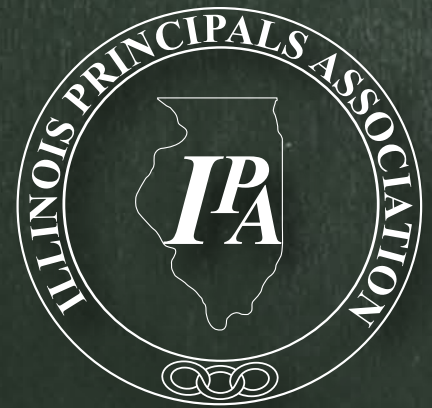


2021-2022

LEGISLATIVE AND CASE LAW UPDATE

By Brian D. Schwartz and Alison Maley



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NEW LAWS:

Absenteeism and Truancy Policy

Public Act 102-157

Effective July 1, 2022

Summary: Requires school districts, charter schools, alternative schools, or any school receiving public funds to develop and communicate to its students and their parent or guardian, on an annual basis, an absenteeism and truancy policy, including at least the following elements:

1. A definition of a valid cause for absence in accordance with the School Code.
2. A description of diagnostic procedures to be used for identifying the causes of unexcused student absenteeism, which shall, at a minimum, include interviews with the student, his or her parent or guardian, and any school officials who may have information about the reasons for the student's attendance problem.
3. The identification of supportive services to be made available to truant or chronically truant students. These services shall include, but need not be limited to, parent conferences, student counseling, family counseling, and information about existing community services that are available to truant and chronically truant students and relevant to their needs.
4. Incorporation of the provisions relating to chronic absenteeism in accordance with the School Code.

The absenteeism and truancy policy must be updated every two years and filed with the State Board of Education and the regional superintendent of schools.

DCFS Liaison

Public Act 102-199

Effective July 1, 2022

Summary: By the beginning of the 2022-2023 school year, each school board must appoint at least one employee as a liaison to facilitate the enrollment and transfer of records to students in the custody of the Department of Children and Family Services.

Liaisons must also inform the Department's Office of Education and Transition Services of a parent-teacher conference or any other meeting concerning the student that would otherwise involve a parent and must, at the option of the caseworker, allow the student's caseworker to attend the conference or meeting.

Bullying Policy – Student Accountability for Specific Violations

Public Act 102-241

Effective August 3, 2021

Summary: Requires increased student accountability if the incident of bullying is based on religion, race, ethnicity, or any other category that is identified in the Illinois Human Rights Act.

Practice Notes: The law gives schools and school districts complete discretion regarding development and implementation of increased accountability.

Menstrual Hygiene Products in Bathrooms

Public Act 102-340

Effective August 13, 2021



Summary: Provides that menstrual hygiene products (formerly feminine hygiene products) shall be made available in bathrooms of every school building that are open for student use in grades 4 through 12 during the regular school day (rather than in bathrooms of school buildings generally).

Practice Notes: Menstrual hygiene products are defined as tampons and sanitary napkins. This is the exact same definition as feminine hygiene products. These products must be made available at no cost to students.

School Unused Food Program

Public Act 102-359

Effective August 13, 2021

Summary: School districts must incorporate a food sharing plan for unused food into their local wellness policy. The food sharing plan shall focus on needy

students, with the plan being developed and supported jointly by the district's local health department. Participants in child nutrition programs, the National School Lunch Program and National School Breakfast Program, the Child and Adult Care Food Program (CACFP), and the Summer Food Service Program (SFSP) shall adhere to the provisions of the Richard B. Russell National School Lunch Act, as well as accompanying guidance from the U.S. Department of Agriculture on the Food Donation Program, to ensure that any leftover food items are properly donated in order to combat potential food insecurity in their communities.

Jett Hawkins Law – No Discrimination Based on Hairstyles

Public Act 102-360

Effective January 1, 2022

Summary: Boards of education and non-public schools may not prohibit hairstyles historically associated with race, ethnicity, or hair texture, including, but not limited to, protective hairstyles such as braids, locks, and twists. Prohibits school uniform or dress codes from applying to hairstyles as described above.

Anaphylactic Policy

Public Act 102-413

Effective August 20, 2021

Summary: Requires ISBE, in consultation with the Illinois Department of Public Health, to establish an anaphylactic policy for school districts with guidelines and procedures for the prevention of anaphylaxis and during a medical emergency resulting from anaphylaxis. The policy shall include the following:

1. A procedure and treatment plan, including emergency protocols and responsibilities for school nurses and other appropriate school personnel, for responding to anaphylaxis.
2. Requirements for a training course for appropriate school personnel on preventing and responding to anaphylaxis.
3. A procedure and appropriate guidelines for the development of an individualized emergency health care plan for children with a food or other allergy that could result in anaphylaxis.
4. A communication plan for intake and dissemination of information provided by this State regarding children with a food or other allergy that could result in anaphylaxis, including a discussion of methods, treatments, and therapies to reduce the risk of allergic reactions, including anaphylaxis.
5. Strategies for reducing the risk of exposure to anaphylactic causative agents, including food and other allergens.

6. A communication plan for discussion with children who have developed adequate verbal communication and comprehension skills and with the parents or guardians of all children about foods that are safe and unsafe and about strategies to avoid exposure to unsafe food.

Education Omnibus Bill

Public Act 102-539

Effective August 20, 2021

Summary: Makes various changes to the School Code listed below:

- Requires the ISBE strategic plan to address how ISBE will focus its efforts to increase equity in all Illinois schools, including programs to improve equitable and strategic resource allocation, efforts to enhance the social-emotional well-being of students, and attraction and retention of diverse and qualified teachers and leaders.
- Requires that the number of students who graduate from a bilingual or English learner program, and the number of students who graduate from, transfer from, or otherwise leave bilingual programs to be included in the School Report Card.
- Requires that the high school dropout rate by grade level be included in the School Report Card.
- Requires a school board to invite a representative from a local mental health agency to consult with the board at a meeting whenever there is evidence that mental illness may be the cause of a student's expulsion or suspension.
- Removes English proficiency requirement for applicants for a Professional Educator License in teaching or school support personnel for educators trained in other states or countries.
- Eliminates a task force on the measurement of student fitness.

