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.

August/September 2020

INDEX

LCW NEWS

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40 years
1980 - 2020

THANK YOU TO OUR PRIVATE EDUCATION CLIENTS!

You are a College President, Head of School or Principal, Business Officer, Division Head, Dean, Administrator, Human Resources Director or Board Member. Each of you is working at peak capacity navigating through new challenges and handling situations you have never encountered before. You are planning how to guide your school, college, or university though frightening and uncertain times while working to reassure your school community. You are facilitating the transition to distance learning, meeting the needs of your students, making difficult decisions about staffing needs, analyzing new state and federal laws and entitlements, and navigating complex contract issues related to the current public health emergency.

We thank you sincerely for your work and dedication. We are also here to help. LCW is monitoring the changing information and laws regarding the coronavirus closely. For templates, special bulletins, and explanations of some of the recent COVID-19 federal legislation, go to www.lcwlegal.com/responding-to-COVID-19/responding-to-the-coronavirus-covid-19-for-independent-schools.

STUDENTS

DISCRIMINATION

Student Stated Viable Gender Bias Claim Against University By Alleging University Faced Contemporaneous Pressure From Department Of Education And The University Had A Pattern Of Gender-Based Decision Making.

David Schwake was a graduate student pursuing a Ph.D. in microbiology at Arizona State University in the summer and fall of 2014. For over three years, he worked in a campus lab as a student researcher alongside other Ph.D. students, including a student who made a sexual misconduct complaint against him. Schwake and the Complainant had dozens of romantic encounters between February 2013 and July 2014.

In August 2014, the University sent Schwake a letter that notified him of the complaint against him and three pending disciplinary charges for Student Code violations, including unwanted or repeated significant behavior and sexual misconduct. A University employee coordinating the University's response suggested Schwake prepare evidence and witnesses while the University investigated. Schwake provided a written account of the allegations, including text messages that he argued confirmed the sexual activity between him and the Complainant was consensual. Schwake stated several students and staff members could corroborate his account.

In early September 2014, the University sent Schwake a second letter stating it found him responsible for the disciplinary charges and immediately suspending him until fall 2017 unless he requested a hearing to appeal the decision.

Shortly thereafter, an associate professor loudly discussed details of Schwake's disciplinary case with a group in his office with the door open and told the group the University "convicted Schwake of sexual assault and suspended him." The associate professor also discussed the case in his course throughout the semester and disclosed confidential, graphic details about the alleged sexual misconduct.

In early October 2014, Schwake's lawyer formally requested an appeal hearing on the University's decision. In mid-October, the University removed Schwake from the lab after the Complainant obtained a state court harassment injunction against him.

On December 3, 2014, Schwake and his lawyer met with the Associate Dean of Students. Schwake's lawyer and the Dean reached a settlement that allowed Schwake to graduate by changing Schwake's punishment from suspension to certain campus restrictions. The Dean explained that, as a result, Schwake was not entitled to a hearing. When Schwake protested, the Dean stated the decision was final, and the University had no appeal process available. When Schwake asked the Dean whether he could file a complaint against the complainant, the Dean denied telling Schwake on multiple prior occasions that he could not do so until after the disciplinary hearing because it would appear retaliatory. The Dean then told Schwake that filing his own complaint could lead to further investigations and additional disciplinary sanctions, including degree revocation.

The following day, Schwake received a letter with the University's final decision, outlining the following restrictions: a three-year restriction on accessing certain campus buildings, including the lab; a three-year ban on holding any paid or volunteer position at the University, including a post-doctoral position for Spring 2015; and a prohibition on any contact with the Complainant with no end duration.

Schwake sued in April 2015, seeking $20 million in damages as well as declaratory and injunctive relief. He asserted claims against University officials for alleged constitutional due process violations. He also asserted a Title IX claim against the University. The trial court granted the University's motion to dismiss the lawsuit and dismissed Schwake's claims with prejudice. Schwake appealed.

To state a Title IX claim, a plaintiff must plead that: (1) the defendant educational institutional received federal funding; (2) the plaintiff was excluded from participation in, denied the benefits of, or subjected to discrimination under any education program or activity, and (3) the latter occurred on the basis of sex. Here, Schwake alleged the University received federal funding. Thus, the Court of Appeals focused on the second and third elements. Schwake argued the University discriminated against him on the basis of sex during the course of the sexual misconduct disciplinary case against him.

While the Court of Appeals noted that other circuit courts fashioned doctrinal tests for sex discrimination claims in this context (the Second Circuit's "erroneous outcome" and "selective enforcement" tests or the Sixth Circuit's "deliberate indifference" test), it had not expressly adopted any of the tests. Instead, the Court of Appeals focused on whether the alleged facts, if true, raised a plausible inference that the University discriminated against Schwake on the basis of sex.

To survive a motion to dismiss, Schwake "need only provide enough facts to state a claim to relief that is plausible on its face." Sex discrimination need not be the only plausible explanation or even the most plausible explanation for a Title IX claim to proceed. Here, the Court of Appeal found the trial court ignored many of the allegations in Schwake's complaint that were relevant to the sufficiency of the Title IX claim.

First, Schwake argued that the University faced significant pressure that affected how it handled sexual misconduct complaints around the time of the complaint made against him. He pointed to a "Dear Colleague" letter that the Department of Education sent in 2011 regarding the handling of sexual misconduct complaints. Schwake also pointed to his allegation that in April 2014 the Department initiated an investigation of the University for possible Title IX violations in the University's handling of sexual misconduct complaints. The Court of Appeal held it was reasonable to infer that such a federal investigation placed tangible pressure on the University. Schwake also alleged the University had a pattern of gender-based decision-making against male respondents in sexual misconduct disciplinary proceedings that make the inference in his case plausible. Although Schwake did not include significant details about this alleged pattern, this fact did not render Schwake's allegation conclusory or insufficient. Instead, the Court of Appeals was satisfied that Schwake's allegations of contemporaneous pressure and gender-based decision-making establish background indicia of sex discrimination relevant to his Title IX claim.

Although Schwake alleged background indicia of sex discrimination, he "must combine those allegations with facts particular to his case to survive a motion to

dismiss." The Court of Appeals held Schwake met this burden. First, Schwake drew the trial court's attention to the allegations concerning the associate professor's statements following the University's initial decision against Schwake. The associate professor made these comments despite the fact that Schwake had the right to appeal the University's decision, thereby ensuring that one version of the sexual misconduct disciplinary case would be the publicly known version. This alleged conduct reflects an atmosphere of bias against Schwake during the course of the University's disciplinary case. The statements are relevant here because the associate professor knew privileged and confidential information about the case shortly after the University made a preliminary decision, despite not being a decision-maker.

