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Developments from the 2022 Session of the Connecticut General Assembly Affecting Independent Schools

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by Mark J. Sommaruga

Our firm had previously published alerts/posts on education and employment legislation that was enacted during the 2022 Regular Session of the Connecticut General Assembly. The following is a brief description of acts that may be of particular interest to Connecticut's Independent K-12 schools.

LEGISLATION AFFECTING EDUCATION

STUDENT MENTAL HEALTH ISSUES (AND MORE)

Public Act 22-80: An Act Concerning Childhood Mental and Physical Health Services In Schools. This omnibus Act addresses various issues affecting mental health services in the schools, and a wide variety of not necessarily connected matters.

Human Services Permit: The Act authorizes the State Board of Education upon the request of a school district or RESC to issue a “human services permit” to applicants with specialized training, experience or expertise in social work, human services, psychology or sociology. The Act sets forth minimum education/experience requirements for this permit, which would authorize holders to be employed and provide mental health and human services to students within their scope of practice/area of expertise or specialty. ***Please note: While this enactment expressly addresses teaching certification in the public schools, it is relevant for those independent schools that are approved providers of special education, as such providers must have appropriately certified administrative, instructional, and related service personnel.***

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Administration of NARCAN: The Act amends the state’s school medication administration laws to allow school nurses (or during their absence/unavailability, qualified/trained school employees) to administer opioid antagonists (i.e., NARCAN) to provide emergency first aid to students experiencing opioid-related drug overdose *and* who do not have prior written authorization from a parent or prior written order of a qualified medical professional. During regular school hours, there must be at least one such qualified/trained school employee on school grounds (at each school in the absence of a school nurse). A parent/guardian may submit a request in writing to the school nurse and medical advisor that an opioid antagonist not be administered to their child. The Act also requires the Department of Consumer Protection (in collaboration with SDE) to provide information to school districts on where they can acquire opioid antagonists. The Act authorizes prescribers or pharmacists certified to prescribe an opioid antagonist to enter into an agreement with schools on the distribution and administration of such antagonists. ***Please note: State regulations generally apply the administration of medication requirements to approved independent providers of special education and any independent school receiving health services from the public school district in which the school is located.***

Career and Technical Pathways Instructor Permit: The Act authorizes the State Board of Education (upon request of a school district or RESC) to issue a “career and technical pathways instructor permit” to any applicant with specialized training, experience or expertise in the field of manufacturing, allied health, computer technology, engineering or any of the construction trades. Such permit will authorize a person to hold a part-time position of not more than twenty (20) classroom instructional hours per week as a teacher of a class in such person’s area of specialized training, experience or expertise. The Act sets forth the qualifications and evaluation provision for a permit holder. Furthermore, the Act provides that no person holding such a permit shall fill a position that will result in the displacement of any person holding a teaching certificate who is already employed at such school. ***Please note: While this enactment expressly addresses teaching certification in the public schools, it is relevant for those independent schools that are approved providers of special education, as such providers must have appropriately certified administrative, instructional, and related service personnel.***

“Aging Out” for Eligibility for Special Education: The Act codifies the *A.R.* case by requiring provision of special education to qualifying students up to age 22 (instead of 21).

Task Forces: Finally, the Act includes a bevy of task forces and study groups. The Act establishes the state teacher shortage and retention task force, which shall develop a comprehensive report that includes recommendations that address 1) strategies to address attrition rates of teachers leaving the teaching profession, 2) the retention of teachers, 3) teacher shortages across subject matter disciplines, 4) the impact of retention and shortages in financially distressed school districts, and 5) streamlining teacher certification without diminishing standards or the professional value of a teaching certificate, and then submit a report on its findings and recommendations by January 1, 2024 to the General Assembly’s Education and Children’s Committee.

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The Act requires SDE to review the state's teacher certification statutes and regulations for obsolete provisions and barriers for recruitment, and report to the Education Committee by January 1, 2023.

The Act renames the minority teacher recruitment task force the "Task Force to Diversify the Educator Workforce" and requires it to conduct a study of existing recruitment and retention programs.

Public Act 22-81: An Act Expanding Preschool and Mental and Behavioral Services for Children. Among other things, this Act, which became effective in May following its passage, requires the Governor to proclaim May 26th to be "Get Outside and Play for Children's Mental Health Day." The Act tasks the University of Connecticut to study and evaluate the impact of social media and cell-phone usage on the mental health and educational experience of students in grades K-12, with findings, reports, and recommendations due to the Children and Public Health Committees by January 1, 2024.

