Hodges Loizzi Eisenhammer Rodick & Kohn LLP

EDUCATION EDITION

December 2013

THE Extra Mile

GOING THE EXTRA MILE SO YOU DON'T HAVE TO

Happy Holidays From HLERK! As 2013 comes to an end, we wish to thank each of our clients and friends for placing their trust and confidence in HLERK. We especially thank the many new school districts and cooperatives statewide who chose to join our client family in 2013 and entrust us with their legal needs in a remarkably complex legal environment.

2013 was challenging as school districts dealt with implementation of the *Affordable Care Act*, a plethora of Attorney General decisions regarding FOIA and open meetings, challenges to the legality of SB7 (successfully defended by HLERK), reactions to on-going school violence issues, increased school district liability risk for special education and challenges to school funding.

In response, HLERK redoubled its efforts, working with *your* professional organizations at the local, state and national levels to inform and guide the school community. HLERK continues to work with NSBA on IDEA reauthorization,

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Consumer Price Index

Percent change for the month of **October 2013,** for the urban wage earners & clerical indices as reported by the Bureau of Labor Statistics.

	All Urban (CPI-U)	Workers (CPI-W)
Chicago Mthly	-0.3	-0.4
12 Mth	0.5	0.3
St. Louis, 1st Half 2013		
6 Mth	0.8	0.9
12 Mth	1.6	1.5
U.S. Mthly	-0.3	-0.3
12 Mth	1.0	0.8

November CPI figures will be released December 14, 2013. For the most recent CPI, visit our website at: www.hlerk.com.

The Extra Mile is intended solely to provide information to the school community. It is neither legal advice nor a substitute for legal counsel. The Extra Mile is intended as advertising but not as a solicitation of an attorney/client relationship.

Reminders & Notes

- **Remember that, effective January 1, 2014, SB7 has been amended to require all school districts to hold the Joint RIF Committee meeting annually prior to December 1st.**
- **Remember to determine dates for semi-annual review of closed session minutes to determine whether such minutes can be publicly disclosed (typically January and June).**
- **Remember to order your copy of the handbook for the IASA *Year in Review* conferences. You can purchase your copy by sending in the attached order form.**

Illinois Supreme Court Strikes Down Amendment to Illinois Public Labor Relations Act- On October 18, 2013, Peoria School District 150 won its challenge to the constitutionality of Public Act 96-1257 ("Act"), which amended the *Illinois Public Labor Relations Act* ("IPLRA") to take peace officers "employed by a school district in its own police department" out from the jurisdiction of the *Illinois Educational Labor Relations Act* ("IELRA") and place them under the jurisdiction of the IPLRA. The effect of the Act was to give peace officers covered by the Act the right to go to interest arbitration as opposed to the right to strike.

In *Board of Education of Peoria School District 150 v. Peoria Federation of Support Staff*, 2013 IL 114853, successfully argued by **Stan Eisenhammer** and **Chris Hoffmann,** the Illinois Supreme Court held that the Act violates the Illinois Constitution's prohibition against "special legislation" because the Act limited its reach to only District 150 and its labor relations with the school district's security officers.

This case arose when the union that represents the security officers employed by District 150 filed a representation petition with the Illinois Labor Relations Board. The union had

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IPLRA Cont. previously been certified under the IELRA; however, the union contended that the Act placed the security officers under the jurisdiction of the IPLRA. Soon after the union filed the representation petition, District 150 filed suit in circuit court.

District 150 sought a declaration that the Act was unconstitutional "special legislation" and an injunction barring the Illinois Labor Relations Board from asserting jurisdiction over labor relations between District 150 and the union.

On the Act's effective date, District 150 was the only school district in the state that even arguably employed peace officers in its own police department. The Act, therefore, violated the special legislation clause because it was intended to apply only to District 150 and its relations with its security officers and, by its own terms, would never apply to school districts that created a police department and employed peace officers after the Act's effective date. The Illinois Supreme Court agreed, finding that there was no rational basis for the legislature's decision to limit the Act's applicability to District 150.

