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School Law Newsletter

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New Equal Access Legislation Allows Charter School Students, Home School Students, And Governor's School Students to Participate In District Activities

Two new laws give charter school students, home school students, and Governor's School students the right to participate in extracurricular and interscholastic activities in public school districts. In May 2012, the South Carolina Legislature revised the South Carolina Charter Schools Act and granted charter school students eligibility to compete for, and if selected, participate in extracurricular activities at the traditional public school where the student is zoned to attend based on residence. A charter school student is eligible to participate in extracurricular activities only if (1) the student's charter school does not offer a similar extracurricular activity, and (2) the student satisfies all other eligibility requirements applicable to traditional public school students who want to participate in extracurricular activities (academics, attendance, behavior, payment of fees, etc.). A charter school student's teacher must certify by affidavit to the public school district that the student is in compliance with all legal requirements for participation, including attendance, class, and enrollment requirements.

In June 2012, the Legislature enacted a similar law for home school students and Governor's School students. The law grants home school students and Governor's school students eligibility to compete for, and if selected, participate in interscholastic extracurricular activities at traditional public schools, provided the student satisfies all eligibility requirements for participation applicable to traditional public school students (academics, attendance, behavior, payment of fees, etc.). Home school students are eligible to participate at the traditional public school the student would be zoned to attend based on residence. However, a home school student must be home schooled for a full academic year prior to participating in an interscholastic extracurricular activity at a traditional public school. Governor's school students are eligible to participate at the traditional public school the student would be zoned to attend based on the location of the Governor's school. However, a Governor's school student is not eligible to participate in an interscholastic activity at a traditional public school if the Governor's school offers the same interscholastic activity. Additionally, a Governor's school student's teacher must certify by affidavit to the public school district that the student is in compliance with all legal requirements for participation, including attendance, class, and enrollment requirements.

These laws are expected to have a significant impact on the administration of extracurricular activities in public school districts. Districts should consider adopting a policy to define the relevant terms and help guide schools, administrators, parents, and students in understanding participation rights and requirements. Districts should also consider creating forms to determine eligibility for charter school students, home school students, and Governor's school students who want to participate in the District's activities.

Practice of Amending Agendas During Board Meetings Under Scrutiny By Appellate Court

On June 13, 2012, in *Lambries v. Saluda County Council*, the South Carolina Court of Appeals handed down a split decision which may have a significant impact

on and restrict how public bodies, including local school boards, continue to conduct meetings.

In this case, Plaintiff Dennis Lambries filed suit against the Saluda County Council ("the Council"), contending that its practice of amending its agenda during regularly scheduled meetings violates the South Carolina Freedom of Information Act ("FOIA"). S. C. Code. Ann. § 30-4-80, which provides for the notice of meetings of public bodies, provides, in relevant part, as follows:

> (a) All public bodies . . . must give written public notice of their regular meetings at the beginning of each calendar year. The notice must include the dates, times, and places of such meetings. Agenda, if any, for regularly scheduled meetings must be posted on a bulletin board at the office or meeting place of the public body at least twenty-four hours prior to such meetings. All public bodies must post on such bulletin board public notice for any called, special, or rescheduled meetings. Such notice must be posted as early as is practicable but not later than twenty-four hours before the meeting. The notice must include the agenda, date, time, and place of the meeting. This requirement does not apply to emergency meetings of public bodies.
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> ...
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> (d) Written public notice must include but need not be limited to posting a copy of the notice at the principal office of the public body holding the meeting or, if no such office exists, at the building in which the meeting is to be held.
>
> (e) All public bodies shall notify persons or organizations, local news media, or such other news media as may request notification of the times, dates, places, and agenda of all public meetings, whether scheduled, rescheduled, or called, and the efforts made to comply with this requirement must be noted in the minutes of the meetings.

Relying on this provision, the circuit court concluded that the specific language in the statute indicated (1) no agenda was required for regularly scheduled meetings, and (2) the amendments to the agenda were made in open public session in accordance with the Council's procedures, and therefore, the action did not violate FOIA.

