

Maintaining SAFE SCHOOLS

Incorporating *Inside School Safety*

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QUICK TIPS

HAND SANITIZER

Be careful when using hand sanitizer in the classroom. It could be dangerous for children with wheat and gluten allergies. "Some hand sanitizers have wheat germ," explained Edgar Schulz, an early childhood special education teacher at Andres and Maria Cardenas Elementary School in Van Nuys, Calif.

SOCIAL MEDIA

State law may criminalize underage students sending and receiving "sexts." For example, a 15-year-old who texted nude pics to boyfriend was placed in legal custody, received six months' probation, and was required counseling and community service. *State v. Katrina R.*, 116 LRP 4369, 799 N.W.2d 673 (Neb. 2011).

LEGAL UPDATES

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COVER STORY

ED announces Title IX enforcement initiative to address sexual offenses in schools

The U.S. Education Department announced Feb. 26 that it is enhancing enforcement of student civil rights protections under Title IX so that schools can better respond to incidents of sexual harassment and assault in K-12 public schools.

You may know that Title IX is a federal civil rights law that prohibits discrimination on the basis of sex in education programs or activities that receive federal funding. What you may not be aware of is how many Title IX claims are being brought against districts for their failure to protect students against sexual discrimination and harassment. **Full story, page 4**

Feds launch school safety clearinghouse

A new federal school safety clearinghouse that provides school safety resources for K-12 education stakeholders is now available. **Page 5**

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Feds launch school safety clearinghouse with resources for prevention, mitigation, and response

A new federal school safety clearinghouse that provides school safety resources for K-12 education stakeholders is now available at *SchoolSafety.gov*. **Page 5**

Conduct a self-evaluation of your facilities for accessibility

Experts recommend that districts conduct a self-evaluation on their facilities to ensure compliance with ADA standards. Here are a few things to look out for. **Page 5**

5 strategies to ward off use of restraint, seclusion

Encourage your colleagues to use preventive behavioral interventions to ward off resorting to more aversive approaches. **Page 6**

Did nurse violate Fourth Amendment when checking vitals of unconscious teen?

For the 40th time in 90 school days, a high schooler came to school late. After his arrival, one of the student's teachers observed him in a "deep sleep." The teacher repeatedly tried to speak to the student without success and reported to an assistant principal that the student was "out cold."

Eventually, the student lifted his head off his desk and had a red mark across his forehead, leading the teacher, vice principal, and school police officer to conclude that he had been asleep for "some time." The student later reported that he had a cold and had been taking cold medication, but the staff members never asked if he was on any medications. The staff members escorted him to the school nurse to be evaluated. The nurse reported that "his vitals were all very high." Based on the nurse's observations, staff members concluded that the student might be under the influence of illegal drugs and ordered him to submit a urine sample. The student refused, and the district called his father to campus.

After the father's arrival, the student still refused to submit a sample, and the student and his father were notified that, per the Pennsylvania district's policy, the failure to submit to the test would be treated the same as a positive result. Subsequently, the student was expelled. The student sued, alleging that the district forced him to undergo a medical examination in violation of the Fourth Amendment.

Under the Fourth Amendment, the reasonableness of search depends on whether it was: 1) justified at its inception; and 2) was reasonably related in scope to the circumstances that justified the search in the first place.

Was requiring the sleeping student to be checked out by the nurse an unreasonable search?

A. No. The district had reasonable grounds for suspecting that the student had violated either the law or the rules of the school.

B. Yes. The staff members violated the student's Fourth Amendment rights when they forced him to submit to a medical examination that was only an excuse to search for possible drug use.

C. Yes. A student's coming to school late and falling asleep isn't a reasonable justification to initiate a search to find potential evidence of illegal drug use.

How the court ruled: A.

In *Cole v. Central Greene School District*, 120 LRP 15 (W.D. Pa. 12/27/19), the court held that there were reasonable grounds for having the nurse check the student. Monitoring the student's vitals and seeking a urine sample were permissive in scope and were not excessively intrusive. The court dismissed the students' Fourth Amendment claims.

B is incorrect. The student's symptoms were indicative of drug use, the court reasoned, and checking the student's blood pressure, pulse, and pupils didn't show a search or seizure that violated the Fourth Amendment.

