



## LEGAL UPDATES & TRENDS FOR 2014-2015: WHAT YOUR BOARD SHOULD KNOW

---

Allison Aiken Hanna, Esq.  
Kimberly Kelley Blackburn, Esq.  
Jasmine Rogers Drain, Esq.

Childs & Halligan, P.A.  
August 23, 2014

## Legislative Update

### **Act 155- Elimination of Exit Exam Requirement: Highlights**

- Eliminates the exit exam as a requirement for graduation beginning with the graduating class of 2015
- Law is retroactive to 1990
- All school districts must have procedures in place to facilitate petitions/request for diplomas under Act 155
- Persons receiving diplomas under Act 155 will not be counted as graduates for determining graduation rates of schools and districts

## Legislative Update

### Act 155- Elimination of Exit Exam Requirement: Highlights

- After a school board has received a petition and verified that the student now qualifies for a high school diploma, it may forward the following information to [Act155diplomas@ed.sc.gov](mailto:Act155diplomas@ed.sc.gov) immediately, with all petitions required to be filed by **December 31, 2015**.
- Beginning in the 2014-2015 school year, eleventh graders will be required to take two tests. (Passage is not required for graduation.)

## Legislative Update



### Affordable Care Act Update

- On February 12, 2014, the IRS issued final rules on the “Employer Mandate” or “Pay or Play” provision
- Effective date for compliance -- January 1, 2015 or the beginning of the employer’s plan year in 2015 or 2016, depending on the size of the employer
- Final rules clarify employee categories and other provisions addressing employee status determinations, safe harbors, and transition relief
- Significant reporting requirements on employers that start in the 2015 calendar year

## Legislative Update

### **Amendments to South Carolina Charter School Act**

Highlights of H.3853 include, but are not limited to:

- Authorizes the establishment of an Alternative Education Campus (“AEC”), a charter school with an explicit mission as outlined in its charter to serve at-risk students
- Mandates to permanently close, with some exceptions, any charter school at the conclusion of the school year after receiving the lowest performance level rating as defined by the federal accountability system for three consecutive years ...

## Legislative Update

### **Amendments to South Carolina Charter School Act: Highlights**

- The elimination of the Charter Advisory Committee (CSAC) and the July 1st submission deadline.
- New charter schools applying to open for the 2015-2016 school year must submit a letter of intent to the board of trustees or area commission and send a copy to the State Department of Education at least 90 days before submitting an application
- The board of trustees or area commission from which the applicant is seeking sponsorship must rule on the application for a charter school in a public hearing, upon reasonable public notice, within ninety days after receiving the application
- In the case of a charter school closure, the sponsor must develop a public charter school closure protocol to ensure timely notification to parents, orderly transition of students and student records to new schools, and proper disposition of school funds, property, and net assets

---

## Legislative Update

- Smart Snacks in Schools Nutrition Program takes effect
- “Back to the Basics In Education Act of 2014” passes

---

## Court Update

### **FOIA/Meeting Agendas case**

Lambries v. Saluda County Council, et al. (S. C. Supreme Court)

### **Student Grading Policy case**

Palms v. Greenville County School District (S.C. Court of Appeals)

### **Cell Phone Search case**

Riley v. California (U.S. Supreme Court)

### **Town of Greece – Prayer case**

Town of Greece v. Galloway (U.S. Supreme Court)



## SOCIAL MEDIA:

---

WHEN GOOD PEOPLE POST  
STUPID COMMENTS, AND  
TERRIBLE PHOTOS, AND  
OFFENSIVE COMMENTS, AND  
INSENSITIVE JOKES, AND ...



## Students and Social Media

- “Students do not shed their constitutional rights to freedom of speech or expression at the school house gate.”
- Student speech may be suppressed if the speech could “materially and substantially disrupt the work and discipline of the school.”

Tinker v. Des Moines Ind. Cmty. School District



## Ripped from the Headlines! (Part 1)

### J.S. v. Blue Mountain School District (Pennsylvania)

- A middle school student created a fake profile for her principal, which portrayed a homosexual middle school principal named “M-Hoe.” The profile did not use the principal’s name, but used his school picture.
- The General Interests section read: “detention, being a tight a\*\*, riding the fraintain, spending time with my child (who looks like a gorilla), baseball, my golden pen, f\*\*\*\*\* in my office, hitting on students and their parents.”
- Part of the About Me section read, “For those who want to be my friend, and aren’t in my school[,] I love children, s\*\* (any kind), dogs, long walks on the beach, tv, being a d\*\*\* head, and last but not least my darling wife who looks like a man (who satisfies my needs).”

