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New Legal Guidance and Law on Student Issues

NEW LEGAL GUIDANCE AND LAW ON STUDENT ISSUES

There have been several interesting developments in student-related legal requirements in the past month that school districts and special education cooperatives need to know. They are described below, in order of their publication.

I. ISBE GUIDANCE ON TMC AND EARLY CHILDHOOD TRANSITION

On January 15, 2013, the Illinois State Board of Education issued notification of revisions to the IDEA proportionate share timely and meaningful consultation ("TMC") time lines. In the past, school districts have been required to hold TMC meetings in the fall of each school year with representatives of private elementary and secondary schools and home schools regarding the use of proportionate share IDEA funds for services to eligible students with disabilities who attend such schools. In an attempt to better budget proportionate share expenses and to prevent delays in providing services, ISBE has revised the TMC

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timelines for 2013-2014 as follows:

■ **April 2013**: ISBE will release estimated proportionate share calculations based on the March, 2013 FACTS child count data.

■ **May 31, 2013**: Final date for districts to convene TMC.

■ **June 15, 2013**: TMC documents due to ISBE.

■ **July 1, 2013**: Date to start filing FY 2014 IDEA grants, to include proportionate share expenses.

■ **August 2013**: ISBE releases final proportionate share calculations.

The ISBE also issued a guidance document titled *Early Intervention to Early Childhood Transition Frequently Asked Questions* (January 2013), which answers 21 questions concerning early childhood transition meetings, evaluations, services, and placement. Some highlights from this FAQ include the following:

■ The time frame for conducting the transition planning

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conference for children moving from IDEA Part C (Early Intervention) to Part B programming is between two years, three months and two years, nine months. The conference must be completed 90 calendar days before the child's third birthday.

- As of July 1, 2012, if a child is referred to Child and Family Connections less than 45 days before his or her third birthday, the CFC may send the child directly to the local school district for evaluation.

- If the child's third birthday is during the summer, the transition planning conference should take place at least 90 calendar days before the end of the school year to ensure that an IEP is in place by the child's third birthday.

- A child who will turn three during the school year may enter school at the beginning of the school year as a two-year-old with an IEP, but may not receive both Part C Early Intervention services and Part B IDEA services at the same time.

- The IEP team must consider a general education preschool setting as the first option for placement, in consideration of the least restrictive environment. General

education preschool options may include park district programs, community preschools, blended programs, Head Start, child care programs and programming at home.

II. ERIN'S LAW REQUIRES DISTRICTS TO PROVIDE SEX ABUSE AWARENESS

Effective January 24, 2013, Public Act 97-1147, known as "Erin's Law," requires Illinois school districts to add age-appropriate sexual abuse and assault awareness and prevention education to the health curriculum for pre-kindergarten through 12th grade students. The purpose of Erin's Law is to equip children with awareness of sexual abuse so that they report abuse and, ultimately, to reduce victimization. "Erin," the law's namesake, was a victim of childhood sexual abuse but was unable to report her suffering until many years later. Her public campaign for awareness has resulted in Erin's Law being passed in numerous states. A previous Illinois Public Act established the Erin's Law Task Force. The Task Force's May 2012 Executive Summary, available on the Illinois State Board of Education website, at www.isbe.state.il.us/reports/erins-law-final0512.pdf, sets forth core components of effective and comprehensive child sexual abuse prevention programs and provides contact information for

statewide resources. The Advocacy Network of Illinois is developing a curriculum, including a "Happy Bear Mascot," to teach young children about good and bad touch and reporting uncomfortable situations. The Task Force Executive Summary also provides additional references and resources for building curriculum.

III. "DEAR COLLEAGUE LETTER" ON PARTICIPATION OF STUDENTS WITH DISABILITIES IN EXTRACURRICULAR ATHLETICS

On January 25, 2013, the U.S. Department of Education's Office of Civil Rights (OCR) issued guidance clarifying school districts' responsibilities under Section 504 to afford students with disabilities an equal opportunity to participate in extracurricular athletics. In addition to providing a summary of school districts' obligations under Section 504 and its regulations, OCR reminded districts that the Section 504 regulations require them to provide an equal opportunity for students with disabilities to participate in nonacademic and extracurricular services and activities, which include but are not limited to, competitive athletics. OCR clarified that a school district's obligations under Section 504 and its regulations supersede any rule of any association (e.g., the

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IHSA), organization, club, or league that would render a student ineligible, or limit a student's eligibility, to participate in any aid, benefit, or service on the basis of disability.

