

## THE Extra Mile

GOING THE EXTRA MILE SO YOU DON'T HAVE TO

**THE EXTRA MILE IS GOING GREEN:** Sign Up Now for HLERK's Monthly Electronic Newsletter--Beginning in April, *The Extra Mile* will be published exclusively by email. As part of HLERK's continuing effort to adopt "green" policies, and to increase our ability to deliver important news to our readers as quickly and efficiently as possible, we are discontinuing the print version.

If you or your colleagues do not currently receive the email version of *The Extra Mile*, please return the enclosed flyer or, more simply, email your contact information to

hlerk@hlerk.com, and continue to receive crucial news that affects public and private schools and special education cooperatives. Often this is news you will find nowhere else; so don't lose the opportunity to minimize your legal risk and costs.

We look forward to continuing to serve our statewide readership of administrators and board members and hope you will share *The Extra Mile* email with your colleagues.

Please also visit our website at [www.hlerk.com](http://www.hlerk.com) to access current news, the Consumer Price Index, and HLERK's upcoming service activities.

### Consumer Price Index

Percent change for the month of **January 2016**, 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	0.8	0.4
12 Mth	0.9	0.5
St. Louis, 2nd Half 2015		
6 Mth	0.7	0.7
12 Mth	0.0	-0.2
U.S. Mthly	0.2	0.1
12 Mth	1.4	1.2

February CPI figures will be released March 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

- It's time to update your student handbooks! Send in the attached form to order the HLERK newly revised *Student Handbook Checklist* or contact **Jennifer Mueller** to request a comprehensive review of your student handbooks.
- This month, school districts begin looking at employee issues, including reductions-in-force. HLERK's acclaimed "RIF" team stands ready to address the multiple complex issues involved. Please contact us with your inquiries, and we look forward to working with you.

**Department of Education Proposes Amended IDEA Rules Governing Equity--On March 2, 2016, the U.S. Department of Education ("DOE") issued a *Notice of Proposed Rulemaking* ("NPRM") seeking to amend the *Individuals with Disabilities in Education Act* implementing regulations. The NPRM seeks to address the "over-identification of certain students for special education services" and the issue of disproportionality in special education. Specifically, the DOE expresses concern about over-identification of students, particularly minority students, with disabilities which results in students being placed "in more restrictive environments and not taught to challenging academic standards." The DOE notes that "the intention of these proposed regulations is not to limit services for children with disabilities who need them; rather, their purpose is to ensure that children are not mislabeled and receive appropriate services."**

The NPRM proposes four primary changes to the current IDEA regulations:

- Establishing and enforcing a "standard methodology that each state must use in its annual determination ... of whether significant disproportionality based on race and ethnicity is occurring in the state and the LEAs of the state."

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#### Offices

Arlington Hts. 847-670-9000

O'Fallon 618-622-0999

Peoria 309-671-9000

## DOE Cont.

- Clarifying “ambiguities in the existing regulations concerning significant disproportionality in the discipline of children with disabilities.” The DOE notes that children of color with disabilities “are more likely to be suspended and expelled than white children with disabilities, and that suspensions are associated with negative student outcomes.”
- Clarifying “IDEA’s requirements regarding their review, and when appropriate, revision.” Specifically, the DOE seeks to improve the “review of LEA policies, practices, and procedures when significant disproportionality is found.”
- Expanding “the scope of … the remedies required under IDEA.” Specifically, this proposed amendment “would require that LEAs identify and address factors contributing to significant disproportionality as part of the implementation and coordinated early intervening services and would expand

the authorized use of funds reserved for these services to serve children from age 3 through grade 12, with and without disabilities.”

The DOE is accepting public comment on the proposed regulations until May 16, 2016. Comments can be submitted through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. Comments will *not* be accepted via fax or email.

The full text of the Notice of Proposed Rulemaking is available at: <https://federalregister.gov/a/2016-03938>.

***For questions on the Notice of Proposed Rulemaking or how to submit a public comment, please contact Bennett Rodick or Kaitlin Atlas.***

**ISBE Issues New Guidance Document 15-9 Regarding IDEA Proportionate Share Services for Parentally Placed Nonpublic Students with Disabilities**--In November 2015, ISBE issued Guidance Document 15-9, available at <http://www.isbe.net/spec-ed/pdfs/guidance-15-09-idea-pps-nonpublic.pdf>, to provide guidance on the requirements of local school districts in IDEA child find activities, timely and meaningful consultations with representatives of non-public schools, and the provision of services to eligible students who attend nonpublic schools located within the local educational agencies (“LEA”). This guidance document consolidates and replaces information contained in those previously issued documents from ISBE on this topic.

In general, IDEA requires LEAs to provide a proportionate share of special education services to eligible students who are parentally placed in nonpublic schools within their LEA’s geographical boundaries.

IDEA proportionate share expenditures must include, at a minimum, services to the students, which may include supplies, materials, and professional development for nonpublic staff in relation to the student services. However, administrative services and child find expenditures are not allowable as proportionate share services. ISBE’s interpretation of the proportionate share law has not changed since the publication dates of their prior guidances. Rather, Guidance 15-9 now contains an additional distinction with respect to “child find” responsibilities which LEAs need to be aware of going forward.

