

THE Extra Mile GOING THE EXTRA MILE SO YOU DON'T HAVE TO

HLERK Attorneys Again Honored as Illinois “Leading Lawyers”--We are pleased to announce that four of our attorneys have again been designated as “Illinois Leading Lawyers” by *Leading Lawyers Magazine*: **Terry Hodges, Mike Loizzi, Stan Eisenhammer and Bennett Rodick.**

Leading Lawyer status recognizes the top five percent of attorneys in a practice area. HLERK attorneys continue to be recognized for leadership and excellence by their peers and by the school community.

Nancy Krent has been designated an Illinois “Super Lawyer” and **Bennett** recently received the *Larry D. Vuillemot Leadership Award* from the Illinois Alliance of Administrators of Special Education.

We are pleased when our attorneys are recognized, but what drives HLERK is our commitment of service to the Illinois school community.

Visit www.hlerk.com for an up to date list of our upcoming activities of service for school administrators and board members.

Join HLERK at the Upcoming IASB/IASA/IASBO Joint Conference--As always, HLERK is proud to play a major role at the upcoming [Joint Conference](#) in Chicago. Our participation in the Conference is part of HLERK’s long tradition of service to the Illinois school community. *Please use this newsletter as a handy guide to our various programs and activities.*

Our programming begins at the Council of School Attorneys meeting on Friday, November 21st where school attorneys will learn from **Rob Swain** and **Dean Krone** on *Municipal Regulation of School Districts: From Civil Rights to Bleachers.*

The following day please join **Heather Brickman** and **Jeff Goelitz** as they present *Google This: E-Privacy in School Technology.* The session commences at 10:30 a.m. on Saturday, November 22nd at the Hyatt Regency Hotel, Grand B Ballroom.

Later that day, join **Stan Eisenhammer** and IASA General Counsel and HLERK alumnus **Sara Boucek** speaking on *Superintendent Employment Contracts.* This ever-popular and vital session for both superintendents and board members begins at 1:30 p.m. at the Sheraton Hotel, Chicago 6.

Finally, please join **Stephanie Jones** and a coterie of HLERK all-stars (and early risers) when
Continued on Page 2

Consumer Price Index

Percent change for the month of **September 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	0.0	0.1
12 Mth	2.1	2.2
St. Louis, 1st Half 2014		
6 Mth	0.9	0.7
12 Mth	1.4	1.0
U.S. Mthly	0.1	0.1
12 Mth	1.7	1.6

October CPI figures will be released November 20, 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

- **IASA and HLERK thank the record number of administrator and board member attendees at IASA’s annual conferences, *The Year in Review: The Highlights and Lowlights of Illinois School Law.* The conference handbook, summarizing the key legal developments you need to know to guide you in a complex and dangerous legal environment, is available for purchase. Order yours by sending in the attached form.**
- **Remember to hold your RIF Joint RIF Committee meeting by December 1st. SB7 was recently amended to make this an annual requirement. Contact Ellen Rothenberg, Tina Christofalos or Jeff Goelitz with your SB7 inquiries.**

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Joint Conference, Cont. she will moderate the session *Legally Stumped?* on Sunday, November 23rd at 8:00 a.m. at the Hyatt Regency, Columbus E/F Ballroom.

Challenge them with your legal inquiries. Finally, we look forward to joining HLERK clients and friends at a special reception the Friday evening of the Joint Conference. HLERK clients should already have received their invitation.

The Joint Conference is a rare opportunity for the entire Illinois educational community to come together. We very much hope you plan on attending and we look forward to, as always, joining you there. Take advantage of the singular opportunity of having access to the best legal minds in the country in approaching an increasingly difficult and complex legal environment. All of us at HLERK always enjoy the opportunity to join you in downtown Chicago at the start of the 2014 Holiday Season.

