



49 Community Drive
Augusta, Maine 04330

Phone: 622-3473 ♦ Fax: 626-2968

Website: www.msmaweb.com

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MSMA STAFF

Cornelia L. Brown, Ph.D.

Executive Director

cbrown@msmaweb.com

Charlotte K. Bates

Director of Policy and Resource Services

cbates@msmaweb.com

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SCHOOL LAW NEWS



◆ 5TH CIRCUIT REJECTS SECTION 504 PEER BULLYING CLAIM, WHERE STUDENT COMMITTED SUICIDE, FINDING SCHOOL WAS NOT DELIBERATELY INDIFFERENT TO EVENTS

A three-judge panel of the U.S. Court of Appeals for the Fifth Circuit has ruled that a Texas school district did not violate a disabled student's right to a free appropriate public education (FAPE) under section 504 of the Rehabilitation Act because the individualized education plan the district developed for the student provided him with a FAPE under the Individuals with Disabilities Educational Act. It also rejected the family's claim that the school district failed to adequately respond to incidents of peer harassment/bullying in violation of section 504. The panel, applying the "deliberate indifference" standard established in *Davis v. Monroe County Board of Education*, 526 U.S. 629 (1999), determined that the district's response to the incidents was not "clearly unreasonable" and, therefore, not deliberately indifferent. Finally, the panel rejected the family's § 1983 claims based on a "caused-to-be subjected" theory and "state-created danger" theory. The case is *Estate of Montana Lance v. Lewisville Independent School District* (LISD).

Montana Lance attended Stewart's Creek Elementary School (SCES) where he received special education services for his disabilities in accordance with his individualized education plan (IEP). When Montana was in second grade his mother informed a teacher that "he was making verbal statements about hurting himself at home." The school obtained a full psychological evaluation, and as a result Montana was identified as "Emotionally Disturbed."

Throughout his time at SCES, Montana was subjected to peer bullying. On January 12th of his fourth grade year, Montana told a teacher he wanted to commit suicide.

School Counselor Mike Riek concluded that the "lethality" of Montana's statements was low, but still notified Montana's father. Montana's parents arranged for him to meet with a psychologist, on January 18th, who said Montana gave no indication that he was intending to commit suicide.

On January 21st some students called Montana a name and pushed him into the rails of the cafeteria serving line. Montana "stormed off and sat by himself at an empty table." Later that day, Montana was sent to the school office for talking in class. While in the office he was allowed to use the nurse's bathroom. When a significant amount of time passed, the nurse checked on Montana, and he said "he'd be right out." However, Montana soon stopped responding to the nurse's inquiries. Because the nurse did not have a key, the custodian had to use a screwdriver to open the door. When the nurse and custodian entered the bathroom, they found Montana hanging from his belt, which was secured to a metal rod in the ceiling. Montana had no pulse and was pronounced dead upon arrival at the hospital.

The Lance family sued LISD in federal district court. They alleged claims under § 1983 (deprivation of civil rights), section 504, and state law. LISD filed a motion for summary judgment. The district court granted LISD's motion. The Fifth Circuit panel affirmed the lower court's decision.

One of the family's claims was that LISD "acted with gross professional misjudgment by failing to provide Montana educational services necessary to satisfy § 504's FAPE requirement (the "failure-to-provide" claim). To prevail on this claim the Lances' had to show that the School District "refused to provide reasonable accommodations for the handicapped plaintiff to receive the full benefits of the school program."

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5th Circuit Rejects Section 504

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The panel rejected this claim because LISD had provided Montana a FAPE under the IDEA and the “§ 504 regulations distinctly state that adopting a valid IEP is sufficient but not necessary to satisfy the § 504 FAPE requirements.” The parents never challenged the sufficiency of Montana’s IEP or the process through which it was developed. The court ruled that the evidence established that the School District had satisfied its § 504 FAPE obligations by implementing a valid IEP under the IDEA. Montana’s IEP “was developed through [IDEA’s] procedures” and was “reasonably calculated to enable the child to receive educational benefits.” Because “to establish a claim for disability discrimination, in th[e] education context, something more than a mere failure to provide the ‘free appropriate education’ required by [IDEA] must be shown,” summary judgment was appropriate on the Lances’ failure-to-provide claim.

