

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

Welcome Back for the 2010-2011 School Year!--Another summer has swept by and the new school year promises to present a variety of complex and important legal challenges in light of Illinois' on-going school financial crisis.

This is the first year in which response to intervention (RtI) is formally required in all Illinois school districts. In addition, school districts are facing continuing issues arising under the recently amended *Freedom of Information and Open Meetings Acts*.

In this complex and ever-changing legal environment we are pleased to work with *your* professional organi-

zations, IASA, IASB, IAASE and IASBO in bringing to you the key legal information you need in order to avoid or minimize legal liability.

You will soon receive the hard copy registration form for the IASA school law conferences, *The Year in Review: The Highlights and Lowlights of Illinois School Law 2010*. On-line registration will be available as well at www.iasaedu.org.

Dates and locations are:

- October 7th-Peoria**
- October 12th-Oak Brook**
- October 28th-Fairview Heights**

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Governor Signs "Sexting" Bill and Other Bills Aimed at Protecting Students' Rights and Safety--Governor Quinn recently signed four bills into law that address student welfare issues and create new issues for school districts.

"Sexting"

The "sexting" bill is the first state law passed to address the increasingly common practice of minors who engage in the transmission of indecent images via cell phone or other electronic devices. [Public Act 96-1087](#) amends Illinois *Juvenile Court Act of 1987* to give the legal system greater flexibility in dealing with minors that engage in such behavior.

This new law now makes the "electronic dissemination of indecent visual depictions by minors" an offense under the *Act* and vests courts with the authority to order supervision, counseling and/or community service for minors who are found guilty of the offense.

Before this law went into effect, prosecutors had no choice but to charge a minor as an adult under existing child pornography laws, if they wished to pursue charges for such conduct; and, if convicted, the minor had to register as an adult sex offender. School districts should note that while this law only covers the transmission of indecent images, school districts' student

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Consumer Price Index

Percent change for the month of **June 2010**, for the urban wage earners & clerical indices as reported by the Bureau of Labor Statistics.

	All Urban (CPI-U)	Workers (CPI-W)
Chicago-Mthly	-0.4	-0.5
12 Mth	0.6	1.1
St. Louis-6 Mth	1.1	1.2
12 Mth	2.3	2.8
U.S. Mthly	-0.1	-0.1
12 Mth	1.1	1.4

July CPI figures will be released August 18, 2010. 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

- HLERK is pleased to co-sponsor its annual *Rush Hour Social* at the IAASE Fall Conference in Tinley Park on September 23rd. Please stop by and say hello! HLERK is proud to have served as IAASE's legal counsel since the organization's inception.
- Federal law requires Illinois school districts to conduct educational programs relating to the U.S. Constitution during the week of September 18th in honor of the Constitution's birthday.
- You will soon receive the registration form for the IASA programs *The Year in Review: The Highlights and Lowlights of Illinois School Law 2010*.

Offices:

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

Bills Cont. discipline policies should be broad enough to also address indecent written messages sent by students.

Bullying

Another law that has received much attention in the media is [Public Act 96-0952](#), which is aimed at further reducing bullying in schools. This law amends Section 27-23.7 and adds Sections 27-23.9 and 23.10 to the *School Code*, expanding the definition of “bullying” to mean any “severe or pervasive physical or verbal conduct,” including written or electronic communications, directed toward a student that “can be reasonably predicted” to have the effect of harming the student.

The law now clearly addresses “cyber-bullying,” and it now requires private, non-sectarian schools to adopt policies on bullying as well. Districts will need to make sure they amend their anti-bullying policies to conform to this new law, and file the amended policy with ISBE.

Military Families

The Governor also signed a bill aimed at removing barriers to academic achievement that children of military families may encounter due to frequent moves and deployment of their parents. The new *Educational Opportunity for Military Children Act* (P.A. 96-0953) addresses residency and graduation issues and also amends certain portions of the *School Code* and *Illinois School Student Records Act* related to immunization requirements and student records.