HLERK Seeks Supreme Court Review of Decision Imposing Zoning Compliance Requirements on Illinois School Districts--On October 7, 2014, HLERK, on behalf of the Board of Education of Community High School District No. 155, filed a petition seeking Illinois Supreme Court review of the recent Illinois appellate court decision regarding newly constructed bleachers at Crystal Lake South High School.

The appellate court decision determined that the bleachers, and all property used for school purposes, are subject to municipal zoning ordinances. As part of this process, District 155 also filed an appeal of the trial court's latest order directing it to retroactively pursue municipal zoning approval of the bleacher project.

The trial court and appellate court rulings would mean that all previously completed school facilities, both in District 155 and throughout the state, are subject to retroactive municipal zoning review—even though they had already been approved by the local regional superintendent as required in the Illinois *School Code*.

Because this case will greatly impact school districts across Illinois, HLERK is providing legal services for the appeal on a pro bono basis.

Contact Rob Swain or Dean Krone with your school zoning inquiries.

Illinois Appellate Court Finds Clear Errors in Regional Board's Denial of Residents' Annexation Petition--In *Merchant v. Regional Board of School Trustees of Lake County*, 2014 IL App (2d) 131277, the Illinois appellate court disagreed with a decision of a Regional Board of School Trustees to deny a petition to annex a subdivision to the residents' preferred school districts.

The case arose when residents of a subdivision in Waukegan petitioned their Regional School Board of Trustees to detach the subdivision from its current school districts and annex it into two neighboring districts. Both the current and the proposed school districts opposed the petition.

The residents and the school districts stipulated that there would be no financial detriment to any of the

school districts if the petition was granted. After considering the evidence, the Regional Board denied the petition, finding that the residents failed to demonstrate sufficient educational benefit from the annexation. On appeal, the trial court held that the Regional Board's decision was clearly erroneous and that the petition should have been granted.

On September 30, 2014, the appellate court agreed with the trial court, noting the same clear errors. First, the appellate court found the Regional Board erred in failing to adequately consider the reduced travel times and distances to the schools in the proposed districts. The court clarified that a reduced commute is not sufficient by itself to justify annexation, but it is a proper consideration—one the Regional Board should have resolved in favor of the residents.

Continued on Page 3

Annexation, Cont. Next, the court determined that the Regional Board erred in its assessment of the residents' community of interest with the desired districts. To demonstrate a community of interest sufficient to support annexation, the residents were only required to show an "identification" with the new districts. The court found that the residents' evidence on this point—such as the fact that their children *already* participated in extra-curricular activities in the proposed districts—was overwhelming. Finally, the Regional Board erred in failing to consider the residents' evidence that annexation would increase their property values.

The court concluded that in the absence of a financial detriment—as was stipulated in this case—the residents were only required to establish *some* benefit to the educational welfare of the students residing in the annexed property. According to the court, the residents presented sufficient evidence to carry that burden, and the Regional Board erred in denying the petition.

The Merchant decision clearly favors petitioners seeking to detach school territory and annex it to other school districts. Contact Rob Swain with questions concerning your school detachment and annexation issues.

“Dear Colleague” Letter Revisits the Importance of Protecting Students from Discrimination in the Allocation of Educational Resources--On October 1, 2014, the U.S. Department of Education issued a new [“Dear Colleague” letter](#) highlighting the importance of protecting students from discrimination when allocating educational resources. This letter builds on the January 19, 2001, “Dear Colleague” letter on this topic and provides guidance for how school districts can ensure compliance with Title VI.

crimination, which include: (1) examining the quality, quantity, and availability of critical educational resources to determine disparities among schools serving similarly situated students or similarly situated students within the same school; and (2) providing the school district an opportunity to explain any differential treatment so as to assess whether there existed any legitimate, nondiscriminatory, educational explanation from the school district.

The letter explains that to comply with federal law when allocating their resources school districts must be mindful to not exacerbate but rather remedy achievement and opportunity gaps for their students of color. To assist school districts with meeting this obligation, the letter outlines the legal obligations educational officials have under federal law, and how the Office of Civil Rights (“OCR”), investigates and analyzes alleged Title VI violations against school districts. The letter also outlines ways officials can prevent and remedy this issue thereby ensuring that their districts are in compliance with Title VI.

