

School Law for Administrators

Headlines on School Law ~ Legislative Wrap-Up

by Rob Taylor, Ph.D.

In one of its articles in a series defining this last session's state legislative activities, *EdWeek* gave the statistic that 30 legislatures are under Republican control while Democrats have the edge in 11, with eight states divided and one nonpartisan. Most of the session's work reflects the continuing move of states to the right.

"Choice" programs have forged ahead, with lawmakers employing various strategies to advance that philosophy. Several states have adopted educational savings accounts (ESAs), intended to provide parents with their own educational fund for flexible use. In Florida, the Foundation for Excellence in Education touts the ESA approach as a means of supporting charter schools and the use of public funds for private school enrollment.

Five states now use ESAs, with Mississippi and Tennessee joining the fold through laws offering individualized accounts for families of special ed. students. In Montana Democratic Governor Steve Bullock vetoed a similar bill but allowed a new tax-credit scholarship bill to become law without his signature. In Arkansas a new voucher program, also aimed at special education, was approved.

Nevada has taken the most aggressive and controversial steps to expand school choice. Lawmakers there passed a bill allowing

all parents to direct K-12 funding toward private school tuition, homeschooling, and related expenses for "nonpublic education."

Back in the public education sphere, charter schools were favored by legislative action. Alabama adopted a law in March to permit charters, making it the 43rd state to do so. Ohio, looking to impact struggling districts, passed a measure expanding the authority of its Academic Distress Commissions partly in order to make charter school authorization easier.

Another strategy being tested to boost charters is linked to the development in several states of "state-run districts," those usually posed as a mechanism to improve low-performing schools. Both Nevada and Georgia passed the needed bills to create such districts. But since such districts by definition skirt the authority of local school districts, there exists the danger of undercutting local policy-making.

Vanderbilt University's Ronald Zimmer, an associate professor of public policy and education, has warned that state officials administering state districts need to work closely with local districts. "All of this could create some tension at the grassroots level and at the state level," he said. "You really

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Around the Nation ~ Florida

Florida school district is facing a lawsuit after disallowing an immigrant student from attending

Many English Language Learner (ELL) students in the United States face a problem called "aging out" in high school. These students face the dilemma of turning 21 before they finish their diploma requirements, and are no longer allowed to go to public high school. Palm Beach Lakes High School (PBLHS) took this rule a step farther when they told an ELL student, Klinton Kaleb Lopez Roblero, who at the time was unaccompanied minor from Guatemala, that he was no longer allowed to attend the high school because he was too old and had low grades. In his defense, the Legal Aid Society of Palm Beach County filed a lawsuit against Palm Beach County School District (PBCSD), alleging the district has a history of discrimination and intentionally deprived Roblero of a comprehensive education. Public

schools cannot terminate the education of a student because they are not getting good grades, and Roblero had three years left before he legally "aged out."

According to the lawsuit PBLHS forced Roblero to withdraw last year with no warning, only two days after he turned 18. As an alternative, the administration at the high school told him to attend a night school that only offered English-language classes and offered no chance to earn credits for a standard high school diploma. In many high schools in the United States, ELL classes are only considered electives, and will not move students closer to graduating. After months of negotiations between Roblero's

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need to do the ground work to create local buy-in in order for it to be successful."

Other dilemmas have emerged for public policy officials. Take the Common Core, for example, a movement much maligned everywhere. However, despite deep concerns, no states decided finally to repeal their laws accepting the Core.

The most energetic arguments centered instead on the tests—developed by the Smarter Balanced Assessment Consortium (SBA) and the consortium called Partnership for Assessment of Readiness for College and Careers (PARCC)—being used for Core assessment. Lawmakers in Missouri and Maine voted to curtail use of the SBA exams, and the Ohio Legislature threw out the tests of PARCC.

Antagonism to these Core-aligned tests were fueled in many areas by a parent- and teacher-based movement called "opt out." In Oregon, despite warnings from federal officials that the state would be risking its federal funding, Democratic Governor Kate Brown signed into law a bill allowing parents to opt their children out of the Smarter Balanced test, while in Delaware lawmakers passed a similar opt out measure, with enough margin to outvote an expected veto by Democratic Governor Jack Markell.

Meanwhile, with states generally seeing increased revenue production, an anticipated healthy growth in school funding has failed to materialize through state budgets. In fact, whereas 2015 saw an overall state school increase of 4.6%, 2016 has been projected by the National Association of State Budget Officers to reach only a 3.1% increase in general fund spending.

