



2022

SAI Annual Conference

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Kennedy v. Bremerton School District (2022)

- Facts –
 - Joseph Kennedy lost his job as a high school football coach in the Bremerton School District after he knelt at midfield after games to offer a quiet personal prayer.
 - The District permitted other members of the coaching staff to forgo supervising students briefly after the game to do things like visit with friends or take personal phone calls.

Kennedy v. Bremerton School District (2022)

- Holding –
 - The Free Exercise and Free Speech Clauses of the First Amendment protect an individual engaging in a personal religious observance from government reprisal; the Constitution neither mandates nor permits the government to suppress religious expression.
 - That Mr. Kennedy chose to use the same time to pray does not transform his speech into government speech. To hold differently would be to treat religious expression as second-class speech and eviscerate this Court's repeated promise that teachers do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Tinker*

Kennedy v. Bremerton School District (2022)

- Key Considerations –
 - He was not instructing players, discussing strategy, encouraging better on-field performance, or engaged in any other speech the District paid him to produce as a coach.
 - Simply put: Mr. Kennedy's prayers did not "ow[e their] existence" to Mr. Kennedy's responsibilities as a public employee.
 - The timing and circumstances of Mr. Kennedy's prayers – during the postgame period when coaches were free to attend briefly to personal matters and students were engaged in other activities – confirms that Mr. Kennedy did not offer his prayers while acting within the scope of his duties as a coach.

Kennedy v. Bremerton School District (2022)

- Key Considerations –

- It is not dispositive that Coach Kennedy served as a role model and remained on duty after games. To hold otherwise is to posit an “excessively broad job descriptio[n]” by treating everything teachers and coaches say in the workplace as government speech subject to government control. *Garcetti*
- That Mr. Kennedy used available time to pray does not transform his speech into government speech.
- Acknowledging that Mr. Kennedy’s prayers represented his own private speech means he has carried his threshold burden.

Kennedy v. Bremerton School District (2022)

- Key Considerations –
 - Under the Pickering-Garcetti framework, a second step remains where the government may seek to prove that its interests as employer outweigh even an employee's private speech on a matter of public concern.
 - Under the Free Exercise Clause, a government must satisfy at least “strict scrutiny,” showing that its restrictions on the plaintiff's protected rights serve a compelling interest and are narrowly tailored to that end.
 - The Court concludes, however, that the District cannot sustain its burden under any standard.

Kennedy v. Bremerton School District (2022)

- Key Considerations –
 - [T]his Court long ago abandoned *Lemon* and its endorsement test offshoot.
 - In place of *Lemon* and the endorsement test, this Court has instructed that the Establishment Clause must be interpreted by “reference to historical practices and understandings.” *Town of Greece*
 - A natural reading of the First Amendment suggests that the Clauses have “complementary” purposes, not warring ones where one Clause is always sure to prevail over the others.
Everson

Kennedy v. Bremerton School District (2022)

- Key Considerations –
 - The District next attempts to justify its suppression of Mr. Kennedy's religious activity by arguing that doing otherwise would coerce students to pray.
 - The District suggests that *any* visible religious conduct by a teacher or coach should be deemed – without more as a matter of law – impermissibly coercive to students.

Kennedy v. Bremerton School District (2022)

- Key Considerations –
 - A rule that the only acceptable government role models for students are those who eschew any visible religious expression would undermine a long constitutional tradition in which learning how to tolerate diverse expressive activities has always been “part of learning how to live in a pluralistic society.” Lee v. Weisman
 - Here, a government entity sought to punish an individual for engaging in a personal religious observance, based on a mistaken view that it has a duty to suppress religious observances even as it allows comparable secular speech.

RECOMMENDED BEST PRACTICES

- ✓ Consider whether the employee is leading prayers with a team/class or before any other captive audience, also whether the prayer is publicly broadcasted (e.g., PA system). This would include times when a coach or teacher is required to actively supervise or instruct. Such activity is not permitted.
- ✓ Teachers and coaches are able to visibly pray before meals or during other times when employees are not actively supervising or instructing.
- ✓ Consider whether a reasonable person would view the employee's speech as private speech or speech "commissioned or created" by the district. (e.g., a teacher thanking a group upon receiving recognition vs. a teacher talking to students and parents at new student orientation)
- ✓ School employees are likely able to read religious books, such as the Torah, Koran, or Bible at times when the district would permit them to read other books.
- ✓ Districts may not proscribe religious activity based on "perceptions" or "discomfort." *Good News Club*
- ✓ School employees may hang religious symbols or place them on their desk to the extent the district has provided those areas for personal effects and has permitted employees to express other personal beliefs (e.g., support of a group or movement). It would need to be clear that such areas share matters that are important to the teacher and are not expressing district beliefs.