The parent’s second § 504 claim was that the School District was deliberately indifferent to the disability-based harassment Montana received from his peers.

The court set the legal stage: This claim derives from *Davis v. Monroe County Board of Education*—a Title IX case (526 U.S. 629 (1999)). *Davis* held that school districts may be liable for failing to address student-on-student sexual harassment “only where they are deliberately indifferent to . . . harassment, of which they have actual knowledge, that is so severe, pervasive, and objectively offensive that it can be said to deprive the victims of access to the educational opportunities or benefits provided by the school.” The panel noted that 5th Circuit courts have extended *Davis*’s reasoning to claims for student-on-student harassment under Title VI and that other circuits also have interpreted *Davis* to apply with equal force in the § 504 setting. In this case, the Lances and the School District do not dispute that *Davis*’s test applies to § 504 claims.

In the § 504 setting, *Davis* requires a plaintiff to show: (1) he was an individual with a disability, (2) he was harassed based on his disability, (3) the harassment was sufficiently severe or pervasive that it altered the condition of his education and created an abusive educational environment, (4) school administrators knew about the harassment, and (5) school administrators were deliberately indifferent to the harassment.

The panel focused on the deliberate indifference element, and noted that the Supreme Court in *Davis* narrowed its application. The panel cited the statement in the *Davis* opinion that “Courts should refrain from second-guessing the disciplinary decisions made by school administrators . . . [s]chool administrators will continue to enjoy the flexibility they require so long as funding recipients are deemed ‘deliberately indifferent’ to acts of student-on-student harassment only where the recipient’s response to the harassment or lack thereof is clearly unreasonable in light of the known circumstances.”

In the panel’s words, “Section 504 does not require that schools eradicate each instance of bullying from their hallways to avoid liability. Judges make poor vice principals.”

The panel determined that deliberate indifference could not be attributed to LISD for three reasons. First, LISD had fully investigated the two documented incidents of harassment and punished all of the students involved. Second, LISD staff had responded to Montana’s needs in a proactive manner, often intervening or showing initiative in helping him. Third, the family’s expert acknowledged that LISD’s anti-bullying policies are “appropriate and up to national standards” and testified that LISD “provided an employee training presentation, entitled ‘Bullying and Harassment in Schools.’”

Relying on Fifth Circuit precedent, the panel concluded LISD’s “response was not clearly unreasonable.” It emphasized that the fact that the response proves ineffective does not necessarily equate to it being “clearly unreasonable.” The panel also pointed out that other federal circuit courts have applied *Davis* in a similar manner.

The panel also rejected the parents various state-created danger theories under § 1983 because these theories had never expressly been adopted in the 5th Circuit. Furthermore, there was no special relationship between LISD and Montana, nor any evidence that the school knew about an immediate danger to Montana’s safety.

Although this case focuses on the “deliberate indifference” standard and the school’s response to the bullying that may or may not have been directly or solely the impetus for the student’s suicide, it serves as a reminder on two fronts. First, in regard to bullying: schools should take reports of bullying seriously, do thorough investigations, intervene appropriately, attend to the safety of targets/victims, and engage in the “alternative disciplinary practices” identified in Maine law that are designed to address the bully’s behavior while keeping him or her in school. And second, school administrators should be sure that the suicide awareness education and suicide prevention and intervention training that is required by 20-A MRSA § 4502(5-B) beginning in the 2014-2015 school year takes place.

