

# Georgia School Superintendents Association

## Spring Bootstrap Conference

### Legal Issues Update

April 17, 2014

Phillip L. Hartley

Harben, Hartley & Hawkins, LLP

# ISSUES PENDING IN THE GENERAL ASSEMBLY



# Guns/Weapons in the Schools

- HB 60 and designating a volunteer to “carry”
- No longer limited to administrator, now “approved personnel” or “a person”
- Decision rests with local board of education, no liability either way
- Training required, costs paid by BOE
- Approval of weapons and security of weapons
- Non-criminal, non-mentally ill, license holder

# Attack on Zero Tolerance

- HB 826 – would change definition of weapon for purposes of felony statute to remove long list and focus just on guns and explosives
- Would allow a “person” to be authorized to carry without training and other provisions
- Would change mandatory reporting requirements for educators
- Would require board policy for all weapons
- Allows more flexibility, even by superintendents or administrators, to modify one year mandated expulsion for students with guns in federal law

# What We Do Not Know?

- **HB 60 definition of weapon in 16-11-127.1**

“Weapon” means and includes any pistol, revolver, or any weapon designed or intended to propel a missile of any kind, or any dirk, bowie knife, switchblade knife, ballistic knife, any other knife having a blade of two or more inches, straight-edge razor, razor blade, spring stick, knuckles, whether made from metal, thermoplastic, wood, or other similar material, blackjack, any bat, club, or other bludgeon-type weapon, or any flailing instrument consisting of two or more rigid parts connected in such a manner as to allow them to swing freely, which may be known as a nun chahka, nun chuck, nunchaku, shuriken, or fighting chain, or any disc, of whatever configuration, having at least two points or pointed blades which is designed to be thrown or propelled and which may be known as a throwing star or oriental dart, or any weapon of like kind, and any stun gun or taser as defined in subsection (a) of Code Section 16-11-106. This paragraph excludes any of these instruments used for classroom work authorized by the teacher.

- **HB 826 definition of weapon in 16-11-127.1**

“Firearm” means a handgun, rifle, shotgun, or other weapon which will or can be converted to expel a projectile by the action of an explosive or electrical charge.

# What You Need to Do...

- Be prepared to discuss with your school councils, local governing boards and local boards of education issues as to authorizing someone to carry
- Pay attention to changes that will impact
  - Training of staff and SROs
  - Protocols with local law enforcement and reporting requirements
  - Codes of Conduct and student handbooks and signs on the front door

# Accountability and School Governance

- Apparently no additional options before July 1, 2015?
- Knowing what it means to be IE2, charter system and status quo when it keeps changing
- What Does it Mean For the District and for Each School
- Leadership – working together becomes critical

# Issues from the Courts



# ***DAY V. FLOYD COUNTY BOE*** **STATE BOARD OF EDUCATION**

“In this case, the Local Board is a charter system. The charter system agreement between the Local Board and State Board requires the Local Board to utilize a Governing Council designated as LSGT. The agreement provides that the LSGT shall have decision-making authority in personnel decisions and financial decisions. ... Furthermore, this Board finds, that based upon the evidence in the record, the record shows that the Local Board did not follow the charter system agreement. This Board finds the Local Board’s failure to do so constitutes its actions as being arbitrary and capricious because the decision on who to RIF may have ended in different results if the proper procedures had been followed.”

# *Day v. Floyd County BOE*

## State Board of Education

“First, O.C.G.A. § 20-2-2065(b)(5) provides that charter systems are ‘[s]ubject to all federal, state, and local rules, regulations, court orders, and statutes relating to civil rights.’ The Fair Dismissal Act provides due process rights to certain school employees, which is a civil right. Thus, O.C.G.A. § 20-2-2065(a) cannot be read so broadly as to violate the due process rights of school employees who are entitled to due process.”

# ***COLON V. FULTON COUNTY***

## **GEORGIA SUPREME COURT**

“We agree with the Court of Appeals that O.C.G.A. § 45-1-4 sets forth a specific waiver of the County’s sovereign immunity and the extent of such waiver.”

“In this regard, the Court of Appeals erred by inappropriately grafting the provisions of subsection (b) onto subsection (d) of O.C.G.A. § 45-1-4, and it compounded this error by then defining the types of ‘state programs or operations’ that would allegedly have to be involved in order for a public employee to present a viable claim for retaliation under subsection (d).”

# What You Need to Do ...

- Be aware of those who raise whistleblower claims
- Investigate allegations
- Documentation of Issues and Timing

## ***FULTON COUNTY BOARD OF EDUCATION V. DRH*** **GEORGIA COURT OF APPEALS**

“We agree with the Local Board that the appeal was moot to the extent that the original term of D.R.H.’s expulsion had expired. D.R.H. had served his expulsion, and therefore the term of his expulsion did not involve an existing fact or right. We do not agree, however, that the appeal was moot as to the Local Board’s determination of misconduct, and that determination remained on D.R.H.’s school record. It cannot reasonably be said that a determination of misconduct on a student’s school record carries no consequences, particularly as it concerns future school discipline or the ability of a student to obtain employment or enter an institution of higher learning later in life.”

