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.

March 2019

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LCW NEWS

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STUDENTS

DISABILITY DISCRIMINATION

University Settles with DOJ Regarding Gluten-Free Options at Dining Hall.

Rider University is a private non-profit university in New Jersey. The university has on-campus dining halls where students eat as part of their meal plans. A student with celiac disease complained that the university was in violation of Title III of the Americans with Disabilities Act because it failed to accommodate students with severe food allergies with respect to its dining options.

The investigation found that the university did not provide adequate information on its website for students who needed reasonable modifications of food services due to their allergies. The university also failed to offer exemptions from its meal plans for students who sought an exemption due to a food-related allergy. The university settled with the government and agreed to "adopt policies for accommodating students with food allergy-related disabilities instead of relying on the limited policies of a food service vendor, make certain structural changes to food service areas to provide allergen-free food preparation areas in its dining facilities, employ a full-time dietician to advise the University and its students on ways to address food allergy-related disability issues, and create a 'pre-order' option for students with food allergies."

For more information, click here.

NOTE:

Food allergies are considered a disability under the ADA and need to be reasonably accommodated. On many private school campuses, this is most prevalent with respect to peanut allergies, though schools should be prepared to handle requests related to other allergies as well. Each request must be discussed on a case-by-case basis to determine what reasonable accommodations can be made.

Student's Claim of Disability Discrimination Cannot Proceed Where Student Failed to Request Certain Accommodations and College Provided Others.

Wail Alhidir is a blind student who was enrolled at Los Angeles City College (LACC). Alhidir filed a complaint against LACC, that disability discrimination under the ADA, Rehabilitation Act, and Unruh Act, based on LACC's alleged failure to accommodate his blindness and make reasonable modifications for him. The trial court found that Alhidir failed to show that LACC's emergency plan was unreasonable, that he was denied access to any areas of campus, that despite Alhidir's preference for a paid note taker versus a volunteer, a paid note taker was not legally required, and that LACC was not a business entity under the Unruh Act. Alhidir appealed.

The court broke Alhidir's complaint into three main categories: academic accommodations, physical barriers on campus, and the emergency plan. Both the ADA and Rehabilitation Act prohibit discrimination against disabled individuals and require reasonable accommodations. The court noted an institution does not need to provide the exact accommodation of the individual's choice, but should give primary consideration to the individual's requests.

Alhidir is a disabled individual. He registered with LACC's Office of Special Services (OSS), which uses an accommodations form that is discussed with the student to review specific accommodations for each course. Alhidir claimed that he did not receive the form in an accessible format, but rather someone read it to him and asked him to sign without reading every single section. He claims he was not told that a note taker was an accommodation he could request. He received many other accommodations, including tape recording lectures. A friend then told Alhidir he could request a note taker from the California Department of Rehabilitation (DOR). He requested one for one of his classes.

For certain classes, Alhidir either did not request certain accommodations or did not accept the accommodations LACC offered. The evidence showed that Alhidir only wanted a paid note taker and not a volunteer one like the OSS provided. The court noted that the evidence could be seen to indicate Alhidir did know of the OSS option, but simply did not want that accommodation. He received many other accommodations for different classes and did well in most of them.

Alhidir finally asked OSS for a note taker in March 2016. OSS informed him that the first step in requesting a volunteer note taker would be to approach his instructor to make a confidential request to the class, but that if he felt uncomfortable doing that OSS could make the request for him. Alhidir did not make the request but was still able to get an A in the class. The court noted that just because Alhidir felt that paid note takers were better than volunteer ones did not mean LACC was required to retain a paid note taker.

With respect to assignments, Alhidir was initially unable to access the website of his Communications professor because it was not formatted to be compatible with his screen reader. To accommodate him, a technology assistant at OSS downloaded the files from the website to Alhidir's USB drive to allow him to access them. Alhidir completed the required assignments. Given all the evidence, the court found that Alhidir failed to meet his burden of showing a failure by LACC to accommodate him when he actually requested accommodations. Since the ADA claim failed, the court did not conduct any further analysis of the Unruh Act issue, because the latter depended on making a showing of the former.

