



Latest in School Law MABE Conference 2018

Stephen C. Bounds, Esq.
Maryland Assoc. of Boards of Educ.
Director of Legal & Policy Services
sbounds@mabe.org

Alexa in the Classroom

- The issue of classroom devices that have recording capability has become a growing concern over the last year or so. Instances of teachers bringing in devices like Alexa, with not a thought to the privacy.
- A growing range of always connected to home devices that are arriving with students with special needs, again be alert.
- First Circuit just denied a request for a non-verbal student to use an audio recorder



Boundaries

- There have been a growing number of high profile child abuse cases that have occurred in schools across the nation and school staff must be on high alert for any and all red flags that exist, if we don't protect students then legislatures will impose unworkable solutions.
- Social Media, email, and text connections between school staff and students are growing exponentially and present growing challenges.



Conflicts of Interest

- Attendance at conferences hosted by vendors of educational materials has become a growing concern and has the lure of free visits to resort locations, speaking fees, and free technology.
- Remember there are no free lunches, these opportunities come with an expectation of securing school business and are nearly always violations of Maryland State ethics laws.
- A former Maryland Superintendent was sentenced to 18 months in prison for this.

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Drug Sniffing Dogs

- The practice of using drug sniffing dogs poses several challenges for schools.
- The basic law has held for decades that the dog scenting the drugs is not a search that requires a high degree of constitutional protection, as the scent is the equivalent of being in plain sight.
- But, students should never have their persons subjected to such searches and as the expected level of privacy grows, (lockers – low to personal items – higher) so will the legal challenges.

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Equal Access Act

- The Equal Access Act (EAA) dealing with student led, non-curricular clubs (during non-instruction time) is generating a new round of school disputes and litigation. The law was passed in 1984 and was focused on religious clubs, after a time most of the disputes and litigation focused on gay-straight alliance clubs. There is an ever growing number of disputes and court actions focusing on pro-life clubs. All such clubs must be provided with equal access.

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Federal Regulations

- The President last spring signed an executive order directing a study to determine if the U.S. Department of Education had been engaged in government (read regulatory) overreach.
- In October, the Department of Education rescinded 72 guidance documents, dealing with disabled students alone, as outdated.
- Whether there was overreach or not, be aware that the pendulum is swinging the other direction and is likely to continue to do so.

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Guns in Schools

- The horrific events at Marjorie Stoneman Douglas HS in Florida have reignited the debates about how to make schools safer that have never fully been off the table since the shootings at Columbine nineteen years ago.
- Armed police or sheriffs, armed guards, or even armed teachers and administrators are once again being called for in most corners.
- There are not easy or even right answers, again if we don't keep kids safe legislatures will (try).

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Helmets and Head Trauma

- It was recently reported that an Illinois former high school football player has sued all at the school level and right up to the helmet seller and manufacturer over an alleged football head injury that resulted in a coma.
- There are schools in Maryland that for the first time have actually dropped their football programs as a result of these concerns and because of declining participation in favor of sports considered safer for the participants.

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Information, Personally Identifiable (PII)

- Personally identifiable information (PII) includes information that can be used to distinguish or trace an individual's identity either directly or indirectly through linkages with other information.
- Directory information is information contained in the education records of a student that would not generally be considered harmful or an invasion of privacy if disclosed.

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Just a T-Shirt?

- There have been a string of court disputes over schools banning various student t-shirt messages that the school believes may cause safety concerns or be potentially disruptive.
- These include pro-gun messages in Nevada and Wisconsin, some with no visible gun images.
- An Arizona district had to reverse their prohibition of a Black Lives Matter t-shirt.
- An Oregon district just reversed a ban on a pro-Trump t-shirt "Border Wall Construction Co."

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Kneeling Student Protests

- It's well-settled that students may, in the exercise of their First Amendment rights, decline to stand for the national anthem, and otherwise express their views, so long as they do so in a respectful manner which is not reasonably calculated to lead to disruption or violence. Our national heroes didn't die for a flag or for a song; they died for the inherent and inalienable rights we teach students about in social studies class, but these disputes will no doubt continue.

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Lockers Containing...Students?

- Amazingly, the cartoon caricature of a student stuffed into a school locker by a bully is a reality in a Tennessee elementary school.
- But the perpetrator was not the usual bully, but the school's kindergarten teacher who is reported to have used the locker punishment for such serious infractions as stepping out of line or having a bad attitude.
- There is indication that the children so falsely imprisoned even had pre-existing special needs.

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Marijuana in Schools

- Only a few of the growing number of states permitting recreational marijuana use or the prescription use of medical marijuana have adopted policies for student in in-schools use.
- The possession of marijuana continues to be a violation of Federal Law and is otherwise banned from most schools by State law and school district policy as well.
- A host of issues arise regarding the in-school use of the drug medicinally, this issue as well is not going away any time soon.

