

BEARD LEGAL GROUP

# EDUCATION LAW REPORT

Published in Cooperation with the Pennsylvania School Study Council, Inc.

August 2024

## Stay Issued On New Title IX Final Rules

On April 19, 2024, the U.S. Department of Education published changes to the Title IX Regulations to go into effect on August 1, 2024 (“2024 Title IX Regulations”). Shortly thereafter, 26 states sued to stop the U.S. Department of Education from enforcing the new Regulations. The Courts have blocked the rule from going into effect in 15 states.

On or about May 14, 2024, Plaintiffs, including the states of Kansas, Alaska, Utah and Wyoming, as well as a minor student and three (3) organizations (Moms for Liberty, Young America’s Foundation and Female Athletes United (Plaintiff organizations) sought a Stay/ Injunction against the implementation of the Final Rules. On May 24, 2024, the Plaintiffs filed a Motion for Preliminary Injunction seeking a Stay on the Final Rules prohibiting enforcement during the pendency of the litigation.

The Court held a hearing on the matter on June 20, 2024. At the hearing, the Court heard oral arguments from the parties and took the matter under advisement.

After hearing testimony, the Court granted the Plaintiffs’ Motion for Preliminary Injunction. On July 12, 2024, U.S. Federal District Court for the District of Kansas issued an Injunction. Among other things, the Court ordered:

*The United States Department of Education, Miguel Cardona, Secretary of the U.S. Department of Education, the United States Department of*

*Justice, Merrick Garland, Attorney General of the United States and all their representative officers, agents, employees, attorneys and persons acting in concert or participation with them are ENJOINED from implementing, enacting, enforcing or taking any action to enforce the Final Rule promulgated by the Department of Education titled “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance” and published in the Federal Register at 89 Fed.Reg. 33,474, set to become effective on August 1, 2024, against Kansas, Alaska, Utah, Wyoming, [Minor]’s school, the schools attended by the members of Young America’s Foundation or Female Athletes United, as well as the schools attended by the children of the members of Moms for Liberty.*

(Continued on Next Page)

*Inside ...*

New PSSC Executive Director ...page 2

Education Law Symposium...page 3

## Stay On New Title IX Final Rules

...continued

The Honorable Judge John W. Broomes, United States District Judge, directed the Plaintiff Organizations (identified previously) to file a notice in the record identifying the schools which their members or their members' children, as applicable, attend on or before July 15, 2024.

On July 15, 2024, an initial list was released which only contained the names of six (6) Pennsylvania schools, however, on July 19, 2024, the Court extended the deadline for identifying schools. Moms for Liberty then asked to submit a list of counties or schools in which their members reside rather than schools; the Court rejected that request and gave the Plaintiff Organizations until July 26, 2024, to submit a list of its schools, which was then filed.

On July 29, 2024, the Pennsylvania School Boards Association sent out a notification to its member schools outlining the events that unfolded and the list that includes several Chapters of the Moms for Liberty in Pennsylvania schools. Enclosed for your information is an excerpt from the original list on July 15, 2024, that identified approximately 12 Pennsylvania schools. After the supplemental list was submitted on July 26, 2024, the new and expanded list of Pennsylvania schools has grown significantly. The July 26, 2024, list identified 118 Pennsylvania school buildings from 49 school districts and 3 charter schools.

The Plaintiffs submitted a third supplemental list of schools on July 31, 2024, with 126 additional Pennsylvania school buildings from 45 districts.

Given the ruling, that means specifically that the 2024 Title IX Regulations are Stayed and/or Enjoined from being implemented at any school and/or buildings on the July 15, 26, and 31, 2024 lists.

The Stay/Injunction does not address the prior Title IX Regulations that for all practical purposes are still in effect.

Recently, as PSBA noted, the Pennsylvania Human Relations Commission posted on its website a reminder that “students in Pennsylvania are protected from discrimination on the basis of sex by the Pennsylvania Human Relations Act.” Please recall previously that several months prior to the release of the Title IX Final Rules, the Pennsylvania Human Relations Commission in December 2023 had issued an expanded version of protections.

We will continue to monitor this case. *State of Kansas, et al. v. United States Department of Education et al.*, Case No. 24-4041-JWB.

<https://www.slfliberty.org/case/moms-for-liberty-and-young-americas-foundation-et-al-v-u-s-department-of-education/>

It is our understanding that the “List” may be updated every two (2) weeks. Schools should periodically check the list to ascertain if their school district or any of its buildings are named.

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## WELCOME

### New PSSC Executive Director

Please welcome Dr. Matthew M. Johnson, Ph.D, Practice in Education, PreK Engagement and Outreach Director, who will also assume responsibility as the new Director of PSSC. Dr. Johnson can be reached at [mmj125@psu.edu](mailto:mmj125@psu.edu) or through the PSSC website at <https://www.paschoolstudycouncil.org/>

*We also want to thank Dr. Peggy Schooling for her years at the helm of PSSC.*

## Education Law Symposium September 11, 2024

<https://www.psscclawconference.org/home>

### In-Person and Virtual

The Pennsylvania School Study Council at Pennsylvania State University College of Education, and Beard Legal Group, will hold its annual Special Education Law Symposium on **Wednesday, September 11, 2024 at the Appalachia Intermediate Unit 8 offices in Altoona**. Districts need to be proactive in an effort to minimize claims and costs associated with the delivery of educational programming to identified students. This conference is specifically designed for Pennsylvania administrators on important and timely topics impacting day to day operations. Superintendents, Assistant Superintendents, Directors of Special Education and Student Services, School Psychologists, Intermediate Unit Administrators, Building Principals and other educators tasked with overseeing the delivery of special education services.