RECOMMENDED BEST PRACTICES

- ✓ Districts should consider that employee speech has even more protection when it occurs around secondary students. The Supreme Court has long recognized that “secondary school students are mature enough . . . to understand that a school does not endorse,” let alone coerce them to participate in, “speech that it merely permits on a nondiscriminatory basis.”
Mergens
- ✓ Students may voluntarily decide to join an employee in prayer, as employees may not discourage a student’s religious expression unless the student is speaking on behalf of the district.
- ✓ Employees still may not coerce, require, or ask any student to pray or even tell students it is important for them to participate in religious activity.

SF 2266 – IPERS Retirement Cap & Board Member Pay

IPERS reemployment pay cap is immediately raised to \$50,000 from \$30,000. The cap is removed when the reemployed member reaches the age of 65.

- \$30,000 reemployment cap has been in place for over 20 years.
- Above the cap an employee has to pay 50% back to IPERS.

School board members are now permitted to earn up to \$20,000 from the school district to work as a school employee or have a contract with the district.

HF 2416 – Transgender Athlete Eligibility

- Only **athletes** listed as females on their birth/adoption certificate at or near the time of their birth may participate in any **team, sport, or athletic event** designated as being for females, women, or girls.
- This applies to all Iowa public schools, accredited nonpublic schools, community colleges, institutions governed by the state board of regents, and any institution of higher education located in Iowa that is a member of the NCAA, NAIA, or NJCAA.

HF 2416 – Transgender Athlete Eligibility (cont.)

- Educational institutions or their employees who violate this law will lose immunity under Iowa Code Chapters 669 and 670.
- If a student suffers direct or indirect harm as a result of a violation of this law, the student has a private cause of action for injunctive, mandamus (a judicial writ to perform a statutory duty), damages, and declaratory relief against the entity that violated the law. If the student prevails they will also be entitled to reasonable attorney fees and costs. **(Possible harm might include not placing in an event or making a spot on a team.)**
- Students subjected to retaliation or other adverse action for reporting a violation of entitled to the same relief.

HF 2416 – Transgender Athlete Eligibility (cont.)

- Schools and other governmental entities shall not investigate a complaint or take any adverse action against an educational institution or organization, or employee for complying with this law. (e.g., Complaint might include a complaint against an employee for not allowing a transgender student to participate.)
- If a lawsuit is brought against an entity or employee for enforcing this law, the attorney general shall provide legal representation and the State of Iowa shall assume financial responsibility for any expense relating to the lawsuit.

HF 2081 – Teacher Assessment Requirements

- Teacher prep programs are not required to administer a preprofessional skills test to students entering the program.
- However, pre-student teaching field experience has been increased to 80 hours, 10 hours of which must occur prior to admission into teacher prep program.
- Pre-student teaching field experience for students participating in a teacher intern preparation program is now 50 hours.

HF 2081 – Teacher Assessment Requirements (cont.)

- Candidates for teacher licensure no longer have to pass the PRAXIS test.
- Candidates who previously failed the Praxis can update their status with the BoEE and obtain licensure if they meet all other requirements.

HF 2165 – Future Ready Workforce Scholarships

- Now allows part-time students to qualify for scholarship support.
- Education-related positions qualify.
- May supplement Governor's Teacher and Para-education registered apprenticeship program.

HF 2080 – Operational Sharing Weighting

- Increased weighting of shared superintendents from 8 to 9 pupils.
- Added School Resource Officers (SRO) as a shared position.
- Allows districts to receive weighting if they share an employee with another district even if the employee is in different positions in each district, as long as both positions are eligible for weighting.
- [Special education directors are excepted from this requirement and are still eligible for sharing incentives, even if they hold another position that is not weighted.]

HF 2589 – Standing Appropriation – Open Enrollment

- Eliminated the March 1 open enrollment deadline
- Districts may still deny application due to insufficient classroom space. [It would be helpful to have policy stating student to teacher ratios and/or classroom size limits.]
- If a student participating in open enrollment attends in the receiving district for less than a full school year, payment from the district of residence to the receiving district shall be prorated on a per diem basis.
- 90 day rule still applies to varsity athletic participation unless one of the open enrollment "good cause" exceptions is met.

