



**Illinois Supreme Court Upholds Dismissal of Taxpayers' Lawsuit Alleging Improper Transfer from Working Cash Fund**--The Illinois Supreme Court recently upheld the dismissal of an action challenging the spending of working cash fund moneys filed by five taxpayers on behalf of Lemont-Bromberek Combined School District 113A.

In *Lutkauskas v. Ricker*, 2015 IL 117090, the taxpayers brought suit against two district employees, seven school board members, the district's accounting firm, and the district's surety. The taxpayers claimed that

the district employees and board members violated Section 20-5 of the *School Code* (105 ILCS 5/20-5) by spending money from the district's working cash fund without a board resolution approving the transfer of funds from the working cash fund. The plaintiffs sought civil and criminal penalties provided for in Section 20-6 of the *School Code*, including forfeiture of office and payment of a fine.

Section 20-5 of the *School Code* requires a school board to pass a resolution directing each temporary

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**Supreme Court to Review School District Zoning Case**--The Illinois Supreme Court *granted* a petition filed by HLERK seeking review of the recent appellate court decision in the "bleachers case" out of Crystal Lake South High School.

As we previously reported, the appellate court decided that the bleachers, and all property used for school purposes, are subject to municipal zoning ordinances. The trial court previously ordered the School District to demolish the bleachers, but the appellate court granted a stay of demolition until the Supreme Court decides the case. The Regional Superintendent of Schools for McHenry County also asked the Supreme Court to hear the case.

If left to stand, the appellate court ruling would mean that both existing and future school facilities, both in District 155 and throughout the state, could be subject to municipal zoning review—even if they had already been approved by the local regional superintendent as required by the *School Code*.

The IASB, IASA and IASBO have sought leave to file a "friend of the court" brief in support of the School District's position. Please join us in thanking your professional organizations for their support.

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**Consumer Price Index**

Percent change for the month of **January 2015**, for the urban wage earners and clerical indices as reported by the Bureau of Labor Statistics.

	All Urban (CPI-U)	Workers (CPI-W)
Chicago Mthly	-0.2	-0.5
12 Mth	0.4	-0.3
St. Louis, 2nd Half 2014		
6 Mth	-0.2	-0.3
12 Mth	0.7	0.4
U.S. Mthly	-0.5	-0.7
12 Mth	-0.1	-0.8

February CPI figures will be released March 20, 2015. For the most recent CPI, visit our website at: [www.hlerk.com](http://www.hlerk.com).

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**Reminders & Notes**

- **Remember your April 1 deadline for reclassification of principals and assistant principals. Contact any of our "RIF" team with your RIF and employee dismissal issues.**
- **Remember to submit your newly revised bullying policies to ISBE on or before April 15 (See article in this issue).**
- **It's time to update your student handbooks! Send in the attached form to order the HLERK newly revised Student Handbook Checklist or contact Lori Martin to request a comprehensive review of your student handbooks.**

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**Zoning Cont.** HLERK is providing legal services for the Supreme Court appeal on a pro bono basis because of the importance of this issue to school districts throughout the State.

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

**Working Cash Fund Cont.** transfer from the working cash fund. While the plaintiffs alleged that the defendants transferred funds from the working cash fund without a board resolution, they did not allege that the transferred money had been stolen or converted; instead, the transferred funds were spent on legitimate school district expenses.

The Supreme Court affirmed the appellate court's dismissal because the plaintiffs did *not* allege that the transferred money was used for an improper purpose. The Court determined that, pursuant to Section 20-6 of the *School Code*, an "unlawful diversion" of funds requires the funds to be used for a purpose not permitted by statute. In this case, the district used the money

from the working cash fund for school purposes.

As a result, the plaintiffs lacked "standing" to maintain the action because they could not assert that the failure to pass a board resolution resulted in an actual loss to the district.

Although the outcome was favorable for school districts, the case serves as a reminder that each working cash fund transfer must be properly authorized by school board resolution.

**Contact Heather Brickman or Steven Richart with your school finance inquiries.**

**Governor Eliminates Mandatory Fair Share Dues for State Employees/School Employees Not Immediately Impacted**--On February 9<sup>th</sup>, Governor Rauner issued an executive order eliminating mandatory fair share dues for Illinois agency employees, declaring them unconstitutional. Notably, the order does *not* affect Illinois school districts, municipalities, other local governments and their employees.

The same day the Governor entered the order, he filed suit in federal court against two dozen public unions, seeking a declaratory judgment that deducting mandatory fair share dues from non-union, public employees' wages is unconstitutional under the First Amend-

ment of the U.S. Constitution. The lawsuit asserts that, as part of the collective bargaining process, public-sector unions take part in many activities that have significant political and civic consequences. Therefore, imposing the fees is a form of compelled speech and association that significantly imposes on employees' First Amendment right to refrain from supporting public-sector unions and their political activities.

Because the executive order does not apply to the *Illinois Educational Labor Relations Act*, it does not directly affect school districts. However, if the federal court grants the relief requested by the Governor in

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**Mandatory Fair Share Dues Cont.** his lawsuit, there could be an impact on the imposition of mandatory fair share dues under the IELRA.

