

2011 Fall Bootstrap Conference

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Legal Issues Update

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What are the present issues?

Voting Redistricting

- ◆ How to stay out of it, but stay in control of it?
- ◆ When is redistricting required?
 - ◆ One person, one vote
 - ◆ Section 2 of the Voting Rights Act
- ◆ Role of the Board
- ◆ Role of the County Commission/City Council
- ◆ Role of the Legislature
- ◆ Section 5 of the Voting Rights Act and Preclearance

OCR and Section 504

- ◆ Status of State Complaint
- ◆ Anticipated Outcome: A Model Procedure that Complies with Minimum Requirements of Regulations
- ◆ Issues of Concern:
 - ◆ What Triggers a Hearing: identification, evaluation and placement
 - ◆ Avoiding an IDEA-type hearing
 - ◆ Don't give IDEA parents more bites at the apple

OCR and Bullying

- ◆ Know what the Dear Colleague letters say?
- ◆ Know what the state statute and your policy require?
- ◆ Everyone aware but someone in charge
- ◆ Be aware of dangerous cases
 - ◆ Cases that you know are serious
 - ◆ The Difficult and Litigious Parent
 - ◆ The Case Made for Cable TV

Providing Health Insurance and Other Benefits

- ◆ There is no requirement in the law that health insurance be provided to classified employees
- ◆ But what about the politics and practicalities?
- ◆ If no benefits, will you get employees and what employees will you get?
- ◆ Contracting for services

Garnishments – Unlicensed Practice of Law

- ◆ UPL Advisory Opinion No. 2010-1 – “A non-lawyer who answers for a garnishee other than himself in a legal proceeding pending with a Georgia court of record is engaged in the unlicensed practice of law”
- ◆ “the inescapable conclusion is that a garnishment action is a legal proceeding.”
- ◆ “[I]n this state, only a licensed attorney is authorized to represent a corporation in a proceeding in a court of record, including any proceeding that may be transferred to a court of record from a court not of record.”

So, What Does This Mean for School Districts

- ◆ Beginning September 12, 2011, answers to garnishments must be filed by a lawyer, licensed to practice law in the State of Georgia.
- ◆ Districts will need to build in “logistical time” for legal counsel to review documentation, sign the answer and return the original to the school district for filing.
 - ◆ Don't forget a copy of answer must be served on the garnishing attorney
- ◆ Does not apply to: bankruptcy orders, IRS levies, child support orders, etc. where the only responsibility of the school district is to remit a check to a governmental entity

Can We Make the Employee Pay?

- ◆ O.C.G.A. § 18-4-97 provides that the school district would be entitled to “actual reasonable expenses, including attorney's fees” in filing an answer to a garnishment.
- ◆ The expenses are to be “paid by the party upon whom the cost is cast.”
- ◆ The school district may deduct \$25 or 10% of the amount paid into the court, whichever is greater,” – not to exceed \$50
- ◆ However, if the school district deducts its actual, reasonable expenses, but “the costs are later cast upon the district, the district shall forthwith refund” the funds to the employee

What are the future issues?

Georgia Supreme Court Decision

Gwinnett Co. Sch. Dist., et al v. Cox, et al

In the Supreme Court of Georgia

Decided: May 16, 2011

S10A1773. GWINNETT COUNTY SCHOOL DIST. et al. v. COX et al.

HUNSTEIN, Chief Justice.

This appeal involves a constitutional challenge to the 2008 Georgia Charter Schools Commission Act, OCGA § 20-2-2081 et seq. (the "Act"). Appellants/plaintiffs are local school systems¹ whose 2009 and 2010 complaints were consolidated by the trial court; appellees/defendants are former State School Superintendent Kathy Cox (in her official capacity), the Georgia Charter Schools Commission, its chairperson and members (in their official capacities), the Georgia Department of Education, and the first three schools chartered under the Act.² Appellants contend, inter alia, that the Act is unconstitutional because it violates the "special schools" provision in the Georgia Constitution of 1983. See Art. VIII, Sec. V, Par. VII (a). Because our constitution embodies the

¹Gwinnett County School District; the Bulloch and Candler County School Districts; the DeKalb County School District and the Atlanta Independent School System; and the Griffin-Spalding County and Henry County School Districts.