The final issue was LACC's emergency procedures. He claims he was unable to access the emergency map on his screen because it was not compatible with his screen reader. LACC had a process by which disabled individuals had "buddies" to assist with evacuation procedures. During the one drill Alhidir had, a professor assisted him. Alhidir never presented evidence that he actually asked the school to address these issues. The ADA only requires an entity to accommodate a disabled person when the entity is actually on notice the individual needs accommodation. For each academic issue, Alhidir was reasonably accommodated when he made requests.

Alhidir v. Los Angeles Community College District 2019 WL 351454

NOTE:

A private school or college can only accommodate requests it is made aware of by the disabled student. In this case, Alhidir either did not make certain requests or made requests such as paid note takers that were not required since LACC was willing to provide a comparable accommodation. It is important to follow up the interactive process with documentation showing what accommodations were requested, which were discussed, and which are being granted, to create a complete picture of the school's response to a disabled student.

ATHLETICS/LIABILITY

Athletic Trainer Subject to Malpractice Claim After Student Suffered Heat Stroke During Soccer Training.

Marco Lujan was a student at Chowan University, a private university in North Carolina. On August 15, 2016, Lujan participated in a soccer conditioning session for Chowan's NCAA men's soccer team. Lisa Bland, Chowan's Director of Sports Medicine, gave approval to the soccer coach to have the practice despite the extreme heat and permitted Michelle Aiken, an unlicensed trainer, to examine Lujan to determine if he was healthy enough to participate.

During the course of a timed run drill, Lujan experienced severe hyperthermia and ultimately suffered a near-fatal heat stroke. He sued Chowan and Bland for claims including medical malpractice and various negligent breaches of duties.

The medical malpractice claim was disputed by Chowan. Under state law, an athletic trainer is someone who carries out the care and rehabilitation of sports injuries under a written protocol with a physician. Therefore, the claim was sound. Lujan alleged that Bland did not provide proper instruction, training, or assistance, including failure to submerge Lujan in an ice bath after the heat stroke. The court also inferred that Bland's actions were a proximate cause of Lujan's injuries. He alleged that she breached her standard of care for her profession. Chowan argued it is entitled to immunity under the Good Samaritan laws for the emergency care it provided. The court noted in response that such immunity is not provided to those who give the care in the ordinary course of their professional business. The court agreed with Lujan that the medical malpractice claims were not futile.

With respect to claims of negligence and negligent hiring and supervision, the court noted that Lujan's allegations included failure to train athletic staff on emergency procedures as well as allowing an unlicensed trainer to supervise the soccer team's practice. These allegations would be analyzed under an ordinary negligence standard. Lujan had done enough to show that his claims were not futile and he should be granted the opportunity to file a third amended complaint.

Lujan v. Chowan University and Lisa Bland 2019 WL 456265

Note:

As athletic departments grow and become more sophisticated, many private schools, even at the K-12 level, are formalizing the training and care provided to students. However, schools should do so with caution and take appropriate steps to ensure they are in compliance with appropriate training, best practices and industry standards. Employees who oversee athletics should have the proper training and experience to know how to handle injuries and other emergencies.

RESTRAINING ORDERS

Court Denies USC a Temporary Restraining Order Against Student Who Was Harassing Faculty.

Roland Ma was enrolled at USC in a remote course offered via a virtual classroom. He had several accommodations from the Disability Services Office, including extra time for exams. Several weeks into the course, Ma's professor, Susan Brumer, placed him on an improvement plan due to poor performance and inappropriate behavior. One example of his behavior was telling other students during class that he was watching pornography. Ma's behavior worsened and he tried to recruit other students to file complaints against Brumer. Ma himself filed a complaint against her and sent flowers to her home with a threatening message. USC placed him on interim suspension while they looked into the matter.

