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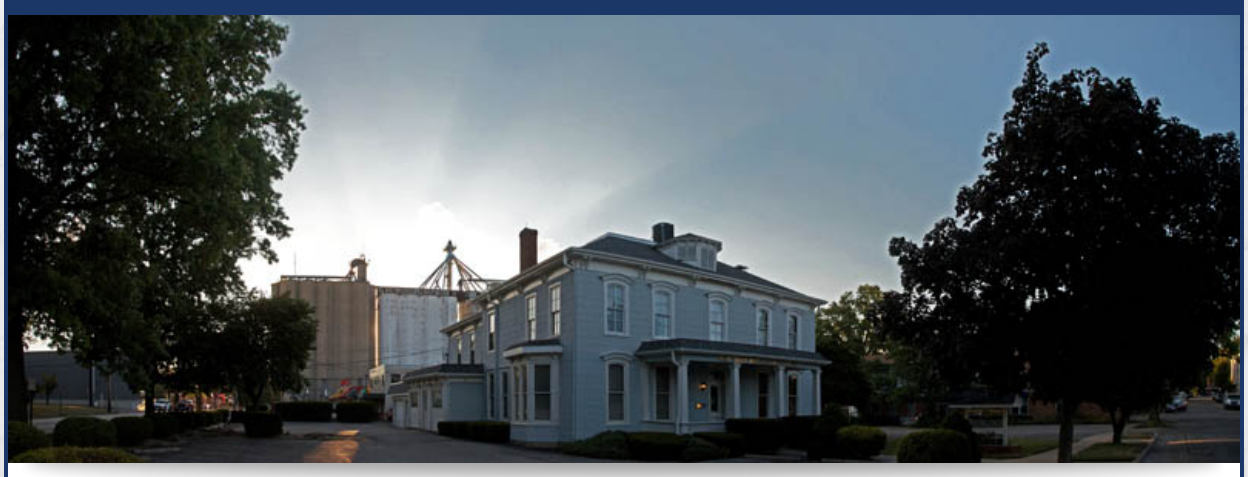

SCHOOL LAW ADVISOR NEWSLETTER

Dear Amber,

Consistent with our mission to continually provide relevant, timely, and important updates improve outcomes for schools and universities, and to protect the education for students and learners, **Miller, Tracy, Braun, Funk & Miller, Ltd.** provides this regular newsletter to schools and educational institutions.

Register here for our upcoming webinar, to be held Monday, May 20th at 2:00 p.m.

In this Issue...

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Illinois School Law Survey Book

The 18th Edition of the ***Illinois School Law Survey***, written by **David** and **Brian** Braun and published by the Illinois Association of School Boards, is now available in print and digital editions. The question-and-answer format book allows readers to find quick answers to common legal questions, and has been significantly updated, revised, and extended in this edition to account for new laws, changes, and cases through January 1, 2024.

The latest edition of the *Survey* can be purchased from the IASB bookstore, **HERE**.

Register for Our Upcoming Webinar

Join Brandon Wright and Ellen Lueking on Monday, May 20th for some quick hits on what you need to know about recent legal updates, including the new Title IX regulations, recent Supreme Court decision, and other end-of-year updates.

Register, here, for our upcoming webinar, to be held Monday, May 20th at 2:00 p.m.

Laws, Guidance and Recent Cases Impacting Schools

New Law Related to Graduation in Effect for 2024

As graduation season is upon us, keep in mind that the General Assembly enacted **PA 103-463**, effective for this school year. This statute states that school districts “shall not prohibit the right of a student **to wear or accessorize the student's graduation attire** with items associated with the student’s cultural, ethnic, or religious identity or any other protected characteristic or category identified in subsection (Q) of Section 1-103 of the Illinois Human Rights Act.” [emphasis added].

For reference, the protected characteristics or categories, in addition to cultural, ethnic, or religious identity, include actual or perceived: race, color, religion, national origin, ancestry,

age, sex, marital status, order of protection status, disability, military status, sexual orientation, pregnancy, or unfavorable discharge from military service. For purposes of the Illinois Human Rights Act, remember that “sexual orientation” specifically includes gender-related identity, whether or not traditionally associated with the person's designated sex at birth.