The executive order raises significant constitutional questions that ultimately may have an impact on all public employees. In the order, the Governor stated that compelling state employees to pay fair share dues forces them to subsidize and enable union activities that they do not support, violating their rights to freedom of speech and association under the federal and state constitutions. He directed the Illinois Department of Central Management Services and other state agencies to cease enforcement of any fair-share provisions in which the state is a party.

The Governor based his actions on the U.S. Supreme Court's ruling in *Harris v. Quinn*, 134 S. Ct. 2618 (2014). In *Harris*, the Court held that mandatory fair share dues imposed on personal care assistants in Illinois violated the workers' rights to freedom of speech and association. In support of its ruling, the Court not-

ed that, unlike other public employees, private care assistants were deemed to be state employees for the sole purpose of collective bargaining; however, the customers receiving services were deemed the employer in all other respects.

Interestingly, the Supreme Court did not overturn *Aboud v. Detroit Bd. of Educ.*, 97 S.Ct. 1782 (1977), in which the Court found the imposition of mandatory fair share dues on non-union member public employees to be constitutional, although the Court majority in *Harris* questioned the legal bases for the *Aboud* decision.

As it now stands, *Aboud*, which allows mandatory fair share dues to be imposed on non-union member, public employees, is still controlling law. The Illinois Attorney General has sought leave to intervene in the case in order to oppose the lawsuit.

**Contact Stan Eisenhammer or Ellen Rothenberg with your "fair share" inquiries.**

**Measles Cases Confirmed in Illinois/School Protocol Requirements**--As a result of the recent confirmed cases of measles in Illinois, schools should be aware of the Illinois Department of Public Health measles exclusion procedures. A copy of the applicable IDPH regulation may be found [here](#). Additional guidance from the Illinois State Board of Education is available [here](#).

Under Illinois law, students must show proof of immunization against communicable diseases to attend school. Immunization exemptions are allowed *only* for medical and religious reasons.

In the event a school receives notification that a student or employee is suspected of having the measles, the school district must notify the local health authority within 24 hours. In addition, on the same day that a report of a suspected case of measles is received, the school is required to conduct an inquiry into absenteeism to determine the existence of any other cases of

measles in the school. The local health department will assist the school district in investigating measles cases and enforcing the IDPH measles exclusion procedures.

IDPH Exclusion procedures provide that upon notice of the presence of a measles case at school, the school is required to exclude "susceptible contacts," meaning any person—student, staff, or visitor—to the school who is unvaccinated or who has not presented proof of immunity or vaccination. All susceptible contacts must be excluded from school for 21 days after the onset of the last reported measles case or until acceptable proof of immunity is received by the school. Students and adults with measles must remain out of school for at least four days after the appearance of the rash. 77 Ill.Adm.Code 690.520(a)(2).

The school district must send home a notice with each student who has not presented proof of immunity

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**Measles Cont.** explaining that the student is to be excluded effective the following morning until the school receives acceptable proof of immunity or until 21 days after the onset of the last reported measles case. Homebound instruction for excluded students should be considered on a case-by-case basis.

All school districts should review the legal require-

ments and its protocols in case the school district must take such action.

**Contact Jennifer Mueller with your inquiries about immunization requirements and the IDPH measles exclusion protocol.**

**School Districts Required to File Bullying Policies with Illinois State Board of Education by April 15, 2015**--On January 28th, the Illinois State Board of Education (ISBE) issued a memorandum to school districts notifying administrators of new required components of a board of education's bullying policy and specifying a timeline for districts to file a revised bullying policy with ISBE. In August 2014, the Illinois Association of School Boards' PRESS Policies were revised pursuant to legislation passed amending the Illinois bullying statute.

The August 2014 revisions were the result of Public Act 98-669, which added several components for the bullying prevention policy including: new definitions; changes to how the policy is created, maintained and implemented; the removal of requiring schools to communicate its policy to students and parents or guardians on an annual basis; and provided for

the need to maintain and analyze data on the prevalence of bullying present within the district.

In January 2015, the passage of Public Act 98-801 added the prohibition of *cyber-bullying* at non-school-related locations or functions, or from the use of a device that is not owned, leased, or used by a school district or school.

ISBE acknowledged that even though careful deliberation with all stakeholders (including students, parents and staff) will need to take place prior to developing a compliant bullying policy incorporating the two most recent amendments to the statute, the submission deadline of **April 15, 2015** would stand for districts to submit their initial bullying policies to ISBE.

**Please contact Terry Hodges or Jennifer Mueller with your bullying policy or procedures inquiries.**

**DHS HIPAA Compliance Audits May Impact School Districts**--The Department of Health and Human Services' Office of Civil Rights is expected to continue its compliance audits this year for compliance with the privacy and security rules and the breach notification rules of Health Insurance Portability and Accountability Act of 1996 ("HIPAA").

Districts that are also HIPAA covered entities should audit and update their HIPAA privacy and security policies and procedures as well as their Business Associate Agreements. Risk assessments are also important to compliance as well as appropriate training,

health plan documentation and recordkeeping. Districts should contact their insurance brokers and third party administrators managing their health plans and Section 125 cafeteria plans to help them determine their potential exposure to HIPAA and compliance risk.

**Even if your District has updated its Section 125 cafeteria plan or Business Associate Agreements recently, confirmation with your broker or administrator regarding remaining compliance issues is advised. Contact Heather Brickman or Barb Erickson with your HIPAA inquiries.**

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