

# **Gael Winter Conference Legal Issues**

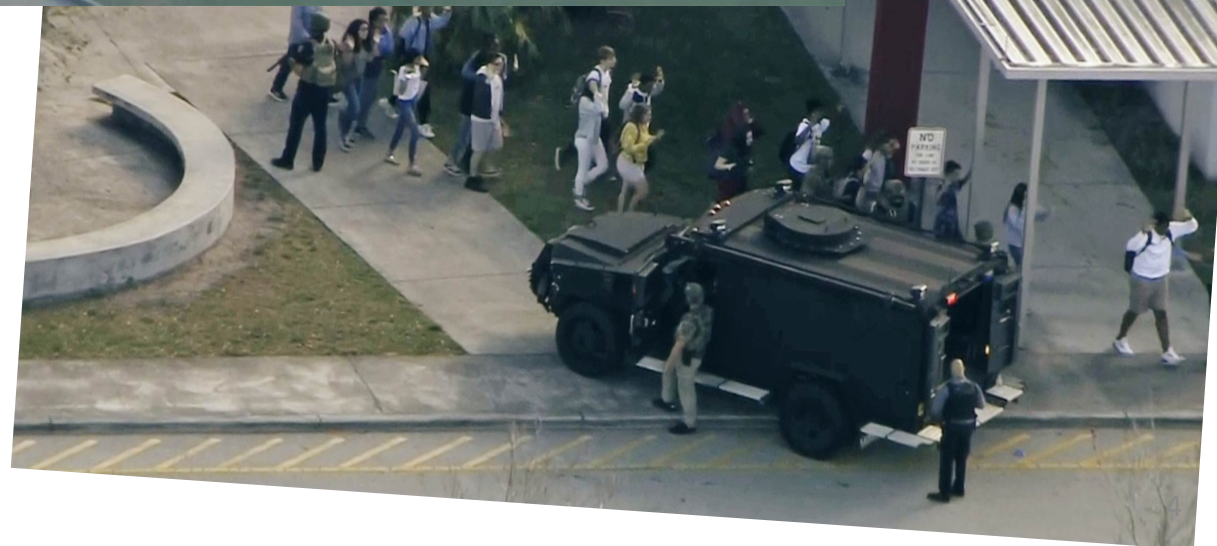
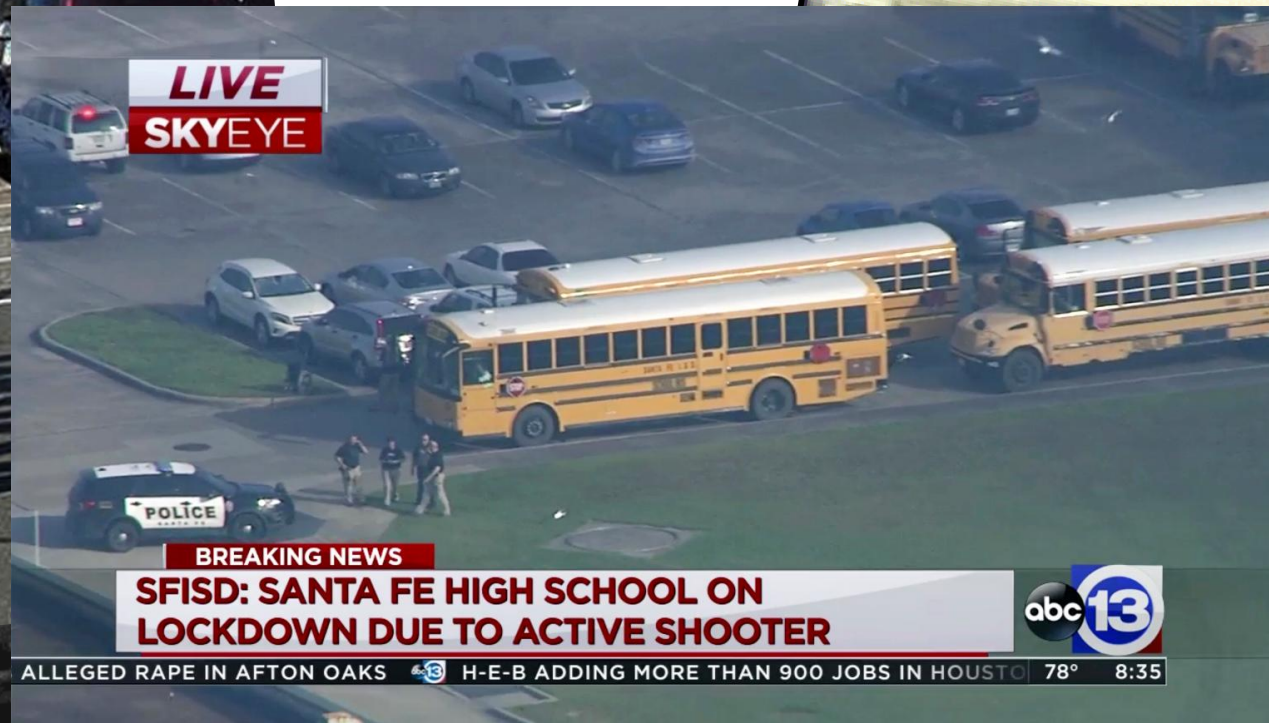
**JANUARY 29, 2019**

