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Reminder About Board Organizational Meetings

Pursuant to law, every school board must hold its organizational meeting no later than 28 days after the consolidated election. Further, new board members cannot be seated until after the official canvass of the results by the county election authority. The deadline for the canvass is not until 21 days after the election.

Therefore, the effective window period to hold all school board organizational meetings this year begins no earlier than Tuesday, April 23, and ends no later than Tuesday, April 30, 2019.

If your Board does not have a regular meeting scheduled during that week-long period, a special meeting must be called.

The only tasks which must be performed at the organizational meeting are these:

1. Swear in and seat newly elected board members. The

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prescribed oath for board members, which has been greatly expanded, can be found in an amendment to Section 10-16.5 of the School Code: http://www.ilga.gov/legislation/publicacts/fulltext.asp?Name=100-1055&print=true&write=

2. Elect board officers, including president, vice president and secretary.
3. Set the board's regular meeting schedule.

Other business may be, but need not be, conducted at the organizational meeting.

If you have any questions about organizational meetings or the transition to new board terms, please contact one of our attorneys at 708/799-6766 (Flossmoor) or 630/928-1200 (Oak Brook).

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TRS Requires Submission of Grandfathered Contracts And Collective Bargaining Agreements By March 29, 2019

TRS has just issued Employer Bulletin 19-12 dated February 2019, which is available on the TRS website at: https://www.trsil.org/employers/employer-bulletins/FY19-12. This bulletin requires that all TRS employers submit all grandfathered individual employment contracts and collective bargaining agreements ("CBAs") to the TRS CBA/Contract Collection Portal by **March 29, 2019**. Grandfathered contracts and CBAs are those entered into prior to June 4, 2018, which provide for salary (*i.e.*, TRS credible earnings) increases greater than 3%. According to the TRS Bulletin, if the employer's grandfathered contracts and CBAs are not submitted as required, any increase in a member's TRS creditable earnings for 2018-19 and future years will be subject to the 3% limitation on creditable earnings used to determine a member's final average

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salary upon retirement. The CBA/Contract Collection Portal is accessed at https://employer.trsil.org/subsections/employeraccess/security/signIn.aspx.

Should you have any questions regarding this obligation, please contact our attorneys in our Flossmoor Office at 708-799-6766 or our Oak Brook Office at 630-928-1200.

"Determining Eligibility for Section 504 and IDEA" and "Crafting 504 Plans" for NBI IEP and 504 Plan Legal

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Workshop, Naperville, IL.

June 7, 2019 – “Determining Eligibility for Section 504 and IDEA” and “Crafting 504 Plans” for NBI IEP and 504 Plan Legal Workshop, Naperville, IL.

Administrator Academy 1843 Identification, Evaluation, and Interventions for Students with ADD/ADHD

April 2, 2019 – South Cook Intermediate Service Center, Chicago Heights, IL.

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Administrator Academy 1652: Successfully Managing the Legal and Practical Issues of One to One Technology Programs

March 12, 2019 – South Cook Intermediate Service Center, Chicago Heights, IL.

“Leading the Team: Preventing

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Due Process Complaints," and "Top Ten Section 504 Blunders and How to Avoid Them," IAASE Winter Conference, at the Crowne Plaza, Springfield, IL.

February 21, 2019 – "Leading the Team: Preventing Due Process Complaints," and "Top Ten Section 504 Blunders and How to Avoid Them," IAASE Winter Conference, at the Crowne Plaza, Springfield, IL.

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Hauser, Izzo, Petrarca, Gleason & Stillman Legal Breakfast at our Oak Brook office, 1415 West 22nd Street, Oak Brook, IL.

January 29, 2019 – Hauser, Izzo, Petrarca, Gleason & Stillman Legal Breakfast at our Oak Brook office, 1415 West 22nd Street, Oak Brook, IL.

“Hot Topics in Section 504”

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IAASE Webinar

January 9, 2019 – "Hot Topics in Section 504" IAASE Webinar

Proposed New Regulations on Sexual Harassment and Sexual Violence From The U.S. Department of Education

On Friday, November 16, 2018, the U.S. Department of Education issued proposed Regulations that would alter what constitutes sexual harassment, what triggers a duty to respond, due process afforded to individuals and procedural responses to complaints, among other things. The Regulations are available for public comment for 60 days.