***FULTON COUNTY BOARD OF EDUCATION V. DRH***  
**GEORGIA COURT OF APPEALS**

“This case involves two distinct entities: the juvenile justice system ... and the local school board. And the authority of each entity to act is governed by statute, and is independent of the other, ... We found no authority permitting local boards of education or school officials to interfere with decisions made by juvenile justice officials as to the placement of a child alleged to have committed a delinquent act.”

# Issues from the State Board

# ***M.C. V. PEACH COUNTY BOARD OF EDUCATION***

## **STATE BOARD OF EDUCATION**

“If there is a requirement to provide a teacher with at least a three-day notice, then a student should have at least an equivalent amount of time to prepare a response, especially when there is the possibility of expulsion. We, therefore, conclude that the one-day notice provided in this case was not reasonable notice.”

# TKES/LKES Rule – passed April, 2014

- Tracks the statute in most provisions
- Local school systems must “adhere to the processes, guidelines, and procedures as set forth in the latest versions” of the TKES and LKES Implementation Handbooks developed by SDOE.
- Defines Teacher of Record – “any educator who is responsible for a specified portion of a student’s learning activities that are within a subject/course and are aligned to performance measures”
- Defines Assistant Principal – “a person charged with assisting the principal in the overall administration of a school, including coordinating and directing school activities.”

# SBOE Rule: Beyond the Statute

However, whenever a procedural violation of this rule, or the TKES or LKES Implementation Handbook is alleged, **“a hearing officer, Local Board of Education, or other appropriate official may find that an employee received a fair and adequate evaluation if the procedural inadequacies did not substantially or materially affect the employee’s final rating.”**

## SBOE Rule: Beyond the Statute

“(g) A rating of ‘Ineffective’ constitutes evidence of incompetency. However a rating other than “ineffective” does not preclude a finding of cause based on incompetency under O.C.G.A. § 20-2-940(a)(1).”

# From Implementation Handbook

## “Annual Evaluation Notification:

Official Code of Georgia 20-2-210 requires that each LEA shall provide written notice in advance of each school year to each teacher of record of the evaluation measures and any specific indicators that will be used for evaluation purposes. This notification must be completed in the advance of each school year. In order to comply with this it is suggested that districts address this in the contract or an attached document disseminated with the contract. The suggested language follows:

**Your annual evaluation for next year will be based on the Teacher Keys Effectiveness System in accordance with Official Code of Georgia 20-2-210, all applicable rules of the State Board of Education, and the Implementation Handbook for TKES.”**

# What You Need to Do...

- Please understand TKES, what it does and what it doesn't do
- Forget the 90%, worry about the 10%
- Documentation, even if it is outside the system
- Be worried when TKES contradicts your documentation/opinion
- Don't rely on TKES to provide the documentation you need

The image features a large American flag waving in the foreground, with the United States Capitol building visible in the background under a clear blue sky. The text "Issues from the Federal Government" is overlaid in white on the flag.

# Issues from the Federal Government

# Dear Colleague...

Letter from OCR/DOJ dated January 8, 2014

“The Civil Rights Data Collection (CRDC), conducted by OCR, has demonstrated that students of certain racial or ethnic groups tend to be disciplined more than their peers.”

“Although African-American students represent 15% of students in the CRDC, they make up 35% of students suspended once, 44% of those suspended more than once, and 36% of students expelled. Further, over 50% of students who were involved in school-related arrests or referred to law enforcement are Hispanic or African-American.”

“In short, racial discrimination in school discipline is a real problem.”

# Issues Raised by Letter

- Different Treatment
  - Policies or Codes of Conduct Themselves
  - Selective Enforcement
  - From the Teacher to the SRO
- Disparate Impact
  - Look at the Numbers
  - Inconsistent Enforcement or Penalties
  - What is the Purpose of the Policy and Penalty

# What You Need to Do...

- Read the Letter
- Avoid OCR complaints
- Know your own numbers because they do
- Evaluate your code of conduct as if you were OCR
- Train teachers, administrators and SROs
- Monitor on a regular basis
- Have in place and be able to explain positive behavior management tools

# Did You Hear There Is An Election?

- Getting Teachers Involved – Support Our Schools
- But When Should They Be Involved?
  - No campaigning at school
  - No campaigning using school resources
- And After the Election – Retaliation Claims
  - Local races are the worst

**GAEL**  
**Fall Legal Issues Conference**

**Georgia Continuing Education Center**  
**Athens, Georgia**

**October 13, 14, 15, 2014**

# Questions

