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Illinois Supreme Court: School Districts are Subject to Municipal Zoning Regulations

Clarifying what has previously been a gray area of the law, the Illinois Supreme Court has ruled that school districts are subject to municipal zoning ordinances. In *Gurba v. Community High School District No. 155*, 2015 IL 118332 (2015), the Court determined that the Crystal Lake School District illegally constructed football field bleachers when it did not receive approval or notify the City of Crystal Lake. This decision immediately impacts school districts statewide.

As we previously reported (September 23, 2014), the facts of this case are relatively straightforward. Crystal Lake School District constructed bleachers for the football field at one of its campuses located in the City of Crystal Lake. As it is required to do under Section 3-14.20 of the Illinois School Code (105 ILCS 5/3-14.20), the School District submitted plans and received approval from the McHenry County Regional

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Superintendent of Schools. The School District did not, however, receive approval or notify the City of Crystal Lake of its plans. The new bleachers would have required a variance or a special use permit as the bleachers violated numerous city zoning and storm water ordinances.

Both the Circuit Court and the Appellate District ruled in favor of the neighboring landowners who had sought to enforce the city's ordinances. The School District then appealed to the Illinois Supreme Court. On September 24, 2015, the Supreme Court determined that since the General Assembly had not enacted any statute expressly preempting or limiting a home rule unit's zoning power over public school property, it is within a city's home rule authority to impose its zoning ordinances on the School District.

The Supreme Court, like the Appellate Court before it, put great emphasis on Section 10-22.13a of the Illinois School Code. That section authorizes a school board "[t]o seek zoning changes, variations, or special uses for property held or controlled by the zoning district." 105 ILCS 5/10-22.13a. The Supreme Court determined that it would be unnecessary for the General Assembly to authorize a school district to seek zoning changes if it did

not intend for school property to be subject to local zoning ordinances in the first place.

The Supreme Court found further support for its decision in *Wilmette Park District v. Village of Wilmette*, 112 Ill. 2d 6 (1986). The Court in *Wilmette* decided that a special use hearing is the best possible way to reconcile the competing interests of two governmental entities, but that if a municipality administers its zoning ordinance in an unreasonable, arbitrary, or discriminatory manner, judicial review is still available to the aggrieved entity.

The *Gurba* decision aligns with *Wilmette* and does not overrule it. Although it is now clear that School Districts must abide by municipal zoning codes, it does not follow that a municipality's zoning decision is now the final decision. School districts maintain recourse to challenge an unreasonable, arbitrary or discriminatory decision through the judicial process.

If you have questions regarding this guidance or would like to discuss your school district's building projects, please contact one of our attorneys in Flossmoor at 708.799.6766 or Oakbrook at

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Broadening Educational Opportunities: New Federal Resources on English Learners and on Inclusion in Early Childhood Programs

English Learners Tool Kit

In January, we reported on newly released joint guidance from the U.S. Departments of Education and Justice, which outlined a school district's obligation to ensure that English Learners have equal access to a high-quality education. (*English Learner Students: New Federal Guidance*,

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https://petrarcagleason.com/joint-federal-guidance-and-toolkit-reminds-schools-of-their-obligation-to-provide-equitable-educational-access-for-english-learner-students/)

In support of that guidance, the Office of English Language Acquisition has released an *English Learner (EL) Tool Kit* designed to aid school districts in providing ELs with the support necessary to achieve their full academic potential. The *EL Tool Kit*, divided into 10 chapters, provides explanations of legal obligations, checklists, sample tools, and additional resources covering the following topics:

- Identifying All English Learner Students
- Providing English Learners with a Language Assistance Program
- Staffing and Supporting an English Learner Program
- Providing English Learners Meaningful Access to Core Curricular and Extracurricular Programs
- Creating an Inclusive Environment for and Avoiding the Unnecessary Segregation of English Learners
- Addressing English Learners with Disabilities
- Serving English Learners Who Opt Out of EL Programs
- Monitoring and Exiting English Learners from EL Programs

and Services
- Evaluating the Effectiveness of a District's EL Program
- Ensuring Meaningful Communication with Limited English Proficient Parents

The full text of the *EL Tool Kit* can be accessed at: http://www2.ed.gov/about/offices/list/oela/english-learner-toolkit/index.html.

