



## THE COMMONWEALTH EDUCATIONAL POLICY INSTITUTE

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#### POTENTIAL ISSUES TO WATCH IN THE 2006-2007 SCHOOL YEAR

##### Overview

The 2005-2006 school year has come to an end and summer is here. The summer months give educational policy-makers and school administrators time to reflect back on and reexamine the problems and issues faced during the past school. At the same time, the summer months allow time to predict and plan for problems and issues that may either carry over from last year or spring to life during the next year.

In an effort to assist educational policy-makers and school administrators as they forecast and plan, I always devote my final commentary to predicting potential issue producers. To this end, I have identified and selected five topics for brief discussion.

##### Potential Issue Areas to Watch

**Special Education:** This past year the United States Supreme Court decided *Schaffer v Weast* (2005), a case out of the United States Court of Appeals for the Fourth Circuit. By a vote of 6 to 2, the high court held that because IDEA is silent on the subject, the burden of proof in this situation (parents challenged the appropriateness of their child's IEP) "lies, as it typically does, on the party seeking relief." The reader is cautioned that the court left open the possibility that States can enforce their own statutes that assign the burden of proof.

More recently the United States Supreme Court heard oral arguments in a case out of the United States Court of Appeals for the Second Circuit, in which the issue of attorney's fees was involved. In *Arlington Central School District v Murphy* (2nd Cir. 2005), the high court must determine whether or not a prevailing party in an IDEA case (in this situation it would be the parents) is eligible to be reimbursed for fees paid to a non-attorney advocate who assisted them with their case in the administrative and judicial processes. With a growing number of non-attorney advocates involved in special education cases, school officials must watch for this decision and study the implications for school system policy.

Two other potential issue producers must be watched. First, the ramifications of recent reports claiming an over identification and inclusion in special education programs of minority students must be analyzed. Second, a growing movement calling for special classes and schools for specific categories of students with educational disabilities (e.g., students with autism) must be watched.

**Religion in Schools:** The reader is reminded that no precise formula exists to decide what is or is not acceptable under the First Amendment's religion clauses. The *Lemon v Kurtzman* (1971) 3-pronged standard; Endorsement; Coercion; Equal Access; and the application of the Public Forum doctrine still apply. The reader is reminded that neutrality (non-establishment) and free exercise of religious beliefs sometimes come into direct conflict; thus, drafting and implementing workable policies is a challenge.

Two specific areas to watch for potential religion-related issues are: (1) the curriculum (e.g., evolution v intelligent design, subject matter in family life and health-related courses, holiday celebrations, school plays and musical performances), and (2) student clubs (e.g., student requests to establish non-traditional student interest clubs). Because each future situation will be fact-bound, school system policies must be such that they enable school principals to make decisions on a case-by-case basis.

**Student-on-Student Harassment and Violence:** Bullying is bullying. While this type of behavior is not criminal behavior, it is nonetheless disruptive and destructive behavior. Because bullying behavior (which to this writer is a form of peer harassment) among and between students is on the rise, school system policies must be proactive and must grant school principals the discretion to immediately act to eliminate the potential for such acts in their schools. In my view, bullying behavior breeds violent, assaultive behavior.

In 2006-2007, youth gang activity in communities will cause school officials to reexamine school security and emergency policies and plans, including arrangements for immediate response and assistance from police agencies. As I have advocated in previous commentaries, it would be prudent for school officials to seek the most recent and up-to-date data from a variety of federal, state, and local law enforcement agencies in an effort to establish an accurate picture of gangs (their names, membership demographics, identifying attire and communication system) and gang ties to criminal activities in the community.

School officials, administrators, teachers, and staff must keep in mind that the judicial standard relied on to establish liability for student injury is "deliberate indifference." This means that when you receive actual notice that something is happening or about to happen in your school, or at a school sponsored activity, and that an immediate threat to the safety and wellbeing of students, staff, parents, spectators exists, do something about it.

**Search and Seizure:** The T.L.O. 2-pronged standard remains the judicial test relied on to determine the constitutionality of school searches and seizures. *New Jersey v T.L.O.* (1985) More specifically, to pass judicial muster under the Fourth Amendment a school search must be based on (1) reasonable suspicion, and as the search is carried out it must remain (2) reasonable in scope. In 2006-2007, because of the increased emphasis on security, public school searches and seizures may, out of necessity, become more intrusive in nature. *Lamb v Holmes* (KY. 2005) Thus, the need to reexamine existing policies and procedures will be critical, especially as they impact on working relationships between school resource officers and school administrators. School principals and staff must be able to move quickly when the situation requires immediate action.

**Teacher Evaluation:** In 2006-2007, the emphasis will remain on linking student academic performance and achievement to classroom teacher performance. Recent case law emphasizes the critical importance of school

officials demonstrating, by substantive evidence, a nexus between documentation of concerns regarding a teacher's work performance, and failure of that teacher to improve classroom performance. *Brown v Regional School District 13* (D.Conn. 2004) The same evaluation link exists between the academic performance and accreditation of a school and the work performance of the school principal. Suffice it to say, this area of school system operation contains potential issues.

A second area of employment law to watch involves employee speech rights. In 2005, the United States Supreme Court decided *Jackson v Birmingham* (2005). This case involved a teacher/coach who publicly spoke out and complained about the disparity between male and female athletic teams. By a vote of 5 to 4 the high court ruled that the teacher/coach had a "private right of action under Title 9" to sue his employer for violating his First Amendment free speech rights. In effect, he successfully argued that his employer had "retaliated" against him for speaking out on a matter of public concern. The advice taken from *Jackson* is clear. Do not take an adverse employment action against an employee solely because he/she speaks out on a matter of public concern. *Pickering v Board of Education* (1969) However, where an employee's comments cause disruption in the work place and/or have a negative impact on staff morale, employee speech is not under the guarantees of the First Amendment. *Connick v Myers* (1983)

### **Policy Implications**

The purpose of this final commentary is to spot potential issues facing local school officials as they plan for the 2006-2007 school year. Realizing that it is not possible to identify and treat every potential issue area, I selected the five discussed above. Because the policy implications were identified, included, and discussed in each section of this commentary, it would be redundant to restate them again at this time.

*Final Comment* - I hope that this commentary (along with the discussions contained in the nine previous commentaries of this past school year) proves helpful in crafting effective and practical school system policies and procedures. It is my hope that my work has contributed in a positive way to the efforts of local school officials and administrators to provide a safe, secure, and disruption free environment in schools where teachers can teach and students can learn.

### **Resources Cited**

*Arlington Central School District v Murphy*, 402 F.3d 332 (2nd Cir. 2005), cert. granted, 126 S.Ct. 978 (2006)  
*Brown v Regional School District 13*, 328 F.Supp.2d 289 (D.Conn. 2004)  
*Connick v Myers*, 461 U.S. 138 (1983)  
*Jackson v Birmingham Board of Education*, 544 U.S. 167 (2005)  
*Lamb v Holmes*, 162 S.W.2d 902 (KY. 2005)  
*Lemon v Kurtzman*, 403 U.S. 602 (1971)  
*New Jersey v T.L.O.*, 469 U.S. 325 (1985)  
*Pickering v Board of Education*, 391 U.S. 563 (1968)  
*Schaffer v Weast*, 126 U.S. 528 (2005)

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Note: The views expressed in this commentary are those of the author.