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OTTOSEN BRITZ KELLY COOPER GILBERT & DiNOLFO, LTD.

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## New requirements for accelerated placement of students

**by Joseph Miller, III and Touline Elshafei**

The Gifted and Talented Children Act, Article 14A of the School Code, will soon be known as the Gifted and Talented Children and Children Eligible for Accelerated Placement Act. Beginning July 1, 2018, Article 14A will be amended by the Accelerated Placement Act (the "Act") (Public Act 100-0421). This Act is designed to help the advancement of students and districts alike, guiding them with program development and implementation of educational programs for students who are eligible for accelerated placement, in addition to students who are gifted and talented.

A new Section 14A-17 defines "accelerated placement" as the placement of a child in an educational setting with curriculum that is usually reserved for children who are older or in higher grades than the child. Such placement may include, but is not limited to, early entrance to kindergarten or first grade, accelerating a child in a single subject, and potential opportunities for "whole grade" acceleration (i.e. skipping a grade). This definition conflicts with Section 10-21.12 of the School Code, that allows but does not require schools to permit early entrance to kindergarten or first grade. Hopefully, the General Assembly will resolve this conflict before the Act goes into effect.

With respect to accelerated placement, school districts will be required to adopt a policy that allows for accelerated placement. The policy must include the following:

- A provision that provides that participation in accelerated placement is not limited to those children who have been identified as gifted and talented. Rather, participation is open to all children who demonstrate high ability and who may benefit from accelerated placement;
- A fair and equitable decision-making process that involves multiple persons and includes a student's parents or guardians;
- Procedures for notifying parents or guardians of a child of a decision affecting that child's participation in an accelerated placement program and;
- An assessment process that includes multiple, valid reliable indicators.

Additionally, the new policy may incorporate the following components:

- Procedures for annually informing the community-at-large, including parents or guardians, about the accelerated placement program and the methods used for the identification of children eligible for accelerated placement;

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## New requirements for Illinois public bodies' sexual harassment policies become law

**by Maureen Anichini Lemon**

Most workplaces already have a policy in place prohibiting sexual harassment. Recent events in Hollywood, Congress, and Springfield, highlighted by the #metoo movement, have created a renewed interest in this topic. As a result, the Illinois General Assembly passed Public Act 100-554 into law in November, 2017. P.A. 100-554 added new sections to, and amended other sections of, the Illinois State Officials and Employees Ethics Act (5 ILCS 430). That is the statute that gave us the Gift Ban Act and the Ethical Conduct prohibition against political activities by employees on compensated time.

The recent changes require *state* agencies to have a sexual harassment policy and require all officers, members and employees of the *state* entities to undergo sexual harassment training on an annual basis. P.A. 100-554 also requires all *local* governmental units, including school districts, to adopt an ordinance or resolution establishing a policy to prohibit sexual harassment. The ordinance or resolution was to have been adopted no later than 60 days after the effective date of the amendatory act, or by January 15, 2018.

P.A. 100-554 identifies four elements that must be contained in each sexual

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## Sexual harassment policies

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harassment policy of a local governmental unit in Illinois. First, the policy must clearly prohibit sexual harassment. State and federal anti-discrimination laws provide a legal definition of sexual harassment as:

> ***unwelcome*** sexual advances, requests for sexual favors, and other verbal and physical conduct of a sexual nature when: (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; (2) submission to or rejection of such conduct by an individual is used as a basis for employment decisions affecting that individual; or (3) such conduct has the intent or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

The policy should contain examples of the types of conduct that meet this definition.

Second, the policy must detail how an individual can report an allegation of sexual harassment. This would include making a confidential report to a supervisor or someone with human resources authority within the school district. This would also include how to file a complaint with the Illinois Department of Human Rights.

Third, the policy must prohibit retaliation against anyone who reports a sexual harassment allegation. The Illinois Human Rights Act expressly prohibits retaliation and the Illinois Whistleblower Act protects anyone who discloses information of a violation of a state or federal law.

Fourth, the policy must include the consequences of a violation of the prohibition against sexual harassment as well as the consequences for knowingly making a false report of sexual harassment.

Although school boards do not typically adopt policies through passage of an ordinance or resolution, they must do so to be in compliance with the requirements of this law.

Finally, although P.A. 100-554's mandate for annual sexual harassment training is limited to state rather than local entities, it is best practice to mandate such training for your school district's employees. It is also best practice to ensure that your elected and appointed officials receive such training at least once upon being seated as a school board member. While they are not employees, school board members have a responsibility to ensure that the District's policy is implemented and that the policy's complaint procedure is effectively utilized.

Even if your current sexual harassment policy meets each of the requirements of P.A. 100-554, we recommend that it be re-adopted through the passage of a resolution. If you have questions regarding the content of the policy or resolution, or are in need of training of your staff or school board members, please contact one of the attorneys at Ottosen Britz for assistance. ■

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- Estate planning, which includes the preparation of wills, trusts and powers of attorneys;
- Estate and trust administration;
- Real estate, which includes purchases and sales of residential and commercial real estate, landlord-tenant disputes and leasing of residential and commercial properties;
- Business formation and succession planning; and
- General civil and commercial litigation.

If you have a question about a legal issue involving these areas of law, Ottosen Britz has an attorney who can assist you.

