PULLMAN & COMLEY

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Policy Revisions Due to New Laws

This Alert is intended to give a general explanation of 2014 legislative enactments of the Connecticut General Assembly that may impact your board of education policies. For more detailed and individualized assistance with amending your policies, please contact any one of our school law attorneys.

INTRAMURAL AND INTERSCHOLASTIC ATHLETICS

Two new state laws that address student concussions and sudden cardiac arrest will impact the policies and practices for intramural and interscholastic athletic programs.[1] Both laws require schools to develop an education program, address training for staff and require the use of a form to document parental informed consent. Although the new programs need not be in place until the 2015-16 school year, school boards should consider adopting a general policy this year to help prepare for compliance with these new laws. The specific elements are as follows:

Concussion Education Plan

Recordkeeping and Reporting Requirements for the 2014-15 School Year:

- When a student is removed from an athletic activity due to demonstrating signs and symptoms of a concussion, a qualified school employee must notify the parents or guardians immediately and not later than 24 hours.

- School districts must be prepared to report to the State Board of Education [“SBE”] all instances of student concussions including the nature and extent of the concussion and the circumstances under which the student sustained the concussion.

During the 2014-15 School Year:

- Make certain that your coaches receive up-to-date training on concussions. The SBE must update the training course on concussions by October 14, 2014. Refresher courses -- which coaches must complete every five years--, will now

include current best practices in concussion research, treatment and issues specific to coaching football, such as frequency of games and full contact practices and scrimmages.

- Start developing your concussion education plan. By January 1, 2015, the SBE must develop a concussion education plan to be used by school districts.

- Add to your school handbook a notice of the need for parental informed consent as a prerequisite for participation in intramural and interscholastic athletics. By July 1, 2015, the SBE is required to develop or approve an informed consent form regarding concussions to distribute to the parents and legal guardians of students. Such informed consent form shall include a summary of the concussion education plan and applicable board policies regarding concussions.

Requirements for the 2015-16 School Year:

- Each local and regional board of education shall implement a concussion education plan by utilizing written materials, online training or videos, or in person training.

- Schools must have parents and guardians sign the informed consent form to acknowledge receipt of the form and authorize the student to participate in the athletic activity.

- Schools must require students who participate in intramural or interscholastic athletics and their parents or guardians to read written materials, view online training or videos, or attend in-person training regarding the district's concussion education plan prior to permitting participation.

Sudden Cardiac Arrest Prevention

Requirements for the 2015-16 School Year:

- Implement the SBE's sudden cardiac arrest awareness education program for intramural and interscholastic athletics (which is supposed to be developed or approved by the SBE by July 1, 2015). The program shall include materials on warning signs and symptoms, risks of continued athletic activity after exhibiting symptoms, obtaining proper medical treatment and the method of allowing a student who has experienced a sudden cardiac arrest to return to intramural or interscholastic athletics.

- Coaches will be required to distribute an informed consent form (developed by the SBE) to parents and guardians of students involved in intramural or interscholastic athletics. The form must summarize the district's sudden cardiac arrest awareness education program and applicable district policies on sudden cardiac arrest.

- Parents and guardians must sign the form to attest to their receipt of the document and authorize their child's participation in intramural or interscholastic athletics.

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- Coaches must annually review the district's sudden cardiac arrest program before commencing a coaching assignment. Coaches who fail to review their district's sudden cardiac arrest program as provided for under the Act, face revocation of their coaching permit.

SAFE SCHOOL CLIMATE PLANS

Three new laws require boards of education to review and revise their safe school climate plans.[2]

These laws include amendments to notice of the policy, the investigatory process, prevention strategies, surveys, and most notably, the addition of "teen dating violence" as a purpose of school climate plans in addition to bullying.

Suggested revisions to the safe school climate plan include the following:

"Definitions" should be revised to include:

- "Teen dating violence" means any act of physical, emotional or sexual abuse, including stalking, harassing and threatening, that occurs between two students who are currently in or who have recently been in a dating relationship."

References to the purpose of the policy should include teen dating violence, such as:

- "The purpose of this policy is to address the existence of bullying and teen dating violence in schools."

In the section on notice:

- Notice of the process by which students may report acts of bullying must be provided to students and parents at the beginning of each school year (in lieu of "annually").

In the section on reporting and the investigation process:

- Parents of both the alleged bully and alleged victim must receive "prompt notice that an investigation has begun."
- When meeting with parents of a student who has been bullied, schools must communicate not only the measures being taken to ensure the safety of the bullied student, but also the policies and procedures in place to prevent further acts of bullying.
- The law now explicitly states that school officials meeting with parents of the bully must be "separate and distinct" from school officials meeting with the parents of the victim.