Early Childhood Inclusion

On September 14, 2015, the U.S. Departments of Education and Health and Human Services released a joint policy statement on the inclusion of children with disabilities in early childhood programs. With the goal of increasing the inclusion of infants, toddlers, and preschool children with disabilities in early childhood programs, the Departments recommend that all young children with disabilities have access to inclusive, high-quality early childhood programs, which can include private or publicly-funded centers or family-based child care, home visiting, Early Head Start, Head Start, private preschools, and public school and community-based pre-kindergarten programs. The

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Departments apply this vision to all young children – from those with the mildest disabilities to those with the most significant impairments.

Noting that children with disabilities continue to face significant barriers to accessing inclusion education, the Departments cite research which supports the benefits of inclusion for both children with and without disabilities. When compared to children with disabilities educated separately, children with disabilities in inclusion classrooms have:

- Greater cognitive and communication development
- A higher likelihood of practicing newly acquired skills
- Fewer absences
- Higher test scores in reading and math
- Higher probability of employment and higher earnings
- Stronger social-emotional skills
- A larger network of friends

Additionally, when children without disabilities are educated in an inclusion environment, they demonstrate greater compassion and empathy and develop a better understanding of diversity and disability. The Departments believe that these benefits can be

obtained without additional costs to school districts, as inclusion programs are not necessarily more expensive than operating separate early childhood programs for children with disabilities.

Early childhood programs should be inclusive of children with disabilities and their families, and school districts must ensure that policies, funding, and practices enable full participation and success. To that end goal, the Departments recommend that school districts take the following actions:

- Connect with families to ensure that inclusion information is available and accessible to all families.
- Review IFSP and IEP policies and procedures to ensure that the first option considered, and meaningfully discussed, is an inclusive setting.
- Pair children's assessments with environmental assessments of the early childhood program to ensure that appropriate supports and accommodations are in place.
- Review and modify resource allocation, paying close attention to a district's use of IDEA Parts B and C funds, shifting educators to provide consultative services, and optimally distributing specialized staff and materials.

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- Offer professional development opportunities, especially those focused on a strong understanding of universal design and universal design for learning.
- Establish an appropriate staffing structure to strengthen staff collaboration, such as a skilled lead teacher paired with a paraprofessional/aide and specialist support, and consider co-teaching models.
- Ensure access to specialized supports, including early interventionists, inclusion specialists, early childhood mental health consultants, behavior consultants, early childhood special educators, developmental specialists, and related service providers.
- Develop formal collaborations with community partners. If no inclusive early childhood program is offered by the district, consider creating a formal agreement with community-based programs.

The full text of the Departments' Policy Statement can be accessed at: http://www2.ed.gov/policy/speced/guid/earlylearning/joint-statement-full-text.pdf.

If you have questions about these new Department of Education

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publications, please contact one of our attorneys in Oak Brook (630-928-1200) or Flossmoor (708-799-6766).

Senate Bill 100 and Recent Student Discipline Cases

Illinois Legislature Dramatically Reforms Out-Of-School Disciplinary Procedures

Governor Rauner signed Senate Bill 100 into law as Public Act 99-456 on August 24, 2015. The bill, which aims to address the school-to-prison pipeline, dramatically reforms the circumstances under and the processes by which a school district can impose out-of-school discipline. School districts do not need to adopt policies incorporating SB100's provisions until September 15, 2016, but it would be wise to begin revising policies and providing professional development now given the depth and breadth of the changes to the existing law.