C is incorrect. The court explained that with the student asleep, having the school nurse check the student's vitals was a reasonable course of action. Additionally, the court noted "a discussion was held regarding the consequences of not submitting to the drug test."

Editor's note: This feature is not intended as instructional material or to replace legal advice. ■

MAINTAINING SAFE SCHOOLS

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Improve school climates with teamwork, patience, and social emotional learning

In addition to the nuts and bolts of preparing for incidents of school violence, experts say districts need to build healthier school climates. Better school atmospheres foster environments where sources of many disruptive behaviors can be identified and addressed before they manifest into bullying, harassment, or violence.

Key points:

- Make sure all school staff, parents, students are part of process
- Teach students how to be mindful, manage emotions
- Be sensitive to cultural, religious, diverse populations

“Bullying happens, and school administrators often ask what type of program would stop or prevent it,” said Jennifer Bashant, CEO of Building Better Futures. “I’ve always felt it was bigger than just a program; it’s a culture and climate issue.”

Get input from every corner of the school. Stephen Sroka, adjunct assistant professor at Case Western University and president of Health Education Consultants, believes school safety efforts need to take a community approach.

“Kids often confide in bus drivers, custodians, and food service people — they are the real eyes at school because they see things teachers and administrators don’t.”

Sroka added that bus drivers are particularly essential because they often spend more time with students than teachers.

“Bus drivers are the first and last school staff to see students,” he said. “They know where they live and often see their parents every day. They definitely need to be part of the team.”

Patience, persistence break down walls. Bashant noted that patience from teachers and administrators is key when building relationships with students.

“Some people take it personally when kids don’t respond right away, and they give up,” she said. “You need to be persistent and genuine. If you keep at it, they will come around.”

Bashant pointed out that students who have suffered some type of trauma are even more challenging to reach.

“They have thick walls and are hyper-vigilant, and some of the conversations with these kids can also be uncomfortable for teachers,” she said. “I tell them they don’t necessarily have to fix the problem, but they have to listen to build relationships.”

Be sensitive to culture, diverse populations. Communicating with students and parents in a culturally sensitive way can motivate them to participate in building a better school climate.

“Whether it’s a black, Hispanic, Muslim, or [the] LGBTQ community, you need to be aware of the culture,” said Sroka.

Bashant said socioeconomics also need to be considered when interacting with students and parents.

“People have preconceived notions, but there are often different priorities for people at different socioeconomic levels and often a different language,” she said. “If staff aren’t in touch with this, they may associate certain language with being disrespectful when it really has a different meaning.”

Adopt social emotional learning techniques. Bashant said teaching students to be self-aware, understand their emotions, and be mindful secondarily reduces bullying.

“As part of mindfulness, kids are taught to be compassionate, regulate their emotions, and what to do when they are frustrated,” she said.

It’s also important to look at how behaviors of students with disabilities can be proactively addressed.

“For example, if a student has ADHD, one of the hallmarks is impulsivity,” she said. “Rather than focusing on teaching them why punching is wrong, help them build their skills to help the student control his impulsive behavior.”

Tip lines provide a voice. According to Sroka, tip lines designed to allow students and community members to report safety concerns have shown a lot of promise.

“Anonymous tip lines of any type provide a powerful voice for kids without the strength to call for help,” he said. “When they are initially set up, ‘haters’ often fill them with false information, but once tip lines are in place for a while this plays out. They are great resources for information,” he said.

Brian Caruso covers school safety issues for LRP Publications. ■

ED announces Title IX enforcement initiative to address sexual offenses in schools

The U.S. Education Department announced Feb. 26 that it is enhancing enforcement of student civil rights protections under Title IX so that schools can better respond to incidents of sexual harassment and assault in K-12 public schools.

“We hear all too often about innocent children being sexually assaulted by an adult at school,” said ED Secretary Betsy DeVos in a statement. “Through compliance reviews and raising public awareness about what’s actually happening in too many of our nation’s schools, we can build on the good work we’re already doing to enforce Title IX and protect students.”

The initiative was announced ahead of the expected release of new Title IX rules. ED’s Office for Civil Rights enforces Title IX and its prohibition on discrimination, including sexual harassment and assault.

