Hodges, Loizzi, Eisenhammer, Rodick & Kohn

EDUCATION EDITION

April 2007

THE Extra Mile

GOING THE EXTRA MILE SO YOU DON'T HAVE TO

**ISBE Adopts Regulation Forbidding School Districts from Inquiring into Students' Immigration Status**- As a result of the highly publicized 2006 litigation involving Elmwood Park School District (See March 2006 *Extra Mile*), on March 22, 2007, ISBE adopted, an amendment to its rules on school governance (23 Ill. Admin. Code 1.240) to clarify its prior interpretation that school districts may not inquire about a student's immigration status during enrollment.

In addition to forbidding inquiries about the immigration status of a student, the new regulation forbids school districts from requiring documents as proof of residency that, when taken together, deny illegal immigrants the opportunity to enroll. Further, the rule prohibits school districts from imposing enrollment requirements more restrictive than those under Illinois and federal law, such as by requiring court-ordered guardianship when an individual enrolling a student meets the legal custody requirements under the *School Code*.

Finally, the regulation prohibits discrimination against homeless students and requires school districts to immediately enroll and serve homeless children without requiring documentation, in accordance with existing federal/state law. The new regulation is currently pending review by the Joint Committee on Administrative Rules and could be finalized as early as the end of April.

***Please contact Jay Kraning or Steve Richart for further information about this rule or other residency issues.***

## Consumer Price Index

Percent change for the month of **February, 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 | 0.6 | 0.7 |
| 12 Mth | 1.7 | 1.5 |
| St. Louis-6 Mth | 0.8 | 0.9 |
| 12 Mth | 1.5 | 1.7 |
| U.S. Mthly | 0.5 | 0.5 |
| 12 Mth | 2.4 | 2.2 |

March CPI figures will be released April 18, 2007. Visit the most recent CPI at our website, 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 newly elected board members after the upcoming election must take an "oath of office" under new Section 10-16.5 of the *School Code.* Contact **Heather Brickman** with questions.
- If you have not done so already, save the dates for the IASA sponsored *Regional Conferences on Recent Developments in School Law*. Visit www.hlerk.com for dates/ locations.
- Join us at the NSBA National Convention in San Francisco and attend sessions with **Nancy Krent, Stan Eisenhammer, Bennett Rodick and Stephanie Jones** at the IAASE Spring Conference in Collinsville!

## Illinois Trial Court Finds Superintendent's Contract Exempt under FOIA

A state court judge in DuPage County has ruled that a superintendent's employment contract is exempt from disclosure under the *Freedom of Information Act* ("FOIA").

In *Stern v. Wheaton Warrenville Community Unit School District 200* (Mar. 27, 2007), a board candidate brought a lawsuit to challenge the school district's denial of his FOIA request for the superintendent's contract. The school district asked the judge to find the document exempt under FOIA because it properly belonged in the superintendent's personnel file and was *per se* exempt based on the reasoning employed in the case of *Copley Press, Inc. v. Peoria School District* (See October 2005, *Extra Mile*).

The judge sided with the school district and found, consistent with *Copley,* that the contract was *per se* exempt from disclosure as part of the superintendent's personnel file.

The board candidate's attorney stated that the judge's decision would be appealed within 30 days. We will continue to monitor this case and report on any future developments.

***School districts continue to face growing numbers of FOIA requests. If you have any questions about this case or about your school district's obligations under FOIA, please contact Heather Brickman.***

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**Teacher May Not Sue Individual School Administrators under FMLA-** In a case of first impression in an Illinois federal court, a Chicago federal trial court recently ruled that the *Family and Medical Leave Act* (FMLA) bars FMLA suits against administrators in the elementary and secondary school context.

In *Lombardi v. Bd. of Trustees Hinsdale Sch. Dist. No. 86*, 463 F.Supp.2d 867 (N.D.Ill. 2006), a third year probationary physical education teacher was non-renewed by the Board. Subsequently, the teacher filed suit against the Board as well as the superintendent, the principal and the athletic director as individuals, alleging violations of the FMLA, breach of contract and tortious interference with contractual relations.

The court noted that individuals may generally be held liable under the FMLA. However, the FMLA contains provisions which create special rules for employees of local educational agencies.

Under these provisions, an "employer" is defined as a "local educational agency" which in turn is defined as a "public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary schools or secondary schools." The court analyzed the plain language of the statute and concluded that individuals are not included as "employers" in the elementary and secondary school context. Rather, only the local educational agency itself is an employer. Accordingly, the court dismissed the FMLA claims against the superintendent, the principal, and the athletic director, but did not dismiss the claim against the Board.

***For more information about this case or with your FMLA issues, please contact Bob Kohn or Lori Martin.***

**"Opposite Sex Day" May Burden Right to Free Exercise of Religion-** School districts continue to confront challenges under the First Amendment regarding student activities. The "Bong Hits" student free speech case currently before the U.S. Supreme Court was discussed in last months *Extra Mile.* In Illinois a federal court in southern Illinois has allowed a parent's lawsuit to go forward challenging a school district's right to encourage students to dress as members of the opposite sex for a day during the District's annual Spirit Week.

In *Stanley v. Carrier-Mills Stonefort School District No. 2*, 459 F. Sup. 2d 766 (S.D.Ill. 2006) a parent alleged that the above practice violated her right to raise her children according to her religious beliefs (because the Bible forbids cross-dressing) and occasioned peer-on-peer sexual harassment to her child in violation of Title IX.

She also alleged that after she spoke to the media in opposition, the school district retaliated against her in violation of her First Amendment rights. Specifically, the parent alleged that the school district retaliated by filing a DCFS complaint against the parent, withholding special education services from one of her children and giving excessive detentions to another child. Eventually, the parent felt she had no other choice but to move her family to a new home outside the school district.

The court declined to dismiss the parent's claims. The court first held that "Opposite Sex Day" could have violated the parent's right to raise her children according to her religious beliefs, depending on the level of coercion involved. While the children were not technically required to cross-dress by the school, the judge reasoned, the parent had alleged that the children would have been compelled to participate by the stigma of being "nonparticipating" students.

Moreover, the benefit to the school district of having "Opposite Sex Day" was slight to nonexistent, and was outweighed by the allegedly onerous burden upon the parent's rights. Next, the court refused to dismiss the parent's claims for defamation, intentional infliction of emotional distress, and First Amendment retaliation based on the conduct of the superintendent and the school district after she spoke to the media. The court reasoned that the alleged reporting of the parent to DCFS and denying of educational benefits to her children would have chilled a person of reasonable firmness from engaging in the protected speech.

***For more information regarding this decision please contact Steve Richart or contact Nancy Krent with your First Amendment inquiries.***

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