Election Day E-Learning

Public Act 102-594

Effective: August 27, 2021

Summary: Permits student instruction to be received electronically under a school district's program for e-learning days while students are not physically present because a school was selected to be a polling place under the Election Code.

Sexual Abuse Policies, Grooming

Public Act 102-610

Effective August 27, 2021

Summary: Requires school boards to include in its policy and all training materials and instruction a definition of prohibited grooming behaviors and

boundary violations for school personnel and how to report these behaviors.

Amends “Erin’s Law” to apply to students in grades pre-K through 12 (previously pre-K through 5), and requires training for school personnel to include preventing, recognizing, reporting, and responding to child sexual abuse and grooming behavior, including when the grooming or abuse is committed by a

member of the school community, with a discussion of the criminal statutes addressing sexual conduct between school personnel and students, professional conduct, and reporting requirements.

Practice Notes: Ed Leaders Network (ELN) training on Understanding Child Sexual Abuse will be updated to meet these new content requirements.

Budget & Finance

NEW LAWS:

Principal Mentoring Program

Public Act 102-521

Effective August 20, 2021

Summary: Subject to annual appropriation by the General Assembly, the State Board shall establish a competitive grant program to support the new principal mentoring program and shall approve one or more eligible entities to provide services to new principals under the program. Approval of eligible entities shall be valid for 3 years. Eligible entities include statewide organizations representing principals and school

districts. Approved entities shall be responsible for mentor training, pairing mentors and new principals, and all other administrative aspects of providing mentoring services as provided by the State Board by rule.

Practice Notes: If the State Superintendent of Education determines that appropriations are not likely sufficient to serve all anticipated first year principals in any given year, then the new principal mentoring program shall be voluntary and priority access to mentoring services shall be given to first year principals in the highest need schools, as determined by the State Superintendent of Education.

Curriculum & Training

NEW LAWS:

Asian American History Instruction

Public Act 102-44

Effective January 1, 2022

Summary: Beginning with the 2022-2023 school year, every public elementary school and high school shall include in its curriculum a unit of instruction studying the events of Asian American history, including the history of Asian Americans in Illinois and the Midwest, as well as the contributions of Asian Americans toward advancing civil rights from the 19th century onward. These events shall include the contributions made by individual Asian Americans in government and the arts, humanities, and sciences, as well as the contributions of Asian American communities to the economic, cultural, social, and political development of the United States. The studying of this material shall constitute an affirmation by students of their commitment to respect the dignity

of all races and peoples and to forever eschew every form of discrimination in their lives and careers.

Practice Notes: Each school district is authorized to define what constitutes a “unit of instruction.” The regional superintendent of schools shall monitor a school district’s compliance with this Section’s curricular requirements during his or her annual compliance visit. A school may meet the requirements of this Section through an online program or course.



Media Literacy Requirement

Public Act 102-55

Effective July 9, 2021

Summary: Beginning with the 2022-2023 school year, every public high school shall include in its curriculum a unit of instruction on media literacy. The unit of instruction shall include, but is not limited to, all the following topics: (1) Accessing information: Evaluating multiple media platforms to better understand the general landscape and economics of the platforms, as well as issues regarding the trustworthiness of the source of information. (2) Analyzing and evaluating media messages: deconstructing media representations according to the authors, target audience, techniques, agenda setting, stereotypes, and authenticity to distinguish fact from opinion. (3) Creating media: Conveying a coherent message using multimodal practices to a specific target audience. This may include, but is not limited to, writing blogs, composing songs, designing video games, producing podcasts, making videos, or coding a mobile or software application. (4) Reflecting on media consumption: Assessing how media affects the consumption of information and how it triggers emotions and behavior. (5) Social responsibility and civics: suggesting 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.

Practice Notes:

1. Each school district is authorized to define what constitutes a “unit of instruction.”
2. "Media literacy" is defined as 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.
3. The State Board of Education shall determine how to prepare and make available instructional resources and professional learning opportunities for educators that may be used for the development of a unit of instruction under this Section.

Opioid Drug Abuse Prevention and Avoidance

Public Act 102-195

Effective July 30, 2021

Summary: The law adds opioid drug abuse to existing curricular mandate for instruction, study, and discussion of effective methods for the prevention and avoidance of drug and substance abuse in grade Kindergarten through 8.

Social Studies May Include Financial Literacy Instruction

Public Act 102-366

Effective August 13, 2021

Summary: Beginning with pupils entering the 9th grade in the 2021-2022 school year and each school year thereafter, one semester, or part of one semester of social studies, may include a financial literacy course.

History Curriculum – Contributions from Americans of Different Faiths

Public Act 102-411

Effective January 1, 2022

Summary: In addition to adding the birthday of Muhammad Ali (January 17) to the list of commemorative holidays, PA. 102-411 requires the teaching of history of the United States must include the contributions made to society by Americans of different faith practices, including, but not limited to, Muslim Americans, Jewish Americans, Christian Americans, Hindu Americans, Sikh Americans, Buddhist Americans, and any other collective community of faith that has shaped America.

Driver's Education – Law Enforcement Stops

Public Act 102-455

Effective January 1, 2022

Summary: Driver's education courses must include instruction in law enforcement procedures during traffic stops, including appropriate interactions with law enforcement officers. The law also requires the Secretary of State to include in the Illinois Rules of the Road publication a description of law enforcement procedures during traffic stops and the actions a motorist should take during a traffic stop.

Naturalization Unit of Curriculum

Public Act 102-472

Effective August 20, 2021

Summary: Every public high school may include in its curriculum a unit of instruction about the process of naturalization by which a foreign citizen or foreign national becomes a U.S. citizen. The course of instruction shall include content from the components of the naturalization test administered by the U.S. Citizenship and Immigration Services. Each school board shall determine the minimum amount of instructional time for the unit.