Public Act 22-47: An Act Concerning Children's Mental Health. This Act includes a variety of provisions designed to address children's mental health, behavioral health and substance use disorders.

Relaxation of Licensure and Certification Requirements for Mental and Behavioral Health Providers and Social Workers: The Act requires the Commissioner of the Department of Public Health and the Commissioner of the Department of Children and Families ("DCF") to jointly develop and implement a plan to waive Connecticut licensure requirements for out-of-state mental and behavioral health care providers who have no disciplinary action or unresolved professional complaints pending against them. Additionally, the Act includes several measures designed to facilitate licensing and certification for social workers and mental and behavioral health care providers.

Children's Mental, Emotional and Behavioral Health Plan Implementation Advisory Board: The Act amends and expands the composition of the Children's Mental, Emotional and Behavioral Health Plan Implementation Advisory Board (the "Board") by including various mental health professionals and executive branch agency representatives on the Board. The Board, which was initially established in 2015, is charged with advising various state agencies, providers of mental, emotional or behavioral health services for children and families and others on a comprehensive plan and state standards concerning mental, emotional and behavioral health services offered for families with children.

DCF Repository of Emergency Mobile Psychiatric Services Best Practices: By July 1, 2023, the Act requires DCF to establish and maintain a repository for emergency mobile psychiatric services personnel to share best practices and deidentified and disaggregated data on student outcomes relating to emergency mobile psychiatric treatment of children.

Truancy Policy and Procedures: On or before September 1, 2023, boards of education shall be required to adopt and implement a new SDE-developed truancy intervention model that accounts for mental and behavioral health, or a similar plan that includes the same required components. In addition, as of July

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1, 2022, boards of education are now required to provide the parents of truant students with information concerning the existence and availability of the 2-1-1 Infoline program, and other pediatric mental and behavioral health screening services and tools. Lastly, as of July 1, 2023 boards of education must ensure that an appropriate school mental specialist (as that term is defined above) conduct an evaluation of each child who is a truant to determine if additional behavioral health interventions are necessary for the well-being of the child. In connection with these requirements, by September 1, 2023 the SDE and DCF are required to issue guidance to local and regional boards of education on best practices relating to intervention in certain behavioral health situations and when it is appropriate to contact the 2-1-1 Infoline program or use alternative interventions. ***Please note: While portions of this enactment expressly address matters in the public schools, it may still be relevant for independent schools, as the state truancy laws generally apply to students attending independent schools.***

Emotional Disability: Effective immediately, the Act requires the SDE to use the term “emotional disability” in lieu of the term “emotional disturbance” for purposes of the administration and provision of special education and related services. The Act further specifies that the term “emotional disability” shall be interpreted in a manner consistent with the federal Individuals with Disabilities Education Act (“IDEA”).

OMNIBUS BILLS

Public Act 22-116: An Act Concerning Assorted Revisions and Additions to the Education Statutes.

Paraprofessional Attendance at PPTs: With respect to current statutory requirements, effective July 1, 2022, the Act amended existing law to specifically require boards of education to notify paraprofessionals assigned to specific students of an upcoming planning and placement team (“PPT”) meeting regarding such student if the student or his or her parent, guardian or surrogate parent requests that the paraprofessional attend such PPT. If such a request is made, the district must give adequate advance notice of the PPT so that the paraprofessional can prepare for the meeting, and must also, upon request of the paraprofessional, provide training to the paraprofessional on his or her role at the PPT meeting. Following such PPT meeting, the attending paraprofessional, or any other paraprofessional who is providing special education or related services to such student, shall be permitted to review the student’s individualized education plan (“IEP”) or other educational program in order to provide special education or related services to such student in accordance with the IEP or other program. ***Please note: Independent schools should be prepared to at least facilitate this enactment, to the extent that they may have relevant personnel attending a PPT meeting.***

Task Forces and Reports: The Act requires the Connecticut Prevention Network to develop a report on the implementation of “recovery schools” designed specifically for students in recovery from substance

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use disorder in other states and the feasibility of implementing one or more of said schools in our state. Such report is to be submitted to the Department of Mental Health and Addiction Services, SDE and Education Committee of the General Assembly by no later than January 1, 2024.

The Act extends the deadline for the Special Education Task Force that was created last year to study issues relating to the provision and funding of special education in the state from January 1, 2023 to January 1, 2024.