While school districts remain able to restrict messages or items which may be materially or substantially disruptive or which are lewd or vulgar, school districts are not able to prohibit wearing of items or accessories that are associated with any of these characteristics or categories.

Website Accessibility

School Districts have increasingly relied on their websites and third-party online platforms to provide instruction, services, programs, and activities to students and members of the public. While website use has increased, much of it is often inaccessible to individuals with disabilities. The U.S. Department of Education Office for Civil Rights and the U.S. Department of Justice have used their enforcement authority pursuant to Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act (Section 504) to investigate and address inaccessible online services, programs, and activities provided by school districts.

On April 24, 2024, the Federal Register published the Department of Justice’s final rule updating its regulations for Title II of the ADA. The final rule has specific requirements about how to ensure that web content and mobile applications (apps) are accessible to people with disabilities. The final rule states that web content and mobile apps – including password-protected content that is available to students and staff – must comply with Web Content Accessibility Guidelines (WCAG) Version 2.1, Level AA. This rule does not prohibit a school district from using designs, methods, or techniques as alternatives to WCAG 2.1, Level AA if the school district can prove the alternatives provide the same or more accessibility and usability.

New Title IX Regulations

Policies:
IASB currently plans to have PRESS policies and procedures prepared by August 1st. Please ensure you are prepared to take action on adoption of the PRESS update. The Department of Education has made it clear that it expects Districts will implement policies and procedures regarding the new regulations immediately and effectively, given that it has the entire summer to prepare to do so. For this reason, we encourage you to begin thinking now about planning the training required for implementation.

Complaints regarding conduct which occurs on or after August 1st must use policies and procedures compliant with the recently released regulations (2024 regulations). Please maintain a copy of your policy and procedures in case you receive complaints regarding conduct which occurred after the 2020 regulations effective date and prior to the 2024 regulations effective date.

As you prepare for next school year and review necessary updates to your student handbook, consider any steps you might need to take regarding the updates to your Title IX policy.

Sex Discrimination:
The regulations cover more conduct, but are going to require less process. For this reason, the administrative burden of the position is unlikely to decline.

Districts will now need to use grievance procedures for sex discrimination, which includes discrimination on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity.

Continue reading...

Navigating the New Federal Overtime Rule: Implications for Schools

The recent announcement by the U.S. Department of Labor (DOL) regarding updates to the Fair Labor Standards Act (FLSA) has significant implications for schools across Illinois – and the nation. These changes, set to take effect on July 1, 2024, and January 1, 2025, respectively, may require significant shifts in how schools manage pay structures and payroll. Understanding these amendments is crucial for school boards and administrators as they navigate the complexities of compliance while balancing budgetary constraints and employment contracts.

Changes to Exempt Employee Salary Thresholds:
The revised rule raises the general salary level threshold for exempt employees from $684 per week to $844 per week, effective July 1, 2024. This threshold further escalates to $1,128 per week starting January 1, 2025. Consequently, more employees may fall under the category eligible for overtime pay unless their salaries align with the new thresholds. This poses a significant challenge for schools, particularly those with limited financial resources, as they seek to maintain compliance while ensuring fair compensation for their employees.

Exemptions for Teachers:

One notable exemption under the FLSA applies to teachers, whose eligibility for overtime pay is determined by their duties rather than their salary. Teachers are exempt if their primary duty involves imparting knowledge in an educational establishment. This exemption remains unchanged by the recent amendments, providing schools with clarity regarding the status of certain staff members. However, schools must still conduct thorough assessments to ensure that all teachers meet the criteria outlined by the FLSA as the exemption only applies to those whose primary duties (i.e. more than 50%) involve teaching.

Continue reading...

Racism-Free Schools Act, effective August 1, 2024: PA 103-472

Schools will be required to annually report to ISBE data on reported allegations of discrimination, harassment, or retaliation against students related to sexual harassment, discrimination or harassment on the basis of race, color, national origin, sex, religion, or disability, and retaliation.

Districts are required to create, implement, and maintain a written policy that prohibits discrimination and harassment based on race, color, and national origin, and prohibits retaliation. See PRESS 2:270 (and 2:270 AP-1).

