Education Law Today

PREPARED BY SIEGEL, O'CONNOR, O'DONNELL & BECK, P.C. MARCH 2009

A NEWSLETTER FOR CONNECTICUT EDUCATORS
FREDERICK L. DORSEY, EDITOR

VOLUME 5
ISSUE 2

A REVIEW OF THE BULLYING STATUTE AMENDMENTS AND REQUIREMENTS FOR 2009

BY FREDERICK L. DORSEY

Effective July 1, 2008, the definition of bullying shifted from emphasis on the victim to the alleged bully. "Bullying" no longer means that acts be repeated against the same student over time. Instead, bullying is defined as **"any overt acts by a student or group of students directed against another student with the intent to ridicule, harass, humiliate or intimidate the other student while on school grounds, at a school sponsored activity or on a school bus, *which acts are committed more than once against any student during the school year*."**

The statute addresses other changes of which school boards and administrators should be aware. The law now requires: (1) teachers and staff who witness bullying or receive student reports of bullying to notify the administration ***in writing***; (2) the principal of the school to designate the personnel responsible for investigating bullying complaints; (3) the district implement a bullying "***prevention*** and intervention strategy," where the statute provides a definition of the term "prevention and intervention strategy"; (4) the school may accept and review anonymous reports of bulling, however, no disciplinary action may be taken solely on the basis of an anonymous report; and (5) each school must notify the parents or guardians of the alleged bully and the victim, when such bullying is verified, *"and invite them to attend at least one meeting."*

School boards are required to provide information concerning prevention of bullying to teachers, administrators and pupil personnel during in-service training. An exception exists for those boards of education that implement an evidence-based model approach consistent with the "prevention and intervention strategy" described in the statute.

IN THIS ISSUE

UPCOMING SEMINARS

Sexual Harassment Prevention Training for Supervisors of Municipalities and Boards of Education
Friday, April 3, 2009

Attorneys Fred Dorsey, Daniel Murphy and Ashley Baron are on the faculty for this morning seminar in Cromwell.

Special Issues in School Law
Monday, April 27, 2009

Attorney Don Strickland will teach to a group of aspiring school administrators enrolled in a graduate level course at St. Joseph College in West Hartford.

For more information:
Visit our website at www.siegeloconnor.com or contact: Marta Santiago at 860-727-8900 or msantiago@siegeloconnor.com.

150 TRUMBULL STREET
HARTFORD, CT 06103
(860) 727-8900

SIEGEL, O'CONNOR, O'DONNELL & BECK, P.C.
www.siegeloconnor.com

14 EUGENE O'NEILL DRIVE
NEW LONDON, CT 06320
(860) 442-4747

...Bullying Statute continued from page 1

By February 1, 2009, school boards were required to submit their bullying policy to the State Department of Education.

By July 1, 2009, school boards must ensure the bullying policy is included in the publication of the school rules, procedures and standards of conduct, and the student handbook.

2008-2009 Negotiation and Settlement Status

By Daniel P. Murphy

Teacher Settlement Summary

YEAR	GWI	TWI
2009-2010	2.47%	4.03%
2010-2011	2.28%	4.19%
2011-2012	2.42%	4.34%

Administrator Settlement Summary

YEAR	GWI	TWI
2009-2010	3.20%	3.58%
2010-2011	3.30%	3.59%
2011-2012	3.41%	3.64%

There were 95 teacher and administrator units scheduled for negotiations this year; 52 of those settled through mediation, while 33 settled through negotiations, arbitrations resolved 3 units (with 2 arbitrations still pending), and 6 were resolved through stipulated arbitration. While the majority of teacher units settled through mediation (37 out of the 54 total teacher units), administrator units were more closely split with 14 mediated and 21 negotiated settlements. In addition to these numbers, three teacher units engaged in midterm contract negotiations this season.

As of this writing, for teacher units, the average total wage increase (TWI) for 2009-10 is 4.03%, comprised of a 2.47% GWI and a 1.56% cost of increment; for 2010-11 the average is 4.19% with a 2.28% GWI and 1.91% cost of increment; for 2011-12 it is 4.34% including a 2.42% GWI and a 1.92% cost of increment.

