

**EdCounsel** LLC  
SCHOOL ATTORNEYS

**MARE/MO K-8  
Fall Conference**

**Whac-a-Topic**





## Duane Martin

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Duane is a first generation college graduate who values the profound difference public educators have made in his life. Those educators directly impacted his professional life and influenced him to focus completely on public service. As an undergraduate, Duane served as one of 30 students selected nationally as a Center Fellow with the Center for the Study of Presidency, publishers of Presidential Studies Quarterly. Duane was also a recipient of the George C. Marshall Award, sponsored by the Marshall Foundation in honor of one of America's truly selfless public servants. After serving overseas as an Army officer, Duane returned home to Missouri to attend law school. In law school, he served as Editor in Chief of the ABA's national quarterly for state and local government law, which includes scholarly works regarding public education. Following law school, Duane served as a judicial law clerk at the Missouri Court of Appeals and as an Assistant Attorney General for the State of Missouri.

### Areas of Emphasis:

**General Counsel Work,  
Policy and Procedure, School  
Personnel and Labor Matters,  
School Litigation**

In private practice, Duane represented his first school district in 1997 and has dedicated his practice exclusively to the representation of public school districts since 2002. He has represented public school districts in state and federal court, as well as before state and federal administrative bodies.

Duane's extensive experience in this field is unparalleled and he continues to work every day to further not only his mission of public service, but the betterment of public education as a whole.

Duane and his wife, Wendy, have six children, all of whom are students of public schools or colleges.









**Rachel Meystedt**

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As the granddaughter, daughter and sister of public school educators and having received all of her academic degrees from public schools, Rachel has always been a strong supporter of public education. After graduating from Scott City High School in southeast Missouri, Rachel moved to Columbia, Missouri to attend Mizzou to obtain both her undergraduate degree in journalism and her law degree.

Prior to joining the EdCounsel team, Rachel worked as legal counsel for the Office of Special Education within the Missouri Department of Elementary and Secondary Education, where she became well-versed in school and special education law, advising the Office's compliance and dispute resolution team and acting as general counsel for the three state-operated schools. She also worked with the U.S. Department of Education on many issues affecting Missouri school districts, fighting for better outcomes for Missouri students. Rachel now uses this experience to provide counsel to school leaders on the variety of complex legal matters districts face every day.

**Areas of Emphasis:**

**General Counsel Work, Policy and Procedure, Compliance, Discrimination Claims**

In her free time, Rachel enjoys spending time with her husband, Jason, and their families, traveling, cheering on the Mizzou Tigers and hiking with their black lab, Tucker.





# MARE/MO K-8 Fall Conference

# Whac-a-Topic

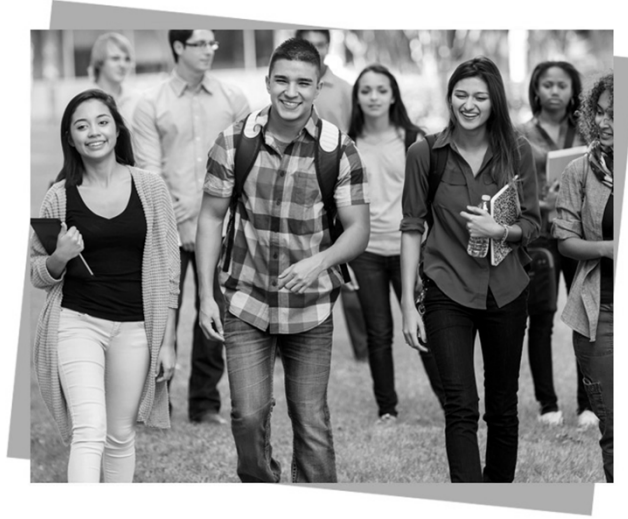
October 24, 2019



## Topic Board

<u>Resident Students &amp; Guardianship Requirements</u>	<u>Juuling: Prohibition and Possession</u>	<u>Medical Marijuana</u>	<u>CBD: SY 19-20</u>
<u>Virtual Ed Developments</u>	<u>Teacher Non-Renewals</u>	<u>Screened Volunteers</u>	<u>New Sexual Misconduct Legislation</u>
<u>Employees, Google, and Data Breaches</u>	<u>Extra Duties and Stipend Pay</u>	<u>School Calendar Requirements</u>	<u>Manifestation Determination Missteps</u>

## Resident Students & Guardianship Requirements



[Back to Board](#)

## Resident Students & Guardianship Requirements

### Residency:

- The student must reside in *and* be domiciled in (meaning parents/guardians reside in) the district in which the student is trying to enroll.
- If the student is living in the district but not domiciled in the district, the student may request a residency waiver.
  - Typically residency waivers are only available to students who are actually living in the district.
  - Once the waiver is filed, the student is typically allowed to enroll in the district while awaiting the board's decision.
  - Waivers should only be granted on the basis of hardship or good cause.
    - Living in the district for reasons other than attending school in the district may be good cause.
    - Athletic or academic ability should *never* be a basis for hardship or good cause.

[Back to Board](#)

## Resident Students & Guardianship Requirements

### Relative Caregiver Affidavits:

- These affidavits should only be accepted by the District if the student is living with a relative caregiver who is a resident of the district and not with a parent/guardian.
  - The affidavit can't be used to prove residency, but could be used to grant a residency waiver.
- Section 431.058, RSMo., defines a "relative caregiver" as a competent adult who is related to a child by blood, marriage, or adoption who is not the parent and who represents in an affidavit that the child lives with the adult and that the adult is responsible for the care of the child.
- A relative caregiver with a properly executed affidavit can consent to enrollment and participation in any school activities when the parent has delegated in writing the parent's authority to consent OR after reasonable efforts have been made to obtain the parent's consent, the consent of the parent cannot be obtained.
- This affidavit expires one year after it is received by the school, so it should be updated annually.



