

## Professional Personnel

### Suspension<sup>1</sup>

#### Suspension Without Pay<sup>2</sup>

The School Board may suspend without pay: (1) a professional employee pending a dismissal hearing, or (2) a teacher as a disciplinary measure for up to 30 employment days for misconduct that is detrimental to the School District. Administrative staff members may not be suspended without pay as a disciplinary measure.<sup>3</sup>

Misconduct that is detrimental to the School District includes:

- Insubordination, including any failure to follow an oral or written directive from a supervisor;
- Violation of Board policy or Administrative Procedure;
- Conduct that disrupts or may disrupt the educational program or process;
- Conduct that violates any State or federal law that relates to the employee's duties; and
- Other sufficient causes.

The Superintendent or designee is authorized to issue a pre-suspension notification to a professional employee. This notification shall include the length and reason for the suspension as well as the deadline for the employee to exercise his or her right to appeal the suspension to the Board or Board-appointed hearing examiner before it is imposed. At the request of the professional employee made within five calendar days of receipt of a pre-suspension notification, the Board or Board-appointed

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<sup>1</sup> State and federal law control this policy's content. The School Code provides that, "[i]f, in the opinion of the board, the interests of the school require it, the board may suspend the teacher **without pay**, pending the hearing, but if the board's dismissal or removal is not sustained, the teacher shall not suffer the loss of any salary or benefits by reason of the suspension," 105 ILCS 5/24-12(d)(1).

This policy contains an item on which collective bargaining may be required. Any policy that impacts upon wages, hours, and terms and conditions of employment, is subject to collective bargaining upon request by the employee representative, even if the policy involves an inherent managerial right. If a local collective bargaining agreement contains provisions on suspension, it will supersede this policy for those covered employees. In such cases, the board policy should be amended to state, "Please refer to the applicable collective bargaining agreement." For employees not covered, the policy should reflect the board's current practice.

A superintendent or board should consult the board attorney before taking any action to suspend a licensed employee, with or without pay.

<sup>2</sup> Under the wage and hours rules, employees who are exempt from overtime requirements become eligible for overtime if they are subject to disciplinary suspensions without pay. *Auer v. Robbins*, 519 U.S. 452 (1997). Teachers are exempt from this rule. Although the U.S. Dept. of Labor modified this rule in 2004, the Illinois legislature rejected these rule changes. 820 ILCS 105/4a. Illinois employers must use the federal rules as they existed on March 30, 2003. This sample policy takes a conservative approach: it does not subject non-teaching professional employees to disciplinary suspensions without pay. Some attorneys believe that non-teaching exempt employees, e.g., administrators, will remain exempt from the Fair Labor Standards Act's overtime requirements as long as suspensions are in increments of a full work week - not day-by-day. Contact the board attorney for an opinion.

The 30-day limit may be modified or deleted.

<sup>3</sup> A difference of opinion exists among attorneys concerning whether a board is permitted to authorize the superintendent to suspend teachers without pay. Some attorneys believe such a delegation is void because of the language in 105 ILCS 5/24-12(d)(1), quoted in f/n 1. Others believe that a board may delegate the authority to the superintendent to suspend teachers without pay as a disciplinary measure as opposed to pending a dismissal hearing. Contact the board attorney for advice if the board wants to authorize the superintendent to suspend professional employees without pay.

hearing examiner will conduct a pre-suspension hearing.<sup>4</sup> The Board or its designee shall notify the professional employee of the date and time of the hearing. At the pre-suspension hearing, the professional employee or his/her representative may present evidence. If the employee does not appeal the pre-suspension notification, the Superintendent or designee shall report the action to the Board at its next regularly scheduled meeting.

#### Suspension With Pay

The Board or Superintendent or designee may suspend a professional employee with pay: (1) during an investigation into allegations of disobedience or misconduct whenever the employee's continued presence in his or her position would not be in the School District's best interests, (2) as a disciplinary measure for misconduct that is detrimental to the School District as defined above, or (3) pending a Board hearing to suspend a teacher without pay.

The Superintendent shall meet with the employee to present the allegations and give the employee an opportunity to refute the charges. The employee will be told the dates and times the suspension will begin and end.<sup>5</sup>

#### Employees Under Investigation by Illinois Dept. of Children and Family Services (DCFS)<sup>6</sup>

Upon receipt of a DCFS recommendation that the District remove an employee from his or her position when he or she is the subject of a pending DCFS investigation that relates to his or her employment with the District, the Board or Superintendent or designee,<sup>7</sup> in consultation with the Board Attorney, will determine whether to:

1. Let the employee remain in his or her position pending the outcome of the investigation; or
2. Remove the employee as recommended by DCFS, proceeding with:
  - a. A suspension with pay; or
  - b. A suspension without pay.

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<sup>4</sup> Some case law suggests a separate hearing must be held before any suspension without pay is invoked: Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532 (1985); Barszcz v. Cmty. College Dist. No. 504, 400 F.Supp. 675 (N.D. Ill. 1975); Massie v. East St. Louis Sch. Dist. No. 189, 203 Ill.App.3d 965 (5th Dist.1990); Spinelli v. Immanuel Lutheran Evangelical Congregation, Inc., 118 Ill.2d 389 (1987).

<sup>5</sup> Only minimal due process is required before a suspension with pay because the property interests at stake are insignificant. Some due process is recommended, however, because a suspension might jeopardize a teacher's good standing in the community and thus infringe the teacher's liberty interests protected by the Constitution. The following option places a ceiling on the number of suspension-with-pay days; the 30-day limit may be modified:

No suspension with pay shall exceed 30 school or working days in length.

<sup>6</sup> Optional. 325 ILCS 5/7.4(c-5). Consult the board attorney about suspending an employee without pay pursuant to a DCFS 325 ILCS 5/7.4(c-5)-recommendation. This language balances the interests of student safety and employee due process when the district receives a recommendation to a remove an employee who is the subject of a DCFS investigation from employment.

**Note:** Liability may exist when a district receives a 325 ILCS 5/7.4(c-5)-recommendation and does not remove the employee as a result. Consider In re Estate of Stewart v. Oswego Cmty. Unit. Sch. Dist. No. 308, 406 Ill.Dec. 345 (2nd Dist. 2016)(finding district's response to a student health emergency was willful and wanton as it had prior information regarding appropriate response protocols and denying tort immunity to district); In re Estate of Stewart, 412 Ill.Dec. 914 (Ill. 2017)(school district's appeal denied).

<sup>7</sup> The text "Board or Superintendent or designee" allows flexibility if the Superintendent were the subject of a DCFS investigation.

### Repayment of Compensation and Benefits

If a professional employee is suspended with pay, either voluntarily or involuntarily, pending the outcome of a criminal investigation or prosecution, and the employee is later dismissed as a result of his or her criminal conviction, the employee must repay to the District all compensation and the value of all benefits received by him or her during the suspension.<sup>8</sup> The Superintendent will notify the employee of this requirement when the employee is suspended.

LEGAL REF.: 105 ILCS 5/24-12.  
5 ILCS 430/5-60(b), State Officials and Employee Ethics Act.  
325 ILCS 5/7.4(c-10), Abused and Neglected Child Reporting Act.  
Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532 (1985).  
Barszcz v. Cmty College Dist. No. 504, 400 F.Supp. 675 (N.D. Ill. 1975).  
Massie v. East St. Louis Sch. Dist. No.189, 203 Ill.App.3d 965 (5th Dist. 1990).

CROSS REF.: 5:290 (Employment Termination and Suspensions)

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<sup>8</sup> This sentence restates State law. 5 ILCS 430/5-60(b).