

## THE Extra Mile

GOING THE EXTRA MILE SO YOU DON'T HAVE TO

### IASA/HLERK Regional School Law Conferences Coming Up!

Welcome back to a new school year! Remember to save the date for the upcoming *Recent Developments in Illinois School Law 2006* conference nearest you. The [Illinois Association of School Administrators](#) is joining HLERK in sponsoring the 2006 Conferences.

Leading topics will include new school finance legislation, new TRS legislation, *Open Meetings Act* amendments and the

final IDEA regulations. Dates and locations are as follows:

**10/12- Collinsville (Holiday Inn)**

**10/19- Oak Brook (The Lodge at McDonald's Headquarters)**

**10/26- Peoria (Weaver Ridge)**

*Registration forms are available at [www.hlerk.com](http://www.hlerk.com) or [www.iasa.edu](http://www.iasa.edu). Contact Kathy Nelson at IASA or Vanessa Clohessy at our office with questions.*

**Termination of Superintendent Upheld Over Denial of Due Process Objections-** The debate over what process school boards must provide when terminating an employee on a multi-year employment contract continues to grow.

In [Batagiannis v. West Lafayette Community School Corp.](#) (July 24, 2006), the Seventh Circuit Court of Appeals, which

governs all Illinois school districts, has ruled that a former superintendent received an adequate hearing before being terminated by a board of education, despite the superintendent's allegations that the hearing was biased and a "sham" and was simply based on what he perceived to be the board's disagreement with his educational policies. The court began by questioning, but not deciding, whether the

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**Department of Education Releases Final IDEA 2004 Regulations / HLERK-PDN to Conduct Conferences-** On August 3rd, the U.S. Department of Education released an unofficial copy of the final regulations implementing the *Individuals With Disabilities Education Improvement Act of 2004* ("IDEA 2004"). The final regulations are available at our website, [www.hlerk.com](http://www.hlerk.com). In addition to the text of the regulations, the 1705-page document contains summaries, an index, and responses to over 5500 comments on the proposed regulations.

The final regulations differ in certain key respects from the June 21, 2005, proposed regulations. Among other highlights, the final regulations add "Tourette Syndrome" to the definition of "other health impairments," allow states to develop separate HOUSS standards for special education teachers, and change provisions for dealing with children with disabilities enrolled by their parents in private schools.

However, the regulations contain nuances affecting nearly every aspect of school districts' compliance with IDEA 2004, including response to intervention, IEPs, placements, child find responsibilities, discipline procedures, procedural safeguards/due process, and specific educational and related services.

The final regulations were officially published in the *Federal Register* on August 14, 2006, and will become effective on October 14, 2006. At our Regional Conferences, HLERK will devote a special

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### Consumer Price Index

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

	All Urban (CPI-U)	Workers (CPI-W)
Chicago-Mthly	0.2	0.2
12 Mth	2.6	2.9
St. Louis-6 Mth	0.7	0.8
12 Mth	2.1	2.3
U.S. Mthly	0.3	0.3
12 Mth	4.1	4.3

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

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### Reminders/Notes

- **Make your reservations today for the upcoming Regional Conferences (see article, above) and the HLERK/PDN Special Education Law Programs (see article, page 2).**
- **Require student health exam and immunization compliance by October 15<sup>th</sup> unless your district has set an earlier date and provided such notice to parents.**
- **Adopt your district's final budget after completion of your public budget hearing before the end of September.**
- **Join us for the HLERK sponsored Rush Hour Social at the [Illinois Alliance of Administrators of Special Education's Fall Conference](#) at the Holiday Inn in Tinley Park on September 28th.**

### Offices:

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

**Regulations cont'd.**

afternoon double session to the new regulations; and in conjunction with the Professional Development Network, will conduct two programs on IDEA 2004 and the new regulations as follows:

**December 6, 2006**  
**Radisson Hotel, Schaumburg**

**December 14, 2006**  
**Clock Tower Resort, Rockford**

**Contact the PDN at 715-836-9900 or [www.meds-pdn.com](http://www.meds-pdn.com) to reserve your space for these important programs.**

**Illinois State Board of Education Proposes Rules for Temporary Denial of Enrollment of Students**— The Illinois State Board of Education has proposed a rule to implement an amendment to the *School Code (P.A. 93-1079)* which addresses the denial of enrollment to students over age 17.

The amended law provides that a district may deny enrollment for one semester to a student over the age of 17 on the basis of failure to meet minimum academic standards or minimum attendance standards, subject to par-

ticular criteria.

The [proposed regulation](#) gives parents the right to appeal an administrative determination to deny enrollment of their student to the school board. If the school board rules against the parent and denies the appeal, then the student may be denied enrollment.

***HLERK has prepared a model truancy policy incorporating the new legal requirements. This policy can be ordered via the attached form. For more information, please contact Debra Kaplan.***

**Termination cont'd.**

superintendent even had a due process right to continued employment as a superintendent and whether his state law breach of contract remedy protected any interest he had in his salary.

The court then ruled that, even if process was due, the superintendent was only entitled to minimal procedural due process in the pre-termination hearing, including notice and the opportunity to be heard by the board.

The court further noted that allegations of “bias” based on opposition to the superintendent’s policies did not violate any rights of the former superintendent, in part because school boards may hire and fire superintendents based on their support for or opposition to the school boards’ programs. Additionally, the court noted that the superintendent had in fact agreed to a school board hearing prior to removal in his employ-

ment contract, and that he received a four-evening, “trial-like” hearing including cross-examination by an attorney.

The *Batagiannis* decision is difficult to reconcile with the Seventh Circuit’s prior ruling in *Baird v. Bd. of Ed. for Warren Comm. Unit Sch. Dist. No. 205* (7th Cir. 2004) (See December, 2004 *Monthly Tickler*). In that case, the court found that a former superintendent was entitled to full procedural due process, including a right to confront witnesses for the pre-termination hearing because the superintendent’s post-termination remedy of filing a state lawsuit was not prompt enough a remedy, and therefore a subsequent lawsuit was inadequate to address earlier procedural errors.

***Please contact Nancy Krent or Rob Swain with questions or to request a complimentary copy of Batagiannis.***

**Court Holds that Employer May Be Liable for Employee’s Out-of-Work Release of Confidential Information**— In a decision with significant implications for school districts, the Illinois appellate court has held that a hospital can be held liable for an employee’s release of confidential patient information in a tavern outside of work time.

In *Bagent v. Blessing Care Corp.* (4<sup>th</sup> Dist. 2006), a patient sued the hospital for breach of health-care practitioner/patient confidentiality and invasion of privacy after the hospital’s phlebotomist revealed plaintiff’s pregnancy to the plaintiff’s sister in a tavern.

The hospital argued that it could not be held liable for the employee’s actions after work hours because the employer had trained the phlebotomist in confidentiality and the phlebotomist’s actions were outside the scope of her employment.

The appellate court ruled that an employer who imposes a continuing duty of maintaining confidential information upon an employee can be held liable for the employee’s breach of confidentiality *after* work hours and outside the worksite, regardless of how well the employee was trained.

The court reasoned that an employee who is entrusted with confidential information, such as the employee of a hospital, a lawyer, or a therapist, owes a 24-hour duty without any spatial limitations.

School employees handle confidential student information on a regular basis, and the *Bagent* decision emphasizes the importance of administration training. All staff should be aware of the need to safeguard the confidentiality of student and personnel records at all times.

***For further information about this case, please contact Steven Richart.***

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