

## Students

### Student Discipline 1

#### Prohibited Student Conduct 2

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 materials. <sup>3</sup>
2. Using, possessing, distributing, purchasing, or selling alcoholic beverages. <sup>4</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, or selling:
  - a. Any illegal drug, controlled substance, or cannabis (including marijuana and hashish). <sup>5</sup>
  - b. Any anabolic steroid unless being administered in accordance with a physician's or licensed practitioner's prescription. <sup>6</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>7</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.
  - 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. "Look-alike" or counterfeit drugs, including a substance not containing an illegal drug or controlled substance, but one: (a) that a student believes to be, or represents to be, an

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<sup>1</sup> All districts must have a policy on student discipline, including corporal punishment (105 ILCS 5/10-20.14; 23 Ill.Admin.Code §1.280). Teachers and other certificated employees must maintain discipline (105 ILCS 5/24-24). Staff members may *not* use isolated time out or physical restraint unless authorized to do so by an administrative procedure or policy (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 f/n 35 and 7:190-AP4, *Use of Isolated Time Out and Physical Restraint*. Given the unique concerns facing school officials, school disciplinary codes are not required to be drafted as narrowly or with the same precisions as criminal statutes. Bethel School Dist. v. Fraser, 106 S.Ct. 3159 (1986).

<sup>2</sup> Boards for elementary districts may customize the items listed as *prohibited student conduct* that clearly will not apply to their students.

<sup>3</sup> Federal law prohibits smoking within schools by anyone (Pro-Children Act of 1994, 20 U.S.C. §6081). Districts that fail to comply risk a civil penalty of up to \$1,000 per violation per day. See policy 8:30, *Visitors to and Conduct on School Property*, for more information.

<sup>4</sup> Alcoholic beverages are defined in 235 ILCS 5/1-3.01 to 3.05.

<sup>5</sup> Controlled substance is defined in 720 ILCS 570/102; cannabis is defined in 720 ILCS 550/3. Either spelling, "marihuana" or "marijuana," is correct; however, "marijuana" is more common.

<sup>6</sup> Anabolic steroid is defined in 720 ILCS 570/102.

<sup>7</sup> 105 ILCS 25/2 requires IHSA to prohibit a student from participating in an IHSA-sponsored athletic competition unless the student has agreed not to use any performance-enhancing substances on IHSA's current banned drug list and to submit to performance-enhancing substance testing. See policy 7:240, *Conduct Code for Participants in Extracurricular Activities*.

illegal drug or controlled substance; 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 or controlled substance. <sup>8</sup>

- g. 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>9</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>10</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, 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 and out-of-sight 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); or (c) it is needed in an emergency that threatens the safety of students, staff, or other individuals. <sup>11</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, and wrongfully obtaining test copies or scores.

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<sup>8</sup> “Look-alike” and counterfeit substances are defined in 720 ILCS 570/102. “Look-alike” drugs should be defined; an unpublished Ill. Court of Appeals decision in 2000 found a board policy prohibiting possession of “look-alikes” to have vagueness problems.

<sup>9</sup> Drug paraphernalia is defined in 720 ILCS 600/2.

<sup>10</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). The language in item #4 is broader because it prohibits “using, possessing, controlling, or transferring” a weapon in addition to violating the *Weapons* section.

<sup>11</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). Camera phones are now common and their misuse could 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 for a first offense can range as high as \$11,000 for each violation or imprisonment for up to one year, and the device may also be seized by the U.S. government. 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 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, added by P.A. 96-1087).

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. **12**
10. Causing or attempting to cause damage to, or stealing or attempting to steal, school property or another person's personal property. **13**
11. Being absent without a recognized excuse; State law and School Board policy regarding truancy control will be used with chronic and habitual truants. **14**
12. 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. **15**
13. Being involved in gangs or gang-related activities, including displaying gang symbols or paraphernalia. **16**
14. Violating any criminal law, including but not limited to, assault, battery, arson, theft, gambling, eavesdropping, and hazing.

