

End Notes - Continued

¹⁰ Pennsylvania law requires that all school districts have anti-bullying policies and that disciplinary consequences for engaging in bullying behavior be set forth in the Code of Student Conduct. 24 P.S. §13-1301.1-A. In addition, if the bully was motivated by a protected characteristic of the victim—such as gender, race or ethnicity—then the bully implicates the anti-discrimination laws and the anti-retaliation rules applicable to those laws.

¹¹ There is an anti-hazing law, 24 P.S. §5351, but it only applies to institutions of higher education. However, hazing in public schools may implicate the anti-discrimination laws if it is motivated by protected characteristics such as gender or race, or if it results in physical injury, as the Due Process clause of the Fourteenth Amendment protects the “bodily integrity” of students. Further, virtually all school districts have anti-hazing policies.

¹² The concept of “injury” is broad and may arise in an almost infinite variety of circumstances. Injuries may be suffered by students, employees or others. If by employees, injuries implicate the Workers’ Compensation Act. However, an employee’s injury may implicate the Due Process Clause of the Fourteenth Amendment as well. I tried a case brought about 10 years ago by an aide who was injured by a moderately mentally retarded student and she sued administrators under the “state created danger” theory of liability. There was a defense verdict from the jury, but critically important to the defense was the investigation conducted by the supervisor when the report of injury was made and corrective action designed to protect the employee.

¹³ Criminal conduct, by its nature, implicates criminal laws.

¹⁴ Weapons frequently implicate criminal statutes regulating weapons. Section 912 of the Crime Code generally makes it a crime to have a weapon on school buses or in schools. 18 Pa.C.S.A. §912. In addition, the School Code requires a minimum expulsion of one year, subject to certain exceptions, of any student who brings a weapon to school or who possesses a weapon. 24 P.S. §13-1317.2-A.

¹⁵ Certain threats, such as “terroristic threats,” are crimes. 18 Pa.C.S.A. §2706. Further, if the threats are motivated by a protected characteristic of the victim, such as gender or race, then the threatening acts or words may become unlawful sexual harassment or racial intimidation under the anti-discrimination laws.

¹⁶ See discussion subsequently in this article about policies that frequently require the complainant to be provided with certain information.

¹⁷ There is infinite variety of what may be said when a complaint is made or reported. It is not beyond the scope of experience for a disgruntled parent to call or send an e-mail saying—my daughter is being bullied and is not safe. I am going to sue you.” If a principal receives any complaint or report of a complaint that has any hint of a threat of suit, it must be reported to the insurance carrier or the insurance carrier may decline coverage due to the principal’s failure to report on a timely basis. If a parent, student or other refers to his or her “attorney” in correspondence, ensure that the complaint is reported to the school district’s insurance broker and carrier. The duty to notify an insurance company of a potential claim is couched as follows in one typical policy possessed by many school districts: “(a) In the event of a CLAIM made against the INSURED, written notice containing particulars sufficient to identify the INSURED and also reasonably obtainable information with respect to the time, place and circumstances thereof, and the names and addresses of the injured and of available witnesses, shall be given by or for the INSURED to US, or to the firm(s) specifically described in the Declarations, as soon as reasonably possible but not later than 60 days after the end of the POLICY PERIOD; (b) If a SUIT is filed against the INSURED, the INSURED shall immediately forward to US every demand, notice, summons or other process received by the INSURED; report of injury was made and corrective action designed to protect the employee.

¹⁸ The Pennsylvania School Boards Association (“PSBA”) is the primary vendor to school districts of school board policy services. Several years ago, PSBA started the service of providing school districts with AR’s to assist in the implementation of policy. Not all districts have AR’s. However, virtually all school districts have written handbooks, protocols or other procedures designed to assist in the operations of the school. Regardless of the form of the administrative “rules,” or what they are called—“AR’s”, protocols, guidelines, etc.—they need to be followed.

¹⁹ There is no legally mandated numbering system for school board policies—however, PSBA’s policy services has attempted to make numbering uniform. That is not to say, however, that all school districts, even those utilizing PSBA’s policy service, use the PSBA standard numbering system.

²⁰ Even if the school board policy does not mandate such a report to the “compliance officer”, principals should make such reports nonetheless.

²¹ Where the principal is charged with the responsibility of providing report forms, the principal must ensure that he/she has the forms, gives the forms to the student/parent, and documents the fact that the forms were provided. If you are asked on the witness stand in front of 8 federal jurors, “did you give the Plaintiff a copy of the complaint form,” you never want to have to answer that question “no.”