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School Law Review

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Districts May Want to Implement Parent/Guardian Guidelines for Extracurricular Activities

***Blasi v. Pen Argyl Area School Dist.*, 2011 WL 4528313 Slip Copy (2011).**

Recently we have received many questions regarding how to deal with parents acting badly at school athletic and extracurricular events. A recent decision by the United States District Court for the Eastern District of Pennsylvania gives insight into how districts should deal with parents who are acting in a negative manner towards coaches, players, and other spectators.

In *Blasi v. Argyle Area School District*, a parent (Blasi) filed a law suit against his children's school district because the district banned him from attending athletic events at his children's school. According to the district, Mr. Blasi sent seventeen emails to various officials and coaches with the district over a one and a half month period in the 2009-2010 school year. In those emails Mr. Blasi complained about how the middle school basketball program was run and the discrimination against his sons because they were not white. Also, Mr. Blasi commented about specific players on the team, such as calling them "suck players," "scrubs," "unskilled," "obese," "out of shape," and "laughing stock."

After the middle school principal became aware of the gravity of the situation, he sent a letter to Mr. Blasi informing him that he was prohibited from attending one home basketball game for violating the school district parental guidelines. The letter also stated that further harassment would result in a total ban of Mr. Blasi from all future games.

The school district had a Parental/Spectator Guidelines policy that was directed at parents and spectators who were present at athletic events. The guidelines laid out a list of acceptable and unacceptable behaviors and gave a list of sanctions for violations of those guidelines. One of the guidelines stated, "the use of impersonal, electronic, handwritten means of expressing concerns is not an acceptable substitute for effective, cooperative, face-to-face communications." Further, the guidelines encouraged parents to conduct themselves in a positive and supportive way towards the coaches and all student players. Mr. Blasi argued that the rules prohibiting criticizing the incompetence of coaches violated his constitutional right to free speech.

However, the court held that the prohibition was a valid time, place, manner regulation. The court looked at three guidelines to come up with that decision: (1) the regulation was justified without reference to the content of the regulated speech; (2) the regulation was narrowly tailored to serve a significant or substantial governmental interest; and (3) the regulation left open ample alternative channels for communication. The court found that Mr. Blasi's speech was not banned altogether, but the manner and circumstances in which he could talk to a member of the coaching staff was regulated. The district had a substantial interest in protecting young students from witnessing heated confrontations between a parent and a coach. Therefore, the Parental/Spectator Guidelines were upheld as constitutional and Mr. Blasi lost his case.

How This Affects Your District:

When districts are concerned about parents and other spectators becoming confrontational or otherwise interfering with athletic or extracurricular events, districts have the right to implement a policy that gives parents and spectators boundaries in which they must stay in order to continue to participate in their children's extracurricular activities.

Any policy a district develops needs to include a list of acceptable and unacceptable behaviors, as well as an explanation of the district's philosophy on parental par-

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District May Want to Implement Parent/Guardian Guidelines for Extracurricular Activities, Cont.

ticipation in student athletics and extracurricular activities. Further, the district should lay out the specific repercussions of actions that are not within the policy's guidelines. That way, parents have full notice of how their actions may affect their ability to participate in their children's extracurricular activities.

If your district does not have a parental guidelines policy then your district may be less able to regulate what actions parents take at extracurricular events. If your district does not have a policy or needs to rethink its policy, we would be glad to help with that process.

No Requirement to Tape-Record IEP When Parent Has Disability

***Belvidere Community Unit School District No. 100*, 112 LRP 12955 (SEA IL 02/27/12).**

A parent with ADHD and dyslexia requested that the school district allow her to record an IEP meeting because she had trouble keeping up with the discussion that was occurring. In lieu of allowing the parent to record the meeting, the district offered to pay for an advocate for the parent who would take extensive notes for her and explain IEP team members' discussions as well as answer any questions she might have. The Impartial Hearing Officer ("IHO") concluded that the district's provision of an advocate who would take notes was appropriate and that districts do not have any obligation to provide a recording of an IEP meeting.

The Office of Special Education Programs' ("OSEP") memoranda and letters have addressed the issue of recording IEP meetings. In all of these directives the OSEP has made clear that decisions regarding whether parents may tape record IEP meetings should be left to the discretion of school districts. However, a problem arises when a parent is not able to fully participate in an IEP meeting because he or she has a disability. IDEA requires that a district not impede parent participation. Thus, if a parent requires an accommodation in order to fully participate, the district must provide a reasonable accommodation.

In looking at that requirement, the IHO concluded that the district's offer to provide the parent with a person who would take notes and provide explanations was a reasonable accommodation. If the district had chosen to allow a recording of the IEP meeting to be done, that would have been fine as well. However, in a prior decision the Office for Civil Rights ("OCR") concluded that tape recording was not the only means of providing an accommodation for a parent with a disability, and that the district's offer of a note-taker was a good faith effort to meet the parent's needs.