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No Dues if Not Joining Union

- An Illinois teacher sued challenging mandatory public employee union membership dues (agency shop). The Supreme Court has ruled 5-4 in favor of Janus on free speech grounds; this case will have a huge impact on the ability of teacher unions to lobby and make large political contributions. The High Court ruled that union dues could not be collected from non-member individuals that had not affirmatively agreed to pay the dues.

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Outrage in Board Public Comments

- There have been high profile lawsuits about the rules and operation of public comment periods at school board meetings in multiple states. These suits challenge the limits that boards of education place on public comment periods during their public meetings. Interestingly, in most places there is no right for the public to speak at a board meeting.
- The removal (in handcuffs) of a teacher from a Louisiana board meeting made national waves.

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Pledge of Allegiance

- There have been disputes about students forced to recite the Pledge of Allegiance in Indiana; assaulted in Michigan; and harassed in Texas for refusing to stand or recite the Pledge.
- Conversely, an Indiana teacher was reprimanded for telling students that they are not required to recite the Pledge.
- The law is clear that a student may opt out of participating in any way; but must remain quiet and may not be disruptive during the Pledge.

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LGBTQ

- There is an ongoing lawsuit in Utah over what are perceived to be anti-gay policies in schools.
- Meanwhile a school district elsewhere held a LGGBDTTTIQQAAPP Inclusiveness Training causing quite a public backlash.
- Watch for the current College fury over the acceptable use of pronouns, with additions like per, perself, ver, verself, hir, hirsself, zir, and zirself; to name just a few. At some schools students may change preferred pronouns daily.

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Religious Collisions

- The MPSSAA has recently dropped a rule requiring student-athletes to obtain a written waiver to complete wearing religiously required garb like a hijab.
- Meanwhile another football coach's firing was upheld for refusal to stop leading his team in public prayer, this is an issue at many schools.
- School district use of religious facilities for graduation ceremonies and other events continues to be struck down by various courts.

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Social Media Concerns

- In California, a Federal District Court ruled that students could be disciplined for "liking" the racist posting of another student's off-campus Instagram account.
- Also in California a girl was kept from playing girl's basketball for retweeting Snoop Dogg.
- Students disciplined in Arkansas and New Jersey for posting off-campus photos of themselves firing weapons have led to lawsuits.

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Transgender/Gender Identity Issues

- Few areas of school law generated more activity than transgender and gender identity issues.
- On February 22, 2017 the 2016 Dear Colleague Letter on transgender issues was withdrawn, citing "the primary role of the States and local school districts in establishing education policy".
- On 5/22/18 in the G. G. v. Gloucester case a VA District Court found Title IX protects transgender students from being denied access to common restrooms aligned with their gender identity.

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Undocumented/Immigration Issues

- A very recent trend has been to declare school districts as sanctuaries for immigrant students.
- The 1982 U.S. Supreme Court case of *Plyler v. Doe* clearly establishes that public schools are to enroll students without regard to immigration status and to take no action to chill attendance.
- NSBA has produced an updated legal guide to serving undocumented students in public schools and it is available at www.nsba.org/

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Vaccines Are Still Controversial

- Vaccination requirements are still being challenged regularly.
- Several states had in recent years have found that relaxed vaccination requirements resulted in a resurgence of a number of previously nearly non-existent childhood diseases.
- As parental choices exemptions have been eliminated several states have seen a large spike in requested religious exemptions as those are often the only ones in existence.

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School Walkouts

- The horrific events at Marjorie Stoneman Douglas HS in Florida earlier this year have also led to a series of student school walkouts and those have been responded to in a wide variety of ways.
- Schools are attempting to balance student First Amendment speech rights with the school's obligation to maintain a learning environment that is both safe and free from disruption of the educational program.

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IX - Title IX

- The U.S. Dep't of Educ. has pursued violation allegations of the 1972 law know as Title IX for decades. Up until the last few years nearly all of those alleged violations pertained to inequities between boys and girls athletic opportunities and facilities such as softball.
- In the last decade, Title IX has also been relied upon in sexual harassment cases, and in matters such as single sex classrooms, sexual violence, and transgender rights.

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Yes

- A school district in Maryland can ban confederate flag emblems as recently occurred in Carroll County Public Schools.
- The law in the Fourth Circuit Court has consistently held that schools are free to ban such symbols in light of the likelihood of the disruption of the educational environment by the inflaming of racial tensions.
- Interestingly, Minnesota went the route of banning all flags but pushback caused a change.

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Zero Common Sense

- A Michigan parent of a disabled student has sued as a result of a teacher's practice of taping shut the mouth of their student to prevent classroom disruptions.
- Yet another illegal strip and body cavity search of a high school girl has generated a huge public outcry and accompanying lawsuits in NY.
- A MO student was just banned from graduation for a prank listing of his HS on Craigslist for sale.
- We will never lose the capacity to do stupid.

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