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## ATTORNEYS AT LAW

# EDUCATION LAW UPDATE

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# IMPACT OF GASB 84 ON STUDENT ACTIVITY FUND ACCOUNTING

Statement No. 84 of the Governmental Accounting Standards Board ("GASB 84"), which amends accounting and financial reporting requirements for fiduciary funds, will take effect for Michigan school districts and colleges beginning July 1, 2019. It may impact school districts and colleges most with regard to student activity funds and funds held for other school organizations. Such funds were previously reported as agency funds, but they must now be reported as either fiduciary funds or governmental funds depending on whether they are considered fiduciary activities under GASB 84.

***…school districts and colleges are required to report student activity funds as governmental funds if they have administrative involvement in the funds.***

Under GASB 84, school districts and colleges are required to report student activity funds as governmental funds if they have administrative involvement in the funds. School districts and colleges have administrative involvement if they have policies or procedures determining how funds may be raised or spent, or if faculty or staff are involved in determining the same. However, minimal formalities on the form of fundraising and spending do not constitute administrative involvement, so school districts and colleges may require basic accounting or anti-fraud measures without it constituting administrative involvement.

GASB has suggested that affected public bodies have administrative involvement if, for example:

- A school board establishes the fees charged by student clubs to their members;
- A faculty advisor has discretion over approval, rejection, or modification of spending; or
- A school board establishes and approves a policy related to the receipt, disbursement, and holding of funds for student clubs and organizations.

In contrast, affected public bodies do not have administrative involvement if, for example:

- A student club president and its members, or their parents, determine how resources can be spent and approve disbursement; or
- A school board establishes a policy only addressing issues such as authorized account signers and the prohibition of spending for illegal activities.

Student activity funds that are held as governmental funds may be subject to additional limitations depending on the source of the funds. Without a specific limitation in the law, such funds may generally be expended for any lawful purpose of a school district or college, including any purpose incidental or appropriate to the performance of school functions, which would cover the majority of potential expenditures from a student activity fund.

However, if school districts or colleges find themselves overburdened as a result of classifying student activity funds as governmental funds, they could potentially reclassify the funds as fiduciary funds after eliminating any administrative involvement in how the funds are raised or spent. This would occur by revoking the policies and procedures related to student activity funds and eliminating faculty and staff involvement in the same.

If you have questions about how the GASB 84 requirements could impact your policies, please feel free to contact Collins & Blaha P.C.

# Federal Judge Upholds Interim Suspension for Student Accused of Sexual Assault

On April 15, 2019, a Western District of Michigan judge held that a university may suspend a student accused of sexual assault on an interim basis until a formal disciplinary hearing is held. The plaintiff, a male medical student at Michigan State University, had been accused of sexually assaulting two intoxicated female students: one at a school-sponsored event, and the second that same night at a friend's apartment. The two female students reported the alleged sexual assaults in February 2018 after they were placed on the same clinical rotation as the plaintiff. The university hired an outside firm to investigate the accusations.

On February 7, 2019, the investigative firm issued its final report, which concluded that a preponderance of the evidence supported the female students' allegations. In response to the report, the university suspended the plaintiff beginning February 12, 2019. Two days later, the university held a hearing where it decided to continue the plaintiff's interim suspension until the conclusion of all disciplinary proceedings against the plaintiff. The plaintiff attended the hearing and was allowed to address the hearing panel. He appealed the hearing decision on March 8, 2019, requesting that the suspension be lifted and he be granted a formal disciplinary hearing. The university informed him that while he had the right to a formal hearing, the suspension would not be lifted until after the hearing's conclusion. The plaintiff then filed a request in the Western District of Michigan court for a preliminary injunction ordering the university to rescind the suspension.

***…it has been generally recognized that interim disciplinary measures do not require the same level of due process as an expulsion.***

The court ruled against the plaintiff, finding that the university may impose an interim suspension until the conclusion of the disciplinary proceedings against the plaintiff. The court found that it has been generally recognized that interim disciplinary measures do not require the same level of due process as an expulsion. The court stated that the university met its minimal due process requirements for the suspension by informing the plaintiff of the investigation, granting the plaintiff an opportunity to be heard during the course of the investigation, and holding an in-person hearing to decide whether the suspension should be imposed. The court also found that rescinding the suspension could cause substantial harm to the students who reported the plaintiff's behavior, as the female students had an interest in being able to continue their studies free from harassment. After consideration of these factors, the court denied the plaintiff's request for a preliminary injunction and permitted the university to continue the plaintiff's interim suspension. However, the court ordered the university to conduct its formal disciplinary hearing prior to the date of one of the plaintiff's required examinations, so that the plaintiff could sit for the examination if he received a favorable hearing result.

For information on how this decision could impact your district's policies, please feel free to contact Collins & Blaha, P.C.

# Status Update: Equity In IDEA Regulations

The U.S. District Court for the District of Columbia recently issued a decision requiring the U.S. Department of Education ("DOE") to immediately implement the 2016 Equity in Individuals with Disabilities Education Act ("IDEA") regulations after concluding that the DOE illegally delayed their enforcement.