Eventually Brumer and another USC employee obtained civil protection orders against Ma based on his behavior. Ma continued to send hundreds of packages, letters and faxes to USC employees. He was expelled a few months after starting the course. Ma sued USC for violating the ADA and FERPA. USC, for its part, sought a temporary restraining order (TRO) against Ma to stop him from communicating with USC employees outside the Office of General Counsel, entering campus, conducting surveillance on USC employees, destroying documents, and scrubbing electronic devices in his possession.

The court explained that in order to obtain the TRO, USC needed to demonstrate that it would suffer irreparable harm in the absence of the TRO. USC argued that without the TRO, Ma won't stop his behaviors. But the court noted this was really just an attempt to enjoin Ma from engaging in behaviors he had been engaged in for months. Ma's efforts to contact USC and its employees has no impact on the court's ability to resolve this matter. Individuals have other remedies, like applying for civil anti-harassment orders. Due to these other remedies, the court held that issuing a TRO was unwarranted. USC had not demonstrated that it was likely to suffer irreparable harm without it.

Ma v. University of Southern California 2019 WL 316706.

FERPA/PRIVACY

U.S. Department of Education Issues FAQs on Schools' Responsibilities Under the Family Educational Rights and Privacy Act (FERPA) in the Context of School Safety.

The U.S. Department of Education released a comprehensive set of frequently asked questions on schools' and colleges' responsibilities under FERPA in the context of school safety. The FAQ document, entitled "School Resource Officers, School Law Enforcement Units and FERPA," consolidates previously issued guidance and technical assistance into a single resource to help raise schools' and colleges' awareness of these provisions.

The document consists of 37 commonly asked questions about schools' and colleges' responsibilities under FERPA relating to disclosures of student information to school resource officers (SROs), law enforcement units and others and clarifies how FERPA protects student privacy while ensuring the health and safety of students and others in the school and campus community.

The FAQ document includes answers to common FERPA questions involving campus safety, such as:

- Can law enforcement officials who are school employees be considered school officials under FERPA and, therefore, have access to students' education records?
- Does FERPA permit schools and colleges to disclose education records, without consent, to outside law-enforcement officials who serve on a school's threat assessment team?
- When is it permissible for schools or colleges to disclose student education records under FERPA's health or safety emergency exception?
- Does FERPA permit school officials to release information that they personally observed or of which they have personal knowledge?

While the information in the guidance is applicable to all educational agencies and institutions that receive funds under any program administered by the Secretary of the US Department of Education, the discussion is generally focused on health or safety emergencies faced by public elementary and secondary schools.

For additional information on FERPA's application to health or safety emergency situations in the postsecondary institution context, please refer to previously issued Department guidance entitled, "Addressing Emergencies on Campus," issued in June 2011, available here.

U.S. Dept. of Education, School Resource Officers, School Law Enforcement Units, and the Family Educational Rights and Privacy Act (FERPA) (Feb. 2019), available here.

NOTE:

FERPA only applies to schools that receive federal funds, so generally it does not apply to private K-12 schools. However, FERPA cases and guidance are often consulted when analyzing issues related to California law on pupil records as found in the Education Code and so this analysis can be helpful to California private K-12 schools as well. Although this guidance is focused on FERPA, there may be other federal and state laws, such as privacy laws, that are relevant to decision-making regarding when and to whom schools may disclose, without consent, student information.

FIRST AMENDMENT/FREE SPEECH

School's Decision to Discipline Student for Off-Campus Speech was Permissible.

CLM was a high school sophomore at a public school in Oregon who created a hit list in his personal journal. The list included 22 students who "must die." His mother discovered the list and graphic depictions of violence. She told a therapist, who then informed the police.

When the police searched the family's home, officers found and confiscated several weapons, including a rifle and ammunition belonging to CLM. However, the officers did not find anything "to indicate any planning had gone into following through with the hit list."

