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Update Memo

PRESS

Policy Reference Education Subscription Service

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Instructions

You are encouraged to share this PRESS Update Memo with all board members and appropriate staff. It may be viewed and downloaded from PRESS Online: iasb.com/policy/login.cfm. Subscribers are mailed the current password with each PRESS issue.

Two other important components of PRESS may be viewed and downloaded from PRESS Online – the committee worksheets and the updated Policy Reference Manual pages. The committee worksheets show suggested changes to PRESS material (including administrative procedures and exhibits) by striking out deleted words and underscoring new words. The updated Policy Reference Manual pages contain all of the material in this PRESS issue; you can use them to update your district manuals.

This publication is designed to provide information only and is not a substitute for legal advice from the school board's legal counsel. If you have any questions, please contact Melinda Selbee, IASB General Counsel and PRESS Editor, 630/629-3776, ext. 1231, or Kimberly Small, Assistant General Counsel and Assistant PRESS Editor, 630/629-3776, ext. 1226.

Student Behavior

Recent legislation (SB 100, P.A. 99-456) significantly amended student discipline statutes. Advocates urged dramatic changes to Illinois' student discipline law to overcome the school-to-prison pipeline. They used this term to describe the practices that drive students out of classrooms and into the juvenile justice system. This legislation's goal was to refocus disciplinary practices on education rather than exclusion.

While the legislation is effective on Sept. 15, 2016, school personnel are already preparing to comply with the new requirements. School boards need to adopt the revised policies now. Three policies have delayed effective dates so that they will not become effective immediately. This is similar to a process used by the Illinois General Assembly. It frequently approves bills with delayed effective dates to give the affected parties time to prepare for full implementation. The policies with delayed effective dates are:

- 7:190, *Student Behavior (formerly known as Student Discipline)*
- 7:200, *Suspension Procedures*
- 7:210, *Expulsion Procedures*

Each of these policies begins with this statement: "This policy becomes effective and replaces the current policy on [policy's title] on the first student attendance day of the 2016-2017 school year." We chose to make them effective on "the first student attendance day," rather than when P.A. 99-456 is effective (9-15-2016), to avoid confusion. Once adopted by the board, these policies should be placed in the board's policy manual. They will be used by staff to come into compliance with P.A. 99-456. After the first student attendance day of the 2016-2017 school year, these policies will replace their former versions which can then be deleted from the policy manual.

Special Thanks

The **PRESS** editors extend their gratitude to the following attorneys for their expert feedback on many pieces of **PRESS** material on student discipline:

Heather K. Brickman, Hodges, Loizzi, Eisenhammer, Rodick & Kohn LLP; **Maryam Brotine**, Robbins, Schwartz, Nicholas, Lifton & Taylor, Ltd.; **Teri E. Engler**, Engler Callaway Baasten & Sraga, LLC; **Jay E. Greening**, Miller, Hall & Triggs LLC; **Stephanie Jones**, Hodges, Loizzi, Eisenhammer, Rodick & Kohn LLP; **Maureen Anichini Lemon**, Ottosen Britz Kelly Cooper Gilbert & DiNolfo, Ltd.; **Lori G. Martin**, Hodges, Loizzi, Eisenhammer, Rodick & Kohn LLP; **Thomas M. Melody**, Klein, Thorpe & Jenkins, Ltd.; **Joseph Miller, III**, Ottosen Britz Kelly Cooper Gilbert & DiNolfo, Ltd.; **Mallory Milluzzi**, Klein, Thorpe & Jenkins, Ltd.; **James A. Petrungaro**, Scariano, Himes and Petrarca, Chtd.; **Richard J. Rettberg**, Peoria SD 150; **M. Curt Richardson**, McLean Co Unit District 5; **Brian Schwartz**, Illinois Principals Association; **Jacqueline F. Wernz**, Franczek Radelet P.C.

► **7:150, Agency and Police Interviews.** The policy and Cross References are updated. The policy is updated in response to subscriber feedback to clarify that superintendents are responsible for developing procedures and implementing this policy. It was also reviewed in light of P.A. 99-456 (eff. 9-15-2016). The policy's Cross References are modified to show that the name of policy 7:190 is changed: Student Discipline Behavior.

► **7:150-AP, Administrative Procedure - Agency and Police Interviews.** The procedure was reviewed in light of P.A. 99-456 (eff. 9-15-2016) and is updated to better align with the Ill. Council of School Attorneys' *Guidelines for Interview of Students* publication. Definitions of police officer and school resources officer are also added.

