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AMENDMENTS TO PUBLIC RECORDS LAW REQUIRE SCHOOL DISTRICTS TO REVIEW CURRENT BOARD POLICY AND RESPONSE PROCEDURES

On December 27, 2006, Governor Taft signed House Bill 9 ("H.B. 9") into law. The law amends the existing public records law, imposing significant additional obligations upon all public entities, including public school districts. H.B. 9 is designed to help eliminate the well-publicized obstacles citizens faced in 2004 when accessing public records. Among the newly-created obligations, the amendments: (1) mandate public records training for public officials or their designees; (2) impose stricter access obligations upon public entities, including a requirement that they explain, with legal authority, request denials; and (3) provide for increased monetary consequences for violations of the act.

The following is a brief summary of some of the more pertinent provisions of H.B. 9:

Training Obligations and Model Public Records Policy

- Requires all elected officials, including public school board officials or their designees to attend 3 hours of training each elected term on the public records law through programs and seminars developed, provided or certified by the Attorney General;
- Requires the Attorney General's Office to develop a model public records policy;

Obligations Relating to Redactions and Duty to Explain Request Denials

- Provides that if a request to access public records is ultimately denied, in part or in whole, the requestor must be provided with an explanation, including legal authority, as to why the request was denied;
 - If the initial public records request was in writing, the explanation also shall be provided to the requestor in writing;

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- Provides that any redaction of public records will be considered to be a denial of a request to inspect or copy the redacted information unless federal or state law authorizes or requires the redaction;
- Provides that the public records requestor must be notified of all places where exempt information was redacted unless the redaction is plainly visible;

Duty to Assist With Revising Broad or Ambiguous Request

- Provides that if a requestor makes an ambiguous or overly broad request or has difficulty in making a request such that the public office cannot reasonably identify what public records are being requested, the public office may deny the request but must also provide the requestor with an opportunity to revise the request by informing the requestor of the manner in which records are maintained by the public office and accessed in the ordinary course of the public office's duties;

Disclosure of Identity

- Provides that requiring the requestor to disclose their identity or intended use of records constitutes a denial of the request except that: (1) this information may be requested in writing to assist in fulfilling the request accurately as long as the requestor is informed that this information is not mandatory; and (2) a person may require disclosure of the requestor's identity or the intended use of the directory information concerning any students attending a public school to ascertain whether the directory information is for use in a profit-making plan or activity;

Other Procedural Requirements

- Mandates that current retention schedules must be readily available anywhere the public can request public records;
- Requires public entities to organize and maintain public records in a manner that they can be made available for inspection or copying;
- Allows the public entity to ask for advance payment of copying costs;
- Provides that the public entity does not have to allow the public to make their own copies;
- Prohibits a public entity from establishing a fixed amount of time before responding to requests unless that time is less than 8 hours;
- Requires all public offices to adopt a public records policy;
- Requires the public entity's public records policy to be distributed to its records custodian with acknowledgement of receipt;

- Requires the creation of a poster highlighting the public records policy which must be hung conspicuously in all public offices, including branch offices, of the public entity;
- Provides that the policy may be posted to the public entity's website;
- Provides that if the public entity has a policy handbook, the public records policy should be included within the handbook;
- Amends the provisions regarding the School District Records Commission to add local and joint vocational school districts;
- Amends the procedure governing records disposal such that the School District Records Commission or the Educational Service Center Records Commission must send any application for one-time disposal of obsolete records or any schedule of records retention and disposition to the Ohio Historical Society for its review;

Court Costs, Fines and Attorney's Fees

- Provides that when citizens sue for access to public records, courts now have discretion to order statutory damages of up to \$1,000, plus court costs and attorney's fees the citizen may incur.

How Can Districts Effectively Respond to the New Obligations?

