LCW Liebert Cassidy Whitmore

# Private Education Matters

News and developments in education law, employment law and labor relations for California Independent and Private Schools and Colleges.

June/July 2019

## INDEX



## LCW NEWS



***Private Education Matters*** is published monthly for the benefit of the clients of Liebert Cassidy Whitmore. The information in ***Private Education Matters*** should not be acted on without professional advice.

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## STUDENTS

### *DUTY OF CARE OWED TO STUDENTS*

### *Trial Court Abused Discretion In Categorically Excluding All Evidence Of Inappropriate Conduct Not Involving Teacher's Physical Contact With Students.*

D.Z. was a high school student in the Los Angeles Unified School District. She alleged that when she was a student, teacher James Shelburne sexually abused her at school. Specifically, D.Z. alleged that Shelburne touched her body multiple times over a few months, hugged her so tightly she could feel his genitals, offered her a ride home, and reached under her clothes to touch her bare buttocks. After these incidents, D.Z. reported Shelburne to the principal who told D.Z. that Shelburne was a good teacher and that it was probably just D.Z. After similar incidents with Shelburne continued to occur, D.Z. made a second report to the principal.

In the year leading up to the incidents involving D.Z., the principal received numerous complaints from students and teachers of Shelburne's inappropriate conduct towards students. On one occasion, a group of female students and a female teacher met with the principal regarding their complaints that Shelburne made inappropriate, sexually-charged comments, massaged students on their shoulders or lower backs, and touched students during class in ways that made the students feel uncomfortable. Another female student had also informed the principal on two or three occasions that Shelburne had touched her in a manner that made her feel uncomfortable. However, the principal did not report or investigate any of the complaints.

D.Z. sued the District alleging negligent supervision and that the District knew or should have known of the danger posed by Shelburne, and the District's failure to respond appropriately resulted in harm to her.

Prior to trial, the District filed a motion to exclude evidence of Shelburne's alleged bad acts toward anyone other than D.Z. and of Shelburne's alleged bad acts unrelated to D.Z.'s negligence claim. In particular, the District sought to exclude evidence of: (1) comments by Shelburne to students that the District claimed were "non-sexual" but otherwise inappropriate, (2) Shelburne's offers to give multiple female students a ride home, (3) questions from Shelburne to female students about their boyfriends and sexual experiences, (4) photographs Shelburne took of students he kept on his computer and posted on his personal Facebook page, as well as Facebook friend requests Shelburne sent to female students, and (5) Shelburne's favoritism toward female students. At a hearing on the motion, the court ruled that only evidence related to other instances of physical touching was admissible and excluded other evidence of Shelburne's conduct.

During a two-week trial, multiple teachers testified they witnessed Shelburne touch female students, stare at their breasts, and make sexual comments. Despite being required by statute to report incidents of child abuse, the teachers did not file a mandated report but said they reported it to the principal. Office staff denied seeing Shelburne engage in inappropriate behavior. One principal stated he never saw Shelburne touching a student's private parts and never received any such complaint between 1995 and 2007. Another principal confirmed the group of female students complained about Shelburne, but she did not remember if she discussed the issue with Shelburne or documented it in his personnel file. This principal stated she filed a District incident report after receiving D.Z.'s complaint, and the police investigated. Shelburne denied all alleged conduct.

A jury returned a verdict in favor of the District and found Shelburne did not pose a risk of sexually abusing students. D.Z. appealed.

On appeal, D.Z. argued the trial court erred by excluding all evidence of prior inappropriate conduct by Shelburne that did not involve physical touching of students. D.Z. argued this evidence was relevant and therefore admissible.

To support her negligent supervision claim, D.Z. was required to prove both that Shelburne posed a risk of harm to students and that the risk of harm was reasonably foreseeable (i.e., the District knew or should have known of the risk). Evidence tending to prove either of these elements was relevant to her claim.

