

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

Welcome Back for the 2009-2010 School Year!--The new school year promises to present a variety of important and complex legal challenges including developing and implementing your Rtl plans, and implementing new special education class size rules and special educator "work load" plans.

This school year also promises the challenge of implementing a newly re-written and broadened *Freedom of Information Act* and important changes to the *Open Meetings Act*. In addition, the federal *No Child Left Behind Act* is due for reauthorization.

In this complex and ever-changing legal environment, our annual, **Illinois Association of School Admin-**

istrators-sponsored October conference, *The Year in Review: The Highlights and Lowlights of Illinois School Law 2009*, is vital for all school administrators and board members.

We are pleased to announce that *online registration* is available at www.iasaedu.org. We are expecting record demand and attendance at all three locations and space is limited. Please make your reservation as soon as possible.

If you missed **Jay Kraning** as a featured speaker at the annual ISBE Special Education Directors' Conference, you can attend Jay's and **Bennett Rodick's** programs at the *Continued on Page 2*

Illinois Federal Court Rules that District Provided FAPE to Unilaterally Placed Child-- In last month's issue, we discussed the new U.S. Supreme Court decision expanding parent rights to reimbursement for unilaterally made special education placements. The Court there emphasized that the parents must, of course, first prove that the school district denied their student a free, appropriate, public education.

In a major victory for Illinois school districts, a federal judge recently ruled in *James D. v. Aptakisis-Tripp Community Consolidated School District #102* (2009 WL 2178431 July, 22, 2009), that an elementary school district provided FAPE to a learning disabled student with low-average intelligence where the child made slow but steady academic progress over several years in district programs. Accordingly, the district did not have to pay for the parents' unilateral placement of their daughter at a private day school.

In *James D*, **Jay Kraning and Debra Kaplan** successfully defended the parents' appeal of a due process decision previously issued by an ISBE hearing officer in favor of the district (also successfully defended by **Jay Kraning and Debra Kaplan**). The parents raised a variety of issues important to all school districts facing possible due process hearings:

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Consumer Price Index

Percent change for the month of **June, 2009**, 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	0.6
12 Mth	-2.2	-2.5
St. Louis-6 Mth	-0.9	-1.3
12 Mth	-0.5	-1.0
U.S. Mthly	0.9	1.1
12 Mth	-1.4	-2.0

July CPI figures will be released August 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

- **To assist school districts in meeting their legal requirements, the U.S. Department of Education's Office for Civil Rights is offering their 2009 Civil Rights Seminar: Ensuring Equal Access and Promoting Educational Achievement and Excellence for All Students on Friday, August 14, 2009. For more information, please contact Karen Mines at 312-730-1560 or email her at Karen.Mines@ed.gov. Visit www.hlerk.com for a registration form.**
- **Remember to provide programming regarding the U.S. Constitution the week of September 17th in honor of the Constitution's birthday.**

Offices:

Arlington Hts. 847-670-9000
Belleville 618-355-7850

Welcome Back Cont. Illinois Alliance of Administrators of Special Education's Fall Conference on September 24th and 25th. Visit www.iaase.org for information and registration. HLERK will be co-hosting a reception for all attendees on September 24th. We look forward to seeing you there.

Finally, if you have not yet registered to receive *The*

Extra Mile by email, or ordered your copies of HLERK's acclaimed and entirely new edition of *A School Board Member's Handbook*, order forms are attached for your convenience.

All of us at HLERK wish you an educationally successful 2009-10 school year. Thanks for reading The Extra Mile.

It's "Audit Letter Season" Again--Each year HLERK receives a large number of requests for audit response letters from our ever-growing number of clients. We are asked to identify pending or threatened litigation and claims and to confirm certain matters related to the district's disclosure of unasserted claims.

Our firm's responses must be tailored to the scope of specific auditor requests and must be in accordance with complex ethics guidelines, acknowledging the importance of maintaining public confidence in school financial statements. This year many school districts

also face enhanced audit requirements due to the ARRA.

Although we expedite matters internally, *the required due diligence does not allow for immediate, form letter responses.* In the event an auditor notifies us of a need for an accelerated response deadline, we will work with him or her to ensure that the district's audit timeline is met.

If you have any questions regarding the audit response process for your district, please do not hesitate to contact Stephanie Jones or Heather Brickman.

FAPE Cont. (1) Did the third grade student make sufficient academic progress to be able to obtain a meaningful educational benefit where her progress was quite slow, especially in comparison to her peers? (2) Did the district properly consider a private outside evaluation where the staff reviewed it but did not discuss it in any depth? (3) Was the district required to allow the parents' private evaluator access to observe the district's program before the due process hearing and without the student present? and (4) Did the district "pre-determine" the student's placement due to an alleged district bias against private placements?

The court ruled in the district's favor on all counts. With respect to the student's academic progress in reading and math, the court found that despite continued IEP goals, the child was making sufficient progress towards mastery of the goals, in light of her individual abilities. Further, although she was advancing much slower than her peers, she was still making individual academic progress, and other test scores and testimony supported that progress.

Next, the court found that the district properly considered a private evaluator's report where the IEP team took the time to review the report between IEP meet-

ings and rejected it at a later meeting. The court held that Federal regulations did not require a "substantive discussion" of the outside evaluation.

The court next found that the parents failed to cite any law indicating that the hearing officer had the power to grant the parents access without the student present; moreover, an observation without the student present would not be particularly helpful.

Finally, the court discredited the parents' argument that the district harbored a "bias" against private placement. The evidence showed that the district considered a variety of placement options for the student. Importantly, the court stated that the district was not required to "offer parents a variety of placement options and allow them to choose" but, rather, the IDEA only requires that school districts have a continuum of placements "available." The court also found that the district's program complied with the "least restrictive environment" requirement of IDEA, because the child had the opportunity to interact with non-disabled peers in her non-academic classes.

Please contact Jay Kraning or Debra Kaplan with questions regarding the application of this decision to your school district.

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