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**12** All districts must have a policy on bullying (105 ILCS 5/27-23.7(d), amended by P.A. 96-952). Policy 7:180, *Preventing Bullying, Intimidation, and Harassment*, contains the statutory definition of *bullying*.

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. Implementing procedures must include a method for informing parents/guardians when their child or ward engaged in aggressive behavior as well as early intervention procedures based upon available community and district resources. See 7:190-E, *Aggressive Behavior Reporting Letter and Form*.

A trial court's order enjoining a student's expulsion for committing aggressive behavior was overturned in *Wilson ex rel. Geiger v. Hinsdale Elementary School Dist.* 181, 810 N.E.2d 637 (Ill.App.2, 2004). The board expelled an 11-year-old student for bringing 2 CDs to school containing a song entitled, "Gonna Kill Mrs. Cox's Baby." Mrs. Cox was the student's pregnant science teacher. The student was expelled for the remainder of the school year for violating the district's policy prohibiting aggressive behavior. The Court of Appeals reversed the trial court's temporary restraining order (that had stopped the penalty's imposition until after a trial) finding that the student had violated school rules subjecting him to exclusion and that the penalty was not unreasonable, arbitrary, capricious, or oppressive.

See also *Gendelman v. Glenbrook North High School and Northfield Township School District 225*, 2003 WL 21209880 (N.D.Ill., 2003)(student suspensions for hazing were upheld).

A person commits a felony hate crime when, by reason of the actual or perceived race, color, creed, religion, ancestry, sexual orientation, disability, or national origin of another person, he or she commits assault or battery (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 makes 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.

**13** 720 ILCS 5/26-1 makes 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.

**14** 105 ILCS 5/26-2a, amended by P.A. 97-218, 5/26-9, and 5/26-12. 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*.

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

**16** See *Kelly v. Board of Educ. of McHenry Community High School 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). Significantly, the General Assembly recognized in 105 ILCS 5/27-23.7(a), that "[g]iven the higher rates of criminal offending among gang members, as well as the availability of increasingly lethal weapons, the level of criminal activity by gang members has taken on new importance for law enforcement agencies, schools, the community, and prevention efforts."

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.

15. 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. **17**
16. 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. **18**

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. **19**

Efforts, including the use of early intervention and progressive discipline, 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. **20** 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. **21**

The grounds for disciplinary action, including those described more thoroughly later in this policy, apply whenever the student’s conduct is reasonably related to school or school activities, including, but not limited to: **22**

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**17** This statement of misconduct restates 105 ILCS 5/10-22.6(d-5), added by P.A. 97-340. 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 Section 10-22.6(d-5) of the School Code.

**18** 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 16: “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.”

**19** “Possession” should be defined to avoid vagueness problems.

**20** See footnote 12.

**21** Mandated by 105 ILCS 5/10-20.36.

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>23</sup>

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<sup>22</sup> A school's power over students does not cease when students leave the campus. Illinois statutes provide little guidance concerning off-campus jurisdiction. Board policy must provide a jurisdictional statement telling students and staff the circumstances under which the district will take disciplinary action. Rules taking jurisdiction of off-campus misconduct generally survive the test of reasonableness if they are limited to situations having a direct nexus to the school. Jurisdictional rules in board policy should generally be as broad as possible in order to give staff members authority to respond to unforeseen situations. However, 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 factual inquiry to determine the degree of nexus and impact on the school. Two decisions issued by the same federal court of appeals are informative. Both cases involved students who created a very unflattering MySpace profile parodying their principal but there was little evidence that the profiles caused, or could cause, substantial disruption in the schools. Absent this factor, the school districts were not empowered to punish out-of-school expressive conduct, even if it is lewd, indecent, or offensive speech. *J.S. v. Blue Mountain Sch. Dist., combined with Layshock v. Hermitage Sch. Dist.*, 650 F.3d 205 (3d Cir. 2011), *cert. denied* 2012 WL 117558 (U.S.).