HF 2589 – Standing Appropriation – Open Enrollment (cont.)

- 90 day rule open enrollment “good cause” exceptions:
 - A change in a child’s residence due to a change in family residence.
 - A change in a child’s residence from the residence of one parent or guardian to the residence of a different parent or guardian.
 - A change in the state in which the family residence is located.
 - A change in a child’s parents’ marital status, a guardianship or custody proceeding, placement in foster care, adoption.
 - Participation in a foreign exchange program, initial placement of a pre-kindergarten student in a special education program requiring specially designed instruction, or participation in a substance abuse or mental health treatment program.

HF 2589 – Standing Appropriation – Open Enrollment (cont.)

- 90 day rule open enrollment “good cause” exceptions:
 - A change in the status of a child’s resident district such as removal of accreditation by the state board, surrender of accreditation, or permanent closure of a nonpublic school, revocation of a charter school contract as provided in section 256E.10 or 256F.8, the failure of negotiations for a whole grade sharing, reorganization, dissolution agreement, or the rejection of a current whole grade sharing agreement, or reorganization plan.
- **Resident and receiving district may mutually agree to immediately allow athletic participation.**

HF 2412 – Radon Testing

- Requires public school districts to establish a radon plan and have at least one short-term radon test done at each attendance **center by July 1, 2027.**
- **Tests will be required every five (5) years** in each building thereafter.
- **Districts will place radon testing results on the school's website.**
- In addition to approved contractors, **district employees may perform the testing** if they have completed a school radon testing training program approved by the DE and the Department of Public Health.

HF 2573 – Response to Opioid Use

- Code now allows a school district to obtain and maintain opioid antagonist medication (Narcan).
- A school employee may possess and administer the drug to an individual if the school employee reasonably and in good faith believes that the individual is experiencing an opioid-related overdose. (Iowa Code §135.190)
- **The school employee who administers the antagonist will have full immunity**. (Iowa Code §135.190)
- [It is still recommended to follow medication administration requirements and ensure employees are properly trained.]

SF 2080 – Student Health Screenings

- Prohibits public schools from administering an invasive physical examination or health screening to a minor student not required by state or federal law without first obtaining a parent's written approval.
- Passive consent was previously enough in many situations.
- “Invasive physical examination” means any medical examination that involves the exposure of private body parts or any act during such examination that includes incision, insertion, or injection into the body, but does not include hearing, vision, or scoliosis screening.

SF 2080 – Student Health Screenings (cont.)

- “Student health screening” means an intentionally planned, periodic process to identify if students may be at risk for a health concern and to determine if a referral for an in-depth assessment is needed to consider appropriate health services. “Student health screening” does not include an episodic, individual screening done in accordance with professional licensed practice.
- Schools may still conduct health screenings in ***emergent care situations*** or from cooperating in a child abuse assessment commenced in accordance with Iowa Code §232.71B.

SF 2080 – Student Health Screenings (cont.)

- **“Emergent care situation”** means a sudden or unforeseen occurrence or onset of a medical or behavioral condition **that could result in serious injury or harm to a student or others** in the event immediate medical attention is not provided.
- **[Under Iowa Code §702.18, “serious injury” includes: disabling mental illness, substantial risk of death, serious permanent disfigurement, protracted loss or impairment of the function of any bodily member or organ. Includes but is not limited to skull and rib fractures.] [Consider possibility of a concussion or eye injuries.]**
- **“Emergent care situation”** includes the need to screen a student or others for symptoms or exposures **during an outbreak or public health event** of concern **as designated by the department of public health.**

SF 2080 – Student Health Screenings (cont.)

- **The Department of Education IS WORKING TO DETERMINE** the extent to which active parental consent is needed for some forms of mental health screenings (e.g., **Social, Academic and Emotional Behavior Risk Screener (SAEBRS)**).
- **Written consent from parents/guardians is already required if a district or the AEA contracts with a mental health professional or a nationally accredited behavioral health care organization to provide universal behavioral health screenings.** The suicide screenings some schools utilize already require parent written approval. (Iowa Administrative Code 281-14.22(1)(b))

SF 2279 – Electronic Submission of Bids

- Districts may now give notice to bidders for public improvement projects that bids may be received in an electronic format, as determined by the district.
- If bids are received electronically, districts must ensure the time and date are recorded when received.
- [Work with your legal counsel on these changes to ensure compliance.]

