

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

**HLERK Activities at the Joint Conference**--HLERK is looking forward to seeing you at a variety of programs and activities at the annual IASB/IASA/IASBO Joint Conference in Chicago. Please join us at the following:

*The Powers That Be: A Primer on School Board Powers and Duties* with **Heather Brickman** and **Cindi DeCola**. Saturday, November 21st at 10:30 a.m. at the Hyatt Hotel-Regency D Ballroom.

*Superintendent Employment Contracts* with **Stan Eisenhammer**. Saturday, November 21st at 3:30 p.m. at the Sheraton Hotel.

*Legally Stumped*, a question and answer

program, with a panel of HLERK early risers chaired by **Heather Brickman**. Sunday, November 22nd at 8:00 a.m. at the Hyatt Hotel-Columbus E/F Ballroom.

*Character Counts: The Importance of Civility and Professionalism in the Practice of Law* with **Nancy Krent** for the Illinois Council of School Attorneys. Friday, November 20th. CLE credit is available to attorneys.

Finally, HLERK clients and guests have received invitations to a very special social event on Saturday evening, November 21st.

*We look forward to seeing you at the Joint Conference.*

**IASA/IASB Retain HLERK to File "Friend of Court" Brief in Illinois Supreme Court**--As reported in the July 2009 *Extra Mile*, the Illinois Appellate Court recently ruled in *SPEED District No. 802 v. Warning* that, as part of a remedy for an unfair labor practice committed against a fourth year non-tenured teacher, the teacher was eligible for reinstatement to a tenured position.

The appellate court upheld a decision by the Illinois Educational Labor Relations Board that the special education district committed an unfair labor practice when it did not renew a teacher's contract for engaging in protected activity under the *Illinois Educational Labor Relations Act* ("IELRA"). The court also held the IELRB's reinstatement was not an abuse of discretion, even though the reinstatement resulted in the teacher obtaining tenure.

The Illinois Supreme Court has agreed to hear the district's appeal. *We are pleased to announce that your professional organizations, the Illinois Association of School Boards and Illinois Association of School Administrators have retained HLERK to file a friend of the court ("amicus curiae") brief to the Illinois Supreme Court in support of the district.*

In the brief, filed November 5th, IASA and IASB assert that:  
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**Consumer Price Index**

Percent change for the month of **September, 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 12 Mth	0.0 -1.9	0.0 -2.3
St. Louis-6 Mth 12 Mth	-0.9 -0.5	-1.3 -1.0
U.S. Mthly 12 Mth	0.1 -1.3	0.1 -1.7

October CPI figures will be released November 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**

- Remember that on **January 1st** the complete re-write of the *Open Meetings* and *Freedom of Information Acts* become effective. HLERK will be conducting IASA sponsored programs for the school community on the impact of the new amendments on school districts. **Contact Rob Swain with your OMA and FOIA inquires.**
- Our thanks to the record number of attendees at the **IASA sponsored** programs, *The Year in Review: The Highlights and Lowlights of Illinois School Law 2009*. The newly updated *Conference Handbook*, summarizing the year's legal developments including the re-write of FOIA and OMA is now available for purchase. This *Handbook* is an invaluable resource. **Order yours today by sending in the attached order form.**

**Offices:**

Arlington Hts. 847-670-9000  
Belleville 618-355-7850

**Criminal Offenses Barring School Employment Expanded and Modified/New Notification Requirement Added**--Effective August 13, 2009, [Public Act 96-0431](#) made comprehensive changes to the list of prohibited offenses for school employment and to the list of offenses prohibiting ISBE Certification.

The *School Code* has long provided that if an individual is convicted of certain specified offense(s), a school district may not employ that individual. The *School Code* also sets forth a list of criminal offenses for which a conviction will result in revocation of a teaching certificate. The new Act, among other things, aligned these two lists of criminal offenses as well as modified and expanded the lists to include additional offenses.

The Act also added a requirement that a district superintendent *must report* a certified employee to the state and regional superintendents if the district superintendent has reasonable cause to believe that the certificate holder “has committed an intentional act of abuse or

neglect with the result of making a child an abused child or a neglected child and that act resulted in the certificate holder’s dismissal *or resignation* from the school district” (emphasis added).

The superintendent must notify the state and appropriate regional superintendent within 30 days of the dismissal or resignation and a copy of the written report must be sent contemporaneously to the employee. The state superintendent, in turn, may then initiate proceedings to revoke the employee’s certificate.

The Act also added the requirement for school boards to conduct training on educator ethics, teacher-student conduct, and school employee-student conduct for all personnel. This training must occur at least once every two years. With all the major legislative changes this year, this significant Act has received little notice.

***Contact Heather Brickman or Barb Erickson with inquiries regarding the impact of this legislation on personnel matters.***

### ***Friend of Court Cont.***

(1) the teacher did not engage in protected activity because she did not have a right to union representation at a post-observation evaluation conference; and (2) the IELRB abused its discretion in awarding reinstatement when the reinstatement resulted in the teacher obtaining tenure.

In addition, IASA and IASB argue the appellate court failed to apply the “mixed motive” test established by the U.S. Supreme Court and used by Illinois courts to determine IELRA violations. Under this analysis, once the plaintiff demonstrates an unlawful reason was a motivating factor in the employer’s decision, the burden shifts to the employer to show it would have made the same decision regardless of the alleged protected activity. The court failed to consider whether the district had a legitimate reason for non-renewing Warning’s employment, finding instead that the district’s reasons for dismissal were pretextual.

In *Warning*, a teacher was placed on a “correctional plan” calling for regular meetings with the teacher and principal to evaluate her progress. The plan stated that failure to follow the plan could result in termination.

The principal denied the teacher’s request for union representation at the meetings because they were not about discipline but about performance. The principal subsequently gave the teacher unsatisfactory reviews and notified her that her teaching contract would be terminated at the end of the year. The union filed an unfair labor practice against the district, claiming the district retaliated against the teacher for insisting on the presence of union representation at the meetings.

***This decision impacts every Illinois school district engaged in non-tenured teacher remediation activities. Contact Stan Eisenhammer with questions regarding your district or teacher evaluation requirements or procedures. Watch the Extra Mile for updates regarding the SPEED litigation.***