A school district is liable under Title IX if a student experienced severe harassment and if that district knew the harassment was occurring.

This “deliberate indifference” standard could have implications for students with disabilities, who can file failure-to-protect claims under Title IX against school districts for monetary damages, if they assert the district did not protect them from sexual harassment or assault. Some courts have held that Title IX cases do not require exhaustion of administrative remedies under the IDEA.

Bobby Truhe, a school attorney at KSB School Law in Lincoln, Neb., said districts should work proactively by analyzing local data on sexual misconduct and be prepared for the possibility that OCR may review the data from a legal perspective in the event a Title IX complaint is filed against the district

According to ED, there were 9,700 incidents of sexual assault, rape, or attempted rape in public elementary and secondary schools in SY 2015-16. Kenneth Marcus, ED’s assistant secretary for Civil Rights said the number of K-12 sexual harassment and violence complaints filed with OCR is nearly 15 times greater than a decade ago.

ED’s new initiative has four parts:

- **Compliance reviews:** OCR will examine how schools and districts handle sexual assault cases

under Title IX and will work with districts to identify and correct compliance concerns.

- **Public awareness and support:** OCR plans to make information about sexual assault available to educators, administrators, parents, and families.

- **Data quality reviews:** OCR will partner with the National Center for Education Statistics to ensure incidents of sexual assault and sexual offenses are being accurately recorded and reported through OCR’s Civil Rights Data Collection.

- **Detailed data collection:** OCR is proposing, for the 2019-20 CRDC, to collect from schools more detailed data on sexual assault, including incidents perpetrated by school staff. If the proposal is adopted, it would be the first universal collection of such statistics, according to ED.

Additionally, ED has also said it would publish an extensive study of how states and districts prevent individuals from obtaining new employment if the individual has engaged in sexual misconduct with a student or minor.

This “Pass the Trash” provision from the Every Student Succeeds Act will likely get more attention as OCR, state accreditation agencies, and local law enforcement scrutinize a school district’s actions in response to allegations of sexual assault, Truhe said.

Districts should immediately work on informing and training staff about reporting, investigating, and responding to allegations of sexual misconduct, Truhe said.

“In my opinion, special education staff and other staff who work with students with disabilities should be in the front row, because they will have to navigate two or more sets of complicated and often contradictory laws when allegations of sexual misconduct involve students with disabilities, both as victims and aggressors,” Truhe said.

Attorney Bobby Truhe is presenting the session Going 9 for IX: 9 Things Anyone Involved in Special Education Must Know About Title IX during LRP’s National Institute® on Legal Issues of Educating Individuals with Disabilities, May 3-6, 2020, in New Orleans. ■

Feds launch school safety clearinghouse with resources for prevention, mitigation, and response

A new federal school safety clearinghouse that provides school safety resources for K-12 education stakeholders is now available at *SchoolSafety.gov*. Trump administration officials announced Feb. 10. The website — which is a joint project of the departments of Education, Justice, Homeland Security, and Health and Human Services — is intended to be a one-stop shop for information, guidance, best practices, and tools intended to improve safety in K-12 schools.

The online clearinghouse was developed in response to a recommendation from the Federal Commission on School Safety — formed in the wake of the Feb. 14, 2018, shooting at Marjory Stoneman Douglas High School in Parkland, Fla. — that was led by Education Secretary Betsy DeVos, the secretaries of the departments of Homeland Security and Health and Human Services, and the acting U.S. Attorney General at the time. “The federal government should develop a clearinghouse to assess, identify, and share best practices related to school security measures, technologies, and innovations,” according to the recommendation in *Final Report of the Federal Commission on School Safety*.

The new website has resources organized into three categories: prevent; protect and mitigate; and respond and recover. Topics addressed under the prevention

category include mental health, school climate, bullying and cyberbullying, and threat assessment and reporting. Under protect and mitigate, the database provides information for school security personnel, emergency planning, and physical security. Respond and recover includes resources related to developing and implementing recovery plans and conducting training, exercises, and drills. Each topic includes guidance, resources, and recommended best practices from both the federal government and third-party organizations.

