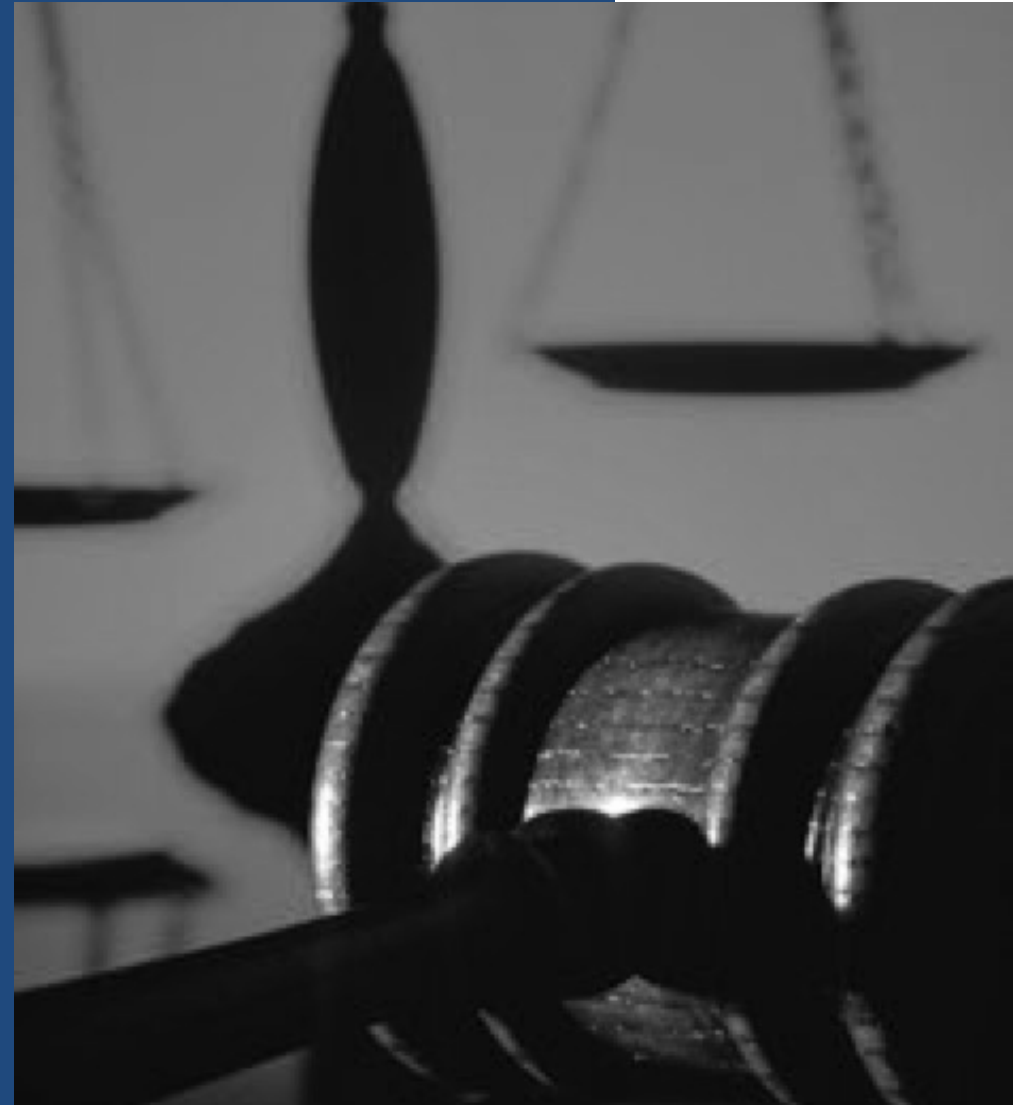


2021

## SAI Annual Conference

Matt Carver, J.D.  
Legal Services Director  
515.267.1115  
[mcarver@sai-iowa.org](mailto:mcarver@sai-iowa.org)



# Equity Instruction – HF 802

- Superintendents **MUST** ensure “any CURRICULUM or MANDATORY staff or student training . . . DOES NOT teach, advocate, encourage, promote, or act upon specific stereotyping and scapegoating toward others on the basis of demographic group or identity.” (new Iowa Code §279.74(2))
- There has been some confusion because “specific defined concepts” were not mentioned in this portion of the bill.

# Equity Instruction – HF 802 (cont.)

- “Race or sex scapegoating” = assigning fault, blame, or bias to members of a race or sex, because they are inherently racist or inclined to oppress others based on their race or sex.
- “Race or sex stereotyping” = “ascribing character traits, values, moral and ethical codes, privileges, status, or beliefs to a race or sex, or to an individual because of the individual’s race or sex.”