-NSBA Legal Clips, March 6, 2014

◆ NJ COURT TAKES NOVEL APPROACH: LETS SCHOOL DISTRICT SEEK CONTRIBUTION FROM PARENTS OF BULLIES IF DISTRICT HELD LIABLE

As reported on *myCentralJersey.com*, two school districts in New Jersey have won an important ruling in their effort to have the parents of students who bullied a fellow student, who has sued the districts for their failure to halt the bullying, contribute to any awards that may be issued against the districts.

The suit was filed against the Flemington-Raritan Regional School District and the Hunterdon Central Regional High School District, seeking to hold the districts liable under New Jersey's Anti-Bullying Bill of Rights Act for alleged bullying beginning in the fourth grade and continuing into high school. The parents of the student say their child was bullied by close to a dozen students over that time, and that the school districts were negligent in responding. Among the consequences, the child spent three months in a hospital combating anorexia that developed from the bullying.

The school districts filed claims against the parents of the alleged bullies under New Jersey's Joint Tortfeasors Contribution Law, arguing that if the districts are found liable, the parents of the bullies must share that liability.

Superior Court Judge Yolanda Ciccone issued a 12 page ruling letting the school district's claim for contribution continue. The judge wrote that the districts "state that discovery will show that the parents were made aware of the conduct of their children and any failure to act may be deemed willful or wanton behavior." She also said the school districts' "negligence is only made evident by occurrence of the parents' and bullies' negligence." "Both acts of negligence were required here for plaintiff to suffer harm," she said. The school district's "failure to adequately respond to plaintiff's complaints of bullying allowed further bullying to take place."

-*myCentralJersey.com*, 3/18/14 by Sergio Bichao

◆ ACLU CHARGES THAT LOCAL NEW HAMPSHIRE SCHOOL BOARD RULES RESTRICTING MEMBER'S SPEECH VIOLATE FIRST AMENDMENT

The New Hampshire Civil Liberties Union (NHCLU) is demanding that the Timberlane School Board (TSB) repeal two rules it recently adopted that limit the ability of board members to publicly comment on board matters, reports the *Eagle-Tribune*, contending both rules violate the First Amendment. Rule 8 prohibits board members other than the chair from speaking to members of the

press. Rule 7 requires board members to support all board decisions, regardless of how individual members voted.

In a letter to TSB Chair Nancy Steenson and Superintendent Earl Metzler, NHCLU attorney Gilles Bissonnette stated, "There is no compelling governmental interest that could possibly justify such a substantial intrusion on First Amendment rights." In the NHCLU letter, Bissonnette argued that board members "should be (and are) able to speak their mind, especially through the media which enables political ideas to reach the largest number of constituents."

Steenson has previously said the Board has always operated under the understanding that only the chairman is allowed to speak to reporters and that the rules just formalized that decision, providing "a unified voice as a board."

In its press release announcing its demand letter to the Board, the NHCLU stated that the problem with the rules "is that they ignore the bedrock principle that an elected official enjoys the same free speech rights as any other citizen. Indeed, individuals do not surrender their free speech rights when they become elected officials, and the government may not impose greater speech restrictions on elected officials than it could impose on members of the general public."

According to Bissonnette, NHCLU has not yet decided whether it will file suit if TSB fails to repeal the rules.

-*New Hampshire Eagle Tribune*, 4/1/14 by Doug Ireland

◆ SCHOOL BUS DRIVER FIRED FOR FACEBOOK POSTING CRITICAL OF DISTRICT SUES GEORGIA SCHOOL BOARD

According to the *Times-Georgian*, the American Civil Liberties Union Foundation of Georgia (ACLU-GA) has filed a lawsuit against the Haralson County School District (HCSD) and Superintendent Brett Stanton challenging the termination of Johnny Cook, a former bus driver for HCSD, for comments he made on his Facebook account in May 2013.