With respect to residency, the *Act* provides that if a student is the child of an active military parent, and is placed with a “non-custodial parent” (an adult that has temporary custody of the child) in a non-resident school, the school may not charge non-resident tuition for that student. This law also allows districts to modify minimal graduation requirements, as long as such modification is the result of scheduling issues and not a result of academic failure.

If a district is not able to ensure graduation for a transferring senior that is the child of active military personnel, then the district must make “every reasonable effort” to ensure the district from which the student transferred issues the student a diploma.

Regarding other admission requirements, this new legislation amends Section 27-8.1 of the *School Code* and provides that until June 30, 2012, school districts must allow *all out-of-state* transfer students without proof of immunizations to attend school for up to 30 days, provided the student has proof of an appointment to receive the required vaccinations.

If the student has not produced proof of immunizations after 30 days, then he/she must be excluded. This law also amends the *Illinois School Student Records Act* to allow out-of-state transfer students to use unofficial transcripts for admission to school until an official transcript can be obtained, until June 30, 2012. Please note that this new *Act* will likely impact a number of your school district’s policies and procedures, including student residency and student records.

Suicidal Behavior

Finally, a new law, [Public Act 96-0951](#), makes clear that school social workers, in addition to teachers and guidance counselors, must receive in-service training on identifying the warning signs of suicidal behavior in adolescents and teens and the appropriate interventions and referral techniques. The law further provides that those who participate or present on suicide prevention at in-services may count those activities towards their requirements for continuing professional development.

HLERK will be reviewing the impact of the above changes in law as well as all other significant legal developments at the IASA programs The Year in Review: The Highlights and Lowlights of Illinois School Law 2010. Visit www.iasaedu.org for information and registration. In the interim please contact Debra Jacobson with questions regarding the impact of the above legislation on your school district.

Referendum Resolution and Petition Deadlines Shortened for the November 2nd Election--A number of important election-related deadlines were changed by [Public Act 96-1008](#), which amended the *Election Code*. As a result, the deadlines for referendum petitions and resolutions to initiate public questions have been shortened in the coming November 2, 2010, general election.

Now, most petitions to submit a public question to referendum must be filed with the local election official not later than 92 days before a regular election (the for-

mer deadline was 70 days before the election), which falls on Monday, August 2, 2010, with respect to the November 2nd election. Perhaps more importantly, the adoption of a resolution by a school board to initiate a public question must be no later than 79 days before the election (the previous deadline was 65 days). Because the 79th day before the November 2nd election falls on Sunday, August 15, 2010, *the deadline for adoption of such resolutions falls on the next business day, or Monday, August 16, 2010. For questions regarding resolutions or petitions for referenda, please contact Heather Brickman or Steve Richart.*

It's Audit Letter Season Again--Each year we receive requests for audit response letters from our large and ever-growing client family. In these requests we are asked to identify pending or threatened litigation and claims and to confirm certain matters related to the district's disclosure of unasserted claims.

Our firm's responses must be tailored to the scope of the specific auditor requests and must be in accordance with complex ethics guidelines, acknowledging the vital importance of maintaining public confidence in school financial statements, especially in this time of fiscal crisis. Many school districts also faced enhanced

audit requirements due to ARRA.

Although we expedite responses to these multiple requests, *the required due diligence does not permit for immediate, "form letter" responses.* In the event your auditor notifies us of a need for an accelerated response timeline, we will work with them to ensure that the district's audit timeline is met but we ask that your auditors provide for sufficient time to allow us to respond to all of our requests on a timely basis. *If you have any questions concerning the audit response process for your district, please contact Stephanie Jones or Heather Brickman.*

Welcome Back Cont. We are also pleased to announce that **Bennett Rodick** will be a featured presenter at the IAASE Fall Conference on September 23rd. In addition, HLERK is pleased to co-sponsor the Conference reception on the same day. Visit www.iaase.org for information and registration.

