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Students With Disabilities Should Have Equal Opportunities in Athletics

Pikeville (KY) Independent Schools, 112 LRP 37715 (OCR 05/03/12).

The Office for Civil Rights (OCR) received a complaint alleging that a district discriminated against a student with disabilities when the student was denied playing time during basketball games because he had diabetes.

Districts have an obligation, per Section 504, to provide physical education courses, athletics, aids, benefits, and services to all students without discriminating on the basis of a student's disabilities. The basis of the complaint was that while the student was on the basketball team, the coach did not allow him to check his blood sugar during practice and informed the student that he would not receive any playing time because of his diabetes. Further, the complaint alleged that the district had failed to provide staff and coaches with proper training regarding diabetes, and for several months the district did not have necessary diabetes equipment available for the student.

Prior to the OCR completing its investigation the district agreed to make changes to its policies regarding athletic involvement of students with disabilities. Specifically, the district stated that it will begin to fully im-

plement the student's 504 plan and will train its employees, including those employees involved with athletics, regarding their responsibilities related to meeting the provisions of 504 plans. Further, the district will take steps to remind its employees that no student should be discriminated against on the basis of his disability. Clearly, in this situation the student was being discriminated against on the basis of his disability because the coach stated that the student would not receive playing time because of his diabetes. Additionally, the district will develop a policy that will ensure that students with disabilities are given an equal chance to participate in extracurricular activities.

Because the district chose to concede that it was not in compliance with Section 504 regulations, the district was able to develop its own plan for ensuring that this discrimination does not continue.

How This Affects Your District:

Districts should be careful to avoid discriminating against students with disabilities when it comes to participation in extracurricular activities, including athletics. There are many students with disabilities, particularly those with 504 plans, who are perfectly capable of participating in athletics and other extracurricular activities. It is im-

portant that districts ensure that these students are provided the same opportunities as any other student wishing to participate in these activities.

The district policy prohibiting disability discrimination should specifically extend that prohibition to athletics and other extracurricular activities. This policy should be distributed to all of the staff, including those staff members who are only involved in athletics. Further, it is important that district employees be trained on this policy so that they are aware of the issues that may arise that may be indicative of discrimination. This training should also include instruction on how to properly implement students' 504 plans, including ensuring that students have access to necessary medications when they need them and that playing time should not be affected on the basis of a student's disability.

All students should be evaluated individually for their participation in athletic activities. A student cannot be disqualified for participation in athletics on the basis of their disability. There will be some cases where students with disabilities cannot participate in athletics. However, where students will be able to participate with some modifi-

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Ennis, Roberts & Fischer's School Law Review has been developed for use by clients of the firm. However, the review is not intended to represent legal advice or opinion. If you have questions about the application of an issue raised to your situation, please contact an attorney at Ennis, Roberts, & Fischer for consultation

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cations and accommodations, those changes should be made to allow the student to participate on an equal basis with typical peers. In the case of stu-

dents with diabetes, there will likely be accommodations that can be made in order to allow students to participate. It is important to note that stu-

dents with disabilities still need to try-out for "cut sports," but they must be provided with reasonable accommodations during the try-outs.

Issues to Consider After School Shooting Incident

In the wake of the school shooting in Newtown, Connecticut there are many issues, concerns, and questions swirling about. Three main issues that we will discuss here are: (1) school safety plans; (2) schools receiving threats; and (3) whether districts should allow handguns to be carried on campus by staff members.

School Safety Plans

According to R.C. 3313.536, each school building must have a comprehensive school safety plan that includes protocol for addressing serious threats to the safety of school property, students, employees, or administrators and protocol for responding to any emergency events that do occur and that compromise the safety of school property, students, employees, or administrators. This plan must be updated at least once every three years and whenever a major modification to the school building triggers changes to the procedures in the plan.

Copies of safety plans and building blueprints must be filed with each law enforcement agency that has jurisdiction over the school building and, if requested, the fire department that would serve the school building. Also, the safety plan and a floor plan of the building must be filed with the attorney general. These are the only agencies that must be allowed access to these documents.

Safety plans and building blueprints are not public records. Therefore, any request for this information can and should be denied.

Each building principal is required to provide training to staff on the procedures to follow during a safety emergency, and to actually conduct a drill of the procedures each year per R.C. 3737.37. The safety drill plan must be shared with local law enforcement, and notice must be given to the

local law enforcement in advance of and following safety drills. This should all occur prior to December 5 each year.

