

2010 Fall Bootstrap Conference

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Legal Issues Update

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Status of Charter Commission Appeal

- Oral Argument on October 12, 2010
- Amicus Brief submitted by GSSA/GSBA and local districts throughout the State
- At conclusion of argument, Court asked for supplemental briefing on two issues:
 - The meaning of the term “special” schools
 - Whether local school districts have an “entitlement” to QBE funds

Facts cited in Amicus Brief

- 1 example school: \$435,694 state funds in FY 2009; Same school: \$1,272,966 in FY 2010 and \$1,463,077 in FY 2011 of local revenue share
- APS:lost only \$10,644 for its one student during the 2010 fiscal year, but will lose \$3,366,660 in FY 2011 to a different recently approved Commission charter

More facts

- DeKalb County School District lost \$299,151 in FY 2010, but will lose \$3,129,455 during FY 2011
- Total of 9.4 million dollars local revenue lost to 7 operating charter commission schools in 2011
- 23 petitions pending, 10 from multidistrict petitions, 4 from virtual schools
- Combating the money follows the student myth

Grammens v. Dollar

- 4-3 decision of the Supreme Court reversing the Georgia Court of Appeals
- Student struck in the eye by a metal pin while shooting a water bottle rocket; not wearing eye protection despite state statute, SBOE rule and LBOE policy
- But when does it apply and that requires discretion on the part of the teacher

Which brings us to new policies

- Restraint – Seculsion
- Bullying
- Board Code of Ethics
- Board Conflict of Interest

Restraint and Seclusion:

- August 2009, House Education and Labor Committee (who requested the GAO report) heard testimony about restraint/seclusion to weigh federal legislation about training, reporting and possibly limiting uses
- House passed the bill on March 3, 2010; was read in the Senate and referred to committee.
- U.S. Secretary of Education sent letter to state school chiefs asking them to develop plans to help ensure that such techniques are used “safely and sparingly”
- State Board rule adopted in July 2010 prohibiting seclusion, chemical restraint, mechanical restraint or prone restraint

What Policy is Needed?

- Schools or programs using physical restraint must have “written policies” that require:
 - Staff and faculty training
 - Written parental notification within one school day of use
 - Procedures for observing and monitoring use
 - Documentation by participating staff for “each student in each instance”
 - Procedures for periodic review of restraint use and documentation
- Only for use when a student is in immediate danger to himself or others and not responsive to less intensive behavioral interventions

Rule NOT to be construed:

- To prohibit appropriate action to break up student fight or altercation
- To eliminate or restrict employee use of discretion when using physical restraint to protect students or others from imminent harm or bodily injury
- To interfere with law enforcement
- To impose ministerial duties on individual employees when acting to protect students or others

What to do?

- Provide training in restraint and protocol to necessary employees: special ed and administrators
- Develop internal capacity to train all as possible
- Policy meeting minimum requirements
- Don't let policy or written procedures become ministerial duties, rely on training instead

SB 250 – New Bullying Definition

(a) As used in this Code section, the term “bullying” means an act which occurs on school property, on school vehicles, at designated school bus stops, or at school related functions or activities, or by use of data or software that is accessed through a computer, computer system, computer network, or other electronic technology of a local school system, that is:

- (1) Any willful attempt or threat to inflict injury on another person, when accompanied by an apparent present ability to do so;

Cont'd

- (2) Any intentional display of force such as would give the victim reason to fear or expect immediate bodily harm;
or
- (3) Any intentional written, verbal, or physical act, which a reasonable person would perceive as being intended to threaten, harass, or intimidate, that:
 - (A) Causes another person substantial physical harm within the meaning of the Code Section 16-5-23.1 or visible bodily harm as such term is defined in Code Section 16-5-23.1;
 - (B) Has the effect of substantially interfering with a student's education;
 - (C) Is so severe, persistent, or pervasive that it creates an intimidating or threatening educational environment; or
 - (D) Has the effect of substantially disrupting the orderly operation of the school.

Bullying Requirements

- New definition immediately applies to student conduct
- Bullying prohibition must be in codes of conduct for ALL schools
- Alternative school assignment after 3rd finding by tribunal for grades 6-12
- By 8/1/11, LBOE policy with specified elements
- SDOE **model** due by 1/1/11, but already issued
- Notification of parents of bully and victim
- Reporting – procedures, no retaliation,

SBOE Model Policy and “Guidance”

- Applies to bullying, harassment, intimidation and retaliation
- Definitions much broader than state statute
- **Does it matter what you call it?**
- Aimed at a particular group or identity
- Sexual Harassment
- Racial, National Origin or Disability Harassment
- Others: Religion, Sexual Orientation, Physical Attributes

What to do?

- Check your current policies and codes of conduct
- Develop bullying policy but you have until 8/1
- Decide how to train coordinators, administrators, teacher, bus drivers and others
- Do we dare try to train parents?

SB84, Standards, Codes of Ethics, Conflicts of Interest

- September SBOE meeting – adoption of State Standards with Code of Ethics and Conflict of Interest provisions attached
- SB84 requires LBOEs to adopt a Code of Ethics within 90 days of SBOE model containing provisions of model at a minimum
- SBOE reposts Standards, Code of Ethics and Conflict provisions at October meeting for possible passage in November
- When does the 90 days for LBOEs run?

What about Conflicts of Interest?

- State law is exhaustive
- Original attachment attempts to duplicate state law
- Reposted attachment broadens conflict provisions in the law to always include:
 - Immediate family members
 - Any business organization with which member is associated

Standards or Rule?

- Are Standards Mandatory?
- Training requirements and use of standards as curriculum
- Who has to be trained?
- Rule on Governance
 - Role of SBOE over LBOE makeup and qualifications, etc?
 - Nepotism or other requirements beyond SB84

What to do?

- Review SBOE model v. existing local board Code of Ethics
- If LBOE has adopted SBOE Code of Ethics, wait for SBOE to finish process and then revise
- If LBOE has not acted, try to complete process by December if possible, probably using modified SBOE Code
- If LBOE doesn't act before February, probably ok, unless General Assembly complains

What else to do?

- Go slow on Conflict of Interest Policy
- Consider using original version which copies the law
- Review SBOE Rule when passed to determine whether other policies are required
- Review State standards for guidance
- When training requirements are adopted, LBOE has 90 days to pass training program containing state requirements at a minimum

QUESTIONS?