## Child Find

Each school district is responsible for locating, identifying, and evaluating all children with disabilities enrolled by their parents in nonpublic schools located in that school district. In other words, LEAs must

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**ISBE Cont.** complete initial evaluations and reevaluations of nonpublic students within their district boundaries regardless of whether or not the students are residents of the district.

If a student is attending a nonpublic school outside of the LEA of residence, the *serving* district, which is the LEA in which the nonpublic school is located, is responsible for child find, evaluations, and service provision. The cost of the child find activities, including evaluations, is not part of the nonpublic proportionate share obligation. Instead, the proportionate share funds are for providing *special education services* to IDEA-eligible nonpublic students.

This language, found in Guidance 15-9, has not changed any legal interpretations made from prior ISBE Guidances, except for a distinction made in their new Guidance with respect to “child find” responsibilities that is dependent upon the characterization of the private facility in which the student was unilaterally placed by their parents. If the private/parochial school where the student has been unilater-

ally placed by his/her parents does not serve students within the general population but instead could be characterized as a *nonpublic special education school*, then the student’s LEA of residence will retain responsibility for conducting any initial evaluation and reevaluations and not the serving district where the nonpublic special education school is located.

This distinction has been made to address a concern that the student’s LEA of residence would not likely want another district to determine eligibility and make any placement recommendation that would commit the LEA of residence to assume financial responsibility for a nonpublic special education placement that was previously made unilaterally by their parents.

**Contact Jay Kraning with your inquiries regarding your child find obligations to unilaterally placed students outside of your school district.**

**SEC Begins Pursuing “MCDC Initiative” Settlements with Public Bond Issuers Including School Districts**--On February 10, 2016, the Government Finance Officers Association (“GFOA”), which is a professional association for individuals who are involved with government financial management, issued an alert to its members that the Securities and Exchange Commission (“SEC”) has begun reaching out to government debt issuers with settlement offers in connection with the SEC’s Municipalities Continuing Disclosure Cooperation Initiative (“MCDC Initiative”). The GFOA alert can be found at: <http://www.gfoa.org/gfoa-alert-sec-mcdc-initiative-and-issuer-settlements>.

In 2014, the SEC launched the MCDC Initiative to encourage bond issuers (including school districts and municipalities) and underwriters to self-report instances of material misstatements in bond offering

documents regarding the issuer’s prior compliance with its continuing disclosure obligations in exchange for favorable settlement terms. Issuers who decided to self-report were required to do so by December 1, 2014.

Since the 2014 reporting deadline, the SEC has been pursuing settlements with underwriters (not issuers), and those settlements included the payment of monetary penalties for violations. According to the GFOA alert, the SEC is now turning its attention to pursuing settlements with issuers. While the SEC will not pursue monetary penalties against issuers who self-reported, it may pursue enforcements against governmental officials who are culpable of the misstatements in bond offering documents.

Whether or not a district or cooperative self-reported  
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**SEC Cont.** potential misstatements, it may be contacted by the SEC in connection with the MCDC Initiative.

*If you receive any communications from the SEC regarding the MCDC Initiative, please exercise*

**caution and consult with legal counsel. Please contact Heather Brickman or Kerry Burnet with questions regarding the MCDC Initiative.**

**Federal Court Holds Dismissed Teacher Cannot Show “Liberty Interest” Due Process Violation After Securing Another Teaching Position One School Year Later**--In a major recent ruling, the U.S. District Court for the Central District of Illinois ruled that a school board did not violate a terminated teacher’s “liberty” right to pursue a public school teaching career, reasoning that the teacher obtained employment as a public school teacher at another school district just one school year after her termination.

In *Wood v. Peoria School District 150*, successfully defended by **Stan Eisenhammer** and **Babak Bakhtiari**, the school board dismissed a middle school math teacher in April 2013. Along with the resolution dismissing her, the school board attached a notice of dismissal stating the reasons for her nonrenewal.

A local reporter then submitted an Illinois *Freedom of Information Act* request for the resolution. The next day, a local newspaper published a story containing the reasons for her dismissal. Notwithstanding the newspaper’s story, the teacher secured a position as teacher at another school district in August 2014, one school year after her dismissal.

The teacher claimed the school board violated the Due Process Clause of the Fourteenth Amendment when it attached the reasons for her dismissal (which

she asserted were false) to the resolution that was later made public. In other words, she alleged the school district’s statements in the notice of dismissal were so stigmatizing that they infringed on her “liberty interest” to pursue a public school teaching career without “due process of law.”

The court stated that to support her claim, the school board’s statements must have “had the effect of blacklisting the employee from employment in comparable jobs,” making it “virtually impossible” to find a new position in that field. Here, the teacher’s “year-long hiatus from teaching did not amount to a tangible loss of employment to support her liberty interest claim.”

In addition, even though the teacher was paid less and taught different grades at her new position, the court held “[a] liberty interest in pursuing a career in the field of one’s choosing does not vest [an employee] with a right to have the same job, or the same salary, or the same employer.”

***The federal judge’s ruling is a substantial victory for Illinois school districts. Contact any of our RIF team with your teacher dismissal inquiries.***