Hodges Loizzi Eisenhammer Rodick & Kohn LLP

THE Extra Mile

GOING THE EXTRA MILE SO YOU DON'T HAVE TO

EDUCATION EDITION

August 2014

Welcome Back for the 2014-2015 School Year! -- Hopefully an unusually cool and wet summer has left us all refreshed, ready, and excited to begin the new school year. With this issue, we welcome you back to what promises to be another year of challenges facing all Illinois school districts.

We look forward to working together with our statewide client family in meeting those challenges and keeping all of our readers up to date through the *Extra Mile*. This issue celebrates the second anniversary of launching the new electronic format of the *Extra Mile*.

Attached with this issue is a handy form for you to use to receive the email edition, or you can simply visit www.hlerk.com to sign up. Recipients of the email edition receive breaking legal developments up to two weeks before the hard copy.

As we enter the new school year, school districts continue to face the ongoing state financial crisis as the Illinois legislature's efforts to address "pension reform" are tied up in the courts. While "sequestration" of federal moneys has ended, Congress has adjourned without passing legislation on education funding or

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Consumer Price Index

Percent change for the month of **June 2014,** for the urban wage earners & clerical indices as reported by the Bureau of Labor Statistics.

	All Urban (CPI-U)	Workers (CPI-W)
Chicago Mthly	0.4	0.4
12 Mth	2.0	2.1
St. Louis, 1st Half 2014		
6 Mth	0.9	0.7
12 Mth	1.4	1.0
U.S. Mthly	0.2	0.2
12 Mth	2.1	2.0

July CPI figures will be released August 19, 2014. 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

- **Federal law requires all school districts to conduct educational programming during the week of September 18th in honor of the Constitution's birthday.**
- **Remember that new legislation affords limited recall rights to certain "Group 2" RIF'd teachers.**
- **Join HLERK at our reception at IAASE's Fall Conference on September 25th. Please stop by and say hello to your favorite HLERK attorney.**

Trial Court Upholds RIF of Tenured Teachers in Group 2 Despite Allegedly Incomplete Evaluations -- For the first time since PERA and SB 7 were adopted, a court has decided whether an alleged procedural defect in the evaluation process could be used to invalidate a RIF.

In *Holmes, et al., v. Board of Education of Belvidere Community Unit School District No. 100,* successfully defended by **Stan Eisenhammer** and **Jeff Goelitz,** the issue for the court was whether an allegedly missing component of an evaluation invalidated the entire evaluations of tenured teachers who were placed in Group 2. If the evaluations were incomplete, plaintiffs argued, they should not have been placed in Group 2 or subsequently RIF'd.

Based on two critical points, the court upheld the district's actions. First, the allegedly missing component was not specifically required by statute or any ISBE regulations; it was required only by the district's evaluation plan. As a result, the court recognized that there was no legal violation.

Second, the court noted that the evaluation plan was structured such that, even if the plaintiffs had all received an Excellent rating on the allegedly missing

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Welcome Back Cont. reauthorization of the two major federal education laws, IDEA and No Child Left Behind. HLERK is hard at work with *your* professional organization, the National School Boards Association in preparing for IDEA reauthorization which may occur after the November elections.

And, of course, school districts, like most employers, will be facing implementation issues under the *Affordable Care Act* as the Obama administration adjusts the effective dates for key provisions of the law and judicial challenges to various provisions of the law proliferate.

In this remarkably complex and ever changing legal environment, HLERK is looking forward to continuing to serve your professional organizations at the local, state, and national level. First and foremost are the IASA conferences, *The Year in Review: The Highlights and Lowlights of Illinois School Law 2014*. Online registration is open at www.iasaedu.org.

Dates and Locations are:

October 1, 2014 — O'Fallon
October 14, 2014 — Peoria
October 22, 2014 — Oak Brook

IASA expects each location to close based on overwhelming demand, ***please register early to assure your attendance at these vital conferences***. Each program features the famed "stump the lawyer" Q&A so take your best shot at your favorite HLERK attorney!

