



## District's Release of Student Records to School's Attorney Did Not Violate Student Records Act-

In *Ibata v. Board of Education of Edwardsville Community Unit School District No. 7*, (No. 5-05-0092, May 12, 2006), the Fifth District of the Illinois Appellate Court ruled that a school district's release of student records to its legal counsel did not violate the *Illinois School Student Records Act* ("ISSRA").

The court, however, also allowed a father to proceed against the School District and its attorneys with his claim that the District failed to grant him access to his daughter's school student records. In so holding, the court ruled that he did not need to file for a due process complaint under the *Individuals with Disabilities Education Act*, (IDEA) to access his daughter's special education and school student records.

Ibata made several verbal and written requests to the District for his daughter's student records due to his concerns regarding

her early childhood special education program. Finally, he initiated a due process hearing against the District complaining, among other things, about the District's failure to grant his records request.

Prior to the conclusion of the due process hearing, the father sued the District and its attorneys alleging that the District violated ISSRA when it transferred the student records to its attorneys without his or his wife's consent, and that it violated the *Mental Health and Developmental Disabilities Confidentiality Act* by allegedly transferring records to the student's physician, also without consent.

In remanding the case back to the trial court for a hearing on the access issue, the court held that Ibata did not need to exhaust his IDEA remedies before he could proceed with his ISSRA claim since ISSRA allows a parent to go directly into court,

*Continued on Page 2 - "Student Records"*

## IASA and HLERK Set Dates for Upcoming Conferences on Recent Legal Developments

We are pleased to announce that the Illinois Association of School Administrators is again joining HLERK in sponsoring the 2006 Regional Conferences on Recent Developments in School Law. Dates and locations are as follows:

- 10/12- Collinsville (Holiday Inn)**
- 10/19- Oak Brook (The Lodge at McDonalds Headquarters)**
- 10/26- Peoria (Weaver Ridge)**

These programs provide you with a unique opportunity to review the major legal developments which will impact you in the 2006-2007 school year.

*Save the date for the location nearest you and please contact IASA or Vanessa Clohessy at HLERK with questions. Registration forms will be available soon.*

## ISBE Issues Supplemental Guidance on Services for Private/Parochial School Students

On April 21st ISBE issued a [Supplemental Guidance Information to ISBE Memorandum #05-7](#) on provision of services to students with disabilities voluntarily enrolled in private schools. The Supplemental Guidance addresses a wide variety of issues, including services to disabled home school students and services for "dually-enrolled" students.

The Supplemental Guidance makes clear that home-school disabled students are eligible for services under a school district's proportionate share plan. In addition, the Supplemental Guidance states ISBE's interpretation of what constitutes a "dually enrolled student" and how a school district provides special education services for such students.

*The Supplemental Guidance is available at [www.isbe.net](http://www.isbe.net). Please contact Bennett Rodick with questions.*

## Consumer Price Index

Percent change for the month of **April, 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	0.1	0.3
12 Mth	2.3	2.4
St. Louis-6 Mth	1.3	1.5
12 Mth	3.3	3.5
U.S. Mthly	0.9	1.0
12 Mth	3.5	3.7

May CPI figures will be released June 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

- \* Adopt and publish your Board's "prevailing wage" resolution. Contact Bob Kohn with questions.
- \* Review your executive session minutes.
- \* Publish and post your schedule of regular Board meetings (if not done at start of calendar year).
- \* Save the date for the upcoming IASA/HLERK Regional Conferences on Recent Legal Developments (see article, next column).

### Offices:

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

**Parents Could Not Challenge Expired IEP When Student Was No Longer in District and Parents Were Not Seeking Reimbursement for Educational Expenses Paid-** The Seventh Circuit Court of Appeals, the federal appellate court with jurisdiction over Illinois, has held that parents' claims against their child's school district under the *Individuals With Disabilities Education Act* ("IDEA") became moot and could not be litigated any further after the student moved to another school district and the parents agreed to a new IEP.