Cook's suit claims he was fired last year after refusing to remove the following Facebook post claiming the school refused to feed a student lunch because he had no funds left on his account:

What! This child is already on reduced lunch and we can't let him eat. Are you kidding me? I'm certain (sic) there was leftover food thrown away today. But kids were turned away because they didn't have .40 on their account. As a tax payer, I would much rather feed a child than throw it away. I would rather feed a child than to give food stamps to a crack

School bus driver fired*(continued from page 3)*

head. (...) the next time we can't feed a kid for forty cent, please call me. We will scrape up the money. This is what the world has come to.

HCSO contends the incident involving the student never happened. It says the student did not go through the lunch line. HCSO provided media outlets with video footage of the child bypassing the line. Haralson County Middle School Principal Brian Ridley said, "The child didn't go through the lunch line and never asked for a lunch, so he was never denied one."

Cook says he got his account from the student, who said to him "Mr. Johnny, I'm hungry." When Cook asked him why, the student replied that he didn't eat lunch that day. Cook then queried why not, to which the student said, "When I took my tray to the register, they told me I didn't have any money on my account." Later that day, Cook decided to post to the social media website.

HCSO has a policy against employees posting negative statements about the school system.

"This lawsuit is not about whether a child got fed, but whether the school district has the right to prevent its employees from abusing their positions by spreading false information linked to our schools through the Internet. Clearly, free speech is a protected right, but knowingly spreading false information and defaming our school district is another," Superintendent Stanton said.

The ACLU-GA's press release announcing the filing of the suit expresses the opposite view, stating, "The First Amendment of the U.S. Constitution forbids government officials from retaliating against employees who speak out on their own time on important community issues, even if those issues are critical of government practices and policies."

-Times-Georgian, 2/27/14, By Amy Lavendar

◆ NINTH CIRCUIT UPHOLDS BAN OF AMERICAN FLAG T-SHIRT DURING CINCO DE MAYO DAY

A U.S. Court of Appeals for the Ninth Circuit three-judge panel has ruled that a California high school assistant principal did not violate students' free speech rights when he prohibited them from wearing clothing bearing the image of the American flag on the day the school was celebrating the Mexican holiday of Cinco de Mayo. It also concluded the assistant principal's action did not violate the students' equal protection or due process rights. The case is *Dariano v. Morgan Hill Unified Sch. Dist.*

Relying on *Tinker v. Des Moines Independent Community School District*, 393 U.S. 624 (1969), the panel concluded that the school administrator's actions were justified because, based on the circumstances, he could

reasonably forecast a substantial disruption caused by the wearing of the American flag. It also employed the *Tinker* substantial disruption standard in rejecting the equal protection and due process claims.

Live Oak High School held a Cinco de Mayo celebration on May 5, 2010, presented in the "spirit of cultural appreciation." It was described as honoring "the pride and community strength of the Mexican people who settled this valley and who continue to work here." The school had a history of violence among students, including racial violence. At least thirty fights, both between gangs and between Caucasian and Hispanic students, had occurred in the previous six years. A police officer is stationed on campus every day to ensure safety on school grounds. At the previous year's Cinco de Mayo celebration, Caucasian and Mexican students yelled threats and obscenities at each other after an American flag was displayed, and the school administration had to intervene.

On Cinco de Mayo 2010, three Caucasian students wore T-shirts depicting the American flag. Some students warned the administrators that the shirts might cause trouble and the students may be in danger. Assistant Principal Miquel Rodriguez instructed the three students to either remove the shirts or turn them inside-out so the flag would not be visible. The students refused both options. Rodriguez told the students he was concerned for their safety, a point the students did not dispute. All three students said they wanted to wear the shirts and bear the risk of violence against them. One student was permitted to wear his shirt because Principal Nick Boden thought its logo was benign and would not receive attention. The other two students were told again to remove the shirts or turn them inside-out, or they could be suspended. When they again refused either option, they were sent home for the day with an excused absence. Neither student was disciplined. Both students received threatening messages at home and by text over the next couple days and their parents kept them home from school out of concern for their safety.