CLM admitted he created the list and that "sometimes he thinks killing people might relieve some of the stress he feels," but he denied he would ever carry out the violence. The police declined to bring charges against CLM, but they informed the District of CLM's list, the fact the police had seized guns from his house, and that CLM's journal contained additional entries that graphically depicted school violence.

The District suspended CLM pending an expulsion hearing. The school's principal recommended that CLM be expelled for one year because news of his list "significantly disrupted the learning environment at school," which would only be increased by CLM's return. At the expulsion hearing, the hearing officer adopted the principal's recommendation for expulsion, largely based on "the significant disruption" CLM's list caused in the school environment.

CLM and his parents filed a lawsuit alleging the District violated the Free Speech Clause of the First Amendment and other constitutional protections. CLM claimed that the District lacked authority under the First Amendment to discipline CLM for his hit list.

The Ninth Circuit Court of Appeals stated that although public school students enjoy greater freedom to speak when they are off campus, their off-campus speech is not necessarily beyond the reach of a district's regulatory authority. The Court reviewed: 1) whether the District could regulate CLM's off-campus speech; and if so; 2) whether the District's decision to expel CLM violated the First Amendment standard for school regulation of speech set out in *Tinker v. Des Moines Independent County School District* (1969) 393 U.S. 503.

In deciding the first issue, the Court had to determine whether CLM's speech had a sufficient nexus to the school. The Court considered: 1) the degree and likelihood of harm to the school caused by the speech; 2) whether it was reasonably foreseeable that the speech would reach and impact the school; and 3) the relation between the content and context of the speech and the school. There is a sufficient nexus between the speech and the school if a district reasonably concludes that it faces a credible, identifiable threat of school violence.

Here, the District reasonably determined CLM presented a credible threat. The District knew CLM identified specific targets, accentuated his hit list with the phrases "I am God" and "All These People Must Die," lived in a gun-owning home close to the school, and had had thoughts of suicide. The District knew the journal contained other graphic depictions of school violence. This evidence was sufficient to render the District's determination reasonable and to give it authority to regulate CLM's speech.

Once it learned of the list, the District could reasonably foresee that news of the threat would reach and impact the school and disrupt the school environment. Although it was not foreseeable to CLM that his speech would reach the school, a lack of intent to share speech is of minimal weight when, as here, the speech contains a credible threat of violence directed at the school.

Finally, the content of the speech involved the school. CLM's hit list contained the names of 22 students, and thus, presented a particular threat to the school community. Ordinarily, schools may not discipline students for the contents of their private, off-campus journal entries, any more than they can punish students for their private thoughts, but schools have a right to address a credible threat of violence involving the school community.

In sum, the Court of Appeals concluded the District could regulate CLM's off-campus speech without violating his First Amendment rights.

McNeil v. Sherwood School District 88J, 2019 WL 1187223.

Note:

This case provides important reinforcement of the analysis involved when schools regulate off-campus speech. In California, high school students have limited free speech rights guaranteed by the state Constitution. Schools should make sure their policies, such as those against harassment and discrimination, as well as bullying and social media rules, make clear that off-campus speech that impacts the school community can be the basis for discipline.

EMPLOYEES

EEO-1 FORM

Reporting Obligation Regarding Pay and Hours Worked Revived by Judge.

The EEOC requires that employers with 100 or more employees file the EEO-1 Form to provide information about employees' race, sex, and ethnicity. The new requirement to report information relating to employee's hours worked and pay, enacted to help deal with pay disparity issues, had been stayed since August of 2017. Many employers had complained about this new requirement.

In the most recent case, some organizations sued to get the stay lifted and they prevailed. The 2018 EEO-1 survey is due for submission by May 31, 2019. Many employers are unprepared to report on the new information categories, as the stay had been in place for so long and therefore employers were likely not collecting this data.

The government could choose to appeal this decision and seek another stay during the pendency of the appeal. At this time it is unclear if the EEOC will delay the reporting past the May 31, 2019 deadline.

