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CLIENT ALERT

June 1, 2011

NEW LAW REQUIRES ALL BOARD OF EDUCATION MEMBERS TO UNDERGO CRIMINAL BACKGROUND CHECKS IN ORDER TO SERVE ON THE BOARD

On May 31, 2011, Governor Christie signed into law Assembly Bill No. 444 (to be codified at N.J.S.A. 18A:12-1, et seq.). The law, which takes effect immediately, requires all current board of education members to pass a criminal history background check in order to serve on the board. The Legislature's purpose in enacting the law is to ensure that board members are held to the same standards as school district employees, who are disqualified from employment if they are, or have been, convicted of certain criminal offenses. To that end, the new law disqualifies any individual from holding membership on a board of education or a charter school board of trustees if the individual has been disqualified as a voter in the State of New Jersey, or has been convicted of a number of criminal offenses, including: any crime of the first or second degree; an offense involving the manufacture, transportation, sale, possession, distribution or habitual use of a controlled dangerous substance; or any crime involving the use of force.

In order to be eligible for service on the board, the individual must also not have been convicted of those offenses constituting disqualifying offenses for prospective or current board employees as listed in N.J.S.A. 18A:6-7.1(c)(2), including third degree crimes of criminal mischief, burglary, making terroristic threats, perjury, or bias intimidation, among others. The law specifically includes convictions which were under New Jersey law or under the laws of any other State for a substantially equivalent crime or offense.

Moreover, each board of education member, prior to taking office, is now required to make a specific declaration that he or she is not disqualified due to the conviction of any crime or offense listed in the law. Any board member who falsely affirms or declares that he or she is not disqualified from membership is, in addition to becoming immediately disqualified from office, guilty of a crime of the fourth degree. Additionally, any board member who is convicted of a disqualifying offense while serving on the board is immediately disqualified from office and must vacate his or her seat on the board.

A444 requires that within 30 days of the effective date of the law (that is, by June 30, 2011), each current board member must undergo a criminal history background investigation, for the purpose of ensuring that the member is not disqualified from membership due to a conviction of a crime listed in the law. Newly elected or appointed board members must pass the criminal background check within 30 days of their election or appointment. In order to complete the check, the board member must submit his or her name, address and fingerprints to the Commissioner of Education, who is then authorized to exchange fingerprint data with the FBI and New Jersey State Police. The Commissioner will notify the board member in writing of the result of the background check. The board member then has 14 days to challenge the accuracy of the criminal record information.

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Each board member is required to assume the costs for the criminal history record check, including all costs for administering and processing the record check. However, the board of education may reimburse the member for the cost of the record check. Should a board of education decide to reimburse its members for the background checks, an amendment to board policy or the passage of a resolution to that effect is likely required. An individual board member should be careful to abstain from voting on any specific authorization of reimbursement to him/herself

Because A444 is already in effect, board members should begin to schedule these criminal history background checks as soon as possible. If you have any questions regarding the implementation or effect of A444, please do not hesitate to contact the school law attorneys at Schenck, Price, Smith & King, LLP, 973-539-1000.