Public Act 22-38: An Act Implementing the Recommendations of the Department of Education. Among other things, this Act extends the term for public school teaching certification by permitting the Commissioner of Education to reissue both the initial certificate (for someone who holds it but has not taught under it) and the provisional certificate, and extends the validity of the professional certificate from 5 years to 10 years. ***Please note: While this enactment expressly addresses teaching certification in the public schools, it is relevant for those independent schools that are approved providers of special education, as such providers must have appropriately certified administrative, instructional, and related service personnel.***

Public Act 22-118: An Act Adjusting the State Budget for the Biennium Ending June 30, 2023, Concerning Provisions Related to Revenue, School Construction and Other Items to Implement the State Budget and Authorizing and Adjusting Bonds of the State. While ostensibly for the purpose of implementing the budget, this Act – commonly referred to as “the Implementer” – addresses a variety of topics including the following notable education law issues.

Accreditation: Beginning July 1, 2023, the Act requires the SDE to allow independent schools to accept curriculum accreditation from Cognia (a nonprofit accreditation and certification agency).

Special Education Funding: This Act requires the SDE to compile and analyze information from school districts on the costs of special education. The SDE must identify districts with expenditures on special education that are 2 ½, 3, 3 ½ and 4 times the district’s net current expenditures per student, along with analysis of cost to reimburse districts at each level of expenditure. The Act replaces the existing “within available appropriations” threshold for the excess cost grant for special education with a three-tiered threshold system based on the property wealth of a town. Currently, the funding of special education costs for a student above four and half times the per pupil costs of such district is subject to reimbursement within available appropriations (and there is a proportionate reduction for all such grants if the need for such grants exceeds the available appropriations for that year). The Act groups towns based upon wealth (“AENGLC”), and the state will pay on a sliding scale when the grant need exceeds appropriations, with the least prosperous districts receiving 76.25% of their grant and on the other end of the scale, the most prosperous districts receiving 70% of their grant. ***Please note: The ability of school districts to receive such excess cost special education grants may affect their***

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willingness to support a placement in a independent school.

Public Act 22-87: An Act Concerning the Identification and Prevention of and Response to Adult Sexual Misconduct Against Children. This Act, makes minor changes to mandated reporter requirements, imposes new obligations with respect to the distribution of mandated reporting policies and sexual abuse and assault resources, imposes new sexual abuse and assault, bystander and interaction with children training requirements.

Mandated Reporters and Distribution of Mandated Reporter Policy and Sexual Abuse and Assault Awareness Resources: The Act requires each local or regional board of education to distribute its mandated reporter policy electronically to all school employees on an annual basis. Starting in the 2022-23 school year, the Act also requires electronic distribution of guidelines regarding identifying and reporting child sexual abuse to (1) all school employees, (2) members of the board of education, and (3) the parents and guardians of students enrolled in the schools under the jurisdiction of the board of education. Thereafter, starting in the 2023-24 school year, it also requires electronic distribution of information regarding the sexual abuse and assault awareness and prevention program identified or developed pursuant to section 17a-101q of the General Statutes to (1) all school employees, (2) members of the board of education, and (3) the parents and guardians of students enrolled in the schools under the jurisdiction of the board of education.

Sexual Abuse and Assault, Bystander and Interaction with Children Training: In addition to the above, on or after July 1, 2023, the Act mandates that each school employee complete (1) training regarding the prevention and identification of, and response to, child sexual abuse and assault, (2) a bystander training program, and (3) an appropriate interaction with children training program. This training must be repeated every three years, at a minimum.

Miscellaneous Changes: Finally, the Act creates an address confidentiality program to provide a substitute mailing address for any person who wishes to keep their residential address confidential due to safety concerns including because of (1) being a victim of family violence, (2) injury or risk of injury to a child, (3) kidnapping, (4) sexual assault, (5) stalking, (6) trafficking in persons, or (7) child abuse or neglect that was substantiated by DCF and was the basis for issuance of a restraining order, civil protection order or termination of parental rights.

Please note: While portions of this enactment expressly address matters in the public schools, it may still be relevant for independent schools, as 1) many of the personnel working in the independent schools are mandated reporters, 2) mandated training reporter training will likely have to be updated, and 3) it may be a best practice to ensure that mandated reporting policies and procedures are provided electronically to one's employees.

