

Georgia School Superintendents Association

Spring Bootstrap Conference

Legal Issues Update

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Phillip L. Hartley

Harben, Hartley & Hawkins, LLP

LEGISLATIVE ISSUES FROM THE GENERAL ASSEMBLY



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
- Must use “multiple, rigorous and transparent measures,”
- Written notice required in “advance of the school year of the measures and indicators to be used”
- “growth in student achievement shall count at least 50%” - state assessments, SLOs, multiple additional measures
- Statute mandates number of meetings, notice of annual evaluation within 5 days, right to request conference with timelines

HB 244 – Evaluation

- Every teacher of record, principal, A.P. to be rated:
 - Exemplary
 - Proficient
 - Needs Development
 - Ineffective
- “Ineffective” rating is evidence of incompetency under Fair Dismissal Act

HB 244-Evaluation cont'd

Except as otherwise provided in Code Section 20-2-948, local school systems shall base decisions regarding retention, promotion, compensation, dismissals, and other staffing decisions, including transfers, placements, and preferences in the event of reductions in force, primarily on the results of the evaluations developed as required by this subsection.

HB 244-Other Changes

- O.C.G.A. § 20-2-211: Contract issuance deadline is May 15 permanently.
- O.C.G.A. § 20-2-212 on salary: ...a teacher shall not receive credit for any year of experience in which the teacher received an unsatisfactory or ineffective annual summative performance evaluation or for the second year in which a teacher receives two consecutive annual summative needs development ratings pursuant to Code Section 20-2-210.

HB 244-Other Changes

O.C.G.A. § 20-2-200, on PSC certification

- (c) An individual who has received any combination of two unsatisfactory, ineffective, or needs development annual summative performance evaluations in the previous five-year period pursuant to Code Section 20-2-210 shall not be entitled to a renewable certificate prior to demonstrating that such performance deficiency has been satisfactorily addressed, but such individual may apply to the commission for a nonrenewable certificate, as defined by the commission. Each local school system and charter school shall report all unsatisfactory, ineffective, and needs development ratings of all performance evaluations as provided in Code Section 20-2-210 for certificated personnel in their employ in a manner, format, and frequency determined by the commission.

Charter School Law

O.C.G.A. § 20-2-2065

(a) Except as provided in this article or in a charter, a charter school, or for charter systems, each school within the system, shall not be subject to the provisions of this title or any state or local rule, regulation, policy, or procedure relating to schools within an applicable school system regardless of whether such rule, regulation, policy, or procedure is established by the local board, the state board, or the Department of Education;

So What Can Be Waived in Charter Schools or Systems?

- Certification (replaced with what?)
- Contracts for teachers (at will employment?)
- State salary scale (separate scale or negotiated)
- Benefits to extent statutory; ex. sick leave
- Nonrenewal Rights and Tenure

What Can't Be Waived in Charter Schools Under O.C.G.A § 20-2-2065?

(b) In determining whether to approve a charter petition or renew an existing charter, the local board and state board shall ensure that a charter school, or for charter systems, each school within the system, shall be:

(5) Subject to all federal, state, and local rules, regulations, court orders, and statutes relating to civil rights; insurance; the protection of the physical health and safety of school students, employees, and visitors; conflicting interest transactions; and the prevention of unlawful conduct;

HB 284-Return to Play Act

- Each LBOE and governing body of charter school must adopt concussion management policy with specified components
- Before each athletic season, provide information to parents about nature and risk
- Athlete with symptoms must be removed from play and evaluated by health care provider; cannot return until cleared by health care provider for “full or graduated return to play”

HB 337: Epi-pens Again

- Schools authorized to “acquire and stock a supply of auto-injectable epinephrine” with prescription
- Schools may designate trained “employee or agent ” to be responsible for storage, maintenance, and distribution
- Employee can administer or give to student for self-administration, even without student prescription
- School personnel who in good faith administer or choose not to administer are immune from civil liability for any act or omission to act, unless misconduct is willful or wanton.

How Not to Waive Official Immunity?

- Avoid mandates in policy and procedures
- Provide discretion to those in charge
- Use the right words

HB 382: Recreational Joint-Use Agreements

- Written agreement between the governing authority of a school and a private entity authorizing such entity to access the facilities of a school under the governing authority's jurisdiction for the purposes of conducting or engaging in recreational, physical, or performing arts activity.
- Agreement must include terms and conditions for use, hold-harmless provision, allow governing authority to revoke at any time, \$1 million in liability insurance, and citation to code section.

HB 382 cont'd

- Governing authority shall not be deemed to have waived its sovereign immunity as to damages arising out of joint-use agreement.
- O.C.G.A. § 51-12-33 shall not apply to claims of civil damages arising from use of school's facilities pursuant to agreement.
- Applies to causes of action on or after July 1, 2013.

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?

SB 160

- Regarding O.C.G.A. § 13-10-90, et seq: It is the intent of the General Assembly that all public employers and contractors at every tier and level use the federal work authorization program on all projects, jobs, and work resulting from any bid or contract and that every public employer and contractor working for a public employer take all possible steps to ensure that a legal and eligible workforce is utilized in accordance with federal immigration and employment.

SB 160 cont'd

- 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 a public employer within this state under a contract or other using a bidding process or by contract wherein the labor or services exceed \$2,499.99”~~:[except for contracts with individuals licensed under Title 26 or Title 43 or by State Bar]

S.B. 160 cont'd

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 Homeland Security or a successor program designated by the United States Department of Homeland Security for the same purpose.

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.

State Cases to Be Aware Of

- Constitutional Challenge to Compulsory Attendance Law
- Fulton Superior Court reverses expulsion for failure to have tribunal within 10 days of student going to jail, rejects SBOE mootness argument
- Federal court certifies constitutional challenge to Board removal statute from SB 84

MEANWHILE IN WASHINGTON...

EEOC

More diligent in investigations

More findings of discrimination and retaliation

Are they filing more lawsuits?

DOJ

More parallel investigations with OCR/EEOC

GNETS programs in Georgia

Legislation by Amicus Briefs

USDOE/OCR

Bullying/Harassment

More, longer, diligent investigations

Legislation by Regulation

Legislation by Waivers

Legislation by Dear Colleague Letters

Questions

