



## **Volunteers and Schools: The Supreme Court Speaks**

by Amy J. Borman and Maria Limbert Markakis

In May, the Ohio Supreme Court upheld the Fifth Court of Appeals decision that school systems cannot be held liable for injuries to students that occur off school property and at the hands of volunteers. Parents of two Massillon City School District elementary students sued because their children were sexually assaulted during a spring break trip to an out-of-state chess tournament. The Ohio Supreme Court held that the school was immune from liability because state law requires that a school employee cause the injury and that the injury occur on school grounds. The parents, however, pointed out that the offender who ran the after-school chess club for students did so with the knowledge and permission of the principal. They also alleged negligence because the school failed to investigate the background of the volunteer who had a prior felony conviction for sexually molesting children.

### **Discretionary Criminal Records Checks of School Volunteers**

Under Ohio law volunteers serving in schools may or may not be required to submit to a criminal records check, at the discretion of each individual school. However, all volunteers having unsupervised access to children on a regular basis must be notified that the school may at any time require their fingerprints for purposes of making a criminal records check. If a criminal records check is conducted on a volunteer, and the records check reveals one of the prohibited statutory violations, the school may no longer utilize the volunteer in a position involving unsupervised access to children on a regular basis unless a notice is sent out to the parent or guardian of each child served by the school.




## **The Legislature Expands the Requirements for Annual Records Checks of School Employees**

Substitute House Bill 428 (127th General Assembly) became effective on June 12, 2008, and added several new requirements with respect to screening school employees for criminal histories. It now requires criminal records checks of all employees and job applicants, not just those whose job duties entail the care, custody or control of children. Also, private companies contracting to provide “essential school services” for school districts, educational service centers, community schools, STEM schools and chartered non-public schools must request the checks for their employees who work in schools, who are in routine interaction with a child, or who have regular responsibility for the care, custody, or control of a child. Essential school services are those services provided by the private company that the chief school administrator has determined are necessary for the operation of the school and would otherwise be provided by school employees (such as food, janitorial or clerical services).

A person employed by a private contractor cannot work in the school unless: (1) the employer has provided proof that they have requested a criminal records check, including an FBI check, within the five-year period prior to the date on which the person will start working in the school, and the records check indicated that the person had not been convicted of or plead guilty to an offense that would disqualify the person for employment with the school; or (2) when the person will have routine interaction with a child or regular responsibility for the care, custody or control of a child, an employee of the school has been assigned to be present in the same room as the child or, if outdoors, to be within a 30-yard radius of the child or to have visual contact with the child. This new law does not apply to individuals licensed by the Ohio Department of Education or those operating school transportation vehicles.

Additionally, the new law explicitly prohibits an employer from hiring or continuing to employ any person whose criminal records check reveals a conviction of or a plea of guilty to any crime that disqualifies an individual for employment with a public or chartered non-public school, unless the person meets the State Board’s rehabilitation standards. In exercising its power to license educators, the State Board of Education may refuse to impose a license to an applicant, may limit a license at issue to an applicant, or may suspend, revoke or limit a license it had previously issued for any of several statutorily specified reasons. Furthermore under the new law, the Educator Standards Board drafted a code of conduct for persons who were licensed by the State Board. The code describes inappropriate educator conduct and disciplinary actions that should be taken against educators who engage in each type of misconduct, including taking action against a person’s license.

Finally, the new law also imposes requirements for reporting teacher misconduct on the community school chief administrator, as the individual responsible for reporting teacher misconduct to the Superintendent of Public Instruction. The chief administrator, board president or chairperson must file a report if: (1) they know that an employee has a guilty plea or conviction, or has been found eligible for intervention in lieu of conviction, or for a pre-trial diversion program concerning a disqualifying or



other criminal offense applicable to teachers; (2) they have initiated termination or nonrenewal proceedings against, or has not renewed the contract of the employee because the board has reasonably determined that the employee has committed an act that is unbecoming to the teaching profession or a disqualifying or other criminal offense applicable to teachers; or (3) an employee has resigned under threat of termination for such an act; or (4) the employee has resigned because of or in the course of an investigation by the board regarding whether the employee has committed such an act.

If you are a school district, educational service center, community school, chartered non-public school or a vendor working in any of those entities, please contact us for further information regarding complying with these new mandatory requirements and potential business opportunities for vendors working in these entities.

*Ms. Borman's and Ms. Markakis's biographies appear on the following page.*

**Disclaimer**

The articles in this newsletter have been prepared by Eastman & Smith Ltd. for informational purposes only and should not be considered legal advice. This information is not intended to create, and receipt of it does not constitute, an attorney/client relationship.

# Background Check

*featuring*

## Amy J. Borman and Maria Limbert Markakis

Firm member Amy J. Borman returned to her native Midwest from New York City in 1985. She and her husband Bob have raised three children in the Toledo area. Dena (25), an Indiana University School of Music graduate, is a high school choral conductor in the Chicago Public Schools; Gabe (23) is a University of Maryland graduate and currently a paralegal at the U.S. Department of Justice, Antitrust Division in Washington D.C. and Ethan (18) graduated from the Toledo School for the Arts this spring. He will be attending Berklee College of Music in Boston this fall. Mr. Borman has multiple degrees, including one from New York University and he is a school counselor at Saint John's Jesuit High School.



Ms. Borman attended Wittenberg University and the University of Michigan where she obtained her bachelor's and master's degrees in music, respectively. She earned her law degree from the University of Toledo. Obviously, her interests lie in the arts. She is active in the arts organizations as well as professional women's organizations and educational advocacy endeavors.

In her practice, Ms. Borman advises businesses and educational institutions in all matters of compliance with laws. Ms. Borman provides guidance to educational clients nationwide and has been a guest speaker at businesses, universities and schools throughout the United States and Europe.

Ms. Borman can be reached at our Toledo or Columbus offices (419-241-6000; 614-280-1770).

Associate Maria Limbert Markakis was born in Northeast Ohio and is a graduate of the Ohio State University and its law school. While in law school, she spent a semester studying at the University of Oxford in Oxford, England. She received her bachelor of science degree in honors accounting and was awarded the College of Business Pacesetter Award.



Her legal career began at the Ohio Attorney General's Office in Columbus. She then moved to Toledo with her husband, George, a native of Cleveland, when he entered medical school at the University of Toledo. Dr. Markakis is currently in his second year of ophthalmology residency at the Kresge Eye Institute in Detroit.

Three years ago Aristotle was born. He is an active little boy who "plays" soccer with the Leprechaun League, attends Kindermusik and enjoys the Toledo Zoo Camp. Ms. Markakis, her husband and son can be spotted cycling around their neighborhood on their bicycle built for two!

Ms. Markakis is part of the Firm's Education Law Section. Her practice takes her across Ohio representing clients and advising school boards. In 2007 she was selected as an Ohio Rising Star Super Lawyer. Only 2.5% of the state's best up-and-coming attorneys are chosen.

Additionally, Ms. Markakis is a member of the Junior League of Toledo and an active member of Holy Trinity Greek Orthodox Cathedral. She can be reached by calling our Toledo office (419-241-6000).