

School Law Buzz

TEXAS SCHOOL LAW E-NEWS



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[Model Data Sharing Agreement](#)

In accordance with Senate Bill 788, 87th Legislature, Regular Session

By Joe Hoffer

The Tri-Agency Workforce Initiative—composed of the Texas Education Agency (TEA), Texas Higher Education Coordinating Board (THECB), and Texas Workforce Commission (TWC)—was created by Governor Abbott to address long-term workforce development needs across the state.

To improve infrastructure, the Tri-Agency created a model data-sharing agreement to be used by public schools, public and private institutions of higher education, and state and local workforce entities when sharing data protected under the Family Educational Rights and Privacy Act of 1974 (FERPA) among themselves or with other authorized organizations. This model agreement will allow partners to access and use student

data to improve outcomes while continuing to protect students' privacy.

The model agreement is not a one-size-fits-all, but rather provides the framework to initiate data sharing agreements with partner entities. There are additional provisions that will be needed to fully protect your school, but it is a great start!

Under FERPA, written sharing agreements are required under certain circumstances when disclosing personally identifiable information from education records without consent.

You may learn more about the Tri-Agency [here](#). The model DSA is available [here](#).

Note: The use of the Agreement is discretionary and entities using the Agreement should consult with their own counsel regarding questions about the legality of data sharing under such Agreements.

[Governmental Relations & YOU](#)

By Joe Hoffer

SLHA has retained two lobbyists (and likely more to come) to aid and assist our clients through the coming Legislative Session. Amanda List and Harold Oliver are seasoned governmental relations professionals who represent the firm's client interests at the capitol and at TEA. Together, our lobbying

team is working for you non-stop concerning regulatory and legislative affairs.

Ms. List's group, AList Consulting, LLC, supports clients in advancing their political agendas in Texas. Over fourteen years, Amanda has built meaningful relationships between her clients, policy makers, and key stakeholders. Respected by members of both parties, she has deep ties to Texas legislators and state agencies.

Mr. Oliver is Managing Principal – Government Affairs Professionals of Texas, LLC. With more than 20 years of experience in communications and government relations, public relations, economic development and legislative affairs, Mr. Oliver brings a wealth of experience to his clientele. His clients range from local governmental entities, professional sports teams to national and global clients.

Welcome Darren McHugh, Of Counsel

By Joe Hoffer

Schulman, Lopez, Hoffer & Adelstein, LLP is pleased to announce Darren McHugh recently joined the Firm as Tax Counsel.

Many of you likely know Mr. McHugh from his work at Hunton Andrews Kurth where he was a tax partner responsible for many charter schools' tax opinions and IRS matters related to your public finance work. He is joining Janet Robertson and SLHA's Public Finance team (Tax Counsel Dusting Whittenburg and Public Finance Associate Roxana Rahdaie) to continue supporting and expanding our work as Bond Counsel, Borrower's Counsel and Tax Counsel. You may reach Darren at dmchugh@slh-law.com.

Title IX Regulations – Guess Who's Back!!!

By Allen Keller

Let's go back in time for a minute and remember the happy days of August 2020, when an updated set of Title IX regulations took effect. We've had essentially two years to get used to the Department of Education's expectations for responding to reports of possible sexual harassment. Now that we've finally settled in and gotten a grasp of our obligations, the Department of Education has decided to shake things up as, in June 2022, a notice of proposed updates to the Title IX regulations was published.

Please note that the current Title IX regulations are still in effect, and will remain so until the Department of Education issues new final regulations.

If the proposed updates to the Title IX regulations take effect, there will be significant changes to our process for responding to reports of possible sexual harassment. For example:

- The current Title IX regulations deal exclusively with sexual harassment. However, the proposed updates would expand conduct prohibited by Title IX to include all forms of sex discrimination, which would include discrimination on the basis of sex / gender, sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity, as well as other conduct on the basis of sex that is considered *quid pro quo* harassment, hostile environment harassment, or certain criminal offenses (sexual assault, dating violence, domestic violence, or stalking). If these

proposed changes take effect, there would be additional circumstances that would require schools to undertake extensive Title IX investigations.