Given the newly-imposed obligations and the penalties tied to violations, districts need to review and revise Board policy, administrative guidelines and other protocol documents and forms to comply with the revised law prior to the effective date of the legislation, which is in late March 2007. (However, the new requirements will not be truly in force until September 2007, based on the language of the law). Along those same lines, district personnel should consider how effective their current records retention process may be and ways to improve the efficiency of searching for documents responsive to public records requests. In connection with the foregoing districts should also consider undertaking training efforts to educate their personnel, particularly those individuals who regularly receive and respond to public records requests, on the revisions to the law and any policy and protocol changes. These steps will not only protect the district from any legal challenges that may result from alleged violations, but may also provide greater operational efficiency in handling such requests.

ARE YOU IN COMPLIANCE WITH OHIO'S "SMOKE FREE WORKPLACE ACT"?

On November 7, 2006, Ohio's voters passed Issue 5, an initiative that bans smoking in almost all public places and places of

employment in the state of Ohio. The law, called the "Smoke Free Workplace Act," took effect on December 7, 2006, and is designed to protect employees from the harmful effects of secondhand smoke. At the time the law was passed, many aspects of the law were unclear. For clarification of the law, the Ohio Department of Health ("ODH") has proposed draft enforcement rules, which are currently posted for public comment on the ODH website. (ODH must adopt a set of rules on or before June 7, 2007.) Right now, what is clear is that the burden falls on employers, including public and private schools, to ensure their employees and visitors comply with the requirements of the new law.

Specific Prohibitions and Obligations. Generally, the law prohibits smoking in a public place or a place of employment. A "place of employment" is defined as an enclosed area under an employer's control and used by employees for work purposes (e.g., offices, meeting rooms, sales, production and storage areas, restrooms, stairways, hallways, warehouses, garages, and even vehicles). Thus, the law bans smoking in all indoor areas of the workplace, as well as school-operated vans, buses and automobiles.

In addition, the law bans smoking in areas adjacent to building entrances and exits. The proposed enforcement rules, if adopted as currently written, will prohibit smoking in locations immediately adjacent to building entrances and exits, and schools will have to ensure that smoke does not enter the building through entrances, windows, ventilation systems and other means. Therefore, employees or visitors will no longer be permitted to step outside the doorway of the workplace and smoke.

Employers must also post "no smoking" signs at each building entrance and in conspicuous locations within the workplace. These signs must contain the telephone number established by the Department for reporting violations, 1-866-559-OHIO (6446). Employers must also remove all ashtrays and other receptacles used for the disposal of smoking-related waste from the prohibited areas, including areas near doorways. Sample signs complying with the new requirements (and other information) are available at the ODH website: <http://www.odh.state.oh.us/alerts/ohiosmokingban.aspx>.

Compliance Issues and Violations. While there are limited exceptions to the broad reach of the law, schools do not qualify for any exception. Furthermore, the law provides that "proprietors" are responsible for ensuring compliance. It defines a "proprietor" as an employer, owner, manager, operator, liquor permit holder, or other person in charge or control of a public place or place of employment. In the case of schools, it will likely be administrators, such as principals and central office personnel on the premises, that will be deemed proprietors and become responsible for making sure employees and visitors comply with the law. ODH will enforce the law, which should begin in earnest sometime in the spring after the formal rules are adopted. Under the proposed rules, local health authorities may be designated for enforcement of the law as well.

The first violation of the law by proprietors who refuse to enforce the law or by individuals who refuse to stop smoking upon request will result in a letter of warning from ODH. Further violations can result in civil fines. The proposed rules establish fines from \$100 for the second offense to \$2,500 for the fifth and subsequent offenses for proprietors. The proposed rules also contain anti-retaliation provisions which set forth fines for proprietors who retaliate against those who file a complaint.

While the new law became effective on December 7, 2006, and draft rules are now in place, the law may not have much impact until ODH formally adopts the implementing rules and begins to enforce the law. Nevertheless, schools should take steps now to comply with the broad requirements of the law. Smoking indoors or smoking immediately in front of any entrance or exit must be prohibited. Likewise, ashtrays and other smoking receptacles must be removed from these areas and signs must be posted as discussed above. Until the formal adoption of rules further defines where outdoor smoking may occur, proprietors should require smokers to smoke in an area at some reasonable distance from doorways, i.e., far enough so that smoke will not enter the prohibited areas.

