

## Students

### Student Behavior 1

The goals and objectives of this policy are to provide effective discipline practices that: (1) ensure the safety and dignity of students and staff; (2) maintain a positive, weapons-free, and drug-free learning environment; (3) keep school property and the property of others secure; (4) address the causes of a student's misbehavior and provide opportunities for all individuals involved in an incident to participate in its resolution; and (5) teach students positive behavioral skills to become independent, self-disciplined citizens in the school community and society. <sup>2</sup>

### When and Where Conduct Rules Apply <sup>3</sup>

A student is subject to disciplinary action for engaging in prohibited student conduct, as described in the section with that name below, whenever the student's conduct is reasonably related to school or school activities, including, but not limited to:

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<sup>1</sup> All districts must have a policy on student discipline, including school searches and bullying prevention (105 ILCS 5/10-20.14); re-engagement of students returning from an exclusionary discipline or an alternative school (105 ILCS 5/10-22.6(b-25)); and corporal punishment (105 ILCS 5/24-24). See also 23 Ill.Admin.Code §1.280. See the Cross References for policies on searches and bullying. Each district must furnish a copy of the discipline policy to parents/guardians within 15 days after the beginning of the school year, or within 15 days after starting classes for a student who transfers into the district. 105 ILCS 5/10-20.14(a). The school board must require that each school inform its pupils of the discipline policy's contents. *Id.*

School boards, along with the parent-teacher advisory committee, must annually review their pupil discipline policies, those policies' implementation, and any other factors related to the safety of their schools, students, and staff. *Id.* For more information about the parent-teacher advisory committee, see 2:150, *Committees*. The parent-teacher advisory committee, in cooperation with local law enforcement agencies, must develop, with the school board, a reciprocal reporting system. 105 ILCS 5/10-20.14(b). See 7:190-AP3, *Guidelines for Reciprocal Reporting of Criminal Offenses Committed by Students*. School districts are encouraged to create memoranda of understanding that define law enforcement's role in schools. See 7:190-E3, *Memorandum of Understanding*.

Given the unique concerns facing school officials, school disciplinary codes are not required to be drafted as narrowly or with the same precision as criminal statutes. *Bethel Sch. Dist. v. Fraser*, 478 U.S. 675 (1986).

<sup>2</sup> The goals and objectives in this policy give the board a focus for monitoring it. This list can be deleted, replaced, or modified by the board. Data on student discipline is available at: [www.isbe.net/Pages/Expulsions-Suspensions-and-Truants-by-District.aspx](http://www.isbe.net/Pages/Expulsions-Suspensions-and-Truants-by-District.aspx).

See f/n 1 in policy 4:170, *Safety*, for information on the U.S. School Safety Clearinghouse website at: [www.SchoolSafety.gov](http://www.SchoolSafety.gov).

<sup>3</sup> Board policy should provide a jurisdictional statement telling students and staff the circumstances under which the district will take disciplinary action. Jurisdictional rules in board policy should generally be as broad as possible to give staff members authority to respond to unforeseen situations. Taking jurisdiction over off-campus misconduct generally survives the test of reasonableness when the misconduct has a direct nexus to the school. A countervailing interest concerns liability for off-campus student injuries, i.e., the greater the jurisdiction a district is willing to impose, the greater the scope of liability it may be assuming. Ultimately, a decision whether to discipline for off-campus misconduct requires a thorough factual inquiry to determine the degree of nexus and impact on the school. Consult the board attorney in these situations.

A U.S. Supreme Court decision and many lower court decisions address disciplining a student for off-campus misconduct. See *Mahanoy Area Sch. Dist. v. B.L.*, 141 S.Ct. 2038 (2021), discussed in f/n 3 of sample policy 7:240, *Conduct Code for Participants in Extracurricular Activities*; and *J.S. v. Blue Mountain Sch. Dist.*, 650 F.3d 915 (3rd Cir. 2011), combined with *Layshock v. Hermitage Sch. Dist.*, 650 F.3d 205 (3d Cir. 2011), cert. denied 565 U.S. 1156 (2012)(absent evidence that parodies of school personnel caused, or could cause, substantial disruption, school districts may not punish out-of-school expressive conduct, even if it is lewd, indecent, or offensive speech).

1. On, or within sight of, school grounds before, during, or after school hours or at any time;
2. Off school grounds at a school-sponsored activity or event, or any activity or event that bears a reasonable relationship to school;
3. Traveling to or from school or a school activity, function, or event; or
4. Anywhere, if the conduct interferes with, disrupts, or adversely affects the school environment, school operations, or an educational function, including, but not limited to, conduct that may reasonably be considered to: (a) be a threat or an attempted intimidation of a staff member; or (b) endanger the health or safety of students, staff, or school property. <sup>4</sup>

### Prohibited Student Conduct <sup>5</sup>

The school administration is authorized to discipline students for gross disobedience or misconduct, including but not limited to:

1. Using, possessing, distributing, purchasing, or selling tobacco or nicotine materials, including without limitation, electronic cigarettes. <sup>6</sup>

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In contrast, the 7th Circuit Court of Appeals upheld a student’s expulsion for an article in an underground newspaper titled “So You Want to be a Hacker.” The article’s instructions for hacking into the school’s computers clearly interfered with the school’s operations. *Boucher v. Sch. Bd. of the Sch. Dist. of Greenfield*, 134 F.3d 821 (7th Cir. 1998). See also *Wisniewski v. Bd. of Educ. of the Weedsport Central Sch. Dist.*, 494 F.3d 34 (2nd Cir. 2007), cert. denied 552 U.S. 1296 (2008), (holding a student’s transmission of an icon of a pistol with blood splattering and the words “Kill Mr. VanDer Molen” crossed the boundary of protected speech and posed a reasonably foreseeable risk that the icon would come to the attention of school authorities and materially and substantially disrupt the school).

Historically, schools have had more leeway in disciplining participants in athletics and extracurricular activities; however, the *Mahanoy* decision raises unresolved questions about the degree of leeway now afforded to school officials. See policy 7:240, *Conduct Code for Participants in Extracurricular Activities* at f/n 3 for further discussion.

A judge may transfer a student to another school for committing stalking or non-consensual sexual contact against another student, or for aiding and abetting such an act; the parents/guardians are responsible for transportation and other costs associated with the transfer. Stalking No Contact Order Act and the Civil No Contact Order Act, 740 ILCS 21/80 and 22/213. A school district is seldom notified when a transfer order is requested. When notified, school officials should immediately seek the board attorney’s advice concerning available options.

<sup>4</sup> The factual context will determine the appropriateness of taking jurisdiction. Contact the board attorney before disciplining a student for off-campus conduct. See *Doe v. Superintendent of Schs. of Stoughton*, 767 N.E.2d 1054 (Mass. 2002)(suspension for off-campus commission of a felony was upheld).

<sup>5</sup> Consult the board attorney for advice on deleting or modifying any of the items in this section on prohibited student conduct.

<sup>6</sup> 105 ILCS 5/10-20.5b prohibits use of tobacco on school property. Federal law prohibits smoking within schools by anyone. Pro-Children Act of 1994, 20 U.S.C. §6081 *et seq.* Districts that fail to comply risk a civil penalty of up to \$1,000 per violation per day. 20 U.S.C. §6083(f)(1). See 8:30, *Visitors to and Conduct on School Property*, for more information.

The U.S. Food and Drug Administration now regulates electronic cigarettes. 21 C.F.R. Parts 1100, 1140, and 1143, amended by 81 Fed.Reg. 28973. An electronic or e-cigarette resembles a regular cigarette and contains a battery-operated heating element that turns a liquid into a mist for inhaling. The liquid may contain nicotine. E-cigarettes are sometimes referred to as e-cigs, vapes, e-hookahs, vape pens, and electronic nicotine delivery systems (ENDS), and they are generally involved in *vaping*. Vaping is the act of inhaling and exhaling the aerosol, often referred to as vapor that is produced by an e-cigarette or similar device. An e-cigarette resembles a cigarette and contains a battery-operated heating element that turns a liquid into a mist for inhaling. Some e-cigarettes do not look like tobacco products and are shaped like other objects, such as USB flash drives, and are more easily concealed.

Information and resources are available at:

[www.isbe.net/Pages/School-Health-Issues.aspx](http://www.isbe.net/Pages/School-Health-Issues.aspx)

[www.fda.gov/tobaccoproducts/default.htm](http://www.fda.gov/tobaccoproducts/default.htm)

[www.cdc.gov/tobacco/basic\\_information/e-cigarettes/index.htm](http://www.cdc.gov/tobacco/basic_information/e-cigarettes/index.htm)

[www.dph.illinois.gov/topics-services/prevention-wellness/tobacco/e-cigarettes-and-vapes](http://www.dph.illinois.gov/topics-services/prevention-wellness/tobacco/e-cigarettes-and-vapes)

[www.drugabuse.gov/drugs-abuse/tobacconicotine-vaping](http://www.drugabuse.gov/drugs-abuse/tobacconicotine-vaping)

2. Using, possessing, distributing, purchasing, or selling alcoholic beverages.<sup>7</sup> Students who are under the influence of an alcoholic beverage are not permitted to attend school or school functions and are treated as though they had alcohol in their possession.
3. Using, possessing, distributing, purchasing, selling, or offering for sale:
  - a. Any illegal drug or controlled substance, or cannabis (including marijuana, hashish, and medical cannabis unless the student is authorized to be administered a medical cannabis infused product under *Ashley's Law*).<sup>8</sup>
  - b. Any anabolic steroid unless it is being administered in accordance with a physician's or licensed practitioner's prescription.<sup>9</sup>
  - c. Any performance-enhancing substance on the Illinois High School Association's most current banned substance list unless administered in accordance with a physician's or licensed practitioner's prescription.<sup>10</sup>
  - d. Any prescription drug when not prescribed for the student by a physician or licensed practitioner, or when used in a manner inconsistent with the prescription or prescribing physician's or licensed practitioner's instructions. The use or possession of medical cannabis, even by a student for whom medical cannabis has been prescribed, is prohibited unless the student is authorized to be administered a medical cannabis infused product under *Ashley's Law*.<sup>11</sup>

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<sup>7</sup> *Alcoholic beverages* are defined in 235 ILCS 5/1-3.01 to 3.05.

<sup>8</sup> *Controlled substance* is defined in 720 ILCS 570/102(f); *cannabis* is defined in 720 ILCS 550/3(a) and in 410 ILCS 705/1-10, added by P.A. 101-27. Either spelling, *marihuana* or *marijuana*, is correct; however, *marijuana* is more common. See f/n 11 for a discussion of medical cannabis and *Ashley's Law*.

<sup>9</sup> *Anabolic steroid* is defined in 720 ILCS 570/102(c-1).

<sup>10</sup> See policies 7:240, *Conduct Code for Participants in Extracurricular Activities*, and 7:300, *Extracurricular Athletics*.

<sup>11</sup> To legally use medical cannabis, an individual must first become a *registered qualifying patient*. The use of cannabis by a *registered qualifying patient* is permitted only in accordance with the Compassionate Use of Medical Cannabis Program. 410 ILCS 130/, amended by P.A. 101-363, scheduled to be repealed on 7-1-20. There are many situations in which no one, even a *registered qualifying patient*, may possess or use cannabis. This includes in a school bus or on the grounds of any preschool, or primary or secondary school unless the student meets the requirements of 105 ILCS 5/22-33, a/k/a *Ashley's Law*. 410 ILCS 130/30(a)(2) and (3), amended by P.A. 101-363, scheduled to be repealed on 7-1-20. *Ashley's Law* provides that school districts "shall authorize a parent or guardian or any other individual registered with the Department of Public Health as a designated caregiver of a student who is a registered qualifying patient to administer a medical cannabis infused product to the student on the premises of the child's school or on the child's school bus if both the student (as a registered qualifying patient) and the parent or guardian or other individual (as a registered designated caregiver) have been issued registry identification cards under the Compassionate Use of Medical Cannabis Program Act." 105 ILCS 5/22-33(b), amended by P.A. 101-363. Once the product is administered, the designated caregiver must remove the product from the school premises/bus. Id. 105 ILCS 5/22-33(b-5), added by 101-370, allows a properly trained school nurse or administrator to administer medical cannabis infused products to a student while at school, a school-sponsored activity, or before/after normal school activities, including while the student is in before-school or after-school care on school-operated property or while being transported on a school bus. The product may not be administered in a manner that would (in the school or district's opinion) create a disruption or expose other students to the product, and schools are not required to authorize use of the product if the school or district would lose federal funding as a result. 105 ILCS 5/22-33(c). For more discussion, see f/n 25 in 7:270, *Administering Medicines to Students*. Contact the board attorney for advice concerning medical cannabis, including whether a federal or State law requires the district to accommodate a student who is a *registered qualifying patient*. See Americans with Disabilities Act of 1990, 42 U.S.C. §12101 et seq.; Individuals with Disabilities Education Improvement Act of 2004, 20 U.S.C. §1400 et seq.; Rehabilitation Act of 1973, Section 504, 29 U.S.C. §794; 105 ILCS 5/14-1.01 et seq., 5/14-7.02, and 5/14-7.02b; and 23 Ill.Admin.Code Part 226.

- e. Any inhalant, regardless of whether it contains an illegal drug or controlled substance: (a) that a student believes is, or represents to be capable of, causing intoxication, hallucination, excitement, or dulling of the brain or nervous system; or (b) about which the student engaged in behavior that would lead a reasonable person to believe that the student intended the inhalant to cause intoxication, hallucination, excitement, or dulling of the brain or nervous system. The prohibition in this section does not apply to a student's use of asthma or other legally prescribed inhalant medications.
- f. Any substance inhaled, injected, smoked, consumed, or otherwise ingested or absorbed with the intention of causing a physiological or psychological change in the body, including without limitation, pure caffeine in tablet or powdered form. <sup>12</sup>
- g. *Look-alike* or counterfeit drugs, including a substance that is not prohibited by this policy, but one: (a) that a student believes to be, or represents to be, an illegal drug, controlled substance, or other substance that is prohibited by this policy; or (b) about which a student engaged in behavior that would lead a reasonable person to believe that the student expressly or impliedly represented to be an illegal drug, controlled substance, or other substance that is prohibited by this policy. <sup>13</sup>
- h. Drug paraphernalia, including devices that are or can be used to: (a) ingest, inhale, or inject cannabis or controlled substances into the body; and (b) grow, process, store, or conceal cannabis or controlled substances. <sup>14</sup>

Students who are under the influence of any prohibited substance are not permitted to attend school or school functions and are treated as though they had the prohibited substance, as applicable, in their possession.

- 4. Using, possessing, controlling, or transferring a *weapon* as that term is defined in the **Weapons** section of this policy, or violating the **Weapons** section of this policy. <sup>15</sup>
- 5. Using or possessing an electronic paging device. Using a cellular telephone, video recording device, personal digital assistant (PDA), or other electronic device in any manner that disrupts the educational environment or violates the rights of others, including using the device to take photographs in locker rooms or bathrooms, cheat, or otherwise violate student conduct rules. Prohibited conduct specifically includes, without limitation, creating, sending, sharing, viewing,

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<sup>12</sup> The Powdered Caffeine Control and Education Act states: "No person may sell, offer for sale, give away, or provide free samples of powdered pure caffeine to any person under age 18 located within the State or to any person under age 18 making the purchase from within the State." A limited exception to this prohibition exists for "the sale of any powdered pure caffeine product that receives explicit approval as safe and effective for its intended use under the federal Food, Drug, and Cosmetic Act or is lawfully marketed under an over-the-counter monograph issued by the United States Food and Drug Administration." 410 ILCS 647/20.

<sup>13</sup> *Counterfeit* and *look-alike substances* are defined in 720 ILCS 570/102(g) and (y). This provision is broader because it would apply, for example, if a student represents a powdered vitamin to be pure caffeine – pure caffeine is prohibited on campus even though it is a legal substance. *Look-alike* drugs should be defined; an unpublished Ill. appellate decision in 2000 found a policy prohibiting possession of *look-alikes* had vagueness problems.

<sup>14</sup> *Drug paraphernalia* is defined in 720 ILCS 600/2(d). Contact the board attorney for advice concerning a student who is a *registered qualifying patient*, as explained in f/n 11.

<sup>15</sup> This language is broader than the **Weapons** section of this policy. The **Weapons** section contains the statutorily required punishment for "a student who is determined to have brought" a weapon to school along with the statutory definition of *weapon*. 105 ILCS 5/10-22.6(d). The language in item #4 is broader because it prohibits "using, possessing, controlling, or transferring" a weapon in addition to violating the **Weapons** section. See the footnotes in the **Weapons** section for a discussion of the Firearm Concealed Carry Act's provisions.

receiving, or possessing an indecent visual depiction of oneself or another person through the use of a computer, electronic communication device, or cellular phone. Unless otherwise banned under this policy or by the Building Principal, all electronic devices must be kept powered-off or silenced and out-of-sight<sup>16</sup> during the regular school day unless: (a) the supervising teacher grants permission; (b) use of the device is provided in a student's individualized education program (IEP); (c) it is used during the student's lunch period, or (d) it is needed in an emergency that threatens the safety of students, staff, or other individuals. <sup>17</sup>

6. Using or possessing a laser pointer unless under a staff member's direct supervision and in the context of instruction.
7. Disobeying rules of student conduct or directives from staff members or school officials. Examples of disobeying staff directives include refusing a District staff member's request to stop, present school identification, or submit to a search.
8. Engaging in academic dishonesty, including cheating, intentionally plagiarizing, wrongfully giving or receiving help during an academic examination, altering report cards, and wrongfully obtaining test copies or scores.
9. Engaging in hazing or any kind of bullying or aggressive behavior that does physical or psychological harm to a staff person or another student, or urging other students to engage in such conduct. Prohibited conduct specifically includes, without limitation, any use of violence, intimidation, force, noise, coercion, threats, stalking, harassment, sexual harassment, public humiliation, theft or destruction of property, retaliation, hazing, bullying, bullying using a school computer or a school computer network, or other comparable conduct. <sup>18</sup>

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<sup>16</sup> Delete "and out-of-sight" if the district wants to provide greater flexibility.

<sup>17</sup> 105 ILCS 5/10-21.10 prohibits student possession of electronic paging devices, but State law leaves to local boards the discretion whether to prohibit student possession of cellular phones. 105 ILCS 5/10-20.28. The misuse of camera phones can seriously invade a student's privacy. A board wanting a sweeping prohibition may use the following alternative for item #5:

Using or possessing a cellular telephone, electronic signaling device, two-way radio, video recording device, and/or other telecommunication device, unless authorized and approved by the Building Principal.

Operating transmitters designed to jam or block wireless communications violates the federal Communications Act of 1934. 47 U.S.C. §§301, 302a, and 333. Fines are as high as \$10,000 for each violation and/or imprisonment, and the device may also be seized. 47 U.S.C. §§501-510.

Making a video recording or live video transmission of another person without their consent in a restroom, locker room, or changing room is a Class 4 felony. 720 ILCS 5/26-4. A minor who distributes or disseminates an indecent visual depiction of another minor through the use of a computer or electronic communication device may be subject to adjudication as a minor in need of supervision. 705 ILCS 405/3-40.

