

THE Extra Mile

GOING THE EXTRA MILE SO YOU DON'T HAVE TO

The final adoption of a state budget in August was accompanied by a host of new legislation that is immediately impacting school districts. In this issue we review three of the most important pieces of new legislation. We will review all significant new legislation affecting you at the IASA sponsored Regional Conferences on Recent Developments in School Law in October. Please visit www.hlerk.com or www.iasaedu.org to register, please note that space is limited at all three locations.

New Limits Placed on “Subcontracting” of Non-Instructional Services To Third Party Vendors— On August 17th, the Governor approved Public Act [95-0241](#) which amends Section 5/10-22.34 of the *School Code* by imposing significant restrictions on a school district’s ability to contract out non-instructional services such as transportation or food service to third party vendors.

may enter into contracts with third parties to perform non-instructional services currently being performed by any employee or bargaining unit member only upon 90 days written notice to the affected employees, provided that: (1) such contract is not entered into and does not become effective during the term of a collective bargaining agreement covering any employees who perform the non-instructional services; (2) the school

Under the statute, school districts

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Consumer Price Index

Percent change for the month of **July, 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 12 Mth	-0.3 3.1	-0.3 3.1
St. Louis-6 Mth 12 Mth	1.0 1.8	0.8 1.7
U.S. Mthly 12 Mth	0.0 2.4	-0.1 2.3

August CPI figures will be released September 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

- **HLERK is pleased to co-sponsor its annual *Rush Hour Social* at the IAASE Fall Conference in Tinley Park on September 27th. Please join us at the Social and say hello!**
- **Require student health exam and immunization compliance by October 15th unless you have set an earlier date and provided such notice to parents.**
- **Adopt your district’s final budget after completion of the public budget hearing before the end of September.**
- **Review the attached summary of upcoming HLERK/MEDS-PDN programs on vital school law issues and register today!**

New Legislation Requires Adoption Of Policy Before Collection And Utilization Of Student “Biometric” Information— Effective August 1, 2007, Public Act [95-0232](#) amends the *Illinois School Code* by adding a new provision, Section 10-20.40 (105 ILCS 5/10-20.40), entitled “Student Biometric Information” and requiring adoption of a policy.

The new law applies to all school districts that collect “biometric information” (i.e. unique behavioral or physiological characteristics, including fingerprint, hand geometry, voice, or facial recognition, or iris or retinal scans) from students and requires such school districts to adopt a policy regulating the use of such a system prior to its implementation.

Such policies, at a minimum, must address all of the following: (1) the receipt of written permission prior to collection/use; (2) the discontinuation of use of biometric information; (3) the destruction of biometric information; (4) a declaration of the permitted uses of biometric information; (5) a prohibition on the disclosure of biometric information; and (6) the protection of biometric information.

Additionally, this new law expressly prohibits a school district

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Subcontractor Restrictions Cont. district performs a comparison of its cost projections for continuing to perform the services against the cost projections of a third party to perform the services; (3) the school district reviews and considers all third party bids in open session; (4) the school district holds at least one public meeting to discuss its proposal to contract out the non-instructional service(s); (5) the third party vendor is required to offer available positions to school district employees terminated as a result of the decision to subcontract; and (6) the third party contract must contain a provision requiring the contractor to comply with a policy of nondiscrimination and equal employment opportunity for all persons.

In addition to the above restrictions, third party vendors that submit bids to perform the non-instructional service must provide: (1) evidence of liability insurance to the school district; (2) their employees with a benefits package “comparable” to the benefits package school district employees who performed the services re-

ceived; (3) information concerning its workforce, including the wages to be paid to their employees; (4) a three year cost projection which cannot be increased if the bid is accepted, and (5) criminal background information regarding its employees.

School districts may avoid the above restrictions, and may enter into a short term contract (not longer than three months) with a third party to perform non-instructional services currently performed by an employee or bargaining unit member to supplement the current workforce in response to an emergency situation that threatens the safety or health of the school district's students or staff, provided that the school board meets all of its obligations under the IELRA.

This new legislation alters the legal landscape as it relates to “contracting out” issues. Please contact Mike Loizzi or John Di John with questions concerning the legislation and its impact on your school district. .

Legislature Requires IEP Teams to Consider and Address Specific Factors in IEPs for all Autistic Students— Effective January 1, 2008, Public Act [95-0257](#) amends Section 14-8.02 of the *School Code* to require IEP teams to consider seven specific factors when developing an individualized education program for a student who has a disability on the autism spectrum (which includes autistic disorder, Asperger's disorder, pervasive developmental disorder not otherwise specified, childhood disintegrative disorder, and Rett Syndrome).

These factors are: (1) the verbal and nonverbal communication needs of the child; (2) the need to develop social interaction skills and proficiencies; (3) the needs resulting from the child's unusual responses to sensory experiences; (4) the needs resulting from resistance to environmental change or change in daily routines; (5) the needs resulting from engagement in repetitive activities and stereotyped movements; (6) the need for any positive behavioral interventions, strategies, and supports to address any behavioral difficulties resulting

from autism spectrum disorder; and (7) other needs resulting from the child's disability that impact progress in the general curriculum, including social and emotional development.

The legislation provides that this amendment does not create any new entitlement to a service, program, or benefit, but also must not affect any entitlement to a service, program, or benefit created by any other law.

HLERK will discuss the impact of this legislation at the upcoming IASA sponsored Regional Conferences and, in greater depth, at the upcoming MEDS-PDN programs on special education law. Visit www.hlerk.com to register. Please contact Bennett Rodick, Nancy Krent or Jay Kraning with questions.

In addition, please join Jay, Bennett, Stan Eisenhammer and Stephanie Jones who will present on new legal issues on Thursday, September 27th at the IAASE Fall Conference in Tinley Park. Visit www.iaase.org to register.

Biometric Information Policy Cont. from refusing to provide any services otherwise available to the student because of the legal custodian's (or the student if 18 years old) failure to provide written consent for the collection and use of the student's biometric information.

School districts that currently collect and utilize such information should contact their legal counsel immediately.

To obtain an in-depth overview of this new law, contact Terry Hodges or John Di John.

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