Given the slow growth of revenues and the large recession-based gaps needing to be made up, several states have been tinkering with their education funding formulas. Nevada has turned to a categorical funding strategy, targeting schools with large English Language Learner (ELL) populations (known as Zoom Schools) that will receive \$100 million in the 2015-2017 biennial budget and schools of primarily low-income students (Victory Schools) which will be the recipient of a new \$50 million program.

In Pennsylvania lawmakers have also decided to direct larger funding levels to low-income schools. Partly this effort is a response to the state's historic—and much-criticized—failure to have any funding formula. Lawmakers recently sent to Democratic Governor Tom Wolf both a highly revised education budget but also the new formula on which it was based, only to see these measures promptly vetoed.

In the state of Washington budget battles have already been

heard by the State Supreme Court, which in 2012 in *McCleary v. Washington* found the state to be underfunding the schools according to the State Constitution and recently found the state in contempt for not moving to buttress education funding. For its 2015-2017 biennial budget the state has committed to increased education spending of \$1.3 billion, targeted at reducing K-3 class sizes, expanding full-day kindergarten, and funding other school services. The Supreme Court has yet to rule on this budget.

Lawmakers focus on controversy over testing

As mentioned above, state legislatures and education officials have stepped into the often acrimonious fray over classroom testing. In fact the Council of Chief State School Officers, in an *EdWeek* piece, reports that 39 states are taking a hard look at how to cut back on "over testing" and how to reduce duplication. Since the Elementary and Secondary Education Act (ESEA) has still not been reauthorized, there is a level of uncertainty on just how to proceed.

However, in Colorado lawmakers in May approved House Bill 1323, eliminating altogether the state exam on social studies and cutting back on PARCC assessments in English/language arts and math. Florida's House Bill 7069 limited school testing to 5% of school hours (45 hours) and threw out the 11th grade English/language arts test. Ohio's 2015-2017 state budget was written to allow just one testing window for state exams and cut back on the allowed length of such tests.

Massachusetts took even more dramatic steps, supported by the 110,000 Massachusetts Teachers Association (MTA): a three-year moratorium on the use of high stakes, standardized tests (such as PARCC) in decisions on graduation and teacher evaluation. MTA President Barbara Madaloni said, "If we eliminate the high stakes, we're going to eliminate over testing."

While Maryland and North Carolina have created commissions to examine testing, the Illinois state school board set in motion a process to support local school districts in conducting audits of their own testing programs. This inventory was based on Achieve's Student Assessment Inventory for School Districts and the audit was conducted in 52 select districts, with results turned over to a state-created testing task force.

The state board's assessment project administrator Diana Zaleski summed up the Illinois inventory program by commenting on involved districts, "They're seeing that there's a need to streamline their assessment systems."

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Around the Nation ~ Oregon

District faces suit from teacher who claims it damaged his reputation for reporting him for texting student

Portland Public School District is facing a lawsuit from a retired P.E. teacher named Norman Scott. In his suit, Scott contends that the school district damaged his professional reputation by wrongfully reporting him to the Oregon Teacher Standards and Practices Commission (OTSPC) after they learned that he had sent a text to a student even though there was nothing inappropriate about the text and that OTSPC ultimately found in his favor. Scott retired from Grant High School, and has filed a suit in Multnomah County Circuit Court against Portland Public Schools (PPSs).

In today's day and age, texting is becoming a common way for people to communicate, and if school districts do not adopt very specific written policies that spell out under what circumstances, if at all, they find it acceptable for teachers, coaches, and other school employees to text students, then they are leaving themselves open to lawsuits in the event that something happens. Districts that choose to adopt policies regarding texting keep records of previous problems, and, therefore, have a number of examples to draw upon that show how texting was used in inappropriate ways in their district in the past.

District officials had Scott on their radar even before the texting incident. In the 2008-2009 school year, the school district was watching Scott carefully after he gained a reputation for using an unusual and humor-filled approach to teaching sex-education to 10th graders. At this time, a student posted a four-minute YouTube video of Scott wearing a condom over

his head and red underwear over his pants. District officials were concerned with this behavior and Scott was directed to change his teaching tactics immediately.

In 2011, the school district became aware that Scott sent a text to a student, and they reported him to the OTSPC. The text was sent in December of 2011 to a student teaching assistant asking if she knew where some teaching materials were. This text seems quite appropriate, but the district is adamant that the choice to report Scott had nothing to do with past problems with him. In 2009, a district spokeswoman talked about the video of Scott saying, "What you saw in that video in no way, shape, or form represents Portland Public Schools' approved curriculum. The current lawsuit claims that the school district had "issues" with Scott that included "allegations of inappropriate boundaries with students, which Scott denied."

