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POTENTIAL ISSUES TO WATCH IN THE 2017-2018 SCHOOL YEAR

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Overview

This past school year I once again had the pleasure of editing and publishing five 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. Before looking ahead to the coming school year, here in review are a listing of topics considered in 2016-17:

- [April 2017: School Disciplinary Authority and Student Off-School Grounds Behavior: Policy Implications](#)
- [March 2017: The Religion/Public Education Controversy 2017: Emerging Issues](#)
- [January 2017: Public School Finance Issues 2016: The Texas Case](#)
- [November 2016: Teacher Classroom Effectiveness and Student Learning Outcomes: Policy Implications](#)
- [September 2016: Teacher Tenure Challenged: The California Case](#)

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.

Leading Issue Producers for 2017-2018

Each year the final edition of the commentary series is devoted to identifying potential legal and policy issues to watch next school year. Based on my review of court decisions, articles in the professional literature, and stories in the news media, the paragraphs below identify and briefly discuss examples of issues I believe are likely to confront local school boards and school administrators next year. It will be obvious to the reader that many of the issues contained in this commentary are not new.

Special Education

Two March 2017 decisions from the United States Supreme Court involving students with disabilities are likely to have an immediate impact on local school system policy and procedure. In [Fry v. Napoleon Community Schools](#) (2017) the Court held that exhaustion of the Individuals with Disabilities Education Act's (IDEA) administrative procedures is not required before parents go to court. In [Endrew F., et al. v. Douglas County School District RE-1](#) (2017), the Court held that:

- (1) the adequacy of a student's Individual Education Plan (IEP) turns on the unique circumstances of the child for whom it was created,
- (2) school authorities are expected to be able to offer a cogent and responsive explanation for their IEP decision, and
- (3) the IEP is reasonably calculated to enable the child to make progress in light of his circumstances.

In 2017-2018 a national conversation will continue regarding the future of special education as we know it today. While it is too early to predict implications for state and local policy and for professional practice, school officials must stay abreast of what is being suggested in the literature. For a comprehensive treatment of the subject I recommend the [April \(2017\) issue of *Educational Leadership*](#) (ASCD), entitled "Differences Not Disabilities."

First Amendment Speech and Expression

Suffice it to say, today's typical public school students (elementary, middle, and secondary) are most competent in using the latest forms of technology to socially communicate with their peers using *cyber language and symbolism*. As witnessed in past school years, local public school boards and administrators will continue to see issues spring up involving allegations of student-on-student cyber harassment (*e.g.*, bullying, sexual harassment, threats, and intimidation). While these "hot topics" already have spawned a few First Amendment speech related incidents (*e.g.*, allegations of verbal and physical harassment, bullying) in public school systems, it is too early to predict an increase in such situations next year.

As of this writing, two emerging sources of potential legal and policy issues might also flow from the current national debate regarding (1) immigration, and (2) the rights of transgender students in public schools.

Transgender Student Rights

The fact that the United States Supreme Court vacated and remanded Gloucester County School Board v. G.G. (2017) back to the United States Court of Appeals for the Fourth Circuit is significant. Subsequently, on remand, a three-judge panel of the Fourth Circuit dissolved its previous injunction. In my opinion, because neither the Supreme Court nor the Fourth Circuit gave local policy makers clear guidance regarding *Title IX* (Educ. Amend. 1972) and the rights and protections of transgender students in public schools, issues will continue to spring up in 2017-2018.

Next school year we also might see an increase in parental allegations of in-person (face-to-face, taunting, bullying, intimidation, harassment) of students with disabilities—especially students where the IEP requires that she/he be mainstreamed into general education academic programs and extra-curricular activities.

Possible legal and policy issues also might spring up involving conflicts between faculty, staff, and student dress and attire and the existing school system dress codes for both employees and students. Issues also might spring up regarding required and proper attire in interscholastic athletics. As a general rule, in such situations the person involved more often than not will claim that his/her mode of dress is tied directly to the requirements of their particular religious faith—*i.e.*, First Amendment Free Exercise.