Second, Schwake drew the trial court's attention to the Dean's treatment of him after Schwake's lawyer and the Dean fashioned a new punishment for Schwake that did not involve suspension. Despite Schwake's repeated protests, the Dean refused to permit Schwake to appeal the punishment and the University's underlying finding of responsibility on the sexual misconduct Student Code violations. In modifying the punishment, the inference may be drawn that the University sought to show that it took sexual misconduct complaints seriously by punishing Schwake while simultaneously insulating the finding of responsibility from scrutiny in light of the University's policy limiting the availability of an appeal hearing. The Dean's refusal to permit Schwake to file a harassment complaint against the Complainant is also probative of gender bias. The Dean's refusal to permit Schwake to pursue a complaint against the Complainant is consistent with the allegations that the University treated male respondents in sexual misconduct disciplinary proceedings differently because of the pending Department investigation into the University's handling of sexual misconduct complaints.

Finally, Schwake's allegations of the University's one-sided investigation support an inference of gender bias. According to Schwake, the University (1) refused to provide him with any written information about the complainant's allegations against him and only orally summarized them; (2) failed to consider his version of the alleged assault or to follow up with the witnesses and evidence he offered in his defense; (3) promised him that it would only consider "one accusation at a time" but then suspended him based on additional violations of the Student Code to which he was not given an opportunity to respond; and (4) ultimately found him responsible for the charges without any access to evidence or considering his exculpatory evidence.

Considering the combination of Schwake's allegations of background indicia of sex discrimination along with the allegations concerning his particular disciplinary case, the Court of Appeal concluded that sex discrimination is a plausible explanation for the University's handling of the sexual misconduct disciplinary case against Schwake, and his Title IX claim may proceed beyond the motion to dismiss stage.

Schwake v. Arizona Board of Regents (9th Cir. 2020) 967 F.3d 940.

NOTE:

This case highlights the importance of carefully following all policies and procedures for responding to and investigating complaints, conducting a fair and thorough investigation, maintaining confidentiality to the extent feasible and only sharing information with those who have a legitimate "need to know," and strictly following the school's disciplinary procedures if misconduct is confirmed.

TITLE IX

Harvard Ends Policy On Single-Sex Student Organizations.

On June 29, 2020, the President of Harvard University, Lawrence S. Bacow, issued a press release announcing that Harvard was discontinuing its policy penalizing students who join single-sex student organizations. The policy, which was announced in May 2016 and took effect prospectively for students matriculating in fall 2017, made any student who became a member of a single-gender social organization ineligible to hold leadership positions in recognized student organizations or athletic teams and ineligible to receive Harvard – administered fellowships. The policy applied equally to men who joined all-male organizations and women who joined all-female organizations, but did not apply to women who joined all-male organizations nor men who joined all-female organizations.

In August 2019, in a case brought against Harvard by fraternities, sororities, and members of single-sex organizations, a United States District Court judge, Nathaniel M. Gorton, held that Harvard's policy plausibly violated Title IX, which prohibits discrimination based on sex in any educational program or activity receiving federal funds. Judge Gorton reasoned that the policy discriminated based on the sex of the students in the social organization and on the sex of the student who associates with that organization. Judge Gorton also found that the policy was based on Harvard's opinion of how modern men and women should act and penalized students who failed to conform to Harvard's opinion by withholding benefits from those students. Judge Gorton concluded that this conduct possibly violated Title IX.

Mr. Bacow referred to the United States Supreme Court's recent landmark decision in *Boystock v. Clayton County* and *Zarda v. Altitude Express*, which is a Second Circuit case that Judge Gorton cited to in support of his opinion and which was consolidated into the *Boystock v. Clayton County* case, as the reason for Harvard's decision to discontinue the policy. In *Boystock v. Clayton County*, the United States Supreme Court held that Title VII of the 1964 Civil Rights Act protects LGBTQ employees from discrimination. Mr. Bacow explained that Harvard reached the conclusion that it could no longer continue to maintain the policy "under the prevailing interpretation of federal law." Mr. Bacow stated that Harvard would no longer be enforcing the policy. The full press release is available here.

NOTE:

In the October 2019 issue of **Private Education Matters**, *LCW reported on the decision in* Kappa Alpha Theta Fraternity, Inc. v. Harvard University, *in the article "*Policy Banning Single-Sex Student Organizations May Violate Title IX.*"*

LITIGATION

Student Entitled To Attorney Fees Because Action Held University Accountable For Its Failure To Comply With Its Own Policies And Procedures For Disciplinary Proceedings And Conferred A Benefit On All Students Attending The University.

The University of California Santa Barbara admitted John Doe as a freshman for the 2016-2017 academic year. Before the academic year began, Doe was in a verbal argument with his girlfriend, Jane Roe, in their home city of San Diego. Weeks later, Jane posted on social media a video recording of the argument in which it appeared that Doe hit her.

A student at the University saw the post and notified the University's Office of Student Affairs, which then forwarded the information to the campus police department. A detective from the campus police department drove to San Diego to arrest and transport Doe, age 17, to a juvenile detention facility in San Diego. The same day, the University issued an interim suspension order and had it delivered to Doe. The order barred him from entering the University's campus on the ground that he posed a threat to the safety of the campus community. He was also notified that the University's Title IX office would investigate the allegation of relationship violence. The interim suspension was imposed pursuant to the University's policies governing student conduct and the University's Policy on Sexual Violence and Sexual Harassment. These policies stated the University would restrict a student only to the minimum extent necessary when there is reasonable cause to believe that the student's participation in University activities or presence at specified areas of the campus will lead to physical abuse, threats of violence, or conduct that threatens the health or safety of any person on University property.

The juvenile court found Doe was not a threat to anyone, and the district attorney eventually dismissed all charges against Doe. The University held a hearing regarding the interim suspension, but declined to remove the order. Doe remained barred from campus, campus housing, attending classes (including online classes), and participating in University activities.

