidentiality guarantees: pros and cons. Don't make promises that you cannot keep (in light of potential future legal proceedings). However, at least maintain discretion.
- Non-retaliation guarantee/protection – to be given to all witnesses and parties.
- Physical evidence: secure before too late and handle in accordance with policies/law (especially if contraband), particularly in digital and social media age. **Remember:** “Search and seizure” issues.

Investigation Plan



- Identify and review applicable policies
- Secure and collect key documents and other evidence
- Develop preliminary outline
- Identify needed witnesses and determine the planned order of interviews
- Draft interview questions
- Coordinate interview logistics

Interviewing Staff Members

- Explain the seriousness of the investigation.
- Explain the importance of accurate information and the individual's obligation to provide truthful, thorough information.
- Caution that the failure to cooperate, the provision of false information, or the subsequent disclosure of confidential information by discussing it with others can be causes for disciplinary action.
- If a union employee requests representation and has a reasonable belief that the interview may result in disciplinary action, ***do not proceed without a union representative.***

Interviewing Staff Members

- Should an employee be unwilling to cooperate with the investigation and refuse to answer questions, this lack of cooperation may be viewed as an act of **insubordination and a basis for further punishment**, i.e., reprimand, suspension or dismissal.
- If the “accused” refuses to participate, the interviewee should be told that the employer will base its decision on the other information gathered during the investigation, the inferences drawn from that evidence and the “accused’s” unwillingness to cooperate in the interview.

- Write legibly (or type).
- Identify date, time and everyone present for the interview.
- Indicate that you reviewed preliminary issues, confidentiality concerns, etc.
- Note key facts.
- Where possible write verbatim answers to key questions – ask interviewee to repeat answer if necessary.
- Consider typing handwritten notes following interview for clear record.

The Investigation Report

- One size does not fit all. Art not science.
- Reports should be:
 - “Newspaper-style”
 - Neutral in tone
 - Clearly written
 - Comprehensive, but not overly-detailed
 - A document that can be used for subsequent action.
- An investigation report is distinct from the investigation “file.”
- Be very conscious of what will be attached to the investigation report.
- Take appropriate steps to redact confidential information.

Sample Investigation Report Outline

- I. Allegation/Incident Investigated**
- II. Executive Summary**
- III. Overview of Investigative Process**
- IV. Summary of Investigation Interviews**
- V. Documentary and Other Evidence Reviewed**
- VI. Identification of Relevant Board Policies and/or Work Rules/Student Code of Conduct**
- VII. Factual Findings**
- VIII. Conclusions**

Who is Entitled to Investigation Records?

- Parents?
 - *Smith v. Superintendent, Middletown Public Schools*, #FIC 2013-333 (January 30, 2014): District’s refusal to produce bullying investigation report to alleged victim’s parent upheld where parent knew the identities of students who were alleged bullies.
 - Disclosure of report – even in redacted form – would result in disclosure of personally identifiable information regarding alleged bullies.
 - District provided summary of report to parent who made request.
- Staff members?
 - General right to investigation records in connection with disciplinary proceedings.
- The “public”?
 - FOIA controls.

- Investigation records/documents should generally not be kept in personnel or student files
 - Exception for letters regarding ultimate disposition (i.e. suspension, etc.)
- An investigation record and the fact that an investigation occurred is not “discipline” for purposes of progressive discipline
- Consider records retention requirements before destroying investigation records. Many investigation records must be preserved for at least five years.

Discipline and Investigation Hypos

Sally Secretary

- Sally Secretary is a 20-year District employee. She works in the main office of one of the schools. She is beloved by students and parents for her warm and rosy demeanor.
- Despite being a wonderful person, Sally is grossly incompetent. She can barely use Word and email and she has no idea how to do more advanced tasks like creating pdfs, working with spreadsheets, etc.
- Paul Principal is Sally's supervisor. Paul hates conflict. He has evaluated Sally every year for the last five years. All of Paul's evaluations of Sally indicate that she is a stellar employee in all performance areas including technology.

- A new District-wide directive comes down directing building secretaries to collect and manage certain student academic information including grades and past student discipline.
- Sally tries to input the data in an Excel spreadsheet, but somehow inadvertently emails the spreadsheet with student names, grades and disciplinary information to all District parents.
- Parents are furious. HR directs Paul to investigate and determine what happened.
- How would you handle this situation? What information and documents are relevant?