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In the section on bullying prevention and intervention strategies:

- All references to prevention and intervention of bullying should also include the phrase "and teen dating violence," For example: "School rules prohibiting bullying, teen dating violence, harassment and intimidation and establishing appropriate consequences for those who engage in such acts."
- The list of potential anti-bullying strategies has been expanded to include use of "culturally competent school-based curriculum focused on social-emotional learning, self-awareness and self-regulation."
- Interventions with the bullied child are explicitly defined to include "referrals to a school counselor, psychologist or other appropriate social or mental health service, and periodic follow-up by the safe school climate specialist with the bullied child."

With regard to reporting to the State Department of Education:

- Boards of education that have not already had their safe school climate plan reviewed and approved by the State Department of Education must do so by September 1, 2014. The policy may make reference to this requirement by generally stating that "the safe school climate plan shall be submitted to the State Department of Education in accordance with state law."

In the section on periodic assessment of school climate:

- Assessment tools must include: "student assessment instruments, including surveys that contain uniform grade-level appropriate questions that collect information about students' perspectives and opinions about the school climate at the school and allow students to complete and submit such assessment and survey anonymously."

ADMINISTRATION OF MEDICATION

School districts are now required to store epinephrine at schools for the emergency administration of the medication to students who do not have a prior written authorization or doctor's order.[3] Schools must train qualified school personnel for this kind of emergency and the law requires that "there shall be at least one such qualified school employee on the grounds of the school during regular school hours in the absence of a school nurse." Although the law is effective as of July 1, 2014, staff must be trained before they can administer the emergency epinephrine and the State Department of Education and the State Department of Public Health have until December 1, 2014 to jointly develop a training program for non-medical staff to administer epinephrine in situations where students were not previously known to have allergies. Another logistical challenge presented by the new law is that parents can, in writing, direct that epinephrine not be used on their child in an emergency situation. Finally, and more generally, the Act clarifies "paraprofessionals" as "qualified school employees" for the administration of medication. Administration of medication policies should be revised to reflect the change in status for paraprofessionals (who previously

could only administer medication in limited circumstances) as well as the policies and procedures for emergency use of epinephrine for students not previously known to have allergies.

REPORTING CHILD ABUSE AND NEGLECT

There are two new laws that may require revisions to your district's child abuse and neglect policy:

Mandatory Suspension of School Employees Investigated by DCF

Effective October 1, 2014, Public Act 14-186, "An Act Concerning The Department Of Children And Families And The Protection Of Children" clarifies the circumstances in which DCF must share information with schools regarding school employees who are investigated by DCF for abuse and neglect. Existing law provides that if DCF determines that there is reasonable cause to believe that a child has been abused or neglected by a school employee who holds a certificate, permit or authorization issued by the State Board of Education, -or- if DCF has recommended that such employee be placed on the DCF child abuse and neglect registry, the Superintendent shall suspend such employee with pay and without termination of benefits pending further action by the board of education. The Act makes two changes to this existing process:

- The law expands the category of "school employees" from persons holding a certificate, permit or authorization issued by the State Board of Education to a school employee as defined by Conn. Gen. Stat. §53a-65, which more broadly includes teachers, substitute teachers, administrators, superintendents, guidance counselors, psychologists, social workers, nurses, physicians, paraprofessionals, coaches or any other person who, in the performance of his or her duties, has regular contact with students and who provides services to or on behalf of students enrolled in the district;

- The Act now requires both the DCF Commissioner's reasonable belief that a school employee has abused or neglected a child –and- the DCF Commissioner's recommendation that the employee be placed on the abuse and neglect registry to trigger the employee's mandatory suspension.

The section of your board's child abuse reporting policy that addresses when an employee must be suspended for the results of an investigation by DCF should be revised to reflect these changes.

Coaches as Mandatory Reporters

This new provision should have little to no impact on child abuse reporting policies because coaches who work for public schools are already mandated reporters by virtue of being "school employees" as defined by Conn. Gen. Stat. §53a-65. Nevertheless, the list of mandated reporters now includes paid youth camp directors or assistant directors and coaches who fall within the following categories:

- Coaches who hold a coaching permit issued by the State Board of Education;

- Coaches of intramural or interscholastic athletics who are age 18 or older;
- Any individual employed as a coach or director of a private youth sports organization, league or team who is age 18 or older;
- Any paid administrator, faculty, staff, athletic director, athletic coach or athletic trainer employed by a public or private institution of higher education who is 18 or older and not a student employee.

