



A Conference for School Office Personnel – Legal Update

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April 2019

Presented by:

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Agenda

Time	Description
9:15 – 10:30 am	Legal Update <ul style="list-style-type: none">• Physical Restraint and Seclusion• Student Data Privacy• Special Education Provider Agreements• Mandated Reporting• Janus v. AFSCME
10:30 – 10:45 am	Break
10:45 – 11:15 am	Legal Updates (Records) <ul style="list-style-type: none">• Educational Continuity for Detained Youth• Requests for Personnel or Medical Records• FOIA – Abuse of Appeal Process
11:15 – 11:45 am	Questions and Answers



Physical Restraint, Seclusion and Exclusionary Time Out

Recent Legislation

Public Act 15-141, effective July 1, 2015 (subsequently amended in 2017 and 2018)

Codified at Conn. Gen. Stat. § 10-236b



Created a **new statute** addressing physical restraint and seclusion of students in schools



Applies to **all students, not only special education students.**



Created **“crisis intervention teams.”**



Outlines **training requirements.**



New in 2018: **exclusionary time out.**

Restraint, Seclusion and Exclusionary Time Out

Public Act 18-51, effective July 1, 2018



Prohibits the use of seclusion as a planned intervention in a student's behavioral intervention plan, IEP or 504 plan.

Clarifies that seclusion, like physical restraint, may only be used as an **emergency intervention to prevent immediate or imminent injury** to the student or to others.

“Seclusion” and “Physical Restraint”

Public Act 18-51, effective July 1, 2018, modifies the definitions of seclusion and physical restraint by clarifying:

“**...Seclusion involves the involuntary confinement of a student in a room from which a student is physically prevented from leaving.**

...Physical restraint includes, among other things, carrying or forcibly moving a person from one location to another.

”

“Exclusionary Time Out”

Public Act 18-51, effective July 1, 2018,
defines exclusionary time out as:

“...A temporary, continuously monitored separation of a student from an ongoing activity in a **non-locked setting**, for the purpose of **calming** such student or **deescalating** such student’s behavior”

Expressly **excluded** from definitions of physical restraint and seclusion

Not prohibited as a planned intervention

Exclusionary Time Out

Public Act 18-51, effective July 1, 2018



BOEs must **adopt a policy** no later than **January 1, 2019** regarding the use of exclusionary time outs (“ETO”s).



Boards should **review and revise** their policies and procedures regarding **physical restraint** and **seclusion** to ensure they are consistent with these new statutory revisions.



ETO policy must require (at minimum) that it **may not be used as a form of discipline.**



At least one employee must remain with the student, or be in close enough proximity to communicate verbally with the student, throughout.

Exclusionary Time Out Policy Requirements

Public Act 18-51, effective July 1, 2018



Space used must be **clean, safe, sanitary and appropriate** for the purpose of **calming** such student **or deescalating** such student's behavior



ETO period must **terminate as soon as possible**



If student requires special education, or is being evaluated, the **PPT shall convene** as soon as is practicable if interventions or strategies are unsuccessful in addressing such student's needs, in order **to determine alternative interventions or strategies**



Student Data Privacy

A smiling teacher with blonde hair and glasses, wearing a blue and white striped shirt, is holding a tablet. She is in a classroom with a chalkboard and other students in the background. A dark blue circular graphic is overlaid on the left side of the image.

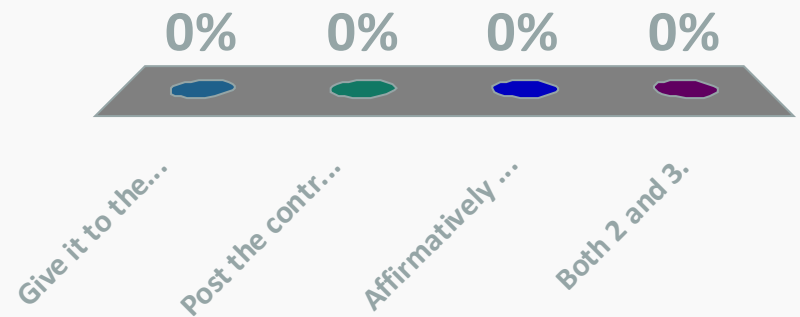
Scenario:

Your district started using a new online program to assist students struggling with math. The program is mainly used by students receiving extra help and special education services. The district has entered into a contract with the vendor owner of this new program.