Comprehensive Personal Health and Safety and Comprehensive Sexual Health Education

Public Act 102-522

Effective August 20, 2021

Summary: Establishes new comprehensive personal health and safety and comprehensive sexual health education requirements. See Appendix A for more detailed information.

Practice Notes: Although Public Act 102-412 (age-appropriate discussion of sexting) was also signed into law, Public Act 102-522 supersedes the previous act and eliminates this section of the School Code. Comprehensive Sexual Health Education includes a requirement to provide course material and instruction to help students safely use the internet, including social media, dating or relationship websites or applications, and texting.

Forensic Speech Course

Public Act 102-551

Effective January 1, 2022

Summary: Every public high school may include in its curriculum a unit of instruction about the process of naturalization by which a foreign citizen or foreign national becomes a U.S. citizen. The course of instruction shall include content from the components of the naturalization test administered by the U.S. Citizenship and Immigration Services. Each school board shall determine the minimum amount of instructional time for the unit.

Mandated Reporter Training – Implicit Bias

Public Act 102-604

Effective January 1, 2022

Summary: Requires mandated reporter training to include a section on implicit bias. At minimum, the training will include information on implicit bias and racial and ethnic sensitivity.

Practice Notes: The Ed Leaders Network (ELN) training for mandated reporters takes users to the Department of Children and Family Services produced training to meet this requirement. The training will be updated accordingly.



Health & Safety

NEW LAWS:

Lockdown Drill Changes

Public Act 102-395

Effective August 16, 2021

Summary: Makes changes to existing law on law enforcement drills, specifying “lockdown” drills as those to address a school shooting incident. Adds the following requirements:

- The lockdown drill must not include simulations that mimic an actual school shooting incident or active shooter event.
- All lockdown drills must be announced in advance to all school personnel and students prior to the commencement of the drill.
- Lockdown drill content must be age appropriate and developmentally appropriate.
- Lockdown drills must include and involve school personnel, including school-based mental health professionals.
- Lockdown drills must include trauma-informed approaches to address the concerns and well-being of students and school personnel.

Additionally, school administrators and school support personnel may exempt a student or students from participating in a walk-through lockdown drill. In this case, schools must provide alternative safety education and instruction related to an active threat or active shooter event to those students.

Law enforcement is permitted to run active shooter simulations at schools, but only on school days when students are not present.





NEW LAWS:

Teacher Evaluation Timelines

Public Act 102-252

Effective January 1, 2022

Summary: No later than September 1, 2022, each school district must establish a teacher evaluation plan that ensures that each teacher in contractual continued service whose performance is rated as either "excellent" or "proficient" is evaluated at least once in the course of the 3 school years after receipt of the rating and implement an informal teacher observation plan established by ISBE rule and by agreement of the joint committee that ensures that each teacher in contractual continued service whose performance is rated as either "excellent" or "proficient" is informally observed at least once in the course of the 2 school years after receipt of the rating.

Practice Notes: Although this new law does not go into effect until January 1, 2022, it is possible for school districts to work with their union to implement this process for the 2021-22 school year. Please consult your school district's legal counsel for additional guidance.

Sick Leave – Birth, Adoption, Placement for Adoption, Foster Care

Public Act 102-275

Effective August 6, 2021

Summary: Requires sick leave to be interpreted to mean birth, adoption, placement for adoption, and the acceptance of a child in need of foster care. Teachers and other applicable employees are entitled to use up to 30 days of paid sick leave because of the birth of a child that is not dependent on the need to recover from childbirth.

- **Birth of a Child:** Paid sick leave because of the birth of a child may be used absent medical certification for up to 30 working school days, which days may be used at any time within the 12-month period following the birth of the child. The use of up to 30 working school days of paid sick leave because of the birth of a child may not be diminished as a result of any intervening period of nonworking days or school not being in session, such as for summer, winter, or spring break or holidays, that may occur during the use of the paid sick leave.

- **Adoption, Placement for Adoption or Foster Care:** The school board may require that the teacher or other employee to which this Section applies provide evidence that the formal adoption process or the formal foster care process is underway, and such sick leave is limited to 30 days unless a longer leave has been negotiated with the exclusive bargaining representative. Paid sick leave for adoption, placement for adoption, or the acceptance of a child in need of foster care need not be used consecutively once the formal adoption process or the formal foster care process is underway, and such sick leave may be used for reasons related to the formal adoption process or the formal foster care process prior to taking custody of the child or accepting the child in need of foster care, in addition to using such sick leave upon taking custody of the child or accepting the child in need of foster care.

School Counselor Cannot Accept Gifts from Prohibited Sources

Public Act 102-327

Effective January 1, 2022

Summary: Beginning on January 1, 2022, a school counselor cannot accept or solicit a gift from "any person who is employed by an institution of higher education or is an agent or spouse of or an immediate family member living with a person employed by an institution of higher education." There are several exceptions in the law, including "any item or items from any one prohibited source during any calendar year having a cumulative total value of less than \$100" and "promotional materials, including, but not limited to, pens, pencils, banners, posters, and pennants. Each exception listed under this subsection is mutually exclusive and independent of one another."

Practice Notes:

1. A guidance counselor is not in violation of this law if he or she promptly takes reasonable action to return the gift to the prohibited source or donates the gift or an amount equal to its value to an appropriate charity that is exempt from income taxation under Section 501(c)(3) of the Internal Revenue Code of 1986.
2. A guidance counselor or prohibited source who intentionally violates this Section is guilty of a business offense and is subject to a fine of at least \$1,001 and up to \$5,000.

Return to Teaching in Subject Shortage Areas

Public Act 102-440

Effective August 20, 2021

Summary: Extends the ability for retirees to seek “eligible employment” in a subject shortage area until June 30, 2024 (previously June 30, 2021).

Service Credit – Private Schools

Public Act 102-525

Effective August 20, 2021

Summary: Extends the deadline for TRS members to establish optional credit for up to 2 years of service as a teacher or administrator in a private school recognized by the Illinois State Board of Education. Deadline for written application for service credit is extended to June 30, 2023 (previously applicable between August 1, 2009 and August 1, 2012).