The Court of Appeal found the trial court's decision regarding the exclusion of evidence was arbitrary because it excluded all evidence of conduct other than touching even though that evidence was relevant to D.Z.'s negligent supervision claim. The Court of Appeal found no authority to support the premise that only evidence related to touching was relevant to whether the risk of harm was reasonably foreseeable.

The District tried to argue the erroneous exclusion of evidence was harmless. However, the Court of Appeal concluded the erroneous exclusion of evidence prejudiced D.Z.'s claim. Shelburne's comments and inappropriate questions to students about boyfriends and sexual experiences was crucial to D.Z.'s argument that the District knew or should have known of the risk that Shelburne would commit sexual abuse of a student. Moreover, the exclusion of non-touching evidence affected D.Z.'s ability to offer otherwise admissible evidence of prior complaints. Therefore, it was reasonably probable that the admission of this evidence would have led to a result more favorable to D.Z.

Ultimately, the Court of Appeal reversed the trial court's decision and ordered a new trial.

*D.Z. v Los Angeles Unified School District* (2019) 35 Cal. App.5th 210.

***NOTE:***

*As the Court of Appeal in D.Z. v Los Angeles Unified School District noted, schools owe students under their supervision a duty to protect them from reasonably foreseeable harm. Accordingly, if a school receives a complaint that a school employee has engaged in inappropriate conduct with a student, the school must investigate the matter and take appropriate remediate action to protect the involved student from future harm and other students from experiencing similar harm. This includes following all mandated reporter duties, which requires that mandated reporters report to CPS or law enforcement. It is not enough to report only to the school when a mandated report is required to be filed.*

## EMPLOYEES

### *DISCRIMINATION LITIGATION*

#### *U.S. Supreme Court Concludes That County Forfeited Its Late Objection That An EEOC Complaint Failed To Reference A Protected Status The Employee Pursued In A Title VII Action.*

Title VII of the Civil Rights Act of 1964 ("Title VII") prohibits discrimination in employment based on race, color, religion, sex, or national origin. Title VII requires an employee to file a charge with the Equal Employment Opportunity Commission ("EEOC") or a state fair employment agency before commencing a Title VII action in court. Once the EEOC receives a complaint, it notifies the employer and investigates the allegations. The EEOC may then resolve the complaint through informal conciliation or sue the

employer. If the EEOC chooses not to sue, it issues a right-to-sue notice, which allows the employee to initiate a lawsuit. An employee must have this right-to-sue notice before initiating a lawsuit.

Lois Davis filed an EEOC complaint against her employer, Fort Bend County. She alleged sexual harassment and retaliation for reporting harassment. While the EEOC complaint was still pending, the County fired Davis because she went to church on a Sunday instead of coming to work as requested. Davis attempted to amend her EEOC complaint by handwriting "religion" on an EEOC intake form; however, she never amended the formal charge document. Upon receiving her right-to-sue notice, Davis sued the County in federal court for religious discrimination and retaliation for reporting sexual harassment.

After years of litigation, the County alleged for the first time that the court did not have jurisdiction to decide Davis' religious discrimination claim because that protected status was not included in her formal EEOC charge. The trial court agreed and dismissed the suit. On appeal, the Fifth Circuit reversed and held that an EEOC complaint was not a jurisdictional requirement for a Title VII suit, and therefore, the County forfeited its defense because it waited years to raise the objection. The U.S. Supreme Court then agreed to hear the case.

The U.S. Supreme Court had to decide whether an EEOC complaint is a jurisdictional or procedural requirement for bringing a Title VII action. When a jurisdictional requirement is not met, a court has no authority whatsoever to decide a certain type of case. A procedural requirement, by contrast, is a claim-processing rule that is a precondition to relief that may be waived if there is no timely objection. The Court noted that a key distinction between the two is that jurisdictional requirements may be raised at any stage of the proceedings, but procedural requirements are only mandatory if the opposing party timely objects.