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In SB 100, the Illinois legislature cautions school officials that out-of-school suspensions and expulsions are among the most serious of disciplinary interventions and, as such, school officials must limit them and only use them only for legitimate educational purposes. This is consistent with recent guidance from the U.S. Department of Education and Department of Justice that, among other matters, emphasizes positive interventions over student removal.

Under the new law:

- Expulsions
  - May be used if the student's continuing presence would:
    - Pose a threat to the safety of other students, staff or members of the school community; or
    - Substantially disrupt, impede, or interfere with the operation of the school
  - If the Board expels a student, the written expulsion decision must:
    - Detail the specific reasons why removing the student is in the best interest of the school;
    - Include a rationale as to the specific

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duration of the expulsion; and
    - Document whether other interventions were attempted or whether it was determined that there were no other appropriate and available interventions

- Out-of-School Suspensions
    - Out-of-school suspensions of ***three days or less*** may be used only if the student's continuing presence in school would pose a threat to school safety or a disruption to other students' learning opportunities. These are things that need to be determined on a case-by-case basis by the school board or its designee.
    - Out-of-school suspensions and disciplinary removals for ***more than three days*** may be used if other appropriate and available behavioral and disciplinary interventions have been exhausted and the student's continuing presence would:
        - Pose a threat to the safety of other students, staff or members of the school community; or
        - Substantially disrupt, impede, or interfere with the operation of the school

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- All suspension decisions must document:
  - The specific act of gross disobedience or misconduct resulting in the decision to suspend;
  - A rationale as to the specific duration of the suspension; and
  - Whether other interventions were attempted or whether it was determined that there were no other appropriate and available interventions. This is something that is left to the discretion of school officials.
  - For out-of-school suspensions longer than four school days, that school officials will provide appropriate and available support services during the period of suspension or whether it was determined that there are no such appropriate and available services. "Appropriate and available support services" are to be determined by school authorities.

There are several board policy provisions within PA 99-456:

- Unless otherwise required by federal or state law,

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districts are forbidden from instituting zero-tolerance policies that require suspensions or expulsions.
- Districts must create a policy to facilitate the re-engagement of students who are suspended out-of-school, expelled, or returning from an alternative school setting.
- Districts must create a policy by which students have an opportunity to make up work for equivalent academic credit. This includes students suspended from the school bus who do not have alternate transportation to school.
- Districts are forbidden from advising or encouraging students to drop out voluntarily due to behavioral or academic difficulties.
- Districts may not issue a monetary fine or fee as a disciplinary consequence, but may still require restitution for lost, stolen, or damaged property.

Additionally, PA 99-456 states that:

- Parent-Teacher Advisory Committees are encouraged to create MOU with local law enforcement agencies that clearly define the agency's role in schools.
- Districts must make reasonable efforts to provide professional development to their staff and board members

on the adverse consequences of school exclusion and justice-system involvement, effective classroom management strategies, culturally responsive discipline, and developmentally appropriate disciplinary methods that promote positive and healthy school climates.

If you have questions regarding this guidance or would like to discuss your school district's disciplinary policies, please contact one of our attorneys in Oak Brook (630.928.1200) or Flossmoor (708.799.6766).

Recent Student Discipline Cases

ADMINISTRATIVE TRANSFERS

Leak v. Bd. of Educ. of Rich Twp. High Sch. Dist. 227, (Ill. App. 9/9/15)

According to the Illinois Appellate Court, an administrative transfer of a student to an alternative program for more than 10 days is tantamount to an expulsion. As such, a due process hearing before the Board of Education is required.

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The Board of Education voted to terminate Superintendent Leak's employment contract for cause on the grounds that Leak administratively transferred 48 disruptive students to alternative schools without Board action. The administrative transfers for each of the 48 students were for more than 10 days.

In her lawsuit challenging her dismissal, Leak sought a declaratory judgment that the transfers were permitted under section 13A-4 of the School Code which states, in pertinent part, that "[a] student who is determined to be subject to suspension or expulsion in the manner provided by Section 10-22.6 may be immediately transferred to the alternative program." 105 ILCS 5/13A-4. The trial court dismissed Leak's argument that she had been discharged for no cause and she appealed.