- Paul logs on to Sally's computer that evening to see what happened. He sees that Sally inadvertently sent the email to all District parents when she meant to send it to him.
- The next day Paul asks to speak with Sally about the incident. Sally insists that she have her union steward with her.
- Rather than dealing with the union Paul decides he knows what happened and what the outcome should be. He writes a summary and sends it to HR with a recommendation that Sally be immediately terminated.
- HR terminates Sally based on Paul's recommendation.
- Any potential problems?

Carl Custodian

- Carl Custodian is a five-year District veteran. Paul Principal reports that Carl does a great job during his second shift assignment and the District's Facility Director, John Doe, has given him stellar reviews.
- Carl hears through the grapevine that second shift custodians at other District schools come to work half-an-hour late every day without any negative consequences.
- Carl decides that this is unfair so he starts coming in to work late. The head custodian sees Carl come in thirty-minutes late and reports the issue to John Doe.

Carl Custodian

- John Doe checks Carl's timecards and sees that he punched in thirty minutes late on one occasion. Mr. Doe decides to issue Carl a two-week suspension.
- Mr. Doe meets with Carl to hand down the suspension at which point Carl tells him other custodians at other schools are routinely late.
- Mr. Doe gets bored and stops listening and leaves the matter at that.
- How would you handle this situation? Any mistakes in the process?

- Carl grieves the suspension. During the Step 3 Board hearing on the suspension Carl's union rep argues that the District has known for years that custodians at other schools are routinely late.
- The next day the Superintendent directs John Doe to look into what is happening at the other schools. John checks with the head custodians who admit that there is a problem.
- John investigates further and sees that a few custodians have been falsifying their time records to show they punch-in on time. Several other custodians are routinely late without falsifying their time records.
- Next steps? How should this be investigated? What punishment is appropriate?

The Hiring Process

The Golden Rule(s)

- **An ounce of prevention is worth a pound of cure.**
- **Job related, job related, job related.**
- **Don't overpromise during the interview or onboarding promise.**
- **Be aware of new legislation targeted to the hiring process.**

Job Postings/Advertisements



- The federal Equal Employment Opportunities Commission (“EEOC”) and Connecticut Commission on Human Rights and Opportunities (“CHRO”) have jurisdiction over discrimination claims not just for firings, promotions and initial hires but also over job advertisements too.
- Employment policies and practices that are neutral on their face may still be illegal if they have a “disparate impact” on applicants or employees who are members of a particular protected class.

Job Postings/Advertisements

- Help wanted postings that seek “recent graduates” or “able-bodied men” are discriminatory.
- Avoid advertising positions in terms of physical requirements (i.e. must be able to stand continuously). Think in terms of the essential functions of the position instead (i.e. must be able to operate floor polisher).
- Don’t require applicants to submit a photo of themselves (drivers’ license, passport, etc.) or birth certificate before making a conditional job offer.



- **Age-Based Inquiries** – Employers generally may not request or require a prospective employee's age, date of birth, dates of attendance at or date of graduation from an educational institution on an initial employment application. Conn. Gen. Stat. § 46a-60(a)(12).
- **“Ban the Box”** Employers generally may not inquire about a prospective employee’s prior arrests, criminal charges or convictions on ***an initial employment application***, unless:
 - The employer is required to do so by federal or state law; or
 - A security, fidelity or equivalent bond is required for the position. Conn. Gen. Stat. § 31-51i(b).
- **Erased Criminal Records** – Employers may not inquire into erased criminal records at any stage of the hiring process. Applies to arrests, criminal charges and convictions.

Interviewing Do's and Don'ts

- **DO** be prepared; take the time to review the candidate's information.
- **DO** have sample questions prepared and conduct consistent interviews.
- **DO** use a candidate evaluation form and **DO** be careful about what you write down on the form. NOTE – Evaluation forms may be subject to FOIA.
- **DO** maintain accurate and detailed job descriptions that can give you a basis for asking questions about the applicant's ability to satisfy specific job requirements.

Other Interviewing Do's and Don'ts

- **DON'T** ask job candidates about their salary history prior to a conditional job offer.
- **DON'T** overpromise or exaggerate opportunities for advancement.
- **DON'T** make references to long-term employment
 - (e.g., “You would have a secure future here”).