There are many other decisions on disciplining a student for off-campus misconduct; for examples, see: *Morse v. Frederick*, 127 S.Ct. 2618 (2007)(held school's compelling interest in stopping student drug abuse allows schools to prohibit student speech that maybe reasonably regarded as promoting illegal drug use); *Boucher v. School Dist. of Greenfield*, 134 F.3d 821 (7th Cir. 1998)(upheld expulsion for off-campus speech – an article explaining how to hack into the school's computers); *Giles v. Brookville Area School District*, 669 A.2d 1079 (Pa. Commw. 1995)(upheld expulsion for selling marijuana to another student off-campus where negotiations took place on campus); *J.S. v. Bethlehem Area School District*, 807 A.2d 847 (Pa. 2002)(suspension upheld for posting on a private web site derogatory, offensive, and threatening statements directed toward a teacher); *Wisniewski v. Weedsport Cent. School District*, 494 F.3d 34 (2<sup>nd</sup> Cir. 2007), (upheld suspension for off-campus speech - an instant message icon illustrating a pistol firing a bullet at teacher's head with words "kill Mr. Vandermolten."); *Doe v. Pulaski Co. Special School*, 306 F.3d 616 (8<sup>th</sup> Cir. 2002) (vacated holding in *Doe v. Pulaski Co. Special School*, 263 F.3d 833 (8th Cir. 2001), holding that the school board did not violate the student's First Amendment rights when it expelled him for writing a letter at home referring to killing his girlfriend).

Note that the law is different regarding participants in athletics and extracurricular activities. See policy 7:240, *Conduct Code for Participants in Extracurricular Activities*.

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, amended by P.A. 97-294). The school district and will probably not be notified before a transfer order is issued. School officials should immediately seek the board attorney's advice concerning available options.

<sup>23</sup> Suspending or expelling a student for off-campus misconduct is problematic when the school's jurisdiction is premised on nothing more than "the student's presence at school may reasonably be considered to create an interference with school purposes or an educational function." If possible, other grounds for jurisdiction should be added. The factual context will determine jurisdiction. Even when there is no other jurisdictional ground, if the nature of the conduct is particularly troublesome, a detrimental impact on the school can be inferred. See *Doe v. Superintendent of Schools of Stoughton*, 767 N.E.2d 1054 (Mass., 2002)(suspension for off-campus commission of a felony was upheld).

## Disciplinary Measures 24

Disciplinary measures may include: 25

1. Disciplinary conference.
2. Withholding of privileges.
3. Seizure of contraband.
4. Suspension from school and all school activities for up to 10 days, provided that appropriate procedures are followed. 26 A suspended student is prohibited from being on school grounds.
5. Suspension of bus riding privileges, provided that appropriate procedures are followed. 27
6. Expulsion from school and all school-sponsored activities and events for a definite time period not to exceed 2 calendar years, provided that the appropriate procedures are followed. 28 An expelled student is prohibited from being on school grounds. 29
7. Notifying juvenile authorities or other law enforcement whenever the conduct involves illegal drugs (controlled substances), “look-alikes,” alcohol, or weapons.
8. Notifying parents/guardians.
9. Temporary removal from the classroom.
10. In-school suspension for a period not to exceed 5 school days. The Building Principal or designee shall ensure that the student is properly supervised. 30
11. After-school study or Saturday study 31 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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24 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.

An example of the judicial reluctance to interfere is Tun v. Whitticker, 398 F.3d 899 (7th Cir., 2005). A student named Brandon brought a substantive due process claim against the school for expelling him without evidence of wrongdoing. Brandon and three others were expelled for allowing nude pictures of themselves to be taken in the school shower. After Brandon appealed using the school’s procedures, the expulsion was rescinded and his record expunged of any reference to the incident. Brandon, however, brought a federal court action alleging that his substantive due process rights were violated. While the Court believed that school officials overacted to boys “just horsing around,” it did not believe the expulsion amounted to a substantive due process violation - it fell short of the required “shocks the conscience” standard.

