

THE
Extra Mile
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Illinois Supreme Court Rules Against School District in “Bleacher Case”--In a major decision, the Illinois Supreme Court ruled that school districts are required to comply with the zoning requirements of local municipalities.

The issue in the case of *Gurba v. Community High School District No. 155* involved whether a school district’s construction of football stadium bleachers on school property is governed by local municipal zoning ordinances. Prior to this case, it had been a long-standing practice that school district construction on school property for school purposes was not

subject to the zoning authority of the local municipality, but, instead, such projects were subject to approval by the local regional office of education.

In 2013, the Board of Community High School District No. 155 decided to replace the bleachers at the Crystal Lake South football stadium. The Board’s plan included moving the home bleachers to an area that had long contained the visiting bleachers, immediately adjacent to residential property.

However, the new home bleachers
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New Concussion Safety Requirements for Schools Now Effective 2015-2016 School Year--In August, Governor Rauner signed into law the *Youth Sports Concussion Safety Act (Public Act 99-0245)*. The Act includes new requirements for concussion safety for public school districts, charter schools, and private schools with students participating in interscholastic athletic activities. In order to address concerns in the school community regarding implementation, it is anticipated a “trailer bill” delaying the effective date of the new law to the 2016-2017 school year will be passed and signed by the Governor within the next month. Until then, this new law is in effect for schools.

Management of student concussions has been increasingly regulated since a 2011 law that mandated, among other things, that school districts adopt a policy regarding student-athlete concussions, student and parent notification and consent, and staff training. In 2014, another law mandated online concussion awareness training for all high school coaching personnel and for student-athletes to watch the Illinois High School Association’s (“IHSA”) video about concussions.

The new law adds to these requirements, imposing additional concussion-related mandates on
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Consumer Price Index

Percent change for the month of **August 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	0.4	0.4
12 Mth	-0.1	-0.5
St. Louis, 1st Half 2015		
6 Mth	-0.7	-0.9
12 Mth	-0.9	-1.2
U.S. Mthly	-0.1	-0.2
12 Mth	0.2	-0.3

September CPI figures will be released October 20, 2015.

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

- We look forward to seeing many of you at the October IASA legal conferences, *The Year in Review: The Highlights and Lowlights of Illinois School Law 2015*. Please visit www.iasaedu.org for information and registration.
- The annual IASA/IASB/IASBO Joint Conference in Chicago is just around the corner. HLERK will be presenting at the conference, and HLERK clients and friends will soon receive their invitation to a special reception on Friday evening. We look forward to seeing you there.
- PERA joint committees on student growth must hold their first official meetings by November 1.

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Concussion Cont. schools. Notably, some of the new requirements apply whether or not the student sustained the concussion while participating in an interscholastic athletic activity.

Over the course of this school year, the Illinois State Board of Education (“ISBE”) will be preparing guidance documents, and the IHSA will be preparing revised concussion training materials and forms. For school districts that subscribe to the Illinois Association of School Boards (“IASB”) PRESS policy service, a revised concussion policy likely will be published in October.

Here is a summary of the key mandates in the new law:

- **Concussion Oversight Team (“COT”):**
 - ◆ School boards and the governing body of charter schools and private schools must appoint or approve a COT.
 - ◆ **Members:** The COT must include an athletic trainer and/or nurse, if employed by the school; a physician, to the extent practicable; and an individual who is responsible for implementing and complying with the return-to-play and return-to-learn protocols adopted by the COT.
 - ◆ **Protocols:** The COT must establish two protocols. The protocols must be based on peer-reviewed scientific evidence consistent with guidelines from the Centers for Disease Control and Prevention.
 - ◊**Return-to-Play Protocol:** Determines when a student may return to practice or competition after a concussion.
 - ◊**Return-to-Learn Protocol:** Determines when a student may return to the classroom after a concussion.
- **Pre-Participation Student & Parent Consent:** To participate in an interscholastic athletic activity, the student and the student’s parent must sign an IHSA-approved consent form that includes the specified concussion information. IHSA has a

[form](#) available on its website. Our firm has not reviewed this form.

- **Removal of a Student from an Interscholastic Athletics Practice or Competition:** A student must be removed from an interscholastic athletics practice or competition when any one of the following individuals believes the student might have sustained a concussion during the practice or competition: coach, physician, game official, athletic trainer, student’s parent, student, or any other person deemed appropriate under the school’s return-to-play protocol.
- **Requirements for the Return of a Student Removed from an Interscholastic Athletics Activity to Practice or Competition:** A student may not return to an interscholastic athletics practice or competition after a concussion until certain statutory requirements are met. (*Note: Coaches of an interscholastic athletic activity are specifically prohibited from authorizing a student to return to play after a concussion.*)
- **Return of a Student who Suffered a Concussion Not the Result of an Interscholastic Athletics Practice or Competition:** The law appears to apply broadly to all concussions, whether or not the concussion was sustained while the student was participating in an interscholastic athletic activity or at school or at a school function. In these situations, the law authorizes the COT to establish the same return-to-learn protocol as used for students who sustain a concussion during an interscholastic athletic activity. Additionally, the school should follow the return-to-play requirements for students who participate in an interscholastic athletic activity and seek to return to that activity after sustaining a concussion outside of the activity.
- **Return-to-Learn Protocol:** As discussed above, the return-to-learn protocol applies whether or not the concussion was sustained while the student was participating in an interscholastic athletic activity. The new law is silent regarding what the return-to-learn protocol must contain. The COT

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will need to specify the requirements for returning to the classroom as part of the return-to-learn protocol.