Extended Retiree Employment in School Districts

Public Act 102-537

Effective August 20, 2021

Summary: Extends the ability of annuitants receiving a retirement annuity to accept employment from a school board or other applicable employer without impairing retirement status with the following stipulations:

- 120 paid days or 600 paid hours in each school year, but not more than 100 paid days in the same classroom until June 30, 2023 (previously June 30, 2021)
- 100 paid days or 500 paid hours in each school year until July 1, 2023 (previously July 1, 2021)

Educator Misconduct

Public Act 102-552

Effective January 1, 2022

Summary: If a superintendent has reasonable cause to believe a license holder has committed an intentional act of abuse or neglect of a child, and the act resulted in dismissal or resignation, the written notification to the State Superintendent of Education and the applicable regional superintendent of schools must include the license holder’s IEIN and a brief description of the misconduct alleged.

The law adds a homicide conviction as grounds for disqualification for educator licensure or suspension or revocation of a license.

Requires a school board, including a special charter district, or Chicago Public Schools, to notify in writing, the Teachers’ Retirement System and the Public School Teachers’ Pension and Retirement Fund of the City of Chicago, information about a teacher who has been convicted of any offense for which a sentence to death or a prison term of one year or more.

For alleged violations of a teacher resigning during the school term to accept another teaching assignment, referrals to the State Superintendent must include:

1. A dated copy of the teacher's resignation letter
2. A copy of the reporting district's current school year calendar
3. Proof of employment for the school year at issue
4. Documentation showing that the district's board did not accept the teacher's resignation
5. Evidence that the teacher left the district in order to accept another teaching assignment.

Prohibition on Using Certain Conviction Information in the Hiring Process

Public Act 101-656

Effective March 23, 2021

Summary: Provides that unless otherwise authorized by law, it is a civil rights violation for any employer to use a conviction record as a basis to refuse to hire, promote or take other negative employment action, unless: (1) there is a substantial relationship between one or more of the previous criminal offenses and the employment sought or held; or (2) the granting or continuation of the employment would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public. If an employer refuses to hire someone based on a conviction or takes a negative job action against a person based on a conviction, a due process provision in the law is triggered.

Practice Notes: Illinois law prohibits individuals with certain criminal convictions from holding school employment. In these cases, a majority of the due process requirements discussed above are waived, although the employer must notify the individual of his/her employment disqualification pursuant to law and furnish the individual with a copy of the conviction report. The individual then has at least five business days to dispute the accuracy of the relevant conviction record law disqualifying their employment.

COURT CASES:

State Appellate Court Sides with School District in Teacher Dismissal Proceeding

Illinois Second District Court of Appeals

Issued January 11, 2021

Summary: *Kalisz v. The Board of Education of Kildeer Countryside School District 96 and The Illinois State Board of Education* involved the appeal of a teacher dismissal proceeding. In 2016 Racheal Kalisz, Plaintiff, was a tenured teacher at Kildeer School District. After an investigation into misconduct stemming from a DCFS investigation, the Board approved a Notice of Remedial Warning. The Notice stated that Plaintiff could be dismissed if certain conduct was repeated, including: engaging in conduct unbecoming a Board employee, showing poor professional judgment and unprofessional conduct, violating Board policy 5:120, Ethics and Conduct, engaging in misconduct as defined by Board policy, including behavior that disrupts the educational process and immoral conduct, and violating Board policy by failing to maintain standards of service required by a teacher.

Three years later, it was determined that Plaintiff violated Board policy and acted unprofessionally in leaving her classroom on multiple occasions. On one occasion, Plaintiff left school without informing the administration or taking sick leave. The District found

the Kalisz violated the Notice of Remedial Warning issued in 2016 and recommended her dismissal. Kalisz challenged the dismissal process claiming that the 2016 Notice of Remedial Warning addressed issues unrelated to the current complaint of leaving her classroom.

On May 10, 2019, a hearing officer issued a written opinion finding that the Board had cause to dismiss Plaintiff and recommended that the dismissal be upheld. The hearing officer noted that Plaintiff demonstrated a lack of professional judgment, which she was warned about in 2016, therefore Plaintiff's dismissal complied with the School Code because Plaintiff failed to remediate her behavior. The Board adopted the hearing officer's findings and recommendations and passed a resolution affirming Plaintiff's dismissal. Plaintiff sought administrative review of the Board's decision, and on January 7, 2020, following a hearing, the Circuit Court found the Board's decision to dismiss Plaintiff was clearly erroneous. The Board then appealed to the Court. On appeal, the Court determined that the Board's conclusion that Plaintiff's 2017-2018 conduct violated the 2016 Notice of Remedial Warning was a proper basis for dismissal. The Court reasoned that in 2016 Plaintiff was specifically warned to exercise appropriate and professional judgment, to conduct herself professionally, and to follow all Board policies and practices, and stated "[t]here is no question that the plaintiff's conduct in 2017-2018 violated these warnings." The Court reversed the Circuit Court's decision and upheld the Board's dismissal of Plaintiff.





Reporting Requirements

NEW LAWS:

School Report Card – Reports of Incidents of Violence

Public Act 102-294

Effective January 1, 2022

Summary: Beginning with the 2022-2023 school year, the school report card shall include data on the number of incidents of violence that occurred on school grounds or during school-related activities and that resulted in an out-of-school suspension, expulsion, or removal to an alternative setting.

Annual Census of Personnel Holding School Support Personnel Endorsement

Public Act 102-302

Effective January 1, 2022

Summary: No later than December 1, 2022, and each December 1st annually thereafter, each school district must report to the State Board of Education the total number of personnel with a school support

personnel endorsement and, for each endorsement area as of October 1st of each year beginning in 2022:

1. Those actively employed on a full-time basis by the school district;
2. Those actively employed on a part-time basis by the school district; and
3. Those actively employed by a special education joint agreement providing services to students in the school district.