In October 2016, Doe filed a lawsuit against the University seeking termination of the interim suspension and reinstatement as a student at the University. The Parties litigated the matter in trial court and the Court of Appeal until March 2017 when the trial court granted a preliminary injunction against the University. University policies state it must complete a Title IX investigation within 60 business days and the entire Title IX process, including all administrative appeals, within 120 business days from the date the University received the report of a potential Title IX violation. The trial court found the University's investigation extended far beyond the time period which, under its policies, the entire Title IX process, including administrative appeals, should have concluded. Even after more than 200 days, the University had only interviewed Doe. The trial court found this delay "unreasonable and arbitrary," and the interim suspension "particularly egregious." Furthermore, the University failed to show it considered less restrictive interim measures.

The University reinstated Doe as an enrolled student for the spring quarter of 2017, but the Parties continued to litigate the matter. The University completed its Title IX investigation in November 2017 and found Doe responsible for dating violence. After a series of administrative appeals, the University overturned this decision in June 2018 and declined to pursue the administrative proceedings any further.

Doe filed a motion for an award of attorney's fees under the private attorney general doctrine codified in California Code of Civil Procedure section 1021.5. Doe's counsel sought $265,508, representing fees incurred from the inception of the case (August 2016) through the trial court's March 2017 order issuing a preliminary injunction against Doe's interim suspension. Doe's counsel requested the fees be increased by a multiplier of 1.6.

Following a hearing, the trial court denied the motion and concluded Doe failed to satisfy two of the four criteria required for an award of fees. Specifically, the

trial court concluded that Doe failed to demonstrate that his action conferred a significant benefit on the general public or a large class of persons, and it was questionable whether the necessity and financial burden of private enforcement were such as to make the award appropriate.

On appeal, Doe argued the trial court applied the wrong standard in denying his motion for attorney's fees and was misled by the University's counsel as to the impact and significance of his litigation.

To obtain attorney's fees under Code of Civil Procedure section 1021.5, the moving party must establish that: (1) it is a successful party in an action; (2) the action resulted in the enforcement of an important right affecting the public interest; (3) the action has conferred a significant benefit on the general public or a large class of persons; and (4) the necessity and financial burden of private enforcement are such as to make the award appropriate.

Here, the Parties did not dispute Doe was the successful party. Nor did the parties dispute that Doe's litigation enforced an important right. However, the trial court concluded Doe failed to satisfy the significant benefit element because the relief sought and obtained "was inherently personal in nature, involving the termination of his interim suspension and reinstatement as an active, full-time student pending the conclusion of the investigation." In response, Doe argued his action effectuated important constitutional and statutory due process rights, and conferred a benefit on all students attending the University. The Court of Appeal agreed with Doe.

The University's written policies required prompt and timely investigation of complaints for sexual harassment and sexual violence. The trial court found the University failed to follow these policies and procedures when it issued the interim suspension and violated Doe's constitutional right to due process. Doe's action enforced a student's right to have the University comply with its own policies governing the time limits for resolving Title IX complaints and investigations. It confirmed the availability of injunctive relief to prohibit an interim suspension where the University unreasonably delayed completion of a Title IX investigation, failed to consider less restrictive measures, and concealed critical evidence utilized in issuing the interim suspension order, all in violation of University policies.

The Court of Appeal held all students benefit when the trial court required the University to follow its own policies and procedures. The trial court had additional evidence showing Doe's case specifically influenced another student to file her own complaint against the University with the U.S. Department of Education alleging the University violated its policies when it placed her on an interim suspension prolonged by a lengthy, delayed Title IX investigation.

The final element required for an award of fees under Code of Civil Procedure section 1021.5 is that the "necessity and financial burden of private enforcement ... are such as to make the award appropriate ...." The trial court concluded it was unnecessary to decide whether Doe established this element because he failed to show that the litigation satisfied the significant benefit element. Nevertheless, the trial court noted it was "questionable whether [he] has met [the necessity and financial burden] requirement."

In determining the financial burden on litigants, courts focus not only on the costs of the litigation but also any offsetting financial benefits that the litigation yields or reasonably could have been expected to yield. Doe neither expected to receive nor received any monetary award for his litigation contesting the interim suspension, yet he incurred significant financial costs.

Ultimately, the parties did not dispute that Doe had no ability to pay for legal representation. Without representation, the interim suspension in this case would have resulted in a de facto expulsion, in violation of the University's policies. Considering these circumstances, the Court of Appeal found necessity and financial burden of private enforcement made an award of attorney's fees appropriate.

Finally, the University argued that the award of fees must be significantly reduced. The Court of Appeal determined the appropriate amount of fees is a distinct question from whether a fee award is justified, so it sent the case back to the trial court to determine the appropriate amount of fees and the amount of the multiplier, if any.

Doe v. Regents of Univ. of California (2020) 51 Cal. App. 5th 531.

NOTE:

This case highlights the significant time and expense that can result from failure to follow disciplinary policies. We would note that mistakes made in the discipline process are common and as long as those mistakes are corrected promptly the outcome of the process is generally supported by the courts.

EMPLOYEES

MINISTERIAL EXCEPTION

First Amendment Religion Clause Barred Court From Entertaining Employment Discrimination Claims Brought By Elementary School Teachers Against Private Religious Schools.

Agnes Morrissey-Berru worked as a lay fifth and sixth grade teacher during her time employed by Our Lady of Guadalupe School (OLG), a Roman Catholic primary school in the Archdiocese of Los Angeles. Morrissey-Berru entered into annual employment agreements with OLG, which included the school's mission "to develop and promote a Catholic School Faith Community" and advised her that all her duties and responsibilities as a teacher were to be performed according to this mission. The employment agreement also set forth that the school's hiring and retention decisions were guided by its Catholic mission, that teachers were required to model and promote Catholic faith and morals, and that teachers could be terminated for conduct that brought discredit upon the school or the Catholic Church. Morrissey-Berru's employment had to be approved by the pastor of the parish, a Catholic priest. While employed by OLG, Morrissey-Berru took religious education courses at the school's request and was expected to attend faculty prayer services.

Morrissey-Berru taught all subjects, including religion. In her position as a teacher, Morrissey-Berru served as a catechist, a person responsible for the faith formation of the students in their charge each day, and taught a Catholic curriculum. Morrissey-Berru served an integral role in facilitating her students' participation in Mass, communion, confession, altar services, and prayer. Moreover, OLG reviewed Morrissey-Berru's performance according to Catholic values and standards.

In 2014, OLG asked Morrissey-Berru to move from a full-time to a part-time position and then declined to renew her contract the following year. Morrissey-Berru filed a claim against OLG under the Age Discrimination in Employment Act of 1967 (ADEA) alleging that OLG demoted her than declined to renew her contract so the school could hire a younger teacher to fill her position. OLG defended by asserting that its decision was based on Morrissey-Berru's classroom performance and problems implementing new curriculum.

