



New IASA Administrator Academy Programs on Education Reform Law (SB-7) Scheduled--HLERK is pleased to announce that, in conjunction with *your* professional organization, the Illinois Association of School Administrators, *seven administrator academy approved* programs explaining the new education reform legislation have been scheduled.

HLERK and IASA thank the attendees at the three sold-out administrator academy programs in August. Due to overwhelming demand, all of the school administrators seeking to learn about this game changing legislation were not able to regis-

ter. Therefore, *seven* administrator academy approved programs have been scheduled so that all school administrators state-wide can receive the information from the people “in the room” as this legislation was created.

Join **Sara Boucek**, IASA Associate Director and General Counsel, **Darren Reisberg**, ISBE General Counsel and the HLERK personnel and labor law attorneys led by **Stan Eisenhammer** and **Mike Loizzi** as they explain the legislation and discuss the practical implications for all Illinois school districts and cooperatives at the following locations:

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FOIA Amended to Eliminate “Pre-Approvals” from PAC and to Provide Relief Concerning Recurrent and Commercial Requesters--On August 26, 2011, Governor Quinn signed into law [Public Act 97-0579](#), which amends the *Freedom of Information Act* (“FOIA”) in a number of significant ways. The most important change is the elimination of the Public Access Counselor’s (“PAC”) pre-approval role for the exemptions Section 7(1)(c), related to personal information, and Section 7(1)(f), related to preliminary/predecisional documents.

As a result, there is no longer any need to seek pre-approval for the “personal information” and “preliminary documents” exemptions. Rather, those two exemptions are treated the same as every other exemption: public bodies can simply assert them on their own (without submitting for pre-approval), and requesters can challenge them before the Attorney General via a Request for Review or in court via a lawsuit.

We understand that the PAC has been sending out closing letters advising public bodies and requesters that they will not be issuing decisions on pending pre-approval matters due to this new law.

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Consumer Price Index

Percent change for the month of **July 2011**, 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	-0.4
12 Mth	3.2	3.9
St. Louis-6 Mth	2.0	2.4
12 Mth	3.3	3.9
U.S. Mthly	0.1	0.1
12 Mth	3.6	4.1

August CPI figures will be released September 14, 2011. 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

- Thanks to all who joined us on September 22nd for our IAASE Fall Conference reception in Tingley Park where **Bennett Rodick** was a featured speaker.
- Prepare your district's administrator salary compensation report and submit to your board at its regular September meeting and post on your district's website by October 1st.
- Require proof of student health exam and immunization by October 15th, unless you have set an earlier date and provided parent notice of the earlier date or the student is an out-of-state transfer student (See [August 2010 Extra Mile](#)).

Offices

Arlington Hts.	847-670-9000
Belleville	618-355-7850
Peoria	309-671-9000

FOIA Cont.

The law also now allows public bodies greater flexibility in responding to FOIA requests from “recurrent requesters.” Upon receipt of a request from a recurrent requester, a public body must make a formal determination that the individual is a recurrent requester and notify the requester of that determination within 5 days.

If a public body does so, it is now entitled to take up to 21 business days to respond, and the response need only provide the recurrent requester an estimate of the time needed to provide the requested records. Although this amendment sounds like a handy new arrow for the quiver, it only applies to *truly* recurrent requesters, namely those who, within the last year, have submitted (a) 50 or more FOIA requests in the year, (b) 15 or more requests in a month, or (c) 7 or more requests in a week.

In addition to these changes, the new law also allows public bodies to charge commercial requesters up to \$10 per hour (after the first 8 hours) for time spent

searching for and retrieving requested records. They can also charge commercial requesters for the actual retrieval and transportation costs for any documents maintained by an off-site, third-party storage company. In order to assess these costs, the public body must provide the requester an accounting of the fees, costs, and personnel hours related to the request. The law also prohibits a commercial requester from filing a request for review with the PAC, except to challenge the determination that his/her request was made for a commercial purpose.

While these changes may help unclog the PAC’s docket, it remains to be seen whether public bodies will receive any substantial relief from recurrent or commercial requesters.

If you have any questions concerning this new law, please contact Steve Richart, Jeff Goelitz or Heather Brickman.

SB-7 Cont.

- September 19th-Tinley Park Convention Center
- September 26th-Arboretum Club in Buffalo Grove
- October 3rd-Radisson Conference Center in Rockford
- October 11th-Four Points Sheraton in Fairview Heights
- October 18th-IASA Offices in Springfield

- November 2nd-Marion High School in Marion
- November 14th-Ihotel in Champaign

Visit www.iasaedu.org for information and registration and contact Stan or Mike with your SB-7 inquiries. For those administrators not able to attend we have enclosed the order form for the Academy Handbook: *Employment of Teachers in Illinois After Education Reform.*

We look forward to seeing you at the program nearest you.

Federal Appellate Court Protects School's Right to Punish Students for Disruptive Use of Social Media

The Fourth Circuit Court of Appeals (which does *not* govern Illinois) recently found that a school district's suspension of a student who had created a MySpace group to harass a classmate did not violate the student's right to free speech.