Districts must also report the total number of students enrolled in the school district and, of that total, the number of students with an individualized education program or a 504 plan as of October 1st of each year beginning in 2022 and must make that information available on its website.

School Report Card – National Board-Certified Teachers

Public Act 102-594

Effective July 1, 2022

Summary: The school report card shall include the number of teachers who are National Board-Certified Teachers, disaggregated by race and ethnicity.



Special Education

NEW LAWS:

PUNS Information Must Be Provided at Annual IEP Meeting

Public Act 102-67

Effective July 9, 2021

Summary: The State Board of Education, in consultation with the Department of Human Services, through school districts, shall provide to inform parents and guardians of students a copy of the Department of Human Service's guide titled "Understanding PUNS: A Guide to Prioritization for Urgency of Need for Services" each year at the annual review meeting for the student's individualized education program.

Practice Notes: Schools should ensure that this guidance is provided at each student's annual IEP meeting.

Re-enrollment of IEP Students Who Turned 22 Last Year and Had Services Interrupted by COVID

Public Act-102-127

Effective July 28, 2021

Summary: Public Act 102-173 allows students with an IEP who turned 22 years old during the 2020-21 school year to reenroll in school for the entire 2021-22 school year if the following conditions are met:

- The student has an IEP and turned 22 years old during the 2020-21 school year;
- At the time the student turned 22 years old, the student's "in-person instruction, services, or activities" were suspended for a period of 3 months or more due to COVID; and
- The student still lives in the school district that provided services when the student turned 22 years old.

Practice Notes:

1. If a student meets the above eligibility requirements and chooses to return to school, the student’s IEP goals that were in effect on the student’s 22nd birthday must be resumed unless there is an agreement to modify the goals to meet the student’s transition needs.
2. Certain exceptions exist for private therapeutic day schools and residential programs.
3. The law required school districts to notify each eligible student by August 26, 2021 by sending the above information to the last known address of the student or the student’s parent or guardian.

Students with an IEP Who Turns 22 During School Year May Continue to Receive Services Through End of the School Year

Public Act 102-172
Effective July 28, 2021

Summary: An eligible student who requires continued public school educational experience to facilitate his or her successful transition and integration into adult life is eligible for such services through age 21, inclusive, which, for purposes of this Article, means the day before the student's 22nd birthday. However, in accordance with this new law, if the student’s 22nd

birthday occurs during the school year, the student is now eligible for services through the end of the school year.

Special Education Parent Location

Public Act 102-514
Effective August 20, 2021

Summary: The State Superintendent of Education may determine that the location of the parent or guardian of a student is unknown after considering information submitted from the school district that last enrolled the student or from the school or special education facility. The information submitted to the State Superintendent of Education must include an affidavit from that school district's superintendent or the facility's director attesting that the location of the parent or guardian is unknown and 4 items of documentary evidence that a minimum of 4 separate attempts were made to locate the parent or guardian. Any determination by the State Superintendent of Education that the location of a parent or guardian is unknown is final. Any determination made by the State Superintendent of Education is subject to review and reconsideration any time a parent's or guardian's location becomes known.





NEW LAWS:

Work Permit Process Streamlined

Public Act 102-32

Effective June 25, 2021

Summary: Work permits or employment certificates must be obtained from a local school before minors 14 and 15 years of age can begin work. Public Act 102-32 streamlines the application process by allowing for online certification through the Illinois Department of Labor.

Practice Notes: This new process allows local school officials to view and approve work permit applications online. To access the Illinois Department of Labor's online certification website at <https://www2.illinois.gov/idol/laws-rules/fls/pages/employment-certificates-minors.aspx>.

Athletic Uniform Modesty Modification

Public Act 102-51

Effective July 9, 2021

Summary: Effective Immediately, a school board must allow a student athlete to modify his or her athletic or team uniform for the purpose of modesty in clothing or attire that is in accordance with the requirements of his or her religion or his or her cultural values or modesty preferences. The modification of the athletic or team uniform may include, but is not limited to, the wearing of a hijab, an undershirt, or leggings.

Practice Notes:

1. If a student chooses to modify his or her athletic or team uniform, the student is responsible for all costs associated with the modification of the uniform and the student shall not be required to receive prior approval from the school board for such modification.
2. At a minimum, any modification of the athletic or team uniform must not interfere with the movement of the student or pose a safety hazard to the student or to other athletes or players. The modification of headgear is permitted if the headgear: (1) is black, white, the predominate color of the uniform, or the same color for all players on the team; (2) does not cover any part of the face; (3) is not dangerous to the player or to the other players; (4) has no opening or closing elements around the face and neck; and (5) has no parts extruding from its surface.

Military Families Living in Temporary Housing

Public Act 102-126

Effective July 23, 2021

Summary: If a dependent of U.S. military personnel is living in temporary housing located outside of a school district but will be living within the district within 6 months (previously 60 days), the dependent must be allowed to enroll and must not be charged tuition. The person seeking to enroll the individual shall provide proof that the individual will be living within the district within 6 months after the time of initial enrollment. Proof of residency may include, but is not limited to, postmarked mail addressed to the military personnel and sent to an address located within the district, a lease agreement for occupancy of a residence located within the district, or proof of ownership of a residence located within the district.

Suicide Prevention Information on Student ID Cards

Public Act 102-134

Effective July 23, 2021

Summary: Each school district shall provide contact information for the National Suicide Prevention Lifeline and for the Crisis Text Line on the back of each student identification card issued by the school district. If the school district does not issue student identification cards to its students or to all of its students, the school district must publish this information on its website.

Excused Student Absence for Mental Health Reasons

Public Act 102-321

Effective January 1, 2022

Summary: Beginning on January 1, 2022, an excused absence includes an absence due to "the mental or behavioral health of the student." Schools must excuse students for up to 5 days before a medical note is required.

Practice Notes: According to the new law, the student "must be given the opportunity to make up any schoolwork missed during the mental or behavioral health absence and, after the second mental health day used, may be referred to the appropriate school support personnel."