# Equity Instruction – HF 802 (cont.)

- “Specific defined concepts” –
  - 1) That one race or sex is inherently superior to another race or sex.
  - 2) That the United States of America and the state of Iowa are fundamentally or systemically racist or sexist.
  - 3) That an individual, solely because of the individual’s race or sex, is inherently racist, sexist, or oppressive, whether consciously or unconsciously.
  - 4) That an individual should be discriminated against or receive adverse treatment solely or partly because of the individual’s race or sex.
  - 5) That members of one race or sex cannot and should not attempt to treat others without respect to race or sex.

# Equity Instruction – HF 802 (cont.)

- “Specific defined concepts” –
  - 6) That an individual’s moral character is necessarily determined by the individual’s race or sex.
  - 7) That an individual, by virtue of the individual’s race or sex, bears responsibility for actions committed in the past by other members of the same race or sex.
  - 8) That any individual should feel discomfort, guilt, anguish, or any other form of psychological distress on account of that individual’s race or sex.
  - 9) That meritocracy or traits such as a hard work ethic are racist or sexist, or were created by a particular race to oppress another race.
  - 10) Any other form of race or sex scapegoating or any other form of race or sex stereotyping.

# Equity Instruction – HF 802 (cont.)

- School district “diversity and inclusion efforts shall discourage students of the school district from discriminating against another by political ideology or any characteristic protected under the federal Civil Rights Act of 1964 . . . and applicable state law.”
- The bill further requires school districts to “prohibit its employees from discriminating against students or employees by political ideology or any characteristic protected” under federal and state law.

# Equity Instruction – HF 802 (cont.)

- Bottom-line:
- Educators MAY:
  - (1) Answer questions about stereotyping, scapegoating, and specific defined concepts.
  - (2) Discuss these topics if training is not mandatory.
  - (3) Teach “specific defined concepts” “as part of a larger course of academic instruction.”
- Consider approaching these subjects as educators might educate students relating to religion. Educators should not promote the restricted topics but may teach ABOUT them.

# Student Free Speech – HF 744

- This covers public and NOT nonpublic schools
- This law requires districts to “protect the intellectual freedom of the school district’s students AND practitioners and . . . Establish and publicize policies that protect students and faculty from discrimination based on speech.”
- Students who file complaints are protected from retaliation.
- Employees who file a complaint are protected by Iowa’s whistleblower statutes (Iowa Code §70A.29)



# Student Free Speech – HF 744 (cont.)

- If a court or the school board find that an employee has discriminated against a student or staff member in violation of this section, the employee SHALL be subject to a hearing before the BoEE and the employee MAY be terminated.
- [Examples – Question on exam about climate change, as opposed to a persuasive speech in speech class.]
- *[This only applies to employees holding a license, certificate, authorization, or statement of recognition from the BoEE.]*

# Student Free Speech – HF 744 (cont.)

- The district shall update student speech policies to include time, manner, and place provisions for student speech.
- **An employee acting within their official capacity to protect a student's speech rights** under this section or refusing to infringe upon a student's speech rights shall not be dismissed, suspended, disciplined, reassigned, transferred or subject to termination or nonrenewal from a teaching or extracurricular contract.
- [Administrator contracts are not specifically referenced]

# Pledge of Allegiance – HF 847

- Public school boards SHALL ensure the Pledge of Allegiance is administered in grades one through twelve every school day.  
The United States flag SHALL be displayed in each classroom in which the Pledge is recited.
- If a student or the student's parent objects to the student saying the Pledge of Allegiance, the student is not required to participate.
- Schools may administer the Pledge of Allegiance at the same time each day, even if some students are not scheduled to attend at that time. (e.g., first period)

# Education Appropriations – HF 868

- **Petition to School Board** – If a petition with the signatures of the lesser of 500 electors or 10% of persons who voted in the last school board election is presented to the board, proposal specified in the petition shall be placed on the agenda for the next meeting, which shall be held within 30 days of the receipt of the petition.
  - 1) If the proposal relates to curriculum, the board may halt instruction of the curriculum until the meeting occurs.

# Education Appropriations – HF 868

- Petition to School Board –
- 2) The meeting notice **SHALL** provide a brief description of the proposal.
- 3) The board **SHALL** allow each interested member of the public to speak at the meeting, but may impose a time limit on individual comments if such restrictions are necessary due to the amount of people wishing to speak.
- 4) Board members ARE NOT required to discuss the proposal or vote on it.