Assistant principal Rodriguez and Principal Boden based their decision "on anticipated disruption, violence, and concerns about student safety in conversations with students at the time of the events, in conversations the same day with the students and their parents and in a memorandum and press release circulated the next day."

The parents filed suit in federal district court on behalf of their children and in their own right against the Morgan Hill Unified School District (MHUSD), Rodriguez and Boden. The suit alleged violation of the students' federal constitutional rights to free speech, due process and equal protection, and their state constitutional right to free speech. The district court granted Rodriguez's motion for summary judgment. The claims against Boden were stayed because he had filed for

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Ninth Circuit upholds ban of American flag t-shirt*(continued from page 4)*

bankruptcy. The court also dismissed all the claims against MHUSD based on sovereign immunity under the Eleventh Amendment. The parents only appealed the ruling as to the claims against Rodriquez.

The Ninth Circuit panel unanimously affirmed the lower court's ruling, concluding that the school administrators' actions were constitutional under *Tinker* because they could reasonably forecast that the students' American flag apparel would cause substantial disruption. The panel pointed out that the level of disruption needed to justify official intervention is "relatively lower in public school than it might be on a street corner." Unlike *Tinker*, where there was no evidence of student interference with school operations or a reasonable belief that such interference would occur, the panel found that the school's history of racial tension and gang violence, the physical threats which occurred when the American flag was displayed at the previous Cinco de Mayo celebration, and the warnings administrators received that day that the Caucasian students might be harmed clearly met the reasonable forecast standard.

The panel commented that the "school officials' actions were tailored to avert violence and focused on student safety, in at least two ways." First, school officials restricted certain clothing, but did not punish the students for wearing that clothing. "School officials have greater constitutional latitude to suppress student speech than to punish it." Second, school officials did not impose a blanket ban on all American flag apparel. Instead, they "distinguished among the students based on the perceived threat level, and did not embargo all flag-related clothing."

The panel also rejected the students' Equal Protection Clause claim, which it characterized as "a variation of their First Amendment challenge." The students' claimed that "they were treated differently than students wearing the colors of the Mexican flag, and that their speech was suppressed because their viewpoint was disfavored." The panel explained the importance of First Amendment law to this claim: "Where plaintiffs allege violations of the Equal Protection Clause relating to expressive conduct, we employ 'essentially the same' analysis as we would in a case alleging only content or viewpoint discrimination under the First Amendment."

Accordingly, the panel again employed the *Tinker* standard. It pointed out that under *Tinker* school officials may engage in viewpoint discrimination "to justify a prohibition against the wearing of a certain symbol, if such a prohibition is 'necessary to avoid material and substantial interference with schoolwork or discipline.'" The panel observed, "Schools may, under *Tinker*, ban certain images, for example images of the Confederate flag on clothing, even though such bans might constitute viewpoint discrimination."

The panel found that the students failed to offer any evidence "demonstrating that students wearing the colors of the Mexican flag were targeted for violence," and "offered no evidence that students at a similar risk of danger were treated differently, and therefore no evidence of impermissible viewpoint discrimination."

The panel further rejected the students' due process claim, a challenge to the student dress code which prohibited clothing that "indicate[s] gang affiliation, create[s] a safety hazard, or disrupt[s] school activities." The panel found that the "dress code is in line with others that the federal courts have held to be permissible." The panel also pointed out that the dress code "incorporates the standards sanctioned in *Tinker*: safety and disruption." In sum, it stated:

It would be unreasonable to require a dress code to anticipate every scenario that might pose a safety risk to students or that might substantially disrupt school activities. Dress codes are not, nor should they be, a school version of the Code of Federal Regulations. It would be equally unreasonable to hold that school officials could not, at a minimum, rely upon the language *Tinker* gives them.

