




Introduction to School Law



Stuart L. Knade, General Counsel
Emily J. Leader, Senior Deputy General Counsel
Katherine M. Fitz-Patrick, Deputy General Counsel



Introductions and roadmap

- Introductions
- Roadmap
 - This is just a snapshot - PLEASE make sure to listen to the legal modules on the LEARN Portal and read the supplementary materials.




2

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CAVEATS

Although every attempt has been made to give accurate information, this presentation is not a substitute for specific legal advice from your local attorney.



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ACTION PLAN RESERVOIR



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WHAT IS SCHOOL LAW?

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School Law

“School Law” includes a broad range of legal topics and sources of law affecting numerous and varied aspects of public school operations, mandates and liability exposures.

Topics arising in the practice of “school law” include:

- constitutional law and civil rights
- special education and disability rights
- labor and employment
- contracts, procurement, construction
- zoning, real estate
- parliamentary procedure
- open meetings and government information access

6

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Sources of Law

- Constitutions
 - U.S.
 - Pennsylvania
- Statutes
 - School Code
- Regulations
 - State Board of Education Regulations
- Case law
- District policies



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District Policies



- Key role of a school board
- Source of law within the school district
- Must comply with state and federal law

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TIME FOR MEETINGS

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Parliamentary Procedure

Section 407 of the School Code expressly authorizes a school board to “adopt reasonable rules and regulations for its government and control,” including rules of order for conducting meetings, also referred to as **parliamentary procedure**.

- *Robert’s Rules of Order, Newly Revised* – most widely known and used

Action Step: What parliamentary procedures govern your school board meetings?

10

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What is the Sunshine Act?

The Sunshine Act requires that official action and deliberations by a quorum of the board and most committees take place at a meeting open to the public, subject to certain exceptions.

- **Official Action** is: (1) Recommendations made by an agency pursuant to statute, ordinance or executive order; (2) The establishment of policy by an agency; (3) The decisions on agency business made by an agency; (4) The vote taken by any agency on any motion, proposal, resolution, rule, regulation, ordinance, report or order.
- **Deliberation** is discussion held for the purpose of making a decision.

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Scenario 1 – Sunshine Act



The Raccoon Valley School Board is considering what to do with a vacant school building that served as an elementary school from 1908 until 2011. There are outstanding legal claims about asbestos exposure. Joe Brown is likely to cast the deciding vote on this and he'll be on vacation. Which of the following statements is incorrect?


12

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Scenario 1 – Sunshine Act

- A. Property Committee may vote in private to sell
- B. Board and lawyer may consult privately on asbestos claims
- C. Board can't vote on sale until it permits public comment
- D. Absent school director may participate via speakerphone

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Voting and Abstentions


Public Official and Employee Ethics Act (Ethics Act)

- A school director must abstain from voting if vote would constitute a conflict of interest
- Abstention requires oral declaration and written form
- Written form becomes part of meeting minutes

Ethics Act Penalties:

- Civil and criminal penalties
- Fines up to \$10,000
- Jail sentences up to 5 years
- Triple damages

Call Ethics Commission at (800) 932-0936

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CAN WE TALK?

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Scenario 2 – Individual Authority of a School Director

In the following examples, determine whether the actions of Raccoon Valley School Director Mike Romanage are “In bounds” or “out of bounds” based on the individual authority of a school director.



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In Bounds or Out of Bounds #1

Mike is concerned about teacher performance. One day he drives to the elementary school and asks the Principal to let Mike examine portions of teachers’ personnel files, in order to recognize excellent professionals, encourage those in need of improvement and respond to those who are not performing at minimal levels.



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In Bounds or Out of Bounds #2

Mike is concerned about the fairness of the district’s student discipline policies related to suspension and expulsion. To address his concerns, Mike proposes that the board review those policies and that the board will request the input of the school administration, students and parents before completing the review.



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In Bounds or Out of Bounds #3


Mike is angry about the lousy burgers and stale corn dogs his district serves students. One day he drives to the high school and gives the cafeteria manager a new menu, which provides the students with whole grains, fresh fruits, and locally grown vegetables. Before leaving, Mike says to the manager, "I want you to adopt this menu ASAP or I will find a cafeteria manager who will!"