How This Affects Your District:

This decision reiterates the idea that districts do not have any responsibility to allow the recording of IEP meetings. Often parents ask for this accommodation, but districts have the right to refuse. However, when a parent has a disability, the district still needs to provide some type of accommodation in order to ensure that the parent can fully participate in the process. This does not mean that there is any particular accommodation that must be used by the district. The accommodation must be made in good faith and must be able to reasonably remedy any issue the parent may have in fully participating. If the school district chooses, it may decide that recording the meeting is the best option. However, if another reasonable accommodation is available, the district may choose to use that accommodation instead.

Most importantly, districts should remember that when parents have a disability and need an accommodation the district needs to find some method of allowing the parent to fully participate. However, recording the IEP meeting is not the only option and may not even be the best option in some cases, and therefore, districts are not tied to any particular method of delivering reasonable accommodations.

Using Church Sites for Graduations

***Doe v. Elmbrook Sch. Dist.*, 111 LRP 59793 (7th Cir. 09/09/11).**

Last fall the 7th Circuit Court of Appeals held that the mere fact that a school rents a church's sanctuary for graduation does not necessarily mean that the district is showing approval for the church's message or that it sponsors the church's beliefs. The district involved in this case had for the past few years held the high school graduation ceremonies at a nondenominational evangelical Christian church. The reason behind using the church was that the district-owned venues had become too hot, cramped, and uncomfortable for use in these types of events and the church's rental rate was reasonable.

The court looked at three factors related to whether a practice violates the Constitution's rule on separation of church and state (i.e. Establishment Clause). A practice may violate the Establishment Clause if it: 1) lacks a legitimate secular purpose; 2) has the primary effect of advancing or inhibiting religion; or 3) fosters an excessive entanglement with religion. The court focused on the entanglement piece,

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Using Church Sites for Graduations, Cont.

because it noted that the content of the graduation was entirely secular and any reasonable observer would know that the religious symbols and messages were part of the "church setting rather than as an expression of adherence or approval by the district."

Each year, the graduation would take place at the front of the sanctuary and while the bibles and hymnals would remain in the pews during the ceremony, the district did have other nonpermanent religious symbols removed. The Court found no evidence that the church controlled or influenced the setting or content of the graduation, which negated the idea that the district and the church were acting in concert with one another and were thus entangled. Rather, the rental of the church building was in line with the rental of any other building that may be used for district events.

One argument made by the complainants in this case was that there were people distributing religious materials outside the ceremony. However, there was no proof that the people handing out the literature were affiliated with the church or that the district encouraged, condoned or continued the practice. Therefore, all of the evidence pointed to the use of the church for graduations as a completely secular exercise.

How This Affects Your District:

As districts are preparing for end of the year activities such as awards ceremonies and graduations, some districts may be using facilities that are owned by religious entities. Most of the time no issues arise from districts holding ceremonies in churches, but from time to time districts may find themselves dealing with parents or students who believe their First Amendment rights are being infringed upon because they have to go to a church in order to attend these ceremonies.

There are a few precautions that districts can take when preparing to use a church for a graduation or awards ceremony. First, consider how much the church used conveys a neutral appearance. Some churches are more ornate than others and religious symbols are not as easily removed or covered. While the mere existence of religious symbols does not create a violation, efforts to make the venue seem more neutral or secular will generally push a court to decide in favor of the district.

Next, make sure that the reason for using the church is sound and free of reasons that may be construed as endorsing religion. One of the best reasons for using a church is that the school facilities or other secular facilities in the area are not adequate. If your district has adequate facilities and you still choose to use the church facilities, then there must be a valid secular reason for doing so. For example, the cost of renting a church facility could possibly be lower than the costs associated with using other community facilities.

The main factors that will weigh in favor of a district being within Constitutional bounds are whether the facility has been cleared of any nonpermanent religious symbols, and the valid reasons why the facility is being used in the first place. If your district can master these two areas, then using a church for graduation and awards ceremonies will likely not be problem-

Administrator's Request for Meeting to Discuss Non-Renewal Can Occur Prior to Final Evaluation

***State ex rel. Carna v. Teays Valley Local School Dist. Bd. Of Edn.*, Slip Opinion No. 2012-Ohio-1484.**

The Ohio Supreme Court recently held that when an administrator learns that her contract will not be renewed, she is permitted by R.C. 3319.02(D) to request a meeting with the board to discuss reasons for nonrenewal without having to await final evaluation or notice from the board of a right to a hearing.

In June 2006, Carna was hired as an elementary school principal. During her first year, all of her reviews were favorable. In the summer of 2007, Carna was placed on administrative leave after allegations arose regarding the possibility that she had altered student test answers on state tests. These allegations were made by school secretaries and teachers. Carna asserted that these allegations were made in retaliation for disciplinary actions she took against these employees and she expressly denied all of these allegations. In July 2007, the assistant superintendent, informed Carna that she would remain on administrative leave during the 2007-2008 school year and her contract would not be renewed. At that point, she asked for a meeting with the Board in order to discuss the reasons for her non-renewal. No meeting was given at that time.

