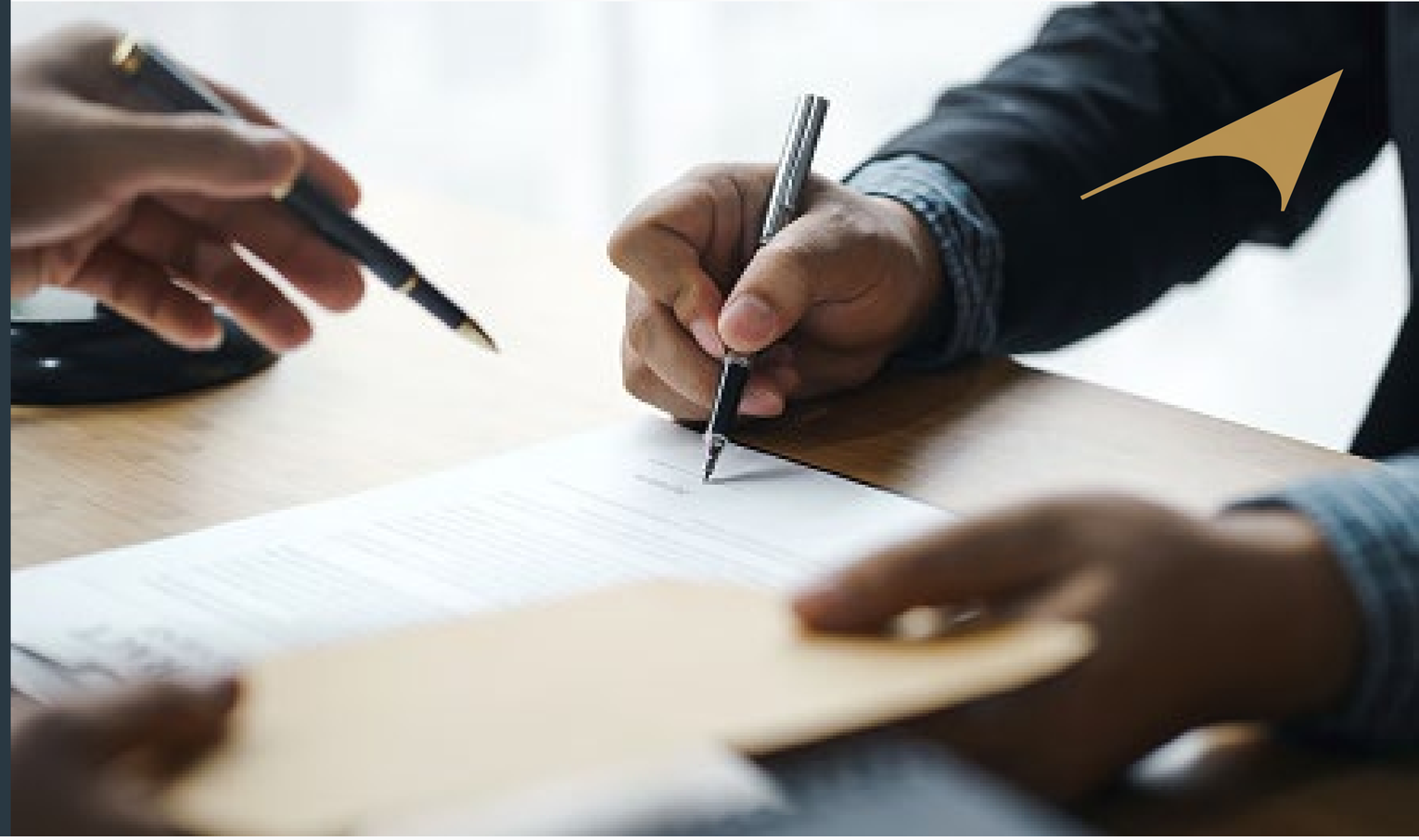
Case Law Update: The Most Significant Legal Changes



2024 School Client Conference
January 12, 2024

Andrew D. Drilling, Madeline G. Cook, and Jordan R. Einhorn

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Three Main Threads

I. Labor and Employment Issues

II. Board and Administration Issues

III. Student Issues

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Labor and Employment Issues

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Teamsters Local 445 v. Town of Monroe, **40 N.Y.3d 18 (2023)**

- The parties entered into a CBA that provided for for-cause termination protection to certain "exempt class" employees, including a secretary to the Town Planning Board.
  - The provision provided grievance procedures that culminated in binding arbitration.

