

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

**Refusal to Hold Evening IEP Meeting Complies With IDEA and Section 504**--A federal court has held that an Illinois school district did not violate either IDEA or Section 504 by refusing to schedule an IEP meeting after regular school hours.

In *B.H. v. Joliet School District No. 86*, 2010 WL 1177447 (N.D. Ill. 2010), the parents' attorney requested meeting dates for three days in September 2007 at 6:30 p.m. The district's attorney replied that the district was not obligated to meet after school hours. The district then proposed seven alternative dates in October and November, with the meetings to occur during school hours.

After both parties filed and withdrew

requests for an administrative due process hearing, and after the impartial hearing officer (IHO) issued an order confirming dismissal of the case based on the apparent settlement of the parties, the parent requested that the case be re-opened and that the IHO order the District to hold a 6:30 p.m. IEP meeting.

The parent claimed that, because the IDEA required IEP meetings to be conducted at mutually agreed times, it necessarily followed that the school district must convene an IEP meeting at any time convenient to the parent. The IHO refused, noting that the parent obviously missed the word "mutually" in the IDEA. The parent later filed in federal court, claiming

*Continued on Page 2*

**Federal Court Penalizes Illinois School District for Violating "Litigation Hold" Requirements**-- A federal court has sanctioned a local school district for failing to properly produce and preserve emails in accordance with the Federal Rules of Civil Procedure ("FRCP"), even though the school district had produced sufficient documents in response to the plaintiff's discovery requests.

Under the FRCP, a federal court may punish a party to a lawsuit for failing to preserve relevant documents. A motion for sanctions can be made when a party either destroys or fails to preserve evidence in its control that it could reasonably expect to be relevant to a potential lawsuit.

In *Jones v. Bremen High School District 228*, No. 08 C 3548 (ND Ill. 2010), a district secretary, filed a claim against the school district alleging discrimination based on race and disability. After the school district received notice of the claim, it directed three employees to go through their emails and save whatever they thought may be relevant to the case.

The employees made the selections without the guidance of legal counsel. Moreover, although the document retention policy posted on the school district's website stated that the

*Continued on Page 2*

**Consumer Price Index**

Percent change for the month of **May 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	0.0	0.1
12 Mth	1.5	2.1
St. Louis-6 Mth	1.1	1.6
12 Mth	0.2	0.3
U.S. Mthly	0.1	0.1
12 Mth	2.0	2.6

June CPI figures will be released July 18, 2010. 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**

- Please send in the attached form to receive the electronic edition of the *Extra Mile* via e-mail. Please also use the form to let us know if your email address has changed.
- Join **Jay Kraning** at the upcoming ISBE Special Education Director's Conference in Peoria on July 30, where Jay will be a featured presenter. **Bennett Rodick** will also be in attendance at the IAASE Executive Board meeting (open to all IAASE members) at the Conference on July 28th as IAASE's legal counsel.
- Attached is the "Save the Date" memo for the October IASA School Law Conferences. Information and registration will soon be available at [www.iasaedu.org](http://www.iasaedu.org). *Save the date for the location nearest you!*

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**Litigation Hold Cont.** district preserved all evidence of its activities, in practice, the district's back-up system permanently deleted all deleted emails every thirty days.

The court in *Jones* explained that the school had a duty to preserve all potentially relevant documents once it received notice of Jones's discrimination charges. Additionally, the court found that the school breached its preservation duty when it failed to ask *all* employees who dealt with Jones to save potentially relevant emails.

The court also emphasized the importance of consulting legal counsel when selecting documents to preserve, describing the school's failure to do so as

“unreasonable” and “improper.” The court was further troubled by the discrepancy between the school's document retention policy posted on its website and its actual practices.

As such, the court imposed sanctions on the school district, ordering the district to pay for Jones's sanctions motion, requiring the jury to be informed of the school's failure to preserve documents, and permitting Jones to question witnesses regarding the deleted emails.

***Any school district facing actual or potential federal litigation is faced with “litigation hold” requirements, and failure to meet these requirements can result in financial penalty and a compromised defense. Contact Rob Swain regarding your litigation hold issues.***

**Public Employer May Legally Search Employees' Text Messages--**The U.S. Supreme Court unanimously upheld the City of Ontario's audits of text messages sent from an employee on a city-owned hand-held pager, finding that the search did not violate the employee's Fourth Amendment rights.

In *City of Ontario v. Quon*, 2010 WL 2400087 (2010), the City issued alphanumeric pagers to several of its SWAT team members, including Sergeant Jeff Quon, in order for them to mobilize and respond to emergency situations.

Before acquiring the pagers, the City announced its “Computer Usage, Internet, and E-Mail Policy,” which applied to all employees. The policy provided that the

City “reserves the right to monitor and log all network activity including e-mail and Internet use, with or without notice.” The policy further provided that employees “should have no expectation of privacy in the use of these resources.” Quon signed a statement that he read and understood the policy.

The Court found that even if Quon had a reasonable expectation of privacy in the messages, the search was reasonable because it was conducted for a “non-investigatory, work-related purpose” or for the “investigation of work-related misconduct,” and because the search was not excessive in scope.

***Contact Rob Swain with questions regarding school technology and acceptable use policy issues.***

**IEP Mtg. Cont.** the district's refusal was a violation of Section 504 of the *Rehabilitation Act*.

The court ruled in favor of the district. It noted that Section 504 reaches grosser kinds of misconduct than the IDEA because it deals with the exclusion of students from educational opportunities rather than affirmative obligations to render an appropriate IEP under the IDEA.

Therefore, a Section 504 violation required more than a showing of a mere IDEA violation. Rather, a plaintiff

must demonstrate that the district acted with “bad faith or gross misjudgment.”

Even if the district's insistence on meeting within the school day fell under Section 504, plaintiff did not show that the district acted with discriminatory animus, bad faith, or gross misjudgment, especially since the district offered numerous alternative dates.

***IEP meeting issues continue to challenge all school districts. Contact Jay Kraning or Nancy Krent with your IEP meeting issues.***