25 Most school attorneys advise against using a grade reduction as a disciplinary measure. One case upheld the application of such a policy. Knight v. Board of Education, 348 N.E.2d 299 (Ill.App. 4, 1976). Another case, however, found unconstitutional, a grade reduction policy requiring 9-week grades to be reduced 4% for each day of a suspension. Smith v. School City of Hobart, 811 F.Supp. 391 (N.D.Ind., 1993).

26 105 ILCS 5/10-22.6. The next sentence is optional.

27 Id.

28 105 ILCS 5/10-22.6. The Indiana Supreme Court upheld a policy to deny semester credit to a student expelled anytime during the semester. South Gibson School Board v. Sollman, 768 N.E.2d 437 (Ind. 2002). An optional provision, such as the following, should first be discussed with the board’s attorney before adoption:

Unless the Building Principal determines otherwise, a student expelled anytime during a semester will be denied credit for the semester regardless of whether the student had completed sufficient course work to earn a passing grade before being expelled.

29 Optional (105 ILCS 5/10-22.6).

30 State law does not cover in-school suspensions. Generally, an educational program must be included in an in-school suspension; otherwise, it may become a regular suspension with procedural requirements.

31 Teachers may not be required to teach on Saturdays (105 ILCS 5/24-2).

12. Community service with local public and nonprofit agencies that enhances community efforts to meet human, educational, environmental, or public safety needs. <sup>32</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.

A student who is subject to a suspension in excess of 20 school days or an expulsion may be immediately transferred to an alternative program in the manner provided in Article 13A or 13B of the School Code. <sup>33</sup>

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. <sup>34</sup> <sup>35</sup>

#### Weapons <sup>36</sup>

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 2 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 alike” of any firearm as defined above.

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<sup>32</sup> Optional. See Herndon v. Chapel Hill-Carrboro City Bd., 89 F.3d 174 (C.A. 4, 1996)(upheld policy requiring students to complete community service in order to graduate).

<sup>33</sup> This restates 105 ILCS 5/10-22.6(a) and (b), amended by P.A. 97-495. Most school lawyers say that a suspension over 10 days is automatically an expulsion and must be treated as such as per Goss v. Lopez, 95 S.Ct. 729 (1975). Subsection 10-22(b) used the phrase “is suspended in excess of 20 school days” even though such a suspension should be treated as an expulsion. It is an open question whether an alternative program is available to a student who is suspended for 11 to 20 days because that student is technically expelled and, as such, qualifies under subsection (a) of Section 10-22.6 even though s/he would not qualify under subsection (b) of that statute. 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.

<sup>34</sup> This paragraph paraphrases 105 ILCS 5/24-24.

<sup>35</sup> School district staff may not use isolated time out or physical restraint unless the superintendent or board authorizes its use in a procedure or policy (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 and Physical Restraint*. An ISBE rule states that a district must have a *policy* on isolated time out and physical restraint in order to authorize their use. As the School Code does not contain such a requirement, ISBE has found that a district procedure will suffice to authorize the use of isolated time-out and restraint. A board may, but is not required to, include both or one of the following sentences:

School District staff members shall not use isolated time out and physical restraint other than as permitted in Section 10-20.33 of the School Code, State Board of Education rules, and procedures developed by the Superintendent. Neither isolated time out nor physical restraint shall be used in administering discipline to individual students, i.e., as a form of punishment.

The first sentence in the above optional paragraph will require the superintendent to develop administrative procedures; the second sentence is from ISBE rule 23 Ill.Admin.Code §1.285.

<sup>36</sup> This section restates 105 ILCS 5/10-22.6. See also the Gun-Free Schools Act, 20 U.S.C. §7151 *et seq.* This section contains the statutorily required punishment for bringing a weapon to school along with the statutory definition of *weapon* (105 ILCS 5/10-22.6). 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.

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. 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, 618 N.E.2d 561 (Ill.App., 1993).

