Implementing Educational Technology

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Over the past decade there has been a marked increase in the use of technology in education. From the “early” days when schools began incorporating desk-top computers into the classroom, to the prevalence of laptop use by students and teachers, to the emergence of a variety of mobile devices in school contexts, the expansion of equipment and software adapted for educational purposes has been dramatic.

On August 16, 2012, the Education Technology Task Force, initiated by State Superintendent of Public Instruction, Tom Torlakson, issued its Recommendations. In conjunction with the issuance of the Task Force’s Recommendations, Superintendent Torlakson noted that, “With its ubiquity and its adaptability, computing technology is changing the face of education… it can be a powerful tool for preparing kids for the economy they will become part of once they leave school.” The Task Force’s Recommendations include some key emerging trends in the implementation of technology in education, including the expanded use of virtual (online) instruction, student access to at least one Internet-connected device for learning “any time, any place” (often termed 1:1 or One-to-One technology learning initiatives); and the implementation of educational technology in accordance with various legal requirements.

A significant amount of legislation geared toward advancing the use of technology in education has been adopted in the last several years, a recent example of which specifically addresses virtual learning. Assembly Bill 644 (codified at Education Code section 46300.8), which took effect on January 1, 2013, authorizes for purposes of computing average daily attendance (“ADA”) funding, the inclusion of pupils in grades 9 through 12, who receive “synchronous, online instruction.” Education Code section 46300.8 subdivision (d) defines “synchronous, online instruction,” for purposes of that section, to mean “a class or course in which the pupil and the certificated employee who is providing instruction are online at the same time and use real-time, Internet-based collaborative software that combines audio, video, file sharing, and other forms of interaction.”

Despite the various policy pronouncements and targeted legislative developments as with Assembly Bill 644, school districts are faced with many challenges in evaluating, procuring and implementing educational technology. And, along with the growth of technology in so many educational settings, schools will encounter the inevitable legal implications that come with such widespread changes.
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Due to the complexities involved in evaluating technology for educational applications, as well as the costs of procuring digital equipment and software, many school districts may find it necessary to limit new technology to certain specific programs, or use a “phase-in” approach to implementation. For example, a school district may find it beneficial to issue the latest iPad to each student in an independent study program to enhance a digital media-focused curriculum; or it may establish synchronous, online instruction only for history classes and supply each student in that course with laptops, consistent with the requirements of Assembly Bill 644.

Do these practical realities in the implementation of educational technology present any legal issues for school districts? It is possible that they do and, therefore, those in decision-making roles should remain especially cognizant of the following:

- Access to technology for all students, including special needs students;
- Financial barriers to accessing technology;
- Compliance with the Williams settlement legislation (Education Code sections 60110-60119);
- Development of appropriate policies and regulations.

Special Needs Students

Generally, when a school district implements educational technology, it should be sure the technology can actually be used by all of the students in the classroom. For example, electronic book (“eBook”) readers issued to students in a literature class may have to include a “text-to-speech” function so that any visually impaired students will have meaningful access to that technology.

Student Fee Issue

Further, school districts should take steps to preclude any financial barriers to accessing technology by students. Despite the long-standing “free school guarantee” (California Constitution, Article IX, section 5 and related statues/regulations), public education agencies have come under very close scrutiny with regard to the student fee issue arising out of ACLU’s lawsuit against the State and the legislation resulting from the
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lawsuit which codifies the constitutional guarantee (Assembly Bill 1575).

A discussion of the new legislation and its impact on public education agencies is beyond the scope of this post (please contact one of our offices for information about the new legislation). But, suffice it to say that the law prohibits any financial barriers (such as a usage fee or security deposit) to students' access to educational technology.

Williams Settlement Legislation

And, according to state law and the California Department of Education (“CDE”) guidance, education technology and web-based instruction are subject to the requirements of the Williams legislation. Education Code section 60010, subdivision (m)(1) defines “technology-based materials” to mean “basic or supplemental instructional materials that are designed for use by pupils and teachers as learning resources that require the availability of electronic equipment in order to be used as a learning resource.” Subdivision (m)(2) further clarifies that the electronic equipment used to access the technology-based materials may be subject to the requirements of the Williams legislation when that equipment is necessary for pupils and teachers to access the technology-based materials.

The primary command of the Williams legislation calls for the “sufficiency of instructional materials.” Education Code section 1240, subdivision (c)(2)(B) states that, “For the purposes of this section, `sufficiency’ means that each pupil has sufficient textbook and instructional materials in the four core areas as defined by Section 60019….” The CDE has made clear that any instructional materials presented through a web-based application or an electronic device (e.g., computer, eBook reader, or iPad) will be subject to the Williams legislation. Thus, schools may be required to provide students with access to certain electronic devices both at school and at home.

Policy Development is Critical

As educational institutions implement new technologies, it is critical that they consider developing policies, regulations and other documentation which provide a rationale for the limited or confined implementation of technology in certain programs or courses, or in stages. This documentation would, for instance, describe the specialized or unique nature of a particular program requiring a particular kind of technology which, due to procurement or logistical hindrances, cannot be issued or made accessible to all students.

A policy that covers agency-wide educational technology matters could include information supportive of a phased approach to implementation by describing in detail various challenges the school district faces, such as evaluating appropriate hardware and software, equipment availability and cost.

In the final analysis, the implementation of educational technology within the public school system is a complex subject. However, attention to the issues touched upon here may provide educational institutions with a means by which to defend against claims of unequal distribution or application of educational technologies. As always, any specific questions or concerns should be addressed with your legal counsel before taking action.
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Tags: Task Force