Hodges Loizzi Eisenhammer Rodick & Kohn LLP

THE Extra Mile

GOING THE EXTRA MILE SO YOU DON'T HAVE TO

EDUCATION EDITION

February 2014

"Clear and Present Danger" Reporting Form Now Available/New Regulations Issued--As we originally reported to you at IASA's *Year in Review* seminars, under the new Illinois *Firearm Concealed Carry Act*, a principal, or his or her designee, must report any student who poses a "clear and present danger" to him or herself or to others to the Illinois State Police ("ISP") within twenty-four hours of such a determination.

The ISP recently adopted a regulation governing this reporting requirement. 20 Ill. Admin. 1230.120. Pursuant to the regulation, ISP will review the reports it receives and determine whether or not the individual poses an actual threat of harm or is likely to be dangerous to the public if granted a weapon. The reporting form and instructions can be found on the ISP website at: https://www.isp.state.il.us/foid/foid-clear-present-danger.cfm.

The new regulation leaves several unanswered questions for school districts. Contact Nancy Krent or Pam Simaga with questions regarding implementation of the new regulation.

Consumer Price Index

Percent change for the month of **December 2013,** 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	-0.2
12 Mth	0.5	0.4
St. Louis, 2nd Half 2013		
6 Mth	0.5	0.3
12 Mth	1.3	1.2
U.S. Mthly	0.0	0.0
12 Mth	1.5	1.5

January CPI figures will be released February 14, 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

Evaluation, Dismissal and RIF Reminders

- Seniority and Sequence of Honorable Dismissal Lists due 75 days before end of school term (unless CBA requires earlier).
- Note the recent statutory change in definition for Grouping 1, especially part-time, non-tenured teachers.
- Principal and Assistant Principal evaluations due March 1 (unless contract/plan requires earlier). Failure to evaluate in the last contract year results in automatic one year extension.
- Teachers must receive dismissal notices at least 45 days before the end of the school term (i.e., mid March-April).
- Check non-renewal deadlines in administrator contracts (April 1 is statutory deadline for some).

Illinois Appellate Court Upholds Validity of Reduction-in-Force under Senate Bill 7--We have been following in the *Extra Mile* the ongoing litigation involving teacher dismissals and RIF's under SB-7.

In *Pioli and Edelson v. North Chicago Community Unit School District No. 187*, 2014 Ill.App.2d 130512, the Illinois Appellate Court (Second District) ruled in favor of North Chicago Community Unit School District No. 187 ("district") after it laid off tenured teachers in the spring of 2012 and did not rehire the teachers for openings in the fall of 2012.

The Appellate Court's ruling is the first appellate consideration of the legality of a teacher RIF under SB-7 and its decision is consistent with the recent Peoria trial court ruling in *Lawler and Frakes v. Peoria School District No. 150* successfully defended by **Stan Eisenhammer** and HLERK alumnus **Tony Loizzi.**

Leonore Pioli and Herman Edelson were tenured teachers at the district. They argued that the district violated Section 24-12 of the Illinois *School Code* (105 ILCS 5/24-12) by honorably dismissing teachers at the end of the 2011-2012 school year and replacing them with new teachers at the start of the 2012-2013 school year.

The district's assistant

Continued on Page 2

Offices
Arlington Hts. 847-670-9000
O'Fallon 618-622-0999
Peoria 309-671-9000

RIF Cont. superintendent submitted an affidavit explaining that during the 2011-2012 school year, the district was operating at a $9 million deficit. In 2011, the Illinois State Board of Education ordered the district to cut $3.2 million from its operating budget for the following school year. To make this happen, the district examined student enrollment and needs and determined that it could reduce the budget and fulfill staffing needs, in part, by eliminating two high school special education teaching positions and by not filling four student services positions at the middle and elementary schools.

The district assigned its teachers to groups based on their performance evaluations and created a list using numbers instead of the teachers' names to provide anonymity. The list was given to the district's "Reduction in Force Joint Committee." The Committee chose to dismiss Pioli and Edelson based on their grouping criteria. The School Board subsequently held a public meeting and voted to honorably dismiss 12 teachers in Group 2, including Pioli and Edelson, and 12 teachers in Group 1. The district sent dismissal notices on March 28, 2012, and the dismissal became effective on May 31, 2012. Around July or August 2012, the district received new enrollment information that it did not have when it made its staffing decisions on May 31 when the dismissal went into effect. As a result of the new information, the district needed to fill positions so it rehired the Group 1 teachers it desired and did not rehire Group 2 teachers.