OCR also explained that simply because a student is a "qualified individual" protected under Section 504 does not mean that the student must be allowed to participate in any selective or competitive program offered by a school district. Rather, a district may require that a student with disabilities meet criteria of skill level or ability in order to participate in the program, so long as such criteria are not discriminatory. OCR reiterated the long-standing Section 504 requirement that school districts must provide reasonable accommodations, aids or services necessary for students with disabilities to have an equal opportunity to participate in athletics, unless doing so would result in a fundamental alteration to the program or activity. While a school district may adopt legitimate safety standards for a student's participation in an athletic program or activity, the district may do so only after considering whether a student with disabilities can participate safely if provided reasonable accommodations.

School districts were cautioned against making decisions about

programs, activities and capabilities of individual students with disabilities based on presumptions, generalizations, or stereotypes about specific disabilities. OCR also encouraged districts to work with the community and athletic associations in integrating students with disabilities to the maximum extent appropriate for a student and developing opportunities to include students with disabilities in extracurricular athletic activities.

IV. REVISED IDEA REGULATION REGARDING PARENT CONSENT FOR ACCESS TO MEDICAID FOR IEP SERVICES

On February 14, 2013, the U.S. Department of Education published an impending revision to the IDEA implementing regulations. Effective March 18, 2013, 34 C.F.R. §154(d) is amended to permit parents to provide a **one-time written consent** for their district to access public benefits or insurance (e.g., Medicaid) to pay for certain IEP services, and to require districts to provide **annual written notification** of parents' rights in this area. Until now, school districts and special education cooperatives were required to secure parent consent every time access to public benefits or insurance was sought. The regulatory revisions are designed to make it easier for districts and

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cooperatives to access public benefits while safeguarding parents' rights at the same time.

Pursuant to the new regulations, before accessing the parents' or child's Medicaid benefits for the first time (if, and only if, a parent agrees to do so), a district must obtain a one-time written consent from the parents, after providing the annual written notification statement. The one-time written consent must specify:

- The personally identifiable information that may be disclosed (e.g.,records or information about the child's services);
- The purpose of the disclosure (e.g., billing for services);
- The agency to which disclosure may be made (e.g., Medicaid); and
- That the parent understands and agrees that the district or cooperative may access the child's or parent's public benefits to pay for the child's services.

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The revised regulation also requires districts to provide annual written notification to the parents (1) before accessing Medicaid for the first time and obtaining the parents' one-time written consent, and (2) annually thereafter. The annual written notification must be in a language understandable to the general public and in the native language of the parent unless it is clearly not feasible to do so, and must include the following:

- A statement of the parental consent provisions in the IDEA regulations;
- A statement of the "no cost" provisions in the IDEA regulations;
- A statement that the parents have the right to withdraw consent to disclosure of their child's personally identifiable information to the agency responsible for the administration of the State's public benefits or insurance program (e.g., Medicaid) at any time; and
- A statement that the withdrawal of consent or refusal to consent to disclose personally identifiable information to

the agency responsible for the administration of the State's public benefits or insurance program (e.g., Medicaid) does not relieve the child's district of its responsibility to ensure that all required IEP services are provided at no cost to the parents.

The annual written notification may be mailed to the parents, e-mailed, provided at the student's IEP meeting, or provided by some other means. A district may determine when the annual written notification is provided to parents each year.

If a district already has written parental consent to access public benefits or insurance at the time the new regulation takes effect, the district must provide the annual written notification but need not obtain a new written consent unless and until there is a change in the services the district provides to the child. Furthermore, the district is not required to obtain consent again when a child transfers schools within the district.

If you have any questions about these new guidance documents or legal requirements, please call one of our attorneys at 630/928-1200 (Oak Brook) or 708/799-6766 (Flossmoor).