Phillip L. Hartley  
Harben, Hartley & Hawkins, LLP  
340 Jesse Jewell Parkway, Suite 750  
Gainesville, GA 30501  
(770) 534-7341  
[phartley@hhhlawyers.com](mailto:phartley@hhhlawyers.com)











# One of the Costliest Years For Weather Disasters in Georgia

5



# O.C.G.A. § 20-2-1185

## SCHOOL SAFETY PLANS AS REVISED BY HB 763

6

(a) Every public school shall prepare a school safety plan to help curb the growing incidence of violence in schools, to respond effectively to such incidents, and to provide a safe learning environment for Georgia's children, teachers, and other school personnel. Such plan shall also address preparedness for natural disasters, hazardous materials or radiological accidents, acts of violence, and acts of terrorism. School safety plans of public schools shall be prepared with input from students enrolled in that school, parents or legal guardians of such students, teachers in that school, community leaders, other school employees and school district employees, and local law enforcement, **juvenile court**, fire service, public safety, and emergency management agencies. **As part of such plans, public schools shall provide for the coordination with local law enforcement agencies and local juvenile court system. School safety plans shall include, at a minimum, the following strategy areas:**



# O.C.G.A. § 20-2-1185

## SCHOOL SAFETY PLANS

### HB 763 REQUIREMENTS

7

- (1) Training school administrators, teachers, and support staff, including, but not limited to, school resource officers, security officers, secretaries, custodians, and bus drivers, on school violence prevention, school security, school threat assessment, mental health awareness, and school emergency planning best practices;
- (2) Evaluating and refining school security measures;
- (3) Updating and exercising school emergency preparedness plans;
- (4) Strengthening partnerships with public safety officials; and
- (5) Creating enhanced crisis communications plans and social media strategies.

# **O.C.G.A. § 20-2-1185 SCHOOL SAFETY PLANS HB 763(a) cont'd**

Such plans shall be reviewed and, if necessary, updated annually. Such plans of public schools shall be submitted to the local emergency management agency and the local law enforcement agency for approval.



# **PLANNING IS USELESS WITHOUT TRAINING**

## **HB 763 AMENDS O.C.G.A. § 20-2-1185**

(e) Every public school shall conduct drills with students, teachers, and other school personnel on the execution of school safety plans in such form and at such intervals based upon guidance from the Georgia Emergency Management and Homeland Security Agency.

# SAFETY PLAN EFFECTIVENESS

- Each school needs its own plan
- Put majority of time and emphasis on most likely events
- Include representatives of groups responsible for implementing the plan
- Should be a living document and not just another notebook on the shelf
- Effectiveness comes only with proper training of personnel, coordination with other agencies, and communication with the community

## **O.C.G.A. § 16-11-130.1 - CAN THE PUBLIC GET A COPY OF YOUR SAFETY PLAN?**

(f) Documents and meetings pertaining to personnel approved to carry or possess weapons within a school safety zone, at a school function, or on a bus or other transportation furnished by a school shall be considered employment and public safety security records and shall be exempt from disclosure under Article 4 of Chapter 18 of Title 50.