For administrator units, the average settlements at this time are as follows: 3.58% TWI for 2009-10 (3.20% GWI plus .38% cost of increment); 3.59% for 2010-11 (3.30% GWI plus .29% cost of increment); 3.64% for 2011-12 (3.41% GWI plus .23% cost of increment).

It is likely that the economic slowdown had an impact on this season's negotiations. The majority of bargaining units apparently felt it wise to resolve salary disputes outside the presence of an arbitrator, who could potentially award figures that would be lower than desired by the unions. In fact, 2 of the 9 arbitrations took place as a result of settlement rejections by the board or town.

The settlement averages are also much lower than last season's figures, although the difference is not as drastic for 2011-12, a factor that likely indicates the expectation of a rebounding economy. Throughout the districts, a pattern that noticeably follows last fall's economic downturn is demonstrated by mostly higher GWI for settlements reported early in the negotiating season, with GWI tending to decrease across the board for settlements toward the end of 2008 and into 2009.

In light of these trends, the tenor of this season's negotiations can be largely characterized by a concern for the status of wages, as bargaining units and school boards alike brace for further economic hardship. It also appears that this climate contributed to the decision by many districts to introduce HSAs and HDHPs as cost-saving measures in the benefits arena.

Summary on New FERPA Regulations

By Ashley E. Baron

On December 9, 2008, The U.S. Department of Education (DOE) published new regulations regarding the Family Educational Rights and Privacy Act (FERPA). The new regulations seek a balance between preserving students' privacy and promoting their safety with facilitating research and accountability to ensure students receive a quality education. Highlights of the FERPA regulations include:

Personally Identifiable Information, Defined. The regulations contain a new definition of personally identifiable information, adding "biometric record" (for example, fingerprints, facial characteristics or handwriting), date and place of birth and mother's maiden name. The catch-all language was also revised to read, "other 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." 34 C.F.R. § 99.3.

Health or Safety Emergencies. Schools are afforded greater flexibility and deference in disclosing student information when there is a threat to the health or safety of students. They may disclose information from educational records to appropriate parties, including parents, whose knowledge is necessary to protect the health and safety of a student or individual, considering the totality of the circumstances. There must be a rational basis for the determination at the time the determination is made, and the basis for the decision must be recorded in the student's educational records. 34 C.F.R. § 99.36.

"FERPA allows disclosure of personally identifiable information in student records to school officials, without consent, if the school has determined that the school officials have a legitimate educational interest in the information."

Disclosure to Parents of Eligible Students (Over the age of 18 or attending postsecondary education). Clarifying, even after the rights under FERPA have transferred from parent to student, the school may generally disclose education records to the student's parents without consent. For example, in a health or safety emergency, regardless of whether the student is a dependent for Federal Income Tax purposes, and under any circumstance if the student is a dependent. 34 C.F.R. §§ 99.5 & 99.36.

Redisclosure of Student Information.

Transfer of Records. Schools, including State Educational Agencies (SEAs), are permitted to disclose student records to officials of another school or postsecondary institution where the student seeks to enroll.

School Officials' Exception. FERPA allows disclosure of personally identifiable information in student records to school officials, without consent, if the school has determined that the school officials have a legitimate educational interest in the information. "School officials" includes administrators, teachers, contractors, consultants, and outsourcing entities. In using this exception, schools must provide the criteria used to determine who is a school official and what is a legitimate educational interest in its annual FERPA notification. 34 C.F.R. § 99.7.

Release of De-Identified Data. Schools may also release, without consent, education records with student information "de-identified" to entities and persons conducting educational research. De-identification is the removal of all personally identifiable information (redacting). Guidelines are available on proper de-identification.

Recordkeeping. Schools must maintain in each student's educational records a record of each request for access to and each disclosure of personally identifiable information from the student's records. Schools are also responsible for obtaining the record of redisclosures from State or Federal authorities, as appropriate. This information must be made available to a parent or eligible student upon request. 34 C.F.R. § 99.32.

REMINDER: NEW IN-SCHOOL SUSPENSION LAW GOES INTO EFFECT JULY 1, 2009

BY MELANIE DUNN

As of July 1, 2009, all student suspensions must be served in-school ("ISS") unless the administration determines that the student poses "such a danger" to persons or property or will cause "such a disruption" of the educational process that an out-of-school suspension ("OSS") is warranted. However, the administration will now be able to assign a student to ISS for up to 10 days. The new law also clarifies that a student may be required to serve the suspension in any school building under the board's jurisdiction.