# Education Appropriations – HF 868

- DE Director must develop three products in subsections 63 and 64 of Iowa Code §256.9 –
  - Product 1 – Website guidance for parents, guardians, and community members who have concerns about school districts or their governing boards. (Iowa Code §256.9(63))
  - Product 2 – Develop and distribute equity guidance for district equity coordinators. (Iowa Code §256.9(64))
  - Product 3 - Develop and distribute a training program on free speech under the First Amendment which school districts may use to provide training under Iowa Code §279.75.

# Education Appropriations – HF 868

- Added the following text to Iowa Code §279.66 (“Discipline and personal conduct standards”):
  - The board of directors of a school district **SHALL include or reference in the student handbook DE guidance** published pursuant to section 256.9, subsection 63, for parents, guardians, and community members who have concerns about school districts or their governing boards. (Iowa Code §279.66(2))

# Education Appropriations – HF 868

- Added the following **training requirement for school district EQUITY COORDINATORS**:
  - The board of directors of a school district **SHALL provide training on free speech** under the first amendment of the Constitution of the United States developed and distributed pursuant to section 256.9, subsection 64, annually to any equity coordinator employed by the school district. (Iowa Code §279.75)



# Board Member Compensation– SF 130

- Allows board members to earn over \$6,000 if they work as substitutes, food service workers or bus drivers.

# Substitute Teacher Authorizations – HF 675

- Allows a person with a substitute authorization to teach in a PK-12 class for not more than 10 consecutive days if they have at least an associate degree and not less than sixty undergraduate hours.
- Administrators may also file a written request to the BoEE for an extension of the ten-day limit.

# Firearm Bill – HF 756

- It is not a crime for an individual to carry an **unloaded** firearm on school property, if it is in a closed and fastened container or in a securely wrapped package that is too large to be concealed.

[What the what????]

- [School policies may still prohibit the carrying of such firearms.]

# Firearm Bill – HF 756

- Minors commit a serious misdemeanor if they are armed with a concealed, dangerous weapon, or if they carry, transport, or possess a loaded firearm of any kind within city limits or an unloaded pistol or revolver in a vehicle.
- Minors commit a simple misdemeanor if they are armed with a taser.

# Open Enrollment – HF 847

- Students may now open enroll after March 1, IF:
  - (1) a change in residence from one parent/guardian to another.
  - (2) Initial placement of a Pre-K student in a special ed. program requiring specially designated instruction.

# Open Enrollment – HF 847

- (3) If a child's assigned school building is designated as in significant need of assistance.
- (4) If a resident district cannot adequately address, a consistent failure of the resident district to reasonably respond to a student's failure to meet basic academic standards after notice provided by a parent or guardian.  
(According to DE rules, after State Board creates)

# Open Enrollment – HF 847

- Transportation assistance for open enrolled students.
- Increased economic eligibility requirement from 160% to 200% or less of the federal poverty level.
- Districts still need to be contiguous for a family to qualify.

# Athletic Eligibility– HF 847

- Student-athlete's are immediately eligible if:
- (1) The child's former school or school district, **if located in this state**, was unable to participate in varsity interscholastic sports as the result of a decision or implementation of a decision of the school board or superintendent. (Iowa Code §256.46(1)(i);
- (2) Resident and receiving district boards of directors agree to waive ineligibility (**N/A if due to academic ineligibility**);



# Athletic Eligibility– HF 847

- Student-athlete's are immediately eligible if:
- (3) If the pupil participates in open enrollment because of circumstances that meet the definition of “good cause.”
- (4) If the board of directors or superintendent of the district of residence issues or implements a decisions that results in the discontinuance or suspension of varsity interscholastic sports activities in the district of residence.

# Athletic Eligibility– HF 847

- Change to the Open Enrollment Transfer Rule for this school year only (2021-22):
- If a student was enrolled in District A on the first day of 2020-21 school year, enrolled in District B for a portion of the 2020-21 school year, and, then re-enrolled in District A prior to July 1, 2021.
- [Think of this as the COVID exception]

# Athletic Eligibility– HF 847

- Academic Ineligibility and the Open Enrollment Transfer Rule:
- A student may not escape the academic ineligibility rule by open enrolling to a new district. Students must complete ineligibility at the new district.

# Voluntary Diversity Plans – HF 228

- Eliminates voluntary diversity plans as a reason to deny open enrollment.
- Provides an opportunity for residents in Davenport, Des Moines, Postville, Waterloo, and West Liberty to apply for open enrollment for the 2021-22 school year.

# Mahoney Area School District v. B.L. (2021)

- B.L., a student at Mahanoy Area High School (MAHS), tried out for and failed to make her high school's varsity cheerleading team, making instead only the junior varsity team. Over a weekend and away from school, she posted a picture of herself on Snapchat with the caption “F@#\$ school f@#\$ softball f@#\$ cheer f@#\$ everything.” The photo was visible to about 250 people, many of whom were MAHS students and some of whom were cheerleaders. Several students who saw the captioned photo approached the coach and expressed concern that the snap was inappropriate. The coaches decided B.L.’s snap violated team and school rules, which B.L. had acknowledged before joining the team, and she was suspended from the junior varsity team for a year.

