Hodges Loizzi Eisenhammer Rodick & Kohn LLP

EDUCATION EDITION

February 2011

THE Extra Mile

GOING THE EXTRA MILE SO YOU DON'T HAVE TO

HLERK Opens Peoria Office/Beth Jensen Joins Firm as Resident Partner--HLERK is pleased and proud to announce the opening of its Peoria office to serve our Peoria area and central Illinois clients. In addition, HLERK is pleased to announce that **Beth Jensen**, former assistant corporation counsel for the City of Peoria and long time attorney representing the Peoria Public Schools, is joining HLERK as our resident partner in Peoria. HLERK now has three offices servicing over 150 school district and cooperative clients statewide. **Please contact Beth or Stan Eisenhammer with questions concerning our Peoria office**.

School Districts Cannot Be Sued for Alleged Violations of Illinois' Safe Schools Law--In *Deon H., et al. v. Board of Education of the Argo Community High School District 217, et al.*, 2011 WL 167237 (N.D.Ill. 2011), a federal district court judge dismissed two claims brought against the school district alleging violations of the *Safe Schools Law*. The claims alleged that Argo Community High School District 217 officials failed to create an "alternative education plan" for two students as required by the law when

Continued on Page 2

Consumer Price Index

Percent change for the month of **December 2010,** for the urban wage earners & clerical indices as reported by the Bureau of Labor Statistics.

	All Urban (CPI-U)	Workers (CPI-W)
Chicago-Mthly	0.3	0.4
12 Mth	1.2	1.6
St. Louis-6 Mth	1.3	1.4
12 Mth	2.5	2.7
U.S. Mthly	0.2	0.2
12 Mth	1.5	1.7

January CPI figures will be released February 14, 2011. 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

- HLERK congratulates our partner **Nancy Krent's** recognition by her peers as an Illinois 2011 "Super Lawyer" by *Illinois Super Lawyer Magazine.* Nancy joins **Terry Hodges**, **Mike Loizzi**, **Stan Eisenhammer** and **Bennett Rodick** in having been recognized for excellence by their peers.
- 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, 2011.

Moment of Silence Mandatory in Schools--On January 13, the U.S. District Court lifted its injunction against implementation of the "Moment of Silence" law thus requiring all Illinois public school classroom teachers to observe a brief period of silence with students at the beginning of every school day.

The injunction, which had been in place since 2008, barred implementation of the *Silent Reflection and Student Prayer Act* (105 ILCS 20/0.01 et seq.) ("Act"). According to the Act, the time is an opportunity "for silent prayer or for silent reflection on the anticipated activities of the day." 105 ILCS 20/1.

The Act has an interesting history. In 2007, the Illinois General Assembly amended the Act to require that teachers observe a period of silence at the beginning of every school day. The amendment was challenged on the grounds that the law violated the First Amendment and was unconstitutionally vague because it did not specify how the period of silence was to be implemented or the penalties for not complying.

In 2008, the district court held that Section 1 of the Act violated the First Amendment because it was an endorsement of religion aimed at introducing prayer in school and was unconstitutionally vague. The district court granted an injunction,

Continued on Page 2

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Safe Schools Law Cont. the students were transferred to an alternative school. As part of the lawsuit, damages were being sought for violations of the *Safe School Law* contained within Section 13A of the *School Code* at 105 ILCS 5/13A-0.5 *et seq*.

In dismissing the claims, the court found that the purpose behind the *Safe Schools Law* is to protect rule-abiding students in the traditional school program by removing "disruptive students," defined as students who "have been found to be eligible for suspension or expulsion through the discipline process by a school district." 105 ILCS 5/13A-1, 13A-2.5. The law provides for the creation of alternative school programs and the administrative process by which a student who is subject to suspension or expulsion may be immediately transferred to the alternative program. 105 ILCS 5/13A-3, 13A-4.

The court held that, although the *School Code* may impose a monetary penalty for any negligent or willful violation of its provisions, it does not expressly create a "private right of action" (*i.e.* a right to sue) for damages for any such violation. 105 ILCS 5/22-8.

In determining that there is no implied private right of action under the *Safe Schools Law*, the court reasoned that the statute's general purpose does not suggest an intent to create such a remedy. Furthermore, the law was enacted to address problems affecting the school system as a whole, not any identifiable class of students. If a class of students was to benefit, it would be "those students who have not been expelled or suspended"—a class in which the two students here would not fall.

Additional counts in this action are either still pending or may be refiled against the district.

As schools struggle with discipline decisions, this decision is a welcome limitation on lawsuits involving students transferred to "safe schools." Contact Jay Kraning or Michelle Todd with your student discipline inquiries.

Moment of Silence Cont. permanently enjoining school districts from implementing or enforcing the Act.

The State Superintendent of Education appealed the district court's decision to the U.S. Court of Appeals for the Seventh Circuit. On October 15, 2010, a three-judge panel of the court of appeals voted 2-1 to reverse the district court's decision that Section 1 of the Act was unconstitutional. The Seventh Circuit upheld the Act because it does not specify that the time be used for prayer and because the moment of reflection has both secular and practical purposes in settling down students at the start of the school day. The court stated, "[N]othing in the text . . . limits students' thoughts during the period of silence; the text mandates only one thing—silence."

In addition, the court of appeals held that the Act was not unconstitutionally vague because the Constitution does not require exact specificity. The court reasoned that after reviewing the school district's way of implementing the mandatory period of silence, any student of ordinary intelligence would understand what was expected. The court remanded the case back to the district court with instructions to enter judgment in favor of the defendant.

The plaintiff petitioned the court of appeals for rehearing before the full court, which the court denied in December. On December 30, 2010, the court issued a mandate requiring the district court to lift the injunction on the Act's implementation. The plaintiff has indicated that he intends to seek review in the United States Supreme Court, although the Court is not required to hear the case.

School boards should contact their legal counsel for guidance in applying this ruling and implementing the requirements of the Act in their districts.

Visit www.hlerk.com for Frequently Asked Questions regarding the *Silent Reflection and Student Prayer Act*.

Please contact Vanessa Clohessy or Nancy Krent for more information concerning implementation of the Act in your school district.

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Peoria, Illinois Coming Soon!