

Omnibus Amendments to the School Code Signed into Effect by the Governor

By Nicole W. Williams, Esq.



Nicole Williams

On July 8, 2022, Governor Wolf signed House Bill 164 into law. The bill includes many amendments to the School Code, some of which are summarized below. Stay tuned for a more in-depth analysis from the attorneys at WBK.

- Sections 121 and 121.1 have been amended to require that beginning in the 2022-2023 school year, an industry-recognized credential attained by a student must be included on the student's transcript and that an alternative path to proficiency in any school year in which a demonstration of proficiency on a Keystone Exam is required for high school graduation.
- Sections 732.1 and 2608-J have been amended to extend the moratorium on the acceptance of new Plancon projects through the 2022-23 fiscal year.
- Section 1115 is a new section providing for school mental health specialists and behavioral specialists working under the supervision of Certified School Social Worker.
- Sections 1205.2 and 1205.5 have been amended to extend/suspend deadlines for complying with continuing education requirements until June 30, 2023/for one year.
- Section 1206.1 is a new section requiring PDE to issue a comparable Pennsylvania certificate on an expedited basis to an out-of-state candidate meeting certain requirements set forth in the School Code who is seeking PA certification in a subject identified by PDE as a shortage area.
- Section 1337 changes the threshold for offering an alternative meal from \$50 in a school year for unpaid school meals to \$75.
- Section 1383 has been amended to allow a student with disabilities as defined in 22 Pa. Code §14.101 who reached the age of twenty-one (21) during the

From Keystone Exam amendments to disability inclusive curriculum, House Bill 164 covers various changes to the School Code.

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Understanding Kennedy v. Bremerton School District and its Impact on Religious Expression of Employees

by Michelle E. Gannon, Esq.

On June 27, 2022, the United States Supreme Court published an opinion in Kennedy v. Bremerton School District. Joseph Kennedy was terminated from his position as a high school football coach in the Bremerton School District after he knelt at midfield following the high school's football games to offer a quiet personal prayer. Mr. Kennedy then sued in federal court, alleging that the District's actions violated the First Amendment's Free Speech and Free Exercise Clauses.

Mr. Kennedy had been coaching football within the District since 2008. For many years, unbeknownst to school administration, Mr. Kennedy engaged his players in pregame and post-game prayer in the locker rooms. His motivational speeches also contained direct reference to religion. In addition, Mr. Kennedy began praying with his players, members of the public, and opposing teammates and coaching staff at the conclusion of games.

The District became aware of this conduct in 2015 and subsequently initiated an official inquiry to determine whether this conduct constituted a violation of the Establishment Clause. Due to its concerns regarding this behavior, the District requested that Mr. Kennedy stop engaging players in prayer. Mr. Kennedy did stop praying with athletes in the locker room and his motivational speeches became secular in nature; however, he continued to kneel mid-field at the conclusion of games, joined mostly by citizens in the stands and members of the opposing team. This practice continued for three additional games until Mr. Kennedy was subsequently placed on administrative leave. His contract was then not renewed.

The District Court granted an award of summary judgment to the District and the Ninth Circuit affirmed; however, the Supreme Court reversed and found that Mr. Kennedy was entitled to summary judgment on his religious exercise and free speech claims. The Court viewed this silent prayer as akin to a teacher silently praying over her lunch. The Court deemed Mr. Kennedy's religious activity as non-coercive in nature, as his students were not praying with him. The Court also made clear that prayer involving a captive audience remains impermissible including prayer over the loudspeaker or prayer as part of a speech at a mandatory event.

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Understanding Kennedy v. Bremerton School District, *continued*

The timing and circumstances of Mr. Kennedy's prayers seemed to heavily inform the Court's decision. Because the prayers occurred during the postgame period when coaches were free to attend briefly to personal matters and students were engaged in other activities, the Court determined that Mr. Kennedy did not offer his prayers while acting within the scope of his duties as a coach. Therefore, it remains settled law that District employees would violate the Establishment Clause if prayers were offered while those employees were acting within the scope of their duties. This behavior would continue to be seen as an endorsement of religion.

When analyzing these issues, considerations must center around whether the speech was private speech or government speech, whether there was any coercion, implicit or explicit, by the speaker compelling others to participate in the religious speech, and whether there was a captive audience at the time of the religious speech. The Court has made clear that the answer to these factors will drive the ability, and responsibility, of the school district to appropriately limit any religious speech in question. As a new school year begins, should you have any questions on how to navigate issues of religious speech please do not hesitate to reach out to your solicitor or any of the attorneys at WBK.

Annemarie Harr Eagle named Chair of WBK's Special Education Law Practice

Attorney Annemarie Harr Eagle has been appointed chair of WBK's Special Education Law practice, leading the team of WBK attorneys specializing in special education law. Attorney Harr Eagle joined WBK in 2015. She serves as the Solicitor for Career and Technology Centers and school districts across Western Pennsylvania where she focuses on special education, student services and general solicitor assignments, including special education and Section 504 litigation, employment matters, and Federal Civil Rights litigation. She also serves as an adjunct professor of Special Education Law at Duquesne University School of Law and is Chair of the Allegheny County Bar Association's School and Municipal Law Section.



Annemarie Harr Eagle

Omnibus Amendments, *continued*

2021-2022 school year, or will reach the age of twenty-one (21) prior to the start of the 2022-2023 school year, and was enrolled during the 2021-2022 school year, to maintain enrollment during the 2022-2023 school year if a parent or guardian and the student elect to enroll no later than August 1, 2022.

- Several amendments were made to the provisions of the School Code concerning requirements for School Safety and Security and School Mental Health Services.
- Article XVII-D has been added to require PDE to establish a Disability Inclusive Curriculum Pilot Program to provide instruction to students on the political, economic and social contributions of individuals with disabilities.
- Section 2599.6 has been amended to provide that for the 2022-23 school year and beyond, Ready-to-Learn Block Grants will be in an amount not less than the amount received during the 2021-22 fiscal year.

We're Speaking...

- On September 2, 2022 Attorney Rebecca Heaton Hall will co-present with Jessica Dirsmith at the PSEA DPS Virtual Conference. Their session is titled "Emotional Disturbance: Ethical and Legally Compliant Intervention, Assessment, and Identification Practices."
- Attorney Megan Turnbull will be speaking on September 29, 2022 at the Pennsylvania State Association of Township Supervisors' Regional Forum in Cranberry Township.
- Attorneys Annemarie Harr Eagle and Lynne Sherry will be speaking at PBI's Exceptional Children's Conference on October 14 in Mechanicsburg, PA. Attorney Harr Eagle will be discussing FAPE in the Virtual Setting. Attorney Sherry will be presenting on the topic of Child Find.
- Attorneys Ira Weiss and Annemarie Harr Eagle are speaking at the NAPSA's (National Association of Pupil Service Administrators) 56th Annual Conference being held from October 16-19, 2022 at the Drury Plaza Hotel in Downtown Pittsburgh. Attorneys Weiss and Harr Eagle will be presenting in a joint session on October 17th titled, "Legal Challenges Relating to Pupil Service Including Equity, Diversity, and Inclusion." Attorney Harr Eagle will present a separate session on the topic of Title IX.
- Attorney Rebecca Heaton Hall will be presenting at the NBI School Law Boot Camp, broadcasted October 27, 2022. Attorney Hall will present two sessions titled: 1) Key Laws to Know, and 2) COVID-19's Impact on Education: Teacher Shortages, Student Mental Health Concerns, Virtual Learning, and Beyond.

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

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