AGENDA (timeframes are estimated for planning purposes)

1. Roll Call

2. Board Member Participation by Other Means

3. Public Participation  8:30 – 8:45 a.m.

4. Minutes of the September Governmental Relations Committee Meeting  (pp. 2-3)

5. Legislative Update  (Nicole Wills, Cynthia Riseman)  8:45 – 8:55 a.m.  (pp. 4-6)

6. ISBE Legislative Agenda Update  (pp. 7-65)
   (Darren Reisberg, Nicole Wills, Cynthia Riseman)  8:55 – 9:30 a.m.

7. Committee Agenda Planning/Additional Items

8. Committee Wrap-up – as needed (Superintendent Koch)

9. Adjourn

* Items listed with an asterisk (*) will be discussed in committee and Board action may be taken in the plenary session.
GOVERNMENTAL RELATIONS COMMITTEE OF THE WHOLE  
Wednesday, September 16th, 2009  
Springfield, Illinois

<table>
<thead>
<tr>
<th>Committee Members Present</th>
<th>Staff Present</th>
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<tbody>
<tr>
<td>Lanita Koster, Chair</td>
<td>Chris Koch</td>
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<tr>
<td>Jesse Ruiz</td>
<td>Darren Reisberg</td>
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<tr>
<td>Joyce Karon</td>
<td>Nicole Wills</td>
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<tr>
<td>David Fields</td>
<td>Susie Morrison</td>
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<tr>
<td>Vinni Hall</td>
<td>Beth Hanselman</td>
</tr>
<tr>
<td>Andrea Brown</td>
<td>Linda Tomlinson</td>
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<td>Connie Wise</td>
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</table>

**Board Members Absent**  
Chris Ward  
Marsha Moffett  
Jean Ladage

**Student Advisory Committee Members**  
Chinelo Agwuncha  
Julia Sauls  
Peyton Bernot  
Jordon Ping  
Courtney McGill  
Daniel Lopez  
Kojo Fletcher  
Shelby Wills  
Kelsea Battefeld  
Hannah Rhoades  
Christopher Parks  
Linda Ly  
Sarah Chapman  
Abigail Horan

1. **ROLL CALL**  
See above.

2. **PUBLIC PARTICIPATION**  
None

3. **MINUTES OF THE MAY COMMITTEE MEETING**  
Board member Joyce Karon made a motion to approve the June Committee meeting minutes and Dave Fields seconded the motion. The minutes were approved with a unanimous voice vote.

4. **LEGISLATIVE UPDATE**  
Governmental Relations staff gave the Committee a status update of HB 4588 which would abolish the Suburban Cook Regional Office of Education and transfer all powers and duties currently vested in the ROE to the State Board of Education. The bill was introduced by Representative Elaine Nekritz in response to the Auditor General’s report on the regional office. The House Elementary and Secondary Education Committee held a subject matter hearing on the legislation on July 14th. At that time, staff opposed the legislation as introduced because of the staffing and fiscal burdens on ISBE.

5. **ISBE LEGISLATIVE AGENDA UPDATE**  
Staff have been continuing to work on the potential legislative proposals that were discussed during the August Board retreat. Proposals include:

- Human Capital Reform
- District and School Innovations and Interventions
- Anti-Bullying legislation
• Certification/Reorganization of Article 21
• Addressing Inequities in Funding to Chicago (the Block Grant Issue)
• Phasing Out General State Aid Hold Harmless
• Revisions to the Private Business and Vocational Schools Act
• Clean-Up Bill

6. FALL MANDATE WAIVER REPORT
The Fall 2009 Waiver Report will be the twenty-ninth report to be submitted to the General. The report contains 58 waiver requests that the General Assembly must act on. These requests address nonresident tuition, driver education fees, limitation of administrative costs, daily physical education, content of evaluation plans, parent-teacher conferences and using other practice driving methods in place of the required six hours of behind-the-wheel instruction in a dual control car on public roadways.

7. ADJOURN
Board member Vinni Hall made the motion to adjourn the Committee. Joyce Karon seconded the motion.
ILLINOIS STATE BOARD OF EDUCATION MEETING
October 30, 2009

TO: Governmental Relations Committee of the Whole
FROM: Christopher A. Koch, Ed.D., State Superintendent of Education
       Darren Reisberg, General Counsel

Agenda Topic: Legislative Update
Materials: Chart of Vetoes

Staff Contact(s): Cynthia Riseman, Liaison, Governmental Relations
                Nicole Wills, Liaison, Governmental Relations

Purpose of Agenda Item
To provide the Committee with an update on spring legislation sustaining veto action by the Governor, update and provide information in regards to new legislative initiatives introduced or amended during the fall veto session, and provide updates of subsequent action by the General Assembly.

Background Information
During the summer months, Governor Quinn acted on approximately 400 bills; sixty-one of which were either vetoed in their entirety, or subject to an amendatory veto. Of the legislative initiatives being tracked by Governmental Relations staff, ten education and related bills were subject to an amendatory veto. Until action is taken to either accept the veto or reject the veto, the bill does not become law. A sponsor of the legislation can take one of two actions with respect to legislation that has been vetoed or amendatorily vetoed:

- File a motion to accept the veto. If the sponsor files this motion and it is accepted by both chambers, the bill will become law as changed by the Governor.
- File a motion to override the veto: Overriding the veto of the Governor requires a vote of 3/5 the majority in both chambers. If the motion to override is successful in both chambers, the bill becomes law as originally passed by the General Assembly. If a 3/5 majority is not attained in either one of the chambers, the bill dies.

A chart of tracked education and related bills amendatorily vetoed by the Governor has been provided.

Veto Session Legislative Initiatives
Many new issues emerged during the first week of the fall veto session; Government Relations staff is tracking both newly emerging issues and amendments to pending bills.

Waivers-
The House Elementary and Secondary Education Committee heard testimony regarding School Code mandate waiver requests. HJR 77 (Smith/Meeks) was approved by the House of Representatives and was sent to the Senate for consideration. The resolution, if adopted in the Senate, will deny the following mandate waiver requests:

- the Lake Park CHSD 108 request regarding content of evaluation plans;
- the Hononegah CHSD 207 request regarding content of evaluation plans; and
- the Wheaton CUSD 200 request regarding behind-the-wheel drivers' education
The Senate Education Committee is expected to hear testimony regarding these mandate waiver requests the last week of the fall veto session. The Senate introduced a corresponding resolution on waivers, SJR 76 (Meeks); however, it is expected that only HJR 77 will see action.

Annexation/ Detachment-
SB 226 (Martinez/Smith) as amended, provides that the State Board of Education (instead of the school board of the affected district) shall handle all matters related to detachment, annexation, division, dissolution, or any combination of those methods if the regional board of school trustees is abolished and the trustees of school of the township in which the school district resides does not exist. This bill was amended in committee and later subject to debate on the House floor; however, pending opposition on the House floor the sponsor failed to call the bill for a vote during the first week of veto session.

ISBE staff opposed this legislation during the committee hearing because this legislation would require the State Board expend costs on a hearing to decide local property issues that are best handled at the local/regional level.

ROE Grant Acquisition-
SB 614 (Demuzio) as amended would provide that a regional office of education may apply for, and be eligible to receive any grant administered by the State Board of Education in the same manner as (and subject to the same restrictions as) school districts. Amendatory language is pending in the Senate Education Committee.

Public Building Commission-
SB 616 (Koehler/Gordon) amends the School Code and the School Construction Law. In a Section concerning a school board's power to levy a tax or borrow money and issue bonds for fire prevention, safety, energy conservation, disabled accessibility, school security, and specified repair purposes, makes changes concerning a school district's authority to replace a school building or build additions to replace portions of a building. With respect to one of the exceptions to a school district's debt limitation, allows additional indebtedness by the execution of a lease with a public building commission; makes related changes. Removes references that limit provisions to just the Chicago school district with respect to (i) the prohibition on the State Board of Education and the Capital Development Board establishing standards that disapprove or otherwise establishing limitations that restrict the eligibility of a school district for a school construction project grant based on certain facts and (ii) the authority of a school district to use school construction project grants for certain purposes.

Blue Ribbon Committee on Elementary and Secondary Mandates-
HJR 74 (Eddy) establishes a Blue Ribbon Committee on Elementary and Secondary Education Mandates to make recommendations to the General Assembly on unnecessary and costly mandates in the School Code and the Administrative Code.

While we recognize the impact of mandates on school districts, both in terms of time and financial resources and the importance of looking at such an issue, we question whether or not a formal committee is necessary to study this issue. ISBE is currently tasked with producing an Educational Mandates Report every March, which documents all new mandates on school districts from the previous legislative session.

For discussion purposes only.
# Vetoed Bills

<table>
<thead>
<tr>
<th>Bill No.</th>
<th>Type of Veto</th>
<th>Effect of Bill</th>
<th>Changes/Stated Reason</th>
<th>Final Action Vote</th>
</tr>
</thead>
<tbody>
<tr>
<td>HB 276 (Fritchey/Silverstein)</td>
<td>Amendatory</td>
<td>Requires agency rulemaking for all administrative policies</td>
<td>Removes underlying provisions. Adds rulemaking to agencies that distribute grants.</td>
<td>H:114-0-0 S: 58-0-0</td>
</tr>
<tr>
<td>HB 557 (Chapa LaVia/Holmes)</td>
<td>Amendatory</td>
<td>School campus threats Class 3 felony</td>
<td>Lowers the penalty to a Class 4 felony</td>
<td>H: 117-0-0 S: 58-0-0</td>
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<tr>
<td>HB 613 (Eddy/Cronin)</td>
<td>Amendatory</td>
<td>Competitive bidding requirements for school contracts</td>
<td>Removes rulemaking language</td>
<td>H :117-0-0 S: 52-0-0</td>
</tr>
<tr>
<td>HB 725 (Watson/Hultgren)</td>
<td>Amendatory</td>
<td>Sign language courses/credits</td>
<td>Removes rulemaking language</td>
<td>H: 114-0-0 S: 58-0-0</td>
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<tr>
<td>HB 2445 (Chapa LaVia/Sullivan)</td>
<td>Amendatory</td>
<td>Time lines and staffing for labor decisions</td>
<td>Makes the bill subject to approp.</td>
<td>H: 91-25-0 S: 52-1-1</td>
</tr>
<tr>
<td>HB 2547 (Fritchey/Steans)</td>
<td>Amendatory</td>
<td>Human Rights investigate bullying in schools</td>
<td>Makes the bill subject to approp.</td>
<td>H: 87-26-0 S: 53-1-0</td>
</tr>
<tr>
<td>SB 51 (Schoenberg/Madigan)</td>
<td>Amendatory</td>
<td>Procurement</td>
<td>IDOT federal compliance</td>
<td>S: 58-0-0 H: 118-0-0</td>
</tr>
<tr>
<td>SB 1391 (Clayborne/Lang)</td>
<td>Amendatory</td>
<td>Marital and family therapists in schools</td>
<td>Sets up a task force</td>
<td>S: 55-1-0 H:71-44-0</td>
</tr>
<tr>
<td>SB 1882 (Cronin/Fortner)</td>
<td>Amendatory</td>
<td>Streamlining Illinois Educational Delivery Systems Task Force</td>
<td>Adds another appt. by the Governor</td>
<td>S: 59-0-0 H: 105-0-0</td>
</tr>
</tbody>
</table>
TO: Governmental Relations Committee of the Whole

FROM: Christopher A. Koch, Ed.D., State Superintendent of Education
       Darren Reisberg, Deputy Superintendent/General Counsel

Agenda Topic: Legislative Agenda Update

Staff Contact(s): Cynthia Riseman, Liaison, Governmental Relations
                 Nicole Wills, Liaison, Governmental Relations

Purpose of Agenda Item
To provide the Committee with an update on the status of the legislative initiatives discussed at the August Board retreat.

Human Capital Reform:
Since August, Agency staff has been developing draft legislation to address:

- Teacher/Principal Evaluations: Modifying requirements related to teacher and principal evaluations to, among other things, require school districts to, by a certain date, incorporate student growth into such evaluations; and

- Teacher/Administrator Incentives: Revising current statutory incentives to attract top human capital to low-performing schools and districts.

The current drafts of these initiatives are attached. We have had multiple meetings with stakeholders to discuss these drafts, the most recent occurring on Thursday, October 22.

District and School Innovations and Interventions:

- Align state and federal accountability designations and status to address the following problems and needs:
  - Currently, the different terms used in federal and state law lead to confusion throughout the system.
  - Districts can avoid NCLB sanctions for schools through the local Title I funding allocation process. As a result, many of the State's lowest-performing high schools are not subject to interventions under federal law.
  - The State's accountability system needs to account for changes to the federal accountability system resulting from the State's approved Differentiated Accountability model.

- Target the State's most intensive intervention authority to persistently low-performing schools and districts. Under current law, the most intensive interventions result solely
from the amount of time a school or district is in status, and do no relate to the degree of low-performance.

- Ensure the State has a full arsenal of interventions in order to improve student achievement outcomes in those districts unwilling or unable to undertake voluntary improvements. Necessary interventions may include:
  - spending or removing the authority of local boards;
  - The ability to override any locally enacted restrictions on reform; and
  - The restructuring of districts through consolidation.

**Anti-Bullying legislation:**
Section 27-23.7 of the School Code currently requires school districts to have a policy on bullying, but there are no parameters for the type of issues the bullying policies should address. We have developed draft legislative language for your review. The proposed statutory changes to Section 27-23.7 include:

- Defining “bullying” and “harassment” and explicitly states that “bullying” and “harassment” are prohibited through the use of data or computer software that is accessed through a computer, computer system, or computer network of a public K-12 educational institution.
- Defining criterion that each school district must include in its policy.
- Requiring the State Educational Agency, subject to availability of funds, to draft a model policy and provide in-service training and materials regarding harassment and bullying.

We have also attached for your review materials on bullying prepared by the Iowa Department of Education and the Ohio Department of Education.

**Certification/Reorganization of Article 21:**
Article 21 of the School Code addresses educator certification. Certain aspects of Article 21 (e.g., alternative certification) will likely be affected by the Human Capital Reform proposal discussed above. Additionally, though, the Agency is considering a reorganization of Article 21 to make the Article more meaningful and user-friendly.