In December 2007 and February 2008, evaluations were performed and Carna was again notified that her contract would not be renewed. In March 2008, the Board voted to non-renew Carna without: (1) giving prior notice to Carna that this decision would be made at the meeting; (2) holding an executive session with Carna; and (3) the Ohio Department of Education ("ODE") completing an investigation into the allegations.

When ODE did complete its investigation in November 2008, it found that all of the allegations were false and that there was no evidence of wrongdoing by Carna.

Revised Code section 3319.02(D)(4) requires that when administrators are informed that their contract will not be renewed, they have the right to request a meeting with the board in executive session. The legal issue in this case was whether Carna's July 2007 request to meet with the Board consti-

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Student Activity in City Owned Parking Lot Was Covered By Code of Conduct, Cont.

tuted a request for a meeting as prescribed in R.C. 3319.02(D)(4). The Board argued that Carna should have made the request after the final evaluation in February 2008 in order for the request to fall under the statute's meaning. The Ohio Supreme Court disagreed.

The Ohio Supreme Court held that as soon as an administrator learns that her contract will not be renewed, the administrator may request a meeting with the board to discuss reasons for nonrenewal. The administrator does not have to await a final evaluation or notice from the board of a right to a hearing. Notice of intent to non-renew does not have to be formal for a request for a hearing to be valid. Rather, as soon as any notice is given of the intent to non-renew, an administrator has a right to ask for and receive a meeting in executive session with the board.

How This Affects Your District:

Some districts may believe that an administrator cannot request a hearing with the board regarding non-renewal until the board gives formal notice after the final evaluation that a non-renewal will occur. However, this case makes clear that as soon as an administrator is aware that he or she will be non-renewed, that administrator has a right to a hearing, under R.C. 3319.02 (D)(4). Therefore, if an administrator is in the last year of his or her contract, the board is already contemplating non-renewal, and the administrator is informed of that (even informally), the administrator has a right to request a hearing immediately. He or she does not need to wait until a final evaluation is completed or formal notice is given. Consequently, if the board does not want to be responsible for early requests, then the board should be careful not to make any statements regarding non-renewal until it is ready to take action and provide a hearing.

Effects of Casino Openings on School District Revenue

In May, the first two of the four Ohio casinos will be opening in Toledo and Cleveland. That has brought about questions regarding how the tax revenue from the casinos will be distributed among communities and particularly school districts. According to the 2009 Amendment to the Ohio Constitution, the casinos will pay one-third of their gross revenue in taxes. The taxes will be split in the following manner:

- 51% to all counties in proportion to the county populations at the time of distribution
- 34% to all counties in proportion to each county's public school district student populations at the time of distribution
- 5% to the host city
- 3% to the Ohio casino control commission
- 3% to Ohio state racing commission fund
- 2% to state law enforcement training fund
- 2% to the state problem gambling and addictions fund

Therefore, school districts in Ohio will receive 34% of the tax revenue coming from casinos. This amount will be split among all of the districts in Ohio based upon student population. The tax money intended for schools will be sent to the counties and each county will distribute the funds based on the population of each district within the county. Each school district has the authority to make decisions about how the funds it receives are used. The only limitation is that the money must be used to support primary and secondary education.

Another inquiry we have received is whether the receipt of these funds will affect other funding obligations of the state. According to the Constitutional Amendment, the distributions to the public school districts are intended to supplement and not supplant any funding obligations of the state. Therefore, other funding for schools (e.g. State General Revenue funding) should not be reduced to offset the gains from casino tax revenues. Many fear that casino tax revenues will simply be used to make up for cuts in other funding sources — a common criticism of lottery tax revenues.

There has been some concern that people in the state have seen projections of the amount that school districts will receive and that this information may be used in order to defeat levy proposals. School districts can and should remind community members that these projections are just that, projections. At this point, how much money each district across the state will receive is undeterminable. Further, even if the projected amounts are correct, they would not cover the amount requested in levy proposals. The amount received would likely be used to fill holes where state budgets have been frozen or cut.

Hopefully the addition of casinos in Ohio will improve the funding situation for school districts. However, districts and communities should be aware that this funding is not going to make any district completely whole after the recent freezes and cuts. It will help to fill in the gaps, but it is not going to be a large windfall.

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.

June 14, 2012 — *Special Education Update*

July 12, 2012 — *Education Law Legal Update*

Other Upcoming Presentations

Jeremy Neff
OCSBA Spring Seminar on June 15
Technology Trends and Troubles

Bronston McCord
2012 OSBA Sports Law Workshop on June 22
Facebook and the Athletic Code of Conduct

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:

- 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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