## Ripped from the Headlines! (Part 1)

### Blue Mountain School District (cont.)

- No one at school actually saw the profile because the school blocked MySpace.
- Although the 3rd Circuit found the comments “disturbing,” it overturned the school’s suspension of the student because there was no disruption at school and therefore, the speech was protected under the First Amendment.

## Ripped from the Headlines! (Part 2)

### Kowalski v. Berkeley County Schs. (4<sup>th</sup> Circuit )

- ❑ K. Kowalski created a MySpace webpage using her home computer and several fellow high school students joined the group, which mostly ridiculed classmate, S.N. Kowalski did not post any comments or photos aimed directly at S.N., but she commented approvingly of two derogatory postings.
- ❑ She was ultimately suspended for five (5) days and given a ninety (90) day “social suspension,” during which she was barred from participating in cheerleading and “Charm Review.”

## Ripped from the Headlines! (Part 2)

### Kowalski v. Berkeley County Schs. (cont. )

- ❑ Student filed a Federal lawsuit alleging violation of her First Amendment rights, violation of Due Process rights, and a claim for intentional or negligent infliction of emotional distress.
- ❑ The Court found that Kowalski’s free speech rights were not violated because the speech was sufficiently connected to the school environment to implicate the District’s discipline authority under Tinker although the conduct occurred off of school grounds.
- ❑ The Court rejected Kowalski’s Due Process claim that she had no notice that she could be punished for off-campus speech, concluding that the relevant policies are “designed to regulate student behavior that would affect the school’s learning environment.”

---

## What would you do?

- 15 and 16 year old girls post “raunchy photos” of themselves posing with sex toys on Facebook at a sleepover
- The girls are members of the high school volleyball team
- The district policy prohibits conduct “that brings discredit or dishonor upon yourself or your school.”



---

## What the Court did:

- Although the conduct was “juvenile” and “silly” it was subject to First Amendment protection
- The girls’ suspension from school and volleyball participation was overturned by Indiana’s federal district court
- T.V. v. Smith-Green Cmty. School Corp., 807 F.Supp.2d 767



## Ripped from the headlines!

Student posts a photo of herself on Facebook – in a bikini with a cut-out representation of Snoop Lion (the artist formerly known as Snoop Dogg, a rapper)

- The student's Facebook settings were "public"
- An administrator at her school used her image and posting in a presentation published to parents/students entitled "Once It's There, It's There to Stay!"
- The presentation was about the importance of students understanding that privacy does not exist on the internet/Facebook

Student sued school district for \$2 million – case was dismissed (Georgia)

## Teachers and Social Media



- "Expression is a teacher's stock in trade, the commodity she sells to her employer in exchange for a salary." Mayer v. Monroe Cty Community Sch. Corp. (7th Cir. 2007).
- Teachers do not enjoy the same level of First Amendment protection as students in their expressive speech

---

## Ripped from the Headlines! (Part 1)

- Stacey Snyder, a student teacher in PA:
  - Posted a picture of herself on MySpace in a pirate hat, holding a plastic cup. The label of the picture read “Drunken Pirate.”
  - Posted several negative comments about her supervisor
- The Pennsylvania federal district court upheld Millersville University’s decision to strip Snyder of her teach certification and BSE degree.



---

## Ripped from the Headlines! (Part 2)

- Carly McKinney, a teacher in Colorado “tweeted” (under @Crunk\_Bear ) self-revealing pictures as well as comments including “stay sexy,” “stay high” and “stay drunk.”
- She also tweeted that one of her students was “jail bait” and she was grading papers while high
- She was placed on paid administrative leave and ultimately terminated



## What would you do?



A teacher is friends with multiple students on Facebook and engages in conversations with a few of them, including posting on each others' walls. Once brought to your attention, how do you handle?

- A. Tell the teacher to “defriend” the students
- B. Warn the teacher that there may be consequences if a post is remotely inappropriate or disruptive and document the warning
- C. Ignore the situation and hope nothing comes of it.

## Best Answer

**B. Warn the teacher there may be consequences if a post is in anyway inappropriate/disruptive and document the warning**

- In real life, the teacher’s post read, “What makes you think I want any? I’m not jealous. I just like to have fun and goof on you guys. If you don’t like it. Kiss my brass! LMAO.”
- The court upheld the termination of the teacher because it was not a violation of the teacher’s First Amendment rights since his speech, “was likely to disrupt school activities.”
- Spanierman v. Hughes, 576 F.Supp.2d 292

# THE FIRST AMENDMENT AND PUBLIC SCHOOLS

What do you do when you don't like what your students and staff say?



