

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

Welcome Back for the 2008-2009 School Year!--The year promises to present a variety of legal challenges including developing and submitting your RtI plans by January 1, 2009, consideration of upcoming changes to special education class size rules and development of special educator "work load" plans which become effective for the start of the 2009-2010 school year.

In addition, January 1, 2009 marks the effective date for important employee benefit law changes affecting Section 403(b), 409A and Section 125 employee benefits.

Of course our annual, **Illinois Association of School Administrators** sponsored, *Regional Conferences on*

Recent Developments in School Law are scheduled for October and the registration form is available at both www.iasaedu.org or www.hlerk.com.

Jay Kraning and **Bennett Rodick** will be speaking at the **Illinois Alliance of Administrators of Special Education's** Fall Conference on September 25th. HLERK will be hosting a reception for all attendees that same day.

HLERK and MEDS/PDN will provide a variety of important in-service opportunities for school administrators as well as a variety of administrator academy programs. Visit www.hlerk.com for information.

Thanks for reading The Extra Mile.

Federal Appellate Court for Illinois Finds Expulsion Hearing Procedures Met Due Process Requirements--The Seventh Circuit Court of Appeals, which governs all Illinois school districts, upheld a school district's expulsion decision against constitutional due process challenges.

In *Coronado v. Valley View School District No. 365-U, No. 08-1850* (8/12/08), the appellate court considered a student's challenge to his expulsion principally because the district did not provide an interpreter for the parents at the hearing and did not call a school security officer as a witness, thus denying the student the opportunity to cross-examine the witness.

Coronado was a 15 year old student who was involved in a gang-related confrontation in the school cafeteria for which the district expelled him for two semesters. After giving Coronado written notice, the district conducted an expulsion hearing, during which his parents asked many questions and made statements in English. The district did not have the security officer at the hearing, and the parents did not request that he be present.

The hearing officer recommended, and the Board of Education accepted, a two semester expulsion for fighting/mob action and being involved in a "subversive organization." The

Continued on Page 2

Consumer Price Index

Percent change for the month of **July, 2008**, 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	1.0
12 Mth	5.8	6.2
St. Louis-6 Mth	2.0	2.3
12 Mth	3.2	3.6
U.S. Mthly	0.5	0.5
12 Mth	5.6	6.2

August CPI figures will be released September 18, 2008. For the most recent CPI, visit our website at: 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

- Federal law requires Illinois school districts to conduct educational programs relating to the U.S. Constitution during the week of September 18th 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 25th. Please join us at the Social and say hello!
- Remember that Section 10-20.40 of the *School Code* requires all school districts to post a list of all contracts over \$25,000 and their collective bargaining agreements on their websites. Contact **Shayne Aldridge** with any questions regarding Section 10-20.40 or to request a copy of our explanation of the reporting requirements.

Offices:

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

Expulsion Cont. former charge was only submitted to the family on the day of the hearing.

The court found that Coronado had received all the process that he was due. The court also found that the parents demonstrated the ability to understand English at the hearing and that the parents failure to request the presence of the security officer was the reason they could not cross-examine him, and, moreover, that there was no federal constitutional right to cross-examine witnesses in an expulsion proceeding.

The court noted that the Illinois Appellate Court's decision in *Colquitt v. Rich Twp. High School No. 227*, held that students in Illinois schools have the right to cross-examine witnesses, but declared that decision to be non-binding on the federal court.

Please contact Jay Kraning or Bennett Rodick with your student discipline inquiries. We will discuss the impact of this important decision at our upcoming, IASA sponsored, Regional Conferences on Recent Developments in School Law.

Ninth Circuit Federal Appellate Court Finds Strip Search Unconstitutional/Subjects Principal to Personal Liability--

The Ninth Circuit Court of Appeals (the federal appellate court with jurisdiction over California and a number of western states) recently held, in a divided opinion, that an assistant principal violated a female student's Fourth Amendment rights by ordering a strip search in an attempt to recover prescription pills.

In *Redding v. Safford Unified School District No. 1*, 531 F.3d 1071 (9th Cir. *en banc* 2008), a thirteen year-old middle school student ("Savana") was reported by a friend ("Marissa") as being the source of "prescription" Ibuprofen pills found in Marissa's possession. The school's assistant principal questioned Savana, who denied any knowledge of the pills, and first searched Savana's backpack and found no contraband.

The assistant principal then ordered the female nurse and office administrative assistant to conduct a strip search in which Savana was asked to remove her jacket, shoes and socks; remove her pants and shirt; pull her bra to the side and shake it (partially exposing her breasts); and pull out her underwear and shake it (partially exposing her pelvic area). The search did not produce any contraband.

After the search, Savana and her parents filed suit against the school district, the assistant principal, the office administrative assistant, and the school nurse for violating her Fourth Amendment rights to be free from an unreasonable search. The trial court, and the appellate court initially, found that the search was constitutional.

However, the Ninth Circuit *en banc* overturned both the

trial court and its own panel in finding the search unconstitutional. The court concluded that because the administration did not retrieve any *actual* evidence of misconduct from the first search of the backpack, the administration's strip search was *not* reasonable because the sole justification in performing the search was another student's uncorroborated allegation.

Moreover, the court found that the traumatic nature of the strip search in light of the student's age and grade was excessively intrusive. Finally, the court held that the constitutional right at issue was "clearly established" and therefore subjected the assistant principal to liability, even though the trial court and its own panel had reached opposite conclusions based on the same facts. Five justices dissented.

This case is in tension with the Seventh Circuit's decision in *Cornfield v. Consolidated High School District No. 230*, 991 F.2d 1316 (1993), where the Seventh Circuit, which governs Illinois school districts, held that the district *did not* violate a student's Fourth Amendment rights when requiring a sixteen year-old suspected of "crotching" drugs to undergo a strip search.

Although the search was invasive, the strip search was warranted because of the district's safety concerns and reasonable suspicion of the student's drug possession.

Strip searches of students are always subjects of potential litigation. We will discuss the impact of the Ninth Circuit's decision for Illinois at the upcoming, IASA sponsored, Regional Conferences on Recent Developments in School Law. For further information regarding Redding or student discipline issues in general, please contact Bennett Rodick or Jay Kraning.