National Women's Law Center v. Office of Management and Budget (2019) --- F.Supp.3d ---, 2019 WL 1025867

LABOR RELATIONS

Private School Teacher Terminated for Organizing Letter Writing Campaign About Complaints.

Marburn Academy is a private school in New Albany, Ohio that focuses on students with learning difficulties and attention issues. The school has three division heads who each report to the Associate Head of School, Scott Burton. Mr. Burton oversees day-to-day operations and reports to Head of School Jamie Williamson, who in turn reports to the Board of Directors. The school issues annual contracts for teachers each spring for the upcoming school year. Its handbook contains what is referred to as the Marburn Problem Solving System (MPSS) for resolving internal disputes.

Michqua Levi has been teaching for over 30 years. She joined Marburn as a full-time teacher in 2012. During the 2017-2018 school year, Levi met with her division head to receive her performance evaluation. On March 16, 2018, Burton provided Levi a contract for the 2018-2019 school year with a salary offer of just under $60,000. Levi spoke with other teachers about her pay before signing the contract. She learned that the school maintained a written pay scale. When she reviewed the pay scale, it seemed she was being paid at a rate indicating she was merely progressing, instead of meeting or exceeding expectations. She believed her performance evaluations merited a higher salary. She told Burton about her discovery and spoke to several other teachers about this issue.

Around the same time, the School made announcements about the annual gala. Many employees were upset about the system the School enacted to determine which staff were seated as special guests at the gala. Levi informed the organizers why the system was offensive to her and others. At this time, the school did not have an HR representative and Levi did not know to whom she should address complaints. She was concerned about retaliation if she went to Burton or Williamson, so she consulted the handbook and approached Board member Sharon Wolfe, who directed her to the Board Chair Brian Hicks and provided his email address. Levi told several colleagues she was going to Hicks with her concerns and she asked some of them to do the same. They told her they were scared to because they feared losing their jobs, but they wanted her to do so. Levi emailed Hicks about her concerns. The email included information about low staff morale, concerns about the gala, the pay scale, and fears of retaliation.

Hicks responded by encouraging Levi to speak to the Head of School since she was writing about operational matters and, as such, the issues were not the purview of the Board. He encouraged her to follow the MPSS. She replied that she had used the MPSS process before and did not find it useful. She was also upset that Hicks had forwarded the email to Williamson. Williamson required Levi to meet with him about her email. He said her conduct was disruptive and divisive. They met on April 26, 2018 and Williamson asked Levi if she wrote the email in an attempt to "get him fired." She denied that and said she was expressing the concerns of a group of individuals. Burton then asked other teachers if Levi had encouraged them to write emails to the Board about their complaints.

On May 7, Williamson provided Levi with a Summary of Concerns and Corrective Action Plan, which stated that she needed to work on her communication, problem-solving, and divisiveness. The Plan stated that the school could not sign her contract for the upcoming school year if Levi did not take ownership of the problems, show a clear commitment to moving forward positively, and signing the Corrective Action Plan. The Plan would remain in place as a condition of employment. Levi spoke to her colleagues about this meeting and contacted other Board members. She said the Plan was extortion. Williamson and Burton learned of these communications and revoked her contract for the 2018-2019 school year. The NLRB General Counsel alleges the school violated Section 8 of the NLRA because Levi was engaged in concerted activity when she advocated on behalf of her colleagues. The school argued that she was merely engaged in personal griping. Section 8 protects concerted activity where individual employees seek to initiate or induce group action, including enlisting the

support of fellow employees. Concerted activity does not include personal complaints.

The Administrative Law Judge (ALJ) found that Levi was engaged in concerted activity and the School violated Section 8 when it issued the Plan and revoked her contract. She discussed her concerns with her colleagues and encouraged them to voice complaints as well. When they were scared to, she did so at their behest. The email she wrote was informing the school of issues affecting a large group of teachers, including the lack of an HR representative, displays of favoritism regarding the gala, and the inaccurate salary scale. The evidence showed that the school was aware the complaints were not limited to Levi alone. The ALJ also noted that Levi had no history of chronic complaining; she enumerated specific concerns, shared by others, and those concerns related to terms and conditions of employment. She was not simply complaining.