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ISBE Issues Guidance on Qualifications of Personnel Conducting Medical Reviews

In July 2012, Section 226.840 of the Illinois State Board of Education special education regulations was amended to revise the qualifications of school personnel who may conduct medical reviews. Last week the ISBE issued *Guidelines: Frequently Asked Questions About Qualifications Required of Personnel Conducting Medical Reviews*. The Guidance defines "medical review," describes how a medical review should be conducted, specifies who may conduct a medical review, clarifies the role of the certified school nurse in the IEP process, and provides suggestions on how school districts can address shortages of certified school nurses.

- Medical Review Defined: ISBE defines a "medical review" as activities resulting in a complete review of a

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student's medical and health status to determine whether a health condition is adversely affecting the student's educational performance. The medical review should help determine if the student requires special education or related services such as school nursing services.

- Conducting the Medical Review: According to ISBE, a medical review should consist of:
  - Collecting parent, student and teacher perceptions and concerns about the student's health.
  - Obtaining objective health information from medical or hospital records.
  - Reviewing the data to determine whether additional information is needed (and obtaining that information, if necessary).
  - Reviewing all data to determine what, if any, appropriate nursing services and accommodations or modifications the student requires.
  - Reporting any educationally relevant medical findings to the IEP team. In making these determinations, the certified school nurse is exercising instructional judgment or conducting an educational evaluation.

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- Qualifications to Conduct the Medical Review: Beginning July 1, 2013, only the following personnel, including grandfathered, non-certificated personnel, may conduct a medical review:
    - A School Nurse (defined as any registered professional nurse who holds a school service personnel certificate with an endorsement in school nursing, or any non-certificated registered professional nurse who was employed in the school district of current employment before July 1, 1976); or
    - A Physician licensed to practice medication in all of its branches; or
    - A Registered Nurse with a bachelor's degree or higher, or an Advanced Practice Nurse.
- Role of the Certified School Nurse in the IEP Process: ISBE indicates that the certified school nurse should participate in the IEP process as follows:
    - Assist in IEP development;
    - Integrate any needed school nursing services into the student's academic or functional goals;
    - Recommend educational interventions, modifications

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or accommodations;
- Provide or delegate (as appropriate) nursing interventions;
- Recommend health-related goals, including frequency of progress monitoring;
- Recommend specific school health services and school nursing services; and
- Write progress reports and evaluate the effectiveness interventions.

The Guidelines only reference the IEP process; however, we recommend that school districts and special education cooperatives follow the amended ISBE regulation and the new Guidelines for medical reviews and planning meetings under Section 504 as well.

If you have any questions, or need assistance revising your policies or procedures to conform to the amended ISBE regulation and new Guidance, please call one of our attorneys at 630/928-1200 (Oak Brook) or 708/799-6766 (Flossmoor).

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Be Careful What You Wish For: Candidate Petition Filing Deadline Moved Until Day After Christmas

Yielding to requests from municipal clerks, school board secretaries, and other local government officials, the General Assembly has acted quickly during its fall veto session to provide one-time relief to those offices which did not wish to stay open on Christmas Eve in order to accept candidate petitions for the April 9, 2013, consolidated election. Senate Bill 3338, signed into law by Governor Quinn as Public Act 97-1134, changes the filing deadline only for this year from the 106th day before the election (Monday, December 24) to the 104th day before the election (Wednesday, December 26). Because the only day in which offices are mandated by law to stay open

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during the election petition filing period is the final one, district offices may now be either open or closed on Christmas Eve, according to the district's discretion. **But the office must be open until 5:00 p.m. on December 26 to accept candidate petitions.**

Of course, this change may be more beneficial to municipalities, which are generally open more days during the holiday season and were planning to have their offices open on December 26 anyway. For school districts which may close their offices for certain days while the students are off, the effect of this legislative solution may be simply to exchange one inconvenience for another, and on short notice. In any event, this change applies only to the current election cycle. Whether the General Assembly comes up with a long-term solution remains to be seen.

A few other things should be clarified:

- The beginning of the filing period has not been changed. This year, the first day for filing is still Monday, December 17.
- While the office must stay open until 5:00 p.m. on December 26, there is no prescribed beginning time. Thus,

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a district may not open until, say, 1:00 p.m. or even 3:00 p.m. on that final day for filing. But we do recommend that you clearly publicize whatever those hours are at the district office and on your website.

