



# VCU L. Douglas Wilder School of Government and Public Affairs

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## CEPI Education Law Newsletter

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### POTENTIAL ISSUES TO WATCH IN THE 2016-2017 SCHOOL YEAR

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## **Overview**

This past school year I once again had the pleasure of editing and publishing nine monthly commentaries for CEPI, each one dealing with a current issue of law and policy having a direct impact on the day-to-day operation of public school systems. As a part of my efforts I was fortunate to secure the involvement of three writers (Professor Mark Weber, attorney Kathleen Conn, and third year law student Emily E. Smith) whose scholarly analyses and discussions (e.g., special education, cyberbullying, student expression) contributed important information for consideration by public school system policy-makers and administrators. Here in review are a listing of topics considered:

- **April 2016: New Developments in Free, Appropriate Public Education for Students with Disabilities** - by Mark Weber
- **March 2016: Regulating Professors' Online Speech - Academic Freedom or "Incivility"** - by Kathleen Conn
- **February 2016: Age Discrimination in Employment** - by Richard Vacca
- **January 2016: Student School Bus Safety** - by Richard Vacca
- **December 2015: Mandatory Immunizations** - by Richard Vacca
- **November 2015: The Applicability of the Tinker Test to Off-Campus Cyber-Speech** - by Emily Smith
- **October 2015: Cyber-bullying in Higher Education** - by Kathleen Conn
- **September 2015: Child-Find for Children with Disabilities** - by Mark Weber

I encourage the reader to consult the *CEPI Index to Prior Issues* for a complete list of past monthly commentaries prior to this year's.

In keeping with past practice this final commentary of the 2015-2016 series is devoted to predicting potential legal and policy issues to watch next school year—a risky business to say the least. The paragraphs below are the results of this year's "issue spotting" exercise.

## **Potential Issues 2016-2017**

### *School Safety and Security*

Over this past year articles and reports both in the popular media and professional literature have continued to feature reports and discussions of the critical need to move forward with policies and procedures aimed at keeping public school system property and events secure and safe. Not only focusing attention on the security and safety of students and staff from violence (e.g., student-on-student initiated verbal harassment and physical altercations; attacks by outside school system third parties; etc.), several are devoted to potential dangers caused by crumbling, outdated school buildings—including but not limited to unsafe drinking water, inadequate ventilation, and other health hazards.

Suffice it to say, such issues will become more intense next school year as budgetary constraints continue to escalate.

In 2016-2017, involvement of local police agencies in assisting school principals in providing and maintaining school security and safety will continue to raise questions of policy and practice. Generally referred to as School Resource Officers (SRO), armed police officers, while not employees of the school system, have nonetheless become a visible and integral part of the school environment, including their presence in school hallways, and at school system activities and events. In recent years, as the need to protect the safety of school students and staff from violence and disruption has grown, the involvement of the SRO has sometimes developed to an extent where the prerogatives and lines of authority between school administrators and the SRO are blurred. Critics claim that too many routine student disciplinary problems, usually the prerogative of a principal or assistant principal, are too often handled as a police matter by the SRO. In 2016-2017, where this is happening, local school system policy-makers must continue to work toward clarifying the disciplinary authority, roles, functions, and expectations of the SRO in student disciplinary matters vis-à-vis building administrators.

Another possible issue to watch involves safety and security of transgender students. While it is premature to predict the broad implications of a recent Virginia case with national implications, where a student has challenged (under both 14th Amendment Equal Protection, and Title IX, Education Amendments Act, 20 U.S.C. 1681 [a]) a local school board's access to school bathrooms policy, this Fourth Circuit Court of Appeals case is important for school system policy-makers to watch as it works its way through the judicial process. G.G. v. Gloucester County School Board, 2016 U.S. App. LEXIS 7026 (4th Cir. 2016) The final ruling in this case (possibly by the United States Supreme Court) will have major implications for school system policies and procedures stretching well beyond those dealing solely with school safety and security.

### *Special Education*

In 2016-2017 issues involving special education will continue to flourish. In my view there are three reasons for this. First, because Congress has not reauthorized IDEA since 2004, school officials are operating on decade-old interpretations of IDEA and each state remains responsible for implementing and paying the lion's share of financial support of an expanding population of special education eligible children. Second, under the most recent publication of the DSM-5 (Diagnostic and Statistical Manual of Mental Disorders) once separate and specific categories of disability have been reorganized and expanded into larger more general categories with specific characteristics listed in the larger category (e.g., Autistic Spectrum Disorders). This will likely add to confusion among non-special education school administrators and staff. Third, claims of discrimination for an over-identification of special education students, resulting in a high percentage of minority students being placed in special education classes and programs, likely will continue to surface.

