

HK School Law Monthly Newsletter



Greetings!

Thank you for your interest in the HK School Law Monthly Newsletter.
We look forward to hearing from you soon!

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We're growing! Visit us at our newest location!

In addition to our Lake Arrowhead offices, we're pleased to announce a second office location in Upland, California. Our second office will be located at: 1425 W. Foothill Blvd., Suite 100, Upland, CA 91786. Our office phone numbers remain the same. Toll Free: 1-800-577-0663. Direct: 909-744-8775.

Please continue to address all correspondence to our secure PO Box at PO Box 1352, Blue Jay, CA 92317-1352.

Weighted Lotteries

Are you all aware of the [new federal guidelines](#) concerning "weighted" lotteries? In January, the Feds released guidance permitting charter schools (pursuant to State law), to hold "weighted" lotteries that favor disadvantaged students. Disadvantaged students are defined as "low-income students, students with disabilities, English-language learners, and students who are migrant, homeless, or delinquent." Notwithstanding such weighted lotteries, a charter school would still be eligible for federal charter school aid. Keep in mind that if State law does not allow for weighted lotteries, you cannot hold one, and if State law is silent on the subject then you need express permission from the Attorney General. If you have questions about weighted lotteries, please contact us at any time.

Boss-Related Stress Not A "Disability," California Court Says

California's Third Appellate District held this past week in a published opinion that an employee's inability to work under a particular supervisor because of anxiety and stress regarding oversight is not a "disability" under California's Fair Employment and Housing Act, affirming a lower court's dismissal of a wrongful termination and disability discrimination case against Sutter Medical Foundation.

In [Higgins-Williams v. Sutter Medical Foundation \(Case No. C073677\)](#), a three-judge panel mostly affirmed a ruling by Sacramento County Superior Court Judge Rudolph R. Loncke granting Sutter summary judgment on claims made by former clinical assistant Michaelin Higgins-Williams.

The case is significant because it continues to reinforce the idea that, simply because a manager or supervisor is a “bad” boss, it doesn’t necessarily lead to grounds for a claim of discrimination or some type of claim for sexual harassment.

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NEWSLETTER

SCHOOL DISCIPLINE AND THE CIVIL RIGHTS ACT

It’s no secret that school discipline has become a leading topic of concern to school leaders across the country...and to legislators and policy makers. Recently, the U.S. Departments of Education and Justice issued guidance regarding school discipline policies that might discriminate against racial or ethnic groups...and how to avoid such policies in the first place.

There is a growing concern in education that suspension and expulsion policies have led to troubling consequences for certain student populations. Suspensions and expulsions pull kids out of classrooms and deprive them of invaluable chances to learn from their mistakes and continue making academic progress. Nonviolent offenses, in particular, have raised the eyebrows of U. S. Attorney General Eric Holder and U.S. Secretary of Education Arne Duncan, both of whom have voiced the concern that suspension and expulsion policies and procedures that are disproportionately applied to certain racial or ethnic groups could lead to claims of discriminatory conduct.

Discrimination Claims in the Context of the Civil Rights Act

Title IV and Title VI of the federal Civil Rights Act of 1964 discuss the fair and nondiscriminatory treatment among schools and recipients of federal aid. Schools can violate the laws if they draft policies that unfairly target specific student groups “in word or in application.” What does this mean? As one example, a dress code rule that targets a kind of clothing that school officials associate with a particular racial group without a legitimate educational justification for doing so could likely be found discriminatory. Keep in mind that the lack of a valid educational justification for the policy is the nexus for finding a discriminatory motive or means.

Similarly, disciplinary policies can be an example of a discriminatory policy “in application.” Even when drafted without discriminatory intent, a disciplinary policy that targets students from certain racial groups who are then disproportionately affected by those policies may also violate federal laws. This type of discrimination is known as a “disparate impact.” Put another way, if students of one race are sanctioned at disproportionately higher rates under a given policy, educators should be prepared to demonstrate that the disciplinary measure is “necessary to meet an important educational goal” and that they have considered alternatives. Again, the policy must have a valid educational justification, or else it could run afoul of federal laws.

The Department of Education's Office of Civil Rights collects data under the Civil Rights Data Collection initiative, and the data is telling. As a snapshot, African-American students represent only 15 percent of students in the dataset, yet they make up 35 percent of students suspended once, 44 percent of those suspended more than once, and 36 percent of students expelled. Furthermore, over 50 percent of students who were involved in school-related arrests or referred to law enforcement are Hispanic or African-American.

For some years now, educators, student advocates and many others have relied on this data and other information to decry the so-called "school-to-prison pipeline," which refers to policies that critics say result in unnecessary and inappropriate referrals from schools to the criminal justice system. Advocates for school discipline reform have argued that such policies disproportionately impact minority racial and ethnic groups.

Investigatory Powers

Both the Dept. of Education and Dept. of Justice have investigatory powers pursuant to Title IV and Title VI violations. Such investigations are triggered by complaints from parents, students, and community members, but both Departments may also initiate investigations as part of regular compliance monitoring activities.

Districts and schools are responsible for ensuring that fairly written rules are applied in a fair manner. When two different groups of students, such as black students and white students, engage in similar conduct but receive different punishments, investigations can result in actions such as sanctions or other more serious remedies. Violation of Title IV or Title VI could result in, for example, mandatory corrections to student records, revised discipline policies, training for school personnel, and annual comprehensive reviews of school discipline practices.

That being said, investigations must comb through fact-specific inquiries to ferret out discriminatory policies or applications of policies. For example, a school could be justified in offering different punishments for two groups of students who are "similarly situated" apart from their race. As one example, the guidance suggests that a Hispanic student who fought with a non-Hispanic peer may receive harsher discipline if he or she threatens school leaders when they try to disrupt the fight.

Many problems with disciplinary policies result from the lack of "a clear definition of the prohibited conduct." Such lack of clarity can easily lead school officials to apply the policy unfairly or differently among racial and ethnic groups.

[The Guidance](#)

In 2011, the Dept. of Justice and Dept. of Education created the Supportive School Discipline Initiative to develop guidance in response to these concerns. The culmination of this Initiative is the multi-faceted guidance recently released. It includes a "Dear Colleague" letter that outlines schools' obligations to provide fair and nondiscriminatory discipline under the Civil Rights Act and details what investigators would use to determine if a complaint of discriminatory discipline practice is valid. The guidance also includes a directory of federal school climate and discipline resources, an online catalog of state-level school discipline laws and regulations, and a guide of "best practices" for policymakers and district leaders who seek to improve their policies.

[Here is a link to all the resources, including the Dear Colleague letter.](#)

WHAT YOU NEED TO DO

If you haven't reviewed your school discipline policies and procedures, now is the time. Our firm has seen an increase in the number of OCR investigations and District investigations into disciplinary policies and procedures that may lead to enforcement activities.

Our firm has a number of templates and sample policies that will benefit your school. We would welcome the chance to share them with you.

Hansberger & Klein, LLP is a law firm representing public charter schools. This newsletter is not intended to be legal advice. If you are seeking legal advice, please contact us or your attorney for guidance. We look forward to working with you!

 **This is a Test Email only.**

This message was sent for the sole purpose of testing a draft message.