► **7:190, Student Discipline Student Behavior. RENAMED.** The policy, footnotes, Legal References, and Cross References are amended to comply with P.A. 99-456 (eff. 9-15-2016) and to add useful provisions. Below are the major changes:

1. A paragraph containing five goals and objectives is added. These give the board a focus for monitoring the policy. This list can be deleted, replaced, or modified by the board.
2. The jurisdictional section is unchanged, but moved before the list of prohibited student conduct and given the heading **When and Where Conduct Rules Apply**. Moving it clarifies that the district will take disciplinary action only when a student engages in

prohibited conduct under the conditions described in the section.

3. New items are added to the list of prohibited student conduct concerning electronic cigarettes; substances, such as pure caffeine in tablet or powdered form, that are ingested or absorbed with the intention of causing a physiological or psychological change in the body; altering report cards; sexual activity; entering school property without proper authorization; prank 911 calls; and drones. Footnotes provide explanations as needed.
4. The prohibition concerning "look-alike" or counterfeit drugs is expanded to include any substance that a student believes to be, or represents to be, a substance prohibited by the policy, even if the substance is not prohibited. This edit will apply, for example, if a student represents a powdered vitamin to be pure caffeine – pure caffeine is prohibited on campus even though it is a legal substance.
5. A new provision prohibits school personnel from advising or encouraging students to drop out voluntarily due to behavioral or academic difficulties. This prohibition is in the new legislation.
6. To align with the new legislation, the use of "positive interventions and supports" is added to the paragraph requiring that efforts be made to deter students from engaging in aggressive behavior.
7. The section on **Disciplinary Measures** is amended to:
 - a. Add a paragraph requiring school officials to consider forms of non-exclusionary discipline to the greatest extent practicable. The new legislation encourages school districts to do this.
 - b. Re-order the disciplinary measures from least severe to most severe to make the list more reader friendly.
 - c. Include the following in the list of potential disciplinary measures: restitution; confiscation and temporary retention of personal property that was used to violate this policy or school disciplinary rules.
 - d. Remove the 5-day limit on in-school suspensions to add flexibility to its use. Many school officials believe that the new legislation's severe restrictions on exclusionary discipline will increase the use of in-school suspensions.
 - e. Add a paragraph cautioning that the disciplinary measures are a range of options that will not always be applicable in every case.

8. A new section is added on **Re-Engagement of Returning Students**. This section complies with the new legislation's requirement to have a policy on the re-engagement of students returning from exclusionary discipline or an alternative school setting. It contains:

- a. A goal for re-engagement that is not required and may be modified, and
- b. A requirement that students who were suspended be allowed to complete or make-up work for equivalent academic credit. This is required for only those students who were suspended.

9. Major updates are made to the footnotes to explain the policy revisions and legal issues arising from the new legislation as summarized below:

- a. The parent-teacher advisory committee should meet to discuss the changes to this policy necessitated by P.A. 99-456 before the legislation's effective date of 9-15-2016.
- b. Data on school districts' student discipline actions is available at www.isbe.net/research/htmls/eoy_report.htm.
- c. Consult the board attorney for advice before deleting or modifying any of the items in the **Prohibited Student Conduct** section.
- d. Contact the board attorney for advice concerning medical cannabis, including whether a federal or State law requires the district to accommodate a student who is a registered qualifying patient.
- e. The practice of suspending or expelling a student based on the number of accumulated disciplinary infractions may be illegal under the new legislation.
- f. The new legislation calls into question the validity of relying on past misconduct in suspension or expulsion decisions.
- g. Consult the board attorney for advice concerning confiscating and retaining devices. While there is no binding Ill. court decision on the topic, the Supreme Court of Arkansas held that a teacher and principal did not violate a student's state or federal rights when they confiscated and retained a student's cell phone for 2 weeks for violating school rules on cell phones.
- h. Contact the board attorney regarding the necessary due process procedures before imposing a disciplinary transfer to an alternative school. An Ill. appellate court stated incidentally in a decision, without establishing precedent, that placement in an alternative school is tantamount to an expulsion.