NEW OBLIGATIONS IMPOSED BY THE FAIR MINIMUM WAGE AMENDMENT AND HOUSE BILL 690

The success of Issue 2, the "Fair Minimum Wage Amendment," and the subsequent passage of House Bill 690 on December 20, 2006, means more for school districts and private schools than simply paying a higher minimum wage in 2007. In addition to raising the minimum wage from \$5.15 to \$6.85 per hour, the changes in the law require employers to update and keep a record of each employee's name, address, occupation, pay rate, daily hours worked, and "each amount paid" to the employee. These records must be kept for at least three years after an employee's period of employment. An employer is required to make this information available, at no cost, to the employee or "a person acting on behalf of an employee" within 30 business days after receiving the request unless the employee or other person agrees to an alternate time or the 30-day period would pose a hardship to the employer.

If an employer does not comply with these recordkeeping requirements, an employee, persons "acting on behalf" of one or more employees, and/or an "interested party," may file a complaint with the state against the employer. The complaining employee's name must be kept confidential unless the employee consents to disclosure and it is necessary for resolution of the complaint. The state may also investigate an employer's compliance with the amendment in the absence of a complaint and the employer must produce all records related to the investigation.

Other notable aspects of the Fair Minimum Wage Amendment and H.B. 690 include:

- The new amendment applies equally to private employers and

public bodies, including school districts and private schools. There are very few exceptions to the coverage of the amendment.

- The amendment provides for automatic yearly increases in the minimum wage based on the rate of inflation as determined by the Consumer Price Index.
- When an employee is hired, the employer must provide that employee with the following information: the employer's name, address, telephone number, and "other" contact information. The employer must update such information if it changes. "Other contact information" does not include any information of an employee, shareholder, officer, director, supervisor, manager, or other individual employed by or associated with an employer but does include an employer's internet site address, e-mail address and fax number, and the name, address and telephone number of the employer's statutory agent.
- "Persons acting on behalf" of an employee include a certified union or collective bargaining representative and an employee's attorney, parent, guardian or legal custodian.
- Employers may adopt and implement their own payroll request procedure to increase privacy protection which may require requests to be made in writing, signed by the employee, notarized and to specifically identify the information requested.
- Employers must maintain a record of a non-exempt employee's base rate of pay but not a record of the time of day an employee begins and ends work on any given day.
- Employers are not required to keep records of the hours actually worked by exempt employees, but instead they will be required to keep a record of an employee's annual base salary or other rate of pay by which the employee qualifies for exemption under the FLSA. For the purposes of the Fair Minimum Wage Amendment, an employer will not be required to keep records of exempt employees' bonuses, incentives, deferred compensation, or any other similar form of compensation.
- An employer is prohibited from discharging, discriminating, or retaliating against an employee (or any person providing assistance to an employee) for exercising any right provided for in the amendment.
- The Attorney General, an employee, or a person acting on behalf of an employee may file a lawsuit against employers for equitable and monetary relief, including back wages, damages (up to two times the measure of back wages), costs and attorneys' fees, for violations of the amendment. The action must be brought within 3 years of a violation. If the employee filed a complaint with the state, the action may be filed within 1 year

after notice of disposition by the state or within 3 years of a violation. If the employee prevails on a claim for monetary relief, the employer must pay the employee within 30 days of the finding.

- If the employer violates the anti-retaliation provision, the employer must pay the employee at least \$150 for each day the violation continued.

Questions Left Unanswered. Both Issue 2 and H.B. 690 leave some questions to be answered.

First, if an employer fails to retain payroll information for all employees, what penalty would it face if no actual violations of the minimum wage requirements are discovered?

Next, what impact, if any, would an increase in the federal minimum wage have on Issue 2 and HB 690? Such an increase seems likely now that the Democrats have gained control of both the Senate and the House.