<sup>18</sup> All districts must have a policy on bullying. 105 ILCS 5/27-23.7(d). Policy 7:180, *Prevention of and Response to Bullying, Intimidation, and Harassment*, contains the statutory definition of bullying. Districts must also have an age-appropriate policy on sexual harassment. 105 ILCS 5/10-20.69, added by P.A. 101-418. See policy 7:20, *Harassment of Students Prohibited*, and its f/n 7 for further detail.

105 ILCS 5/10-20.14 requires boards, in consultation with their parent-teacher advisory committees and other community-based organizations, to include provisions in their student discipline policy to address aggressive behavior, including bullying. These provisions must include procedures for notifying a student's parents/guardians about his/her aggressive behavior and early intervention procedures based upon available community-based and district resources. See 7:190-E1, *Aggressive Behavior Reporting Letter and Form*.

Suspending students for hazing was upheld in *Gendelman v. Glenbrook North High Sch. and Northfield Twp. Sch. Dist.*, 225, 2003 WL 21209880 (N.D.Ill. 2003). This decision may have been legislatively overturned by amending 105 ILCS 5/10-20.14.

The failure of a school official (including any administrator, teacher, counselor, support staff, or coach) to report hazing is a Class B misdemeanor. 720 ILCS 5/12C-50.1.

10. Engaging in any sexual activity, including without limitation, offensive touching, sexual harassment, indecent exposure (including mooning), and sexual assault. This does not include the non-disruptive: (a) expression of gender or sexual orientation or preference, or (b) display of affection during non-instructional time.
11. Teen dating violence, as described in Board policy 7:185, *Teen Dating Violence Prohibited*. **19**
12. Causing or attempting to cause damage to, or stealing or attempting to steal, school property or another person's personal property. **20**
13. Entering school property or a school facility without proper authorization.
14. In the absence of a reasonable belief that an emergency exists, calling emergency responders (such as calling 911); signaling or setting off alarms or signals indicating the presence of an emergency; or indicating the presence of a bomb or explosive device on school grounds, school bus, or at any school activity.
15. Being absent without a recognized excuse; State law and School Board policy regarding truancy control will be used with chronic and habitual truants. **21**
16. Being involved with any public school fraternity, sorority, or secret society, by: (a) being a member; (b) promising to join; (c) pledging to become a member; or (d) soliciting any other person to join, promise to join, or be pledged to become a member. **22**
17. Being involved in gangs or gang-related activities, including displaying gang symbols or paraphernalia. **23**
18. Violating any criminal law, including but not limited to, assault, battery, arson, theft, gambling, eavesdropping, vandalism, and hazing.

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A person commits a felony hate crime when, by reason of the actual or perceived race, color, creed, religion, ancestry, gender, sexual orientation, physical or mental disability, or national origin of another individual or group of individuals, regardless of the existence of any other motivating factor or factors, he or she commits assault, battery, aggravated assault, intimidation, stalking, cyberstalking, misdemeanor theft, criminal trespass to residence, misdemeanor criminal damage to property, criminal trespass to vehicle, criminal trespass to real property, mob action, disorderly conduct, transmission of obscene message, harassment by telephone, or harassment through electronic communications as these crimes are defined in the Criminal Code. 720 ILCS 5/12-7.1. The penalty is heightened when the offense is committed in a school or administrative facility.

720 ILCS 5/26-1(a)(3.5) and (b) make transmitting a threat of violence, death, or bodily harm directed against persons at a school, school function, or school event, whether or not school is in session, or causing such a threat to be transmitted, a Class 4 felony.

**19** All school boards must have a policy on prohibited teen dating violence. 105 ILCS 110/3.10. Verify that the board adopted the policy listed and amend its title in this policy, if necessary.

**20** 720 ILCS 5/26-1(a)(3.5) and (b) make threatening to destroy a school building or school property, whether or not school is in session, or causing such a threat to be transmitted, a Class 4 felony.

**21** 105 ILCS 5/26-2a, amended by P.A.s 102-406, 102-266, and 102-321; 5/26-9; and 5/26-12, amended by P.A. 101-81. See policy 6:110, *Programs for Students At Risk of Academic Failure and/or Dropping Out of School and Graduation Incentives Program*, and 7:70, *Attendance and Truancy*.

**22** State law requires schools to suspend or expel any student who engages in this activity. 105 ILCS 5/31-3.

**23** See *Kelly v. Bd. of Educ. of McHenry Cmty. High Sch. Dist. 156*, 2007 WL 114300 (N.D.Ill. 2007)(upheld student's expulsion for drawing gang symbols while at school; testimony that the danger posed by gang signs and the presence of gangs at school supported the board's insistence on strict enforcement of board policy prohibiting gang related behavior and made expulsion a proper remedy).

740 ILCS 147/15 *et seq.* allows a school district to bring a civil suit against a gang, gang officers, or gang members for losses it suffers due to their criminal activity.

19. Making an explicit threat on an Internet website against a school employee, a student, or any school-related personnel if the Internet website through which the threat was made is a site that was accessible within the school at the time the threat was made or was available to third parties who worked or studied within the school grounds at the time the threat was made, and the threat could be reasonably interpreted as threatening to the safety and security of the threatened individual because of his or her duties or employment status or status as a student inside the school. <sup>24</sup>
20. Operating an unmanned aircraft system (UAS) or drone for any purpose on school grounds or at any school event unless granted permission by the Superintendent or designee. <sup>25</sup>
21. Engaging in any activity, on or off campus, that interferes with, disrupts, or adversely affects the school environment, school operations, or an educational function, including but not limited to, conduct that may reasonably be considered to: (a) be a threat or an attempted intimidation of a staff member; or (b) endanger the health or safety of students, staff, or school property. <sup>26</sup>

For purposes of this policy, the term *possession* includes having control, custody, or care, currently or in the past, of an object or substance, including situations in which the item is: (a) on the student’s person; (b) contained in another item belonging to, or under the control of, the student, such as in the student’s clothing, backpack, or automobile; (c) in a school’s student locker, desk, or other school property; or (d) at any location on school property or at a school-sponsored event. <sup>27</sup>

Efforts, including the use of positive interventions and supports, shall be made to deter students, while at school or a school-related event, from engaging in aggressive behavior that may reasonably produce physical or psychological harm to someone else. The Superintendent or designee shall ensure that the parent/guardian of a student who engages in aggressive behavior is notified of the incident.<sup>28</sup> The failure to provide such notification does not limit the Board’s authority to impose discipline, including suspension or expulsion, for such behavior.

No disciplinary action shall be taken against any student that is based totally or in part on the refusal of the student’s parent/guardian to administer or consent to the administration of psychotropic or psychostimulant medication to the student. <sup>29</sup>

### Disciplinary Measures <sup>30</sup>

School officials shall limit the number and duration of expulsions and out-of-school suspensions to the greatest extent practicable, and, where practicable and reasonable, shall consider forms of non-

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<sup>24</sup>This statement of misconduct restates 105 ILCS 5/10-22.6(d-5). The following alternative provides a shorter statement but will require the administrator to check the statute before imposing discipline based on it:

Making an explicit threat on an Internet website against a school, employee, or any school-related personnel under circumstances described in 105 ILCS 5/10-22.6(d-5).

<sup>25</sup> For more information regarding unmanned aircraft systems, see [www.faa.gov/uas/](http://www.faa.gov/uas/).

<sup>26</sup> A catchall provision, e.g., this one, gives staff members authority to respond to unforeseen situations.

If the board adopts a mandatory uniform policy (see 7:165, *School Uniforms*), add the following item to the list as number 22: “Failing to comply with the mandatory uniform policy, but only after repeated attempts to secure compliance, such as conferences with parents/guardians, have been unsuccessful.”

<sup>27</sup> *Possession* should be defined to avoid vagueness problems.

<sup>28</sup> See f/n 18.

<sup>29</sup> Mandated by 105 ILCS 5/10-20.36.

<sup>30</sup> **IMPORTANT:** The practice of suspending or expelling a student based on the number of accumulated disciplinary infractions is illegal under 105 ILCS 5/10-22.6. This includes a system of assigning points to specific infractions and then tallying the points a student receives over a period of time to determine a disciplinary exclusion from school.

exclusionary discipline before using out-of-school suspensions or expulsions.<sup>31</sup> School personnel shall not advise or encourage students to drop out voluntarily due to behavioral or academic difficulties.<sup>32</sup> Potential disciplinary measures include, without limitation, any of the following: <sup>33</sup>

1. Notifying parent(s)/guardian(s).
2. Disciplinary conference.
3. Withholding of privileges.
4. Temporary removal from the classroom.
5. Return of property or restitution for lost, stolen, or damaged property. <sup>34</sup>
6. In-school suspension. The Building Principal or designee shall ensure that the student is properly supervised. <sup>35</sup>
7. After-school study or Saturday study<sup>36</sup> provided the student's parent/guardian has been notified. If transportation arrangements cannot be agreed upon, an alternative disciplinary measure must be used. The student must be supervised by the detaining teacher or the Building Principal or designee.

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Before amendments to 105 ILCS 5/10-22.6, courts used the following factors to determine if a board abused its discretion when it expelled a student: (1) the egregiousness of the student's conduct; (2) the record of the student's past conduct; (3) the likelihood that such conduct will affect the delivery of educational services to other students; (4) the severity of the punishment; and (5) the intent of the child. Robinson v. Oak Park, 213 Ill.App.3d 77 (1st Dist. 1991); Wilson ex rel. Geiger v. Hinsdale Elementary Dist., 349 Ill.App.3d 243 (2nd Dist. 2004). Whether courts will continue to use these factors is yet to be determined. The amendments to 105 ILCS 5/10-22 call into question the validity of relying on past misconduct in suspension or expulsion decisions.

Aside from procedural due process protection, students have a constitutional substantive due process right. This right protects them from an abuse of government power which "shocks the conscience." While the scope of substantive due process is very limited, it is available to students who believe they were subject to arbitrary and excessive discipline. Generally, however, school officials need not fear being found guilty of a substantive due process violation. Federal courts are loath to second-guess school officials. See Tun v. Whitticker, 398 F.3d 899 (7th Cir. 2005)(expulsion did not amount to a substantive due process violation because it fell short of the required *shocks the conscience* standard).

<sup>31</sup> 105 ILCS 5/10-22.6(b-5). In addition, subsection c-5 states, "[s]chool districts must make reasonable efforts to provide ongoing professional development to teachers, administrators, school board members, school resource officers, and staff on the adverse consequences of school exclusion and justice-system involvement, effective classroom management strategies, culturally responsive discipline, the appropriate and available supportive services for the promotion of student attendance and engagement, and developmentally appropriate disciplinary methods that promote positive and healthy school climates." 105 ILCS 5/10-22.6(c-5).

<sup>32</sup> 105 ILCS 5/10-22.6(h).

<sup>33</sup> Most school attorneys advise against using a grade reduction as a disciplinary measure. A decision upholding such a policy is Knight v. Bd. of Educ., 38 Ill.App.3d 603 (4th Dist. 1976). A decision striking one is Smith v. Sch. City of Hobart, 811 F.Supp. 391 (N.D.Ind. 1993)(grade reduction policy requiring 9-week grades to be reduced 4% for each day of a suspension was found unconstitutional).

<sup>34</sup> While restitution is permitted, issuing a fine or fee as a disciplinary consequence is not permitted. 105 ILCS 5/10-22.6(i). Possible parental liability for damages under the Parental Responsibility Law (740 ILCS 115/5) is discussed in a footnote in sample policy 7:170, *Vandalism*.

<sup>35</sup> An in-school suspension program may focus on promoting non-violent conflict resolution and positive interaction with other students and school personnel, and districts may employ a school social worker or a licensed mental health professional to oversee in-school suspension programs. 105 ILCS 5/10-22.6(l). Providing programming during in-school suspensions is not required, however providing such programming will help distinguish them from exclusionary suspensions. See f/n 3 in policy 5:230, *Maintaining Student Discipline*, for further discussion of in-school suspension programs.

<sup>36</sup> Teachers may not be required to teach on Saturdays. 105 ILCS 5/24-2.

8. Community service with local public and nonprofit agencies that enhances community efforts to meet human, educational, environmental, or public safety needs.<sup>37</sup> The District will not provide transportation. School administration shall use this option only as an alternative to another disciplinary measure, giving the student and/or parent/guardian the choice.
9. Seizure of contraband; confiscation and temporary retention of personal property that was used to violate this policy or school disciplinary rules. <sup>38</sup>
10. Suspension of bus riding privileges in accordance with Board policy 7:220, *Bus Conduct*. <sup>39</sup>
11. Out-of-school suspension from school and all school activities in accordance with Board policy 7:200, *Suspension Procedures*.<sup>40</sup> A student who has been suspended may also be restricted from being on school grounds and at school activities. <sup>41</sup>
12. Expulsion from school and all school activities for a definite time period not to exceed two calendar years in accordance with Board policy 7:210, *Expulsion Procedures*.<sup>42</sup> A student who has been expelled may also be restricted from being on school grounds and at school activities. <sup>43</sup>
13. Transfer to an alternative program if the student is expelled or otherwise qualifies for the transfer under State law. The transfer shall be in the manner provided in Article 13A or 13B of the School Code. <sup>44</sup>
14. Notifying juvenile authorities or other law enforcement whenever the conduct involves criminal activity, including but not limited to, illegal drugs (controlled substances), *look-alikes*,

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<sup>37</sup> See Herndon v. Chapel Hill-Carrboro City Bd., 89 F.3d 174 (4th Cir. 1996)(upheld policy requiring students to complete community service in order to graduate).

<sup>38</sup> Consult the board attorney for advice concerning confiscated devices. There is no binding Ill. court decision regarding school personnel seizing and retaining a student's property. The Supreme Court of Arkansas held that a teacher and principal did not violate a student's state or federal rights when they confiscated and retained a student's cell phone for two weeks for violating school rules on cell phones. Koch v. Adams, 361 S.W.3d 817 (Ark. 2010).

<sup>39</sup> 105 ILCS 5/10-22.6(b) and (b-30).

<sup>40</sup> A suspension may be imposed in only limited situations that vary according to the suspension's length. 105 ILCS 5/10-22.6(b-15). This is explained in sample board policy 7:200, *Suspension Procedures*, and its footnotes.

<sup>41</sup> This sentence is optional. A board may make this mandatory by replacing "may also be" with "shall also be."

<sup>42</sup> An expulsion may be imposed in only limited situations. 105 ILCS 5/10-22.6(b-20). This is explained in sample policy 7:210, *Expulsion Procedures*, and its footnotes.

105 ILCS 5/10-22.6(d) permits expulsion for a definite period of time not to exceed two calendar years. School officials must document whether other interventions were attempted or whether it was determined that there were no other appropriate and available interventions.

<sup>43</sup> This sentence is optional. A board may make this mandatory by replacing "may also be" with "shall also be."

<sup>44</sup> 105 ILCS 5/10-22.6(a) and (b). Subsection 10-22.6(b) uses the phrase "is suspended in excess of 20 school days" even though a 20-consecutive day suspension should be treated as an expulsion. Goss v. Lopez, 419 U.S. 565 (1975). An alternative program is probably available to a student who is suspended for 11 to 20 consecutive days because that student is technically expelled and, as such, qualifies under subsection (a) of Section 10-22.6. Contact the board attorney if the district wants to interpret the statute as referring to *cumulative* school days so that it can transfer a student to an alternative program upon his or her suspension in excess of 20 *cumulative* school days.

Contact the board attorney regarding the necessary due process procedures before imposing a disciplinary transfer to an alternative school. The court in Leak v. Rich Twp. High Sch. Dist. 227 (397 Ill.Dec. 90 (1st Dist. 2015)), held that placement in an alternative school is tantamount to an expulsion. Thus, according to dicta in this decision, districts must follow expulsion procedures before a student is transferred to an alternative school. Schools may still reach agreements with parents/guardians to transfer students to such schools without completing the expulsion procedures.

The alternative program may not deny the transfer on the basis of the suspension or expulsion, except in cases in which the transfer is deemed to cause a threat to the safety of students or staff in the alternative program.

alcohol, or weapons or in other circumstances as authorized by the reciprocal reporting agreement between the District and local law enforcement agencies. 45

The above list of disciplinary measures is a range of options that will not always be applicable in every case. In some circumstances, it may not be possible to avoid suspending or expelling a student because behavioral interventions, other than a suspension and expulsion, will not be appropriate and available, and the only reasonable and practical way to resolve the threat and/or address the disruption is a suspension or expulsion. 46

Corporal punishment is prohibited. *Corporal punishment* is defined as slapping, paddling, or prolonged maintenance of students in physically painful positions, or intentional infliction of bodily harm. Corporal punishment does not include reasonable force as needed to maintain safety for students, staff, or other persons, or for the purpose of self-defense or defense of property. 47

#### Isolated Time Out, Time Out, and Physical Restraint 48

Neither isolated time out, time out, nor physical restraint shall be used to discipline or punish a student. These methods are only authorized for use as permitted in 105 ILCS 5/10-20.33, State Board of Education rules (23 Ill.Admin.Code §§ 1.280, 1.285), and the District's procedure(s).

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45 105 ILCS 5/22-88, added by P.A. 101-478 and amended by P.A.s 102-197 and 102-558. See policy 7:150, *Agency and Police Interviews*.

46 **Note:** Districts that receive early childhood block grant funding (authorized by 105 ILCS 5/1C-2 of the School Code) are prohibited from expelling children from their early childhood programs. 105 ILCS 5/2-3.71(a)(7) and 105 ILCS 5/10-22.6(k). A district may, however, transition a child to a new program if: (1) it has documented evidence that all available interventions and supports recommended by a qualified professional have been exhausted; (2) the program determines that transitioning a child is necessary for the well-being of the child or his or her peers and staff; and (3) the current and pending programs create a transition plan for the child with parent or legal guardian permission. 105 ILCS 5/2-3.71(a)(7)(C). A district may temporarily remove a child from attendance in the group setting in the case of a serious safety threat to a child or others, or in the case of possession of a weapon as described in 105 ILCS 5/10-22.6(d), but it must then begin the process of documenting interventions and supports as outlined in the law. 105 ILCS 5/2-3.71(a)(7)(E). Ill. State Board of Education (ISBE) rules implementing these new requirements are at 23 Ill.Admin.Code §§ 235.300-235.340. As of **PRESS** Issue 104 (June 2020), the ISBE forms required to document steps taken in accordance with these rules were being developed and projected to be available in late summer 2020 at: [www.isbe.net/Pages/Early-Childhood.aspx](http://www.isbe.net/Pages/Early-Childhood.aspx). **Consult the board attorney for advice to ensure compliance with ISBE rules.** Compliance with this law does not relieve a district of its obligations to also comply with the Individuals with Disabilities Education Improvement Act of 2004 when disciplining students with disabilities. For further information, see sample policy 7:230, *Misconduct by Students with Disabilities*. For districts that receive early childhood block grant funding, add the following:

Students enrolled in the District's State-funded preschool program(s) may be temporarily removed or transitioned to a new program in accordance with federal and State law. State law prohibits the expulsion of students from the program(s).

If this language is inserted, add 105 ILCS 5/2-3.71(a)(7) to the Legal References for this policy.