- i. The new legislation explicitly forbids zero tolerance policies. It provides, however, an exception for zero tolerance policies established by state or federal law. This includes zero tolerance laws for bringing weapons to school. The School Code provides that a student who brings a weapon to school "shall be expelled for a period not less than one year," unless modified by the superintendent or board. The federal Gun-Free Schools Act provides for at least a one year expulsion for students who bring firearms to school. Thus, while the superintendent and the board may modify that consequence, the superintendent/board may decline to exercise that discretion and impose the maximum penalty authorized by law.

► **7:190-AP2, Student Handbook - Gang Activity Prohibited.** This student handbook provision is unchanged, other than punctuation, after a 5-year review to ensure legal compliance and alignment with good governance principles. A footnote is updated.

► **7:190-AP3, Administrative Procedure - Guidelines for Reciprocal Reporting of Criminal Offenses Committed by Students.** The procedure is unchanged after a 5-year review to ensure legal compliance and alignment with good governance principles. It was reviewed in light of P.A. 99-456 (eff. 9-15-2016).

► **7:190-AP4, Administrative Procedure - Use of Isolated Time Out and Physical Restraint.** The procedure was due for a 5-year review to ensure legal compliance and alignment with good governance principles. It is unchanged.

► **7:190-AP7, Administrative Procedure - Student Discipline Guidelines.** The procedure is updated in response to:

1. 105 ILCS 5/10-22.6(c-5), amended by P.A. 99-456 (eff. 9-15-2016), to, among other things, add provisions on professional development and collaboration with law enforcement; and
2. 105 ILCS 5/2-3.162, added by P.A. 99-78, to add a provision on the student disciplinary report and a link to ISBE's report containing data from all Illinois school districts on exclusionary student discipline, www.isbe.net/research/htmls/eoy_report.htm.

► **7:190-AP8, Administrative Procedure - Student Re-Engagement Guidelines. NEW.** The procedure implements the section in Board policy 7:190, *Student Behavior*, on **Re-Engagement of Returning Students**. Each board must adopt a policy on re-engaging students who are returning from an out-of-school suspension, expulsion, or alternative school setting. 105 ILCS 5/10-22.6(b-25), amended by P.A. 99-456, eff. 9-15-2016. This procedure requires school officials to determine on a case-by-case basis whether a *re-engagement conference*

and/or a *re-engagement plan* is/are appropriate. While neither is mandatory, one or both will advance “supporting the student’s ability to be successful in school following a period of exclusionary discipline,” from Board policy 7:190, *Student Behavior*.

► **7:190-E1, Exhibit - Aggressive Behavior Reporting Letter and Form.** The exhibit is revised to promote cooperation between the school and a student’s parent(s)/guardian(s) to prevent the escalation of demonstrated behavior that put the student at risk for aggressive behavior, such as bullying.

► **7:190-E3, Exhibit - Memorandum of Understanding. NEW.** The exhibit implements P.A. 99-456 (eff. 9-15-2016), which states that “school districts are encouraged to create memoranda of understanding with local law enforcement agencies that clearly define law enforcement’s role in schools, in accordance with Section 10-22.6 of this [the School] Code.”

It is meant to assist school districts in developing an MOU if they do not already have one, but it **must be developed with the assistance of the board’s attorney to align the sample MOU terms with local conditions.** It is not meant to replace any existing MOUs, but it may be used to audit them for continuous improvement and align them with best practices.

The exhibit contains two subheads: **General Law Enforcement MOU** and **School Resource Officer (SRO) MOU**. Each may stand alone or they may be combined as directed within the footnotes. Each subhead is heavily footnoted with explanations, instructions, information, best practice considerations, and other resources for use.

► **7:190-E4, Exhibit - Acknowledgement of Receiving Student Behavior Policy and Student Conduct Code. NEW.** Most schools already use a form like this. This form serves to: (1) evidence that students and their parents/guardians received the *Student Behavior* policy and *Student Conduct Code*, and (2) elicit a pledge from students to follow the *Student Behavior* policy and *Student Conduct Code* and to help maintain a safe and positive school environment.

► **7:200, Suspension Procedures.** The policy, footnotes, Legal References, and Cross References are amended to comply with P.A. 99-456 (eff. 9-15-2016) as discussed in the intro to this *Update Memo*. Below are the major changes:

1. Two new subheads are added: **In-School Suspension** and **Out-of-School Suspension**. In-school suspensions are not covered by statute and implementation of that subhead will require assistance from the board attorney to align the policy with the district’s practices. Out-of-school suspensions are now governed by P.A. 99-456 (eff. 9-15-2016).