The Supreme Court concluded that Title VII's complaint-filing requirement is not jurisdictional because those laws "do not speak to a court's authority." Instead, those complaint-filing requirements speak to "a party's procedural obligations." Therefore, the Court found that while filing a complaint with the EEOC or other state agency is still mandatory, the County forfeited its right to object to Davis' failure to mention religious discrimination in her EEOC complaint because the County did not raise the objection until many years into the litigation.

*Fort Bend County v. Davis* (2019) 139 S.Ct. 1843.

***Note:***

*This case demonstrates the importance of considering the adequacy of an employee's administrative EEOC discrimination complaint early in the litigation process.*

## *Job Requirement That Was Not Essential To Performing Purchasing Manager Position Unfairly Screened Out Qualified Individual With A Disability.*

On June 10, 2019, the U.S. Department of Justice ("Department") announced that it had reached a settlement with York County, South Carolina ("York County") resolving a complaint the Department had filed against the County under the Americans with Disabilities Act ("ADA"). The complaint stemmed from a job announcement that York County promulgated for the position of Purchasing Manager. The job announcement stated that a driver's license was a mandatory requirement for the position. However, driving was not an essential function of the position. An individual with dwarfism, who did not have a driver's license because of his physical impairment but who was otherwise qualified for the position, requested that York County waive the driver's license requirement so that he could apply. York County refused to do so.

The Department's complaint alleged that York County discriminated against the individual with dwarfism under the ADA by 1) failing to make reasonable accommodations to the application process so the individual could participate in it and 2) using qualification standards / selection criteria that screened out or tended to screen out an individual with a disability or a class of individuals with disabilities. The settlement agreement requires York County to review and revise all job listings to ensure that instructions for requesting reasonable accommodations are stated clearly and that only essential job functions are listed as mandatory requirements. The settlement agreement also requires York County to review and revise its policies and procedures to ensure compliance with the ADA,

including nondiscrimination in the hiring process, reasonable accommodations for applicants, and appropriate qualification standards / selection criteria for job openings.

The settlement agreement is available at https://www.ada.gov/york_county_sa.html.

***NOTE:***

*While this settlement agreement is only binding on York County, the circumstances surrounding the agreement provide a good reminder for private schools and colleges of their obligation to provide reasonable accommodations to disabled applicants and the importance of establishing job announcements and screening criteria that are job-related and do not result in the exclusion of individuals who are qualified for the job.*

## LABOR RELATIONS

### *Union Steward's Profane, Aggressive Confrontation With Supervisor Retained NLRA Protection.*

Louis Little was employed by Greyhound Lines, Inc. for 25 years as a bus driver before being discharged in 2016. During the last 20 years of Little's employment, he served as a union steward for 17 years and then as chief union steward for 3 years. In the three months leading up to his termination, Little received complaints from several unit employees, including unit member Danielle Young, about the way their Manager, Jon Heben, spoke to them. Young specifically complained that Heben spoke to her in an arrogant, antagonistic manner, often in the presence of bus passengers.

Several weeks after Young complained to Little, Young arrived at the facility at 1:30 pm for a 2:00 pm scheduled departure. An issue with the computer system and the need to search for an alternative route because of an unexpected road closure delayed Young's departure. After 2:00 pm, Young asked Heben for his assistance in determining an alternative route, but Heben just yelled and waived his finger at Young. Young immediately complained to Little and the two decided to discuss the incident with Heben before Young left on her scheduled route.

Little and Young approached Heben in a private area. Little told Heben that he wanted to speak with him about how he had spoken to Young. In response, Heben pointed his finger and yelled at Little and Young, denied he did anything wrong, and directed Young to begin her route because her departure was already delayed by over 35 minutes. Little told Heben that his current conduct was the reason why he wanted to speak with him. Heben continued to point his finger and yell.

Little then stated that Young could have "gotten her *expletive* and left" on time if Greyhound had not failed to assign Young a "damn bus" and the clerk had done "what she was supposed to damn do." Heben moved closer to Little, pointed his finger in Little's face, and instructed Little not to swear. Little continued to swear using increasingly vulgar expletives and continued to blame Young's delayed departure on Greyhound. Little and Young then walked away from Heben and towards the platform near Young's bus. Heben followed them and continued to yell at Little to stop swearing, and yell at Young to get on her bus and leave.