47 This paragraph paraphrases 105 ILCS 5/24-24.

48 Isolated time out, time out, or physical restraint may be used by staff members **only** if their use is authorized by policy and administrative procedure. 105 ILCS 5/2-3.130, 5/10-20.33, and 5/24-24; 23 Ill.Admin.Code §§1.280(c) and 1.285. See 7:190-AP4, *Use of Isolated Time Out, Time Out, and Physical Restraint*. **The sample policy allows the use of isolated time out, time out, and physical restraint pursuant only to the conditions allowed in the School Code and ISBE rules.** State statute and ISBE rules contain complex restrictions on the use of isolated time out, time out, and physical restraint. 105 ILCS 5/2-3.130 and 5/10-20.33, amended by P.A. 102-339; 105 ILCS 5/24-24; 23 Ill.Admin.Code §§1.280(c) and 1.285. According to the ISBE rule, isolated time out, time out, and physical restraints are allowed only if a board authorizes their use in a policy containing the numerous components identified in the rule. To comply with ISBE's rule, a board must also incorporate by reference the district's procedure, i.e., 7:190-AP4, *Use of Isolated Time Out, Time Out, and Physical Restraint*. By doing this, the policy includes the district's procedure. **For a board that wants to prohibit the use of isolated time out, time out, and physical restraint** (1) delete this subhead and its contents; (2) amend the Legal References as follows "23 Ill.Admin.Code §§1.280-~~1.285~~," and (3) delete "Incorporated by Reference: 7:190-AP4 (Use of Isolated Time Out, Time Out, and Physical Restraint)".

## Weapons 49

A student who is determined to have brought one of the following objects to school, any school-sponsored activity or event, or any activity or event that bears a reasonable relationship to school shall be expelled for a period of at least one calendar year but not more than two calendar years:

1. A *firearm*, meaning any gun, rifle, shotgun, or weapon as defined by Section 921 of Title 18 of the United States Code (18 U.S.C. § 921), firearm as defined in Section 1.1 of the Firearm Owners Identification Card Act (430 ILCS 65/), or firearm as defined in Section 24-1 of the Criminal Code of 1961 (720 ILCS 5/24-1).
2. A knife, brass knuckles, or other knuckle weapon regardless of its composition, a billy club, or any other object if used or attempted to be used to cause bodily harm, including *look-alikes* of any *firearm* as defined above.

The expulsion requirement under either paragraph one or two above may be modified by the Superintendent, and the Superintendent's determination may be modified by the Board on a case-by-case basis. The Superintendent or designee may grant an exception to this policy, upon the prior request of an adult supervisor, for students in theatre, cooking, ROTC, martial arts, and similar programs, whether or not school-sponsored, provided the item is not equipped, nor intended, to do bodily harm. 50

This policy's prohibitions concerning weapons apply regardless of whether: (1) a student is licensed to carry a concealed firearm, or (2) the Board permits visitors, who are licensed to carry a concealed firearm, to store a firearm in a locked vehicle in a school parking area. 51

## Re-Engagement of Returning Students 52

The Superintendent or designee shall maintain a process to facilitate the re-engagement of students who are returning from an out-of-school suspension, expulsion, or an alternative school setting. The goal of re-engagement shall be to support the student's ability to be successful in school following a period of

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<sup>49</sup> This section paraphrases 105 ILCS 5/10-22.6(d) and contains the statutorily required punishment for bringing a weapon to school along with the statutory definition of *weapon*. When preparing for a due process hearing, a principal needs to use the applicable State and federal law definitions of *firearm* – not just the School Code.

While subsection 105 ILCS 5/10-22.6(b-10) explicitly forbids zero tolerance policies, it provides an exception for those zero tolerance policies established by State or federal law, which includes weapons in school. Section 10-22.6(d) provides that a student who brings a weapon to school, as defined in the section, “shall be expelled for a period not less than one year,” unless modified by the superintendent or board. The federal Gun-Free Schools Act (20 U.S.C. §7961 *et seq.*) provides for at least a one year expulsion for students who bring firearms to school. As directed by 20 U.S.C. §7961(b)(1), 105 ILCS 5/10-22.6(d), the superintendent and the board may modify that consequence; however, the superintendent/board may decline to exercise that discretion and instead impose the maximum penalty authorized by law. Analyzing the student's circumstances on a case-by-case basis may avoid a judicial finding that an expulsion is too severe. See *Washington v. Smith*, 248 Ill.App.3d 534 (1st Dist. 1993).

Item #4 in the **Prohibited Student Conduct** section is broader because it prohibits “using, possessing, controlling, or transferring” a weapon in addition to violating the **Weapons** section.

<sup>50</sup> Optional.

<sup>51</sup> The Firearm Concealed Carry Act permits a properly licensed individual to carry a concealed firearm within a vehicle into a school parking area and store it a locked vehicle out of plain view. 430 ILCS 66/65(b). The federal Gun-Free Schools Act has a similar provision. 20 U.S.C. §7961(g). The School Code, however, contains no similar exception to the ban on firearms at schools. Contact the board attorney before permitting students to store their firearms in their vehicle's trunk while parked at school.

<sup>52</sup> Required by 105 ILCS 5/10-22.6(b-25). See 7:190-AP8, *Student Re-Engagement Guidelines*.

exclusionary discipline and shall include the opportunity for students who have been suspended to complete or make up work for equivalent academic credit. 53

### Required Notices

A school staff member shall immediately notify the office of the Building Principal in the event that he or she: (1) observes any person in possession of a firearm on or around school grounds; however, such action may be delayed if immediate notice would endanger students under his or her supervision, (2) observes or has reason to suspect that any person on school grounds is or was involved in a drug-related incident, or (3) observes a battery committed against any staff member.<sup>54</sup> Upon receiving such a report, the Building Principal or designee shall immediately notify the local law enforcement agency, Ill. Dept. of State Police (ISP), and any involved student's parent/guardian.<sup>55</sup> *School grounds* includes modes of transportation to school activities and any public way within 1000 feet of the school, as well as school property itself.

### Delegation of Authority

Each teacher, and any other school personnel when students are under his or her charge, is authorized to impose any disciplinary measure, other than suspension, expulsion, corporal punishment, or in-school suspension, that is appropriate and in accordance with the policies and rules on student discipline. Teachers, other certificated [licensed] educational employees, and other persons providing a related service for or with respect to a student, may use reasonable force as needed to maintain safety for other students, school personnel, or other persons, or for the purpose of self-defense or defense of property. Teachers may temporarily remove students from a classroom for disruptive behavior. 56

The Superintendent, Building Principal, Assistant Building Principal, or Dean of Students is authorized to impose the same disciplinary measures as teachers and may suspend students guilty of gross disobedience or misconduct from school (including all school functions) and from riding the school

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<sup>53</sup> A goal for re-engagement is optional. Schools must permit students who were suspended to make-up work for equivalent academic credit. 105 ILCS 5/10-22.6(b-30).

<sup>54</sup> 105 ILCS 5/10-27.1A, 5/10-27.1B, and 5/10-21.7. *School grounds* includes the real property comprising any school, any conveyance used to transport students to school or a school-related activity, and any public way within 1,000 feet of any school ground. To satisfy the reporting requirement, ISBE created the School Incident Reporting System (SIRS), a web-based application on IWAS for schools to report incidents electronically. Reporting on SIRS does not satisfy the requirement to report incidents to local law enforcement authorities.

<sup>55</sup> *Id.* State law imposes this duty to report firearm possession only on school officials; this duty may be also imposed on volunteers and community members. Only staff members, however, are vulnerable to committing a petty offense for their failure to report, and only staff members are protected from civil or criminal liability that might arise as a result of making a report (although the liability potential for anyone making a report is remote).

The building principal must notify the student's parents/guardians only when the alleged offense is firearm possession. The policy expands this notification duty; a board disinclined to do this should substitute the following sentence:

Upon receiving such a report, the Building Principal or designee shall immediately notify the applicable local law enforcement agency, Ill. Dept. of State Police (ISP), and, if a student is reportedly in possession of a firearm, also the student's parents/guardians.

<sup>56</sup> 105 ILCS 5/24-24 and 23 Ill.Admin.Code §1.280 require: (1) teachers and other certificated [licensed] employees (except for individuals employed as paraprofessionals) to maintain discipline, and (2) the district to have a policy on discipline that provides that:

[A] teacher, other certificated employee, and any other person, whether or not a certificated employee, providing a related service for or with respect to a student may use reasonable force as needed to maintain safety for the other students, school personnel or persons or for the purpose of self-defense or the defense of property, shall provide that a teacher may remove a student from the classroom for disruptive behavior, and shall include provisions which provide due process to students. The policy shall not include slapping, paddling or prolonged maintenance of students in physically painful positions nor shall it include the intentional infliction of bodily harm. 105 ILCS 5/24-24.

bus, up to ten consecutive school days, provided the appropriate procedures are followed.<sup>57</sup> The Board may suspend a student from riding the bus in excess of ten school days for safety reasons. <sup>58</sup>

### Student Handbook

The Superintendent, with input from the parent-teacher advisory committee,<sup>59</sup> shall prepare disciplinary rules implementing the District's disciplinary policies. These disciplinary rules shall be presented annually to the Board for its review and approval.

A student handbook, including the District disciplinary policies and rules, shall be distributed to the students' parents/guardians within 15 days of the beginning of the school year or a student's enrollment.

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<sup>57</sup> Required by 105 ILCS 5/10-22.6(b).

<sup>58</sup> Id.

<sup>59</sup> The board must establish and maintain a parent-teacher advisory committee to develop guidelines on student discipline. See 2:150, *Committees*. This policy's dissemination requirements are from 105 ILCS 5/10-20.14.

A comprehensive student handbook can provide notice of the school's conduct rules, extracurricular and athletic participation requirements, and other important information. The handbook can be developed by the building principal, but should be reviewed and approved by the superintendent and board. The Illinois Principals Association maintains a handbook service that coordinates with **PRESS** material, *Online Model Student Handbook (MSH)*, at: [www.ilprincipals.org/resources/model-student-handbook](http://www.ilprincipals.org/resources/model-student-handbook).

Incorporated  
by Reference: 7:190-AP4 (Use of Isolated Time Out, Time Out, and Physical Restraint)

LEGAL REF.: 20 U.S.C. §6081, Pro-Children Act of 1994.  
20 U.S.C. §7961 et seq., Gun Free Schools Act.  
105 ILCS 5/10-20.5b, 5/10-20.14, 5/10-20.28, 5/10-20.36, 5/10-21.7, 5/10-21.10,  
5/10-22.6, 5/10-27.1A, 5/10-27.1B, 5/22-33, 5/24-24, 5/26-12, 5/27-23.7, and  
5/31-3.  
105 ILCS 110/3.10, Critical Health Problems and Comprehensive Health Education  
Act.  
410 ILCS 130/, Compassionate Use of Medical Cannabis Pilot Program.  
410 ILCS 647/, Powdered Caffeine Control and Education Act.  
430 ILCS 66/, Firearm Concealed Carry Act.  
23 Ill.Admin.Code §§ 1.280, 1.285.

CROSS REF.: 2:150 (Committees), 2:240 (Board Policy Development), 5:230 (Maintaining  
Student Discipline), 6:110 (Programs for Students At Risk of Academic Failure  
and/or Dropping Out of School and Graduation Incentives Program), 7:70  
(Attendance and Truancy), 7:130 (Student Rights and Responsibilities), 7:140  
(Search and Seizure), 7:150 (Agency and Police Interviews), 7:160 (Student  
Appearance), 7:170 (Vandalism), 7:180 (Prevention of and Response to Bullying,  
Intimidation, and Harassment), 7:185 (Teen Dating Violence Prohibited), 7:200  
(Suspension Procedures), 7:210 (Expulsion Procedures), 7:220 (Bus Conduct),  
7:230 (Misconduct by Students with Disabilities), 7:240 (Conduct Code for  
Participants in Extracurricular Activities), 7:270 (Administering Medicines to  
Students), 7:310 (Restrictions on Publications; Elementary Schools), 7:315  
(Restrictions on Publications; High Schools), 8:30 (Visitors to and Conduct on  
School Property)

## Students

### Suspension Procedures 1

#### In-School Suspension 2

The Superintendent or designee is authorized to maintain an in-school suspension program. The program shall include, at a minimum, each of the following:

1. Before assigning a student to in-school suspension, the charges will be explained and the student will be given an opportunity to respond to the charges.
2. Students are supervised by licensed school personnel.
3. Students are given the opportunity to complete classroom work during the in-school suspension for equivalent academic credit.

#### Out-of-School Suspension

The Superintendent or designee shall implement suspension procedures that provide, at a minimum, for each of the following: 3

1. A conference during which the charges will be explained and the student will be given an opportunity to respond to the charges before he or she may be suspended.

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<sup>1</sup> State law requires districts to have a policy on student discipline. 105 ILCS 5/10-20.14; 23 Ill.Admin.Code §1.280. State or federal law controls this policy's content.

Boards may authorize *by policy* the superintendent, building principal, assistant building principal, or dean of students to suspend students guilty of gross disobedience or misconduct from school, including all school functions. 105 ILCS 5/10-22.6(b). See 7:190, *Student Behavior*, for such an authorization.

<sup>2</sup> An in-school suspension program may focus on promoting non-violent conflict resolution and positive interaction with other students and school personnel, and districts may employ a school social worker or a licensed mental health professional to oversee in-school suspension programs. 105 ILCS 5/10-22.6(l). Providing programming during in-school suspensions is not required; however providing educational programs during in-school suspensions will help distinguish them from exclusionary suspensions. See f/n 3 in policy 5:230, *Maintaining Student Discipline*, for further discussion of in-school suspension programs. Contact the board attorney for advice concerning amending this section.

20 ILCS 1705/76, added by P.A. 101-45, requires the Ill. Dept. of Public Health to create and maintain an online database and resource page on its website that contains mental health resources specifically geared toward school social workers, school counselors, parents, teachers, and school support personnel. See the database at: [www.dhs.state.il.us](http://www.dhs.state.il.us).

<sup>3</sup> Suspension procedures are required by State law. 105 ILCS 5/10-22.6. The right to attend school is a property right protected by the due process clause of the U.S. Constitution. *Goss v. Lopez*, 419 U.S. 565 (1975). Imposing a short deprivation of this property right by suspending a student for 10 or fewer days requires only minimal due process. The student must be generally informed of the reasons for the possible suspension, and be permitted to tell his/her version of the story. Making a decision to suspend before the hearing violates the basic due process requirement that the hearing be meaningful. *Sieck v. Oak Park-River Forest High Sch.*, 807 F.Supp. 73 (N.D. Ill. 1992).

105 ILCS 5/10-22.6(b) allows a student who is suspended in excess of 20 school days to be immediately transferred to an alternative program in the manner provided in Article 13A or 13B of the School Code. A student cannot be denied transfer because of the suspension, except in cases in which such transfer is deemed to cause a threat to the safety of students or staff in the alternative program.

Consult the board attorney for assistance if a suspension will exceed 10 consecutive school days. Subsection 10-22.6(b) uses the phrase "is suspended in excess of 20 school days" even though a 20-consecutive day suspension should be treated as an expulsion. *Goss v. Lopez*, 419 U.S. 565 (1975). For further discussion, see f/n 43 in policy 7:190, *Student Behavior*.

2. A pre-suspension conference is not required, and the student can be immediately suspended when the student’s presence poses a continuing danger to persons or property or an ongoing threat of disruption to the educational process. In such cases, the notice and conference shall follow as soon as practicable.
3. An attempted phone call to the student’s parent(s)/guardian(s).
4. A written notice of the suspension to the parent(s)/guardian(s) and the student, which shall: <sup>4</sup>
  - a. Provide notice to the parent(s)/guardian(s) of their child’s right to a review of the suspension;
  - b. Include information about an opportunity to make up work missed during the suspension for equivalent academic credit; <sup>5</sup>
  - c. Detail the specific act of gross disobedience or misconduct resulting in the decision to suspend;
  - d. Provide rationale or an explanation of how the chosen number of suspension days will address the threat or disruption posed by the student or his or her act of gross disobedience or misconduct; and
  - e. Depending upon the length of the out-of-school suspension, include the following applicable information:
    - i. For a suspension of 3 school days or less, an explanation that the student’s continuing presence in school would either pose: <sup>6</sup>
      - a) A threat to school safety, or
      - b) A disruption to other students’ learning opportunities.
    - ii. For a suspension of 4 or more school days, an explanation: <sup>7</sup>
      - a) That other appropriate and available behavioral and disciplinary interventions have been exhausted,

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<sup>4</sup> 105 ILCS 5/10-22.6.

**Consult the board attorney** (1) about the specific documentation required in this portion of the notice, and (2) to ensure that 7:200-E1, *Short Term Out-of-School Suspension (1-3 Days) Reporting Form* and 7:200-E2, *Long Term Out-of-School Suspension (4-10 Days) Reporting Form* reflect the exact practices that the district will use to implement this requirement.

<sup>5</sup> Required by 105 ILCS 5/10-22.6(b-30).

<sup>6</sup> 105 ILCS 5/10-22.6(b-15) explains that “threat to school safety or a disruption to other students’ learning opportunities” shall be determined by the school board or its designee on a case-by-case basis. **Consult the board attorney for specific advice regarding the application of these statutory terms in this context (see f/n 8, below).**

<sup>7</sup> 105 ILCS 5/10-22.6(b-20). School officials are granted the sole authority to determine on a case-by-case basis: (1) whether “appropriate and available behavioral and disciplinary interventions have been exhausted;” and (2) whether “the student’s continuing presence in school would either (i) pose a threat to the safety of other students, staff, or members of the school community, or (ii) substantially disrupt, impede, or interfere with the operation of the school.” Consult the board attorney to request specific training for school officials to apply these statutory terms in this context.

- b) As to whether school officials attempted other interventions or determined that no other interventions were available for the student,<sup>8</sup> and
  - c) That the student’s continuing presence in school would either:
    - i) Pose a threat to the safety of other students, staff, or members of the school community, or
    - ii) Substantially disrupt, impede, or interfere with the operation of the school.
  - iii. For a suspension of 5 or more school days, the information listed in section 4.e.ii., above, along with documentation by the Superintendent or designee determining what, if any, appropriate and available support services will be provided to the student during the length of his or her suspension.<sup>9</sup>
5. A summary of the notice, including the reason for the suspension and the suspension length, must be given to the Board by the Superintendent or designee.
  6. Upon request of the parent(s)/guardian(s), a review of the suspension shall be conducted by the Board or a hearing officer appointed by the Board.<sup>10</sup> At the review, the student’s parent(s)/guardian(s) may appear and discuss the suspension with the Board or its hearing officer and may be represented by counsel. Whenever there is evidence that mental illness may be the cause for the suspension, the Superintendent or designee shall invite a representative from a local mental health agency to consult with the Board.<sup>11</sup> After presentation of the evidence or receipt of the hearing officer’s report, the Board shall take such action as it finds appropriate. If the suspension is upheld, the Board’s written suspension decision shall specifically detail items (a) and (e) in number 4, above.<sup>12</sup>

LEGAL REF.: Goss v. Lopez, 419 U.S. 565 (1975).  
 105 ILCS 5/10-20.14, 5/10-22.6.  
 23 Ill.Admin.Code §1.280.