2. The most significant edits required by P.A. 99-456 (eff. 9-15-2016) were made to number 4’s notice provisions. These changes also correspond with 7:200-E1, *Short Term Out-of-School Suspension (1-3 Days) Reporting Form* and 7:200-E2, *Long Term Out-of-School Suspension (4-10 Days) Reporting Form*, discussed below. The biggest difference between short-term and long-term suspensions is that districts must exhaust “other appropriate and available behavioral and disciplinary interventions,” and “attempt other interventions or determine that no other interventions were available for the student” before suspending a student. In addition, certain findings about the student’s continuing presence in school must also be made depending upon the chosen length of the student’s suspension. While school officials do have discretion to determine the length of suspensions, they are required to resolve threats, address disruptions, and minimize the length of student exclusions to the greatest extent practicable.

3. Footnotes are significantly amended to explain the details of P.A. 99-456 (eff. 9-15-2016).

► **7:200-E1, Exhibit - Short Term Out-of-School Suspension (1-3 Days) Reporting Form. NEW.** The fillable form exhibit details the information required by P.A. 99-456 (eff. 9-15-2016) that districts must provide to a student and his or her parents when he or she receives a short term suspension from school.

Along with other information, the law added these major components for a short term suspension of a student:

1. A description of the specific act(s) of gross disobedience or misconduct resulting in the decision to suspend;
2. A rationale for the specific duration of the suspension; and
3. A determination that the student’s continued presence poses (a) a threat to school safety, and/or (b) a disruption to other students’ learning opportunities.

► **7:200-E2, Exhibit - Long Term Out-of-School Suspension (4-10 Days) Reporting Form. NEW.** The fillable form exhibit details the requirements of P.A. 99-456 (eff. 9-15-2016) that districts must provide to a student and his or her parents when he or she receives a long term suspension from school.

Along with other information, the law added these major components for a long term suspension of a student:

1. A description of the specific act(s) of gross disobedience or misconduct resulting in the decision to suspend;

2. A rationale for the specific duration of the suspension; and
3. A determination that the student's continued presence at school (a) poses a threat to school safety of other students, staff, or members of the school community, and/or (b) substantially disrupts, impedes, or interferes with the operation of the school.
4. Information about all behavioral and disciplinary interventions and resources previously utilized to address the student's behavior or whether there were no appropriate and available interventions and resources.

► **7:210, Expulsion Procedures.** The policy, footnotes, Legal References, and Cross References are amended to comply with P.A. 99-456 (eff. 9-15-2016) as discussed in the intro to this *Update Memo*. Below are the major changes added for school officials to provide a student and his or her parents in their written notice of a recommended expulsion of a student:

1. Details of the specific act of gross disobedience or misconduct resulting in the decision to recommend expulsion;
2. A list of the student's prior suspension(s);
3. Details of the specific reason why removing the student from his or her learning environment is in the best interest of the school;
4. A rationale for the specific duration of the recommended expulsion;
5. Additional efforts to resolve threats or disruptions and minimize the length of out-of-school suspensions;
6. Documentation about how the student's continuing presence in school would (1) pose a threat to the safety of other students, staff, or members of the school community, and/or (2) substantially disrupt, impede, or interfere with the operation of the school; and
7. Documentation for how school officials determined that all behavioral and disciplinary interventions have been exhausted through specifying which interventions were attempted or whether school officials determined that no other appropriate and available interventions existed for the student.

► **7:210-E1, Exhibit - Notice of Expulsion Hearing. NEW.** The fillable form exhibit details the new requirements in P.A. 99-456 (eff. 9-15-2016) discussed above in 7:210, *Expulsion Procedures* that districts must provide to a student when he or she receives a notice of expulsion hearing from school.

► **7:220, Bus Conduct.** The policy, footnotes, and Cross References are amended to comply with P.A. 99-456

(eff. 9-15-2016). Two new subheads are added: **School Bus Suspensions** and **Academic Credit for Missed Classes During School Bus Suspension**.

The **School Bus Suspensions** footnotes discuss that attorneys disagree whether P.A. 99-456, eff. 9-15-16, applies to school bus suspensions.

The **Academic Credit for Missed Classes During School Bus Suspension** subhead and the first sentence of its text are required by P.A. 99-456 (eff. 9-15-2016).

► **7:230, Misconduct by Students with Disabilities.** Only the policy's Cross References are modified. The name of policy 7:190 is changed as shown: Student Discipline Behavior.