[Back to Board](#)

## Resident Students & Guardianship Requirements

### Attorney-in-Fact:

- Section 475.602, RSMo., allows a parent to delegate decision-making authority to another individual for not more than one year.
  - Does not have to be a relative.
- That person is then the "attorney-in-fact" and can exercise "any of the powers regarding the care and custody of the child."
- The parent can revoke this at any time, and doesn't relinquish any of his or her rights by signing this affidavit.
- The school has to be notified of the existence of the power of attorney and given a copy of it as soon as possible.
  - Have to communicate with both the parent and the attorney-in-fact regarding "the custody, visitation, or support of the child."
- This could also not be used to prove residency, but could be used to grant a residency waiver.
- The power of attorney has to include certain things and be witnessed by a notary to be valid.

[Back to Board](#)

## Juuling: Prohibition & Possession



[Back to Board](#)

## Juuling: Prohibition & Possession

- Missouri law prohibits the possession by minors of e-cigarette devices containing nicotine, and
- All students may be prohibited by District Policies from possessing or using these devices on school grounds.



[Back to Board](#)

## Juuling: Prohibition & Possession

- **How are these devices prohibited?**
  - Missouri law prohibits the possession of tobacco products, including “vapor products” containing nicotine like e-cigarettes, by minors.
  - The applicable laws also permit political subdivisions, like school districts, to enact more stringent rules – like prohibiting possession by all students (not just minors).



[Back to Board](#)

## Juuling: Prohibition & Possession



- Districts incorporate this legal prohibition into District Policies – specifically the district’s student code of conduct – and have it apply to all students.
- Model District Policies include language regarding e-cigarettes and include them in the general definition of “tobacco products.”

[Back to Board](#)

## Juuling: Prohibition & Possession

- What are the consequences of possession or use of these devices at school?
  - Each district treats it differently, and
  - Your district's student code of conduct (if not contained in District Policies) should be consulted.



CONTINUED...

[Back to Board](#)

## Juuling: Prohibition & Possession

- Since it is difficult to determine what is actually being inhaled using an e-cigarette device, some districts have decided to discipline possession and use of these devices more harshly so that the consequences align more closely with drug paraphernalia.
- Stricter consequences are permissible if it is published to parents and students, either through District Policies or student handbooks.



[Back to Board](#)



## Medical Marijuana



[Back to Board](#)

## Medical Marijuana Amendment 2

- On November 6, 2018, a majority of Missourians voted “yes” on Amendment 2, creating a constitutional right for Missourians to use medical marijuana under the supervision of a physician.
- In May 2019, the Missouri Department of Health and Senior Services finalized its rules implementing Amendment 2.
- Employees, students, and parents, will be asking districts about their rights regarding the use of medical marijuana and CBD both at school and outside of school/workplace.

[Back to Board](#)

## Medical Marijuana



- **Is it legal to use medical marijuana now? What is the timeline?**
- It is legal under Missouri law for that individual to use medical marijuana in the State if:
  - An individual has a valid patient identification card issued by the Missouri Department of Health and Senior Services (DHSS), the agency responsible for implementing Amendment 2.
- The application and approval process for identification cards is currently underway.

*CONTINUED...*

[Back to Board](#)

## Medical Marijuana

- In August, DHSS will accept applications for licenses for cultivation and dispensary operations.
- Medical marijuana may be available for purchase from a licensed dispensary as early as January 2020.
- A licensed individual, however, may begin cultivating medical marijuana for personal use before that time.



[Back to Board](#)

## Medical Marijuana

- **Do I have to permit my students and employees to use medical marijuana at school if they have a medical marijuana card?**

- No. Schools may continue to enforce a drug-free workplace policy and prohibit employees from working while under the influence of marijuana. Furthermore, Amendment 2 **expressly prohibits consumption of marijuana for medical use in a public place.**
- DHSS has included "schools" in the regulatory definition of "public place."
- Although the regulatory definition of "public place" exempts areas designated by owners or entities as "non-public" places, the law does not require a public entity to operate such a space.

CONTINUED...

[Back to Board](#)

## Medical Marijuana



- Districts receiving federal funds must comply with the Drug-Free Workplace Act by operating a drug-free workplace.
- Amendment 2 allows minors to obtain identification cards with parental consent.
- Additional federal laws applicable to student use:
  - 20 U.S.C. § 7118, *21<sup>st</sup> Century Schools Act*. schools receiving federal funds under the Act must use portion of funds to "develop, implement, and evaluate comprehensive programs and activities that... (2) foster safe, healthy, support, and drug-free environments that support student academic achievement."

CONTINUED...

[Back to Board](#)

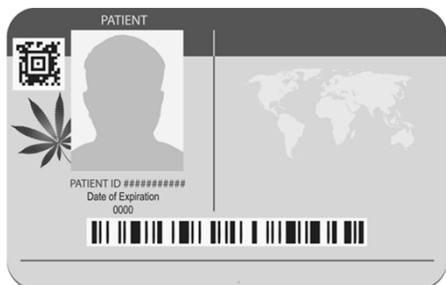
## Medical Marijuana

- Additional federal laws applicable to student use:
  - 20 U.S.C. § 1415(k)(1)(G)(ii), *IDEA's* "placement in alternative educational setting" requirement: "School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, in cases where a child... (ii) knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of a State or local educational agency."

CONTINUED...