Little and Heben ended up face to face, with Little swinging his hand across his body aggressively and pointing his index finger at Heben, mimicking Heben's earlier pointing. Heben asked Little if he was going to hit him, and Little replied that he was not. Approximately two and a half minutes after Little and Young first approached Heben, they walked away and the confrontation ended. There were passengers on the bus during the incident, but the door and windows to the bus were not open.

About two and a half weeks later, Greyhound discharged Little for further delaying Young's bus route by confronting Heben, for his unrestrained use of profanity, for his uncontrolled behavior, and for his gross insubordination. Little was also terminated for punching Heben in the stomach, but video footage of the confrontation later revealed no physical contact between the men occurred, which indicated that Heben had been dishonest when he said Little punched him.

The National Labor Relations Board ("NLRB") concluded that Little had engaged in union activity protected under the National Labor Relations Act ("NLRA") during his confrontation with Heben because Little was acting in his capacity as chief

union steward when he approached Heben to discuss Young's second complaint related to Heben's treatment of her. Having concluded that Little had engaged in protected union activity, the NLRB next applied the factors set forth in *Atlantic Steel Co.*, 245 NLRB 814 (1979), to determine whether Little's misconduct during the confrontation caused him to lose NLRA protection.

Under *Atlantic Steel*, the NLRB considers the following four factors to determine whether an employee's activity that is initially protected under the NLRA has been rendered unprotected by the employer's subsequent misconduct: (1) the location of the discussion; (2) the subject matter of the discussion; (3) the nature of the employee's outburst; and (4) whether the outburst was, in any way, provoked by the employer's unfair labor practices.

First, the NLRB found that the location of the discussion was a neutral factor in the *Atlantic Steel* analysis. There was no evidence that any passengers heard or witnessed the confrontation, that any passengers complained about the confrontation, or that the confrontation affected Greyhound operations in any way. The evidence also did not establish that any employees witnessed Little undermining the authority of Heben (a supervisor). Further, the portion of the confrontation that occurred in an area open to possible passenger and employee observation would not have occurred had Heben not followed Little and Young onto the bus platform after Little and Young first walked away.

Second, the NLRB concluded that the subject matter of the discussion strongly favored protection despite Little's use of profanities and aggressive conduct because Little was acting in his capacity as chief union steward when he confronted Heben to discuss Young's complaints.

Third, the NLRB explained that it ordinarily would have found the nature of Little's outburst, including his use of profanities and aggressive gesticulation in close proximity to Heben, weighed against protection. However, testimony of employees and union officials indicated that profane language and heated arguments among employees and union officials at the facility and in front of passengers were commonplace. Before Little was terminated, no other employee had been disciplined, discharged, or suspended for using profanity. Accordingly, the NLRB found that factor three neither favored nor disfavored Little's retention of NLRA protection.

Fourth, the NLRB found that Little's misconduct was provoked by Heben's conduct. Little's use of profane language did not occur until Heben began to yell and point his finger in response to Little's attempt to discuss Young's complaint about Heben's treatment of her. Further, Heben chose to extend the confrontation by following Little and Young to the bus platform, which led to the escalation.

Because two of the factors weighed in favor of protecting Little's misconduct and two factors were neutral, the NLRB held that Little did not lose the protection of the NLRA. Accordingly, Greyhound violated the NLRA when it discharged him.

*Greyhound Lines, Inc. and Louis Little* (May 6, 2019) 367 NLRB No. 123.

