HLERK

OCTOBER, 2004

HODGES, LOIZZI, EISENHAMMER, RODICK & KOHN

MONTHLY TICKLER

CONSUMER PRICE INDEX

Percent Changes As Reported by the Bureau of Labor Statistics
For the month of August, 2004
Urban Wage Earners & Clerical

	All Urban (CPI-U)	Workers (CPI-W)
Chicago-Monthly	**0.5**	**0.4**
12 Month	**3.1**	**2.7**
St. Louis-6 Month	**2.6**	**2.6**
12 Month	**3.9**	**4.0**
U.S.-Monthly	**0.1**	**0.1**
12 Month	**2.7**	**2.6**

September CPI Figures will be released October 15, 2004.
Visit the CPI at http://stats.bls.gov/eag/eag.us.htm

Reminders/Notes

- **Require student health exam and immunization compliance by October 15th unless your district has set an earlier date and provided such notice to parents.**
- **Please remember that Boards of Education are obligated to report FOIA requests at public Board meetings.**
- **To request electronic delivery of this newsletter and take advantage of our new web-links, simply return the enclosed form and the *Tickler* will arrive to your inbox each month even before it goes to print!**

Register now for Our annual *Regional Conferences on Recent Developments in School Law--* By now, you should have received an invitation to our annual fall seminars scheduled for Wednesday, **October 13th**, at the Wyndham Hotel in Itasca or Wednesday, **October 27th**, at the Weaver Ridge Country Club in Peoria. Please return your registration form promptly and reserve a spot at one of our conference locations.

New to the *Tickler*-- The *Tickler* now includes web-links to breaking news, legislation, and essential information referenced in our articles. The underlined text indicates that a link is present and can be accessed via the electronic version of this newsletter.

Continuing our effort to provide you with the best information, in the most effective format available, we offer our readers the option of receiving the *Tickler* via e-mail. If you would like to receive the *Tickler* electronically each month, please return the enclosed form.

Supreme Court Finds District Not Responsible for Out-of-State Placement-- In a favorable ruling for school districts, the Illinois Supreme Court held that a district was not required to pay for the educational portion of a delinquent special education student's out-of-state placement. *In re D.D.*, 2004 WL 2110531 (Ill. 2004). In that case, the student was adjudicated delinquent by the juvenile court and placed in an out-of-state residential facility. The juvenile court found that Oak Park-River Forest High

School District No. 200 was responsible for paying for the educational component of such placement. The placement was a result of a probation violation pursuant to the *Juvenile Court Act*. The school district was not involved in the adjudication.

In reversing the juvenile court, the Illinois Supreme Court held that the school district was not responsible for reimbursement. The Court noted that the School Code requires that the school district be involved directly in out-of-district placements when the student cannot receive a free and appropriate public education in its own district. The only time the student would be eligible for reimbursement for educational services outside of the student's resident district is when the resident district is unable to meet the student's needs. The court found that the school district's adequacy was not considered at all in placing the student in the out-of-state facility and, therefore, reimbursement was not required.

It also considered the fact that the *Illinois Juvenile Court Act* does not require nor provide for joinder of the school district in these cases, nor does it grant the juvenile court the power to require the school district to pay for the educational component of a delinquent student's residential placement. Here, the placement was made exclusively under the *Juvenile Court Act*, and because of that, no provision of the School Code could compel school district reimbursement.

Please contact Barbara Erickson for more information or for a complimentary copy.

Physical Fitness Facility Medical Emergency Preparedness Act-- On August 12, 2004, the Governor signed into law the *Physical Fitness Facility Medical Emergency Preparedness Act*, Public Act 93-910. It becomes effective January 1, 2005.

The new Act does a number of things. First, it requires entities, which operate physical fitness facilities, to adopt and implement a written plan for responding to medical emergencies before July 1, 2005. This plan must comply with the Act and implementing rules adopted by the Department of Public Health ("DPH"). Second, it requires physical fitness facilities to have at least one automated external defibrillator (AED) on the premises. Third, it requires the DPH to adopt rules to establish training programs for physical fitness facility staff on the role of CPR and the use of AEDs, which must be consistent with the rules adopted under the *AED Act*, 410 ILCS 4/1 *et seq*. Fourth, it calls for DPH inspections of facilities about which there has been a complaint, and discretionary inspections at other times. Fifth, it provides penalties for violations. Sixth, it requires the DPH to adopt rules to implement the Act. Seventh, it specifically prohibits a cause of action in connection with the use or non-use of an AED at a facility governed by the Act, except for willful or wanton misconduct, as long as a plan is in place, the facility has an AED, and has maintained it in accordance with DPH rules. Eighth, a public entity owning or operating four or fewer indoor physical fitness facilities must have at least one such facility in compliance with the Act on or before July 1, 2006; with the second facility in compliance by July 1, 2007; the third by July 1, 2008; and the fourth by July 1, 2009. A public entity owning/operating more than four such facilities must have 25% of the facilities in compliance by July 1, 2006; 50% by July 1, 2007; 75% by July 1, 2008; and 100% by July 1, 2009. Ninth, the Act amends Section 30 of the *AED Act* specifically to include school districts as a "person" owning, occupying or managing the premises where an AED is located, which is not liable for civil damages in relation to the use or non-use of the AED, except for willful and wanton misconduct, if the requirements of the *AED Act* are met. Section 30 is also amended so that any user, not just a "trained" user, is exempt from liability,

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except for willful and wanton misconduct, if the requirements of the *AED Act* are met.