The expulsion requirement under either paragraph 1 or 2 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. <sup>37</sup>

#### 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>38</sup> Upon receiving such a report, the Building Principal or designee shall immediately notify the local law enforcement agency, State Police, and any involved student's parent/guardian. <sup>39</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 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. <sup>40</sup> Teachers may temporarily remove students from a classroom for disruptive behavior. <sup>41</sup>

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 bus, up to 10 consecutive school days, provided the appropriate procedures are followed. <sup>42</sup> The Board may suspend a student from riding the bus in excess of 10 school days for safety reasons. <sup>43</sup>

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<sup>37</sup> Optional.

<sup>38</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>39</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, State Police, and, if a student is reportedly in possession of a firearm, also the student's parents/guardians.

<sup>40</sup> Required by 105 ILCS 5/24-24 and 23 Ill.Admin.Code §1.280.

<sup>41</sup> Id.

<sup>42</sup> Required by 105 ILCS 5/10-22.6, amended by P.A. 96-998.

<sup>43</sup> Id.

## Student Handbook

The Superintendent, with input from the parent-teacher advisory committee, **44** 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.

LEGAL REF.: Gun-Free Schools Act, 20 U.S.C. §7151 et seq.  
Pro-Children Act of 1994, 20 U.S.C. §6081.  
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, 5/24-24, 5/26-12, 5/27-23.7, and 5/31-3.  
23 Ill.Admin.Code §1.280.

CROSS REF.: 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 (Preventing Bullying, Intimidation, and Harassment ), 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), 8:30 (Visitors to and Conduct on  
School Property)

Policy Reviewed May 2008  
Policy Adopted June 2008  
Policy Reviewed April 2009  
Policy Adopted May 2009  
Policy Reviewed November 2009  
Policy Adopted December 2009  
Policy Reviewed September 2010  
Policy Adopted October 2010  
Policy Reviewed January 2012  
Policy Adopted February 2012

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**44** The board must establish and maintain a parent-teacher advisory committee to develop guidelines on student discipline. See policy 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.

## Students

### Administrative Procedure - Guidelines for Investigating Sexting Allegations

Establishing procedures with local law enforcement agencies and State’s attorneys to investigate allegations of sexting protects the District, its staff and its students from the broad legal implications that sexting allegations present. This administrative procedure contains three sections:

1. Glossary of Terms
2. Preparation of Guidelines for Investigating Sexting Allegations
3. Investigation and Management of Sexting Allegations

#### Glossary of Terms

**Electronic device:** any type of electronic communication device, defined at 705 ILCS 405/3-40(a), added by P.A. 96-1087. It includes, but is not limited to, a wireless telephone, personal digital assistant, or a portable or mobile computer, that is capable of transmitting images or pictures. This includes cellular telephones (see [www.thesaurus.com](http://www.thesaurus.com), listing cellular and wireless telephones as synonyms). For more discussion, see f/n 3 in 7:190 - AP5, *Electronic Devices - Student Handbook*.

**Sexting:** a portmanteau word of sex and texting with no clear definition. It is commonly explained as the act of sending sexually explicit photos, images, or messages electronically, primarily by mobile phone or the internet, that are taken with or without consent. It also includes *indecent visual depictions*, which means a depiction or portrayal in any pose, posture, or setting involving a lewd exhibition of the unclothed or transparently clothed genitals, pubic area, buttocks, or, if such person is female, a fully or partially developed breast of the person (705 ILCS 405/3-40(a), added by P.A. 96-1087, eff. 1-1-11).

#### Preparation of Guidelines for Investigating Sexting Allegations

This section identifies best practices for creating guidelines for investigating sexting allegations at the District-wide level. The Superintendent should discuss this procedure with local law enforcement agencies and State’s attorneys to minimize the potential legal implications for students and administrators that sexting presents. Customize the procedure to each District’s specific needs.