***Note:***

*The NLRA grants private sector workers the right to organize and be represented by labor unions and gives significant protections to employees whether or not they work in a unionized environment. This means that an employee, even an employee who swears, yells and gestures while speaking up on behalf of other employees' working conditions, may be engaging in legally protected activity. The above factors must be applied to each situation to determine whether such activity is protected by law. Furthermore an employee's misconduct, past discipline (or lack thereof) for similar misconduct by other employees in the past, and the culture of the workplace will also be relevant to the analysis.*

## BUSINESS AND FACILITIES

### *WELL BUILDING STANDARDS*

#### *School Building Occupant Health – WELL Building Standards.*

NOTE: The following is general advice only. Please consult an LCW attorney with any specific questions you may have or additional information you may want on these issues.

Did you know human beings spend approximately 90% of their time indoors? According to the United States Environmental Protection Agency, all of this time spent inside, instead of outdoors in the fresh air, can negatively impact our health and wellbeing. To address these issues, the International WELL Building Institute ("IWBI") created the WELL Building Standard. This standard is a performance-based certification system that is similar to Leadership in Energy and Efficiency Design ("LEED") certification. WELL, however, focuses on the health and wellbeing of individuals inside of buildings, instead of the physical construction of the buildings.

The WELL Building Standard promotes health among building occupants by measuring indoor environment features, and encouraging owners to improve those features to benefit building occupants. Healthy buildings can now achieve silver, gold, or platinum WELL certification levels from Green Business Certification Inc. ("GBCI"), the same organization that administers the LEED certification program.

Schools, and their students, employees, and others who spend time in the buildings, can also improve the health and wellbeing of occupants by achieving WELL certification for school buildings. To achieve this certification, the WELL Building Standard focuses on seven concepts to make buildings healthier for their occupants.

- Air – A building's air quality standards and pollution management.
- Water – A building's water quality and efforts to promote hydration.
- Nourishment – Making healthy food options and choices available and promoting healthy eating habits.
- Light – Minimizing electric light glare and improving natural and quality light throughout the building.
- Fitness – Providing physical activity spaces and equipment for students and others, and providing physical activity incentive programs.
- Comfort – Providing ergonomic, thermal, sound, and other comforts throughout the building.
- Mind – Actively encouraging mental wellbeing and awareness of a healthy lifestyle.

Schools can benefit from this certification by improving their buildings' indoor environment, making the building healthier for all occupants.

## ARBITRATION AGREEMENTS

***Employer Waived Right To Compel Arbitration Through Previous Statement It Did Not Intend To Compel Arbitration And Lengthy Delay Before Filing Motion.***

Xavier Nunez filed a complaint against his former employer, Nevell Group, Inc., alleging various violations of the California Labor Code including unpaid minimum wages, unpaid overtime, and failure to provide meal and rest periods. Nunez, as a member of the carpenters' union, and Nevell Group were parties to a collective bargaining agreement ("CBA") that stated that any alleged violations of the applicable wage order were subject to arbitration.

Nevell Group informed the trial court of the existence of the CBA and its intention to compel arbitration of Nunez's claims. The trial court ordered Nevell Group to file a motion to compel arbitration by a certain deadline. Nevell Group then sent a letter to Nunez and his attorney demanding arbitration pursuant to the CBA, but Nunez's counsel refused the demand. Thereafter, Nevell Group did not file the motion to compel arbitration by the court-imposed deadline. At a subsequent status conference, counsel for Nevell Group informed the trial court that it still intended to file a motion to compel arbitration, so the court set a new deadline for the motion. However, Nevell did not file the motion by the second court-imposed deadline and, instead, informed the trial court that it decided not to proceed with compelling arbitration. Two years later, and after the parties had engaged in extensive discovery and an unsuccessful mediation, Nevell Group filed a motion to compel arbitration, which the trial court denied on the grounds that Nevell Group had "acted inconsistently with its right to compel arbitration resulting in prejudice to the Plaintiff."