Additionally, OCR takes into consideration that resources may appropriately be allocated differently to meet schools' differing needs, but nevertheless encourages districts to proactively identify and address racial disparities in resource allocation. The letter highlights how the ultimate issue regarding funding tends to be whether or not it is provided to each school in the district so as to provide equal educational opportunities for all students. In identifying this issue, the letter outlines some solutions for how a district can address the issue themselves.

To assist educational officials in complying, OCR explains its methodology in investigating claims of a school district discriminating in its allocation of educational resources. One example is the two-pronged approach in handling allegations of *intentional dis-*

For a school district to prevent and remedy discrimination in the provision of educational resources and proactively work toward attaining this, the letter provides that the district should engage in periodic self-assessment of their policies and practices; work cooperatively with leaders, teachers, and support staff to

Continued on Page 4

“Dear Colleague” Letter, Cont. end and eliminate discriminatory effects of such policies and practices; develop additional courses, programs, and extracurricular activities that were previously lacking; help to attract, develop, and retain strong teachers, leaders and support staff; and, where necessary, invest

financial resources into technology, instructional materials, and facilities for the district.

Contact Nancy Krent with your Title VI discrimination issues.

News from Secretary Duncan and Department of Education to Superintendents on Nationwide Outbreak of Enterovirus D68 (EV-D68)--On October 23, 2014, U.S. Secretary of Education Arne Duncan issued a [letter](#) to Superintendents across the United States on the nationwide outbreak of enterovirus D68 (EV-D68), which has been significantly harmful to children. The letter attempts to provide Superintendents with a consolidated list of informative resources to share with parents and community members in order to address their questions regarding not only this outbreak but additionally the Ebola virus as it relates to school-aged children.

The letter begins by stating the alarming reality that almost all of the Center for Disease Control and Prevention (CDC) cases of EV-D68 have been among children, especially those with asthma or a history of wheezing.

In effort to provide parents and community members with information about what they can do to prevent this illness and protect themselves and their families, the letter provides for several resources developed by the CDC and encourages Superintendents to share them and make them more accessible to the public.

Among these resources tailored to EV-D68 are a web feature on what parents need to know, a drop-in newsletter article, a fact sheet for parents, general questions and answers for the public, and an info-graphic on how to prevent one’s child from getting and spreading this virus.

The letter also suggests specific ways that Superintendents can work with their schools to share these resources including printing and sending copies of the fact sheet and info-graphic, emailing parents the link to information on the CDC website, having schools post links to CDC information on their social media

accounts, syndicating content from the CDC website, placing the text of the newsletter on school websites, e-newsletters, and other publications that reach parents, and even encouraging local child care facilities and organizations to share the drop-in article or post the fact sheet and/or info-graphic within their facilities.

The letter highlights the recent CDC press release about a new lab test developed that allows for more rapid testing of the EV-D68 specimen. The letter warns that due to the new testing confirmed cases of the virus will appear to have risen over the next 7-10 days when in fact these cases do not actually represent a real-time influx of new cases.

The letter notes that while the EV-D68 season is expected to taper off, flu activity in turn begins to increase in October, and while no vaccinations exist to prevent EV-D68, the best way for parents to stay protected is to get their children, especially those who are 6 months or older, vaccinated against the flu every year.

The letter also provides informative resources specific to the Ebola virus, which has also become widespread. The letter assures the public that control of the Ebola virus is a top national priority and provides a link to resources made available by the Department’s Office of Safe and Healthy Students, which has accessible materials specific to Readiness and Emergency Management of Schools in crisis situations.

The letter concludes by encouraging Superintendents to assist in sharing all these informative resources available to them through the CDC.

Please contact Stan Eisenhammer or Michelle Todd with your communicable disease policy and practice inquires.

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