CROSS REF.: 5:100 (Staff Development Program), 7:130 (Student Rights and Responsibilities),  
 7:190 (Student Behavior), 7:220 (Bus Conduct)

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The footnotes are not intended to be part of the adopted policy; they should be removed before the policy is adopted.

<sup>8</sup> While school officials have discretion to determine the length of suspensions, they must resolve threats, address disruptions, and minimize the length of student exclusions to the greatest extent practicable. 105 ILCS 5/10-22.6(b-20). **Consult the board attorney about the practical implementation of documenting other appropriate and available interventions for the student.**

Last, the law also requires school districts to make reasonable efforts to provide ongoing professional development to teachers, administrators, school board members, school resource officers, and staff on the adverse consequences of school exclusion and justice-system involvement, effective classroom management strategies, culturally responsive discipline, the appropriate and available supportive services for the promotion of student attendance and engagement, and developmentally appropriate disciplinary methods that promote positive and healthy school climates. 105 ILCS 5/10-22.6(c-5).

<sup>9</sup> 105 ILCS 5/10-22.6(b-25).

<sup>10</sup> A board may hear student disciplinary cases in a meeting closed to the public. 5 ILCS 120/2(c)(9).

<sup>11</sup> 105 ILCS 5/10-22.6(c), amended by P.A. 102-539.

<sup>12</sup> 105 ILCS 5/10-22.6(b).

## Students

### Expulsion Procedures 1

The Superintendent or designee shall implement expulsion procedures that provide, at a minimum, for the following:<sup>2</sup>

1. Before a student may be expelled, the student and his or her parent(s)/guardian(s) shall be provided a written request to appear at a hearing to determine whether the student should be expelled. The request shall be sent by registered or certified mail, return receipt requested.<sup>3</sup> The request shall:<sup>4</sup>
  - a. Include the time, date, and place for the hearing.
  - b. Briefly describe what will happen during the hearing.
  - c. Detail the specific act of gross disobedience or misconduct resulting in the decision to recommend expulsion.
  - d. List the student's prior suspension(s).
  - e. State that the School Code allows the School Board to expel a student for a definite period of time not to exceed 2 calendar years, as determined on a case-by-case basis.
  - f. Ask that the student or parent(s)/guardian(s) or attorney inform the Superintendent or Board Attorney if the student will be represented by an attorney and, if so, the attorney's name and contact information.
2. Unless the student and parent(s)/guardian(s) indicate that they do not want a hearing or fail to appear at the designated time and place, the hearing will proceed. It shall be conducted by the Board or a hearing officer appointed by it.<sup>5</sup> If a hearing officer is appointed, he or she shall report to the Board the evidence presented at the hearing and the Board shall take such final action as it finds appropriate. Whenever there is evidence that mental illness may be the cause

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<sup>1</sup> State or federal law requires districts to have a policy on student discipline. 105 ILCS 5/10-20.14; 23 Ill.Admin.Code §1.280. State or federal law controls this policy's content. The discipline of special education students must comply with the Individuals With Disabilities Education Improvement Act of 2004 and the Illinois State Board of Education's Special Education rules. See 7:230, *Misconduct by Students with Disabilities*.

<sup>2</sup> Expulsion procedures are required by State law. 105 ILCS 5/10-22.6(a). The right to attend school is a property right protected by the due process clause of the U.S. Constitution. *Goss v. Lopez*, 419 U.S. 565 (1975). Thus, an expulsion of more than 10 days requires due process including, but not limited to, notice of the charges, an opportunity to hear the evidence in support of the charges, an opportunity to refute them, and a decision by an impartial decision maker based on the evidence presented. The adequacy of an expulsion hearing is frequently challenged; the board attorney should be consulted as every due process analysis will be highly fact specific. See f/n 9, *infra*.

<sup>3</sup> 105 ILCS 5/10-22.6(a). Whenever the term "registered mail" is used in the School Code, it shall be deemed to authorize the use of either registered mail or certified mail, return receipt requested. 105 ILCS 5/1-3.5.

<sup>4</sup> *Id.* Items a and b address due process, which includes the right to receive a notice with enough detail and with enough time to prepare a defense. Item c details the requirements pertaining to expulsions throughout 105 ILCS 5/10-22.6. Items d through f are optional best practice inclusions. **Consult the board attorney about the specific documentation required in this portion of the notice to ensure the district's practice matches the policy language.**

<sup>5</sup> A board may hear student disciplinary cases in a meeting closed to the public. 5 ILCS 120/2(c)(9).

for the recommended expulsion, the Superintendent or designee shall invite a representative from a local mental health agency to consult with the Board. <sup>6</sup>

3. During the expulsion hearing, the Board or hearing officer shall hear evidence concerning whether the student is guilty of the gross disobedience or misconduct as charged. School officials must provide: (1) testimony of any other interventions attempted and exhausted or of their determination that no other appropriate and available interventions were available for the student, and (2) evidence of the threat or disruption posed by the student. The student and his or her parent(s)/guardian(s) may be represented by counsel, offer evidence, present witnesses, cross-examine witnesses who testified, and otherwise present reasons why the student should not be expelled. <sup>7</sup> After presentation of the evidence or receipt of the hearing officer's report, the Board shall decide the issue of guilt and take such action as it finds appropriate.
4. If the Board acts to expel the student, its written expulsion decision shall: <sup>8</sup>
  - a. Detail the specific reason why removing the student from his or her learning environment is in the best interest of the school. <sup>9</sup>
  - b. Provide a rationale for the specific duration of the recommended expulsion. <sup>10</sup>
  - c. Document how school officials determined that all behavioral and disciplinary interventions have been exhausted by specifying which interventions were attempted or whether school officials determined that no other appropriate and available interventions existed for the student. <sup>11</sup>
  - d. Document how the student's continuing presence in school would (1) pose a threat to the safety of other students, staff, or members of the school community, or (2) substantially disrupt, impede, or interfere with the operation of the school. <sup>12</sup>

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<sup>6</sup> 105 ILCS 5/10-22.6(c), amended by P.A. 102-539.

<sup>7</sup> A student's opportunity to offer evidence, present witnesses, cross-examine witnesses, and otherwise present reasons why the student should not be expelled generally outweighs a district's interest in not providing the student these opportunities. See, Camlin v. Beecher Comm. Sch. Dist., 339 Ill.App.3d 1013 (3rd Dist. 2003) and Colquitt v. Rich Tsp H. S. Dist., 298 Ill.App.3d 856 (1st Dist. 1998). Determining whether denying these opportunities would violate a student's right to due process requires a careful analysis of the facts and federal case law. See Brown v. Plainfield Dist., 500 F. Supp.2d 996 (N.D. Ill. 2007) and Coronado v. Valleyview Sch. Dist., 537 F.3d 791 (7th Cir. 2008).

<sup>8</sup> **Consult the board attorney to request specific training for school officials to apply these statutory terms in the context of expulsions.** See 7:210-E1, *Notice of Expulsion Hearing*. The law gives school officials discretion while also requiring them to resolve threats, address disruptions, and minimize the length of student exclusions to the greatest extent practicable. 105 ILCS 5/10-22.6(b-20). Yet, the law also requires school districts to make reasonable efforts to provide ongoing professional development to teachers, administrators, school board members, school resources offices, and staff on the adverse consequences of school exclusion and justice-system involvement, effective classroom management strategies, culturally responsive discipline, and developmentally appropriate disciplinary methods that promote positive and healthy school climates. 105 ILCS 5/10-22.6(c-5).

<sup>9</sup> 105 ILCS 5/10-22.6(a).

<sup>10</sup> *Id.*

<sup>11</sup> 105 ILCS 5/10-22.6(b-20) requires and grants school officials the sole authority to determine on a case-by-case basis: (1) whether "appropriate and available behavioral and disciplinary interventions have been exhausted," and (2) whether "the student's continuing presence in school would either (i) pose a threat to the safety of other students, staff, or members of the school community or (ii) substantially disrupt, impede, or interfere with the operation of the school."

<sup>12</sup> *Id.*

5. Upon expulsion, the District may refer the student to appropriate and available support services.  
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LEGAL REF.: Goss v. Lopez, 419 U.S. 565 (1975).  
105 ILCS 5/10-20.14, 5/10-22.6.

CROSS REF.: 5:100 (Staff Development Program), 7:130 (Student Rights and Responsibilities),  
7:190 (Student Behavior), 7:200 (Suspension Procedures), 7:230 (Misconduct by  
Students with Disabilities)

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<sup>13</sup> 105 ILCS 5/10-22.6(b-25). **Consult the board attorney about transfers to an alternative program pursuant to Article 13A of the School Code.** See Leak v. Bd. of Educ. of Rich Twp. High Sch. Dist. 227, 2015 IL App (1st) 143202, requiring *obiter dictum* that before school officials transfer students to alternative schools for extended periods of time, they must provide students with a meaningful opportunity to be heard.

## Students

### Conduct Code for Participants in Extracurricular Activities 1

The Superintendent or designee, using input from coaches and sponsors of extracurricular activities, shall develop a conduct code for all participants in extracurricular activities consistent with School Board policy.<sup>2</sup> The conduct code shall: (1) require participants in extracurricular activities to conduct themselves as good citizens and exemplars of their school at all times, including after school, on days when school is not in session, and whether on or off school property; (2) emphasize that hazing and bullying activities are strictly prohibited; and (3) notify participants that failure to abide by it could result in discipline, up to and including removal from the activity. Participants who violate the conduct code will be allowed to give an explanation before being progressively disciplined.<sup>3</sup> The conduct code shall be reviewed by the Building Principal periodically at his or her discretion and presented to the Board.

Participants in extracurricular activities must abide by the conduct code for the activity and Board policy 7:190, *Student Behavior*. All coaches and sponsors of extracurricular activities shall annually review the conduct code with participants and provide participants with a copy. In addition, coaches and sponsors of interscholastic athletic programs shall provide instruction on steroid abuse prevention to students in grades 7 through 12 participating in these programs.<sup>4</sup>

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<sup>1</sup> State or federal law controls this policy's content.

<sup>2</sup> Optional:

...and the rules adopted by any association in which the School District maintains a membership.

<sup>3</sup> In most cases involving a student's removal from an extracurricular activity, courts have ruled that participation in extracurricular programs is a privilege rather than a right. *Clements v. Bd. of Educ. of Decatur Public Sch. Dist. No. 61*, 133 Ill.App.3d 531 (4th Dist. 1985). The deprivation of a privilege does not trigger the Constitution's due process provision. Consequently, unlike school attendance, students generally have no constitutional right to participate in extracurricular programs. See also *Kevin Jordan v. O'Fallon THSD 203*, 302 Ill.App.3d 1070 (5th Dist. 1999). This case involved a type of *good citizen* rule in which all student-participants in extracurricular activities agreed to abide by the school's ban on alcohol and drug use. Pursuant to this rule, the school suspended a star football player who police had found intoxicated at a convenience store around 3:00 A.M. The suspension was upheld.

Compare with *Mahanoy Area Sch. Dist. v. B.L.*, 141 S.Ct. 2038 (2021), which involved a student suspended from the cheerleading squad for one year after she posted two vulgar *snap*s on Snapchat while off campus during the weekend. The U.S. Supreme Court held that while schools may have a special interest in regulating some off-campus student speech, e.g., teaching good manners and preventing disruption, here the school's interests were insufficient to overcome the student's interest in free expression, and the one-year suspension violated the student's First Amendment rights. The Court noted that the school's interest in regulation was diminished by the fact that the student's speech did not identify the school, did not target any member of the school community, and was transmitted through a personal cell phone to an audience consisting of her private circle of Snapchat friends. Comments during oral argument suggest the Court was particularly struck by the severity of the discipline issued as well. Careful factual analysis, in consultation with the board attorney, should occur when considering discipline of participants for off-campus activity. See 7:240-API, *Code of Conduct for Extracurricular Activities*.

<sup>4</sup> 105 ILCS 5/27-23.3.

### Extracurricular Drug and Alcohol Testing Program<sup>5</sup>

The District maintains an extracurricular drug and alcohol testing program in order to foster the health, safety, and welfare of its students. Participation in extracurricular activities is a privilege and participants need to be exemplars. The program promotes healthy and drug-free participation.

Each student and his or her parents/guardians must consent to having the student submit to random drug and alcohol testing in order to participate in any extracurricular activity. Failure to sign the District's *Consent to Participate in Extracurricular Drug and Alcohol Testing Program* form will result in non-participation.

If a test is *positive*, the student will not participate in extracurricular activities until after a *follow-up* test is requested by the Building Principal or designee and the results are reported. The Building Principal or designee will request a *follow-up* test after such an interval of time that the substance previously found would normally be eliminated from the body. If this *follow-up* test is negative, the student will be allowed to resume extracurricular activities. If a *positive* result is obtained from the *follow-up* test, or any later test, the same previous procedure shall be followed.

The Superintendent or designee shall develop procedures to implement this policy. No student shall be expelled or suspended from school as a result of any verified positive test conducted under this program other than when independent reasonable suspicion of drug and/or alcohol usage exists. This program does not affect the District policies, practices, or rights to search or test any student who at the time exhibits cause for reasonable suspicion of drug and/or alcohol use.

### Performance Enhancing Drug Testing of High School Student Athletes<sup>6</sup>

The Illinois High School Association (IHSA) prohibits participants in an athletic activity sponsored or sanctioned by IHSA from ingesting or otherwise using any performance enhancing substance on its banned substance list, without a written prescription and medical documentation provided by a licensed physician who evaluated the student-athlete for a legitimate medical condition. IHSA administers a performance-enhancing substance testing program. Under this program, student athletes are subject to random drug testing for the presence in their bodies of performance-enhancing substances on the IHSA's banned substance list. In addition to being penalized by IHSA, a student may be disciplined according to Board policy 7:190, *Student Behavior*.

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<sup>5</sup> This program is optional. The U.S. Supreme Court upheld the constitutionality of a student activities drug testing policy that required all middle and high school students to consent to random urinalysis testing for drugs in order to participate in any extracurricular activity. *Bd. of Educ. of Independent Sch. Dist. No. 92 v. Earls et al.*, 536 U.S. 822 (2002). This sample policy, as well as the procedures and forms implementing it, are based on the policy approved by the Seventh Circuit in *Todd v. Rush County Schs.*, 133 F.3d 984 (7th Cir. 1998). Alternatively, this program may be limited to extracurricular athletic participants; if so, add the Drug and Alcohol Testing Program to policy 7:300, *Extracurricular Athletics*, and delete it from here.

<sup>6</sup> For a list of banned substances, the testing program, and other related resources, see the IHSA Sports Medicine website, [www.ihsa.org/Resources/Sports-Medicine/Performance-Enhancing-Drugs-Steroid-Education](http://www.ihsa.org/Resources/Sports-Medicine/Performance-Enhancing-Drugs-Steroid-Education).

LEGAL REF.: Mahanoy Area Sch. Dist. v. B.L., 141 S.Ct. 2038 (2021).  
Bd. of Educ. of Independent Sch. Dist. No. 92 v. Earls, 536 U.S. 822 (2002).  
Vernonia Sch. Dist. 475 v. Acton, 515 U.S. 646 (1995).  
Clements v. Bd. of Educ. of Decatur, 133 Ill.App.3d 531 (4th Dist. 1985).  
Kevin Jordan v. O'Fallon THSD 203, 302 Ill.App.3d 1070 (5th Dist. 1999).  
Todd v. Rush County Schs., 133 F.3d 984 (7th Cir. 1998).

105 ILCS 5/24-24, 5/27-23.3, and 25/2.

CROSS REF.: 5:280 (Duties and Qualifications), 6:190 (Extracurricular and Co-Curricular Activities), 7:180 (Prevention of and Response to Bullying, Intimidation, and Harassment), 7:190 (Student Behavior), 7:300 (Extracurricular Athletics)

## Students

### Student Support Services 1

The following student support services may be provided by the School District: <sup>2</sup>

1. Health services supervised by a qualified school nurse.<sup>3</sup> The Superintendent or designee may implement procedures to further a healthy school environment and prevent or reduce the spread of disease.
2. Educational and psychological testing services and the services of a school psychologist<sup>4</sup> as needed. In all cases, written permission to administer a psychological examination must be obtained from a student's parent(s)/guardian(s). The results will be given to the parent(s)/guardian(s), with interpretation, as well as to the appropriate professional staff.

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<sup>1</sup> State or federal law controls this policy's content.

<sup>2</sup> All districts are required to conduct a comprehensive needs assessment to determine the scope of student personnel services needs in the areas of: (1) guidance and counseling needs; (2) psychological needs; (3) social work needs; and (4) health needs. 23 Ill.Admin.Code §1.420(q). Endorsement requirements for various types of school support personnel are referenced in f/ns 3 through 6 below, and further information is available at [www.isbe.net/Pages/PEL-School-Support-Ed-Lic.aspx](http://www.isbe.net/Pages/PEL-School-Support-Ed-Lic.aspx). Until June 20, 2023, an individual who fails to meet the necessary qualifications for a specific school support personnel endorsement, but holds another professional license or certification approved by ISBE, may seek short-term approval for assignment to a position in situations where an unforeseen vacancy occurs. Short-term approvals are valid for three full fiscal years. 23 Ill.Admin.Code §25.432.

P.A. 95-558 created the Ensuring Success in School Task Force. This task force developed recommendations for policies, procedures, and protocols for school boards to adopt to address the education and related needs of students who are parents, expectant parents, or victims of domestic or sexual violence. The intent of the recommendations is to ensure these student populations' ability to: (1) stay in school; (2) stay safe at school; and (3) successfully complete their education. A copy of this report is at: [www.isbe.net/Documents/ess-task-force-final-report0610.pdf#search=%22ensuring%20success%20in%20school%20task%20force%22](http://www.isbe.net/Documents/ess-task-force-final-report0610.pdf#search=%22ensuring%20success%20in%20school%20task%20force%22). School boards and superintendents may want to create their own study groups to discuss implementation of the task force's recommendations for policies, procedures and protocols.

<sup>3</sup> School districts may employ noncertificated/non-professional-educator-licensed *registered professional nurses* to perform professional nursing services. 105 ILCS 5/10-22.23; 23 Ill.Admin.Code §1.760(c). A *registered professional nurse* means any nurse who is licensed to practice professional nursing in Illinois under the Nurse Practice Act (225 ILCS 65/) and whose license is active and in good standing with the Ill. Dept. of Financial and Professional Regulation. 23 Ill.Admin.Code §1.760(b).

A *school nurse* means any registered professional nurse who also holds a professional educator license endorsed for school support services in school nursing, or any registered professional nurse who does not hold the professional educator license but was employed in the school district of current employment before 7-1-76. 23 Ill.Admin.Code §1.760(c).

105 ILCS 5/10-22.23 provides that any nurse first employed on or after 7-1-76, whose duties require teaching or the exercise of instructional judgment or educational evaluation of students, must be licensed under 105 ILCS 5/21-25. However, that licensure Section 21-25 was repealed by P.A. 98-413, eff. 8-16-13.