On appeal, the Court of Appeal noted that while California law reflects a strong policy favoring arbitration agreements, a court may deny a petition to compel arbitration if the party seeking arbitration has waived its right to compel arbitration. Whether a party waived its right to compel arbitration depends upon (1) whether the party's actions are inconsistent with the right to arbitrate; (2) whether litigation procedures have been "substantially invoked" before

the party notifies the opposing party of its intent to arbitrate; (3) whether the motion to compel arbitration was filed close to the trial date or after a long delay; (4) whether the party filed a counterclaim without seeking a stay; (5) whether "important intervening steps," such as conducting discovery not available in arbitration; and (6) whether the delay in seeking arbitration prejudiced the opposing party.

In applying those factors, the Court of Appeal held that the Nevell Group had explicitly waived its right to arbitrate by notifying the trial court and Nunez that it had decided not to proceed with compelling arbitration. Further, the Court of Appeal found that Nunez was prejudiced by Nevell Group's delay in filing the motion to compel because by the time Nevell Group filed the motion, Nunez has conducted extensive discovery, hired experts to analyze evidence, and underwent unsuccessful mediation. Therefore, the Court of Appeal affirmed the decision of the trial court.

*Nunez v. Nevell Group, Inc.* (2019) 247 Cal.Rptr.3d 595.

***Note:***

*The decision in Nunez highlights the importance of deciding early on in the litigation process whether to compel arbitration if the complaint involves a matter subject to an arbitration agreement.*

## LITIGATION - VENUE

***Agreement Limiting Venue To Particular County Prohibited Litigation In Federal Court Where No Federal Courthouse Located In Designated County.***

CH2M Hill, Inc. had contracts with the City of Albany to provide engineering services to the City. The contracts contained identical venue-selection clauses establishing that venue for any litigation arising out of the contract "shall be in Linn County, Oregon."

The City of Albany brought a breach of contract action against CH2M Hill in state court in Linn County. CH2M Hill argued that despite the absence of a federal courthouse in Linn County, it should be able to remove the case to the federal court in a neighboring county because that court has jurisdiction over matters arising in Linn County.

The Ninth Circuit disagreed. In a case of first impression, the Ninth Circuit held that an agreement that limits venue for litigation to a particular county unambiguously prohibits litigation in federal court when there is no federal courthouse located in the designated county. The court explained that the clear language of the venue selection clause expressed the parties' intent to litigate matters arising out of the contracts within the geographic boundaries of Linn County. Permitting CH2M Hill to remove the case to federal court would violate the plain terms of the parties' agreement.

*City of Albany v. CH2M Hill, Inc.* (9th Cir. 2019) 924 F.3d 1306.

***Note:***

*This case highlights an important factor private schools and colleges should consider when including venue selection clauses in employment, independent contractor services, and similar agreements. This is a particular issue in contracts for computer and software services where the venue clause if often not within the state where the school or college is based.*

## LCW BEST PRACTICES TIMELINE

Each month, LCW presents a monthly timeline of best practices for private and independent schools. The timeline runs from the fall semester through the end of summer break. LCW encourages schools to use the timeline as a guideline throughout the school year.

**MID-JUNE THROUGH END OF JULY**

- ☐ Update Employee and Student/Parent Handbooks
  - The handbooks should be reviewed at the end of the school year to ensure that the policies are legally compliant, and consistent with the employee agreements, and the tuition agreements that were executed. The school should also add any policies that it would like to implement.
- ☐ Conduct review of the school's Bylaws (does not necessarily need to be done every year).

- ☐ Review of insurance benefit plans
  - Review the school's insurance plans, in order to determine whether to change insurance carriers. Insurance plans expire throughout the year depending on your plan. We recommend starting the review process at least three months prior to the expiration of your insurance plan.
    - Workers Compensation Insurance plans generally expire on July 1.
    - Other insurance policies generally expire between July 1 and December 1.

**AUGUST**

Conduct staff trainings, which may include:

- ☐ AB 1825 Sexual Harassment Training, which a school with more than 50 employees must provide to supervisors and managers every two years.

- ☐ Mandated Reporter Training
  - Prior to commencing employment all mandated reporters must sign a statement to the effect that they have knowledge of the provisions of the Mandated Reporter Law and will comply with those provisions. (California Penal Code section 11166.5.)