Bennett Rodick, recipient of the Vuillemot Award for Educational Leadership, joined **Michelle Todd** at the Illinois Alliance of Administrators of Special Education's Executive Board meeting in Springfield on August 6th as part of the ISBE Special Education Director's Conference. HLERK's *Legal Update* to the Executive Board is available at www.iaase.org. That same day found **Rob Swain** joining ISBE's Chief Legal Counsel, **Nicki Bazer** at the Loyola University Chicago's Education and Policy Law Institute and Illinois State Board of Education's School Discipline Workshop.

Michelle, Bennett, and a variety of HLERK attorneys will be in attendance at the IAASE's Executive Board meeting and Fall Conference on September 24-26. HLERK will, as always, co-sponsor the Conference's *Rush Hour Social*. Visit www.iaase.org for information and registration. HLERK thanks IAASE's President-Elect **Dr. Lea Anne Frost** for organizing what promises to be a remarkable conference. HLERK is privileged to have served as IAASE's legal counsel since the organization's inception.

October will find HLERK again co-sponsoring the Lake County Superintendent's *Leadership Conference* at beautiful Eagle Ridge Resort in Galena. Registration remains open but please register soon in order to assure yourself attendance. HLERK will hold a reception for Conference attendees. Visit www.lcsupts.org for information and registration.

In November, HLERK will have its usual prominent presence at the IASB/IASA/IASBO Joint Conference in Chicago. HLERK clients and friends will soon receive a "save the date" memo for a very special reception the Friday evening of the Joint Conference.

All of us at HLERK wish you an educationally successful and fulfilling year free from legal concerns. It is our fervent hope and desire that our ongoing mission of service to the educational community assists you in meeting that goal.

Thanks for reading the Extra Mile.

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RIF Upheld Cont. component, that component could not have improved their overall ratings. Therefore, the allegedly missing component had no effect on the teachers' overall ratings or the validity of their evaluations. Because of these two factors, the evaluation ratings were allowed to stand, and the court concluded that the teachers were properly placed in Group 2 and that their resulting RIF was valid.

The court's decision exemplifies the importance of school districts' evaluation plans and rating systems, and the importance of following them precisely. The Plaintiffs have appealed the trial judge's decision, so we will keep you apprised of the outcome on appeal.

In the meantime, if you have any questions about evaluation plans, evaluations, or RIFs, please contact Stan Eisenhammer, Jeff Goelitz, Ellen Rothenberg, Tina Christofalos or Terry Hodges.

Illinois Supreme Court Finds Recent Pension Reform Unconstitutional -- We have pledged to keep you apprised of all relevant developments in the ongoing school pension reform legislation and litigation. In *Kanerva v. Weems*, the Illinois Supreme Court struck down Public Act 97-695, which amended the state's contribution obligations to group healthcare coverage for retired state employees in state public pension systems. The Court found that the health insurance subsidy was a constitutionally protected benefit that the Illinois General Assembly was prohibited from impairing or diminishing.

In 2012, the Illinois General Assembly passed Public Act 97-695 ("Act"), which went into effect on July 1, 2012. The Act amended the *State Employees Group Insurance Act* by changing the state's contribution obligations regarding the group health benefits for annuitants, retirees, and survivors within three of the state's retirement systems: the State Employee's Retirement System ("SERS"), the State Universities Retirement System ("SURS"), and the Teachers' Retirement System of the State of Illinois ("TRS"). Previously, the state covered 100% of a retiree's health insurance coverage if that individual had at least 20 years of creditable service. The Act, however, established a new system in which retirees would be required to contribute a small percentage to their own health insurance coverage.