The Illinois Appellate Court reviewed sub-paragraphs (a) and (b) within Section 10-22.6. Subparagraph (a) permits the immediate transfer to an alternative program following board approval while subparagraph (b) only authorizes school personnel to suspend pupils for a period not to exceed 10 school days without board approval. The court determined that when read in their

entirety, the School Code provisions establish an intent by the legislature to expel students only "after the parents have been requested to appear at a meeting of the board, or with a hearing officer appointed by it." 105 ILCS 5/10.22.6(a). Accordingly, since these administrative transfers were for more than 10 days, the transfers were tantamount to an expulsion, the students' due process rights were violated, and there should have been a board hearing.

CONFIDENTIALITY OF STUDENT RECORDS

Letter to Soukup, (FPCO 2/9/15)

The Illinois School Code requires school district anti-bullying policies to provide parents the opportunity to discuss with the school the bullying investigation, findings and actions taken by the school. Similarly, U.S. Department of Education guidance indicates that schools should advise harassed students and their parents about bullying investigations, findings, and actions taken with regard to complaints of bullying.

Concerned that USDOE guidance contradicts confidentiality laws,

an inquiry was made to the Family Policy Compliance Office ("FPCO") that implements the Family Educational Rights and Privacy Act ("FERPA"). The FPCO indicated, that in accordance with civil rights guidance, *FERPA* permits a school to disclose to the parent of a harassed student information about sanctions imposed on a perpetrator which directly relate to the harassed student. According to the FPCO, examples of these sanctions include a requirement that the harasser stay away from the victim; the separation of students; change of classes, and that the harasser is prohibited from attending school for a period of time.

Bryner v. Canyons Sch. Dist., (UT. App. 5/29/15)

In Illinois, videos created for safety or security purposes are not student records unless used for specific purposes, such as student discipline. In the following case, the District was required to provide a redacted video only if the parent paid to redact it:

A parent of a student involved in an altercation in a middle school hallway filed a complaint in court because the district refused to produce a copy of the surveillance video showing the

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fight. The Court agreed with the school that the video, in which students were clearly identifiable by face, body shape, clothing or otherwise, was a student record that directly related to students and was maintained by the school. The Court cited FERPA guidance that parents have the right to inspect and review a videotape showing their own child engaged in misbehavior if no other students are pictured. The Court held that school must provide a redacted copy of the video to the parent within fifteen days of receipt of the parent's payment of the $120 cost to redact the video.

MANIFESTATION DETERMINATIONS

In re Student with Disability, (IL SEA 5/15/15)

An Illinois special education due process hearing officer overturned the manifestation determination and expulsion of a student who came to school under the influence of marijuana when the school failed to follow proper procedures:

A high school senior with ED and ADD was suspended for ten days and expelled for 2 years for coming to school under the

influence of marijuana. The district determined his behavior was not a manifestation of his disability and he was transferred to an alternative school. Hearing Officer Milsk found that the parents did not receive proper notice of the manifestation meeting ("MDR") because the school scheduled the meeting with the parents by phone, rather than sending written notice, and it was unclear if the parents understood the purpose and possible consequences of the MDR. The MDR team was inappropriately made up of school personnel who did not have direct involvement with the student and testimony at the due process hearing showed that team members knew little, if anything, about the student's disability. The District did not have sufficient information about the student because the team found reevaluation to be unnecessary in 2010 and 2013 and the last psychological evaluation of the student was done by his previous district. As a result, the MDR and expulsion were struck down.

Districts must give parents 10 calendar days' notice of a manifestation determination and the meeting must be held within ten school days of the decision to suspend the student for more than ten days, expel or transfer the student to an Interim Alternative Educational Setting. The IEP team must carefully

consider the student's disability and its effect on the student's misbehavior.