The court found that the district properly implemented the RIF consistent with the requirements of SB-7 and rejected a variety of claims arguing that the process utilized by North Chicago was improper.

As deadlines loom for employee actions, contact HLERK's "RIF team" Terry Hodges, Ellen Rothenberg or Tina Christofalos with your inquiries.

School District Required to Reimburse Parent for Unilateral Placement of Student at Residential Facility--In *Jenna R.P. and E. Scott P. v. City of Chicago School District No. 229 and ISBE*, the Illinois Appellate Court (First District) in a rare special education decision reversed a special education hearing officer's decision which held that a school district was not required to reimburse residential tuition paid for by a parent after he unilaterally placed his child at a residential facility.

The Impartial Hearing Officer ("IHO") determined that City of Chicago School District No. 229 ("district") could have provided the student with a free and appropriate public education ("FAPE") in a less restrictive setting and therefore did not award reimbursement. The Appellate Court reversed and remanded for a determination of the appropriate amount of reimbursement, concluding that the IHO should have considered what the district *actually* offered as opposed to what it *could have* offered.

In September of 2004, Jenna began attending Lane Technical High School ("Lane Tech"). She began failing classes and she expressed a plan to hang herself. Jenna was hospitalized in the psychiatric ward of Children's Memorial Hospital. Hospital clinicians were concerned that she was depressed, had adjustment problems and that she was developing a cluster of borderline personality traits. After Jenna was discharged from the hospital, her mother requested that Lane Tech evaluate her to determine if she was qualified for special education services.

The following month, Jenna's parents participated in developing an Individualized Educational Program ("IEP") for Jenna. The IEP reflected that Jenna had an emotional disturbance and a learning disability. It included strategies to reduce her academic stress. Despite the plan, Jenna accumulated 68 absences and failed 5 classes in her freshman year. During her sophomore year, the IEP was modified to provide for additional academic support and 60 minutes of social work weekly. Nevertheless, Jenna accumulated 115 absences and received no academic credits.

As a result, her doctor recommended that Jenna be

Continued on Page 3

CONTACT US:
info@hlerk.com

3030 Salt Creek Lane . Suite 202 . Arlington Heights, Illinois 60005
804 West US Highway 50 . Suite 220 . O'Fallon, Illinois 62269
401 SW Water Street . Suite 106 . Peoria, Illinois 61602

Placement Cont. placed in a highly structured and supportive program. Jenna's father, Scott, contacted Lane Tech to discuss arranging and financing long-term plans for Jenna, but he was told that the IEP team could not convene until the fall.

Scott sent a 10-day notice expressing his intent to place Jenna at Elan School in Portland, Maine ("Elan") and to seek reimbursement from the district. Elan provided a highly structured program for emotional and transitional problems and it was on a list of ISBE approved schools

The IHO ruled that the district failed to provide Jenna with FAPE and failed to prove that her IEP was appropriate given the overwhelming evidence that Jenna needed a highly structured setting. However, the IHO also found that Scott failed to prove that the placement at Elan was educationally appropriate because it was not the least restrictive environment.

Ultimately, the IHO concluded that the district could have provided Jenna with FAPE in a less restrictive environment by placing her in a self-contained instructional classroom at Lane Tech or at a private day school. The circuit court affirmed the administrative decision.

The Appellate Court reversed, noting that it cannot consider a hypothetical IEP that the district could have offered. Additionally, the court found that the IHO and circuit court erred by placing significant emphasis on the requirement of educating a student in the least restrictive environment.

Rather, the court noted that there are a number of factors to consider when determining if a parent's choice provided an appropriate education. For instance, the placement must provide an element of special education services that the public school placement did not offer. The parent must also show that the school provided specially designed instruction to meet the unique needs of his or her child. In this case, Elan offered Jenna small class sizes, something Lane Tech did not offer to Jenna. Further, Scott demonstrated that Elan's program met Jenna's needs through her social and academic progress.

School districts should carefully note the impact of the Chicago decision in considering parent requests for private placements. Contact Jay Kraning or Nancy Krent with your special education inquiries.

Court Finds that District's Remediation Process Was "Less Than Fair" and Orders Reinstatement of Tenured School Psychologist--The Illinois Appellate Court (Third District) recently upheld a hearing officer's finding that a school district terminated the employment of a tenured school psychologist based on a less than fair remediation process. The district was ordered to reinstate the employee with full back pay.

