

THE
Extra Mile
GOING THE EXTRA MILE SO YOU DON'T HAVE TO

Americans with Disabilities Act Amended to Allow More People to Qualify as “Disabled”--On September 25, 2008, President Bush signed into law the [ADA Amendments Act of 2008](#) (“Act”), which is effective January 1, 2009. The Act amends the *American with Disabilities Act* (“ADA”) by broadening the class of individuals who may be determined to be “disabled.”

The Act redefines “disability” by specifically rejecting the Supreme Court rulings in [Sutton v. United Air Lines](#), and in [Toyota Motor Manufacturing, Kentucky, Inc. v. Williams](#).

In *Sutton*, the Supreme Court held that corrective and mitigating measures should be considered when de-

termining whether a person qualifies as “disabled” under the ADA. The Supreme Court found in *Sutton* that a person was not “disabled” under the ADA because wearing corrective contact lenses fully corrected that person’s vision impairment.

In *Toyota*, the Supreme Court held, among other things, that the terms “substantially” and “major” in the ADA definition of “disability” are to “be interpreted strictly to create a demanding standard for qualifying as disabled.” Both of these cases narrowed the scope of individuals who fell under the protections of the ADA.

The Act, however, specifically

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Join HLERK at the Joint Conference!--We are pleased to announce a wide variety of programs at the [IASA/IASB/IASBO Joint Conference](#) in November, both at the Conference itself as well as the Illinois Council of School Attorneys School Law Program. Join us at the following Joint Conference programs:

Legal Aspects of E-Communication featuring **Stephanie Jones** on Saturday, November 22nd at the Swissotel at 1:30 p.m.

Carousel of Panels — Hannah Montana to Sweeney Todd: Hiring, Evaluating and Possibly Firing Your Principal featuring **Shayne Aldridge** on Saturday, November 22nd at the Sheraton also at 1:30 p.m.

The Powers that Be: A Primer on School Board Powers and Duties featuring **Heather Brickman** and **Cindi DeCola** on Saturday, November 22nd at the Hyatt in the Columbus I/J Ballroom at 1:30 p.m.

Finally, join us on Sunday, November 23rd for *Coffee and Conversation* at the *Legally Stumped* program at the Hyatt, Columbus E/F Ballroom at 8:00 a.m. **Heather Brickman** will chair a panel of HLERK's early risers, including **Terry Hodges, Michael Loizzi, Nancy Krent, Ellen Rothenberg and James Levi**. Give us your best shot!

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Consumer Price Index

Percent change for the month of **September, 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	-0.2	-0.2
12 Mth	4.4	4.8
St. Louis-6 Mth	2.0	2.3
12 Mth	3.2	3.6
U.S. Mthly	-0.1	-0.1
12 Mth	4.9	5.4

October CPI figures will be released November 18, 2008. 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

- Due to overwhelming demand, the location of the November 13th **HLERK/MEDS-PDN** program on *Special Education Law* has been changed to the **Chevy Chase Country Club, 1000 North Milwaukee Avenue in Wheeling**. Visit www.hlerk.com or www.meds-pdn.com for on-line registration for all of the HLERK/MEDS-PDN programs on special education, Section 504, Open Meetings and Freedom of Information Acts and employee benefits.
- School districts/joint agreements must make their Annual Statement of Affairs public by December 1 by submitting it to ISBE for posting on the ISBE website, having copies available at the main office, and publishing a summary in the newspaper. See [P.A. 94-875](#) for more details.

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

Joint Conference Cont.

In addition to our Joint Conference activities, **Heather Brickman** will chair the Illinois Council of School Attorneys program on school law at the Hyatt on Friday, November 21st.

Joining Heather will be **Bennett Rodick** and **Stan Eisenhammer** who will present on the labor law implications of ISBE's new work load and class size requirements while **Barbara Erickson** will join **Heather** in discussing tax and TRS implications for administrator employment contracts.

We look forward to seeing you at the Joint Conference. Please join us at each of the above programs.

ADA Cont.

overrides these holdings by stating that “while Congress expected that the definition of disability under the ADA would be interpreted consistently with how courts had applied the definition of a handicapped individual under the *Rehabilitation Act of 1973*, that expectation has not been fulfilled.” One of the purposes of the Act, therefore, is to reinstate a “broad scope of protection to be available under the ADA.” Consequently, more persons will likely qualify as disabled and be afforded the protections under the ADA.

School districts should contact their attorneys to

discuss what changes may need to be made to their medical certification forms and disability policies as well as to discuss any requests by employees for reasonable accommodations.

For further information on the ADA Amendments and to discuss how this will impact your school district, please contact Ellen Rothenberg. In addition, we will discuss potential impacts on student issues at the upcoming HLERK/MEDS-PDN program on Section 504 scheduled for January 29th in Orland Park. Visit www.hlerk.com to register.

School Code Bidding Statute Amended/Judicially Clarified--In a significant victory for school districts, the Illinois Appellate Court has upheld a school board’s decision not to bid a contract for energy delivery. *Tarsitano v. Bd. of Educ. of Township High School District 211*, No. 1-07-2041 (09/30/2008).

The statutory language of Section 10-20.21(a)(xiii) of the *School Code* provides that “contracts for goods or services which are **procurable from only one source**, such as for the purchase of magazines, books, periodicals, pamphlets and reports, and for **utility services** such as water, light, heat, telephone or telegraph” (emphasis added) are exempted from bidding.

The plaintiff argued that the language “procurable from only one source” modifies the term “utility services”; and since the district’s energy contracts were economically procurable from *more than one source*, they were therefore subject to public bid.

The court, however, agreed with the district’s interpretation of the statute’s language and held that “the Dis-

trict’s no-bid vendor contracts are specifically exempt from the competitive bidding provision of the *School Code*.”

In addition, the bidding statute has been revised by P.A. 95-990, eff. 10/3/08. The new law increases the threshold for contracts that must be bid. Previously boards had to bid any contract for the purchase of supplies, materials, or work, or for any transportation contracts, subject to numerous exceptions, if they involved an expenditure of more than \$10,000. Under the new law, those contracts would need to be bid only if they involve an expenditure in excess of \$25,000, or a lower amount if required by board policy. The bill leaves the current bidding exemptions in place, except that the exemption for certain repair, maintenance, remodeling renovation, construction, or single project contracts involving an expenditure of \$20,000 or less is increased to apply instead to projects of \$50,000 or less. Other than the increased thresholds, the bidding process remains the same.

For questions regarding the above matters, or bidding questions generally, please contact Bob Kohn.

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