As "education reform" legislation is implemented, litigation regarding labor and personnel issues is likely to follow. Contact Stan Eisenhammer regarding your labor litigation inquires.

Holidays Cont. once again joined with IASA on the statewide *Year in Review* conferences and continues to serve as general counsel to IAASE.

In addition, 2013 continued to see the growth of HLERK in number of attorneys to serve you and the expansion and re-design of each of our three offices in Arlington Heights, Peoria and O'Fallon. In our 23 year history, we have grown from one office to three and from six attorneys to over 35.

As we enter 2014, school districts will continue to face financial challenges, possible pension reform, and possible changes to NCLB obligations as well as legislative, administrative and court rulings impacting all aspects of already complex school operations.

We hope that you continue to use the *Extra Mile* as well as the wide variety of HLERK in-service and administrator academy programs to help you manage your legal risk in a time of intense change and ongoing financial crisis. HLERK is proud of our commitment to serving the educational community.

Of course, with the holidays and winter break rapidly approaching, we wish each of you a safe, happy and healthy holiday season.

We look forward to publishing the Extra Mile in 2014 to keep you abreast of breaking legal developments, many of which you will find nowhere else. Happy Holidays!

Illinois Court Upholds Dismissal of Tenured Teacher under SB7 Dismissal Process--On November 1, 2013, the Circuit Court of McLean County upheld the Board of Education of Bloomington Public School District No. 87's ("Board") 2012 dismissal of a tenured teacher charged with violating a previously issued Notice of Remedy.

The case, *Jordan v. Board of Education of Bloomington Public School District No. 87*, Case No. 13 MR 9, successfully defended by **Terry Hodges**, **Rob Swain**, and **Chris Hoffmann,** was one of the first, if not the first, tenured teacher dismissal cases to be heard under the amended dismissal process set out in Section 24-12 of the *School Code* (105 ILCS 5/24-12) under SB7.

Section 24-12 of the *School* Code, which was amended in June 2011, establishes the process school boards must follow when dismissing tenured teachers. Under Section 24-12, a tenured teacher dismissed for cause by the school board may request a hearing before a

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SB7 Cont. neutral hearing officer appointed by the Illinois State Board of Education ("ISBE"). Prior to the 2011 amendment, the hearing officer would then issue a binding decision stating whether the teacher's dismissal would be upheld or whether the teacher must be reinstated. The hearing officer's decision was final (subject to the parties' right to request administrative review of the hearing officer's decision in circuit court).

After the 2011 amendment, the hearing officer no longer issues a final decision in teacher dismissal cases. Rather, the hearing officer issues findings of fact and a recommendation back to the school board. The school board then may choose to either adopt the hearing officer's findings of fact and recommendation or, if the school board determines that the hearing officer's findings of fact and recommendation are against the manifest weight of the evidence, the school board may modify the hearing officer's findings of fact and recommendation. Under the amended version of Section 24-12, the school board now has the final decision-making authority in tenured teacher dismissal cases.

In this case, the ISBE-appointed hearing officer recommended that the teacher be dismissed, and the Board adopted a resolution approving the teacher's dismissal. The teacher then filed a complaint for administrative review of the Board's decision in the Circuit Court of McLean County. The circuit court upheld the Board's decision, finding that the Board's decision was supported by the evidence.

Please contact Terry or Chris for questions regarding the tenured teacher dismissal process post SB7.

IRS Broadens Flexible Spending Account Rules-- On October 31, 2013, the IRS released Notice 2013-71, modifying the health flexible spending account ("FSA") rules to allow plans to permit participants to carry over up to $500 in unused funds for expenses incurred during the next plan year.

The Notice clarifies that the new carryover is different from the existing option for a grace period, which allows use of any remaining funds in the health FSA for expenses incurred up to 2½ months into the next plan year.

