GAESP & GAMSP
ANNUAL FALL CONFERENCE
LEGAL ISSUES AFFECTING K-8 ADMINISTRATORS

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SO YOU ARE TIRED OF THE PANDEMIC…

• What Do We Expect for the Rest of the Year?
• How Does Your School Prepare?
• How Does Your School District Make Decisions?
WHAT HAPPENS IN WASHINGTON

- How the Election Will Matter?
- Will an Accountability Waiver Be Granted?
- So What?
- Will Additional Relief Funds Be Provided for Education?
- Leave Under the FFCRA Will Expire 12/31/20, Will The Leave Provisions Be Extended?
WHAT HAPPENS IN ATLANTA

What Decision Will the SBOE/SDOE Make Regarding EOCTs?

How Will the State Deal With Accountability Decision? CCRPI? Consequences?

How Long Will the Emergency Orders Continue?

What Is the Authority of DPH at the State and Local Level?

Where is the Authority to Waive TKES/LKES?

Predicting the General Assembly, Special Session or 2021 Session
WHAT HAPPENS IN YOUR SCHOOL?

• Going Back to the Classroom or Going Virtual
• Making the Quarantine Decisions
• Regardless of TKES/LKES, Don’t Forget the Importance of Documentation
• How Many Issues Will Be Disputed: Promotion, Graduation Honors, Personnel Decisions, What Else?
• Will There Be Lawsuits? What About the Suit by GAE?
Like All Issues Dealing with Disabilities in the Workplace, Many Have to Be Analyzed on an Individualized Basis

In General, Having COVID 19 or Being Exposed to It Are Probably Not Qualifying Conditions under ADA, but having a condition that puts an employee at Greater Risk for COVID probably is, either ADA or ADEA

But Being Afraid of COVID 19 Probably is Not a Qualifying Condition

Retaliation for Taking Leave Under the New Acts is Prohibited

When is Teleworking a Required Accommodation? An Acceptable Accommodation?
WHAT ARE THE RULES WHEN EMPLOYEES COME BACK TO SCHOOL?

Masks, social distancing, what can you require?

Temperature, health questions, mandated testing?
<table>
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<th>Question</th>
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<td>Can You Mandate Quarantine?</td>
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<td>Based on What Evidence?</td>
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<td>When the Employee Disagrees?</td>
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<td>Who Pays and What Do We Call It?</td>
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<td>Will Immunization Become a Requirement?</td>
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WHAT DOES THE FUTURE HOLD?

• More Parental Choice
• More Staff Choice
• What Will ADA/FMLA Mean?
• Home Study, Private Schools, Virtual Programs, Charter Schools
MAY 6, 2020 NEW TITLE IX REGULATIONS

EFFECTIVE AUGUST 14, 2020
MAIN CHANGES:

• Definitions, including the conduct that constitutes sexual harassment

• When and How District must respond to allegations of sexual harassment; including offer of supportive measures and grievance process

• Which employees can bind the District based on knowledge of sexual harassment

• Complications as to discipline procedures
IMPORTANT TERMS

- Actual Knowledge

- Notice of sexual harassment or allegations of sexual harassment to a school’s Title IX Coordinator or any official of the school who has authority to institute corrective measures, or to any employee of an elementary and secondary school.
SEXUAL HARASSMENT

Quid Pro Quo
An employee of the recipient conditioning the provision of aid, benefit, or service of the recipient on an individual’s participation in unwelcome sexual conduct

Hostile Environment
Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectionably offensive that it effectively denies a person equal access to the recipient’s educational program or activity

Clery Act/Violence Against Women Act
sexual assault, stalking, domestic violence, dating violence
PROGRAM OR ACTIVITY

• “all of the operations” of elementary and secondary school

• Includes locations, events or circumstances over which the recipient exercised substantial control over both the respondent and context in which the harassment occurs