At the district court, OLG successfully moved for summary judgment under the ministerial exception, but the Ninth Circuit Court of Appeals reversed the decision.

Kristin Biel worked as a lay teacher for about a year and half at St. James School (St. James), a Catholic primary school located in Los Angeles. Biel entered into an employment agreement with St. James that "set out the [school's] religious mission; required teachers to serve that mission, imposed commitments regarding religious instruction, worship, and personal modeling of the faith; and explained that teachers' performance would be reviewed on those bases." Biel's performance was evaluated according to Catholic values and standards and the school's principal, a Catholic nun, evaluated Biel's performance according to these values and standards.

Biel, who was Catholic, taught all subjects at St. James, including religion for 200 minutes each week. Biel also led student prayer at least twice each school day and served an integral role in teaching students about the Catholic Faith, including Mass, confession, the sacraments, social teachings, history, morality, practices, and prayers.

After Biel's one and a half years at St. James, the school declined to renew her contract. Biel filed a suit against St. James, alleging that her contract was not renewed because she had requested a leave of absence to obtain treatment for breast cancer. St. James contended that its decision was based on Biel's poor performance and, specifically, her "failure to observe the planned curriculum and keep an orderly classroom."

At the district court, St. James successfully moved for summary judgment under the ministerial exception, but the Ninth Circuit Court of Appeals reversed the decision as it had in Morrissey-Berru's case.

The ministerial exception requires courts "to stay out of employment disputes involving those holding certain important positions with churches and other religious institutions." The ministerial exception stems from the First Amendment Religion Clauses, namely that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." The Religion Clauses "protect the right of churches and other religious institutions to decide matters 'of faith and doctrine' without government intrusion." According to the U.S. Supreme Court, the ministerial exception preserves a church's independent authority to select, supervise, and remove ministers without secular interference to prevent the risk that "a wayward minister's preaching, teaching, and counseling could contradict the church's tenets and lead the congregation away from the faith."

In its consolidated decision regarding both Morrissey-Berru and Biel's cases, the Supreme Court discussed its significant decision in *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC* (2012) 565 U.S.

171. In *Hosanna-Tabor*, Cheryl Perich, a teacher at an Evangelical Lutheran school, filed a suit against the school, alleging that she was terminated because of a disability, in violation of the Americans with Disabilities Act (ADA). The school contended that it terminated Perich because she was violating Lutheran doctrine that "disputes should be resolved internally and not be going to outside authorities." The Supreme Court held that the ministerial exception applied to Perich's case and barred her suit. The Supreme Court specifically noted that Perich had been given the title of "minister"; Perich's position "reflected a significant degree of religious training followed by a formal process of commissioning"; Perich held herself out as a minister of the Church; and "Perich's job duties reflected a role in conveying the Church's message and carrying out its mission."

The Supreme Court explained that the factors it relied upon in *Hosanna-Tabor* are instructive, but are not inflexible requirements due to the differences among various religious groups, including different titles and roles, training needed to serve different roles, structures, and religious tenets, among other factors. For example, an employee need not have the title "minister" or a similar counterpart, such as priest, nun, rabbi, or imam, in order to qualify for the ministerial exception because having a title itself is not indicative of whether the individual serves an important role in teaching the tenets of their faith. Further, relying too heavily on titles would risk extending the ministerial exception privilege to more formally organized religions over less formally organized ones.

According to the Supreme Court, the essential question in the ministerial exception analysis is what the employee does. The Supreme Court discussed the important role teachers at religious schools of all faiths and denominations serve in educating young people in their faith and proliferating the faith to the next generation.

The Supreme Court found that Morrissey-Berru and Biel qualified for the ministerial exception articulated in *Hosanna-Tabor* because both teachers performed vital religious duties for their schools and their students. Both teachers had the responsibility to educate and form students according to the Catholic faith as set forth in their employment agreements and faculty handbooks. Both teachers guided their students in the faith, prayed with students, attended mass with their students, and prepared their students for participation in religious activities. While Morrissey-Berru and Biel had less religious training than Perich in *Hosanna-Tabor* and did not have the title of "minister," the schools they worked for saw them as playing a vital role in carrying out the mission of the church. The Supreme Court noted that the school's definition and explanation of the employee's role in situations like this one is important.

The Supreme Court also explained that it disagreed with the Ninth Circuit's rigid test, which found that Morrissey-Berru and Biel did not fall within the ministerial exception. First, the Ninth Circuit placed too much weight on the fact that Morrissey-Berru and Biel did not have clerical titles similar to the title of minister. Second, the Ninth Circuit placed too much significance on the fact that Morrissey-Berru and Biel had less religious training than Perich in *Hosanna-Tabor*. Third, the Ninth Circuit in Biel's case "inappropriately diminished" the extent of the role she served in her students' spiritual and religious practices through her position.

The Supreme Court declined to adopt a rigid test and instead stated: "[w]hen a school with a religious mission entrusts a teacher with the responsibility of educating and forming students in the faith, judicial intervention into disputes between the school and the teacher threatens the school's independence in a way that the First Amendment does not allow." The Supreme Court reversed and remanded the Ninth Circuit's decisions in Morrissey-Berru and Biel's cases.

Our Lady of Guadalupe School v. Morrissey-Berru (2020) 140 S.Ct. 2049.

NOTE:

In light of the Supreme Court's decision, religious schools should consider reviewing their employment contracts and employee handbooks and confirming that they accurately and completely set forth their religious mission and their employees' responsibilities related to that religious mission.

FFCRA

U.S. Department Of Labor Issues New Guidance On FFCRA And School Leave.

On August 27, 2020, the U.S. Department of Labor published three new frequently asked questions – questions 98 through 100 -addressing the impact of schools reopening, distance learning, and hybrid learning schedules on leaves under the Families First Coronavirus Response Act (FFCRA).

Question 98 clarifies that when a child's school is operating on a hybrid learning schedule (i.e., alternating days between in person and distance learning), an employee is eligible to take paid leave under the FFCRA on days when the employee's child is not permitted to attend school in person and must instead engage in remote learning. However, the employee is only eligible if the employee needs the leave to actually care for his/her child during that time and no other suitable person is available.

Question 99 clarifies that when a child's school gives the employee a choice between having his/her child participate in remote learning only or in-person learning only and the employee chooses the remote learning only option, the employee is not eligible to take paid leave under the FFCRA. The DOL opined that the child's school is not "closed" due to COVID–19 related reasons, but is instead open for the child to attend and the employee has chosen to keep the child at home.