What should the district do with the contract, if anything?

1. Give it to the district's business manager to be kept only in her office.
2. Post the contract, along with a brief description of the contract on the district's website.
3. Affirmatively provide a copy of the contract to the parent of each student using the program.
4. Both 2 and 3.



Student Data Privacy

Public Act 16-189, effective October 1, 2016



- **Imposes significant obligations** on school districts designed to protect the privacy of student information, student records, and student-generated content, each of which is defined in the Act.
- **Districts must enter into written contracts** with contractors (operators of websites, online services, or mobile applications, or with consultants who provide non-instructional support services and have access to student data) any time the district shares or provides access to student data with that contractor.

Student Data Privacy

Public Act 18-125, effective July 1, 2018



- **Clarifies current requirements and creates new exceptions to existing student data privacy laws affecting BOEs**
- **Maintains requirement that BOEs enter into a written agreement any time boards share student data with contractors**
- **Maintains requirement that such contracts contain ten specific provisions (CGS § 10-234bb(a))**

Student Data Privacy: TOS Addendum

Public Act 18-125, effective July 1, 2018



CET Requirements

CET Requirements

- Requires Commission for Educational Technology (“CET”) to create uniform student data privacy terms-of-service addendum* that conforms to legal requirements for student data privacy



Optional

Optional

- Use of addendum is an option, not a requirement



Void

Void

- Any relevant contract entered into on or after July 1, 2018 that does not contain either (1) all of the required contractual provisions (CGS § 10-234bb(a)) **or** (2) the CET addendum, **is void if** a board has given the contractor adequate notice of need to amend the contract **and** the contractor fails to do so

Student Data Privacy: Notice to Parents

Public Act 18-125, effective July 1, 2018

Clarifies that BOEs are **not required to provide separate electronic notice to families** each time the board enters into a contract that involves access to student data



MUST:

1

Post a notice and copies of contracts involving student data on the BOE website, **and**

2

Provide parents with annual notification of the address of such website on or before September 1 of each school year

Student Data Privacy: Narrow Exemption

Public Act 18-125, effective July 1, 2018

Boards not required to enter into a contract pursuant to CGS § 10-234bb(a) for the use of a website, online service or mobile application *that cannot meet the requirements of such section when*:

- 1 Website, online service or mobile application **is unique and necessary to implement a student's IEP or 504 plan**
- 2 Contractor is **unable to comply** with the student data privacy contracting requirements
- 3 Such internet website, online service or mobile application is **FERPA and HIPAA compliant**

Student Data Privacy: Narrow Exemption

4 Board provides evidence upon request that it **attempted to enter into a contract** for the use of such technology and find equivalent technology operated by a contractor that complies with the student data privacy requirements

5 **Contractor complies with** the student data privacy law's requirements related to the **security, maintenance, use and disclosure** of student data pursuant to CGS § 10-234bb, and

6 **Parent or guardian** and member of the planning and placement team **sign an agreement** that:

- Acknowledges the parent or guardian is aware the technology does not comply with the student data privacy contracting requirements and
- Authorizes the use of such technology



Special Education Provider Agreements



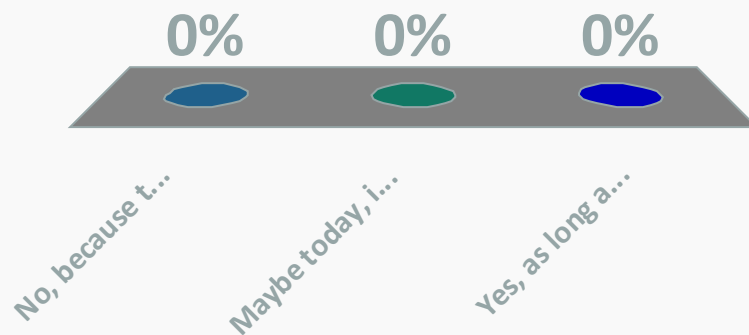
Scenario:

A student's planning and placement team decides to place the student in a private special education school. The student has been accepted into the school. To effectuate the placement, the district sends the private school a letter explaining the agreement to place the student in the private school and attaches the student's individualized education program (IEP).