Four different sets of plaintiffs, all of whom were retirees, filed lawsuits against the Director of the Department of Central Management Services arguing that the Act was unconstitutional. Article XIII, Section 5, of the Illinois Constitution states that "[m]embership in any pension or retirement system of the State . . . shall be an enforceable contractual relationship, *the benefits of which shall not be diminished or impaired*." Ill. Const.1970, art. XIII, §5 (emphasis added). The plaintiffs argued that the state's health insurance contributions constituted such a "benefit of membership" that could not be diminished or impaired.

On a direct appeal from the circuit court, the Illinois Supreme Court considered whether state subsidized health insurance qualifies as a benefit of membership in a state retirement system. After reviewing both the plain meaning and the legislative history of Article XIII, Section 5, the court determined that by using the expansive term "benefits," the drafters intended to protect all of the benefits that are limited to, conditioned on, and flow directly from membership in the state's public pension system. Accordingly, the court held that state subsidized healthcare is a benefit of membership and precluded from being impaired or diminished.

This case indicates that the Illinois Supreme Court interprets Article XIII, Section 5, of the Illinois Constitution fairly broadly, which may impact the court's ruling in the pending TRS pension litigation which, as we have earlier reported, has been barred from implementation by a Sangamon County Judge.

Contact Heather Brickman or Barb Erickson with your pension reform or employee benefit inquiries.

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Amendment to the Illinois *School Safety Drill Act* Enables School Districts to Make Updated Emergency and Crisis Response Plans Available through Electronic Applications on Electronic Devices (i.e., Smartphones, Tablets, and Laptop Computers) -- On June 23, 2014, Governor Quinn signed Public Act 98-0661 ("Act"), an amendment to the Illinois *School Safety Drill Act*. The Act clarifies how public school districts can make a school building's updated emergency and crisis response plans available.

After updating a school building's emergency and crisis response plans, "consideration may be given" to making those plans available to first responders, administrators, and teachers for implementation and utilization through the use of electronic applications on electronic devices. The Act specifies that those electronic applications may be available on, but are not limited to, smartphones, tablets, and laptop computers.

It is important to note that the Act is not mandatory, but rather is an option that school districts may choose in order to more efficiently communicate their updated emergency and crisis response plans to faculty, staff, and first responders.

In fact, the Illinois House of Representatives rejected an earlier version of the Act that would have required school districts to make updated emergency and crisis response plans available in a digital format, as well as required sending them to first responders, administrators, and teachers in a format available on handheld electronic devices. The Act goes into effect on January 1, 2015.

Contact Nancy Krent or Chris Hoffman with your school safety inquires.

Lengthy Delay Distinguishes Mediation From Non-Compensable Resolution Session/Parents Awarded Around $160,000 in Total -- In *Board of Education of Evanston-Skokie Community Consolidated School District v. Risen*, a district court held that the parents could recover attorneys' fees for the time their counsel spent preparing for, traveling to and from, and attending a mediation session.

This case arose after the District was ordered to reimburse the parents of a special education student for the cost of his private placement tuition. The parents also sought to recover attorneys' fees for a mediation session conducted in connection with the case. The *Individuals with Disabilities Education Act* (IDEA) contains a fee-shifting provision that allows the court, in its discretion, to award reasonable attorneys' fees to the prevailing party. 20 U.S.C. 1415(i)(3)(b). However, the law provides that fee awards *may not* include the time an attorney spends preparing for or attending a resolution session.

The District argued that the mediation was the equivalent of a resolution session, for which the parents could not receive attorneys' fees. The court disagreed, finding that resolution sessions only include preliminary meetings that are geared toward an early resolution of the case. IDEA defines a preliminary meeting as one held within 15 days of receiving notice of the parents' complaint. The mediation in this case occurred 15 *months* after the initial request. Due to the lengthy delay, the court held that the mediation could not be considered "preliminary."

Moreover, the court noted that while IDEA expressly excludes time spent on resolution sessions from awards of attorneys' fees, the law is silent with regard to mediations.

Contact Michelle Todd or any of our student special education group attorneys with your special education inquiries or for the impact of this decision on your special education hearing process.