-NSBA Legal Clips, March 6, 2014

◆ **ARIZONA APPELLATE COURT RULES SCHOOL HAS NO DUTY OF CARE TO STUDENT TRAVELLING TO AND FROM SCHOOL**

In February 2014, an Arizona appellate court ruled that a school was not liable for injuries that a fifth grader sustained while riding her bicycle home from school. The court concluded that the school owed no duty of care to the student once she left the school's custody. The case is *Monroe v. BASIS School, Inc.*

On October 17, 2003, Jennifer Monroe was struck and injured by a truck while riding her bike home from school, and as a result spent two weeks in a coma and was permanently injured. The accident occurred in a busy intersection located one block from her school. The intersection was equipped with marked crosswalks and traffic lights. There was no crossing guard stationed at the intersection. At the time of the accident, Jennifer was in fifth grade at BASIS, a charter school (charter schools under Arizona law are defined as a public school). When Jennifer turned 18, she filed suit against BASIS, alleging the school had been negligent in failing to post a crossing guard at the intersection and in locating its school in close proximity to a dangerous intersection.

The trial court granted BASIS' motion for summary judgment, holding the school owed no common law or statutory duty of care to Jennifer, and she appealed.

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Arizona appellate court rules*(continued from page 5)*

The appellate court affirmed the trial court's decision. The court held that a school does not have a duty of care to a student travelling to and from school when the student is not in the school's custody or participating in a school-sponsored function. Its analysis would appear to apply with equal weight to a regular public school district.

Schools owe students a duty of care, but it is not limitless. Citing the Restatement (Third) of Torts and various court decisions, the court summarized the state of the duty: "The relationship between a school and its students parallels aspects of several other special relationships—it is a custodian of students, it is a land possessor who opens the premises to a significant public population, and it acts partially in the place of parents." Where a duty arises from a special relationship, the duty is tied to expected activities within the relationship. Therefore, in the student-school relationship, the duty of care is bounded by geography and time, encompassing risks such as those that occur while the student is at school or otherwise under the school's control. The student-school relationship "exists only so long as a student is in its care and custody during school hours," terminating when child has departed from school's custody.

The appellate court cited the general rule as "absent a statute to the contrary or an undertak[ing] specifically assumed, an educational institution has no duty 'to conduct or supervise school children in going to or from their homes.'" Based on this rule, a school has no affirmative common law duty to provide crossing guards. In circumstances, not present here, where a school undertakes an affirmative act, such as voluntarily providing crossing guards, a duty of care is imposed on that conduct.

The appellate court also rejected the plaintiff's argument that the school's proximity to a busy intersection created a danger for elementary school students, which imposed a duty on BASIS to provide a crossing guard. Because there was no affirmative conduct on the part of the school, it had no common law duty of care.

The appellate court held further that the school had no statutory duty to place crossing guards at the intersection. It also held that public policy considerations do not create a duty, concluding that Monroe had cited no public policy authority and that the court was not aware of any such authority that would support a general duty of care against harm away from school premises, absent a school-supervised activity or a particular statute. The court said that to hold otherwise would imply that the student-school relationship extends to situations where the school lacks custody over the student and the student is not participating in a school-sponsored activity. The court declined to define the scope of duty in such broad terms.

-NSBA Legal Clips, March 20, 2014

FROM THE FERPA FILES

◆ SENDING MASS EMAIL ABOUT OTHERS' FAILING GRADES VIOLATES FERPA

A school staff member sought guidance from the Family Policy Compliance Office (FPCO) of the U. S. Department of Education, disclosing that she had accidentally sent an email to every student who failed a test as a group. The email allowed the failing students who received the email to know which fellow students had failed the test.

In *Anonymous, Letter to*, 17 FAB 2 (FPCO 2013), the FPCO responded that under FERPA, a school may not generally disclose personally identifiable information from a student's education records to a third party unless the student's parent or eligible student has provided written consent. The FPCO reminded her that a student's grade on a test would generally be part of the student's education records. The FPCO program analyst advised that while there are several exceptions to the prior written consent requirement for disclosure, none of the exceptions were met in this situation. FPCO provided the staff member with a FERPA fact sheet and guidance document and advised it would launch an investigation should it receive a complaint regarding the improper disclosure.

