Hodges, Loizzi, Eisenhammer, Rodick & Kohn

EDUCATION EDITION

October 2007

THE Extra Mile

GOING THE EXTRA MILE SO YOU DON'T HAVE TO

IASA/HLERK Regional Conferences Coming up!— This is your last opportunity to register for the upcoming IASA/HLERK Regional Conferences on *Recent Developments in School Law*. IASA has extended the registration deadline but space is filling up fast! It has been an extraordinary year of legal developments in a variety of areas and this is an opportunity no school administrator should miss!

A registration form is enclosed or you can register on-line at www.hlerk.com or www.iasaedu.org. We are expecting record attendance at all three locations, and we look forward to seeing you there.

Illinois Appellate Court Holds Employment Contracts Are Not Exempt under FOIA— The Fourth District Illinois Appellate Court has held that the employment contracts of the president and other employees of Southern Illinois University (SIU) are not exempt under the *Freedom of Information Act* (FOIA) and has ordered their release to a newspaper. SIU has indicated that they will *not* seek to appeal this decision to the Illinois Supreme Court.

In *Reppert v. Southern Illinois University*, No. 4-06-1014 (Ill. App. Ct., Aug. 15, 2007), the court considered whether SIU had properly denied access to the contracts under FOIA's personnel-file exemption or whether the contracts were public records that had to be released.

The court decided the employment contracts were not exempt. It reasoned that because the contracts contained information bearing on the employees' public duties, the release of the contracts could not be considered an invasion of privacy, since FOIA provides, "information that bears on the public duties of public employees and

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Consumer Price Index

Percent change for the month of **August, 2007,** for the urban wage earners & clerical indices as reported by the Bureau of Labor Statistics.

	All Urban (CPI-U)	Workers (CPI-W)
Chicago-Mthly	0.1	0.0
12 Mth	2.7	2.5
St. Louis-6 Mth	1.0	0.8
12 Mth	1.8	1.7
U.S. Mthly	-0.2	-0.2
12 Mth	2.0	1.8

September CPI figures will be released October 18, 2007. Visit the most recent CPI at our website, www.hlerk.com.

Reminders/Notes

- **Please review the attached summary of upcoming HLERK/MEDS-PDN programs on vital school law issues and register today at either www.meds-pdn.com or www.hlerk.com!**
- **Save the date for the upcoming HLERK reception for clients and friends at the Joint Conference on Saturday, November 17th from 3:00-7:00 p.m. at the Hyatt Hotel, East Tower, Monarch Suite!**
- **Remember to submit to ISBE in October your "timely and meaningful consultation" compliance information regarding services for students attending private schools.**

Seventh Circuit Court of Appeals Rules on Scope of Special Education "Stay-Put" Provision— On September 17th, the Seventh Circuit Court of Appeals, which governs all Illinois school districts, issued its decision in *John M. v. Board of Education of Evanston Township High School District No. 202*.

At the heart of this case is the application of one of IDEA's procedural safeguards commonly known as "stay-put". Section 1415(j) of the Act requires that, during a hearing between the school district and a child's parents, the child remain in his or her "then-current educational placement" unless otherwise agreed upon by the parties or ordered by the court.

In July's *Extra Mile* we reported that HLERK's **Nancy Krent** had been retained by your professional organizations (NSBA, IASB, IASA, and IAASE), to file a "friend of the court" brief in support of Evanston's position.

The issue in *John M.* turned on what constitutes the "then-current educational placement" in the context of a student who matriculates from an elementary to a high school district. Initially, the trial court held that because the stay-put provision uses the term "then-current educational placement" instead of "then-current IEP," the stay-put provision covers more than just the four corners of the last agreed-upon IEP.

Using this expanded definition, the district court ordered Evanston High School District to go beyond the provisions in the IEP and provide "co-taught" classes that were neither specified in the student's

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Employment Contracts Cont. officials shall not be considered an invasion of personal privacy." The court noted that none of the information contained in the contracts was confidential, but all such information fell under the definition of "public records" under Section 2(c) of the FOIA. Thus, the contracts had to be released.