- The current Title IX regulations prohibit the filing of a formal complaint if the complainant is not participating in the school's educational programs or activities at the time the complaint is filed. This means that, currently, former students and former employees cannot file a formal complaint after they withdraw from enrollment or leave employment with a school. Under the proposed updates to the regulations, a complainant would have a right to file a complaint of sex discrimination *even after* they have withdrawn or left employment with the school.
- The current Title IX regulations require a lengthy investigation process for all formal complaint, which includes an opportunity for the complainant and respondent to each receive copies of all relevant evidence gathered during the investigation. The proposed updates appear to eliminate the requirement to share copies of all evidence, and instead give schools the option to provide a *description* of the relevant evidence along with a reasonable opportunity to respond.
- The current Title IX regulations call for a strict "separation of duties," and provide that our decision-maker for a particular complaint cannot be the Title IX Coordinator or the investigator who conducted the initial review of the report. The proposed updates would give us greater flexibility and allow the Title IX

Coordinator or investigator to serve as the decision-maker.

This certainly is not a complete summary of the proposed updates; the notice of proposed rulemaking consisted of 13 pages of proposed regulatory language and 177 pages of commentary. Which can serve as some [light reading](#) if you need help falling asleep.

So where are we now?

As part of the rulemaking process, the Department of Education solicited public comments on the proposed updates. The public comment window closed on September 12, 2022, and as of that date, *over 240,000* public comments were submitted. This is *nearly double* the number of public comments received when the current Title IX regulations were proposed back in November 2018.

The Department of Education is now required to review and respond to the public comments. Not all comments must be responded to individually, but the Department of Education has an obligation to address all of the concerns in some form.

Due to the sheer volume of public comments submitted, we do not have a firm expectation as to when the proposed updates may be finalized. By way of comparison, the Department of Education proposed the current regulations in November 2018, but the final version of those updates did not take effect until August 2020. Commentators believe this extended time period was due largely to the Department of Education's review of roughly 120,000 public comments. With double that number of comments to review during this round of proposed updates, it could be a while before any new Title IX regulations take effect.

In the interim, we must continue under the current Title IX regulations. We are watching for notice of any final updated rules and will let everyone know if and when that happens.

Agreements and Contracts and Forms...Oh, My: How to Navigate the Real Estate Process for Schools

By Mary Kendall

In today's economic environment, the only thing that seems certain is uncertainty. With varying market conditions and even experts disagreeing on what the magic 8-ball says, it can make preparing for a school's growth a daunting task. But when it comes to planning the next steps required for a school's future real estate project, there are some real, tangible, and practical things that can be done to help navigate the real estate process.

While this current economic environment may provide unique challenges to school boards and executive leadership in terms of knowing how to plan, it may also provide good opportunities for real estate leases and purchases for schools that are ready to take advantage of the opportunity when it presents itself. Entering into a new lease or negotiating a purchase agreement for a new property can be a daunting process and schools often have tight deadlines that make protracted negotiations even more frustrating. That is where learning a few practical things before planning a project can help.

The real estate team at Schulman, Lopez, Hoffer & Adelstein, LLP, will be providing a short series, Agreements and Contracts and Forms...Oh, My: How to Navigate the Real

Estate Process for Schools. This series will walk through:

- 6 Things to Know Before Beginning a Real Estate Project
- The Who, What, When, Where, Why and How of the Real Estate Process
- How to Keep the Deal on Track
- The Closing: It's Not the Journey...It's the Destination!
- So, What Now? Real Estate Issues Post Closing

Stay tuned for the next installment of Agreements and Contracts and Forms...Oh, My: How to Navigate the Real Estate Process for Schools.

Jason Adelstein leads the Firm's commercial real estate and natural resources practice for both public and private clients and his team is available to support your next project.

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 Joe Hoffer at jhoffer@slh-law.com or at (210) 538-5385.