



New Florida Laws Aimed at Schools

Insights

6.05.08

The Florida legislature enacted three bills this session relating to education issues in Florida. Although none have yet been signed by Governor Crist, all three are expected to be signed. Only one (the Ethics in Education Act) has an immediate impact on Florida private schools; it contains a series of requirements that private schools need to plan for. The other two either pertain only to public schools (the bullying law), or reflect a pilot program not yet widely applicable to private schools (extracurricular activities). Here is a brief summary of each.

Ethics in Education Act

Part of the bill entitled the "Ethics in Education Act," impacts those private schools that accept scholarship students under either the Corporate Income Tax Credit Scholarship Program or the McKay Scholarship Program.

The new statutory provision is intended to protect the health, safety, and welfare of children in K-12 schools by requiring employment screening of educators and administrators by:

- requiring training on inappropriate activities;
- requiring reporting of inappropriate activities when observed by colleagues; and
- prohibiting favorable references, and invalidating confidentiality provisions in a termination agreement, that would conceal an educator's or administrator's activities, if they have the effect of harming the health, safety, or welfare of a child.

To accomplish these goals, the law requires several things:

1. Public schools must disqualify instructional personnel and administrators from employment in any position requiring direct contact with students if the individual is ineligible for such employment under Fla. Stat. § 1012.315. Section 1012.315 is a new statutory provision which lists criminal convictions that will disqualify an educator from employment. The offenses include convictions relating to sexual misconduct; assault; battery; murder; abuse of a child, adult or developmentally disabled person; kidnapping; false imprisonment; certain firearms offenses; carjacking; prostitution, and other similarly egregious crimes.

The law applies to public, charter, and private schools that accept scholarship funds under the

Corporate Tax Credit Scholarship Program or the McKay Scholarship Program.

2. Schools must also adopt policies of ethical conduct for instructional personnel and administrators, train employees on such requirements, establish procedures for reporting alleged misconduct by other instructional personnel and administrators which affects the health, safety, or welfare of a student, and include an explanation of the immunities and protections provided under the law.

One such immunity protects an individual who reports suspected child abuse from being sued. Another provides qualified immunity to a current or former employer who responds to a request for a reference from a prospective employer by providing truthful information about the current or former employee without an intent to violate the individual's civil rights.

3. Additionally, schools may not enter into confidentiality agreements with instructional personnel or school administrators who were terminated, or who resigned in lieu of termination, if the termination was based on misconduct that affects the health, safety, or welfare of a student. In addition, schools may not provide instructional personnel or school administrators with employment references or discuss the personnel's or administrators' performance with prospective employers in another educational setting, without disclosing the misconduct. Any such agreement entered into that is contrary to this provision is void and unenforceable.
4. Finally, schools must conduct pre-employment history checks of each of the instructional personnel's or administrator's prior employers, screen such persons through the use of educator screening tools described in the statute, and document the findings. If the school is unable to contact a prior employer, it must document the efforts to do so.

If the private school knowingly fails to comply with these requirements, the Department of Education may suspend payments of scholarship funds and prohibit the school from enrolling new scholarship students for one fiscal year and until the school complies with these requirements.

Although these requirements are substantial, the legislature compromised on several aspects of the legislation that would have impacted a private school in even more onerous ways, including making these provisions applicable to *all* employees and requiring that the school post on a supposedly secure Internet site the reasons for a private school employee's separation from employment. Private school advocates were concerned about the security of such sensitive information and the potential lawsuits that former employees could bring if the school did not receive immunity.

This law is expected to become effective July 1, 2008. Therefore, schools should communicate with their counsel to obtain appropriate policies, training, and explanation of the new requirements.

Jeffrey Johnston Stand up for all Students Act (Anti-Bullying/Harassment Law)

This new law prohibits bullying and harassment of students in public schools. The comprehensive statutory provisions requires that *public* schools adopt policies prohibiting such behavior, provide complaint procedures, provide immunity for reporting such inappropriate behavior, outline consequences for bullying/harassment, require prompt investigation of complaints, and requires that the school promptly notify the parents of the students involved. The Department of Education is to create a model policy for use by the school districts.

This policy does not currently apply to private schools, even those that receive scholarship funds. But since claims of bullying and harassment have increased, our advice is that all private schools should have an anti-bullying/harassment policy, with an appropriate reporting procedure, and take all such complaints seriously. Moreover, as with many other processes adopted first by the public schools, this statutory provision will likely become the standard to be observed in the Florida's education industry.

Interscholastic and Intrascholastic Sports Provision

A new subsection has been added to the Florida law pertaining to student standards for participation in interscholastic and intrascholastic extracurricular activities. Specifically, the new provision adds a two-year pilot program in Bradford, Duval, and Nassau Counties, beginning with the 2008-2009 school year.

The program allows private middle or high school students to participate in interscholastic or intrascholastic sports at a public middle or high school within the student's district if the private school the student attends 1) is not a member of the FHSAA and does not offer an interscholastic or intrascholastic athletic program; and 2) the private school meets the guidelines to be established by the FHSAA regarding school and student eligibility to participate in such activities. The parents of the student must provide all transportation for the student to/from the public school and the private school, public school, and FHSAA are exempt from civil liability for any injury that occurs during transportation.

If your school needs advice or assistance about any of these new laws contact one of the attorneys in any of our Florida offices:

Fort Lauderdale: 954.525.4800

Orlando: 407.541.0888

Tampa: 813.769.7500

This Legal Alert provides an overview of some of the important aspects of three new laws. It is not intended to be, nor should it be construed as, legal advice for any particular legal situation.