

THE  
**Extra Mile**  
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**ADA Amendments Act of 2008 Potentially Impacts Section 504 Plans/OCR Issues Updated FAQ--**

As reported in the October 2008 *Extra Mile*, the *ADA Amendments Act of 2008* ("Act") broadened the class of individuals who may be determined to be "disabled" effective January 1, 2009.

The U.S. Department of Education's Office for Civil Rights ("OCR") has now issued an update to their Frequently Asked Questions addressing these legislative changes. <http://www.ed.gov/about/offices/list/ocr/504faq.html>

The expanded definition of "disabled" may increase the number

of students who are eligible for services due to a physical or mental impairment that substantially limits one or more major life activities.

In the Act, Congress provided an expansive, non-exhaustive, list of major life activities including eating, sleeping, reading, thinking, concentrating and communicating. Congress also stated that some brain functions qualify as major life activities.

Prior to the Act, school districts could take into consideration mitigating measures, such as medication, hearing aids, and the use of assistive technology, to determine whether a

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***Illinois Appellate Court Rules That School Boards Have Broad Discretion in Structuring Their Bids--***

In a major victory for school districts, the Illinois Appellate Court recently ruled in *Singles Roofing v. Maercker School District 60*, No. 2-09-0319 (Second District April 6, 2009), that a school district had discretion to structure bids as they considered appropriate.

In *Singles*, HLERK attorneys **Rob Swain** and **Debra Kaplan** successfully defended the district against an aggrieved bidder's motion for a temporary restraining order ("TRO") to stop work on contracts awarded for certain roofing work at a school.

The trial court denied *Singles* a TRO and the appellate court affirmed, finding that the aggrieved bidder for the roofing contract was not entitled to a TRO because school boards have broad discretion under Section 10-20.21 of the *School Code* in how they structure their bids for work.

In *Singles*, the district had structured the bids so that they could be awarded either for two separate portions of the work, or as a single combined bid for the entire scope of work.

The district decided to award the work, at a slightly higher cost, to two separate contractors rather than award all of the work to

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**Consumer Price Index**

Percent change for the month of **March, 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	0.0	0.1
12 Mth	-1.9	-2.2
St. Louis-6 Mth	0.4	0.2
12 Mth	2.5	2.6
U.S. Mthly	0.2	0.2
12 Mth	-0.4	-0.9

April CPI figures will be released May 18, 2009. For the most recent CPI, visit our website at: [www.hlerk.com](http://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**

- **Adopt and publish your board's prevailing wage resolution. Contact Bob Kohn with inquiries.**
- **Save the date for the IASA sponsored *Regional Conferences on Recent Developments in School Law!* See the attached/enclosed memo with dates/locations.**
- **HLERK congratulates all newly elected board members and is pleased to announce an all-new edition of our acclaimed *A School Board Member's Handbook*. Retainer clients will receive eight complimentary copies while others may purchase copies by sending in the attached order form.**

**Offices:**

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**ADA Amendments Act Cont.**

student has a physical or mental impairment that substantially limits a major life activity.

The Act, however, specifically states that such mitigating measures (except for ordinary eyeglasses or contact lenses) are **not** to be considered when determining if a person has such an impairment.

The Act's elimination of the ability to consider "mitigating measures" in determining disability status as well as expansion of the definition of disability may cause the number of students who may require a

Section 504 evaluation and become eligible for Section 504 Plans to significantly increase.

OCR has recently advised school districts that, in a change from past practice, they will investigate *all* complaints they receive. Not surprisingly, school districts are seeing an upsurge in OCR complaints.

***Compliance with Section 504 requires proper procedures and forms. Contact Bennett Rodick or Michelle Todd with your Section 504 inquiries or to request a review of your Section 504 policies and forms.***

**Bid Structuring Cont.**

plaintiff which had submitted the lowest "combined bid". The district determined this was in its best interest to protect against the risk that any one contractor might become insolvent or suffer a disruption to its operations during the work.

The appellate court held that the decision whether to award the work separately as two bids or as one combined bid was well within the district's discretion.

Further, the court also found that the district was not required to find the plaintiff to be the lowest responsible bidder for the two contracts it awarded because it was not the lowest bidder with respect to the separate portions of the work.

***As school districts move to spend ARRA funds, bidding disputes are likely to grow. Contact Rob Swain or Bob Kohn with your bidding law inquiries.***

**Significance of District-Wide Training Order Lets Parents Claim Prevailing Party Status over Illinois School District, Making Them Eligible to Receive Attorneys' Fees**--The U.S. District Court for the Northern District of Illinois granted a student and his parents' motion for attorneys' fees over the objection of the school district. The district argued that the parents did not "prevail" because the relief plaintiffs obtained at the administrative level; when compared with the relief the plaintiffs requested, was *de minimis* and not worthy of a fee award.

In *William P. by Patrick P. and Marianne P. v. Evergreen Park School District No. 124*, 51 IDELR 247 (N.D. Ill. 2008), plaintiffs filed a motion for attorneys' fees following the issuance of a court order which declared them prevailing parties in a due process hearing where the hearing officer ordered the district to provide additional services to the student plaintiff and all future students with Down Syndrome.

The parents' requested relief, which they did not obtain, included compensatory education and tuition reimbursement

In rejecting the district's argument, the court found that Section 1415(i)(3)(B) of the IDEA, which allows the parents of a child with a disability who is found to be the prevailing party of an administrative hearing to recover attorneys fees when he or she obtains "actual relief on the merits" of a claim that "materially alters the legal relationship between the parties by modifying defendant's behavior in a way that directly benefits the plaintiff," had been satisfied. Accordingly, the court granted the plaintiffs' motion for fees.

***As William P. demonstrates, the risk of potential due process hearings and attorneys' fees liability continues to grow. Contact Jay Kraning or Nancy Krent with your special education inquiries.***

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