Sexual Abuse and Assault Awareness and Prevention Program

The second new law that might require a revision of your child abuse policy or the development of a separate policy is Public Act 14-196, "An Act Concerning a State-Wide Sexual Abuse and Assault Awareness Program." This Act requires the Department of Education (in consultation with others) to develop a sexual abuse and assault awareness and prevention program for use by boards of education. Boards of education must implement the program by October 1, 2015. The program must contain the following elements:

- For teachers, instructional modules that may include, but not be limited to, (a) training regarding the prevention and identification of, and response to, child sexual abuse and assault, and (b) resources to further student, teacher and parental awareness regarding child sexual abuse and assault and the prevention of such abuse and assault;
- For students, age-appropriate educational materials designed for children in grades K-12, inclusive, regarding child sexual abuse and assault awareness and prevention;
- A uniform child sexual abuse and assault response policy and reporting procedure that may include, but not be limited to, (a) actions that child victims of sexual abuse and assault may take to obtain assistance, (b) intervention and counseling options for child victims of sexual abuse and assault, (c) access to educational resources to enable child victims of sexual abuse and assault to succeed in school, and (d) uniform procedures for reporting instances of child sexual abuse and assault to school staff members.

The Act permits parents and legal guardians to exempt their children from participation in all or part of the program by sending written notification to the board of education (this provision may require amendment of your "Exemption from Instruction" or similar policy). If a student is exempted from participation, the board shall provide the student with the opportunity for alternative study or academic work.

STUDENT CONDUCT / SMOKING PROHIBITED

Effective October 1, 2014, a new law[4] prohibits the sale, delivery to or purchase or possession in a public place by persons under the age of 18 of electronic nicotine delivery systems (the so-called "e-cigarettes") or "vapor products," and imposes an array of fines for violation of the law. Boards of education should review their non-smoking policies, and should consider revision to their student discipline policies so as to include

such possession of e-cigarettes as a punishable offense.

STUDENT EXPULSION

The expulsion statute, Connecticut General Statutes §10-233d, has been amended with regard to the expungement of expulsion records from students' cumulative education records and the discretion to shorten or waive the expulsion period for certain misconduct.[5] Specifically, the Act does the following:

- Makes it clear that when an expulsion involves the possession of a firearm or deadly weapon, boards no longer have the discretion to "shorten or waive" the expulsion period as permitted by Conn. Gen. Sta. §10-233d(c)(2). That being said, the Act did not change two other sections of the expulsion law that address the length of expulsions. Therefore, despite the change to section (c)(2), boards appear to retain the discretion to "modify" a mandatory one year expulsion on a "case by case basis" per §10-233d(a)(2) and/or to readmit such expelled student at the discretion of the board per §10-233d(j)). The distinction appears to have some impact on the ability to expunge such expulsions.

- Eliminates the ability to expunge the expulsion records of students in grades 9-12 who have been expelled for possession of a firearm or deadly weapon.

- Requires boards of education to expunge expulsion records from the cumulative records of students who are in the eighth grade or lower who have been expelled based on possession of a firearm or deadly weapon upon such a student's graduation from high school.

- Expands the discretion of boards of education to expunge expulsion records from the cumulative records of a student before graduation (including students in grades K-8 who have been expelled for possession of a firearm or deadly weapon) if the student has demonstrated conduct and behavior in the years following the expulsion that warrants expungement. In making this determination, the board may receive and consider evidence of any subsequent disciplinary problems that have led to removal from a classroom, suspension or expulsion of the student.

Boards should consider amending expulsion policies to conform to these changes.

TRUANCY

The truancy statute now includes a special category of excused absences for students who are absent in order to visit with parents or legal guardians who have been called to active duty or are on leave from military deployment to a combat zone or combat support posting.[6] The Act provides that students will be granted up to ten excused absences for such purposes, and gives local and regional boards of education the discretion to grant additional excused absences for such purposes. The Act also states that students and their families are responsible for obtaining assignments from their teachers prior to any period of absence and making sure that such assignments are completed upon return to school. Boards of education should

consider amending their truancy and/or attendance policies to reflect this special category of excused absence.

FAMILY AND MEDICAL LEAVE

In 2012, the Connecticut General Assembly passed a law that created a special, reduced hours-worked FMLA eligibility threshold for school paraprofessionals. Under federal law, public school employees are required to work 1,250 hours in the twelve-month period preceding leave in order to become eligible for FMLA-protected leave benefits. As a result of the new law and the Connecticut Department of Labor's subsequent adoption of implementing regulations, paraprofessionals are eligible for FMLA leave once they have worked 950 hours after May 12, 2014. Therefore, your FMLA policy should be revised to reflect the following changes:

- Paraprofessionals are eligible for FMLA leave if they have been employed by the school district for no less than twelve months and have worked at least 950 hours after May 12, 2014.
- In order to be eligible for leave under the 950-hour rule, the hours must actually be worked. The use of accrued leave benefits (sick leave, vacation leave, etc.) does not count as time worked.
- Summer recess does not count as FMLA leave time unless a paraprofessional is required to report to work during the summer months.