8:30 to 9:30 a.m.

**Attorney Charles Jelley, ODR Hearing Officer**

**Key Issues Regarding Student Discipline of Identified Students**

**Who better to get the inside track from than those who are presiding over cases where these issues arise.**

- Manifestation Determinations
- Threat Assessments
- Child Find
- Expedited Hearings
- Dealing with Disruptive Students and Aggressive Behaviors

9:30 to 10:30 a.m.

**Dr. Steven Kachmar**

**Independent Educational Evaluations and Defensible School-Based Practice of School Psychology – What School Personnel Need to Know**

This session will focus on Independent Educational Evaluations (IEEs) and strengthening school-based psychological services in order to bolster the defensibility of school district evaluations. Emphasis will be placed on the evaluations of students suspected of having educational disabilities; the assessment areas, tools, and practices often utilized in schools and by independent evaluators; system issues that can undermine the defensibility of school-based psychological services; and strategies to bolster the defensibility of those practices. Dr. Kachmar will also address questions regarding parental requests for “Dyslexia” evaluations and who is best suited to diagnose and make recommendations regarding same.

10:30 to 10:40 a.m.

**Break**

10:40 to 11:40 a.m.

**Attorney Brandi Suter, Parent Attorney**

**A Parent’s Perspective on FAPE**

The session focuses on essential themes such as understanding parental perspectives, effective IEP development and implementation, educational programming and curriculum and parental requests for IEEs. Attendees will have the opportunity to engage with real-life scenarios to gain pragmatic insights to enhance and foster collaboration, and improve practices within their educational settings. The session will include an open-ended Q&A.

11:40 to 12:30 p.m.

**Lunch/Networking**

12:30 to 1:30 p.m.

**Andy Klein, Consultant**

**A Special Education Consultant’s View From the Trenches**

Let a former ODR Hearing Officer and Special Education Consultant outline tips and suggestions to craft more legally defensible IEPs, develop sound measurable goals and report on student progress. Mr. Klein will also share his recommendations regarding FBAs and Positive Behavior Support Plans and Section 504 Service Agreements.

1:30 to 2:30 p.m.

**Attorney Carl P. Beard, School Attorney**

**Avoiding Landmines and Litigation**

This session will include an update of key Hearing Officer and Federal Court decisions from the last year to help avoid and minimize legal exposure.

2:30 to 3 p.m. Q&A

**CONTINUING EDUCATION CREDITS.** The PA School Study Council offers Act 45 and 48 professional development credit for those with Pennsylvania teaching or administrative certificates. There will be a total of 4.5 hours awarded for attending the full conference. If you are interested in receiving Act 45 or Act 48 credit, please check the appropriate box on the registration form and list your professional personnel ID (PPID) number.

\* Attorneys are eligible substantive Continuing Legal Education Credits through PaCLE.

**REGISTRATION FEES - Live participation will be held at the Appalachia Intermediate Unit 8 Office in Altoona.**

**MEMBER PRICING**

In-Person Attendance: \$179.00

Virtual Attendance: \$139.00

**NON-MEMBER PRICING**

In-Person Attendance: \$229.00

Virtual Attendance: \$189.00

Eventbrite: <https://www.eventbrite.com/e/993871204527?aff=oddtcreator>

**NOTE:** A recording of the presentation and materials will be available for purchase after September 11, 2024.

For questions about becoming a member or about this conference, please contact Danielle Nattermann at [dns5077@psu.edu](mailto:dns5077@psu.edu)

## Beard Legal Group Education Law Report

As solicitors, labor counsel and special counsel, Beard Legal Group represents more than 80 School Districts in Pennsylvania. The Firm has successfully negotiated hundreds of teacher and support staff contracts.

The Firm also represents a large area of the State for coverage of school board directors through their insurance carriers.

Our legal expertise includes: Solicitorship Services, Collective Bargaining – Teacher and Support Contracts, Employment Matters, Labor Arbitrations, Special Education Issues and Proceedings, Defense of Tax Assessment Appeals, PHRC/EEOC Complaints, Student Expulsion Hearings and Constitutional Issues.

### About the Pennsylvania School Study Council

The Pennsylvania School Study Council (PSSC), a partnership between the Pennsylvania State University and member educational organizations, is dedicated to improving education by providing research information, professional development activities, and technical assistance to enable its members to meet current and future challenges. PSSC offers professional development to the membership through colloquiums, workshops, study trips, consultation, publications, and customized services. For more information, visit PSSC website, <https://www.paschoolstudycouncil.org/> or contact Matthew M. Johnson, Ph.D at [mmj125@psu.edu](mailto:mmj125@psu.edu)

## *Subsequent Issues*

If you have a school law question or topic you would like to have addressed in subsequent issues of the newsletter, please send an email to:

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The information contained in the *Education Law Report* is for the general knowledge of our readers. The *Report* is not designed to be and should not be used as the sole source of legal information for analyzing and resolving legal problems. Consult with legal counsel regarding specific situations.

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*Prior issues are available on our website.*

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