



MISSOURI SCHOOL
BOARDS' ASSOCIATION

2018 Legal Update for Special Educators

Susan Goldammer

Missouri School Boards' Association

goldammer@mosba.org

Virtual Courses:

Senate Bill 603, House Bill 1606

- Intent is to allow parents and students to decide which courses they will take with the local district and which courses they will take virtually.
- Good: Allows students to access more courses than those offered by the district.
- Concern: School district does not have complete control over quality of course but still must pay for the course.
 - Note: If really bad, can remove students.

Virtual Courses

- The Missouri Virtual Instruction Program (MOVIP) has now become the Missouri Course Access and Virtual School Program (MOCAP).
- DESE must take applications from virtual course providers to offer courses through MOCAP.
- Once approved, K-12 students may select from any of the courses, and the local school district must pay for the student to attend the course.
 - Costs capped currently at \$441 per course/semester.

Virtual Courses

- To be eligible, the student must be enrolled full-time in your district and must have attended a public school or charter school at least one semester immediately prior to enrolling in the virtual course.
- Exception: If a student has a documented medical or psychological diagnosis or condition that prevents the student from attending a school in the community during the previous semester.

Virtual Courses

- School district can only refuse to allow a student to enroll in a course if it determines that it is not in the “best educational interest of the student” to take the course.
 - Student’s needs, not district’s needs!
- If the district refuses to enroll, the student/parent(s) may appeal to the school board and to DESE.

Virtual Courses

Nothing in the law allows the district to deny a student access to a MOCAP course solely because:

- The district cannot afford to pay for courses.
- The district already offers the course.
- The course is associated with an End-of-Course examination.
- The district cannot afford to continue to employ a teacher if students take the course in MOCAP.

Virtual Courses

- Districts must adopt a policy that sets out the process for enrolling in virtual courses, and this process must be “substantially similar” to the process for enrolling in district-sponsored courses.
 - MSBA Policy IGCD!
- When students transfer, district must accept MOCAP credits and must pay tuition if student is in the middle of a course.
- The district is required to notify parents and students in handbooks, registration documents and on the homepage of the district's website.

Virtual Courses and Special Ed Students

- No exceptions for special education students in the statute and no mention of the IEP team.
- MSBA policy: IEP team may decide that a course is not appropriate for the student.
 - Might have to obtain information from course providers to determine.
- MSBA Policy: Instead of appealing that decision to the Board and to DESE (state law), parents must follow federal law (due process) to challenge the decision.

Virtual Courses and 504 Students

- Statute requires “digital content conforms to accessibility requirements.”
- Hopefully that means that the MOCAP course providers must meet web accessibility standards as required under 504 and the ADA.
- 504 teams might need to determine if additional accommodations are necessary for students to access.

Nelson v. Charles City Community School District (8th 2018)

- Student missed a lot of school due to a medical condition.
- Resident school district encouraged the student to enroll in virtual courses.
- The student enrolled in courses through a different district but missed enrollment deadlines, and the resident district did not advocate for student's enrollment.

Nelson v. Charles City Community School District (8th 2018)

- Parents sued under §504.
- Court held that even though the student had never been evaluated or identified for special education, because the substance of the parents' complaint was a denial of FAPE, the parents had to exhaust their remedies under IDEA first, which they failed to do.
- Relied on Fry v. Napoleon Community School (2017).

FERPA and Virtual Education

- U.S. Dept. of Ed FPCO “Letter to Agora Cyber Charter School,” November 2, 2017.
- Parents/eligible students cannot be required to waive their rights under FERPA as a condition of education.
- In order for the student to attend classes in this PA virtual charter school, parent had to agree to the “terms of use” of the contracted virtual course providers, including K12 Inc.
- Terms violated FERPA because it allowed K12 to use personally identifiable student information in any way and to redistribute information to any person.

Data Breach: House Bill 1606

- If there is an electronic data breach that includes personal information of a student (as defined in statute), the district is required to send written notification to the parent or legal guardian, DESE and the State Auditor.
- Policy EHBC: Data Governance and Security
- Procedure EHBC-AP1: Incident and Data Breach Response Plan

Are We Having Fun Yet?

FERPA and Video and Discipline

- U.S. Dept. of Ed FPCO “Letter to Wachter,” December 7, 2017.
- 2 victims and 6 perpetrators of a hazing incident caught on video, as well as bystanders.
- Also witness statements.
- Considered education records of the 8.
- Mom of punished student wants to see
- District does not have and cannot afford software to blur faces, so personally identifiable.

FERPA and Video and Discipline

- Parent is entitled to view education records directly related to more than one student if the information cannot be segregated and redacted without destroying its meaning.
- Only entitled to view part related to his or her student, not all of it.
- Parents of one of the students disciplined had a right to see the entire video even though it was an education record for 7 other students.

Whistleblower: Senate Bill 1007

- Good: Protection for employees who report illegal activity, waste of resources, violations of policy, etc.
- Problem: Protects employees from discipline for comments regarding the “operations” of the district (specifically or generally) to the public.
- More protections for employee speech than the First Amendment!
 - No exception for disruption to the workplace or educational environment.
- District must post a copy of the statute where it can reasonably be read by all employees.

Whistleblower Takeaway

Do not discipline an employee for his or her speech (social media posts, e-mails, gossiping, complaining, etc.) unless you are certain that the speech is not protected under the First Amendment and the new Whistleblower statute.

