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SCHOOL LAW BUZZ

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SLHA, LLP Facilitates \$17 Million Bond Issuance for Leadership Prep School

By Stephanie Bazan

We would like to congratulate our client Leadership Prep School (LPS) on their recent successful bond closing which allows them to have the facilities necessary to significantly grow their enrollment and impact more students.

Leadership Prep School was founded with a mission to inspire students to learn, grow, and lead for a lifetime. They have plans to grow to serve approximately 1,412 students in grades K-12 by the 2026-27 school year.

SLHA, LLP served as bond, disclosure and real estate counsel in connection with the issuance of the Leadership Prep School Series 2022 bond issue. Janet Robertson leads the Firm's bond counsel and public finance practice, and Jason Adelstein leads the Firm's commercial real estate and natural resources practice for both public and private clients.

Congratulations again to LPS on the successful closing of their \$16,295,000 tax-exempt Series 2021A and \$415,000 taxable Series 2021B bonds.

Generation 27 Update – A Quick Glimpse at the Next Generation of Potential Open Enrollment Charter Schools

By Denise Pierce

The Texas Education Agency made a call for proposals on September 17, 2021 for its 27th generation of open enrollment charter school applications ("Gen 27"). Twenty-three (23) application teams responded proposing open enrollment charter schools in Austin (2), Dallas/DFW (5), Fort Worth (1), Houston/Houston Area (9), San Antonio (3), and the Rio Grande Valley (3). The applications proposed various instructional models including emphasis on classical studies, dyslexia, aviation, single gender academies, entrepreneurship, and more.

Of the 23 submitted applications in Gen 27, five (5) applications were deemed incomplete, eight (8) applications missed the required cut score of 85%, and one (1) application team withdrew its application. Consequently, 14 of the 23 submitted applications will not proceed to the next step in the application process, which is the Gen 27 capacity interview.

Nine application teams are advancing to the capacity interview stage. Of these, charter schools are proposed in Austin (1), Dallas (1), Fort Worth (1), Houston (4), and San Antonio (2).

The capacity interviews will be conducted by Marian Schutte, the Director of the TEA Division of Charter School Authorizing and Administration (the “Charter Division”). Ms. Schutte and her colleagues from the Charter Division will take the lead on questioning the applicant teams on any aspect of their submitted applications. The Charter Division has the ultimate responsibility for making recommendations to the Commissioner of Education about which applications should advance to the next stage of the application process. TEA professionals from other departments also typically ask questions of the applicant teams and subsequently provide input to Ms. Schutte and her team on which applications to advance. These TEA professionals represent various TEA departments such as Finance, Special Populations, Grants Management, and Legal Services. Members of the State Board of Education also are invited to attend the Gen 27 capacity interviews but are not required to participate. The rigorous capacity interview is one hallmark of the Texas charter application process, which is arguably among the most competitive in the country.

The Charter Division will conduct the Gen 27 capacity interviews via zoom videoconference. The interviews will be live streamed for public viewing through TEA’s AdminMonitor at <https://www.adminmonitor.com/tx/tea>. Time permitting, you may wish to watch all or some of the Gen 27 applicant interviews, which are scheduled for May 10, 11, and 12th. Three interviews are scheduled on each date. Each interview is scheduled for two hours. For your convenience, here is the interview schedule posted by TEA as of the date of this newsletter’s publication:

<https://tea.texas.gov/sites/default/files/gen-27-interview-schedule.pdf>

Following the Gen 27 capacity interviews, the Commissioner is expected to announce his Generation 27 selections on Friday, May 27, 2022. In the past, about half of the interviewees are selected by the Commissioner for charter awards. If this historic pattern holds true for Gen 27, then we expect 4-5 applications to be selected by the Commissioner to proceed to the near-final step in the application process, which is a presentation by the Commissioner to the [15-member State Board of Education](#) at their meeting scheduled for June 13-17, 2022. The SBOE members are authorized by state law to veto any of the Commissioner’s selected applications. Each application team that survives SBOE veto will be awarded a charter contract by the Commissioner, provided that the application team meets the final step in the application process, which is to address any contract contingencies identified by the Commissioner.

The imbedded table links to each application submitted in the Gen 27 application and describes the status of each application as of April 25, 2022.

SLHA wishes the nine applicant teams every success in their Gen 27 capacity interview and beyond.

The imbedded table referenced in this article is found on the last page of this Newsletter.

