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EDUCATION EDITION

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THE Extra Mile

GOING THE EXTRA MILE SO YOU DON'T HAVE TO

Seventh Circuit Finds School District Not Liable under Title IX or Illinois Law for Teacher's Sexual Abuse in Another District--In *Jane Doe-2 v. McLean County Unit School District No. 5*, No. 09-1936 (7th Cir. 2010), the Seventh Circuit Court of Appeals held that McLean County School District No. 5 was not liable under Title IX or state "tort" law for its failure to warn a subsequent employing school district that a teacher formerly employed by District 5 had engaged in inappropriate conduct with female students.

A former District 5 teacher, John White, was ultimately convicted of sexually abusing several female students at both District 5 and his subsequent employer. The Plaintiff identified District 5 school officials and alleged that they were aware of several parent and student complaints regarding the abuse while the teacher was employed by District 5.

According to the Complaint, District 5 allowed White to resign and entered a severance agreement with him. Three District 5 officials also provided White a positive letter of recommendation that mentioned nothing about the abuse.

After White began teaching elementary school for Urbana, District 5 sent a "Verification of Teaching Experience" stating White taught at the district for three complete school

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Consumer Price Index

Percent change for the month of **December, 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	-0.5	-0.5
12 Mth	2.5	2.9
St. Louis-6 Mth	-0.9	-1.3
12 Mth	-0.5	-1.0
U.S. Mthly	-0.2	-0.1
12 Mth	2.7	3.4

January CPI figures will be released February 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

- **Remember your statutory and CBA deadlines for reductions-in-force or dismissal of certificated or educational support employees. Contact Ellen Rothenberg or Tina Christofalos with your evaluation, dismissal or RIF inquiries.**
- **Review the necessity for administrative reclassifications or nonrenewal of employment contracts and take any necessary action prior to April 1, 2010.**
- **HLERK congratulates our former colleague Sonja Trainor on joining the NSBA's Office of General Counsel in Washington D.C. as Associate General Counsel. Sonja practiced with HLERK until her relocation to the Washington D.C. area.**

New Law Bans Disclosure of Evaluations and Places Stringent Requirements on Teacher and Principal Evaluation Plans--Less than a month after the effective date of sweeping FOIA reform, the legislature passed SB 315 (P.A. 96-0861) banning the disclosure of performance evaluations of teachers, principals and district superintendents, effectively negating the obligation to disclose such evaluations pursuant to a FOIA request.

Known as the *Performance Evaluation Reform Act of 2010*, this new law's focus is to bring evaluation practices in line with the federal Race to the Top criteria and contains many structural changes to the evaluation process for certificated staff.

Although the law was generally effective on January 15, 2010, it contains specific, delayed implementation dates for various requirements, and prohibits application for waiver of those requirements after such implementation dates.

By the applicable implementation dates listed in the law, each school district must incorporate into its evaluation plan the use of data and indicators of student growth as a significant factor for evaluating the performance of teachers and principals. School districts are also required to use a joint committee, composed of members equally selected by the

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Evaluations Cont. district and its teachers or, where applicable, the exclusive bargaining representative of its teachers, in determining how student growth data will be incorporated into the performance evaluation plan.

By no later than September 1, 2012, evaluation plans must ensure that both principals and non-tenured teachers are evaluated each school year and tenured teachers are evaluated once every two years. Tenured teachers who receive a rating of "needs improvement" or "unsatisfactory" must be evaluated at least once in the school year following receipt of such rating. And, on or after September 1, 2012, tenured teachers and principals must be rated as either "excellent," "proficient," "needs improvement," or "unsatisfactory," with a mandatory professional development plan to follow a rating of "needs improvement." Prior to that date, tenured teachers may be evaluated under either this new four-category rating system or the existing rating system of "excellent," "satisfactory" or "unsatisfactory." The law also changes the training cycle for evaluators and will require ISBE pre-qualification of evaluators.

Contact Terry Hodges or Cindi DeCola with inquiries.

Abuse Cont. years and failed to mention the alleged abuse. White taught second grade at Urbana School District for two years. During that time, he was convicted of sexually abusing several of his female students. Following his arrest in 2007, he pled guilty to aggravated criminal sexual abuse of two of his McLean students and eight of his Urbana students, including the Plaintiff.

Plaintiff, through her mother, sued District 5 claiming the district was liable under Title IX because the district's concealment of White's sexual abuse amounted to a "deliberate indifference" to the safety of students in Urbana. The district court dismissed both claims.

The Seventh Circuit affirmed, finding District 5 lacked sufficient control over the teacher and the context in which known abuse occurred. Title IX prohibits sex-based discrimination under any educational program receiving federal funding. Title IX allows the plaintiff to recover if the district acts with "deliberate indifference" to the harassment. To prove deliberate indifference, plaintiff must show the district exercised "actual knowledge" of the harassment and "substantial control over both the harasser and the context in which the known harassment occurs." District 5 lacked control because White's abuse of the Plaintiff occurred after he left the district, when it no longer had supervisory authority to prevent the conduct.

The court also dismissed Plaintiff's state law claim of willful and wanton misconduct. The court found that District 5 had no duty to protect the Plaintiff. Furthermore, McLean's failure to report the abuse under the *Illinois Abused and Neglected Child Reporting Act* (ANCRA), did not create any duty to the Plaintiff.

In dismissing the Complaint, the court emphasized that:

> …[W]e emphasize that nothing in our decision today should suggest that school districts can quietly shuffle abusive teachers on to the next district with impunity. ANCRA imposes criminal penalties for willful violations of its reporting requirements, (citation omitted), which we trust will give Illinois school officials an extra incentive (if they needed one) to disclose their teachers' known acts of sexual harassment.

Please note that sections 5/10-21.9 and 21-23a of the *School Code* have recently been amended to require district superintendents to notify the State Superintendent of Education and regional superintendent if he or she has "reasonable cause" to believe a teaching certificate holder committed an intentional act of abuse or neglect and if the act resulted in the certificate holder's *dismissal or resignation*. Written notice must be sent within 30 days after the dismissal or resignation.

Allegations of employee misconduct create significant legal implications for school districts. Contact Ellen Rothenberg or Cindi DeCola with your personnel related inquiries.