

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

*Breaking News*

The Joint Committee on Administrative Rules (JCAR) sent their approval to the [Teachers' Retirement System](#) (TRS) for the rules submitted by TRS to implement TRS's new pension legislation. Upon receipt of notification of approval of the rules, TRS must file the regulations for publication in the Illinois Register. **For more information regarding the new rules, click [here](#) or contact Cindi DeCola of our office.**

**U.S. Supreme Court Decides Complainant Party Should Have Burden Of Persuasion in Special Education Due Process Hearing-** On November 14, 2005, the U.S. Supreme Court issued its decision in [Schaffer v. Weast](#), 546 U.S. \_\_\_\_ (Nov. 14, 2005), assigning the "burden of persuasion" to the complaining party in IDEA due process hearings.

Although the IDEA lists many specific requirements for states and local schools to follow in their implementation of the IDEA, it is silent on the is-

sue of which party bears the burden of persuasion in IDEA due process hearings.

Schaffer involved a parental claim for reimbursement for the unilateral placement of their son in a private school program.

At the hearing, the ALJ ruled that the evidence was equally persuasive on both sides, but because the ALJ believed that the parents had the burden of persuasion, he found for the school district. **Continued on Page 2**

**Illinois Open Meetings Act Amendment Becomes Effective January 1**

Effective January 1, 2006, a public body that has a website maintained by the public body's full-time staff must post the following on its website:

- (1) the agenda of any regular meetings of the governing body of that public body, and
- (2) notice of all meetings of the governing body.

Beginning on July 1, 2006, a public body also will be required to post the minutes of regular meetings of the governing body open to the public.

These are three new requirements under Sections 2.02 and 2.06 of the [Open Meetings Act](#) as amended by [Public Act 94-0028](#).

The amendment also delineates when specific postings shall be placed on the website and the length of time the postings must remain on the website. It further provides that the failure of a public body to post on the website notice of any meeting or the agenda of any meeting will not invalidate any meeting or actions taken at a meeting.

**Please contact Heather Brickman or Barbara Erickson with questions or to request a complimentary copy of the Act. HLERK has developed a model policy governing the Open Meetings Act that has been updated to include the new statutory requirements. You may purchase a copy by sending in the attached order form.**

**Consumer Price Index**

Percent change for the month of **October, 2005**; for the urban wage earners & clerical indices as reported by the Bureau of Labor Statistics.

	All Urban (CPI-U)	Workers (CPI-W)
Chicago-Mthly	-0.2	-0.2
12 Mth	3.7	4.3
St. Louis-6 Mth	1.9	2.0
12 Mth	3.3	3.4
U.S. Mthly	0.2	0.1
12 Mth	4.3	4.7

November CPI figures will be released December 16, 2005. Visit the CPI at <http://stats.bls.gov/eag/eag.us.htm>.

*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**

\*Determine dates for semi-annual reviews of executive session minutes (typically, January and July).

\*Make your reservation today for the new HLERK/PDN program on Special Education Law scheduled for February 15th in Springfield (see article page 2).

\*Remember your statutory and collective bargaining agreement deadlines for reductions-in-force of certificated and educational support personnel.

\*Remember that on January 1st amendments to the *Open Meetings Act* take effect (see article this page).

\*Join **Terry Hodges** and **James Levi** at the January 20th IASBO program on Law and School Governance at the Downers Grove Double Tree Guest Suites. Contact [www.iasbo.org](http://www.iasbo.org) to register online today, or call IASBO at 815-753-9365.

**Offices:**

- Arlington Hts. 847-670-9000
- Springfield 217-546-9200
- Belleville 618-355-7850

**Happy Holidays from HLERK-** As we end another year of service to the educational community, we want to thank all of our clients and friends for placing their trust and confidence in our firm. We especially wish to thank the many new school districts who joined our client family during 2005 and entrusted us with their legal needs.

We are particularly pleased to have launched our website at [www.hlerk.com](http://www.hlerk.com) and our newly redesigned and retitled monthly publication *The Extra Mile*. At HLERK, we will go the extra mile so you do not have to.

**ISBE Issues New Proposed Rules Banning Junk Food For K-8-** On December 9, 2005, ISBE issued new [proposed regulations](#) banning junk food and soda in Illinois elementary and middle schools during the school day. The ISBE was acting on the Governor's recommendation made last month to eliminate junk food from schools. Existing rules prohibit "minimally nutritious" foods during breakfast and lunch for grades K-5, but the new rules would ban junk food for the entire school day through the eighth grade. The proposed rules alter the definition of "minimally nutritious" food to be based on the food's nutritional content

The year 2006 promises to be interesting and challenging for the school community as we continue the process of *IDEA 2004* implementation both at the state and federal levels. Funding issues persist and new Illinois pension legislation soon will be accompanied by implementing regulations. HLERK will continue to update you on these developing issues and new legal issues, often first reported here and on our website.

Finally, from all of us at HLERK, please accept our best wishes for a happy, safe and healthy holiday season. We look forward to working with you in 2006.

rather than specific categories of food. For example, foods with a fat calorie content over 35% or a with a total sugar weight exceeding 35% would qualify as junk food, subject to particular exceptions.

The new rules would not affect extracurricular activities after school or federal reimbursable meals. High schools would not be subject to the new regulations; however, the Governor hopes to push for similar regulations for high schools in the future.

***Please contact Debra Kaplan for more information or with questions.***

**New** **HLERK/PDN**  
**Program on Special**  
**Education Law Announced**

We are pleased to announce a new one day program on Illinois special education law. The program will feature **Bennett Rodick, Heather Brickman, and Stephanie Jones** and will focus on *IDEA 2004* and federal as well as state implementing activities. The program will address discipline, highly qualified teacher requirements and services for private school students among other hot topics affecting all school administrators. The date/time for the program is:

February 15, 2006  
Hilton Hotel  
Springfield, IL

**You may register online at:**  
[www.meds-pdn.com](http://www.meds-pdn.com)

**or contact PDN at (715) 836-9900. We look forward to seeing you there!**

***Supreme Court, Continued from Page 1***

The Supreme Court noted that the ordinary rule in adversarial proceedings is that the plaintiff – the party seeking relief – bears the risk of failing to prove his or her claims, and therefore bears the burden of persuasion.

The Court also pointed out that in several similar situations, when the federal statute is silent on the issue of the burden of persuasion, including the *Americans with Disabilities Act* and Title VII, the complaining party should have the burden.

The Schaffers' argument that every IEP should be assumed invalid until the school district proves otherwise was rejected by the Court. While the school district may have expertise and resources in excess of those of the par-

ents, the Court pointed out that the parents' relative disadvantage in the area of expertise and knowledge is addressed by the IDEA in the form of procedural protections for parents, which courts have held to provide parents a large degree of protection.

The majority, therefore, held that, in a due process proceeding brought pursuant to the IDEA, the complaining party – whether that be the school district or the student's parents- bears the burden of persuasion. The Court specifically did not decide the issue of whether individual states could require school districts to bear the burden of persuasion at such hearing. Such state statutes exist, but such a statute was not before the Court for consideration.

***Please contact Sonja Trainor for more information.***

CONTACT US:  
[info@hlerk.com](mailto:info@hlerk.com)

3030 Salt Creek Lane · Suite 202 · Arlington Heights, Illinois 60005  
3048 Spring Mill Drive · Springfield, Illinois 62704  
521 West Main, Suite 201D · Belleville, Illinois 62220