



A NEWSLETTER FROM THE LAW FIRM OF FERRARA, FIORENZA, LARRISON, BARRETT & REITZ, P.C.

Route to: Board Personnel Instruction PPS Business Other: _____

Hot Topics

Attorney Spotlight

Additional Requirements for Complying with Dignity for All Students Act

Katherine E. Gavett, Esq.

As a follow up to last month's article on the Dignity for All Students Act (DASA), there are additional requirements and mandates school districts and BOCES need to implement in their reporting procedures to the Commissioner.

Reporting Requirements Under DASA 2012

Effective July 1, 2012, school districts and BOCES must include in their annual reports to the Commissioner all material incidents of discrimination and/or harassment that:

- Are the result of the investigation of a written or oral complaint made to the school principal or other school employee;
- Are otherwise directly observed by such principal or administrator, or by any other school employee regardless of whether a complaint is made.

These reports must be submitted on or before the basic educational date system (BEDS) reporting deadline and include the following information:

1. The type(s) of bias involved (actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender, sex or other) – where multiple types of bias are involved they must all be reported;
2. Whether the incident resulted from student and/or employee conduct;
3. Whether the incident involved physical contact and/or verbal threats,

intimidation or abuse; and

4. The location where the incident occurred (on school property or at a school function).

Code of Conduct Requirements

Please be aware that before a school district or BOCES can adopt a revised version of its code of conduct, Education Law § 2801(5) requires school boards and BOCES to hold a public hearing which provides for the participation of school personnel, parents, students, and other interested parties. In addition, Education Law § 2801 also requires that after the revised code of conduct has been adopted, the updated version must be forwarded to the Commissioner of Education within thirty days of its adoption at the following address: Student Support Services, Room 475 EBA, 89 Washington Street, Albany, New York 12234.

Reporting Requirements Under DASA 2013

As an update to the new requirements discussed in our July 2012 newsletter, which become effective July 2013, there are additional requirements which apply to the school district's DASA-related policies and/or procedures. These require the school district to:

- Include appropriate references to the provisions of the School District's code of conduct that are relevant to harassment, bullying and discrimination in its procedures;



Katherine E. Gavett is a 2000 graduate of Syracuse University and received her law degree from Hofstra University in 2003. Katherine is admitted to the Bar of New York State, the

U.S. District Court for the Northern and Western Districts, and the Federal Court for the Second Circuit. Katherine is also a member of the New York State Bar Association, the Onondaga County Bar Association and the New York State Trial Lawyers Association.

Katherine represents private and public sector employers in federal and state actions, hearings before administrative agencies, and in arbitrations. She concentrates her practice on all aspects of labor and employment law, construction litigation, and tax certiorari proceedings. Prior to her employment with Ferrara, Fiorenza, Larrison, Barrett & Reitz, P.C., Katherine represented clients in civil actions in state and federal court.

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Hot Topics**Additional Requirements for Complying with DASA (cont'd)**

- Provide all school employees, students and parents with a written or electronic copy of the school district's policies (or a plain language summary of the policies) at least once during each school year. This should include the process by which students, parents and school employees may report harassment, bullying and discrimination.

School Districts must also implement additional guidelines relating to the development of measured, balanced and age-appropriate responses to instances of harassment, bullying or discrimination by student, with remedies and procedures following a progressive model that make appropriate use of intervention, discipline and education, vary in method according to the nature of the behavior, the development age of the student and the student's history of problem behavior, and are consistent with the school district's code of conduct.

The training required by DASA must address the social patterns of harassment, bullying and discrimination and strategies for effectively addressing problems of exclusion, bias and aggression in educational settings.

In addition, the 2013 amendments require the Commissioner to:

- provide guidance and educational material to school districts related to best practices in addressing cyberbullying and helping families and communities work cooperatively with schools in addressing cyberbullying, whether on or off school property;
- require that any school professional applying on or after July 1, 2012 for a certificate or license, (including classroom teacher, school counselor, school psychologist, school social worker, school administrator or supervisor or superintendent of school) have completed training on

the social patterns of harassment, bullying and discrimination, the identification and mitigation of harassment, bullying and discrimination, and strategies for effectively addressing problems of seclusion, bias and aggression in education settings.