The regulations, which were supposed to be effective July 1, 2018, are aimed at promoting racial and ethnic equity by addressing significant disproportionality in the identification, placement, and discipline of students with disabilities. The regulations require states to adopt a standard approach to determine if its local districts experience significant disproportionality. Specifically, the regulations require states to work within set parameters to develop their own risk ratio thresholds—the point at which disproportionality based on race or ethnicity can be determined to be significant. If a district exceeds the threshold, the regulations require it to review its policies, practices, and procedures for identifying and placing children in special education programs. The district must then publicly report on the revisions made and identify the factors contributing to significant disproportionality.

In February 2018 the DOE issued a notice proposing delay of the regulations' effective date from July 1, 2018, to July 1, 2020. In response, the Council of Parent Attorneys and Advocates ("COPAA") filed suit against the DOE to require implementation of the 2016 Equity in IDEA regulations. The court found in favor of COPAA, and ordered the DOE to immediately implement the Equity in IDEA regulations. The DOE has filed an appeal.

Because the Equity in IDEA regulations are in effect, states are technically required to comply with them. However, it is unclear if the DOE intends to provide the assistance and support it is required to provide under the regulations, given its pending appeal.

Collins & Blaha, P.C. will continue to keep you informed of developments in this matter.

# Michigan Legislative Update

## House Bill No. 4216

Introduced by Representative Sarah Anthony (D-Lansing) on Feb. 19, 2019, HB 4216 would amend the Revised School Code (MCL § 380.1531) by adding the following provision: "…[t]he Superintendent of Public Instruction shall only issue a teaching certificate to an individual who has completed at least 1 hour of training and education on bullying prevention."

***Current Status: Referred to the Committee on Education.***

## Senate Bill No. 0351

Introduced by Senator Jeremy Moss (D-Southfield), SB 0351 would amend the Elliot-Larsen Civil Rights Act (MCL § 37.2102 *et. seq.*) by adding sexual orientation and gender identity or expression as categories protected from discrimination. Sexual orientation would be defined as "having an orientation for heterosexuality, homosexuality, or bisexuality or having a history of such an orientation or being identified with such an orientation." Gender identity or expression would be defined as "having or being perceived as having a gender-related self-identity or expression whether or not associated with an individual's assigned sex at birth."

***Current Status: Referred to the Committee on Government Operations.***

Collins & Blaha, P.C. will continue to keep you updated as additional action is taken on this legislation.

# School of Choice Programs

Sections 105 and 105c of the State School Aid Act authorizes school districts to create and operate school of choice programs. However, school districts operating a school of choice program must keep in mind the following requirements.

## Applications and Selection Process

- School districts must publish the grades, schools, and special programs for which they will accept school of choice students.
- School districts must take school of choice applications for a period of at least 15 days. School districts offering a limited number of school of choice positions must limit the application period to no more than 30 days.
- If the number of school of choice applicants does not exceed the number of positions available, all applicants must be accepted. If the number of applicants exceeds available positions, eligible applicants must be accepted in the following order:
  - Students who reside in the same household as students who were enrolled through school of choice in the preceding school year, semester, or trimester.
  - Students selected through a random draw system, which the school district must also use to create a waiting list for school of choice enrollment.

## Enrollment

- School districts may not grant or refuse enrollment to their school of choice program on the basis of a student's age, except when an applicant applies to a program that is not appropriate for his or her age. School districts may never grant or refuse enrollment based on religion, race, color, national origin, sex, height, weight, marital status, or athletic ability.
- School districts may deny enrollment to an applicant who has been suspended within the preceding 2 years, has ever been expelled, or has ever been convicted of a felony.
  - If a school district has previously counted a school of choice student on count day or supplemental count day who could have been excluded under one of the above reasons during the previous school year, semester, or trimester, the district must continue to enroll that student until he or she graduates from high school. However, this does not prevent a district from expelling the pupil for disciplinary reasons.

## Considerations for Special Education Students

- School districts may not refuse enrollment to a student eligible for special education programs or services unless the applicant lives outside the district's intermediate school district and there is no written agreement between the district and the applicant's district of residence. Special education programs are not "special programs" for purposes of the statute.
- If a student who is enrolled in a school of choice program and is eligible or becomes eligible for special education services relocates to a school district outside the boundaries of the intermediate school district of the enrolling school of choice district, the enrolling district is required to execute a written agreement with the student's new district of residence addressing the payment of added costs of special education programs and services in order for the student to be counted in membership by the enrolling district.

For further information regarding creating or operating a school of choice program in your district, please contact Collins & Blaha, P.C.

***Since 1981, when Collins & Blaha, P.C. was founded, our attorneys have represented educational institutions in the ever-changing area of educational law. We currently represent some of the largest school districts in the state, and some of the smallest. Whatever the size, the issue, or the challenge, our clients are confident that Collins & Blaha, P.C. will represent their interests competently and with the hands-on approach that a specialized firm can provide.***

**Collins & Blaha, P.C.**
**Attorneys at Law**