• What about online?
FOCUS ON THE PROCESS

1) Treat both complainant and respondent equal
2) Evaluate all relevant evidence objectively
3) Title IX Coordinator, Investigator, and decision-maker are to be free from conflict of interest and trained to be impartial
4) Presume innocence of respondent
5) Prompt time frames for process
6) Range of remedies and sanctions which may be imposed
7) Standard of proof—preponderance of evidence
8) Appeal procedures
9) Privileged (with waiver)
PUTTING ALL THIS TOGETHER...
Dear Colleague:

The Department of Justice and the Department of Education are withdrawing the statements of policy and guidance. These guidance documents take the position that the prohibitions on discrimination “on the basis of sex” in Title IX 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, nor did they undergo any formal public process.
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:

- Dear Colleague Letter on Transgender Students jointly issued by the Civil Rights Division of the Department of Justice and Department of Education dated May 13, 2016

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, nor did they undergo any formal public process.

This interpretation has given rise to significant litigation regarding school restrooms and locker rooms.

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.
Please note that this withdrawal of these guidance documents does not leave students without protections from discrimination, bullying, or harassment. All schools 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.
STATUS OF TITLE IX TRANSGENDER CASES


• Transgender high school student, who identified as male and had transitioned legally, socially and medically, brought § 1983 action against school district, alleging that his rights under the Equal Protection Clause and Title IX were violated when he was not allowed to use the boys’ bathroom at county high school.
STATUS OF TITLE IX TRANSGENDER CASES

Decision by panel in favor of student, 2-1; motion for rehearing en banc pending

Active judges on full court: 6 by Trump, 4 by Obama, 1 by Bush and 1 by Clinton

The Court focused on how this student was treated differently from other students and refused to address whether sexually separated restrooms were constitutional or whether “sex” in Title IX specifically includes gender identity
BOSTICK V. CLAYTON COUNTY, GA
(USSC, JUNE 15, 2020)

• 3 cases, 11th Cir. Ruled that Sexual Orientation Not Protected by Title VII, 2nd Cir. Ruled that It Was; 6th Cir. Ruled that Gender Identity Was Protected

• “Because discrimination on the basis of homosexuality or transgender status requires an employer to intentionally treat individual employees differently because of their sex, an employer who intentionally penalizes an employee for being homosexual or transgender also violates Title VII.”
OCR WEIGHS IN ON TRANSGENDER STUDENTS AND TITLE IX

• Connecticut Rule Allows Transgender Students To Compete on Teams of Their Gender Identity

• In a Letter of Enforcement, OCR Stated "by permitting the participation of biologically male students in girls interscholastic track" under the transgender participation policy [Connecticut] "denied female student-athletes benefits and opportunities."
RACIAL JUSTICE ISSUES

• “Defunding” SROs
  • Reviewing the MOU
  • Body Cameras
• Student Discipline Issues
  • What Does Your Data Show?
  • Training of Teachers and Staff
• Social Media
  • Staff Understanding that Internet is Not Private and Postings Have Consequences
  • When Is Student Speech Disruptive and Does It Matter Where?
• Dress Codes in a Political Season
ISSUES FROM THE GENERAL ASSEMBLY
• Georgia COVID-19 Pandemic Business Safety Act

• Immunity that includes Districts except for “gross negligence, willful and wanton misconduct, reckless infliction of harm, or intentional infliction of harm”

• But Districts have Sovereign Immunity

• What about those signs?

O.C.G.A. 51-16-1 et seq
S.B. 359
H. B. 86

- Adds to the State Mandated Grievance Statute a “tenure lite” provision
- After 4 contracts can appeal summative ratings of U or I, procedural deficiencies and job performance
- LUA shall establish appeals policy and submit to SDOE by 7/1/21
FALL LEGAL ISSUES WORKSHOP

• NOVEMBER 4, 5, and 6, 2020
  • CLASSIC CENTER
  • ATHENS, GA
• HOPEFULLY LIVE AND IN PERSON!

• ONLY LEGAL ISSUES WORKSHOP THIS SCHOOL YEAR