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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



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

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



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

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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



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.

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.

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



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).

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



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).



Posted 3/16/15

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



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>.



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).

Published 3/4/15

Same Sex Spouses Now Covered



by FMLA

By Final Rule published February 25, 2015, and effective March 27, 2015, the Family and Medical Leave Act of 1993 (“FMLA”) definition of spouse is amended to include persons in legally married same-sex couples. The change was made to respond to the U.S. Supreme Court’s decision that the Defense of Marriage Act is unconstitutional, and to make the FMLA consistent with many state laws, including Illinois’ marriage and civil union laws.

The amendment allows the following rights for eligible employees:

1. To take leave to care for a same-sex spouse with a serious health condition;
2. To take qualifying exigency leave due to a same-sex spouse’s covered military service;
3. To take military caregiver leave for a same-sex spouse
4. To take leave to care for a stepchild (child of



employee's same-sex spouse); and

5. To take leave to care for a stepparent who is a same-sex spouse of the employee's parent.

The Final Rule, 29 CFR 825.102, can be found at: <http://www.dol.gov/whd/fmla/spouse/>

If you have questions about this Final Rule or about the FMLA, please contact one of our attorneys in Flossmoor (708-799-6766) or Oak Brook (630-928-1200).

Published 2/25/15

Supreme Court on Tax Objections: No Harm, No Foul,

Part 2

In October, we reported on the Illinois Appellate Court decision in *G.I.S. Venture v. Novak* (“*G.I.S. Venture II*”) concerning school district financial practices. While noting that the decision was still subject to possible Illinois Supreme Court review, we observed that the biggest takeaway on the opinion is that taxpayers cannot obtain monetary relief simply by discovering some procedural error in district fund transfers; rather, the objectors must show how such an error actually resulted in higher property taxes. Recently, the Illinois Supreme Court has twice demonstrated its support for this important principle.

On January 28, the Supreme Court declined to review the Appellate Court opinion in *G.I.S. Venture II*. That action leaves the Appellate Court’s *G.I.S. Venture II* opinion as binding precedent for the circuit courts. Specifically, even though abatements of the working cash fund prior to 2010 should have been transferred first only to the educational fund, where an abatement transfer had gone directly to the operations and maintenance fund, no tax refunds are now due without a showing

that a transfer to the correct fund would have produced an excess accumulation of moneys in that fund.

A few days earlier, on January 23, the Supreme Court issued an important opinion of its own in *Lutkauskas v. Ricker*. In that case, what the school district had done wrong was to make inter-fund transfers without the proper formality of a board resolution. Based on this error, certain taxpayers had filed suit “on behalf of” the school district itself, demanding that the school officials responsible for the error be fired, pay criminal fines, and reimburse the district in the amount of the erroneous transfers. They based their claims largely on Section 20-6 of the School Code. That section imposes personal liability upon any public school official who intentionally violates the provisions of Article 20 (the working cash fund article) for the amount of “any sum unlawfully diverted”. The Court found that this last phrase does not mean just any procedurally flawed transfer, but a use of the funds for improper purposes which results in an actual loss to the district. Since the taxpayers who had sued on behalf of the district could not show that the district had lost any money, they had no legal basis to ask for those school officials to

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“reimburse” the district from the officials’ personal funds. Such payments would, in fact, have resulted in an impermissible windfall for the district because the district would have been reimbursed for money which it had spent on legitimate purposes.

It should be emphasized that neither the *Lutkauskas* decision nor the *G.I.S. Venture* decision condones procedural errors in the management of working cash funds, nor do they immunize school districts from corrective judicial remedies. But the form of monetary relief sought in each case was denied where there was, in fact, no monetary injury.

Should you have any questions, please contact one of our attorneys at our Oak Brook office at 630-928-1200 or our Flossmoor Office at 708-799-6766.

Published 2/4/15

ENGLISH LEARNER STUDENTS: NEW FEDERAL GUIDANCE

On January 7, 2015, the U.S. Department of Education's Office for Civil Rights (OCR) and the U.S. Department of Justice Civil Rights Division (DOJ) issued a joint Dear Colleague Letter regarding English Learner (EL) Students and Limited English Proficient (LEP) Parents to assist schools in meeting their legal obligation to ensure that these students can participate meaningfully and equally in educational programs and services. The Guidance discusses compliance issues that frequently arise in OCR and DOJ investigations and offers suggestions for schools to provide EL students and LEP parents equal access to information and curricular and extracurricular school programs.

The Guidance Package includes three resources:

- (1) A fact sheet in English and other languages about schools' obligations under federal law to ensure that EL students can participate meaningfully and equally in school;
- (2) A fact sheet in English and other languages about schools'

obligations under federal law to communicate information to LEP parents in a language they can understand; and

(3) A toolkit to help school districts identify EL students, prepared by the DOE's Office of English Language Acquisition.

The Guidance Package is available on the DOE's website at: www2.ed.gov/about/offices/list/ocr/letters/colleague-el-201501.pdf

Summary of OCR/DOJ's January 7, 2015 *Dear Colleague Letter on English Learner Students and Limited English Proficient Parents*

The Guidance discusses the following school district obligations to EL students for which the OCR and DOJ frequently find noncompliance:

- identify EL students in a timely, valid and reliable manner;
- offer all EL students an educationally sound language assistance program;
- provide qualified staff and sufficient resources for

- instructing EL students;
- ensure EL students have equitable access to curricular and extracurricular school programs and activities
- avoid unnecessary segregation of EL students from other students;
- monitor students' progress in learning English and doing grade-level classwork;
- evaluate students for special education and provide a free appropriate public education under IDEA and Section 504 to EL students with disabilities;
- remedy any academic deficits EL students incurred while in a language assistance program;
- move students out of language assistance programs when they are proficient in English and monitor those students to ensure they were not prematurely removed;
- evaluate the effectiveness of EL programs; and
- provide LEP parents with information about school programs, services, and activities in a language they understand.

