



Board Violates OMA By Failing to List Action Item on Agenda and By Discussing Services Contract During Closed Session--The Public Access Counselor of the Illinois Attorney General recently issued a binding opinion that the Village of Blue Mound violated the requirements of the *Open Meetings Act* by improperly closing a portion of its regular meeting to the public to discuss a proposed police services contract and by failing to include on the agenda the general subject matter of the Board's final action to approve the police services contract.

At its May 4, 2015, regular meeting,

the Village Board entered closed session without providing a description of the subject of discussion or citing the relevant statutory exception for entering closed session.

Moreover, the agenda for the meeting only listed "executive session," without further explanation. During closed session, the Village Board heard a presentation from a representative of the Macon County Sheriff's Office concerning a proposed contract to provide police services for the Village.

Upon return to open session, the

Continued on Page 3

Join HLERK at the Upcoming IASB/IASA/IASBO Joint Conference--As always, HLERK is proud to play a major role at the upcoming Joint Conference in Chicago. Our participation in the Conference is part of HLERK's fundamental mission of service to the Illinois school community.

HLERK's service mission includes applying HLERK's experience to the training of school attorneys from across Illinois in order to assist all school districts.

Please use this newsletter as a handy guide to our various programs and activities.

Our programming begins at the Council of School Attorneys meeting on Friday, November 20, where school attorneys from across Illinois will learn from HLERK alumnus **Sonja Trainor**, senior staff attorney for the National School Boards Association. Sonja will speak on *National School Law Trends* at the Illinois Council of School Attorneys *School Law Seminar* at the Hyatt Regency, West Tower, Crystal Ballroom B.

Joining her will be **Terry Hodges** and **Steve Richart**, who will speak regarding *Outsourcing of Third Party Non-Instructional Services*.

The School Law Seminar will conclude with a presentation by
Continued on Page 2

Consumer Price Index

Percent change for the month of **September 2015**, for the urban wage earners and clerical indices as reported by the Bureau of Labor Statistics.

	All Urban (CPI-U)	Workers (CPI-W)
Chicago Mthly	-0.3	-0.5
12 Mth	-0.4	-1.1
St. Louis, 1st Half 2015		
6 Mth	-0.7	-0.9
12 Mth	-0.9	-1.2
U.S. Mthly	-0.2	-0.3
12 Mth	0.0	-0.6

October CPI figures will be released November 20, 2015.

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

- IASA and HLERK thank the record number of administrator and board member attendees at IASA's annual conferences, *The Year in Review: The Highlights and Lowlights of Illinois School Law*. The conference handbook, summarizing the key legal developments you need to know to guide you in a complex and dangerous legal environment, is now available for purchase. Order yours by sending in the attached form.
- Remember to hold your RIF Joint Committee meeting by December 1. This is an annual requirement. Contact **Ellen Rothenberg, Tina Christofalos, or Jeff Goelitz** with your SB7 inquiries.

Offices
Arlington Hts. 847-670-9000
O'Fallon 618-622-0999
Peoria 309-671-9000

Joint Conference Cont. our retiring senior litigation counsel, **Nancy Krent**, who will speak on *Ethical Issues Throughout Your Career*.

On Saturday, November 21, please join **Heather Brickman** and **Jeff Goelitz** as they present *Board Member & Staff Use of Technology* at 10:30 a.m.-12:00 p.m. at the Hyatt Regency, Regency D Ballroom.

Later that day, join **Stan Eisenhammer** and IASA General Counsel and HLERK alumnus **Sara Boucek** as they speak on *Superintendent Employment Contracts*. This ever-popular and vital session for both superintendents and board members is at 1:30 p.m.-3:00 p.m., Sheraton, Chicago 6, Ballroom Level IV.

At the same time, **Stephanie Jones** and **Jennifer Mueller** present *School Safety and Crisis Management: A Primer for Board Secretaries* at 1:30 at Swissotel Event Center Vevey Ballrooms.