Avoid These Questions

DON'T ASK DISCRIMINATORY QUESTIONS

Refrain from asking:

- When did you graduate high school (or college)?
- Where (or on what days) do you practice religion?
- What is your maiden name?
- What is your native language?
- Where are your parents from?
- How many children do you have?
- What are your childcare arrangements?

Don't Ask About Disabilities Before Making A Conditional Offer

- **DON'T** ask about physical or mental disabilities before making a conditional job offer, but:
 - **DO** make available detailed job descriptions that explain the physical, educational and other requirements of the job; and
 - **DO** ask whether there is anything that could prevent the applicant from performing the job.
 - Example: This job requires you to lift 20 lbs. and climb ladders. Can you satisfy these requirements with or without reasonable accommodation?

Don't Ask About Disabilities Before Making A Conditional Offer

- If the applicant has voluntarily disclosed the disability, or if the applicant has an obvious disability (e.g., a wheelchair or vision impairment), the employer may ask limited questions about the need for reasonable accommodations.
- Example (Voluntary Disclosure): An individual with diabetes applying for a one-to-one para position voluntarily discloses that she will need periodic breaks to take medication.
 - The employer may ask the applicant questions about the reasonable accommodation such as how often she will need breaks, and how long the breaks must be. The employer may NOT ask any questions about the underlying physical condition.

Don't Ask About Salary History

- Connecticut law prohibits employers –**public and private** -- from asking a prospective employee about his/her wage and/or salary history, or directing someone else to do so. Conn. Gen. Stat. § 31-40z
- An employer may ask about other elements of the compensation structure in the applicant's prior position (e.g., "what benefits did you receive?"), but may not ask about the value of those elements.
- Rationale: Allowing employers to peg initial compensation to the employee's previous compensation level perpetuates the effects of past discrimination.

Interview Question Do's and Don'ts

Category	May Ask	Discriminatory / Potentially Discriminatory
Gender and Family Issues	<ul style="list-style-type: none"> If applicant has relatives already employed by the district 	<ul style="list-style-type: none"> Number of Children Child-Care Arrangements Marital Status Spouse's Occupation Health-Care Coverage through Spouse Maiden Name (of Married Woman)
Race	No questions may be asked.	<ul style="list-style-type: none"> Applicant's race or color of skin Photo to be affixed to application form
National Origin or Ancestry	<ul style="list-style-type: none"> Whether applicant has a legal right to be employed in the U.S. Ability to speak/write English fluently (if job-related) Other languages spoken (if job-related) 	<ul style="list-style-type: none"> Ethnic association of surname Birthplace of applicant/applicant's parents Nationality, lineage, national origin Nationality of applicant's spouse Whether applicant is citizen of another country Applicant's native tongue

Interview Question Do's and Don'ts

Category	May Ask	Discriminatory / Potentially Discriminatory
Religion	<ul style="list-style-type: none">Whether applicant is able to work on the days/times required by the job	<ul style="list-style-type: none">Religious affiliationReligious holidays observed
Age	<ul style="list-style-type: none">If applicant is over age 18	<ul style="list-style-type: none">Date of birthDate of high-school graduationAge
Disability	<ul style="list-style-type: none">Whether applicant can perform essential job-related functions, with or without reasonable accommodation	<ul style="list-style-type: none">If applicant has a disabilityNature or severity of disabilityWhether applicant has ever filed workers' compensation claimRecent or past surgeries and datesPast medical problems
Other	<ul style="list-style-type: none">Academic, vocational, or professional schoolingTraining received in U.S. militaryMembership in trade or professional association related to the positionJob References	<ul style="list-style-type: none">Number and kinds of arrestsHeight or weight except in bona fide occupational qualificationVeteran status, discharge status, branch of serviceContact in case of emergency (appropriate to ask at post-hire)

Background Check Requirements

- Two levels of scrutiny under Connecticut law:
 1. Background check requirements applicable to **ALL applicants for a position in a public school**, and:
 2. Background check requirements applicable to positions that would have **“direct student contact.”**



Required Background Checks for All Applicants

- Conn. Gen. Stat. § 10-221d requires that boards of education require **all applicants** for district positions to:
 1. State in writing whether they have ever been convicted of a crime or whether criminal charges are pending against them;
 2. Submit to a DCF abuse and neglect registry check;
 3. Submit to state and national criminal history records checks within thirty days from the date of initial employment.
- ***Erased criminal records*** do not need to be disclosed.
- Criminal record history checks accomplished through fingerprinting.
- Fingerprint checks for substitute teachers can be completed up to one year prior to date of employment and can remain valid for up to five years as long as substitute is “continuously” employed – at least one day each school year – for the five-year period.