If you have questions regarding these cases or about student discipline, please contact one of our attorneys in Oak Brook (630.928.1200) or Flossmoor (708.799.6766).

Beware Topic Creep in Closed Session

School board members, administrators, attorneys: we have all been there. The school board has voted correctly to go into closed session to talk about a topic which is a proper one, say employment of specific personnel, the sale price of district-owned property, or collective bargaining matters. But after a few minutes, board members' comments and questions veer a little

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off-topic. A discussion of whether to employ a particular assistant principal turns into whether there should be reductions in total staff numbers at that school. A discussion of how much to ask for an old school building changes into whether the district should expand other facilities. A discussion of the cost of union bargaining proposals becomes a general discussion on district finances. Sometimes the new discussion is appropriate for closed session, but it does not fit the particular exception cited in the board's motion. This is topic creep, and the Illinois Attorney General's office has warned us against it.

In Public Access Opinion 15-003, the Attorney General reviewed a recent closed session of the Waubonsee Community College. The evidence showed that while the board had voted to go into closed session to discuss, in part, the "appointment, employment, compensation, discipline, performance, or dismissal of specific employees," the board had, in fact, primarily discussed the financial condition of the college. The AG warned that, although fiscal matters may well have future implications with respect to the employment and compensation of employees, the specific personnel exception in the Open Meetings Act does not authorize

closed session discussion of budgetary issues. Further, while that board had also cited the statutory exception for the purchase or lease of real property for public body use, the actual closed session discussion related to the college's sale of its own property. The sales price of property owned by a public body is, of course, a different exception under the Open Meetings Act. Still, the AG found a violation of the law as a result.

The circumstances which led to the AG review in this case in the first place were avoidable: a newspaper reporter had peered through a door window, where she could see projected slides on general finance matters. But never assume that your closed sessions will always avoid review. Anyone in the closed meeting might contact the Public Access Counselor.

Every participant in closed sessions, including board members and administrators, should be mindful of topic creep. If a discussion veers too far from a proper topic, the group should be reminded. If a different but still proper closed session topic comes up, do a quick return to open session for a new vote with the proper citation. However inconvenient or awkward, remember that Open Meetings Act violations are punishable as

crimes.

If you have questions about topic creep in closed session, please contact one of our attorneys in Flossmoor (708-799-6766) or Oak Brook (630-928-1200).

June School Board Meeting Agenda Reminders

As school district officials prepare the agenda for their June school board meetings, it is best to remember two routine but essential annual actions which should be on that agenda.

Prevailing Wages. The Illinois Prevailing Wage Act (820 ILCS 130/0.01 *et seq.*) establishes a policy under which school districts and other public bodies must require their construction contractors to pay their laborers, mechanics, and

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other workers no less than that level of wages which are determined to be prevailing in each district's locality or county. To effectuate this policy, this law contains several mandates relevant to school districts. (We are aware of some currently pending proposals would remove the Prevailing Wage Act mandates for school districts as part of various restrictions on property taxes, but none of these proposals has been enacted to date.) One of those mandates provides that, during the month of June each year, each public body must investigate and ascertain the local prevailing wages, publicly post or keep them available for inspection, and file them with the Illinois Department of Labor. Generally, this means that every school board must approve a resolution each June adopting the State's published wage rates for the county as its prevailing wages.

Accrued Interest. School Code Section 10-22.44 (105 ILCS 5/10-22.44) allows school boards to freely transfer interest accruing on any district fund (except Tort Immunity, IMRF, Life Safety, and Capital Improvements) to any other district fund. However, this authority is effectively limited by an Illinois State Board of Education Rule (23 Ill. Admin. Code Section 100.50), first imposed in 2008, which provides that all interest

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earnings “shall be added to and become part of principal as of June 30 of the fiscal year“ *unless* ”otherwise provided by statute or specified by board resolution adopted prior to June 30 of a fiscal year.” Thus, to the extent that a school board does not exercise its authority to transfer interest in a given year, then, to fully preserve that authority, it must pass a resolution before June 30 to designate all the interest accruing during the fiscal year as interest for the coming fiscal year as well.