The policy shall be posted in a prominent and accessible location and distributed in such a manner as to ensure notice of the policy to all employees. If the school district…maintains an Internet website or has an employee Intranet, the website or Intranet shall be considered a prominent and accessible location. Posting and distribution shall be effectuated by the beginning of the 2024-2025 school year and shall occur annually thereafter.

The policy shall be published on the school district's Internet website, if one exists, and in a student handbook, if one exists. A summary of the policy in accessible, age-appropriate language shall be distributed annually to students and to the parents or guardians of minor students. School districts…shall provide a summary of the policy in the parent or guardian's native language. For the annual distribution of the summary, inclusion of the summary in a student handbook is deemed complaint.

Continue reading...

Will the Supreme Court's Decision in *Muldrow* Impact School Districts?

In *Muldrow v. City of St. Louis*, (**Decided April 17, 2024**), the Supreme Court resolved a Circuit split over whether or not an employee challenging a transfer under Title VII of the Civil Rights Act must meet a heightened threshold of significant or serious harm. Justice Kagan, writing the opinion, concluded the text of Title VII imposes no such requirement. Specifically, an employee challenging a job transfer under Title VII must show that the transfer brought about *some harm* with respect to an identifiable term or condition of employment, but that harm need not be significant.

Jatonya Muldrow, a police officer, claimed she was transferred out of a police intelligence unit by a new supervisor who wanted a male officer in the position. While Muldrow's rank and pay remained the same in the new position, her responsibilities, perks, and schedule did not. The Court stated Muldrow "need show only some injury respecting her employment terms or conditions. The transfer must have left her worse off, but need not have left her significantly so. And Muldrow's allegations, if properly preserved and supported, meet that test with room to spare."

To make out a Title VII discrimination claim, a transferred employee must show *some harm* respecting an identifiable term or condition of employment. What the transferred employee does not have to show is that the harm incurred was significant, serious, or substantial, or any similar adjective suggesting that the disadvantage to the employee must exceed a heightened bar.

"Discriminate against" means treat worse, here based on sex. Kagan states, "neither that phrase nor any other says anything about how much worse. There is nothing in the provision to distinguish, as the courts below did, between transfers causing significant disadvantages and transfers causing not-so-significant ones."

The ruling may make it easier to bring certain workplace discrimination lawsuits by lowering the bar Title VII plaintiffs must meet. The opinion also poses concerns for school districts because if more staff transfers can be litigated under federal civil rights law, schools could be forced to spend undue time and resources on litigation rather than serving the educational needs of students. The Court assures, however, "there is reason to doubt that the floodgates will open in the way feared." Kagan explains, "the anti-discrimination provision at issue requires that the employee show some injury…[it] requires that the employer have acted for discriminatory reasons 'because of' sex or race or other protected trait."

The *Kluge* Case Continues...

Kluge, a high school teacher, asserted he had a sincerely held religious belief which prevented him from referring to transgender students by their affirmed names and pronouns. Kluge was granted an accommodation to use only the last name of students. After the completion of that school year, the school withdrew the accommodation, citing that it was

detrimental to transgender students' well-being as well as the learning environment for other students and faculty. Kluge resigned after his accommodation was rescinded.

Kluge sued, alleging that the school's violated his religious liberty rights under Title VII of the Civil Rights Act. The court granted summary judgment to the school and Kluge appealed to the 7th Circuit. The 7th Circuit affirmed the summary judgment. The 7th Circuit appeals panel vacated the decision and remanded the case, for the Court to apply the Groff standard after the Supreme Court clarified the standard to be applied in Title VII cases for religious accommodation in *Groff v. DeJoy*. The clarified standard from *Groff* required a religious accommodation result in substantial increased costs in relation to the conduct of its particular business.

On April 30, 2024, the District Court issued an order, again granting summary judgment in favor of the school, finding that undue hardship existed, when viewed in the context of the particular business, because the religious accommodation actually resulted in substantial student harm and an unreasonable risk of liability, sharply contradicting the school's mission to foster a supportive environment for all students. There remains an opportunity for Kluge to appeal, at this time.

We look forward to serving you and your educational institutions.

Sincerely,

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