

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

**ISBE to Issue Proposed Special Education Regulations**—On February 10th the Illinois State Board of Education anticipates publishing its proposed regulations for special education for public comment. The proposed rules seek to reconcile and align state regulations with the provisions of *IDEA 2004*.

Certain proposed rules retain state measures that are more protective than proposed federal regulations. For example, the ISBE rules retain short-term measurable objectives in IEPs and keep the age of 14 ½ as the age for transition plans.

Pursuant to the proposed federal regulations, the proposed state rules allow for districts to use a process to determine if a child responds to “scientific, research-based intervention” as part of the evaluation procedures. The proposed rules make substantial revisions

to the process of responding to “referrals” for special education services.

The proposed regulations also cap the percentage of special education students in general education classes at 40% and allow for the option of co-teaching with general and special education teachers.

Other proposed rules provide that school districts must ensure that psychological evaluations are conducted for any students suspected of or determined to have mental retardation, and that the eligibility category “developmental delay” be allowed for children up to the age of seven.

Please note that these are proposed regulations only.

*Continued on Page 2*

**ISBE Issues Final “Highly Qualified Teacher Regulations**—On January 19th, the Illinois State Board of Education adopted final regulations defining standards and criteria for teachers to be “highly qualified.” The final regulations are substantially the same as the preliminary regulations that were released for public comment in October. The final regulations will take effect once they have been approved by JCAR.

The regulations also contain the Highly Objective Uniform State Standards for Evaluation (HOUSSE), which allow teachers to demonstrate subject matter knowledge in each core subject area they teach by acquiring points. Points are available for a variety of professional development activities, such as experience in teaching the subject area, mentoring, and consulting with other teachers.

ISBE is still trying to work with the U.S. Department of Education to gain some flexibility for special education teachers who teach multiple subject areas, but at this time the regulations require such teachers to meet the “highly qualified” standards in each subject area that they teach.

*For more information on the regulations or the requirements for “highly qualified” teachers in general, please contact Stephanie Jones or Sara Boucek. The regulations are available at [www.isbe.net](http://www.isbe.net)*

**Consumer Price Index**

Percent change for the month of **December, 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 12 Mth	-0.5 3.6	-0.5 3.9
St. Louis-6 Mth 12 Mth	1.3 3.3	1.5 3.5
U.S. Mthly 12 Mth	-0.4 3.4	-0.5 3.5

January CPI figures will be released February 18, 2006. For the most recent CPI visit [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**

\*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. Register on-line at [www.meds-pdn.com](http://www.meds-pdn.com) or contact them at (715) 836-9900.

\*Remember your statutory and collective bargaining agreement deadlines for reductions-in-force or dismissal of certificated and educational support personnel. Contact Ellen Rothenberg with your inquiries.

\*Join Bennett Rodick and Shayne Aldridge at the Illinois Principals’ Association/IAASE programs on special education law on February 10th at Deer Grove, IL (Bennett) and on February 17th in Bloomington (Shayne).

**Offices:**

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

**Seventh Circuit Overturns Dismissal of Special Education Civil Rights Complaint**—On January 4, 2006, the Seventh Circuit Court of Appeals reversed two lower district courts' dismissals of Plaintiff's IDEA and §1983 civil rights claims.

In *Mosley v. Board of Education of the City of Chicago* the Plaintiff filed two separate claims against the Chicago Board of Education, alleging that 1) the school violated IDEA in placing her child in special education classes without her knowledge or permission, and 2) her own civil rights were violated by retaliatory actions of school personnel and the Board of Education.

In this case, the Plaintiff was the mother of a child who was educated in one of Chicago's public schools. She was asked by the school to serve as the parent chairperson of a committee that the school created pursuant to the federal [Improving America's Schools Act](#). During the same time, the Plaintiff became aware that her son had been placed in various special education classes without her knowledge or permission.

She claimed that once she became aware of her son's placement, she educated herself in the IDEA process and started to challenge the process with school personnel and the Board of Education. She alleged that her challenges resulted in 1) harassment to her son by school personnel, and 2) retaliatory action against her, which prohibited her performance as the chairperson of the school committee. After she was hospitalized allegedly due to

the increased harassment, she filed these two lawsuits.

The trial court dismissed both claims. First, the lower court dismissed Plaintiff's IDEA claims for failure to exhaust her administrative remedies. The Appellate Court reversed, holding that Plaintiff's failure to exhaust was not grounds to dismiss the IDEA complaint at the outset of litigation. Rather, the Court held that failure to exhaust must be raised as an affirmative defense by the Board of Education, perhaps in connection with defending the merits of the underlying claims. Thus, the Court reversed and remanded the Plaintiff's IDEA claim to the lower court for further proceedings.

Second, the lower court dismissed Plaintiff's §1983 retaliatory claims holding that her claims were time-barred by a two-year statute of limitations and did not amount to unconstitutional adverse action by the Board of Education. Plaintiff alleged that the school district retaliated against her in violation of the First Amendment after she had criticized the budget process, raised complaints under IDEA and challenged school personnel actions and by withholding information from her that prohibited her from meaningfully participating as the chairperson. The Appellate Court held that Plaintiff's claims were not time-barred and that the above-noted allegations were sufficient adverse actions by school personnel to sustain her §1983 claim.

**For more information or to request a complimentary copy, please contact Sara Boucek.**

**U.S. Supreme Court to Consider Award of Expert Witness Fees in Due Process Hearings**—The U.S. Supreme Court has agreed to hear an appeal in the case of *Arlington Central School District v. Murphy*, (2<sup>nd</sup> Cir. 2005) to address the issue of whether or not prevailing parents in due process hearings may recover expert fees from school districts under the attorney fees provisions in IDEA.

The Second Circuit Court of Appeals recently ruled that courts may award expert fees, including fees for educational consultants, to prevailing parents. The Second Circuit noted that IDEA does not provide for payment of lay advocate services.

Other appeals courts, including the Seventh Circuit which governs Illinois school districts, have ruled differently, finding that IDEA does not specifically authorize payments for experts, and that parents are limited to the expert fee awards available under other federal statutes.

**For more information, please contact Debra Kaplan.**

**HLERK.COM**

Visit us on the web for breaking news, upcoming conferences, and register for electronic delivery of

**The Extra Mile**

Click [HERE](#)

**Special Ed Regulations continued from page 1**

They are available for a six month extended comment period and the proposed regulations will not become final until after final federal regulations implementing IDEA 2004 are issued. Federal regulations are not expected un-

til the summer.

**Go to [www.isbe.net](http://www.isbe.net) to see the proposed regulations or contact us for a complimentary copy. Please contact Bennett Rodick, Jay Kraning or Nancy Krent with questions concerning the proposed regulations or IDEA 2004 implementation issues.**

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