SLHA Welcomes Roxana Rahdaie to the Public Finance Team

By Janet Vaughan Robertson

We are pleased to introduce Roxana Rahdaie, Public Finance Associate. Ms. Rahdaie is a December 2020 graduate of the South Texas College of Law, where she ranked in the 25 percentile of the graduating class. She also holds a Bachelor of Science degree from the University of Houston. Ms. Rahdaie joined the Firm in April in our public finance and real estate practice areas where she represents open enrollment charter schools in bond, real estate and financial law matters. She interfaces with clients and lenders, as well as local and state government agencies.

The public finance team at Schulman, Lopez, Hoffer & Adelstein, LLP (SLHA) provides bond counsel and disclosure counsel services to new and existing clients. For charter schools that are not in the market for a bond issue, the finance team at SLHA works closely with our real estate group on all forms of leases, development leases with options to purchase and secured bank loans, as well.

In addition to our work as bond counsel and disclosure counsel to charter schools, our public finance team also represents underwriters, trustee banks, conduit issuers, and bond purchasers in other types of municipal bond transactions. This depth of experience means our attorneys are uniquely qualified to interface effectively on behalf of our clients with all of the parties involved in the bond financing process. We also provide representation throughout the entire life cycle of a bond financing, including real estate and construction matters, environmental issues,

utility regulation, other transactional matters and potential litigation.

Partner Janet Vaughan Robertson is the department head of the public finance group. Ms. Robertson has 30+ years of experience representing borrowers, lenders and issuers in 501(c)(3) bond issues and bank financings and is a highly respected bond counsel, underwriter counsel, credit bank counsel, borrower counsel, issuer counsel and trustee counsel in connection with multi-million dollar municipal and conduit bond issues for school districts, charter schools, private schools and local governments.

SLHA's public finance team also has unparalleled access to all of the Firm's attorneys. Managing Partner Joe Hoffer's practice covers all areas of charter school law, including financial transactions, civil litigation, operations, governance, nonprofit tax law, construction litigation, administrative law and litigation, employment student law and civil rights matters. Partner Jason Adelstein, a Texas Board certified Commercial Real Estate Law practitioner, represents public, private and institutional parties in the negotiation, acquisition, development, leasing, financing, operation and purchase/sale of all types of commercial properties, including properties for use by charter schools and other educational institutions.

Our rapidly growing school finance practice is ready to assist you. Please feel free to reach out to Ms. Rahdaie at rrahdaie@slh-law.com or Ms. Robertson at jrobertson@slh-law.com.

**Class of 2022 Graduation
Ceremonies: Load the Fireworks
and Watch for Landmines**

By Denise Pierce

The high school graduates in the Class of 2022 are to be commended for their endurance. They have completed their high school credits contending with a global pandemic that required them to flex between online, hybrid, and in-person learning. They added face masks to their essential school supplies and became adept at regular temperature checks, testing, and other school-imposed safety protocols. Many lost loved ones to the randomness of COVID-19 virus, overcame attendant financial challenges, and yet persevered.

This month, these fighters in the Class of 2022 will promenade proudly to the triumphant refrains of Pomp and Circumstance. Like the high school graduates before them in the Class of 2020 and in the Class of 2021, this year's graduates deserve booming and brilliant fireworks displays to celebrate their arrayed accomplishments and to signal their endurance, resilience, and tenacity. SLHA offers a hearty congratulations to them and most especially to you, our clients, who have prepared the Class of 2022 for their college, career, and military days ahead.

As you are loading the fireworks in celebration of the Class of 2022, be certain also to watch for lurking legal landmines. High school graduation ceremonies (and football games) arguably have stirred more litigation than any other type of public school-sponsored event.

This year, with so many students and families celebrating challenges overcome by the Class of 2022, litigation risks may be low. However, given heightened polarization and culture war in the State of Texas and across the nation, any random word, set of comments, place, or activity associated with the graduation ceremony could erupt legal calamity. Therefore, public school officials must be mindful of the legal landmines associated with planning and implementation of graduation ceremonies for the Class of 2022.

We offer general guidance here, as our newsletter format does not permit a full legal analysis on each issue. For the ease of reading, we also have redacted the legal citations. If your graduation program contemplates one or more of the elements identified below, give us a call. You should invite an SLHA attorney into the planning conversation so that the legal risks can be analyzed and minimized by careful application of the applicable legal standards.

