

THE Extra Mile

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Seventh Circuit Rules in District's Favor in Ongoing Special Ed Dispute--

The Seventh Circuit Court of Appeals, which governs Illinois school districts, recently held that a school district's decision to remove a self-injurious and disruptive student suffering from Rett's Syndrome from a regular education classroom did not violate the student's right to a free appropriate education in the least restrictive environment.

In *Board of Education of Township High School No. 211 v. Michael and Dianne Ross*, (May 11, 2007), an Illinois school changed a student's placement from a regular education setting to a "multiple needs" program in a special education setting because the student was struggling academically; and it determined that her current placement, full day regular education classes with extensive assistance from her own special education teacher and teacher's aide, was not providing the student with a satisfactory

education. The student's parents claimed that the school district failed to provide their daughter with a free appropriate public education in the least restrictive environment because the district provided inadequate support to their daughter in the regular education setting.

The court affirmed the lower court and hearing officer's rulings that the measures employed by the district to facilitate the student's education were sufficient, and its decision to place the student in a special education setting was consistent with IDEA for the following reasons.

First, the court noted that the record demonstrated that the student was not making meaningful progress in the regular education setting. For example, to the extent the student was successful, she was meeting her goals through work performed in a private room with instruction from her special education teacher.

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JCAR Lifts Filing Prohibition/ISBE Special Education Regulations Set for Approval--

On June 19th the Joint Committee on Administrative Regulations, the body which previously "froze" ISBE's adopted special education regulations (See *January, 2007 Extra Mile*), lifted its freeze and allowed the Regulations to go into effect upon filing with the Illinois Secretary of State's Office.

The ISBE regulations are designed to both implement the requirements of *IDEA 2004* as well as clarify and update those portions of the Regulations in excess of *IDEA 2004* requirements. There are many aspects of the Regulations which will directly impact Illinois school districts.

Initially, the new Regulations are streamlined by removing unnecessary duplication of *School Code* or federal regulation language and instead directly cross-reference the federal *IDEA 2004* Regulations or state law. Substantively, the new regulations require school districts to take action on any referral of a student for a case study evaluation within fourteen school days of the date of the referral. Unlike a prior version of the regulations, however, school districts retain the legal authority to accept or reject such a referral.

By far the most controversial of the new regulations relates to case load/class size, response to intervention ("RTI"), and the new "Work Load" requirements. As concerns RTI, school districts are required to have in place an RTI process for determination of the existence of a learning disability no later than the beginning

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Consumer Price Index

Percent change for the month of **April, 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	0.8	0.8
12 Mth	3.2	3.0
St. Louis-6 Mth	0.8	0.9
12 Mth	1.5	1.7
U.S. Mthly	0.6	0.8
12 Mth	2.6	2.5

May CPI figures will be released June 18, 2007. Visit the most recent CPI at our website, www.hlerk.com

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Reminders/Notes

- HLERK is pleased to announce a completely new edition of our acclaimed *A School Board Member's Handbook*. Order yours today by sending in the attached form. Every board member and administrator will need this vital resource!
- HLERK congratulates our client, the **Illinois Alliance of Administrators of Special Education** on its receipt of the "Exemplary Unit Award" from the National Council of Administrators of Special Education. In addition we congratulate **Elliott Lenoff**, Director of the Kendall County Special Education Cooperative, on his receipt of IAASE's David A. Berto Award for career-long leadership in special education.

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LRE Dispute Cont. Moreover, the record demonstrated that outside experts and the district's teachers and specialists believed that this student could not learn satisfactorily in the regular education setting. The outside experts, hearing officer and the district court concluded that the recommended placement presented "reverse mainstream opportunities," which allow for integration into the regular education environment and periodic interaction with nondisabled students and, thus, would provide the student with a free appropriate public education in the least restrictive environment that she could handle.

JCAR Cont. of the 2010-2011 school year. By January 1, 2008 each school district must have developed a plan for transition to the use of an RTI process.

Case Load and Class Size regulations are replaced with a "Class Load" regulation which goes into effect for the 2009-2010 school year. Any class which has more than 30% of its students with IEPs is not considered a regular education classroom.

Permissible class size is non-categorical and based on the amount of time the disabled student is removed from regular education classes. The current ISBE Case Load/Class Size regulations remain in effect for the 2007-2008 and 2008-2009 school years.

Finally, the ISBE regulations create a new requirement governing "Work Load for Special Educators". Each school is

The parents also alleged that the school district violated IDEA because: (1) the district predetermined its placement decision without input from the parents; and (2) the school district failed to include a transition plan in the student's IEP. Both claims were rejected; however, the court found that the district's failure to include a transition plan, which it did not believe was necessary for the student at the time, constituted a procedural violation of IDEA but did not result in the loss of an educational opportunity for the student.

For more information on LRE issues or this litigation, please contact Nancy Krent or John DiJohn.

required, in consultation with its labor organization, to develop a work load plan for its special education staff to take effect in the 2009-2010 school year. The regulation defines the activities which must be a subject of the Plan including instruction, consultation, IEP attendance and paperwork.

HLERK will discuss the substance and impact of the new regulations at its upcoming IASA sponsored [Regional Conferences on Recent Developments in School Law](#) as well as the new HLERK/PDN programs on special education law. In addition, please join **Mike Loizzi and Bennett Rodick** at the ISBE Special Education Directors Conference on August 2nd where they will conduct a special program on the new Work Load policy requirements.

Please contact Bennett Rodick, Nancy Krent or Jay Kraning with questions regarding the impact of the new regulations on your school district/cooperative.

Court Denies District Reimbursement for Juvenile Court's Placement of a Student at a Drug Treatment Facility-- In [Antioch Community High School District 117 v. Bd. of Ed. of Proviso Township High School District 209](#) (May 4, 2007), the Illinois appellate court held that a school district in which a private alcohol and drug treatment facility was located was *not* entitled to reimbursement from a child's resident school district for the placement of that child at the treatment facility by the juvenile court. In this case, the school district in which the facility was located sued the student's resident district for reimbursement for the placement.

The plaintiff district claimed that under a specific provision in the *Illinois School Code*, resident school districts must pay for educational services for a resident student that is placed in a drug treatment facility. The resident district, however, claimed that because the student was placed in the

facility by the juvenile court and not the resident district, the [Juvenile Court Act](#) should apply, rather than the [School Code](#). Under the *Juvenile Court Act*, the resident district is not obligated to reimburse the district where the facility is located. Additionally, the resident district argued that it knew nothing about the placement and had no opportunity to offer services to the student.

The court agreed with the resident district, finding that it did not have to pay for the private placement because the child had been placed in the facility exclusively under the *Act*. The court relied upon a recent special education case, *In re D.D.*, 212 Ill.2d 410 (2004) in support of its decision, extending that ruling to apply to general education students as well as special education students.

For a copy of this decision or with questions, please contact Nancy Krent or Debra Kaplan.

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