The Office of the Attorney General, charged with enforcing Issue 2's requirements, may also provide such guidance. More likely than not, many of these issues will require resolution by the courts. What is clear is that schools and school districts must become comfortable with both the direct payroll consequences of the amendment and the record-keeping and record-producing requirements.

OHIO SUPREME COURT UPHOLDS THE CONSTITUTIONALITY OF STATE LAW AUTHORIZING CHARTER SCHOOLS

The Ohio Supreme Court, in a sharply divided 4-3 ruling, recently held that Chapter 3314 of the Ohio Revised Code, the state law authorizing establishment and operation of community or "charter" schools, is constitutional and dismissed all constitutional challenges to the program that had been raised by charter school opponents. The Supreme Court ruling, however, did not resolve a second set of legal challenges to the charter school program based on non-constitutional issues that will be addressed by the Franklin County Court of Common Pleas.

Background. In 2001, the Coalition for Public Education ("CPE") — a group composed of organizations representing parents, teachers, school administrators, school board members and taxpayers — filed suit challenging the community school legislation enacted by the General Assembly. Although the suit named only the State Board of Education, Ohio Department of Education and other government entities as defendants, the court permitted a group representing a number of Ohio community school operators and students and White Hat Management

LLC, a community school management company, to join in the defense of the lawsuit.

The charter school opponents asserted ten different statutory and constitutional arguments against the legality of the charter schools and requested an injunction to stop further allocations of tax dollars to community schools and to reallocate current state tax revenues to the traditional public school districts that have lost funding to community schools.

In 2002, the parties and the trial court agreed to divide the litigation into separate phases. As the first phase, the judge directed the parties to submit written briefs arguing only the constitutional issues raised by the plaintiffs. Specifically, CPE alleged that the privately operated community schools: (1) violated the Thorough and Efficient Clause because they were not part of a system of public schools; (2) violated the same clause because the school diverted funding from public schools; (3) deprived local voters and school boards of authority over public education and local property tax revenue; and (4) impermissibly received credit from the state.

The Court's Ruling. Writing for the majority of the Court, Justice Judith Lanzinger rejected the claim that the community school legislation violated the Thorough and Efficient Clause, reasoning, "In enacting community school legislation, the General Assembly added to the traditional school system by providing for statewide schools that have more flexibility in their operation. Community schools were designed to give parents a choice and give educators 'the opportunity to establish limited experimental educational programs in a deregulated setting.'" She noted that community school students must pass the same graduation test that students in traditional public schools must pass, and that community schools must administer proficiency and achievement tests and meet the same health and safety standards as traditional schools. Explaining her position, she wrote: "The expressed legislative intent is to provide a chance of educational success for students who may be better served in their educational needs in alternative settings. Requiring community schools to be operated just like traditional public schools would extinguish the experimental spirit behind R.C. Chapter 3314. While the wide discretion granted to the General Assembly is not without limits ... we hold that the General Assembly has not transgressed the limits of its legislative power so as to render R.C. Chapter 3314 unconstitutional under the Thorough and Efficient Clause."

Justice Lanzinger also rejected the CPE's related claim that community schools have diverted money from local school districts and made them more reliant on local property taxes. "(W)hen a student leaves a district for a community school, the state reduces the state funding that the district receives for the student. Nothing in the Constitution, however, prohibits the General Assembly from reducing funding because a school district's enrollment decreases," wrote Justice Lanzinger. "If a child moves out of the

district altogether, the state is permitted to reduce its funding to that child's district because state money follows the child. For example, if a child leaves a school district to attend private school, or to be schooled at home, the state is required to reduce its funding to that district. The same thing occurs when a child opts to attend a community school. Whenever a student leaves, for any reason, the school district's funding is decreased and the district continues to receive state funding based on the students actually attending. Traditional schools still receive the full amount of state funds for the actual number of students enrolled."