# Mahoney Area School District v. B.L. (2021)

- The Supreme Court has previously outlined three specific categories of student speech that schools may regulate in certain circumstances: (1) “indecent,” or “lewd,” or “vulgar” speech uttered during a school assembly on school grounds, (*Bethel v. Fraser*), (2) speech, uttered during a class trip, that promotes “illegal drug use,” (*Morse v. Frederick*), and (3) speech that others may reasonably perceive as “bear[ing] the imprimatur of the school,” such as that appearing in a school-sponsored newspaper. (*Kuhlmeier*)

# Mahoney Area School District v. B.L. (2021)

- **Question** – Does the First Amendment prohibit public school officials from regulating off-campus speech?
- **Holding** – A student's posts on Snapchat, criticizing her school and containing vulgar language, are not subject to regulation by the school; the posts contained no special features, such as threats or bullying, that would place them outside the First Amendment's ordinary protection.

# Mahoney Area School District v. B.L. (2021)

- The key factors the Supreme Court will consider in determining if schools may regulate off-campus speech:
- (1) In relation to off-campus speech, schools rarely stand *in loco parentis*.
- The doctrine of in loco parentis treats school administrators as standing in the place of students' parents [guardians] under circumstances where the children's actual parents [guardians] cannot protect, guide, and discipline them.



# Mahoney Area School District v. B.L. (2021)

- The key factors the Supreme Court will consider in determining if schools may regulate off-campus speech:
- (2) Regulation of off-campus speech along with on-campus regulations would cover speech 24 hours per day.
- As such, courts must be more skeptical of off-campus regulation of speech, especially if it is religious or political.

# Mahoney Area School District v. B.L. (2021)

- The key factors the Supreme Court will consider in determining if schools may regulate off-campus speech:
- (3) The school itself has an interest in protecting a student's unpopular expression, especially when the expression takes place off campus.
- “America’s public schools are the nurseries of democracy. Our representative democracy only works if we protect the ‘marketplace of ideas.’”

# Mahoney Area School District v. B.L. (2021)

- Some facts the Supreme Court considered in ruling against the school:
- (1) B.L.'s posts, while crude, did not amount to fighting words. (*Chaplinsky v. New Hampshire*)
- (2) And while B.L. used vulgarity, her speech was not obscene as the Supreme Court has understood that term. (*Cohen v. California*)

# Mahoney Area School District v. B.L. (2021)

- Some facts the Supreme Court considered in ruling against the school:
- (3) B.L.'s posts were outside of school hours and she did not identify the school or individual members of the school in her posts.
- (4) The communication was on her personal cellphone and transmitted to her private circle of Snapchat friends.

# Mahoney Area School District v. B.L. (2021)

- Some facts the Supreme Court considered in ruling against the school:
- (5) The school presented no evidence of any general effort to prevent students from using vulgarity outside of the classroom.
- (6) The school did not present evidence that suggests any serious decline in team morale – to the point where it could create a substantial interference in, or disruption of, the school's efforts to maintain team cohesion. (*Tinker*)

# Mahoney Area School District v. B.L. (2021)

- While not part of the Supreme Court's holding, the majority opinion gave reason for schools to believe that it may still regulate the following off-campus speech:
- (1) Serious or severe bullying or harassment targeting particular individuals;
- (2) Threats aimed at teachers or other students;

# Mahoney Area School District v. B.L. (2021)

- It is likely school may still regulate the following off-campus speech:
- (3) Failure to follow rules concerning lessons, the writing of papers, the use of computers, or participation in other online school activities;
- (4) Breaches of school security devices, including material maintained within computers;

# Mahoney Area School District v. B.L. (2021)

- It is likely school may still regulate the following off-campus speech:
- (5) Speech occurring at all times when the school is responsible for the student;
- (6) Speech during travel en route to and from the school;
- (7) All speech taking place over school laptops or on a school's website;



# Mahoney Area School District v. B.L. (2021)

- It is likely school may still regulate the following off-campus speech:
- (8) Speech taking place during remote learning;
- (9) Speech during activities taken for school credit;
- (10) All speech taking place over school laptops or on a school's website;

# Mahoney Area School District v. B.L. (2021)

- It is likely school may still regulate the following off-campus speech:
- (11) Communications to school e-mail accounts or phones;
- (12) Speech during extracurricular activities, such as team sports.