A school nurse may hold a Professional Educator License with a school support personnel endorsement. 105 ILCS 5/21B-25(2)(G); 23 Ill.Admin.Code §§1.760(c), 23.120, 25.245.

<sup>4</sup> A *school psychologist* means a psychologist who holds a Professional Educator License with a school psychologist endorsement per 105 ILCS 5/21B-25 and either: (1) has graduated with a master's degree or higher degree in psychology or educational psychology from an institution of higher education that maintains equipment, courses of study, and standards of scholarship approved by the Ill. State Board of Education (ISBE), has had at least one school year of full-time supervised experience in the delivery of school psychological service approved by the State Superintendent of Education, and has such additional qualifications as may be required by ISBE; or (2) holds a valid Nationally Certified School Psychologist credential. 105 ILCS 5/14-1.09. School psychologists hold a Professional Educator License with a school support personnel endorsement. 105 ILCS 5/21B-25(2)(G); 23 Ill.Admin.Code §§1.760(a), 23.130, 25.235.

3. The services of a school social worker.<sup>5</sup> A student's parent/guardian must consent to regular or continuing services from a social worker.
4. Guidance and school counseling<sup>6</sup> services.
5. A liaison to facilitate the enrollment and transfer of records of students in the legal custody of the Illinois Department of Children and Family Services when enrolling in or changing schools.<sup>7</sup>

The Superintendent or designee shall develop protocols for responding to students with social, emotional, or mental health needs that impact learning ability.<sup>8</sup> The District, however, assumes no liability for preventing, identifying, or treating such needs.

#### Erin's Law Counseling Options, Assistance, and Intervention <sup>9</sup>

The Superintendent or designee will ensure that each school building's Student Support Committee identifies counseling options for students who are affected by sexual abuse, along with District and community-based options for victims of sexual abuse to obtain assistance and intervention. Community-based options must include a Children's Advocacy Center and sexual assault crisis center(s) that serve the District, if any.

This policy shall be implemented in a manner consistent with State and federal laws, including the Individuals with Disabilities Education Act, 42 U.S.C. §12101 et seq.

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<sup>5</sup> A *school social worker* means a social worker who has graduated from an accredited graduate school of social work and has such additional qualifications as may be required by ISBE and who holds a Professional Educator License with a school support personnel endorsement for school social work per 105 ILCS 5/21B-25. 105 ILCS 5/14-1.09a. See 105 ILCS 5/21B-25(2)(G); 23 Ill.Admin.Code §§1.760(a), 23.140, 25.215. School social workers may not provide services outside of their district employment to any student(s) attending school in the district. 23 Ill.Admin.Code §25.215. *School marriage and family therapists* are another type of school support personnel; they hold a Professional Educator License with a school support personnel endorsement. 105 ILCS 5/21B-25(2)(G); 23 Ill.Admin.Code §§23.150, 25.260.

<sup>6</sup> *School counselors* hold a Professional Educator License with a school support personnel endorsement. 105 ILCS 5/21B-25(2)(G); 23 Ill.Admin.Code §§1.760(a), 23.110, 25.225. *School guidance counselors* refers to district employees that work in high schools to offer students advice and assistance in making career or college plans; no specific school support personnel endorsement exists for school guidance counselors. 105 ILCS 5/22-90 (final citation pending), added by P.A. 102-327.

In contrast, *professional counselors* and professional counseling practice in Illinois are governed by the Professional Counselor and Clinical Professional Counselor Licensing and Practice Act and its implementing regulations. 225 ILCS 107/; 68 Ill.Admin.Code Part 1375. The Mental Health and Developmental Disabilities Code, 405 ILCS 5/, provides that minors 12 years of age or older may request and receive up to eight 90-minute sessions (previously five 45-minute sessions) of professional counseling services or psychotherapy (provided by a clinical psychologist) without the consent of the minor's parent, guardian, or person in loco parentis. 405 ILCS 5/3-5A-105. Most school districts do not regularly provide *professional counseling* or *clinical psychological* services to students. Instead, most districts provide *school counseling* or *school psychological* services to students, and Illinois law does not specify any limits on the number of school counseling or school psychological sessions which a minor may have before obtaining parent/guardian permission. If your district seeks to regularly provide *professional counseling* or *clinical psychological* services to students, consult with your board attorney about potential changes to board policies and administrative procedures, as well as collective bargaining issues.

<sup>7</sup> Optional. 105 ILCS 5/10-20.59 allows a liaison. Be sure this policy is consistent with policy 7:50, *School Admissions and Student Transfers To and From Non-District Schools*. See f/n 13 in 7:50, *School Admissions and Student Transfers To and From Non-District Schools*, for liaison responsibilities and requirements.

<sup>8</sup> Required by the Children's Mental Health Act of 2003, 405 ILCS 49/15(b).

<sup>9</sup> Required by *Erin's Law*, 105 ILCS 5/10-23.13(b)(2), (3), and (5), amended by P.A. 102-610. See sample policy 5:90, *Abused and Neglected Child Reporting*, and administrative procedure 5:90-AP, *Coordination with Children's Advocacy Center*, for more information on Children's Advocacy Centers.

LEGAL REF.: 105 ILCS 5/10-23.13(b) and 5/21B-25(G).  
405 ILCS 49/, Children's Mental Health Act of 2003.  
740 ILCS 110/, Mental Health and Developmental Disabilities Confidentiality Act.

CROSS REF.: 6:65 (Student Social and Emotional Development), 6:270 (Guidance and Counseling Program), 7:100 (Health, Eye, and Dental Examinations; Immunizations; and Exclusion of Students), 7:280 (Communicable and Chronic Infectious Disease), 7:340 (Student Records)

## Students

### Exemption from Physical Education 1

In order to be excused from participation in physical education, a student must present an appropriate excuse from his or her parent/guardian or from a person licensed under the Medical Practice Act.<sup>2</sup> The excuse may be based on medical or religious prohibitions. An excuse because of medical reasons must include a signed statement from a person licensed under the Medical Practice Act that corroborates the medical reason for the request. An excuse based on religious reasons must include a signed statement from a member of the clergy that corroborates the religious reason for the request.<sup>3</sup> Upon written notice from a student's parent/guardian, a student will be excused from engaging in the physical activity components of physical education during a period of religious fasting.<sup>4</sup>

Special activities in physical education will be provided for a student whose physical or emotional condition, as determined by a person licensed under the Medical Practice Act, prevents his or her participation in the physical education course.<sup>5</sup>

State law prohibits the Board from honoring parental excuses based upon a student's participation in athletic training, activities, or competitions conducted outside the auspices of the School District.<sup>6</sup>

A student who is eligible for special education may be excused from physical education courses in either of the following situations:<sup>7</sup>

1. He or she (a) is in grades 3-12, (b) his or her IEP requires that special education support and services be provided during physical education time, and (c) the parent/guardian agrees or the IEP team makes the determination; or
2. He or she (a) has an IEP, (b) is participating in an adaptive athletic program outside of the school setting, and (c) the parent/guardian documents the student's participation as required by the Superintendent or designee.

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<sup>1</sup> An ISBE rule requires boards to have a policy defining the types of parental excuses that will be accepted in order for a student to be exempted from P.E. 23 Ill.Admin.Code §1.425(e), amended at 42 Ill.Reg. 11542-43. State or federal law controls this policy's content.

For elementary districts, delete 6:310, *High School Credit for Non-District Experiences; Course Substitutions; Re-Entering Students* from the cross references of this policy.

<sup>2</sup> Medical Practice Act is found in 225 ILCS 60/.

<sup>3</sup> Required by 23 Ill.Admin.Code §1.425(d)(1) and (2),. School boards must identify any evidence/support they will require for excuses they will deem *appropriate*. Before the board adopts this policy, it should have a conversation with the superintendent to discuss and review and/or amend the sample reasons for excusal offered in this policy. Topics for discussion include determining whether (a) the sample reasons are sufficient, (b) more reasons are needed, and/or (c) the sample reasons should be amended. These conversations should be based upon the community's needs.

<sup>4</sup> 105 ILCS 5/27-6(b-5), added by P.A. 102-405. A note from clergy or a religious leader is unnecessary and should not be requested by a district.

<sup>5</sup> Required by 105 ILCS 5/27-6 and 23 Ill.Admin.Code §1.425(d)(3).

<sup>6</sup> 105 ILCS 5/27-6(b); 23 Ill.Admin.Code §1.425(e)(6). See 6:310, *High School Credit for Non-District Experiences; Course Substitutions; Re-Entering Students*, for a list of categories of students in grades 9-12 who may be excused from P.E. due to participation in school district athletic training, activities, or competitions.

<sup>7</sup> 105 ILCS 5/27-6(b) and 23 Ill.Admin.Code §1.425(e)(5)(A) and (B).

A student requiring adapted physical education must receive that service in accordance with his or her Individualized Educational Program/Plan (IEP).<sup>8</sup>

A student in grades 9-12, unless otherwise stated, may submit a written request to the Building Principal to be excused from physical education courses for the reasons stated in 6:310, *High School Credit for Non-District Experiences; Course Substitutions; Re-Entering Students*.<sup>9</sup>

Students in grades 7 and 8 may submit a written request to the Building Principal to be excused from physical education courses because of his or her ongoing participation in an interscholastic or extracurricular athletic program.<sup>10</sup> The Building Principal will evaluate requests on a case-by-case basis.

The Superintendent or designee shall maintain records showing that the criteria set forth in this policy were applied to the student's individual circumstances, as appropriate.<sup>11</sup>

Students who have been excused from physical education shall return to the course as soon as practical.<sup>12</sup> The following considerations will be used to determine when a student shall return to a physical education course:<sup>13</sup>

1. The time of year when the student's participation ceases;
2. The student's class schedule; and
3. The student's future or planned additional participation in activities qualifying for substitutions for physical education as outlined in policy 6:310, *High School Credit for Non-District Experiences; Course Substitutions; Re-Entering Students*.<sup>14</sup>

LEGAL REF.: 105 ILCS 5/27-6.  
225 ILCS 60/, Medical Practice Act.  
23 Ill.Admin.Code §1.420(p) and §1.425(d), (e).

CROSS REF.: 6:60 (Curriculum Content), 6:310 (High School Credit for Non-District Experiences; Course Substitutions; Re-Entering Students)

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The footnotes are not intended to be part of the adopted policy; they should be removed before the policy is adopted.

<sup>8</sup> 105 ILCS 5/27-6(b).

<sup>9</sup> 105 ILCS 5/27-6; 23 Ill.Admin.Code §1.425(e). Delete this sentence for elementary school districts.

<sup>10</sup> Optional. *Id.* See f/n 19 in 6:310, *High School Credit for Non-District Experiences; Course Substitutions; Re-Entering Students*, for discussion of what constitutes an *interscholastic* or *extracurricular athletic program*. Delete this paragraph for high school districts.

For elementary or unit school boards that want to explain the meaning of *interscholastic* or *extracurricular athletic program*, insert the following option:

Interscholastic or extracurricular athletic programs are organized school-sponsored or school-sanctioned activities for students that are not part of the curriculum, not graded, not for credit, generally take place outside of school instructional hours, and under the direction of a coach, athletic director, or band leader.

<sup>11</sup> 23 Ill.Admin.Code §1.425(e). Districts must maintain records showing that the criteria set forth in 105 ILCS 5/27-6, amended by P.A. 100-465, was applied to the student's individual circumstances.

<sup>12</sup> 23 Ill.Admin.Code §1.425(e)(1)(A)-(C).

<sup>13</sup> Insert any additional criteria the board may want to use.

<sup>14</sup> Delete item #3 for elementary districts, move "and" to the end of sentence number 1, delete the semicolon at the end of number 2 and insert a period.

## Students

### Suicide and Depression Awareness and Prevention

Youth suicide impacts the safety of the school environment. It also affects the school community, diminishing the ability of surviving students to learn and the school's ability to educate. Suicide and depression awareness and prevention are important Board goals.

#### Suicide and Depression Awareness and Prevention Program

The Superintendent or designee shall develop, implement, and maintain a suicide and depression awareness and prevention program (Program) that advances the Board's goals of increasing awareness and prevention of depression and suicide. This program must be consistent with the requirements of *Ann Marie's Law* listed below; each listed requirement, 1-6, corresponds with the list of required policy components in the School Code Section 5/2-3.166(c)(2)-(7). The Program shall include:

1. Protocols for administering youth suicide awareness and prevention education to students and staff.
  - a. For students, implementation will incorporate Board policy 6:60, *Curriculum Content*, which implements 105 ILCS 5/2-3.139 and 105 ILCS 5/27-7 (requiring education for students to develop a sound mind and a healthy body).
  - b. For staff, implementation will incorporate Board policy 5:100, *Staff Development Program*, and teacher's institutes under 105 ILCS 5/3-14.8 (requiring coverage of the warning signs of suicidal behavior).
2. Procedures for methods of suicide prevention with the goal of early identification and referral of students possibly at risk of suicide. Implementation will incorporate:
  - a. The training required by 105 ILCS 5/10-22.39 for licensed school personnel and administrators who work with students to identify the warning signs of suicidal behavior in youth along with appropriate intervention and referral techniques, including methods of prevention, procedures for early identification, and referral of students at risk of suicide; and
  - b. Ill. State Board of Education (ISBE)-recommended guidelines and educational materials for staff training and professional development, along with ISBE-recommended resources for students containing age-appropriate educational materials on youth suicide and awareness, if available pursuant to *Ann Marie's Law* on ISBE's website.
3. Methods of intervention, including procedures that address an emotional or mental health safety plan for use during the school day and at school-sponsored events for a student identified as being at increased risk of suicide. Implementation will incorporate paragraph number 2, above, along with Board policies:
  - a. 6:65, *Student Social and Emotional Development*, implementing the goals and benchmarks of the Ill. Learning Standards and 405 ILCS 49/15(b) (requiring student social and emotional development in the District's educational program);
  - b. 6:120, *Education of Children with Disabilities*, implementing special education requirements for the District;

- c. 6:140, *Education of Homeless Children*, implementing provision of District services to students who are homeless;
  - d. 6:270, *Guidance and Counseling Program*, implementing guidance and counseling program(s) for students, and 105 ILCS 5/10-22.24a and 22.24b, which allow a qualified guidance specialist or any licensed staff member to provide school counseling services;
  - e. 7:10, *Equal Educational Opportunities*, implementing supports for equal educational opportunities for students;
  - f. 7:50, *School Admissions and Student Transfers To and From Non-District Schools*, implementing State law requirements related to students who are in foster care;
  - g. 7:250, *Student Support Services*, implementing the Children’s Mental Health Act of 2003, 405 ILCS 49/ (requiring protocols for responding to students with social, emotional, or mental health issues that impact learning ability); and
  - h. State and/or federal resources that address emotional or mental health safety plans for students who are possibly at an increased risk for suicide, if available on the ISBE’s website pursuant to *Ann Marie’s Law*.
4. Methods of responding to a student or staff suicide or suicide attempt. Implementation of this requirement shall incorporate building-level Student Support Committee(s) established through Board policy 7:250, *Student Support Services*.
  5. Reporting procedures. Implementation of this requirement shall incorporate Board policy 6:270, *Guidance and Counseling Program*, and Board policy 7:250, *Student Support Services*, in addition to other State and/or federal resources that address reporting procedures.
  6. A process to incorporate ISBE-recommended resources on youth suicide awareness and prevention programs, including current contact information for such programs in the District’s Suicide and Depression Awareness and Prevention Program.

Illinois Suicide Prevention Strategic Planning Committee

The Superintendent or designee shall attempt to develop a relationship between the District and the Illinois Suicide Prevention Strategic Planning Committee, the Illinois Suicide Prevention Coalition Alliance, and/or a community mental health agency. The purpose of the relationship is to discuss how to incorporate the goals and objectives of the Illinois Suicide Prevention Strategic Plan into the District’s Suicide Prevention and Depression Awareness Program.

Monitoring

The Board will review and update this policy pursuant to *Ann Marie’s Law* and Board policy 2:240, *Board Policy Development*.

Information to Staff, Parents/Guardians, and Students

The Superintendent shall inform each school district employee about this policy and ensure its posting on the District’s website. The Superintendent or designee shall provide a copy of this policy to the parent or legal guardian of each student enrolled in the District. Student identification (ID) cards, the District’s website, and student handbooks and planners will contain the support information as required by State law.

### Implementation

This policy shall be implemented in a manner consistent with State and federal laws, including the Children's Mental Health Act of 2003, 405 ILCS 49/, Mental Health and Developmental Disabilities Confidentiality Act, 740 ILCS 110/, and the Individuals with Disabilities Education Act, 42 U.S.C. §12101 et seq.

The District, Board, and its staff are protected from liability by the Local Governmental and Governmental Employees Tort Immunity Act. Services provided pursuant to this policy: (1) do not replace the care of a physician licensed to practice medicine in all of its branches or a licensed medical practitioner or professional trained in suicide prevention, assessments and counseling services, (2) are strictly limited to the available resources within the District, (3) do not extend beyond the school day and/or school-sponsored events, and (4) cannot guarantee or ensure the safety of a student or the student body.

- LEGAL REF.: 42 U.S.C. § 1201 et seq. Individuals with Disabilities Education Act.  
105 ILCS 5/2-3.166, 105 ILCS 5/2-3.139, 5/3-14.8, 5/10-20.73 (final citation pending), 5/10-22.24a, 5/10-22.24b, 5/10-22.39, 5/10-20.75 (final citation pending), 5/14-1.01 et seq., 5/14-7.02, and 5/14-7.02b, 5/27-7.  
405 ILCS 49, Children's Mental Health Act of 2003.  
740 ILCS 110/, Mental Health and Developmental Disabilities Confidentiality Act.  
745 ILCS 10/, Local Governmental and Governmental Tort Immunity Act.
- CROSS REF.: 2:240 (Board Policy Development), 5:100 (Staff Development Program), 6:60 (Curriculum Content), 6:65 (Student Social and Emotional Development), 6:120 (Education of Children with Disabilities), 6:270 (Guidance and Counseling Program), 7:180 (Prevention of and Response to Bullying, Intimidation, and Harassment), 7:250 (Student Support Services)

## Students

### Restrictions on Publications; Elementary Schools 1

*[For elementary or unit districts only]*

#### School-Sponsored Publications and Web Sites

School-sponsored publications, productions, and web sites are part of the curriculum and are not a public forum for general student use.<sup>2</sup> School authorities may edit or delete material that is inconsistent with the District's educational mission.

All school-sponsored communications shall comply with the ethics and rules of responsible journalism. Text that is libelous, obscene, vulgar, lewd, invades the privacy of others, conflicts with the basic educational mission of the school, is socially inappropriate, is inappropriate due to the maturity of the students, or is materially disruptive to the educational process will not be tolerated.

The author's name will accompany personal opinions and editorial statements. An opportunity for the expression of differing opinions from those published/produced will be provided within the same media.

#### Non-School Sponsored Publications Accessed or Distributed On-Campus<sup>3</sup>

For purposes of this section and the following section, a *publication* includes, without limitation: (1) written or electronic print material, (2) audio-visual material on any medium including electromagnetic media (e.g., images, digital files flash memory, etc.), or combinations of these whether off-line (e.g., a printed book, digital files, etc.) or online (e.g., any website, social networking site, database for

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The footnotes are not intended to be part of the adopted policy; they should be removed before the policy is adopted.