# HB 763 AMENDS OPEN RECORDS ACT

A new exemption in § 50-18-72 (a)

"(25.1) School safety plans prepared pursuant to Code Section 20-2-1185, whether in the possession of a local school system, a local law enforcement agency, a local emergency management agency, the Department of Education, the Georgia Emergency Management and Homeland Security Agency, or any other public entity;"

## **O.C.G.A. § 50-14-3(B)(4)**

Portions of meetings during which that portion of a record made exempt from public inspection or disclosure pursuant to Article 4 of Chapter 18 of this title is to be considered by an agency and there are no reasonable means by which the agency can consider the record without disclosing the exempt portions if the meeting were not closed.

# **POTENTIAL SCHOOL SAFETY LEGISLATION FROM THE 2019 GA – SB 15, ET AL**

14

- Threat assessments of buildings by private persons and agencies designated by GEMA
- Georgia Information Sharing and Analysis Center – includes prevention or discovery of mass casualty incidents at schools; to the extent allowed by FERPA shall curate individual student profiles from school, DHS and law enforcement records?
- GEMA shall develop program to train school safety coaches – former law enforcement, military or EMS – grant them a special homestead exemption, but requires constitutional amendment
- School Safety Plan - weather drills and terrorism drills each at least once a year



# OTHER POTENTIAL LEGISLATION

- SR 12 – SPLOST funds for school security projects including people for security and mental health
- Gov's Budget Proposal - \$30,000/school for school safety grants and \$8.4 million for mental health in HS's through GA APEX



**NEW THIS MORNING**

## **THE PRESIDENT'S SCHOOL SAFETY PLAN**

DEVOS ON PROPOSAL TO ARM TEACHERS, "HARDEN" SCHOOLS





FINAL REPORT OF THE FEDERAL COMMISSION ON

## School Safety



Presented to the  
PRESIDENT OF THE UNITED STATES

December 18, 2018



There is no universal school safety plan that will work for every school across the country. Such a prescriptive approach by the federal government would be inappropriate, imprudent, and ineffective. We focused instead on learning more about, and then raising awareness of, ideas that are already working for communities across the country.



# PREVENTION

- Character Education and Positive School Climate
- Improving Access to School-Based Mental Health and Counseling
- Threat Assessment – Clarifying FERPA
- Press Coverage – Media Plan
- Violent Entertainment and Rating Systems
- School Discipline – Revoking Obama OCR Title VI DCL
- Law Enforcement – ERPOs But No Gun Age Restrictions

# PROTECT AND MITIGATE

- Training
- Troops to Teachers
- Building and Campus Security – Risk Assessment, Could Include Arming Staff
- Active Shooter Preparedness

A large American flag is shown waving in the wind against a bright blue sky with scattered white clouds. The flag is positioned on the left side of the frame, with its hoist visible. The stars and stripes are clearly visible, and the flag appears to be made of a heavy material.

**OTHER FEDERAL ISSUES**



# WHAT CAN BE DISCLOSED UNDER FERPA<sup>21</sup> NOW?



Health Emergency

---

“If the educational agency or institution determines that there is an articulable and significant threat to the health or safety of a student or other individuals...”

34 CFR § 99.36(c)



Safety Emergency

---

“it may disclose information from education records to any person whose knowledge of the information is necessary to protect the health or safety of the student or other individuals.”

34 CFR § 99.36(c)

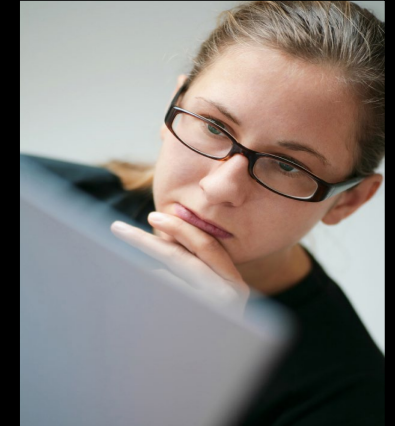


Law Enforcement Records

---

Investigative reports and records that are created and maintained by law enforcement units

34 CFR § 99.8



Personal Knowledge or Observation

---

Information learned through personal knowledge or observation

FERPA only applies to educational records



## Discipline and Title VI

DeVos Holds 'Listening Sessions' on Student Discipline as GAO Report Confirms Widespread Racial Disparities



Based on OCR's Data Collection, Obama administration issued 2014 Dear Colleague Letter on racial disparities in discipline: urged schools to emphasize positive interventions over more punitive measures, like suspension or expulsion.