In *Board of Education of Valley View Community Unit School District 365-U v. Illinois State Board of Education,* 2013 Ill.App.3d 120313, the court found that it was unfair to the employee for the principal, who was the evaluator, to serve as the primary observer in a remediation plan, especially in light of the poor previous relationship between the employee and the principal. Notably, the court also found that it was inappropriate for an employer to write a glowing letter of recommendation for a less than adequate employee to a potential employer as a means of ridding itself of that employee.

The roots of this case date back to April 2009 when the principal evaluated the employee and found deficiencies in her performance.

As required by the Illinois *School Code*, a consulting teacher was appointed to take part in this process; however, the consulting teacher in this case did not conduct any observations of the employee nor provide any evidence at the hearing. In fact, the court found that no evidence exists that she participated in the process at all. Instead, it was the principal who personally observed the employee on 24 out of her 29 informal work-based observations.

Continued on Page 4

CONTACT US:
info@hlerk.com

3030 Salt Creek Lane . Suite 202 . Arlington Heights, Illinois 60005
804 West US Highway 50 . Suite 220 . O'Fallon, Illinois 62269
401 SW Water Street . Suite 106 . Peoria, Illinois 61602

Remediation Cont. According to the employee, near the end of the 2009-2010 school year the principal stated that she intended to terminate the employee. The principal gave the employee two choices: voluntarily resign and receive a favorable letter of recommendation; or stay and have her workload increased dramatically.

At the hearing, the employee produced a copy of a favorable letter of recommendation written by the principal during this period, and the record also showed that the employee's workload increased due to the principal's reassignment of duties. The principal denied that this conversation took place and claimed the employee had requested that she prepare the letter of recommendation.

The court agreed with the hearing officer's opinion that the principal's glowing letter of recommendation was inconsistent with her view that the employee could not function properly as a School Psychologist. Furthermore, the court also shared the hearing officer's concerns that the principal was the employee's primary observer and solely conducted each one of her formal evaluations.

In fact, the court noted that the overwhelming majority of evidence presented by the district was provided by the principal, and the record did not contain any negative observations of the employee's performance by the consulting teacher nor anything suggesting that the employee failed to comply with any advice the consulting teacher may have suggested to her during remediation.

Contact any of our personnel practice group attorneys as you approach employee dismissal and "non-renewal" season.

ISBE Determines Funds for Special Education Room and Board Claims is Insufficient to Cover 100% of Claims for Fiscal Years 2013 and 2014-- School districts have been dealing with increasing numbers of severely disabled students which they are unable to program for in public school programs leading to an increase in private residential school placements. Under law, the school district is eligible to receive reimbursement from the State for tuition payments made in excess of twice the district's per capita charge for students not receiving special education services.

However, if the money appropriated by the General Assembly for this purpose is insufficient for any year, then the funds are apportioned on the basis of the approved claims. The *Individuals with Disabilities Education Act* ("IDEA") Special Education Room and Board Fund has traditionally been sufficient to pay all claims at 100%. Districts typically receive 90% of their claims monthly, and are reimbursed for 100% of their claims at the end of the year.

Unfortunately, there are insufficient funds this year for the IDEA Special Education Room and Board Fund to fully cover all claims for the 2012-2013 school year. Presently a proration rate of slightly over 90% has been projected.

For fiscal year 2014, the State set aside approximately $29.5 million for the IDEA Special Education Room and Board Fund. Historically in Illinois, claims have grown annually by approximately 20% due to a steady growth of residential placements and rises in residential per diem rates. If this statewide growth rate is realized for the 2013-2014 school year, then claims are projected to reach approximately $50 million. Therefore, the State would be unable to reimburse monthly claims at 90%. Rather, it will likely reimburse claims at 50% monthly, and at the end of the year, school districts will be reimbursed for just below 60% of their claims.

ISBE's reimbursement limitations may impact your district's budgeting process. Please contact Nancy Krent or Bennett Rodick with your residential placement inquires.

CONTACT US:
info@hlerk.com

3030 Salt Creek Lane . Suite 202 . Arlington Heights, Illinois 60005
804 West US Highway 50 . Suite 220 . O'Fallon, Illinois 62269
401 SW Water Street . Suite 106 . Peoria, Illinois 61602