Time Out & Physical Restraint Changes

Public Act 102-339

Effective August 13, 2021

Summary: Aligns the statute to rules adopted by the State Board of Education governing the use of and reporting of time out and physical restraint in the public schools. Specifically isolated time out, time out, and physical restraint, other than prone physical restraint, may be used only if (i) the student's behavior presents an imminent danger of serious physical harm to the student or to others; (ii) other less restrictive and intrusive measures have been tried and have proven to be ineffective in stopping the imminent danger of serious physical harm; (iii) there is no known medical contraindication to its use on the student; and (iv) the school staff member or members applying the use of time out, isolated time out, or physical restraint on a student have been trained in its safe application, as established by rule by the State Board of Education. Prone restraint is prohibited after the 2021-2022 school year and may only be used under specific conditions.

Mandatory Unstructured Play Time for Grades K-5

Public Act 102-357

Effective August 13, 2021

Summary: Beginning August 13, 2021, requires all public schools to provide daily time for supervised, unstructured, child-directed play for all students in kindergarten through grade 5. For any school day 5 clock hours or longer in length, the total time allotted for play for students in kindergarten through grade 5 must be at least 30 minutes. For any school day less than 5 clock hours in length, the total time allotted for play each school day must be at least one-tenth of a day of attendance.

Practice Notes:

1. Play time shall be considered clock hours.
2. Play time may be divided into play periods of at least 15 consecutive minutes in length.
3. All public schools shall prohibit the withholding of play time as a disciplinary or punitive action, except when a student's participation in play time poses an immediate threat to the safety of the student or others.

Religious Fasting – Excused from Physical Education

Public Act 102-405

Effective August 19, 2021

Summary: A pupil shall be excused from engaging in any physical activity components of a physical education course during a period of religious fasting if the pupil's parent or guardian notifies the school principal in writing that the pupil is participating in religious fasting.

Religious Observances – Excused Absence

Public Act 102-406

Effective August 19, 2021

Summary: A child is exempt from compulsory attendance at school because of religious reasons, including the observance of a religious holiday or participation in religious instruction. A school board may require the parent or guardian to give notice of such exemption, not exceeding 5 days of the child's absence to the school principal or other school personnel. District superintendents shall develop and distribute to schools, appropriate procedures regarding a student's absence for religious reasons and how schools are notified of a student's impending absence for religious reasons.

Student Absences – Pregnancy

Public Act 102-471

Effective August 20, 2021

Summary: Requires a school board to adopt written policies related to absences and missed homework for classwork assignments as a result of or related to a student's pregnancy.

Student Information Sharing Between Districts

Public Act 102-557

Effective August 20, 2021

Summary: Allows elementary and high school districts with overlapping boundaries to share student records and information through an intergovernmental agreement under the following conditions:

1. The sharing of student information must be voluntary and at the discretion of each school district that is a party to the agreement.
2. The sharing of student information applies only to students who have been enrolled in both districts or would be enrolled in both districts based on district attendance boundaries, and the student's parent or guardian has expressed in writing that the student intends to enroll or has enrolled in the high school district.

3. The sharing of student information does not exceed the scope of information that is shared among schools in a unit school district. However, the terms of an intergovernmental agreement may place further limitations on the information that is allowed to be shared.

COURT CASES:

U.S. Supreme Court Declines to Hear Case on Transgender Student Rights

United States Supreme Court

Issued June 28, 2021

Summary: The United States Supreme Court left in place a decision that allowed a transgender student to use the bathroom that corresponded to his gender identity. The High Court's decision not to hear the case of Gloucester County School Board v. Gavin Grimm ends a nearly seven-year legal battle over transgender student rights.

The Grimm case has bounced around in the court system for years. The U.S. Supreme Court originally agreed to hear the case in 2016, but the case became moot after the Trump administration rescinded Title IX guidance that protected transgender students. Grimm then amended his complaint, beginning the process anew.

In 2019, a federal district court in Virginia ruled in favor of Grimm, finding his Title IX rights and rights under the Equal Protection Clause had been violated. In August of 2020, the U.S. Court of Appeals for the Fourth Circuit agreed with the lower court in a 2-1 decision. The appellate court heavily relied on *Bostock v. Clayton County*, a recent U.S. Supreme Court case that determined Title VII of the Civil Rights Act of 1964 protects against discrimination based on sexual orientation and gender identity.

Practice Notes: Although the decision does not directly impact Illinois school districts, it sends a strong message that Title IX protects transgender students. This case, along with the Biden administration's announcement earlier this month that it will enforce Title IX to protect students based on sexual orientation and gender identity, essentially ends the debate. Transgender students should be allowed to use restroom and locker room facilities based on their gender identity.

U.S. Supreme Court Sides with Student, But Finds Tinker Standard Applies Off-Campus

United States Supreme Court

Decided June 23, 2021

Summary: The United States Supreme Court decided *Mahoney Area School District v. B.L.* In this case, a student (B.L.) posted two images on Snapchat expressing frustration with the school's cheerleading squad. One message contained vulgar language and gestures. Both the district and federal appellate courts found in favor of the student. Particularly concerning was that the appellate court found that the Tinker standard, allowing a school to discipline a student for substantially disruptive behavior, does not apply to purely off-campus speech.

The U.S. Supreme Court also ruled in favor of the student but disagreed with the appellate court on the underlying reason. The high Court opined that the Tinker standard can apply to purely off-campus speech but found no substantial disruption to the educational environment caused by B.L.'s Snapchat posts.

In deciding the case, the U.S. Supreme Court did not provide a bright-line rule as to when the Tinker standard applies to off-campus speech. The Court did, however, provide three features of off-campus speech "that often, even if not always, distinguish schools' efforts to regulate [off-campus] speech from their efforts to regulate on-campus speech." These features include:

1. A school, in relation to off-campus speech, will rarely stand in loco parentis. Here the Court stated that student off-campus speech will "normally fall within the zone of parental, rather than school-related responsibility."
2. From a student's perspective, regulations of off-campus speech, when coupled with regulations of on-campus speech, include all the speech the student utters in a 24-hour day. Accordingly, "this means courts must be more skeptical of a school's efforts to regulate off-campus speech, for doing so may mean that the student cannot engage in that kind of speech at all." The Court continued, stating that "when it comes to political or religious speech that occurs outside school or a school program or activity, the school will have a heavy burden to justify intervention."
3. The school itself has an interest in protecting a student's unpopular expression, especially when the expression takes place off-campus. The Court called schools "the nurseries of democracy" and found that schools have a strong interest in ensuring that future generations understand the workings of free speech.