According to Scott's attorney, the district was unhappy with the fact that Scott texted the student. The lawsuit asserts that banning all texting between students and teachers is unrealistic in a time when texting has become a commonplace and effective way to communicate. PPS spokeswoman Christine Miles declined to offer comment about Scott's case. Miles, however, said the district does not have a specific teacher-to-student texting policy, but it is working on a social-media policy that would address the subject.

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attorneys and school board attorneys, the school district has finally agreed to investigate the claims. "We take this allegation very seriously, and are committed to ensuring each child has access to a quality education," PBCSD said.

This case is time sensitive because Roblero will "age out" at 21, and now he has lost a year that he should have been guaranteed a free and appropriate education. He is now 19. The lawsuit asks that Roblero be allowed to return to PBLHS. School district officials vow that they are investigating the allegations and will work with Legal Aid "to resolve this in the best interest of the student."

The suit also alleges that despite repeated warnings from federal officials, the school district "continues to engage in an ongoing practice of national origin discrimination." In addition to terminating his schooling three years early, the suit alleges that the school district also made it difficult for Roblero to enroll initially and he, therefore, started five days late because

school district officials asked him to provide records from his home country in Guatemala, a breach of district and federal law.

This is not the first time that the U.S. Department of Justice has dealt with this school district. In fact, this suit comes on the heels of another controversy where the district was accused of continuing to discriminate against students born out of the country despite a 2013 settlement. Roblero's suit contends PBCSD's decision to dismiss him violates a 2013 settlement between the school district and the U.S. Department of Justice, in which the school system agreed to revise its enrollment policies to "ensure that students do not face barriers to enrolling in or attending district schools on the basis of national origin, immigration status, or language status."

Source: *The Palm Beach Post*

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Around the Nation ~ Arkansas

District facing a lawsuit after the school board voted to ban the rebel mascot and song

In June 2015, the Fort Smith School Board (FSSB) surprised the public when they made a seemingly rash decision to ban the district's rebel mascot and the performance of the song "Dixie." This decision has many people up in arms because the school board acted without notifying the public that this issue was even up for discussion. Now, the school district is facing a lawsuit alleging that the decision is a violation of the Arkansas Freedom of Information Act (FOIA) because of the public was not informed that this issue would be on the table. To add insult to injury, the school district claims that the implementation of a new song and mascot will cost the tax payers' money.

The lawsuit claims that FSSB alerted the public and local news media about the meeting, and at this time they stated that purpose of the meeting was to discuss the annual evaluation of the superintendent of the Fort Smith School District. The lawsuit claims that "The purpose of the notice was to lead members of the public and media into believing that the meeting was just to discuss a personnel issue and that the meeting would not be open to the public, or at least for the most part not open to the public because it concerned a personnel issue."

Even though the school board failed to send out any public notification that there would be discussion of the mascot and the song at the meeting, the local media was tipped off about the plan. After the meeting was adjourned, the local media was informed that changes had been made to the song and the mascot, and that those changes were "official." According to the lawsuit, changing the fight song of the school and mascot will cost taxpayers between \$200,000 and \$500,000, and school officials have not yet informed the public where that money will come from.

The focus of this lawsuit is that FSSB members violated FOIA by misleading the public to believe the June meeting would be closed for the purpose of evaluating the superintendent, rather than to determine if the mascot and song should be changed, and then went ahead with these changes without any outside input or discussion.

Source: *KFSM 5News*

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The lawsuit contends that Scott signed a retirement agreement on May 7, 2012, stating that he would remain on paid administrative leave until his retirement took effect on June 30, 2012. Scott and the district both agreed to settle their disputes with each other, and to "waive any and all claims or complaints against each other," including "agency complaints," according to the lawsuit and a copy of the retirement agreement. "The district told him they were wiping the slate," Grey said.

Even so, the district elected to file a complaint with the Teacher Standards and Practices Commission about Scott's text to the teaching assistant. Scott was not aware of this complaint until October 2014, more than two years later, according to Scott's attorney. At that point, the commission began officially investigating the complaint.

In February 2015, the commission told Scott it was dismissing the complaint, but Scott believes that the harm was already done. Commission spokeswoman Elizabeth Keller confirmed

that the complaint was dismissed without action. She said she could not publicly release a copy of the investigative report because the complaint was dismissed.

In the lawsuit, Scott claims that the complaint damaged his professional reputation, and further, he believes that the commission's investigation held up renewal of his teaching license, which he wants to keep current so he can substitute teach at Portland area schools. The \$10,000 Scott is seeking includes lost wages for the time he spent meeting with a commission investigator, money he spent on legal representation to defend himself and damage to his ability to seek substitute teaching work because he has had to disclose the district's complaint about him. On top of that, Scott is seeking attorney's fees generated by the lawsuit.

Source: *The Oregonian*

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