



University of Pittsburgh

# THE FORUM

The Tri-State Area School Study Council Newsletter

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Summer 2020

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### See related newsletters:

- [Education Law Report](#), prepared by Tucker Arensberg Law Firm
- [Special Education Alert](#), prepared by Andrews & Price, LLC

TRI-STATE AREA SCHOOL STUDY COUNCIL

*Seeking ways to increase organizational capacity in schools through problem solving, technical service, and staff development so all students will be better prepared to make contributions to both our democratic society and the world community*

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## Message from the Director

I want to take this time to wish you well as we move into what will surely be a very challenging and unique year for school districts. I know that ongoing changes and uncertainty have made it difficult to plan for all possible scenarios that we will face as we move forward. I know that our skilled administrators and educators will be working to make this a great year for students despite circumstances. Tri-State will be working to provide you with excellent professional development opportunities that will help you navigate the year.

We will be holding our workshops virtually through at least the fall of 2020 with hopes to meet in person once again when it is safe to do so. We already have one workshop that is available on Mental Health. This series aims to help teachers and administrators with both their own and their students mental health after this harrowing year.

Tri-State is dedicated to continuing our support of districts in the region. If you have any suggestions for workshops that will help you and your staff, do not hesitate to reach out at [tristate@pitt.edu](mailto:tristate@pitt.edu). We hope to see many of you virtually in this upcoming year.

-Dr. Diane L. Kirk & Tri-State Team

## 2020 Workshop Calendar

### Workshop on New Title IX Regulations

September 3, 2020 | 9:30-12:00  
Online via Zoom

### Tri-State Mental Health Series

Series of 4 workshop  
starting August 15, 2020  
ending November 15, 2020  
*\*only open to member districts\**  
Online via Zoom

[Check our website for updates and new workshops!](#)



Thank you to the law firms who contribute to *The Forum* newsletter each issue:

- **Andrews & Price**, [Special Education Alert](#)
- **Tucker Arensberg Attorneys**, [Education Law Report](#)
- **Weiss Burkardt Kramer LLC**, *In Brief: School Law Update* (Located on pages 6-7 of *The Forum*)

# Tri-State Events—Summer 2020

## Dr. Samuel Francis School Law Symposium and Special Education Workshop

Due to gathering restrictions from the COVID-19 pandemic, we had decided to move the annual Dr. Samuel Francis School Law Symposium and Special Education Workshop to a virtual format. This was Tri-State's first online event and it was an outstanding success.

This symposium hosted eight sessions over two days to accommodate all of the presenters. Most sessions focused on different impacts of the coronavirus on school districts—ranging from implications on new construction, contract negotiation, and new special education considerations. One session focused entirely on the new Title IX Regulations, to be implemented in the new school year. Three of our presentations focused on case law from the past year, providing excellent summaries to participants.

Presenters:

Patricia Andrews, Esq., Andrews & Price LLC  
Carl Beard, Esq., Beard Legal Group  
Annemarie Harr Eagle, Esq., Weiss Burkardt Kramer LLC  
Patrick Fanelli, Esq., Fanelli Willett Law Offices  
John Paul Jones, Esq., Pennsylvania State Education Association  
Matthew Hoffman, Esq., Tucker Arensberg, P.C.  
Noah Jordan, Esq., Rothman Gordon PC  
Jocelyn Kramer, Esq., Weiss Burkardt Kramer LLC  
Christina Lane, Esq., Maiello Brungo & Maiello LLP  
Lynne Sherry, Esq., Weiss Burkardt Kramer LLC  
Ira Weiss, Esq., Weiss Burkardt Kramer LLC

### Statistics for the Event

# of Speakers	11
# of Sessions	8
# of Participants	264

## Tri-State Postponed Workshops Update

Tri-State needed to cancel several events from March 2020-May 2020 due to complications caused by the Coronavirus. Due to this, we have postponed or rescheduled these events to allow participants join us again at these professional development events.