For each of these ceremony elements, the outcome in any legal challenge will be based on a careful review of the particular facts and circumstances. There are no hard and fast rules, only zones of risk.

1. **Prayer By Students** – In our opinion, prayer may be offered by a student during a graduation ceremony only if the school's policy or practice permits students to offer prayer at the graduation ceremony as a means for solemnizing the event and if the school does not require pre-approval of the prayer by school officials. Under these circumstances, a student's prayer will likely be

considered private speech that is protected by the Free Speech and Free Exercise Clauses of the First Amendment to the U.S. Constitution. Because it is likely to be considered private speech, a student's prayer can be sectarian. A caution here is to have a broad student selection process year over year and to add a speech disclaimer as a footnote in the graduation program indicating that the school does not approve, endorse, or otherwise support student speech.

2. **Prayer By School Officials** – We recommend against prayer by school officials. Prayers offered by school officials (e.g., board members, school administrators, teachers, staff, and even active volunteers) will almost certainly be perceived as government speech and therefore is highly restricted by the Establishment Clause of the First Amendment to the U.S. Constitution.
3. **Prayer by Invited Guests** – We also recommend against prayer by invited guests. Prayers offered by invited guests are likely to carry the imprimatur of government speech and therefore implicate restrictions of the Establishment Clause of the First Amendment to the U.S. Constitution.
4. **Speeches by Students** – Depending on the school's policy and practice regarding student speeches at graduation, students may have broad liberties regarding the content of their graduation speeches. Yet, even when a student's graduation speech is considered private speech, courts

have authorized schools to prohibit and take disciplinary action when a student's speech is vulgar, lewd, profane, hate speech, threatens health and safety, promotes illegal drugs, defames a person, or is disruptive to the graduation ceremony. If there will be student speeches, we advise schools to add a speech disclaimer as a footnote to the graduation program.

5. **Speeches by School Officials** – Because speeches by school officials will almost certainly be considered government speech, we recommend that the content of speeches by school officials be limited to school-related issues only. School officials must avoid issues like religion, politics, and elections. Non-school content will expose the school to constitutional liability and to the loss of the school's tax-exempt status.
6. **Speeches by Invited Guests** – Invited guests have broad latitude in the content of their graduation speeches. The speaker's remarks are not likely to bear the imprimatur of the school and therefore will not be considered government speech. Cautions here are to absolutely avoid clergy who will offer a purely sectarian message (i.e., no preaching!) and political candidates who will use the platform to solicit campaign support (i.e., no campaign activities!). Here, a speech disclaimer footnote is also advisable.
7. **Using a Worship Facility for the Graduation Ceremony** – If the school uses a worship space for its

graduation ceremony, then it should work with the church to remove portable religious iconography from the ceremony space (e.g., church bulletins, hymnals, flyers, communion table, baptismal fonts, etc.). Permanent iconography should be largely ignored during the ceremony and the church members must avoid proselytizing guests before or after the graduation ceremony. The school's aim is to regard the facility as a secular event center rather than as a worship space. These and similar tactics will minimize challenge under the Establishment Clause of the First Amendment to the U.S. Constitution.

8. **Academic Accomplishments in the Printed Program** – Schools often use the printed program to highlight the academic accomplishments of its students. Students ranked in the top 10% are sometimes noted, along with students who graduate with distinction. These printed notations arguably compromise the confidentiality requirements of federal law not to share personally identifiable information from education records, but we perceive the litigation risk here to be extremely low. The risk is particularly low for schools that include student honors and awards as part of their definition of “directory information” under the Family Educational Rights & Privacy Act (“FERPA”).
9. **COVID-19 Safety Protocols** – Even though COVID-19 transmission has waned in recent months, schools are

wise remain concerned about the graduation ceremony becoming a spreader event. We warn against the school imposing mask or vaccination mandates, but it is defensible for schools to require social distancing and to refuse attendance to persons who have fevers or who have recently had close contact with person who tested positive. Schools may also provide and encourage the use of hand sanitization as well as face masks.

10. **Other Safety Protocols** – With the anticipation of a large crowds comes the concern for random violence. To guard against this threat, we believe that schools may require a no-bag, small bag, or clear bag policy for entrance into the graduation venue. School may also defensibly search persons or their property upon entry to the event, provided the searches are reasonable in light of facts and circumstances.

In closing, we again offer congratulations to our client schools and to their graduates in the Class of 2022! Load the fireworks. If you observe any landmines, let us know how we can safely retrieve and disarm them.

