



# Hot topics in student welfare policies

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Policy	Guidelines/regulations	District-level policies/handbooks
<p><i>“The who, what and why”</i></p> <ul style="list-style-type: none"><li>• Sets goals</li><li>• Resolves issues</li><li>• Defines and aligns administrative responsibilities</li><li>• Establishes oversight and evaluation procedures</li></ul>	<p><i>“The how”</i></p> <ul style="list-style-type: none"><li>• Supports and implements board policy</li><li>• Provides direction for administrative decisions and district procedures</li><li>• Involves input of administrators</li></ul>	<p><i>“Here’s how it’s done every day”</i></p> <ul style="list-style-type: none"><li>• In line with board policies, how policies will be implemented in a practical manner</li><li>• Provides detailed direction for daily operations</li><li>• Written by the expert in that area</li><li>• Gives administration greater flexibility for revision and implementation</li></ul>



# **BULLYING AND DISCRIMINATION**



# Hazing and bullying

- Ohio Revised Code (RC) 3313.666 (Jessica Logan Act)
  - Prohibits harassment, intimidation or bullying
  - Requires districts to adopt a policy
    - Must appear in student handbooks and code of conduct
    - Training on policy (as funds are available)
    - Statement on policy sent home to custodial parents
    - Bullying policy added to in-service training
- Does not create a separate cause of action



# Hazing and bullying

- Policy must include the statutory definition of of bullying
  - Intentional written, verbal, electronic or physical act exhibited toward another particular student more than once
  - Behavior must:
    - Cause mental or physical harm to the other student
    - Be sufficiently severe, persistent or pervasive that it creates an intimidating, threatening or abusive educational environment for the other student
- Definition of electronic act – act committed through the use of a cell phone, computer, pager, personal communication device or other communication device.



# Hazing and bullying

- Policy must include:
  - Statement prohibiting bullying of any student on school property, on a school bus, or at school-sponsored events
  - Statement providing for the possibility of suspension of a student found responsible for harassment, intimidation, or bullying by an electronic act



# Hazing and bullying

- Policy must include:
  - Procedure for reporting and documenting incidents
    - Must be reported to principal or designee
    - Must notify custodial parents of students involved
    - Must allow for anonymous reporting
    - Must include a statement prohibiting false reports
  - Procedure for responding to and investigating incidents



# Hazing and bullying

- Policy must include:
  - Strategy for protecting victims or other students from new or additional bullying
  - Discipline procedures
  - Requirement that district provide semiannual summary of incidents to board president and post on district website





# Hazing and bullying

- Nondiscrimination and bullying
  - When hazing and/or bullying is based on race, color, national origin, sex, or disability; and
  - the behavior creates a hostile environment;
  - the hazing and bullying investigation is suspended while the applicable nondiscrimination grievance procedures are conducted



# Nondiscrimination and Title IX

- Title IX of the Education Amendments of 1972 prohibits discrimination on the basis of sex in education programs or activities operated by recipients of federal financial assistance
- U.S. Department of Education (USDOE) Office of Civil Rights (OCR) Dear Colleague Letter – April 4, 2011
  - Publish a notice of nondiscrimination – must be “widely” distributed and be posted on school websites, various locations throughout the school and be published in electronic and printed publications.
  - Must designate a Title IX coordinator (name and/or title, office address, telephone number and email address)
  - Must adopt and publish grievance procedures that provide for prompt and equitable resolution of sex discrimination complaints



# Nondiscrimination and Title IX

- Reports and complaints of sex discrimination
  - All members of school community encouraged to report
  - District employees are required to report
- Timeframes
  - Should establish timeframes for resolving complaints (60 days and periodic updates)
- Interim measures
  - protect the alleged victim and ensure they continue to have equal access to all educational programs and activities during the investigation (may apply to incidents outside of school grounds)
  - Schedule changes, seating changes, academic modifications, school counseling....