[Back to Board](#)

## Medical Marijuana



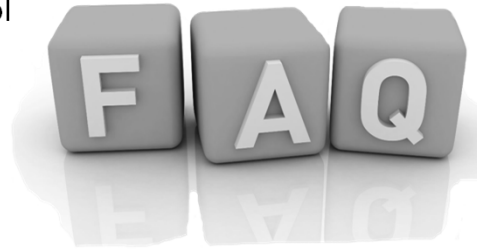
- Additional federal laws applicable to student use:
  - 29 U.S.C. § 705(20)(C)(i)(iv): *Section 504* does not consider an "individual who is currently engaging in the illegal use of drugs," to be an "individual with a disability" and permits disciplinary action pertaining to the use or possession of illegal drugs.

CONTINUED...

[Back to Board](#)

## Medical Marijuana

- Districts may still face challenges under Missouri law (discussed below) if we discipline a student for legal consumption not on school property.
- Districts may wish to check existing drug-free policies this year to ensure medical marijuana usage at work or on district property is specifically prohibited.



CONTINUED...

[Back to Board](#)

## Medical Marijuana



- **What if an employee has a positive drug test in violation of Board Policy?**
  - Without documented observation of physical manifestation of drug use at work (**blood-shot eyes, delayed reaction time, lack of coordination, etc.**), it is risky to discipline a licensed medical marijuana user for a positive drug test.
  - Districts may want to train managers in spotting the signs of marijuana impairment.

[Back to Board](#)

## Medical Marijuana

- **Is there overlap with a school's obligations under the Americans with Disabilities Act?**

- We do not yet know how a Missouri court will rule on this issue. Claims are likely to be brought under the Missouri Human Rights Act (not the ADA) which prohibits discrimination because of disability in employment and access to public accommodations (i.e. schools).



- We may be able to make the argument that it is unreasonable and presents an undue hardship to require schools to accommodate marijuana usage of employees given the nature of schools (e.g. responsible for the safety and well-being of vulnerable individuals, children, etc.).

*CONTINUED...*

[Back to Board](#)

## Medical Marijuana

- We do not yet know how a Missouri court will rule on this issue.
- Claims are likely to be brought under the Missouri Human Rights Act (not the ADA) which prohibits discrimination because of disability in employment and access to public accommodations (i.e. schools).
  - It may be more difficult to make a similar argument for students who are licensed to legally consume medical marijuana, although we can still prohibit consumption at school.



*CONTINUED...*

[Back to Board](#)

## Medical Marijuana



- The ADA does not require an employer to accommodate the current use of illegal drugs.
- Marijuana possession, sale, and cultivation, remains illegal pursuant to federal law.
- Therefore, a court could hold there is no obligation under the ADA to accommodate marijuana usage of any kind.
- An employee who wants to avoid discipline for having marijuana in their system at work (e.g. a positive drug test) may ask for an accommodation permitting them to use medical marijuana on their own time, off district property.

[Back to Board](#)

## CBD: SY 19-20



[Back to Board](#)

## CBD: SY 19-20

- What do the new medical marijuana laws mean for CBD?



- On November 6, 2018, a majority of Missourians voted “yes” on Amendment 2, creating a constitutional right for Missourians to use medical marijuana under the supervision of a physician.
- Amendment 2 does not change the legal status of CBD.

*CONTINUED...*

[Back to Board](#)

## CBD: SY 19-20



- State and federal law exempt industrial hemp (containing an average THC concentration of less than 0.3%) from the definition of marijuana.
- These laws mean substances containing less than 0.3% of THC are no longer considered controlled substances.

[Back to Board](#)



## CBD: SY 19-20

- Some CBD products may fall under this exemption.
- The U.S. Food and Drug Administration (FDA) has the authority to regulate and license CBD but unfortunately has done little to have a meaningful impact.
- FDA has recently indicated it will speed up efforts to create rules for CBD.
- The FDA has determined that CBD is considered a “drug,” meaning it’s intended for use in the diagnosis, cure, mitigation, treatment or prevention of diseases.



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[Back to Board](#)

## CBD: SY 19-20



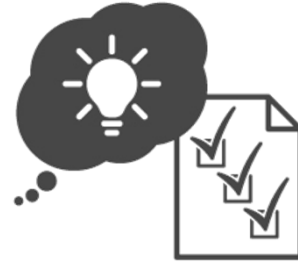
- Districts may want to treat requests to use CBD oil from students and teachers in a similar fashion as requests to use other medications,
- taking care to ensure the district is not permitting the use of a controlled substance on campus.

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## CBD: SY 19-20

### What are the Key Takeaways?

- Districts should continue to enforce drug-free workplace policies if they receive federal funding.
- Districts may want to allow the use of CBD in accordance with existing District Policies regarding medications.
- This is a developing area of the law, so stay tuned for more information on this as the year progresses.



[Back to Board](#)

## Virtual Ed Developments



[Back to Board](#)

## Virtual Ed Developments

- New Missouri legislation from 2018 created the Missouri Course Access and Virtual Schools Program (MOCAP)
  - giving students broader abilities to take virtual courses
  - at their resident district's expense.



[Back to Board](#)

## Virtual Ed Developments



- There are ten MOCAP providers in Missouri at this point
- There are also virtual providers that are attempting to enter into agreements with school districts to provide virtual education courses or programs to students outside of MOCAP, under the authority granted to districts in § 162.1250, RSMo.
- These virtual education courses and programs are still at districts' expense.

[Back to Board](#)

## Virtual Ed Developments

- **What is MOCAP?**

- MoVIP was the previous virtual education program which MOCAP replaced, pursuant to § 161.670, RSMo.
- Based on the new MOCAP statute, school districts are *required* to approve students' requests to enroll in virtual courses or programs
  - if they meet eligibility requirements and
  - the class or program is in the student's "best educational interest."



CONTINUED...

[Back to Board](#)

## Virtual Ed Developments



- To be eligible, the student has to be
  - enrolled full-time in the district and
  - have attended a public school at least one semester immediately prior to enrolling in the online course
  - *unless* a medical condition or disability prevented attendance.