Is this letter, with the attached IEP, sufficient to allow the district to receive excess cost?

1. No, because the parent must sign the letter.
2. Maybe today, if the cost threshold is met, but definitely not after July 1st.
3. Yes, as long as the cost threshold is met, because the district attached the student's IEP.



Special Education Provider Agreements

Public Act 18-183, effective July 1, 2018



- Auditors of Public Accounts found that **special education services** are often provided pursuant to an agreement between a BOE and a private provider that is **not captured in a formal contract**.
- Beginning July 1, 2019, BOEs are now explicitly required to have a **written contract** with any private provider of special education services to be eligible for **excess cost reimbursement** for those services.

A student's IEP will **not be considered a contract** for the purpose of determining eligibility for reimbursement

Special Education Provider Agreements



Any agreement or contract entered into after July 1, 2018 **must include an explanation of how the tuition or costs for special education services will be calculated**



Applies to agreements and contracts with **any public or private provider** of special education services



SDE must develop **standards and a process**, including:

- **A means to document the scope, type and number of services provided**; date and length of time service is provided and the name and signature of individual provider; and
- Either **standard forms or electronic reporting system**

Private Provider Obligations



Private providers are **not required to use the form or reporting system developed by SDE** in order for the school districts to be eligible for excess cost reimbursement.



Beginning July 1, 2018, if a **private provider** of special education services is providing services pursuant to an agreement or contract with a school district, it **must submit its operating budget to the SDE on an annual basis**, on or before October 1st.





Mandated Reporting Changes

Mandated Reporting: Licensed Behavior Analyst

Public Act 18-17, effective July 1, 2018



- **Adds licensed behavior analysts** to the list of individuals mandated to report to the Commissioner of Children and Families any suspected abuse or neglect of a child, pursuant to CGS § 17a-101.

Already mandated to report as a school employee pursuant to CGS § 53a-65. This Act **extends** such **mandated reporting** obligations to **work performed outside of schools**.

Electronic Reporting: Child Abuse and Neglect

Public Act 18-67



- **Authorizes DCF to run a pilot program** between July 1, 2018 and September 30, 2019 to allow certain categories of initial reports of suspected abuse or neglect to be made electronically

Beginning October 1, 2019, all initial reports of suspected abuse or neglect shall be made either **orally or electronically**. A mandated reporter who makes an electronic report shall respond to inquiries from DCF within twenty-four hours of such report.

Mandated Reporting: Behavior Analysts



Public Act 18-96 **reduces from 72 hours to 48 hours the time to make an initial report** of suspected abuse or neglect of an individual with an **intellectual disability** or who receives funding or services from the Department of Social Services' Division of Autism Spectrum Disorder Services and is **over age 18**.

Unsuccessful attempts to make initial reports after business hours, on holidays or weekends not considered violation, so long as reasonable attempts to make the report are made as soon as practicable.





Janus v. AFSCME



Scenario:

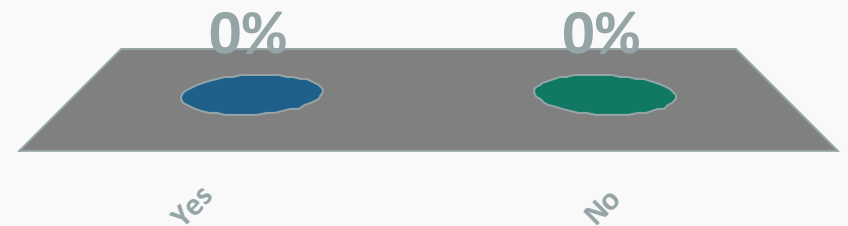
A dues payer from the teachers' union wants to withdraw from the teachers' union and stop paying dues.