### Dr. Jean E. Winsand Workshop for Women in School Leadership

Originally scheduled for April 2, 2020  
Tentatively rescheduled for April 1, 2021

### Principal Leadership Workshop #3: School Safety

Originally scheduled for March 30, 2020  
Rescheduled in Fall 2020, date to be determined

### Principal Leadership Workshop #4

Originally scheduled for May 2020  
Rescheduled in Fall 2020, date to be determined



We look forward to have you join us at our events as we slowly resume in person workshops! ▲



## Women's Law Project

### UPDATE: New Title IX Regulations: Oppositions and Consequences

A wave of litigation is challenging Secretary of Education Betsy DeVos's new Title IX regulations on sexual harassment and sexual assault. These changes took effect on August 14, 2020.

In 1972, Title IX of the Education Amendments was enacted, a law essential to tackling and mitigating sex-based discrimination in schools, universities, and other federally funded educational institutions across the United States.<sup>1</sup> This federal civil rights law states, "[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance." 20 U.S.C. § 1681(a).

Sexual harassment and sexual assault in an educational setting deprive students of equal educational opportunity. This means that K-12 schools, colleges, universities, and other higher education institutions that receive federal funding are required to take swift, affirmative steps in responding to sexual harassment and sexual assault claims while assuring that both sides are treated fairly.<sup>2</sup> The original version of the new regulations was proposed in November of 2018. After a firestorm of public comment overwhelmingly critical of the proposed regulations, the final form regulation was published on May 6, 2020.

*The final form regulation was published on May 6, 2020.*

These new Title IX regulations include many measures that weaken students' sexual assault and harassment protections put in place by the prior administration.<sup>3</sup> Prior to Secretary DeVos's changes, schools were held to far stricter guidelines on how to respond to sexual assault and harassment claims. The prior administrative guidance, which Secretary DeVos rescinded, ensured that schools had clear guidance and victims had support for coming forward. These new regulations, in contrast, threaten the true intention and essence of Title IX.

As a result, many schools including their superintendents and principals, colleges and universities, mental health professionals, survivors' advocates, women's rights organizations and other stakeholders oppose these new regulations for a variety of reasons.<sup>2</sup> The new rule limits the geographical reach within which a school can protect students, making schools only responsible for sexual assault or harassment that happens on-campus. This limits a huge proportion of students who live off campus whether that be in Greek life, general apartments, or study abroad for the semester.<sup>3</sup> Additionally, the new rule hinders schools' abilities to respond to sexual harassment that occurs online, since it does not directly address whether or not schools have to respond. Sexual harassment can and does occur online, possibly leaving a vulnerable population of victims unable to seek protection from their school.<sup>3</sup>

Also, colleges and universities under this new regulation can now ignore incidents of sexual assault and harassment if the victim did not report directly to the Title IX coordinator or a designated school official responsible for receiving Title IX complaints.<sup>3</sup> Previously, schools were required to look into every single complaint they received of sexual harassment and assault, but now the standard is "unwelcome conduct" on the basis of sex that is "determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access" to a school program or activity.<sup>3</sup> This means that the victim now has to show that they suffered harassment so severe that they have already been denied access to an education. Otherwise, the school must dismiss the complaint.<sup>3</sup>

If a student experiences sexual harassment and/or assault, schools should intervene before the student suffers harm that destroys their chance at an education. The regulations are likely to confuse schools as to what they should do when a complaint with a technical deficiency comes across their path. Read more about the consequences of these new regulations here.

So why should schools care? One reason is money. While the Department of Education has never actually imposed this sanction, at least in theory, schools risk losing critical federal funding if they don't implement the new regulations, which just took effect on August 14, 2020.