**Addressing Inequities in Funding to Chicago (the Block Grant Issue):**
Agency staff intend to further analyze and discuss with the Board ways in which to democratize mandated categorical and other block grant funding to all Illinois school districts so that these dollars more closely follow the relevant students.

**Phasing Out General State Aid Hold Harmless:**
Despite the Board’s and Agency’s attempts this past session, the General Assembly did not pass a bill that would statutorily phase out the GSA hold harmless. Agency staff believes this issue is important enough to attempt again.

A copy of the relevant pages of HB 3245, Senate Amendment 1 has been included for your reference. HB 3245 was initiated by Representative Roger Eddy last year in response to the
Board’s proposal to reduce General State Aid hold harmless to 50% and phase it out in three years. Representative Eddy proposed a slower phase out at a 20% reduction over four years. The language is being provided to show Board members how the language closed the door so no new districts were eligible for GSA hold harmless and how the phase out would occur. The actual percentage method of phasing out the hold harmless funds would depend on the Board’s budget proposal.

**Revisions to the Private Business and Vocational Schools Act:**
Agency staff intend to closely review the PBVS Act so as to ensure that the State and PBVS students are best protected and, that the program is administered efficiently until such point as it is transferred to a state agency more logically equipped to administer it.

**Clean-Up Bill:**
As we have done for the past few years, the Agency intends to pursue a clean-up bill to address audit findings or any statutory inconsistencies or concerns brought forth by Agency staff.

**Expected Outcome**
This item is for discussion purposes only.
AN ACT concerning education

Be it enacted by the people of the State of Illinois, represented in the General Assembly:

Section 1. Short title. This Act may be cited as the Performance Evaluation Reform Act of 2009.

Section 5. Findings; Declarations: The General Assembly finds and declares all of the following:

(a) Effective teachers and school leaders are a critical factor contributing to student achievement.

(b) Many existing district performance evaluation systems fail to adequately distinguish between effective and ineffective teachers and principals. A recent study of evaluation systems in three of the largest Illinois districts found that out of 41,174 teacher evaluations performed over a five-year period, 92.6% of teachers were rated "superior" or "excellent", 7% were rated "satisfactory", and only 0.4% were rated "unsatisfactory".

(c) Performance evaluation systems must assess professional competencies as well as student growth.

(d) School districts and the State must ensure that performance evaluation systems are valid and reliable, and contribute to the development of staff and improved student achievement outcomes.

Section 10. Article 24A of the School Code is hereby amended as follows:

(105 ILCS 5/Art. 24A heading)

ARTICLE 24A. EVALUATION OF CERTIFIED EMPLOYEES

(105 ILCS 5/24A-1) (from Ch. 122, par. 24A-1)

Sec. 24A-1. Purpose. The purpose of this Article is to improve the educational services of the elementary and secondary public schools of Illinois by requiring that all certified school district employees be evaluated on a periodic basis and that the evaluations result in remedial action being taken when deemed necessary.

(Source: P.A. 84-972.)
(105 ILCS 5/24A-2) (from Ch. 122, par. 24A-2)
Sec. 24A-2. Application. The provisions of this Article shall apply to all public school districts organized and operating pursuant to the provisions of this Code, including special charter districts and those school districts operating in accordance with Article 34, except that this Section does not apply to teachers assigned to schools identified in an agreement entered into between the board of a school district operating under Article 34 and the exclusive representative of the district's teachers in accordance with Section 34-85c of this Code. The State Board of Education may, by administrative rule, establish the application of this Article to other public entities employing certified teachers. A provision of a collective bargaining agreement or evaluation plan may not restrict or prohibit the application of any provision of this Article. Any such restriction or prohibition in a collective bargaining agreement or evaluation plan is void as contrary to public policy to the extent of such restriction or prohibition.
(Source: P.A. 95-510, eff. 8-28-07.)

Sec. 24A-2.5. Definitions. In this Article:

"Evaluator" means:

(a) an administrator qualified under Section 24A-3;

(b) an assistant principal qualified under Section 24A-3 under the supervision of an administrator who is also qualified under Section 24A-3; or

(c) other individuals qualified under Section 24A-3, [if the school district and the exclusive bargaining representative of its teachers negotiate and agree to it] [provided that, where applicable, the school district shall bargain over the impact and effects of the use of other individuals with the exclusive bargaining representative of its teachers.] [Alternate bracketed language is proposed for discussion.]

"Full Implementation Date" means:

(a) For school districts having less than 500,000 inhabitants:

(i) if the State of Illinois receives a Race to the Top Grant, September 1, 2013; or

(ii) if the State of Illinois does not receive a Race to the Top Grant, September 1, 2014.

(b) For school districts having 500,000 or more inhabitants, September 1, 2012.

"Race to the Top Grant" means a grant made by the Secretary of the U.S. Department of Education pursuant to paragraph (2) of Section 14006(a) of the American Recovery and Reinvestment Act of 2009.
(105 ILCS 5/24A-3) (from Ch. 122, par. 24A-3)

Sec. 24A-3. Evaluation training and pre-qualification.

(a) Beginning January 1, 1986, School boards shall require evaluators those administrators, or—in school districts having a population exceeding 500,000—assistant principals, who evaluate other certified personnel to participate at least once every 2 years in an inservice training workshop on either school improvement or the evaluation of certified personnel provided or approved by the State Board of Education prior to undertaking any evaluation and at least once every 3 years thereafter. Training provided or approved by the State Board of Education shall include the evaluator training program developed pursuant to Section 24A-20 of this Code.

(b) Any evaluator undertaking an evaluation after the Full Implementation Date must first successfully complete a pre-qualification program provided or approved by the State Board of Education. The program must involve rigorous training and an independent observer's determination that the evaluator's ratings properly align to the requirements established by the State Board pursuant to this Article.

(Source: P.A. 86-1477; 87-1076.)

(105 ILCS 5/24A-4) (from Ch. 122, par. 24A-4)

Sec. 24A-4. Development and submission of evaluation plan. As used in this and the succeeding Sections, "teacher" means any and all school district employees regularly required to be certified under laws relating to the certification of teachers and other school district employees whose position is identified by State Board administrative rule with responsibility for undertaking or overseeing instruction. Each school district shall develop, in cooperation with its teachers or, where applicable, the exclusive bargaining representatives of its teachers, an evaluation plan for all teachers. By no later than the Full Implementation Date, each school district shall develop in cooperation with its teachers or, where applicable, the exclusive bargaining representatives of its teachers, an evaluation plan for all teachers providing for the use of data and indicators on student growth as a significant factor in rating teaching performance. The district shall, no later than October 1, 1986, submit a copy of its evaluation plan to the State Board of Education, which shall review the plan and make public its comments thereon, and the district shall at the same time provide a copy to the exclusive bargaining representatives. Whenever any substantive change is made in a district's evaluation plan, the new plan shall be submitted to the State Board of Education for review and comment, and the district shall at the same time provide a copy of any such new plan to the exclusive bargaining representatives. The board of a school district operating under Article 34 of this Code and the exclusive representative of the district's teachers shall submit a certified copy of an agreement entered into under Section 34-85c of this Code to the State Board of Education, and that agreement shall constitute the teacher evaluation plan for teachers assigned to schools identified in that agreement. Whenever any substantive change is made in an agreement entered into under Section 34-85c of this Code by the board of a school district operating under Article 34 of this Code and the exclusive representative of the district's teachers, the new agreement shall be submitted to the State Board of Education.

(Source: P.A. 95-510, eff. 8-28-07.)
Sec. 24A-5. Content of evaluation plans. This Section does not apply to teachers assigned to schools identified in an agreement entered into between the board of a school district operating under Article 34 of this Code and the exclusive representative of the district's teachers in accordance with Section 34-85c of this Code. Each school district to which this Article applies shall establish a teacher evaluation plan which ensures that each teacher in contractual continued service is evaluated at least once in the course of every 2 school years, beginning with the 1986-87 school year.

By no later than the Full Implementation Date, each school district shall establish a teacher evaluation plan which ensures that:

(i) each teacher not in contractual continued service is evaluated at least once every school year;

(ii) each teacher in contractual continued service is evaluated at least once in the course of every 2 school years. However, any teacher in contractual continued service whose performance is rated as either "needs improvement" or "unsatisfactory" must be evaluated at least once in the school year following the receipt of such rating; and,

(iii) notwithstanding anything to the contrary in this Section or any other Section of the School Code, a principal may, but need not, evaluate any and all teachers within a school during his or her first year as principal of such school.

The evaluation plan shall comply with the requirements of this Section and of any rules adopted by the State Board of Education pursuant to this Section.

The plan shall include a description of each teacher's duties and responsibilities and of the standards to which that teacher is expected to conform.

The plan may provide for evaluation of personnel whose positions require administrative certification by independent evaluators not employed by or affiliated with the school district. The results of the school district administrators' evaluations shall be reported to the employing school board, together with such recommendations for remediation as the evaluator or evaluators may deem appropriate.

Evaluation of teachers whose positions do not require administrative certification shall be conducted by an administrator qualified under Section 24A-3, or—in school districts having a population exceeding 500,000—by either an administrator qualified under Section 24A-3 or an assistant principal under the supervision of an administrator qualified under Section 24A-3, and shall include at least the following components:

(a) personal observation of the teacher in the classroom by the evaluator (on at least 2 different school days in school districts having a population exceeding 500,000) by a district administrator qualified under Section 24A-3, or—in school districts having a population exceeding 500,000—by either an administrator qualified under Section 24A-3 or an assistant...
principal under the supervision of an administrator qualified under Section 24A-3, unless the teacher has no classroom duties.

(b) consideration of the teacher's attendance, planning, and instructional methods, classroom management, where relevant, and competency in the subject matter taught, where relevant.

(c) by no later than the Full Implementation Date, consideration of student growth as a significant factor in the rating of the teacher's performance.

(d) prior to the Full Implementation Date, rating of the teacher's performance of tenured teachers as either:

   (i) "excellent", "satisfactory" or "unsatisfactory"; or
   (ii) "excellent", "proficient", "needs improvement" or "unsatisfactory".

(e) on and after the Full Implementation Date, rating of the performance of tenured teachers as "excellent", "proficient", "needs improvement" or "unsatisfactory".

(f) specification as to the teacher's strengths and weaknesses, with supporting reasons for the comments made.

(g) inclusion of a copy of the evaluation in the teacher's personnel file and provision of a copy to the teacher.

(h) within 30 days after the completion of an evaluation rating a tenured teacher as "needs improvement", the evaluator(s), after consultation with the teacher, shall develop a professional development plan that identifies specific professional development or other activities the teacher will undertake and the supports that the district will provide to address the areas identified as needing improvement.

(i) within 30 days after completion of an evaluation rating a tenured teacher as "unsatisfactory", development and commencement by the district, or by an administrator qualified under Section 24A-3 or an assistant principal under the supervision of an administrator qualified under Section 24A-3 in school districts having a population exceeding 500,000, of a remediation plan designed to correct deficiencies cited, provided the deficiencies are deemed remediable. In all school districts the remediation plan for unsatisfactory, tenured teachers shall provide for remediation during twenty (20) calendar weeks during a school term or terms, which remediation period shall exclude only weeks of scheduled school breaks; 90 school days of remediation within the classroom. In all school districts evaluations issued pursuant to this Section shall be issued within 10 days after the conclusion of the respective remediation plan. However, the school board or other governing authority of the district shall not lose jurisdiction to discharge a teacher in the event the evaluation is not issued within 10 days after the conclusion of the respective remediation plan.

(j) participation in the remediation plan by the tenured teacher rated "unsatisfactory", an evaluator and a district administrator qualified under Section 24A-3 (or-- in a school district...
having a population exceeding 500,000—an administrator qualified under Section 24A-3 or an assistant principal under the supervision of an administrator qualified under Section 24A-3, and a consulting teacher, selected by the participating administrator or by the principal or assistant principal qualified under Section 24A-3, or in school districts having a population exceeding 500,000—by an administrator qualified under Section 24A-3 or by an assistant principal under the supervision of an administrator qualified under Section 24A-3, of the teacher who was rated "unsatisfactory", which consulting teacher is an educational employee as defined in the Educational Labor Relations Act, has at least 5 years' teaching experience and a reasonable familiarity with the assignment of the teacher being evaluated, and who received an "excellent" rating on his or her most recent evaluation. Where no teachers who meet these criteria are available within the district, the district and the exclusive bargaining representative of its teachers shall mutually designate an individual to participate in the remediation process, an individual who meets these criteria.

In a district having a population of less than 500,000 with an exclusive bargaining agent, the bargaining agent may, if it so chooses, supply a roster of qualified teachers from whom the consulting teacher is to be selected. That roster shall, however, contain the names of at least 5 teachers, each of whom meets the criteria for consulting teacher with regard to the teacher being evaluated, or the names of all teachers so qualified if that number is less than 5. In the event of a dispute as to qualification, the State Board shall determine qualification.

(k) evaluations and ratings once every 30 school days for the 90 school day remediation period immediately following receipt of a remediation plan provided for under subsections (i) and (j) of this Section; provided that in school districts having a population exceeding 500,000 there shall be monthly evaluations and ratings for the first 6 months and quarterly evaluations and ratings for the next 6 months immediately following completion of the remediation program of a teacher for whom a remediation plan has been developed. a mid-point and final evaluation by an evaluator during and at the end of the twenty (20) calendar week remediation period, immediately following receipt of a remediation plan provided for under subsections (i) and (j) of this Section. Each evaluation shall assess the teacher’s performance during the time period since the prior evaluation; provided that the last evaluation shall also include an overall evaluation of the teacher’s performance during the remediation period. A written copy of the evaluations and ratings, in which any deficiencies in performance and recommendations for correction are identified, shall be provided to and discussed with the teacher within 10 school days of the date of the evaluation, unless an applicable collective bargaining agreement provides to the contrary. These subsequent evaluations shall be conducted by an evaluator the participating administrator, or in school districts having a population exceeding 500,000—by either the principal or by an assistant principal under the supervision of an administrator qualified under Section 24A-3. The consulting teacher shall provide advice to the teacher rated "unsatisfactory" on how to improve teaching skills and to successfully complete the remediation plan. The consulting teacher shall participate in developing the remediation plan, but the final decision as to the evaluation shall be done solely by the evaluator administrator, or in school districts having a population exceeding 500,000—by either the principal or by an assistant principal under the supervision of an administrator qualified under Section 24A-3, unless an applicable collective bargaining agreement provides to the contrary. Teachers in the remediation process in a school district having a population exceeding 500,000 are not subject to the annual evaluations described in
paragraphs (a) through (e) of this Section. Evaluations at the conclusion of the remediation process shall be separate and distinct from the required annual evaluations of teachers and shall not be subject to the guidelines and procedures relating to those annual evaluations. The evaluator may but is not required to use the forms provided for the annual evaluation of teachers in the district's evaluation plan.