In addition, districts must post notices that explain the new paraprofessional FMLA entitlement and inform employees of the procedures for filing complaints with the State Department of Labor. Notices must be posted prominently in places where they can be seen by employees and job applicants. Electronic posting may be sufficient so long as it meets all other notice requirements.

LAW ENFORCEMENT IN SCHOOLS

The definition of "retired police officer," for the purposes of employing school security personnel who possess a firearm in the performance of their duties, has been expanded.[7] Now, in addition to state and local police who have retired in good standing, boards of education may also employ federal law enforcement officers or police officers from other states who have retired in good standing and who meet or exceed the standards of the Police Officer Standards and Training Council for certification in Connecticut. Boards that have policies addressing this topic should amend such policies to reflect the expanded pool for armed school security personnel.

SPECIAL EDUCATION – NOTICE OF RIGHTS

Existing law requires that when a child has been identified as eligible for special education and at each Planning and Placement Team meeting, the school district must inform the parent/guardian or surrogate parent of their legal rights regarding special education. Now, a new state law requires that such notice must

also include notice of "the right of a parent, guardian or surrogate parent to withhold from enrolling such child in kindergarten, in accordance with the provisions of section 10-184" of the Connecticut General Statutes.[8] This law became effective upon passage. In light of the new law, schools should provide an addendum to the notice given to parents until the State Department of Education revises the model procedural safeguards.

SCHOOL CALENDAR

The recommendations of the Uniform Regional School Calendar Task Force have been adopted by a new law [9] that delays mandatory implementation of the uniform regional school calendar by a year (until 2016-2017) and to permit a school district to delay implementation for an extra year (2017-2018) if an existing employee contract makes such implementation "impossible." When implementation of the uniform regional school calendar law becomes mandatory, some school calendar policies may need to be revised to acknowledge the requirements of the law.

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[1] PUBLIC ACT 14-66, AN ACT CONCERNING YOUTH ATHLETICS AND CONCUSSIONS; PUBLIC ACT 14-93: AN ACT CONCERNING SUDDEN CARDIAC ARREST PREVENTION.

[2] PUBLIC ACT 14-172, AN ACT CONCERNING IMPROVING EMPLOYMENT OPPORTUNITIES THROUGH EDUCATION AND ENSURING SAFE SCHOOL CLIMATES; PUBLIC ACT 14-232: AN ACT CONCERNING THE REVIEW AND APPROVAL OF SAFE SCHOOL CLIMATE PLANS BY THE DEPARTMENT OF EDUCATION AND A STUDENT SAFETY HOTLINE FEASIBILITY STUDY; PUBLIC ACT 14-234: AN ACT CONCERNING DOMESTIC VIOLENCE AND SEXUAL ASSAULT.

[3] PUBLIC ACT 14-176: AN ACT CONCERNING THE STORAGE AND ADMINISTRATION OF EPINEPHRINE AT PUBLIC SCHOOLS AND PUBLIC INSTITUTIONS OF HIGHER EDUCATION.

[4] PUBLIC ACT 14-76: AN ACT CONCERNING THE GOVERNOR'S RECOMMENDATIONS REGARDING ELECTRONIC NICOTINE DELIVERY SYSTEMS AND YOUTH SMOKING PREVENTION.

[5] PUBLIC ACT 14-229: AN ACT CONCERNING THE EXPUNGEMENT OF A PUPIL'S CUMULATIVE EDUCATION RECORD FOR CERTAIN EXPULSIONS.

[6] PUBLIC ACT 14-198: AN ACT CONCERNING EXCUSED ABSENCES FROM SCHOOL FOR CHILDREN OF SERVICE MEMBERS.

[7] SECTION 254 of PUBLIC ACT 14-217, AN ACT IMPLEMENTING PROVISIONS OF THE STATE BUDGET FOR THE FISCAL YEAR ENDING JUNE 30, 2015.

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[8] PUBLIC ACT 14-39: AN ACT ESTABLISHING THE OFFICE OF EARLY CHILDHOOD, EXPANDING OPPORTUNITIES FOR EARLY CHILDHOOD EDUCATION AND CONCERNING DYSLEXIA AND SPECIAL EDUCATION.

[9] PUBLIC ACT 14-38, AN ACT CONCERNING A UNIFORM REGIONAL SCHOOL CALENDAR.