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In Bounds or Out of Bounds #4

Based on phone calls he has received from parents, Mike is concerned about unsanitary conditions in the middle school locker rooms. After school, he approaches the Athletic Director during an 8th grade boys basketball game and tells him that he is going to inspect the locker rooms.



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Takeaway

Individual school directors have no individual power to act other than to participate in discussion and voting on actions taken by the collective board. Therefore, a school director who acts individually may be acting outside of his/her authority.

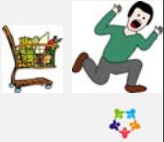
Banger Area Education Association v. Angle

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Scenario 3 – Parental Complaints

There I was, standing in the dairy section of the grocery store after work one day . . . when out of the blue a parent of one of our high school students walked up and told me that the previous weekend her son had seen one of our teachers kissing a student in the parking lot of the local movie theater.


AS A SCHOOL DIRECTOR,
SHOULD I:



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Scenario 3 – Parental Complaints

A. Promptly text all other board members about this
B. Tell the parent to call the Superintendent
C. Go to the school and confront the teacher
D. All of the above



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Investigations

School Board's Role



- Board should not be directly involved in investigations
- Maintaining integrity of investigation is important
- Board may become fact-finder during student discipline or employee termination hearing
- Potential individual liability for violating rights

The *School Leader News Article, Volume 9, No. 11, May 11, 2012*, outlines a four-step process for handling allegations of misconduct involving staff or students.




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Takeaways

- Keep in mind the chain of command
 - Teachers report to principals; principals report to the Superintendent; and the Superintendent reports to the board
 - If you have a request for information, you should ask the Superintendent unless he or she indicates otherwise
- Remember the Sunshine Act's prohibitions when communicating with other board members outside the boardroom
 - PSBA recommends emails by and between board members be limited to such discussions such as setting the time for a meeting

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STUDENTS

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Regulating Student Conduct

School Board's Role

- Adopt Reasonable Rules and Regulations
 - Section 510 of the School Code
 - Section 12.3(a) of the State Board of Education regulations
- Adopt a Code of Student Conduct
 - Section 12.3(c) of the State Board of Education regulations

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Student Discipline

Student Discipline Terms

- **Suspension:** An exclusion from school for up to ten school days, imposed by a building principal.
- **Expulsion:** An exclusion from school in excess of 10 consecutive schools days, imposed by the board of school directors.
- Students have **due process** rights before being excluded from school. *Goss v. Lopez* (U.S. 1975)

NOTE: Special rules apply for disciplinary exclusions of students with disabilities.

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Student Constitutional Rights

“students do not shed their constitutional rights at the schoolhouse gate”

Fourth Amendment, Search & Seizure

- U.S. Constitution
 - *New Jersey v. T.L.O.* (1985)
 - *Vernonia S.D. 47J v. Acton* (1995)
 - *Pottawatomie County v. Earls* (2002)
- Pennsylvania Constitution
 - *Theodore v. Delaware Valley S.D.* (Pa. 2003)


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Scenario 4 – School District Policy and Regulating Student Conduct


Several members of the Raccoon Valley School Board have been hearing from community members that drug use is rampant at Raccoon Valley High School. When they raised the issue at a school board meeting, the Superintendent mentioned that a district in the next county had a student drug testing program that had been upheld against a court challenge.

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Scenario 4 – School District Policy and Regulating Student Conduct

Determined to do something about the drug problem quickly, the board asked the administration to adapt the other district’s drug testing policy and present it to the board for adoption, which the board then did at its next meeting, waiving a second reading.



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After all, if they adopt the same policy upheld in the other district, it must be on solid legal ground, right?

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Scenario 4 – School District Policy and Regulating Student Conduct

A.True: Since it was vetted in court already
B.False: Each district must analyze its particular issues

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Student Constitutional Rights

First Amendment, Student Speech

- *Tinker v. Des Moines Indep. Cmty. S.D.* (1969)
- *Bethel S.D. v. Fraser* (1986)
- *Hazelwood S.D. v. Kuhlmeier* (1988)
- *Morse v. Frederick* (2007)

First Amendment, Off-Campus Student Speech

Can a school district discipline a student for off-campus speech?

