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The Education Works

EDUCATION NEWS FROM SOUTHSIDE WORKS

Maiello Brungo & Maiello

ATTORNEYS AT LAW

Sexual Harassment In The Spotlight

From #MeToo to the Times Up Movement, one thing is clear given the recent headlines relating to celebrities and others – sexual harassment is now front and center in the psyche of the American public. Sexual assault and discrimination claims have been filed against high-profile figures from Hollywood to Washington D.C. The Times Up Movement began as a New Year's Day initiative to combat sexual harassment in the workplace and has now reached popular award shows where actors/musicians are dressing in black and/or wearing white roses in a show of solidarity with the movement. The movement's goal is to empower victims of inequality and harassment to take action, and it has established a legal fund to assist victims in seeking redress in court.

As a result, it is advisable to take stock of your school district's current culture, policies and procedures to ensure that you, as leaders, are taking all necessary precautions to protect your employees and students. By taking proactive steps, you will avoid being caught unprepared to address complaints within your school district.

It is now time to conduct the annual review and training required by many of your sexual harassment policies. It is simply not enough to send out an email reminder to your staff of the school district's sexual harassment policy. It is important that you review your sexual harassment policy and procedures. As school board members, you must understand how your school district responds to complaints and assess whether the current process is working.

Training is key. Provide opportunity for small groups of employees to engage, ask questions and receive expert advice in order to understand the school district's policies to avoid workplace harassment issues.

Taking these steps will send a clear message to employees, students and your community that at the governance level, your school district takes harassment and discrimination concerns seriously.

Our experienced School Law team is here to help. Contact MB&M to discuss how we can assist with policy and procedure review and interactive training programs tailored to your school district's needs.

Maiello Brungo & Maiello

A FIRM COMMITMENT TO YOU

Social Media Posts And Personal Email – The Public's Right To Know

Public officials must have a heightened awareness of the material posted on their public Facebook pages. Any information touching on public concerns posted on these pages could be subject to disclosure under the Right to Know Law.

Recently, the Pennsylvania Office of Open Records ("OOR") issued a final determination in the matter of *Noel Purdy v. Borough of Chambersburg*. The case involved a Right to Know Request for "copies of all Facebook posts and associated comment threads from [the Borough Mayor's] public figure Facebook page... this is to include all related posts and comments that have been deleted from the Facebook page." The Borough initially denied the portion of the request relating to the Borough Mayor's Facebook account, stating that these posts constituted private social media activity and that the posts on the account were not records of the Borough. In Purdy's Appeal, Purdy claimed that the Mayor had both a public figure account and a private account, and she further indicated that she was only seeking posts on the Facebook page that had been used by the Mayor in his official capacity.

In its determination, OOR found that the Mayor's public Facebook account was linked to the Borough's official website. Additionally, OOR further held that the Borough Mayor's public Facebook page stated that he was a "Public Figure in Chambersburg, Pennsylvania." The page contained discussions and posts regarding activities within the Borough, including those relating to the police department and councilmembers, and contained contact information for the Borough. Ultimately, OOR held that the Mayor's public Facebook page constituted a record within the meaning of the Pennsylvania Right to Know Law, and found that Facebook posts, associated comments, and messages sent via Facebook's Messenger application regarding matters of public concern were subject to disclosure under the Right to Know Law, unless material could be redacted.

This determination is consistent with prior decisions of the Office of Open Records that have held that the location of electronic communications is irrelevant when an individual requests records pertaining to governmental business. In the case of *Mollick v. Township of Worcester*, an individual requested email between the members of a governmental deliberative body (in this case the Board of Supervisors of a township) pertaining to municipal business. The Commonwealth Court held that such email constituted "records" that were "in the possession" of the Township and under the Pennsylvania Right to Know Law were subject to disclosure. In so holding, the Court stated that the township's contention that it was not in possession of the requested documents was not a basis for denial of the request. As the Commonwealth Court stated "regardless of whether the Supervisors herein utilized personal computers or personal email accounts, if two or more of the Township Supervisors exchanged emails which document a transaction or activity of the Township, and which were created, received, or retained in connection with a transaction, business, or activity of the Township, the Supervisors may have been acting as the Township, and those emails could be 'records' 'of the Township.' As such, any emails that meet the definition of 'record' under the RTKL, even if they are stored on the Supervisors' personal computers or in their personal email accounts, would be records of the Township."