Required Background Checks for Direct Student Contact Positions

- Conn. Gen. Stat. § 10-222c requires boards of education to take the following steps before making an offer of employment to an applicant for a **direct student contact** position:
 1. Collect applicant information, contact authorizations and statements;
 2. Contact applicant's former school/student contact employers;
 3. Contact SDE for eligibility, abuse, neglect or sexual misconduct information.
- “Direct student contact” position is not statutorily defined. ***When in doubt better to assume position is covered.***

Required Background Checks for Direct Student Contact Positions

- Contractors who employ employees who will have “direct student contact” in schools are subject to the requirements of Conn. Gen. Stat. § 10-222c.
- Contractors must require all such employees to provide them with:
 1. Contact information for current and former school/direct student contact employers;
 2. Current and former employer contact authorization, and;
 3. Written abuse, neglect or sexual misconduct statement.
- Contractor must then conduct background check activities in same way as school employers.

The Background Check Process for “Direct Student Contact” Positions – Employer Review

- Hiring board of education must conduct a review of applicant’s employment history by contacting listed employers.
- Review conducted on SDE-developed form and asks:
 1. Dates of employment;
 2. Knowledge of abuse, neglect or sexual misconduct allegations, discipline or licensure/certification issues.
- Review can be made in writing or telephonically.
- Current and former employers must respond within five business days.
- More information may be requested by the hiring board of education, magnet or charter school depending on the current or former employer’s response.

Other Background Check Considerations

- **Use of Credit Scores** – Generally prohibited except for positions with access to certain financial information. Conn. Gen. Stat. § 31-51tt.
 - Federal Fair Credit Reporting Act requires prior notice to and consent of job applicants.
- **Disclosure of Salary Information** – Connecticut law requires all employers – including school districts-- to disclose to job applicants the salary/wage ranges for vacant positions upon request or by the time an offer of compensation is made. Conn. Gen. Stat. § 31-40z.
- **Personal Online Accounts** – Connecticut law prohibits employers from requiring applicants to disclose usernames and passwords or log on to account in employer's presence.

Student Data Privacy

Student Data Privacy Act – Overview

- First enacted in 2016, Connecticut’s Student Data Privacy Law:
 - Mandates that boards of education enter into student data privacy contracts with required terms;
 - Mandates that boards post notice of such student data privacy contracts on their websites;
 - Requires “operators” to maintain security protocols, delete student data upon request (with some exceptions) and refrain from targeted advertising or the sale or unauthorized disclosure of student data;
 - Mandates certain data breach procedures.

- A “contractor” is either:
 1. An “operator” -- someone who “(A) operates an Internet web site, online service or mobile application with actual knowledge that such Internet web site, online service or mobile application ***is used for school purposes and was designed and marketed for school purposes*** . . . and (B) collects, maintains or uses student information” or
 2. A “consultant” – “a professional who provides noninstructional services, including, but not limited to, administrative, planning, analysis, statistical or research services, to a local or regional board of education pursuant to a contract with such local or regional board of education.

Student Data Sharing Contracts

- Conn. Gen. Stat. § 10-234bb requires that local and regional boards of education enter into a written contract with a “contractor” any time the board of education “shares or provides access to student information, student records or student generated content with a contractor.”
- Such contracts must include ten required provisions per the law.

Required Contract Terms

All contracts that provide “access to student information, student records or student generated content with a contractor” must include the following terms:

1. Statement that student data is not property of contractor;
2. Description of process for deletion of student data;
3. Statement that contractor shall not use student data for unauthorized purposes;
4. Description of process for student/parent review of student data;
5. Statement that contractor will take actions designed to ensure security and confidentiality of student data;

Required Contract Terms, *cont'd*

6. Description of procedures contractor will follow to notify board of education when there has been an unauthorized release or disclosure of student data;
7. Statement that student data shall not be retained or available to contractor upon expiration of contract;
8. Statement that contractor shall ensure compliance with FERPA;
9. Statement that the laws of Connecticut shall govern rights of board of education and contractor;
10. Statement that if any provision of contract is held invalid, the remaining parts of contract are still valid.

