

December, 2005



Hello,

Welcome to the winter edition of *School Law Matters*, a quarterly e-Newsletter developed by the Education & Municipal Law Group of Clark Hill PLC.

In this issue, we offer articles of interest on general school and labor and employment law.

### CONTENT AREAS

**General School Law**

**Labor and Employment**

**Immigration Law**

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#### GENERAL SCHOOL LAW

**"Burden of Proof Clarified Under IDEA"**

- By Maria Fracassa Dwyer, Attorney, Clark Hill PLC

The United States Supreme Court recently held that parents who demand changes to their child's special-education programs bear the burden of proving that the Individualized Education Program ("IEP") is inadequate. *Schaffer v Weast* (November 14, 2005).

[Read the entire article here.](#)

**"Court Dismisses NCLBA Lawsuit"**

- By Neil Goodman, Attorney, Clark Hill PLC

In an Opinion and Order dated November 23, 2005, Chief United States District Judge Bernard Friedman granted Education Secretary Margaret Spellings' motion to dismiss the lawsuit brought by numerous school districts and teachers' unions throughout the country, including the School District of the City of Pontiac and the Michigan Education Association, under the "unfunded mandates" provision of the No Child Left Behind Act ("NCLBA"). *School District of the City of Pontiac v Spellings*, Case No. 05-71535 (E.D. Mich. November 23, 2005).

[Read the entire article here.](#)

**"New Regulations Regarding Exclusive Beverage Contracts"**

- By Pat Higdon and Jeremy S. Motz, Attorneys, Clark Hill PLC

The Federal Food and Nutrition Service (FNS) has recently issued an interim rule, effective December 21, 2005, which adds new sections to the Child Nutrition and WIC Reauthorization Act of 2004. This interim rule prohibits any schools who participate in the National School Lunch Program (NSLP), or any person approved by a school participating in the NSLP, from directly or indirectly restricting the sale or marketing of fluid milk products at any time or in any place on school premises or at school-sponsored events.

[Read the entire article here.](#)

### **"School Bond Qualification, Approval and Loan Act"**

- *By James Crowley and Alan Szuma, Attorneys, Clark Hill PLC*

The "School Bond Qualification, Approval and Loan Act" was signed into law on July 20, 2005 (the "Act"). The Act repeals and replaces the prior School Bond Loan Fund qualification requirements under the State Loans to School Districts Act (the "Prior Act"). The Act continues to implement the provisions of Section 16 of Article IX of the Constitution of Michigan of 1963, as amended, which provides the guarantee of the State of Michigan and a loan mechanism for qualified school bonds.

[Read the entire article here.](#)

### **"New Criminal Background Check Requirements Effective January 1, 2006: "School Safety" Legislation Update"**

- *By Joseph Bennett, Attorney, Clark Hill PLC*

Effective January 1, 2006, new statutory amendments will require criminal record checks for all new full-time and part-time school employees, and any individuals assigned to "regularly and continuously work under contract" in any school. MCL § 380.1230(1); MCL § 380.1230a(1). The new legislation does not define "regularly and continuously," and is not on its face limited to individuals assigned under direct contracts with school districts: the legislation arguably would also apply to persons like construction project contractors and sub-contractors.

[Read the entire article here.](#)



## **LABOR AND EMPLOYMENT**

### **"Volunteer or Employee? Determining Volunteer Status under the FLSA"**

- *By Jeremy S. Motz, Attorney, Clark Hill PLC*

In the wake of heightened concerns of School Districts around the country, the United States Department of Labor ("DOL") recently issued an opinion letter regarding the applicability of the Fair Labor Standards Act ("FLSA") to volunteers. The specific issue at hand is whether coaches or other extracurricular "volunteers" at schools are in fact bona fide volunteers or are employees entitled to overtime pay under the FLSA.