CONTINUED...

[Back to Board](#)

## Virtual Ed Developments

- “Best educational interest” is an individualized determination, but can include the following considerations, at the district’s discretion:
  - The student’s attendance.
  - The student’s grade point average.
  - The student’s technological abilities.
  - The student’s self-motivation.
  - Whether the virtual course has appropriate rigor compared to the district’s current course in the same subject.
  - Whether the student has been successful taking virtual courses in the past.



*CONTINUED...*

[Back to Board](#)

## Virtual Ed Developments

- We caution against bright-line rules as to what constitutes “best educational interest.”
- MOCAP specifically limits the amounts vendors can charge for MOCAP courses
  - based on percentages of the state adequacy target.

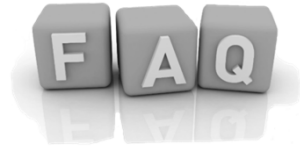


[Back to Board](#)

## Virtual Ed Developments

- **Does our district have to let students take MOCAP courses?**

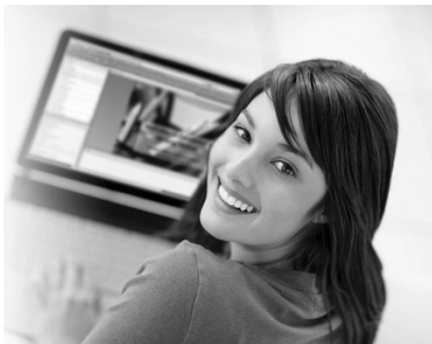
- If a student meets the eligibility criteria and the class is in the student's "best educational interest," as decided by the district, the district must allow the student to enroll.
- If the eligibility and "best educational interest" criteria are not met, the district has discretion to allow the student to take the course, under the understanding that such a decision could set precedent for future requests.



*CONTINUED...*

[Back to Board](#)

## Virtual Ed Developments



- If students' requests to enroll in MOCAP courses or programs are denied, those students have the right under the law to appeal that decision to the Board, and then on to DESE.
- There is no requirement that districts allow students to enroll in virtual courses or programs that are not approved by MOCAP.
- There is also no requirement that districts pay for virtual courses or programs that are not MOCAP-approved.

*CONTINUED...*

[Back to Board](#)

## Virtual Ed Developments

- **Can our district allow students to take virtual courses that aren't MOCAP-approved?**

- Yes! Under § 162.1250, RSMo., a district can create a cooperative agreement with a vendor or a school district who sponsors or that has developed online courses or programs to provide virtual education to students.
  - Creating this agreement is the district's *option*.
  - The district does not have to offer or approve virtual courses or programs that are not MOCAP-approved.



CONTINUED...

[Back to Board](#)

## Virtual Ed Developments



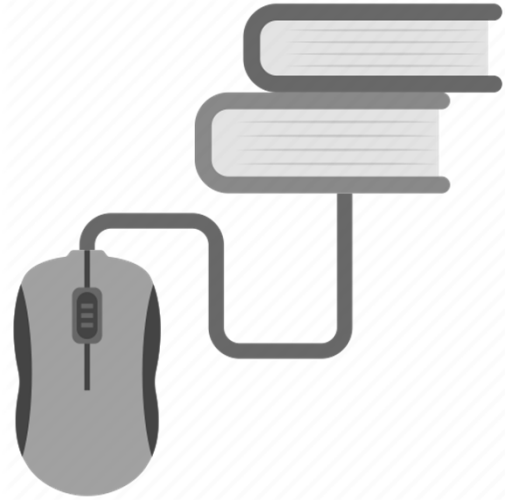
- If an agreement is created under this statute, your district is on the hook to ensure that the vendor's virtual courses meet Missouri learning standards and that the instructors of those virtual classes are properly certificated.
- There are no limits on the amounts vendors can charge for these classes, so that is a consideration that must be taken into account when creating agreements with vendors.
- Section 162.1250, RSMo. also explains how state funding applies in this instance.

CONTINUED...

[Back to Board](#)

## Virtual Ed Developments

- If students are allowed to take virtual courses that do not meet Missouri learning standards and are not taught by Missouri-certificated teachers, it's likely the District would not receive state funding for that student's coursework.



[Back to Board](#)

## Virtual Ed Developments What are the FAQ's?



- **Can students take virtual courses or enroll in virtual schools and pay for that coursework themselves?**
  - Yes! If a student chooses to take a virtual course or enroll in a virtual school, they can do that without receiving approval from the District.
  - Once the student completes the course or program, the District would then need to consider how the student's credits transfer within the District based on its procedures for awarding credit to transfer credits.

[Back to Board](#)



## Teacher Non-Renewals



[Back to Board](#)

## Teacher Non-Renewals

- Evaluate board support for non-renewal.
- Determine if administration will recommend renewal.
- Have summative conference and provide recommendation on non-renewal in writing.
- Determine if teacher will be given opportunity to resign.
- Give hard deadline to resign.



[Back to Board](#)

## Teacher Non-Renewals

**DENIED**

- Must notify in writing by April 15.
- Teacher may request a statement of reasons for non-renewal – no limitation on time frame.
- Upon request, provide a concise statement of reasons based on summative evaluation criteria.
  - e.g., "failure to use effective teaching techniques, strategies and skills during lessons."
- Notice must specific language if based on one of the following reasons:
  - a decrease in pupil enrollment,
  - school district reorganization, or
  - the financial condition of the district.

[Back to Board](#)

## Screened Volunteers



[Back to Board](#)

## Screened Volunteers

- **HB 604 – Background Checks**

- The omnibus education bill included new background check requirements for individuals called “screened volunteers.”
- The requirement is located in § 168.133, RSMo., which includes the background screening requirements for all new employees.
- “Screened volunteers” must now be screened just like administrators, teachers, aides, paraprofessionals, bus drivers, etc.