Question 100 clarifies that when a child's school is operating under a remote learning only program out of concern for COVID-19, the employee is eligible to take paid leave under the FFCRA while the child's school remains closed.

DISCRIMINATION

Receipt Of Federal And State Funds Conditioned On Compliance With Anti-Discrimination Laws Insufficient To Convert Private University To State Actor.

John Heineke was a tenured economics professor at Santa Clara University, a private university located in Northern California. After a student filed a complaint of sexual harassment against Heineke, the University hired an outside investigator to conduct an investigation into the student's allegations. The investigator determined that the evidence did not support the student's claims. However, during the course of the investigation, the investigator learned of a prior complaint of sexual harassment made by a former student against Heineke. After investigating the prior complaint, the investigator concluded that Heineke "more likely than not" sexually harassed the former student.

The University determined that Heineke's conduct violated the University's harassment policy and terminated Heineke's employment. Heineke appealed his termination to the University's president, who upheld the termination. Heineke then appealed to the University's Faculty Judicial Board, which, after holding a hearing on the matter, unanimously upheld Heineke's termination.

Heineke filed a claim against the University pursuant to 42 U.S.C. Section 1983. To state a claim under 42 U.S.C. Section 1983, Heineke had to show that the University, acting under color of state law, deprived him of a right secured by the Constitution or laws of the United States. Heineke attempted to do so by alleging that the University violated his rights under the Fourteenth Amendment due process and equal protection clauses. Heineke also filed various state law claims, including wrongful discharge, intentional infliction of emotional distress, negligent infliction of emotional distress, breach of contract, breach of the covenant of good faith and fair dealing, and defamation.

The district court dismissed Heineke's 42 U.S.C. Section 1983 claim because it concluded that the University, as a private school, was not a "state actor," and consequently, its conduct was not subject to the Fourteenth Amendment. The district court also dismissed Heineke's state law claims and permitted him to refile them in state court. Heineke appealed and the Ninth Circuit Court of Appeals reviewed the district court's decision.

On appeal, Heineke argued that his claim under 42 U.S.C. Section 1983 should proceed because "(1) [the University] receives federal and state funds, (2) which are conditioned on compliance with federal and state anti-discrimination laws and regulations, including enacting an affirmative action plan and a sexual harassment policy, (3) such that [the University] may lose government funds should it fail to comply with the law." Heineke asserted, therefore, that the University serves as a state actor on behalf of the federal government and the State of California in its enforcement of federal and state anti-discrimination laws, such as Title IX, on campus as a condition of the federal and state funds it accepts.

The Court disagreed with Heineke's assertions, finding that receipt of government funds was insufficient to transform a private university into a state actor. The Court further noted that a private university's compliance with "generally applicable laws" is also insufficient to transform private conduct into state action. Ultimately, the Court concluded "that receipt of federal and state funds conditioned on compliance with anti-discrimination laws is insufficient to convert private conduct into state action."

Heineke v. Santa Clara University (9th Cir. 2020) 965 F.3d 1009.

Employee Did Not Prove Discriminatory Animus For Supervisors' Age-Related Comments.

Virgina Arnold worked at Dignity Health (Dignity) as a medical assistant. During her employment, Arnold received numerous verbal and written warnings for various performance deficiencies. In September 2012,

Arnold's supervisor issued her a final written warning and three-day suspension for failing to follow Dignity's process for addressing scheduling errors. Arnold's union grieved her final warning and a previous warning. Dignity and the union agreed to reclassify Arnold's prior warnings to a lesser level of warning. Under the agreement, Dignity also issued a new final written warning and three-day suspension for additional instances of misconduct that occurred while the grievance was pending.

In June 2013, Arnold's supervisor contended that Arnold threw away a specimen cup still containing patient health information. Arnold refused to take responsibility when her supervisor questioned her and blamed a co-worker. Arnold's supervisor also learned that Arnold kept a photograph of a male model with his shirt unbuttoned in a cupboard near her desk, which her supervisor concluded was inappropriate in the workplace.

Given Arnold's previous discipline, Dignity determined that termination was necessary. Arnold's supervisor provided her with a letter explaining she was being terminated for: (1) failure to safeguard personal health information, a HIPAA violation; (2) display of inappropriate materials in the workplace; (3) careless performance of duties; (4) failure to communicate honestly during the course of the investigation; and (5) failure to take responsibility for her actions.

Following her termination, Arnold initiated a lawsuit against Dignity and other employees alleging discrimination, harassment, and retaliation based on her age and her association with her African-American coworkers in violation of the California Fair Employment and Housing Act (FEHA). Arnold is over seventy and African-American. To support her age claims, Arnold cited multiple instances when her supervisors commented on her age and asked about her plans for retirement. Arnold claimed that after learning she had recently celebrated her birthday, one of her supervisors stated, "Oh, I never knew you were that old" and "Oh, how come you haven't retired?" To support her association claims, Arnold alleged Dignity failed to follow up on a complaint she made that her African-American coworkers were being mistreated.

Ultimately, the trial court decided in favor of Dignity's pre-trial motion, finding that Dignity established legitimate, non-discriminatory reasons that were not pretextual for terminating Arnold's employment. Arnold appealed the trial court's decision regarding her claims for discrimination based on her age and association with African-Americans.

The FEHA makes it unlawful for an employer to discriminate against an employee because of several protected classifications, including age and association with those of a protected status. California courts use a three-stage burden-shifting test to analyze FEHA discrimination claims. Under this test, the employee must first establish the essential elements of a discrimination claim. If the employee can do so, the burden shifts back to the employer to show that the allegedly discriminatory action was taken for a legitimate, non-discriminatory reason. If the employer meets this burden, the presumption of discrimination disappears and the employee then has the opportunity to attack the employer's legitimate reason as pretext for discrimination.

On appeal, Arnold argued that the trial court was wrong to enter judgment in favor of Dignity because Arnold had presented evidence that Dignity's reasons for terminating her employment were not credible. She also argued she presented substantial evidence of age and association discrimination, including that her supervisors repeatedly used age-based discriminatory language and did not respond to her complaints regarding racially prejudiced behavior toward other African-American employees. The Court of Appeal, however, found that the trial court properly entered judgment in favor of Dignity.

