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POTENTIAL ISSUES TO WATCH IN THE 2009-2010 SCHOOL YEAR**Overview**

Each year I devote this final edition of the commentary series to identifying potential legal and policy issues facing public school boards and administrators next school year. Based on my tracking and review of 2008-2009 court decisions, as well as emerging proposals from the new administration in Washington, D.C., the paragraphs below contain examples of potential issue areas to watch in 2009-2010. The issue areas selected for inclusion and brief discussion are: (1) student expression, (2) school violence: safety and security, (3) parent rights (4) employment, and (5) school finance/budget.

Student Expression Issues

Student Expression: Access to and Use of Technology. As I observed in last year's final commentary, 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 2009-2010 administrators and teachers will continue to see a rapid growth of students "texting" each other both inside school hallways and at school sponsored events. The use of cell phones, especially those equipped with cameras, will continue to escalate. At the same time more and more students will continue to establish personal accounts on *face book* and *my space*. These developments likely will produce safety, security, disruption, harassment, and cyber bullying issues in 2009-2010.

Other Forms of Student Expression. In 2009-2010 school administrators, classroom teachers, coaches, and other personnel will continue to see an increase of other forms of expression that test the limits of First Amendment free speech. For example, issues involving student religious speech will spring up as more students interject their personal religious beliefs into term papers and essays that they write. Students also will express their religiously based views into class discussions—especially in science, social studies, home and family living, and health education classes I also foresee an increasing number of students and their parents objecting, on religious grounds, to required outside reading lists—especially where the book or essay contains references to such controversial subjects as alternative life styles, abortion, and contraception.

School Violence: Safety and Security

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As in the past five years, public school officials and administrators in 2009-2010 must be ready to immediately and swiftly deal with threats and actual incidents of violence that compromise the safety and security of students and staff. Once again, building level administrators must continue 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, the direct involvement of local police agencies in school buildings and at school events will intensify through: (1) periodic but unannounced school searches (including the use of police K-9 units in conducting searches) and (2) continued presence of uniformed and armed police officers in school hallways and at all school sponsored extra-curricular events. At the same time, building level administrators must be empowered by local school board policies to: (1) conduct random searches of students and drug tests; (2) conduct strip searches; (3) require student and faculty identification badges to be visible at all times, (4) install and monitor surveillance cameras on school buses and in school buildings; and (5) subject parents and other visitors to school buildings and school sponsored events to routine screenings (usually involving use of handheld metal detectors) as a precondition of entrance.

Parent Rights: Special Education, At Risk Students, Charter Schools

Special Education. In 2009-2010, issues involving parent rights in special education, especially parents whose children are classified as being on the Autism disability continuum, will present local public school officials with issues to resolve. Conflicts involving implementation of research based methodologies (ABA and others) likely will dominate the scene.

Public school officials also must be ready and prepared to spend more time and effort to settle conflicts (FAPE, LRE, ESY, related services) through *alternative dispute resolution* means (both mediation and due process hearings) and less time in litigation. At the same time, however, the complicated nature of a growing number of special education disputes further emphasizes a need next year to seek advice from the school system's lawyer at every step of the process.

At Risk Students. In 2009-2010, the population of students entering public schools who are "at risk of failure" (potential drop-outs) will continue to escalate. Local school officials will need to form partnerships with other public agencies (especially community health and social welfare), as well as with the local business community, in an effort to meet the socio-economic needs of students and their families. Because many of these students live in homes where parents neither speak nor understand English there will be a growing need for ESL teachers, bi-lingual classroom teachers and guidance counselors, and social workers. Building level administrators also will find that they are dealing not with a biological parent but rather with a surrogate parent, or court appointed special advocate, or court appointed guardian ad litem.

Charter Schools. In 2009-2010, there will be a renewed interest in establishing charter schools. This renewed interest is spawned by the following factors: (1) recent comments made by the new United States Secretary of Education favoring the establishment of charter schools; (2) a growing and vocal population of parents across the country who wish to take their children out of the local public schools and place them in a more specialized setting (e.g., single sex school, school for children with Autism, school for academically talented kids [especially mathematics, science, and engineering], and school of art and drama); and (3) the number of public schools reported as failing to meet national and state academic standards and/or accreditation.

Employee Rights

This coming year public school officials will see a renewed interest in establishing “pay for performance” (i.e., “merit pay”) 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; and, if my prediction is correct, collateral issues will once again spring up involving tenure and continuing contract status.

School Finance/Budget

Because of the dire condition of our nation’s economy, issues of adequacy and equity will continue to be debated in Congress and in state legislative chambers. At the same time, local school boards, city councils, and county supervisors will be faced with serious day-to-day budgetary problems. With rising costs and shrinking assets, local school system budgets will be taken far beyond anticipated levels of expenditure. As a result, local school officials will, in an environment of financial strain and “financial exigencies,” continue to 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, drama, and music will feel the impact of the economic pinch. For the first time, all interscholastic athletic programs (major and minor) will feel the budgetary pinch as schedules are adjusted—especially involving school teams traveling to other communities. If economic conditions do not improve, athletic directors and principals may find themselves dealing with the difficult task of eliminating school teams.

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 2009-2010 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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