The website offers an interactive online school safety assessment that generates an action plan based upon the answers provided. It also offers a “private, secure platform for school communities to share safety and security plans” that will allow school safety officials to “access plans and other resources developed by schools, which you can apply to your own planning process.”

School safety advocates applauded the new website. “Principals all around this country have to become experts in school safety,” said Max Schachter, a school safety advocate and father of one of the students murdered during the school shooting in Parkland. “But now, they can go on *SchoolSafety.gov* — every administrator — because there are step-by-step instructions on what schools need to do.” ■

Conduct a self-evaluation of your facilities for accessibility

Under the Section 504 and ADA Title II regulations, a qualified individual with a disability cannot be denied the benefits of or be excluded from participation in a district’s facilities or otherwise be subjected to discrimination because the facilities are inaccessible or unusable. 34 CFR 104.21; 28 CFR 35.149.

“Each school district was [expected] to have done a self-evaluation of their physical facilities to identify areas that they need to address,” said Deborah Leuchovius, ADA specialist at the PACER Center Inc.

Kathy Gips, director of training at the New England ADA Center, said her center recommends that districts periodically reevaluate their compliance. As you do, take these steps:

- **Evaluate older school buildings.** Make sure existing facilities (those for which construction commenced before Jan. 26, 1992, under the ADA and before June 3, 1977, under Section 504) meet the program accessible standard, Gips said. This means that the district must operate each service, program, and activity so that it is readily accessible to individuals with disabilities when viewed in its entirety. The district does not have to ensure that every part of the facility is accessible to individuals with disabilities. 34 CFR 104.22(a); 28 CFR 35.150(a).

If you have installed an elevator, lift, or automatic door, make sure the new additions are maintained and operational, Leuchovius said.

- **Inspect playgrounds, other recreational areas.** Since schools were required to conduct their self-evaluations in the early 1990s, the Department of Justice has issued standards for recreational areas, Gips said. While the fields themselves don’t have to be accessible, a person who uses a wheelchair must be able to get from the parking lot to the fields and to travel between the fields as well.

Ensuring an accessible route to and between recreational areas is commonly overlooked, Gips said.

- **Review plans for new construction.** All alterations made to your school have to be in compliance with the 2010 ADA standards for accessible design, Gips said.

Have someone in the school district who is knowledgeable about ADA standards do a plan review before you sign off on the project, she said. The person in charge of facilities for the school would probably be a good person for this, as he will have knowledge of the ADA standards, Gips said.

“We still see a lot of new schools not in compliance with the standards,” Gips said. “New construction has to be accessible.” ■

5 strategies to ward off use of restraint, seclusion

The national attention paid recently to the misuse of restraint and seclusion in schools underscores how important it is for you to review alternatives to such restrictive measures with your colleagues.

To start, share with them strategies to avoid letting a student's challenging behavior escalate to the point where the use of restraint or seclusion is seen as the only alternative. Work with them to figure out the root of the student's behavior and explain how it may be that the student is looking for access, escape, or sensory input.

"You have to look at the root causes of the problem behaviors," said Jason Robinson, an assistant professor of special education at the University of Northern Colorado. "All behavior is a form of communication."

Help your colleagues try these preventive behavioral interventions:

1. Modify assignments. If the student knows that he can flip a desk or throw a tablet and avoid an assignment he doesn't want to tackle, make the assignment less aversive, Robinson said. For example, if a student struggles with math, allow him to work on problems with a peer or take short breaks between problems.

2. Offer "free" reinforcements. If the student seeks attention when she lashes out, find a way to regularly give her positive attention for no reason when she is behaving appropriately, Robinson said. For example, if the student prefers a particular staff member, have that adult visit the student's classroom or ask her teacher to give her a note from that person every 20 minutes. "It makes the problem behavior irrelevant," he said. "The student gets the attention she is looking for on a schedule. It's finding a way for her to get what she wants in a more socially acceptable manner while also maintaining instructional control."

3. Be predictable. Establish reinforcements that the student can depend on, such as:

- ✓ Greeting the student when she enters the classroom.
- ✓ Praising the student for her effort on a task rather than task completion.
- ✓ Making sure the student receives more praise

in the day than reprimands.

