

State College Area School District Settles Litigation

On July 11, 2023, the Religious Rights Foundation of Pennsylvania (“RRF”) filed a federal complaint in the United States District Court for the Middle District of Pennsylvania against the State College Area School District and its Board of Directors on behalf of a number of private schools within the jurisdictional boundaries of the District whose students desired to participate in the extracurricular activities of SCASD. RRF argued that the District violated the Free Exercise Clause and Equal Protection Clause of the United States Constitution by prohibiting parochial students that were not enrolled in SCASD from participating in the District’s extracurriculars while permitting homeschooled students and Charter School students to do so. RRF contended that the District’s policy of excluding parochial students unjustly discriminated against them and forced parochial students and parents to choose between their religious beliefs and educational opportunities despite also being taxpayers of the District.

Per the Pennsylvania Charter School Law, charter school students are generally permitted to participate in extracurricular activities of the school district of residence if the charter school does not provide the same extracurricular activity and the charter school student meets all participation requirements. 24 P.S. §17-1719-A.

Act 55 of 2022 revised the School Code to require school districts, effective the 2023-2024 school year, to develop policies and procedures to permit homeschooled students to participate in any cocurricular activity that merges extracurricular

activities with a required academic course, including but not limited to band or orchestra; CTE programs; and academic courses equaling up to at least 25% of the school day for full-time students in the district’s schools, so long as the student would otherwise qualify for the course and the parents provide transportation for the class. 24 P.S. § 1327.1(f.2)(1).

Judge Matthew Brann previously denied SCASD’s motion to dismiss the case on December 1, 2023 with the case proceeding through the discovery phase until the parties reached a settlement on June 5, 2025.

The Release and Settlement Agreement, along with the Consent Order, are publicly available and can be accessed through the District’s BoardDocs online portal: [https://go.boarddocs.com/pa/stco/Board.nsf/files/DH5UCN7B6D82/\\$file/13.F.%20Consent%20Order%2006-02-2025.pdf](https://go.boarddocs.com/pa/stco/Board.nsf/files/DH5UCN7B6D82/$file/13.F.%20Consent%20Order%2006-02-2025.pdf)

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In addition to payment of \$150,000 in attorneys' fees, SCASD will permit eligible parochial students residing within the District the same opportunities for extracurricular, co-curricular, and athletic programs offered to homeschooled students and Charter School students under the Pennsylvania Public School Code, as amended. However, if a parochial school offers a specific sport or activity, its students are not eligible to participate in that same activity through the District. If the parochial school does not offer a particular sport or activity, students may join through SCASD.

The agreement and consent order also address eligibility disputes involving the Pennsylvania Interscholastic Athletic Association ("PIAA"). If PIAA declares a parochial student ineligible to participate, RRF must work directly with PIAA to resolve the issue. The District contends that PIAA must first approve of parochial school student participation on District sports teams before there is any obligation on the part of the SCASD to permit participation. In short, if PIAA declares a parochial student ineligible, SCASD may also declare them ineligible without violating the agreement.

Schools are advised to review their programs and eligibility requirements as well as current policies and handbooks, including policies and procedures addressing student participation in extracurricular and cocurricular activities.

Appeals Court Says District Did Not Violate Parent's Free Speech Rights After Challenging School Activities

Angela Reading, a mother and former school board member, alleged that federal and local government officials violated her right to free speech by engaging in a campaign of censorship and retaliation after she posted comments on Facebook. She requested a preliminary injunction to prohibit those officials from further interfering with her First Amendment rights.

As part of its 2022 "Week of Respect," the School invited students to design posters "demonstrat[ing] that UES [is] a safe place where everyone [is] accepted." Some students offered "messages of general acceptance," while others supported more specific causes.

One such poster, anchored in the center by the acronyms "LGBTQ" and "UES," featured descriptions of various sexual identities and their corresponding flags. The poster included a "bi" flag, a "genderfluid" flag, and a "polysexual" flag, among others. It announced that "different is cool" and instructed students that "you are who you are."