- **Training:** Training requirements depend on the position held by the individual.
 - ◆ Coaches, game officials, and nurses must take a training course at least once every 2 years and must submit proof of completion. Training for coaches and game officials must be in accordance with the law and must be IHSA-approved.
 - ◆ Physicians and athletic trainers also must take concussion-related training consistent with the law.
 - ◆ A physician, athletic trainer, or nurse who is not in compliance with the training requirements cannot serve on the COT.
 - ◆ Training must be completed for the first time no later than September 1, 2016; however, we note that concussion awareness training requirements pursuant to the [2014 law](#) are currently in effect. IHSA will be updating its

training to comply with the 2-hour requirement.

- **Emergency Action Plan (“EAP”):** School boards and the governing body of charter schools and private schools must develop a school-specific emergency action plan (“EAP”) for interscholastic athletic activities that meets certain statutory requirements. IHSA has an [EAP template](#) available on its website. Our firm has not reviewed it.
- **Designated Individual & Supervisor:** The new law requires the identification of an individual responsible for compliance with the return-to-play and return-to-learn protocols. That individual must be supervised by the Superintendent, chief school administrator, or designee.

The IASB published a [Checklist for Youth Sports Concussion Safety Act](#) for school districts. Additional concussion resources are available on the [IHSA website](#).

Contact [Jennifer Mueller](#) or [Stephanie Jones](#) with your inquiries regarding the new concussion law.

Court Upholds Superintendent’s Termination for Reassigning Students to Alternative School without Board Action--On September 9, 2015, the Illinois Appellate Court ruled that Rich Township High School District 227 Board of Education and its individual Board members had sufficient cause to terminate the employment of their Superintendent.

The primary issue in the case, [Leak v. Board of Education of Rich T.H.S.D. 227](#), was whether the Superintendent’s conduct constituted sufficient “cause” to terminate her employment contract. At issue was the Superintendent’s practice of administratively transferring misbehaving students to alternative schools without taking the students’ cases to the Board.

Interestingly, this practice of transferring students to the alternative school without Board action was a long-standing practice that had gone on for years without question. The Superintendent had recently

been renewed for a multi-year contract and been rated Excellent by 6 of 7 Board members. However, a swing election resulted in a new Board majority, and the new Board was concerned about this practice and fired the Superintendent because of it.

The court examined Section 10-22.6 of the *School Code*, which authorizes students who are guilty of “gross disobedience of misconduct” to be expelled, but only by the Board and only following a hearing by the Board or its hearing officer. This authority is distinct from the authority to suspend students for up to 10 days, which authority is often delegated to the Superintendent. Since the alternative school placements at issue in this case lasted more than 10 days, they were expulsions, and the court concluded that the Superintendent had acted improperly in expelling students without Board hearings.

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Termination Cont. Notably, the court reviewed Section 13A-4 of the *School Code*, which authorizes students subject to suspension or expulsion to be “immediately transferred to the alternative program.” The court determined that this authority does not trump the requirement under 10-22.6 that the Board make any and all expulsion decisions.

The court also considered the Superintendent’s arguments concerning whether the Board violated an implied covenant to act in good faith under the employment contract and whether the Board acted arbitrarily or capriciously. The court rejected these arguments, noting that the Board had acted within its contractual authority to dismiss the Superintendent if she acted in

a manner that was detrimental to the best interests of the district.

Finally, the Superintendent argued that she did not receive a fair and impartial hearing before the Board before her termination. The crux of her argument was that the Board was biased. To be biased, the court held, the Superintendent would have to prove the Board members “had to some extent adjudged the facts [and] the law of the case in advance of hearing it.” The Superintendent failed to do so, so the court rejected her claim.

The Appellate Court’s ruling impacts both student and school personnel practices. Please contact Jeff Goelitz or Bennett Rodick with your inquiries.

Bleachers Cont. were to be larger and higher than the pre-existing visitor bleachers and were also to be closer to the property line of the residential property.

The plans for the project were approved by the McHenry County Regional Superintendent of Schools. Accordingly, the district began building the new bleachers without seeking building permits, zoning approval, or storm water management approval from the City of Crystal Lake. Upon learning of the project, the City ordered the Board to stop the bleacher project until it obtained a special-use permit, a storm water management permit, and zoning variances.

The Board did not comply with the City’s order, taking the position that school district construction projects on district property and for school purposes are not subject to the zoning authority of the local municipality.

As the bleacher project was being completed, three citizens who own residential property adjacent to the new bleachers filed a lawsuit against the Board seeking to enforce the City’s zoning restrictions and argu-

ing that the new bleachers negatively affected the values of their property.

In deciding this case, the Illinois Supreme Court rejected the Board’s contention that local zoning laws do not apply to school district construction. The Court found that there are no statutory provisions that expressly exempt school property from municipal projects. To the contrary, the Court found that Section 10-22.13a of the *School Code*, which provides school boards with the authority to seek “zoning changes, variations, or special uses for property held or controlled by the school district,” demonstrated that school districts are subject to local zoning ordinances.

This case has far-reaching implications for both existing improvements and future plans, and may affect other municipal regulation of school districts, as well. We will address this case in our 2015 IASA Law Conferences, The Year in Review: The Highlights and Lowlights of Illinois School Law 2015. Contact Rob Swain, Dean Krone, Bob Kohn, or James Levi with questions about how the ruling may affect your district.