*Continued on page 4*

# Women's Law Project

Continued from page 3

Various organizations that represent student survivors of sexual assault and harassment jointly filed a complaint for declaratory and injunctive relief against these new regulations, including The Victim Rights Law Center, Equal Rights Advocates, Legal Voice and Chicago Alliance against Sexual Exploitation. The State of New York, the National Women's Law Center, and the ACLU have also filed their own lawsuits against Secretary DeVos and the Department of Education to challenge the new guidelines. In the beginning of July, the National Women's Law Center along with co-counsel Morrison & Foerster LLP and Diane Rosenfield of Harvard Law School amended their complaint to include seven plaintiff students who have experienced sexual harassment or assault and who would be directly harmed by the new Rule.4 PA Attorney General Josh Shapiro, along with attorneys general from New Jersey, California and 17 other states, also filed a complaint outlining the devastating consequences of this new rule if it goes into effect. About a week before the rule went into effect, the United States District Court for the Southern District of New York denied the motion for a preliminary injunction, which would have temporarily stopped the implementation of the new Rule.5 The collective hope is that some form of pending litigation will help turn around this new Rule as the new academic year starts at the end of August. Stay tuned for more news about this wave of litigation and what schools are doing in response to the DeVos regulations.

References:

1. <https://www.attorneygeneral.gov/taking-action/press-releases/ag-shapiro-new-title-ix-rule-unlawful-limits-protections-for-sexual-harassment-victims/>
2. <https://www.womenslawproject.org/2018/12/17/wlp-analysis-of-the-proposed-title-ix-regulations-invitation-for-you-to-submit-comment/>
3. <https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2020/05/Title-IX-Final-Rule-Factsheet-5.28.20-v3.pdf>
4. <https://nwlc.org/press-releases/nwlc-adds-7-student-plaintiffs-to-lawsuit-challenging-title-ix-sexual-harassment-rule/>
5. [https://www.texasattorneygeneral.gov/sites/default/files/images/admin/2020/Press/Title%20IX%20Order%20\(SDNY\).pdf](https://www.texasattorneygeneral.gov/sites/default/files/images/admin/2020/Press/Title%20IX%20Order%20(SDNY).pdf) ▲

## Title IX Documents for Reference

- [Title IX Fact Sheet](#)  
Published by the US Department of Education
- [Summary of Major Provisions of the Department of Education's Title IX Final Rule](#)  
Published by the US Department of Education
- [Summary of Major Provisions of the Department of Education's Title IX Final Rule and Comparison to the NPRM](#)  
Published by the US Department of Education
- [Title IX Final Rule Outline of Key Provisions](#)  
Published by American Council for Education

## Tri-State Membership Renewal

Tri-State Area School Study Council would like to thank our membership for your continued support of our organization. We would not be able to put on the workshops, conferences, and networking events without your help.

We hope that you will renew your membership for the 2020-2021 membership year if you have not done so already. We will honor your membership until September 1, 2020 if you were registered last year. We encourage you to join in order to access our timely workshops and trainings as you move into the new school year.

Do not hesitate to contact us at [tristate@pitt.edu](mailto:tristate@pitt.edu) if you have any questions. We look forward to having you as a member for years to come! ▲



University of Pittsburgh

# Green Building Alliance

## Update from Green Building Alliance

Green Building Alliance is here to help you through these unprecedented times!

We urge school administrators to submit their questions about building best practices regarding reopening through this [form](#). We also recommend reviewing the [Guide to Keeping Schools Safe During Covid-19 published by Perkins & Will](#). Control measures can be put into place to minimize the risk of COVID-19 transmission as school buildings reopen. According to the [Schools for Health: Risk Reduction Strategies for Reopening Schools guidance document](#), the holistic approach for risk reduction must encompass all of these areas: healthy classrooms, healthy buildings, healthy policies, healthy schedules, and healthy activities. Each of these separate areas need attention and cannot exist in isolation as we prioritize the health and safety of our students, teachers, and staff.



While social distancing, mask-wearing, and modified student schedules are all incredibly important in our fight against COVID-19, there are two major aspects that cannot be overlooked as we think about reopening our schools: building ventilation and cleaning and disinfecting protocols. How can we ensure that our students and teachers are breathing clean air in their school buildings? How can we ensure what we are using to combat the virus transmission is not further harming our students' and teachers' respiratory systems?

