Hodges Loizzi Eisenhammer Rodick & Kohn LLP

THE Extra Mile

GOING THE EXTRA MILE SO YOU DON'T HAVE TO

EDUCATION EDITION

August 2012

Welcome Back to the 2012-2013 School Year!--A brutally hot summer is sweeping by and, like you, we are preparing for the start of the new school year. With this issue, we welcome you back to what promises to be a challenging environment for Illinois school districts.

For those of you receiving this issue via email, you will see our new electronic format. We welcome your thoughts and comments on the format and how we can improve the *Extra Mile*. You will also find enclosed with this issue a form you can submit to receive the email edition or you can sign up at www.hlerk.com.

In this school year, all school districts and cooperatives will continue the implementation of the massive "education reform" legislation (See Notes, below). As you know, every aspect of school district operation is impacted by the SB7 and PERA legislation and ISBE has just adopted new teacher evaluation and tenured teacher dismissal regulations.

In addition, school districts continue to face the ongoing state financial crisis.

In this remarkably complex environment, we are pleased to continue serving *your* professional organizations at the federal, state and local

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Consumer Price Index

Percent change for the month of **June 2012,** for the urban wage earners & clerical indices as reported by the Bureau of Labor Statistics.

	All Urban (CPI-U)	Workers (CPI-W)
Chicago Mthly	-0.1	-0.2
12 Mth	0.9	0.5
St. Louis, 1st Half		
6 Mth	1.4	1.5
12 Mth	2.6	2.7
U.S. Mthly	-0.1	-0.2
12 Mth	1.7	1.6

July CPI figures will be released August 14, 2012. 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

- **ISBE regulations governing dismissal of tenured teachers under SB 7 and PERA became effective on July 25th. The new rules will apply to cases where the district issued the "notice of charges" on July 1st or later.**
- **Remember your September 1st deadline to implement a teacher evaluation plan which rates all teachers in one of four categories as well as a variety of other requirements. Contact any of HLERK's personnel/ labor attorneys with your SB 7 or PERA inquiries.**
- **We are pleased to celebrate the one year anniversary of the opening of our Peoria office.**

Illinois Appellate Court Reinstates Lawsuit Challenging Constitutionality of Amendment to Public Labor Relations Act--On July 25, 2012, Peoria School District 150 won a major victory in its challenge to the constitutionality of Public Act 96-1257 ("Act"), which amended the Illinois *Public Labor Relations Act* ("IPLRA") to remove peace officers "employed by a school district in its own police department" from the jurisdiction of the Illinois *Educational Labor Relations Act* ("IELRA") and place them under the jurisdiction of the IPLRA.

The Act gives peace officers the right to go to interest arbitration as opposed to the right to strike.

In *Board of Education of Peoria School District 150 v. Peoria Federation of Support Staff*, 2012 Ill. App. 110875 (4th Dist.), successfully argued by **Stan Eisenhammer, Beth Jensen** and **Chris Hoffmann,** the Illinois Appellate Court held that District 150 stated a valid claim that the Act violates the Illinois Constitution's prohibition against "special legislation."

This case arose when the union that represents the security officers employed by District 150 filed a representation petition with the Illinois Labor Relations Board. The union had previously been certified under the IELRA; however, the union contended that the Act placed the security

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IPLRA Cont. officers under the jurisdiction of the IPLRA. Soon after the union filed the representation petition, District 150 filed suit in circuit court seeking declaratory and injunctive relief because the Act was unconstitutional special legislation and sought an injunction that would bar the Illinois Labor Relations Board from asserting jurisdiction over labor relations between District 150 and the union.

On the Act's effective date, District 150 was the *only* school district in the state that even arguably employed peace officers in its own police department. District 150 argued that the Act violated the special legislation clause because it was intended to apply only to District 150 and its relations with its security officers and, by its own terms, would never apply to school districts that created a police department and employed peace officers after the Act's effective date.

District 150 contended that there was no rational basis for distinguishing between school districts based upon when the district began employing peace officers.

The Illinois Labor Relations Board and the Illinois Educational Labor Relations Board joined the suit to argue in favor of the legislation. The Boards filed a motion to dismiss District 150's complaint, which was granted by the circuit court.

District 150 then appealed the case to the Fourth District Appellate Court. The appellate court reversed the circuit court's decision and remanded the case back to the circuit court for further proceedings. In its opinion, the court agreed with District 150, stating "No legitimate state interest identified by the parties—and none we can conceive of—accounts for the closing of the affected class by reference to the statute's effective date."

As "education reform" legislation is implemented, litigation regarding labor and personnel issues, as well as legislative amendment efforts, is likely to follow. Contact Stan Eisenhammer regarding your labor law and litigation inquiries.

Welcome Cont. levels. First and foremost, online registration is available for the IASA/HLERK conferences, *The Year in Review: The Highlights and Lowlights of Illinois School Law 2012*. Dates and locations are:

Tuesday, October 2nd
Weaver Ridge Country Club
Peoria

Monday, October 29th
Hamburger University
Oak Brook

Tuesday, October 30th
Regency Conference Center
O'Fallon

Visit www.iasaedu.org for information and registration. IASA expects each location to close based on enormous demand, *so please register early to assure your attendance at these vital conferences.*

In addition, we are pleased to announce that HLERK will, once again, co-sponsor the IAASE Fall Conference's reception on September 20th. We look forward to visiting with your special education administrators there and at the Executive Committee meeting attended by **Bennett Rodick** and **Michelle Todd**.