Regarding Arnold's age discrimination claim, the court noted that the supervisors who made comments about her age were not materially involved in the decision to terminate her employment. Thus, any comments Arnold's supervisors made did not support the conclusion Dignity terminated her based on discriminatory animus. The court also concluded that age-based comments - such as the supervisors saying they did not know she was "that old" or asking her why she had not retired - did not indicate a discriminatory motive. The court opined that the comments one of Arnold's supervisors made around her birthday occurred during "a natural and appropriate occasion for discussing a person's age and future plans."

As to Arnold's association discrimination claim, the court found that the employee to whom Arnold complained about the mistreatment of other African-American employees was also not involved in Arnold's termination. There was no evidence that anyone involved in the decision to terminate Arnold's employment knew about her complaint or that it factored into the determination to fire Arnold. Accordingly, the Court of Appeal held that the trial court did not err in entering judgment in favor of Dignity for Arnold's claim for association discrimination.

Arnold v. Dignity Health (2020) 53 Cal.App.5th 412.

NOTE:

This case concluded that the comments Arnold's supervisors made about her age did not indicate a discriminatory motive, and were "benign and even complimentary." Regardless, it is poor form for an employer to express surprise that an employee is "that old." LCW advises schools to refrain from asking questions about retirement to an employee who has not announced they are retiring or from making comments about an employee's age to limit the risk of an age discrimination claim and to be a respectful employer.

HARASSMENT

Continuing Violation Exception Saves Sexual Harassment Claims.

Daisy Arias worked for Blue Fountain Pools and Spas (Blue Fountain). While Arias was working for Blue Fountain, she experienced sustained, egregious sexual harassment, primarily from a salesperson named Sean Lagrave who worked in the same office. Arias repeatedly complained about Lagrave's conduct over the course of her decade-long employment. In April 2017, Lagrave yelled at her, used gender slurs, and physically assaulted her. Arias told the owner of Blue Fountain at the time, Farhad Farhadian, that she wasn't comfortable returning to work with Lagrave. Farhadian refused to remove Lagrave and subsequently terminated Arias' health insurance. Before Farhadian told Arias to pick up her final paycheck, he had repeatedly ignored her complaints and participated in creating a sexualized office environment.

Arias then filed a complaint with the California Department of Fair Employment and Housing (DFEH) and sued Blue Fountain, Farhadian, and Lagrave alleging, among other claims, sexual harassment and failure to prevent sexual harassment. Blue Fountain, Farhadian, and Lagrave filed a motion to have the claims dismissed. The trial court denied their motion. Blue Fountain, Farhadian, and Lagrave brought a petition for writ of mandate to renew their argument that Arias' claims were barred by the statute of limitations.

Under the Fair Employment and Housing Act (FEHA) at the time this case began, an employee was required to first file a complaint with the DFEH within one year of the alleged misconduct. However, courts recognize an exception for continuing violations. To establish a continuing violation, an employee must show that the employer's actions are: (1) sufficiently similar in kind; (2) have occurred with reasonable frequency; and (3) have not acquired a degree of permanence. In their writ petition, Blue Fountain, Farhadian, and Lagrave argued that Arias could not meet the third element– that Blue Fountain's actions had acquired a degree of permanence – because Arias admitted she felt that further complaints about the hostile work environment were futile after the company's prior management failed to address her numerous complaints. The Court of Appeal disagreed.

First, the Court of Appeal noted that Arias presented evidence of several incidents of sexual harassment that occurred in the one year preceding her termination that were within the complaint-filing period. Accordingly, the court concluded it would have been improper for the trial court to dismiss her claims, even if it determined the incidents outside the limitations period could not be the basis for liability.

Second, the court found that while Arias had been subject to sexual harassment since she started working at Blue Fountain in 2006, Farhadian purchased the company and took over operations in January 2015. Thus, even if the conduct of prior management made Arias' further complaining futile, the arrival of new management created a new opportunity to seek help and Arias could establish a continuing violation with respect to all of the complained of conduct that occurred during Farhadian's ownership.

Finally, the court identified a factual dispute over whether and when Blue Fountain made clear no action would be taken and whether a reasonable employee would have decided complaining was futile. Because Arias continued making complaints and tried complaining to different people, the Court of Appeal reasoned that this question needed to be resolved by a jury, not the trial court.

Accordingly, the court denied Blue Fountain, Farhadian, and Lagrave's writ petition and concluded that Arias' claims could proceed to trial.

Blue Fountain Pools and Spas Inc. v. Superior Court of San Bernardino County (2020) 53 Cal.App.5th 239.

NOTE:

Effective January 1, 2020, an employee now has three years, instead of the one year, from the date of the allegedly discriminatory conduct to file an administrative complaint with the Department of Fair Employment and Housing. (Gov. Code section 12960(e).)

WAGE AND HOUR

Hospital's Quarter Hour Time-Rounding Policy Was Lawful.

Joana David worked as a registered nurse at the Queen of the Valley Medical Center (QVMC) from 2005 to 2015. From September 2011 to May 2015, David worked two, 12-hour shifts per week. To record her time, David clocked in and out of work using an electronic timekeeping system that automatically rounded time entries up or down to the nearest quarter hour.

After David's employment ended, she sued QVMC alleging various California wage and hour violations. Among other claims, David alleged that QVMC did not pay her all wages owed because of the hospital's time-rounding policy.

QVMC argued that it paid David for all time worked and that its rounding policy was legal. Specifically, QVMC noted that because David's time entries were rounded to the nearest quarter hour, when she clocked in or out, her time was rounded up or down a maximum of seven minutes. Thus, David benefitted from the rounding policy on several occasions. QVMC's expert witness reviewed David's time entries and concluded that in a 128-day period, 47% of David's rounded time entries favored her or had no impact and 53% favored QVMC. Further, the expert found that during that same period, the hospital paid David for 2,995.75 hours of work, and that had punch time entries been used, QVMC would have paid David for 3,003.5 hours. While David argued that the hospital's failure to pay her for those 7.75 hours of work established that the rounding policy was unfair, the court found that QVMC had shown its policy was neutral. After the trial court decided in favor of QVMC, David appealed.

Under California wage and hour law, an employer may use a rounding policy if it is "fair and neutral on its face" and "is used in in such a manner that will not result, over a period of time, in failure to compensate the employees properly for all the time they have actually worked." Further, a court may decide in favor of an employer if the employer can show the rounding policy does not systematically underpay the employee, even if the employee loses some compensation over time.

