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THE Extra Mile

GOING THE EXTRA MILE SO YOU DON'T HAVE TO

EDUCATION EDITION

February 2016

IASA/SB100-ESSA Conferences Upcoming--The Illinois Association of School Administrators is pleased to offer a series of three regional conferences discussing the impact of Senate Bill 100 and the *Every Student Succeeds Act*. Join **Sara Boucek**, IASA general counsel and HLERK alumnus, and a team of HLERK all-stars.

Due to overwhelming demand, the following locations are currently at capacity and closed to new enrollment.

Monday, February 22, 2016
8:00a.m.—12:15p.m., Universal Technical Institute, 2611 Corporate West Drive, Main Campus Auditorium, Lisle

Tuesday, February 23, 2016
8:00a.m.—12:15p.m., Normal West High School, 501 N. Parkside Road, Auditorium, Normal

Wednesday, February 24, 2016
8:00a.m.—12:15p.m., Mount Vernon Primary Center, 401 N. 30th Street, Auditorium, Mt. Vernon

IASA and HLERK look forward to seeing you there and helping you address the myriad of SB100 implementation issues for all school districts.

Consumer Price Index

Percent change for the month of **December 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	-0.6	-0.6
12 Mth	0.0	-0.4
St. Louis, 2nd Half 2015		
6 Mth	0.7	0.7
12 Mth	0.0	-0.2
U.S. Mthly	-0.3	-0.4
12 Mth	0.7	0.4

January CPI figures will be released February 20, 2016.

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

- Remember your statutory and CBA deadlines for reductions-in-force or end-of-year dismissals of teacher or educational support employees. Contact **Ellen Rothenberg**, **Tina Christofalos**, or **Jeff Goelitz** with your evaluation, dismissal, or RIF inquiries. Timelines begin as early as February 1.
- Review the need for nonrenewal of employment contracts or administrative reclassifications to teaching positions for tenured administrators. Be aware of possible impact on the RIF process.
- Remember to complete Principal and Assistant Principal evaluations by March 1 and give any reclassification notices to Principals and Assistant Principals by April 1.

***Every Student Succeeds Act* Adopted/Dear Colleague Letter Issued--**On December 10, 2015, the *Every Student Succeeds Act* ("ESSA") was signed by the President. The ESSA is the most recent reauthorization of the *Elementary and Secondary Education Act of 1965* (ESEA), the best known reiteration of which was the *No Child Left Behind Act* (NCLB).

While the ESSA maintains a number of the hallmarks of NCLB, the law also includes a number of significant changes, many of which are centered on reducing the role of the Federal Government in public education and shifting more power to the states.

Below is a summary of some of the more significant changes in the ESSA. In addition, the National School Board Association prepared a summary of the law, which you can find here.

The White House published a report on the reauthorized law in December, which is available here. The Department of Education has issued two Dear Colleague Letters (December 18, 2016; January 28, 2016) regarding transition from NCLB to the ESSA.

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

ESSA Cont.

- Transition & Implementation: While the ESSA went into effect on December 10, 2015, transition will occur over the next several years. Upcoming key implementation dates include:
  - ◊ New state plans pursuant to ESSA will take effect beginning with the 2017-2018 school year. Existing state plans will be in effect through August 1, 2016.
  - ◊ Existing waivers to states (including Illinois) granted through ESEA flexibility terminate on August 1, 2016. After the waivers end, states must continue supporting their lowest-performing schools (i.e., "priority schools") and schools with big achievement gaps (i.e., "focus schools") until states' new ESSA plans take effect.
- Testing: Annual, statewide assessments in reading and math in grades three through eight and once in high school, as well as science assessments at least once during grades three to five, grades six to nine, and grades 10 to 12, are still required under the ESSA. States have flexibility to develop and implement innovative assessments so long as they meet certain technical standards. State assessment systems will continue to be peer-reviewed.
- Accountability: One of the biggest changes under the ESSA is that the "adequate yearly progress" federal accountability system has been replaced. Instead, states must develop their own system, which must be submitted to the U.S. Department of Education for the 2017-2018 school year. The state plans must include long-term goals and measures of interim progress for all students and separately for each subgroup of students. Generally, the goals must address improved academic achievement based on proficiency on tests, English language learner proficiency, and graduation rates. The ESSA identifies "indicators" for elementary, middle schools and high schools that must be part of states' accountability systems. It will be up to states to decide how much "weight" to assign to the indicators for accountability. In addition, annual reporting of data for all students and disaggregated by subgroups will continue to be required under the ESSA.
- School Improvement & Interventions: The ESSA also replaces the NCLB one-size-fits-all sanctions and interventions aimed at school improvement. In its place, states must develop a system for identifying and providing support and interventions for schools in need of improvement. States must identify and intervene in low performing schools, including those that are in the bottom 5% of performers with high school graduation rates below 67%, and where subgroups of students are struggling. Schools identified for improvement must develop a school improvement plan in collaboration with community stakeholders, and the plan is to be approved, monitored, and reviewed by the school, school district, and state department of education.
- Academic Standards: Under the ESSA, states retain the power to choose their own academic standards. The U.S. Department of Education cannot mandate or incentivize states to adopt any specific set of standards, including the Common Core.
- Subgroups: The ESSA increases accountability for all students and makes changes for certain subgroups. Under the ESSA, accountability for English language learners is moved from a separate system in Title III (English language acquisition section) to Title I (accountability section for all students). The reason for this is to ensure that students who are learning English are a priority. The ESSA also sets forth options for how English language learners' test scores are included as part of

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ESSA Cont.

a state's accountability system. In addition, the ESSA establishes a state-level participation cap that only 1% of students overall can be given alternate assessments.