We strongly recommend that every school board take both of these actions every year during their regular June board meeting. If you have questions about email access to board members, please contact one of our attorneys in Flossmoor (708-799-6766) or Oak Brook (630-928-1200).

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U.S. Department of Education Reminds All Schools to Designate a Title IX Coordinator

The U.S. Department of Education's Office for Civil Rights (OCR) enforces Federal civil rights laws that prohibit discrimination in programs receiving federal financial assistance from the Department of Education. Title IX of the Education Amendments of 1972 prohibits discrimination on the basis of sex in all federally funded education programs and requires school districts, colleges, and universities to designate at least one employee to coordinate the school's compliance with Title IX.

In its enforcement work, OCR has found that the most egregious Title IX violations occur when a school district fails to designate a Title IX coordinator or fails to properly train and support a coordinator. An effective Title IX coordinator can help to avoid these potential violations and enhance the school

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climate by promoting gender equality in education.

In an effort to help schools understand their obligations under Title IX, OCR issued a *Dear Colleague Letter* on April 24, 2015, reminding school districts, colleges, and universities to designate a Title IX coordinator. The *Letter* also outlines the factors a school should consider when designating a Title IX coordinator, the Title IX coordinator's responsibilities, and the importance of supporting Title IX coordinators through proper training and visibility.

The following is a summary of OCR's April 24, 2015 *Dear Colleague Letter on Title IX Coordinators*:

Designation of a Title IX Coordinator

At all times, a school district must have at least one person designated and *actually serving* as the Title IX coordinator. In larger school districts, OCR advises that multiple Title IX coordinators be designated, including one at each building or school and one lead coordinator with ultimate oversight responsibility.

School districts should select a coordinator who can

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independently act in this capacity, free from conflict of interest. OCR cautions that a superintendent, principal, dean of students, or athletic director may have inherent conflicts of interest.

Responsibility and Authority of a Title IX Coordinator

The Title IX coordinator is responsible for:

- Coordinating the school district's response to discrimination complaints.
- Monitoring outcomes of the complaint.
- Identifying and addressing any patterns of discrimination.
- Assessing the effects of patterns of discrimination on the school climate.

To effectively carry out this role, a coordinator must:

- Be immediately informed of all discrimination complaints.
- Have access to the information necessary to properly

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investigate and respond to the complaint.

- Have knowledge of the school district's policies and procedures on discrimination and be involved in drafting and revising those policies.

Title IX broadly prohibits retaliation against all parties to the discrimination complaint, including the coordinator. Thus, a school district cannot interfere with a coordinator's efforts to perform his or her Title IX responsibilities.

Support for Title IX Coordinator

Title IX coordinators must be visible to the school community. School districts must notify students and employees of the name, address, telephone number, and email address of the Title IX coordinator. This notification should be widely distributed and easily found on both the district's website and in other publications, including the district's "notice of nondiscrimination."

School districts must provide proper training to Title IX coordinators. This training should include information on the Title IX regulations and relevant OCR guidance as well as the

school district's policies and grievance procedures.

The full text of this *Dear Colleague Letter* can be found at: http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201504-title-ix-coordinators.pdf.

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In addition to the *Dear Colleague Letter*, the guidance package also includes supporting documents to further assist schools with Title IX compliance:

(1) A letter to Title IX coordinators which explains the significance of the position and directs coordinators to OCR resources which are available online to support their work, including the *Dear Colleague Letter* and the *Title IX Resource Guide*. This letter can be found at: http://www2.ed.gov/about/offices/list/ocr/docs/dcl-title-ix-coordinators-letter-201504.pdf.

