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DOE's Draft Regulations for A5

By Jennifer A. Osborne, Esq.

On April 30, 2008, New Jersey Education Commissioner Lucille E. Davy released the Department's draft regulations regarding A5. The Department asserts that the proposed regulations should be in place prior to the start of the 2008-2009 school year.

Two areas directly affected by the passage of A5 were the public notice, hearing, and review requirements for certain employee contracts and travel restrictions. The following highlights some of the comments and clarifications provided by the draft regulations.

Regulations Affecting Certain Employment Contracts

Draft regulations provide that the Executive County Superintendent ("ECS") shall review and approve all superintendent, assistant superintendent, deputy superintendent, and school business administrator ("SBA") employment contracts, including original and renewal contracts, as well as the renegotiation, extension, amendment, or other alteration of the terms of these employment contracts prior to their execution. The purpose of such review is to ensure compliance with applicable laws. The review standards followed by the ECS shall include examining the contract to insure that it is comparable with the salary, benefits, and other emoluments contained in the contracts of similarly credentialed and experienced administrators in similar school districts; ensuring that the contract does not contain separation of service payments that are deemed prohibited or excessive by the ECS; and confirming that the contract does not duplicate benefits that are otherwise provided by law or through an existing group plan.

Draft regulations further emphasize the previous A5 public hearing and notice requirements placed upon superintendent, assistant superintendent, and SBA contracts. Specifically, boards of education shall not renegotiate, amend, extend, or otherwise alter the terms of a contract with one of these employees without providing public notice of at least 30 days prior to the scheduled board action, providing at least 10 days' notice of the public hearing, and holding a public hearing prior to board action.

(cont'd →)

Draft regulations also provide that boards must submit to the ECS written justification for the non-renewal, dismissal for cause, re-assignment or elimination of the position of an SBA, or the individual certified and performing the duties of an SBA, within 48 hours of the board's notification to the subject employee. Following notice, the affected employee may request a meeting with the ECS to discuss the board's justification. The ECS has the authority to initiate further review of the matter.

School District Travel

As a condition of receiving state aid, school districts must ensure the effective and efficient use of funds through compliance with A5's travel requirements as well as New Jersey Department of the Treasury, Office of Management and Budget Circular 08-19-OMB. Draft regulations provide that school district travel expenditures shall include, but are not limited to, "all costs for transportation, meals, lodging, and registration or conference fees directly related to participation in the event," except as otherwise provided through the regulations. Travel expenditures also include all required training and travel authorized in employee contracts and school board policies, including required professional development, staff training, and required new board member training, as well as all reasonable costs for activities, events, or functions for the benefit of students.

Conversely, the regulations provide that travel expenditures shall not include, but are not limited to, costs associated with (1) subsistence reimbursement for one-day trips, except for meals expressly authorized by regulation; (2) subsistence reimbursement for overnight in-state travel, except where authorized by the Commissioner in accordance with regulation; and (3) costs associated with board members and employees whose duties are unrelated to the purpose of the travel event or who are not required to attend the event in order to meet continuing education requirements or comply

with law or regulation. For example, the regulations provide that full attendance for a NJSBA convention shall be limited to board members, the superintendent, and the school business administrator, and lodging reimbursement for these individuals shall only be permitted when the convention received a waiver from the Department and where home to convention commutation exceeds 50 miles.

The draft regulations further provide that boards of education are required to implement policies and procedures that comply with the various travel restrictions set forth by law and regulation. All travel requests shall be approved in writing by the superintendent and approved by a majority of the full voting membership of the board prior to the travel event. If an event has a total cost which exceeds \$5,000, regardless of the number of attendees, or where more than three individuals from the district are to attend, the district must obtain prior written approval from the ECS. Boards must establish a deadline prior to the travel event for submitting requests. If an occasional unforeseen emergent situation arises wherein a travel request cannot obtain prior approval of the board, justification for the emergency must be included in the text of the request and may be honored upon the prior written approval of the superintendent and the ECS. Such emergency approvals must be ratified at the board's next regularly scheduled meeting. The regulations expressly provide that travel to conferences, conventions, and symposiums shall not be considered emergencies and shall not be approved under these emergency procedures.

This article highlights some of the key areas addressed by the draft regulations and is not meant to be exhaustive.

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The information provided here is necessarily general and is not intended as legal advice or a substitute for legal advice. If you have any questions regarding this Alert, please contact Anthony P. Sciarrillo of the EdLaw Group at edlawgroup@lindabury.com.

Before making your choice of attorney, you should give this matter careful thought. The selection of an attorney is an important decision.

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