(l) in school districts having a population of less than 500,000, reinstatement to the evaluation schedule set forth in the district's evaluation plan, a schedule of biennial evaluation for any tenured teacher who achieves a rating equal to or better than "satisfactory" or "proficient" in the school year following a rating of "needs improvement" or "unsatisfactory". Completes the 90 school day remediation plan with a "satisfactory" or better rating, unless the district's plan regularly requires more frequent evaluations; and in school districts having a population exceeding 500,000, reinstatement to a schedule of biennial evaluation for any teacher who completes the 90 school day remediation plan with a "satisfactory" or better rating and the one year intensive review schedule as provided in paragraph (h) of this Section with a "satisfactory" or better rating, unless such district's plan regularly requires more frequent evaluations.

(m) dismissal in accordance with Section 24-12 or 34-85 of the School Code of any teacher who fails to complete any applicable remediation plan with a rating equal to or better than a "satisfactory" or "proficient" rating. Districts and teachers subject to dismissal hearings are precluded from compelling the testimony of consulting teachers at such hearings under Section 24-12 or 34-85, either as to the rating process or for opinions of performances by teachers under remediation.

In a district subject to a collective bargaining agreement as of the effective date of this amendatory Act of 1997, any changes made by this amendatory Act to the provisions of this Section that are contrary to the express terms and provisions of that agreement shall go into effect in that district only upon expiration of that agreement. Thereafter, collectively bargained evaluation plans shall at a minimum meet the standards of this Article. If such a district has an evaluation plan, however, whether pursuant to the collective bargaining agreement or otherwise, a copy of that plan shall be submitted to the State Board of Education for review and comment, in accordance with Section 24A-4.

Nothing in this Section shall be construed as preventing immediate dismissal of a teacher for deficiencies which are deemed irremediable or for actions which are injurious to or endanger the health or person of students in the classroom or school, or preventing the dismissal or non-renewal of non-tenured teachers for any reason not prohibited by applicable employment and civil rights laws. Failure to strictly comply with the time requirements contained in Section 24A-5 shall not invalidate the results of the remediation plan.

(Source: P.A. 95-510, eff. 8-28-07.)
Sec. 24A-6. Alternative evaluations. The school board of any school district which has not evaluated all of its teachers by the end of the 1987-88 school year, or which fails to evaluate such teachers within every 2 school years thereafter, as provided for in this Article shall report the names and titles of such employees and the reasons for the failure to evaluate to the State Board of Education. In districts where a collectively bargained plan already exists, that plan shall be used to evaluate the teachers in that district, rather than using the evaluation plan developed by the State Board of Education unless the collectively bargained plan does not meet the requirements of subsections (a) through (d) of Section 24A-5. In cases where an evaluation instrument is in dispute, the State Board of Education shall postpone its evaluation until the dispute is resolved. Upon receipt of such reports or if otherwise made aware that such evaluations have not been conducted, the State Board of Education shall enter upon the district premises and evaluate the teachers in accordance with an evaluation plan developed by the State Board of Education, which plan shall parallel as closely as possible the requirements of subsections (a) through (d) of Section 24A-5. The results of the State Board evaluation shall be communicated to the school board, which shall supply a copy to the teacher, place a copy in the teacher's personnel file, and, where necessary, undertake a remediation program as defined in subsections (f) through (j) of Section 24A-5.

(Source: P.A. 86-201.)

Sec. 24A-7. Rules. The State Board of Education is authorized to adopt such rules as are deemed necessary to implement and accomplish the purposes and provisions of this Article, including, but not limited to, rules (i) relating to the methods for measuring student growth, (ii) defining the term "significant factor" for purposes of including consideration of student growth in performance ratings, and (iii) establishing minimum requirements for district teacher and principal evaluation instruments and procedures. The rules adopted by the State Board shall prohibit the use of year-to-year growth on the annual State testing administered as of the effective date of this amendatory act of the 96th General Assembly as the sole measure of student growth for teacher evaluations. Prior to the Full Implementation Date, except that these rules shall not apply to teachers assigned to schools identified in an agreement entered into between the board of a school district operating under Article 34 of this Code and the exclusive representative of the district's teachers in accordance with Section 34-85c of this Code.

(Source: P.A. 95-510, eff. 8-28-07.)

Sec. 24A-8. Evaluation of teachers not in contractual continued service. Beginning with the 1987-88 school year. Each teacher not in contractual continued service shall be evaluated at least once each school year.

(Source: P.A. 84-1419.)

(a) Beginning with the 2006-2007 school year and each school year thereafter, each school district, except for a school district organized under Article 34 of this Code, shall establish a principal evaluation plan in accordance with this Section. The plan must ensure that each principal is evaluated as follows:

   (1) For a principal on a single-year contract, the evaluation must take place by April 1 of each year.

   (2) For a principal on a multi-year contract under Section 10-23.8a of this Code, the evaluation must take place by April 1 of the final year of the contract.

On and after the Full Implementation Date, the plan must:

   (1) Rate the principal's performance as "excellent", "proficient", "needs improvement" or "unsatisfactory"; and

   (2) ensure that each principal is evaluated at least once every school year.

Nothing in this Section prohibits a school district from conducting additional evaluations of principals.

(b) The evaluation shall include a description of the principal's duties and responsibilities and the standards to which the principal is expected to conform.

(c) The evaluation must be performed by the district superintendent, the superintendent's designee, or, in the absence of the superintendent or his or her designee, an individual appointed by the school board who holds a registered Type 75 State administrative certificate. Prior to the Full Implementation Date, the evaluation must be in writing and must at least do all of the following:

   (1) Consider the principal's specific duties, responsibilities, management, and competence as a principal.

   (2) Specify the principal's strengths and weaknesses, with supporting reasons.

   (3) Align with the Illinois Professional Standards for School Leaders or research-based standards established by administrative rule or district standards.

Following the Full Implementation Date, the evaluation must, in addition to the above requirements, provide for the use of data and indicators on student growth as a significant factor in rating performance.

(d) One copy of the evaluation must be included in the principal's personnel file and one copy of the evaluation must be provided to the principal.
(e) Failure by a district to evaluate a principal and to provide the principal with a copy of the evaluation at least once during the term of the principal's contract, in accordance with this Section, is evidence that the principal is performing duties and responsibilities in at least a satisfactory manner and shall serve to automatically extend the principal's contract for a period of one year after the contract would otherwise expire, under the same terms and conditions as the prior year's contract. The requirements in this Section are in addition to the right of a school board to reclassify a principal pursuant to Section 10-23.8b of this Code.

(f) Nothing in this Section prohibits a school board from ordering lateral transfers of principals to positions of similar rank and salary.

(Source: P.A. 94-1039, eff. 7-20-06.)

(105 ILCS 5/24A-20)

(a) On or before the date established in subsection (b) of this Section, the State Board of Education shall, through a process involving collaboration with teacher unions, school district management representatives, and other stakeholders, develop or contract for the development of all of the following data collection and evaluation support systems:

(1) A system to annually collect and publish data by district and school on teacher and administrator performance evaluation outcomes. The system must ensure that no teacher or administrator can be personally identified by publicly reported data.

(2) Both a teacher and principal model evaluation template. The model templates must incorporate the requirements of this Article and any other requirements established by the State Board by administrative rule, but allow customization by districts in a manner that does not conflict with such requirements.

(3) An evaluator pre-qualification program based on the model teacher evaluation template.

(4) An evaluator training program based on the model teacher evaluation template. The training program shall provide multiple training options that account for the prior training and experience of the evaluator.

(5) A superintendent training program based on the model principal evaluation template.

(6) One or more instruments to provide feedback to principals on the instructional environment within a school.
(7) A State Board-provided or approved technical assistance system that supports districts with the development and implementation of teacher and principal evaluation systems.

(8) Web-based systems and tools supporting implementation of the model templates and the evaluator pre-qualification and training programs.

(9) A process for measuring and reporting correlations between local principal and teacher evaluations and (i) student growth in tested grades and subjects, and (ii) retention rates of teachers.

(b) If the State of Illinois receives a Race to the Top Grant, the data collection and support systems described in subsection (a) will be developed on or before September 1, 2011. If the State of Illinois does not receive a Race to the Top Grant, the data collection and support systems described in subsection (a) will be developed on or before September 1, 2012.

(c) Districts shall submit data and information to the State Board on teacher and principal performance evaluations and evaluation plans in accordance with procedures and requirements for submissions established by the State Board. Such data shall include, without limitation, (i) data on the performance rating given to all tenured teachers, (ii) data on district recommendations to renew or not renew non-tenured teachers, and (iii) data on the performance rating given to all principals.

Section 15. Section 2-3.25g of the School Code is hereby amended as follows:

(105 ILCS 5/2-3.25g) (from Ch. 122, par. 2-3.25g)

Sec. 2-3.25g. Waiver or modification of mandates within the School Code and administrative rules and regulations.

(a) In this Section:

"Board" means a school board or the governing board or administrative district, as the case may be, for a joint agreement.

"Eligible applicant" means a school district, joint agreement made up of school districts, or regional superintendent of schools on behalf of schools and programs operated by the regional office of education.

"Full Implementation Date" has the meaning set forth in Section 24A-2.5(a) of this Code for any Eligible Applicant other than a school district organized under Article 34 of this Code, and the meaning set forth in Section 24A-2.5(b) for a school district organized under Article 34 of this Code.

"State Board" means the State Board of Education.

(b) Notwithstanding any other provisions of this School Code or any other law of this State to the contrary, eligible applicants may petition the State Board of Education for the waiver or modification of the mandates of this School Code or of the administrative rules and regulations promulgated by the State Board of Education. Waivers or modifications of administrative rules and regulations and modifications of mandates of this School Code may be requested when an eligible applicant demonstrates that it can address the intent of the rule or mandate in a more effective, efficient, or economical manner or when necessary to stimulate innovation or improve
student performance. Waivers of mandates of the School Code may be requested when the waivers are necessary to stimulate innovation or improve student performance. Waivers may not be requested from laws, rules, and regulations pertaining to special education, teacher certification, teacher tenure and seniority, or Section 5-2.1 of this Code or from compliance with the No Child Left Behind Act of 2001 (Public Law 107-110).

On and after the Full Implementation Date, waivers or modifications may not be requested from laws, rules, and regulations pertaining to teacher and principal evaluations. On the Full Implementation Date, any previously authorized waiver or modification from laws, rules, and regulations pertaining to teacher and principal evaluations shall terminate.

(c) Eligible applicants, as a matter of inherent managerial policy, and any Independent Authority established under Section 2-3.25f may submit an application for a waiver or modification authorized under this Section. Each application must include a written request by the eligible applicant or Independent Authority and must demonstrate that the intent of the mandate can be addressed in a more effective, efficient, or economical manner or be based upon a specific plan for improved student performance and school improvement. Any eligible applicant requesting a waiver or modification for the reason that intent of the mandate can be addressed in a more economical manner shall include in the application a fiscal analysis showing current expenditures on the mandate and projected savings resulting from the waiver or modification. Applications and plans developed by eligible applicants must be approved by the board or regional superintendent of schools applying on behalf of schools or programs operated by the regional office of education following a public hearing on the application and plan and the opportunity for the board or regional superintendent to hear testimony from staff directly involved in its implementation, parents, and students. The time period for such testimony shall be separate from the time period established by the eligible applicant for public comment on other matters. If the applicant is a school district or joint agreement requesting a waiver or modification of Section 27-6 of this Code, the public hearing shall be held on a day other than the day on which a regular meeting of the board is held. If the applicant is a school district, the public hearing must be preceded by at least one published notice occurring at least 7 days prior to the hearing in a newspaper of general circulation within the school district that sets forth the time, date, place, and general subject matter of the hearing. If the applicant is a joint agreement or regional superintendent, the public hearing must be preceded by at least one published notice (setting forth the time, date, place, and general subject matter of the hearing) occurring at least 7 days prior to the hearing in a newspaper of general circulation in each school district that is a member of the joint agreement or that is served by the educational service region, provided that a notice appearing in a newspaper generally circulated in more than one school district shall be deemed to fulfill this requirement with respect to all of the affected districts. The eligible applicant must notify in writing the affected exclusive collective bargaining agent and those State legislators representing the eligible applicant's territory of its intent to seek approval of a waiver or modification and of the hearing to be held to take testimony from staff. The affected exclusive collective bargaining agents shall be notified of such public hearing at least 7 days prior to the date of the hearing and shall be allowed to attend such public hearing. The eligible applicant shall attest to compliance with all of the notification and procedural requirements set forth in this Section.

(d) A request for a waiver or modification of administrative rules and regulations or for a modification of mandates contained in this School Code shall be submitted to the State Board of Education within 15 days after approval by the board or regional superintendent of schools. The
application as submitted to the State Board of Education shall include a description of the public hearing. Following receipt of the request, the State Board shall have 45 days to review the application and request. If the State Board fails to disapprove the application within that 45 day period, the waiver or modification shall be deemed granted. The State Board may disapprove any request if it is not based upon sound educational practices, endangers the health or safety of students or staff, compromises equal opportunities for learning, or fails to demonstrate that the intent of the rule or mandate can be addressed in a more effective, efficient, or economical manner or have improved student performance as a primary goal. Any request disapproved by the State Board may be appealed to the General Assembly by the eligible applicant as outlined in this Section.