Mr. Lambries appealed the decision to the South Carolina Court of Appeals. Reversing the circuit court's ruling, the Court of Appeals interpreted FOIA to require agendas for regularly scheduled meetings and prohibit public bodies from amending published agendas during session. Although acknowledging the issue was a close question, the Court of Appeals construed FOIA to allow citizens to be apprised of public official activities.

In a dissenting opinion, Justice Pieper pointed to the absence of an express legislative mandate in FOIA requiring absolute adherence to published agendas, writing that "the statute is completely silent as to whether a public body can amend an agenda" during meetings. His dissent reasoned that allowing in-meeting amendments would not infringe upon the legislative intent and spirit of FOIA of providing public access to a public body's actions.

In light of the impact this ruling may create for public bodies, the Council has requested a rehearing on the appeal. In the meantime, if this decision stands, school boards will be required to stick to their posted agendas which will mean careful drafting on the front end and could mean less efficiency and additional meetings for public bodies.

New Legislation Revises The South Carolina Retirement System

On July 1, 2012, an Act revising the South Carolina Retirement System ("SCRS") became effective. Only a few SCRS revisions will affect employees hired before July 2012. On the other hand, new state employees, those hired after June 30, 2012, will notice significant changes in the SCRS rules.

Class One and Two Members

Class One and Two members have technical definitions in the SCRS statutes, but generally they refer to employees who have been in the SCRS for a number of years, and at least prior to June 30, 2012.

The major change affecting Class One and Two members concerns those who have not yet retired and/or have not already retired and entered into TERI. The new requirements that an individual be retired for at least thirty consecutive calendar days and that when s/he returns to work for a covered SCRS employer s/he will be limited to a yearly earning limitation of ten thousand dollars do **not** apply to Class One and Two members **who have retired before January 2, 2013, or those who retire after age sixty-two.** Specifically, Section 9-1-1790(A) provides in relevant part:

> (A)(1) A retired member of the system who has been retired for at least thirty consecutive calendar days may be hired and return to employment covered by this system . . . and earn up to ten thousand dollars without affecting the monthly retirement allowance the member is receiving from the system. If the

> retired member continues in service after earning ten thousand dollars in a calendar year, the member's allowance must be discontinued during his period of service in the remainder of the calendar year. . . If a retired member of the system returns to employment covered by this system . . . sooner than thirty days after retirement, the member's retirement allowance is suspended while the member remains employed by the participating employer . . .
>
> **(2) The earnings limitation imposed pursuant to this item does not apply if the member meets at least one of the following qualifications:**
>
> (a) the member retired before January 2, 2013;
>
> (b) the member has attained the age of sixty-two years at retirement. . .

On the other hand, if an individual is a Class One and Two member and does **not** meet the above-referenced qualifications of (A)(2), **s/he is subject to the provisions of (A)(1).**

Class Three Members

A Class Three member is an employee member of the SCRS with an effective date of membership after June 30, 2012.

The Act provides that Class Three members must be sixty years old or satisfy the "rule of ninety" to acquire full retirement benefit eligibility. The "rule of ninety" is met when a person's age plus years of service equal a minimum sum of ninety. Class Three members must also have at least eight years of service to become vested in SCRS. The new requirements that an individual be retired for at least thirty consecutive calendar days and that when s/he returns to work for a covered SCRS employer s/he will be limited to a yearly earning limitation of ten thousand dollars apply to Class Three members. Further, their new pension compensation calculation will average the five highest years of compensation instead of three highest paid salary years. Significantly, unused leave time will not be added in the calculation for determining average final compensation.

TERI

The Act also provides that the TERI program will be terminated by June 30, 2018. Section 9-1-2210 now reads:

> (J) Notwithstanding any other provision of this section, a member who begins participation after June 30, 2012, shall end his participation no later than the fifth anniversary of the date the member commenced participation in the program, or June 30, 2018, whichever is earlier. **A member's participation may not continue after June 30, 2018, under any circumstance.**

The changes to the Act are important. Anyone having questions about his/her own situation is encouraged to contact the SCRS directly.

