

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

Seventh Circuit Court of Appeals Upholds District's Requirement to Bring Employee Complaints to Administration First--In *Samuelson v. LaPorte Community School Corporation, et al.*, 526 F.3d 1046 (7th Cir. 2008), the Seventh Circuit Court of Appeals (which governs all Illinois school districts), found that the district's policy requiring staff to bring complaints to the attention of administration did not violate an employee's right to First Amendment protection, but merely established the proper channels of communication for workplace issues requiring administrative attention.

A former coach, dismissed by the Board of Education from his coaching position, alleged that the board

chose not to renew his contract in retaliation for his statements about a perceived inequity between girls' and boys' sporting programs, his disagreement with various school policies and practices, and a possible Title IX suit.

He also claimed that the district's "chain of command policy" was an unlawful prior restraint of his right to speak on matters of public concern in violation of the First Amendment.

The policy required, in part, that "All staff members shall be responsible to the Board through the Superintendent. Each staff member shall refer matters requiring administrative action to the person in charge of the

Continued on Page 2

Superintendent's Contract Not Necessarily Off-Limits to FOIA Request--In a recent decision creating a further divide in the Illinois Appellate Court, the Second District Appellate Court held that a retired Wheaton-Warrenville School District No. 200 superintendent's employment contract was subject to the *Illinois Freedom of Information Act* ("FOIA"), and was not *per se* exempt from disclosure.

In *Stern v. Wheaton-Warrenville Community Unit School District 200*, No. 2-07-0424 (June 9, 2008) the Appellate Court reversed the trial court's decision, (reported in the *April, 2007 Extra Mile*), which held that an employment contract was exempt from disclosure under FOIA *per se* as a part of the superintendent's personnel file.

The trial court had followed the holding of the Third District Appellate Court in *Copley Press, Inc. v. Board of Education for Peoria School District No. 150*, (See *October, 2005, Extra Mile*), in which the court determined that the Peoria superintendent's performance evaluations and letter stating the reasons for her dismissal were part of her personnel file and were thus *per se* exempt from disclosure.

The Second District, however, chose to follow the Fourth District Appellate Court's decision

Continued on Page 2

Consumer Price Index

Percent change for the month of **May, 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	1.1	1.2
12 Mth	4.5	4.7
St. Louis-6 Mth	1.2	1.3
12 Mth	2.1	2.1
U.S. Mthly	0.8	1.0
12 Mth	4.2	4.5

June CPI figures will be released July 18, 2008. 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 your upcoming January 1, 2009 deadline for submission of your response to intervention (RtI) plans to ISBE. Contact MEDS-PDN at 715.836.9900 to purchase the CD and materials from the HLERK program on RtI presented by **Nancy Krent, Jay Kraning** and **Bennett Rodick** on April 15th at Lake Geneva.
- Visit <http://web.mac.com/rvoltz/Site/Podcast/Podcast.html> to listen to Heather Brickman's "podcast" on the IASA website regarding the *Freedom of Information Act* in light of the recent court ruling barring disclosure of a superintendent's internet search records (see related article this page).

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

IASB Publishes Model Special Education Procedures--On June 17th the Illinois Association of School Boards published newly developed model Special Education Procedures for consideration by school districts and special education cooperatives.

The Procedures represent the final step of implementing IDEA 2004 in Illinois and are the result of the *pro bono* efforts of the Illinois Council of School Attorneys, Special Education Committee. **Bennett Rodick** joined fellow committee members in drafting and revising the Procedures. These Procedures have been approved by

Contract Cont. in *Reppert v. Southern Illinois University*, (See [October, 2007](#), Extra Mile), which held that public employees' employment contracts were not *per se* exempt and thus, subject to disclosure under FOIA.

The court stated, "thus, to the extent that a personnel file contains both information that bears on public duties and private information, the trial court must determine, through an in camera inspection of the file, whether the requested information is exempt as a clearly unwarranted invasion of personal privacy, and whether the presence of exempt private information can be cured through redaction."

In this case, after denying Mr. Stern's FOIA request, the superintendent provided the contract to the local newspaper through a FOIA request. In light of this disclosure, the court ruled that "even if an item is *per se* exempt, voluntary disclosure can preclude later claims of exemption . . . the determination of whether such a disclosure has waived a claim of exemption is a question of fact . . . [that] requires consideration of the cir-

First Amendment Cont. department, who shall refer such matters to the next higher authority, when necessary...All staff members have the right to appeal any decision made by an administrative officer, through approved procedures as defined by contract, agreements, policies, administrative guidelines, or by State law."

An examination of the district's bylaws and guidelines revealed a clear statement of employees' First Amendment rights.

the Illinois State Board of Education for utilization. The Procedures are available to *all* Illinois school districts and special education cooperatives, free of charge, at <http://iasb.com/law/>. HLERK wishes to give special thanks to IASB's general counsel, **Melinda Selbee**, and her staff who guided this important project to completion.

Contact Bennett Rodick with questions regarding the Procedures and their application to your district or cooperative.

cumstances related to the disclosure, including the purpose and extent of the disclosure, as well as the confidentiality surrounding the disclosure." The superintendent admitted the disclosure in his deposition but qualified his admission by testifying that it was his personal decision to do so. The school district argued that he did not have authority to make the disclosure.

The court therefore found that "there are factual issues about whether [the superintendent's] disclosure of his contract to the newspapers was within the scope of his authority." Accordingly, the appellate court remanded the case back to the trial court for it to determine if the disclosure was within the superintendent's authority. If it was, then any claim that the contract is exempt from disclosure, *per se* or not, is waived.

HLERK will discuss this decision at its Fall, 2008 MEDS-PDN programs on Electronic Records, Open Meetings Act and Freedom of Information Act. Visit www.meds-pdn.com to register today! Contact Heather Brickman, Rob Swain or Shayne Aldridge with your FOIA inquiries.

Addressing the coach's retaliation claim, the court found that the decision of the board not to renew his contract was solely based upon an ongoing series of complaints filed by the players and their parents and his general inability to perform as a coach. Therefore, the court affirmed the district court's summary judgment decision for the school district.

For more information on the LaPorte decision or employee First Amendment issues, please contact Nancy Krent or Shayne Aldridge.

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