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**Scenario 5 – Student Constitutional Rights
and Authority to Discipline**

Ferris created the following mock profile of Principal Rooney on 2Face, a social networking website, from his home computer. A number of students at Raccoon Valley High School viewed the profile during class time:

Name: *Principal Rooney*

Occupation: *being a hard ass dictator principal!*

Age: *pass the Viagra, I'm as old as dirt!*

Relationship Status: *married, but willing to experiment*

Hobbies: *exposing myself to students, hitting on parents, and watching hardcore porn on my work computer*

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**Scenario 5 – Student Constitutional Rights
and Authority to Discipline**

Which of the following statements about Raccoon Valley's authority to discipline Ferris is correct?



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**Scenario 5 – Student Constitutional Rights
and Authority to Discipline**

- A. No discipline: made off campus and no substantial disruption
- B. Ferris can be disciplined because the profile is defamatory
- C. Ferris can be disciplined because his speech is harassment
- D. Ferris can be disciplined for disrespecting a principal

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A Note on Bullying/Harassment

In situations involving Internet-based wrongdoings, schools must also determine whether such conduct constitutes bullying or cyberbullying, unlawful discrimination, or a criminal offense (e.g. cyber harassment).

School Board's Role

- Bullying – must have a policy regarding bullying that is incorporated into the Student Code of Conduct and reviewed every three years

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Takeaways

- Rulemaking authority is not unlimited
- Rules must be reasonable and not arbitrary, capricious or discriminatory
- Subject to statutory and constitutional restraints


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Special Education

SEA FAPE IEP PTE
LEA LRE GIEP FBA
IDEA BSP
ADA NOREP
OCR OSERS NORA



39


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Special Education

The Individuals with Disabilities Education Act (IDEA) requires public school districts to provide each child identified as having a disability with a Free, Appropriate Public Education in the Least Restrictive Environment, at no cost to the parent, through an Individualized Education Program which provides specially designed instruction and related services to meet the needs of the child.

School districts must also comply with Chapter 14 of the Pennsylvania State Board of Education regulations.


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Special Education

School Board's Role

As part of the comprehensive planning process, the Board approves a district-wide special education plan, which includes programs and services such as:


- Child Find
- Continuum of Educational Placements/LRE
- Behavior Support
- Procedural Safeguards

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Scenario 6 – Child Find

Michelle attended school in the Raccoon Valley School District from kindergarten through 8th grade.

- In 7th grade, Michelle was absent two times and visited the nurse 54 times with various complaints (e.g. illness/injury, hunger, peer conflict, nervousness, and anxiety).
 - Michelle cut herself in school with a metal instrument, which she then swallowed. She was diagnosed with depression.
 - A licensed psychologist recommended wraparound services.
 - The district knew she was receiving services because her therapist visited her in school and worked closely with her guidance counselor and attended meetings.


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Scenario 6 – Child Find

➤ In 8th grade, Michelle was absent 17 times and visited the nurse 113 times. She also frequently visited the school guidance counselor.

- Michelle’s academic performance continued to decline.
- The district offered her several services:
 - A fifteen-minute flex period before lunch
 - A forty-minute study hall, so she could meet with teachers and complete assignments
 - Use of an after-school homework center
- Nevertheless, she failed science and got D’s in reading and algebra.

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Scenario 6 – Child Find

➤ For 9th grade, Michelle’s father enrolled her in a cyber charter school. The school evaluated her for special education services, and concluded that she was eligible for services as a student with Emotional Disturbance. The school implemented an IEP for her.

True or False?
The school district breached its Child Find obligation by failing to identify Michelle as a student with a disability in need of special education.

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Scenario 6 – Child Find


A. True. This pattern meant school should have evaluated

B. False. Michelle’s medical needs were addressed by therapist

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Scenario 6 – Child Find



Jana K. v. Annville-Cleona School District

School districts are obligated to identify, locate and evaluate all children with disabilities, including homeless students and wards of the state, and provide them with special education services.




20 U.S.C. § 1412(a)(3); 34 C.F.R. § 300.111; 22 Pa. Code § 14.121

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Takeaways

- Highly regulated
- Litigation is costly

NOTE: Several other laws require districts and other entities to offer children special services or accommodations, including: Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act, and Pennsylvania law and regulations requiring the offering of gifted education programs and early intervention services for children.