# Nondiscrimination and Title IX

- Applicable evidentiary standard:
  - The Title IX coordinator will determine whether or not, by a “**preponderance of the evidence**” the allegations are true
  - Evidence must show the alleged discrimination/sexual harassment was more likely than not to have occurred



# Nondiscrimination and Title IX

- Grievance procedure may include both an informal process and a formal process
  - Title IX coordinator serves as the grievance officer and coordinates the District's efforts to resolve complaints
  - Process should be prompt and impartial (free from conflicts of interest)
  - Informal process can be terminated by either party at any time in order to pursue the formal process
  - Informal process may not be used when the alleged discrimination or harassment may constitute sexual violence or any criminal act



# Nondiscrimination and Title IX

- No retaliation
  - no one shall retaliate against any person because he or she files a complaint or participates in any way in an investigation
- Notice
  - both parties are to receive notice of the outcome of an investigation
- Filing a complaint with the Title IX coordinator does not prevent an individual from pursuing redress through other avenues (OCR, contacting law enforcement)



# Transgender students

- The USDOE released guidance on its interpretation of the rights/protections of transgender students under Title IX.
- Despite this guidance, whether Title IX's prohibition against discrimination "on the basis of sex" extends to cover a student's gender identity or transgender status remains unsettled



# Transgender students

- Due to unsettled nature of the law districts are encouraged to work with their legal counsel to ensure that all students in the district are in a safe, supported and secure learning environment
- Districts are required to have several policies regarding nondiscrimination, but are not required to have a separate policy related to transgender students.
- Current district policy should already cover all protected classes as required by state and federal law





# Transgender students

- Districts should work with transgender students who seek accommodations individually and on a case-by-case basis and involve legal counsel
- If districts wish to clearly take a position on the issue in policy it is wise to work with legal counsel
- This an area of law and policy that continues to develop. Our policy and legal teams will continue to monitor the issue
- Highland Local Schools case- U.S. District Court
  - Ordered district to allow transgender female to use the girls bathroom and be treated otherwise as a girl



# STUDENT HEALTH AND SAFETY



# Crisis management

- With safety being a growing concern for our schools, many districts are exploring options for increasing safety
- Possible ways to manage safety in schools and to minimize threats
  - School resource officers (SROs)
  - Door barricades
  - Arming staff



# School resource officers

- SROs are sworn law enforcement officers assigned to one or more schools on a daily basis
- Roles of SRO
  - Law enforcement officer
  - Informal counselor
  - Educator



# School resource officers

- Law enforcement role
  - Keep the peace in the school so students can learn and teachers can teach
  - Analyze security issues within the building and school grounds
  - Assist in development or revision of emergency management plans



# School resource officers

- Informal counselor role
  - Provide guidance to students and act as a link to support services inside and outside of the school
  - Mutually beneficial-students learn to trust the SRO and understand that someone cares, while the SRO gains critical information about what is going on in the school



# School resource officers

- Educator role
  - The SRO has specialized knowledge of the law, substance abuse/drugs, local crime trends, and the juvenile justice system
  - Assist in staff training regarding safety and security



# School resource officers

- Collaboration between school administrators and SROs is critical
- Set clear goals and expectations
- SROs should be aware of school discipline policies and procedures
- Need a strong MOU in place to specify roles and responsibilities
- Does not require a board policy





# Door barricades

- House Bill (HB) 64 established a method for door barricades to be incorporated into school emergency management plans
- RC 3781.106 - Ohio Board of Building Standards required to adopt rules allowing:
  - “for the use of a device by a staff member of a public or private school that prevents both ingress and egress through a door in a school building, for a finite period of time, in an emergency situation, and during active shooter drills”



# Door barricades

- The rules set forth the following requirements for the use of door barricades:
  - School safety plan must have been adopted
  - Only used in emergency situation or active shooter drill
  - Engaged only by staff
  - Only engaged for a finite period of time
  - Police and fire officials have to be notified prior to use (proof required)
  - In-service training for staff required and records verifying training are maintained



# Door barricades

- Door barricade cannot be permanently mounted to the door, and removal cannot require more than one operation unless statutory exemptions are met
- Americans with Disabilities Act
  - ADA may apply to the use of these devices
  - While state law may allow use, federal law may prevent it
  - Little guidance on this issue
- Wise to consult with legal counsel prior to implementing use



# Arming staff

- Many school boards are considering arming staff as a part of the district's overall safety plan
- Considerations –
  - Affirmative board action required- (resolution) authorizes certain qualified employees who possess the appropriate licenses, skills and training to be armed
  - Possession of a concealed firearm requires a CCW license, received through the State of Ohio
  - Create training requirements for staff designated to carry a firearm



# Arming staff

- Involve board counsel
- Policy implications
  - Board policy is not required and not recommended
  - Specific/detailed information regarding the program, names of those authorized to carry and training should be in emergency management plans (these are not considered a public record)



# EpiPens and inhalers

- HB 296 (2014) Authorizes school districts to procure non-individual specific EpiPens for use in emergency situations
- HB 39 (2016) - Authorizes school districts to procure non-individual specific inhalers for use in emergency situations
  - Metered-dose or dry powder inhalers
  - May include spacers, holding chambers or other devices that attach to improve the delivery of medication
- Permissive
- Liability language
- Districts participating are encouraged to maintain two EpiPens/inhalers in each building