On October 1, 2008, the State Department of Education issued guidelines to help school administrators determine the limited circumstances under which a student may receive an OSS. Highlights of the guidelines include:

- *Violation of a Publicized Policy.* A policy violation alone should not generally constitute sufficient grounds for OSS. However, the consequences of the misconduct may lead the administrator to find that it is sufficiently dangerous or disruptive to justify OSS. For example, an instance of fighting

is probably a simple policy violation that leads to ISS if the students involved are not harmed, but OSS may be appropriate if the students were injured as a result.

- *Recurring or Cumulative Disruptive Act.* An OSS may be appropriate for repeated, disruptive misconduct that has led the student to be suspended in-school several times, apparently with no change to the student's behavior. However, the State cautions that OSS should be used sparingly in these cases, and should involve a consideration of the frequency of the same offense, the number of different offenses, and the intensity of any and all offenses.

- *Mitigating Factors.* The administrator should consider certain mitigating factors before imposing OSS: (1) intensity of any or all offenses; (2) age, grade level, and developmental stage of student; (3) learning or behavioral support provided to the student through special education, Section 504, or other means; (4) student's discipline history and likelihood of repetition; (5) student's intent and expressed reasons for the behavior; (6) student's academic progress and relative risk of lost instruction; (7) interpretation of culture and communication factors; (8) history of school and family collaboration in supporting positive behaviors.

"On October 1, 2008, the State Department of Education issued guidelines to help school administrators determine the limited circumstances under which a student may be suspended out-of-school."

As stated in the guidelines, the purpose of the new suspension law is to keep as many students as possible in school, apparently despite the ongoing disruption to school operations that is necessitated by the requirement of an expanded ISS program. The good news is that the guidelines seem to prescribe a common-sense approach to assessing on a case-by-case basis whether a student's misconduct is sufficiently severe to warrant OSS as opposed to the now "default" ISS. Arguably, school administrators have always used this kind of common sense to effectively discipline students while promoting a safe and orderly learning and working environment for students and staff. It is hoped, therefore, that application of these guidelines will result in little increased burden upon administrators as they continue to strike this fine balance. Governor Rell has proposed in her budget plan to delay the implementation of this statute for two years due to its categorization as an unfunded mandate on local school districts. Please review our client alerts and website for updates.

IMPORTANT DATES AND REQUIREMENTS FOR EDUCATORS IN 2009

BY ASHLEY E. BARON

March 10, 2009 – end of review period for local school district officials to challenge U.S. Census estimates on 2007 population and poverty that are relied upon in determining federal education funding levels. Local school districts who think the data is incorrect must challenge the estimates by contacting the State Title I Director or the Small Area Income and Poverty Estimates (SAIPE) Branch at the Census Bureau by March 10 at (**301) 763-3193 or hhes.saipe@census.gov.**

Beginning October 1, 2007, at each initial PPT meeting, the school district must inform the parent, guardian or student of the laws relating the physical restrain and seclusion pursuant to Conn.Gen.Stat. 46a-150 *et seq.* (state human rights), and their rights under those laws. Any parent, guardian or student who has not been informed of their rights under the law should receive such notice as soon as possible.

E-NEWSLETTER

Education Law Today,
our Firm's complimentary newsletter for
Connecticut Educators,
is available to you electronically.
If you would like others in your organization to
receive future issues of this tri-annual newsletter by e-mail, please contact
msantiago@siegeloconnor.com.

This newsletter is published by the firm of Siegel, O'Connor, O'Donnell & Beck, P.C.,whose practice concentrates in labor and employment law exclusively representing management. The views, analyses and developments in the law that are reported and offered in this issue are intended to educate and assist lay persons in recognizing legal problems. They are neither intended as individual advice nor offered as a general solution to all apparently similar individual problems. Readers are cautioned not to attempt to solve their individual problems solely on the basis of the information contained herein. © 2009 Siegel, O'Connor, O'Donnell & Beck, P.C.