## When patriotism, civics, and student free speech collide

**by Meganne Trela**

Inspired by the National Anthem protests of NFL players, high schools around the country are starting to see student athletes take a knee during the playing of the National Anthem at school sporting events. With the controversy surrounding the protests at an all-time high this past Fall, it's not surprising that many school administrators, coaches, and staffs are left wondering how to react to student athletes participating in the protests. The United States District Court for the Southern District of California recently addressed the issue in *V.A. v. San Pasqual Valley Unified School District*, 2017 WL 6541447 (S.D. Cal. Dec. 21, 2017). In granting the student's motion for preliminary injunction, the court found that a student's decision to kneel during the playing of the National Anthem was protected free speech.

V.A. was a member of the San Pasqual Valley High School (SPVHS) varsity football and basketball teams. He began kneeling during the playing of the National Anthem at football games in the 2017 season. V.A. wanted to express his personal concerns with racial injustice in America. When V.A. kneeled at the first home game, it was done peacefully and without incident. At an away game the following week, he was able to kneel peacefully during the National Anthem; however, after the game, students from the opposing high school approached students from SPVHS, made racial slurs, threatened to force the kneeling student to stand, and sprayed a water bottle at another student.

After receiving concerns about student safety at athletic events, the district superintendent issued a memorandum to the coaching staff stating that "[k]neeling, sitting or similar forms of political protest are not permitted during athletic events at any home or away games." The rule was in effect "until further notice, pending adoption of a Board Policy." Students and parents were given notice of the rule. When V.A. attended an away basketball game in November he left the court during the playing of the National Anthem because of the superintendent's rule regarding kneeling. While the School Board drafted a policy, the draft was never adopted by the Board. To avoid additional controversy, the superintendent recommended that the school stop playing the National Anthem all together. The school district, however, was unable to control whether the National Anthem was played at away athletic events.

V.A. moved for a preliminary injunction, arguing that the district's policy violated his right to free speech. To seek a preliminary injunction, a plaintiff must establish that (1) he is likely to succeed on the merits; (2) he is likely to suffer irreparable harm in the absence of preliminary relief; (3) the balance of equities tips in his favor; and 4) an injunction is in the public interest. In determining whether a preliminary injunction was appropriate in this case, the court held that V.A. was likely to succeed on the merits based on the United States Supreme Court's decision in *Tinker v. Des Moines Indep. Cmty. School District*, 393 U.S. 503 (1969). In *Tinker*, the Supreme Court held that a school can only regulate a student's speech if the school shows "facts which might reasonably have led school authorities to forecast substantial disruption of or material interference with school activities" or interference "with the rights of other students to be secure and to be let alone." In *Tinker*, the Supreme Court found that students wearing black armbands to protest the Vietnam War could not be regulated because their silent protest did not disturb or interrupt school activities.

In this case, the court reasoned that kneeling during the National Anthem was speech. Although schools are not required to tolerate speech that interferes with basic educational missions, they cannot entirely restrict a student's right to express his opinions. Based on precedent from the Supreme Court, the court found that student speech that could be restricted fell into three categories: (1) vulgar lewd, obscene, and plainly offensive speech; (2) school-sponsored speech; and (3) speech that did not meet the first two categories but was considered speech covered by the *Tinker* standard. The court determined that the student's silent protest by way of

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## Student free speech

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kneeling during the National Anthem did not fall within the first two categories, meaning the student's speech was governed by the *Tinker* standard.

The court held that the student's kneeling could not be restricted under the *Tinker* standard because his silent protest would not likely cause a substantial disruption or material interference with school activities. While the student's kneeling did cause a reaction from another school well after the National Anthem was played, the reaction did not rise to a level that was likely to cause a substantial disruption. Thus, the fact that spectators from an opposing school reacted poorly to V.A's exercise of speech was not enough to warrant a policy restricting the student's First Amendment rights.

The court additionally held that the last three elements of the student's preliminary injunction were met because the restriction would cause irreparable harm, the balance of equities weighed in favor of the student, and it was in the public's interest to grant the student's motion. The court reasoned that the loss of First Amendment rights - even if momentary - is unquestionably irreparable injury and there is a significant public interest in upholding the principles of the First Amendment. As a result, the student's motion for preliminary injunction was granted.

The American public has not heard the last of the controversy surrounding National Anthem protests, and school districts nationwide will likely continue to see student athletes exercising their free speech rights on the sidelines. As the heated debate continues, schools will need to make and defend policy decisions related to student conduct during the National Anthem. It is important that school districts keep in mind the legal standards applicable to students when considering restrictions on student speech to avoid costly legal challenges. If you have questions about student speech, contact an attorney at Ottosen Britz. ■

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## Accelerated placement

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- A process that allows for multiple individuals to refer a child for accelerated placement, including a child's parents or guardians; licensed education professionals; the child, with the written consent of a parent or guardian; a peer, through a licensed education professional who has knowledge of the referred child's abilities; or, in the case of possible early entrance, a preschool educator, pediatrician or psychologist who knows the child; and

- A provision that provides that children participating in an accelerated placement program and their parents or guardians will be provided a written plan detailing the type of acceleration the child will receive and strategies to support the child.

The Gifted and Talented Children and Children Eligible for Accelerated Placement Act continues to "encourage" school districts to design educational programs for eligible children without any state funding. Through this recent amendment, the Illinois General Assembly mandates school districts to implement an accelerated placement program regardless of access to state funding. The Act requires the State Board of Education to adopt rules regarding the collection of accelerated placement program data and an efficient method of making the data available to the public.

Please contact an Ottosen Britz attorney if you have any questions as you put your accelerated placement policy into practice. ■

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