Schools Receiving Threats

Saad-El-Din v. Steiner, No. 514071 (N.Y. Sup. Ct., App Div. Oct. 25, 2012).

When a school district receives what it reasonably believes to be a genuine threat to school safety, clearly the district must take that threat seriously. When that threat comes from a student, districts are sometimes unsure whether the student can be punished for that threat.

Courts have been relatively clear in their assessment that where a district receives a threat from a student, the student is not protected by the First Amendment right to free speech. Recently, in New York, a state appellate court ruled that a school district's decision to suspend a student after the student threatened to blow up the school was not a violation of that student's free speech rights.

In that case the student told other students and a teacher not to come to school on that Friday because he was going to blow the school up. The teacher reported this incident to the school administrators, and admitted that she did not know the student well enough to know whether the student might actually follow through. The student was sent to the principal's office and was subsequently suspended for five days, awaiting a disciplinary hearing. After the hearing, the hearing officer recommended the student for an additional 25-day suspension, which the district accepted.

The appellate court looked to the *Tinker* standard, which states that "the relevant inquiry focuses on whether the student's conduct 'might reasona-

bly have led school authorities to forecast substantial disruption of or material interference with school activities.'" School officials are not required to prove that a disruption did occur or that it is inevitable that a disruption will occur, but only that a substantial disruption is reasonably likely to occur.

In this case, the court stated that the district was justified in its assessment that a substantial disruption was reasonably likely to occur. The court looked at the fact that the threat was made on school grounds, during school hours. Further, the district did an investigation into the matter and called for police intervention. Regardless of whether the student meant to actually carry out the threat, the school officials could punish the student because of the threat of a substantial disruption to school functions.

When districts are making decisions regarding whether to punish students for statements made, they should look at whether the statements are reasonably likely to cause a substantial disruption at school. This substantial disruption could be the carrying out of the threat or a disruption caused by other students being afraid to come to school on a particular day because of that threat.

Allowing Handguns on Campus

After the Connecticut shooting, there has been a lot of talk about whether teachers and school staff should be allowed to carry weapons on campus.

In Ohio, a board of education may give permission to a school employee to carry a handgun on campus. According to R.C. 2923.122, a security officer employed by a board of education or any other person who has written authorization from the board of education or governing body of a school to carry

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Issues to Consider After School Shooting Incident, Cont.

deadly weapons in a school safety zone may do so without violating the law against carrying weapons on campus. School districts may be considering this option, particularly after Attorney General DeWine made a statement that he would “seriously consider having someone in [each] school” who has access to a gun.

Attorney General DeWine did qualify his statement by noting that he did not believe everyone or just anyone in school should be allowed to carry a gun. He stated that he believes that a person who knows what he or she is doing with a gun, who has training, should have access to a gun that is stored in a safe location.

If your district is considering this option, there are a few issues you should keep in mind. First, there is also a federal law that regulates gun possession on school premises. Under federal law, a person may possess a firearm in a school zone if such possession is “in accordance with a contract entered into between a school in the school zone

and the individual or an employer of the individual.” For this reason, if a board was to authorize a person to carry a concealed handgun on school premises, the board should state that carrying the handgun is now part of the employee’s job duties. Further, the board should pass a resolution specifically stating that particular individuals are allowed to and should carry a concealed weapon on campus during the school day. The resolution should further state that if an individual is not named in the resolution, then he or she is not permitted to carry a concealed weapon on school grounds except in accordance with state and federal law.

Where a board decides to allow a person to carry a concealed handgun, it should require the person to have a license and annual training in order to continue being authorized for this duty.

The main issue that accompanies allowing people to carry concealed weapons in school zones is the potential for liability if those handguns are used for purposes other than the ones

specified in the resolution. Districts should consider whether they are willing to take on the risk that weapons brought on campus by their employees may be used for unauthorized purposes. Whenever districts begin to allow weapons to come on campus, there is always a risk that the weapons will be used for purposes other than those intended. Any district that allows weapons on campus should ensure that the employees who are authorized to carry the weapons are properly trained and licensed, and that the weapons are either carried on such employees or are securely stored out of the reach of students.