► **7:240, Conduct Code for Participants in Extracurricular Activities.** The following describe the most significant changes to the policy, footnotes, and Cross References:

1. The policy now specifically requires participants in extracurricular activities to abide by the conduct code for the activity and Board policy 7:190, *Student Behavior*. This articulates a requirement that was previously implied to add clarity.
2. The section on **Performance Enhancing Drug Testing of High School Student Athletes** is revised to delete a reference to a now repealed State law. It continues to require participants to follow IHSA's rules prohibiting the use of performance-enhancing substances on its banned substance list. A new sentence clarifies that a student who violates the IHSA rule may also be disciplined according to Board policy 7:190, *Student Behavior*.

► **7:240-AP2, E1, Exhibit - Consent to Participate in Extracurricular Drug and Alcohol Testing Program.** The exhibit is unchanged except for minor grammatical changes to enhance clarity.

Concussion Material

► **7:305, Student Athlete Concussions and Head Injuries.** Only footnotes and the Legal References are changed. Footnotes explain that trailer legislation (P.A. 99-486) amended the Youth Sports Concussion Safety Act. 105 ILCS 5/22-80, added by P.A. 99-245. The trailer legislation (P.A. 99-486) delays the compliance deadline until the beginning of the 2016-2017 school year. The reference to the trailer bill's status from the Legal References is removed.

Other footnotes explain that 105 ILCS 5/10-20.54 was repealed by P.A. 99-245. It required each school board to adopt a policy regarding student athlete concussions and head injuries. School districts should be guided by it until they fully comply with the Youth Sports Concussion Safety Act.

- **7:305-AP, Administrative Procedure - Program for Managing Student Athlete Concussions and Head Injuries. REWRITTEN.** The procedure begins with a synopsis of State law and includes web links to resources. An actor-action table comprehensively covers the duties for the school board; superintendent or designee; concussion oversight team; building principals or designees; student participants in interscholastic athletic activities and their parents/guardians; coaches or assistant coaches (whether volunteers or district employees) of interscholastic athletic activities; nurses and physicians who serve on the concussion oversight team; athletic trainers; game officials of interscholastic athletic activities; and other staff members who are responsible for student athletes.

Instruction

- **6:130, Program for the Gifted.** During the 5-year review of this policy, it was amended to provide a focus for the board to monitor it. This is done by: (1) adding goals for the gifted and talented education program, and (2)

stating that the board will periodically meet with the superintendent or designee to determine and/or review the indicators and data that evidence whether the program is accomplishing its goals and objectives. The Legal References now reference the entire Article on Gifted and Talented Children rather than just one section.

- **6:300, Graduation Requirements.** The policy, footnotes, and Cross References, are amended. Nonsubstantive edits are made to the policy. The footnotes explain that students entering the 9th grade in the 2016-17 school year and each year thereafter must complete one semester of civics to graduate. 105 ILCS 5/27-22(e)(5), amended by P.A. 99-434 and P.A. 99-485, delayed the effective date of P.A. 99-434 until 7-1-2016. Two policies are added to the Cross References.
- **6:300-E2, Exhibit - State Law Graduation Requirements.** The exhibit quotes 105 ILCS 5/27-22 and is updated to reflect amendments by: (1) P.A. 99-434 to add one semester of civics to the graduation requirements, and (2) P.A. 99-485 to make the civics course requirement

