

Georgia School Superintendents Association

Fall Bootstrap Conference

Legal Issues Update

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Issues from the Courts



Voting Rights Act

- Shelby County v. Holder – section 5 of the VRA
- “Current burdens must be justified by current needs ... The coverage formula met that test in 1965, but no longer does so.”
- Preclearance no longer required
- Does not overrule the premise of section 5, nor does it overrule section 2
- Effect on SPLOST/Bond elections
- Effect on Reapportionment in 2020³

Employment Retaliation

- USSC – University of Texas Southwestern Medical Center v. Nassau
- In retaliation case, unlike discrimination case, plaintiff must prove that adverse act would not have occurred but for the retaliation
- Harder for plaintiff to win, easier for school district to get out on summary judgment
- Documentation often the key

Employment Retaliation

- *Pereda v. Brookdale Senior Living Communities*
– 11th Circuit, FMLA
- The FMLA protects an employee from retaliation for requesting leave in the future, even though at the time of her request and termination, she was not eligible or entitled to FMLA leave because she had not worked the required number of hours and not yet given birth.
- The Court ruled that the employee⁵ engaged in

Bullying/Harassment

“We agree with the district court that on hindsight the Defendants should have done more to address disability harassment, but that Plaintiffs have failed to meet the high bar of deliberate indifference and have failed to demonstrate that Defendants’ response was clearly unreasonable.”

Long v. Murray Cnty. Sch. Dist., 2012 WL 2277836 (N.D.Ga. 2012)

Issues from the Federal Government

Special Education Students

“Whether or not the bullying is related to the student's disability, any bullying of a student with a disability that results in the student not receiving meaningful educational benefit constitutes a denial of FAPE under the IDEA that must be remedied," according to *Dear Colleague Letter, 113 LRP 33753* (OSERS/OSEP 08/20/13).

OCR/DOJ Activity

- Bullying/Harassment Remains Priority
- LGBT Harassment Has Special Emphasis
- Resolution Agreements are Becoming More Onerous
- DOJ Remains Active in Amicus Briefs
- Not Backing Off of More Liberal Standard

Complying with the ACA

- Next Major Deadline is January 1, 2015
- But, does this really mean open enrollment 2014?
- Substitutes – the 30 hour rule?
- Can we pay employees to go elsewhere for insurance?
- Beware the FLSA

ISSUES LEFT OVER FROM THE GENERAL ASSEMBLY



HB 242: Juvenile Code Rewrite

- Takes effect Jan. 1, 2014
- Revises Title 15, Chapter 15 in its entirety-
new numbers assigned to many familiar code sections
- Provides new definitions of many key terms
- Likely to result in:
 - Increased pressure on school systems to document attempts to help students before referrals and to collaborate with other agencies in developing plans for juveniles

HB 242 cont'd

O.C.G.A. § 15-11-415 (a) Restraints on the freedom of a child prior to adjudication shall be imposed only when there is probable cause to believe that a child committed the act of which he or she is accused, there is **clear and convincing evidence** that such child's freedom should be restrained, that no less restrictive alternatives will suffice...

“Unruly” child now referred to as “in¹³ need of

HB 242 cont'd

Children in Need of Services

- Includes children who have committed an act that would not be against the law but for the fact that they are children, such as skipping school, running away from home, and violating curfew
- **If school brings complaint, it must state that it has attempted to address the issue at the school level before filing the complaint with the juvenile court, including addressing any disabilities or suspected disabilities¹⁴ that may**

HB 244-Evaluation

- No later than 14-15, each local system and charter school shall implement evaluation system adopted by SBOE for teachers of record, assistant principals, and principals
- Written notice required in “advance of the school year of the measures and indicators to be used”
- Must address well prior to contract issuance
- Don't get so hung up on new system₁₅ that principals forget to document problems

SB 160 - Immigration Reporting (Again!)

- Attempts to clarify HB 87 passed in 2011
- What needed clarifying?
 - What is a benefit covered?
 - What is a contract and when is it a benefit?
 - How does eVerify coordinate with SAVE?

eVerify

- O.C.G.A. § 13-10-90: Physical performance of services redefined:
- “‘Physical performance of services’ means ~~the building, altering, repairing, improving, or demolishing of any public structure or building or other public improvements of any kind to public real property within this state, including the construction, reconstruction, or maintenance of all or part of a public road; or any other performance of labor or~~ services for

SAVE

O.C.G.A. § 36-50-1

- “Public benefit” means a federal ~~benefit as defined in 8 U.S.C. Section 1611~~, a state, or local benefit ~~as defined in 8 U.S.C. Section 1621~~, a ~~benefit identified as a public benefit by the Attorney General of Georgia~~, or a public benefit which shall include the following:”
[some new]
- “SAVE program” means the federal Systematic Alien Verification for Entitlements program operated by the United States Department of

SB 160: New Code Section 50-36-4

- Public employers & agencies subject to these code sections must make annual immigration report to Dept of Audits:
 - O.C.G.A. § 13-10-91 (contractors)
 - O.C.G.A. § 36-60-6 (business license applicants)
 - O.C.G.A. § 50-36-1 (public benefits applicants)
- DoA must create immigration compliance reporting system, annually notify those subject to reporting, and provide submission instructions and technical support

