

2024

# BUSINESS IN 2023

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# Your Host



## **Gabriel S. Oberfield**

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# TODAY'S AGENDA

**Gabe Oberfield – (12:00PM-12:05PM)**

- Intros / Agenda

**Roger Bearden – (12:05PM-12:15PM)**

- New Healthcare Transaction Requirements in New York State

**Mia DeLane-Gurley – (12:15PM-12:20PM)**

- Highlights of Board of Regents Amendments, Effective August 2, 2023

**Emily Fallon – (12:20PM-12:30PM)**

- Practical Guidance Concerning Native American Representations (Including Mascots) in Public Schools

**Katie McGraw – (12:30PM-12:40PM)**

- An Interesting Case: New York State Division of Human Rights, and Alleged Employment Discrimination and Harassment

**Kristin Warner – (12:40PM-12:45PM)**

- Education Law Sect. 2-d Compliance Reminders

**G. Oberfield – (12:45PM)**

- Questions / Wrap Up

# Material Health Care Transaction Disclosure Law



## Roger A. Bearden

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# Overview

- New York State Public Health Law Section 45-a
  - Adopted as part of 2023-24 Budget
  - Effective August 1, 2023
- Requires certain health care entities to provide a thirty (30)-day pre-closing notice to the State Department of Health of certain “material transactions”
- DOH will submit the notice to the Office of the New York Attorney General and post a summary of the proposed transaction on its website with an invitation for public comment

# Material Transaction

- A merger with a health care entity;
- An acquisition of one or more health care entities;
- An affiliation agreement or contract formed between a health care entity and another person; or
- The formation of a partnership, joint venture, accountable care organization, parent organization, or management services organization for the purpose of administering contracts with health plans, third-party administrators, pharmacy benefit managers, or health care providers as prescribed by the commissioner by regulation.

# Exclusions

- Clinical affiliations of for the purpose of collaborating on clinical trials or graduate medical education programs;
- Transactions already subject to the CON process or an insurance entity approval process under the New York Public Health or Insurance Laws; and
- “De minimis” transactions, defined to mean a transaction or series of transactions resulting in a health care entity increasing its total gross in-state revenues by less \$25 million



# Health Care Entity

- Included, but not limited to:
  - Physician practice, group, or management services organization or similar entity providing all or substantially all of the administrative or management services under contract with one or more physician practices
  - Provider-sponsored organization, health insurance plan, or any other kind of health care facility, organization or plan providing health care services in this state
- Does not include:
  - an insurer authorized to do business in this state, or
  - a pharmacy benefit manager registered or licensed in this state



# Contents of Notice

- Transaction details, including:
  - Names and addresses of the parties to the transaction;
  - Copies of the definitive agreements;
  - Locations impacted by the transactions;
  - Plans to reduce or eliminate services or plan participation;
  - Closing date; and

## Contents of Notice (cont'd)

- Description of the purpose of the transaction, including the following:
  - anticipated impacts on cost, quality, access, health equity, and competition in the impacted markets, which may be supported by data and a formal market impact analysis; and
  - any commitments by the health care entity to address the anticipated impacts

# Next Steps

- Law is effective as of August 1, 2023
- DOH will likely develop both regulations and subregulatory guidance, as well as forms to aid in the submission of required notices
- For now, DOH has established a dedicated email address for submission of the materials:
  - [MaterialTransactionDisclosure@health.ny.gov](mailto:MaterialTransactionDisclosure@health.ny.gov)

# Highlights of Board of Regents Amendments Effective August 2



## Mia C. DeLane-Gurley

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# Amendment Summary

- Section 19.5 of the Rules of the Board of Regents is now expanded beyond the prohibition of corporal punishment and aversive interventions to also prohibit seclusion and prone restraint.
- Section 19.5 of the Rules of the Board of Regents now indicates when and how timeout and physical restraint may be utilized.
- Section 19.5 of the Rules of the Board of Regents and Section 100.2 of the Commissioner’s Regulations now includes an Annual Reporting Requirement beginning with the 2024-2025 school year.
- Section 200.1 of the Commissioner’s Regulations was amended to revise the definition of “aversive intervention” consistent with the definition in Section 19.5.
- Section 200.7 of the Commissioner’s Regulations was amended to add the use of corporal punishment and seclusion to the list of unauthorized behavioral interventions.
- Section 200.15 of the Commissioner’s regulations was amended to replace the term “emergency intervention” with “physical restraint” and replace the phrase “time out room” with “timeout.”
- Section 200.22 of the Commissioner’s regulations was amended to, among other things, remove references to child specific exceptions for the issue of aversive intervention and add corporal punishment, seclusion and physical restraints to the list of interventions that cannot be included on a behavioral intervention plan.