The majority opinion did not accept the CPE's contentions that tax-funded community schools deprive local residents of their constitutional right to control publicly-funded education through elected local school boards, and that the community school funding scheme diverts local school tax revenues away from local schools. "This court has held that the General Assembly has the power to create and modify school districts. In analyzing this specific issue in the case before us, the Court of Appeals for Franklin County opined that the plain language of Section 3, Article VI 'does not give those [local] voters more power than the General Assembly to create policy and organize and administer a system of public education throughout the state.' We agree with this statement. ... By choosing to create community schools as part of the state's program of education but independent of school districts, the General Assembly has not intruded on the powers of city school boards. ... Section 3, Article VI of the Ohio Constitution does not prevent the General Assembly from creating additional schools that are located within city school districts but are not part of the district."

With regard to the claimed unconstitutional diversion of local tax revenues, Justice Lanzinger wrote, "Funds raised by local school districts, such as funds derived from local levies, are never sent from the local school district to the community schools, nor are any funds from the local school district to the state ever redirected to the community schools."

DOL ISSUES OPINION LETTER ON VARIOUS EMPLOYEE-VOLUNTEER SCENARIOS

On October 20, 2006, the Department of Labor (DOL) issued an opinion letter regarding requirements for overtime pay when non-exempt school employees — such as classroom aides, secretaries, bus drivers and custodians — assist with coaching sports or other extracurricular activities. While DOL opinion letters are not legally binding, they reflect the department's current thinking on the issue posed and can be instructive in avoiding liability.

Under the Fair Labor Standards Act (FLSA), non-exempt employees must be paid time and one-half for all hours worked over forty (40) in a workweek. The FLSA allows public employees to work occasionally and sporadically for their employer in a different capacity than their regular job and receive their regular wage, rather than overtime pay. Specifically, employees may volunteer without being paid overtime as long as they: (1) receive no compensation for their volunteer services other than a nominal fee; (2) render services without employer coercion; and (3) are not otherwise employed by the same employer to perform the same services.

In its recent opinion letter, the DOL addressed three different hypothetical scenarios related to school employee "volunteerism." Each scenario is summarized briefly below.

Aides in the Classroom. In the first scenario, the DOL indicated it would not assert a violation of the FLSA if an instructional aide volunteers in his or her child's classroom and performs instructional aide duties. The DOL stated that despite some overlap in the job duties and volunteer activity, the DOL would not pursue a claim for unpaid wages so long as the employee did not expect to be paid and was not coerced to perform such volunteer services. However, the department stressed that its own enforcement policy would not affect an individual's private enforcement rights under the FLSA.

Volunteering for PTO. In the next scenario presented for review, the DOL stated that secretarial and clerical employees could volunteer for a parent-teacher organization and perform duties similar to those they perform for the school, as long as the school district and the parent-teacher organization are not the same public agency. In this scenario, the PTO should be structured as an independent, not-for-profit entity with its own governing board and by-laws to support its charitable/educational purpose.

Volunteering at Athletic Events, Dances and other Special Events. According to the DOL, secretarial, clerical, and bookstore employees can volunteer as ticket-takers, ushers, box office personnel, or security workers at athletic or special events without triggering overtime rules. Based on the DOL's job descriptions, these employees' regular job duties appear to be different than the volunteer positions, thus differentiating their secondary activities from their regular job.

Finally, the DOL stated it did not have enough facts to determine whether secretarial and clerical employees could volunteer as dance chaperones, student proctors, field trip chaperones, or crowd control monitors and receive payments of \$10 or \$20 per activity. While employees who volunteer can receive a "nominal" fee, determining what amount con-

stitutes a "nominal" fee depends on the facts of each case. However, as a guideline, the DOL announced it would assume a fee is nominal if it does not exceed 20% of what the school otherwise would pay someone for the services. However, due to the limited facts presented in the inquiry to which the opinion responded, it was not clear whether this provision applied to the scenario.

Despite the guidance provided in the DOL's recent opinion letter, the complexity of the FLSA and case-by-case nature of the analysis that accompanies employee-volunteer situations will continue to give schools headaches. In order to minimize risk, schools must consider the specific facts of each potential employee-volunteer scenario prior to approving such service.