- The Town later terminated the secretary, and the union sought to compel arbitration in accordance with the CBA.

- New York Court of Appeals held that a CBA provision granting "for-cause" termination protection to exempt class employees is unenforceable, not arbitrable, and against public policy.

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Groff v. DeJoy, 600 U.S. 447 (2023)

- The Supreme Court heightened the standard for employers to claim undue hardship in response to an employee's request for religious accommodations.
- An undue hardship is shown when a burden is "substantial in the overall context of the employer's business."
  - A cost must be excessive or unjustified to constitute an undue hardship.
  - Mere *de minimis* costs will not be enough to raise an undue hardship defense.
  - The determination is necessarily fact- and circumstance-specific.
- All relevant factors must be considered to determine the impact of the accommodation, including:
  - The particular accommodations at issue;
  - The accommodation's practical impact on the conduct of the employer's business; and
  - The effect on co-workers impacting the conduct of the employer's business.

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Board and Administration Issues

Application of Wontrobski-Ricciardi, **62 Ed. Dept. Rep. Decision No. 18,237 (Feb. 7, 2023) – Board Member Conduct**

- Petitioner and Respondents were members of a school board. Petitioner alleged that Respondents made inappropriate and defamatory remarks at a board meeting that violated board policy. Petitioner sought to have Respondents removed from office.
- Appeal was dismissed on procedural grounds for improper service.
- "Although the application must be denied on procedural grounds, **I am compelled to comment on the lack of civility displayed by respondents**. Respondents' characterization of petitioner as, for example, a 'horrible, horrible, person' [and] 'pretty despicable' **demonstrate a lack of maturity and self-control**. Even assuming that petitioner's public comment was motivated by personal animus toward [respondent]—which is far from apparent based on the evidence in the record—it would not excuse respondents' actions. **I admonish each respondent 'to comport himself in the future in a manner befitting a holder of public office.'"**

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Application of M.K., **62 Ed. Dept. Rep., Decision No. 18,236 (Feb. 7, 2023)**

- School board policy required speakers at board meetings to identify their names and addresses. This was challenged as violating the Open Meetings Law.
- Application was denied on procedural grounds, but the Commissioner noted that the Committee on Open Government has issued advisory opinions on this issue.
- Per the Committee on Open Government: "A public body may request that a person provide his or her name or other identifier," but "a person may not be *required* to do so in order to attend, speak or otherwise participate relative to a meeting of a public body."

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FOIL

- As a refresher, the Freedom of Information Law (FOIL) grants the public wide-ranging rights of inspection of documents in the possession of a public entity.
- FOIL contains several exemptions, and determining whether to provide a requested document requires close analysis of the statute and the document(s) at issue.
  - Exemptions are generally construed narrowly. The entity claiming the exemption bears the burden of proof.

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In re Suffern Educ. Ass'n v. Board of Ed. Suffern Sch. Dist., **213 A.D.3d 857 (2d Dep't 2023)**

- District responded to Petitioner's FOIL request by providing heavily redacted emails. The School argued these emails were exempt from FOIL as "intra-agency materials."
- The intra-agency exemption provides that an entity can deny access to intra-agency materials that do not consist of merely "statistical or factual tabulations of data."
  - Factual data is objective information, not "opinions, ideas, or advice exchanged as part of the consultative or deliberative process of government decision making."
- After in camera review, the Court ordered the Board of Education to produce the unredacted version of the email at issue because the redacted portions contained information that met the definition of "factual data," and was thus subject to disclosure under FOIL.

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Getting the Word Out, Inc. v. N.Y. State Olympic Reg'l Dev. Auth., **214 A.D.3d 1158 (3d Dep't 2023)**

- Petitioner requested copies of injury reports from sporting and athletic competitions hosted by the agency over certain years. The agency released redacted versions of the reports on the basis that they contained protected health information.
- The Court found that the health-related information in the reports was subject to protections under *both* FOIL and HIPAA.
  - Nevertheless, both statutes provide "a mechanism to disclose such information by way of deidentification."
- HIPAA: "Health information that does not identify an individual and with respect to which there is no reasonable basis to believe that the information can be used to identify an individual is not individually identifiable health information."
  - HIPAA regulations provide "an exhaustive list of information that must be removed in order to deidentify individually identifiable health information."
- "While FOIL contains no guidance as to the extent of deletion necessary to satisfy deidentification, we find that the stringent deidentification procedure provided in the HIPAA Privacy Rule is sufficient to meet the analogous requirement in [FOIL]."

