

From: [Kevin Skelly](#)
To: [board](#)
Cc: [Chad Graff](#); [Lenore Silverman](#)
Subject: FW: Privileged & Confidential Attorney Client Correspondence
Date: Monday, June 10, 2013 7:11:00 PM

In preparation for our discussion tomorrow.

Kevin

Kevin Skelly, Ph.D.
Superintendent
Palo Alto Unified School District
(650) 329-3737

-----Original Message-----

From: Chad Graff [<mailto:cgraff@fagenfriedman.com>]
Sent: Friday, June 07, 2013 6:09 PM
To: Kevin Skelly
Cc: Lenore Silverman
Subject: FW: Privileged & Confidential Attorney Client Correspondence

Confidential Attorney Client Communication

Dear Kevin,

In addition to our memo, please let the Board know that we received questions below. great questions that hit at the very conflict between OCR's authority to act in enforcement of civil rights laws and OCR's lack of authority to direct District policymaking when not provided for in the civil rights laws and regulations themselves. Although OCR's regulations typically direct OCR to "provide assistance and guidance to recipients [of federal funds] to help them comply" with the various laws and regulations," those actions must be informed by the laws and regulations. That is why we have been pressing OCR for concrete identification of the legal issues that are the bases for their investigations.

We will review these questions further and bring them into Tuesday's discussion of the District's steps to question OCR actions that are not legally-directed and to obtain oversight of OCR actions that are overstepping their authority.

Thanks,

Chad

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Dear all:

Your perspectives on this information would be valuable as we plan next steps. Please share responses with all board members in ways you see fit.

It appears to me that the federal legislation that would provide a basis for the standards that the OCR is enforcing was first introduced in 2011, then reintroduced in March 2013, as the "Safe Schools Improvement Act." The bills have not emerged from committee nor been voted on or passed by either the U.S. Senate or House of Representatives.

The text of the bills, which resembles the language in the Office for Civil Rights dear colleague's letters, is linked below.

<http://www.govtrack.us/congress/bills/113/s403#overview>
<http://www.govtrack.us/congress/bills/113/hr1199#overview>

If the prospect of these bills passing is as slim as speculated here, it could explain the interest OCR has in strong arming policy "agreements" at the school district and state level. It also provides a highly legitimate reason for school districts to avoid acting on policy-language before Congress does.

My questions:

- What are the laws/codes that protect a single school district from federally mandated policy language that exceeds current law or exceeds policy language required of all districts?
- What are the laws/codes that provide school districts due process protection from expansive federal requests for information or investigations, and/or protection from subsequently discovered "violations" unrelated to the complaint, or when there is no complaint at all?
- In the Terman case, which federal laws in effect at the time of the alleged incident(s) detailed in the complaint, were not reflected in PAUSD policies at the time?
- What is the status of our Freedom of Information requests to OCR for complete complaint information submitted in the Terman, Jordan & Duveneck investigations, including "who, what, where, when and how" detail, and written records of interviews and evidence, as each described in the OCR case processing manual?

Thanks,