- ☐ Risk Management Training such as Injury, Illness Prevention, CPR.

- ☐ Distribute Parent/Student Handbooks and collect signed acknowledgement of receipt forms, signed photo release forms, signed student technology use policy forms, and updated emergency contact forms.

**SEPTEMBER**

- ☐ The due date to submit EEO-1 Component 2 pay data for 2017 and 2018 is September 30, 2019, and the report must be filed with the U.S. Equal Employment Opportunity Commission's through the web-based portal available at https://eeoccomp2.norc.org, which is scheduled to launch mid-July 2019. The EEOC helpdesk will begin answering Component 2 pay data questions beginning on approximately June 17, 2019 at EEOCcompdata@norc.org or (877) 324-6214. Further instructions on how to file are posted on the EEOC website at: http://www.eeoc.gov/employers/eeo1survey/howtofile.cfm.
  - It is the opinion of the General Counsel of the EEO Commission that Section 702, Title VII of the Civil Rights Act of 1964, as amended, does not authorize a complete exemption of religious organizations from the coverage of the Act or of the reporting requirements of the Commission. The exemption for religious organizations applies to discrimination on the basis of religion. Therefore, since the EEO Standard Form 100 does not provide for information as to the religion of employees, religious organizations must report all information required by this form.

## CONSORTIUM CALL OF THE MONTH

Members of Liebert Cassidy Whitmore's consortiums are able to speak directly to an LCW attorney free of charge to answer direct questions not requiring in-depth research, document review, written opinions or ongoing legal matters. Consortium calls run the full gamut of topics, from leaves of absence to employment applications, student concerns to disability accommodations, construction and facilities issues and more. Each month, we will feature a Consortium Call of the Month in our newsletter, describing an interesting call and how the issue was resolved. All identifiable details will be changed or omitted.

**ISSUE:** A school administrator called an LCW attorney to see whether the school can withhold transcripts for a recent graduate with an unpaid tuition balance.

**RESPONSE:** The LCW attorney explained that California law does not permit a school to withhold transcripts because of an unpaid tuition balance due to the general principle that withholding a student's transcript interferes with the student's ability to enroll at a new school and continue his/her education. However, schools may enact policies that implement other consequences for unpaid tuition. For example, schools may enact a policy prohibiting students with unpaid tuition balances from participating in graduation ceremonies or other end of the year events. Further, schools may enact a policy barring a student

from sitting for exams if he/she is behind on tuition payments. In addition, schools make enact a policy terminating a student's enrollment if he/she is behind on tuition payments. If a school chooses to implement one of these policies, the school must inform parents of the policy in advance, such as including the policy in the enrollment contract and/or student handbook, and the school must apply the policy consistently.

California law does permit schools to withhold a student's transcript under certain circumstances, including if the student 1) willfully damages real or personal school property, 2) fails to return school property, or 3) causes injury or death to a student, employee, or volunteer. However, before a school may withhold a student's transcript in these limited circumstances, the school must notify the parents of the student in writing of the alleged misconduct, afford the student or parent a hearing to contest the allegations, and provide a program of voluntary work in lieu of payment if the parent or student is unable to pay the damages caused by the student. Once the parent or student pays the damages or completes the voluntary work, the school must release the transcripts.

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## New to the Firm

**Kevin B. Piercy** joins our Fresno office where he provides advice and counsel to the firm's clients in matters pertaining to employment and labor law. His main areas of specialty include the Fair Labor Standards Act, the California Labor Code, Title VII, and the Fair Employment and Housing Act.

He can be reached at 559.449.7809 or kpiercy@lcwlegal.com.

**Isabella Reyes** joins our San Francisco office where she assists our clients in a full array of employment matters, discrimination, harassment, and retaliation claims under Title VII, Title IX, the ADA, FEHA, and various federal and state statutes.

She can be reached at 415.512.3015 or ireyes@lcwlegal.com.