SF 2322 – Public Records Fees

- Amends language in Iowa Code §22.3 relating to fees charged for public records requests.
- The lawful custodian shall make every reasonable effort to provide the public record requested at no cost other than copying costs for a record which takes less than thirty minutes to produce. In the event expenses are necessary, such expenses shall be reasonable and communicated to the requestor upon receipt of the request. [A person may contest the reasonableness of the custodian's expenses.]
- Costs for legal services should only be utilized for the redaction or review of legally protected confidential information.

HF 771 – Student Administration of Bronchodilators

- Adds bronchodilators to list of medications students may self-administer under Iowa Code §280.16 if:
 - Parents provide written authorization;
 - The school district notifies the parent in writing that the school does not have liability related to the self-administration;
 - A healthcare professional provides written statement regarding the student's use of the medication;
 - This process must be completed annually.

Houston CC System v. Wilson (2022)

- Facts –
 - Wilson was elected to the Board of Trustees of the Houston Community College System (HCC), a public entity that operates various community colleges. Mr. Wilson often disagreed with the Board about the best interests of HCC, and he brought multiple lawsuits challenging the Board's actions. By 2016, these escalating disagreements led the Board to reprimand Mr. Wilson publicly. Mr. Wilson continued to charge the Board—in media outlets as well as in state court actions—with violating its ethical rules and bylaws. At a 2018 meeting, the Board adopted another public resolution, this one “censuring” Mr. Wilson and stating that Mr. Wilson’s conduct was “not consistent with the best interests of the College” and “not only inappropriate, but reprehensible.” The Board imposed penalties in addition to the verbal censure, among them deeming Mr. Wilson ineligible for Board officer positions during 2018.

Houston CC System v. Wilson (2022)

- Holding –
 - The United States Supreme Court reversed the 5th Circuit Court of Appeals's ruling and decided that elected bodies may verbally censure fellow board members.
 - Wilson would have had to show that the government took an "adverse action" in response to his speech that "would not have been taken absent the retaliatory motive." *Nieves v. Bartlett*
 - Here the board merely passed a resolution censuring Wilson for his behavior and determined he was ineligible for officer positions for a period of one year.
 - The board did nothing to exclude Wilson from fulfilling his role on the board.

DE Social-Emotional-PD Grants

- To help support the social-emotional-behavioral health of Iowa students, the Iowa Department of Education has announced a third round of funding for the COVID-19 Public Health Workforce Supplemental Opportunity Grant. All Iowa school districts are strongly encouraged to apply for this funding that supports up to 12 days of professional development and training for school staff. *Deadline to apply for this round of funding is August 12.*
- Iowa schools can apply for awards up to \$100,000. Grant requirements and the application process can be found at [iowaGrants.gov](https://iowagrants.gov) under funding opportunity #464801. All applicants must register an account to apply. For questions contact Melissa Walker at melissa.walker@iowa.gov.

DE Social-Emotional Health Screenings

- The Iowa Department of Education has released a set of reviewed SEBH screening tools.
- Reviewed SEBH Screening Tools: Preschool-Kindergarten - This resource is provided as a tool to support schools in selecting SEBH screening measures. Schools are not required to use or select from this reviewed list.
- Approved Grade 1-12 Behavioral Health Screening Tools: For Contracted Mental Health Providers - This resource is provided to meet Iowa Code 280A requirements. Schools are required to select from this list when they contract with mental health providers for universal behavioral health screening.
- For additional information contact Kathy Bertsch at kathy.bertsch@iowa.gov or 515-419-2444.

DE Social-Emotional Learning Resources

The Department of Education has released new resources on the [Social-Emotional Learning webpage](#) including:

A video, ["Iowa's Foundation for Social-Emotional Learning"](#). This video provides an overview of the basics of Social-Emotional Learning (SEL) in Iowa including importance, definition, alignment with existing initiatives, foundational principles, specific framework of Competencies and Learning Targets, and more. It was developed as a tool that can be used to introduce and/or clarify the role of SEL in Iowa.

The [Iowa Social-Emotional Learning Guide](#) has been revised, adding Preschool as a grade band and updating foundational information for alignment of the Guide and video.

Preschool now also has a separate document for [Preschool SEL Competencies](#), [Preschool Iowa Early Learning Standards Alignment Tool](#) similar to the condensed versions for K-12 and individual grade bands.