On appeal, the Court of Appeal affirmed the trial court's decision and found that QVMC's policy was neutral both on its face and in practice. The Court noted that the timekeeping software rounded all time, regardless of whether the rounding benefited QVMC or the employee. Further, the court reasoned that the policy did not systematically undercompensate David since the overall loss of 7.75 hours in the 128-day period was statistically meaningless. Thus, the court found that QVMC had satisfied its burden of establishing that the rounding policy was lawful.

David v. Queen of Valley Med. Ctr. (2020) 51 CalApp.5th 653.

NOTE:

This case examines time-rounding policies under California law. However, the decision offers guidance similar to that under federal wage and hour law regarding time-rounding policies.

BENEFITS CORNER

AFFORDABLE CARE ACT

IRS Announces ACA Affordability Percentage For 2021.

Every year the Internal Revenue Service (IRS) adjusts the shared-responsibility affordability percentages under the Affordable Care Act (ACA), and recently issued the new 2021 percentage in Rev. Proc. 2020-36. For 2021, the premium cost of the lowest-level self-only coverage must be less than 9.83% of an employee's household income to be considered affordable. This is an increase from the 2019 affordability percentage of 9.78%. The ACA originally set the affordability threshold at 9.5% of an employee's household income.

For many employers, it is difficult to determine an employee's household income. Accordingly, the IRS provided three safe harbors for employers to determine if they have offered affordable coverage. An employer may choose any safe harbor, but must apply the safe harbor on a reasonable and consistent basis.

Briefly, the three safe harbors are:

1. Rate of Pay Safe Harbor: Under this safe harbor, an employer's offer of coverage will be deemed affordable if the cost for the lowest-level self-only coverage is no more than the IRS issued affordability percentage (9.78% for 2020 or 9.83% for 2021) of an amount equal to 130 hours multiplied by the lower of the employee's hourly rate of pay during the calendar month (or the start of the plan year).

2. Form W-2 Safe Harbor: Under this safe harbor, an employer's offer of coverage will be deemed affordable if the employer's share of the cost for the

lowest-level self-only coverage is no more than the IRS issued affordability percentage (9.78% for 2020 or 9.83% for 2021) of the employee's wages as reported in Box 1 of Form W-2.

3. Federal Poverty Line Safe Harbor: Under this safe harbor, an employer's offer of coverage under a calendar year plan is affordable if an employee pays no more for the lowest-level self-only coverage than the IRS issued affordability percentage (9.78% for 2020 or 9.83% for 2021) of the published annual individual U.S. mainland federal poverty level divided by 12.

If the safe harbor makes the employer's offer of coverage affordable, the employer will not face penalties, even if an individual's overall household income qualifies him/her for a premium tax credit from Covered California.

Employers should carefully monitor the adjustments to the affordability percentage since failure to offer affordable, minimum value coverage to full-time employees may result in employer shared responsibility penalties. The 2020 penalty for employers that do not offer affordable, minimum value coverage is $321.67 per month/$3,860 per year for each employee who enrolls in coverage through Covered California and qualifies for assistance premium tax credit. These penalty amounts have not yet been released for 2021 as of the publishing of this Newsletter.

CAFETERIA PLANS

A Reminder About Section 125 Cafeteria Plan Relief Options.

In May 2020, the Internal Revenue Service (IRS) issued Notice 2020-29 and Notice 2020-33, which provides guidance and allows temporary changes to Section 125 Cafeteria Plans to address changes in expenses due to the impacts of the COVID-19 pandemic. Notice 2020-29 provides employers the option to amend their Cafeteria Plans to: (1) extend the health FSA and dependent care FSA's claims period for claims incurred during 2019 to the end of 2020; and (2) allow employees to make midyear election changes in 2020, including revoking, increasing, or decreasing a health FSA or dependent care FSA election. Notice 2020-33 increases the maximum health FSA carryover amounts remaining in a health FSA to the next year and permits employers to amend their Cafeteria Plans to adopt this increased amount.

Employers can, but are not required to, amend their Section 125 plan documents to provide these options for employees. An employer must adopt an amendment for the 2020 plan year on or before December 31, 2021, and may be effective retroactively to January 1, 2020. The employer should also inform all employees eligible to participate of the changes to the plan and review any other requirements that Notices 2020-29 and 2020-33 provide.

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.

AUGUST

Conduct staff trainings, which may include:

- ☐ Sexual Harassment Training:
  - A school with five or more employees, including temporary or seasonal employees, must provide sexual harassment training to both supervisory and nonsupervisory employees every two years. Supervisory employees must receive at least two hours and nonsupervisory employees must receive at least one hour of sexual harassment training. (California Government Code § 12950.1.)
- ☐ 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 § 11166.5.)
- ☐ Risk Management Training such as Injury, Illness Prevention, and 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

- ☐ In light of the Coronavirus Disease 2019 (COVID-19) public health emergency, and to relieve employers of unnecessary burdens during this crisis, the EEOC has delayed the opening of the 2019 EEO-1 Component 1 Data Collection to a time when the agency anticipates that filers will have resumed more normal operations. More information is available on the EEOC website at: https://www.eeoc.gov/employers/eeo-1-survey.

- 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.

OCTOBER 1ST THROUGH 15TH

□ File Verification of Private School Instruction (Education Code § 33190.)

- Every person, firm, association, partnership, or corporation offering or conducting private school instruction on the elementary or high school level shall between the first and 15th day of October of each year, file with the Superintendent of Public Instruction an affidavit or statement, under penalty of perjury, by the owner or other head setting forth the following information for the current year:

  (a) All names, whether real or fictitious, of the person, firm, association, partnership, or corporation under which it has done and is doing business.

  (b) The address, including city and street, of every place of doing business of the person, firm, association, partnership, or corporation within the State of California.

  (c) The address, including city and street, of the location of the records of the person, firm, association, partnership, or corporation, and the name and address, including city and street, of the custodian of such records.

  (d) The names and addresses, including city and street, of the directors, if any, and principal officers of the person, firm, association, partnership, or corporation.

  (e) The school enrollment, by grades, number of teachers, coeducational or enrollment limited to boys or girls and boarding facilities.

  (f) That the following records are maintained at the address stated, and are true and accurate:

  1. The attendance of the pupils in a register that indicates clearly every absence from school for a half day or more during each day that school is maintained during the year (Education Code § 48222.)
  2. The courses of study offered by the institution.
  3. The names and addresses, including city and street, of its faculty, together with a record of the educational qualifications of each.

  (g) Criminal record summary information of applicants that has been obtained pursuant to Education Code Section 44237.