In the world of electronic and social media communications, elected officials must recognize that they are always representing the governmental entity when discussing entity business. Elected officials must further be aware that any electronic communications discussing governmental business, even those transmitted or stored on a personal device, could be subject to disclosure under the Right to Know Law, subject to appropriate redaction.

The attorneys on Maiello, Brungo & Maiello, LLP's Education Law Team assist our school district clients with RTKL requests on a weekly, if not daily, basis. If you have questions on the processing of any RTKL request, the Education Law Team at Maiello, Brungo & Maiello, LLP, 412-242-4400, is available to answer your questions.

Digital Accessibilty: What Education Leaders Need To Know

Technology initiatives in our schools bring significant benefit to the educational experience. But have you stopped to consider whether these technology initiatives are accessible to all? The Internet is fundamentally designed to work for all people, regardless of hardware, software, language, culture, location, or physical or mental ability. When the Web meets this goal, it is accessible to people with a diverse range of hearing, movement, sight, and cognitive ability. Thus, the impact of one's disability may be radically changed while utilizing the Web because the Web removes barriers to communication and interaction that many people face in the physical world. However, when websites, web technologies, or web tools are badly designed, they can create barriers that exclude people from using the Web. With more learning and interaction occurring online, accessibility has become a major concern for school districts. When these resources are found to be inaccessible to students, teachers, parents or others with disabilities, your school district may be opening itself to complaints and legal challenges alleging disability discrimination.

Marcie Lipsitt, an outspoken special-education advocate, has filed hundreds of federal complaints against school districts when it appears their websites aren't accessible to people with vision and hearing disabilities. "I will file as long as I need to file," Lipsitt said. "I'm hoping my efforts will inspire others to file these complaints. If one person files in every school district, wow, we'd have tens of thousands of accessible school districts." http://www.freep.com/story/news/education/2016/07/04/michigan-woman-fights-accessible-websites-us-school-districts/86526716/ last visited on 4/5/17.

Spurred by close to 400 complaints filed by education advocate Marcie Lipsitt against public educational entities across the country, the Office for Civil Rights ("OCR") has found itself tackling allegations that school district web sites are not accessible to those with disabilities. The complaints are rooted in a seemingly

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straight-forward precept, but one that might often be overlooked. Specifically, a school's digital resources must be accessible to users including those who have physical, sensory, cognitive, or learning disabilities; such accessibility applies to a school's public-facing website, so as not to discourage or prevent disabled students, parents or employees from utilizing the online resources. The complaints filed with OCR allege that the school district websites run afoul of the Americans with Disabilities Act (ADA) and Section 504 because certain pages were not accessible to these individuals. Generally, in investigating these institutions, OCR has found the following web design issues that made the sites inaccessible or only partially accessible to disabled users: videos without closed captions; images without alternative text markup; website features or structure that was not navigable by keyword — a necessary function for people who are blind, have low-vision or limited dexterity; or poor color contrast for text, making it illegible for some.

While these complaints have caught many school districts, as well as OCR, off-guard, there is a path forward, through a voluntary resolution agreement. Based on available data, most of the complaints are being resolved with voluntary resolution agreements between the school districts and OCR. These agreements generally consist of two parts: (1) Assurances of Nondiscrimination with a written commitment to make and maintain an accessible web presence, and (2) written Benchmarks for Measuring Accessibility by establishing a set of technical accessibility standards. The agreements typically detail the process for complying with the laws, starting with an audit of existing web content and an adoption of an official web accessibility policy. Additionally, school districts are often required to implement an OCR-approved process to ensure new content is accessible as well as a plan for remediating content deemed inaccessible during the audit.

If OCR has yet to bring its scrutiny to your web site, there are steps that can be taken to review your site for accessibility compliance. One way to begin to identify common accessibility problems is through "WAVE," a free online tool to evaluate website accessibility. It can be found at http://wave.webaim.org/

Upon review and identification of any accessibility issues, school districts should work with their IT Departments to ensure not only that the website pages are accessible, but also that proper training is given to any staff who add content to the website to ensure such content is accessible.

If you have questions about the requirements for website accessibility, development of accessibility notices and policies, assistance with an OCR complaint investigation, or tailored training and consultation with your professionals on compliance with the ADA, please contact the Education Law Team at Maiello Brungo & Maiello at 412-242-4400.

"You're Out Of Order!" – When Enough Is Enough

Civil discourse among School Board members and members of the public who attend meetings is necessary for the orderly administration of School District business. However, as Board Members, it is important to remember that citizens enjoy the protections of the First Amendment in attending public meetings, even under circumstances in which their speech may be considered disruptive.