The ALJ also noted that the requirement to follow the MPSS violated the NLRA. Forcing her not to go outside the MPSS process limited her right to speak about her issues with other employees. Furthermore, the ALJ disagreed with the School that Levi lost the protection of the Act when she called the Plan an example of extortion. She was simply venting her frustration while seeking assistance from colleagues and Board members. The ALJ recommended full reinstatement to Levi's former position and backpay.

Marburn Academy, Inc. and Michqua Levi (09-CA-224092; JD-18-19) February 14, 2019.

Note:

Private schools (that are non-religious) must remember that the NLRA applies to their workplaces even if the employees are not unionized. Here the school's actions deprived the employee of her rights to engage in concerted activity by discussing her complaints with her employees and encouraging them to write their own emails as well. This can be a very difficult issue to manage, and schools may need to consult with legal counsel before taking action against an employee who is organizing employee complaints in this matter.

BUSINESS AND FACILITIES

SUMMER CAMPS

Make Sure Your School is Ready for Summer Camp Programs.

With spring here, many schools are in the process of getting ready to open or run summer camp programs at their facilities. Below are helpful checklists of issues to consider and forms and agreements to have in place when permitting or running these summer camp programs. The first checklist should be reviewed by those schools who use a third-party company to operate summer camp programs. The second checklist should be reviewed by those schools who operate their own summer camp programs.

Checklist for Summer Camps Operated by a Third-Party Camp Operator

- ☐ Clear communication to parents of school students that the school does not operate the summer camp; and
- ☐ School's contract with the camp operator should include the following essential provisions:
  - ☐ Clear description of premises
  - ☐ Description of lease or use of any equipment or furniture
  - ☐ Indemnification provision in favor of the school
  - ☐ Termination for convenience
  - ☐ Criminal background checks and tuberculosis risk assessments by camp operator of camp staff
  - ☐ Camp operator compliance with all applicable local, state, and federal laws and all school rules and procedures
  - ☐ Payment terms
  - ☐ Use restrictions & rules
  - ☐ Insurance by camp operator naming school as additional insured. Third-party policies to be primary; School's insurance non-contributory. Third-party policies to provide endorsement waiving rights of subrogation against the school.
  - ☐ Provisions addressing camp's use of school's name/logo
  - ☐ Marketing/Advertising of camp
  - ☐ Provision that camp employees or hired contractors are not employees of the School.

Checklist for Summer Camps Operated Directly by the School

- ☐ Prepare and send out Summer Camp Enrollment Agreements;
- ☐ Use Waivers and Releases for activities posing a heightened risk of injury, including hiking, horseback riding, swimming, and off campus field trips (e.g. trips to the beach);
- ☐ Obtain essential forms such as emergency contacts, proof of vaccinations or medical exemption; authorization for medical treatment in emergencies, and authorization to administer medications;
- ☐ Camps that Organize/Sponsor Athletic Amateur Sports Competitions:
  - ☐ Distribute Opioid Factsheet and Concussion and Head Injury Information Sheet, and receive signed acknowledgment from parents and student prior to student being permitted to participate in practices or competitions;
- ☐ Independent Contractors – ensure classification as independent contractor is appropriate;
- ☐ Determine whether California and federal laws relating to organized camps may apply;
- ☐ Camp employees:
  - ☐ Passed criminal background checks;
  - ☐ Completed tuberculosis risk assessments before they begin work;
- ☐ Work permits (for minors);
- ☐ Volunteers & Interns – ensure worker is appropriately categorized:
  - ☐ Employees may not volunteer for services similar to those they are paid to perform during the school year;
  - ☐ Volunteers may only receive nominal compensation;
  - ☐ Volunteers should sign volunteer agreements clearly stating they have no expectation to be compensated for services;
- ☐ Evaluate wage & hour compliance for camp staff (i.e. if the camp is overnight, determine whether camp staff need to be paid for on call time when they are sleeping);
- ☐ Mandated Reporter Training to camp staff; and
- ☐ Harassment Training to camp staff (temporary or seasonal employees who are employed for less than 6 months are not required to receive harassment training until January 1, 2020).