In *Brown v. Bartholomew Consolidated School Corporation*, the parents of an autistic child invoked IDEA's "stay put" provision and requested a due process hearing, alleging that the district had violated IDEA by predetermining the child's IEP before soliciting the parents' input and alleging that the proposed IEP was not reasonably calculated to confer an educational benefit. The due

process hearing officer held, and the trial court affirmed, that the district had fully complied with IDEA, determining that the case was, predominately, a methodology dispute with the parents arguing in favor of their preferred methodology.

Then, while the case was on appeal, the parents relocated and enrolled their child into a different school district, where a new agreed IEP was established. Because of the move, the Seventh Circuit refused to decide the case and dismissed it as "moot."

The court first found that the parents' lawsuit was not seeking reimbursement for past educational expenses paid. Absent such a claim for reimbursement and under the circumstances of the case, any court decision would be "advisory," and the court held that it had no jurisdiction to issue advisory rulings.

***Please contact Bennett Rodick with questions.***

**Seventh Circuit Holds That Employee's Termination Was Justified by Employer's Honest Suspicion That Employee Had Misused FMLA Leave-** The Seventh Circuit Court of Appeals, the federal appellate court with jurisdiction over Illinois, has affirmed a district court's ruling that an employer could fire an employee for misusing leave without violating the *Family and Medical Leave Act* ("FMLA").

In *Crouch v. Whirlpool Corp.*, 2006 WL 1028489 (7<sup>th</sup> Cir. 2006), an employee argued that his employer's suspicion regarding his misuse of medical leave was not genuine because the employer approved the employee's disability leave after learning about many of the allegedly suspicious circumstances. The court held that the employer did honestly suspect the employee of falsifying medical leave forms in order to take a vacation, and was therefore not required to reinstate the em-

ployee upon his return from leave.

Where the employee's leave from work is not "for the intended purpose of the leave," as where an employee claims disability leave with the intended purpose of taking a vacation, the employer is under no obligation to reinstate the employee, the court found. The court noted that the FMLA grants an employee on leave no greater employment rights than if he were continuously employed during the leave period, and in this case the employee could have been fired pursuant to the company's general policy against falsifying company forms if he were continuously employed during the leave period.

***FMLA issues continue to affect school district employee leaves. HLERK has developed a comprehensive FMLA policy. You may purchase a copy by sending in the attached order form. Please contact Steven Richart with questions.***

***Student Records continued***

and "none of the defendants assert[ed] that the *Student Records Act* is preempted by the *Individuals with Disabilities Education Act*." More importantly, however, the court also held that the District did not violate ISSRA when it transmitted the contents of his daughter's records to its attorneys representing it in the administrative hearing.

The court opined, "[s]chool districts may reveal the contents of a student's school record to attorneys representing the district in proceedings concerning the student's special edu-

cation placement without prior parental notice." In its holding, the court affirmed the position that school attorneys may access student records in order to properly advise school districts on student issues.

Finally, the court granted the District's motion for summary judgment when it found that the father did not provide evidence to prove his claim that the District had violated the *Mental Health and Developmental Disabilities Confidentiality Act*.

***Please contact Shayne Aldridge or Stephanie Jones for more information.***

**Gifted Education Rules Pending Final Adoption**

The Illinois State Board of Education (ISBE) has issued a set of proposed rules for Gifted Education for which the comment period recently ended. Currently, the proposed rules are pending final adoption by the Joint Committee on Administrative Rules (JCAR). The new proposed regulations detail the contents of proposals that districts must submit to ISBE to apply for state funding for the support of gifted education.

The proposed rules state that the proposals must include specific measures and criteria used to identify and select gifted students for a local program, an impartial appeals process conducted by a neutral decision-maker for students who are denied access to the program, and teacher qualifications that meet the detailed standards set forth in the proposed rules. For a copy of the proposed rules, click [here](#) or visit [isbe.net](http://isbe.net).

***Please contact Debra Kaplan for more information.***

CONTACT US:  
info@hlerk.com

3030 Salt Creek Lane · Suite 202 · Arlington Heights, Illinois 60005  
3048 Spring Mill Drive · Springfield, Illinois 62704  
521 West Main, Suite 201D · Belleville, Illinois 62220