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LEGAL UPDATE

January 19, 2010

To: Superintendents, Member School Districts (K-12)

From: Loren Soukup, Schools Legal Counsel *LS*

Subject: **Rehabilitation Act Extended to Claims by Independent Contractors**
Memo No. 03-2010

On November 19, 2009, the United States Court of Appeals, Ninth Circuit, published its decision in *Fleming v. Yuma Regional Medical Center*¹, holding that independent contractors working for public employers are protected from disability discrimination under the Rehabilitation Act of 1973 (“Act”).² Prior to this decision, only employees had standing to bring an employment discrimination claim under Section 504 of the Act.

Section 504 creates a private right of action for qualified disabled individuals claiming discrimination in any “program or activity” receiving federal financial assistance. As recipients of federal financial assistance, public school districts and county offices of education are subject to Section 504 requirements.

In *Fleming*, an anesthesiologist suffering from sickle cell anemia was hired by the Yuma Regional Medical Center (“Regional Center”) as an independent contractor. Upon learning of the anesthesiologist’s sickle cell anemia, the Regional Center informed the anesthesiologist that it would not be able to accommodate him by providing assistance in the operating room or with the call schedule. The anesthesiologist declined the position and brought suit against the Regional Center for breach of his employment contract and employment discrimination in violation of Section 504.

The Regional Center argued that the anesthesiologist had no standing to sue under Section 504 because he was an independent contractor, not an employee. The court ruled in favor of the

¹ (2009) ___ F.3d ___; 2009 WL 3856926

² 29 U.S.C. 794 *et seq.*

anesthesiologist, stating that while the Act adopts the standards that are applied under Title I of the Americans with Disabilities Act (“ADA”)³, specifically in proving when discrimination in the workplace is actionable, it does not adopt the ADA’s limitation to the employer-employee relationship. The court found that the language in Section 504 is “broad enough to cover employees and independent contractors alike.”

In light of the *Fleming* decision, the scope of individuals who may bring discrimination claims under Section 504 has been expanded. As such, districts and county offices of education should ensure that both employees and independent contractors are not discriminated against based on disability in violation of Section 504. Districts and county offices of education are also encouraged to review their current board policies and regulations to ensure compliance with Section 504. We advise that independent contractors be given a copy of the district or county office of education’s complaint process when the contract relationship is first established.

Please contact any of our attorneys if you have questions regarding this issue.

³ 42 U.S.C. 12111 *et seq.*