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POTENTIAL ISSUES TO WATCH: 2014-2015**Overview**

Each June I devote the final commentary in the series to the identification of topics where a potential exists to produce legal and policy issues facing local boards of education and school administrators next school year. Following in that tradition this final commentary for the 2013-2014 school year is not intended as a research piece or to argue one side or another, but rather it is an “issue spotting” exercise—a risky task to say the least.

Potential Issue Producers

Based on my review of this year’s court decisions, a tracking of stories reported in the popular media, and a review of current literature in education law, I have identified for brief and general discussion the following seven topics where potential legal and policy issues are likely to emerge during the 2014-2015 school year: *common core, school finance, special education, charter and non-traditional programs, school prayer, cyber bullying, and privacy.*

Common Core State Standards. While no case law exists at this point in time, the literature in public education is filled with a diverse array of articles (pro and con) and announcements for professional development training devoted to the implementation of the Common Core State Standards (*e.g.*, English, language arts and literacy, Mathematics, common assessments of student progress by grade level, etc.). Initiated in 2009, with voluntary standards published in 2010, by 2012 at least 37 states had adopted plans to fully implement the Common Core Standards. Here in Virginia the Common Core Standards have not been adopted. In states where Common Core Standards have been adopted, will implementation of the Common Core, and resulting standardization, cause conflicts of law and policy between the federal government and state governments?

In my view the fact that local school systems have spent recent years working to implement, be in compliance with, and fund both state academic standards and the federal government’s requirements of *No Child Left Behind* (especially the AYP mandate), puts local school boards,

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school principals, and classroom teachers in a precarious position as next school year plays out. Issues will emerge as educators at the local level ask: What do we do next? What will happen to current efforts to implement existing state standards and statewide testing (as measures of student mastery and achievement)? How do we integrate the new Common Core Standards into the classroom curriculum and into classroom teaching? What will be the impact on administrator and teacher evaluation of productivity (data-driven measures)? What about the continued push for some form of outcome-based merit pay? Will standardized student test scores dominate? How do we motivate and assess student mastery—especially at-risk students (sometimes referred to as “struggling learners”) to successfully respond to new teaching and learning strategies? What will be the impact on students covered by IDEA 2004—which, after a decade, has not been reauthorized by Congress? As next school year unfolds the bottom line question remains: Who pays the lion’s share of the bill?

School Finance. Local school boards will continue to feel the pinch of shrinking budgets and the community’s—especially parents—expectation that the quality of education provided students must continue to improve. Yet, we continue to live in an era where the “red pen” dominates. To put it another way, as next school year unfolds the board of education, school administration, and classroom teachers will be expected to do much more with fewer resources. Plus, next year the competition for financial resources between local school systems and other community agencies (police, fire, mental health, social services) will continue to escalate. In 2014-2015 local school boards will be expected to do infinite things with a shrinking pot of money.

In communities across the country as the population of special needs students continues to grow so too does the need to establish innovative programs and hire more teachers with special qualifications. As this school year recently came to a close there were local school systems where classroom teacher positions went unfilled. The difficulty in finding, competing for and hiring certified teachers in mathematics, science, technology, English as a second language, and special education will continue into next school year.

At the same time local school systems are facing growing budgetary issues associated with maintenance and operation. For example, school buildings, many of which were built several years ago, are in critical need of repair, up-dating, and even replacement. Classroom equipment is in need of up-dating and replacement (especially electronic equipment). So too do school buses need sustained maintenance.

Special Education. Not often focused on in education law literature is federal law providing early intervention for infants and toddlers with disabilities (physical or mental) under three years of age (birth through age two) as provided in IDEA, 20 U.S.C., Part C, sections 1431-1444, with federal regulations found at 34 C.F.R. 303.1 et seq. While each state sets its own standards and procedures, and designates the local lead agency responsible for delivery of services, the possible future impact on local public school systems cannot be neglected. In 2014-2015, as transition to a public school special education setting is one option available under the law, and coupled with an emphasis on pre-school education, will local school systems see more situations requiring early intervention?

At the same time local public school systems will continue to see an increase in the demand for programs aimed at students with Autism Spectrum Disorder (ASD). In my view the redefinition, now included in the DSM-5 (published in 2013), broadens the scope of ASD causing a need for local school systems to reexamine current policy and procedures put into play using the previously accepted definition. Coupled with the fact that IDEA has not been reauthorized since 2004, local school boards and staff are facing a rather disconcerting road to travel. Also issues likely will spring up in 2014-2015 as advocates continue their demand that special schools be established for students classified as ASD.