<sup>1</sup> State or federal law controls this policy's content. This policy concerns an area in which the law is unsettled. It applies to only to elementary or unit districts (both elementary and high school students). Unit districts should adopt this policy and policy 7:315, *Restrictions on Publications; High Schools*. The Speech Rights of Student Journalists Act, 105 ILCS 80/5, applies to high school and unit districts.

<sup>2</sup> School authorities may reasonably regulate student expression in school-sponsored publications for education-related reasons. *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260 (1988). This policy allows such control by clearly stating that school-sponsored publications are not a "public forum" open for general student use but are, instead, part of the curriculum.

A school board that does not retain control of student publications can anticipate at least two problems: (1) how to keep content consistent with the district's mission, and (2) how to ensure that the Constitutional rights of third parties are not violated by student journalists. Concerning the second problem, a third party may seek to hold the district responsible for the student journalists' acts. See *Yeo v. Town of Lexington*, 131 F.3d 241 (1st Cir. 1997), *cert. denied* (1998).

<sup>3</sup> Non-school sponsored publications, like underground newspapers, cannot be subject to the same degree of regulation by school authorities as school-sponsored publications. Absent a showing of material and substantial interference with the requirements of good discipline, students retain their First Amendment free speech rights. The federal circuits disagree on whether school authorities may require prior approval before a student is allowed to distribute non-school-sponsored publications. The Seventh Circuit, which covers Illinois, refused to approve prior approval regulations. *Fujishima v. Bd. of Ed.*, 460 F.2d 1355 (7th Cir. 1972), but see *Baughman v. Freienmuth*, 478 F.2d 1345 (4th Cir. 1973). Non-school sponsored web sites should be regulated in the same manner as non-school sponsored publications.

A school policy prohibiting junior high students from distributing written material at school that is prepared by non-students was upheld in *Hedges v. Wauconda Cmty. Unit Sch. Dist. No. 118*, 9 F.3d 1295 (7th Cir. 1993).

information retrieval, etc.), or (3) information or material on electronic devices (e.g., text or voice messages delivered by cell phones, tablets, and other hand-held devices).<sup>4</sup>

Creating, distributing, and/or accessing non-school sponsored publications shall occur at a time and place and in a manner that will not cause disruption, be coercive, or result in the perception that the distribution or the publication is endorsed by the School District.

Students are prohibited from creating, distributing, and/or accessing at school any publication that:

1. Will cause substantial disruption of the proper and orderly operation and discipline of the school or school activities;<sup>5</sup>
2. Violates the rights of others, including but not limited to material that is libelous, invades the privacy of others, or infringes on a copyright;<sup>6</sup>
3. Is socially inappropriate or inappropriate due to maturity level of the students, including but not limited to material that is obscene, pornographic, or pervasively lewd and vulgar, contains indecent and vulgar language, or *sexting* as defined by School Board policy and Student Handbooks;<sup>7</sup>
4. Is reasonably viewed as promoting illegal drug use;<sup>8</sup> or
5. Is distributed in kindergarten through eighth grade and is primarily prepared by non-students, unless it is being used for school purposes. Nothing herein shall be interpreted to prevent the

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<sup>4</sup> The definition of *publication* is optional and may be amended. This sample definition uses broad and generally understood terms to keep the policy current with rapid technology changes.

<sup>5</sup> For example, a school district may discipline a student for writing an underground newspaper, and distributing it at school, that contained an article on how to hack into the school's computer. School authorities could reasonably believe the article would be disruptive. Boucher v. Sch. Bd. of the Sch. Dist. of Greenfield, 134 F.3d 821 (7th Cir. 1998).

<sup>6</sup> School officials may not regulate student speech based upon their fear or apprehension of disturbance. Many decisions address the tension between students' right to free speech and restrictions of it on campus. See, for example:

Brandt v. Bd. of Educ. of City of Chicago, 480 F.3d 460 (7th Cir. 2007), *cert. denied* (2007) (school did not violate students' First Amendment rights when it disciplined students for wearing T-shirts with a "talentless infantile drawing" that school officials reasonably found to undermine the educational atmosphere).

Nuxoll v. Indian Prairie Sch. Dist. #204, 523 F.3d 668 (7th Cir. 2008) (holding that the student was likely to succeed on merits of his claim that the school would violate his speech rights by preventing him from wearing T-shirt with slogan "Be Happy, Not Gay").

J.C. v. Beverly Hills Unified Sch. Dist., 711 F.Supp.2d 1094(3rd Cir. 2010) (discussed the "rights of others to be secure and let alone" argument from Tinker, but found that the school district violated a student's First Amendment rights for disciplining her when she posted a video clip on a website).

B.H. v. Easton Area Sch. Dist., 725 F.3d 293 (3rd Cir. 2013), *cert. denied* (2014) (school violated students' free speech rights by banning the wearing of cancer awareness bracelets containing the caption *I ♥ boobies*).

<sup>7</sup> Be sure that the board's definitions for *sexting* in this policy align with other definitions used throughout the board's policy manual. For example, see the discussion within sample administrative procedure 7:190-AP5, *Student Handbook-Electronic Devices*. There, *sexting* encompasses the term *indecent visual depiction* as defined by 705 ILCS 405/3-40 (Juvenile Court Act purposes), and *non-consensual dissemination of private sexual images* as defined by 720 ILCS 5/11-23.5 (Criminal Code of 2012 purposes). It defines indecent visual depiction as a depiction or portrayal in any pose, posture, or setting involving a lewd exhibition of the buttocks, or if such person is a female, a fully or partially developed breast of the person. However, a district may create or have another definition of sexting that may or may not encompass these statutory terms and definitions.

<sup>8</sup> Morse v. Frederick, 551 U.S. 393 (2007).

inclusion of material from outside sources or the citation to such sources as long as the material to be distributed or accessed is primarily prepared by students.<sup>9</sup>

Accessing or distributing *on-campus* includes accessing or distributing on school property or at school-related activities. A student engages in gross disobedience and misconduct and may be disciplined for: (1) accessing or distributing forbidden material, or (2) for writing, creating, or publishing such material intending for it to be accessed or distributed at school.<sup>10</sup>

#### Non-School Sponsored Publications Accessed or Distributed Off-Campus<sup>11</sup>

A student engages in gross disobedience and misconduct and may be disciplined for creating and/or distributing a publication that: (1) causes a substantial disruption or a foreseeable risk of a substantial disruption to school operations, or (2) interferes with the rights of other students or staff members.

#### Bullying and Cyberbullying<sup>12</sup>

The Superintendent or designee shall treat behavior that is *bullying* and/or *cyberbullying* according to Board policy 7:180, *Prevention of and Response to Bullying, Intimidation, and Harassment*, in addition to any response required by this policy.

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The footnotes are not intended to be part of the adopted policy; they should be removed before the policy is adopted.

<sup>9</sup> Optional. The rationale for this section is that prior to high school, students have not developed sufficient experience and education in critical review of external resource materials. Accordingly, in order to accomplish the district's educational mission, yet allow students the opportunity to communicate with their fellow students, widespread student distribution of written material in elementary and middle school may be limited to material primarily prepared by the students themselves. Hedges v. Wauconda Cmty. Unit Sch. Dist. No. 118, 9 F.3d 1295 (7th Cir. 1993); Leal v. Everett Public Schs., 88 F.Supp.3d 1220 (W.D.Wa. 2015).

<sup>10</sup> For example, a school district may discipline a student for writing an underground newspaper, and distributing it at school, that contained an article on how to hack into the school's computer. School authorities could reasonably believe the article would be disruptive. Boucher v. Sch. Bd. of the School Dist. of Greenfield, 134 F.3d 821 (7th Cir. 1998).

<sup>11</sup> Optional. School officials must proceed carefully before disciplining a student for out-of-school conduct. A school's authority over off-campus expression is much more limited than expression on school grounds. Many decisions address the tension between public schools' authority to discipline students for off-campus speech and students' right to free speech. However, school officials may generally: (1) remove a student from extracurricular activities for failure to follow an extracurricular conduct code (see 7:240, *Conduct Code for Participants in Extracurricular Activities*); and (2) suspend or expel a student from school attendance when the student's expression causes substantial disruption to school operations, as provided in this policy (see also 7:190, *Student Behavior*). For example, see:

J.S. v. Blue Mountain Sch. Dist., 650 F.3d 915 (3rd Cir. 2011), combined with Layshock v. Hermitage Sch. Dist., 650 F.3d 205 (3d Cir. 2011), *cert. denied* (2012) (schools may not punish students for their off-campus indecent and offensive parodies of their principals, absent a showing that the parodies caused, or could cause, substantial disruption in the schools).

Kowalski v. Berkeley Cnty. Sch., 652 F.3d 565 (4th Cir. 2011), *cert. denied* (2012) (upheld a student's suspension for off-campus posts to a social network site that defamed a classmate because it was foreseeable that the expression would reach the school and the student's conduct involved substantial disruption and interference with the work and discipline of the school).

The statutory definition of *bullying* includes *cyberbullying* (105 ILCS 5/27-23.7); these terms are defined in 7:180, *Prevention of and Response to Bullying, Intimidation, and Harassment*. See also f/n 6 and 7:190-AP6, *Guidelines for Investigating Sexting Allegations*.

Consult the board attorney for guidance concerning off-campus speech. Every situation is fact specific and the issues require careful evaluation.

<sup>12</sup> 105 ILCS 5/27-23.7.

LEGAL REF.: 105 ILCS 5/27-23.7.  
Hazelwood v. Kuhlmeier, 484 U.S. 260 (1988).  
Tinker v. Des Moines Indep. Cmty. Sch. Dist., 393 U.S. 503 (1969).  
Hedges v. Wauconda Cmty. Unit Sch. Dist. No. 118, 9 F.3d 1295 (7th Cir. 1993).

CROSS REF.: 6:235 (Access to Electronic Networks), 7:180 (Prevention of and Response to Bullying, Intimidation, and Harassment), 8:25 (Advertising and Distributing Materials in School Provided by Non-School Related Entities)

## Students

### **Restrictions on Publications; High Schools 1**

[For high school or unit districts only]

#### **Definitions 2**

Libel means the willful or negligent publication of provably false and unprivileged statements of fact that do demonstrable harm to a living person's reputation.

Obscene means lewd; impure; indecent; calculated to shock the moral sense of humans by a disregard of chastity or modesty. Objectionable or offensive to accepted standards of decency.

School official means a Building Principal or designee.

School-sponsored media means any material that is prepared, substantially written, published, or broadcast by a student journalist, distributed or generally made available to members of the student body, and prepared under the direction of a student media advisor. It does not include media intended for distribution or transmission solely in the classroom in which the media is produced.

Slander means the speaking of false statements of fact that seriously harm a living person's reputation.

Student journalist means a public high school student who gathers, compiles, writes, edits, photographs, records, or prepares information for dissemination in school-sponsored media.

Student media adviser<sup>3</sup> means an individual employed, appointed, or designated by the District to supervise or provide instruction relating to school-sponsored media.

#### **School-Sponsored Media**

School-sponsored publications, productions, and websites are governed by the Speech Rights of Student Journalists Act and the School Board policies, and student journalists are responsible for determining the news, opinion, feature, and advertising content of those publications, productions, and websites.<sup>4</sup>

The footnotes are not intended to be part of the adopted policy; they should be removed before the policy is adopted.

<sup>1</sup> State or federal law controls this policy's content. This policy concerns an area in which the law is unsettled.

<sup>2</sup> Speech Rights of Student Journalists Act, 105 ILCS 80/5--added by P.A. 99-578. See also *Black's Law Dictionary*, 11th ed. 2019.

<sup>3</sup> *Id.* uses *adviser*, not *advisor*. *Adviser* is used throughout this policy for consistency with the statute.

<sup>4</sup> *Id.* With some exceptions, the Act effectively restricts school authorities' power to reasonably regulate student expression in high school-sponsored publications for education-related reasons under *Hazelwood School District v. Kuhlmeier*, 484 U.S. 260, 408 S.Ct. 562 (1988). --See the last sentence in ¶n 64, below.

Student journalists must: <sup>5</sup>

1. Make decisions based upon news value and guided by the Code of Ethics provided by the Society of Professional Journalists, National Scholastic Press Association, Journalism Education Association, or other relevant group;
2. Produce media based upon professional standards of accuracy, objectivity, and fairness;
3. Review material to improve sentence structure, grammar, spelling, and punctuation;
4. Check and verify all facts and verify the accuracy of all quotations;
5. In the use of personal opinions, editorial statements, and/or letters to the editor, provide opportunity and space for the expression of differing opinions within the same media to align with the District's media literacy curriculum mandate in 105 ILCS 5/27-20.08; and
6. Include an author's name with any personal opinions and editorial statements, if appropriate.

Student journalists may not create, produce, or distribute school-sponsored media that: <sup>6</sup>

1. Is libelous, slanderous, or obscene;
2. Constitutes an unwarranted invasion of privacy;
3. Violates federal or State law, including the Constitutional rights of third parties;<sup>7</sup> or
4. Incites students to: <sup>8</sup>

The footnotes are not intended to be part of the adopted policy; they should be removed before the policy is adopted.

<sup>5</sup> Consult the board attorney about text that balances the student journalists' rights to have control of their media publications with the board's interests in (a) ensuring differing opinions are published, (b) this Act, and (c) providing student journalists opportunities to apply the upcoming Illinois media literacy curriculum mandates.

Number 5 in the list is intended to align with the *media literacy* curriculum mandate for students in grades 9 through 12 that starts in the fall of 2022 and is listed at 105 ILCS 5/27-20.08, added by P.A. 102-55, and sample policy 6:60. *Curriculum Content. Media literacy* means the ability to access, analyze, evaluate, create, and communicate using a variety of objective forms, including, but not limited to, print, visual, audio, interactive, and digital texts. Id. *Media literacy* instruction must include a component on social responsibility and civics that includes "[s]uggesting a plan of action in the class, school, or community to engage others in a respectful, thoughtful, and inclusive dialogue over a specific issue using facts and reason." Providing opportunity and space for expression of differing opinions in media aligns with and promotes this inclusive dialog.

For boards that provide student journalists more flexibility, make the following three edits: (1) replace "must" with "shall strive to," (2) amend number 5 to read: "In the use of personal opinions, editorial statements, and/or letters to the editor, determine the need to provide opportunity and space for the expression of differing opinions within the same media to align with the District's media literacy curriculum mandate in 105 ILCS 5/27-20.08", and (3) delete number 6.

<sup>6</sup> 105 ILCS 80/15—~~added by P.A. 99-678~~. A school board may retain control of material in student publications that falls within the listed exceptions. Consult the board attorney about how much control of high school student publications school officials may retain in the context of the Speech Rights of Student Journalists Act.

<sup>7</sup> 105 ILCS 80/15—~~added by P.A. 99-678~~.

Delete "~~including Constitutional rights of third parties~~" if the board wants only the word-for-word statutory language in its policy. Because the Constitutional rights of third parties are common controversies within the context of student-sponsored publications, the purpose of this additional text is to underscore that Constitutional rights of third parties are included under the exception of State and federal law.

While 105 ILCS 80/20 limits liability of school districts for a student journalist's expression, except in cases of willful or wanton misconduct, some attorneys believe it may still be possible that a third party may seek to hold the district responsible for the student journalists' acts. See *Yeo v. Town of Lexington*, 131 F.3d 241 (1<sup>st</sup> Cir. 1997), *cert. denied* (1998). See the second sentence in f/n 1, above.

- a. Commit an unlawful act;
- b. Violate any of the District's policies—~~including but not limited to (1) its educational mission in policies 1:30, *School District Philosophy* and 6:10, *Educational Philosophy and Objectives*, and (2) speech that is socially inappropriate or inappropriate due to the maturity of the students pursuant to policies 6:65, *Student Social and Emotional Development*, and 7:180, *Prevention of and Response to Bullying, Intimidation, and Harassment*;~~ or
- c. Materially and substantially disrupt the orderly operation of the school.

~~All school sponsored media shall comply with the ethics and rules of responsible journalism. The District will not engage in prior restraint of material prepared by student journalists for school-sponsored media, unless the material ~~Text that fits into numbers one of the four prohibited categories listed (1) through four (4) above, in which case will not be tolerated and school officials the Superintendent or designee and/or student media advisers may review, edit, and or delete such media material before publication or distribution of the media.~~ <sup>2</sup>~~

Commented [KAS1]: This sentence is now addressed above.

~~The author's name will accompany personal opinions and editorial statements. An opportunity for the expression of differing opinions from those published produced will be provided within the same media.~~

Commented [DJ2]: These statements are now accounted for above, following the fn 5 option.

No expression made by students in the exercise of freedom of speech or freedom of the press under this policy shall be deemed to be an expression of the District or an expression of Board policy.<sup>10</sup>

The footnotes are not intended to be part of the adopted policy; they should be removed before the policy is adopted.

<sup>8</sup> 105 ILCS 80/15, ~~added by P.A. 99-678~~ broadly allows school boards to limit speech that would incite violation of any policy. This policy language follows the statute. Policies most often needing assessment are those that involve a district's educational mission and philosophy and social appropriateness language for student body's age(s)/maturity. School officials must be careful to understand that that law is written that student journalists using media to *incite* other students to act a certain way is the exception. ~~This e) additional text may be added to~~ (1) underscores that 105 ILCS 80/15 does not authorize or protect expression that *incites* students to violate board policies, and (2) reminds students and the community that school officials have many legal obligations to implement and enforce specific board policies and ensure school environments are safe and conducive to learning. See the second sentence in fn 1, above.

While ~~105 ILCS 80/Section 20 of the Act~~ limits liability of school districts for a student journalist's expression, except in cases of willful or wanton misconduct, discuss with the board attorney how to balance the rights of student journalists under this law and the other policy implementation duties that face school officials with board policies and laws.

For boards that ~~only want to provide additional text to the word-for-word statutory language in their policies, add to item 4.b~~ delete:

~~, including but not limited to (1) its educational mission in policies 1:30, *School District Philosophy* and 6:10, *Educational Philosophy and Objectives*, and (2) speech that is socially inappropriate or inappropriate due to the maturity of the students pursuant to policies 6:65, *Student Social and Emotional Development* and 7:180 *Prevention of and Response to Bullying, Intimidation, and Harassment*.~~

<sup>9</sup> 105 ILCS 80/10 requires school officials to show justification without undue delay before limiting student expression. For boards that want the student media advisor to provide student journalists with written justification prior to limiting materials, insert the following sentence to end the paragraph:

~~In such cases, the student media adviser will promptly provide the student journalist with a written justification prior to limiting the material.~~

<sup>10</sup> 105 ILCS 80/20, ~~added by P.A. 99-678~~.

