



SCHOOL LAW NEWS BRIEFS

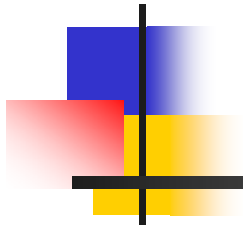
Cuddy Law Firm, LLP
NMSBA Convention
December 2008



School Law News Briefs

- Election 2009 – Open Meetings and Election Issues
- New Section 403(b) Regulations – 12/31/08 Deadline!
- Section 504 Update – New Definitions
- Lease Purchase Financing – Why Is It Weird?

Election 2009



Patricia Salazar Ives, Esq.
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Election 2009

Upcoming Deadlines

December 15, 2008 – Publication

County Clerk Responsibility

Affidavit of Publication

December 16, 2008 – Candidates

Declarations

Board Vacancies

Email blasts

Advocating for Bond Issue

Document Review



Election 2009

Open Meetings Issues

Annual Open Meetings Notice Resolution

Special vs. Regular

Time

Publication/Postings

Agendas

Action items

Rolling quorums



Election 2009

Attorney General Approval
Election Contests



Complying with New Section 403(b) Regulations

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By December 31, 2008:

- Employers must adopt written plan document for Section 403(b) plan
- Plan document must include:
 - Eligibility rules
 - Benefits available
 - Applicable limitations
 - Contracts available under the Plan
 - Time and form of benefit distributions

By December 31, 2008

(cont.):



- Plan document must also allocate responsibilities among employer, fund vendors, and other parties (*not* individual participants) regarding who is responsible for:
 - Advising employees of plan eligibility criteria
 - Coordinating plan loan limitations and hardship withdrawal restrictions
 - Advising participants of rights and benefits under the Plan



Centralizing vs. Decentralizing Compliance Functions

- If school district leaves functions decentralized, district personnel must coordinate among investment providers to apply any plan-level limitations (such as those on loans and hardship withdrawals).
- If school district uses an outside party such as third-party administrator to provide these functions, be sure to comply with the Procurement Code when selecting the outside party. May be able to “piggy-back.” *See* NMSA 1978, Section 13-1-129.



Model Plan

- IRS has issued model plan language that public schools can use. Find this on the Internet at:

www.irs.gov/pub/irs-drop/rp-07-71.pdf



SECTION 504 – WHAT IT IS AND WHAT IT ISN'T

Sarah Piltch & Jennifer L. Bradley

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Notice of Non-Discrimination Statement

- Under Section 504 of the Rehabilitation Act of 1973, 29 USC Section 794, a School District which receives federal funds is prohibited from discriminating against students on the basis of a disability.
- Under IDEA, the school district ensures that students who need or are believed to need special education or related services will be identified, evaluated, and provided with appropriate educational services.



Section 504

- Section 504 of the Rehabilitation Act of 1973 is a civil rights statute which provides that “No otherwise
- qualified individual with disabilities in the United States...shall, solely by reason of his/her disability, be
- excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any
- program or activity receiving federal financial assistance or activity conducted by any executive agency
- or by the United States Postal Service.”

Definitions

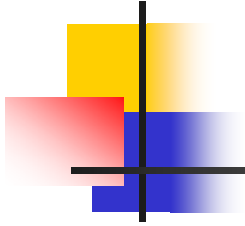


- Individual's with disabilities:
- An individual with disabilities is the same as "a person with disabilities" defined in 34 CFR 10430.
- That definition is as follows:
- "A person with a disability" means any person who (1) has a physical or mental impairment, which substantially limits one or more major life activities, (2) has a record of such an impairment, or (3) is regarded as having such an impairment.



Major Life Activity

- Major life activities, under Section 504, include caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. (Recent amendment adds eating, sleeping, standing, lifting, bending, reading, concentrating, thinking and communicating.) The disabling condition need only substantially limit one major life activity in order for the student to be eligible.
- 34 CFR 104.3(j).



- QUESTIONS?????



Lease-Purchase Agreement Restrictions

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& Jennifer L. Bradley
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Doing Business with Public Schools in New Mexico

- New Mexico law has special limitations on incurring debt by public bodies



New Mexico Constitution

Article IX, Section 11:

- Public schools are prohibited from entering into debt except if the proposition to create the debt has been submitted to voters and a majority of those voting on the question has voted in favor of creating such debt.



Bateman Act

NMSA § 6-6-11 and 12

- School Districts cannot become indebted during any current year which, at the end of such current year, is not and cannot then be paid out of the money actually collected and belonging to that current year.
- Lease Agreements are exempt from restrictions, but still must comply if it constitutes creation of a debt



It constitutes a debt if. . .

- The Lease Purchase transaction includes the elements of an installment purchase and security agreement
- Montana v Gabaldon



What the Law Means

- If it constitutes a debt, then
- No general operational funds or funds derived from state general fund revenues can be used to make the payments anticipated under the Lease-Purchase Agreement.

Consequence



- The transaction is void.
- In addition, any officer or board member, who approves of such a transaction may be guilty of a misdemeanor.



Family Medical Leave Act 2008 Amendment

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Andrew M. Sanchez

NMSBA Convention 2008



FMLA 2008 Amendment

- Final rule goes into effect Jan. 16, 2009
- New Provisions for FMLA Servicemembers
- *"Spouse, son, daughter, parent, or next of kin" permitted to take up to **26 workweeks** of leave, in a single 12-month period, to care for a "member of the Armed Forces, including a member of the National Guard or reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise on temporary disability retired list, for a serious injury or illness."*



FMLA 2008 Amendment

- Up to 12 weeks of leave for certain qualifying exigencies (as determined by the Sect. of Labor) arising out of a covered military member's active duty status, or notification of an impending call or order to active duty status, in support of a contingency operation.



FMLA 2008 Amendment

- The Department's final rule defines qualifying exigency by referring to a number of broad categories for which employees can use FMLA leave: (1) Short-notice deployment; (2) Military events and related activities; (3) Childcare and school activities; (4) Financial and legal arrangements; (5) Counseling; (6) Rest and recuperation; (7) Post-deployment activities; and (8) Additional activities not encompassed in the other categories, but agreed to by the employer and employee.
- Board Policies on FMLA must be updated to include special provisions for FMLA Servicemember Family Leave



Question & Answers

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- 505-988-4476 Santa Fe