Charter Schools and Non-traditional Programs. At this point in time, while the jury is still out on the effectiveness and success of charter schools, the demand for charter schools and other special schools (*e.g.*, engineering and technology, the arts, gender specific schools, alternative schools for students with disciplinary issues, potential dropouts, etc.) nonetheless continues to grow. Depending on the constitution, statutes, and regulations governing public education in a given state, the establishment, funding of, and policies governing such special endeavors is easier to discuss than to actually carry to fruition. However, in my view in 2014-2015 the demands for such schools will continue to escalate and resulting issues will emerge.

Next year a need to reexamine policies and procedures involving students meeting graduation requirements through online courses will continue to grow. Also, the expansion of “virtual high schools” will require extensive planning and the reexamination of existing policies dealing with the entire school curriculum.

School Prayer and School Board Meetings. Suffice it to say, the United States Supreme Court’s recent decision in Town of Greece v. Galloway (2014), where the Court ruled by a vote of 5-4 that the town board of supervisors practice of beginning official meetings with a prayer was constitutional, will begin to raise legal and policy issues for local public school boards—especially in communities where school boards in the past started official meetings with prayer. As of this writing, because the high court has not yet spoken directly on prayer at school board meetings, legal and policy issues are likely to surface during the 2014-2015 school year.

Another area where potential First Amendment issues exist involves both students and staff—especially in secondary schools. In 2014-2015 school system policies must be revisited as the number of students and teachers who come to school wearing religious garb, symbols, and accessories will increase—especially as the legal pendulum swings away from Establishment Clause dominance and toward issues of free exercise.

Cyber Bullying. Suffice it to say we live in what is called “the digital age.” Cell phones, Texting, Facebook, Twitter, blogs, *et al.*, are common place and dominate the scene among today’s youth. Coupled by the rapid paced development and use of new technologies, this past year’s school system-wide policies dealing with in-school use by students are most likely out dated.

The one area of school system policy where issues will continue to abound involves student discipline. More specifically issues involving students who anonymously use technology as means of bullying and harassing school administrators and staff, as well as other students. In 2014-2015, in addition to other potential issue producers, one main area of difficulty in drafting and

implementing workable school system policies deals with bullying and harassment activities—especially those developed, initiated and transmitted by students off-school property using their own (not school owned) technology (especially cell phones). Making a causal link between outside school private behavior and in-school threats and/or disruption will dominate the scene.

Privacy. A basic expectation is that the personal property belonging to a person belongs to that person and to no one else. Personal property should be “let alone.” Personal lives outside of school in the community are included in a person’s private world. Because employees (administrators, teachers, staff) and students in public schools expect that their computers, cell phones, iPads, book bags, pocketbooks, brief cases, lunch bags, jean and jacket pockets, written correspondence, *et al.*, as well as their private lives, are off-limits to unauthorized persons, policies and procedures must be carefully written, publicized, and explained to avoid legal ramifications.

In 2014-2015 a need to collect outside-of-school, community-based information on students and their families will continue to grow. Privacy issues are likely to spring up as efforts are made to provide all students equal access to a quality education (including supportive services) in a safe and non-disrupted learning environment.

Next school year privacy-based issue producers involving students and staff will encompass such topics as search and seizure (especially looking for weapons and drugs on campus); the collection of family-parent background information (especially non-English speaking parents, and socio-economic condition); access to mental health information (especially the early identification of students in need of help and early intervention); increased reliance of interagency agreements and record sharing between school personnel and police agencies (especially where gang activity, violence and/or child abuse are suspected); and the possible use and abuse of prescription drugs.

Final Comment

As stated at the outset the intent of this final commentary is not to take a stand on a topic but rather to spot, identify and briefly discuss potential issues requiring the attention of school system policy makers, administrators, and classroom teachers as plans are made for next school year. Coupled with the contents of the monthly commentaries posted this past year, it is my hope that the above paragraphs provide helpful information.

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

Personal Note: This final commentary is lovingly dedicated to the memory of my late brother Dr. James S. Vacca. Jim devoted his entire professional career to working with and providing educational opportunities for hundreds of struggling kids. A great teacher, curious scholar, effective practitioner, loving husband, parent, grandparent, and brother, Jim is missed.