Speech Language Pathologists

- DESE revised state regulations and is no longer issuing teaching certificates.
- Missouri Board of Healing Arts issues licenses.
- Not required to pay them on the teacher salary schedule because they are no longer “teachers.”
- PEERS employees, not PSRS.

Retirement and SLPs: Senate Bill 892

- Previously: If you retired from PSRS, you could return to work for a school district in a non-certificated position but were limited to the 550 rules.
- Now: A PSRS retiree is not limited to 550 hours, BUT they cannot be paid more than 60% of the state minimum teacher salary.
 - \$15,000, including insurance benefits
 - District must pay into PEERS
- Problem: \$15,000 is far below what SLPs can earn in the private sector.

Retirement and SLPs

- Option 1: SLPs can work with independent contractors that contract with school.
- Although PSRS retirees are limited to 550 hours even if they work as an independent contractor, this only applies if position requires a certificate.
- Problem: The SLP will need a license through the Board of Healing Arts, not just a DESE certificate, to work for contractor.

Retirement and SLPs

- Option 2: “Critical Shortage” exception
- Problem: The PSRS “critical shortage” statute only allows PSRS retirees to return to “teach.”
 - PSRS defines “teach” as working in a certificated position.
- Now if they return, they are coming back in a non-certificated position.
- Solution: PSRS/PEERS is revising regulation definition of “teach” to simply mean return as an employee in the school district.

Braille Instruction: House Bill 1606, Senate Bill 743

- If a student has a vision impairment and qualifies for special education, the student will receive instruction in Braille reading and writing unless the student's IEP team determines otherwise.
- Presumption of Braille, but IEP team gets the final decision.

Gifted:

House Bill 1606, Senate Bill 743

- If your district has a gifted program, the district must have a Board policy allowing parents or guardians to request a review of any decision that excludes their student from the program.
- Districts and employees are immune from liability relating to the decision.
- Policy IGBB, Programs for Gifted Students

Group Homes: Senate Bill 743

- Court-ordered group homes, institutions for neglected children and institutions for delinquent children.
- District must continue to provide educational services to students served by these group homes, but the students in these facilities will be considered separate for “accountability purposes under state and federal law.”
 - MSIP, accreditation
 - Not sure what the feds will think!

ACT WorkKeys: House Bill 1606

- If a student is required to take the ACT by either the state or the district, the state or the district must pay for students to take the ACT WorkKeys assessment.
- Within 3 months of the ACT assessment.
- Student that takes the ACT WorkKeys will not take ACT if required by state.
 - District can require both

Hi-SET: House Bill 1606

- DESE will pay the fees for the high school equivalency examination (Hi-SET) for all persons taking it for the first time.
- Subject to appropriation.
- Great for districts that operate a Missouri Option Program, which allows students to obtain a high school diploma if they pass the Hi-Set.

Immunization: House Bill 1606

- If you provide parents information on immunizations, infectious diseases, medications or other health issues, the district also is required to provide parents information about influenza and flu vaccinations.
- “Tackle the Flu” resources on MO Dept. of Health and Senior Services website.

Power of Attorney for Care of Child: Senate Bill 819

- Allows parents to delegate authority for the care and custody of a child to another person with a notarized power of attorney.
 - Parent still has rights and obligations
 - Can be revoked
- Must be signed annually unless armed forces.
- School must be notified of the power of attorney.
- The school must communicate with both the parent and the delegated person.

Juvenile Law: Senate Bills 793 and 800

- Changes juvenile statutes so that a “child” is any person under the age of 18.
- 17-year-olds will be considered runaways.
- 17-year-olds that commit crimes will be processed as juveniles unless certified as an adult.
- Effective January 1, 2021.
- Issue: Argument of unfunded mandate.

Human Sexuality: House Bill 1606

- If a school district teaches human sexuality, the district must teach students about:
 - Sexual Harassment
 - Sexual Violence
 - Consent
- Policy IGAEB, Teaching About Human Sexuality

Drivers Education: House Bill 1355

- Drivers education courses must include instruction on what to do during a traffic stop and appropriate interactions with law enforcement.
- Students will also receive information on the dangers of operating a motor vehicle while intoxicated or on drugs.

Sheltered Workshops: Senate Bill 743

- Law now requires that the workshops get paid monthly.
- Guaranteed payment to disabled employee of \$21 for a six-hour day.
- More stability and a raise.

Cannabidiol (CBD)

- CBD: a chemical derived from cannabis plant
 - Does not cause impairment.
 - Can have trace amounts of THC.
- FDA approved a drug made from CBD for use in treating two forms of epilepsy in June, 2018.
- DEA is apparently reclassifying so that CBD is not a Schedule 1 drug (not done yet).
- Parents want to administer to children.

Missouri Statute and CBD

- §195.207: Only a parent or legal guardian can administer “hemp extract” (CBD oil) to a minor.
 - Must have Hemp Extract Registration Card.
 - 125 cards issued to administer to 99 minors as of June 30, 2018 in Missouri.
- §192.947: No state liability (criminal or civil) for an individual that administers CBD when ordered by a neurologist as allowed by statute and asks in “good faith.”
- Problem: Statute still only allows parent or legal guardian to administer.

November Election and Marijuana

- 3 ballot measures to legalize medical marijuana!
- Not limited to seizure disorders.
- Problem If It Passes: Still illegal under federal law.
- JHCD: “Staff, students and all other individuals are prohibited from possessing or administering any medication, while on district grounds, on district transportation or during district activities, that is illegal pursuant to state or federal law.”



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Vote November 6th!