English Language Learners

In 2017-2018, it is likely that the population of English Language Learner students entering public schools will continue to grow. Coupled with a move to establish and maintain more welcoming, friendly, inclusive, and accommodating school environments, students from many different countries, where native languages and regional dialects often merge, the impact on school system policies (*e.g.*, parent involvement, student attendance, academic requirements, class placements, staff training, support services, discipline procedures) likely will require constant monitoring, accommodation, and possible change.

Student Discipline

The results of this year's *Commonwealth Poll* (VCU Center for Public Policy) show that most Virginians regard their local public schools as "safe or very safe," and recent statistics published by the National Center for Education Statistics indicate that "actual student victimization is trending down." Compass Point (April 3, 2017) However, next school year legal experts and advocacy groups will continue to insist that:

- (1) student out-of-school suspensions and expulsions from school be reduced,
- (2) fewer in school disciplinary matters be handled by police resource officers (early diversion from the criminal justice system), and
- (3) zero tolerance policies, where they exist, be jettisoned.

One factor fueling the call for change relates to a growing percentage of minority students (some with disabilities) being either suspended or expelled from school. While not dismissing the need to keep schools safe and secure, by taking immediate disciplinary action against any student involved in such serious offenses as weapons violations, drug sale and possession, assaults (physical and verbal), and harassment of any kind, advocates for change continue to suggest student peer mediation programs, restorative justice, and mentoring as examples of viable alternatives to traditional disciplinary actions. In other words convert as many disciplinary situations as possible into developmental (both educational and social) learning experiences. Students should be in school learning from their mistakes and not be out on the streets.

Another factor requiring a reexamination of student disciplinary policies and procedures involves the growing ethnic and cultural diversity of the student population. For example, some students entering a local public school system for the first time may neither recognize nor comprehend the school system's behavioral rules, expectations, or consequences because of language barriers. The same can be said of their parents.

Substance Abuse

According to recent reports in the news media, drug dealing and user abuse of both prescription and illegal drugs (heroin and opiates), especially among school age kids, are on the rise. In 2017-2018, local school system policy makers likely will experience community (especially parent) demands that efforts be made to inform, educate, and provide resources for faculty, staff, parents, and students in an effort to reduce and eliminate such harmful activities both in the community and in the schools. To develop and implement a successful (proactive) policy, the total cooperation and active involvement of police agencies, mental health, local health care professionals, juvenile justice, and social services, as well as local businesses and community faith-based organizations, are needed.

Other Possible Issues

While it is too early to make predictions involving some areas of school system operation, what follow is a list of ten potential "hot topics" that might spawn issues in the 2017-2018 school year:

- teacher and administrator performance-based pay plans;
- teacher tenure versus performance-based term contracts;

- transfer of “high achieving” principals, classroom teachers, counselors, and other staff from academically “high achieving” schools to academically “under achieving schools;”
- required cultural diversity in-service training for all administrators, classroom teachers (especially science, mathematics, and technology), and support staff;
- repair and/or replacement of equipment, school buses, air conditioning, ventilation, and heating systems in schools;
- realignment of student attendance zones due to shifting demographics;
- student grading scales;
- charter schools, vouchers, scholarship funds to help students currently isolated in “academically underperforming” schools move to “academically achieving” schools;
- subjects included (or not included) in the curriculum, student class assignments, required readings; and
- high school graduation (diploma) requirements (academic, technology, community service, et al.)—especially bridging secondary education to a student’s future plans (community college, four year college, fulltime employment).

Final Thought

As stated at the outset, the intent of this year’s final commentary is to identify and briefly discuss potential legal and policy issues to be aware of and watch during next school year. Recognizing that several of the issues included in this commentary actually are carried over from past school years, I hope that giving them a renewed emphasis will remind local public school officials and administrators that much work still needs to be done.

Finally, I hope that the information contained in each issue in this past year’s *CEPI Education Law Newsletter* series proved helpful to public school system policy makers, school administrators, and others in their sustained quest to provide and maintain equal access to quality educational opportunities for all children within their jurisdiction.

Have a great summer!

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

Resources Cited

Are Virginia schools becoming safer? Compass Point, CEPI (April 3, 2017)

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