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Changing Times in School Law - Introduction

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By: Jeanne L. Surface, David L. Stader & Anthony D. Armenta

Changing Times in School Law

Introduction

As 2012 came to a close, the re-election of President Obama assures the continuation of state waivers to No Child Left Behind (NCLB), the use of student growth modeling to make teacher and administrator employment decisions, and more accountability measures for PK-12 public schools and public and private institutions of higher education. The inexplicable school shootings at Sandy Hook Elementary in Newtown, Connecticut, once again opened the political discussion about school safety. The reauthorization of Individuals with Disabilities Education Improvement Act of 2004 (IDEIA) looms on the horizon. The U.S. Supreme Court has once again ventured into the divisive affirmative action and university admissions debate by choosing to rule in *Fisher v. University of Texas*. These events, and many others, pose difficulties for secondary schools and institutions of higher education. This special issue of *The Clearing House* focuses on the many changes that have occurred recently in school law.

In the first article, “Physical Assault on School Personnel,” Kajs, Schumacher, and Vital begin with a discussion about the extent of the problem and the attempts that some states have taken to deter and prevent assaults. The article provides three case studies that highlight the dangerous level of violence that can be inflicted on school personnel while on duty. Next, the article examines the financial and psychological impact of the violence and its wide-spread impact. The authors follow up with information about various state statutes and how some individual states have set up legal consequences for assaults and restitution for the victims. The authors provide sources of legal assistance through professional organizations and recommend policies and procedures for districts, as well as resources to provide guidance to leaders who are creating school policies regarding physical assaults of educators.

In the second article, “Burden’s on U! The impact of the *Fisher v. University of Texas* decision on K-16 Admissions Policies,” Nguyen helps us understand the implications of the *Fisher v. University of Texas* decision and provides background on the race-conscious admission decisions. Additionally, the author illuminates the strict scrutiny standard in judicial review in this case and how the burden-shifting will impact the final outcome in the lower court. Nguyen finishes the article by outlining the implications for higher education and for PK-12 education.

In “Policy and System Change: Planning for Unintended Consequences,” Brady, Duffy, Hazelkorn, and Bucholz provide policymakers with a means to predict the full array of outcomes, intended and unintended, when promoting educational reforms that affect the implementation of new practices and policies. They begin by emphasizing the strong impact that public opinion has on schools using the example of the Individuals with Disabilities Act (IDEA) passed in 1975. They outline the impact and unintended consequences, as well as discuss the changes that were made in the law to clarify, strengthen, and provide guidance on the lessons learned from two decades of experience. The next section of the article is a discussion of three specific cases where well-intended policies had unexpected

negative outcomes. In the last section of the article, the authors lay out a model for predicting policy outcomes and conclude on a positive note by discussing policy changes that have had significant, unanticipated positive outcomes.

In “Truancy Laws: How They Are Affecting Our Legal Systems, Schools, and Students,” Deborah Gleich-Bope writes about the history of truancy, enforcement measures, and its prevention. She begins the article discussing a new law in Nebraska and its impact on schools and follows with a discussion of the history of truancy laws and the influence of families on truancy. In the next section, she articulates the Nebraska model for responding to truancy. She ends with a discussion of some interventions that show promise and concludes that “while the issue of truancy will never completely be resolved, it is important to be aware of the laws that affect students and the implication for their families as well as for the legal system, especially at the state level.”

Weiler and Armenta add a Fourth R into the traditional three R’s in schools, the Revolver. “The Fourth R-- Revolvers: Principal Perceptions Related to Armed School Personnel and Related Legal issues.” The article opens with a quick view of the recent gun violence that has stirred the passions of the American public. The article moves into a discussion of competing solutions and addresses the perceptions and legality of those solutions. The authors created a survey that was sent to 40 current building principals to collect the thoughts of front-line personnel on the topic of carrying a firearm on campus. They conclude that while several lawmaking bodies, including school boards, want to arm school personnel, building principals, in general, were not in favor of the idea for many reasons.

“Not Second-Class: Title IX, Equity, and Girls High School Sports.” Stader and Surface provide a review of Title IX implementation in response to *Ollier v. Sweetwater Union High School*. They begin with a review of the law, a discussion of its enforcement by the Office of Civil Rights, and a historical context of court cases involving Title IX. *Ollier v. Sweetwater Union High School* is reviewed and the systemic discrimination is highlighted. The article concludes with a discussion of the importance of girls’ athletic programs and how they continue to be made second-best because of systemic discrimination. The authors then provide lessons that can be learned from the case and some specific steps to assure that girls’ athletic programs are given equal treatment in high school athletics.

In “Access or barrier? Tuition and Fee Legislation for Undocumented Students Across the States,” Nguyen and Serna help the reader understand the Development, Relief, and Education for Alien Minors (DREAM) Act and the impact that repeated stalls by Congress has had on these students. Next, the article examines the current landscape of laws and policies impacting undocumented students and their attainment of affordable higher education. The authors highlight the context of *Plyler v. Doe* and the PK-12 guarantee, and they follow with a discussion of the federal attempts a comprehensive immigration reform. This section is followed by a discussion of states that allow students to pay in-state tuition if they are undocumented and states that ban the practice. This is followed by a section that addresses the impact of state legislation. Lastly, the authors conclude that without comprehensive reform at the federal level, the educational opportunities afforded undocumented students will depend upon the state in which they live.

Then in “Educator Sexual Misconduct and Non-Disclosure Agreements: Policy Guidance from Missouri’s *Amy Hestir Student Protection Act*, Surface, Stader, and Armenta outline how the state of Missouri has changed the law to protect students who are victims of sexual misconduct by teachers. Amy Hestir was a student in Missouri who was sexually abused by a popular high school teacher. She did not consider the relationship abusive until she tried to end it, and he sexually assaulted her. The state of Missouri is now responding with the *Amy Hestir Protection Act*, which prevents districts from allowing employees to resign without the district disclosing the sexual misconduct. The article outlines the first statute in the nation to effectively address the problems associated with investigating alleged sexual misconduct, non-disclosure agreements, and civil liability protections for school officials. When faced with any kind of abuse by an employee a district must act. School authorities must take prompt, careful action to follow district policy, investigate the circumstances, confront all parties, preserve confidentiality, and document the incident carefully in the employee’s file. Most importantly, districts need to take particular precautions to protect the student/victim and any others who reported the alleged abuse.

“The Legal Challenges to Teacher Evaluation: Pitfalls and Possibilities for States” discusses the challenges and potential legal problems emerging from use of new teacher evaluation systems in states. Hazi used three sources of data: Policy data used to investigate states revising teacher evaluation statutes; selected case law providing insight into judicial reasoning as well as psychometric and educational evidence; and data concerning problems arising from the writing of teacher evaluations. The article discusses various legal challenges that have occurred, the pitfalls that have been uncovered with tying teacher evaluation to standardized test scores, discrimination cases, and cases that involved arbitrary and capricious decision making. In many states, teachers and administrators no longer design their own evaluation policy and procedures. Instead, they are designed by third parties such as legislators, state department officials, statisticians, vendors, and consultants. It is not yet clear whether this era of accountability will withstand legal challenges to this type of teacher evaluation.

We hope that you will enjoy this special of *The Clearing House* as it focuses on the many changes that have occurred recently in School Law. Schools will continue to be met with new legal challenges and will need to respond through policy or practice. We are confident that this special theme issue of TCH will provide you with the guidance that you need to revise current policies and procedures in your school district.