



**HLERK Activities at the Joint Conference**

We will host our annual reception for clients and friends on **Saturday, November 17th** from 3:00-7:00 p.m. at the Hyatt Chicago in the Monarch Suite, East Tower. Please join us for conversation, food, drinks and, best of all, fireworks.

In addition, please attend the following Conference programs featuring HLERK attorneys:

- *Protecting Your District From TIF Districts* moderated by **Heather Brickman** and featuring **Dean Krone** on Saturday, November 17th at 10:30 a.m. in the Hyatt at Regency Ballroom D.

- *Managing School Districts in a Digital Society* featuring **Rob Swain** and **Stephanie Jones** on Saturday, November 17th at 3:30 p.m. in the Sheraton at the Sheraton IV Ballroom.
- *Special Education Update* with **Bennett Rodick** at the Illinois Council of School Attorneys program on Friday, November 16th at 1:30 p.m. in the Hyatt at Crystal Ballroom C. Continuing legal education credit is available for this program.

*We look forward to seeing you at the Joint Conference. Contact Stan Eisenhammer with questions.*

**Moment of Silence Mandatory in Schools--** SB 1463 (P.A. 95-0680), adopted by a legislative override of the Governor’s earlier veto this summer, amends the current *Illinois Silent Reflection and Student Prayer Act* (105 ILCS 20/0.01 et seq.) (“Act”) to mandate that classroom teachers observe a “brief period of silence” with students “at the opening of every school day.” Previously, such moments of silence were merely optional at the discretion of the teacher in charge.

The law is effective immediately. The Act has already sparked much controversy among parents who believe the law is inappropriate or unconstitutional. Although the General Assembly was careful to note that this moment of silence is not to be “conducted as a religious exercise,” it does state that the time “shall be an opportunity for silent prayer or for silent reflection on the anticipated activities of the day.” Other states, including Texas and Indiana, also have mandatory moments of silence in their schools.

School officials have also voiced concerns over implementation of the law, including when to hold the moment of silence, how long it should be held, and what disciplinary action to take if students or staff members refuse to comply.

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**Consumer Price Index**

Percent change for the month of **September, 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	0.3	0.4
12 Mth	3.4	3.4
St. Louis-6 Mth	1.0	0.8
12 Mth	1.8	1.7
U.S. Mthly	0.3	0.3
12 Mth	2.8	2.8

October CPI figures will be released November 18, 2007. 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 HLERK/PDN programs on special education law (November 1/Mt. Vernon, November 6/Lincolnshire and November 29/Bloomington) and electronic records, Open Meetings Act and FOIA (November 28/Gurnee and December 10/Matteson). Register at [www.hlerk.com](http://www.hlerk.com) or [www.meds-pdn.com](http://www.meds-pdn.com). We look forward to seeing you there!**
- **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, having copies available at the main office, and publishing a summary in the newspaper, see [P.A. 94-875](http://www.p.a.94-875) for more details.**

**Offices:**

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

***Moment of Silence Cont.***

The Illinois State Board of Education has opined that implementation of the new legislation will have to be

decided on a local basis.

***For further details and updates on this law, please contact Terry Hodges or Jeff Goelitz.***

**“No-Match” Letter Rule on Immigration Enjoined from Enforcement--** The [Department of Homeland Security](#) (DHS) recently issued a [final rule](#) describing the legal obligations of employers (including school districts) who receive either a “no-match” letter from the Social Security Administration (SSA) or an employment verification letter from the DHS.

Although this rule was to take effect on September 14, 2007, a federal judge has issued a preliminary injunction preventing its implementation.

***We will keep you apprised of the status of this rule and associated litigation through The Extra Mile. Please contact Cindi DeCola or Jeff Goelitz with questions.***

**No Public Placement Required Prior to Reimbursement for Private Special Education Services--** In the first case decided by the United States Supreme Court this term, [Board of Education of New York v. Tom F.](#), 552 U.S. \_\_\_\_ (2007), there was no decision at all.

rationale from the Supreme Court decision in *Town of Burlington* that the purpose of IDEA is to give children with disabilities “both an appropriate education and a free one.” To accomplish this, parents are not required to “jeopardize their child’s health and education” by trying out a public school placement before receiving tuition reimbursement.

The Court offered no opinion in a 4-4 split (Justice Kennedy took no part in this decision), other than to affirm a ruling of the Second Circuit Court of Appeals that public schools must reimburse parents for the cost of special education services in private schools, even when the parents do not first allow their child to try out the special education placement offered by the public schools.

The case received extra media attention due to the fact that the parent seeking reimbursement was former Viacom executive Tom Freston, whose buyout package from the company in 2006 amounted to \$75 million.

The Second Circuit applied the Supreme Court’s ra-

The split Court’s decision carries no precedential weight.

***Contact Bennett Rodick with questions.***

**Closed Session Transcripts Held to be Privileged under State and Federal Law --** In *Tumas v. Board of Education of Lyons Township High School District No. 204*, 2007 WL 2228695 (N.D. Ill. July 31, 2007), a former employee filed a civil rights suit against the school board.

privilege, which protects “pre-decisional and deliberative” discussions between members of governmental bodies, exempts the board from disclosing the closed session transcripts. More importantly, however, the federal court also exempted the transcripts from discovery on the basis of a state *Open Meetings Act* privilege, departing from *Kodish v. Oakbrook Terrace Fire Protection District*, 235 F.R.D. 447 (N.D. Ill. 2006) (See [August](#), 2006 *Extra Mile*). Although the court in *Tumas* claimed to be following *Kodish*, the court in *Kodish* noted that “there is no compelling policy interest to justify protecting all communications in [a] closed session meeting,” and therefore refused to recognize a federal privilege under the *Open Meetings Act*. ***Please contact Bob Kohn with questions.***

The board met in closed session to discuss litigation strategies, and the plaintiff subsequently sought production of the transcripts of that closed session. The board argued that these materials were privileged under the federal deliberative process privilege and the *Illinois Open Meetings Act* and *Freedom of Information Act*.

The court held that the federal deliberative process