Another School Prayer Case at the U.S. Supreme Court: Can a High School Football Team Pray After Football Games at the 50 Yard Line?

By Joe Joyce

Since the U.S. Supreme Court famously announced in the 1960s that neither students nor teachers “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate,” defining Constitutional rights to speech and expression in and around schools has been a frequent subject of litigation and discussion by legal scholars. In late April 2022, the U.S. Supreme Court held oral argument in what may be the next chapter in the Court’s body of case law defining those rights.

In *Kennedy v. Bremerton School District*, a high school football coach sued his school district employer after the District non-renewed his employment contract due to his post-game prayers at the 50-yard line. From the questions raised by the Justices during oral argument, they are weighing several issues. First, the facts appear to be disputed. The Justices asked whether the Coach was still “on-duty,” the length of the Coach’s prayer, and the extent to which students were involved.

As to the law, the Court must reconcile three First Amendment interests that may be in conflict. Coach Kennedy argued that his brief post-game prayers were private speech protected by his rights of free speech and free exercise of religion. In contrast, the District argued that audible prayers at the 50-yard line immediately after a large, school-sponsored event constituted school-sponsored speech

that created potential violations of the First Amendment’s Establishment Clause. Specifically, the District argued that allowing the Coach’s visible prayers to go forward would have constituted District endorsement of religion and this his prayers may have served as religious coercion to the District’s students to participate in the prayers.

Coach Kennedy responded that the Establishment Clause does not compel public schools to purge from public view all religious exercise of coaches and teachers. He also sought to distinguish his prayer as private speech endorsing religion and not government speech endorsing religion. During two hours of oral arguments, the Justices raised multitude hypotheticals. The Justices also discussed the Court’s decades old tests for Establishment Clause cases, which have been the subject of scrutiny, especially from Justice Gorsuch and the late Justice Scalia. See *Shurtleff v. City of Boston*, 596 U.S. ____, No. 20-1800, 2022 WL 1295700, at *19 (U.S. May 2, 2022) (Gorsuch, J., concurring in judgment), citing *Lamb’s Chapel v. Center Moriches Union Free School Dist.*, 508 U.S. 384, 398, 113 S.Ct. 2141, 124 L.Ed.2d 352 (1993) (Scalia, J., concurring in judgment).

Of particular note for school administrators and school lawyers alike is whether the Court will engage in some firm line-drawing with regard to what conduct is permissible and impermissible in this First Amendment context. Hopefully the Court will give helpful guidance so that public school administrators and employees can stand on firmer legal ground in these complex and often emotionally charged situations. SLHA will publish an update when the opinion is issued.

Have Questions? We'll Answer.

If you have any questions concerning the content in this e-newsletter or any other school law matter, please contact Laura Van Story at lvanstory@slh-law.com or at (210) 538-5385.

Generation 27 Applications and Status as of April 25, 2022

Proposed School Name	City	Status
A.D. Rison Académie	Austin	Incomplete
Harmony Empowerment College and Career Academy	DFW Area - Crowley	Incomplete
Heritage Erudite Charter Academy	DFW Area - DeSoto, Duncanville	Incomplete
Ion Public School	Houston Area - Fort Bend	Incomplete
The School of Learning	Houston Area - Humble	Incomplete
Academy of Visual and Performing Arts	Fort Worth	Interview
Celebrate Dyslexia School	San Antonio	Interview
Heritage Classical Academy	Houston	Interview
NextGen International Business and Entrepreneurship Academy	Houston	Interview
Oasis Academy of North Texas	Dallas	Interview
ONE Collegiate Charter School	Houston	Interview
Patterns High School of Technology	Austin	Interview
Sankofa Academy Public Schools	Houston	Interview
Spelligent San Antonio	San Antonio	Interview
Champions Prep Academy	RGV -Pharr	Missed Cut Score
Creative Arts Studio	RGV - McAllen	Missed Cut Score
Friendship Aspire Leadership Academy for Girls and Boys	Houston	Missed Cut Score
Lions Academy	Houston Area - Alvin	Missed Cut Score
Monarch Academy	Houston Area - Cleveland	Missed Cut Score
New Heritage Academy	DFW Area - Arlington	Missed Cut Score
New Hope Resiliency Academy Charter School	RGV - San Benito	Missed Cut Score
Rising Aviation High School	DFW Area	Missed Cut Score
S.H. James Preparatory Academy	San Antonio	Withdrawn