



GAESP & GAMSP

ANNUAL FALL CONFERENCE

LEGAL ISSUES AFFECTING K-8 ADMINISTRATORS

Phillip L. Hartley

Harben, Hartley & Hawkins, LLP

340 Jesse Jewell Pkwy, Suite 750

Gainesville, Ga. 30501

770-534-7341 – office

770-654-3616 – cell

phartley@hhhlawyers.com





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?

COVID 19 AND THE ADA/SECTION 504

- 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?

AND THEN WHAT?

Can You Mandate Quarantine? Based on What Evidence?

When the Employee Disagrees?

Who Pays and What Do We Call It?

Will Immunization Become a Requirement?

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)

A decorative graphic consisting of blue circuit-like lines with circular nodes, extending horizontally from the left and right sides of the central text box.

PUTTING ALL THIS
TOGETHER...



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 letter is to inform you that the Department of Justice and the Department of Education are withdrawing the statements of policy and guidance previously issued by the Department of Education on the subject of Title IX of the Education Amendments of 1972.

- 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.

The Department of Justice and the Department of Education dated May 19, 2016.

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.

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.



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.

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 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.

STATUS OF TITLE IX TRANSGENDER CASES



- Adams by & through Kasper v. Sch. Bd. of St. Johns Cty., Fla., (11th Cir., August 7, 2020)
- 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

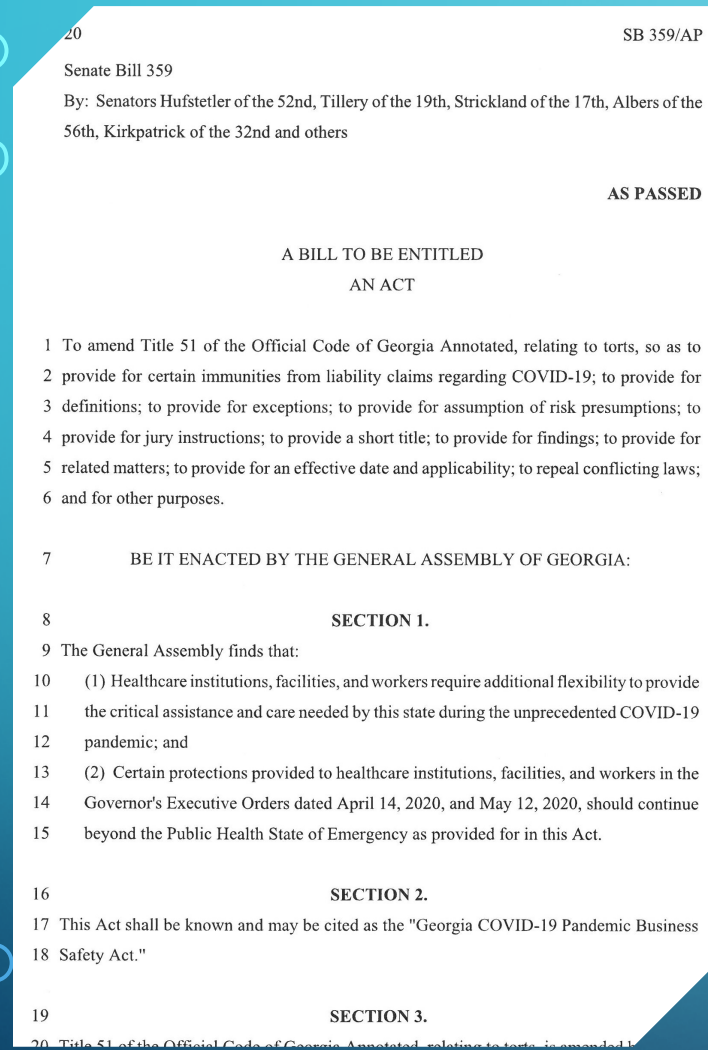
- Connecticut Rule Allows Transgender Students To Compete on Teams of Their Gender Identity
- In a Letter of Enforcement, OCR Stated "by permitting the participation of biologically male students in girls interscholastic track" under the transgender participation policy [Connecticut] "denied female student-athletes 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





- **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

O. C. G. A. § 20-2-989.7

H. B. 86

20 HB 86/AP
House Bill 86 (AS PASSED HOUSE AND SENATE)
By: Representatives Benton of the 31st, Stovall of the 74th, Greene of the 151st, Gambill of the 15th, and Moore of the 1st

A BILL TO BE ENTITLED AN ACT

1 To amend Part 11 of Article 17 of Chapter 2 of Title 20 of the Official Code of Georgia
2 Annotated, relating to complaints policy for teachers and other school personnel, so as to
3 provide a separate appeals process for certain performance ratings contained in personnel
4 evaluations for teachers who accepted a school year contract for the fourth or subsequent
5 consecutive school year; to provide for the establishment of appeals policies by local units
6 of administration; to provide for appeals hearings to be conducted by independent third
7 parties or system administrators; to require local units of administration to submit copies of
8 their complaint policies to the Department of Education; to provide for an effective date; to
9 provide for related matters; to repeal conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

11 Part 11 of Article 17 of Chapter 2 of Title 20 of the Official Code of Georgia Annotated,
12 relating to complaints policy for teachers and other school personnel, is amended by revising
13 Code Section 20-2-989.7, relating to matters not subject to complaint, as follows:
14 '20-2-989.7.

15 (a)(1) ~~Except as otherwise provided in paragraph (2) of this subsection, the~~ the
16 performance ratings contained in personnel evaluations conducted pursuant to Code
17 Section 20-2-210, professional development plans, and job performance shall not be
18 subject to complaint under the provisions of this part; provided, however, that this shall
19 not apply to procedural deficiencies on the part of the local school system or charter
20 school in conducting an evaluation pursuant to Code Section 20-2-210.

21 (2) For teachers who have accepted a school year contract for the fourth or subsequent
22 consecutive school year, summative performance ratings of 'Unsatisfactory' or
23 'Ineffective' contained in personnel evaluations conducted pursuant to Code Section
24 20-2-210, procedural deficiencies on the part of the local school system or charter school
25 in conducting an evaluation pursuant to Code Section 20-2-210, and job performance
26

H. B. 86
- 1 -

- 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