### *At Risk and Special Needs Students*

In 2016-2017, emerging issues involving a growing population of students from families where the primary language spoken is not English—students who enter school with little to no understanding or speaking ability in English (English language learners)—will require local school officials to reexamine and define the concept of “necessary related services” in a different, non-special education, context. In 2016-2017 a need to reexamine remedial education programs, as well as student identification and placement policies and procedures will be necessary. The inclusion of students from diverse cultural and

language backgrounds will cause the terms “at-risk” and “special needs” to change, and the responsibility to “meet their unique needs” to become more comprehensive and demanding. In 2016-2017, school system resources (both fiscal and programmatic) will be stretched well beyond current limits as local school officials endeavor to provide all students with equal access to free, meaningful, and appropriate educational opportunities—including English language development, academic skills, and career readiness.

### *Student Discipline*

Incidents of student-on-student harassment (including, but not limited to sexual harassment, bullying, threats of violence and harm, hate speech, use of vulgar language, sexually explicit pictures) will continue to spring up, especially at the secondary school level. Next school year, because student access to, dependence on, and use of electronic/social media have become “facts-of-life,” policy and legal issues will continue to flourish. Moreover, because much student-to-student electronic communication is created off school grounds, on non-school time, community-based conflicts, including organized protests, are likely to flare up during the school day, causing disruption on school grounds.

In 2016-2017, a rapidly developing, technology-driven, and ever changing venue of student First Amendment speech will out-pace school system policy. Thus, local school system policy-makers and their legal counsel will spend inordinate hours auditing existing policies and formulating new policies and student disciplinary procedures.

### *Administrator and Teacher Contracts, Salaries, and Benefits*

In 2016-2017, the tenure and continuing contract debate will continue. Fueled by a continued emphasis on accountability for student academic progress, school improvement, and fiscal responsibility, school boards will continue to feel community pressure to summarily dismiss ineffective school staff and to radically reorganize an age-old instructional delivery model. Thus, the procedural requirements of tenure and continuing contract status (in states where they exist) will continue as a focus of heated discussions among and between local school officials and advocates for organizational change—especially in communities where loss of school accreditation has become a major problem.

In 2016-2017, as local school system maintenance and operation budgets continue to grow and access to fiscal resources shrink, salaries and benefits (especially for classroom teachers) will remain high priority subjects faced by local school officials. Three factors will add to the difficulty in meeting staff expectations. First, growing competition for funds between local school systems and other local governmental agencies (e.g., police, fire, sanitation, street and road maintenance, et al.). Second, a continued reliance on local property taxes as the major source of school system operating funds. Third, a critical need for additional funds to maintain and repair ageing school buildings and facilities, and to replace old school buses.

### *Others to Watch*

As November 2016 moves closer, public education once again constitutes a major subject in the political campaigns of the candidates for President of the United States. As in past campaigns, state and local public school officials will be “caught in the middle” as proposals and promises are made absent a presentation of concrete policies and funding. Subsequently, issues will spring up as a new administration sets a different agenda for involvement of the federal government (USDOE, Justice Department) in the schools.

Another possible issue producer to watch focuses on a resurfacing of the “controversial and sensitive subjects in the curriculum” controversy. As in past years, parents, students, teachers, and principals are again in conflict over what students are being or should be taught and exposed to (e.g., films, books, guest speakers, research assignments, discussions) in classrooms and school assemblies. Where this conflict springs up in 2016-2017, local school boards once again will be in a quandary over the enforcement of existing policies and procedural requirements concerning the curriculum.

Finally, next school year potential issues involving student possession and use of alcohol, tobacco, and drugs (including prescription drugs) might once again spring up. Of particular note are recent reports linking students and E-cigarettes.

### **Summary Comment**

As stated at the outset, my purpose in writing this commentary is to identify and briefly discuss potential issues of law and policy facing local school boards and administrators in the 2016-2017 school year. I hope that the information presented in the paragraphs above will prove helpful as existing policies are reexamined and plans are made for next school year.

Have a great summer.

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