Revisions to Policies, Administrative Procedures and Exhibits

Number and Title	Action The memo describes the revisions.
6:130, Program for the Gifted	Policy, footnotes, and Legal References are updated after 5- year review to enhance alignment with governance principles.
6:300, Graduation Requirements	Policy is nonsubstantive updated; Cross References and footnotes are amended in response to legislation.
6:300-E2, Exhibit - State Law Graduation Requirements	Exhibit is updated in response to legislation.
7:150, Agency and Police Interviews	Policy and Cross References are updated in response to subscriber feedback.
7:150-AP, Administrative Procedure - Agency and Police Interviews	Procedure is updated to better align with the Ill. Council of School Attorneys' <i>Guidelines for Interview of Students</i> publication.
7:190, Student Behavior (formerly known as Student Discipline)	Policy, footnotes, Legal References, and Cross References are updated in response to legislation and to add useful provisions.
7:190-AP2, Student Handbook - Gang Activity Prohibited	Student handbook provision is unchanged, other than a punctuation edit.
7:190-AP3, Administrative Procedure - Guidelines for Reciprocal Reporting of Criminal Offenses Committed by Students	Procedure is unchanged after a 5-year review.
7:190-AP4, Administrative Procedure - Use of Isolated Time Out and Physical Restraint	Procedure is unchanged after its 5-year review to ensure legal compliance and alignment with good governance principles
7:190-AP7, Administrative Procedure - Student Discipline Guidelines	Procedure is updated in response to legislation.
7:190-AP8, Administrative Procedure - Student Re-Engagement Guidelines	NEW. Procedure is added in response to legislation.
7:190-E1, Exhibit - Aggressive Behavior Reporting Letter and Form	Exhibit is revised to promote cooperation.
7:190-E3, Exhibit - Memorandum of Understanding	NEW. Exhibit is added in response to legislation.
7:190-E4, Exhibit - Acknowledgement of Receiving Student Behavior Policy and Student Conduct Code	NEW. Exhibit is added to supplement the PRESS suite of student behavior material.
7:200, Suspension Procedures	Policy, footnotes, Legal References, and Cross References are updated in response to legislation.
7:200-E1, Exhibit - Short Term Out-of-School Suspension (1-3 Days) Reporting Form	NEW. Exhibit is added in response to legislation.
7:200-E2, Exhibit - Long Term Out-of-School Suspension (4-10 Days) Reporting Form	NEW. Exhibit is added in response to legislation.
7:210, Expulsion Procedures	Policy, footnotes, Legal References, and Cross References are updated in response to legislation.
7:210-E1, Exhibit - Notice of Expulsion Hearing	NEW. Exhibit is added in response to legislation
7:220, Bus Conduct	Policy, footnotes, and Cross References are updated in response to legislation.
7:230, Misconduct by Students with Disabilities	Modifications to only the Cross References after review to ensure legal compliance and alignment with governance principles.
7:240, Conduct Code for Participants in Extracurricular Activities	Policy, Cross References, and footnotes are updated in response to legislation and to add clarity.

Revisions to Policies, Administrative Procedures and Exhibits

continued

Number and Title	Action
7:240-AP2, E1, Exhibit - Consent to Participate in Extracurricular Drug and Alcohol Testing Program	Exhibit is unchanged except for minor grammatical changes to enhance clarity.
7:305, Student Athlete Concussions and Head Injuries	Footnotes and Legal References are changed in response to legislation.
7:305-AP, Administrative Procedure - Program for Managing Student Athlete Concussions and Head Injuries	Procedure is rewritten in response to legislation.

Acknowledgement to PRESS Advisory Board

Before each **PRESS** issue is published, a group of distinguished individuals provides input and suggestions. We appreciate their contributions and thank them sincerely.

Melinda Selbee, **PRESS** Editor and IASB General Counsel

Kimberly Small, Assistant **PRESS** Editor
and IASB Assistant General Counsel

Sara Boucek, Associate Director/Legal Counsel
Illinois Association of School Administrators

Heather K. Brickman, Attorney
Hodges, Loizzi, Eisenhammer, Rodick & Kohn, LLP

Marcy Dutton, Deputy General Counsel
Illinois State Board of Education

Dr. James Gay, Superintendent
Community High School District 230

Dr. Michael Kiser, Attorney
Law Office of Michael L. Kiser, Esq.

Larry D. Kuster, Attorney
Rammelkamp Bradney, Attorneys at Law

Fred Munding, Assistant Superintendent
DuPage County Regional Office of Education

Mr. Gregg Murphy, Assistant Regional Superintendent
Iroquois-Kankakee Regional Office of Education

Merry Rhoades, Attorney
Tueth, Keeney, Cooper, Mohan & Jackstadt P.C.

M. Curt Richardson, Attorney
McLean County Unit District 5

Caroline Roselli, Attorney
Robbins, Schwartz, Nicholas, Lifton & Taylor, Ltd.

Wayne Savageau, former IASB Policy Consultant
and former Superintendent

Brian Schwartz, Associate Director & General Counsel
Illinois Principals Association

IASB Staff Members, especially Policy Consultants
and Field Services Directors



2921 Baker Drive
Springfield, Illinois 62703-5929
217/528-9688

One Imperial Place
1 East 22nd Street, Suite 20
Lombard, Illinois 60148-6120
630/629-3776

www.iasb.com

