Hodges, Loizzi, Eisenhammer, Rodick & Kohn

EDUCATION EDITION

July 2007

THE Extra Mile

GOING THE EXTRA MILE SO YOU DON'T HAVE TO

HLERK Retained to File "Friend of Court Brief" In Federal Special Education Litigation-- Your professional organizations, the **National School Boards Association**, the **Illinois Association of School Boards**, the **Illinois Association of School Administrators** and the **Illinois Alliance of Administrators of Special Education** recently retained HLERK to file an "amicus brief" with the Seventh Circuit Court of Appeals in *John M. v. Evanston Township High School District No. 202*.

This matter is on appeal from a ruling of the Northern District of Illinois in which the trial court granted a "preliminary injunction" to enforce a co-taught educational program for the child as it was provided by the elementary school district. The court found that the co-taught program in the elementary district was the "stay-put" placement during the pendency of the Parents' appeal of the hearing officer's decision in favor of the District.

The High School District appealed to the Seventh Circuit, the Appellate Court governing all Illinois school districts, arguing that the Judge exceeded his legal authority by ordering a "co-taught" educational program as a "stay-put" placement notwithstanding the absence of such a program in the child's elementary district IEP (although the co-taught program was actually implemented by the elementary district).

On May 29th HLERK filed its brief on behalf of NSBA, IASB, IASA and IAASE arguing that the trial judge erred by imposing a requirement on the high school to provide an educational program, under the guise of "stay-put", that is not found in the last undisputed IEP. This position was echoed by the brief submitted by the U.S. Department

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Consumer Price Index

Percent change for the month of **May, 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	0.8	1.0
12 Mth	3.7	3.7
St. Louis-6 Mth	0.8	0.9
12 Mth	1.5	1.7
U.S. Mthly	0.6	0.8
12 Mth	2.7	2.8

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

Reminders/Notes

- The U.S. Department of Justice issued the first of several installments of a "Toolkit" to assist state and local governments in compliance with Title II of the *Americans With Disabilities Act*. It is available at http://www.usdoj.gov/crt/ada/pcatoolkit/toolkitmain.htm .
- Join **Mike Loizzi** and **Bennett Rodick** at the ISBE *Special Education Director's Conference* on August 2nd.
- Join us for the variety of Fall in-service/program opportunities summarized on the attached In-Service Form.
- The due date for District "RTI" Plans under the ISBE Special Education Regulations is January 1, 2009, not January 1, 2008 as reported in June *Extra Mile*.

U.S. Supreme Court Upholds School District Discretion to Limit Student Speech-- On June 25th the U.S. Supreme Court issued its opinion in *Morse v. Frederick*, (the "bong hits" case, See February, 2007, *Extra Mile*) ruling that school officials *did not* violate the First Amendment by restricting student speech at a school event, as the speech in question arguably promoted drug use.

This case centered on an incident at an Alaskan high school where a student held up a banner with the words "Bong Hits 4 Jesus" while standing across the street from the school during the passing of the Olympic torch for the 2002 Winter Olympics. The principal allowed the students to go outside to view the torch run during school hours.

After the student displayed the message to the crowd, the principal confiscated the banner and the student was suspended by the school for 10 days. The Supreme Court reversed the Appellate Court's decision in favor of the student, concluding that schools may take appropriate steps to protect students from speech that encourages illegal drug use.

The Court first rejected the student's argument that the off-campus banner display did not constitute school speech, reasoning that while the student displayed the banner off school property, the event occurred during school hours and was sanctioned by school administration.

The Court further held that the school administration reasonably interpreted the message on the sign to advocate illegal drug use.

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Friend of Court Cont. of Education whose input was sought out by the Appellate Court. Emphasizing the importance of this issue, a variety of parent advocacy groups sought, on June 22nd, to file an "amicus" brief in favor of the trial court's ruling. We will keep you apprised of the status of this important litigation.

For more information on this matter or to request a copy of the HLERK brief, please contact Nancy Krent, John DiJohn or Stephanie Jones.

IRS Contacting Schools Regarding 403(b) "Plans"-- On June 21, 2007, the IRS announced that it is expanding its outreach effort to ensure that public schools throughout the United States are complying with the "Universal Availability" requirement for 403(b) retirement annuities. "Universal Availability" requires that public schools, which sponsor 403(b) "plans", must offer that opportunity to all employees normally expected to work 20 hours or more per week, including substitute teachers. Specifically, the IRS has expanded its "403(b) Universal Availability Project" by sending questionnaires regarding 403(b) practices to public schools in several states including Illinois. The IRS is advising school districts that receive the questionnaire to answer it "completely and accurately" and is also claiming that it will work with any school district found to be out of compliance. School districts should be proactive and review current 403(b) practices and procedures and contact their legal counsel or service providers if any deficiencies are discovered.

For more information regarding employee benefits issues, please contact Heather Brickman or Barbara Erickson.

Illinois Appellate Court Rules that *School Code* Detachment Provision Violates EEOA-- The Appellate Court of Illinois found that an annexation/detachment provision of the *School Code* violates the *Equal Educational Opportunities Act of 1974* ("EEOA"). In *Board of Education of Joliet Township High School District No. 204 v. Board of Education of Lincoln Way Community High School District No. 210,* the court held that Section 7-2(b) of the *School Code* governing school detachments violates the EEOA.

Two families filed a petition to detach a 320 acre tract from Joliet and annex the tract to Lincoln Way. Joliet claimed that its student population consists of 60% underrepresented groups and that Lincoln Way is almost "completely Caucasian." It argued that allowing the detachment/annexation would promote racial segregation.

Section 7-2(b) provides, "the [Board] shall have no authority or discretion to hear any evidence or consider any issue except those necessary to determine whether the limitation and conditions of this Section have been met." The EEOA, however, provides, "[n]o State shall deny educational opportunity to an individual on account of his or her race, color, sex, or national origin, by . . . the assignment by an educational agency of a student to a school, other than the one closest to his or her place of residence."

The Court found that the provision barring the Board from hearing evidence regarding racial composition "is inconsistent with the express directive of the EEOA." The court held,

"[w]here the creation or expansion of such segregation exists, the issue must be as mandated by the EEOA. As drafted, section 7-2(b), however, denies the Board any opportunity to examine the issue, thereby affording a legal loophole through which the issue can be avoided under the guise of procedural compliance . . . we hold that the prohibition against hearing any evidence or considering any issue other than the compliance with the statutory criteria must be suspended by preemption and that a requirement must be read into the statute that every action taken by an educational agency that involves the assignment of a student to a school district other than the one closest to his or her place of residency must comply with the policy announced in the EEOA . . ."

This case gives school districts the ability to make arguments regarding racial composition of the districts when faced with an annexation/detachment petition, if those issues are present.

Please contact Bob Kohn or Shayne Aldridge with your detachment/annexation inquiries.

Speech Cont. The Court reasoned that the constitutional rights of students in public school are not equal to the rights of adults, and that the First Amendment does not require school districts to tolerate student speech, at school events, that advocates drug abuse. The Court rejected, though, the school district's argument that it could discipline a student for any speech not consistent with its "educational mission".

Please contact Nancy Krent or Michelle Todd for more information about this decision or with your student First Amendment issues.

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