Law Offices of Cory H. Morris v. Suffolk Cnty., **216 A.D.3d 638 (2d Dep't 2023)**

- Municipality did not issue a response to petitioner's FOIL requests. Petitioner proceeded to file in New York State Supreme Court seeking disclosure of the requested records as well as attorney's fees and legal costs.
- Failure to inform a FOIL requester of the availability of administrative review of a denial waives the administrative exhaustion requirement, and the requester can file directly in state court.
- "Whereas here, an agency fails to 'inform the person [or entity] making the FOIL request that further administrative review of the determination is available, the requirement of exhaustion is excused."

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Student Issues

Student Discipline and Suspensions

- Recent decisions by the Commissioner show a trend in discouraging suspensions as a means for student discipline.

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Student Discipline and Suspensions – Appeal of B.A., Ed. Dep't Rep. Decision No. 18,209 (Oct. 31, 2022)

- Commissioner ruled that a long-term suspension of nine months (with a possible reduction to five months subject to a behavioral contract) was excessive where the student sent text messages contemplating that the recipient-student would attack another student of the District.
- The Commissioner cited another case where a student was suspended for only five days for actually participating in a fight.
- "Students must understand that impulsive and juvenile comments can have real world consequences. Punitive and exclusionary suspension, however, will not impart that lesson."
- "Instead of punishment, respondent should have helped the student 'learn to assume and accept responsibility for [his] own behavior' while simultaneously establishing remedial supports to foster, and thus augment, the student's emotional intelligence. Punishment for its own sake does not reform; it only creates cycles of resentment and distrust."

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Student Discipline and Suspensions – Appeal of A.W., Ed. Dep't Rep. Decision No. 18,256 (Mar. 22, 2023)

- District suspended student for one year, on the condition that the student could return early by completing "weekly counseling sessions by a licensed mental health professional."
- Any district offering an early return option for long-term suspensions containing a counseling requirement must provide a cost-free option.
- The Commissioner noted that while the District provided a referral list to the student's family of providers who offered affordable and/or free services, requiring a parent to secure and pay for such services raises "substantial equity concerns."
- The Commissioner indicated that direct delivery by District-employed personnel is a sufficient cost-free option to meet this obligation.

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Student Discipline and Suspensions – Appeal of L.O., **Ed. Dep't Rep. Decision No. 18,267 (April 26, 2023)**

- Principal informed student's parent via letter that the student was suspended for five days for violating the district's code of conduct.
- The letter advised the parent of her right to meet with the principal to review the decision, to present the student's version of the events, and to question complaining witnesses. The letter did not allege that the student's presence in school presented a continuing danger or an ongoing threat of disruption to the academic process.
- Commissioner held that the district did not provide a legally compliant written notice, nor an opportunity for an informal conference prior to imposing a student's short-term suspension.
- The remedy for procedural errors in connection with a short-term suspension is **expungement of the entire incident** from the student's record.

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Student Discipline and Suspensions – Appeal of R.M. and C.M., **Ed. Dep't Rep. Decision No. 18,344 (September 20, 2023)**

- Principal emailed student's parent on March 6, informing them of misconduct and stating that the student's "consequence will be one day in ISS (In School Suspension)." The email invited the parent to "call [the principal] if [she] would like to speak further about this incident."
  - The principal sent a follow-up email on March 7 and a physical letter that petitioners received on March 8. The student served the in-school suspension on March 7.
- Parent challenged, arguing that the suspension was excessive and did not respect procedural rights under Education Law § 3214.
- In-school suspensions and suspensions from extracurricular activities are not governed by Education Law § 3214 and do not require a full hearing; rather, only "minimal standards of administrative due process" apply.

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Student Discipline and Suspensions – Appeal of R.M. and C.M., **Ed. Dep't Rep. Decision No. 18,344 (September 20, 2023) (cont'd)**

- Notwithstanding the fact that Education Law Section 3214 does not apply to in-school suspensions, the Commissioner held that unless a student poses a continuing danger to persons or property or an ongoing threat of disrupting the academic process, the opportunity to discuss the in-school or extracurricular suspension should precede removal of the student from school, even for an in-school suspension.
- "Basic fairness dictates that a student and the person in parental relation to such student must receive an opportunity to discuss the circumstances underlying the threatened disciplinary action with the person or body authorized to impose such discipline."
- Because the principal did not provide the petitioners with an opportunity to discuss the in-school suspension prior to its imposition, petitioners were denied due process.