"I recommend starting the day with a full pocket of paperclips, and any time you praise the student, move a paperclip to your right pocket," Robinson said. "If you issue a reprimand, move a paperclip from the right to the left. The hope is that you will use way more praise and, by the end of the day, only have a few paperclips in the left pocket. The student needs to have more positive attention than negative attention."

Also strive for the final interaction of the day with the student to be positive, Robinson said.

"Even if you just say, 'Thanks for coming; I'm looking forward to seeing you tomorrow,' you're reminding the student that you're starting fresh tomorrow," he said. "Tomorrow is a new day. You're having a rapport with students so when things get heated, you can deescalate the situation without more restrictive measures."

4. Don't reinforce negative behavior. If the student has been inadvertently receiving the reinforcement of computer time after he acts out to escape a task, such as reading, you need to find alternative ways for the student to earn access to what he wants while behaving appropriately, Robinson said. For example, the student may complete a certain number of problems to earn a break to do a computer activity. "Then the problem behavior would no longer be the way the student can get what he wants," he said. The key is to be consistent and recognize that the student's behavior may briefly become worse before it improves.

5. Build skills. The student may lash out because he doesn't have the academic skills to complete the task his teacher has asked him to do or to solve an interpersonal conflict that has presented itself, Robinson said. "If he can't do the skill, it doesn't matter how much we reinforce or punish, he's not going to be able to do it," he said. The student may benefit from reteaching and more frequent check-ins during assignments, Robinson said. Learning communication and conflict-resolution skills may also be helpful. Just don't wait to work on skills until the student's behavior has escalated. "If two students are arguing and you know a student has exhibited aggression in the past, intervene right away," he said. "Work on social-emotional strategies for regulating and expressing emotions." ■

Prior complaints of teacher misconduct may create Title IX liability for district

Case name: *Doe v. School Bd. of Miami-Dade County*, 119 LRP 25501 (S.D. Fla. 2019).

Ruling: The U.S. District Court, Southern District of Florida ruled that a student presented enough facts to warrant a jury trial on whether her school district had actual notice of a teacher's sexual misconduct toward her and other students. It denied the district's motion for summary judgment in the student's Title IX complaint.

What it means: Courts located within the 11th Circuit, which includes Alabama, Florida, and Georgia, may consider the receipt of multiple prior complaints about a teacher's alleged sexual misconduct as evidence that a school district had actual notice of later misconduct in a Title IX suit. In this case, the district denied knowing about a teacher's alleged history of sexual misconduct toward students. However, because this student presented evidence that on two occasions the district received complaints about the teacher's alleged misconduct, she created a factual dispute that warranted a jury trial.

Summary: A Florida school district will have to defend a former student's Title IX suit alleging that a teacher sexually assaulted her. The U.S. District Court, Southern District of Florida denied the district's motion for summary judgment. The student alleged in her complaint that a district teacher "repeatedly sexually harassed and abused her" over the course of three years. The district moved for summary judgment, asserting that the student could not show that it "had actual notice of, and was deliberately indifferent to, [the teacher's] misconduct." The court explained that although actual notice is difficult to establish in sexual assault cases, the 11th U.S. Circuit Court of Appeals has found there to be actual notice "in cases that involved multiple prior incidents of sexual misconduct that closely resembled the incident at issue." The court noted that the student presented evidence that a classmate made an in-person complaint to the assistant principal alleging that the teacher was having inappropriate relations with students. The district denied that the AP ever received any complaint, but the court pointed out that "the record contains evidence of [the classmate] testifying that he scheduled an appointment with [the AP], sat across his desk, and informed him of [the teacher's] inappropriate relations with former and current students, including physical interactions between [the teacher] and a student in a hotel during a school-related trip." The court determined that this evidence, coupled with evidence that the principal's secretary received an email stating that one of its employees "is having sex with students and former students," was enough to create a "disputed

material fact for a reasonable jury's determination of whether the School Board had actual notice." Thus, the court concluded that a jury trial was required. It denied the district's motion for summary judgment. ■

ALJ properly weighed conflicting evidence

Case name: *Blackburn v. Martin County Bd. of Educ.*, 119 LRP 39515 (Ky. Ct. App. 2019).