These areas are not easy to spot check. While it is easy to see if your child's teacher is wearing a mask, it is much harder to identify if the air handling units in the school building have been switched to 100 percent outdoor air. This is stated not to incite fear, but to acknowledge that we need to be asking different questions of our schools as they consider reopening. What if we begin to discuss and think about indoor air quality in our school buildings not just during the pandemic, but also after it ends (because we have to believe that there is an end in sight!)? How can we use this discussion about healthy indoor air quality and environments as an opportunity to facilitate better educational environments and learning outcomes for all students? This could be our opportunity to reinvest in our students and teachers AND their health through building modifications and operational practices. ▲

## Diversity Resources for Teachers and School Administrators

Below is a collection of resources for teachers and administrators to address issues of diversity. The resources are not affiliated with the University of Pittsburgh and may not be kept up to date.

- [Social Justice Mathematics and Science Curricular Resources for K-12 Teachers](#)  
Dr. Kari Kokka, Assistant Professor of Mathematics Education at the University of Pittsburgh, has compiled an extensive list of social justice resources for K-12 teachers. The resources found here can be beneficial to both teachers and school administrators alike.
- [Speak Up](#)  
A site focused on opening a dialogue with youth about racism.
- [Teaching Tolerance \(Southern Poverty Law Center\)](#)  
A comprehensive site dedicated to educating for a diverse democracy. Classroom resources and webinars available for free.
- [Facing History](#)  
A site with free lesson plans and webinars focused on understanding the past to make decisions in the future.

The University of Pittsburgh's School of Education has webinars focused on diversity in teaching throughout the 2020-2021 year. These virtual programs are open to the public unless otherwise indicated. Please visit [https://calendar.pitt.edu/department/school\\_of\\_education](https://calendar.pitt.edu/department/school_of_education) for more information.

## Commonwealth Court Rules that Student Cannot be Disciplined for Off-Campus, Crude Language

By Nicole W. Williams, Esq.

*On June 30, 2020, the Third Circuit Court of Appeals affirmed an earlier district court decision in B.L. by and through Levy v. Mahanoy School District, holding that a student's Snapchat post which occurred off-campus and on a weekend was protected speech under the First Amendment of the U.S. Constitution, the student did not waive her First Amendment protections and as a result, the student could not be disciplined for the speech.*



Nicole W. Williams

In 2017, student B.L. made the junior varsity cheerleading squad at Mahanoy Area High School ("MAHS"), a school located in Schuylkill County, Pennsylvania. B.L., upset that she did not make the varsity cheer squad, vented her frustrations on a Saturday, while at a local store with a friend, by posting a photo to Snapchat which was visible to approximately 250 of her friends, many of whom were fellow MAHS students and some of whom were cheerleaders. The photo depicted B.L. and her friend, both with their middle fingers raised, with the caption "f\*\*\* school f\*\*\* softball f\*\*\* cheer f\*\*\* everything."

Cheerleaders at MAHS were required to acknowledge the team rules which included requiring cheerleaders to "have respect for [their] school, coaches, ... [and] other cheerleaders"; avoid "foul language and inappropriate gestures"; and refrain from sharing "negative information regarding cheerleading, cheerleaders, or coaches ... on the internet." Because the video referenced the school and its activities and included an obscene gesture and language, the cheerleading coaches at MAHS immediately removed B.L. from the cheerleading squad. This discipline was upheld by the school but overturned by the district court which found that the school had violated B.L.'s First Amendment rights by removing her from the JV cheerleading squad.

In its decision affirming the lower court's ruling, the appellate court found that the speech was off-campus speech because the post was created off school grounds, not during school time, without school resources, and on an app unaffiliated with the school district. The fact that the post referenced the school and reached fellow students and coaches was not enough to bring the speech "on campus." The court declined to impose a balancing test on the speech and further opined that it did not matter that the discipline was to exclude from an extracurricular activity because discipline, whatever the form, cannot be used to control student free speech in a realm that is normally beyond regulation. Furthermore, the court declined to extend the "substantial disruption" test from *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503, 89 S.Ct. 733, 21 L.Ed.2d 731 (1969), to off-campus speech. Importantly, the court also found that B.L. did not waive her First Amendment rights where such a waiver must be voluntary and knowing. As such, the court found that the post was protected First Amendment speech for which B.L. could not be disciplined.