Angela Reading first saw the poster when she attended the School's "Math Night." After her seven-year-old daughter asked what the word "polysexual" meant, she was "livid." She took her concerns to social media. In a lengthy post to the "NJ Fresh Faced Schools" Facebook page, Reading wondered why an elementary school would permit its students to "research topics of sexuality," and worried that adults were "talking about their sexual life" with her children. She called the poster "perverse" and argued that it "should be illegal to expose my kids to sexual content." Although "[k]ids should respect differences," Reading explained, they "should not be forced to learn about and accept concepts of sexuality in elementary school." Reading concluded the post by noting that her comments were "made in [her] capacity as a private citizen and not in [her] capacity as a [school] board member."

Reading's post quickly drew the ire of military personnel at nearby Joint Base McGuire-Dix Lakehurst, some of whom had children at the School. Things escalated to a point where a higher-ranking officer got involved, then local police. It reached a point where it was stated Homeland Security was involved.

On November 30, 2022, Hanover Township Police Chief Robert Duff successfully convinced Nicole Stouffer, the administrator of "N.J. Fresh Faced Schools," to remove Reading's post from the page.

Superintendent Payne and Chief Duff privately lambasted Reading in a string of text messages to each other. Duff called Reading “sick in the head,” to which Payne responded, “[o]ld news.”

In a post to the Northern Burlington Parents Facebook page, Major Chris Schilling acknowledged that “[t]he current situation involving Mrs. Reading’s actions has caused safety concerns for many families.”

These efforts led to what Reading calls “an over-the-top show of force” at the next Board of Education meeting on December 13, 2022. She claims that Chief Duff arranged for “a multi-jurisdictional battalion of armed police officers, install[ed] a metal detector, and requir[ed] bag searches.” Reading alleged that “panic-stricken attendees assailed” her at the meeting, “falsely accusing her of jeopardizing school safety when no ‘threat’ had ever materialized.”

Reading defended herself in the media. She emailed government officials, appeared on national television, and was interviewed on local radio. She also published articles on a blog, which covered topics ranging from government censorship to developments in education policy.

Since the controversy began, Reading lost a job offer, resigned from her position on the Northern Burlington County Regional School Board, and withdrew her children from public schools. She blames Defendants, whose conduct “rendered [her] a pariah in her community.”

Although Reading did not get her injunction, the Court commented:

Reading’s allegations are serious and raise important questions under the Free Speech Clause of the First Amendment. Reading expressed concern about whether her seven-year-old daughter was being exposed to sexual topics that have no place in an elementary school. Regardless of whether one agrees with Reading’s concern, the record suggests that Defendants’ response to her blog post was, to put it mildly, disproportionate. Although that past conduct may very well result in remedies for damages or declaratory relief, this narrow appeal concerns only Reading’s standing to seek a preliminary injunction. And because Reading has not shown a likelihood of future injury, she lacks standing to seek that

form of relief. We will affirm the District Court’s order denying Reading’s motion for a preliminary injunction and remand for further proceedings consistent with this opinion.

Comment: As the above case demonstrates, parents are more prone to challenge activities and/or issues that they believe negatively impact their children’s values in the school setting.

Commonwealth Court Rules District Does Not Have Immunity Under PSTCA in Student-on-Student Sexual Assault Case

On June 9, 2025, in a case stemming out of sexual assault in the School District of Philadelphia, Commonwealth Court would not grant immunity to school district employees who allegedly failed to properly monitor or supervise two older students who had sexually assaulted a female student in the school setting.

In *L.F.V. v. South Philadelphia High School*, 2025 WL 1617645 (Commw.Ct. 2025), after the female student had been sexually assaulted, parents filed suit against Philadelphia School District on behalf of their child, alleging the District was negligent.

Parents alleged L.F.V. was attending physical education in October 2021 when she was reportedly pushed and pulled into a bathroom where she was sexually assaulted by two 16-year-old male students. In the case, parents/students pled that two, relatively older, male students pulled and pushed the mentally-disabled, 16-year-old female plaintiff behind the bleachers, said sexually-crude statements to her, engaged in inappropriate touching and sexual contact by one of the males who asked her later to show pictures of her private area to them by way of cell phone, and instructed her not to tell her parents what had occurred.

When this case was first before the Trial Court, Trial Court stated that such pled facts adequately support the inference that the two, relatively-older, male students intentionally and knowingly committed such acts which constitute aggravated indecent assault.

