

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

**New Employee Benefits and Section 504 Seminars Scheduled!**—As noted in the September 2007 issue of *The Extra Mile*, new IRS regulations governing Section 125 Cafeteria Plans will become effective as of January 1, 2009. In addition, school districts are working to come to grips with new IRS regulations regarding Section 403(b) deferred compensation plans.

In order to assist school administrators in this difficult and complex area of the law, **HLERK** with **MEDS-PDN** will present an *all new* program on *Employee Benefits Overview in Illinois*. Join **Heather Brickman** and **Barbara Erickson** in **Schaumburg** on **December 18, 2008**, or in **Lincolnshire** on **January 22, 2009**.

In addition, the number and complexity of

Office for Civil Rights claims under Section 504 of the *Rehabilitation Act of 1973* continues to grow. In order to assist school administrators, **HLERK** and **MEDS-PDN** will offer an *all-new* program on Section 504. Join **Bennett Rodick** and **Shayne Aldridge** on January 29, 2009 in Orland Park.. Registration for the employee benefits program is currently available on-line at [www.hlerk.com](http://www.hlerk.com) or [www.meds-pdn.com](http://www.meds-pdn.com). Information and registration for the Section 504 program will soon be available on both websites.

**Contact Heather Brickman or Barb Erickson with your employee benefits inquiries or Bennett Rodick, Jay Kraning or Shayne Aldridge with your Section 504 inquiries. We look forward to seeing you at these important new programs.**

**New Legislation Holds School Districts Responsible for Juvenile Court Placements**—At the end of August, the Governor signed legislation that makes school districts financially responsible for the cost of a resident student placed in a drug/alcohol rehabilitation facility, regardless of who places the student at the facility. [P.A. 95-0844](#) was passed to clarify Section 10-24.12 of the *School Code*.

In *Antioch Community High School District No. 117 v. Board of Education of Proviso Township High School District No. 209*, 373 Ill.App.3d 544, 868 N.E.2d 1068 (2<sup>nd</sup> Dist. 2007) (see [June 2007 Extra Mile](#)) and then in *Carbondale Community Unit School District No. 165 v. Carlyle Community Unit School District No. 1* (see [May 2008 Extra Mile](#)), Illinois courts found that the county, not the school district, was responsible for payment of the educational costs of students placed by juvenile authorities in drug and alcohol rehabilitation facilities.

Under P.A. 95-0844, the law now requires the school district of residence to pay the educational component regardless of who places the child at the facility.

The bill provides that the educational component of a special

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**Consumer Price Index**

Percent change for the month of **August, 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	-0.7	-0.8
12 Mth	4.9	5.4
St. Louis-6 Mth	2.0	2.3
12 Mth	3.2	3.6
U.S. Mthly	-0.4	-0.5
12 Mth	5.4	5.9

September CPI figures will be released October 18, 2008. For the most recent CPI, visit our website at: [www.hlerk.com](http://www.hlerk.com)

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**Reminders & Notes**

- Remember to submit to ISBE in October your "timely and meaningful consultation" compliance information regarding special education services for disabled students attending private schools located in your school district.
- Require student health exam and immunization compliance by October 15th unless you have set an earlier date and provided notice to parents of the earlier date.
- Remember that new IRS regulations governing cafeteria plans become effective as of January 1, 2009, and your district's Rfl plans are due to ISBE on January 1, 2009.
- Register now for the upcoming IASA/HLERK programs on *The Year in Review: The Highlights and Lowlights of Illinois School Law 2008*. Visit [www.hlerk.com](http://www.hlerk.com) for the registration form.

**Offices:**

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**Juvenile Court Placements cont.**

education student's placement is reimbursable through ISBE. P.A. 95-0844 is *retroactive* and applies to all placements made after July 1, 2007.

**For more information on P.A. 95-0844 or its implications for your school district, please contact Bennett Rodick or Stephanie Jones.**

**Federal Appellate Court Declines to Modify FAPE Standard**—A recent decision by the Federal Court of Appeals for the 10th Circuit (which does not govern Illinois) reiterated the holding in *Board of Education v. Rowley*, 458 U.S. 176 (1982), that IDEA does not guarantee an IEP which maximizes educational benefits but, rather, only guarantees an IEP that is “reasonably calculated to enable [a child] to receive educational benefits.”

The decision, *Thompson R2-J School District v. Luke P.*, 2008 WL 3984361 (10th Cir. 2008), was brought by the district against parents of a child with autism who, although making some educational progress at school, was having difficulty generalizing his skills to settings other than the school environment.

Relying on IDEA’s statement of purpose that Congress intended to ensure, among other things, “independent living, and economic self-sufficiency for individuals with disabilities,” the parents claimed that the school’s

failure to ensure generalization of skills and self-sufficiency was a violation of IDEA that entitled them to reimbursement for a private residential placement.

The appellate court disagreed, concluding that the broad statement of purpose language in IDEA 2004 regarding self-sufficiency did not create a new substantive standard of FAPE. Instead, the court relied on *Rowling* in rejecting “self-sufficiency” as a substantive standard and holding that “generalization skills need not always be included in, and progress on such skills is not necessary to ensure, a compliant IEP.”

Because Luke P. was receiving at least *some* educational benefit, the parents’ claim for reimbursement was defeated. This is the first appellate decision to address the claims of advocacy groups that IDEA 2004 creates a new substantive standard for FAPE beyond that stated in *Rowley*.

**For additional information regarding this decision, please contact Nancy Krent or Bennett Rodick.**

**Model Employee Election Conduct Guidelines**—As the 2008 national election approaches, school districts are being confronted with issues involving political or campaign activity by employees while at work. The issue of political activity by school district employees is governed by several state statutes. In addition, First Amendment constitutional issues may come into play.

In an effort to help school districts deal with this area of the law, our firm has created *Model Employee Election Conduct Guidelines*.

**If you would like to purchase a copy of the Model Guidelines, please send in the attached order form or if you have questions regarding this issue, please contact Nancy Krent or Tony Loizzi.**

**Federal Appellate Court to Reconsider Its Decision that NCLB May Violate Constitution**—As we previously reported (see [January 2008 Extra Mile](#)), the Sixth Circuit Court of Appeals held in *School District of Pontiac, et al. v. Spellings*, 512 F.3d 252 (6th Cir. 2008) that the *No Child Left Behind Act* (“NCLB”) does not clearly provide states and school districts with their funding obligations under the NCLB. As such, the court found that NCLB may violate the U.S. Constitution. Although this holding was *not* binding on Illinois school districts, it was nonetheless a potentially

important decision.

The Sixth Circuit Court of Appeals, however, has recently **vacated** its decision and agreed to rehear the case with all the court’s judges. It is anticipated that the court may reach a final decision by the end of 2008. We will continue to keep you posted on this matter.

**Please contact Stephanie Jones with your NCLB inquiries.**

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