ADDRESSING OFFENSIVE CONTENT POSTED ON STUDENT-CREATED WEB SITES

Even before the proliferation of MySpace, YouTube and other adolescent-centered web sites, some students spent hours of their own personal time, using their own computer resources to create Web sites dedicated to insulting, demeaning or even threatening school administration, teachers or other school personnel. In response, many schools took disciplinary action, such as suspension or expulsion, in an effort to force the student to shut down the Web site and stop the widespread dissemination of its offensive content. A number of those schools, however, subsequently discovered that taking such action may potentially run afoul of the student's First Amendment rights, causing costly and well-publicized lawsuits.

Given the foregoing risk, how may a district address this serious issue while avoiding the creation of potential liability for the district? Consider the following suggestions:

Establish Parental Contact. Oftentimes, parents are wholly unaware that the student has developed the Web site and is setting forth such content. Likewise, parents may be unaware that in certain circumstances they may be responsible, legally and financially, for their children's actions that violate the rights of other individuals.

Contact Law Enforcement. Any time a student asserts true threat — whether veiled or overt — on any Web posting, the local authorities should be contacted for involvement. With the authorities involved, additional pressure is exerted on the student-offender and the district can utilize the technological and investigative resources of the law enforcement agency to its advantage.

Contact the Internet Service Provider or Sites. District administrators can contact AOL or other internet service providers, MySpace and other social networking sites to request potentially harmful or illegal material posted by students be removed. This may be especially effective for addressing the new phenomenon of students creating fake MySpace pages/profiles for administrators and teachers, where they post material and communicate as if they were the administrator/teach-

er. While contacting these ISPs and sites may take time, they have grown rather receptive and responsive to these requests.

Bring a Lawsuit. Recently, a number of lawsuits have been asserted by teachers and administrators against students and the students' parents alleging the content of Web postings constitute defamation, defined as the publication of false information that damages one's professional reputation, or infringes upon an individual's privacy rights. For example, a Florida teacher sued a student for posting sexual comments and a photograph to his MySpace account. This private legal action, which is usually brought against the student and his/her parents may encourage the site to be shut down.

Get Creative. In situations where parents refuse to help or law enforcement is unable to assist, districts may need to get creative in preventing the continued dissemination of the student's message. Districts should consider whether students have improperly used materials protected by copyright or trademark in creating their sites/content. Districts may also remind students and parents that many colleges now surf the Web as part of the admission process and may run across such content.

Protect the District's Existing Rights. While disciplining public school students for off-campus speech is always problematic, it can be done lawfully when the student's speech causes a "substantial disruption to the educational environment." This is a very difficult standard to satisfy and this action should not be undertaken without consulting your legal counsel at the earliest point possible. In connection with protecting this right, districts may also wish to review their acceptable use policies to ensure that students are forewarned that such off-campus speech may be subject to discipline if it rises to this level.

UNITED STATES SUPREME COURT TO RESOLVE WHETHER NON-LAWYER PARENTS MAY BRING THEIR CHILD'S SPECIAL EDUCATION CLAIMS IN COURT *PRO SE*

The U.S. Supreme Court will decide whether non-lawyer parents may represent their child *pro se* in federal court in special education disputes arising under the Individuals with Disabilities Education Improvement Act ("IDEIA"). The issue arises from a lawsuit filed by Jeff and Sandee Winkelman against the Parma City School District Board of Education ("the District") challenging whether the District's proposed educational plan provided their son with a free appropriate public education ("FAPE"). After a four-day hearing in which the Winkelmans were represented by legal counsel, the state due process hearing officer found that the District's proposed educational plan was legally appropriate. The state level review officer affirmed the hearing officer's decision. The Winkelmans then appealed the state hearing officer's findings to the U.S. District Court.

Although the parents had been represented by counsel during the state due process hearing, they initially brought their federal lawsuit *pro se*. Prior to the district court's decision on the merits, the Winkelmans obtained legal counsel. After the district court

ruled in favor of the school system, the parents next appealed to the U.S. Court of Appeals for the Sixth Circuit and attempted to proceed *pro se* during the appellate proceedings. In accordance with the majority of courts to address the issue, the Sixth Circuit ruled that the Winkelmans could not proceed in that court without a lawyer and ordered them to obtain counsel.