- The time period for filing objections may be effectively pushed back. By law, the deadline for filing objections is the fifth business day after the deadline for filing petitions and that deadline has now been pushed back. The issue of whether the "business days" to count are those of the State or might be those of the local district has been the subject of some discussion. Our opinion is that you count only the days when the local district is actually open for business. In any event, we strongly advise that you clearly publicize which five days, and for what hours, the district office will be open to accept objections.

If you have questions about any of this, please contact one of our attorneys at 630/928-1200 (Oak Brook) or 708/799-6766 (Flossmoor).

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District to Pay for Multiple Bites at FOIA Exemption Apple

On October 3, 2012, an Illinois Appellate Court issued a decision which should serve as a warning to public school districts asserting questionable objections under the Illinois Freedom of Information Act ("FOIA"). In *Rock River Times v. Rockford Public School District 205*, the Appellate Court affirmed the trial court's ruling denying the requestors' prayer for attorney's fees in FOIA litigation against District 205, while at the same time upholding the Circuit Court's imposition of a civil penalty in the amount of $2,500 against the District. The Appellate Court's decision makes it clear that if a school district wishes to assert exemptions to document disclosure under the FOIA, it will not be afforded multiple opportunities to do so.

On August 26, 2010, the Rock River Times and its reporter, Joe McGhee, served the Rockford School District with a FOIA request for a letter written by a principal in response to the District Superintendent's "separation of employment" letter. The

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District initially claimed that the letter was exempt from disclosure because it fell within the Act's exemptions for "personal privacy" and the "examination data for qualifications for employment". The State's Freedom of Information Act Public Access Counselor (PAC) initially rejected the District's claim under the "personal privacy" exemption but failed to address the second ground. In a separate ruling, the PAC rejected the District's examination data exemption claim and ordered the District to release the letter.

The District, in a September 29, 2010, letter, "expressed its willingness" to rethink its denial of the request. In a letter dated October 8, 2010, the District acknowledged that the previously claimed exemptions did not prohibit disclosure of the letter. However, instead of releasing the letter, the District asserted a new basis for denying the request–that the letter was exempt because it constituted an adjudication of an employee grievance or a disciplinary case.

The PAC advised the District that it would consider the new claim. However, the newspaper and reporter disagreed with the PAC's decision to consider new exemptions and filed suit alleging that the District willfully and deliberately violated

the FOIA. They asked that the Circuit Court impose monetary penalties and award them attorney's fees based upon the District's conduct. Once the suit was filed, the PAC told the District that it would no longer consider its new grounds for exemption. Prior to any adjudication on the complaint by the Circuit Court, the District relented and turned over the letter alleging that it was doing so based upon a "verbal opinion" it received from the PAC. Notwithstanding the fact that the letter was disclosed, the Circuit Court decided to impose monetary sanctions against the District in the amount of $2,500 but denied the prayer for attorney's fees. Both sides appealed the Circuit Court's order.

The Appellate Court affirmed the Circuit Court's ruling. It determined that the 2010 amendments to the FOIA made it clear that the recovery of attorney's fees is only permissible when the disclosure of the documents sought is achieved through an order adjudicating the matter in favor of the Plaintiff. In this case, since the Plaintiff received the documents through the voluntary action of the District, an award of attorney's fees was not permissible as a matter of law.

The Appellate Court further determined that the Circuit Court

correctly found that the District willfully and deliberately violated FOIA and, therefore, sanctions were warranted. The Appellate Court seized upon the fact that, after the PAC rejected the District's claims of exemption and directed release of the letter, the District asserted a brand new ground for withholding the letter. The Appellate Court determined that nothing in FOIA permits different exemptions to be raised on numerous occasions by a public body and that the District's attempt to do so was nothing more than an attempt to circumvent the Act. To make matters worse, it agreed with the Circuit Court that the District's contention that it released the letter based upon a "verbal opinion" issued by the PAC was "resoundingly unconvincing." Given all of this, the Appellate Court concluded that the Circuit Court correctly determined that the District deliberately embarked on a course of conduct to avoid disclosure of the letter regardless of its statutory obligation to do so.