A request for a waiver from mandates contained in this School Code shall be submitted to the State Board within 15 days after approval by the board or regional superintendent of schools. The application as submitted to the State Board of Education shall include a description of the public hearing. The description shall include, but need not be limited to, the means of notice, the number of people in attendance, the number of people who spoke as proponents or opponents of the waiver, a brief description of their comments, and whether there were any written statements submitted. The State Board shall review the applications and requests for completeness and shall compile the requests in reports to be filed with the General Assembly. The State Board shall file reports outlining the waivers requested by eligible applicants and appeals by eligible applicants of requests disapproved by the State Board with the Senate and the House of Representatives before each March 1 and October 1. The General Assembly may disapprove the report of the State Board in whole or in part within 60 calendar days after each house of the General Assembly next convenes after the report is filed by adoption of a resolution by a record vote of the majority of members elected in each house. If the General Assembly fails to disapprove any waiver request or appealed request within such 60 day period, the waiver or modification shall be deemed granted. Any resolution adopted by the General Assembly disapproving a report of the State Board in whole or in part shall be binding on the State Board.

(e) An approved waiver or modification (except a waiver from or modification to a physical education mandate) may remain in effect for a period not to exceed 5 school years and may be renewed upon application by the eligible applicant. However, such waiver or modification may be changed within that 5-year period by a board or regional superintendent of schools applying on behalf of schools or programs operated by the regional office of education following the procedure as set forth in this Section for the initial waiver or modification request. If neither the State Board of Education nor the General Assembly disapproves, the change is deemed granted. An approved waiver from or modification to a physical education mandate may remain in effect for a period not to exceed 2 school years and may be renewed no more than 2 times upon application by the eligible applicant. An approved waiver from or modification to a physical education mandate may be changed within the 2-year period by the board or regional superintendent of schools, whichever is applicable, following the procedure set forth in this Section for the initial waiver or modification request. If neither the State Board of Education nor the General Assembly disapproves, the change is deemed granted.

(f) On or before February 1, 1998, and each year thereafter, the State Board of Education shall submit a cumulative report summarizing all types of waivers of mandates and modifications of mandates granted by the State Board or the General Assembly. The report shall identify the topic of the waiver along with the number and percentage of eligible applicants for which the waiver has been granted. The report shall also include any recommendations from the State Board.
regarding the repeal or modification of waived mandates.
(Source: P.A. 94-198, eff. 1-1-06; 94-432, eff. 8-2-05; 94-875, eff. 7-1-06; 95-223, eff. 1-1-08.)

Section 20. Section 34-8 of the School Code is hereby amended as follows:

§ 34-8. Powers and duties of general superintendent. The general superintendent of schools shall prescribe and control, subject to the approval of the board and to other provisions of this Article, the courses of study mandated by State law, textbooks, educational apparatus and equipment, discipline in and conduct of the schools, and shall perform such other duties as the board may by rule prescribe. The superintendent shall also notify the State Board of Education, the board and the chief administrative official, other than the alleged perpetrator himself, in the school where the alleged perpetrator serves, that any person who is employed in a school or otherwise comes into frequent contact with children in the school has been named as a perpetrator in an indicated report filed pursuant to the Abused and Neglected Child Reporting Act, approved June 26, 1975, as amended.

The general superintendent may be granted the authority by the board to hire a specific number of employees to assist in meeting immediate responsibilities. Conditions of employment for such personnel shall not be subject to the provisions of Section 34-85.

The general superintendent may, pursuant to a delegation of authority by the board and Section 34-18, approve contracts and expenditures.

Pursuant to other provisions of this Article, sites shall be selected, schoolhouses located thereon and plans therefor approved, and textbooks and educational apparatus and equipment shall be adopted and purchased by the board only upon the recommendation of the general superintendent of schools or by a majority vote of the full membership of the board and, in the case of textbooks, subject to Article 28 of this Act. The board may furnish free textbooks to pupils and may publish its own textbooks and manufacture its own apparatus, equipment and supplies.

In addition, in January of each year, the general superintendent of schools shall report to the State Board of Education the number of high school students in the district who are enrolled in accredited courses (for which high school credit will be awarded upon successful completion of the courses) at any community college, together with the name and number of the course or courses which each such student is taking.

The general superintendent shall also have the authority to monitor the performance of attendance centers, to identify and place an attendance center on remediation and probation, and to recommend to the board that the attendance center be placed on intervention and be reconstituted, subject to the provisions of Sections 34-8.3 and 8.4.

The general superintendent, or his or her designee, shall conduct an annual evaluation of each principal in the district pursuant to guidelines promulgated by the Board and the Board approved principal evaluation form. The evaluation shall be based on factors, including the following: (i) student academic improvement as defined by the school improvement plan; (ii) student
absenteeism rates at the school; (iii) instructional leadership; (iv) effective implementation of
programs, policies, or strategies to improve student academic achievement; (v) school
management; and (vi) other factors, including, without limitation, the principal's communication
skills and ability to create and maintain a student-centered learning environment, to develop
opportunities for professional development, and to encourage parental involvement and
community partnerships to achieve school improvement.

Effective no later than September 1, 2012, the general superintendent or his or her designee shall
develop a written principal evaluation plan. The evaluation plan must be in writing and shall
supersede the evaluation requirements set forth above. The evaluation plan must do at least all
of the following:

(1) Provide for annual evaluation of all principals employed under a performance
contract by the general superintendent or his or her designee, no later than July 1st of each year.

(2) Consider the principal's specific duties, responsibilities, management, and
competence as a principal.

(3) Specify the principal's strengths and weaknesses, with supporting reasons.

(4) Align with research-based standards.

(5) Use data and indicators on student growth as a significant factor in rating principal
performance.

Section 25. Section 34-85c of the School Code is hereby amended as follows:

§ 34-85c. Alternative procedures for teacher evaluation, remediation, and removal for cause after
remediation.

(a) Notwithstanding any law to the contrary, the board and the exclusive representative of the
district's teachers are hereby authorized to enter into an agreement to establish alternative
procedures for teacher evaluation, remediation, and removal for cause after remediation,
including an alternative system for peer evaluation and recommendations; provided however,
that no later than September 1, 2012: (i) any such alternative procedures must include
provisions whereby student performance data is a significant factor in teacher evaluation and (ii)
teachers are rated as "excellent", "proficient", "needs improvement" or "unsatisfactory". Pursuant
exclusively to that agreement, teachers assigned to schools identified in that agreement shall be
subject to an alternative performance evaluation plan and remediation procedures in lieu of the
plan and procedures set forth in Article 24A of this Code and alternative removal for cause
standards and procedures in lieu of the removal standards and procedures set forth in Sections
34-85 and 34-85b of this Code. To the extent that the agreement provides a teacher with an
opportunity for a hearing on removal for cause before an independent hearing officer in
accordance with Sections 34-85 and 34-85b or otherwise, the hearing officer shall be governed
by the alternative performance evaluation plan, remediation procedures, and removal standards
and procedures set forth in the agreement in making findings of fact and a recommendation.
(b) The board and the exclusive representative of the district's teachers shall submit a certified copy of an agreement as provided under subsection (a) of this Section to the State Board of Education.

Section 30. Consideration of Performance in Teacher Licensure Determinations.

By no later than March 1, 2010, ISBE will submit to the General Assembly recommendations and proposed legislation for a new teacher licensure structure that:

1. addresses the need for induction and mentoring for all beginning teachers;

2. considers measures of teacher performance in decisions to grant a full professional educator license;

3. bases teacher professional development requirements on (a) goals and objectives set forth in the improvement plans for the school and district, and (b) the professional development needs of the teacher identified through the teacher's performance evaluation;

4. bases licensure renewals on completion of meaningful professional development and consideration of performance evaluation ratings;

5. provides examples of a pattern of performance that would constitute "incompetency" as such term is used in Section 21-23 of the School Code (Suspension or revocation of certificate); and

6. expands eligibility for alternative certification candidates and permits alternative certification programs offered by sponsors other than institutions of higher education.

ISBE's recommendations must describe the process and timeline for transitioning to the new licensure structure.

Section 999. Effective date. This Act takes effect upon becoming law.
Incentives for an Effective Workforce in Underperforming Schools Act
(Human Capital Reform)

AN ACT concerning education

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 1. Short title. This Act may be cited as the Incentives for an Effective Workforce in Underperforming Schools Act.

Section 3. Findings; Declarations: The General Assembly finds and declares all of the following:

(a) Effective teachers and administrators are a critical factor in strengthening underperforming schools and increasing student achievement.

(b) Underperforming schools have difficulty recruiting and retaining effective teachers and administrators.

(c) Existing incentives for working at underperforming schools are not sufficient and do not address the many issues that may prevent an effective teacher or administrator from accepting employment at such schools.

(d) The State of Illinois must continue to develop and test new means of recruiting, attracting and retaining effective teachers and administrators in order to help strengthen underperforming schools and provide opportunities for all Illinois students.

Section 5. The School Code is amended by adding Section 2-3.148 as follows:

(105 ILCS 5/2-3.148 new)

Sec. 2-3.148. Incentives for an Effective Workforce in Underperforming Schools Program.

(a) The State Board of Education shall establish a program to provide incentives for highly effective teachers and administrators to work in an Eligible School.

(b) For the purposes of this Section:

"Underperforming School" means a school that is within the bottom 5% of achievement of all schools in the State, as designated by the State Superintendent.

"Previously Underperforming School" means a school that was within the bottom 5% of achievement of all schools in the State, as designated by the State
Superintendent, within any of the prior five years, but whose achievement is no longer within the bottom 5% of achievement of all schools in the State.

"Eligible School" means either an Underperforming School or Previously Underperforming School that has developed and continues to implement a school improvement plan that is designed to achieve:

(i) rapid and significant student achievement gains; and
(ii) comprehensive interventions and reforms to establish a school climate and culture conducive to teaching and learning.

"Eligible District" means a district that contains one or more Eligible Schools.

"Program" means the program to provide incentives for highly effective teachers and administrators to work in an Eligible School established by this Section.

(c) The State Board of Education shall, by administrative rule, establish procedures and develop criteria for the administration of the Program, including, but not limited to:

(1) The procedures and conditions for implementation of the payment and other incentives authorized under the Program;

(2) The standards to be used by Eligible Districts for determining the effectiveness of teachers and administrators that are eligible to receive incentives under the Program;

(3) Any other criteria teachers and administrators must meet to be eligible to receive incentives under the Program; and

(4) Any criteria Eligible Schools and Eligible Districts must meet to be eligible to participate in the Program.

(d) Subject to appropriation, the State Board of Education may provide one or both of the State payment incentives described in this paragraph (d) to Eligible Districts for distribution to highly effective teachers or highly effective administrators, as applicable. If the appropriation in any given year is not sufficient to make payments on behalf of all highly effective teachers and highly effective administrators eligible for such payments, then payments under subparagraph (1) to teachers that have previously relocated to an Eligible School shall receive first priority, and the State Board may prioritize or prorate payment of any remaining amounts in accordance with procedures and criteria set forth in administrative rule.

(1) An annual payment for highly effective teachers that relocate to and remain employed by an Eligible School from a public school that is not an Eligible School and have accepted a lower paying position as the result of the Eligible District's salary schedule. Each annual payment made under this subparagraph
(1) shall be equal to the difference between the teacher's salary for the school year immediately preceding the teacher's relocation and the teacher's salary in the first year the teacher works full time at the Eligible School. The State Board may, by administrative rule, limit the number of years a teacher may receive a payment under this subparagraph (1).

(2) A one-time payment in an amount provided by appropriation or otherwise established by the State Board through administrative rule for highly effective teachers and highly effective administrators who relocate to an Eligible School from a public school that is not an Eligible School.

(e) Any State payment incentives made to highly effective teachers and highly effective administrators pursuant to paragraph (d) above shall, for the purpose of calculating teacher benefits under the Illinois Pension Code, be considered "Salary" as defined in Section 16-121 of the Illinois Pension Code.

(f) Notwithstanding any longer probationary period required by Section 24-11 or 34-84 of the School Code, an Eligible District may establish a probationary period of less than 4 years or may waive a probationary period for a highly effective teacher who accepts employment at an Eligible School. The number of probationary years reduced or waived pursuant to this paragraph shall not exceed the number of years the teacher has previously been employed full-time in a public school.

(g) For highly effective teachers and highly effective administrators that accept a position with an Eligible School from a public school that is not an Eligible School, each school board shall grant these teachers and administrators, for a period of up to 5 years, a leave of absence. A teacher or administrator that accepts a position contingent upon the availability of State payment incentives under paragraph (d) shall be eligible for an authorized leave of absence under this paragraph. At the end of the authorized leave of absence, the teacher or administrator must return to his/her previous school district or resign; provided, however, that if the teacher or administrator chooses to return to the school district, the individual must be assigned to a position which requires the teacher's or administrator's certification and legal qualifications. The contractual continued service status and the retirement benefits of the teacher or administrator who is granted a leave of absence to accept employment with an Eligible School outside of their current school district shall not be affected by that leave of absence.

(h) A district collective bargaining agreement may not restrict or prohibit the provision of the Program incentives set forth in subsection (d) or (f). Any such restriction or prohibition is void as contrary to public policy to the extent of such restriction or prohibition.

(i) Eligible Schools and Eligible Districts participating in the Program shall provide data and report to the State Board of Education on participation in a manner and frequency established by the State Superintendent.
Section 10. Section 16-158 of the Pension Code is hereby amended as follows:

(40 ILCS 5/16-158(f))

Sec. 16-158(f).

(f) Except as specifically set forth in subsection (f-5) of this Section, if the amount of a teacher's salary for any school year used to determine final average salary exceeds the member's annual full-time salary rate with the same employer for the previous school year by more than 6%, the teacher's employer shall pay to the System, in addition to all other payments required under this Section and in accordance with guidelines established by the System, the present value of the increase in benefits resulting from the portion of the increase in salary that is in excess of 6%. This present value shall be computed by the System on the basis of the actuarial assumptions and tables used in the most recent actuarial valuation of the System that is available at the time of the computation. If a teacher's salary for the 2005-2006 school year is used to determine final average salary under this subsection (f), then the changes made to this subsection (f) by Public Act 94-1057 shall apply in calculating whether the increase in his or her salary is in excess of 6%. For the purposes of this Section, change in employment under Section 10-21.12 of the School Code on or after June 1, 2005 shall constitute a change in employer. The System may require the employer to provide any pertinent information or documentation. The changes made to this subsection (f) by this amendatory Act of the 94th General Assembly apply without regard to whether the teacher was in service on or after its effective date.

