

THE
Extra Mile
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Moment of Silence Litigation Given "Class Action" Status--

Federal district judge Robert Gettleman recently ruled in favor of granting "class action" status to the Plaintiffs in the "moment of silence" litigation, thereby allowing participation by students and school districts throughout the state. However, Judge Gettleman refrained from implementing the order until the Parties can determine appropriate notification to Illinois school districts.

As last reported in *The Extra Mile's* [December](#), 2007 issue, the Moment of Silence law ([P.A. 95-0680](#)) was challenged in the Federal District Court for the Northern District of Illinois by atheist activist and radio talk-show host Rob Sherman and his daughter, a freshman at Buffalo

Grove High School.

A preliminary injunction was issued in November, 2007, prohibiting Township High School District 214 from implementing the law and later enjoining State Superintendent Christopher Koch from implementing or enforcing the law.

The legislature may also derail the mandatory moment of silence for prayer and reflection. Earlier this month, [H.B. 4180](#), which eliminates references in the law to "prayer" and again makes the moment of silence optional, passed in the House and is now up for consideration in the Senate. Since last Fall, 18 Democrats and 15 Republicans have reversed their positions on the law.

For further information, contact Terry Hodges or Jeff Goelitz.

ISBE Issues Response to Intervention ("RtI") Template/ Special Education Work Load Issues Addressed--ISBE recently issued its much-anticipated "[District Self-Assessment Template](#)" regarding development and implementation of a school district's RtI plan. The self-assessment was required by ISBE's RtI Plan, which it issued in January.

Under the template, school districts are required to self-assess their readiness to develop and implement an RtI plan in the following areas: 1) Consensus Building and Collaboration; 2) Standards Based Curriculum and Research-Based Instruction; 3) Research Based Assessment Practices; 4) Student Intervention/Problem Solving Team Process; 5) Intervention Strategy Identification; 6) Resource Identification; and 7) Ongoing Professional Development.

Please note that completion of the template is a school district's responsibility and *not* a special education cooperative's responsibility. The completed template is due to ISBE on (or before) **May 23, 2008**. ISBE has posted the template on its website at: http://www.isbe.net/RtI_plan/default.htm.

Each school district must have its RtI plan completed on or before **January 1, 2009**.

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Reminders/Notes

- **HLERK is pleased to announce the dates/locations for the Illinois Association of School Administrators sponsored, 2008, Regional Conferences on Recent Developments in School Law. Visit www.hlerk.com/pages/news_conferences.cfm for the dates/locations. Save the date for the location nearest you. Please contact Stan Eisenhammer with questions.**
- **Register today for the upcoming HLERK/MEDS-PDN programs on Response to Intervention. Dates/locations are on the**

attached Memorandum, or visit www.hlerk.com/pages/news_conferences.cfm to register.

- **Pursuant to [new legislation](#), school districts must establish a "Green Cleaning Policy" by May 9, 2008. Please contact Heather Brickman or Lori Martin with questions.**

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.

Offices:

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

Federal Appellate Court Upholds Validity of NCLB-

The Seventh Circuit Court of Appeals recently held that the *Individuals with Disabilities Education Act* ("IDEA") does not prohibit the application of the *No Child Left Behind Act* ("NCLBA") to students with disabilities. In so doing the court upheld a federal trial court ruling.

In *Board of Education of Ottawa Township High School District No. 140 v. Spellings*, 517 F.3d 922 (7th Cir. 2008), two Illinois school districts and several parents sued the Secretary of the U.S. Department of Education seeking a declaratory judgment that the requirements of IDEA supersede the requirements of NCLBA, thus rendering NCLBA invalid.

Although the court found the school districts had "standing" to bring suit, it held that the districts' claim is too weak to justify continuing litigation because,

RtI/Workload Cont.

RtI and its relationship with special education raises a host of questions and concerns. HLERK is pleased to conduct two RtI programs, in conjunction with MEDSPDN, on **April 15th** in **Lake Geneva** and **April 30th** in **Collinsville**. The Collinsville program has no further space available, but, due to the demand, we will schedule an additional Collinsville program in May. ISBE has announced that they will conduct a training on the template on April 11, 2008, via a live webcast.

In a related area, school districts are beginning to address the requirement in the ISBE special education regulations regarding "work load" plans which school districts must have in place prior to the 2009-2010 school year. HLERK is pleased to announce that **Shayne Aldridge** is the co-author of an important article to be published in the May/June issue of the *Illinois School Board Journal*, together with the Superinten-

School District Not Liable for Juvenile Court Placement--In the **June**, 2007 issue of *The Extra Mile* we reported on the Illinois Appellate Court decision in *Antioch Community High School District No. 117 v. Board of Education* in which the Illinois Appellate Court determined that a school district was not responsible for a placement made by a Juvenile Court under the *Juvenile Court Act*. In a ruling dated April 7, 2008, a Fifth District trial court judge again held that a school district of residence is not financially responsible for a placement made by the Juvenile Court. The decision, *Community High School District No. 155 v. Carlyle Community Unit School District No. 1*, No. 7 SC 1047 was successfully defended by **Stephanie Jones** and **Bennett Rodick**.

even assuming NCLBA and IDEA do conflict, the requirements of NCLBA, the later passed legislation, supersede those of IDEA.

As the Court noted, "Then the earlier enactment, [IDEA] must give way. Plaintiffs' view that an earlier law can repeal a later one by implication has time traveling in the wrong direction." Accordingly, the NCLBA "must prevail to the extent of any conflict."

Please note that this decision does *not* impact the decision in *School District of Pontiac v. Spellings* in which the Sixth Circuit Court of Appeals questioned the constitutionality of NCLBA. (See **January** 2008 *Extra Mile*.)

For further information, please contact Bennett Rodick or Lori Martin.

dents of the Northern Suburban Special Education District and Northwest Suburban Special Education Organization, Tim Thomas and Dr. Judy Hackett, respectively, regarding the background and nature of the new work load requirements. The article will be posted on the IASB website at <http://www.iasb.com>.

Additionally, **Mike Loizzi** and **Bennett Rodick** are, together with the NSSED and NSSEO superintendents, presenting on the issues created for school districts under the new work load requirements from both a special education and labor relations perspective on May 1st at the Illinois Alliance of Administrators of Special Education's Spring Conference in Collinsville. Visit <http://www.iaase.org> for more information.

Contact Stephanie Jones or Bennett Rodick with RtI inquires and Mike Loizzi or Bennett for work load plan inquiries.

CONTACT US:
info@hlerk.com

3030 Salt Creek Lane . Suite 202 . Arlington Heights, Illinois 60005
3048 Spring Mill Drive . Springfield, Illinois 62704
23 Public Square . Suite 260 . Belleville, Illinois 62220