This case draws an important distinction between foul language being used by a student off-campus and language used by a student to bully, harass or threaten another student or the school. School administrators should contact legal counsel with any concerns regarding student expression, particularly during times when students are participating in school activities virtually. ♦

## PA Class Action Lawsuit Filed Regarding Denial of FAPE During COVID-19 School Closures

By Emily H. Hammel, Esq.



Emily H. Hammel

On May 18, 2020, a class-action lawsuit was filed in the U.S. District Court, Eastern District of Pennsylvania on behalf of nonverbal and partially verbal elementary students who did not receive their required special education services due to mandated COVID-19 school closures. Plaintiffs allege that Pennsylvania Governor Tom Wolf, Education Secretary Pedro Rivera and the Pennsylvania Department of Education have violated Plaintiffs' rights under the Individuals with Disabilities Education Act ("IDEA"), Section 504 of the Rehabilitation Act ("Section 504") and the Americans with Disabilities Act ("ADA") because Governor Wolf's failure to include in person instruction for nonverbal and partially verbal children with autism as a "life-sustaining" business, permitted to operate during the pandemic, has denied Plaintiffs the opportunity to receive FAPE, or a Free Appropriate Public Education, as entitled under the law.

Despite the school closures ordered by Governor Wolf during the COVID-19 pandemic, the Department of Education did not recommend any additional federal waivers concerning FAPE and Least Restrictive requirements of the IDEA. Instead, the Department of Education reiterated that learning must continue for all students during the COVID-19 emergency. Plaintiffs were only offered online learning consisting of limited video meetings with teachers and therapists. Such meetings

## Background Check Requirements for Independent Contractors: Clarification from the Commonwealth Court

By Lisa M. Colautti, Esq.

On October 19, 2019, the Commonwealth Court issued a decision in the case of *United Union of Roofers, Waterproofers and Allied Workers v. North Allegheny S.D., Fox Chapel S.D. and Montour S.D.*, 220 A.3d 709 (Pa. Cmwlth. 2019). Under



Lisa M. Colautti

this ruling, it is clear that independent contractors who have “direct contact with children” as defined by the School Code, must provide complete background checks to the school entities where they perform the work.

In 2015, the Roofers’ Union brought suit against North Allegheny School District, Fox Chapel Area School District, and Montour School District (Districts) alleging that roofing contractors were exempt from School Code provisions requiring background checks for employees, volunteers and independent contractors who have direct contact with children. Although direct contact with children is not defined in Section 111 of the School Code, it is defined elsewhere in the Code as “the possibility of care, supervision, guidance or control or routine interaction with children.”

The Roofers’ Union was awarded contracts at each District to either renovate existing schools or to build a new school on an existing campus. Background checks were required as part of each contract. When the building projects began, several individual roofing contractors were denied access to school sites based on their criminal records which were determined to be in violation of Section 111 of the School Code. Districts presented evidence to the trial court that roofing contractors were in direct contact with children on school grounds, were able to use restrooms in school buildings, and were in close, unsupervised proximity to students during evening and summer activities.

The trial court ruled in favor of the Roofers’ Union and Districts appealed the decision to Commonwealth Court. The court held that school entities may conduct background checks on independent contractors who have direct contact with children as permitted by the plain language of the School Code. Additional claims were later withdrawn by the Roofers’ Union and the case is now final.

This decision reiterates that independent contractors who have the possibility of care, supervision, guidance or control or routine interaction with children are subject to the same FBI, State Police, and Child Abuse background checks and Employment History Reviews as school employees. Our office is happy to assist with any questions you may have regarding this case or clearances in general. ♦

### PA Class Action Lawsuit *continued*

proved challenging for students who are nonverbal or partially verbal. Additionally, Plaintiffs’ online education was 75 minutes per week, as opposed to the 32 and 1/2 hours per week of hand-over-hand instruction students were receiving prior to school closures. Furthermore, Plaintiffs allege the online plan was not consistent with Plaintiffs’ IEPs and posed significant risk for regression resulting in a decrease in overall functioning and skill level.