Youth Suicide Awareness and Prevention Act Passed Into Law

In May 2012, the South Carolina Legislature passed into law H. 4690, a bill amending the South Carolina Code of Laws by enacting the "Jason Flatt Act" ("Act").

Pursuant to what will be S.C. Code Ann. § 59-26-110, the South Carolina Department of Education ("Department of Education") will mandate training on youth suicide prevention. Specifically, beginning with the 2013-2014 school year, the Department of Education shall require two hours of training in youth suicide awareness and prevention as a requirement for the renewal of credentials of individuals employed in a middle school or high school as defined by state law. The law provides that the required training shall count toward the one hundred twenty renewal credits specified in the Department of Education's regulations for renewal of credentials.

In addition, under this new legislation, the Department of Education will be required to develop guidelines suitable for training and materials that may be used by schools and districts. Local school districts, however, will have the ability to approve materials to be used in providing training for employees.

As a safeguard for schools and school employees, the Act provides some protection from liability. Specifically, the Act precludes an individual from bringing a legal cause of action for loss or damage caused by any act or omission resulting from the implementation of the provisions of the Act, unless the loss or damage was caused by willful or wanton misconduct. Likewise, there shall be no cause of action for loss or damage resulting from any training, or lack of training, required by the Act, unless the loss or damage was caused by willful or wanton misconduct. Further, the law provides that the training, or lack of training, required by the provisions of Act must not be construed to impose any specific duty of care.

Fourth Circuit Upholds School Credit for Religious, Released-Time Classes

On June 28, 2012, in *Moss v. Spartanburg County School District Seven*, a three-judge panel of the United States Court of Appeals for the Fourth Circuit (MD, NC,

SC, VA, WV) upheld, against civil rights violations claims, the constitutionality of a South Carolina school district's policy that grants public school elective credit for off-campus religious instruction.

As background, in 2007, Spartanburg County School District Seven ("School District") adopted a policy allowing public school students to receive two academic credits for off-campus religious instruction offered by private educators. The policy derived state statutory authority from the 2006 Released Time Credit Act that empowers local school boards to award two religious education credits, so long as teachers use secular criteria in evaluating class performance and school administrators do not discriminate against programs by denomination. In 2009, two Spartanburg High School students, parents of those students, and the Freedom From Religion Foundation, Inc. commenced a lawsuit against the School District in a South Carolina district court, alleging that the policy impermissibly endorsed religion and entangled church and State, in violation of the Establishment Clause of the First Amendment.

Neither of the two student plaintiffs participated in the released-time course while attending Spartanburg High School, nor did they claim to have been harassed in any way for not participating. The student plaintiffs were not adversely affected by released-time grades, and they did not claim to have seen or encountered any efforts at advertising or promoting released-time religious classes by school personnel or on school grounds. One student, however, did receive a promotional letter in the mail from Spartanburg Bible School, which indicated that the school would be conducting a released time course which would "be available for elective credit to students who attend Spartanburg High School." In addition, the flyer provided that the course would "help students learn the basic tenets of the Christian worldview," and it would teach students "how they ought to live as a result of what they have learned." Although the School District reportedly provided Spartanburg Bible School with the addresses of students so that it could send the promotional letter, School District and high school officials did not review or approve the letter before it was sent. Based on the evidence and arguments presented, the district court granted summary judgment in favor of the School District, dismissing the Plaintiffs' claims. The Plaintiffs then appealed the decision to the Fourth Circuit.

In affirming the district court's ruling, the Fourth Circuit noted that the United States Supreme Court has interpreted the First Amendment not as dictating total separation, but as embodying "benevolent neutrality that recognizes a wide range of permissible state accommodation for religion." The Fourth Circuit upheld the constitutionality of the released-time policy as accommodating religious education in much the same way public institutions allow privately educated students to transfer credits. To rule otherwise, the Fourth Circuit concluded, would have created an unconstitutional hostile environment toward religion. The Fourth Circuit also noted that "private religious education is an integral part of the American school system," and as such, the School District could permissibly accommodate, though not promote, the religious educational program for the purpose of student development.