[Back to Board](#)

## Screened Volunteers

- So who is a “screened volunteer”?
  - “[A]ny person who assists a school by providing
    - uncompensated service and
    - who may periodically be left alone with students.”
- Must be conducted before they are left alone with children or have access to student records.
  - Access to student records must still be supervised by staff members.
- By statute, this includes, but is not limited to persons who:
  - Regularly assist in the office or library,
  - Mentors or tutors students,
  - Coach or supervise a school-sponsored activity, or
  - Chaperone students on an overnight trip.



[Back to Board](#)



## Screened Volunteers

- What does it mean to be “left alone” with students?
  - There is no definition within the statute.
  - If an individual is not a “screened volunteer,” we recommend that individual is within the line of sight of an employee at all times.
- What about student volunteers or A+ tutors?
  - Likely not meant to be covered by the legislature.
  - Could tutor within the line of sight of an employee.
- When in doubt, screen!

[Back to Board](#)

## Screened Volunteers

- The background screening requirements include all of the following:
  - Missouri State Highway Patrol and FBI fingerprint check;
  - Children’s Division Central Registry *or* Family Care Safety Registry check;
  - Sex offender registry screening; and
  - Casenet check.



[Back to Board](#)

## Screened Volunteers

- A district is not required to cover the costs of these checks, but *can* pay for them if it chooses to.
  - Some districts are choosing to pay for a set number of these checks, or to devote a set amount of money to covering these checks per school year.



[Back to Board](#)

## New Sexual Misconduct Legislation



[Back to Board](#)

## New Sexual Misconduct Legislation



- Missouri passed new legislation last year regarding the prevention of sexual misconduct in schools.

[Back to Board](#)

## New Sexual Misconduct Legislation

- **What does this legislation require?**
  - School districts must disclose information about a former employee when they receive a request from any public/charter school regarding any board policy violation related to sexual misconduct with a student when that violation was "determined to be an actual violation by the board of the district... after a contested case due process hearing conducted pursuant to board policy." In other words, not required to disclose mere allegations that were unsubstantiated or board policy violations that did not result in a board hearing.



*CONTINUED...*

[Back to Board](#)

## New Sexual Misconduct Legislation

- Before making an offer of employment, school districts must contact the district or charter school that previously employed the prospective employee and request information regarding sexual misconduct violations.
- New board members must receive 18.5 hours of training with 2.5 hours of training that "provides up-to-date and reliable information on identifying signs of sexual abuse in children and danger signals of potentially abusive relationships between children and adults. The training shall emphasize how to establish an atmosphere of trust so that students feel their school has concerned adults with whom students can feel comfortable discussing matters related to abuse."

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[Back to Board](#)

## New Sexual Misconduct Legislation

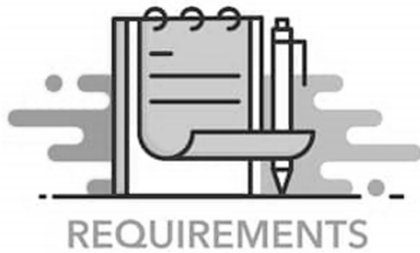
- Returning board members must take at least one hour of annual refresher training which also addresses the concept of preventing sexual abuse of children.
- "Screened volunteers," defined as: "any person who assists a school by providing uncompensated service and who may periodically be left alone with students," must have background checks performed before being left alone with students.



*CONTINUED...*

[Back to Board](#)

## New Sexual Misconduct Legislation



- Beginning in SY 2020-21, Districts must provide training developed by DESE to students in grades 6 and above that is "trauma informed, developmentally-appropriate sexual abuse training."
- "School personnel, contractors, and volunteers" added to the definition of "those responsible for the care, custody, and control of the child," as that term relates to certain statutes regarding child abuse.

*CONTINUED...*

[Back to Board](#)

## Employees, Google, and Data Breaches



[Back to Board](#)



## Employees, Google, and Data Breaches

- Missouri passed new legislation last year regarding school data breaches
  - requires notification to State Auditor, DESE and parents
  - regardless of the number of students impacted by the breach.



[Back to Board](#)

## Employees, Google, and Data Breaches



- Google for Education is a powerful tool used by many Missouri school districts that can be readily misused, resulting in a data breach.
- Like all tools, the District's Google resources can be abused.
- A misguided employee may use the technological capacity he or she has to do something on Google that he/she is not authorized to do and in violation of the policy limitations on the use of the data.

[Back to Board](#)

## Employees, Google, and Data Breaches

- **What is a data breach anyway?**
  - The term "data breach" is not specifically defined in the statute dealing with school data breaches.
  - For the definition of "personal information", the statute relating to school data breaches cross-references the statute regarding consumer data breaches,
  - but it does not do so for the term "breach" or "data breach."



*CONTINUED...*

[Back to Board](#)

## Employees, Google, and Data Breaches



- "Personal information", an individual's first name or first initial and last name in combination with any one or more of the following data elements that relate to the individual if any of the data elements are not encrypted, redacted, or otherwise altered by any method or technology in such a manner that the name or data elements are unreadable or unusable:

*CONTINUED...*

[Back to Board](#)

## Employees, Google, and Data Breaches What are the FAQ's?

- Social Security number;
- Driver's license number or other unique identification number created or collected by a government body;
- Financial account number, credit card number, or debit card number in combination with any required security code, access code, or password that would permit access to an individual's financial account;
- Unique electronic identifier or routing code, in combination with any required security code, access code, or password that would permit access to an individual's financial account;
- Medical information; or
- Health insurance information.