- Per the Connecticut Center for Educational Technology (“CCET”):
 - Districts may lawfully use apps from operators who sign off on the “**Connecticut Student Data Privacy Pledge**” that assures compliance with required terms;
 - **Connecticut Educational Software Hub** lists educational software from operators who have signed off on pledge.
 - Districts may lawfully use apps from operators that include website terms of service that are compliant with required contract terms.
- Districts may ensure compliance with law by using CCET-developed model terms of service addendum.
- Districts must annually submit a report to CCET concerning district use of websites, online services or mobile apps without a contract.

Website Notice of Student Data Contracts

- Student Data Privacy Act requires boards of education to “maintain and update, as necessary, an Internet web site with information relating to all [student data] contracts...”
- Not later than five days after a student data contract is entered into, district must post notice on such website.

Website Notice of Student Data Contracts, *cont'd*

- The notice must state that the contract has been executed, the date such contract was executed, a brief description of the contract and the purpose of the contract and state what student data will be collected as a result of the contract.
- On or before September first of each year, the board must electronically notify students and parents/guardians of the website address.

- “Operators” – websites, online services, mobile apps – must:
 - Implement and maintain security procedures and practices that meet or exceed industry standards;
 - Delete student data upon request unless prohibited by law or the information is in the possession of the operator only in connection with a disaster recovery storage system.

- Operators may not knowingly:
 - Engage in targeted advertising to students;
 - Collect, store or use student data for anything other than school purposes;
 - Sell, rent or trade student data;
 - Disclose student data unless the disclosure is made for certain permissible purposes.

Data Breach Protocols -- Contractors

- Depending on the nature of the data disclosed contractors have either thirty or sixty days to notify a board/charter school of a data breach.
- During such thirty or sixty day time frame the contractor may conduct an investigation and restore the reasonable integrity of their data system.
- Upon receipt of such notice the board/charter school must electronically notify all effected students and their parents/guardians and post notice on the board/charter school website.

Data Breach Protocols -- Operators

- Depending on the nature of the data disclosed operators have either thirty or sixty days to notify an effected student or his/her parents/guardians of a data breach.
- During such thirty or sixty day time frame the operator may conduct an investigation and restore the reasonable integrity of their data system.

- Student Data Privacy Act exempts districts from being required to enter into a student data contract if the website, online service, or mobile application operated by a consultant or operator is unique and necessary to implement an IEP or 504 plan.

PPT Process/Timelines

- **THE INDIVIDUALS WITH DISABILITIES EDUCATION IMPROVEMENT ACT OF 2004, 20 U.S.C. §§1400, *ET SEQ.* [“IDEA”]**
- **IMPLEMENTING REGULATIONS – 34 C.F.R. §§300.1, *ET SEQ.***
- **CONN. GEN. STAT. §§10-76A, *ET SEQ.***
- **IMPLEMENTING REGULATIONS – CONN. AGENCIES REGS. §§20-76A-1**

– *BOARD OF EDUCATION OF THE HENDRICK HUDSON CENTRAL SCHOOL DISTRICT V. ROWLEY*, 458 U.S. 176 (1982).

Interpreting the IDEA’s forerunner, The Education for All Handicapped Children Act of 1975, the Court held that the “‘basic floor of opportunity’ provided by the Act consists of access to specialized instruction and related services which are individually designed to provide educational benefit to the handicapped child.” 458 U.S. at 201.

- An Individualized Education Program (“IEP”) means “a written statement for each child with a disability . . . that must include:”
 - A statement of present levels of “academic achievement and functional performance.”
 - **Measurable** annual goals, including academic and functional goals.
 - A description of how the child’s progress toward meeting the annual goals will be measured and when periodic reports on the child’s progress towards the annual goals will be provided.
 - A statement of the special education and related services and supplementary aids and services, **based on peer reviewed research** to the extent practicable, to be provided to the child.

- An IEP must include:
 - A statement of any individual appropriate accommodations that are necessary to measure academic achievement and functional performance of the child on state and district-wide assessments.
 - If the PPT determines that the child shall take an alternative assessment on a state or district-wide assessment of student achievement a statement of why (i) the child cannot participate in regular assessment; and (ii) the particular alternate assessment selected is appropriate.