**Brian J. Hoffman** is a litigator in Liebert Cassidy Whitmore's Sacramento office. He has experience in all phases of litigation, from the pre-litigation stage through mediation and trial. Prior to joining LCW, Brian worked as a full-service civil and business litigation attorney.

He can be reached at 916.584.7015 or bhoffman@lcwlegal.com

**Videll Lee Heard** represents Liebert Cassidy Whitmore clients in matters pertaining to labor and employment law. With over 25 years of trial and arbitration experience, Lee has extensive knowledge in all aspects of the litigation process.

Lee joins our Los Angeles office and can be reached at 310.981.2018 or lheard@lcwlegal.com

MANAGEMENT TRAINING WORKSHOPS

## Firm Activities

**Customized Training**

Our customized training programs can help improve workplace performance and reduce exposure to liability and costly litigation. For more information, please visit www.lcwlegal.com/events-and-training/training.

July 9 **"Preventing Harassment, Discrimination and Retaliation in the Independent School Setting/Environment"**
Brentwood School | Los Angeles | Pilar Morin

July 30 **"Harassment and Understanding Professional Boundaries"**
Oakwood School | Los Angeles | Julie L. Strom

August 9 **"Preventing Harassment, Discrimination and Retaliation in the Private and Independent School Environment and Mandated Reporting"**
German International School of Silicon Valley | Mountain View | Grace Chan

August 12 **"Harassment Prevention: Train the Trainer"**
Liebert Cassidy Whitmore | Fresno | Shelline Bennett

August 14 **"Student Boundaries and Mandated Reporting"**
The Bishop School | La Jolla | Judith S. Islas

August 14 **"Preventing Harassment, Discrimination and Retaliation in the Independent School Setting/Environment and Professional Conduct"**
Woodland School | Portola Village | Grace Chan

August 19 **"Mandated Reporting and Other Topics"**
Foothill Country Day School | Claremont | Julie L. Strom

August 20 **"Preventing Harassment, Discrimination and Retaliation in the Independent School Environment/Setting"**
New Roads School | Santa Monica | Michael Blacher

August 20 **"Understanding Professional Boundaries"**
Viewpoint School | Calabasas | Jenny Denny

August 21 **"Understanding Professional Boundaries"**
Head-Royce School | Oakland | Grace Chan

August 21 **"Preventing Harassment, Discrimination and Retaliation in the Private and Independent School Environment"**
Marymount of Santa Barbra | Santa Barbara | Julie L. Strom

August 22 **"Preventing Harassment, Discrimination and Retaliation in the Independent School Setting/Environment"**
Sea Crest School | Half Moon Bay | Grace Chan

August 23 **"Preventing Harassment, Discrimination and Retaliation in the Private and Independent School Environment"**
Chandler School | Pasadena | Michael Blacher

August 23 **"Preventing Harassment, Discrimination and Retaliation in the Independent School Setting/Environment and Mandated Reporter"**
Presidio Hill School | San Francisco | Linda K. Adler

August 26 **"Preventing Harassment, Discrimination and Retaliation in the Independent School Environment/Setting"**
Saint Mark's School | Altadena | Julie L. Strom

August 26 **"Mandated Reporting"**
Temple Israel of Hollywood Day School | Los Angeles | Michael Blacher

**Speaking Engagements**

July 26 **"Legal Issues Facing Private Schools from a Federal and State Perspective"**
Pacific Southwest District School Ministries Administrators' Leadership Conference | Temecula | Michael Blacher

**Webinar**

For more information and to register, please visit www.lcwlegal.com/events-and-training/webinars-seminars.

August 7 **"Mandated Reporter Training for Private Schools"**
Liebert Cassidy Whitmore | Webinar | Julie L. Strom

## Firm Publications

To view these articles and the most recent attorney-authored articles, please visit: **www.lcwlegal.com/news**

Elizabeth Arce and Michael Blacher wrote an article that appeared on NBOA's website *NetAssets* titled "Difficult Conversations Can Strengthen School Values" on June 18, 2019.

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