### Non-School Sponsored Publications Accessed or Distributed On Campus <sup>11</sup>

For purposes of this section and the following section, a *publication* includes, without limitation: (1) written or electronic print material, (2) audio-visual material on any medium including electromagnetic media (e.g., images, [digital files](#)~~MP3 files~~, flash memory, etc.), or combinations of these whether off-line (e.g., a printed book, [digital files](#)~~CD-ROM~~, etc.) or online (e.g., any website, social networking site, database for information retrieval, etc.), or (3) information or material on electronic devices (e.g., ~~text data~~ or voice messages delivered by cell phones, tablets, and other hand-held devices). <sup>12</sup>

Creating, distributing, and/or accessing non-school sponsored publications shall occur at a time and place and in a manner that will not cause disruption, be coercive, or result in the perception that the distribution or the publication is endorsed by the School District.

Students are prohibited from creating, distributing, and/or accessing at school any publication that:

1. Will cause a material and substantial disruption of the proper and orderly operation and discipline of the school or school activities; <sup>13</sup>
2. Violates the rights of others, including but not limited to material that is libelous, slanderous or obscene, ~~or~~ invades the privacy of others, or infringes on a copyright; <sup>14</sup>
3. Is socially inappropriate or inappropriate due to maturity level of the students, including but not limited to material that is obscene, pornographic, or pervasively lewd and vulgar, contains

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<sup>11</sup> Non-school sponsored publications, like underground newspapers, cannot be subject to the same degree of regulation by school authorities as school-sponsored publications. Absent a showing of material and substantial interference with the requirements of good discipline, students retain their First Amendment free speech rights. The federal circuits disagree on whether school authorities may require prior approval before a student is allowed to distribute non-school-sponsored publications. The Seventh Circuit, which covers Illinois, refused to approve prior approval regulations. [Fujiishima v. Board of Education](#), 460 F.2d 1355 (7<sup>th</sup> Cir.: 1972), but see [Baughman v. Freienmuth](#), 478 F.2d 1345 (4<sup>th</sup> Cir.: 1973). Non-school sponsored web sites should be regulated in the same manner as non-school sponsored publications.

A school policy prohibiting junior high students from distributing written material at school that is prepared by non-students was upheld in [Hedges v. Wauconda County Community Unit Sch. Dist. No. 118](#), 9 F.3d 1295 (7<sup>th</sup> Cir. 1993).

<sup>12</sup> The definition of *publication* is optional and may be amended. This sample definition uses broad and generally understood terms to keep the policy current with rapid technology changes.

<sup>13</sup> For example, a school district may discipline a student for writing an underground newspaper, and distributing it at school, that contained an article on how to hack into the school's computer. School authorities could reasonably believe the article would be disruptive. [Boucher v. School Board of the School Dist. #1 of Greenfield](#), 134 F.3d 821 (7<sup>th</sup> Cir.: 1998).

<sup>14</sup> School officials may not regulate student speech based upon their fear or apprehension of disturbance. Many decisions address the tension between students' right to free speech and restrictions of it on campus. See, for example:

[Brandt v. Board of Educ. of City of Chicago](#), 480 F.3d 460 (7<sup>th</sup> Cir.: 2007), *cert. denied* (2007) (school did not violate students' First Amendment rights when it disciplined students for wearing T-shirts with a "talentless infantile drawing" that school officials reasonably found to undermine the educational atmosphere).

[Nuxoll v. Indian Prairie Sch. Dist. #204](#), 523 F.3d 668 (7<sup>th</sup> Cir.: 2008) (holding that the student was likely to succeed on merits of his claim that the school would violate his speech rights by preventing him from wearing T-shirt with slogan "Be Happy, Not Gay").

[I.C. v. Beverly Hills Unified Sch. Dist.](#), 593 F.3d 249 (3<sup>rd</sup> Cir. 2010) (discussed the "rights of others to be secure and let alone" argument from [Tinker](#), but found that the school district violated a student's First Amendment rights for disciplining her when she posted a video clip on a website).

[B.H. v. Easton Area Sch. Dist. #121](#), 725 F.3d 293 (3<sup>rd</sup> Cir 2013), *cert. denied* (2014) (school violated students' free speech rights by banning the wearing of cancer awareness bracelets containing the caption *I #boobies*).

indecent and vulgar language, or *sexting* as defined by School Board policy and Student Handbooks; <sup>15</sup>

4. Is reasonably viewed as promoting illegal drug use; <sup>16</sup>
5. Is distributed in kindergarten through eighth grade and is primarily prepared by non-students, unless it is being used for school purposes. However, material from outside sources or the citation to such sources may be allowed, as long as the material to be distributed or accessed is primarily prepared by students; <sup>17</sup> or
6. Incites students to violate any Board policies.

Accessing or distributing *on-campus* includes accessing or distributing on school property or at school-related activities. A student engages in gross disobedience and misconduct and may be disciplined for: (1) accessing or distributing forbidden material, or (2) for writing, creating, or publishing such material intending for it to be accessed or distributed at school. <sup>18</sup>

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<sup>15</sup> Be sure that the board's definitions for *sexting* in this policy align with other definitions used throughout the board's policy manual. For example, see the discussion within sample administrative procedure 7:190-AP5, *Student Handbook-Electronic Devices*. There, *sexting* encompasses the term *indecent visual depiction* as defined by 705 ILCS 405/3-40 (Juvenile Court Act purposes), and *non-consensual dissemination of private sexual images* as defined by 720 ILCS 5/11-23.5 (Criminal Code of 2012 purposes). It defines indecent visual depiction as a depiction or portrayal in any pose, posture, or setting involving a lewd exhibition of the buttocks, or if such person is a female, a fully or partially developed breast of the person. However, a district may create or have another definition of *sexting* that may or may not encompass these statutory terms and definitions.

<sup>16</sup> *Morse v. Frederick*, 551 U.S. 393 (2007).

<sup>17</sup> Optional. The rationale for this section is that prior to high school, students have not developed sufficient experience and education in critical review of external resource materials. Accordingly, in order to accomplish the district's educational mission, yet allow students the opportunity to communicate with their fellow students, widespread student distribution of written material in elementary and middle school may be limited to material primarily prepared by the students themselves. *Hedges v. Wauconda Community Unit Sch. Dist. No. 118*, 9 F.3d 1295 (7th Cir. 1993); *Leal v. Everett Pub. Sch. Dist.*, 88 F.Supp.3d 1220, 2015 WL 728651 (W.D.Wa. 2015).

<sup>18</sup> For example, a school district may discipline a student for writing an underground newspaper, and distributing it at school, that contained an article on how to hack into the school's computer. School authorities could reasonably believe the article would be disruptive. *Boucher v. Sch. Bd. of the Sch. Dist. of Greenfield*, 134 F.3d 821 (7th Cir. 1998).

### Non-School Sponsored Publications Accessed or Distributed Off-Campus<sup>19</sup>

A student engages in gross disobedience and misconduct and may be disciplined for creating and/or distributing a publication that: (1) causes a substantial disruption or a foreseeable risk of a substantial disruption to school operations, or (2) interferes with the rights of other students or staff members.

### Bullying and Cyberbullying<sup>20</sup>

The Superintendent or designee shall treat behavior that is *bullying* and/or *cyberbullying* according to Board policy 7:180, *Prevention of and Response to Bullying, Intimidation, and Harassment*, in addition to any response required by this policy.

LEGAL REF.: 105 ILCS 5/27-20.08 and 5/27-23.7.  
~~Speech Rights of Student Journalists Act.~~ 105 ILCS 80/. Speech Rights of Student Journalists Act.  
Tinker v. Des Moines Indep. Cmty. Sch. Dist., 393 U.S. 503 (1969).  
Hazelwood v. Kuhlmeier, 408 S.Ct. 562-484 U.S. 260 (1988).  
Morse v. Frederick, 551 U.S. 393 (2007).  
Hedges v. Wauconda Cmty. Community Unit Sch. Dist. No. 118, 9 F.3d 1295 (7th Cir. 1993).  
~~Tinker v. Des Moines Indep. Cmty. Sch. Dist., 89 S.Ct. 733 (1969).~~  
~~Morse v. Frederick, 551 U.S. 393 (2007).~~

CROSS REF.: 1:30 (School District Philosophy), 6:10 (Educational Philosophy and Objectives), 6:65 (Student Social and Emotional Development), 6:235 (Access to Electronic Networks), 7:180 (Prevention of and Response to Bullying, Intimidation, and Harassment), 8:25 (Advertising and Distributing Materials in Schools Provided by Non-School Related Entities)

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<sup>19</sup> Optional. School officials must proceed carefully before disciplining a student for out-of-school conduct. A school's authority over off-campus expression is much more limited than expression on school grounds. Many decisions address the tension between public schools' authority to discipline students for off-campus speech and students' right to free speech. However, school officials may generally: (1) remove a student from extracurricular activities when the conduct code for participation requires students to conduct themselves at all times as good citizens and exemplars of the school (see 7:240, *Conduct Code for Participants in Extracurricular Activities*); and (2) suspend or expel a student from school attendance when the student's expression causes substantial disruption to school operations, as provided in this policy (see also 7:190, *Student Behavior*). For example, see:

I.S. v. Blue Mountain Sch. Dist., 650 F.3d 915 (3rd Cir. 2011), combined with Lavshock v. Hermitage Sch. Dist., 650 F.3d 205 (3rd Cir. 2011), cert. denied (2012) (schools may not punish students for their off-campus indecent and offensive parodies of their principals, absent a showing that the parodies caused, or could cause, substantial disruption in the schools).

Kowalski v. Berkeley Cnty. Sch., 652 F.3d 565 (4th Cir. 2011), cert. denied (2012) (upheld a student's suspension for off-campus posts to a social network site that defamed a classmate because it was foreseeable that the expression would reach the school and the student's conduct involved substantial disruption and interference with the work and discipline of the school).

The statutory definition of *bullying* includes *cyberbullying* (105 ILCS 5/27-23.7); these terms are defined in 7:180, *Prevention of and Response to Bullying, Intimidation, and Harassment* (see also fn 6 and 7:190-AP6, *Guidelines for Investigating Sexting Allegations*).

Consult the board attorney for guidance concerning off-campus speech. Every situation is fact specific and the issues require careful evaluation.

<sup>20</sup> 105 ILCS 5/27-23.7.

## Students

### Student Records 1

School student records are confidential. Information from them shall not be released other than as provided by law.<sup>2</sup> A school student record is any writing or other recorded information concerning a

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<sup>1</sup> State law requires school boards to adopt a policy and procedures implementing the Illinois School Student Records Act (ISSRA) and specifying the content of school student records. 23 Ill.Admin.Code §§375.100 and 226.740. Both State and federal law address school student records. See the federal Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. §1232g) implemented by federal rules at 34 C.F.R. Part 99) and ISSRA (105 ILCS 10/, amended by P.A.s 102-557 and 101-515 , implemented by ISBE rules at 23 Ill.Admin.Code Part 375).

In addition, the U.S. Dept. of Education's (DOE) *Protecting Student Privacy* webpage, a service of the Privacy Technical Assistance Center (PTAC) and the Student Privacy Policy Office, is a *one-stop* resource for education stakeholders to learn about student privacy and confidentiality, including data privacy and security practices related to student-level longitudinal data systems, at: [www.studentprivacy.ed.gov/](http://www.studentprivacy.ed.gov/). PTAC published a guide for school officials titled *Protecting Student Privacy While Using Online Educational Services: Requirements and Best Practices* (2014), at: [www.studentprivacy.ed.gov/resources/protecting-student-privacy-while-using-online-educational-services-requirements-and-best](http://www.studentprivacy.ed.gov/resources/protecting-student-privacy-while-using-online-educational-services-requirements-and-best).

The DOE also issued a summary of resources on FERPA and virtual learning (2020) at: [www.studentprivacy.ed.gov/resources/ferpa-and-virtual-learning](http://www.studentprivacy.ed.gov/resources/ferpa-and-virtual-learning). **Boards that wish to enter into cloud computing and other operator contracts must comply with the Student Online Personal Protection Act (SOPPA), 105 ILCS 85/, amended by P.A. 101-516, and should contact the board attorney for implementation guidance.** See also f/n 2, item #7, below.

Confusion persists regarding the interplay between the FERPA and the Health Insurance Portability and Accountability Act of 1996 (HIPAA) (Pub. L. 104-191). The Privacy Rule implementing HIPAA, issued by the U.S. Dept. of Health and Human Services (DHS), addresses the disclosure of individuals' health information by *covered entities*. 45 C.F.R. Parts 160 and 164, Subparts A and E. Generally speaking, a school district becomes a *covered entity*, and must comply with applicable sections in the Privacy Rule, if it provides health care and transmits health information in electronic form in connection with transactions. However, *educational records* as defined by FERPA are excluded from HIPAA's definition of *protected health information*. 45 C.F.R. §160.103. In most cases this exception relieves school districts of complying with burdensome privacy notices and authorization forms. In December 2019, DHS and DOE issued an update to its *Joint Guidance on the Application of FERPA and HIPAA to Student Health Records*, at:

[www.studentprivacy.ed.gov/resources/joint-guidance-application-ferpa-and-hipaa-student-health-records](http://www.studentprivacy.ed.gov/resources/joint-guidance-application-ferpa-and-hipaa-student-health-records).

The board attorney should be consulted on all HIPAA-related questions.

<sup>2</sup> A plethora of statutory and decisional law protects student records. Aside from the laws identified in f/n 1, other laws protecting student records include:

1. Schools may not provide a student's *personal information* to a business organization or financial institution that issues credit or debit cards. 105 ILCS 5/10-20.38.
2. Schools may not sell personal information concerning a child under the age of 16, with a few exceptions, unless a parent has consented. Children's Privacy Protection and Parental Empowerment Act, 325 ILCS 17/.
3. The release of confidential information given by a student to a therapist, e.g., school counselor or psychologist, is governed by the Mental Health and Developmental Disabilities Confidentiality Act. 740 ILCS 110/.
4. Schools must keep a sex offender registration form received from law enforcement separately from school student records maintained on behalf of the juvenile sex offender. 730 ILCS 152/121.
5. Divorced or separated parents/guardians with and without *parental responsibility* (formerly custody) are both permitted to inspect and copy the student's school student records. The Ill. Marriage and Dissolution of Marriage Act (IMDMA), 750 ILCS 5/602.11.
6. Schools may not provide a parent/guardian access to his or her child's school records if the parent is prohibited by an order of protection from inspecting or obtaining such records pursuant to the Domestic Violence Act of 1986 or the Code of Criminal Procedure of 1963. *Id.*

student and by which a student may be identified individually that is maintained by a school or at its direction by a school employee, regardless of how or where the information is stored, except as provided in State or federal law as summarized below: 3

1. Records kept in a staff member's sole possession.
2. Records maintained by law enforcement officers working in the school. 4
3. Video and other electronic recordings (including without limitation, electronic recordings made on school buses<sup>5</sup>) that are created in part for law enforcement, security, or safety reasons or purposes. The content of these recordings may become part of a school student record to the extent school officials create, use, and maintain this content, or it becomes available to them by law enforcement officials, for disciplinary or special education purposes regarding a particular student.
4. Any information, either written or oral, received from law enforcement officials concerning a student less than the age of 18 years who has been arrested or taken into custody. 6

State and federal law grants students and parents/guardians certain rights, including the right to inspect, copy<sup>7</sup>, and challenge school student records.<sup>8</sup> The information contained in school student

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7. SOPPA (105 ILCS 85/, amended by P.A. 101-516) addresses a school district's obligations related to *covered information* of students and contracts with educational technology operators. In some instances, covered information as defined under SOPPA may also qualify as education records under FERPA and school student records under ISSRA. See policy 7:345, *Use of Educational Technologies; Student Data Privacy and Security*, and administrative procedure 7:345-AP, *Use of Educational Technologies; Student Data Privacy and Security*, for a description of SOPPA obligations.

**Note:** Nos. 5 and 6 above may conflict with FERPA in that they restrict a parent/guardian's right to access his or her child's school records more than is expressly permitted by FERPA. 20 U.S.C. §1232g(a)(1)(A), (B); 34 C.F.R. §99.10(a). **Consult the board attorney for guidance.**

Allowing students to grade each other's papers does not violate FERPA; such student work is not a *school record* until it is recorded by the teacher. *Owasso I.S.D. No. I-011 v. Falvo*, 534 U.S. 426 (2002). School student records are *per se* prohibited from disclosure; a district is under no obligation to redact them. *Chicago Tribune Co. v. Chicago Bd. of Educ.*, 332 Ill.App.3d 60 (1st Dist. 2002).

<sup>3</sup> 20 U.S.C. §1232g(a)(4); 34 C.F.R. §99.3; 105 ILCS 10/2(d); 705 ILCS 405/1-7 and 5-905; 23 Ill.Admin.Code §375.10. Rather than listing the exceptions in the policy, a school board may choose to end the sentence after the proviso "except as provided in State or federal law."

<sup>4</sup> For a helpful resource, see f/n 1 in policy 7:150, *Agency and Police Interviews*.

<sup>5</sup> For an explanation, see footnotes in policy 7:220, *Bus Conduct*.

<sup>6</sup> Many lawyers believe that once these records are received by a school, they are protected as *education records* under FERPA. Consult the board attorney for advice.

<sup>7</sup> 105 ILCS 10/5(a).

105 ILCS 10/5(c) requires that a parent's or student's request to inspect and copy records be granted no later than 10 business days (previously 15 school days) after the date of receipt of such a request by the official records custodian.

105 ILCS 10/5(c-5) outlines how a school district may extend the 10 business day timeline for response by not more than five business days from the original due date if one or more of these six reasons applies:

1. The requested records are stored in whole or in part at other locations than the office having charge of the requested records;
2. The request required the collection of a substantial number of specified records;
3. The request is couched in categorical terms and requires an extensive search for the records responsive to it;
4. The requested records have not been located in the course of routine search and additional efforts are being made to locate them;
5. The request for records cannot be complied with by the school district within the time limits prescribed by subsection (c) without unduly burdening or interfering with the operations of the school district; or
6. There is a need for consultation, which shall be conducted with all practicable speed, with another public body or school district among two or more components of a public body or school district having a substantial interest in the determination or in the subject matter of the request.

records shall be kept current, accurate, clear, and relevant. All information maintained concerning a student receiving special education services shall be directly related to the provision of services to that child.<sup>9</sup> The District may release directory information as permitted by law, but a parent/guardian shall have the right to opt-out of the release of directory information regarding his or her child.<sup>10</sup> The District will comply with State or federal law with regard to release of a student's school records, including, where applicable, without notice to, or the consent of, the student's parent/guardian or eligible student.<sup>11</sup> Upon request, the District discloses school student records without parent consent to the official records custodian of another school in which a student has enrolled or intends to enroll, as well as to any other person as specifically required or permitted by State or federal law. <sup>12</sup>

The Superintendent shall fully implement this policy and designate an *official records custodian* for each school who shall maintain and protect the confidentiality of school student records, inform staff

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The person making the request and the school district may also agree in writing to extend the timeline for compliance for a period to be determined by the parties. *Id.*

<sup>8</sup> 23 Ill.Admin.Code §375.10 provides that districts may, through board policy, allow scores received on college entrance examinations to be included on a student's academic transcript if that inclusion is requested in writing by a student, parent or person who enrolled the student. If the board of a unit or high school district wants to allow this, insert:

A student or the student's parent/guardian may request, in writing, that scores received on college entrance examinations be included on the student's academic transcript.