(2) A *Title IX Resource Guide* which provides an overview of Title IX requirements and describes Title IX as it applies to specific school district actions, including athletics, sex-based harassment, treatment of pregnant and parenting

students, and discipline. The *Title IX Resource Guide* can be found at: http://www2.ed.gov/about/offices/list/ocr/docs/dcl-title-ix-coordinators-guide-201504.pdf.

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If you have questions regarding this guidance or would like to discuss your school district's Title IX compliance, please contact one of our attorneys in Oak Brook (630.928.1200) or Flossmoor (708.799.6766).

Delegation of Educational Rights Form Gives Parents

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Right to Sue

The Court of Appeals for the Seventh Circuit, the federal circuit that includes Illinois and two other states, issued an opinion, *Stanek v. St. Charles Community Unit School District #303*, on April 9, 2015, interpreting Illinois special education law regarding a parent's ability to file suit on behalf of their adult child under the Individuals with Disabilities Education Act ("IDEA").

The IDEA provides parents enforceable rights on behalf of their minor child. However, under both Illinois and federal law, those rights transfer to a disabled student when the student reaches age 18. At that time, the student can choose to delegate his or her rights to make educational decisions to a "Parent" representative by written consent through a *Delegation of Rights to Make Educational Decisions* form. (Copies of this form can be accessed on the ISBE website at http://www.isbe.net/spec-ed/pdfs/nc_deleg_34-57k.pdf). In the Delegation of Rights form, the student gives consent for the Parent Representative to make all educational decisions on the student's behalf.

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The *Stanek* case involved an 18 year old student with autism (who was 19 and attending college at the time his parents brought suit in federal court) who had completed a Delegation of Rights form to transfer his educational decision-making authority to his parents. Due to his disability, Stanek had an IEP with accommodations, including the provision of study guides as well as extended time on tests and homework. During his junior year, Stanek elected both Honors and AP level courses, but his grades began to decline when his teachers refused to provide the accommodations set forth in his IEP. Stanek's parents filed a due process complaint, which was subsequently dismissed because they had failed to follow the hearing officer's pre-hearing instructions. The parents then filed suit in federal district court, alleging violations of IDEA, Section 504 of the Rehabilitation Act, and the Americans with Disabilities Act. Specifically, the parents contended that the District denied Stanek a free appropriate public education, discriminated against him on the basis of his disability, retaliated against him on the basis of his parents' advocacy, denied the parents the right to participate in his special education process, and retaliated against the parents for asserting their rights.

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The lower court ruled in favor of the School District, dismissing all counts of the complaint. Among other reasons for dismissing the complaint, the court reasoned that, because Stanek had reached age 18, the parents' rights under the IDEA, specifically the right to file suit, transferred to him. According to the court, the right to make educational decisions, designated on the Delegation of Rights Form, only applied to decisions made while Stanek was a student at the high school, and did not include litigation.

On appeal, the Seventh Circuit Court held that Illinois law should not be interpreted so narrowly as to allow a parent only the right to make educational decisions. A parent to whom an adult child has transferred his or her educational decision making authority should also have the power to enforce their rights by litigation if necessary.

This is the first case to interpret and apply the Illinois Delegation of Rights form. School districts and cooperatives should be aware that a parent's authority to make educational decisions for their adult child pursuant to this ISBE form includes the ability to enforce those rights through litigation.

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If you have any questions about the *Stanek* case, about delegation of rights, or about the required notice to parents and students about delegation, please contact one of our attorneys in either the Flossmoor (708.799.6766) or Oak Brook (630.928.1200) office.

Reminder About Board Organizational Meetings

Pursuant to law, every school board must hold its organizational meeting no later than 28 days after the consolidated election. Further, new board members cannot be seated until after the official canvass of the results by the county election authority. The deadline for the canvass is not until 21 days after the election.

Therefore, the effective window period to hold all school board organizational meetings this year begins no earlier than

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Tuesday, April 28, and ends no later than Tuesday, May 5.