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LEGISLATION AFFECTING EMPLOYERS

NON-DISCRIMINATION/EMPLOYMENT & DOMESTIC VIOLENCE PROTECTIONS

Public Act 22-82: An Act Concerning Online Dating Operators, The Creation of a Grant Program to Reduce Occurrences of Online Abuse and the Provision of Domestic Violence Training and Protections for Victims of Domestic Violence. This Act, which takes effect on October 1, 2022, adds status as a domestic violence victim as a protected class under Connecticut Fair Employment Practices Act (“CFEPA”) (and prohibits discrimination against such persons). The Act amends CFEPA to prohibit employers from refusing to provide a reasonable accommodation (including a reasonable leave of absence) to an employee for the purpose of seeking attention to injuries caused by (or services relating to) domestic violence, unless the absence would cause an undue hardship to the employer. Employers can request certain specified supporting documentation from employees with respect to a request for such a leave of absence; however, employers must maintain the confidentiality of information (to the extent permitted by law) regarding one’s status as a domestic violence victim.

The Act authorizes the Connecticut Commission on Human Rights and Opportunities (“CHRO”) to require employers with three or more employees to post in a prominent location information concerning domestic violence and the resources available to victims of domestic violence. The Act requires each state agency (but not independent employers) to provide a minimum of one hour of training and education related to domestic violence and the resources available to victims of domestic violence 1) to all employees by July 1, 2023, and 2) to all employees hired on or after January 1, 2023, not later than six months after they start work. The Act sets forth the contents of such training, and these training requirements may be met by using an online training and education video (or other interactive method of training and education) to be developed by CHRO in conjunction with the Connecticut Coalition Against Domestic Violence (and made available at no cost to each state agency).

Lastly, of great significance to many small employers throughout Connecticut (and seemingly unrelated to the stated focus of the Act), the Act lowers the threshold for the definition of an “employer” covered under the CFEPA from an employer employing three employees to an employer employing *one* employee or more. The Act expands the definition of “employee” under CFEPA to include any elected or appointed official of a municipality, board, commission, counsel or other governmental body.

Please note: Employers may have to amend non-discrimination policies to accommodate victims of domestic violence. Resources available to the victims of domestic violence must also be posted.

EMPLOYEE FREE SPEECH AND “CAPTIVE AUDIENCES”

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Public Act 22-24: An Act Protecting Employee Freedom of Speech and Conscience. This Act, which **took effect on July 1, 2022**, prohibits employers from requiring employees to attend meetings (or listen to speech or view communications) sponsored by the employer, the primary purpose of which is to communicate the employer's opinion concerning religious or political matters. This Act does NOT prohibit: 1) Employers from communicating to their employees any information that the employer is required by law to communicate or is necessary for employees to perform their job duties; 2) institutions of higher education from meeting or communicating with employees as part of coursework, symposia, or an academic program at the institution; 3) “casual conversations” between employees (or a single employee) and an agent/representative of an employer, provided that participation in the conversations is not required; or 4) a requirement limited to an employer's managerial and supervisory employees. **The Act also does not apply to a religious corporation, entity, association, educational institution, or society that is exempt from the requirements of Title VII of the Civil Rights Act of 1964 or the CFEPA with respect to speech on religious matters to employees who perform work connected with such entities’ activities.**

In addition to these so-called “captive audience” provisions, the Act amends the state statute protecting employees from discipline or discharge due to their exercise of free speech (Connecticut General Statutes §31-51q) by limiting the damages available under it to lost wages/compensation, and thus eliminates any right to punitive damages, although attorney’s fees/costs remain available. However, the Act also broadens Conn. Gen. Stat. §31-51q so as to prohibit employers from even threatening to subject an employee to discipline or discharge due to their exercise of free speech rights.

ELECTIONS

Public Act 22-129: An Act Concerning Probate Court Operations. Among other things, this Act expands upon a 2021 law that requires employers (through June 30, 2024) to grant employees, upon request, two hours of unpaid time off from their regularly scheduled workday to vote in regular state elections (and special elections for congresspersons or state legislators) so as to also require such leave for special elections for probate court judges.

MISCELLANEOUS

JUNETEENTH

Public Act 22-128: An Act Establishing Juneteenth Independence Day as a Legal Holiday. Effective October 1, 2022, this Act establishes a new state holiday on June 19th - Juneteenth Independence Day. If this holiday occurs on a school day, school districts can choose to close their schools for such day; if schools are in session on that date, districts shall require each school to hold a suitable nonsectarian educational program in observance of such holiday. ***Please note: This Act may be relevant to the extent that independent schools 1) provide employees with a day off on state holidays, and 2) are in coordination with public***

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schools with respect to their calendars.

Please contact any of our School Law attorneys should you have any questions regarding the Acts that were passed and how they may impact your school.

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