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Dr. Richard S. Vacca, Editor; Senior Fellow, CEPI

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**POTENTIAL ISSUES TO WATCH IN THE 2004-2005 SCHOOL YEAR****Overview**

The 2003-2004 school year has come to an end and the more relaxed days of summer are upon us. The usually less hectic summer months provide a time for school officials and professional personnel to reflect back on the past year's accomplishments and to celebrate successes. At the same time, however, the summer gives school policy-makers and administrators time to reflect back on and reexamine the problems and issues faced during the past school year, and to forecast and plan for problems and issues that may either carry over from last year or spring to life next year.

In an effort to help educational policy-makers and administrators as they attempt to forecast and plan for next year, I decided to devote my final commentary for the 2003-2004 year to predicting potential issue producers to be ready for in the 2004-2005 school year. I have identified and selected the following topics for brief discussion:

- Ramifications of the United States Supreme Court's recent decision involving the Pledge of Allegiance.
- Growing support for school voucher plans.
- Implementation of parental choice options under the requirements of No Child Left Behind.
- Increasing popularity of home schooling, charter schools, and other alternates to traditional public and private schools.
- Rise in youth gangs and gang-related violence.

**Issues to Watch**

*Elk Grove Unified School District v Newdow (2004)*. In a decision that received considerable national publicity, the United States Court of Appeals for the Ninth Circuit held that the inclusion of the words "under God" in the Pledge of Allegiance, when recited by students within the context of a public school, violates the Establishment Clause of the First Amendment to the United States Constitution. Subsequently, the Supreme Court granted certiorari, oral arguments were heard, and the high court handed down its decision on June 14, 2004. [Elk Grove School District v Newdow \(2003\)](#)

The *Newdow* decision is significant in two ways. First, while the Supreme Court did reverse the Ninth Circuit Court's decision (which had ruled in the complaining father's favor), it actually did not specifically address the question of the inclusion of the words "under God" in the Pledge of Allegiance. The opinion written by Justice Stevens treated the matter as a domestic relations law issue (*i.e.*, focusing instead on the father's lack of standing [he is party to a joint custody arrangement] to bring the suit on behalf of his daughter). However, in a concurring opinion, Chief Justice Rehnquist, joined in part by Justices O'Connor, and Thomas, stated that he believed that a required recitation of the Pledge of Allegiance (including the words "under God"), by students in public schools, did not offend the First Amendment. Justice Antonin Scalia did not participate in the Court's deliberations. *Elk Grove School District v Newdow* (2004)

In light of the fact that the United States Supreme Court narrowly refused to take up the Fourth Circuit Court's decision in *Bunting v Mellen* (2003), where the required "super prayer" said by cadets at the Virginia Military Institute was declared in violation of the First Amendment, the aftermath of the high court's "non-decision" in *Newdow* is worth watching, especially by public school officials and administrators here in the Fourth Circuit. In other words the "battle over the Pledge of Allegiance" is not over.

*Growing Support of School Voucher Plans.* In 2002, the United States Supreme Court upheld an Ohio scholarship program that provided financial assistance in the form of vouchers, to parents who wished to take their children out of "failing public schools," and place them in private schools (including private religious schools). By a vote of 5-4 the high court viewed the scholarship program as one that created a "true private choice" for parents. *Zelman v Simmons-Harris* (2002)

This past February, the United States Supreme Court, by a vote of 7-2, reversed a Ninth Circuit Court decision in a case involving a State of Washington statute. The Washington statute in question created a scholarship program that provided public scholarship assistance to post secondary school students, including otherwise qualified students enrolled in religious schools who were pursuing a degree in *theology*. However, students pursuing a course of study in *devotional theology* (*i.e.*, devotional in nature or designed to induce religious faith) were excluded from receiving scholarship assistance. As it had reasoned in the *Zelman* decision, the Supreme Court viewed the Washington program as accommodating an individual's "private choice." In other words, a citizen should not be denied public financial assistance just because he/she decides to spend public money at a private religious school. *Locke v Davey* (2004)

In this writer's opinion, *Zelman* and *Locke* demonstrate a willingness of most members of the current Supreme Court to accept (within a public policy context) school choice plans (including a broad range of private school options) that are linked to publicly funded vouchers. As a general rule, where a student is otherwise qualified for public financial assistance it should not matter if he/she attends a private religious school. Thus, the high court characterizes vouchers as enabling parents to seek equal access to quality educational opportunities for their children, wherever these opportunities exist. The potential policy implications of this judicial attitude are many and must be watched.