**CONTINUED...**

[Back to Board](#)

## Employees, Google, and Data Breaches What are the FAQ's?

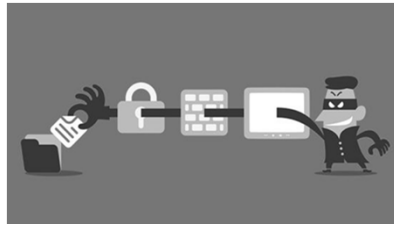


- The term "data breach" as used in the consumer data breach statute is defined as:
  - "unauthorized access to and unauthorized acquisition of personal information maintained in computerized form by a person that compromises the security, confidentiality, or integrity of the personal information."

[Back to Board](#)

## Employees, Google, and Data Breaches

- **What notification is required in the event of a data breach?**
  - In the event of a breach of data maintained in electronic form that includes personal information of a student, a school district shall send written notification to the parent or legal guardian of an affected student.
  - Notification of a breach of personal information of a student shall also be sent to the department of elementary and secondary education and the state auditor.



[Back to Board](#)

## Employees, Google, and Data Breaches



- **How does the FERPA requirement of a “school official” with a “legitimate educational interest” relate to the data breach issue?**
  - To have access to a particular student’s information, a “school official” as defined in FERPA must have a “legitimate educational interest” in the records.
  - A “legitimate educational interest” is tied to that specific user’s job responsibilities as to that student.
  - If the student information includes personally identifiable information (PII), and it is a breach if released to someone who is not a “school official” with a “legitimate educational interest.”

[Back to Board](#)

## Employees, Google, and Data Breaches

- How does the school's use of Google relate to this issue?
  - Google is a powerful tool that allows school users to access and use a great deal of district data,
    - including student record information and
    - personally identifiable information.

Google

*CONTINUED...*

[Back to Board](#)

## Employees, Google, and Data Breaches



- Google users may have greater access and capabilities than a "legitimate educational interest" would permit.
- Districts should consider restrictions on tools like "Google Takeout", and the ability to share to avoid employees exceeding authorization.

## Extra Duties & Stipend Pay

what are other  
words for  
stipend?



salary, pay, allowance, fee,  
wage, emolument, compensation,  
grant, payment, hire



[Back to Board](#)

## Extra Duties and Stipend Pay

### What is a “Stipend” or “Extra Duty” Anyway?

**Stipend:** a fixed sum of money paid periodically for services or defray costs

**Extra Duty:** compensated services beyond the scope of regular job duties



[Back to Board](#)

## Extra Duties for Professional Staff Members

- Because employee is generally exempt under FLSA, employee is typically salaried, not hourly.
- Additional duties may typically be assigned to professional staff without additional compensation.
- An employee may be provided extra-duty compensation or a stipend to compensate the employee for performing additional duties.
  - amount of compensation determined by the Board
  - set by adopting an extra-duty salary schedule or
  - approving a specific amount for the position.
- In writing
- Approved by the Board of Education



[Back to Board](#)

## Contracts/Letters for Extra Duty Teachers

### **Contracts**

- Binding upon both parties
- Creates due process
- Contract approved by Board
- Signed by both parties

### **Letters**

- Not a binding agreement
- Usually no process due
- Hire approved by Board
- Signed by district

[Back to Board](#)

## Extra Duties for Support Staff Members

- Because employee is generally not exempt under FLSA, employee is typically hourly and overtime/comp time.
- Additional duties may be assigned to exempt support staff but they must be paid for the work on an hourly basis under FLSA.
- An employee's compensation for an extra-duty .
  - amount of compensation determined by the Board
  - set by adopting an extra-duty wage schedule or
  - approving a specific hourly rate for the position.
- In writing
- Approved by the Board of Education



[Back to Board](#)

## Non-Exempt Employees

- Any employee who does not fall within one of the "exempt" categories
- Entitled to minimum wage and overtime provisions of the FLSA
  - For each hour worked in excess of 40 hours during one week, the employee must be paid time and half or provided compensatory time



[Back to Board](#)



## Non-Exempt Employees

- Employees paid to work fewer than 40 hours/week who work extra time may have a claim for “straight time” for hours worked in excess of their normal workweek, but less than 40 hours.
  - This in addition to a claim for overtime/compensatory time when the employee works more than 40 hours/week.



[Back to Board](#)

## Can a Non-Exempt Employee “Volunteer” to Coach?

Individuals are “volunteers” when they:

1. Perform hours of service for civic, charitable or humanitarian reasons without promise, expectation, or receipt of compensation for the services rendered.;
2. Offer their services freely and without coercion, direct or implied, from the employer; and
3. Are not otherwise employed by the same public agency to perform the **same services** as those for which they propose to volunteer.

[Back to Board](#)

## Can a Non-Exempt Employee “Volunteer” to Coach?

- FLSA provides that a volunteer may only be paid expenses, reasonable benefits, or a nominal fee, or any combination thereof.
- A fee is not nominal if it is:
  - a substitute for compensation; or
  - tied to performance or productivity
- *Purdham v. Fairfax Co School Board*
  - \$2000/year coaching stipend paid to employee was a “nominal fee”



[Back to Board](#)

## Example



- Bus driver may NOT volunteer to drive the basketball team to away games.
- Bus driver for the school system MAY volunteer to be an assistant coach for the basketball team.
  - *July 14, 2004 Opinion Letter from the Wage and Hour Division of the U.S. Department of Labor*

[Back to Board](#)

# Checklist for Complying with the FLSA: Non-Exempt Employee Volunteers

- Ensure that the duties involved are dissimilar. If so:
- Have written volunteer agreement with non-exempt coaches/sponsors who are paid the same stipend as certified staff
- Ensure that the stipend is "nominal"

### Volunteer Agreement Form

By participating as a volunteer, I agree to the following conditions:

- I understand my position description and will execute my duties to the best of my abilities.
- I will follow Between Friends' Policies and Procedures as outlined in the Policies and Procedures handbook emailed to me and/or given to me at training.
- I agree to make personal safety a top priority and will promptly report any unsafe conditions or concerns to the Volunteer Coordinator.
- I will not disclose confidential information that I will be exposed to through my volunteer role. Between Friends volunteers are responsible for maintain the confidentiality of all proprietary or privileged information to which they are exposed to while volunteering within the agency. It is essential that all information, whether read, heard, or observed be treated as confidential during and after your commission with Between Friends. **Initials:** \_\_\_\_\_  
*Failure to maintain confidentiality may result in termination of your position with Between Friends.*
- I understand that interviews and/or visuals, with or without my name, may be used in any lawful, Between Friends presentations for community education, awareness, and fundraising purposes. I grant permission to Between Friends to use interviews, photographs, and/or videos of me in these instances as well as on social networking websites, including, but not limited to, Facebook, Twitter, Instagram, and YouTube representing Between Friends. **Initials:** \_\_\_\_\_  
*If this clause is not initialed, the volunteer has not granted permission to use their interviews and/or visuals. The volunteer is responsible for reminding any photographers of this situation and excusing themselves from being in photographs or videos.*

**Note: Between Friends management are the only individuals granted permission to carry out the above paragraph.**

- I give permission to Between Friends to give a reference on my behalf for the purposes of validating experience, qualifications, and references, including information contained in my personnel file with Between Friends as a volunteer staff or both. **Initials:** \_\_\_\_\_

**I have read and fully understand and agree with the contents of this Agreement.**

If the Volunteer is under the age of 18:  
 Parent/Guardian Printed Name: \_\_\_\_\_ Signature: \_\_\_\_\_  
 Volunteer Printed Name: \_\_\_\_\_ Signature: \_\_\_\_\_  
 Volunteer Coordinator: \_\_\_\_\_ Signature: \_\_\_\_\_  
 Date Signed: \_\_\_\_\_

[Back to Board](#)

# School Calendar Requirements

## 2020/21 Academic Calendar

September 2020						October 2020						November 2020						December 2020											
Su	Mo	Tu	We	Th	Sa	Su	Mo	Tu	We	Th	Sa	Su	Mo	Tu	We	Th	Sa	Su	Mo	Tu	We	Th	Sa						
	1	2	3	4	5					1	2	3	1	2	3	4	5	6	7					1	2	3	4	5	
6	7	8	9	10	11	12	4	5	6	7	8	9	10	8	9	10	11	12	13	14	6	7	8	9	10	11	12		
13	14	15	16	17	18	19	11	12	13	14	15	16	17	15	16	17	18	19	20	21	13	14	15	16	17	18	19		
20	21	22	23	24	25	26	18	19	20	21	22	23	24	22	23	24	25	26	27	28	20	21	22	23	24	25	26		
27	28	29	30				25	26	27	28	29	30	31	29	30						27	28	29	30	31				

January 2021						February 2021						March 2021						April 2021									
Su	Mo	Tu	We	Th	Sa	Su	Mo	Tu	We	Th	Sa	Su	Mo	Tu	We	Th	Sa	Su	Mo	Tu	We	Th	Sa				
					1	2	1	2	3	4	5	6	1	2	3	4	5	6					1	2	3		
3	4	5	6	7	8	9	7	8	9	10	11	12	13	7	8	9	10	11	12	13	4	5	6	7	8	9	10
10	11	12	13	14	15	16	14	15	16	17	18	19	20	14	15	16	17	18	19	20	11	12	13	14	15	16	17
17	18	19	20	21	22	23	21	22	23	24	25	26	27	21	22	23	24	25	26	27	18	19	20	21	22	23	24
24	25	26	27	28	29	30	28							28	29	30	31				25	26	27	28	29	30	
31																					28	29	30	31			

May 2021						June 2021						July 2021						August 2021									
Su	Mo	Tu	We	Th	Sa	Su	Mo	Tu	We	Th	Sa	Su	Mo	Tu	We	Th	Sa	Su	Mo	Tu	We	Th	Sa				
					1	1	2	3	4	5	1	2	3	1	2	3	4	5	6	7							
2	3	4	5	6	7	8	6	7	8	9	10	11	12	4	5	6	7	8	9	10	8	9	10	11	12	13	14
9	10	11	12	13	14	15	13	14	15	16	17	18	19	11	12	13	14	15	16	17	15	16	17	18	19	20	21
16	17	18	19	20	21	22	20	21	22	23	24	25	26	18	19	20	21	22	23	24	22	23	24	25	26	27	28
23	24	25	26	27	28	29	27	28	29	30				25	26	27	28	29	30	31	29	30	31				
30	31																										

[Back to Board](#)

## School Calendar Requirements



- New legislation changed districts' abilities to determine their own start dates to some extent.
- This change is reflected in § 171.031, RSMo.
- The statute states that beginning with the 2020-2021 school year, school districts cannot start earlier than 14 calendar days *prior to* Labor Day.

[Back to Board](#)

## School Calendar Requirements

- Labor Day 2020 is September 7.
  - Start date no earlier than August 24
- Labor Day 2021 is September 6.
  - Start date no earlier than August 23
- The prior version of this statute allowed the District to set a public hearing regarding the start date if earlier than 10 days prior to Labor Day.
- The new version of this statute removes the hearing option.



[Back to Board](#)

## School Calendar Requirements

- Failure to follow the statute shall result in DESE withholding an amount equal to  $\frac{1}{4}$  of the district's state aid.
- The start date refers to the date students begin attending school.
- This does not prevent the District from scheduling professional development or other staff attendance days prior to the start date for students.



