

ORANGE COUNTY
BOARD OF EDUCATION

AGENDA ITEM ABSTRACT

Meeting Date: May 2, 2011

AGENDA ITEM No. 11-05-13

ACTION ITEM: (Y/N) N

SUBJECT: Quarterly Legal Update

INFO. CONTACT D. Michael Parker, Attorney PHONE: 919-732-8141

ATTACHMENTS: Legal Update: May 2, 2011.

PURPOSE: The purpose of this agenda item is for Board members to receive a quarterly legal update from Attorney Parker.

BACKGROUND: Board of Education Policy #1010 Board Authority and Duties states "The board will provide a system of schools and established general policies in keeping with the needs of the community and the requirements of state law and perform all specific duties imposed by law."

Attorney Parker will provide a legal update to assist board members in complying with policy.

FINANCIAL IMPACT: None.

RECOMMENDATION: The Superintendent recommends Board of Education members receive the quarterly legal update from Attorney Parker.

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LEGAL UPDATE May 2, 2011

OFFICE OF CIVIL RIGHTS

The US Department of Education through its Office of Civil Rights (OCR) issued a "Dear Colleague" letter on April 4, 2011 regarding Title IX requirements as related to the issues of sexual harassment and sexual assaults on students. This 19-page letter is what OCR calls a "significance guidance document" to educational recipients of federal funding on their rights and obligations. After citing some statistics, this letter defines sexual harassment as unwanted conduct of a sexual nature including unwelcome sexual advances, requests for sexual favors and other verbal, nonverbal or physical conduct of a sexual nature. If the school knows or should know of sexual harassment, it is required to take immediate steps to prevent its recurrence and address its effects, noting that the school may have an obligation to respond to sexual harassment that initially occurred outside school grounds and even outside a school's educational program or activity. It clarifies the school's duty to respond immediately and appropriately to address sexual harassment, outlines the requirements necessary for a grievance procedure a student can follow to file a complaint and mandates training for appropriate staff to recognize and address sexual harassment. It requires an adequate, immediate and impartial investigation of complaints. The school cannot condition its response on a criminal investigation or delay its response pending findings by law enforcement, noting sexual harassment under Title IX may occur even if there is insufficient evidence of criminal activity. The legal standard of proof of "clear and convincing evidence" is applied to findings the school should make from its investigation, compared to the burden of proof of beyond a reasonable doubt required for a criminal conviction. The letter also directs schools to take proactive steps to prevent sexual harassment such as orientation programs for new staff and employees and training for student athletes and coaches. The education programs should encourage reporting of incidents. Finally remedies are suggested including immediate measures to protect the complaining student such as providing an escort between classes, changing schedules so the complainant and the alleged perpetrator are not in the same classes, moving a student to another school and providing counseling and academic support that could include permitting a student to re-take a course or withdraw from a class.

COURT DECISIONS OF INTEREST

Purdham v. Fairfax County School Board, a recent 4th Circuit Court of Appeals decision, added some definition to the term "volunteer" under the Fair Labor Standards Act (FLSA). At issue was whether a school employee, in this case a security assistant who also coached the golf team, is entitled to overtime pay for his service as a golf coach based on whether he

is an employee or a volunteer under the FLSA. Under FLSA a "volunteer" is one who receives no compensation or is paid expenses, reasonable benefits or a nominal fee for the duties performed. The services must differ from those for which the person is employed by the agency. Charitable reasons should serve as the motivator for a volunteer. Noting that the job of security assistant was in no way tied to coaching the golf team, the Court determined that the plaintiff was a volunteer under the definitions of the FLSA. The school exerted no pressure on employees to coach, an apparent important factor. These cases are very fact sensitive; nonetheless this case does provide some help in interpreting the FLSA.

DISCIPLINE OF STUDENTS FOR OFF CAMPUS ACTIVITY

Superior Court Judge Carl Fox ruled that Wake County Schools did not have the authority to suspend a high school student for hitting another student while waiting for the bus. The Wake County Schools administration had suspended the student for the remainder of the school year. He was placed in an alternative school after appealing the decision to the School Board. Wake County policy applied the student code of conduct to off-campus activities but Judge Fox cited the section in the public school law stating that long-term suspensions for physical assaults must be at school sponsored events or at school related activities. This decision is not binding on other school districts unless appealed.

PENDING LEGISLATION OF INTEREST

HB 344 would provide a potential refundable tax credit of up to \$6,000 to parents of students with disabilities who enroll the child in a private school or who are home schooled. Public schools are already required to reimburse private school tuition and related services if the Individualized Education Plan (IEP) determines services are needed that are not offered by the district. The eligibility for the credit would include children who spend most of their school day in regular classes but are pulled out for different services or specials. Private schools are not required to provide special education services to student with special needs.

SB 49 increases the fines for speeding in a school zone to not less than \$100 and not more than \$250.

PHOEBE'S LAW is a bill to pay off the \$747 million fines and forfeiture judgment through a pilot program of speed cameras in school and work zones.

OTHER LEGAL ISSUES

SOCIAL NETWORKING provides new opportunities for interaction between students and staff and raises issues never before faced in the education community. A middle school principal in Washington State experienced cyberbullying through an anonymous Facebook page falsely suggesting inappropriate sexual activity with students. Before it was shut down, the page listed 32 friends, many of whom shared names with students at the school. The matter is still under investigation. Numerous incidents exist of Facebook posts by educators about their students or classes, comments about their anatomy or "funny" pictures coming back to haunt them. Current policy precedes the Facebook explosion and is being updated.