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During President Obama's administration in 2011, the Department of Education issued policy guidance addressing Title IX's protections against sexual violence and harassment, including procedural requirements that applied to resolve complaints. The 2011 guidance was in lockstep with the Obama administration's increased enforcement of investigating violations through the Office for Civil Rights and the Department of Justice. Again in 2014 and 2015, the Obama administration issued additional guidance to address policies, practices, roles and responsibilities for investigating complaints and following Title IX.

Upon her appointment to the position of Secretary of Education, Betsy DeVos signaled that she would take up issues relating to Title IX, and started doing so in September 2017 when she revoked the 2011 and 2014 guidance documents. Since that time, the U.S. Department of Education has utilized guidance from 2001 and 2006, as well as an interim guidance document. Last Friday, DeVos released proposed Title IX Regulations that would, for the first time, address the issue of sexual violence and harassment through binding regulation. If implemented, the Regulations would change multiple current aspects and practices of Title IX,

including what constitutes sexual harassment, what triggers a duty to respond, due process afforded to individuals and procedural responses to complaints.

Changes of Note

School Obligations Triggered by Actual Knowledge: Under previous guidance, a school had an obligation to investigate and address sexual harassment when the school should have known about the harassment – something called constructive notice. **Proposed Regulation Section 34 C.F.R. 106.44 provides that schools would only have an obligation based on actual knowledge of sexual harassment.** Actual knowledge is notice of sexual harassment or allegations of sexual harassment to an official of the school who has authority to institute corrective measures on behalf of the school. Accordingly, it is only when a school makes an intentional decision not to respond to third-party discrimination that the school can be said to subject another to discrimination. Stated another way, constructive notice is no longer sufficient to establish obligations or claims of discrimination under Title IX.

Limitation on Responsibility for Response: **Section 34 C.F.R.**

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106.44 would act to limit the responsibility of schools for responding to sexually harassing and violent conduct to only that which occurs within the school's education program or activity. The Regulation Notice suggested that in determining whether conduct occurs within a school's education program or activity, the school should consider whether the conduct occurred in a location or context under the purview of the school, whether the school exercised oversight, or whether the circumstance was funded, sponsored or promoted by the school.

Delineation of a Deliberate Indifference Standard: **The Regulations would implement a standard whereby schools must respond in a manner that is not deliberately indifferent.** Deliberate indifference is defined as a response to sexual harassment in a manner that is clearly unreasonable in light of the known circumstances. Previous guidance held a school responsible if it knew or should have known about the harassment.

Formal Complaint Procedures: **Proposed section 34 C.F.R. 106.45 would address required grievance procedures for complaints of sexual harassment.** The procedures include (a) treating complainants and respondents equally, (b) requiring an objective

evaluation of all evidence, (c) selecting a complaint investigator who does not have a conflict of interest or bias for or against complainants or respondents, (d) an equal opportunity for parties to present witnesses and other evidence, and (e) a presumption that the respondent is not responsible for the alleged conduct until a determination of responsibility is made. The Regulation also would have schools describe in policy or procedure the standard of evidence to be used to determine responsibility, but only permits schools to use a preponderance of the evidence standard (what is used in most civil litigation) if the school uses that standard for other conduct violations that have the possibility of similar disciplinary outcomes as a sexual harassment violation.

Notice of Allegations and Procedures: The Regulations would require that all parties receive notice of the allegations and grievance procedure utilized for an investigation. The notice of the allegations must include sufficient details such as the identities of all parties involved and the conduct allegedly constituting sexual harassment.

Hearing or Written Question/Answer: 34 C.F.R. 106.45(b)(3) would require schools to afford the parties with the opportunity

for a live hearing or an opportunity to submit written questions, provide answers to questions and allow limited follow-up between the parties. This requirement emphasizes an opportunity for additional due process of cross examination before a finding is made. Importantly, Sections 106.45(b)(3)(vi) and (vii) would prevent harassing or irrelevant questions about a complainant's sexual behavior or predisposition.

Inspection of Evidence: The Regulations would provide both parties an equal opportunity to review evidence obtained as part of the investigation – including evidence that might not be relied upon in reaching a determination. Schools must take caution to send each party any evidence prior to the completion of an investigative report and provide at least 10 days for the parties to provide any written response. This written response must be considered by an investigator in making any determination.