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District Does Not Have Immunity

...Continued

Parents asserted that the District owed their daughter a duty of care to protect her at school and breached that duty through failure to monitor the bathroom and failures of employees supervising the gym class. Subsequently the District filed Preliminary Objections citing the PSTCA. The PSTCA up until 2019 had eight (8) exceptions that could expose a local agency, such as a school district, to liability.

In 2019, the Pennsylvania State Legislature added a ninth (9th) exception:

42 Pa.C.S. § 8542

(b) Acts which may impose liability. – The following acts by a local agency or any of its employees may result in the imposition of liability on a local agency: . . .

(9) Sexual abuse. – Conduct which constitutes an offense enumerated under [42 PA. COUNS. STAT. §] 5551(7) (relating to no limitation applicable) if the injuries to the plaintiff were caused by actions or omissions of the local agency which constitute negligence.

See also 42 Pa.C.S. § 5551. No limitation applicable.

A prosecution for the following offenses may be commenced at any time:

(7) An offense under any of the following provisions of 18 Pa.C.S. (relating to crimes and offenses), or a conspiracy or solicitation to commit an offense under any of the following provisions of 18 Pa.C.S. if the offense results from the conspiracy or solicitation, if the victim was under 18 years of age at the time of the offense:

Section 3011(b) (relating to trafficking in individuals).

Section 3012 (relating to involuntary servitude) as it relates to sexual servitude.

Section 3121 (relating to rape).

Section 3122.1 (relating to statutory sexual assault).

Section 3123 (relating to involuntary deviate sexual intercourse).

Section 3124.1 (relating to sexual assault).

Section 3124.2 (relating to institutional sexual assault).

Section 3125 (relating to aggravated indecent assault).

Section 4302 (relating to incest).

Upon incorporating the language of 42 Pa.C.S. §5551(7) into the language of 42 Pa.C.S. §8542(b)(9): a local agency is liable if the “injury was caused by the negligent acts of the local agency or an employee thereof acting within the scope of his office or duties with respect to” “conduct which constitutes an offense enumerated under Section 5551(7).”

At the Common Pleas level, the Court overruled the District’s Preliminary Objections because in the eyes of the Court, the Plaintiffs pled sufficient facts to demonstrate negligent omissions by the District or its staff.

That case sat for a considerable period of time but ultimately, the case was appealed to Commonwealth Court. In its June 9, 2025 decision, the Commonwealth Court held that the District was not immune under the PSTCA. As noted above, the District argued that its employees were not the ones to commit the sexual abuse and, as such, the District did not fall under the Ninth exception of the PSTCA, added back in 2019. The Commonwealth Court rejected the arguments by Philadelphia School District and remanded the case for further action.

The Commonwealth Court undertook an extensive analysis of the immunity provisions under the PSTCA and looked at the legislative history of how the Ninth exception came to be adopted. Both the District and the parents cited various references to the legislative history and the intent of how the sexual abuse exception came about. Both the District and the parents in arguing their cases relied on statements by Representative Mark Rozzi, the lead legislative sponsor of the sexual abuse exception, who identified sexual scandals that prompted the legislation.

Interestingly in this case, State Representative Mark Rozzi filed an Amicus brief in this case. According to

the Commonwealth Court's opinion, Representative Rozzi argued that the sexual abuse exception was intended to 1) whole public institutions accountable for enabling "abusers to commit their crimes against" children, and 2) expand a plaintiff's "right to sue" to include such public institutions. He contended that a deliberate use of the language "actions and omissions" was inserted into the sexual abuse exception to ensure that public institutions could be held negligent for facilitating sexual abuse.

Ultimately, the Commonwealth Court stated:

As for the parties' competing interpretations of legislative history, we favor Plaintiffs' interpretation, which relies on the floor statement of Representative Rozzi, the main legislative sponsor. As the lead sponsor, he asserted that the intent of the legislation was to hold municipalities -like the District- accountable for negligently enabling sexual abuse.

At the end of the day, the Commonwealth Court affirmed the denial of the District's Preliminary Objections relative to the issue of immunity and remanded the matter back to the Trial Court / Court of Common Pleas for further proceedings.

When the 2024 Title IX training was underway, Beard Legal Group had outlined that until the Pennsylvania Supreme Court weighs in, there will not be any true finality on the issue of whether Districts can be held liable for the acts and omissions of third parties.