HLERK is also proud to be a sponsor of the Lake County Superintendents' Fall Leadership Conference in October and will be hosting a reception at the Conference. Visit www.lcsupts.org for information.

Additionally, the Special Education Leadership Academy has invited HLERK to present *administrator academy approved* programs on special education law. These programs are likely to be scheduled in February, 2011.

HLERK is also pleased to be the only law firm co-sponsor of the IASA School for Advanced Leadership program. HLERK will be participating in several of the programs during the upcoming school year. Visit www.iasaedu.org for more information.

Finally, if you have not yet registered to receive the *Extra Mile* by email or ordered copies of HLERK's acclaimed *A School Board Member's Handbook*, order forms are enclosed. The email edition of the *Extra Mile* is received up to two weeks before the hard copy edition. *This year celebrates our 20th year of service to the Illinois school community. All of us wish you an educationally successful new year. Thanks for reading the Extra Mile and we look forward to seeing you at our variety of programs and receptions in the fall.*

Seventh Circuit Upholds Decision of School Principal to Request Arrest of Parents Involved in Disruptive Incident at Elementary School--In *Stokes v. Board of Education of the City of Chicago*, (7th Cir. 2010), the federal appellate court for Illinois found that a principal had probable cause to criminally charge plaintiffs and cause their arrest after witnessing what appeared to be a fight in the school office. The court accordingly upheld the district court's decision granting defendants' motion of summary judgment.

Plaintiffs, the mother and grandmother of one of the students at a Chicago elementary school, brought suit alleging their Fourth Amendment rights were violated when principal Johnny Banks signed a criminal complaint against them, causing their alleged false arrest.

Banks signed the complaint after walking into the school office and witnessing what appeared to be a fight among four women. According to witness testimony following the incident, one plaintiff was attacked by two women who were grabbing and tearing out her hair. Later evidence showed that neither plaintiff retaliated physically or verbally to the attack.

Also during the attack, 30 kindergarteners were dismissed from school, saw the attack, and began to yell. One student was knocked over as a result of the altercation.

Banks entered the office as the fight was breaking up, or immediately after it had broken up. He instructed the plaintiffs to go to a room down the hall and instructed the other two women to go to his office. Two witnesses testified that one of the plaintiffs refused to leave the office, yelling at him for an extended period of time, and continued yelling at him once she did enter the room.

The principal later filed criminal charges against the four women for disorderly conduct and instructed the police to arrest them, despite prior statements by a school employee that he did not think the plaintiffs should be arrested and one plaintiff's statement that the

other had nothing to do with the altercation. The criminal charges against the plaintiffs were dismissed early the next morning and they were released. The principal later acknowledged to one of the plaintiffs that he had made a mistake and that he should only have had the other two women arrested.

The court found the facts, taken in a light most favorable to the plaintiffs, showed a reasonable person in Banks' position could have probable cause to believe the plaintiffs engaged in disorderly conduct.

The court rejected plaintiffs' argument that Banks failed to investigate the incident to identify the aggressors, stating that a full investigation would have taken a significant amount of time in this case. Banks had to take prompt action, given the need to restore order to the school and prevent any potential harm to students.

The court noted the need of building principals to act promptly to restore order. "The children and their parents had a right to expect the principal and police to act swiftly to restore order. The situation jeopardized the physical safety of the students, the staff and the four women involved. It also threatened the psychological well-being of many of your children. It was not unreasonable for Banks to act immediately to remove any further threat of physical or psychological harm and to ask the police to do so without further investigation at the time."

Finding Banks had probable cause, the court found the defendants were entitled to summary judgment on the false arrest claims. The court found defendants were also entitled to summary judgment on plaintiffs' state law claims of false arrest, false imprisonment, and malicious prosecution.

Building administrators must often confront difficult situations. *Stokes* is a welcome voice of support for school administrators charged with maintaining order.

Please contact Bennett Rodick regarding the implications of this decision for your school district.