Ruling: In an unpublished decision, the Kentucky Court of Appeals held that a worker was entitled to benefits for his head injury. The worker did not establish a compensable work-related injury to his cervical spine.

What it means: In Kentucky, when there is conflicting medical evidence, the administrative law judge has the discretion to weigh the evidence and determine the credibility of a witness's testimony. *Editor's note: Per court order, this decision has not been released for publication in official or permanent law reports.*

Summary: An electrician and maintenance worker for the Martin County Board of Education was working at an elementary school sewer plant when he was discovered lying across the driver's seat of his motor vehicle and was unresponsive. His right arm had scratches and abrasions, and there was dried blood in his right ear. The worker had a limited memory of the events leading to his injury. He said that he remembered hearing a noise at the sewer plant and thought a belt in the motor needed repairs. While attempting to make repairs, he believed he was standing on a grate that broke and caused him to fall. At the time of the injury, testing was performed that indicated a moderate brain injury. He sought workers' compensation benefits, alleging a traumatic brain injury and a cervical spine condition. The Kentucky Court of Appeals held that the worker established a compensable head injury. It said that while the medical evidence was conflicting, the administrative law judge found the physicians' opinions that he suffered a head injury was persuasive. The worker's physician found that he suffered weakness in his right leg and arm, a tremor in his right hand, and decreased pinprick sensitivity in all extremities. The physician also observed that he was confused, frightened, and suffered from memory issues. The administrative law judge cited to a report from the emergency responders, which noted that the worker was found unresponsive and had dried blood in his ear to support a finding of a work-related head injury. As to the worker's alleged cervical spine injury, the court noted that the ALJ properly used his discretion to determine that the evidence did not compel a finding in favor of the worker. A dissenting judge opined that the matter should be sent back to the ALJ for further findings of fact. The judge opined that

the board of education was entitled to know if the ALJ concluded that the worker's injury was the result of electrocution or a fall. ■

Blanket drug testing after report of alcohol use raises alarms

Case name: *Robertson v. The Sch. Bd. of the City of Richmond, Va.*, 119 LRP 42750 (E.D. Va. 2019).

Ruling: The U.S. District Court, Eastern District of Virginia determined that a school district's practice of testing employees for both alcohol and drugs based on reasonable suspicion of either alcohol or drug use may have violated a teacher's assistant's Fourth Amendment rights. The court concluded that the assistant's federal civil rights lawsuit challenging the district's practice and its failure to train its employees could proceed to trial.

What it means: If a district suspects that one of its employees is under the influence of drugs or alcohol while at work, it can require the employee to take a drug or alcohol test. However, that district does not have free rein to test for any substance. When this district received reports that a teacher's assistant may have been drinking on the job, it had the right to test him for alcohol use. However, because its suspicion only extended to alcohol use, the district might have violated his Fourth Amendment rights when it also tested him for drug use.

Summary: A Virginia school district will have to defend to a jury its practice of testing employees for alcohol and drug use based on suspicion of only alcohol

use. Concluding that the district's practice and failure to train its employees may have violated a teacher's assistant's Fourth Amendment rights, the District Court held that the assistant's federal civil rights suit could proceed to trial. After a parent reported that the assistant came to work smelling like alcohol, a school security officer drove him to the hospital for alcohol and drug testing. The assistant sued the district, asserting that while the district may have had a reason to test him for alcohol use, it did not have reasonable suspicion to test him for drug use, which violated his Fourth Amendment rights. He also challenged the district's practice of testing employees for both alcohol and drugs based on reasonable suspicion of either alcohol or drugs. The district countered that because it received reports that the assistant was stumbling while interacting with students, they had "reasonable suspicion to test [him] for mind-altering substances." The court explained that while districts who have reasonable suspicion that an employee has been drinking alcohol can test for alcohol use, "reasonable suspicion that an employee has used one substance, however, does not give a public employer an unlimited right to search that employee for all 'mind-altering substances.'" Moreover, the district conceded that it did not train its staff "on topics concerning detention, reasonable suspicion, ... or what testing should be administered." Thus, because the employee presented enough evidence that could lead a reasonable jury to find that a constitutional violation was "almost bound to happen" due to the district's practices, the court concluded that a jury trial was appropriate. ■

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