The *Rock River Times* decision has two important lessons for school districts, public bodies and their lawyers. First, all claims of exemptions to disclosure must be asserted at one time and within the legally mandated time frame for responding to a

FOIA request. The courts will frown upon a "moving target" approach to the presentation of exemptions. Second, recipients of FOIA requests should be mindful that when it comes to dealing with the PAC, honesty truly is the best policy. It does not help to misrepresent facts to a court concerning the PAC to justify a violation of the FOIA.

If you have any questions about the case or your obligations under FOIA, please contact our attorneys at (630) 928-1200 (Oak Brook) or (708) 799-6766 (Flossmoor).

Student Criminal Reports to be Shared with Districts

Important changes to the parameters within which public schools may acquire and use information contained in law enforcement records about students who have been arrested and/or charged with criminal offenses are on the horizon. Public Act 97-1104,

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which takes effect on January 1, 2013, amends the Illinois School Code and Juvenile Court Act to allow law enforcement officials to provide school districts with information that can be used to maintain and enhance school safety and may lead to the provision of services to students who run afoul of the law.

School Code Changes

The new law amends the School Code to make it mandatory that all courts, law enforcement agencies of the State of Illinois and its political subdivisions report to the principal of any Illinois public school any time a child enrolled in that school is detained under the Juvenile Court Act, for any criminal offense, or for any violation of any municipal or county ordinance. The report to be provided to the principal must contain the following information:

- the basis for detaining the child;
- the events that led up to the child's detention and;
- the status of the proceedings.

Law enforcement officials must update the report, as appropriate, to keep the principal aware of the status of the judicial proceedings. Principals who receive law enforcement

reports under this provision must keep them separate and apart from the student's "official school record," and the reports do not constitute public records. The information obtained by the principal may be used only by "a school official or school officials who the school has determined have a legitimate educational or safety interest to aid the proper rehabilitation of the child and to protect the safety of students and employees in the school."

Juvenile Court Act Changes

This new law also amends the Juvenile Court Act to comport with the changes to the School Code governing the dissemination and use of law enforcement reports. Further, the list of persons and agencies entitled to access to law enforcement reports about a child taken into custody on or before his/her 17 th birthday is expanded to include "appropriate school officials," if a law enforcement officer or agency believes there is an imminent threat of physical harm to students, school personnel, or others who are present at the school or on school grounds. The Act makes it clear that not all school personnel may have unlimited access to these reports, however. Mirroring the changes to the School Code, the new provisions of the Juvenile Court Act

restrict inspection and copying of the reports to “a school official or officials who the school has determined have a legitimate educational or safety interest by a local law enforcement agency under a reciprocal reporting system with respect to a minor arrested or taken into custody for any one of a series of serious offenses,” which include violation of the Illinois Controlled Substance Act, the Harassing and Obscene Communications Act, and “forcible felonies” under the Criminal Code.

The Act also makes other noteworthy amendments to the Juvenile Court Act. Law enforcement records related to the arrest or detention of a minor for specifically enumerated offenses before or on their 17 th birthday may be released to select school district personnel if the law enforcement agency or officer believes that there is an imminent threat of physical harm to students, school personnel or others who are present in the school or on school grounds. The reports obtained from law enforcement officers or agencies are to be kept in a separate file, shall not be made a part of the child’s school record, and are not a public record. If law enforcement agencies and appropriate school officials conclude that it is in the best

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interest of the arrested or detained student, referral to school- or community-based services may be made, including a determination of eligibility for special education services or drug or alcohol prevention or treatment programs. Finally, if a child is the subject of an ongoing police investigation that is directly related to school safety, law enforcement agencies or officials may share the information contained in law enforcement reports with select school officials verbally but may not provide actual copies of their reports. School officials entitled to receive verbal information from ongoing investigative reports may reduce what they have learned to writing, but must keep their written summary separate from the child's official record and shall not consider it a part of the child's official record or a public record.

Public Act 97-1104 presents a new and important opportunity for schools and law enforcement agencies to communicate for the purpose of ensuring that educators are kept abreast of the status of school children involved in the juvenile or criminal justice systems. These amendments to the School Code and Juvenile Court Act seek to strike a balance between the need to better protect safety in schools, the maintenance of

confidentiality of student records, and the interests of court-involved students. We recommend that these new provisions be incorporated into any reciprocal reporting agreements your district has with local law enforcement.