Can the teacher do both?



Can the teacher both withdraw from the union and stop paying dues?

1. Yes
2. No





Janus v. AFSCME

U.S. Supreme Court (June 27, 2018)

- U.S. Supreme Court 5-4 decision, June 2018
- Agency fee (or “fair share” fee) provisions in collective bargaining agreements are invalid.
- Agency fees may not be deducted from an employee’s pay unless the employee has expressly consented to the deduction.



15-Minute Break



Legal Update

Educational Continuity for Detained Youth

Public Act 18-31, effective August 1, 2018



A student **not enrolled** when placed in a detention facility must be reenrolled in child's nexus district, or, if no nexus, the district where the facility is located **within three business days** of the district receiving notice that the student is in custody.



A child who is enrolled in a school district when placed in a detention facility **shall remain enrolled in that district** during such period of detention.



Detained student shall have the right to return to school district **immediately** upon discharge.



When education provider learns that a child is going to be discharged, the **provider must immediately notify the district.**

Detained Youth: Justice Liaisons

Public Act 18-31, effective August 1, 2018

School districts with ***at least 6,000 students*** enrolled during 2016-17 school year must:

- Designate at least one employee as a liaison to facilitate student transitions between the district and the juvenile and criminal justice systems (“justice liaison”) and
 - Provide the Court Support Services Division of the Judicial Branch (“CSSD”) with an annual written notice of the name, title and contact information for the district’s justice liaison on or before August 1.

Justice Liaison: Role and Responsibilities

Justice liaisons are responsible for assisting the school district, the CSSD and educational service providers to ensure that:

- 1** All persons under twenty-two years of age in justice system custody are **promptly evaluated for eligibility for special education services**, when deemed necessary;
- 2** Students in custody and returning to the community from custody are **promptly enrolled in school**;
- 3** Students in custody and returning to the community from custody **receive appropriate credit for school work completed** while in custody; and
- 4** **All relevant school records** for students who enter custody and who return to the community **are promptly transferred** to the appropriate school district or educational service provider.

Requests for Personnel or Medical Records

Public Act 18-93, effective October 1, 2018



- **Current law:** when public agency believes it **would be an invasion of privacy** to disclose, **must first immediately notify the employee** and any applicable collective bargaining representative, to provide opportunity to object.
- **Beginning October 1, 2018:** when public employer **reasonably believes** disclosure **would not legally** constitute an invasion of privacy, employer **must first disclose the records to the requestor.**

Subsequently, within a **reasonable time** after, employer must then make a reasonable attempt to send a written or electronic copy or brief description of the request to the employee concerned, and any applicable collective bargaining representative.



Perkins v. Freedom of Information Commission

228 Conn. 158 (1993)

- Disclosure of such records shall only be considered an **invasion of privacy** where:
 - Such records do not pertain to a **legitimate matter of public interest** and
 - Disclosure of such records would be **highly offensive to a reasonable person**

FOIA Invasion of Privacy Test

A hand is shown reaching into a filing cabinet drawer to pull out a document. The background is a blurred office setting with a window. A dark blue circular graphic is in the top left corner.

Scenario:

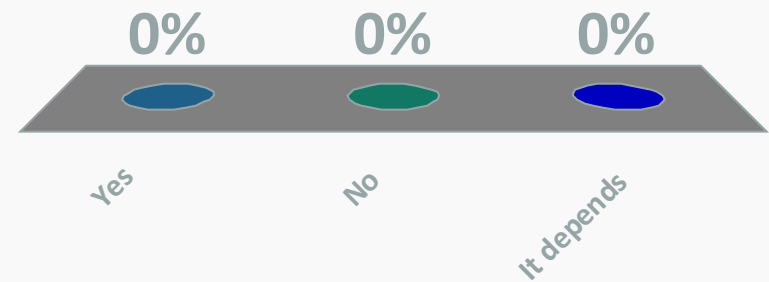
An individual requests an investigation report regarding employee sexual harassment misconduct that resulted in dismissal.