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: An administrator of an independent school called an LCW attorney and explained that one of their employees recently requested that they be permitted to bring an emotional support animal – not a registered service animal – to work with them. The administrator asked whether employers are required to allow employees to bring emotional support animals to the workplace.

RESPONSE: The LCW attorney explained that under the Fair Employment and Housing Act ("FEHA"), the School would need to permit an emotional support dog if it is a reasonable accommodation for a disabled employee. When an employee requests to bring an emotional support animal to work, the process is generally the same as for any employee requesting an

accommodation for a disability. The School would engage in the interactive process and evaluate the reasonableness of the accommodation, whether it will allow the employee to perform his or her job effectively, and whether it will impose an undue hardship on the School. As with any request for an accommodation, the School may request documentation from the employee's health care provider stating the employee has a disability and explaining why the employee requires the animal in the workplace. The LCW attorney also explained that more detailed information about emotional support dogs can be found in a recent LCW blog post, "I'm Stressed Out! Can I Bring My Dog To Work?

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New to the Firm

Allen Acosta is an Associate in Liebert Cassidy Whitmore's Los Angeles office, where he represents clients in all facets of labor and employment law, including discrimination, harassment, retaliation, and federal civil rights' claims.He can be reached at aacosta@lcwlegal.com.

Daniel Bardzell is an Associate in LCW's Sacramento office, where he assists clients with all matters pertaining to labor and employment law, including providing advice and counsel and defending clients in litigation matters. An experienced litigator, Daniel has defended employers against allegations of discrimination, retaliation, and sexual harassment, among others. He can be reached at dbardzell@lcwlegal.com.

English Bryant is an Associate in LCW's San Diego office, where she assists clients in all matters pertaining to labor and employment. Prior to joining LCW, English served as a legal advisor the San Diego County Sheriff's Department, handling high-level personnel issues, civil service hearings, and Pitchess motions, and overseeing Internal Affairs investigations and medical standards issues. She can be reached at ebryant@lcwlegal.com.

Anthony Risucci is an Associate in Liebert Cassidy Whitmore's San Francisco office where he provides representation and counsel to clients in all matters pertaining to labor, employment, and education law, with a particular focus on public safety. He can be reached at arisucci@lcwlegal.com.

LCW and Cal-ISBOA California Legal Symposium

Cal ISBOA
California Independent Schools Business Officers Association

TUESDAY, November 10, 2020 | 8:30 AM - 1:30 PM

LCW is partnering with Cal-ISBOA to present the "California Legal Symposium." We'll focus on legal issues affecting independent schools in California, including:

- Employment Contracts
- Diversity, Equity and Inclusion
- Town Hall - Legal Eagles
- Legal Updates

Registration includes access to the symposium for two people.

Pricing:
LCW Consortium Members: $175.00
Non-Cal-ISBOA/Non-LCW Consortium Members: $200.00

REGISTER TODAY:
https://www.isboa.org/event-3949871

Firm Activities

Consortium Training

Oct. 6 **"Employee Investigations: Five Critical Components School Administrators Need to Know "**
CAIS Consortium| Webinar |Brian P. Walter

Oct. 20 **"The Right to Privacy Under Federal and California Law"**
ACSI Consortium | Webinar | Brett A. Overby

Oct. 27 **"Employee Policies Every California Private School Handbooks Should Contain and Why"**
Golden State Independent School Consortium| Webinar | Linda K. Adler

Nov. 17 **"Enrollment Agreements for California Private Schools"**
CAIS Consortium | Webinar | Brian P. Walter

Nov. 17 **"Legal Literacy for Jewish Day Schools"**
Builders of Jewish Education Consortium | Webinar | Michael Blacher

Customized Training

Oct. 9 **"Preventing Harassment, Discrimination and Retaliation in the Private and Independent School Environment and Mandated Reporting"**
St. James Episcopal School| Webinar |Alison Kalinski

Oct. 19 **"Preventing Harassment, Discrimination and Retaliation in the Independent School Environment/Setting"**
Abraham Joshua Heschel Day School | Webinar | Michael Blacher

Speaking Engagements

Oct. 22 **"Legal and Risk Management Strategies in a COVID-19 Driven World"**
National Business Officerse Association (NBOA) | Webinar | Michael Blacher, Ronald C. Wanglin & Jamie Gershon

Nov. 10 **"Employment Contracts"**
Cal-ISBOA California Legal Symposium| Webinar | Brian P. Walter and Donna Williamson

Nov. 10 **"How to Lawfully Promote Diversity, Equity and Inclusion on Campus"**
Cal-ISBOA California Legal Symposium| Webinar | Heather DeBlanc and Grace Chan

Nov. 10 **"Town Hall - Legal Eagles"**
Cal-ISBOA California Legal Symposium| Webinar | Michael Blacher, Brian P. Walter, Donna Williamson & Grace Chan

Nov. 10 **"Legal Update"**
Cal-ISBOA California Legal Symposium| Webinar | Michael Blacher

Seminars and Webinars

Oct. 22 **"Train the Trainer Refresher: Harassment Prevention"**
Liebert Cassidy Whitmore | Webinar | Christopher S. Frederick

GET YOURS TODAY!

The COVID-19 pandemic is having an immense and wide-ranging impact on schools, their employees, and their students and families. Just as schools needed to address new and complex issues related to the sudden closure of physical campuses and the transition to distance learning to complete the school year, schools must now look forward to what the fall might look like. In planning for the fall, schools will need to consider federal, state, and local orders, guidance, and legal obligations and many other variables to decide how best to continue educating their students while promoting a safe and healthy school for school employees, students, and families alike.

Our Return to Work and School Toolkit is designed to help independent schools plan for a safe and healthy reopening by providing policies and protocols that schools may want to consider adopting. The Toolkit includes 38 template checklists, policies, and forms, as well as recordings of our June 19th and July 31st Return to Work and School Webinars which addresses how to implement the policies and protocols included in the Toolkit as well as common issues facing schools as they plan to reopen and any revised or new federal, state, or local guidelines for the safe and healthy reopening of schools.

Pricing:

Consortium Members:
Toolkit and Recording: $399
Toolkit, Live Stream and Recording: $449

Non-Consortium Members:
Toolkit and Recording: $499
Toolkit, Live Stream and Recording: $549

PURCHASE TODAY:
WWW.LCWLEGAL.COM/EVENTS-AND-TRAINING

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. To contact us, please call 310.981.2000, 415.512.3000, 559.256.7800, 619.481.5900 or 916.584.7000 or e-mail info@lcwlegal.com.