For each of the obligations listed above, The *Dear Colleague Letter* provides various approaches that school districts may take to satisfy their civil rights obligations to



EL students, gives examples, and explains factors the OCR and DOJ will consider when investigating complaints. The Guidance also discusses how schools can implement Title III grants and subgrants consistent with these obligations.

We recommend that school districts and special education joint agreements review the Guidance Package and consider whether a comprehensive review of English Learner policies and practices is necessary.

If you have questions about these new Department of Education publications or would like to discuss your school district or joint agreement policies and practices regarding EL students or LEP parents in light of the new Guidance Package, please contact one of our attorneys in Flossmoor (708-799-6766) or Oakbrook (630-928-1200).

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FIRM CHANGE

Dear Friends:

We would like to announce some major changes taking place at our law firm.

Our relationship with 3 of our attorneys – Alan Sraga, Teri Engler, and Cynthia Baasten – has ended. We wish them all well in their future plans. If you have any questions about how this change affects your representation in any matter, please contact one of our attorneys below as soon as possible. You always have the right to select which attorneys will represent you in any matter. Our firm, of course, stands ready, willing, and able to continue to provide you with legal services in any and all matters affecting you.

Due to this change and effective immediately, we have changed the name of the firm from “Sraga Hauser, LLC” to “Hauser Izzo, LLC”. Please note that this is merely a name change and will not require any affirmative action should you choose to continue to use our firm’s services. Our new website address is also changing to www.hauserizzo.com and all of our attorney email addresses will reflect this change. The mailing addresses and phone numbers of both our Oak Brook and Flossmoor offices will remain the same.

Lastly, we are pleased to announce that Courtney Stillman is now a full member/partner

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of the firm. Courtney's vast experience in special education and student services issues, as well as her experience as a local school board president, will continue to be a great asset to our firm as we continue to provide a high quality and broad scope of legal services for our school district and other local governmental clients.

We hope none of these changes will greatly inconvenience you. We value your continued trust in us and look forward to providing you with high quality legal services.

Best wishes for a happy and healthy holiday season.

HAUSER IZZO, LLC

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Christopher L. Petrarca

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SCHOOL BOARD CANDIDATE FILING LOCATIONS

The April 7, 2015, consolidated election will be the first one for which school board candidates must file their petitions with county election officials instead of with the local school district office. Provided herein are those filing locations in various counties. The filing period begins on December 15 and ends on December 22, 2014.

COOK COUNTY

To address the expected volume of school board candidates, the Cook County Clerk has added a few temporary filing locations as follows:

Monday, December 15: 8 a.m. to 5 p.m.

Cook County Clerk's Office

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69 W. Washington, Pedway
Chicago, IL 60602

Arlington Racecourse
2000 W. Euclid Avenue, Ditka's Hall of Fame Room
Arlington Heights, IL 60005

Hawthorne Distribution Center
2222 S. Kenneth Avenue, Blue awning entrance
Chicago, IL 60623 (on the border with Cicero)

Tinley Park Convention Center
18451 Convention Center Drive, West Exhibit Hall
Tinley Park, IL 60477

Tuesday, December 16 – Friday, December 19: 8 a.m. to 6 p.m.
Saturday, December 20: 9 a.m. to Noon
Monday, December 22: 8 a.m. to 5 p.m.

Cook County Clerk's Office
69 W. Washington, Fifth Floor
Chicago, IL 60602

Hawthorne Distribution Center

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2222 S. Kenneth Avenue, Blue awning entrance
Chicago, IL 60623 (on the border with Cicero)

**Elsewhere, candidates must file at a single location in each
county as follows:**

BOONE COUNTY

Boone County Clerk's Office
1212 Logan Avenue, Suite 103
Belvidere, IL 61008

DEKALB COUNTY

DeKalb County Clerk's Office
Administration Building – 2nd Floor
110 E. Sycamore Street
Sycamore, IL 60178

DUPAGE COUNTY

DuPage County Election Commission
Jack T. Knuepfer Administration Building
421 N. County Farm Road (1st Floor, North end)
Wheaton, IL 60187

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IROQUOIS COUNTY

Iroquois County Clerk's Office
1001 E. Grant Street, Room 104
Watseka, IL 60990

KANE COUNTY

Kane County Clerk's Office
719 S. Batavia Avenue, Bldg. B
Geneva, IL 60134

KANKAKEE COUNTY

Kankakee County Clerk's Office
Kankakee County Administration Building
189 E. Court Street
Kankakee, IL 60901

LAKE COUNTY

Lake County Clerk, Elections Department
18 N. County Street, Room 101
Waukegan, IL 60085

LASALLE COUNTY

LaSalle County Clerk's Office

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707 E. Etna Road
Ottawa, IL 61350

MCHENRY COUNTY

McHenry County Clerk's Office
County Administration Building
667 Ware Road, Room 107
Woodstock, IL 60098

OGLE COUNTY

Ogle County Clerk's Office
Ogle County Courthouse
105 S. 5th Street, Suite 104
Oregon, IL 61061

WILL COUNTY

Will County Clerk's Office
302 N. Chicago Street (1st Floor)
Joliet, IL 60432

WINNEBAGO COUNTY

Winnebago County Clerk's Office
404 Elm Street, Suite 104

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Should you have any questions, please contact one of our attorneys at our Flossmoor Office at 708-799-6766.