Connecticut Law Tribune
December 27, 2013 ctlawtribune.com An ALM Publication

Forecast 2014: Education Law Issues Include Money, Reform Measure

By THOMAS MOONEY

Inadequate funding is the new normal for many school districts, but the demands and expectations on school districts in Connecticut have never been greater. School districts are being squeezed by unfunded mandates related to education reform and accountability, on the one hand, and by municipal austerity and oversight on the other. Given these pressures, we may expect to see a number of related legal challenges for school districts in 2014.

Municipal Interference

Even in the best of times, towns and boards of education clash over their respective rights and responsibilities. For over a century, Connecticut courts have recognized that boards of education operate as agents of the state and, as such, remain beyond municipal control in many respects. Connecticut General Statutes Section 10-222 provides, for example, that the municipal appropriation "for the maintenance of public schools shall be expended by and in the discretion of the board of education." That independence often rankles municipal officials, who watch as the lion's share of the town budget goes to support the schools while they struggle to moderate tax increases and deal with financial challenges on the municipal side.

The future portends even greater tension because of tight money and municipal

officials emboldened by recent legislative changes. To be sure, in Connecticut Coalition for Justice in Educational Funding v. Rell, on remand, the Superior Court in December denied the state's motion to dismiss. The case, which concerns a challenge to the current education funding statutes as unconstitutionally "inadequate," originally resulted in a plurality opinion of the Connecticut Supreme Court, and it is now expected to go to trial in July. We do not expect a decision for months or years to come, but the ongoing case may militate against state action to reduce educational funding.

That said, it is unlikely that funding increases in most school districts will even keep up with inflation. Currently, over 40 percent of the dollars spent on our schools comes from the state. While the state budget may be in balance in the coming year, significant deficits are projected for future years. Compounding that difficulty are the facts that Connecticut has the dubious distinction of being second only to Illinois in underfunding its pension obligations, and that Connecticut has long-term unfunded obligations in excess of $60 billion. Connecticut taxpayers will have to deal with these issues at some point, and since the recession of 2008 there has already been fierce resistance in some towns to increase taxes. Accordingly, meaningful increases in funding for education, at either the state or local level, are quite unlikely in the coming year.

At the same time, the General Assembly has invited greater municipal scrutiny of school board expenditures. While C.G.S. Section 10-222 has long permitted line-item budget transfers over the course of the year, that statute was amended in 1998 to provide that the board of education itself must make such transfers, except as follows: Boards may delegate that authority to specified individuals (e.g., the superintendent of schools) only (1) "under emergency circumstances if the urgent need for the transfer prevents the board from meeting in a timely fashion to consider such transfer," and (2) if such transfers are announced at the next regularly-scheduled board meeting.

In 2013, the General Assembly further amended the statute. Now, when such transfers are made, the board of educa-

tion must give a written explanation of the transfer to the legislative body of the municipality. In addition, when the municipality receives the board of education budget estimate as part of the annual budget process, the municipal budget authority must now make "spending recommendations and suggestions … as to how such board of education may consolidate noneducational services and realize financial efficiencies." The board of education need not agree to such recommendations or suggestions, but (adding insult to injury) if it rejects any such recommendations, the board of education must now explain its decision to the town in writing within 10 days.

Moreover, school boards must now post on the district websites aggregate spending information in specified categories for each school. With the coming financial storm and these statutory amendments, we can expect to see even greater tension and possibly legal conflicts between municipal and education officials.

Educational Reform

In ruling that the CCJEF case will go to trial in July, the Superior Court rejected the state's claim that the case was not yet ripe for adjudication because of the educational reforms enacted in 2010 and 2012. The impact of these reforms on boards of education in Connecticut is already being felt.

Districts are now "graded" on student achievement, and the state Department of Education just issued its new scorecard on student achievement for every school and school district in the state. This new accountability comes at a time when school districts are struggling to implement the Common Core State Standards for the curriculum and to move to new assessment tools for student achievement that are aligned to these new standards. The likely result of these changes, at least in the short term, will be lower measured student performance as instruction catches up with the new standards and new assessments.

The likely decline in measured student performance threatens to undercut a key piece of education reform—holding teachers accountable for their students' performance. In Public Act 12-116, the General Assembly imposed detailed requirements for teacher evaluation plans. Now such plans must provide that student achievement on both state and local assessments will be considered in the evaluation of teacher performance. This change is important because this reform legislation established a separate abbreviated termination hearing process for teachers who are evaluated as incompetent or ineffective.

In sharp contrast to the current process for terminating the contracts of "incompetent" teachers (which can take 10, 20 or more days of hearing), this new procedure, effective July 1, 2014, expressly limits to 12 hours contract termination hearings for teachers who are evaluated as incompetent or ineffective.

Such hearings will be limited to whether the evaluations relied upon were "determined in good faith in accordance with the [district's teacher evaluation] program [and] were reasonable in light of the evidence presented." Given the high stakes here, we may expect more challenges earlier in the process of teacher evaluation.

Since 2004, teachers have had the right to file grievances over alleged failures to comply with evaluation procedures. However, now that continued employment as a teacher will largely depend on whether a teacher is evaluated as "effective," weaker teachers may well challenge administrative decisions throughout the process, starting with the setting of student learning objectives all the way to the decision to initiate termination proceedings.

The new teacher evaluation procedures, overseen by the state Department of Education as required by statute, are already time-consuming and complicated. Given the incentive teachers will now have to claim that evaluators have made procedural mistakes, school districts must strive to keep their evaluation procedures as simple as possible as the new evaluation procedures and related tenure proceedings play out in coming years.

School Safety

These broad challenges of reform and austerity are not, of course, the only problems school districts will confront in 2014. Every new year brings new complexity and related legal challenges to school district operation. This year, in the aftermath of the Newtown shootings, school safety will be of primary concern. School officials will have to deal with comprehensive new legislation concerning school safety, including new school safety committees and new standards for construction. Safety concerns may also invite Freedom of Information Act disputes because school officials may well refuse requests to disclose certain public records for fear that disclosure of those records could compromise school safety.

Perhaps most interesting will be the likely challenges over what is and is not protected student and employee speech through social media. When is a student's posting on Facebook an exercise of free speech, and when is it illegal bullying of a fellow student? When is a teacher's tweet castigating the principal for a decision he made protected speech? When is such speech pursuant to duty and unprotected as such? When is it unprotected because it is disruptive to district operation? At this point, there are no clear answers to many of these questions.

School districts will confront these and other new issues in the coming year. We live in interesting times that promise to keep school lawyers busy in 2014.•

Thomas Mooney is a partner in the Hartford office of Shipman & Goodwin, where his practice includes all areas of school law, including labor negotiations, teacher tenure proceedings, freedom of information hearings, student disciplinary matters and special education disputes. He is the author of "A Practical Guide to Connecticut School Law" (7th Edition, 2012).