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SCHOOL EMPLOYMENT LAW

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The Faces of School Employment



Employee Classifications

- **Professional Employees:** Certificated employees who have acquired tenure
 - Teachers, Supervisors, Principals, Home and School Visitors
- **Temporary Professional Employees (TPEs):** Certificated employees who have not acquired tenure (status granted after three year probationary period)
- **Nonprofessional Employees:** Not certificated and do not acquire tenure
 - IT directors, cafeteria managers and transportation directors
 - Janitors, bus drivers and cafeteria workers

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Employment Decisions

School Board's Role

- Boards hire everyone from the bus driver to the superintendent
- Individual districts use a variety of hiring procedures
- Direct supervision is not the responsibility of an individual board member

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Employment Discrimination

- Age Discrimination in Employment Act (ADEA)
- Americans with Disabilities Act (ADA)
- Civil Rights Act – Titles VI & VII
- Equal Pay Act
- Title IX
- Genetic Information Nondiscrimination Act (GINA)
- Pennsylvania Human Relations Act

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Discrimination “Shark Bait”

Discriminatory actions in the following areas increase the risks of litigation:

- Hiring practices
- Salaries
- Terminations
- Harassment
- Retaliation



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Scenario 7 – Hiring Process and Employment Discrimination

Raccoon Valley High School has an open assistant principal position.

In RVSD, the school board interviews for all administrative positions, but has delegated the authority to determine who will be interviewed by the board to Assistant Superintendent Jane Powers.

~

➤ Lisa Savvy, a biology teacher at Otter Lakes School District, has her principal’s certification. Lisa applied for the position.

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Scenario 7 – Hiring Process and Employment Discrimination

➤ Jane Powers reviewed the applications and noted that three qualified, experienced teachers from Raccoon Valley High School applied.

➤ Powers recommended the board interview and evaluate these internal candidates before considering outside applicants because of their familiarity with Raccoon Valley policy, curriculum, staff and the board and superintendent’s vision.

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Scenario 7 – Hiring Process and Employment Discrimination

➤ The three internal candidates are all men. After interviewing them, the board selected John Jumper for the position by a 7-2 vote. The two board members who voted “no” stated RVSD should seek stronger, outside candidates for the position but the seven “yes” votes all concurred on the record that having someone with great familiarity with RVSD is extremely valuable.

55

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Scenario 7 – Hiring Process and Employment Discrimination

➤ One of the directors who voted “no” told Savvy that she has heard the board president complain about women administrators because they “go on and on” in meetings and that they need more men in these positions and that no one ever called him on this.

~

Savvy has now sued RVSD claiming she was not hired because she is a woman. Her lawyer argues that discrimination is demonstrated by the board president’s comment and the fact that only men were invited to be interviewed.

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Scenario 7 – Hiring Process and Employment Discrimination

At the end of a jury trial, a judge gives instructions on the law, telling jurors that if they find particular facts, they must apply the law in a particular way. Assume these facts are all true:

What do you think would be a correct description of the law for the judge to give to the jury?

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Scenario 7 – Hiring Process and Employment Discrimination

- A. Recommender on interviews is female so not discrimination
- B. Ad didn't limit to internal candidates. She wins interview
- C. Leader's anti-women administrator's remark = discrimination
- D. Savvy must show RVSD's reason is pretext for discrimination

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Employee Discipline

School Board's Role

- Informal hearings and/or suspensions may occur before termination hearing
 - School administrators may conduct an investigation
 - May be better to use outside counsel to investigate
- Boards are responsible for termination decisions
- Board termination decisions can be overturned by an arbitrator

59

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Reasons for Dismissal

- Professional Employees:
 - Immorality, Incompetence
 - Two unsatisfactory performance evaluations
 - Intemperance, Cruelty
 - Certain criminal convictions
 - Persistent/willful violation or failure to comply with school laws including official directives and board policy
- Temporary Professional Employees:
 - Same reasons as listed above, but may be terminated for one unsatisfactory performance evaluation
- Nonprofessional Employees:
 - Incompetency, Intemperance, Neglect of Duty, Violation of School Law, Other Improper Conduct


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Employee Termination Procedures


- “Loudermill” hearing
- Administrative hearing before the School Board
- Appeal to Secretary of Education (professional employees)
- Local Agency Appeal to court of common pleas (TPEs and non-professional employees)
- Grievance and hearing before an arbitrator (unionized employees only)
- Extremely limited judicial review of arbitrator decisions

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Employee Termination Procedures

- **Due Process:** Notice of charges and an opportunity to be heard.
- **Substantial Evidence:** The board is the fact-finder, and may consider only evidence presented on the record. Each factual determination must be supported by evidence that a *reasonable mind* would find adequate to support each conclusion.