Please contact Barbara Erickson for more information, or a copy of the Act.

Due Process Hearing Officers Issue Three Victories to School Districts-- Illinois State Board of Education hearing officers recently decided three important due process proceedings in favor of Illinois school districts, validating the districts' efforts to provide appropriate educational programs to disabled students.

One case, handled by HLERK, addressed the issue of elementary district liability after a student begins high school. In that case, the student had received two years of services at the elementary district before his parents placed him in a private day school for his freshman year of high school. Contrary to the assertions of the parents, the hearing officer found that neither the elementary district nor the high school district had committed any procedural violations, and that the IEP developed jointly by the two districts was appropriate. The hearing officer noted that the very same IEP had been adopted by the private school, which the parents asserted is providing an appropriate education. Because procedural violations had not been substantiated, the hearing officer refused to order compensatory education or reimbursement for the parents' expenses associated with the placement and tutoring. *In the Matter of the Special Education of C.S. and Glenview School District No. 34 and Northbrook Township District 225*, ISBE Case No. 3656, Aug. 25, 2004.

Another case, handled by HLERK provides new authority for the proposition that a school district may file for due process over a parent's refusal to consent for initial placement. In that case, the student had exhibited disruptive behavior and academic difficulties, ultimately leading the district to obtain a hearing officer's order to evaluate the student over the parent's refusal to consent to that evaluation. After the district evaluated the student, found him eligible for services, and developed an IEP based on its findings, the parent refused to consent to initial placement. The district filed for due process a second time. The hearing officer decided that she had jurisdiction to decide the case based on federal and state regulations allowing a district to file for due process on the issue of educational placement, then found that the district's proposed program for the student was appropriate, and ordered its implementation. *M.H. v. Hillside 93 Local School District*, ISBE Case No. 4139, Aug. 31, 2004.

In a third case, the hearing officer extended the *Beth B.* decision issued by the Seventh Circuit, to order that a student with Rett Syndrome be placed in the district's proposed placement, even though it would constitute a more restrictive setting than that advocated by the student's parents. Noting that a less restrictive setting had been attempted and was not working, the hearing officer found that the district had presented sufficient evidence at the 42-day hearing to show that its proposed placement would likely benefit the student. *L.R. v. Township High School District 211*, ISBE Case No. 3002, August 29, 2004.

Please contact Sonja Trainor with questions or for a complimentary copy.

TRIP Extended and LPDCs Eliminated-- On June 30, 2004, the Governor signed Senate Bill 1553, which in addition to various other legislative changes, extends the Illinois' Teacher Retirement Insurance Program (TRIP), amends teacher certification and recertification requirements, and eliminates the requirement of local professional development committees.

TRIP was scheduled to sunset on July 1, 2004. Under the new law, the program will continue permanently to be available for thousands of retired Illinois teachers who

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rely on it for affordable and reliable health care insurance. Public Act 093-0679 provides that teacher contributions will increase from .75 percent to .80 percent of salary and district contributions will increase from .50 percent to .60 percent of each teacher's salary beginning July 1, 2005. Additionally, Public Act 093-0679 details the cost of the health benefits to be received by retired teachers.

The law also amends Illinois' teacher certification/recertification requirements by revising the initial, standard, masters and administrator certification processes.

Finally, the statute eliminates the requirement that districts maintain a local professional development committee (LPDC) and assigns the LPDC's responsibilities to the respective regional superintendent of schools. Pursuant to the change in the law, a district is authorized to enter into an agreement with the school district's bargaining unit, if any, to form an LPDC. The law also provides that any provisions regarding LPDCs contained in a collective bargaining agreement in existence on June 30, 2004, shall remain in full force and effect for the term of the agreement, unless terminated by mutual agreement.

Please contact Sara Groom with questions or to request a complimentary copy.

Seventh Circuit Finds IDEA Remedy Exhaustion Futile-- In *McCormick v. Waukegan School District #60*, the federal appellate court for Illinois ruled that a student with an IEP for a physical disability *did not* have to exhaust his administrative remedies by filing for due process under the IDEA before bringing a civil rights suit in federal court seeking monetary damages. According to the court, remedies available in due process proceedings would not be able to redress the student's claims relating solely to physical injuries that were "non-educational in nature".

The case involved a high school freshman, who has a rare form of muscular dystrophy. He had an IEP that limited his participation in physical education class and provided other similar accommodations. The P.E. instructor was on notice that he could not participate in any strenuous activities, but she allegedly ignored the IEP instructions one day in class and ordered the student to do push-ups and run laps, threatening to fail him otherwise. The student experienced permanent damage to his kidneys and a worsening of his overall physical condition as a result of the activities.

The court distinguished this case from others in which IDEA remedies such as psychological services or educational assistance are able to at least, in part, remedy any damage to the student. In this case, the nature of the student's claim was physical and not at all educational in nature; therefore, "no change in his IEP could remedy . . . the damage done to [the student's] body."

The potential impact of this ruling on Illinois school districts is significant.

Contact Sara Groom to request a complimentary copy of *McCormick* or with questions.

SIU Administrator's Legal Roundtable-- Shayne Aldridge and Stephanie Jones will present on the *Children's Mental Health Act* at the Southern Illinois University School Administrators' Legal Roundtable in Carbondale on Wednesday, October 13, 2004. The conference is presented by the SIU Educational Administration Department and area Regional Offices of Education and is open to all school administrators and board members.

For more information and registration forms, please contact Dr. Brad Colwell, Associate Professor at (618) 536-4434, or click on the link provided.

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