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“FAPE 22” – A.R. v. Connecticut

- *A.R. v. Connecticut*, 5 F.4th 155 (2d Cir. 2021)
  - The Second Circuit Court of Appeals held that Connecticut was required to provide FAPE to any student with a disability who has not yet received a high school diploma until the student’s 22nd birthday.
  - The IDEA’s requirement to provide FAPE to all children with disabilities “between the ages of 3 and 21, inclusive” means the relevant period ends on the last day of the student’s 21st year.

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“FAPE 22” – NYSED Formal Opinion

- On July 6, 2023, the New York State Education Department released Formal Opinion of Counsel No. 242, effectively adopting the *A.R. v. Connecticut* decision.
  - New York State law on this issue is “materially indistinguishable” from the relevant Connecticut law in *A.R.*
  - Accordingly, New York school districts are now required to provide special education and related services to a resident student with disabilities at least until the student’s 22nd birthday.
  - The Opinion *recommends*, but does not require, that districts allow students to continue through the end of the school year in which they turn 22, as opposed to pulling them out the day before their 22nd birthday.
  - Currently, there is no indication that the State will provide additional funding in connection with this increased obligation.

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IDEA v. ADA

Perez v. Sturgis Public Schools, 143 S. Ct. 859 (2023)

- 23-year-old deaf student filed a due process hearing under IDEA.
- After settling the IDEA case, the student then filed a federal court action under Section 504 and the ADA, seeking only ***compensatory damages***.
- School district moved to dismiss the federal case on the basis that the parent failed to exhaust administrative remedies.
  - Under *Fry v. Napolean*, 580 U.S. 154 (2017), a parent cannot avoid the IDEA exhaustion rule by cloaking an IDEA case as a Section 504 or ADA case.

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IDEA v. ADA

Perez v. Sturgis Public Schools, 143 S. Ct. 859 (2023)

- The Supreme Court held that the IDEA's administrative exhaustion requirement is ***exclusive*** to claims that are available under the IDEA.
- Because the parent was seeking monetary damages not available under the IDEA, the claim could be brought in federal court without administrative exhaustion.
- *Perez* creates the potential for increased federal litigation brought by parents, which means increased school district exposure for monetary damages.
- A lawsuit "admittedly premised on the past denial of free and appropriate education may nonetheless proceed without exhausting IDEA's administrative processes if the remedy a plaintiff seeks is not one IDEA provides."

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Affirmative Action and DEI Initiatives

- In June 2023, the Supreme Court held that the Equal Protection Clause prevents colleges and universities from implementing race-conscious affirmative action practices in admissions. *Students for Fair Admissions v. Harvard*, 600 U.S. 181 (2023).
- Presently, this decision does not directly affect K-12 schools.
- School Districts should continue to monitor the evolving jurisprudence on this issue while abiding by pertinent state legislation, such as the Dignity for All Students Act.

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Dignity for All Students Act (DASA)

- DASA took effect in 2012.
  - Requires K-12 instruction to include "awareness and sensitivity to harassment, bullying, discrimination and civility in the relations of people of different **races**, **weights**, **national origins**, **ethnic groups**, **religions**, **religious practices**, **mental or physical abilities**, **sexual orientations**, **genders**, and **sexes**." Educ. Law § 801-a.
  - "No student shall be subjected to harassment or bullying by employees or students on school property or at a school function; nor shall any student be subjected to discrimination based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender, or sex by school employees or students on school property or at a school function." Educ. Law § 12(1).

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Appeal of C.B., **Ed. Dep't Rep. Decision No. 18,238 (Feb. 8, 2023)**

- Student alleged that two other students bullied and harassed her. Harassment occurred in school, online and on the phone outside of school hours.

- School investigated the incidents that occurred at school and took remedial measures to prevent them from reoccurring, but did not investigate acts that "occurred outside of the school environment."

- The Education Department dismissed the student's appeal, in part because the student admitted she did not notify the District of the harassment that occurred outside of school.