- Highly Qualified Teachers: The NCLB highly qualified teacher requirements have been eliminated. In addition, in the ESSA, there are not mandated teacher evaluation requirements. That is, teacher evaluations are no longer tied to student test scores, which marks a big change from NCLB wavier requirements.

This overview is intended only to highlight some of the key changes in the ESSA. There is much work to be done by states, especially as the 2016-2017 school year will be a big transition year. We anticipate additional guidance will be forthcoming from the U.S. Department of Education and the Illinois State Board of Education to support states and school districts in the transition to the ESSA.

ESSA will be discussed at the upcoming IASA Conferences on SB100 and ESSA.

Please contact Stephanie Jones and Jennifer Mueller with questions regarding the ESSA, and we look forward to seeing you at the rapidly approaching IASA Conferences on the ESSA.

New Special Education "Medical Review" Rules and School Nurse Rules Take Effect July 1, 2016-- Federal special education law requires that, if appropriate, a student's health must be assessed as part of a student's special education evaluation or re-evaluation. Illinois special education regulations provide that this medical review must contain both subjective and objective information about the student's health. Beginning July 1, 2016, new rules will take effect in Illinois impacting these requirements.

These new rules provide that a medical review for the purpose of a special education evaluation or reevaluation must be conducted by certain qualified personnel. The following personnel will be considered qualified to conduct a medical review as of July 1, 2016:

- An individual who holds a professional educator license endorsed for school support personnel in school nursing;
- An individual licensed to practice medicine in all of its branches (pursuant to the *Medical Practice Act of 1987*);
- An individual licensed as a registered professional nurse (pursuant to the *Nurse Practice Act*) and who also holds a bachelor's degree in nursing, education, or a related field; or
- An individual licensed as an advance practice nurse (pursuant to the *Nurse Practice Act*).

There are certain limited exceptions to these personnel requirements. ISBE has been providing training modules for current school nurses to meet the new requirements.

The new regulatory requirements will impact school district evaluations of students with disabilities and may have labor and personnel implications as well.

Please contact Lori Martin with your inquiries.

Illinois School District Liability for Attorneys' Fees Awards in FOIA Lawsuits Increased (again) By Appellate Court--The Appellate Court of Illinois recently held that a requester under the Illinois *Freedom of Information Act* is entitled to attorney fees arising from a FOIA lawsuit if the public body produces the requested records after the requester files suit, even in the absence of a court order requiring production.

In *Perdue v. Village of Tower Hill*, 2015 IL App (5th) 140357-U, James Perdue submitted a FOIA request to the Village of Tower Hill, requesting that the Village produce 11 years of attorney contracts, billings, and disbursements. The Village suggested that Perdue narrow his request, but Perdue did not respond. The Village then denied the request as unduly burdensome. Perdue filed a petition for judicial review in circuit court, and the Village ultimately agreed to release six years of the records to Perdue.

Perdue filed a motion seeking attorney fees and costs, claiming he had paid about $17,000 to attorneys since submitting his FOIA request. The court awarded Perdue $6,500 in fees, reasoning that only a portion of the records requested were produced and that, had Perdue worked with the Village to narrow his request, the litigation could have been resolved earlier.

On appeal, Perdue argued he was entitled to all $17,000 in attorney fees because he "prevailed" in his FOIA suit, even though he did not obtain a court order requiring the Village to release the records. The appellate court held that "in order to 'prevail' in a FOIA suit, a court order is not required and a requester may be entitled to attorney fees if the requester prevails by obtaining the records after filing a suit."

In this case, the parties came to an agreement to limit the request from 11 years of records to six years of records only *after* Perdue filed suit. Therefore, Perdue "prevailed" in the FOIA suit and was entitled to attorney fees.

This case clarifies the definition of a "prevailing party" in FOIA lawsuits in light of FOIA's recent amendments and conflicting appellate court decisions interpreting the amendments.

Although this case holds a FOIA requester does not need a court order to obtain an attorney fee award, public bodies may point to other factors during the course of litigation to reduce the award, such as the requestor's refusal to narrow a burdensome request.

FOIA issues continue to grow in complexity and create increased school district financial risk. Contact Steve Richart or Heather Brickman with your FOIA inquiries.

Public Body Violated OMA By Requiring Members of the Public to Submit Questions for Public Comment On a Specific Form Hours Before a Meeting--On January 11, 2016, the Illinois Attorney General issued an informal, unbinding opinion finding that the Board of Trustees of the Village of Cahokia violated the *Open Meetings Act* when it did not allow a citizen to speak because she had not submitted her question on a form hours ahead of the meeting.

The *Open Meetings Act* provides that persons must be allowed to address public officials at a public meeting under rules established by the public body. The Village of Cahokia adopted a rule that any person wishing to make a public comment at a meeting had to fill out a specific form available at the Clerk's office by noon on the day of the meeting (seven hours in advance).

The form required citizens to provide their names, addresses, phone numbers, and the subject of their comment, or a list of questions they planned to ask. The Attorney General determined that the rules were overly restrictive and might have a chilling effect on speech. The A.G. noted that the Village had "mis-interpreted OMA's public comment requirement as providing for a controlled question and answer session, as opposed to a forum where each person may speak his or her mind."

Please contact Jeff Goelitz or Kerry Burnett with your OMA inquiries.

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