Actor	Action
Superintendent or designee	<p>Convene a meeting with Board attorney, local law enforcement agencies, and State’s attorney to determine best practices and procedures for investigating sexting. Use the <b>Investigation and Management of Sexting Allegations</b> section (see below) as a template for discussion at the meeting and customize it to meet local considerations as necessary.</p> <p>Ask the Board attorney to provide direction about searching student owned electronic devices in Step 2: Isolate Evidence / Confiscate Device in the <b>Investigation and Management of Sexting Allegations</b> section (see below).</p> <p style="padding-left: 40px;">Searching electronic devices involves Fourth Amendment search and seizure and the federal Stored Communication Act (SCA) (18 U.S.C. §2701) issues. Generally asking for permission, calling the parents to come and look through the phone, or getting a warrant solves this issue. <b>Note:</b> See the Dept. of Justice’s, “The Stored Communication Act, in Searching and Seizing Computers and Obtaining Electronic Evidence Manual” (Sept. 2009), available at:</p>

Actor	Action
	<p><a href="http://www.justice.gov/criminal/cybercrime/ssmanual/03ssma.html">www.justice.gov/criminal/cybercrime/ssmanual/03ssma.html</a> and Orin S. Kerr, A User's Guide to the Stored Communications Act, and a Legislator's Guide to Amending It, George Washington Law Review (Aug. 2004).</p> <p>Identify and list all State's attorneys and local law enforcement agencies with jurisdiction over the District's boundaries. Provide this list to all Building Principals in the District.</p> <p>Provide the local State's attorney offices and law enforcement agencies with an annual list of school buildings and the names of each building's administrators that are located within their jurisdictions.</p> <p>Invite local State's attorney offices and law enforcement agencies to meet with District school officials to provide input on how the District should manage identified indecent visual depictions.</p> <p>Add an agenda item about sexting to a Parent Teacher Advisory Committee meeting (see policy 2:150, <i>Committees</i>). Include information from discussions with State's attorneys and local law enforcement about the issue. Discuss local considerations for:</p> <ol style="list-style-type: none"> <li>1. Disciplinary actions and consequences in response to sexting; and</li> <li>2. Sexting education and prevention efforts.</li> </ol> <p>Consider adding information about the negative consequences of sexting to the District's sex education curriculum. See, U.S. Dept. of Justice Guide titled <i>Citizen's Guide to United States Federal Child Exploitation Laws</i>, available at: <a href="http://www.justice.gov/criminal/ceos/citizensguide_porn.html">www.justice.gov/criminal/ceos/citizensguide_porn.html</a>; MTV's four-part series titled <i>Sexting in America: When Privates Go Public</i>, available at: <a href="http://www.mtv.com/videos/news/483801/sexting-in-america-when-privates-go-public-part-1.jhtml#id=1631892">www.mtv.com/videos/news/483801/sexting-in-america-when-privates-go-public-part-1.jhtml#id=1631892</a> and <a href="http://www.athinline.org">www.athinline.org</a>. Consider adding these to 7:190-AP6, <i>E1, Exhibit-Letter to Parents/Guardians About Preventing and Reducing Incidences of Sexting</i>.</p> <p>Convene a meeting with Building Principals to inform them of the District's Investigation and Management of Sexting Allegations procedures (see below).</p> <p>Raise awareness of and increase educational opportunities about sexting as necessary. Follow the Parent Teacher Advisory Committee's recommendations for providing sexting education and prevention efforts. Invite the local State's attorney and local law enforcement to participate in the District's education and prevention efforts.</p>
Building Principals	<p>Educate building staff members about the procedures for <b>Investigation and Management of Sexting Allegations</b> (see below).</p> <p>Follow the Investigation and Management of Sexting Allegations.</p>

### Investigation and Management of Sexting Allegations

This section relies upon the Building Principal or designee to manage several practical and legal implications when conducting sexting allegation investigations.