In addition, we are pleased to announce that **Bennett** will chair the always popular "attorneys' panel" on September 21st, and **Jay Kraning** will speak on residential placement issues at the session. Visit www.iaase.org for information and registration. HLERK is privileged to serve IAASE as its general counsel.

The following week will find Bennett and **Nancy Krent** traveling to Washington D.C. to assist the National School Boards Association to develop its position regarding reauthorization of the *Individuals with Disabilities Education Act*. While reauthorization for IDEA will not occur until after the fall elections, NSBA wishes to be a proactive and vital presence on behalf of the nation's school boards in the post-

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Welcome Cont. election debate.

October will find HLERK presenting at and co-sponsoring the Lake County Superintendents' Leadership Conference at Eagle Ridge Resort in Galena. Join **Terry Hodges** and **Mike Loizzi** at their presentation on education reform issues. Registration for the Conference is currently closed and the wait list is full. Visit www.lcsupts.org for information.

At the end of October, HLERK is co-sponsoring the President's Reception for the American Association of School Administrators' national conference in Chicago. We look forward to seeing your personnel administrators there.

We also expect to soon have a new edition of our acclaimed *A School Board Member's Handbook*. Visit us at www.hlerk.com where we will post when the new edition becomes available. As always, HLERK retainer clients will receive complimentary copies.

In November, HLERK will have a prominent presence at the IASB/IASA/IASBO Joint Conference in Chicago. HLERK clients and guests will also receive an invitation to a special event the Friday evening of the Joint Conference.

Welcome back to a new school year. As always, we thank you for reading the Extra Mile.

All of us at HLERK wish you an educationally successful school year and one free from legal entanglements. We hope that our on-going mission of service to the educational community helps you in meeting that goal.

Illinois Supreme Court Upholds Reinstatement of Lawsuit Against School District for Allegedly "Passing" Teacher Alleged to Have Engaged in Improper Conduct--We have closely followed in the *Extra Mile* the case of *Jane Doe 3 et al. v. McClean County School District No. 5* (See June 2011 *Extra Mile* reporting on the appellate court's ruling and March 2012 reporting on the Supreme Court's oral argument). Now, the Illinois Supreme Court has issued its long-awaited ruling.

In this case, students from the Urbana School District sued McLean County District No. 5 for allegedly engaging in "willful and wanton" conduct as a result of McLean County's alleged actions related to Jon White, a teacher who knowingly had sexual contact with students while teaching at McLean County, and then molested students once hired by Urbana.

On August 9th, the Illinois Supreme Court upheld the decision of the appellate court reinstating the lawsuit and allowing the plaintiffs to proceed on their claims. In their decision, the Supreme Court reviewed the plaintiffs' claim that McLean County had a duty to protect the student plaintiffs in this case because they knew of White's prior misdeeds and "passed" him to another school district despite that knowledge.

In reviewing this case, the Supreme Court upheld the appellate court's decision that the litigation could proceed against McLean County, but based on different grounds than the appellate court. The appellate court had held that McLean County created a duty to protect the student plaintiffs when McLean County's administration allegedly wrote a letter of recommendation for White that was falsely positive and when the administration allegedly did not disclose the allegations of sexual misconduct on an employment verification form, among other actions, which the appellate court deemed as "passing" White from one school to the next.

The Supreme Court did not agree that all of the actions allegedly taken by McLean County administrators created a duty. However, the Supreme Court did find that McLean County's alleged action in falsifying an employment verification form created a duty. The Supreme Court found that the duty existed because McLean County allegedly voluntarily provided the form with incorrect employment dates. The form sent

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Teacher Cont. by McLean County to Urbana allegedly reflected that White had worked the entire school year when in actuality he was not employed the full school year. The Court found that such information would have been a red flag to Urbana had they known it. As such, the Court ordered the case remanded to the trial court for further proceedings.

Under the Supreme Court's holding, school districts may be liable if they give false information to future employers about an employee. The holding does not impose liability on a school district that gives truthful information in a letter of recommendation or employment verification. Nevertheless, school districts should be cognizant of the impact of this case on their resignation agreements going forward and discuss that impact with legal counsel.

Cases such as these also serve as a friendly reminder regarding school district personnel and board members' obligations under the *Abused and Neglected Child Reporting Act*. It is each mandatory reporter's obligation to report suspected abuse of students by teachers, family members or any other person. The obligation to report extends to board members, who should report any suspicion of abuse to the district's superintendent or other qualified administrator.

Also, when providing employment verification, a school district has an obligation to note if a former employee is subject to an ongoing DCFS investigation. Performing these obligations will protect the school district from future liability in abuse and neglect situations.

Contact Stephanie Jones with your inquiries about the impact of this key Illinois Supreme Court decision. We will review this issue at the IASA conferences, The Year in Review: The Highlights and Lowlights of Illinois School Law 2012.

It's Audit Letter Season Again!--Each year we receive requests for audit response letters from our large and ever-growing client family. In these requests, 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 the specific auditor requests and must be prepared in accordance with complex ethics guidelines, acknowledging the vital importance of maintaining public confidence in school financial statements, especially in this time of fiscal crisis.

Although we expedite responses to these multiple requests, *the required due diligence does not permit for immediate, "form letter" responses.* In the event your auditor notifies us of a need for an accelerated response timeline, we will work with them to ensure that the district's audit timeline is met, but we ask that your auditors provide sufficient time to allow us to respond to all of our requests on a timely basis.

If you have any questions concerning the audit response process for your district, please contact Heather Brickman.

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