



Electronic Dispatch

School District Law Information Memo

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PREGNANT STUDENT PARENTAL NOTIFICATION

On March 22, 2005, the U.S. District Court for the Eastern District of New York refused to enjoin enforcement of the Port Washington Board of Education's pregnant-student parental notification policy, despite a challenge based on both the Federal Constitution and federal and state privacy laws.

The controversy arose in 2002, when the Port Washington Board of Education adopted a policy stating that it was the "right and responsibility" of District staff, including school nurses, to inform parents of a student's pregnancy. The policy provided that staff members who became aware of a student's pregnancy "should immediately" report it to a school social worker, who then had a responsibility to encourage the student to disclose to her parents. If the student represented that she would inform her parents, the policy required the social worker to follow up with the parents to ensure that the student had done so. If the student refused to disclose, the social worker would then offer to help the student make the disclosure. The policy stated further that, if the student persisted in keeping her pregnancy from her parents, the social worker "should" inform the parents directly after giving a final notice to the student and consulting with the principal and superintendent.

The Port Washington Teachers' Association and the New York State United Teachers ("NYSUT") sued to enjoin the District from enforcing the policy. Several groups, including the New York Civil Liberties Union Foundation, the American Academy of Pediatrics, the Association of Reproductive Health Professionals, and the New York State Society for Clinical Social Work, backed the plaintiffs.

NYSUT contended that the policy violated students' constitutional rights to due process, privacy, and equal protection by interfering with the female students' reproductive privacy rights. The union argued that the policy would be constitutional only if it contained a judicial bypass procedure. In the abortion rights area, the Supreme Court has held that a state may require a minor to seek parental permission before obtaining an abortion provided it creates a judicial bypass procedure by which a minor can petition a court for permission to obtain an abortion if her parents do not consent. NYSUT also challenged the policy by relying on federal and state statutes that mandate confidentiality of certain hospital, substance abuse, and abortion records, and on New York's statutory privilege protecting private social workers from disclosing client communications.

In addressing the claims, the court first held that the union and the other plaintiffs lacked standing and were not the proper parties to contest the District's policy because the policy potentially implicated the rights of students, not the rights of staff members. The Court further observed that the plaintiffs did not face any potential negative consequences from the policy, because they were unable to show that the District planned to discipline staff for failing to follow the policy. Moreover, the Court held that the case was not ripe for adjudication since the plaintiffs had not shown that an actual controversy between the District and a student had arisen at the time the case was filed.

The Court also rejected all of NYSUT's constitutional and statutory arguments. With respect to the constitutional claims, the Court criticized NYSUT's "unblinking reliance" on abortion cases. The Court held that simply notifying parents of a student's pregnancy does not affect a student's right to seek an abortion. Moreover, according to the Court, schools have an "unquestioned obligation" to inform parents regarding any health and safety issues affecting children.

The Court also refused to find an implied confidentiality right with respect to a student's pregnancy in either federal or state privacy statutes. The Court held that federal statutes upon which NYSUT relied, such as substance abuse confidentiality laws, were not broad enough to cover the pregnancy of a minor student. In addition, the Court noted that the Family Educational Rights and Privacy Act of 1974 ("FERPA," or "the Buckley Amendment") would seem to require that schools permit parental access to educational records, which would likely contain information about a student's pregnancy. The Court also emphasized that New York law

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generally favors disclosure to parents; accordingly, New York's various privacy statutes, none of which governed this exact issue, could not be applied to students. Finally, the Court rejected the argument that conversations between a school social worker and a student are privileged. According to the Court, a social worker employed by a school cannot rely upon New York's statutory social worker privilege in order to avoid disclosing the pregnancy to a student's parents.

While technically, all the Court decided was that an injunction should not be issued preventing the District from enforcing its policy, the reasoning of the decision makes clear that the Court intends to uphold the policy on the merits. When that happens, the decision may be appealed to the U.S. Court of Appeals for the Second Circuit.

The case provides an early indication that non-mandatory pregnant student parental notification policies are lawful in New York, which is good news for school districts who have such policies or plan to implement them. The policies help insure that pregnant students receive timely and appropriate medical care. As the Court pointed out, such policies may also help to protect a school district against liability in the event that a pregnant student is injured because of her parents' lack of knowledge about the pregnancy.

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