Actor	Action
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Actor	Action
Building Principal or designee	<p><b>Step 1: Investigate</b></p> <p>Determine where actions took place.</p> <p>Contact parents/guardians of all students involved.</p> <p>Contact the Superintendent and request permission to contact the Board Attorney.</p> <p><b>Step 2: Isolate Evidence / Confiscate Device</b></p> <p>NEVER transfer or store depictions on personal or school electronic devices to minimize accusations of possession of child pornography. (See 625 ILCS 5/11-20.1 <i>et seq.</i> and 18 U.S.C.§§2251, 2252, and 2252A). Also see the U.S. Dept. of Justice’s Child Exploitation and Obscenity Section discussing child pornography issues, available at: <a href="http://www.justice.gov/criminal/ceos/childporn.html">www.justice.gov/criminal/ceos/childporn.html</a>.</p> <p>Contact local law enforcement.</p> <p style="padding-left: 40px;">See Joshua D. Herman, <i>Criminal Law. Sexting: It’s No Joke, It’s a Crime</i>. Illinois Bar Journal, Volume 98, No. 4, P. 192 at f/n 42 (published April 2010), online at: <a href="http://www.isba.org/ibj/2010/04/criminallaw">www.isba.org/ibj/2010/04/criminallaw</a>, (quoting an attorney in the Illinois Attorney General’s High Tech Crimes Bureau who advises school administrators to immediately confiscate devices with such material on them and report the incident to law enforcement immediately, stating that possession of a sext message that is child pornography is no different than possessing a “kilo of cocaine.”)</p> <p>Follow board policy 7:140, <i>Search and Seizure</i> and 7:150-AP, <i>Administrative Procedure, Agency and Police Interviews</i>.</p> <p style="padding-left: 40px;">Follow the Board Attorney’s direction regarding searches of student owned technological devices. See Preparation of Guidelines for Investigating Sexting Allegations (above).</p> <p><b>Step 3: Follow the reporting requirements of Board policy 5:90, Abused and Neglected Child Reporting, when applicable</b></p> <p style="padding-left: 40px;">A <i>sexted</i> image may constitute child abuse depending upon the visual depiction and the circumstances. See 325 ILCS 5/3 and 705 ILCS 405/2-3 (2) which includes sex offenses defined at 720 ILCS 5/1-1 <i>et seq.</i> School personnel are granted broad immunities against civil and criminal claims for filing reports in good faith, even if the report is unfounded. In contrast, school personnel who willfully fail to report may be guilty of a Class A misdemeanor (325 ILCS 5/4) and face suspension of their teaching certificates (105 ILCS 10/21B-75, added P.A. 97-607).</p> <p><b>Step 4: Determine appropriate disciplinary actions for all students involved in the incident</b></p> <p>Evaluate disciplinary options. Remember that a student who forwards sexts of himself or herself likely expected the depiction to remain private. As a result, consider the social stigma, bullying, harassment, and severe embarrassment issues involved in the issue.</p> <p>Provide an equivalent discipline to all students involved in the creation,</p>

Actor	Action
	<p>dissemination and storage of the sexted image, whenever possible.</p> <p>See Sorenen, Vitale, and Haase, <i>Sexting at School: Lessons Learned the Hard Way</i>. National School Board Association, Council of School Attorney’s Inquiry &amp; Analysis, f/n 40 (published February 2010) discussing several sex equality claims against school districts for punishing students differently when they are involved in the same incident.</p> <p>For situations that may require unequal punishment, contact the Superintendent so that he or she may consult the Board Attorney.</p> <p><b>Step 5: Prepare a plan to prevent harassment and bullying of involved students</b></p> <p>Remind the students and their parents/guardians of the Board’s policy 7:180, <i>Preventing Bullying Intimidation and Harassment</i>.</p> <p>Instruct involved students not to harass anyone involved in the sexting incident and keep the issues confidential.</p> <p>Consider involving the social worker or guidance counselor, if available, in the process to assist students.</p> <p>Follow 7:180, <i>Preventing Bullying Intimidation and Harassment</i>, for students who violate the policy.</p>