In summary, the 2012 statute focuses on prevention and education with broad sweeping and general policy and code of conduct requirements. Whereas, the 2013 amendments to DASA outline very specific procedures to follow. In addressing the Dignity for All Students Act, we recommend school districts focus on training students and staff in gaining an understanding of the 2012 DASA and implementing its general requirements and next year focus on implementing the specific procedural requirements under the 2013 DASA.

New State Laws**New State Laws Affecting School Districts****Attendance of Parent Member of CSE**

The Education Law provides that the Committee on Special Education ("CSE") includes persons holding certain types of positions, plus an additional parent member. The law has required school districts to affirmatively notify parents of a student of their right to request that the additional parent member not participate at a meeting regarding the student. In practice, parents could, and often did, waive their right to have the additional parent member attend the meeting.

Chapter 276 of the Laws of 2012 changes the "default" practice so that the additional parent need not routinely attend CSE meetings. Now, the additional parent member needs to attend only if this is specifically requested in writing, at least 72 hours before the meeting, by the parents or other person

in parental relation to the student, the student, or a member of the CSE.

This law deletes the requirement that the district notify parents of their right to opt out of having the additional parent member attend. Now, the district must notify parents, in writing, of their right to have an additional parent attend a meeting of the CSE regarding the student. The district will also have to provide a statement prepared by the State Education Department, which explains the role of the additional parent if he or she attends the meeting.

The bill making these changes was signed by the Governor on August 1, 2012 and took effect immediately. It was enacted largely to benefit the New York City Department of Education, due to the large volume of IEP meetings and the cost of stipend payments and transportation reimbursements for parent volunteers who serve in this

role. However, it applies to school districts throughout the state.

Access to IEPs Electronically

Prior law required a Board of Education to adopt a policy to ensure that each teacher and service provider who is responsible for the implementation of a student's individualized education program ("IEP") is given a copy of the IEP before it is implemented.

Chapter 279 of the Laws of 2012 adds the option of having these persons be able to access the IEP electronically. If the policy provides that the IEP is to be accessed electronically, then the policy must also require that the individuals responsible for the implementation of a student's IEP be notified and trained on how to access IEPs electronically. It was signed by the

Continued on the next page

New State Laws**New State Laws Effecting School Districts (cont'd)**

Governor on August 1, 2012 and took effect immediately.

This law provides additional flexibility which expressly allows school districts to use modern technology. Districts which choose to provide electronic access to IEPs should take care to protect the confidentiality of this information (e.g., by limiting access to authorized persons).

Cooperative Purchasing with Government Entities Outside New York

School districts and other public bodies which are governed by Section 103 of the General Municipal Law are required to use competitive bidding for purchases and public works contracts that are covered by this section. The law has long provided for some exceptions. For example, a school district may buy off a "state contract". In other words, the

New York State Office of General Services ("OGS") awards a contract, and the district may purchase the same goods from the same vendor, on the terms and conditions set by the state. A school district may also purchase directly from certain other public bodies in New York State. The district may also enter into a municipal cooperative agreement with one or more public bodies in New York State to engage in purchasing from other sources on a cooperative basis.

However, until now, there was no statutory authority for a local government in New York State to engage in cooperative purchasing or "piggy-backing" onto contracts awarded by government entities outside of New York State.

This is changed by Chapter 308 of the Laws of 2012, which was signed by the Governor on August 1, 2012 and took

effect immediately. It amends Section 103 of the General Municipal Law to expressly authorize contracts for purchases of apparatus, materials, equipment or supplies, or for services related to their installation, maintenance or repair, through a contract awarded by the United States or any of its agencies, any state, or any county, political subdivision or district in any state. The entity which initially awarded the contract must have used competitive bidding in a manner that is consistent with state law. That entity must also have made the contract available for use by other governmental entities.

This has the potential for greatly expanding the number of sources from which public bodies in New York State may purchase certain goods and services.