Whenever it determines that a payment is or may be required under this subsection, the System shall calculate the amount of the payment and bill the employer for that amount. The bill shall specify the calculations used to determine the amount due. If the employer disputes the amount of the bill, it may, within 30 days after receipt of the bill, apply to the System in writing for a recalculation. The application must specify in detail the grounds of the dispute and, if the employer asserts that the calculation is subject to subsection (g) or (h) of this Section, must include an affidavit setting forth and attesting to all facts within the employer's knowledge that are pertinent to the applicability of that subsection. Upon receiving a timely application for recalculation, the System shall review the application and, if appropriate, recalculate the amount due.

The employer contributions required under this subsection (f) may be paid in the form of a lump sum within 90 days after receipt of the bill. If the employer contributions are not paid within 90 days after receipt of the bill, then interest will be charged at a rate equal to the System's annual actuarially assumed rate of return on investment compounded annually from the 91st day after receipt of the bill. Payments must be concluded within 3 years after the employer's receipt of the bill.

(f-5) Notwithstanding anything contained to the contrary in subsection (f), an employer shall not be required to make any payment under subsection (f) as the result of the salary of a teacher employed at an Eligible School, as defined in Section 2-3.148(b) of the School Code, if the State Superintendent has determined that the salary is in furtherance of a school improvement plan for an Eligible School that is designed to achieve: (i) rapid and significant student
achievement gains; and (ii) comprehensive interventions and reforms to establish a school climate and culture conducive to teaching and learning.

Section 15. Repeal of Salary Incentive Program for Hard-to-Staff Schools. Section 21-29 of the School Code is hereby repealed as of the effective date of this Act.

Section 999. Effective Date. This Act takes effect upon becoming law.
Anti-Bullying Legislative Initiative

(105 ILCS 5/27-23.7)
Sec. 27-23.7. Bullying prevention education; gang resistance education and training.
Harassment and bullying prevention.

(a) The General Assembly finds that a safe and civil school environment is necessary for students to learn and achieve and that harassment and bullying cause physical, psychological and emotional harm to students and interfere with students’ ability to learn and participate in school activities—bullying has a negative effect on the social environment of schools, creates a climate of fear among students, inhibits their ability to learn, and leads to other antisocial behavior. Bullying The General Assembly further finds that bullying behavior has been linked to other forms of antisocial behavior, such as vandalism, shoplifting, skipping and dropping out of school, fighting, using drugs and alcohol, sexual harassment, and sexual violence. Because of the negative outcomes associated with harassment and bullying in schools, the General Assembly finds that schools should educate all students, parents and school personnel about what behaviors constitute prohibited harassment and bullying.

—The General Assembly further finds that the instance of youth delinquent gangs continues to rise on a statewide basis. Given 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.

(b) In this Section:
"Bullying prevention" means and includes instruction in all of the following:

—(1) Intimidation.
—(2) Student victimization.
—(3) Sexual harassment.
—(4) Sexual violence.
—(5) Strategies for student-centered problem solving regarding bullying.

"Gang resistance education and training" means and includes instruction in, without limitation, each of the following subject matters when accompanied by a stated objective of reducing gang activity and educating children in grades K through 12 about the consequences of gang involvement:

—(1) Conflict resolution.
—(2) Cultural sensitivity.
—(3) Personal goal setting.
—(4) Resisting peer pressure.

“Harassment and bullying” means any physical or verbal act or conduct, including communications made in writing or electronically, directed toward a student or students which has or can be reasonably predicted to have the effect of one or more of the following:

(1) placing the student(s) in reasonable fear of harm to the student's person or property;
(2) causing a substantially detrimental effect on the student's(s') physical or mental health;
(3) substantially interfering with the student's(s') academic performance;
(4) substantially interfering with the student(s') ability to participate in or benefit from the services, activities, or privileges provided by a school district (or one or more of its schools) or recognized non-public school; or
(5) substantially disrupting or interfering with the orderly operation of a school district (or one or more of its schools) or recognized non-public school.

Notwithstanding (5) above, this Act shall not be construed to permit school district or recognized non-public school officials to punish student expression or speech based on an undifferentiated fear or apprehension or disturbance out of a desire to avoid the discomfort sometimes associated with an unpopular viewpoint.

“Harassment and bullying” may include without limitation threats, intimidation, stalking, physical violence, sexual harassment, sexual violence, theft, public humiliation, teasing, social exclusion, destruction of property or retaliation for asserting or alleging an act of harassment or bullying.

“Recognized non-public school” means any non-public school currently recognized by the State Board of Education in accordance with Section 2-3.25o of the School Code [105 ILCS 5/2-3.25o].

(c) Each school district may make suitable provisions for instruction in bullying prevention and gang resistance education and training in all grades and include such instruction in the courses of study regularly taught therein. A school board may collaborate with a community-based agency providing specialized curricula in bullying prevention whose ultimate outcome is to prevent sexual violence. For the purposes of gang resistance education and training, a school board must collaborate with State and local law enforcement agencies. The State Board of Education may assist in the development of instructional materials and teacher training in relation to bullying prevention and gang resistance education and training.

(cd) Beginning 180 days after August 23, 2007 (the effective date of Public Act 95-349), each school district shall create and maintain a policy on bullying. By January 1, 2011, every school district and recognized non-public school shall have adopted and have in effect a policy that complies with this subsection (c) which policy must be filed with the State Board of Education. Each school district must communicate its policy on bullying to its students and their parent or guardian on an annual basis. The policy must be updated every 2 years and filed with the State Board of Education after being updated. The State Board of Education shall monitor the implementation of policies created under this subsection (d).

Every policy required under this subsection (c) must contain, at a minimum, the following components:
(1) a definition of harassment and bullying that is no less inclusive than that set forth in subsection (b);
(2) a statement declaring that harassment and bullying are contrary to state law and school district policy;
(3) a statement declaring that students shall not be subjected to harassment and bullying on the basis of actual or perceived race, color, religion, sex, national origin, ancestry, age, marital status, physical or mental disability, military status, sexual orientation, gender-related identity or expression, unfavorable discharge from military service, association with a person or group with one or more of the aforementioned actual or perceived characteristics, or any other distinguishing characteristic that may be defined by the State law or a school district;
(4) instructions for reporting harassment and bullying, including identification of the person(s) responsible for receiving reports of harassment and bullying;
(5) an explanation of the procedure(s) for the prompt investigation of allegations of harassment and bullying, including identification of the person(s) responsible for investigating reports of harassment and bullying;
(6) the timelines that the school district or recognized non-public school will follow to resolve complaints of harassment and bullying;
(7) a list of the potential consequences for and remedial actions that may be taken against an individual who violates the harassment and bullying policy; and
(8) a list of the potential remedies for and protective actions that may be taken for a student subjected to harassment and bullying. With respect to this list of potential remedies, the policy must state that except to secure their immediate safety or with the consent of the adult who legally enrolled the student, a student ordinarily should not be removed from a class, room, school facility or school district in order to stop ongoing harassment, intimidation or violence directed at them and if there is a need to separate students for this purpose and to create an environment conducive to learning and respect, it is presumed that the offending students ordinarily should be removed.

A school district in every one of its schools, and a recognized non-public school shall post the policy required in this subsection (c) in an area of the school where notices regarding the rules, regulations, procedures, and standards of conduct are posted; distributed annually to parents, guardians, and students; provide the policy to all school personnel at the beginning of each school year or at the time a new employee is hired; and include the policy on the school district's, or recognized non-public school’s website, student handbook, student orientation materials and/or publication that sets forth the rules, procedures or standards of conduct for students.

Every school district and recognized non-public school shall maintain data regarding the allegations and incidents of harassment and bullying in the school, including a record of each complaint alleging a violation of the harassment and bullying policy and the resulting determination made and/or actions taken in response to such complaint. Beginning with the 2011-2012 school year, every school district and recognized nonpublic school must submit to the State Board of Education data regarding harassment and bullying in a format to be determined by the State Board of Education.

(d) Subject to funds appropriated for these purposes, the State Board of Education, in collaboration with additional state agencies at its discretion, shall facilitate compliance with this section by:
(1) providing, either directly, or through a contract, in-service trainings and materials regarding harassment and bullying to school personnel and students that

(i) address the causes of bullying and harassment and that train teachers, administrators, student services personnel, and other school personnel about student-centered strategies to prevent bullying and harassment and to effectively intervene when such incidents occur, and

(ii) teach students about the consequences of bullying and harassment; and

(2) preparing model policies applicable to and age appropriate for grades K-12.

(Source: P.A. 94-937, eff. 6-26-06; 95-198, eff. 1-1-08; 95-349, eff. 8-23-07; 95-876, eff. 8-21-08.)

New Section (Language removed from Section 27-23.7 into this new section with the following changes):

Gang resistance education and training.

(a) The General Assembly further finds that the instance of youth delinquent gangs continues to rise on a statewide basis. Given 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.

(b) In this section:

"Gang resistance education and training" means and includes instruction in, without limitation, each of the following subject matters when accompanied by a stated objective of reducing gang activity and educating children in grades K through 12 about the consequences of gang involvement:

1. Conflict resolution.
2. Cultural sensitivity.
3. Personal goal setting.
4. Resisting peer pressure.

(c) Each school district may make suitable provisions for instruction in bullying prevention and gang resistance education and training in all grades and include such instruction in the courses of study regularly taught therein. A school board may collaborate with a community based agency providing specialized curricula in bullying prevention whose ultimate outcome is to prevent sexual violence. For the purposes of gang resistance education and training, a school board must collaborate with State and local law enforcement agencies. The State Board of Education may assist in the development of instructional materials and teacher training in relation to bullying prevention and gang resistance education and training.
S.B. 126
128th General Assembly
(As Introduced)

Sens. Fedor, Turner, Cafaro, Schiavoni, Morano, Kearney, Sawyer, D. Miller

BILL SUMMARY

- Requires school districts, community schools, and STEM schools to expand their existing student anti-harassment policies to cover incidents of harassment, intimidation, or bullying that occur (1) on school buses or (2) off of school property and materially disrupt the educational environment and discipline of the school.

- Requires the anti-harassment policies to prohibit harassment, intimidation, or bullying by electronic means.

- Specifies that the anti-harassment policies must include the following: (1) a statement providing for possible suspension of students who engage in cyberbullying, (2) means for making anonymous reports of incidents of harassment, intimidation, or bullying, (3) disciplinary procedures for students who make false reports, and (4) strategies for protecting other persons (in addition to the victim, as in current law) from harassment or retaliation after a report has been made.

- Directs school districts, community schools, and STEM schools to review their anti-harassment policies annually.

- Revises the requirement for school districts, community schools, and STEM schools to provide training on their anti-harassment policies to school employees and volunteers by (1) eliminating a provision making the requirement contingent on the availability of state or federal funds for that purpose, (2) requiring the training to be conducted annually by December 31, and (3) requiring parental notification if the training is not conducted.

- Prohibits a school district administrator from knowingly failing to report to law enforcement authorities menacing by stalking or telecommunications harassment committed on school premises, on a school bus, or at a school-sponsored event.
CONTENT AND OPERATION

School anti-harassment policies

(R.C. 3313.666)

Background--current law

Current law requires each school district, community (charter) school, and STEM school to adopt a policy prohibiting student harassment, intimidation, or bullying on school property or at school-sponsored events.¹ "Harassment, intimidation, or bullying" is defined as "any intentional written, verbal, or physical act that a student has exhibited toward another particular student more than once and the behavior both: (1) causes mental or physical harm to the other student [and] (2) is sufficiently severe, persistent, or pervasive that it creates an intimidating, threatening, or abusive educational environment for the other student."² The anti-harassment policy must include procedures for reporting and responding to prohibited incidents, procedures for notifying parents of students involved in a prohibited incident, strategies for protecting victims from retaliation or additional harassment after a report, and disciplinary procedures for perpetrators.

The bill

The bill makes several changes to the requirements for anti-harassment policies in public schools. First, it adds school buses to the school-related locations where student harassment, intimidation, or bullying must be prohibited under the policy. Moreover, it specifies that prohibited incidents that occur off of school property also are covered by the policy, if the off-site harassment, intimidation, or bullying "materially or substantially" disrupts the educational environment and discipline of the school.³

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¹ R.C. 3314.03(A)(11)(d), 3313.666(B), and 3326.11 (first and last sections not in the bill). A STEM school is a public science, technology, engineering, and math school that operates under the direction of its own governing body (see R.C. Chapter 3326).

² R.C. 3313.666(A).

³ Under current law, whether a school district's disciplinary policies cover conduct that occurs off school property is left to the discretion of each school district board of education. If a district board elects to cover off-premises conduct, the discipline must pertain only to conduct that either (1) is connected to activities or incidents that have occurred on school property or (2) is directed at the person or property of a district official or employee (R.C. 3313.661(A), not in the bill). These provisions also apply to community schools and STEM schools (R.C. 3314.03(A)(11)(d) and 3326.11, neither section in the bill).
Second, it expands the definition of "harassment, intimidation, or bullying" to account for cyberbullying techniques by specifically including acts committed through the use of a cell phone, computer, pager, personal communication device, or other electronic communication device. It also requires the anti-harassment policy to contain a statement expressly providing for the possibility of suspension for a student who engages in cyberbullying.

Third, the bill requires the anti-harassment policy to include the following additional elements:

(1) A means for a person to make an anonymous report of harassment, intimidation, or bullying;

(2) A strategy for protecting other students or persons, not just the victim of the incident, after a report has been made; and

(3) A prohibition against students deliberately making false reports of prohibited incidents and a disciplinary procedure for students who make false reports.

Finally, the bill requires each school district, community school, and STEM school to review its anti-harassment policy annually. The district or school must make its policy and an explanation of the seriousness of cyberbullying available to all students and their parents.

**Employee training on anti-harassment policies**

(R.C. 3313.667)

Under current law, to the extent that state or federal funds are appropriated for these purposes, school districts, community schools, and STEM schools must (1) provide training on their anti-harassment policies for school employees and volunteers who have direct contact with students and (2) develop a process for educating students about the policies. The bill repeals the language making implementation of these requirements contingent on the availability of funding. Consequently, the provision of both the staff training and student education is always mandatory under the bill, even if districts and schools must use their own funds to comply.