The IEP, *cont'd.*

- An IEP must include:
 - Transition planning – goals and objectives.
 - A statement that at least one year before the child reaches the age of majority (18 in Connecticut) the child has been informed of the rights to be transferred upon reaching the age of majority.
 - When the student graduates or ages out, LEA must provide the student with a summary of academic achievement and functional performance (“summary of performance”), including recommendations to assist the student in meeting his/her post-secondary/post-school goals.
- Amendments/modifications may be made without a PPT meeting; must be in writing.

- Non-attendance permitted by a member of the team ***if the parent and LEA agree (a written understanding)*** that attendance is not necessary because the team member's area of curriculum or services is not being modified or discussed.
- Non-attendance permitted by a member of the team whose area of curriculum or services is being modified or discussed ***if the parent and LEA consent to excusal and the team members submits in writing to the parent and LEA input into the development of the IEP prior to the meeting.***

The PPT, *cont'd.*

- Team must include not less than 1 regular education teacher of such child if the child is, or may be, participating in the regular educational environment, along with not less than 1 special education teacher (or provider).
- Team must also include a representative of the public agency who:
 - Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;
 - Is knowledgeable about the general education curriculum; and
 - Is knowledgeable about the availability of resources of the public agency.
- Parent and LEA may invite others who have knowledge or special expertise regarding the child.

- Team must include at least one person who can interpret the instructional implications of evaluation results; this may be one of the above persons as opposed to having to invite another person.
- The child, whenever appropriate.
 - Required when the meeting be considering transition services and post-secondary goals.
- To the extent appropriate, with the consent of the parents/child in developing such post-secondary goals and transition services, the LEA must invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services.
- The parent.

- Tension between need to meet at least annually (every 12 months) and accommodating parental schedules?
 - Recent case law appears to suggest that it is generally more important to accommodate the parents so as to ensure their presence and that minor deviations from the rigid “every 12 month”/timely annual review meeting requirement would be tolerated in this context.

IEP and PPT Meeting Tips -- Recommendations

- Remember to record PPT recommendations even if parent is in disagreement.
- Any **recommendation** made by the PPT should be implemented. If a recommendation is not implemented with a reasonable timeframe, there should be a follow-up PPT rescinding the recommendation with justification and/or stating why the recommendation was not implemented.
- Discuss student placement last. Requirement that an IEP specify the “location” does not mean that the IEP must specify a specific school site.

IEP and PPT Meeting Tips -- Minutes

- While “minutes” per se are not required, and need not be verbatim, you should be accurate, especially via offers of services to the parents.
- Do not write that the “Administration” or “Board” made statements at the PPT. These entities are not considered specific members of a PPT.
- If there is a tape/video of the meeting, there may be no need for “minutes”/summary.

IEP and PPT Meeting Tips – Miscellaneous

- Accommodations and modifications -- List only those sites/activities where the accommodations and/or modifications are required for the student. Check only those boxes that apply to the student.
- Transition planning – If the student is eligible do not forget to fill out.
- Delivery of PPT documents -- The PPT is not required to give any PPT documents, even pages 1 and 2, to the parents or their attorney at the end of a PPT meeting.
 - The state regulations provide that the school district has five school days to deliver a full copy of the IEP to the parents. Conn. Agencies Reg. §10-76d-13(a)(6).
 - Rushing to get documentation to a parent or their attorney is the cause of many mistakes and clerical errors that may come back to haunt you.

IEP and PPT Meeting Tips – Goals and Objectives

- Be sure to write specific goals and objectives with evaluation procedures and performance criteria that match the objectives.
- Do not forget to fill out the progress reporting section for the objectives.
- Be sure to fill out the present levels of educational performance. The levels must correlate to the goals and objectives.
- ***Ensure that goals and objectives are measurable!!***

IEP and PPT Meeting Tips – Goals and Objectives

- Role of parent in participating in creation of goals and objectives.
 - Cannot deliver a fait accompli.
 - Means of accomplishing parental participation may include:
 - Submitting draft goals and objectives to parents before PPT meeting;
 - Actually taking the time to develop and revise goals and objectives at the PPT meeting (time permitting);
 - Presenting draft goals at PPT meeting and adjourning the PPT to allow parents to consider; or
 - Having parents agree “on the record” (as a PPT “recommendation”) that a member of the PPT will draft goals and objectives based upon the PPT discussion and deliver them to the parent, with the parent then being able to make further comment.
- Parental participation is paramount; indeed, both courts and due process hearing officers have been willing to find that an IEP or placement was inappropriate simply because there was not adequate parental participation.

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