NOTE:

The following is general advice only. Please consult us should you have specific questions on these issues.

LCW BEST PRACTICES TIMELINE

Each month, LCW will present 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.

MARCH- END OF APRIL

- ☐ The budget for next school year should be approved by the Board.
- ☐ Issue contracts to existing staff for the next school year.
- ☐ Issue letters to current staff who the School is not inviting to come back the following year.
- ☐ Assess vacancies in relation to enrollment.
- ☐ Post job announcements and conduct recruiting
  - Resumes should be carefully screened to ensure that applicant has necessary core skills and criminal, background and credit checks should be done, along with multiple reference checks.
- ☐ Consider whether summer program will be offered and if so, identify the nature of the program and anticipated staffing and other requirements; advise staff of summer program and opportunity to apply to work in the summer, that hiring decisions will be made after final enrollment numbers are determined in the end of May.
- ☐ Distribute information on summer program to parents and set end date for registration by end of April.

MAY

- ☐ Complete hiring of new employees for next school year.
- ☐ Complete hiring for any summer programs.
- ☐ If service agreements expire at the end of the school year, review service agreements to determine whether to change service providers (e.g. janitorial services if applicable).
  - Employees of a contracted entity are required to be fingerprinted pursuant to Education Code sections 33192, if they provide the following services:

- School and classroom janitorial.
- Schoolsite administrative.
- Schoolsite grounds and landscape maintenance.
- Pupil transportation.
- Schoolsite food-related.

– A private school contracting with an entity for construction, reconstruction, rehabilitation, or repair of a school facilities where the employees of the entity will have contact, other than limited contact, with pupils, must ensure one of the following:
  - That there is a physical barrier at the worksite to limit contact with pupils.
  - That there is continual supervision and monitoring of all employees of that entity, which may include either:
    - surveillance of employees of the entity by School personnel; or
    - supervision by an employee of the entity who the Department of Justice has ascertained has not been convicted of a violent or serious felony (which may be done by fingerprinting pursuant to Education Code section 33192). (See Education Code section 33193).

If conducting end of school year fundraising:

□ Raffles:
  – Qualified tax-exempt organizations, including nonprofit educational organizations, may conduct raffles under Penal Code section 320.5.
  – In order to comply with Penal Code section 320.5. raffles must meet all of the following requirements
    - Each ticket must be sold with a detachable coupon or stub, and both the ticket and its associated coupon must be marked with a unique and matching identifier.
    - Winners of the prizes must be determined by draw from among the coupons or stubs. The draw must be conducted in California under the supervision of a natural person who is 18 years of age or older
    - At least 90 percent of the gross receipts generated from the sale of raffle tickets for any given draw must be used by to benefit the school or provide support for beneficial or charitable purposes.

□ Auctions:
  – The school must charge sales or use tax on merchandise or goods donated by a donor who paid sales or use tax at time of purchase.
    - Donations of gift cards, gift certificates, services, or cash donations are not subject to sales tax since there is not an exchange of merchandise or goods.
    - Items withdrawn from a seller's inventory and donated directly to nonprofit schools located in California are not subject to use tax.
      - Ex: If a business donates items that it sells directly to the school for the auction, the school does not have to charge sales or use taxes. However, if a parent goes out and purchases items to donate to an auction (unless those items are gift certificates, gift cards, or services), the school will need to charge sales or use taxes on those items.

