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POTENTIAL ISSUES TO WATCH IN THE 2008-2009 SCHOOL YEAR**Overview**

This final edition of my commentary series for the current year is devoted to identifying potential legal and policy issues facing public school boards and administrators next year. Based on my tracking and review of 2007-2008 court decisions, as well as new and proposed legislative and regulatory changes, the paragraphs below contain examples of potential issue areas to watch in 2008-2009. The issue areas selected for inclusion and brief discussion are: (1) student expression, (2) school violence: safety and security, (3) parent rights: special education, (4) employee rights, and (5) school finance/budget.

Student Expression Issues

Student Access to and Use of Technology. There is little doubt that today's typical public school student is very knowledgeable and competent in accessing and using the many forms of technology that dominate our daily lives. In recent years we have observed a rapid growth of students "texting" each other both inside and outside of school. The use of cell phones, especially those equipped with cameras, has escalated. At the same time more and more students are establishing personal accounts on *Face Book* and *My Space*. In my view, these developments have produced a potential for safety, security, disruption, harassment, and cyber bullying issues to spring up next school year.

In 2008-2009 the traditional use in school board policy of such terms as appropriate, offensive, derogatory, disrespectful, and distasteful speech likely will not pass judicial muster in future student First Amendment cases. The reason is simple. Today's technology-competent students communicate in code where neither punctuation nor spelling matter, and newly made-up words and phrases are both understood and acceptable. Students are shocked when others "text" them in complete, grammatically correct sentences.

Other Forms of Student Expression. In 2008-2009 school administrators most likely will see an increase of other forms of expression that test the limits of First Amendment free speech and expression. Some examples of potential issue producers follow.

(a) Tattoos (both temporary and permanent) and body piercing (tongue, eye brows, lips, nose) are becoming more popular with students of all ages (including elementary and middle school students), and with staff as well. In my opinion in 2008-2009 traditional policies and rules currently applied to T-shirts, buttons, armbands, and student attire will not suffice when dealing with contemporary modes of expression. Fashion and clothing fads are ever changing and in 2008-2009 will test and stretch the limits of existing school system policies and school rules; as well as the patience levels of school principals and teachers.

(b) Student politically-oriented speech and expression likely will increase this coming year; especially as the candidates for President of the United States become more active and media coverage of the campaign increases. While a presidential election year presents social studies and government teachers with a treasure trove of classroom projects and discussions, school principals must be ready to handle student activities that might include heated debates popping up in the lunch room, requests for outside speakers for assemblies and classrooms, impromptu rallies, posters put up in school hallways, students and staff wearing partisan campaign buttons, and requests of student organizations and outside groups to distribute political literature on school property during instructional time.

(c) In 2008-2009 issues involving student and staff religious speech and expression likely will increase. While school prayer and organized devotional-type club activities will not be as numerous as in past years, legal and policy issues involving the curriculum are more likely to increase. For example, I foresee a continued debate in the science curriculum pitting intelligent design against the teaching of evolution, as well as an increase in the number of students who insert their own personal religious beliefs into assigned research projects, oral presentations, and class discussions. I also foresee parents and others objecting, on religious grounds, to required outside reading lists and required classroom textbooks that contain discussions of alternative life styles, gay marriage, abortion, and contraception. Objections to school-based health clinics and condom distribution programs (where they exist) also will produce issues in 2008-2009.

School Violence: Safety and Security

In the aftermath of the horrible situation at Virginia Tech, an increase in youth gang related activities, and the highly publicized increase across the country of violent episodes occurring on school buses and at after school athletic events, school systems (urban, suburban, and rural) must be ready to immediately deal with threats and actual incidents of mayhem that compromise the safety and security of students and staff.

Next school year school officials will need to take drastic safety and security measures many of which will have a direct impact on the personal privacy expectations of students and staff members. For example, in 2008-2009 school officials must increase the involvement of local police agencies in school buildings and at school events, implement regular but unannounced school search and seizure measures (including the use of police K-9 units in conducting searches), regularly use hand held metal detectors, conduct random drug tests; require student and faculty identification cards, and install surveillance cameras on school buses and in school buildings. In 2008-2009 other privacy issues likely will spring up as parents and other visitors to school buildings and school sponsored events are routinely screened as a precondition of entrance.

Parent Rights: Special Education

In 2008-2009, issues involving parent rights in special education will present school officials with interesting challenges. Because of recent United States Supreme Court decisions, new federal guidelines implementing the reauthorized IDEA 2004, and changes in state guidelines and procedures, parent rights in special education have

been somewhat narrowed. A good example involves the exhaustion of administrative procedures rule of civil procedure. More specifically, prior to seeking legal relief judges will insist that parents first exhaust the IDEA's administrative options (e.g., resolution sessions, mediation, due process hearings) prior going into a court of law.

In 2008-2009 public school officials must be prepared to spend more time and effort in resolving special education-oriented conflicts through alternative dispute resolution means and less time in litigation. At the same time, however, the complicated nature of a growing number of special education disputes (especially those involving children with autism) further emphasizes a need next year to seek advice from the school system's lawyer at every step of the process.

Employee Rights

This coming year public school officials will see a renewed interest in establishing "pay for performance" programs for school administrators and teachers. Fueled by the ability to use technology to track such items as student test score results, adequate yearly progress computations, student suspension and expulsion numbers, and drop out rates to specific school buildings and to particular curricular options and classes in those buildings, these data can be factored into employment decisions. At the same time more school boards will insist on writing productivity targets and expectations into employment contracts for superintendents of schools.

In recent years some experts have argued that the time has come to completely change the way that we evaluate, retain, reward, and pay school administrators and teachers. I believe that in 2008-2009 we will once again hear a community-based demand for "merit pay;" and, if my prediction is correct, collateral issues will once again spring up involving seniority, tenure, and continuing contract.

School Finance/Budget

In 2008-2009, while issues of adequacy and equity will continue to be debated in state legislative venues across the country, local school boards, city councils, and county supervisors will be faced with serious day-to-day budgetary problems. With rising costs associated with: (1) the rapidly escalating price of gasoline and other energy sources, (2) meeting NCLB mandates (especially AYP), (3) providing for the needs of growing numbers of non-English speaking students, (4) early identification of students with developmental delays, and (5) expanding curricular options and special programs for students who are at risk of failure and dropping out of school, local school system budgets will be taken far beyond anticipated levels of expenditure.

In effect, issues will spring up next year when local school officials will, in an environment of financial strain and "financial exigencies," examine and reevaluate the economic feasibility of retaining specific school program offerings, especially those categorized as "extracurricular." At the same time, because of a continued primary emphasis on academic subjects, programs in the "arts," especially art and music, will feel the impact of the economic pinch.

Policy Implications

My purpose in writing this final commentary was to identify potential policy and legal issues to be aware of and watch during the 2008-2009 school year. Recognizing that the summer months provide opportunities to forecast and plan for next year, I hope that the information and discussions contained in this commentary and in each edition of this year's *CEPI Education Law Newsletter* series, prove helpful to policy-makers and school

administrators in their quest to provide and maintain a safe, secure, and disruption-free educational environment where teachers can teach and students can learn.

Best wishes for a restful summer.

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