Critics claim guidance values statistics over students; schools less safe; restricted ability to maintain order



2 listening sessions, plus recommendation from Safety Commission leads to DCL and related non-regulatory guidance being rescinded.

# LIKELY CHANGES IN TITLE IX HARASSMENT REGULATIONS

- Definition of sexual harassment consistent with court cases
- Limit Title IX responsibility to only incidents that occur on campus or during a school program
- Requires investigation only for “formal” complaints
- Allows higher evidentiary standard to substantiate a claim
- Teacher’s knowledge would bind the District
- Give parties equal access to evidence
- Talks about complainants and respondents with due process for both sides

# LIKELY CHANGES FOR DISTRICTS FROM NEW REGULATIONS

24

- Definition of sexual harassment to change in Code of Conduct and Title IX policy
- Better training for teachers on duty to report
- Better policies and procedures to separate Title IX, discipline, bullying, child abuse reporting
- Fewer investigations under Title IX and OCR complaints
- More Title IX and OCR complaints by “respondents”





U.S. Department of Justice  
Civil Rights Division

U.S. Department of Education  
Office for Civil Rights



February 22, 2017

These guidance documents take the position that the prohibitions on discrimination “on the basis of sex” ... require access to sex-segregated facilities based on gender identity. These guidance documents do not, however, contain extensive legal analysis or explain how the position is consistent with the express language of Title IX,

In addition, the Departments believe that, in this context, there must be due regard for the primary role of the States and local school districts in establishing educational policy.

In these circumstances, the Department of Education and The Department of Justice have decided to withdraw and rescind the above-referenced guidance documents in order to further and more completely consider the legal issues involved. The Departments thus will not rely on the views expressed within them.

withdraw and rescind the above-referenced guidance documents in order to further and more completely consider the legal issues involved. The Departments thus will not rely on the views expressed within them.



U.S. Department of Justice  
*Civil Rights Division*



U.S. Department of Education  
*Office for Civil Rights*

February 22, 2017

Dear Colleague:

The purpose of this guidance is to inform you that the Department of Justice and the Department of Education are withdrawing the statements of policy and guidance reflected in:

- Letter to Emily Prince from James A. Ferg-Cadima, Acting Deputy Assistant Secretary for Policy, Office for Civil Rights at the Department of Education dated January 7, 2015; and
- Dear Colleague Letter on Transgender Students jointly issued by the Civil Rights Division of the Department of Justice and the Department of Education dated May 13, 2016.

Please note that this withdrawal of these guidance documents **does not leave students without protections from discrimination, bullying, or harassment. All school must ensure that all students, including LGBT students, are able to learn and thrive in a safe environment. The Department of Education Office for Civil Rights will continue its duty under law to hear all claims of discrimination and will explore every appropriate opportunity to protect all students and to encourage civility in our classrooms.**

In addition, the Departments believe that, in this context, there must be due regard for the primary role of the States and local school districts in establishing educational policy.

In these circumstances, the Department of Education and the Department of Justice have decided to withdraw and rescind the above-referenced guidance documents in order to further and more completely consider the legal issues involved. The Departments thus will not rely on the views expressed within them.

# *ADAMS V. SCHOOL BOARD OF ST. JOHNS COUNTY, FLA.*

## (FEDERAL DISTRICT COURT)

27

- “Everyone agrees that boys should use the boys’ restroom at Nease and that girls should use the girls’ restroom. The parties disagree over whether Drew Adams is a boy.”
- Evidence of medical transition and legal documentation
- Rules Title IX requires his use of boys restroom and withdrawal of guidance did not substitute substantive interpretation
- If necessary finds an equal protection violation
- Finds privacy and safety concerns not warranted

**U.S. DEPARTMENT OF EDUCATION**

**OFFICE FOR CIVIL RIGHTS**



**CASE PROCESSING MANUAL  
(CPM)**

**EFFECTIVE DATE: NOVEMBER 19, 2018**

# A New Approach to OCR Complaints

28

Resolution  
over  
investigation

Addressing  
issues rather  
than punishment

Some argue no  
emphasis on  
enforcement

Clearly less  
emphasis on  
advocacy of specific  
issues