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4 Under continuing law, districts and schools also are explicitly authorized to form bullying prevention task forces and other initiatives involving volunteers, parents, law enforcement personnel, and community members (current R.C. 3313.667(A), which is moved to R.C. 3313.666(F) by the bill).
With respect to the training for employees and volunteers, the bill specifies that the training must be conducted annually by December 31. If a district or school fails to meet that deadline, it must mail a notification to the parents of students enrolled in the noncompliant schools indicating that the required training has not been completed. This notification, to be sent by January 30, must be clearly distinguishable from other parent mailings. If the notification is not sent, the parent of any student enrolled in the district or school may apply to the applicable common pleas court for an order compelling compliance with the training or notification requirement or granting other equitable relief.

School administrators’ duty to report certain harassment to police

(R.C. 2921.22)

The bill prohibits a school district employee who is licensed by the State Board of Education and works as an administrator from knowingly failing to report to law enforcement authorities when the employee knows that menacing by stalking or telecommunications harassment has been or is being committed on school premises, a school bus operated by the district, or at a school-sponsored event. It appears that the

5 The bill retains current law specifying that the time spent by employees in the training must count toward any state- or district-mandated continuing education requirements.

6 Menacing by stalking is (1) knowingly engaging in a pattern of conduct to cause mental distress to another person or to cause the other person to believe the offender will cause the person physical harm or (2) using an electronic method to post a message inciting another person to engage in such a pattern of conduct (R.C. 2903.211, not in the bill).

Telecommunications harassment is making or causing to be made a telecommunication, or permitting a telecommunication to be made from a device under the person’s control, (1) with the purpose to abuse, threaten, or harass another person or (2) when the caller does any of the following:

(a) Fails to identify the caller to the recipient of the telecommunication and makes the telecommunication with purpose to harass or abuse any person at the premises to which the telecommunication is made;

(b) Describes or suggests that the caller, the recipient, or any other person engage in sexual activity, and the recipient or another person at the premises to which the telecommunication is made has requested that the caller not make a telecommunication to the recipient or to those premises;

(c) Commits aggravated menacing during the telecommunication;

(d) Knowingly states to the recipient that the caller intends to cause damage to property, and the recipient, any member of the recipient’s family, or any other person who resides at the premises to which the telecommunication is made owns, leases, resides, or works in, will at the time of the damaging be near or in, has the responsibility of protecting, or insures the property that will be damaged; or

(e) Knowingly makes the telecommunication to the recipient, to another person at the premises to which the telecommunication is made, or to those premises, and the recipient or another person at those
prohibition does not apply to administrators employed by community schools or STEM schools. A violation of the prohibition is the crime of failure to report a crime, but the bill does not specify a penalty for the violation.

The bill does not define "administrator" for purposes of the prohibition. However, under continuing law, the reporting procedures in a school district's anti-harassment policy must include a requirement for school personnel to report incidents of harassment, intimidation, or bullying of which they are aware to the school principal or another designated administrator. Presumably, then, the principal or designated administrator would be subject to the duty to report the incident to law enforcement authorities if the incident qualifies as menacing by stalking or telecommunications harassment.

**HISTORY**

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premises previously has told the caller not to make a telecommunication to those premises or to any persons at those premises (R.C. 2917.21, not in the bill).

R.C. 3313.666(B)(4). Continuing law grants civil immunity to school employees who promptly report an incident of harassment, intimidation, or bullying in good faith and in accordance with the procedures outlined in the anti-harassment policy (R.C. 3313.666(D)).
Yes, You Can ...

Do Something about Cyberbullying

Material prepared by
Carol Greta, Attorney
Iowa Department of Education

Note to educators: The materials in this document are not legal advice to the educator, but have been prepared as a courtesy to and for the use of educators as general guidelines.

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I. INTRODUCTION

What is cyberbullying? Why has it become such a pervasive problem, and not just in schools?

Cyberbullying is the intentional infliction of harm by the use of one or more media of electronic technologies. Electronic media include computers, Instant Messaging, social networking Web sites, handheld communication devised, cell phones, and the two dozen other media that were just invented as this sentence was typed. Cyberbullies use technology to flame, out, phish, bash, spam, impersonate, threaten, etc.

The “traditional” school bully, as we have learned the hard way, is an unhappy youth who feels disenfranchised, and chooses to take drastic, even tragic steps to get

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1 It is the policy of the Iowa Department of Education not to discriminate on the basis of race, creed, color, sex, sexual orientation, gender identity, national origin, gender, disability, religion, age, political party affiliation, or actual or potential parental, family or marital status in its programs, activities, or employment practices as required by the Iowa Code sections 216.9 and 256.10(2), Titles VI and VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000d and 2000e), the Equal Pay Act of 1973 (29 U.S.C. § 206, et seq.), Title IX (Educational Amendments, 20 U.S.C. §§ 1681 – 1688), Section 504 (Rehabilitation Act of 1973, 29 U.S.C. § 794), and the Americans with Disabilities Act (42 U.S.C. § 12101, et seq.).

2 These terms may have more than one definition. Some of the more commonly understood definitions are included here.
Flame: to post an extremely critical or abuse message.
Out: to trick the target into revealing sensitive or confidential information and then to forward that information to others as a “joke.”
Phish: same as out.
Bash: to post racist or other extremely offensive remarks online.
Spam: to flood the Internet with multiple copies of the same message.
The anonymity of electronic communications has deepened the pool from which cyberbullies emerge. The lack of the face-to-face element emboldens adults and children alike to communicate in a way in which they would not dream of doing otherwise.

Let’s take a moment to hold up a mirror to ourselves. Who among us has not regretted hitting the “send” key on an outgoing email, wishing that we had let more time pass to cool off before replying in the manner in which we replied? The sad truth is that technological advances have far outraced attempts to retain a modicum of civility in all of us. At all cyberbullying conferences I have attended that have included students, one student always asks of the adults, “What are you doing to cut back on your own misuse of electronic technology?” It’s a valid question, and one that every educator needs to resolve before confronting a student accused of cyberbullying.

Cyberbullying is an issue that is exacerbated among the young because targets often are reluctant to break a perceived code of silence by complaining, because they fear that adults will take away their own access to electronic communication devices, and because we adults just have a lack of understanding of the nature of cybercommunications. When targeted students do complain, an additional challenge lies in trying to corral the information, because one click of the mouse can send the information literally around the globe. Finally, when confronted with evidence of cyberbullying, the student suspected of the same may loudly proclaim that s/he is just exercising his/her free speech rights.

So what’s an educator to do?

As with any form of student misconduct in which other students (or staff) are harmed, the worst thing to do is nothing.

“Awareness without Action is Useless.” D. Olweus.

“Awareness without Action is a Successful Lawsuit.” C. Greta

Just because it may be more difficult to gather evidence does not excuse school officials from taking some kind of action. The remainder of this document discusses what steps educators may – and in some cases, must – take in the face of cyberbullying and other forms of electronic misconduct by students.

II. STATUTES, RULE, AND POLICY

In 2007, the Iowa Legislature enacted legislation requiring all school districts and accredited nonpublic schools in Iowa to have anti-harassment/anti-bullying board policies, to make complaint forms available to targets of bullying and harassment, to put investigative procedures into place, and to collect and report data regarding incidents of

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3 Please forgive the gross over-simplification. It is included merely to demonstrate the difference between cyberbullies and non-cyberbullies.
bullying and harassment. The new law includes electronic means of bullying and harassment. (See 2.a. in box below.)

**Iowa Code section 280.28**

1. Purpose - findings - policy. The state of Iowa is committed to providing all students with a safe and civil school environment in which all members of the school community are treated with dignity and respect. The general assembly finds that a safe and civil school environment is necessary for students to learn and achieve at high academic levels. Harassing and bullying behavior can seriously disrupt the ability of school employees to maintain a safe and civil environment, and the ability of students to learn and succeed. Therefore, it is the policy of the state of Iowa that school employees, volunteers, and students in Iowa schools shall not engage in harassing or bullying behavior.

2. Definitions. For purposes of this section, unless the context otherwise requires:
   a. "Electronic" means any communication involving the transmission of information by wire, radio, optical cable, electromagnetic, or other similar means. "Electronic" includes but is not limited to communication via electronic mail, internet-based communications, pager service, cell phones, and electronic text messaging.
   b. "Harassment" and "bullying" shall be construed to mean any electronic, written, verbal, or physical act or conduct toward a student which is based on any actual or perceived trait or characteristic of the student and which creates an objectively hostile school environment that meets one or more of the following conditions:
      (1) Places the student in reasonable fear of harm to the student's person or property.
      (2) Has a substantially detrimental effect on the student's physical or mental health.
      (3) Has the effect of substantially interfering with a student's academic performance.
      (4) Has the effect of substantially interfering with the student's ability to participate in or benefit from the services, activities, or privileges provided by a school.
   c. "Trait or characteristic of the student" includes but is not limited to age, color, creed, national origin, race, religion, marital status, sex, sexual orientation, gender identity, physical attributes, physical or mental ability or disability, ancestry, political party preference, political belief, socioeconomic status, or familial status.
   d. "Volunteer" means an individual who has regular, significant contact with students.

3. Policy. On or before September 1, 2007, the board of directors of a school district and the authorities in charge of each accredited nonpublic school shall adopt a policy declaring harassment and bullying in schools, on school property, and at any school function, or school-sponsored activity regardless of its location, in a manner consistent with this section, as against state and
school policy. The board and the authorities shall make a copy of the policy available to all school employees, volunteers, students, and parents or guardians and shall take all appropriate steps to bring the policy against harassment and bullying and the responsibilities set forth in the policy to the attention of school employees, volunteers, students, and parents or guardians. Each policy shall, at a minimum, include all of the following components:

a. A statement declaring harassment and bullying to be against state and school policy. The statement shall include but not be limited to the following provisions:

1. School employees, volunteers, and students in school, on school property, or at any school function or school-sponsored activity shall not engage in harassing and bullying behavior.

2. School employees, volunteers, and students shall not engage in reprisal, retaliation, or false accusation against a victim, witness, or an individual who has reliable information about such an act of harassment or bullying.

b. A definition of harassment and bullying as set forth in this section.

c. A description of the type of behavior expected from school employees, volunteers, parents or guardians, and students relative to prevention measures, reporting, and investigation of harassment or bullying.

d. The consequences and appropriate remedial action for a person who violates the antiharassment and antibullying policy.

e. A procedure for reporting an act of harassment or bullying, including the identification by job title of the school official responsible for ensuring that the policy is implemented, and the identification of the person or persons responsible for receiving reports of harassment or bullying.

f. A procedure for the prompt investigation of complaints, either identifying the school superintendent or the superintendent's designee as the individual responsible for conducting the investigation, including a statement that investigators will consider the totality of circumstances presented in determining whether conduct objectively constitutes harassment or bullying under this section.

g. A statement of the manner in which the policy will be publicized.

4. Programs encouraged. The board of directors of a school district and the authorities in charge of each accredited nonpublic school are encouraged to establish programs designed to eliminate harassment and bullying in schools. To the extent that funds are available for these purposes, school districts and accredited nonpublic schools shall do the following:

a. Provide training on antiharassment and antibullying policies to school employees and volunteers who have significant contact with students.

b. Develop a process to provide school employees, volunteers, and students with the skills and knowledge to help reduce incidents of harassment and bullying.

5. Immunity. A school employee, volunteer, or student, or a student's parent or guardian who promptly, reasonably, and in good faith reports an incident of harassment or bullying, in compliance with the procedures in the policy adopted pursuant to this section, to the appropriate school official designated
by the school district or accredited nonpublic school, shall be immune from civil or criminal liability relating to such report and to participation in any administrative or judicial proceeding resulting from or relating to the report.

6. Collection requirement. The board of directors of a school district and the authorities in charge of each nonpublic school shall develop and maintain a system to collect harassment and bullying incidence data.

7. Integration of policy and reporting. The board of directors of a school district and the authorities in charge of each nonpublic school shall integrate its antiharassment and antibullying policy into the comprehensive school improvement plan required under section 256.7, subsection 21, and shall report data collected under subsection 6, as specified by the department, to the local community.

8. Existing remedies not affected. This section shall not be construed to preclude a victim from seeking administrative or legal remedies under any applicable provision of law.

This law has been incorporated into the accreditation rules adopted by the State Board of Education as rule 12.3(13). Failure of a school board to adopt a policy that is in compliance with the rule below subjects the district or accredited nonpublic school to removal of accreditation.

### 281—Iowa Administrative Code rule 12.3(13)

The policy adopted by the board regarding harassment of or by students and staff shall declare harassment and bullying in schools, on school property, and at any school function or school-sponsored activity regardless of its location to be against state and school policy. The board shall make a copy of the policy available to all school employees, volunteers, students, and parents or guardians and shall take all appropriate steps to bring the policy against harassment and bullying and the responsibilities set forth in the policy to the attention of school employees, volunteers, students, and parents or guardians. Each policy shall, at a minimum, include all of the following components:

a. A statement declaring harassment and bullying to be against state and school policy. The statement shall include but not be limited to the following provisions:

1. School employees, volunteers, and students in school, on school property, or at any school function or school-sponsored activity shall not engage in harassing and bullying behavior.

2. School employees, volunteers, and students shall not engage in reprisal, retaliation, or false accusation against a victim, a witness, or an individual who has reliable information about such an act of harassment or bullying.

b. A definition of harassment and bullying consistent with the following: Harassment and bullying shall be construed to mean any electronic, written, verbal, or physical act or conduct toward a student which is based on the student's actual or perceived age, color, creed, national origin, race, religion, marital status, sex, sexual orientation, gender identity, physical attributes,
physical or mental ability or disability, ancestry, political party preference, political belief, socioeconomic status, or familial status, and which creates an objectively hostile school environment that meets one or more of the following conditions:

1. Places the student in reasonable fear of harm to the student's person or property.
2. Has a substantially detrimental effect on the student's physical or mental health.
3. Has the effect of substantially interfering with a student's academic performance.
4. Has the effect of substantially interfering with the student's ability to participate in or benefit from the services, activities, or privileges provided by a school.

The local board policy must set forth all 17 of the above-enumerated traits or characteristics, but does not need to be limited to the 17 enumerated traits or characteristics.

c. A description of the type of behavior expected from school employees, volunteers, parents or guardians, and students relative to prevention, reporting, and investigation of harassment or bullying.
d. The consequences and appropriate remedial action for a person who violates the antiharass-ment and antibullying policy.
e. A procedure for reporting an act of harassment or bullying, including the identification by job title of the school official responsible for ensuring that the policy is implemented, and the identification of the person or persons responsible for receiving reports of harassment or bullying.
f. A procedure for the prompt investigation of complaints, identifying either the school superintendent or the superintendent's designee as the individual responsible for conducting the investigation, including a statement that investigators will consider the totality of circumstances presented in determining whether conduct objectively constitutes harassment or bullying under this subrule.
g. A statement of the manner in which the policy will be publicized.

