

THE
Extra Mile
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Former Student's Action to Recover Damages from School Administrators Based Upon Breach of "Duty to Protect" Student from Sexual Abuse Not Barred By Statute of Limitations--In *Doe v. Hinsdale High School District 86*, a former student appealed the decision of the trial court to grant the district's motion to dismiss her complaint for civil conspiracy and failure to protect her from sexual abuse by a coach.

The lower court ruled that her action was time barred by the one-year statute of limitations period set forth in Section 8-101 of the *Tort Immunity Act*.

The appellate court, however, re-

cently reversed the trial court and reinstated the claim against the school personnel.

The court held that the applicable statute of limitations was Section 13-202.2 of the *Code of Civil Procedure* which deals with sexual abuse and provides a minimum five-year statute of limitations

Importantly, the court further held that Section 13-202.2 is not limited to persons accused of committing sexual abuse, but also to persons who allegedly breached a duty to protect a plaintiff from sexual abuse.

For information about this decision contact Brandon DeBerry.

Illinois Appellate Court Overturns IELRB/Upholds Public Policy of Not Endangering Students at School--The Illinois Appellate Court recently determined what many might find obvious, that adults who may endanger children should not be working in schools. More specifically, the court held that an arbitrator could *not* reinstate a discharged custodian by ignoring evidence of the custodian's anger management issues in other school contexts.

Central Community Unit School District No. 4 v. IELRB, 2009 WL 503457 (4th Dist. 2009) involved a school custodian who swore at students on multiple occasions. In addition to the swearing incidents, the custodian -- who was also a substitute bus driver -- had once stopped his bus full of students to confiscate a student's CD player and throw it in the trash.

Based on the sum of his inappropriate behaviors, the district dismissed the custodian/bus driver.

The employee's union filed a grievance and an arbitrator determined that, as to the employee's position as custodian, he could not consider the evidence of anger management issues on the bus. As a result, the arbitrator ordered the employee reinstated to his custodial position.

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Consumer Price Index

Percent change for the month of **February, 2009**, for the urban wage earners & clerical indices as reported by the Bureau of Labor Statistics.

	All Urban (CPI-U)	Workers (CPI-W)
Chicago-Mthly	-0.1	-0.1
12 Mth	-1.0	-1.3
St. Louis-6 Mth	0.4	0.2
12 Mth	2.5	2.6
U.S. Mthly	0.5	0.5
12 Mth	0.2	-0.3

March CPI figures will be released April 18, 2009. 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

- **HLEK is pleased to announce the dates/locations for the Illinois Association of School Administrators sponsored, 2009 Regional Conferences on Recent Developments in School Law. Visit www.hlerk.com for the schedule.**
- **We congratulate the Illinois Alliance of Administrators of Special Education on receiving, for the fifth consecutive year, the exemplary unit award from the Council of Administrators of Special Education. At the IAASE Spring Conference in Collinsville, Stephanie Jones will speak on student records while Bennett Rodick will deliver a keynote address on April 30th.**

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COBRA Benefits Extended by ARRA--Along with increased school funding, the *American Recovery and Reinvestment Act* ("ARRA") extends benefits available under the *Consolidated Omnibus Budget Reconciliation Act of 1985* ("COBRA").

With regard to COBRA, ARRA does two important things: (1) it makes available to "assistance eligible individuals" ("AEI") a premium reduction in the amount of 65% for COBRA continuation coverage for up to 9 months, and (2) it provides a special COBRA election opportunity to individuals "involuntarily terminated" from September 1, 2008, through February 16, 2009, who did not elect COBRA when it was first offered or who did elect COBRA, but are no longer enrolled.

An AEI is a COBRA "qualified beneficiary" who meets all of the following requirements: (1) is eligible for COBRA continuation coverage at any time during the period beginning September 1, 2008, and ending December 31, 2009, (2) elects COBRA coverage (when first offered or during the additional election period), and (3) is eligible for COBRA as a result of the employee's *involuntary termination* between September 1, 2008, and December 31, 2009.

The employer must provide the COBRA coverage if the AEI pays 35% of the otherwise required premium. The remaining 65% (the subsidy) is treated as a payment of payroll taxes by the employer maintaining the plan and is reimbursed to the employer by the federal government by being claimed as a credit on Form 941, the employer's quarterly federal tax return. Form 941 has been revised to allow for this credit.

Student Endangerment Cont. The district refused to abide by the arbitrator's award on the basis that it was against public policy to employ such a volatile individual in a school setting.

As a result, the employee's union filed an unfair labor practice charge against the district, and the IELRB upheld the award of reinstatement. The appellate court, reversed the IELRB finding that it was improper for the arbitrator to ignore compelling evidence of the employee's anger management issues in other school contexts.

The premium reduction applies to periods of coverage beginning on or after February 17, 2009. A period of coverage is a month or shorter period for which the plan charges a COBRA premium. The premium reduction starts on March 1, 2009, for plans that charge for COBRA coverage on a calendar month basis. The premium reduction for an individual ends either upon eligibility for other group coverage (or Medicare), after 9 months of the reduction, or when the maximum period of COBRA coverage ends, whichever occurs first. Individuals paying reduced COBRA premiums must inform their plans if they become eligible for coverage under another group health plan or Medicare.

Individuals eligible for the special COBRA election period described above also must receive a notice informing them of the special COBRA election opportunity. This notice must be provided within 60 days following February 17, 2009 (i.e. April 18, 2009). The model notice can be found at <http://www.dol.gov/ebsa/COBRAmodelnotice.html>.

Finally, individuals who are denied the premium reduction may soon be able to appeal to the Department of Labor or Health and Human Services. The DOL and HHS are currently developing a process and an official application form that will be required to be completed for such appeals.

<http://www.dol.gov/ebsa/cobra.html>; <http://www.irs.gov/newsroom/article/0,,id=205370,00.html>

Contact Heather Brickman or Barbara Erickson for more information regarding the impact of the COBRA continuation provision on your district.

Relying on the *in loco parentis* doctrine in Section 24-24 of the *School Code*, the court determined that public policy strongly favors safety in schools. As a result, the arbitrator's exclusion of clear evidence of an employee's dangerous tendencies resulted in an award that was arbitrary and capricious.

As the Central case shows, employee dismissals for cause can raise a host of complex legal and factual issues. Contact Mike Loizzi or Jeff Goelitz with questions concerning the impact of this decision on your school district

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