At the present time, based on the Philadelphia Court of Common Pleas and Commonwealth Court decision, it appears that school districts may be held liable and not have qualified immunity for the acts of third parties unrelated to the district or any of its employees.

Even prior to the L.F.V. Commonwealth Court decision on June 9, 2025, there were at least three other Courts that "*held that Section 8542(b) does not require the local agency or one of its employees to be the entity performing the [C]onduct which constitutes an offense enumerated under Section 5551(7).*"

In the absence of decisions from the Pennsylvania Supreme Court interpreting Section 8542(b)(9), federal courts have applied the sexual abuse exception in different manners on motions to dismiss.

In the Middle District, Judge Conner determined that, when a minor alleged that she was sexually abused by another minor student, such allegations "fit squarely within the [sexual abuse] exception[.]" *Doe by Brown v. Harrisburg Sch. Dist.*, (M.D. Pa. Aug. 10, 2020).

In the Middle District, Judge Brann construed Section 8542(b)(9) to preclude vicarious liability claims against a school district when the school district employees were not named as defendants and a high-school student/baseball player alleged he was sexually assaulted by a teammate in a hotel room while the team travelled to a national baseball tournament. *Doe v. Williamsport Area Sch. Dist.*, (M.D. Pa. Oct. 19, 2023).

*Judge Brann also determined that the Tort Claims Act did not bar the plaintiff's negligence, negligent infliction of emotional distress, and negligent failure to rescue claims asserted against the school district to the extent that the plaintiff alleged that the school district's negligence caused the sexual abuse. 2023 WL 6929316 at *16.*

In the Western District of Pennsylvania, Judge Colville determined that the sexual assault exception applied to negligence claims asserted against a school district and two high school wrestling coaches where the plaintiff alleged he was sodomized and experienced other instances of extreme hazing while students were left unsupervised before practice. *J.R. by & through Mr. R.R. v. Greater Latrobe Sch. Dist.*, (W.D. Pa. Aug. 25, 2023).

As the school year rapidly approaches and educators are heading back for orientation in the first few days of school, sufficient time should be set aside for a refresher on the basics of supervision, the concept of *in loco parentis* under Section 1317 of the School Code and the fact that the Educators' Code of Conduct provides a pertinent part that professional educators "shall exert reasonable effort to protect students from harm." (§235.5a(b)(4)).

District Does Not Have Immunity *...Continued*

For those districts subscribing to PSBA's Policy Service, educators should also be alerted to the provisions of Policy 340 addressing student welfare that provides a pertinent part:

Teachers, other professional employees, support staff, chaperones, coaches, etc., are responsible for the safety of pupils in their charge within the building, on school property, at school sponsored events, and at any off campus student activities, sanctioned by the school.

Practice Note: It may be sometime until this case gets sorted out in the Court of Common Pleas of Philadelphia County. In the meantime, districts should emphasize that school district administrators and employees need to be ever vigilant in regard to supervision and oversight of students within the school setting.

It's That Time of Year - Handbook Considerations

Usually in June and early July school district administrators set about the task of reviewing both their faculty and student handbooks. Within the last six months, there have been two significant pieces of legislation that can impact both student and staff conduct.

Pennsylvania Law:

In December 2024 the Pennsylvania Crimes Code was amended (per Act 125 of 2024) to allow for criminal prosecution for "Unlawful dissemination of intimate image" under Title 18 Section 3131(a) and (c).

Act 125 (2024 Amendment) in addition to amending 3131(a) and (c) added definitions of "artificial intelligence;" "artificially generated sexual depiction," "generative artificial intelligence" and photo editing software in Section (g).

(a) Offense defined.--Except as provided in sections 5903 (relating to obscene and other sexual materials and performances), 6312 (relating to sexual abuse of children) and 6321 (relating to transmission of sexually explicit images by minor), a person commits the offense of unlawful dissemination of intimate image if, with intent to harass, annoy or alarm another, the person disseminates:

- (1) A visual depiction of the current or former sexual or intimate partner in a state of nudity or engaged in sexual conduct.
- (2) An artificially generated sexual depiction of an individual.

...

(c) Grading.--

(1) An offense under subsection (a)(1) shall be:

- (i) A misdemeanor of the first degree, when the person depicted is a minor.
- (ii) A misdemeanor of the second degree, when the person depicted is not a minor.