Invasion of privacy?



Is this request an invasion of privacy under the *Perkins* test?

1. Yes
2. No
3. It depends



A hand is shown holding a white folder, pulling it out from a filing cabinet. The background is a blurred office setting with a window. A dark blue circular graphic is in the top left corner.

Scenario:

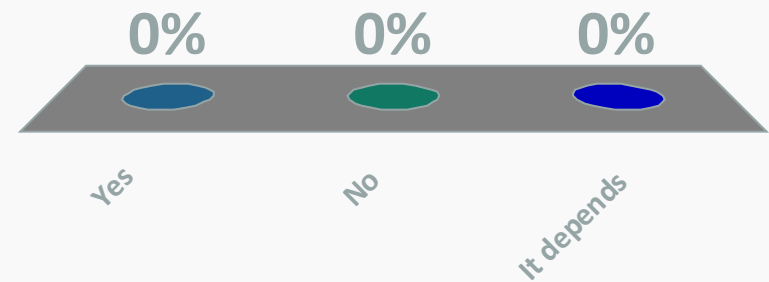
You receive a request for an investigation report regarding an employee's conduct outside of work that resulted in dismissal.

Invasion of privacy?



Is this request an invasion of privacy under the *Perkins* test?

1. Yes
2. No
3. It depends



A close-up, slightly blurred photograph of a filing cabinet. The shelves are filled with numerous folders of various colors, including orange, red, purple, and green. The focus is on the middle section, showing rows of folders with white tabs. A dark blue circular graphic is overlaid on the top left corner.

Scenario:

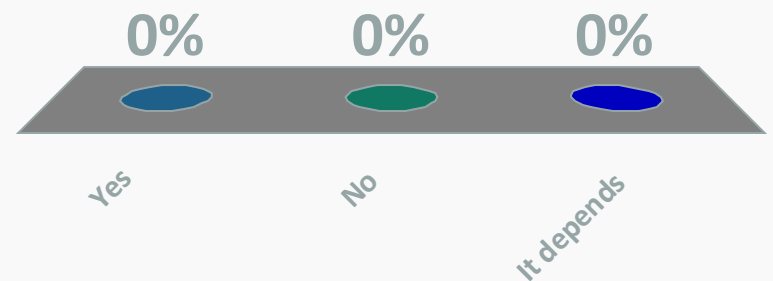
You receive a request for medical records provided to an employer to support employee eligibility for sick leave.

Invasion of privacy?



Is this request an invasion of privacy under the *Perkins* test?

1. Yes
2. No
3. It depends



FOIA: Abuse of Appeal Process

Public Act 18-95, effective October 1, 2018



Clarifies factors the FOIC must consider when determining if an individual appealing to the FOIC is abusing the appeal process.

If the Executive Director, at his or her discretion, believes an appeal is an abuse of the appeal process, a hearing shall not be scheduled unless given leave by the commission after a review of affidavits and written arguments from the parties.

FOIA: Abuse of Process Factors

Factors to be considered by FOIC to determine if appeal process is abused



Nature, content and language or subject matter of request or appeal, **including, among other factors, whether the request or appeal is repetitious or cumulative (NEW)**



Nature, content and language or subject matter **of prior or contemporaneous requests or appeals or other verbal or written communications** to the agency or official of the agency



History of nonappearance or disruption of commission proceedings



Refusal to participate in settlement conferences

Vexatious Requester Petition

Public Act 18-95, effective October 1, 2018

Submitted by public agency to FOIC under penalty of false statement detailing the alleged conduct, including:



Number of requests filed and total number of pending requests



Scope of the requests



Nature, content, language or subject matter of other oral and written communications to the agency from the requester



A pattern of conduct that amounts to an abuse of the right to access information under the FOIA and/or interference with the operation of the agency

Questions?



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