Finally, please join **Stephanie Jones** and a coterie of HLERK all-stars (and early risers) when she will moderate the session *Legally Stumped?* on Sunday, November 22, at 8:00 a.m. in the Hyatt Regency, Columbus E/F Ballroom. Challenge them with your legal inquiries.

We look forward to joining HLERK clients and friends at a special reception the Friday evening of the Joint Conference. HLERK clients and invited guests should already have received their invitation.

The Joint Conference is a rare and vital opportunity for the entire Illinois educational community to come together. We very much hope you plan on attending, and, as always, we look forward to joining you there. Take advantage of the singular opportunity of having access to the best legal minds in the country in approaching an amazingly difficult and complex legal environment.

Southern Illinois Federal Court Dismisses Bullying Case Against School District--The U.S. District Court for the Southern District of Illinois recently dismissed a case against a school district, in which a student and her parents alleged that the school district failed to protect her from bullying by classmates, which deprived her of access to a "free appropriate public education."

In *Kuhner v. Highland Community Unit School District No. 5*, successfully defended by **Stephanie Jones** and **Michelle Todd**, the court held that the *Individuals with Disabilities Education Act* ("IDEA") requires exhaustion of IDEA's administrative procedures (i.e., a due process hearing) prior to bringing suit, regardless of the law the plaintiff invokes as the basis for her claim.

J.K., a student enrolled in a special education program, alleged that she was bullied, intimidated, and harassed by several students of Highland High School beginning in early November 2013, due to her learning disability. The incidents included students calling J.K. names such as "fat," "ugly," "whore," and

"skank," and making pig noises at her.

J.K. alleged that, in December 2013, she was physically shoved into a door by a male student, pushed into lockers by other students while walking in the hallways, and tripped while walking up the stairwell.

Although J.K. and her parents notified her special education teacher and case worker, the parents allege that no action was taken, and the alleged bullying allegedly continued until J.K. stopped attending classes at the end of December 2013, and began homebound instruction. Thereafter, in January 2014, J.K. attempted suicide and was hospitalized. In April 2014, J.K. returned to school for one week before resuming homebound instruction for the remainder of the school year. At the beginning of the 2014-2015 school year, J.K. attempted to return to school once again, but only attended classes on the first day. She has not attended classes at Highland High School since August 13, 2014.

J.K.'s parents filed a lawsuit against the school district pursuant to a variety of civil rights statutes,

Continued on Page 4

CONTACT US:
info@hlerk.com

3030 Salt Creek Lane . Suite 202 . Arlington Heights, Illinois 60005
804 West US Highway 50 . Suite 220 . O'Fallon, Illinois 62269
401 SW Water Street . Suite 106 . Peoria, Illinois 61602

OMA Cont. Village Board voted to approve the proposed police services contract. The agenda also did not contain any reference to the police services contract or police services in general.

First, the PAC found that the Village Board violated OMA by failing to publicly disclose and record in the minutes the specific statutory exception authorizing the Village Board to enter closed session. The PAC noted that while it is not necessary to indicate in a meeting agenda that a board will enter closed session or the subject to be discussed therein, OMA requires that a public body cite the specific exception authorizing its action when it enters closed session.

Next, during the PAC's review, the Village claimed that the Board entered closed session to discuss "personnel." In its opinion, the PAC explained that "personnel" is not an exception to OMA; instead, public bodies may enter closed session to discuss the "appointment, employment, compensation, discipline, performance, or dismissal of specific employees."

The PAC found that the police services contract was not a proper topic of discussion for closed session because it was being considered as a cost-saving measure, not as a means of addressing issues with specific

employees. While the approval of the police services contract may ultimately affect specific employees, the Village Board did not discuss any specific employees in closed session.

Finally, the PAC found that the Village Board violated OMA by taking final action to approve the police services contract without including any reference to it on the meeting agenda.

This opinion is an important reminder to state the statutory exception for entering closed session at the time a board takes action to enter closed session, even if it is not listed on the meeting agenda. Moreover, this opinion emphasizes the importance of listing the general subject matter of items that may be the subject of final action on the meeting agenda.