This is best regarded as a brief cautionary tale.

-Reported in the *FERPA Bulletin*, Volume 17, Issue 1 (January 2014)

◆ PARENT NOT ENTITLED TO COPIES OF SPECIFIC TEST FORMS

A parent wrote the Family Policy Compliance Office (FPCO) stating that after a school district Admissions, Review and Dismissal meeting on March 21, 2012, the parent had requested copies of five specific forms used as part of the student's psychological evaluation. When the parent did not receive the copies by May 21, 2012, the parent filed a complaint with the FPCO. In *Anonymous, Letter to*, 17 FAB 5 (FPCO 2013), FPCO Director Dale King responded

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FERPA Files*(continued from page 6)*

that FERPA requires educational agencies afford parents the opportunity to inspect and review their minor children's education records within 45 days after receipt of a request. However, a school district is not required to provide copies of education records unless a failure to do so would effectively prevent the parent from exercising the right to inspect and review the records. Here the district had given the parents the opportunity to inspect and review the records (the forms) and there was no indication that copies were necessary because the parent did not live beyond commuting distance to the school nor were there any other circumstances that prevented the parent from inspecting and reviewing the records in person. As the lack of copies did not prevent the parent from exercising his or her rights, no FERPA violation occurred.

-Reported in the *FERPA Bulletin*, Volume 17, Issue 1 (January 2014)

◆ U.S. DEPARTMENT OF EDUCATION RELEASES NEW GUIDANCE ON PROTECTING STUDENT PRIVACY WHILE USING ONLINE EDUCATIONAL SERVICES

On February 25, 2014, the U.S. Department of Education's Privacy Technical Center (PTAC) released guidance intended to "help school systems and educators interpret and understand the major laws and best practices protecting student privacy while using online educational services."

The following is from the press release introducing this guidance:

This guidance summarizes the major requirements of the Family Educational Rights and Privacy Act (FERPA) and the Protection of Pupil Rights Amendment (PPRA) that relate to these educational services, and urges schools and districts to go beyond compliance to follow best practices for outsourcing school functions using online educational services, including computer software, mobile applications and web-based tools.

"As an education community, we have to do a far better job of helping teachers and administrators understand technology and data issues so that they can appropriately protect privacy while ensuring teachers and students have access to effective and safe schools," said U.S. Secretary of Education Arne Duncan. "We must provide our schools, teachers, and students cutting-edge learning tools—and we must protect our children's privacy. We can do both—but we will have to try harder to do it."

Recent advances in technology and telecommunications have dramatically changed the landscape of education in the United States and resulted in the proliferation of student data. Today's classrooms increasingly employ on-demand delivery of personalized content, virtual forums for interacting with other students and teachers, and a wealth of other interactive technologies that help foster and enhance the learning process. While these technologies have the potential to transform the educational process, they also raise new questions about how best to protect student privacy.

The Department is issuing this guidance to answer questions from schools, districts and vendors about how student data can and should be used, what steps are necessary to protect students' privacy, and how to prevent the misuse, abuse and commercialization of students' information. The guidance addresses a range of concerns regarding the security and privacy of student data. For example: "*What does FERPA require if personally identifiable information from students' education records is disclosed to a provider?*" and, "*Do FERPA and PPRA limit what providers can do with the student information they collect and receive?*"

This guidance, titled *Protecting Student Privacy While Using Online Educational Services: Requirements and Best Practices*, is available online at <http://ptac.ed.gov>. If you click on the "04/01/2014 Publication," you can also access a slide deck, transcript and recording from PTAC's March 13, 2014 webinar offering additional information.

-Charlotte Bates