Compliance with DOA requirements

- See memo from DOA to Superintendents of 8/9/13
- Although School Districts do not likely provide public benefits for which SAVE reporting is required, it will have to so indicate in DOA system
- No federal registration if no benefits
- Make good faith efforts and be on the look out for further guidance

Charter Systems and Schools

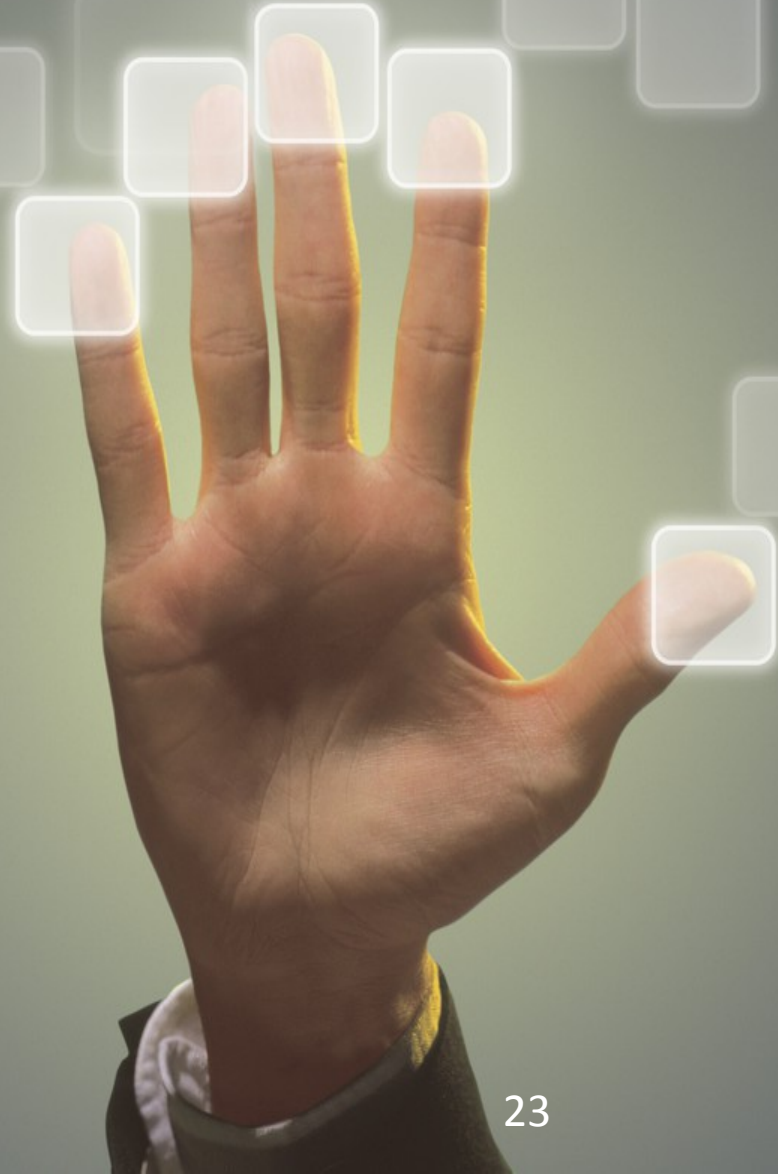
- *Atlanta Independent School System v. Atlanta Neighborhood Charter School* – Ga SCt
- Funding formula in the statute for start up charters strictly construed and enforced
- Know what you are agreeing to and exactly what it is going to mean
- How do you know when the rules keep changing, even during the charter term?

Charter Systems and Governance

O.C.G.A. § 20-2-2063(d)

The State Board of Education shall establish rules, regulations, policies, and procedures to provide for a charter petition from a local school system to establish a charter system. Such rules, regulations, policies, and procedures shall require that a charter petition and the charter contain an explanation of the structure, rights, and responsibilities of the principal, governing council, and local board of education of the system charter school, with an objective of maximizing school level governance and the involvement of parents, teachers, and community members in such governance.

And from the World of Technology



Getting Lost in the Matrix

- Understanding the Purpose and Requirements of the State Discipline Matrix Reporting System
- Do We Rewrite our Code of Conduct?
- Don't let the Data Reporting Dictate the Discipline
- Why Does It Matter?
 - Think CCRPI
 - Think PR

Records stored in “the cloud”

- FERPA does not prohibit the use of cloud computing solutions for the purpose of hosting education records;
- FERPA requires States to use reasonable methods to ensure the security of their IT solutions.
- Security plans must adequately protect

What exactly is direct control?

It is unclear if a district will be in “direct control” if it has retained a company to host this sort of storage for records. However, it is clear that if districts do outsource information technology services, it should be clear in their service agreements or contracts that the outside party may not use or allow access to personally identifiable information from education records, except in accordance with the requirements established by the educational agency or

Practical Concerns and Advice

- Privacy concerns
- Security concerns
- Access concerns
- COPA
- It is bigger than you think, especially with BYOT and click through contracts

Questions