This opinion clarifies that boards may discuss specific employees in closed session but cannot discuss other matters that may tangentially affect specific employees, such as the financial need for a reduction in force.

Open Meetings Act issues continue to grow in both number and complexity. Contact Bob Kohn or Steve Richart with your OMA inquiries.

U.S. DOE "Dear Colleague" Letter Clarifies that IDEA Does Not Prohibit the Use of the Terms Dyslexia, Dyscalculia, and Dysgraphia--On October 23, 2015, the Office of Special Education and Rehabilitative Services ("OSERS") at the U.S. Department of Education issued yet another in a series of "Dear Colleague" letters, this time concerning the use of the terms dyslexia, dyscalculia, and dysgraphia in evaluations and individualized education plans ("IEPs").

The letter notes that OSERS has received communications from "stakeholders" that "State and local educational agencies are reluctant to reference or use dyslexia, dyscalculia, and dysgraphia in evaluations, eligibility determinations, or in developing the IEP un-

der the IDEA."

The letter concludes that under the *Individuals with Disabilities in Education Act* ("IDEA") there is "nothing...that would prohibit the use of the terms dyslexia, dyscalculia, and dysgraphia in IDEA evaluation, eligibility determinations, or IEP documents."

The letter explains that regardless of what learning disability a student has or may have, the district is obligated to evaluate the student in accordance with IDEA to determine whether the student meets the criteria for a specific learning disability.

Continued on Page 4

Bullying Cont. alleging emotional and physical injuries and deprivation of J.K.'s access to a public education. The school district filed a Motion to Dismiss, arguing that J.K. and her parents failed to exhaust administrative remedies under the IDEA and that the district was not liable for injuries due to tort immunity.

Generally, IDEA covers any matter relating to the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to such child. Where the plaintiff seeks relief that is available under the IDEA, she must follow the IDEA's administrative procedures and exhaust such procedures prior to bringing suit.

In this case, there was no dispute regarding the fact that J.K. did not exhaust her remedies available under the IDEA. However, J.K. and her parents argued that they had nothing to gain from administrative exhaustion under the IDEA. Instead, J.K. and her parents sought monetary damages, which are unavailable under the IDEA.

The District Court held that J.K. and her parents were

seeking relief available under the IDEA despite not invoking the IDEA as the basis for their claims. The court reasoned that merely requesting monetary damages does not remove a cause of action from the ambit of the IDEA. The court found that where the plaintiff requests monetary damages so that she can compensate for failures of the school district that could be provided in-kind by the school district, the request was really one for relief available under the IDEA, which required exhaustion of administrative remedies.

Therefore, the court dismissed J.K.'s claims regarding her emotional distress and depreciation of access to a public education and advised her to complete the IDEA administrative process pursuant to 20 U.S.C. § 1415(f). With regard to J.K.'s claims of physical injuries, the court granted J.K. leave to amend her complaint to address those claims where remedy is unavailable under the IDEA.

Bullying claims and issues continue to give rise to litigation and potential school district and administrator liability. Contact Michelle Todd or Stephanie Jones with your bullying inquiries.

Dear Colleague Cont. The letter discusses the use of "multi-tiered systems of support" ("MTSS"), which may be used to "identify students at risk for poor learning outcomes, including those who may have dyslexia, dyscalculia, or dysgraphia; monitor their progress; provide evidence based interventions; and adjust the intensity and nature of those interventions depending on a student's responsiveness."

The letter warns schools, however, that they must identify students who do not respond to such multi-tiered systems of support and refer them for special education evaluations. Moreover, while the letter seems to encourage the use of MTSS, it is careful to remember that the use of these support systems "may

not be used to delay or deny a full and individual evaluation."

Further, the letter clarifies that there may be situations where "the child's parents and the team of qualified professionals responsible for determining whether the child has a specific learning disability would find it helpful to include information about the specific condition (e.g., dyslexia, dyscalculia, or dysgraphia) in documenting how that condition relates to the child's eligibility determination."

Recent Illinois legislation also addresses the issue of dyslexic students in school. Contact Bennett Rodick or Michelle Todd with your inquiries.