(2) An offense under subsection (a)(2) shall be:

- (i) A misdemeanor of the first degree, when the person depicted is a minor.
- (ii) A misdemeanor of the second degree, when the person depicted is not a minor.

Federal Law

On May 19, 2025, President Trump signed into law the "Take It Down" Act.

The Act prohibits the publication of non-consensual intimate imagery (NCII) including AI-generated deepfakes and requires websites and social media platforms to remove such content upon receiving notice of their existence.

Specifically, the bill prohibits the online publication of intimate visual depictions of

- an adult subject where publication is intended to cause or does cause harm to the subject, and where the depiction was published without the subject's consent or, in the case of an authentic depiction, was created or obtained under circumstances where the adult had a reasonable expectation of privacy; or
- a minor subject where publication is intended to abuse or harass the minor or to arouse or gratify the sexual desire of any person.

Violators are subject to mandatory restitution and criminal penalties, including prison, a fine, or both. Threats to publish intimate visual depictions of a subject are similarly prohibited under the bill and subject to criminal penalties.

Separately, covered platforms must establish a process through which subjects of intimate visual depictions may notify the platform of the existence of, and request removal of, an intimate visual depiction including the subject that was published without the subject's consent. Covered platforms must remove such depictions within 48 hours of notification. Under the bill, covered platforms are defined as public websites, online services, or applications that primarily provide a forum for user-generated content.

The only new law under "OFFENSE INVOLVING AUTHENTIC VISUAL DEPICTIONS" addresses violations for both adults and minors (any individual under 18 years of age)

- (A) INVOLVING ADULTS.—Except as provided in subparagraph (C), it shall be unlawful for any person, in interstate or foreign commerce, to use an interactive computer service to knowingly publish an intimate visual depiction of an identifiable individual who is not a minor if—
- (i) the intimate visual depiction was obtained or created under circumstances in which the person knew or reasonably should have known the identifiable individual had a reasonable expectation of privacy;
 - (ii) what is depicted was not voluntarily exposed by the identifiable individual in a public or commercial setting;

(iii) what is depicted is not a matter of public concern; and

(iv) publication of the intimate visual depiction—

(I) is intended to cause harm; or

(II) causes harm, including psychological, financial, or reputational harm, to the identifiable individual.

(B) INVOLVING MINORS.—Except as provided in subparagraph (C), it shall be unlawful for any person, in interstate or foreign commerce, to use an interactive computer service to knowingly publish an intimate visual depiction of an identifiable individual who is a minor with intent to—

(i) abuse, humiliate, harass, or degrade the minor; or

(ii) arouse or gratify the sexual desire of any person.

PRACTICE NOTE: Students, parents and staff all need to be made aware of these changes both at the state and federal level. The above items should be added to the Student Code of Conduct and incorporated into your Level of Offenses in your handbooks if structured in that manner. These items should also be included in faculty handbooks as well. Students, parents and staff need to know the serious consequences for engaging in such conduct. As the grading of the offenses reflect, engaging in this type of conduct could have severe consequences for individuals. Students who may be charged could be significantly and negatively impacted concerning scholarships, admission to schools, and even into the military, as a result of engaging in such conduct. Students who engage in such conduct could be subject to disciplinary action that could include referral for expulsion, and face criminal charges. Consideration should be given to notifying parents of these changes, posting them on your website and/or school district Facebook page and affirmatively raising them in district to parent and community articles, newsletters, and communications, etc., to cut off possible arguments that either the student and/or the parents were not made aware of the serious consequences for engaging in such action.



Pennsylvania School Study Council Education Law Symposium 2025

Beard Legal Group is again partnering with the Pennsylvania School Study Council, Penn State Law, Penn State College of Education to provide a day-long Education Law Symposium.

This Symposium will be held **Wednesday, September 10, 2025.**

The conference will be held at the Appalachia Intermediate Unit 8 Training Center in Altoona Pennsylvania.

Additional information will be forthcoming.

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. The PSSC offers professional development to the membership through colloquiums, workshops, study trips, consultation, publications, and customized services. For more information, visit the PSSC website, <https://www.paschoolstudycouncil.org/> or contact Matthew M. Johnson, Ph.D at 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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