**Note:** Though 23 Ill.Admin.Code §375.10 uses the phrase "student, parent or person who enrolled the student," student records rights under ISSRA and FERPA attach to *eligible students* and their parents/guardians, not to "a person who enrolled the student" (though that person is typically a parent or guardian).

If a board allows for the inclusion of college entrance examination scores on academic transcripts, amend the district's notification to parents/guardians and students of their school student records rights with the process for requesting the inclusion. 23 Ill.Admin.Code §375.30(d)(5). See 7:340-AP1, E1, *Notice to Parents/Guardians and Students of Their Rights Concerning a Student's School Records*, for an example.

<sup>9</sup> 23 Ill.Admin.Code §226.740(a).

<sup>10</sup> This sentence is required if the board allows schools to release student directory information. 20 U.S.C. §1232g; 23 Ill.Admin.Code §375.80; 34 C.F.R. §99.37. There is at least one instance in Illinois in which parents were upset that their school district released students' names and addresses pursuant to a Freedom of Information Act (FOIA) request. FOIA contains an exemption for home addresses. Many lawyers, however, say that a district must release student information pursuant to a FOIA request when each of the following has occurred: the FOIA request seeks information that is included in the district's definition of student directory information, the district notified parents that it releases directory information, and the parents did not opt out of allowing directory information to be released concerning their child. An opinion from the Ill. Public Access Counselor supports that a district may not rely on the FOIA exemption for home addresses. PAO 12-3.

The **PRESS** policy does not identify the components of *directory information*, leaving that task to implementing material. Boards may want to discuss this quagmire with the superintendent knowing that there are good reasons to release directory information, e.g., to allow the district to publish information about specific students, and good reasons to not release directory information, e.g., to avoid releasing names and addresses pursuant to a FOIA request.

<sup>23</sup> Ill.Admin.Code §375.80(a)(1) no longer includes *gender* as information which may be designated as directory information. This is consistent with attorneys' views that Illinois' past practice of including *gender* within directory information may have violated FERPA. FERPA regulations provide that directory information "means information contained in an education record of a student that would not generally be considered harmful or an invasion of privacy if disclosed" and it "includes, but is not limited to, the student's name; address; telephone listing; electronic mail address; photograph; date and place of birth; major field of study; grade level; enrollment status (e.g., undergraduate or graduate, full-time or part-time); dates of attendance; participation in officially recognized activities and sports; weight and height of members of athletic teams; degrees, honors, and awards received; and the most recent educational agency or institution attended." 34 C.F.R. §99.3. Though FERPA regulations do not explicitly preclude the designation of *gender* as directory information, DOE guidance has consistently advised schools not to disclose a student's sex as directory information because it would be considered harmful or an invasion of privacy. See *Letter to Institutions of Postsecondary Education*, DOE Family Policy Compliance Office (September 2009). Consult the board attorney about the practical implementation of this issue. Some attorneys, for example, believe photos of the "Girls Volleyball Team" may contradict DOE guidance.

<sup>11</sup> 20 U.S.C. §1232g(j), as added by Sec. 507 of the U.S.A. Patriot Act of 2001.

<sup>12</sup> 34 C.F.R. §99.31; 105 ILCS 10/6, amended by P.A. 102-557.

members of this policy, and inform students and their parents/guardians of their rights regarding school student records. 13

#### Student Biometric Information Collection 14

The Superintendent or designee may recommend a student biometric information collection system solely for the purposes of identification and fraud prevention.<sup>15</sup> Such recommendation shall be consistent with budget requirements and in compliance with State law. Biometric information means any information that is collected through an identification process for individuals based on their unique behavioral or physiological characteristics, including fingerprint, hand geometry, voice, or facial recognition or iris or retinal scans.

Before collecting student biometric information, the District shall obtain written permission from the person having legal custody/parental responsibility<sup>16</sup> or the student (if over the age of 18).<sup>17</sup> Upon a student's 18th birthday, the District shall obtain written permission from the student to collect student biometric information.<sup>18</sup> Failure to provide written consent to collect biometric information shall not be the basis for refusal of any services otherwise available to a student.

All collected biometric information shall be stored and transmitted in a manner that protects it from disclosure. Sale, lease, or other disclosure of biometric information to another person or entity is strictly prohibited. 19

The District will discontinue use of a student's biometric information and destroy all collected biometric information within 30 days after: (1) the student graduates or withdraws from the School District, or (2) the District receives a written request to discontinue use of biometric information from

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13 Each school must have an *official records custodian*. 105 ILCS 10/4(a). Districts must notify students and parents/guardians of their rights concerning school student records. 105 ILCS 10/3; 105 ILCS 10/4, amended by P.A. 101-161; 23 Ill.Admin.Code §375.30; 34 C.F.R. §99.7. Comprehensive faculty and student handbooks can provide required notices, along with other important information, to recipients. Handbooks can be developed by the building principal, but should be reviewed and approved by the superintendent and board. See 7:340-AP1, E1, *Notice to Parents/Guardians and Students of Their Rights Concerning a Student's School Records*, and 7:340-AP1, *School Student Records*.

14 This program is optional; however, districts either wishing to implement such a program or districts that have already engaged in the collection of student biometric information must have a policy consistent with the requirements of 105 ILCS 5/10-20.40. This section restates the School Code's requirements for a student biometric information policy.

15 For districts already collecting biometric information, the following is an alternative:

The Superintendent or designee shall maintain a biometric screening program that is consistent with budget requirements and in compliance with State law.

16 Several statutes define legal custody and when a court may grant it; the term requires statutory construction/interpretation and school boards should discuss this issue with their attorney prior to adopting a policy on collection of student biometric information.

105 ILCS 5/10-20.40(b)(1) states the definition of legal custody is the same as the definition of legal custody for purposes of residency, payment of tuition, hearings, and criminal penalties at 105 ILCS 5/10-20.12b(2)(i)-(v).

The IMDMA, 750 ILCS 5/, changed the terms *custody* and *visitation* to *parental responsibility* and *parenting time*, respectively. It also requires a *parenting plan* that allocates: (1) significant decision-making responsibilities; and (2) each parent's right to access his or her child's school records. The IMDMA does not amend ISSRA or the School Code.

17 Based upon 105 ILCS 5/10-20.40, written permission is not required annually; it is valid until a request for discontinuation of the use of biometric information is received or until the student reaches the age of 18. See 7:340-AP1, E5, *Biometric Information Collection Authorization*.

18 Districts must reissue 7:340-AP1, E5, *Biometric Information Collection Authorization* to students turning 18 years of age during the school year. This is because all rights and privileges accorded to a parent under ISSRA become exclusively those of the student upon his or her 18th birthday, graduation from secondary school, marriage, or entry into military service, whichever comes first. 105 ILCS 10/2(g).

19 State law contains two exceptions: (1) the individual who has legal custody/parental responsibility of the student or the student (if over the age of 18) consents to the disclosure; and (2) the disclosure is required by court order. 105 ILCS 10-20.40(b)(5).

the person having legal custody/parental responsibility of the student or the student (if over the age of 18).<sup>20</sup> Requests to discontinue using a student's biometric information shall be forwarded to the Superintendent or designee.

The Superintendent or designee shall develop procedures to implement this policy consistent with State and federal law. <sup>21</sup>

- LEGAL REF.: 20 U.S.C. §1232g, Family Educational Rights and Privacy Act, implemented by 34 C.F.R. Part 99.  
50 ILCS 205/7, Local Records Act.  
105 ILCS 5/10-20.12b, 5/10-20.40, and 5/14-1.01 et seq.  
105 ILCS 10/, Ill. School Student Records Act.  
105 ILCS 85/, Student Online Personal Protection Act.  
325 ILCS 17/, Children's Privacy Protection and Parental Empowerment Act.  
750 ILCS 5/602.11, Ill. Marriage and Dissolution of Marriage Act.  
23 Ill.Admin.Code Parts 226 and 375.  
Owasso I.S.D. No. I-011 v. Falvo, 534 U.S. 426 (2002).  
Chicago Tribune Co. v. Chicago Bd. of Ed., 332 Ill.App.3d 60 (1st Dist. 2002).
- CROSS REF.: 5:100 (Staff Development Program), 5:130 (Responsibilities Concerning Internal Information), 7:15 (Student and Family Privacy Rights), 7:220 (Bus Conduct), 7:345 (Use of Educational Technologies; Student Data Privacy and Security)
- ADMIN. PROC.: 7:15-E (Notification to Parents of Family Privacy Rights), 7:340-AP1 (School Student Records), 7:340-AP1, E1 (Notice to Parents/Guardians and Students of Their Rights Concerning a Student's School Records), 7:340-AP1, E3 (Letter to Parents and Eligible Students Concerning Military Recruiters and Postsecondary Institutions Receiving Student Directory Information), 7:340-AP1, E4 (Frequently Asked Questions Regarding Military Recruiter Access to Students and Student Information, 7:340-AP1, E5 (Biometric Information Collection Authorization), 7:340-AP2 (Storage and Destruction of School Student Records), 7:340-AP2, E1 (Letter Containing Schedule for Destruction of School Student Records)

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The footnotes are not intended to be part of the adopted policy; they should be removed before the policy is adopted.

<sup>20</sup> 105 ILCS 5/10-20.40(d). No notification to or approval from the district's local records commission, pursuant to the Local Records Act, is required to destroy student biometric information. See *f/n 15* for a discussion about the terms *custody* and *parental responsibility*.

<sup>21</sup> Whether the student biometric information is an education record under FERPA or falls under an exception to an education record under FERPA is an issue about which school boards should consult their board attorney. Protected Health Information under the DHS's interpretations of HIPAA excludes education records covered by FERPA, and thus HIPAA requirements are not expected to be triggered by districts collecting student biometric information. However, before implementing policies and procedures to collect student biometric information, a board should discuss these issues with the board attorney.

## Students

### Use of Educational Technologies; Student Data Privacy and Security 1

Educational technologies used in the District shall further the objectives of the District's educational program, as set forth in Board policy 6:10, *Educational Philosophy and Objectives*, align with the curriculum criteria in policy 6:40, *Curriculum Development*, and/or support efficient District operations. The Superintendent shall ensure that the use of educational technologies in the District meets the above criteria.

The District and/or vendors under its control may need to collect and maintain data that personally identifies students in order to use certain educational technologies for the benefit of student learning or District operations.

Federal and State law govern the protection of student data, including school student records and/or *covered information*.<sup>2</sup> The sale, rental, lease, or trading of any school student records or covered information by the District is prohibited.<sup>3</sup> Protecting such information is important for legal

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<sup>1</sup> The Student Online Personal Protection Act (SOPPA) (105 ILCS 85/), amended by P.A. 101-516, controls the content of this policy. SOPPA specifically requires boards to adopt a policy for designating which district employees are authorized to enter into agreements with *operators* (see **Operator Contracts** subhead). SOPPA is the State law that governs how educational technology companies, schools, and the Ill. State Board of Education (ISBE) use and protect *covered information* of students. The amendments to SOPPA were intended to strengthen protections for online student data, in part by centralizing the vetting and contracting process within schools, and to give parents ready access to information about how their children's data is being used at school. SOPPA does not, however, require a district to obtain parent opt-in or separate consent for the use of online services or applications, nor is such consent required if the operator is acting as a *school official* pursuant to the delineated exception in the Family Educational Rights and Privacy Act's (FERPA)(20 U.S.C. §1232g) implementing regulations. See 34 C.F.R. §99.3(a). A helpful resource published by the Ill. Council of School Attorneys, *Answers to FAQs Regarding the Student Online Personal Protection Act and Public Schools*, is available to IASB members on IASB's website at: [www.iasb.com/policy-services-and-school-law/guidance-and-resources/student-online-personal-protection-act/](http://www.iasb.com/policy-services-and-school-law/guidance-and-resources/student-online-personal-protection-act/). Additional SOPPA resources are available through ISBE at: [www.isbe.net/Pages/Educational-Technology.aspx](http://www.isbe.net/Pages/Educational-Technology.aspx).

<sup>2</sup> 105 ILCS 5/10-20.74, added by P.A. 101-654, requires districts to submit to the ISBE an annual report about its educational technology capacity and policies, including device availability for students, school-based access and infrastructure, professional learning and development training opportunities, and documentation of developmentally appropriate computer literacy instruction embedded in the district's curriculum at each grade level. See 2:150-AP, *Superintendent Committees*, at f/n 20, for a list of sample **PRESS** policies that apply to this submission. See also policy 6:60, *Curriculum Content*, at f/n 25, and 6:300-E2, *State Law Graduation Requirements*, for more information about computer literacy requirements.

<sup>3</sup> See policy 7:340, *Student Records*, and its implementing administrative procedure, 7:340-AP1, *School Student Records*, for requirements addressing school student records under federal and State law. SOPPA does not override or otherwise supersede the requirements of FERPA or the Ill. School Student Records Act (ISSRA) (105 ILCS 10/). 105 ILCS 85/30(9), amended by P.A. 101-516.

*Covered information* is a broader concept than student records, and may include information that does not qualify as a student record. However, even if the covered information is not maintained as a student record, it may still qualify as a *public record* under the Local Records Act (50 ILCS 205/), such that a district would have an obligation to maintain it. Consult the board attorney for guidance on these issues.

<sup>3</sup> 105 ILCS 85/26(1), added by P.A. 101-516. SOPPA includes a clarification that schools and operators are not prohibited from producing and distributing, free or for consideration, student class photos and yearbooks to the school, students, parents, or others authorized by parents, as long as there is a written agreement between the operator and district. 105 ILCS 85/30(10), amended by P.A. 101-516.

compliance, District operations, and maintaining the trust of District stakeholders, including parents, students and staff. <sup>4</sup>

#### Definitions <sup>5</sup>

*Covered information* means personally identifiable information (PII) or information linked to PII in any media or format that is not publicly available and is any of the following: (1) created by or provided to an operator by a student or the student's parent/guardian in the course of the student's or parent/guardian's use of the operator's site, service or application; (2) created by or provided to an operator by an employee or agent of the District; or (3) gathered by an operator through the operation of its site, service, or application.

*Operators* are entities (such as educational technology vendors) that operate Internet websites, online services, online applications, or mobile applications that are designed, marketed, and primarily used for K-12 school purposes. <sup>6</sup>

*Breach* means the unauthorized acquisition of computerized data that compromises the security, confidentiality or integrity of covered information maintained by an operator or the District. <sup>7</sup>

#### Operator Contracts

The Superintendent or designee designates which District employees are authorized to enter into written agreements with operators for those contracts that do not require separate Board approval.<sup>8</sup> Contracts between the Board and operators shall be entered into in accordance with State law and Board policy 4:60, *Purchases and Contracts*, and shall include any specific provisions required by State law. <sup>9</sup>

#### Security Standards

The Superintendent or designee shall ensure the District implements and maintains reasonable security procedures and practices that otherwise meet or exceed industry standards designed to protect

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<sup>4</sup> SOPPA permits, but does not require, districts to designate an appropriate staff person as a Privacy Officer, who may also be an official records custodian under ISSRA, to carry out the duties and responsibilities assigned to schools and to ensure a district's compliance with the requirements of SOPPA. 105 ILCS 85/27(f), added by P.A. 101-516. For boards that wish to designate a Privacy Officer, add the below sentence to the end of the paragraph. Boards may designate an individual other than the Superintendent to serve in the capacity of Privacy Officer, such as a Business Manager, IT Director, or District Records Custodian.

The Board designates the Superintendent to serve as Privacy Officer, who shall ensure the District complies with the duties and responsibilities required of it under the Student Online Personal Protection Act, 105 ILCS 85/, amended by P.A. 101-516.

<sup>5</sup> 105 ILCS 85/5, amended by P.A. 101-516. See f/n 3 above for more discussion about *covered information*.

<sup>6</sup> SOPPA specifically provides that it does not apply to general audience websites, online services, online applications, or mobile applications, even if login credentials are required to access the general audience sites, services, or applications. 105 ILCS 85/30(3), amended by P.A. 101-516. Consult the board attorney for guidance regarding whether certain applications that may be widely used by schools, but which may not have been originally marketed to K-12 (e.g., certain video conference applications), come within the scope of SOPPA.

<sup>7</sup> Operators must notify districts of a breach of covered information within the most expedient time possible and without reasonable delay, but no later than 30 calendar days after the determination that a breach has occurred. 105 ILCS 85/15(5), added by P.A. 101-516.

<sup>8</sup> This statement is required by 105 ILCS 85/27(b), added by P.A. 101-516. SOPPA provides that any agreement entered into in violation of SOPPA "is void and unenforceable as against public policy." *Id.* SOPPA does not provide for a private right of action against school districts; the Ill. Attorney General has enforcement authority under SOPPA through the Consumer Fraud Deceptive Trade Practices Act. 105 ILCS 85/35.

<sup>9</sup> SOPPA requires specific provisions be included in a contract with any operator that seeks to receive covered information from a school district. 105 ILCS 85/15(4) and 85/27(g), added by P.A. 101-516. See 7:345-AP, *Use of Educational Technologies; Student Data Privacy and Security*, for details.

covered information from unauthorized access, destruction, use, modification, or disclosure.<sup>10</sup> In the event the District receives notice from an operator of a breach or has determined a breach has occurred, the Superintendent or designee shall also ensure that the District provides any breach notifications required by State law. <sup>11</sup>

LEGAL REF.: 20 U.S.C. §1232g, Family and Educational Rights and Privacy Act, implemented by 34 C.F.R. Part 99.  
105 ILCS 10/, Ill. School Student Records Act.  
105 ILCS 85/, Student Online Personal Protection Act.  
23 Ill. Admin. Code Part 380.

CROSS REF.: 4:15 (Identity Protection), 4:60 (Purchases and Contracts), 6:235 (Access to Electronic Networks), 7:340 (Student Records)

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<sup>10</sup> 105 ILCS 85/27(e), added by P.A. 101-516. SOPPA does not provide specifics regarding security procedures or practices, nor is there a formal, nationalized standard specific to K-12, but the law does require ISBE to make available on its website guidance for schools pertaining to reasonable security procedures and practices. 105 ILCS 85/28, added by P.A. 101-516. ISBE has endorsed a security best practices document published by the Learning Technology Center of Illinois (an ISBE grant-funded program) as its guidance that all districts should follow, which is available at: [www.isbe.net/Pages/Educational-Technology.aspx](http://www.isbe.net/Pages/Educational-Technology.aspx) (see *Reasonable Security Practices* dropdown). The Learning Technology Center of Illinois offers cybersecurity training to administrators and educators throughout the State. See [www.ltc.org](http://www.ltc.org). The U.S. Dept. of Education has also issued multiple guidance documents on security best practices for schools, available at: <https://studentprivacy.ed.gov/security>.

<sup>11</sup> In the event of a breach of covered information of students, SOPPA requires school districts to provide two types of notices: (1) individual notices to the parents of students whose covered information was involved in the breach and (2) a more general notice about the breach on the district's website (or at the district administrative office, if it does not maintain a website) if the breach involved 10% or more of the district's student enrollment. 105 ILCS 85/27(a)(5) & (d), added by P.A. 101-516. See 7:345-AP, *Use of Educational Technologies; Student Data Privacy and Security*, for details about the required notices.