The US Supreme Court has upheld a school's right to:

- Punish a student for making graphic sexual references during a commencement speech. Bethel School District No. 403 et al. v. Fraser, a minor, et al. 478 U.S. 675 (1986)
- Censor an article on teen pregnancy from a school newspaper. Hazelwood School District et al. v. Kuhlmeier et al. 484 U.S. 260 (1988)



**CENSORED**

## What would you do?

- On a school approved trip to watch the Olympic torch relay, multiple students hold up a sign that says, "BONG HiTS 4 JESUS." There are many students (and international media) on the trip who can read the sign.
- You are the principal and want to confiscate the sign. Can you??



## Answer

**YES!**

- According to the US Supreme Court, the drug problem is so pervasive in our county that prohibiting obviously drug-related signs is permissible.
- In this case, one child sued for a violation of his First Amendment rights; the court stated that teaching students about drug prevention is an important, if not compelling, interest.
- Morse v. Frederick, 127 S.Ct. 2618 (2007)

## What would you do?

- A student wears a pink plastic “i ♥ boobies!” bracelet to school for 3 months.
- An administrator asks the student to remove the bracelet because it violates policy – it contains offensive language.
- Student refuses!
- Can you suspend the student?
- Can you confiscate the bracelet?



## Answer

### It depends!

J.A. v. Fort Wayne Cmty. Sch., No. 12-155 (N.D. Ind. Aug. 20, 2013)

Court says the ban is justified - the school district “made an objectively reasonable decision in determining that the bracelet was lewd, vulgar, obscene or plainly offensive” and its ban is constitutional.

- “Ambiguously vulgar slogan”
- Age and maturity of students



## Answer

### It depends!

*B.H. v. Easton Area Sch. Dist.*, No. 11-2067,  
2013 U.S. App. LEXIS 16087 (3d Cir. Aug. 5,  
2013)

- Court issued an injunction on the bracelet ban– it violated the student’s right to free speech.
- The bracelet did not cause a “substantial disruption” and was not “vulgar, lewd, profane or plainly offensive.”
- Petition for Cert. was denied



## Answer

### Would it matter to you if:

- The student’s mother was a breast cancer survivor?
- There was no disruption at the school based on the student wearing the bracelet?
- Breast cancer research was the school’s fundraising project/focus?
- The school had a history of violence/harassment against females?



# BULLYING IN THE SCHOOLS: LIABILITY

---

Can your school district be on the hook for bullying in the schools?

## Safe Schools Climate Act

- South Carolina passed an anti-bullying law called the Safe Schools Climate Act (S.C. Code Ann. 59-63-110)
  - Prohibits persons from engaging in harassment, intimidations, or bullying—including cyberbullying
  - School employees, students, and volunteers who witness this type of activity shall report the incident to the appropriate school official
  - Prohibits reprisal, retaliation, or false accusations
  - School districts must adopt a policy that prohibits harassment, intimidation, or bullying at school



---

## Notice and Response are Key

- School districts may be liable for peer harassment based on sex only where an appropriate school official with authority to remedy the harassment:
  - Had actual knowledge of severe, pervasive and objectively offensive harassment based on sex that deprived the victim of access to an educational opportunity or benefit
  - Was deliberately indifferent to the harassment
- There is a battle over the liability standard

---

## Bullying Trends

- Student v. Student
- Student v. Teacher
- Teacher v. Student
- Cyberbullying

## Student v. Student bullying

- Bell v. Ayio (Louisiana case)
  - Student bullied another child on the bus
    - driver removed both students from bus and left them without supervision while waiting for an administrator
    - student injured by aggressor
    - district liable for damages

## Teacher v. Student bullying

- Keeton v. Weiner, No. NNH-CV13-6041584-S (Conn., New Haven Co. Super. filed Sept. 11, 2013).
  - A group of Connecticut parents and their children claim a third-grade teacher aggressively harassed students if they did not answer a question correctly or complete a homework assignment properly
- Teacher dismissed from lawsuit due to jurisdictional issue

---

## Additional Hot Topics for 2014-2015

- Facilities Use Issues
- Religious Issues
- Policy Issues

---

## SROs: Memorandum of Understanding Checklist

- Specify Role of SRO
- Knowledge Needed for SRO
- SRO's Specific Duties
- Who, Where, and When?
- Who Employs the SRO?
- Funding
- Selection of SRO
- Training
- Chain of Command
- Personnel Issues
- Liability Issues



# Questions/Comments Responses