Arming employees remains a controversial issue for which appropriate policies and procedures will vary widely from district to district. Careful planning is critical in order to avoid legal and public relations pitfalls. The information in this article provides some basic background, but should not be seen as the basis for a comprehensive policy.

Upcoming Board of Revision Property Valuation Complaints

In the next few months, county boards of revision will begin notifying school districts of board of revision property valuation complaints filed by property owners. School districts have 30 days from the date they are notified to file a counter-complaint to contest a valuation reduction request. The failure to file a counter-complaint means the property owner will have an uncon-

tested opportunity to reduce its property value, which, if granted, directly results in the loss of tax dollars to school districts.

Schools also have the chance to file their own complaints to increase the valuation of property. Many districts choose to file their own complaints on property that has recently

sold for more than the county auditor’s value. Additionally, districts can file complaints on undervalued properties. ERF can assist districts in identifying recently sold and undervalued property. Complaints must be filed by March 31st, but the planning process should begin now. For questions or more information, please contact Gary Stedronsky.

School District Sued After Student Strip-Searched

Parents of an elementary student, in North Carolina have filed suit against their son’s school district after he was subjected to a strip-search. The strip-search occurred after another student reported she was missing \$20.

While in the lunchroom, a female student reported that she had dropped money under the lunch table. The parents argue that their son went under the table to retrieve the money and gave the money he found back to the female student. However, the female student alleged that some of her money was still missing. The Assistant Principal then took the accused student to

her office and requested that a male custodian come to her office. She explained to the student that she had the authority to search him and proceeded to do a search of his body.

The Assistant Principal allegedly made the student remove his shoes, socks, pants, and shirt. According to the parents’ complaint, she put her fingers in the waistband of his underwear and ran her fingers around the waistband to check for the money. The search turned up no results and the missing money was later found on the floor of the cafeteria.

Initially the district supported the administrator’s actions and said that she was within her rights to search the student. However, within a few days the district stated that the administrator had not followed the district policy regarding searches and she no longer works with the district.

How This Affects Your District:

In general, this situation is a good example of when a strip-search is likely inappropriate. Districts should have a policy that outlines when a strip-search is appropriate and the specific

School District Sued After Student Strip-Searched, Cont.

methods by which that type of search should be completed. All administrators should be trained regarding that policy to prevent this type of situation from arising in your district.

As a general rule it is inappropriate

to subject a student to a strip-search when the object of the search is to find missing money. Courts are likely to find that this type of invasion of a student's privacy is not warranted when the issue is money and not weapons or drugs. However, even if a

search is done in order to look for drugs or weapons, the administrator completing the search should have an individualized suspicion that a particular student is in possession of those items prior to completing a strip-search.

Three Bills Signed By Governor At End Of December

In late December the Ohio legislature took action on three bills related to education that were subsequently passed and signed into law.

HB 143 – Concussions

This bill was written and passed in order to provide protection for young athletes who suffer head injuries.

The Department of Health will develop a concussion and head injury information sheet and parents will now be required to submit a signed form acknowledging receipt of this information sheet. If a student's parent has not signed this form, their child will not be allowed to participate in practice or competition for interscholastic athletics.

In addition, all coaches and referees for interscholastic athletics must hold a pupil-activity permit. In order to obtain the pupil-activity permit, the coaches and referees will be required to complete a brain trauma and brain injury management training. Alternatively, referees can complete specified alternative training programs rather than obtaining the pupil-activity permit.

In order to protect students who have suffered a head injury, any student who exhibits signs, symptoms, or behaviors consistent with a concussion or similar head injury must be removed from participation in the athletic practice or competition. If a student is removed, the student cannot return to practice or competition for at least 24 hours and must be assessed and cleared for return by a physician. In order to return, the physician must provide written clearance to the district.

All school employees and volunteers are protected from civil liability for in-

jury, death, or loss that arises from providing the services or duties required in the bill, unless their act or omission constituted willful or wanton misconduct.

HB 543 – “Jason Flatt Act”

This bill requires school districts to provide training in youth suicide awareness and prevention to all teachers, nurses, counselors, school psychologists and administrators. If appropriate, districts may also provide this training to other personnel.

Each district must either adopt the curriculum developed by ODE or develop its own curriculum in consultation with public or private agencies or persons involved in youth suicide awareness and prevention programs. If a district chooses to adopt the curriculum developed by ODE, it may adapt that curriculum for its own use. This training will count toward the professional development required by districts.