The board shall integrate its policy into its comprehensive school improvement plan. The board shall develop and maintain a system to collect harassment and bullying incidence data, and report such data, on forms specified by the department, to the local community and to the department.

The Department has also drafted a sample policy\(^4\) and forms\(^5\) for schools and school districts to use.

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\(^4\) The sample policy is just that...sample language for schools and school districts to consider. As long as the required elements in rule 12.3(13) are included, the policy does not have to mirror precisely the sample policy, and in fact, the sample anti-bullying/anti-harassment policy put forth by the Iowa Association of School Boards (IASB) is somewhat different from the department’s.

\(^5\) Sample forms are included at the end of this document.
SAMPLE ANTI-BULLYING/ANTI-HARASSMENT POLICY

Harassment and bullying of students and employees are against federal, state and local policy, and are not tolerated by the board. The board is committed to providing all students with a safe and civil school environment in which all members of the school community are treated with dignity and respect. To that end, the board has in place policies, procedures, and practices that are designed to reduce and eliminate bullying and harassment as well as processes and procedures to deal with incidents of bullying and harassment. Bullying and harassment of students by students, school employees, and volunteers who have direct contact with students will not be tolerated in the school or school district.

The board prohibits harassment, bullying, hazing, or any other victimization, of students, based on any of the following actual or perceived traits or characteristics: age, color, creed, national origin, race, religion, marital status, sex, sexual orientation, gender identity, physical attributes, physical or mental ability or disability, ancestry, political party preference, political belief, socioeconomic status, or familial status. Harassment against employees based upon race, color, creed, sex, sexual orientation, gender identity, national origin, religion, age or disability is also prohibited.

This policy is in effect while students or employees are on property within the jurisdiction of the board; while on school-owned or school-operated vehicles; while attending or engaged in school-sponsored activities; and while away from school grounds if the misconduct directly affects the good order, efficient management and welfare of the school or school district.

If, after an investigation, a student is found to be in violation of this policy, the student shall be disciplined by appropriate measures up to, and including, suspension and expulsion. If after an investigation a school employee is found to be in violation of this policy, the employee shall be disciplined by appropriate measures up to, and including, termination. If after an investigation a school volunteer is found to be in violation of this policy, the volunteer shall be subject to appropriate measures up to, and including, exclusion from school grounds. “Volunteer” means an individual who has regular, significant contact with students.

Harassment and bullying mean any electronic, written, verbal, or physical act or conduct toward a student which is based on any actual or perceived trait or characteristic of the student and which creates an objectively hostile school environment that meets one or more of the following conditions:

- Places the student in reasonable fear of harm to the student’s person or property;
- Has a substantially detrimental effect on the student’s physical or mental health;
- Has the effect of substantially interfering with the student’s academic performance; or
- Has the effect of substantially interfering with the student’s ability to participate in or benefit from the services, activities, or privileges provided by a school.
“Electronic” means any communication involving the transmission of information by wire, radio, optical cable, electromagnetic, or other similar means. “Electronic” includes but is not limited to communication via electronic mail, internet-based communications, pager service, cell phones, electronic text messaging, or similar technologies.

Harassment and bullying may include, but are not limited to, the following behaviors and circumstances:

- Verbal, nonverbal, physical or written harassment, bullying, hazing, or other victimization that have the purpose or effect of causing injury, fear, or suffering to the victim;
- Repeated remarks of a demeaning nature that have the purpose or effect of causing injury, fear, or suffering to the victim;
- Implied or explicit threats concerning one's grades, achievements, property, etc. that have the purpose or effect of causing injury, fear, or suffering to the victim;
- Demeaning jokes, stories, or activities directed at the student that have the purpose or effect of causing injury, fear, or suffering to the victim; and/or
- Unreasonable interference with a student's performance or creation of an intimidating, offensive, or hostile learning environment.

Sexual harassment means unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature when:

- Submission to the conduct is made either implicitly or explicitly a term or condition of the student’s education or benefits;
- Submission to or rejection of the conduct by a school employee is used as the basis for academic decisions affecting that student; or
- The conduct has the purpose or effect of substantially interfering with the student’s academic performance by creating an intimidating, hostile, or offensive education environment.

In situations between students and school officials, faculty, staff, or volunteers who have direct contact with students, bullying and harassment may also include the following behaviors:

- Requiring that a student submit to bullying or harassment by another student, either explicitly or implicitly, as a term or condition of the targeted student’s education or participation in school programs or activities; and/or
- Requiring submission to or rejection of such conduct as a basis for decisions affecting the student.

Any person who promptly, reasonably, and in good faith reports an incident of bullying or harassment under this policy to a school official, shall be immune from civil or criminal liability relating to such report and to the person’s participation in any administrative, judicial, or other proceeding relating to the report. Individuals who knowingly file a false complaint may be subject to appropriate disciplinary action.

Retaliation against a person because the person has filed a bullying or harassment complaint or assisted or participated in a harassment investigation or proceeding is prohibited. An individual who knowingly files a false harassment complaint and a
person who gives false statements in an investigation shall be subject to discipline by appropriate measures, as shall a person who is found to have retaliated against another in violation of this policy. A student found to have retaliated in violation of this policy shall be subject to measures up to, and including, suspension and expulsion. A school employee found to have retaliated in violation of this policy shall be subject to measures up to, and including, termination of employment. A school volunteer found to have retaliated in violation of this policy shall be subject to measures up to, and including, exclusion from school grounds.

The school or school district will promptly and reasonably investigate allegations of bullying or harassment. The (state the title of the investigator) or designee will be responsible for handling all complaints by students alleging bullying or harassment. The (state the title of the investigator) or designee will be responsible for handling all complaints by employees alleging bullying or harassment.

It also is the responsibility of the superintendent, in conjunction with the investigator and principals, to develop procedures regarding this policy.

[OPTIONAL, BUT STRONGLY SUGGESTED THAT IT BE INCLUDED AND FOLLOWED:] The superintendent also is responsible for organizing training programs for students, school officials, faculty, staff, and volunteers who have direct contact with students. The training will include how to recognize harassment and what to do in case a student is harassed. It will also include proven effective harassment prevention strategies. The superintendent will also develop a process for evaluating the effectiveness of the policy in reducing bullying and harassment in the board. The superintendent shall report to the board on the progress of reducing bullying and harassment in the board.

The board will annually publish this policy. The policy may be publicized by the following means:

- Inclusion in the student handbook,
- Inclusion in the employee handbook
- Inclusion in the registration materials
- Inclusion on the school or school district’s web site,
- (other)

and a copy shall be made to any person at the central administrative office at (street address).

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ANTI-HARASSMENT/BULLYING INVESTIGATION PROCEDURES

Individuals who feel that they have been harassed should:

- Communicate to the harasser that the individual expects the behavior to stop, if the individual is comfortable doing so. If the individual wants assistance communicating with the harasser, the individual should ask a teacher, counselor or principal to help.
• If the harassment does not stop, or the individual does not feel comfortable confronting the harasser, the individual should:
  -- tell a teacher, counselor or principal; and
  -- write down exactly what happened, keep a copy and give another copy to the teacher, counselor or principal including:
    o what, when and where it happened;
    o who was involved;
    o exactly what was said or what the harasser did;
    o witnesses to the harassment;
    o what the student said or did, either at the time or later;
    o how the student felt; and
    o how the harasser responded.

COMPLAINT PROCEDURE

An individual who believes that the individual has been harassed or bullied will notify __________, the designated investigator. The alternate investigator is __________. The investigator may request that the individual complete the Harassment/Bullying Complaint form and turn over evidence of the harassment, including, but not limited to, letters, tapes, or pictures. The complainant shall be given a copy of the completed complaint form. Information received during the investigation is kept confidential to the extent possible.

The investigator, with the approval of the principal, or the principal has the authority to initiate a investigation in the absence of a written complaint.

INVESTIGATION PROCEDURE

The investigator will reasonably and promptly commence the investigation upon receipt of the complaint. The investigator will interview the complainant and the alleged harasser. The alleged harasser may file a written statement in response to the complaint. The investigator may also interview witnesses as deemed appropriate.

Upon completion of the investigation, the investigator will make written findings and conclusions as to each allegation of harassment and report the findings and conclusions to the principal. The investigator will provide a copy of the findings of the investigation to the principal.

RESOLUTION OF THE COMPLAINT

Following receipt of the investigator's report, the principal may investigate further, if deemed necessary, and make a determination of any appropriate additional steps which may include discipline.

Prior to the determination of the appropriate remedial action, the principal may, at the principal's discretion, interview the complainant and the alleged harasser. The principal will file a written report closing the case and documenting any disciplinary
action taken or any other action taken in response to the complaint. The complainant, the alleged harasser and the investigator will receive notice as to the conclusion of the investigation. The principal will maintain a log of information necessary to comply with Iowa Department of Education reporting procedures.

POINTS TO REMEMBER IN THE INVESTIGATION

- Evidence uncovered in the investigation is confidential.
- Complaints must be taken seriously and investigated.
- No retaliation will be taken against individuals involved in the investigation process.
- Retaliators will be disciplined up to and including suspension and expulsion.

CONFLICTS

If the investigator is a witness to the incident, the alternate investigator shall investigate.

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The Children’s Internet Protection Act (CIPA) is a federal law enacted by Congress to address concerns about access to offensive content over the Internet on school and library computers. CIPA imposes certain types of requirements on any school or library that receives funding for Internet access or internal connections from the E-rate program – in Iowa, that’s all school districts and public libraries.

CIPA requires the following:

- Schools and libraries subject to CIPA may not receive the discounts offered by the E-rate program unless they certify that they have an Internet safety policy and technology protection measures in place. An Internet safety policy must include technology protection measures to block or filter Internet access to pictures that are: (a) are obscene, (b) child pornography, or (c) harmful to minors (for computers that are accessed by minors).
- Schools and libraries must also certify that, as part of their Internet safety policy, they are educating minors about appropriate online behavior, including cyberbullying awareness and response and interacting with other individuals on social networking sites and in chat rooms.
- Schools subject to CIPA are required to adopt and enforce a policy to monitor online activities of minors.
- Schools and libraries subject to CIPA are required to adopt and implement a policy addressing: (a) access by minors to inappropriate matter on the Internet; (b) the safety and security of minors when using electronic mail, chat rooms, and other forms of direct electronic communications; (c) unauthorized access, including so-called “hacking,” and other unlawful activities by minors online; (d)
unauthorized disclosure, use, and dissemination of personal information regarding minors; and (e) restricting minors’ access to materials harmful to them.

CIPA does not require the tracking of Internet use by minors or adults, any of the following. It also permits an authorized person to disable the blocking or filtering measure during any use by an adult to enable access for bona fide research or other lawful purposes.

The provisions of CIPA were upheld by the U.S. Supreme Court in 2003 in the case U.S. v. American Library Association, 539 U.S. 194.

Congress amended the law late last year to require schools and libraries that receive E-rate funds to educate minors about appropriate online behavior, including interacting with other individuals on social networking websites and in chat rooms, and about cyberbullying awareness and response.

III. GUIDANCE FROM CASELAW

Much like the legal analysis for hazing, there must be a close connection – a \textit{nexus} – to school for school officials to be able to regulate cyberbullying. But \textit{in addition}, because cyberbullying involves student speech, the school must demonstrate legitimate pedagogical concerns before courts will allow schools to take action. Before discussing some recent cyberbullying cases, here is a review of student free speech cases:

\begin{center}
\textbf{The First Amendment}

Congress shall make no law … abridging the freedom of speech …
\end{center}


\textit{Tinker v. Des Moines Independent Community School District,}
\textit{ 393 U.S. 503, 89 S.Ct. 733 (1969)}

John and Mary Beth Tinker were public school students in Des Moines who were part of a group against American involvement in the Vietnam War. Wanting to publicize their opposition to the same, the Tinker children decided to wear black armbands to school. Up to this point, the Des Moines District had no policy concerning armbands. Having heard of the students' plans, however, the principals of the public schools in Des Moines adopted and informed students of a new policy prohibiting the wearing of
armbands. A student who refused to take off his or her armband would be suspended until agreeing to return to school without the band.

With knowledge of the school policy, the Tinker children and a friend decided to wear armbands to school. Upon arriving at school, the children were asked to remove their armbands. They did not remove the armbands and were subsequently suspended until they returned to school without their armbands. Their parents filed suit in federal trial court asking for a small amount of money for damages and an injunction to restrain school officials from enforcing their armband policy.

Although the trial court recognized the children's First Amendment right to free speech, the court refused to issue an injunction, claiming that the school officials' actions were reasonable in light of potential disruptions from the students' protest. The Tinkers appealed their case to the Eighth Circuit Court of Appeals where a tie vote in that court allowed the lower court's ruling to stand. As a result they decided to appeal the case to the U.S. Supreme Court.

The case came down to this fundamental question: Do the First Amendment rights of free speech extend to symbolic speech by students in public schools? And, if so, in what circumstances is that symbolic speech protected?

The First Amendment states "Congress shall make no law . . . abridging the freedom of speech." The Fourteenth Amendment extends this to state governments, of which school systems are a part. The First Amendment, however, does not identify which kinds of speech are protected. For example, it is not clear whether hate speech against an individual or group is protected. Neither does the First Amendment specify what types of expressive actions should be considered as speech.

The Supreme Court ruled 7-2 in favor of the students. From the majority opinion come the following words:

It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate. . . .

...That [schools] are educating the young for citizenship is reason for scrupulous protection of Constitutional freedoms of the individual, if we are not to strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes. . . .

. . . On the other hand, the Court has repeatedly emphasized the need for affirming the comprehensive authority of the States and of school officials, consistent with fundamental constitutional safeguards, to prescribe and control conduct in the schools.

. . . In order for the State in the person of school officials to justify prohibition of a particular expression of opinion, it must be able to show that its action was caused by something more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint. Certainly where there is no finding and no showing
that engaging in the forbidden conduct would "materially and
substantially interfere with the requirements of appropriate discipline in
the operation of the school," the prohibition cannot be sustained . . .