In a recent 2017 case decided by the United States Court of Appeals for the Third Circuit, Barna v. Board of School Directors of the Panther Valley School District, a member of the public had engaged in disruptive and, at times, threatening behavior over the course of several Board meetings. The Board informed him that he was banned from attending future Board meetings because his conduct had become intolerable. He sued the School Board and seven Board Members in their official and individual capacities for what he claimed was a violation of his First Amendment right to address the Board at public meetings.

The District Court for the Middle District of Pennsylvania implied that the member of the public had a viable claim because the Board's ban on his future attendance at meetings was "not sufficiently tailored to serve a significant government interest and leave open ample alternative channels of communication." However, the District Court held that the Board and its members enjoyed qualified immunity and dismissed the lawsuit.

On appeal, the Third Circuit took no position on the viability of the First Amendment claim and simply held that the Board members did not enjoy qualified immunity in their official capacities (although they were immune individually). The Third Circuit vacated the District Court's determination on the issue of official capacity qualified immunity and remanded the case back to the District Court. Based on the District Court's initial opinion, it is likely that the Court will find that the School District's attempt to ban the member of the public from future meetings violates his First Amendment rights. School Board members must recognize the public's right to attend and participate in meetings, even when individuals engage in conduct that could be considered disruptive. Absent some extenuating circumstances, such as threats of violence, Boards cannot preemptively bar individuals from attending meetings even though the individual has been disruptive in the past.

The full version of this article is available on our website under the Resource tab at www.mbm-law.net.

Special Education Resolutions!

What can we do better in 2018 to avoid compliance problems and/or litigation in special education? We all know that there are things that could be done better. Let's resolve to take action and review what changes and improvements are in order. Here are a few suggestions:

***tRansparency.** If you make a mistake, own it, address it and move on. It is best to take action now to provide missing services rather than explain it later in due process.

***Expertise.** Remember that school officials are considered experts in their areas of certification. You can rely upon the opinions of your staff, sup-ported with data, to make special education pro-gram recommendations.

***Special.** First and foremost, special education services begin with the school district's regular education curriculum. Every student is entitled to access the school district's curriculum with the assistance of special education.

***cOmmunicate.** Discuss issues with your team and with parents. Ask for all stakeholders to give insight into the program, and document everything.

***Learning.** Remember, this is the focus of special education.

***Unite.** You are all on the same team. Administration, regular education, special educa-tion and support staff all play important roles in ensuring compliance with special education laws and regulations.

***Track.** Document goals, behaviors, attendance, days of suspension, etc. You must meet all of these timelines.

***admIt.** If you make a mistake, own it, address it and move on. It is best to take action now to correct any issues, rather than attempt to explain it later in due process.

***goaLs.** Make sure to address all identified needs of the student, and make sure you document them.

***pwN.** Consent based upon prior notice is an important procedural safeguard. Use the PWN to document all actions taken or refused.

2018

tRANSPARENCY | EXPERTISE

SPECIAL | cOMMUNICATE

LEARNING | UNITE

TRACK | ADMIT

GOALS | PWN

RESOLUTIONS

A NEW YEAR, A REFRESHED PERSPECTIVE

Michael Brungo congratulates, Falco Muscante and Dave Raves on becoming Partner.

Maiello Brungo & Maiello Announces Two Partners

Maiello, Brungo & Maiello is pleased to announce that David Raves and Falco Muscante have been named Partners.

"David and Falco epitomize the talent MB&M brings to client service and the model we want all of our lawyers to follow. Both are committed to the firm and their clients, and we recognize them for their individual achievements and dedication," said Al Maiello, Senior Managing Partner of Maiello Brungo & Maiello.

Mr. Raves has been with the firm since 1999 and leads the firm's Construction Law Team. Mr. Raves is also a registered architect and integrates his architectural experience with his legal practice. Mr. Raves focuses his practice on construction matters including litigation, suretyship and land use.

Mr. Muscante has been with the firm since 2005 and is a leading member of the firm's School & Municipal Law Team. Mr. Muscante has represented public entities for 30 years, including school districts, boroughs, townships, third class cities, sewage/water authorities and other entities. While advising public clients in the many different areas of the law that touch upon their daily operations, he also has served as special counsel and litigation counsel for public entities in numerous administrative and court proceedings.

To speak with any of our attorneys, call 412.242.4400

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