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COLLECTIVE BARGAINING

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Collective Bargaining

- Public Employe Relations Act of 1970 (PERA)
- Most school districts, IUs and Career and Technical Schools have unionized faculty
- Collective Bargaining Agreements (CBA) cover many of the conditions of employment including salary, benefits, etc.
- Many districts have board members actively participating in negotiations

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Scenario 8 – Collective Bargaining and Conflict of Interest

Susie has been a school director in Raccoon Valley School District for 20 years. Her husband is a teacher and a member of the Raccoon Valley Education Association. Every time the district bargains the teachers’ contract, Solicitor Hawkins rules Susie may not participate in any part of contract negotiations, but that she may vote on the final contract. Susie believes she has no conflict of interest and may participate in all matters related to collective bargaining. Which of the following is incorrect?

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Scenario 8 – Collective Bargaining and Conflict of Interest

- A. Ethics Act: prohibits her participation in bargaining
- B. Ethics Act and PERA allow her to vote on final contract
- C. Ethics Act: no conflict to participate in bargaining
- D. Legal analysis still needed, particularly under PERA


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Collective Bargaining and Conflict of Interest

- Section 1801 of PERA (43 P.S. §1101.1801) states: No person who ...
 - is a member of the same local, State, national or international organization as the employe organization with which the public employer is bargaining
- OR**
- has an interest in the outcome of such bargaining which interest is in conflict with the interest of the public employer,

shall participate on behalf of the public employer in the collective bargaining processes . . .

- Conflict of Interest cannot be waived by school board, *Reading Education Association PSEA/NEA v. Reading School District*, PERA-C-12-60-E (P.L.R.B., May 13, 2013).


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SUPERINTENDENTS

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Superintendents


- CEO of the district
- Elected for 3 to 5 year term
- Board must evaluate
- Nonvoting member of board
- Makes employment recommendations
- Makes instructional material recommendations

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Scenario 9 – Superintendents


Raccoon Valley’s superintendent, Dr. Relic, retired last year after a distinguished career. After conducting an extensive superintendent search, the district has decided to hire Vanna Vision as the new superintendent.

Which of the following is CORRECT?

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Scenario 9 – Superintendents

A. RVSD may employ Vanna without a written contract
B. Vision needs no commission from the Secretary of Education
C. After annual evaluation: post whether Vanna met her goals
D. Give no prior notice of questions you plan to ask in public

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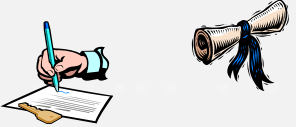
Superintendent Removal

- May be suspended for serious misconduct
- May be removed for neglect of duty, incompetency, intemperance, or immorality
- Removal may result in costly litigation
- Buy-outs are an option, in accordance with contract provisions

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Assistant Superintendents

- Perform such duties as assigned by board of school directors or district superintendents
- Most other provisions relating to assistant superintendents track those for superintendents



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ACT 93 – ADMINISTRATOR COMPENSATION PLANS

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Act 93 – Administrator Compensation Plans


- Act 93 of 1984 (24 P.S. § 11-1164) requires boards to adopt an administrator compensation plan with a description of salary and benefits
- What “administrators” are included in Act 93 plans?
 - Employees who are not in a bargaining unit due to the nature of their assigned duties
 - Position with the rank of first-level supervisor and higher, and
 - Not in a specifically excluded position
- What positions are excluded from Act 93 plans?
 - Superintendent, Assistant Superintendent, Business Manager, Personnel Director, Executive Director, Assistant Executive Director, Director of Vocational Technical School

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**Act 93 –
Administrator Compensation Plans**

- At the request of a majority of the school administrators, the board must “meet and discuss” the compensation plan prior to adoption
- The “meet and discuss” is a process for receiving input from affected employees before the final decision
- The “meet and discuss” process under Act 93 is not a negotiation as in collective bargaining and does not require mutual agreement

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Scenario 10 – Act 93 Plans

Administrators in the Raccoon Valley School District are covered by an Administrative Compensation Plan (ACP) under Act 93, which expires on June 30, 2016. The School Board sought to skip bonuses provided for in the ACP, and instead use the earmarked money to fund salary adjustments in a new ACP.