If your Board does not have a regular meeting scheduled during that week-long period, a special meeting must be called.

The only tasks which must be performed at the organizational meeting are these:

1) Swear in and seat new board members.

2) Elect board officers, including president, vice president and secretary.

3) Set the board’s regular meeting schedule.

Other business may be, but need not be, conducted at the organizational meeting.

If you have any questions about organizational meetings or the transition to new board terms, please contact one of our attorneys at 708/799-6766 (Flossmoor) or 630/928-1200 (Oak Brook).

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Email Access to Board Members Must be Posted

Last year, the General Assembly enacted an amendment to the Local Records Act (P.A. 98-930) which imposes a new posting mandate on all school districts, as well as other local governmental units, which maintain a website. **No later than April 1, 2015, every district must post to its website a mechanism for members of the public to electronically communicate with its school board members.** This posting may be by a hyperlink which is easily accessible from the district's homepage.

The mechanism for electronic communication might be a uniform single email address, the only example specified in the statute. (The single email address which a district establishes in compliance with this law would look something like this: SchoolBoard@[district's website].) The persons responsible for

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maintaining the District emails should ensure that all such messages to a uniform address are directed to the school board members. Districts may use individual email addresses for board members either in addition to, or in place of, the single address.

This new law requiring the public's access to school board members via email does not attempt to address various other issues about board member use of electronic means of communication, such as the use private email accounts for school-related communications, a majority of a quorum of board members communicating about substantive school issues outside of a board meeting, retention of and public access to records of electronic communications, etc. Please review your board policies to ensure that these issues are addressed, such as in the Illinois Association of School Board's PRESS model policy number 2:140. Keep in mind that public comments or questions, once sent to a school board member's public email account, are public records.

If you have questions about email access to board members, please contact one of our attorneys in Flossmoor (708-799-6766) or Oak Brook (630-928-1200).

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Student Privacy and Online Educational Service Providers: New Guidance

The Privacy Technical Assistance Center (PTAC) of the U.S. Department of Education (DOE) serves as a resource for schools and school districts to learn about data privacy, confidentiality, and security practices related to student-level longitudinal data systems. As we discussed at our 2014 Fall Legal Breakfast, in February 2014, PTAC issued guidance entitled *Protecting Student Privacy While Using Online Educational Services: Requirements and Best Practices* (http://ptac.ed.gov/document/protecting-student-privacy-while-using-online-educational-services). To supplement this Guidance, PTAC recently issued additional resources to help school districts evaluate Terms of Service (TOS) agreements with their online educational service providers

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and recognize how each provision of the TOS agreement relates to student privacy.

Commonly referred to as "Click-Wrap" agreements, TOS agreements require that, prior to accessing the application or service for the first time, a user must click "I agree" to accept the terms of the agreement. Once a user accepts the terms, those terms govern what information the educational service provider may collect from or about students, what can be done with the information, and with whom the information can be shared.

The Model Terms of Service document written by PTAC reviews twelve common provisions of TOS agreements and provides examples of contract language that align with best practice recommendations. This Document also lists examples of "Warning" terminology, which poorly protect student privacy and may violate the Family Educational Rights and Privacy Act or other statutes. PTAC further provides an explanation of each provision to assist educators in understanding the rationale behind each component of a TOS agreement. The *Model Terms of Service* document can be found at: http://ptac.ed.gov/document/protecting-student-privacy-while-using-online-educational-services-model-terms-service.

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PTAC also produced a 9 ½ minute training video which summarizes the student privacy issues and illustrates the process by which school districts can evaluate their TOS agreements. The video can be found at: http://ptac.ed.gov/document/protecting-student-privacy-while-using-online-educational-services-training-video.

If you have questions about this new Privacy Technical Assistance Center document or would like to discuss your school district's Terms of Service agreements, please contact one of our attorneys in Flossmoor (708-799-6766) or Oak Brook (630-928-1200). .

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