



Plaintiffs Cannot Obtain Attorneys’ Fees Award From School District in FOIA Action Unless They Win In Court--In *Rock River Times v. Rockford Public School District No. 205*, 2012 IL App (2d) 110879, the Illinois Appellate Court (Second District) recently affirmed a trial court’s ruling that plaintiffs cannot obtain attorneys’ fees under the *Illinois Freedom of Information Act* (5 ILCS 140/1 *et seq.*) (“FOIA”) unless they actually win their case in court.

This case involved a FOIA request by the Rock River Times to the

Rockford Public School District in which the newspaper requested a letter written by a school principal in response to a reprimand by the superintendent. The district initially refused to release the letter, citing two FOIA exemptions.

After the Attorney General’s Public Access Counselor (“PAC”) denied the district’s use of the first two exemptions, the district raised a third exemption.

Rather than await the PAC’s decision on the district’s use of a third
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Joint Conference Upcoming! Join HLERK at Our Programs and Activities--As part of our tradition of service to the Illinois educational community, HLERK is proud to have been invited to play a major part at the IASB/IASA/IASBO Joint Conference in November. **Please keep this handy guide to our variety of programs and activities:**

Our programming begins at the Illinois Council of School Attorneys meeting on Friday, November 16th with **Terry Hodges’** presentation, *SB7 and PERA Revisited: What’s Clear and What’s Not*, at 9:00 a.m. at the Hyatt Regency, West Tower, Crystal Ballroom B. **Heather Brickman** is a member of the ICSA Executive Committee and a past Chair of the Council.

Also on Friday, **Bob Kohn** joins former IASA Superintendent of the Year and noted author, **Jim Burgett**, in presenting *Considering Consolidation: Financial and Legal Factors*. We welcome you to join them at 1:30 p.m. at the Hyatt Regency Crystal Ballroom A.

On Saturday, November 17th at 1:30 p.m., **Heather Brickman and Stephanie Jones** present *School Law 2012: Top 5 Things Boards Need to Know* at the Hyatt Regency Crystal Ballroom D.

Finally, on Sunday morning, **Stephanie** will lead a group of
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Consumer Price Index

Percent change for the month of **September 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	0.3	0.4
12 Mth	1.6	1.5
St. Louis, 1st Half		
6 Mth	1.4	1.5
12 Mth	2.6	2.7
U.S. Mthly	0.4	0.5
12 Mth	2.0	2.0

October CPI figures will be released November 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

- **Our thanks to the record number of attendees at the IASA sponsored programs, *The Year in Review: The Highlights and Lowlights of Illinois School Law 2012*. The conference handbook, summarizing the year's legal developments including the new information on SB 7 and PERA is now available for purchase. This handbook is an invaluable resource for every school administrator facing a challenging and complex legal environment. Order yours today by sending in the attached order form.**
- **Determine dates for semiannual review of closed session minutes (typically January and July).**

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Fees Cont. exemption, the newspaper filed a complaint against the district on November 3, 2010. The newspaper also petitioned the court for attorneys' fees and the imposition of a civil penalty under FOIA.

While the suit was pending, the district voluntarily released the principal's letter to the newspaper on November 24, 2010. The district then asked the court to find that the newspaper was not entitled to attorneys' fees under FOIA.

FOIA's attorney fee provision was amended on January 1, 2010, to provide that a party who "prevails" in

a proceeding under FOIA shall be entitled to attorneys' fees. Before the amendment, FOIA provided that a party who "substantially prevails" may be entitled to attorneys' fees. By removing the term "substantially" from the attorney fee provision, the court determined that the legislature intended to require the plaintiff to actually obtain judicial relief before becoming entitled to attorneys' fees.

For further information concerning the Freedom of Information Act and its impact on your school district or for a copy of this ruling, contact Heather Brickman or Steve Richart.

Programs Cont. HLERK's intrepid early risers and she will moderate the always popular panel, *Legally Stumped?* on November 18th at 8:00 a.m., Hyatt Regency Grand Ballroom A. Take your best shot at stumping the all-star team of select HLERK attorneys in all areas of education law.

Finally, we look forward to hosting our clients and friends at a very special social event on Friday even-

ing November 16th.

The Joint Conference is a rare opportunity for school board members and administrators to gain access to the best legal minds addressing key issues in a complex legal environment. We hope you plan on attending, and we look forward to seeing you there. All of us at HLERK enjoy the opportunity to join you in downtown Chicago at the start of the 2012 Holiday Season.

Legislation Allows School Districts to Recover Outstanding Fees from State Income Tax Refunds-

On July 19, 2012, the Board of Education of Sandwich Community Unit School District No. 430 joined a growing list of school districts across the state that are taking advantage of legislation passed in 2011 that allows school districts to team up with the Illinois State Comptroller to collect outstanding student fees from parents' state income tax refunds.

Under Public Act 97-0632, effective December 16, 2011, school districts may enter into intergovernmental agreements with the Comptroller to participate in the Local Debt Recovery Program. Under the program, administered by the Comptroller, school districts may submit debts to the Comptroller only after providing the debtor notice and an opportunity to contest the debt. Once the notice and opportunity to be heard have been provided and the amount owed has been verified, the school district may then submit the

debt to the Comptroller for processing.

The statute authorizes the Comptroller to deduct the amount owed to the school district from the debtor's state income tax refund and to charge the debtor a \$15 fee to pay for the costs of the program. Once the Comptroller processes a deduction, the Comptroller must give written notice to the debtor and allow the debtor the opportunity to protest the deduction in writing within 60 days. If the debtor does not make a written protest, the Comptroller may then pay the deduction to the school district.

Given the financial pressures many school districts are facing, this program could become a popular method of recovering unpaid student fees.

For more information on the program or to begin the application process, contact Aaron Lawlor with the Comptroller's Office at 312-814-2451, or contact HLERK's Chris Hoffman regarding the legislation.

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