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Appeal of C.B., **Ed. Dep't Rep. Decision No. 18,238 (Feb. 8, 2023)**

- Despite ruling in favor of the district, the opinion emphasized that "Bullying and harassment does not respect jurisdictional lines."
- Under DASA, harassment and bullying consist of "the creation of a hostile environment by conduct or by threats, intimidation or abuse, including cyberbullying …" Educ. L. § 11(7)(d).
- A school district is obligated to address all bullying and harassment that "occurs off school property and creates or would foreseeably create a risk of substantial disruption within the school environment." Educ. L. § 11(7)(d).

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Legislative Updates

Legislative Updates

- **New York TEACH Act (A.68-A/S.2140-B)**
  - Directs the Commissioner of Education to issue guidance to school districts for developing programs and obtaining funding to attract underrepresented candidates into the teaching profession.
  - Signed by Governor on 9/6/23, effective 3/4/24.
- **Amendment to Taylor Law effective immediately (A.7157/S.6477)**
  - A union, upon request, is entitled to receive from the employer the "name, home address, job title, employing agency or department or other operating unit and work location of all employees of a bargaining unit."
  - An employer's failure to comply shall be deemed an unlawful employment practice.

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Legislative Updates

- **Student Government Bill (A.6091/S.1732)**
  - Requires a board of education of every district serving students in grades 9-12 with no districtwide or school building peer selected student government to establish at least one student government organization within such district or school building.
  - Signed by Governor on 9/7/23, effective 9/1/24.
- **Student Voter Registration Bill (A.5180-A/S.1733-A)**
  - Boards of education are required to adopt policies that promote student voter registration and pre-registration, including procedures for: (1) providing access to voter registration and pre-registration applications during the school year and assistance with filing such applications; and (2) informing students of the state requirements for voter registration and pre-registration.
  - Signed by Governor on 9/20/23, effective 7/1/24.

Legislative Updates

- **Asian Lunar New Year declared a school holiday**
  - State law, signed 9/9/23, defines Asian Lunar New Year as "the first day of the second lunar month after the winter solstice in the preceding calendar year."
- **Community Eligibility Provision State Subsidy** (Educ. L. § 925)
  - For each breakfast and lunch meal that is served at a school participating in the federal community eligibility provision program and that is reimbursed at the federal reimbursement rate for a paid meal, the department shall reimburse the school food authority the difference between (1) the combined state and federal reimbursement rate for a paid meal for the current school year and (2) the combined state and federal reimbursement rate for a free meal for the current school year, provided that the total reimbursement rate for each meal served shall equal the combined state and federal reimbursement rate for a free meal for the current school year.
  - Effective in the 2023-2024 school year and thereafter.

Legislative Updates

- **Unemployment Benefits Notice**
  - All employers whose employees are eligible for unemployment insurance must notify those employees of their right to file for unemployment benefits upon a permanent or indefinite separation from employment, hour reduction, temporary suspension, or interruption in employment.
- **Workplace Violence Prevention**
  - Labor Law 27-b is amended to require schools to develop and implement programs to prevent workplace violence.
- **Access to Employee Social Media**
  - Effective March 12, 2024, employers will be prohibited from requesting or requiring that an employee or applicant disclose any username, password, or other authentication information for accessing a personal account through an electronic communications device.

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Legislative Updates

- New York minimum wage increases:
  - For employees outside of New York City and Nassau, Suffolk, and Westchester Counties, the hourly minimum wage is scheduled to increase as follows:
    - January 1, 2024: $15.00
    - January 1, 2025: $15.50
    - January 1, 2026: $16.00
  - Rate will be higher in New York City and the surrounding counties.
- The minimum salary threshold for exempt “executive” and “administrative” employees has also increased from $1,064.25/week to $1,124.20/week.
  - Rates in NYC, and Nassau, Suffolk and Westchester counties are higher.
  - Reclassification of employees may be required.

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Questions?

Hodgson Russ LLP
ATTORNEYS

Contact Us

Andrew D. Drilling, Esq.

Senior Associate

140 Pearl Street, Suite 100
Buffalo, NY 14202-4040
716-848-1412

Madeline G. Cook, Esq.

Associate

140 Pearl Street, Suite 100
Buffalo, NY 14202-4040
716-848-1691

Jordan R. Einhorn

Associate Pending Admission

140 Pearl Street, Suite 100
Buffalo, NY 14202-4040
716-848-1339