²Ivy Preparatory Academy, Charter Conservatory for Liberal Arts and Technology and Heron Bay Academy.

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Technology

By providing for LBOEs to have exclusive control over general K-12 schools, our constitutions, past and present, have limited governmental authority over the public education of Georgia's children to that level of government closest and most responsive to the taxpayers and parents of the children being educated.

“Authority is granted to county and area boards of education to establish and maintain public schools within their limits.” Art. 8, Sect. 5, Para. 1

- ◆ **“Each school system shall be under the management and control of a board of education, the members of which shall be elected as provided by law.” Art. 8, Sect. 5, Para. 2**

**“THE PROVISION OF AN
ADEQUATE PUBLIC EDUCATION
FOR THE CITIZENS SHALL BE
THE PRIMARY OBLIGATION OF
THE STATE OF GEORGIA.”**

Art. 8, Sect. 1, Para. 1

The Challenge of 2012

- ◆ Constitutional Amendment to broaden the definition of special schools
- ◆ Constitutional Amendment to reframe the roles of the State and Local Boards
- ◆ State Races for Members of the General Assembly and Judges on the Supreme Court
- ◆ Local Races for Boards of Education

Redefining How the Board Operates

- ◆ What is a meeting of the Board?
- ◆ AG's Proposed Additions to the Definition
- ◆ (iii) The communications between a quorum of the members of the governing body of an agency or a quorum of the members of a committee appointed by the governing body of an agency if such communications are for the purpose of discussing or determining the vote or other resolution of official business or other matters that the communicating members anticipate will be included on the agenda of a future meeting of their governing body or committee.

Meeting shall not include:

- ◆ The gathering of a quorum ... for the purpose of making inspections of physical facilities or property under the jurisdiction of such agency at which no other official business of the agency is to be discussed or official action is to be taken;
- ◆ The gathering of a quorum ... for the purpose of attending statewide, multijurisdictional, or regional meetings to participate in seminars or courses of training on matters related to the purpose of the agency or to receive or discuss information on matters related to the purpose of the agency at which no official action is to be taken;
- ◆ The gathering of a quorum ... for the purpose of meeting with members of the legislative or executive branches of the state or federal government at which no official action is to be taken;

Meeting shall not include:

- ◆ The gathering of a quorum of the members of a governing body of an agency for the purpose of traveling to a meeting or gathering as otherwise authorized by this subsection so long as no official business, policy, or public matter within the subject matter jurisdiction of the agency is formulated, presented, discussed, or voted upon;
- ◆ The gathering of a quorum ...at social, ceremonial, civic, or religious events so long as no official business, policy, or public matter within the subject matter jurisdiction of the agency is formulated, presented, discussed, or voted upon; or
- ◆ The gathering of more than two but less than a quorum of the members of the governing body of an agency or persons appointed by those members.

This subparagraph's exclusion of divisions (i)-(vi) from the definition of "Meeting" shall not apply if it is shown that a purpose of the gathering is to evade or avoid the quorum requirements for conducting a meeting while discussing or conducting official business.

Other possible issues from AG's proposal:

- ◆ Minutes for executive session
- ◆ Executive session for the disposal of real estate
- ◆ Modifying the personnel exception for executive session
- ◆ Mediations involving the board
- ◆ Running an executive session

Open Records Act

- ◆ Proposed New Act from AG Attempting Clarification Throughout
- ◆ Can require requests in writing
- ◆ Not to be used during litigation
- ◆ Procedure to object when process turns to harassment

The continued struggle with immigration issues:

- ◆ Plyler v. Doe, what it says and what it doesn't
- ◆ HB 87 – No effect on students, little effect on school districts
- ◆ HB 296 and collecting data on number and cost of “illegal aliens and undocumented students”
- ◆ The Alabama Statute and Lawsuit
- ◆ The Eleventh Circuit Intervenes