JUNE

□ Conduct Exit Interviews:
  – Conduct at the end of the school year for employees who are leaving (whether voluntarily or not). These interviews can be used to help defend a lawsuit if a disgruntled employee decides to sue.

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 Dean of Students called to express her concern about the increase in parents claiming their child has generalized anxiety and therefore need testing accommodations. She said some of these parents are asking the child's tutor to provide a note for the school. Sometimes, the parents only claim the child needs the accommodation in a particular class, usually one they are struggling with. The Dean wanted to know how to address this and what the school was actually required to permit.

RESPONSE: The attorney told this Dean that the school is required to accommodate students with disabilities under the ADA. Anxiety is a disability. However, the school did not just have to take the word of a parent or tutor. The school could require a doctor's note confirming the child actually has a disability that limits a major life activity. It is important to note the school has no right to know the actual diagnosis and should not ask for that information. The note should state what the recommended accommodations are and then the school should discuss those with the parents to determine what is reasonable. The school is not required to fundamentally alter its academic program. The attorney informed the Dean that the anxiety may be related to performance in a certain class or subject, so it might be reasonable that accommodations are needed in one type of class and not another. The Dean explained it was frustrating because simply providing accommodations does not help the student get to the root of the anxiety problem. The attorney sympathized with this perspective, but noted it was not the school's role to decide how the child's anxiety should be treated or explored. The school did, however, have a legal obligation to provide reasonable accommodations. So, if the doctor's note requested additional testing time, for example, that is the topic for discussion with the parents.

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LCW Liebert Cassidy Whitmore

WEBINARS ON DEMAND

Throughout the year, we host a number of webinars on a variety of important legal topics. If you missed any of our live presentations, you can catch-up by viewing recordings of those trainings.

WWW.LCWLEGAL.COM/EVENTS-AND-TRAINING

Private Education Matters is available via e-mail. If you would like to be added to the e-mail distribution list, please visit www.lcwlegal.com/news.

Please note: by adding your name to the e-mail distribution list, you will no longer receive a hard copy of ***Private Education Matters***.

If you have any questions, contact Nick Rescigno at nrescigno@lcwlegal.com.

Firm Activities

Consortium Training

April 10 **"Emerging Legal Issues for Private Schools"**
Builders of Jewish Education Consortium | Los Angeles | Michael Blacher

Speaking Engagements

April 28 **"HR Jeopardy!"**
California Independent Schools Business Officers Association (Cal-ISBOA) Annual Conference | North Hollywood | Michael Blacher and Donna Williamson

April 29 **"Managing Human Resources - Exempt/Non-Exempt"**
California Independent Schools Business Officers Association (Cal-ISBOA) Annual Conference | North Hollywood | Brian P. Walter & Jessica McCullagh & Kathy Tuccio

April 29 **"Managing the Risk and Reward of Extended Field Trips - Reviewing Your Student Travel Programs"**
California Independent Schools Business Officers Association (Cal-ISBOA) Annual Conference | North Hollywood | Heather DeBlanc & Jane Davis

Seminars/Webinars

Register Here: https://www.lcwlegal.com/events-and-training

April 12 **"Train the Trainer: Harassment Prevention"**
Liebert Cassidy Whitmore | Los Angeles | Christopher S. Frederick

Firm Publications

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

"The Thin Blue Line" authored by Managing Partner **J. Scott Tiedemann** and Associate **Sarah R. Lustig** of our Los Angeles office, appeared in the January 25, 2019 issue of the *Daily Journal.* "California Law Enforcement Unions Seek to Block Release of Officer Disciplinary Records" quote by Managing Partner, **J. Scott Tiedemann** appeared in the January 17, 2019 issue of the *Los Angeles Times.*

"Changes to Sexual Harassment Laws Could Open California Employers to Increased Liability" quote by Partner, **Jesse Maddox** of our Fresno and Sacramento offices, appeared in the February 1, 2019 issue of the *San Gabriel Valley Tribune* and the *Orange County Register.*

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