**Back to Board**

## Manifestation Determination Missteps



**Back to Board**

## Manifestation Determination Missteps

- Under both the Individuals with Disabilities Education Act (IDEA) and Section 504, if a student with a disability is disciplined, they have rights to certain due process protections, including manifestation determination meetings.
- Districts interpret and apply the requirements for a manifestation determination under IDEA/504 differently and sometimes fail to understand when the requirement is triggered.



[Back to Board](#)

## Manifestation Determination Missteps



- **When are manifestation determination meetings required?**
  - Manifestation determination meetings are required when there is a “change of placement” for a student with a disability as a result of a disciplinary action.
  - This applies to both students with disabilities who are eligible under the IDEA and students with disabilities who are eligible under Section 504.

**CONTINUED...**

[Back to Board](#)

## Manifestation Determination Missteps

- A change in placement occurs when:
  - A student is removed for *more than 10* school days in a row;
  - A student has been removed multiple times from school for disciplinary reasons which constitutes a pattern.



CONTINUED...

[Back to Board](#)

## Manifestation Determination Missteps

- A pattern exists when:
  - The student has been removed for *more than 10* school days in a school year; and
  - The student's behavior is substantially similar in this incident to the student's behavior in the prior incidents that resulted in removals from school; and
  - Other factors point to this being a pattern of removals, such as the length of each removal, the total amount of time the student has been removed, and the proximity of removals to one another.

CONTINUED...

[Back to Board](#)

## Manifestation Determination Missteps



- Some districts choose to hold a manifestation determination meeting *any time* a student with a disability is removed from school more than ten school days in any one school year just to be sure they're covered in the event they were to incorrectly determine no pattern existed, but manifestation determination meetings are only *required* when a pattern exists and the student has been removed more than 10 school days in any one school year.

[Back to Board](#)

## Manifestation Determination Missteps



- A district will be deemed to have "knowledge" the student is a student with a disability if:
  - The parent has expressed a concern that the student may be a student with a disability;
  - The parent has requested an evaluation; *or*
  - The student's teacher or other personnel have expressed a concern that the student may have a disability to the special education director or other supervisory personnel, pursuant to the district's child find procedures.

**CONTINUED...**

[Back to Board](#)



## Manifestation Determination Missteps

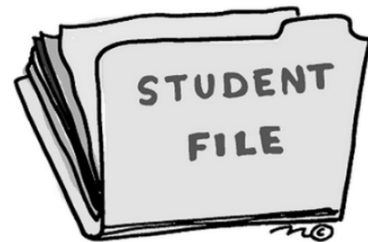
- A district won't be deemed to have "known" the student is a student with a disability if:
  - The parent hasn't consented to an evaluation or has not provided consent for services;
  - The district considered whether an evaluation was necessary and decided it wasn't and provided a proper Notice of Action Refused; or
  - The student has been evaluated and determined not to be a student with a disability.
    - This may not apply if the district has "knowledge" that the student could be eligible in another area of eligibility not yet evaluated.

*CONTINUED...*

[Back to Board](#)

## Manifestation Determination Missteps

- If a manifestation determination meeting is necessary for a student who hasn't yet been found eligible, the team should consider any information related to the reasons the district and/or parents suspect the student is eligible, any patterns of the student's behavior, and any other relevant information based on the conduct and the suspected disability.



[Back to Board](#)

## Manifestation Determination Missteps

- **What does the Team consider in a manifestation determination meeting?**
- The Team has to decide whether the student's behavior was caused by or had a direct and substantial relationship to, his or her IDEA or 504 disability; or
- If the student's IEP and/or BIP were being implemented correctly at the time of the infraction and whether the failure to implement directly caused the student's conduct.



CONTINUED...

[Back to Board](#)

## Manifestation Determination Missteps



- The team has to consider all relevant information in a student's file, including the IEP or 504 Plan, any teacher observations, and any relevant information from the parents.
- It's also important to remember that the focus of the meeting is the student's IDEA or 504 disability, *not* other diagnoses that were made that were not the basis for finding eligibility under the IDEA or 504.

[Back to Board](#)

## Manifestation Determination Missteps

- **What happens if the team determines the behavior *wasn't* a manifestation of the student's disability?**
  - The student may be disciplined just as any other student is disciplined under the code of conduct, but services may still need to be provided.
  - This discipline should be consistent with other discipline and be reasonable.
  - If the student does have behavioral issues that don't constitute a pattern, but do disrupt the student's or other students' learning, then the team should still consider whether to conduct a functional behavioral assessment and whether to develop a behavioral intervention plan.



[Back to Board](#)

## Manifestation Determination Missteps

- **What happens if the team determines the behavior *was* a manifestation of the student's disability?**
  - The Team must either:
    - Conduct a functional behavioral assessment and implement a behavioral intervention plan (unless a functional behavioral assessment has already been completed before the disciplinary behavior occurred); or
    - If a behavioral intervention plan has already been developed, review the plan and modify it, as necessary, to address the behavior. This has to be done, even if the plan is brand new!



**CONTINUED...**

[Back to Board](#)

## Manifestation Determination Missteps



- Return the student to his or her previous placement, unless the student's parents and the district agree to a change of placement as part of the modification of the behavioral intervention plan.

CONTINUED...

[Back to Board](#)

## Manifestation Determination Missteps

- **What happens if the team determines the behavior *was* a manifestation of the student's disability?**
  - When a student must be returned to class as a result of a behavioral incident that was a manifestation of the student's disability, this may create concerns for parents of students who were also involved in the behavioral incident. The behavioral intervention plan should cover all aspects of the student's behavior who has a disability, but depending on what occurred, safety plans for other students involved, if they are not students with disabilities, may be helpful tools to use as the student is reintegrated into the classroom.

[Back to Board](#)