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## Special Report: Education Law

# Schools face new, old issues

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From bullying and special education issues to unfunded mandates and school safety, September always brings a host of new (and some old) challenges to school districts. How to best serve the community and educate the students while facing a litany of legal challenges.

With the 2013-14 academic year underway, what are hot-button issues facing Western New York school districts? We reached out to three top education attorneys to find out. Tracie Lopardi of Harris Beach, Ron Mendrick of Harter Secrest & Emery and John Christopher of Hodgson Russ LLP offered their take on what issues top the list, from the parents' side of the table as well as the school districts they represent.

They all agreed that one of the most hotly contested issues this year is standardized testing and how it is being utilized. Many parents want to opt out of the tests but fear potential fallout, they said. School districts that have a number of students opt out could suffer, as well, while teachers who are given assessments (APPR) will be judged on student test scores to mark their progress as teachers.

"The national and state education programs are really focusing on enhancing student achievement through the objective rating of teachers, the APPR," Lopardi said. "And because those ratings are based partially on student results, it has raised a lot of concerns."



Lopardi

While the idea of standardized testing and teacher evaluations are geared toward a common goal of better preparing students for success after high school, does Lopardi see the potential for litigation coming out of those issues? Could parents seek to sue to block the standardized testing? Or could the teacher's union choose to wage a legal battle over the inclusion of student test scores as part of teacher evaluations?

"I think it is too early to tell what might happen with regard to legal challenges," she said. "But it is certainly an issue we are monitoring very closely for our clients. I'm sure the parents and unions are, as well."

Christopher, who has been practicing education law for nearly 25 years, agreed.

"The evaluations are a hot legal issue," he said. "This Sept. 1 was a big date for schools because they had their first round of recertification of their APPR, and during the course of September and October, teachers will receive their first APPR results from last school year."



Christopher

On the legal side, Christopher said those results will lead to teachers exercising their right to appeal any evaluation, as outlined in their contracts.

"This is one of the most cutting-edge areas of all as districts try to figure out how to make their way through these appeals," he said. "Then, as we get to somewhere in mid-school year, I think you will see a lot of districts begin to bargain over the APPR going forward."

Another issue is student safety, according to Lopardi. "There is a continuing emphasis on student safety and that includes safety when it comes to athletics," she said.

With the recent death of Brocton High School football player Damon Janes, 16, who suffered a hit in a game earlier this month, Lopardi said it serves as a reminder to all the importance of student safety during athletic events.

"We are certainly all aware of the Concussion Management and Awareness Act but I think with what happened recently, it is going to be even more of a concern for school districts, parents and students alike," she said.

Another concern is student safety as it pertains to



Pinnacle Charter School in Buffalo closed after a lengthy legal battle to keep the school open. Test scores and teacher evaluations are just a few of the issues at the center of possible legal battles facing local public schools in the year ahead.

building access, she said. With the Sandy Hook Elementary School shootings still fresh in people's minds, school districts have to be more vigilant than ever about securing their buildings.

"Whether it is looking at the name-badge system for teachers, to the security guards and resource officers, schools are assessing their security — including the use of armed security guards — as they work to ensure student safety," she said.

Christopher said there are additional issues facing today's schools, including questions of residency and increased challenges to mandatory immunizations.

In the wake of heavy media attention regarding the safety of certain vaccines, districts see more parents trying to opt out of having their child receive the mandatory immunizations. Christopher said the most common argument made is a religious exemption.

"There is a burden of proof parents need to meet to make that argument," he said. "And that is important, because without that burden you would have literally every parent opting out of having their child immunized." As it is, the numbers are on the rise, he said.

"We've had an ever-increasing number of parents trying to opt out. There is a hearing process they have to go through and we are handling a lot more of these hearings," Christopher said.

He pointed to a news story about a rise in the number of measles cases being reported in communities where there are large groups of students who opt out.

"That connection is that they go hand-in-hand, and we expect to continue to see steady growth in that area," he said.

As far as residency, Christopher said there is an ongoing fight in many districts to define who the school is required to educate, based on residency.

"Under the law, the schools are obligated to educate students who reside within the district," he said. "In New York, we have a lot of small, shapely districts where you could be standing in one location and be within three miles of 10 different school districts."

With the pressure and emphasis on testing, Christopher

said parents are challenging residency issues, often in an effort to get their child into a neighboring district that may show better academic results.

"This is something I suspect we will see even more of as the test results come out and more parents become aware of the differences between the districts," he said.

Ron Mendrick, meanwhile, is an education attorney with Harter Secrest & Emery. He said for all the issues the districts are facing this year, there isn't a single issue jumping out of the pack.

"It feels like every year there is a big, new issue but this year I see less of that and more of a continuation of some of the issues we have been facing for the last several years," he said.

Asked for his thoughts on the buzz about the teacher evaluation program, Mendrick said it is more of a wait-and-see issue.

"We are still in the first year of its implementation and it isn't done yet," he said. "People don't even know how this is going to turn out and what any of the issues might be yet."

He agreed that there could be legal challenges brought by parents fighting the rule requiring students to participate in standardized testing.

"There is certainly a lot of political push and a number of websites out there advocating that, so it is pretty clear that it is still a very controversial topic," he said.

Another area for potential conflict is related to the new Common Core Learning Standards adopted by New York state.

"The state is asking that schools embrace and implement these common core standards, but it is costing schools in both technology and staff time to do so," Mendrick said. "And as we've discussed, it is also an issue with student testing and the evaluations all tied together through these common core standards."



Mendrick