

## THE Extra Mile

GOING THE EXTRA MILE SO YOU DON'T HAVE TO

**ISBE “Junk Food” Ban in Effect**--As previously reported in *The Extra Mile*, ISBE issued proposed school food service regulations last December banning the sale of junk food in elementary and middle schools. The final regulations became effective on October 17, 2006.

The most significant feature of the new regulations is the section governing food and beverage sales in schools. The new section applies only to elementary and middle schools receiving federal money under the School Breakfast or National School Lunch Programs, and only to sales of foods and beverages before school or during the school day (not to sales at after-school events or functions).

Under the new regulations, the only beverages that can be sold to K-8 students are milk, certain dairy beverages, fruit and vegetable drinks containing 50

percent or more fruit or vegetable juice, water, certain fruit smoothies, and beverages exempted from the USDA's list of Foods of Minimal Nutritional Value.

The only foods that can be sold to K-8 students outside of food service areas or meal periods are nuts, seeds, nut butters, eggs, cheese packaged for individual sale, fruits or non-fried vegetables, low-fat yogurt products, or foods meeting strict nutritional content requirements.

Schools may apply to ISBE for a one-time exemption from the food and beverage standards for the 2006-2007 school year under two circumstances. The first is for schools that cannot adhere to the requirements without breaching an existing food and beverage contract. The second is if the school cannot segregate its food and beverage sales to K-8 students from sales to 9-12 students.

*(Continued on Page 2)*

### Please Join HLERK at the IASB/ IASA/IASBO Joint Conference.

Our annual reception for clients and friends will be in the Monarch Suite of the Hyatt Hotel, East Tower, on **Saturday, November 18th from 3:00-7:00 p.m.** Join us for conversation, food, drink and fireworks!

Please also attend the following Conference programs featuring HLERK attorneys:

**Superintendent Employment Contracts** with **Stan Eisenhammer** on November 18th, 10:30-12:00 p.m. at the Sheraton Hotel, Ballroom Level IV (Chicago 6);

**Intelligent Design, Christmas Programs and Book Banning: The First Amendment and the Public Schools** moderated by **Heather Brickman** with **Nancy Krent** and **Stan Eisenhammer** on November 18th, 1:30-3:00 p.m. at the Sheraton Hotel, Ballroom Level IV;

**Financial Responsibility: Leadership without Paranoia!** with **Terry Hodges** on November 18th, 1:30-3:00 p.m. at the Sheraton Hotel, Ballroom Level IV (Chicago 9).

*All of us at HLERK look forward to seeing you at the Conference! Contact Stan Eisenhammer with questions.*

*Recent Developments in Illinois School Law 2006 Handbooks* now available for purchase. See article next page.

Are you receiving the email version of *The Extra Mile*? Sign up today at: [www.hlerk.com](http://www.hlerk.com)

**Offices:**  
Arlington Hts. 847-670-9000  
Springfield 217-546-9200  
Belleville 618-355-7850

### Consumer Price Index

Percent change for the month of **September, 2006**, for the urban wage earners & clerical indices as reported by the Bureau of Labor Statistics.

	All Urban (CPI-U)	Workers (CPI-U)
Chicago-Mthly	-0.4	-0.5
12 Mth	0.7	0.3
St. Louis-6 Mth	0.7	0.8
12 Mth	2.1	2.3
U.S. Mthly	-0.5	-0.6
12 Mth	2.1	1.7

October CPI figures will be released November 18, 2006. Visit the most recent CPI at our website, [www.hlerk.com](http://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

- Register now for the upcoming HLERK/PDN Special Education Law Programs scheduled for December 6th in Schaumburg and December 14th in Rockford. Register by contacting the PDN at 715.836.9900, or go to their website at [www.meds-pdn.com](http://www.meds-pdn.com). The registration form is also available at [www.hlerk.com](http://www.hlerk.com).
- Submit your “timely and meaningful consultation” compliance information to ISBE as required by IDEA 2004.
- School districts/joint agreements must make their Annual Statement of Affairs public by December 1 by submitting it to ISBE for posting on the ISBE website ([click for ISBE's form](#)); having copies available at the district/joint agreement main office; and publishing a summary in the newspaper, see [P.A. 94-875](#) for more.

**Junk Food Ban Cont.**

ISBE has a new guidance document on its website at [www.isbe.net/nutrition](http://www.isbe.net/nutrition); it contains the USDA's list of exempt beverages, a worksheet to determine what foods can be sold, and a form to request exemption from the food and

beverage requirements for the 2006–2007 school year.

***Please contact Steven Richart with questions or to request a complimentary copy of the Regulations or ISBE Guidance.***

**ISBE Confirms Definition of “Private School” Regarding Preschool Students with Disabilities**--The Illinois State Board of Education has confirmed what it regards to be a “private elementary school” for purposes of a school district’s obligation to preschool age, parentally-placed private school students with disabilities.

ISBE informs us that it considers any private school, other than a day care center, which offers any grades of elementary programming to constitute a “private elementary school.”

Under the recently released federal regulations implementing IDEA 2004, preschool students placed by their parents in private schools must be included as part of a school district’s “proportionate share” and “TMC” responsibilities if those students attend schools defined by state law as “elementary or secondary schools.”

In short, preschool students must be included in a school district’s proportionate share responsibilities if they attend a private school located within the school district that offers elementary programming.

***Please contact Nancy Krent with questions regarding parentally-placed private school students with disabilities.***

**Parents Denied Attorneys Fees under IDEA Despite Prevailing on Certain Issues**--In [\*Linda T. and Gene A. v. Rice Lake Area School District\*](#), the Seventh Circuit Court of Appeals affirmed the district court’s decision to deny any award of attorneys’ fees to the parents of a special education student despite their having “prevailed” on certain issues in the litigation.

provide greater specificity. The parents then filed in the district court for the award of attorneys’ fees as the prevailing party. The district court held that the parents’ success before the ALJ was minor because the specificity issue was a secondary concern.

In *Linda T.*, parents of an autistic student disagreed with an IEP. The parents requested a due process hearing to challenge it on three issues: (1) placement at the middle school full time; (2) greater specificity regarding training in the IEP; and (3) retention of an independent consultant to train the staff.

On appeal, the court recognized that the IDEA did not create a “presumptive eligibility” to an award of fees. The court must determine the prevailing party status and the amount of fees that are reasonable under the circumstances. The court then noted that the Supreme Court previously has held that minor success on the merits will not support an award of attorneys’ fees. Here, the court found that the parents’ victory was only on a minor issue and did not deserve an award of fees.

They lost on two of the issues but succeeded in having the Administrative Law Judge (“ALJ”) order the IEP revised to

***Please contact Barbara Erickson with questions.***

**IASA/HLERK Law Conference Handbooks Available--**

HLERK and IASA wish to thank the record number of attendees at our recently completed *Recent Developments in Illinois School Law* conferences.

Our comprehensive seminar handbook, summarizing the year’s developments in labor, personnel, students and board governance, is now available for purchase. Just send in the

attached form or go to [www.hlerk.com](http://www.hlerk.com) to purchase yours today!

In addition, our Oak Brook location was, unfortunately, unable to accommodate all the administrators who wished to attend our program. We hope to expand available space for next year’s Regional Conferences.

***Again, thanks to all who attended and made the Conferences a resounding success.***

CONTACT US:  
[info@hlerk.com](mailto:info@hlerk.com)

3030 Salt Creek Lane · Suite 202 · Arlington Heights, Illinois 60005  
3048 Spring Mill Drive · Springfield, Illinois 62704  
23 Public Square, Suite 260 · Belleville, Illinois 62220