While the suit is not filed against the school district itself, the outcome of this case may impact future due process litigation involving COVID-19 school closures. Be on the lookout for updates on the status and eventual outcome of this case and what impact any ruling may have on special education programming and future due process matters. ♦

## Compliance Alert: New Title IX Regulations

By Amanda B. Jewell, Esq.

On May 19, 2020, the Secretary of Education amended the regulations implementing Title IX of the Education Amendments of 1972. These changes will be effective as of August 14, 2020. The primary focus of the new Final Rule is an increase in due process and substantive legal protections for those accused of violations, a narrowing of scope of sexual harassment and liability, and expanded requirements pertaining to Title IX officials at a school district, including training. School administrators must ensure compliance with the new obligations by the upcoming deadline. ♦



Amanda B. Jewell

## We’re Speaking...

- On July 30, 2020, Attorney Ira Weiss and Attorney Annemarie Harr Eagle will be providing a legal update at the PACTA Annual Conference.
- On August 17, 2020, Attorneys Aimee Zundel and Annemarie Harr Eagle will be presenting at PBI’s “Snapshots of Special Education Law.” Attorney Harr Eagle will speak on Special Education Statute of Limitations Issues while Attorney Zundel will present on Anxiety and School Phobia.
- Attorney Lynne Sherry will present on the topic of AEDY at PBI’s “Current Issues for Child Advocates” CLE currently scheduled to be held virtually in October 2020.

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*This issue of In Brief: School Law Update is meant to be informational and does not constitute legal advice. Should districts wish legal advice on any matter, they should contact their legal counsel or request a legal opinion from Weiss Burkardt Kramer LLC.*

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## Regional Administrative Changes

*Several area districts have had recent changes in their administrative teams. Congratulations to everyone in new positions and to those who have moved on to new opportunities!*

**Dr. Joseph Dimperio**—Interim Superintendent, Bethel Park School District

**Dr. Neil English**—Superintendent, Riverview School District  
previously Curriculum Coordinator and Instructional Principal of Riverview Jr/Sr High School

**Dr. Mark Gross**—Superintendent, Mars Area School District  
previously Assistant Superintendent for Secondary Education at Hempfield Area School District

**Dr. Erica Kolat**—Data Specialist, Chester County Intermediate Unit  
previously Superintendent at McGuffey School District

**Dr. Patrick O'Toole**—Acting Superintendent, North Allegheny School District

**Dr. Mary Catherine Reljac**—Superintendent, Fox Chapel Area School District  
previously Assistant Superintendent at Franklin Regional School District

**Dr. Robert Scherrer**—Executive Director, Allegheny Intermediate Unit  
previously Superintendent at North Allegheny School District

**Wes Shipely**—Substitute Superintendent, Ellwood City School District

**Amy Todd**—Interim Superintendent, McGuffey School District

*We would also like to congratulate those administrators who have recently retired in our region!*

**Dr. Gene Freeman**—retired as Superintendent, Fox Chapel Area School District  
now Superintendent of Asheville City Schools

**Dr. Margaret "Peggy" DiNinno**—retired as Superintendent, Riverview School District

### Employment Opportunities

Visit Tri-State's job board for current postings.

<https://tristate.pitt.edu/jobs>

If you have any jobs you would like advertised, please email us.

### Tri-State Mental Health Series

Tri-State Member Districts can now register for a four-part series on Mental Health.

Each of the four 90-minute webinar focuses on a different specific challenge educators will face when they return to school.

The seminars will be led by leading trauma and school mental health experts, Presented by Mary Margaret Kerr, Ed.D, Melissa Nelson, Ed.D., Mark Lepore, Ed.D., and Toya Jones, MSW, LCSW.

**Register and find more information at [bit.ly/TriStateMentalHealth](http://bit.ly/TriStateMentalHealth)**

Asynchronous sessions available until November 15, 2020

**The Forum** is a publication of the Tri-State Area School Study Council. Your comments and suggestions of topics for future publications are always welcome. You may contact us at:

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