Written Determination: The Regulations would require that all determinations be made in writing and include: (a) identification of the section of any policy/procedure/code that is alleged to have been violated; (b) a description of the

procedural compliance with the Regulations; (c) findings of fact supporting the determination; (d) application of policy to the facts; (e) a statement and rationale for any sanctions to be imposed; and (f) the procedure and permissible bases for an appeal. The written determination must be provided to the parties simultaneously.

Supportive Measures: **The Regulations address that supportive measures are to be appropriately offered to the complainant or respondent of a claim of harassment or violence and may include protective changes to ensure the safety of all parties, counseling, extensions of deadlines, modifications of class or work, escorts, leaves of absence, increased security or other measures.**

Recordkeeping: **34 C.F.R. 106.45(b)(7) would impose upon schools a record-keeping requirement whereby they must maintain relevant records connected to the investigation for a period of 3 years.**

Impact on Illinois Schools

The regulations will have widespread impact on schools. First and foremost, most schools will need to amend Board Policies

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5:20, 7:20 and 2:260 to fall in line with the new requirements. For Boards of Education who subscribe to PRESS Policy Subscriptions, we anticipate that there will be forthcoming changes to those sections, and possibly others, after implementation of the Regulations.

One area of the Regulations that may pose a problem to schools is the requirement to have a complaint investigator who does not have a conflict of interest or bias in the investigation. It is unclear whether school personnel will be presumed to have an implicit conflict or bias or whether a third-party investigator will be required for complaints.

Because of the additional due process afforded to respondents, including notice of allegations and an opportunity to review investigatory evidence, schools will have to be very careful to address any confidentiality requirements that are required by law. In addition, investigators should be prepared to encounter witnesses who are more reluctant to share information due to the requirement that investigatory materials be shared with the parties.

The written determination required by the Regulations would

require a statement and rationale for any sanctions imposed upon any party. This requirement may pose a frustration to schools whose determinations of certain discipline for students and employees must be made at the Board level and not by a complaint investigator or administrator.

The Regulations require additional investigative, hearing, due process, recordkeeping and written determinations requirements that do not presently exist. Districts will need to ensure that their leadership, complaint managers, investigators and human resources professionals are appropriately trained on the changes in order to ensure compliance with the many procedural changes. Schools may find it beneficial to coordinate with a third-party investigator to ensure compliance with the Code changes.

Comment and Codification

A copy of the proposed Regulation is available here. The proposed Regulations are open for comment for the next 60 days and the deadline for commenters to provide feedback is January 15, 2019. To submit comments electronically, visit www.regulations.gov or send letters directly to the U.S. Department of Education: Attention Brittany Bull, U.S.

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Department of Education, 400 Maryland Avenue S.W., Room 6E310, Washington, D.C., 20202.

If you have any questions, please contact our attorneys in our Flossmoor Office at 708-799-6766 or our Oak Brook Office at 630-928-1200.

Cook County School Board Candidates' Filing Locations Announced for April 2, 2019, Election

Since the change in the law providing for school board candidate filings to be handled by the County Clerk rather than at the local school districts, the Cook County Clerk has been able to handle the volume of filings by using multiple sites in the

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suburbs, as well as the Clerk's central office in Chicago. Last week, the Cook County Clerk announced where those temporary filing sites will be this year. These temporary filing locations in Orland Park and Prospect Heights will be open for filings *only on the first day for filing*, December 10, from 8:00 a.m. to 5:00 p.m.:

Orland Park Civic Center 14750 Ravinia Avenue Orland Park, IL	Rob Roy Golf Course 505 E. Camp McDonald Road Prospect Heights, IL

The following Cicero and Chicago locations will be open for the entire filing period of December 10 through 17, from 8:00 a.m. to 5:00 p.m.:

Elections Operations Center 1330 S. 54th Avenue Cicero, IL	Cook County Clerk's Office 69 W. Washington, Pedway Level Chicago, IL

With respect to the Chicago location, filings will be on the 5th

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Floor rather than on the Pedway Level on each day after December 10.

Also note that the South Suburban location in Orland Park and the West Suburban location in Cicero are different than the ones used in the last two election cycles. If you have any questions, please contact our attorneys in our Flossmoor Office at 708-799-6766 or our Oak Brook Office at 630-928-1200.

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