True or False?
If a majority of the administrators agree, the Raccoon Valley School Board can amend the existing ACP.

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Scenario 10 – Act 93 Plans

A. True. It’s a contract that can be amended


B. False. Once adopted it remains in place for full term

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**SCHOOL SOLICITORS &
OTHER LEGAL COUNSEL**

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Solicitor 


- Selecting a Solicitor
- Appointed by a majority vote of the board
 - Serves “at the pleasure of the board”
- The key responsibilities of a solicitor include:
 - Provide ongoing advice, representation and opinions on school law matters and legal questions as they arise
 - Attend board meetings as desired by the board
 - Preparation of contracts, requests for proposals or invitations to bid

Who does the Solicitor work for?

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**Scenario 11 – The Solicitor’s Relationship
with the Board and the Superintendent**

- A. The Superintendent
- B. Individual Board Members
- C. The District
- D. The Board Majority

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Other Legal Counsel

- Reasons for retaining “special counsel” or outside counsel:
 - Avoid professional conflict during a hearing or investigation
 - Have a specific area of expertise (special education, labor and employment, bond issues)
- School districts and individual officials are sometimes represented in litigation by counsel provided by the school district’s insurance carrier

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Pennsylvania School Board Solicitors Association

The PSBSA is the most effective way for attorneys representing public schools to network, share ideas and expertise, and to stay abreast of current issues, case law, legislation and other developments in education and local government law impacting public schools.


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LIABILITY AND IMMUNITY

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Governmental Immunity in State Court


- Immunity has roots in England where the king could not be sued
- Abolished in 1973 by Pennsylvania Supreme Court
- Reinstated by Political Subdivision Tort Claims Act (PSTCA) in 1978
 - Negligent supervision is not a cause of action
 - School district can be sued for personal injuries for eight reasons, with the most common being:
 - Real Property
 - Personal Property
 - Vehicle Liability



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Section 1983 and Federal Claims

- Section 1983 allows individuals to sue governmental entities for the deprivation of rights secured by the Constitution and/or federal law
- Many Section 1983 claims are filed based on the legal theory of “state-created danger”




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State-Created Danger

To prevail on a state-created danger claim, a plaintiff must prove:

- 1) The harm ultimately caused was foreseeable and fairly direct;
- 2) A state actor acted with a degree of culpability that shocks the conscience;
- 3) A relationship between the state and the plaintiff existed such that the plaintiff was a foreseeable victim of defendant’s acts, or a member of a discrete class of persons subjected to the potential harm brought about by the state’s actions, . . . ; and
- 4) A state actor affirmatively used his or her authority in a way that created a danger to the citizen or that rendered the citizen more vulnerable to danger than had the state not acted at all.



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Scenario 12 – State-Created Danger

True or False?



A coach's decision to return a student to play in an extracurricular activity after the student exhibits signs or symptoms of a concussion, traumatic brain injury, or sudden cardiac arrest may establish liability under the state-created danger theory pursuant to Section 1983.

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Scenario 12 – State-Created Danger

- A. True. Putting student back in game is an affirmative act
- B. False. Coaches can't foresee further injury to student

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Individual Liability and Official Immunity

- Public officials have the same immunity under the PSTCA as the school district, except where willful misconduct is proven
- Section 1983 – Public officials have “good faith” immunity under federal case law, unless their decisions impinge upon a clearly established right they should have known about

90


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Individual Liability and Official Immunity

- PSTCA requires school districts to defend and indemnify public officials (pay for legal costs and judgments) in state or federal lawsuits, except where willful misconduct is proven
- Liability insurance coverage usually pays defense costs
- Immunity does not protect from audit surcharges – financial assessment against officials found to have voted for illegal expenditures of public funds causing actual financial loss to the district

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Questions?



Stuart L. Knade, ext. 3377
Emily J. Leader, ext. 3378
Katherine M. Fitz-Patrick, ext. 3414

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