# Practical Guidance Concerning Native American Representations (Including Mascots) in Public Schools



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# Part 123 of the Regulations of the Commissioner of Education

- **November 2022**

- NYSED Senior Deputy Commissioner James N. Baldwin released a memorandum stating that “public school districts are prohibited from utilizing Native American mascots” and must commit to changing them by the end of the 2022-2023 academic school year.

- **May 3, 2023**

- Effective date of Part 123
- Required school districts to formally commit to changing any team names, mascots, and logos derived from Indigenous peoples via a Board resolution by June 30, 2023.



# Part 123 of the Regulations of the Commissioner of Education

- By June 30, 2025, “any team name, mascot, or logo that has any connection to Indigenous peoples in the past or present, including logos that incorporate symbols associated with Indigenous peoples such as feathers, historical weapons like tomahawks or spears, or logos utilizing stylization generally attributable to or in association with Indigenous peoples such as feathers or traditional Indigenous clothing” are prohibited.
  - 8 NYCRR 123.1

# How far does Part 123's prohibition go?

- **The regulation applies to school team names, mascots, and logos only.**
  - Legacy or memorial items, such as plaques or trophies, are historical artifacts that do not need to be removed or changes.
  - Public schools, school buildings, school districts, or towns named after Indigenous nations, tribes, or people are outside the scope of Part 123 and do not need to be changed.

# How far does Part 123's prohibition go?

- School district employees are expressly prohibited from displaying paraphernalia or clothing associated with the retired Indigenous name, mascot, and logo.
  - *Ex.* A teacher who coaches a sports team cannot wear a clothing item distributed during a prior season with the retired team name and logo during the school day.
- Gymnasium floors, turf fields, scoreboards and other items associated with facility and grounds that bear the retired name and logo must also be removed.

# Practical Compliance with Part 123

- NYSED advises taking an “economical” approach to comply with the regulation by June 30, 2025.
  - *I.e.*, replacing the “end-zones” on a turf football field that say the retired team name, or just the center of a wood floor that has an image of the retired mascot, painting over imagery or the retired team name on scoreboards rather than purchasing an entire replacement.
- Building Aid is available for this work and Districts must submit applications for capital construction projects to the Office of Facilities Planning for review, approval, and permitting.

## What if Districts or Boards of Education refuse to comply with Part 123 by June 30, 2025?

- If a school district is not in compliance with Part 123 by June 30, 2025 the State Education Department has the authority under Education Law Section 306(2) to remove school officers or withhold State Aid.
- Upon a showing of good cause, the State Education Department may grant an extension to comply with the regulation past June 30, 2025.

## Good faith compliance may include:

- The inability of specific staff members, contractors, or consultants to complete specific work on a timely basis if significant progress (~75%) has been made and is ongoing;
- Replacement costs that could be substantially mitigated if postponed for a brief period; and/or
- In the case of capital projects needed to comply with this regulation, work toward compliance will have commenced, and a substantial percentage of the work needed to comply (~75%) shall have been completed by the end of the 2024-2025 academic year with an attestation by the District.

# An Interesting Case: NYS Division of Human Rights, Alleged Employment Discrimination and Harassment



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# Education Law Sect. 2-d Compliance Reminders



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# Your Questions



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### **New York Employment Law: The Essential Guide**

NYS Bar Association Members can buy the book from the bar [here](#).

Non-NYS Bar Association Members can purchase through Amazon [here](#).

# Thank You

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It is not to be considered as legal advice.  
Laws can change often, and information may become outdated.

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