

THE
Extra Mile
GOING THE EXTRA MILE SO YOU DON'T HAVE TO

Welcome Back to a New School Year!

HLERK welcomes all school administrators and board members back for the commencement of the 2007-2008 school year. The year promises much change as school districts begin to implement a variety of new laws and regulations ranging from employee benefits to special education.

We thank you for reading *The Extra Mile* to keep abreast of the important new legal developments affecting you. *The Extra Mile* is also available to you by electronic mail. If you are not currently receiving the email edition please fill out the enclosed form and return it to our office so that you will be the first to receive breaking school legal news.

As part of our commitment to the school community, HLERK attorneys will be

speaking at a variety of Fall in-service programs sponsored by your professional organizations. **Heather Brickman** will be speaking at four IASB Division Meetings in September and October while **Jay Kraning** and **Bennett Rodick** will address the IAASE Fall Conference on September 27th. Enclosed with this month's *Extra Mile* is a complete listing of upcoming HLERK attorney speaking engagements, the Fall HLERK/MEDS-PDN upcoming programs, the registration form for the upcoming IASA sponsored *Regional Conferences on Recent Developments in School Law* and the order form for our completely new edition of the acclaimed *A School Board Member's Handbook*.

Once again, we welcome you back and look forward to seeing you in the Fall. Thanks for reading.

A Tax Tornado!--In a whirlwind of activity, the IRS has recently released numerous final and proposed regulations affecting employee benefits.

In April, the IRS released **final 409A regulations** governing non-qualified deferred compensation arrangements, including many types of compensation agreements entered into by school districts in which payment of compensation is made to an employee or former employee in a calendar year after the right to receive such money has irrevocably vested. Such a deferred compensation arrangement that does not meet 409A requirements may be subject to early income taxation and excise taxes.

On August 7, 2007, the IRS released **409A guidance** stating that elective pay arrangements of school districts, such as those compensating 10 month employees over 12 months, constitute "deferred compensation" subject to 409A.

Further, on July 23, 2007, the IRS released **final section 403(b) regulations**. These regulations incorporate numerous changes regarding the administration of 403(b) arrangements, including the necessity for 403(b) arrangements to be set forth in a *written plan document*.

While the regulations generally apply for taxable years beginning after December 31, 2008, new tax-free transfer rules and a prohibition on separate, incidental life insurance contracts with a 403(b) both apply after September 24, 2007. As mentioned in *July's Extra Mile*, the IRS is currently targeting school

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Consumer Price Index

Percent change for the month of **June, 2007**, 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	0.1
12 Mth	3.6	3.6
St. Louis-6 Mth	1.0	0.8
12 Mth	1.8	1.7
U.S. Mthly	0.2	0.1
12 Mth	2.7	2.7

July CPI figures will be released August 18, 2007. Visit the most recent CPI at our website, 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

- **Remember to register for the October, IASA sponsored, *Regional Conferences on Recent Developments in School Law* by sending in the enclosed order form. Space is limited at all three locations.**
- **Federal law requires Illinois school districts to conduct educational programs relating to the U.S. Constitution during the week of September 17th in honor of the Constitution's birthday.**
- **HLERK is pleased to co-sponsor its annual *Rush Hour Social* at the IAASE Fall Conference in Tinley Park on September 27th. Please join us at the Social and say hello!**

Offices:

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

Special Education Services at Public Expense Extended Until Age 22--On July 16, 2007, the Governor signed [P.A. 95-0014](#) into law, taking effect immediately, which extends the provision of special education services *until the day before the student's 22nd birthday*.

This statute amends Section 5/14-1.02 of the *School Code* that addresses the definition of "Children with Disabilities." Previously, both Section 5/14-1.02 and the ISBE Special Education Regulations provided that school districts had to ensure that students with disabilities between the ages of 3 and 21 receive a free appropriate public education.

This statutory change is in keeping with the re-authorization of IDEA and its implementing regulations, which provide

that a free appropriate public education must be available to all children residing in the state between the ages of 3 and 21, inclusive..." Accordingly, school districts must provide special education services to students until the day before their 22nd birthday. ISBE has adopted new regulations that mirror the federal regulations on this issue.

The new statute does, however, limit the "extended" services to those students who *require* continued educational services to be successful in transitioning and integrating into adult life. Whether a student *requires* such "extended" services is the student's IEP team's decision.

If you have any questions regarding Public Act 95-0014 or would like a copy of the Act, please contact Shayne Aldridge.

Tax Tornado Cont.

districts in a compliance effort on Universal Availability of 403(b) "plans".

Finally, on August 3, 2007, the IRS released **proposed Section 125 cafeteria plan regulations**. Among other things, these regulations incorporate years of guidance provided by the agency affecting these types of plans and modify non-discrimination testing procedures.

While the Section 125 rules are in proposed form only, they may be relied upon by school districts until final regulations are issued.

School districts should consult with their legal counsel regarding compliance deadlines and requirements under all

these regulations. The National School Boards Association and its Council of School Attorneys have invited **Heather Brickman** to present at a *national*, NSBA-sponsored, audio conference regarding the proposed 403(b) Regulations on Wednesday, September 26th at 1:00 p.m. See the attached HLERK In-Service/Programs form for more details.

In addition, **Heather** and **Barbara Erickson** have been invited by NSBA's Council of School Attorneys to present at its upcoming conference in Orlando on the implications for school districts arising out of the new 403(b) and 409A regulations.

For further information regarding this complex area of law and its implications for your school district, please contact Barbara Erickson or Heather Brickman.

ISBE Issues New Mandated Special Education Forms--As noted in the [June Extra Mile](#), ISBE recently concluded its regulatory process and issued new special education regulations on June 28th to bring Illinois into conformance with the requirements of IDEA 2004.

In addition, in August, ISBE also issued new Required Notice and Consent Forms and Instructions. These forms supersede all previous forms and school districts are to use these forms immediately. The new forms include updates of existing forms, a newly revised Explanation of Procedural Safeguards, and new forms for excusal of an IEP team member and amending an IEP without holding an IEP meeting. Both the Instructions and the Form itself provide that this form is to only be used for "minor changes that do not change placement."

The forms are available at www.isbe.net/spec-ed and school districts should implement their use, especially the Procedural Safeguards form, immediately.

HLERK will review the new regulations and forms at the upcoming IASA sponsored *Regional Conferences on Recent Developments in School Law* (see attached registration form). In addition, HLERK and MEDS-PDN have scheduled a new program on special education law after the ISBE regulations on October 6th in Lincolnshire (see attached form). Finally, join **Jay Kraning** and **Bennett Rodick** at the upcoming IAASE Fall Conference on September 27th in Tinley Park where they are addressing current special education legal issues involving the new regulations.

Contact Nancy Krent, Jay Kraning or Bennett Rodick with your inquiries regarding the new regulations and forms.

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