In *Kowalski v. Berkeley County Schools*, 2011 WL 3132523 (4th Cir. 2011), Kara Kowalski, a high school senior, created a discussion group page on MySpace from her home computer after school hours. The discussion group was called "S.A.S.H" which stood for "Students Against Shay's Herpes" and the comments on the discussion page were clearly targeted at Shay N., one of Kowalski's classmates.

Kowalski invited other students to join the group and many students actively participated in the group by making derogatory comments about Shay and posting insulting, doctored photographs of her. When Shay's father brought the site to the attention of an assistant principal, the school gave Kowalski a five-day suspension from school and a 90-day suspension from school-sponsored activities.

Kowalski argued that the punishment violated her freedom of speech under the First Amendment. She argued that her speech occurred off school grounds and therefore the school did not have the right to discipline her for it. The court, citing to *Tinker v. Des Moines Independent School District*, noted that a school has the right to discipline students if their

speech "materially and substantially" interrupts classwork or creates disorder.

The court reiterated the standard that schools may even punish out-of-school speech if it substantially disrupts the school environment. The court found that the school was sufficiently disrupted, in this case, to merit discipline of Kowalski. Shay had missed a day of school to avoid further harassing comments and the comments and pictures were only likely to continue if the school did not put a stop to it. The court found that this sufficiently disrupted the school to merit discipline.

The *Kowalski* case stands in contrast to recent cases decided by the Third Circuit (which also does not govern Illinois), which were reported to you in the [August 2011](#) edition of the *Extra Mile*. In two separate cases the Third Circuit held that suspending students who created insulting and derogatory fake profiles of their principals on social networking sites violated the students' First Amendment rights.

While not governing law in Illinois, this case, taken together with the Third Circuit decisions, demonstrates the difficult decisions school administrators must make when seeking to manage student use of a variety of social media.

Until and unless the Supreme Court resolves these issues, districts seeking to discipline students for inappropriate use of social media outside of school face significant constitutional hurdles.

IASA Programs on the School Law Year in Review Coming Up!--You should have received your invitation for the October IASA annual school law conferences, *The Year in Review: The Highlights and Lowlights of Illinois School Law 2011*. Send in your reservation today or visit www.iasaedu.org for information and registration.

These annual conferences are a unique opportunity to review the year's major issues and changes in school law to help *you* avoid costly legal liability. Although much discussion has focused on education reform leg-

islation, there have been major developments in students, special education and board governance. Join us at:

Weaver Ridge/Peoria—October 6th

Hamburger University/Oak Brook—October 20th

Doubletree/Collinsville—October 27th.

Contact Stan Eisenhammer with your inquiries.

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Governor Amendatorily Vetoes Service Animal Bill (HB 3440)--The Illinois General Assembly recently passed a bill, [HB 3440](#), that would amend the controversial Illinois service animal statute contained in Section 14-6.02 of the *School Code*. The bill passed both houses on May 31, 2011, and was sent to the Governor on June 29, 2011.

The bill, as passed by both houses, defines a “service animal” to include, but not be limited to, “an animal trained or being trained as: a hearing animal; a guide animal; an assistance animal; a seizure alert animal; a mobility animal; a psychiatric service animal; or an autism service animal.” The bill also provides that reasonable accommodations must be sought for the use of service animals to accompany a student with a disability at all school functions.

However, on August 28, 2011, the Governor issued an amendatory veto to retain the definition of “service animal” as set forth in HB 3440, but to eliminate all other changes to the statute.

That is, the Governor’s amendatory veto restores the language providing that service animals shall be permitted to accompany a student with a disability at all school functions. In 2010, two Illinois school districts unsuccessfully challenged a parent’s request to have an autism service dog attend school.

The General Assembly can accept the Governor’s amendatory veto with a simple majority vote of both chambers. Upon such action, the bill with the Governor’s changes becomes law. The General Assembly also can override the Governor’s amendatory veto with a 3/5 vote of both chambers. In this case, the bill becomes law without the Governor’s changes. If the General Assembly fails to act, the bill dies. We will continue to keep you apprised of any action by the Illinois General Assembly on this bill. We will discuss the implications of the new legislation at the IASA fall legal conferences.

If you have questions about this bill or service animals in schools, please contact Bennett Rodick.

New Law Addresses Home/Hospital Instruction--On July 14, 2011, [P.A. 97-123](#) went into effect, significantly changing requirements for home and hospital instruction of students who are absent from school due to a medical condition.

The new law states that a child will qualify for home or hospital instruction where it is *anticipated* by a physician that, due to a medical condition, a child will not be able to attend school for two or more consecutive weeks or on an ongoing intermittent basis. Previously, anticipated illness did not qualify a child for such instruction.

The legislation also defines “ongoing intermittent ba-

sis” to mean that the child’s medical condition is anticipated to cause the child to be absent at least two days at a time, multiple times during the school year, for a total of at least ten days. Finally, this law requires a school to start the instruction no more than five school days after receipt of a written physician’s statement, and it makes clear that a child’s IEP/504 plan must continue to be implemented, unless the IEP/504 team determines changes are necessary. *We expect these changes will lead to an increase in home and hospital instruction requests.*

Please contact Jay Kraning for assistance with implementation of these new homebound legal requirements.