The parents asked the U.S. Supreme Court to review the Sixth Circuit's *pro se* representation decision. In opposing the request for review, the school district argued that allowing non-lawyer parents to represent their child's interests in court was contrary to the plain language of the IDEIA as well as Congressional intent. The IDEIA expressly provides that non-attorney parents may represent their child's interests during the state administrative proceedings but contains no corresponding right for court proceedings. Further, when Congress amended the IDEIA in 2004, it declined to add an express provision giving non-attorney parents the right to represent their child *pro se* in court. The school district's opposition to the request for review also noted that policy considerations weigh against such a right because minor children with disabilities cannot make an informed choice to assume the risk of proceeding without counsel.

In May 2006, the Justices asked the U.S. Solicitor General to brief the issue. The Solicitor General's office took the position that the Sixth Circuit holding does not comport with the language or intent of the IDEA. According to the brief, the key issue for the U.S. Supreme Court to address is whether parents are entitled to sue on their own behalf under IDEIA or whether their right to file an IDEIA lawsuit derives from their child's rights. Four other appeals courts have held that parents need a lawyer to bring their child's substantive claims under the IDEA, but not the parents' procedural claims. The issue is expected to be heard during the Supreme Court's February term.

IDEIA'S IMPLEMENTING REGULATIONS TAKE EFFECT

The much-anticipated final regulations implementing Part B of the Individuals with Disabilities Education Improvement Act ("IDEIA") of 2004 became effective on October 13, 2006. The implementing regulations closely follow the language and intent of the IDEIA. Like the IDEIA, which was signed into law on December 3, 2004, the regulations focus on improving education outcomes and accountability for all students while removing unnecessary bureaucracy, paperwork, legal process, and expenses.

Briefly, notable revisions include:

- "Tourette Syndrome" has been added to the list of chronic or acute health problems in the definition of other health impairment. 34 CFR §300.8(c)(9)(i).

- The definition of supplementary aids and services has been modified to specify that the definition includes aids, services, and other supports provided in extracurricular and nonacademic settings to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate. 34 CFR §300.42.
- The regulations have been revised to clarify that a school district must ensure that a free appropriate public education ("FAPE") is available to any child with a disability who needs special education and related services, even though the child has not failed or been retained in a course, and is advancing from grade to grade. 34 CFR §300.101(c).
- The regulations regarding FAPE exceptions clarify that a regular high school diploma does not include an alternative degree that is not fully aligned with the state's academic standards, such as a certificate or a general educational development credential ("GED"). 34 CFR §300.102(a)(3)(iv).
- The section regarding time extensions for filing a state complaint has been revised to clarify that the 60-day timeline may be extended if the parent and the public agency agree to engage in mediation or other available means of dispute resolution. 34 CFR 300.152(b)(1)(ii).
- The regulations regarding parental consent for initial evaluation have been changed to clarify that the school district does not violate the IDEIA if it declines to pursue an initial evaluation where the parent does not provide consent. 34 CFR §300.300.
- A new provision has been added which provides that if a parent of a child who is home schooled or placed in a private school by the parent at the parent's expense does not provide consent for an initial evaluation or a reevaluation, or the parent fails to respond to a request to provide consent, the school district is not required to consider the child eligible for services. 34 CFR §300.300(d)(4).
- The parental consent provisions have been revised to clarify that school districts must follow certain procedures and document their attempts to obtain parental consent in order to meet the reasonable efforts requirement regarding obtaining informed parental consent for an initial evaluation, initial services, or a reevaluation. 34 CFR §300.300(d)(5).

- A new provision regarding due process complaints provides that if the parents fail to participate in the resolution meeting after reasonable efforts to obtain participation have been made and documented, the local education agency ("LEA") may, at the conclusion of the 30-day resolution period, request that a hearing officer dismiss the parents' due process complaint. 34 CFR §300.510(b)(4).

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