[Read the entire article here.](#)

### **"The Department of Labor Issues Opinion Letters Regarding the New White Collar Exemptions Under the Fair Labor Standards Act"**

- *By Maria Fracassa Dwyer, Attorney, Clark Hill PLC*

In a series of opinion letters, the Department of Labor ("DOL") has found that maintenance supervisors do not qualify for exempt status under the Fair Labor Standards Act ("FLSA"), while substitute teachers do qualify as exempt. Further, employers may make full day deductions when employees fail to show due to in-climate weather.

[Read the entire article here.](#)

### **"Are All Those FMLA Claims Really Waived?"**

- *By Jennifer Buckley, Attorney, Clark Hill PLC*

The Fourth Circuit has concluded that severance agreements cannot waive an employee's right to file a claim under the Family and Medical Leave Act (FMLA). In *Taylor v. Progress Energy*, (2005), the United States Court of Appeals held that a former employee's FMLA lawsuit was not barred by the severance agreement that the employee had signed, thus upholding an FMLA regulation that bars the prospective and retrospective waiver or release of claims without the prior approval of the U.S. Department of Labor or a court.

[Read the entire article here.](#)



## IMMIGRATION LAW

### **"Immigration Law Update"**

- By Michael P. Nowlan, Attorney, Clark Hill PLC

US immigration policy has been very active in recent news reports. Accordingly, the School Law Group at Clark Hill is providing a brief summary of some of the current immigration issues, particularly as they relate to school districts. Please contact us if you have any questions.

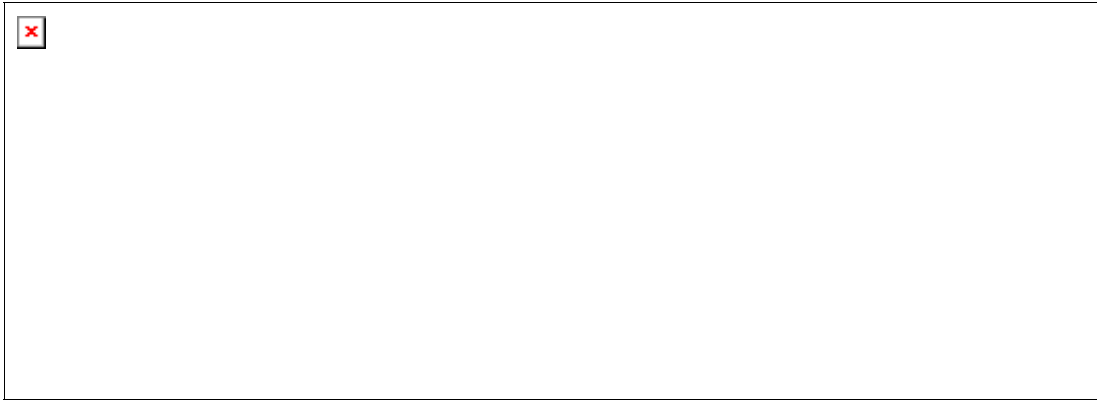
Children of foreign nationals who are in the US with temporary visas are entitled to attend the public school in the school district in which they live. The United States Supreme Court has ruled that children who do not have legal status in the US cannot be denied a free public education, and this has been affirmed by both Michigan courts and the Michigan Attorney General. However, while children may be permitted to attend school, this does not change their immigration status, and accordingly children in the US without immigration authorization (temporary status or a green card) can be deported.

Private schools may apply for permission to sponsor a foreign national adult or child for a student visa (F-1 visa) so that they may come to the US to study. An F-1 visa holder may not attend a public elementary school or a publicly funded adult education program. Attendance at a public secondary school is not permitted unless the total period of schooling is 12 months or less and the student has reimbursed the local educational agency for the full cost of his or her education.

If you have any questions, please contact Michael P. Nowlan at (313) 965-8666 or you may e-mail him at [mnowlan@clarkhill.com](mailto:mnowlan@clarkhill.com).

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>>>Newsletter Editors - Maria Fracassa Dwyer and Neil H. Goodman<<<

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