*Implementation of Parental Choice Options Under No Child Left Behind.* As most educational policy-makers and administrators already know, the federal No Child Left Behind Act (NCLB) mandates that parents must be allowed to take their children out of public schools classified as either "failing schools," or "persistently dangerous schools." No Child Left Behind Act of 2001

While public school divisions here in Virginia and elsewhere in the nation have not yet witnessed a landslide of such requests, the future may tell a different story. What if, in a local school system, the number of students

who fail statewide grade-level tests and the population of students who fail to graduate solely because of below passing scores on statewide end of course examinations grow? What if the number of disciplinary incidents and violent episodes in that same local school system escalates? What if the number of school dropouts increases? What if a majority of the teachers in those schools are not “highly qualified?” What if individual schools lose their accreditation? What if parents in that school system are eligible to receive public assistance through vouchers, and must be provided with transportation? Will the number of student transfer requests increase? If the transfer requests do increase, where will the transferring students go, and will there be room in the schools to which they want to transfer? What will happen to the remaining students, principals, teachers, and other staff members? Will parental transfer requests include private schools and public schools outside the school system boundaries? The policy implications of legally sanctioned alternatives to required public school attendance are many and must be dealt with.

*Increasing Popularity of Home Schools, Charter Schools, and Other Alternatives.* Over the past decade, while federal and state laws required the integration and inclusion of all students (no matter their race, socio-economic condition, or educational disabilities) into the mainstream of public schools, the number of home schools, charter schools, alternative schools for students with severe disciplinary problems (some of which are being outsourced to private companies), schools for students who are academically gifted and talented, schools for engineering and technology, schools of the arts, and others continued to grow. In fact, recent literature has contained articles urging the establishment of single-sex schools and classes, and special schools for students with such disabilities as Autism. The “mixed messages” to school officials are very disconcerting. However, coupled with the above discussions of vouchers, expanding choice options, and No Child Left Behind, local public school system policy-makers would be wise to plan now for what seems inevitable during the next decade, as a trend to separate and not integrate students gathers momentum.

*Rise In Youth Gangs and Gang Related Violence.* A review of the professional literature and popular media reveals several articles and stories warning local government officials that the proliferation of youth gangs and gang-related violent episodes (many of which are drug-connected and involve the use of deadly weapons) are on the rise across the country. As public school officials and administrators know, what happens in the community sooner or later happens inside a school.

Over the past two years I have devoted several commentaries to issues of school security and student search and seizure. Suffice it to say, youth gang activity in communities will cause school officials to reexamine school safety and emergency policies and plans, including arrangements for immediate response and assistance from police agencies. Over the summer it would be prudent for school officials to seek the most recent and up-to-date data from a variety of federal, state, and local law enforcement agencies in an effort to establish an accurate picture of gangs (their names, membership demographics, identifying attire and communication system) and gang ties to criminal activities in the community.

Based upon the most recent information gathered, it behooves school officials to reexamine all policies and procedures dealing with such related subjects as: student dress codes, use of appropriate language inside the school and at school sponsored activities, possession and use of computers and other electronic technologies, involvement of school security and school resource officers, student search and seizure, possession and use of drugs, weapons, and alcohol, and others.

### **Policy Implications**

The purpose of this commentary is to spot potential issues facing local school officials as they plan for the 2004-2005 school year. Realizing that it would not be possible to identify and treat every potential issue, this writer selected the five discussed above. Because the policy implications were identified, included, and discussed in each section of this commentary, it would be redundant to restate them again at this time.

I hope that the information in this final commentary (along with the discussions contained in the nine previous commentaries for this past school year) proves helpful in crafting effective and practical school system policies and procedures. It is my hope that I contributed in a positive way to the efforts of local school officials and administrators to provide a safe and disruption free environment in schools where teachers can teach and students can learn.

### **Resources Cited**

Bunting v Mellen, 327 F.3d 355 (4th Cir. 2003)

Elk Grove School District v Newdow, 221 F.3d 772 (9th Cir. 2003), cert. granted, 2003 U.S. App. LEXIS (2003)

Elk Grove School District v Newdow, 2004 U.S. LEXIS 4178 (2004)

Locke v Davey, 124 S.Ct. 1307 (2004)

No Child Left Behind Act of 2001, 20 U.S.C. 6301, et.seq. (2002)

Zelman v Simmons-Harris, 122 S.Ct. 2002 (2002)

*Richard S. Vacca*  
Senior Fellow CEPI

Note: The views expressed in this commentary are those of the author.