A plan may *not* have *both* the new carryover provision and a grace period for the health FSA. Thus, in effect, a plan may allow a participant either to carry over all unused funds for use within 2½ months of the next plan year *or* carry over up to $500 for use any time during that next plan year.

The $500 carryover is an optional provision that must be effectuated by a written plan amendment; such amendment must be made by the last day of a plan year and may be retroactive to the first day of that plan year.

Please contact Heather Brickman or Barb Erickson regarding necessary amendments of your FSA Plans.

ISBE Hearing Officer Finds Non-"Parent" Cannot Request Removal of Special Education Evaluation Documents--Ruling on a due process request filed under the *Individuals with Disabilities Education Act* ("IDEA") against Peoria Public School District No. 150, an ISBE-appointed hearing officer just held that the sole relief requested by the Complainant – the destruction and removal of evaluation documents from the student's file – was not proper under IDEA and could not be asserted by a person not a "parent" of the child. The case was successfully defended by HLERK attorney **Nina Gougis.** The student in question was reevaluated after the district obtained written consent

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Eval Docs Cont. from her biological mother. The student's biological mother orally revoked her consent after the reevaluation already was conducted. After that, the student's stepfather sent a written revocation of consent to the district, demanding that the evaluation documents be removed from the student's school records.

When the district denied the stepfather's request, he filed a due process complaint alleging the district failed to properly obtain consent for reevaluation and requesting the destruction and removal of the evaluation documents from the student's file. However, the stepfather did not challenge the student's current placement.

The district filed a motion to dismiss on the basis that the relief requested – the destruction and removal of documents from the student record file – is not relief that could be granted under IDEA. The district also asserted that the stepfather had no authority to file for due process on the student's behalf and that only the mother had the right to challenge the validity of the written consent for reevaluation that she gave to the district.

The hearing officer granted the district's motion to dismiss. In so doing, the hearing officer found that the destruction and removal of evaluation documents was a form of relief that could not be given under IDEA. Rather, the complainant was required to seek such relief under the *Family Educational Rights and Privacy Act* and the *Illinois School Student Records Act*.

The hearing officer also noted that the stepfather admitted that there is a divorce decree between the biological mother and father and that he was uncertain whether the decree contains any provisions regarding educational decision-making. Therefore, the hearing officer required the stepfather to provide sufficient documentation as to his status as a parent as part of any attempt to file an amended due process complaint.

Custody issues continue to create challenges for school districts. Contact Nina, Bennett Rodick or Michelle Todd with your inquiries.

Food Allergy Guidelines Published by the Centers for Disease Control in Consultation with the U.S. Department of Education--The Centers for Disease Control and Prevention ("CDC"), in consultation with the U.S. Department of Education, recently published *Voluntary Guidelines for Managing Food Allergies in Schools and Early Care and Education Programs* ("*Voluntary Guidelines*").

The *Voluntary Guidelines* are designed to improve food safety in the United States by providing practical information and planning steps for school administrators and staff. The *Voluntary Guidelines* identify five priority areas that each school should address, and include recommendations for each area.

These priority areas are to: (1) ensure the daily management of food allergies in individual children; (2) prepare for food allergy emergencies; (3) provide professional development on food allergies for staff members; (4) educate children and family members about food allergies; (5) create and maintain a healthy and safe educational environment.

For detailed recommendations from the CDC for each of these priority areas, and for additional resource information to protect students with allergies in your schools, review the *Voluntary Guidelines* (available through: http://www.cdc.gov/healthyyouth/foodallergies/). In addition, please also review the guidelines published by ISBE in conjunction with the Illinois Department of Public Health, *Guidelines for Managing Life-Threatening Allergies in Illinois Schools* (available at http://www.isbe.state.il.us/nutrition/pdf/food_allergy_guidelines.pdf.)

Please contact Bennett Rodick, Jay Kraning or Laura Pavlik with school allergy inquires.

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