Practice Notes: Essentially, the U.S. Supreme Court recognized that the Tinker standard allowing a school to discipline a student for substantial disruption to the educational environment still applies to off-campus speech. However, the Court went on to say that the "three features of much of off-campus speech mean that the leeway the First Amendment grants to school in light of their special characteristics is diminished." Therefore, schools must make an extra effort to document how off-campus student speech substantially

and materially disrupts the educational environment before imposing discipline. Schools "must be able to show that [a school's need to discipline a student] was caused by something more than a need or desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint." Thus, "simple undifferentiated fear or apprehension...is not enough to overcome the right to freedom of expression."

Task Forces & Commissions

NEW LAWS:

Mental Health Task Force

Public Act 102-116

Effective July 23, 2021

Summary: Amends the Children's Mental Health Plan section of the Children's Mental Health Act of 2003 to make recommendations for ensuring all Illinois youth receive mental health education and have access to mental health care in the school setting. In developing these recommendations, the Children's Mental Health Partnership shall consult with the State Board of Education, education practitioners, including, but not limited to, administrators, regional superintendents of schools, teachers, and school support personnel, health care professionals, including mental health professionals and child health leaders, disability advocates, and other representatives as necessary to ensure the interests of all students are represented.

High-Cost Special Education Funding Commission

Public Act 102-150

Effective July 23, 2021

Summary: The High-Cost Special Education Funding Commission is created to make recommendations to the Governor and the General Assembly for an alternative funding structure in this State for high-cost special education students that is aligned to the principles of the evidence-based funding formula. The Commission shall do all the following:

1. Review the current system of funding high-cost special education students in this State.
2. Review the needs of high-cost special education

students in this State and the associated costs to ensure high-quality services are provided to these students.

3. Review how other states fund high-cost special education students.

4. If available, review other proposals and best practices for funding high-cost special education students.

State Education Equity Committee

Public Act 102-458

Effective August 20, 2021

Summary: The Committee, including representatives from teachers' organizations, school administrators, school board members, principals, and regional superintendents of schools, is charged with addressing systemic inequities and ensure every child is equipped to reach the child's fullest potential by identifying evidence-based practices or policies to build on this State's progress of ensuring educational equity for all its students in all aspects of birth through grade 12 education, and seek input and feedback on identified evidence-based practices or policies from stakeholders.

Whole Child Task Force – Learning Loss During Suspension/Expulsion

Public Act 102-635

Effective January 1, 2022

Summary: Requires the Whole Child Task Force to recommend legislation, policies, and practices to prevent learning loss in students during periods of suspension and expulsion, including, but not limited to, remote instruction. The law also adds a representative from an organization representing regional offices of education to the Whole Child Task Force.



Guide to Understanding P.A. 102-522 (S.B. 818) (Published August 23, 2021)

New Comprehensive Personal Health and Safety and Comprehensive Sexual Health Education Requirements

Public Act 102-522 establishes new comprehensive personal health and safety and comprehensive sexual health education requirements. The Governor signed the bill into law on August 20, 2021. These requirements, as outlined below, go into effect immediately. We have annotated these new requirements with some definitions from the law that may provide additional context.

Requirements of Public Act 102-522

All classes that teach comprehensive personal health and safety and comprehensive sexual health education must satisfy the following criteria.

"Comprehensive personal health and safety education" means age and developmentally appropriate education that aligns with the National Sex Education Standards, including information on consent and healthy relationships, anatomy and physiology, puberty and adolescent sexual development, gender identity and expression, sexual orientation and identity, sexual health, and interpersonal violence.

"Comprehensive sexual health education" means age and developmentally appropriate education that aligns with the National Sex Education Standards, including information on consent and healthy relationships, anatomy and physiology, puberty and adolescent sexual development, gender identity and expression, sexual orientation and identity, sexual health, and interpersonal violence.

(1) Course material and instruction shall be age and developmentally appropriate, medically accurate, complete, culturally appropriate, inclusive, and trauma informed.

"Complete" means information that aligns with the National Sex Education Standards, including information on consent and healthy relationships, anatomy and physiology, puberty and adolescent sexual development, gender identity and expression, sexual orientation and identity, sexual health, and interpersonal violence.

"Culturally appropriate" means affirming culturally diverse individuals, families, and communities in an inclusive, respectful, and effective manner, including materials and instruction that are inclusive of race, ethnicity, language, cultural background, immigration status, religion, disability, gender, gender identity, gender expression, sexual orientation, and sexual behavior.

"Inclusive" means inclusion of marginalized communities that include, but are not limited to, people of color, immigrants, people of diverse sexual orientations, gender identities, and gender expressions, people who are intersex, people with disabilities, people who have experienced interpersonal or sexual violence, and others.

"Trauma informed" means to address vital information about sexuality and well-being that takes into consideration how adverse life experiences may potentially influence a person's well-being and decision making.

(2) Course material and instruction shall replicate evidence-based or evidence-informed programs or substantially incorporate elements of evidence-based programs or evidence-informed programs or characteristics of effective programs.

"Evidence-based program" means a program for which systematic, empirical research or evaluation has provided evidence of effectiveness.

"Evidence-informed program" means a program that uses the best available research and practice knowledge to guide program design and implementation.

"Characteristics of an effective program" includes development, content, and implementation of such programs that (i) have been shown to be effective in terms of increasing knowledge, clarifying values and attitudes, increasing skills, and impacting behavior; (ii) are widely recognized by leading medical and public health agencies to be effective in changing sexual behaviors that lead to sexually transmitted infections, including HIV, unintended pregnancy, interpersonal violence, and sexual violence among young people, and (iii) are taught by professionals who provide a safe learning space, free from shame, stigma, and ideology and are trained in trauma-informed teaching methodologies.

