



ESC Region 12 Updates

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J.T. v. DeBlasio (Class Action)

- This Special Education case out of the Southern District of New York has drawn some criticism from the Federal judge overseeing the case:
- The Court entered an Order to Show Cause to counsel for Plaintiffs on September 2, 2020. In a relatively uncommon step, Judge Colleen McMahon ordered Plaintiffs' counsel to show why the Court has jurisdiction, (i.e. why the Court has the authority to hear the claims, over any out-of-state school districts or state Departments of Education).
- In addition, Counsel for the Chancellor of New York City Schools and the New York City mayor has filed a Motion to Dismiss the case.
- Plaintiffs have files a response. We are awaiting a ruling from the suit.

De'Andre Arnold v. Barbers Hill Independent School District ("Hair Love" case)

- This case involves an African-American student who contested Barbers Hill ISD's modified dress code;
- At the beginning of the school year, the dress code required that the hair of male students not "extend, at any time, below the eyebrows, below the ear lobes, or below the top of a t-shirt collar. Corn rows and/or dread locks were permitted if they met the aforementioned lengths." The students were able to comply with the dress code and keep their "locs" by wearing a thin headband and tying their hair up and back so that they did not extend beyond the mandated length. BHISD then made a mid-year change to its policy that determined compliance with the policy by judging the hair length "when let down."

De'Andre Arnold v. Barbers Hill Independent School District ("Hair Love" case)

- Houston Federal District Court issued a temporary injunction against BHISD while the case is pending on the merits. Finding that the policy makes a distinction based on sex, the Court applied the heightened "intermediate-scrutiny" standard. This heightened standard of review by the Court put a "demanding" burden on the BHISD to present an "exceedingly persuasive" justification for the hair-length policy. This meant that the policy must "at least" be "substantially related to the achievement" of "important government objectives."

Resulting ACLU Letter to Texas School Districts

- Several of our client districts have received a letter regarding the *Arnold* case from the Texas ACLU letter:
- The *Arnold* decision does not bind schools located outside of the Houston Division of the Southern District of Texas. The *Toungate* opinion is still good law but note that the court's holding was based upon interpretation of the Texas Constitution and state law.

Resulting ACLU Letter to Texas School Districts

- **The most legally defensible position is a relaxed hair code. While the Arnold decision does not render current dress codes unconstitutional, school districts should carefully review existing dress codes and be prepared to justify and defend those codes. In particular, the Arnold court held that at trial, Barbers Hill ISD must present an “exceedingly persuasive” justification for its policy. The court stated that where the dress code treats students differently based upon race, sex, religion or other protected classification, the policy must be “at least” substantially related to the “achievement of important governmental objectives”.**

TSTA Files Grievance

- **The Texas State Teachers Association has filed a formal grievance on behalf of multiple educators against a school district regarding the District’s return-to-school plan. The grievance alleges that the District’s plan puts teachers, students, and employees at risk for exposure to COVID-19 by requiring in-person instruction on District campuses. Further allegations include violation of Texas Education Code § 4.001(b) and Board Policy AE(LEGAL), which state that campuses shall maintain safe environments for student learning. The grievance also asserts violation of Texas Labor Code § 411.103, which dictates that employers provide a workplace that is “reasonably safe and healthful for employees.”**

TSTA Files Grievance

- **The grievance seeks many remedies, notably including, but not limited to:**
 - 1. the provision of personal protection equipment to all employees;**
 - 2. teacher option to teach virtually;**
 - 3. suspension of in-person education and the district-wide return to distance learning;**
 - 4. mandate that all students and employees wear protective face coverings on campuses;**
 - 5. the provision of technological devices to all students and employees to use in distance learning;**

and,

 - 6. modifications and/or improvements to various ventilation and other components of District facilities.**

New Title IX Policies and Procedures:

- **August 14, 2020 was the effective date for the new Title IX regulations from the U.S. Department of Education regarding sexual harassment complaints;**
- **The new legal requirements were incorporated into the updated FFH and DIA policies contained in TASB Update 115 which your district should adopt immediately unless already done;**
- **These updated local policies require superintendents to administratively adopt formal complaint procedures. TASB Legal drafted model administrative procedures, but the model procedures must be tailored to the needs of each school district;**
- **The procedures provide the framework for training the Title IX Coordinator as well as other district administrators who may be designated to serve in the roles of investigator, decision-maker or informal facilitator.**

Returning to School amid COVID-19:

Our Districts are facing numerous issues in this challenging time:

- **School Finance**
- **Safety of Teachers, Staff and Students**
- **Temporary Paid Leave Under FFRCA**
- **Whether to Require Face Masks**
- **Challenges of Virtual Learning and Virtual Events**

PYT Ed Clips are available for information on these and many more subjects!



WELCOME TO THE POWELL, YOUNGBLOOD & TAYLOR TEAM

Angela Tekell



**Ms. Tekell will be heading our
brand new Waco Office at 400
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THANK YOU! QUESTIONS?

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