If you have questions concerning these impending changes to the law or their impact on your policies and procedures on reciprocal reporting or student records, please contact one of our attorneys in Flossmoor (708-799-6766) or Oak Brook (630-928-1200).

Districts Must Use Reasonable Care When Completing

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Employment Verfication and Reference Forms

Last year we alerted you to Doe-3 v. White, an Illinois Appellate Court decision that appeared to greatly expand the possibility for school districts' and district officials' liability to students when failing to report an employee with a history of abusive conduct. Doe-3 was appealed and the Illinois Supreme Court rendered a decision on August 9, 2012, that upholds a duty of districts to use reasonable care when completing employment forms, but does so narrowly, on the particular facts of the case.

Jon White was a teacher in McLean School District and, while employed by that district, sexually abused young girls in his class. Lawsuits alleged that McLean administration knew about the abuse, but did not report it to the Illinois Department of Children and Family Services ("DCFS"). Instead, when White resigned, a McLean administrator gave him a positive letter of recommendation and a severance package that concealed the abuse. When White applied for employment at Urbana School District,

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McLean administrators not only allegedly failed to inform Urbana of White's misconduct, but also provided false information to Urbana that White had taught the entire previous year at McLean.

Consistent with earlier decisions in the matter, the Illinois Supreme Court held that thestudents could not demonstrate an affirmative duty on the part of McLean School District to warn Urbana of White's conduct or to protect the students from criminal acts of a third party. McLean School District had no special relationship to the students that created a duty to them and a school district has no duty to individual students in a district, separate from the district as a whole. However, under the specific facts of this case, where McLean officials allegedly falsely represented White's employment history, a duty was created to protect the students from injuries that were reasonably foreseeable from the misstatements.

The Court applied a standard of ordinary care to the facts of this case, stating that every person owes a duty of ordinary care to others to guard against injuries that naturally flow as a reasonably foreseeable consequence of his or her action. In other words, where a person's action creates a foreseeable risk of injury, the person has a duty to protect others from that

injury. According to the Court, McLean's alleged act of misstating White's employment history on Urbana's employment verification form created a duty to the abused students. The Court found that the sexual abuse suffered by Urbana students was not, as a matter of law, an unforeseeable result of the false employment verification. By stating that White taught a full school year, when in fact he was terminated during the school year, McLean School District implied that White's severance was routine. Had McLean truthfully disclosed White's employment history, it would likely have been a "red flag" to Urbana to investigate further. The Court held that the injuries were not so remote or unlikely as to preclude a duty of care. It was a reasonable possibility that if White abused students in one district, he would do it again in another district. Finally, the Court held that it is

According to the Court, the Abused and Neglected Child Reporting Act could provide a separate basis for liability because of the failure to report White's misconduct to DCFS. School personnel and school board members are mandated reporters to DCFS under the Abused and Neglected Child Reporting Act, 325 ILCS 5/1 et seq. Likewise, pursuant to Section 10-21.9(e-5) of the Illinois

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School Code, a local superintendent must notify the State Superintendent of Schools and the Regional Superintendent, of any certificate holder whom he or she has reasonable cause to believe has intentionally abused a student. Illinois public policy favors protection of children from sex offenders. The Court also noted that the Tort Immunity Act does not protect public employees against liability for willful and wanton conduct.

This decision confirms that, while School Districts have no affirmative duty to protect individual students from harm, providing false information that is reasonably foreseeable to cause injury may result in liability.

Based on this decision, we advise that extreme caution be exercised in providing any factual information about past employees. For additional information, please call one of our attorneys in Flossmoor or Oak Brook.

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Illinois Appeals Court Limits School District's Obligation to Provide Transportation to Parochial School Students

On June 18, 2012, the Illinois Fifth District Appellate Court ruled that the Illinois School Code does not require a public school district to provide transportation to parochial and charter school students on days that public schools are not in session. In *C.E. and C.L. v. Board of Education of East St. Louis School Dist. 189, et. al.*, 2012 IL App (5th) 110390, the Court was asked to decide if Section 29-4 of the School Code required the East St. Louis School District to provide transportation to students attending parochial and charter schools which extended their school years to include 15 days when the public schools were closed. The plaintiffs, parochial school students and their parents, argued that language in the Code requiring school boards to provide free transportation to parochial and charter school students "on the same basis" as

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public school students, meant that the public school district had to provide transportation whenever the charter and parochial schools were in session. The Appellate Court disagreed.