(3) Course material and instruction shall be inclusive and sensitive to the needs of students based on their status as pregnant or parenting, living with STIs, including HIV, sexually active, asexual, or intersex or based on their gender, gender identity, gender expression, sexual orientation, sexual behavior, or disability.

(4) Course material and instruction shall be accessible to students with disabilities, which may include the use of a modified curriculum, materials, instruction in alternative formats, assistive technology, and auxiliary aids.

(5) Course material and instruction shall help students develop self-advocacy skills for effective communication with parents or guardians, health and social service professionals, other trusted adults, and peers about sexual health and relationships.

(6) Course material and instruction shall provide information to help students develop skills for developing healthy relationships and preventing and dealing with interpersonal violence and sexual violence.

(7) Course material and instruction shall provide information to help students safely use the Internet, including social media, dating or relationship websites or applications, and texting.

(8) Course material and instruction shall provide information about local resources where students can obtain additional information and confidential services related to parenting, bullying, interpersonal violence, sexual violence, suicide prevention, sexual and reproductive health, mental health, substance abuse, sexual orientation, gender identity, gender expression, and other related issues.

(9) Course material and instruction shall include information about State laws related to minor confidentiality and minor consent, including exceptions, consent education, mandated reporting of child abuse and neglect, the safe relinquishment of a newborn child, minors' access to confidential health care and related services, school policies addressing the prevention of and response to interpersonal and sexual violence, school breastfeeding accommodations, and school policies addressing the prevention of and response to sexual harassment.

(10) Course material and instruction may not reflect or promote bias against any person on the basis of the person's race, ethnicity, language, cultural background, citizenship, religion, HIV status, family structure, disability, gender, gender identity, gender expression, sexual orientation, or sexual behavior.

(11) Course material and instruction may not employ gender stereotypes.

(12) Course material and instruction shall be inclusive of and may not be insensitive or unresponsive to the needs of survivors of interpersonal violence and sexual violence.

(13) Course material and instruction may not proselytize any religious doctrine.

(14) Course material and instruction may not deliberately withhold health-promoting or life-saving information about culturally appropriate health care and services, including reproductive health services, hormone therapy, and FDA-approved treatments and options, including, but not limited to, Pre-exposure Prophylaxis (PrEP) and Post-exposure Prophylaxis (PeP).

"Pre-exposure Prophylaxis (PrEP)" means medications approved by the federal Food and Drug Administration (FDA) and recommended by the United States Public Health Service or the federal Centers for Disease Control and Prevention for HIV pre-exposure prophylaxis and related pre-exposure prophylaxis services, including, but not limited to, HIV and sexually transmitted infection screening, treatment for sexually transmitted infections, medical monitoring, laboratory services, and sexual health counseling, to reduce the likelihood of HIV infection for individuals who are not living with HIV but are vulnerable to HIV exposure.

"Post-exposure Prophylaxis (PeP)" means the medications that are recommended by the federal Centers for Disease Control and Prevention and other public health authorities to help prevent HIV infection after potential occupational or non-occupational HIV exposure.

(15) Course material and instruction may not be inconsistent with the ethical imperatives of medicine and public health.



Q&A Regarding P.A. 102-522

Are school districts required to offer courses on comprehensive personal health and safety education or comprehensive sexual health education?

No. However, if a school district does offer courses on comprehensive personal health and safety education or comprehensive sexual health education, the 15 requirements discussed above must be followed.

What health education courses are required by Illinois law?

The only health education courses that are truly mandatory are the ones outlined in the Critical Health Problems and Comprehensive Health Education Act. For specific instructional requirements of this Act, see PRESS Policy 6:60-AP.

If a school district offers comprehensive personal health and safety and comprehensive sexual health education courses, are students required to participate?

No student shall be required to take or participate in any class or course in comprehensive personal health and safety and comprehensive sexual health education. A student's parent or guardian may opt the student out of comprehensive personal health and safety and comprehensive sexual health education by submitting the request in writing. A school district may not require active parental consent for comprehensive personal health and safety and comprehensive sexual health education.

If a school district offers comprehensive personal health and safety and comprehensive sexual health education courses, are school districts required to notify parents of the curriculum?

An opportunity shall be afforded to individuals, including parents or guardians, to review the scope and sequence of instructional materials to be used in a class or course under this Section, either electronically or in person. A school district shall annually post, on its Internet website if one exists, which curriculum is used to provide comprehensive personal health and safety and comprehensive sexual health education and the name and contact information, including an email address, of school personnel who can respond to inquiries about instruction and materials.

Will ISBE provide any resources?

By August 1, 2022, ISBE must develop and adopt rigorous learning standards in the area of comprehensive personal health and safety education for pupils in kindergarten through the 5th grade and comprehensive sexual health education for pupils in the 6th through 12th grades, including, but not limited to, all of the National Sex Education Standards, including information on consent and healthy relationships, anatomy and physiology, puberty and adolescent sexual development, gender identity and expression, sexual orientation and identity, sexual health, and interpersonal violence, as authored by the Future of Sex Education Initiative. The standards adopted by ISBE may (but are not required to be adopted) by local school boards.

How will these new requirements be monitored by ISBE?

The State Board of Education shall, through existing reporting mechanisms if available, direct each school district to identify the following: (1) if instruction on comprehensive personal health and safety and comprehensive sexual health education is provided; (2) whether the instruction was provided by a teacher in the school, a consultant, or a community group or organization and specify the name of the outside consultant, community group, or organization; (3) the number of students receiving instruction; (4) the number of students excused from instruction; and (5) the duration of instruction.

The State Board of Education shall report the results of this inquiry to the General Assembly annually, for a period of 5 years.



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2021-2022
**LEGISLATIVE AND
CASE LAW UPDATE**

By Brian D. Schwartz and Alison Maley