The *Reppert* court expressly declined to follow the Third District Appellate Court's reasoning in *Copley Press, Inc. v. Peoria School District No. 50* (see October 2005 *Monthly Tickler*) and lower court decisions which have applied the *Copley* case to employment contracts (see *Stern v. Wheaton Warrenville Community Unit School District 200*, reported in the April 2007 *Extra Mile*). In *Copley* and its progeny, employment contracts were previously considered exempt if they were maintained in personnel files, which are *per se* exempt under FOIA.

For further information or to request a copy of this decision, please contact Steve Richart.

Illinois Appellate Court Declines to Require "Miranda Warnings" Prior to Student Questioning— Anyone who has ever watched an episode of *Law & Order* can probably recite the famous warnings that police officers are required to give to individuals they place under arrest. Arising out of the famous Supreme Court case *Miranda v. Arizona*, 384 U.S. 436 (1966), these so-called *Miranda* warnings are intended to protect arrested individuals' Fifth Amendment right against self-incrimination.

In a new Illinois Appellate Court decision, a student sought to exclude statements she made to a school resource officer on school premises. The court concluded that such a scenario is not "custodial interrogation" requiring "Miranda" warnings. *In re: K.G.M.*, No. 4-06-0563 (Ill. App. Ct. 4th Dist., Aug. 15, 2007). In *K.G.M.,* a high school student suspected of "keying" a car was summoned to the office of the school resource officer, where the officer elicited a confession from the student. The court noted that the questioning took place "with a lone police officer, not in uniform and with weapon concealed, . . . during the school day and with the office door open." This, plus the fact that the student was not handcuffed, threatened, or physically restrained, was enough to convince the 4th District that the student was not under "custodial interrogation," and therefore the officer did not need to give a *Miranda* warning prior to questioning the student. The student has appealed the decision to the Illinois Supreme Court. We will keep you apprised of this litigation.

HLERK will explore the issues raised by* K.G.M. *at the upcoming HLERK/MEDS-PDN program on school violence on October 2nd. For more information about this decision, please contact Bennett Rodick or Jeff Goelitz.

It's "Audit Letter Season" Again— Each year HLERK receives from client school districts/cooperatives and their auditors a large number of requests for audit response letters. Through such response letters, we are asked to identify pending or threatened litigation and claims and to confirm certain matters related to the district's disclosure of unasserted claims.

Our firm's responses must be tailored to the scope of specific auditor requests and must be in accordance with complex ethics guidelines, acknowledging the importance of maintaining public confidence in financial statements. Although we expedite matters internally through the use of audit protocols and electronic communication, *the required due diligence does not allow for immediate, form letter responses*. In the event an auditor notifies us of a need for an accelerated response deadline, we will work with him or her to ensure that the district's audit timeline is met.

If you have any questions regarding the audit response process for your district, please do not hesitate to contact Shayne Aldridge or Heather Brickman.

Stay Put Cont. IEP nor regularly available in the school district.

The Seventh Circuit overturned the ruling, holding that unless unusual circumstances exist, the court should not need to go beyond the four corners of the IEP in order to determine the appropriate stay-put placement of a child.

However, the Seventh Circuit also held that, when the IEP is vague with respect to how its goals are to be achieved, the Court may use evidence from outside the IEP to determine the intent of those who formulated the IEP and whether additional services might be necessary in a stay-put situation in order to effectuate the IEP. In the end, the Seventh Circuit remanded the case to the district court for several determinations, including the intent of John M.'s middle school IEP, and to determine whether specific methodologies used to implement his IEP must be employed during his stay-put placement.

Please contact Nancy Krent or Stephanie Jones with questions concerning the John M. ruling or its impact on your school district.

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