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## Writing The Book On Education Law

Attorney's latest volume updates special ed, discipline trends

By DOUGLAS S. MALAN

Thomas B. Mooney was there in the 1960s and 1970s when fundamental changes in education law provided more rights to students and helped define the relationship between students and their schools.

Gender equity, disabled students' rights to an education, and the confidentiality of students' records were among the issues addressed by lawsuits and legislation. At the time, Mooney, who is chair of the School Law Practice Group at Shipman & Goodwin, was just beginning his legal career in a practice area that was in its embryonic stage.

His firm was representing eight school boards in the state, and he first jumped into special education hearings regarding the quality of education provided to disabled children.

"I realized there was this evolving area of law that no one knew about," Mooney said.

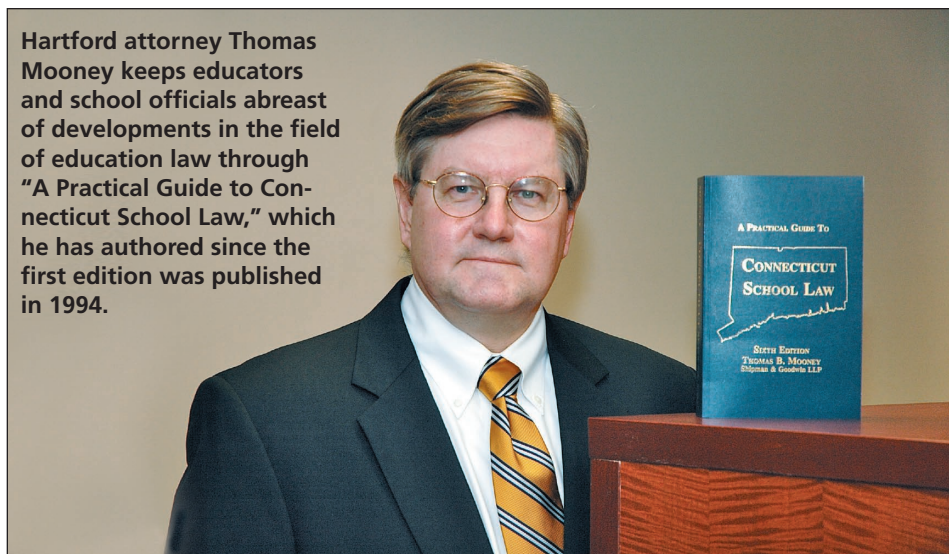
At that time, "the changes [in education law] were revolutionary and now they're incremental and continuing."

Mooney keeps educators and school officials abreast of developments in the field of education law through "A Practical Guide to Connecticut School Law," which he has authored since the first edition was published in 1994. The sixth edition came out late last month.

At 595 pages, the latest edition is more than 200 pages longer than the first book. Mooney has updated the book's seven chapters: school board organization, authority and responsibility; religion and the schools; teacher employment, evaluation and dismissal; students; special education; collective bargaining; and the obligations of school boards as employers.

Technological advances have created a

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Gary Lewis

host of legal issues involving online student-to-student bullying in recent years and also have raised questions about students' free-speech rights off campus. And there's also a brewing debate about in-school versus out-of-school suspensions that led the General Assembly to pass legislation requiring suspensions to be served at school.

Mooney now represents 80 of 156 school boards in the state, and the demands on schools have increased, as have the potential legal issues, because of what he called "a fundamental societal shift."

No longer do families, churches and charities support schools as they once did, Mooney said. "Those institutions look to government to help solve problems and legislators look to schools as vehicles to solve problems. It's a real challenge, especially in difficult economic times."

### Special Education

Mooney has moved away from special education hearings and now focuses his prac-

tice on labor negotiations, teacher tenure proceedings and student disciplinary matters. But special education hearings represent the majority of work handled by education lawyers.

Forty percent of all money spent on school law is in this area, Mooney said.

"Special education seems to be more and more the overriding issue in our practice," said Michelle C. Laubin, a partner of Berchem, Moses & Devlin in Milford who represents school districts. "The realm of student discipline is so vastly overshadowed by special education litigation."

Laubin said such cases are keeping lawyers on both sides busy because parents are becoming more aware of their rights under the federal Individuals with Disabilities Education Act (IDEA), which Congress first adopted in 1975 and has since reauthorized periodically. The law states that disabled students are entitled to an individualized educational program that meets their needs and it's up to the school district to provide that

program.

With the burden on school districts and the law providing attorneys' fees, Laubin said there's "a huge incentive for parents to come forward and demand a specialized program."

Alyce L. Alfano, of Alfano & Klebanoff in West Hartford, focuses her practice on special education, representing parents and students during administrative hearings before the state Department of Education.

"Parents come to us dissatisfied with what the school system is willing to provide to their [disabled] child," Alfano said. "Our cases are in districts all over the state. Special education has been a steady practice for a while. There's certainly no slowing down in that area."

When parents believe their educational needs aren't being met, they retain Alfano to advocate for them. Resolutions run the spectrum from obtaining a full evaluation of the student to assess his or her needs to having the school district foot the bill for a student's transfer to a private school that better accommodates the student. In between, there also are agreements reached that require the school to provide more speech and language programs or more occupational therapy, Alfano said.

Typically, disputes are worked over the course of several weeks or a few months.

Last year, 154 of 199 cases that were decided involved settlements between the

school district and the family, according to the state Department of Education. Laubin said that's an indication of school districts determining that settlements are more cost-effective than litigation involving attorneys' fees.

When a district also must pay for a student's relocation to a private school, the costs increase.

### **Discipline, Free Speech**

Other changes outlined in the latest version of Mooney's book involve student discipline. Schools are now generally required to provide a supervised environment on campus for students who are suspended, rather than sending them home where they may be free to do as they please.

"We're suspending more students because we don't have the family support," Mooney said. "[Schools'] duties have expanded to address this."

The law's implementation was postponed from July 1, 2008, to July 1, 2009, because of concerns over the cost of implementation and how to structure the program.

The state's bullying statute also received an update.

New legislation that was effective July 1 expands the definition of bullying to acts that "are committed more than once against any student during the school year." The previous bullying statute required the acts to be committed against the same student over a period of time. ■

Students' free-speech rights have been front and center, thanks to the case of Burlington student Avery Doninger, who insulted school officials on her personal blog and was removed from her position as class officer at Lewis S. Mills High School. She sought an injunction against the school in order to remain class officer, but she lost her First Amendment battle earlier this year after taking the case to the Second Circuit.

The Doninger case illustrated that the "off-campus and on-campus construct is breaking down," Mooney said.

Mooney gravitated toward school law after a college professor dissuaded him from becoming a German teacher. He joined Shipman & Goodwin shortly after law school and became one of the firm's first lawyers dedicated to the area of law. He soon began teaching the subject matter at the University of Connecticut's law school and school of education, which he still does, and his book is the textbook of choice in many graduate level courses throughout the state.

He writes the update every other summer and usually spends about 100 hours working on it. He sets up a database on his computer to keep track of important developments.

"As I keep up to date in my practice, every time a case is interesting I put it in the folders," he said. "My challenge is to keep it manageable because there's a lot to say about school law." ■