Even though the Appellate Court was conscious of the "failing state" of the public school district in question and sympathetic to the circumstances facing parents of children "who certainly deserve access to quality education," it interpreted the language in Section 29-4 of the School Code requiring that transportation be provided "*on the same basis*" as public school students to mean that parochial and charter school students were not entitled to any more transportation than public school students. Therefore, on days that transportation is not provided to public school students, the district is not obligated to provide it to parochial and charter school students. The Court noted that any other interpretation of the Code would ignore the intent of the Legislature to make transportation equally accessible to nonpublic school students and to provide them with transportation without unduly increasing the costs to the public school district.

This is an important decision which limits the obligation of public schools to provide transportation to charter and private

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school students.

If we can be of further assistance, please contact one of our attorneys in our Flossmoor office – (708) 799-6766 or in our Oak Brook office – (630) 928-1200.

School Code Provisions on Service Animals Amended to Include Miniature Horses

Governor Quinn has signed into law Public Act 97-0956, which amends Section 14-6.02 of the School Code to permit not only dogs, but also miniature horses, to act as service animals for students with disabilities. Effective immediately, a "service animal" is defined as a dog or miniature horse trained or being trained as a hearing animal, guide animal, assistance animal, seizure alert animal, mobility animal, psychiatric service

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animal, autism service animal, or animal otherwise trained to assist an individual with a physical, mental or intellectual disability. (Prior to this Public Act, any animal individually trained to perform tasks for the benefit of a student with a disability was permitted to accompany the student.)

According to the U.S. Department of Justice Disability Rights Section, miniature horses generally range in height from 24-34 inches at the shoulders and generally weigh between 70 and 100 pounds. In determining whether a school must reasonably accommodate a request for a horse, the school must consider: (1) the type, size and weight of the miniature horse and whether the facility can accommodate its features; (2) whether the handler has sufficient control over the horse; (3) whether the horse is housebroken; and (4) whether the horse's presence in the facility compromises legitimate safety requirements necessary for operation of the school. These considerations are consistent with current Americans with Disabilities Act regulations regarding service animals.

School districts should consider the individual circumstances of students with disabilities who request to bring horses as service animals and be prepared to modify policies, practices

and procedures as needed. For more information or assistance with review of your district's policies, procedures, or practices, contact one of our attorneys in Oak Brook or Flossmoor.

Hauser Izzo to Conduct School Board Leadership Training

We are proud and happy to report that Hauser Izzo, LLC has been approved by the Illinois State Board of Education to provide Leadership Training for Illinois school board members. Leadership Training is a new program required by the Education Reform Act. Pursuant to Section 10-16a of the School Code, all school board members elected or appointed after the Act's effective date, June 13, 2011, must receive training on specific topics. Of course, longer-serving members may also find the training useful.

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Hauser Izzo will provide training in the general areas of (a) Education and Labor; (b) Financial Oversight and Accountability; and (c) Fiduciary Responsibilities of School Board Members, including a comprehensive overview of issues board members are likely to encounter. Specific topics covered are listed on the attachment. After a detailed PowerPoint presentation, our attorneys will lead a mock school board meeting, including both regular and closed sessions, to demonstrate and reinforce substantive law issues and board procedures.

Although the first school board election under this new law will be in April 2013, we are offering 2 initial sessions this fall, open to any incumbent school board members and anyone interested in becoming a school board member. **The first session will be on Saturday, September 15, from 8:00 a.m. to noon, at the offices of the South Cook Intermediate Service Center, 253 W. Joe Orr Road, Chicago Heights. The second session will be on Thursday, October 11, from 6:00 p.m. to 10:00 p.m., at the Drake Oak Brook Office Plaza, 2215 York Road, Oak Brook, Illinois.**

There will be limitations on the number of participants. Cost is $100 per person. Training materials are included in this cost. To register for the Oak Brook location, please call Sraga Hauser

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and ask for Melissa or email her at mschmehl@dev.hauserizzo.com. To register for the South Cook Intermediate Service Center location, information is available on their website www.s-cook.org. Click on “Professional Learning” and then on “Calendar of Courses.”

