



THE COMMONWEALTH EDUCATIONAL POLICY INSTITUTE

CENTER FOR PUBLIC POLICY - L. DOUGLAS WILDER SCHOOL OF GOVERNMENT AND PUBLIC AFFAIRS

CEPI Education Law Newsletter

Dr. Richard S. Vacca, Editor; Senior Fellow, CEPI

June 2010: Vol. 8-10

POTENTIAL ISSUES TO WATCH IN THE 2010-2011 SCHOOL YEAR**Overview**

As compared to previous years, the 2009-2010 school year was relatively quiet. However, over the past nine months some issues did command attention both in popular media and professional literature. For an update and brief discussion of selected issues from 2009-2010, the reader is encouraged to look back at this year's *Education Law Newsletter* series.

As we move forward, what about next year? The paragraphs below contain examples of potential issue producers to watch.

Potential Issues: 2010-2011

In 2010-2011, several aspects of public school system maintenance and operation have a potential to spawn legal and policy issues. At the same time, however, some carryover issues will command the attention and time of school administrators and staff. What follow are my predictions.

School System Budgets. The financial picture in public education will remain neither hopeful nor encouraging and will dominate—forcing major budgetary cuts both in professional staff and curricular program offerings. Shrinking budgets will require cutting positions (including classroom teachers), freezing employee salaries, requiring employee non-paid furloughs, assigning staff to larger classes, eliminating extra-curricular activities, and limiting use of school buses by sports teams and clubs. At the same time, in this era of increasing health risks and escalating violence on school campuses, school officials will continue their efforts to maintain safe and secure schools—raising the possibility of new questions regarding staff and student privacy.

Personnel Administration: Accountability plus Pay for Performance. In state after state efforts to eliminate tenure and/or continuing contract status for administrators and teachers will continue. Advocates for such action will cite two major reasons for their position. First, in their view tenure and/ or continuing contract status function as impediments to change—making it difficult and sometimes impossible to assign, reassign, transfer, and remove staff members. Second, advocates will insist on using *student academic performance* (as measured

by standardized testing) as a major element in determining contract renewal and rewards for both administrators and classroom teachers. Advocates for change will insist that employment contracts for superintendents, principals, and classroom teachers include specific targets and benchmarks of productivity. “Accountability and pay for performance” will be the goal in 2010-2011.

Unions and professional organizations will fight such efforts, especially through political action at the federal and state levels and work stoppages in local school districts. And, court cases likely will emerge as things move forward.

Special Education. Fueled mainly by a growing population of students identified as needing special education programs and services (especially students on the autism disorders continuum), coupled with shrinking financial picture and an increased number of students with disabilities receiving services under the Rehabilitation Act of 1973, Section 504, local school districts (LRE’s) will move to consolidate resources by placing more special education students into general education settings and specially designed charter schools. At the same time efforts to shrink student enrollment will continue by limiting and narrowing the application of eligibility criteria to children initially identified as needing special education—especially in such categories as Learning Disabled. This likely will produce parent challenges.

While on the national education scene it is difficult to predict what will happen regarding the future of IDEA, the Obama Administration’s efforts to set in motion the *Race to the Top* initiative (especially regarding the establishment of national academic standards and charter schools) will dominate. At the same time, Congress will remain quiet concerning the future of special education—especially regarding funding. Experts remind us that such behavior is not new. Over the life of IDEA Congress has never adequately funded the statute’s mandates leaving states and local school districts with the financial burden to implement the law. In my view issues involving NCLB will subside in 2010-2011.

Parents and Special Education. As stated above, advocate groups will become more active in representing the interests of students through parent initiated actions. While filing law suits can’t be ruled out, more dispute resolution will be accomplished through established administrative processes. In my view local school systems will witness an increase in the number of special education disputes referred to mediation. And, of those conflicts not resolved through mediation, due process hearings likely will resolve most others. For these reasons, coupled with the high cost of litigation, special education disputants seeking remedy in a court of law will be less than in previous years.

At-Risk Students. In 2010-2011, the population of “at-risk” students (*i.e.*, students at risk of failure) entering the public schools will increase. Within this population are students who live in homes where adult members of the household speak very little to no English; or where parents are homeless and living in shelters; or where drug and alcohol use and abuse are rampant; or where poverty and joblessness make it impossible to have access to computers and books. Three potential issue areas to watch next year are: (1) *family privacy* (*e.g.*, a growing need to collect important “home life” data to complete student social histories), (2) *school discipline* (disruption caused by academic frustration, lack of understanding, and growing gang-related behavior), and (3) *student drop-outs* (especially increasing within minority and impoverished student populations).

Student Expression. In 2010-2011, a major carry-over issue involves student expression through technology. While a growing number of students will test the limits of the First Amendment by displaying inappropriate T-shirts, tattoos, and body piercing, “cyber bullying” and other forms of student-on-student harassment and threatening behaviors will command the attention of principals and teachers. A related area to watch involves

the inappropriate use of camera-ready cell phones—especially used for the production and dissemination of sexually explicit pictures. There is little question in my mind that many legal and policy issues will spring up as student suspensions and expulsions increase in number.

School Violence: Safety and Security. In my view gang-related activity in schools will escalate next year—not just in urban school districts but in suburban and rural school systems as well. If my prediction is accurate we will witness (1) more direct involvement of local law enforcement agencies in school buildings and at school-related activities; (2) expanded use of surveillance cameras on school buses, in school buildings, and on school grounds; and (3) increased screenings (usually involving handheld screening devices) of all visitors (including parents) to schools buildings during the school day and all spectators at school sponsored-activities—including mandatory searches as a precondition of entrance. At the same time, school initiated searches and drug testing programs will expand. Thus, privacy concerns will produce potential issues requiring local school officials to work closely with legal counsel to reexamine and up-date existing policies and procedures.

Policy Implications

My purpose in writing this final commentary was to identify potential policy and legal issue areas to watch in 2010-2011. While making such predictions is an imprecise and risky business, I nonetheless hope that the information contained in this final commentary is helpful to policy-makers and administrators as they strive to maintain safe, secure, and disruption-free learning environments where teachers can teach and students can learn.

Best wishes for a restful summer.

Richard S. Vacca
Senior Fellow CEPI

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