HB 555 – Rating System

This bill replaces the current academic performance rating system for school districts and individual buildings of districts and applies to all schools, including community schools, STEM schools, and college-preparatory boarding schools. The new rating system will assign letter grades of “A,” “B,” “C,” “D,” or “F” for overall academic performance. This is a change from the current ratings of “excellent,” “effective,” “continuous improvement,” “academic watch,” and “academic emergency.” The grade for overall academic performance will be calculated based upon specified components and performance measures that will also be assigned individual letter grades.

The new grading method will begin in the 2014-2015 school year and it is the State Board of Education's responsibility to establish a method to assign the overall grade for that year and subsequent years, going forward. The method developed by the State Board must grade each individual performance measure, which will then be grouped into one of the following larger components: gap closing, achievement, progress, graduation, kindergarten through third-grade literacy and prepared for success. Note that the performance measures in the “prepared for success” component do not receive separate grades. Each component will then be individually graded based upon the performance measures in its group. Only the resulting component grades will be used by the State Board to determine the overall grade.

While the new grading method will not begin until the 2014-2015 school year, the new law will affect school districts this school year. The law incrementally increases the number of graded and reported separate performance measures in each of the 2012-2013 through 2014-2015 school years. For 2012-2013 and 2013-2014, letter grades will be assigned only to specified individual performance measures. An overall letter grade will be assigned beginning with the 2014-2015 school year.

The following definitions are assigned to each letter grade:

- A – Making Excellent Progress
- B – Making Above Average Progress
- C – Making Average Progress
- D – Making Below Average Progress
- F – Failing to Meet Minimum Progress

Education Law Speeches/Seminars

Administrator's Academy Dates at Great Oaks Instructional Resource Center

You can enroll in an Administrator's Academy session using the form on our website or by emailing Pam Leist at pleist@erflegal.com.

March 7th, 2013—*Advanced Topics in School Finance Law*

June 13th—*Special Education Legal Update*

July 11th—*Education Law Legal Updates 2012-2013*

Section 504: Diabetes Workshop

Bill Deters will join Lauren Brown, the Supervisor/Consultant for Intervention Services, School Nursing Services, and Sign Language Interpreter Services at Hamilton County ESC to discuss:

- Section 504 of the American with Disabilities Act and the school district's role in implementing the law
- Issues related to diabetes in the school setting, including the role of school nurses and other personnel in helping to meet each student's needs.

The workshop will take place at the Great Oaks Instructional Resource Center or via live webinar on January 9, 2013. The cost of either the seminar or webinar is \$50 per school district (no limit to the number of participants per school district). The presentation will also be archived for anyone who cannot attend the live event.

This workshop is open to all school personnel. Registered nurses will have the opportunity to earn two contact hours, if they attend the entire event. To register or for more information, email or call Pam Leist at pleist@erflegal.com, or 513-421-2540.

Other Upcoming Presentations

Jeremy Neff
Talawanda on January 8, 2013
Student Discipline

Bill Deters
Princeton Administration Center on January 9, 2013
Section 504 Diabetes Workshop

Bronston McCord
Ohio Association of Local School Superintendents on January 16, 2013
Negotiations

Pamela Leist
Miami University on March 14, 2013
Practical Legal Advice for Teachers

Webinar Archives

Did you miss a past webinar or would you like to view a webinar again? If so, we are happy to provide that resource to you. To obtain a link to an archived presentation, send your request to Pam Leist at pleist@erflegal.com or 513-421-2540. Archived topics include:

- Education Law Legal Update - Including SB 316
- Effective IEP Teams
- Cyberlaw
- FMLA, ADA and Other Types of Leave
- Tax Incentives
- Prior Written Notice
- Student Residency, Custody and Homeless Students
- Ohio Budget Bill/House Bill 153
- Student Discipline
- Media and Public Relations
- Gearing Up for Negotiations

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 Ryan LaFlamme
 Gary Stedronsky

Workers' Compensation

*Administrative Hearings, Court Appeals, Collaboration
with TPA's, General Advice*

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Special Education

*Due Process Claims, IEP's, Change of Placement,
FAPE, IDEA, Section 504, and any other topic related
to Special Education*

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School Finance

Taxes, School Levies, Bonds, Board of Revision

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