Breach of Contract Claims**Statute of Limitations for Breach of Contract Begins with Right to Demand Payment**

In a ruling which has far-reaching implications for school districts involved in construction contract disputes, for example, the New York State Court of Appeals has provided new clarity on the statute of limitations affecting breach of contract cases. The case solidified that the time limit in which a breach of contract case must be filed begins to run when a plaintiff has the right to demand payment under a contract, and cannot be extended by a plaintiff's delayed demand for payment.

In Hahn Automotive Warehouse, Inc. v. American Zurich Insurance Co., Zurich provided coverage to Hahn that required Hahn to pay estimated premi-

ums that were later reconciled with actual claims data to determine a final premium amount owed. When the reconciliation showed that Zurich was owed more premium than Hahn's estimated payments, Zurich was supposed to bill Hahn for the premium adjustments. In 2005, after eight years of coverage under this arrangement, Zurich realized that it had not billed Hahn for premium adjustments dating back to 1997, and attempted to invoice Hahn to recover these premium adjustments.

Hahn argued, and the Court agreed, that any of Zurich's bills for debts that arose more than six years before the commencement of court proceedings

were barred by New York's statute of limitations for contract claims. Most importantly, the Court held that the time limits on Zurich's breach of contract claims began to run at the point where Zurich had the right to demand payment from Hahn for premium adjustment. The Court reasoned that any other rule would permit a party in Zurich's situation to extend the statute of limitations indefinitely by simply failing to make a demand for payment.

The Hahn decision will impact any party seeking to obtain payment of an amount alleged to be due based upon a breach of contract theory. Such

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Breach of Contract Claims

Statute of Limitations for Breach of Contract Begins with Right to Demand Payment (cont'd)

claims will now be required to show that any court action was commenced within the applicable time period after the party first had the right to request the payment allegedly due under the contract. A party considering a breach of contract action will now have to act sooner than before to ensure that a claim is filed within the appropriate time deadline.

The Hahn rule could have a significant impact claims involving school districts, especially where the statute of limitations for pursuing a contract claim against a school district is one year. Remember to notify your school attorney promptly when any disputed contract claims are received in order to ensure that you preserve this defense.

If you have any questions about this subject or need assistance in responding to and defending against a disputed claim arising from a contract, please feel free to contact us.

Upcoming Events

<u>Attorney(s)</u>	<u>Date(s)</u>	<u>Event/Program/Location</u>
Joseph Bufano	8/23/12	Client In-service program on <i>Dignity for All Student Acts</i>
Michael Dodd	8/29/12	Client In-service program on <i>Dignity for All Student Acts</i>
Marc Reitz	9/2/12	Client In-service program on <i>Legal Updates</i>
Joseph Bufano	9/4/12	Client In-service program on <i>Dignity for All Student Acts</i>
Michael Dodd	9/5/12	Client In-service program on <i>Harassment of Students and Employees</i>
Donald Budmen Joseph Bufano	9/24/12	NYSCOSS - Fall Leadership Summit presentation " <i>In Truth, We Never Ignored Bullying! So, What's Up DASA?</i> " - Saratoga Hilton, Saratoga Springs, New York
Henry Sobota	9/24/12	NYSCOSS - Fall Leadership Summit presentation " <i>Hot Topics in Labor and Personnel Confronting Superintendents in the Fall of 2012</i> " - Saratoga Hilton, Saratoga Springs, New York
Benjamin Ferrara Eric Wilson	9/24/12	NYSCOSS - Fall Leadership Summit presentation " <i>It's a New Playbook Now! The Newest 3020-a Reforms and the Impact of APPR on the Discipline of Teachers and Principals</i> " - Saratoga Hilton, Saratoga Springs, New York

***** Education Law Conference Postponed *****

The 36th Annual Education Law Conference presented by the Study Council at Syracuse University originally scheduled for **August 28, 2012 has been postponed**. The new date will be announced soon. For more information, contact the Study Council office at 315-443-4696.

Please note that "Client In-Service" programs are being provided to particular clients at their request. If you are interested in having us present a program for you, please contact us so we can schedule one to suit your needs.