# EpiPens and inhalers

- May accept donations
- Annual ODE reporting requirement
- Superintendent is required to adopt a policy governing the maintenance and use of EpiPens procured under RC 3313.7110/inhalers procured under RC 3313.7113
  - Must first consult with licensed health professional authorized to prescribe drugs
  - Must meet statutory requirements



# The opioid epidemic

- Heroin, fentanyl, opioid pain medications
- Unintentional fentanyl-related drug overdoses increased from 503 in 2014 to 1,155 in 2015
- The percentage of prescription opioid-related deaths declined for the fourth straight year
- 81 million fewer opioid doses dispensed to Ohio patients in 2015 than in 2011





# The opioid epidemic

- Expansion of Naloxone (Narcan) availability and use:
  - HB 170 (14)
  - HB 4 (15)
  - HB 462 (16)



# The opioid epidemic

- Ohio Revised Code (RC) section 2925.61
  - (B) “A family member, friend, **or other individual** who is in a position to assist an individual who is apparently experiencing or at risk of experiencing an opioid-related overdose, is not subject to criminal prosecution for a violation of section 4731.41 of the Revised Code or criminal prosecution under this chapter if the individual, acting in good faith...”
  - (D) A peace officer employed by a law enforcement agency, acting in good faith...



# Naloxone

- Family member, friend, or other individual is protected from criminal liability if they do all of the following:
  - Obtain naloxone by prescription or from another source listed in statute;
  - administer naloxone AND
  - attempt to summon emergency services



# Naloxone in Schools

- Talk with board counsel
  - Written procedures for handling, storing, administering, etc.
- Consider naloxone side effects
- Meet with first responders
  - Consider including in school safety plan



# Drug abuse prevention

- HB 367 (15)
  - Requires school districts to include instruction on prescription opioid abuse prevention in the district health curriculum
- Start Talking! Ohio



# Drug testing students

- District may authorize a program of random drug testing for students participating in extracurricular activities
- Cannot require random drug testing for all students in the school (not participating in extracurricular activities)
- Breathalyzers – considered a “search” – fourth amendment protections



# Youth tobacco use

- Electronic cigarettes
  - Battery operated products designed to deliver nicotine, flavor and other chemicals to the user by creating a vapor the user inhales
  - Take various forms
  - Deliver nicotine (addictive substance) at unknown levels
  - Increased use among teens
  - Overall impact on health still largely unknown



# Youth tobacco use

- Juvenile tobacco laws now include “alternative nicotine products”
  - “an electronic cigarette or any other product or device that consists of or contains nicotine that can be ingested into the body by any means, including but not limited to chewing, smoking, absorbing, dissolving or inhaling.”
- Requires age verification from individuals purchasing alternative tobacco products and requires age verification for internet sales
- Ohio’s smoking laws do not include alternative nicotine products
  - Consider revising tobacco/smoking policies for staff and community members to restrict the use of electronic cigarettes on district property





# Address confidentiality

- HB 359 (Safe at Home Program)
  - Allows victims of domestic violence, stalking, human trafficking, rape or sexual battery to apply for a confidential address
  - Work with applicant assistant to apply to Secretary of State
  - School districts must use confidential address of participants if requested



# Address confidentiality

- For address confidentiality program participants district cannot disclose:
  - Confidential address
  - School address (includes higher education institution address)
  - Business or place of employment
  - First-degree misdemeanor for violation if have access to this information and knowingly disclose it (except where disclosure is required by law)



# RESOURCES AND HOT TOPICS



# Resources

- Hazing and Bullying
  - October 26, 2010 Dear Colleague Letter  
<http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf>
- Nondiscrimination
  - April 4, 2011 Dear Colleague Letter  
<http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.pdf>
  - Title IX Resource Guide  
<http://www2.ed.gov/about/offices/list/ocr/docs/dcl-title-ix-coordinators-guide-201504.pdf>
- School resource officers
  - <https://nasro.org/>
  - <http://www.osroa.org/>
- Drug prevention  
<http://starttalking.ohio.gov/>



# Hot topics

- Homeless students
- Foster students
- Zero tolerance
- Truancy
- CPR instruction



# OSBA Policy Services

- Premium, Standard and Review policy manual drafting services
- Webhosting service
- Update service
- Policy Development Quarterly (PDQ)
- Bank of sample policies and regulations
- Telephone helpline



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# Thank you!



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