



Happy Holidays from HLERK!

As we end 2008 we wish to thank all of our clients and friends for placing their trust and confidence in our firm. We especially wish to thank the many new school districts and cooperatives who joined our client family in 2008 and entrusted us with their legal needs.

2009 promises to be a challenging year for Illinois public school districts as the financial tsunami washes ashore, a new administration and Congress address national education policy and school districts begin to implement a variety of new ISBE and legislative requirements. We hope you continue to use *The Extra Mile* to help you navigate the school law challenges which 2009 will bring.

Of course, with the holidays and winter break rapidly approaching, all of us at Hodges, Loizzi offer you our best wishes for a happy, safe and healthy holiday season.

Department of Education Issues Final IDEA Withdrawal of Consent Regulations--On December 1, 2008, the U.S. Department of Education issued the final regulations for Part B of the *Individuals with Disabilities Education Act*, 34 CFR Part 400. The final regulations make several significant changes to the rules regarding the revocation of parental consent for students to receive special education services.

With the adoption of the new regulations, parents may revoke consent for special education services *after* their child has been receiving such services, so long as the revocation is in writing. After receiving the parent's written revocation, a school district *must* provide the parent with written notice of the termination of special education services for their child conforming to federal regulation, prior to terminating such services.

More importantly, the public agency *may not* utilize mediation or due process procedures to challenge the parent's revocation of consent nor is the public agency required to convene an IEP meeting or develop a new IEP.

This revision constitutes a substantial change from the previous IDEA (and ISBE) regulations, where school districts could challenge a parent's revocation.

Continued on Page 2

Consumer Price Index

Percent change for the month of **November, 2008**, for the urban wage earners & clerical indices as reported by the Bureau of Labor Statistics.

	All Urban (CPI-U)	Workers (CPI-W)
Chicago-Mthly	-2.0	-2.3
12 Mth	0.6	0.6
St. Louis-6 Mth	2.0	2.3
12 Mth	3.2	3.6
U.S. Mthly	-1.9	-2.3
12 Mth	1.1	0.7

December CPI figures will be released January 18, 2009. For the most recent CPI, visit our website at: 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

- **The IRS on December 11th issued a Notice extending the deadline for adoption of a written 403(b) plan from January 1, 2009 to December 31, 2009, provided that there is reasonable operational compliance, considering the new regulations, during 2009. The impact of the Notice will be discussed at the upcoming MEDS-PDN programs on *Employee Benefits Overview in Illinois*. Visit www.hlerk.com for on-line registration.**
- **Remember your January 1 deadline for submitting your District's RtI plan to ISBE. Contact Stephanie Jones with your RtI inquiries.**

Offices:
 Arlington Hts. 847-670-9000
 Springfield 217-546-9200
 Belleville 618-355-7850

IDEA Cont. However, in the event a parent revokes consent for special education services, the school district is *not* required to amend the child's education records to remove any reference to the child's previous receipt of special education services. The final regulations also provide that a school district will *not* violate *IDEA* in failing to provide FAPE to an otherwise eligible child.

The regulations include several other notable amendments. The final regulations now permit a school district, or any party, to be represented by a non-attorney at a due process hearing. In *IDEA*'s previous regulations, only parents could be represented by a non-attorney at hearing.

Moreover, the final regulations amend timelines in the

Department's state monitoring process, requiring that a school district achieve corrective action within a one-year timeframe if identified for non-compliance with *IDEA* or its implementing regulations.

The new federal regulations supersede the Illinois State Board of Education's regulations, which currently permit school districts to utilize the mediation and/or due process procedures to challenge a parent's revocation of consent for their child to receive special education services. ISBE has not issued a Guidance regarding the amended federal regulations.

The final regulations can be found at www.ed.gov/news/fedregister. If you have questions regarding the regulations or their impact on your school district, please contact Bennett Rodick or Michelle Todd.

Illinois Supreme Court to Decide Freedom of Information Act ("FOIA") Court Ruling--The Illinois Supreme Court has decided to hear an appeal involving a question which has divided the Illinois Appellate Court: whether employment contracts are subject to public release under FOIA. The case is entitled *Stern v. Wheaton-Warrenville Community Unit School District 200*, and the lower and appellate court decisions in this case were reported in our previous newsletters. (See [June](#) 2008 and [April](#) 2007 *Extra Mile*.)

As reported in our April 2007 *Extra Mile*, a trial court in DuPage County initially held that a retired Wheaton-Warrenville superintendent's employment contract was exempt from disclosure under the FOIA *per se* as a part of the superintendent's personnel file. This was consistent with the reasoning of the Third District Appellate Court in *Copley Press, Inc. v. Board of Education for Peoria School District No. 150*, (See [October](#) 2005 *Extra Mile*), which held that a Peoria superintendent's performance evaluations and reasons for dismissal were a part of her personnel file and were *per se* exempt from disclosure.

However, as reported in our June 2008 *Extra Mile*, the Second District Appellate Court disagreed with the trial court's analysis on appeal. The appellate court in *Stern* relied on the Fourth District Appellate Court's decision

in *Reppert v. Southern Illinois University* (See [October](#), 2007, *Extra Mile*), which held that public employees' employment contracts were not *per se* exempt and, thus, subject to disclosure under FOIA. The Second District noted that the contract contained information bearing on the public duties of a public employee, and wrote, "we decline to hold that, merely because an item is contained in a personnel file, it is *per se* exempt."

According to the Second District, the trial court should have determined, through an *in camera* inspection of the file, whether the requested information was exempt as a clearly unwarranted invasion of personal privacy, and whether the presence of exempt private information could be cured through redaction. In addition, the Second District noted that the superintendent had previously released the contract to local newspapers, which may have waived the exemption.

On November 26, 2008, the Illinois Supreme Court accepted the case.

HLEK recently completed a series of MEDS-PDN programs regarding FOIA. Persons desiring to purchase the CD and materials from this program should contact MEDS-PDN at 715.836.9900 or visit www.meds-pdn.com. Contact Rob Swain or Steve Richart for questions regarding the impact of Stern on your school district or other FOIA inquiries.

CONTACT US:
info@hlerk.com

3030 Salt Creek Lane . Suite 202 . Arlington Heights, Illinois 60005
3048 Spring Mill Drive . Springfield, Illinois 62704
23 Public Square . Suite 260 . Belleville, Illinois 62220