Use of Employee Social Media and E-Mail Accounts for Employment Decisions

On August 1, 2012, Governor Pat Quinn signed into law new provisions of the Illinois Right to Privacy in the Workplace Act which significantly curtail an employer’s right to gain access to the private social media and e-mail accounts of employees and prospective employees. The new provisions of the Act, which take

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effect on January 1, 2013, make it unlawful for an employer to demand that its employees or those applying for employment disclose their "password or any other account-related information in order to gain access to the employee's or prospective employee's account or profile on a social networking website or to demand access in any manner to an employee's or prospective employee's account or profile on a social networking website." 820 ILCS 55/10(b). There are no exceptions to the new restrictions set forth in the Act. Illinois is the second State in the country to enact such a sweeping piece of legislation.

Despite its breath, the new law makes it clear that its provisions do not prohibit employers from developing and implementing policies "governing the use of its electronic equipment including policies concerning Internet usage, social networking site use and e-mail use." Moreover, the new law does not prohibit an employer from "monitoring its employees' use of its electronic equipment and e-mail without requesting or requiring any employee or prospective employee to provide any password or other account-related information in order to gain access to the employee's or prospective employee's account or profile on a social media networking site." The changes to the

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Act do not prohibit employers from obtaining information about an employee or job applicant that is in the public domain or is obtained in compliance with the new provisions of the Act.

According to the new provisions of the law, a "social networking website" is an "Internet based service that allows individuals to a) construct private or semi-private profiles within a bounded system, created by the service; b) create a list of other users with whom they share a connection within the system and; c) view and navigate their list of connections and those made by others within the system." E-mail is not considered a "social networking site" under the new law. However, Facebook, Twitter, My Space, Google Plus and Live Journal certainly are examples of websites that are "social networking sites."

The new Illinois law follows a series of National Labor Relations Board (NLRB) decisions tackling the issue of an employer's restrictions on employee social media use. In Hispanics United of Buffalo and Ortiz, 3-CA-27872 (NLRB September 2, 2011), the NLRB decided that an employer's termination of employees for complaints about the employer on their private Facebook accounts was a violation of the National Labor Relations Act (NLRA) because

it was a restraint on the employees' right to discuss matters affecting their employment amongst themselves." Particularly salient to the Board's finding was the fact that the employees were using their private accounts outside of work.

However, in Karl Knauz Motors, Inc. and Becker, 13-CA-46452 (NLRB September 28, 2011), the Board found that an employee's termination as a result of Facebook postings on his private page did not violate the NLRA as the employee made mocking comments about his employer which did not involve any discussion with other employees and there were no comments made about the terms and conditions of his employment. The Board also reaffirmed that an employee's use of disparaging terms or even profanity may be protected activity under the NLRA. While the Board found that the employee's conduct was not protected activity under the NLRA, it nevertheless found that the employer's application of its policies against company "disrespect" and "bad attitude" could be interpreted as chilling an employee's right to communicate with co-workers concerning the terms and conditions and of employment and therefore violated Section 7 of the Act.

While the NLRB's rulings are merely persuasive and not binding, Hispanics United and Kauz elucidate three guiding principles for

employers trying to determine if social media commentary is "protected activity" under the NLRA: 1) the social medial comments in question must involve terms and conditions of employment; 2) an employee's use of profanity or disparaging remarks about an employer on a social media site may not be enough to remove the Act's protection of the employee's commentary and; 3) an employee's social media commentary must be in conjunction with other employees or somehow involve other employees.

Employers still have the right to set policy restricting the use of electronic media both as to employer-owned technology and, to a lesser degree, disruptive use of employee-owned technology. However, in light of the new Illinois law and recent rulings by the NLRB, employers should proceed with caution. An employer should not demand that an employee or applicant for employment turn over their private social media or e-mail account as a condition of their employment or continued employment. An employer should also be very careful in developing social media use restrictions for its employees and disciplining employees for discussions posted about their employer on private social media accounts. If you have any questions concerning your social

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media policy or access to employee email or social media accounts, please contact our attorneys at 708-799-6766 or 630-928-1200.

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