….. In our system, state-operated schools may not be enclaves of
totalitarianism. School officials do not possess absolute authority over
their students. Students in school as well as out of school are "persons"
under our Constitution. In the absence of a specific showing of
constitutionally valid reasons to regulate their speech, students are
entitled to freedom of expression of their views. . . .

*Bethel School Dist. No. 403 v. Fraser,*

The lesson from *Fraser* is that lewd, indecent, objectively offensive speech by
students may be regulated by school officials.

Matthew Fraser was a high school student in Pierce County, Washington, who
delivered a speech at a mandatory school assembly of about 600 fellow students, some
as young as 14 years of age, nominating a classmate for class vice president. Matthew
thoughtfully, creatively, and wholly inappropriately laced his nomination speech with
sexual innuendo and outright graphic, explicit sexual metaphor. The reaction of the
captive audience of students ranged from clueless bewilderment to embarrassment to
enthusiastic "hooting and yelling," accompanied by gestures that "graphically simulated
the sexual activities pointedly alluded to in [Fraser's] speech."

The federal district court awarded modest (less than $300) monetary damages to
Fraser, plus attorney's fees, and enjoined the district from preventing Fraser from being
considered as a commencement speaker. This ruling was upheld by the Ninth Circuit
Court of Appeals, which held that Fraser's speech was indistinguishable from *Tinker's*
armband.

A divided (6-3) U.S. Supreme Court reversed the lower courts, holding that there is a
"marked distinction between the political 'message' of the armbands in *Tinker* and the
sexual content of [Fraser's] speech." Chief Justice Burger, writing for the majority,
acknowledged *Tinker's* rationale that students do not "shed their constitutional rights to
freedom of speech or expression at the schoolhouse gate," but clarified that *Tinker* is not
to be read as precluding any discipline of students for indecent speech and lewd conduct
at school.

In his dissent, Justice Stevens stated that he was not denying a school's duty to
prescribe rules of conduct within its walls. Rather, Justice Stevens did not believe that
Fraser had fair notice that he would be punished for his speech. (The school's policy
under which Fraser was suspended for three days prohibited "disruptive conduct.")

*Hazelwood School Dist. v. Kuhlmeier,*
School officials may regulate content of articles in school newspaper as school-sponsored expressive activity. So held the Supreme Court (another 6-3 decision) in *Hazelwood*.

Students in a high school journalism class in St. Louis published their school’s newspaper as part of the curriculum of that class. They customarily submitted the paper to the class advisor prior to publication. One the occasion in question, the advisor had concerns about two articles, the first regarding teen pregnancy (including comments attributed to pregnant students at the school) and the second about divorce (including scathing comments by one student against her father). Because of time restraints, the advisor pulled two entire pages, including a number of non-offensive articles. The students took their case to federal court in Missouri.

The federal trial court did not agree with the students, but this decision was reversed by the Eighth Circuit Court of Appeals. The school appealed this decision.

The Supreme Court took this opportunity to differentiate regulation of this type of student speech.

The question whether the First Amendment requires a school to tolerate particular student speech – the question that we addressed in *Tinker* – is different from the question whether the First Amendment requires a school affirmatively to promote particular student speech. [Emphasis added.]

*Morse v. Frederick,*
*127 S.Ct. 2618 (2007)*

The U.S. Supreme Court held in *Morse* [the “Bong HiTS 4 Jesus” case] that a school may restrict student speech that is harmful, such as speech that appears to promote illegal drug use. It remains to be seen how far-reaching the effects of this holding will be. (For instance, if a school can demonstrate that certain student speech will lead to a decline in test scores or increased truancy, may the school intercede? How about speech that leads to more dental decay in students?)

The immediate benefit of the *Morse* decision was to High School Principal Deborah Morse and all public school administrators and board members everywhere. The Supreme Court’s ruling undid the Ninth Circuit’s decision that Principal Morse was not entitled to qualified immunity from suit because the law in this area was so well settled that she should have known that it was wrong for her to take the banner away from young Mr. Frederick (now a teacher himself) and to punish him for its display.

In summary, our starting point consists of the following:

1. *Tinker:* Absent either impingement on the rights of others or the likelihood of a substantial and material disruption at school, school officials may not regulate student speech.
2. *Fraser:* Lewd, indecent, objectively offensive speech by students may be regulated by school officials.
3. *Hazelwood:* School officials may regulate content of articles in school newspaper as school-sponsored expressive activity.
4. **Morse:** School officials may regulate speech that appears to promote illegal or harmful activity.

**Look for the nexus, or lack thereof, to school in the following sampling of caselaw regarding cyberbullying:**

1. A high school student created a Web site that used crude and vulgar language in criticizing the school administration. He did not use school resources to create the site, but the site included a hyperlink to the school's official homepage, and the student invited readers of his Web site to contact the school to communicate their observations about the high school. The school imposed a ten day suspension, which was overturned by the court because the principal testified that he suspended the student because the principal did not like the content of the student’s Web site. Had the principal testified about the site causing a substantial disruption of educational time at school, there might have been a different outcome. [*Beussink v. Woodland R-IV School District*, 30 F.Supp.2d 1175 (E.D. Mo. 1998).]

2. A student included mock obituaries of his friends in a web site he created and named “Unofficial Kentlake High Home Page.” The student – an honors student with no disciplinary history – included a disclaimer on his web site that noted that the site had no connection to the school and was for entertainment purposes only. Readers of the web site were invited to vote on “who should die.” When local media picked up on this, one TV station characterized the site as having a “hit list.” Mortified, the student removed his site the day after this news item ran on television. There was no evidence that any of the students whose obits were featured felt threatened, no evidence that the creator of the web site intended to do any harm, and no evidence of any disruption to the educational environment. The court found in favor of the student. [*Emmett v. Kent School District No. 415*, 92 F.Supp.2d 1088 (W.D. Wash. 2000).]

3. In this case one student wrote an e-mail about the school’s activities director that was very unflattering about his weight (very large) and genital size (not so very large). The student sent the email from his home computer to friends on their home computers, but one recipient brought several copies of the e-mail to school. In ruling in favor of the student, the court stated that the mere desire on the part of school officials to avoid discomfort or unpleasantness did not justify a restriction of private student speech. However, because this student had previously written “poison pen” e-mails about school employees on school computers, the court left the door open for a school to prevail if the school can demonstrate a “well-founded expectation of disruption.” [*Killion v. Franklin Regional School District*, 136 F.Supp.2d 446 (W.D. Pa. 2001).]

4. The court reversed the expulsion of a student who posted derogatory comments on the student’s personal Web site about Canadians, lesbians, albino florists, oh, yes, and his teachers. School district also ended up paying the student $20,000. [*Muss v. Beaverton School District*, No. CV-02-1706-AA (D. Ore. 2002).]
{If you’re keeping score, the school districts haven’t won yet; this next case ends that streak.}

5. The court upheld the expulsion of a student based upon a Web site the student created at home that contained threatening comments against a teacher and a principal. The student attempted to shield himself from school discipline or regulation by putting a disclaimer on his site (which was not password-protected) that viewers promised not to tell any school officials or employees about the site. This attempt proved futile. His site had many visitors, so the word got back to the teacher who was threatened that he was actually soliciting donations from site visitors to hire a hitman to take out the teacher. \[J.S. ex rel. H.S. v. Bethlehem Area School District, 807 A.2d 847 (Pa. 2002).\]

6. Comments typed in class and printed off in class alleging that a teacher and principal were having sex were proper grounds to suspend the student who typed and printed the comments. This student was an honor student who went to court to try to get the suspension off her student record. The court denied her request. \[Matos ex rel. Matos v. Clinton School District, 367 F.3d 68 (1st Cir. 2004).\]

7. A male middle school student who was a competitive ballroom dancer was verbally harassed and taunted by peers almost daily; some students also posted derogatory comments about him on an internet chat room that was accessed from the school library. In response, the district made classroom announcements, contacted parents, and suspended students. The harassment continued; the family sued. The school was able to get the lawsuit dismissed because it showed that it took reasonable steps to try to get the harassment to stop. \[Shaposhnikov v. Pacifica School District, WL 931731 (N.D. Cal. 2006).\]

8. A senior with no disciplinary history and who was academically successful decided just before the Christmas recess to create a “parody profile” of one of the high school principals on MySpace.com. The profile was juvenile in its conception, vulgar in parts, and crude. It did not provide a flattering profile of the principal. The student did not use school equipment or school time to develop the profile. The court determined that the student’s off-campus speech did not result in a substantial disruption of school operations; therefore, it granted summary judgment to the student. This case is on appeal to the Third Circuit Court of Appeals. \[Layshock v. Hermitage School District, 496 F.Supp.2d 587 (W.D. Pa. 2007).\]

9. A year later, another federal trial court in Pennsylvania reached the opposite conclusion, ruling that school officials did not violate a student’s free speech rights by disciplining her for creating a parody online profile of her principal, and granting the school’s motion for summary judgment. As in Layshock, the student here created a fake MySpace profile and used a photo of the principal from the district’s Web site. The personal profile section depicted the principal as a pedophile and sex addict. The court here found that Fraser’s regulation of lewd and vulgar speech applied. \[J.S. v. Blue Mountain School District, No. 07-585 (M.D. Pa. 9/11/08).\]

10. The suspension of a middle school student who created an instant messaging (IM) icon depicting his English teacher being shot was upheld by a federal court.
The student created the icon at home and sent it to 15 other students, one of whom showed it to the teacher. The teacher was distressed enough that he was allowed to stop teaching this student’s class. The court concluded that “it was reasonably foreseeable that the IM icon would come to the attention of school authorities and the teacher whom the icon depicted being shot,” thus deciding that the material and substantial disruption of the work of the school was met. [Wisniewski v. Weedsport Cent. School District, 494 F. 3d 34 (2nd Cir. 2007).]

11. Student who wrote vulgar comments about school officials in a blog could be barred from running for class secretary as punishment. The student was unhappy that school officials were not cooperating with her efforts to organize a music event. In this extraordinarily thoughtful decision, the Court noted that the student was a “good student and a good citizen” who had a “momentary lapse of judgment,” and that the school officials were not “tyrants bent on curbing the constitutional rights of all who criticize them.” The decision upholding the punishment turned on the fact that the student’s blog gave false information about the music event and then urged other students to contact the school superintendent in support of the event “to piss her off more.” It is also worth noting that the student was not suspended, did not receive any other written discipline, and was allowed to continue as a member of the student council. [Doninger v. Niehoff, 2007 WL 2523753 (D. Conn. 8-31-07); aff’d, 527 F.3d 41 (2nd Cir. 2008).]

12. The expulsion for the remainder of a semester of a high school student was upheld by a state court where the student violated the school’s computer use policy by decoding encrypted information and helping another student to access extremely sensitive and private school information. This student had previously committed a serious violation of the policy, and his conduct was felonious under state criminal statutes. [M.T. v. Central York School Dist., 2007 WL 3239280 (Pa. Cmwlth. 2007).]

13. It’s not just the kids!
A teacher created a MySpace account (“Mr. Spiderman”), ostensibly so he could answer questions about homework and to learn more about his students so he could better relate to them. Several students complained to the school’s counselor about the content of the teacher’s MySpace account. When the counselor looked at the web site, he saw pictures of naked men and inappropriate conversations that the teacher had conducted with students. The teacher closed down this account, but soon activated another account under the name “Apollo68.” This account again generated student complaints. Eventually, the teacher was terminated and his termination was upheld by the courts. [Spanierman v. Hughes, et al., ___ F.Supp.2d ___ (D. Conn 2008).]

IV. PROTECTING THE TARGET
Just because it may be more difficult to gather evidence does not excuse school officials from taking some kind of action. And just because a school may not be able to directly discipline the bully/ies does not excuse school officials from acting.

School officials must take reasonable steps to avoid being successfully sued. If sued, the courts will examine the school’s actions to determine whether the school and its officials acted with “deliberate indifference” to the harm being perpetrated against the target student.

Knowing of allegations of bullying/harassment or just being vaguely aware of rumors of bullying/harassment and doing nothing will almost certainly result in a finding of deliberate indifference.

For the most part, success in stopping the bullying/harassment is not the yardstick by which liability of schools is measured. As long as schools take steps that are reasonably calculated to end the bullying/harassment, a school and school officials will be held harmless. However, one federal court just ruled that even though a school district reacted to each allegation of harassment, the fact that the harassment continued over four years means that a jury can decide if at some point over those four years the district’s ineffective response was “clearly unreasonable,” and thus, that the district was deliberately indifferent. *Patterson v. Hudson Area Schools*, ___ F.3d ____ (6th Cir. 2009).

So here are some steps to consider directly related to protection of targeted students:

- Notify the perpetrator and perpetrator’s parents of the allegation
  - Just because you may not have a sufficient nexus to discipline the perpetrator doesn’t mean that you ignore him/her. Call that student and parents into your office for a heart-to-heart.

- Keep an extra eye on the perpetrator…and let the perpetrator and his/her family know that you will be doing so.

- Give target’s family option of notifying law enforcement
  - In Iowa, the crimes of harassment and terrorism can be committed by electronic means. So just because a school may not be able to take action, law enforcement should be contacted if the family is willing to cooperate.
  - If the cyberbullying involves a threat, notify law enforcement directly and inform the families of both students that you have done so.
  - Of course, the school must fully cooperate with law enforcement.

- Do not discourage target’s family from exploring civil actions (defamation, invasion of privacy, intentional infliction of emotional distress)

- Gather evidence and investigate
  - Confiscate the electronic device(s) in question for as long as you need to investigate
    - Learn how to do this or find an expert
• See information about school policy in next section
  o Document, document, document
  o Keep target and target’s family posted as to progress made during investigation, but remember not to tell them what discipline is ultimately imposed against the perpetrator.

• Check with the target often to make sure s/he is not suffering any retaliation from the initial perpetrator or friends of the perpetrator

• Offer counseling/mental health support to the target

V. OTHER ACTIONS TO CONSIDER

There are other action steps that a school should consider that are proactive and not reactive to situations in which allegations are made. These include the following:

• Professional development

• Parent/Community outreach

• Filter and monitor…but DO NOT rely on filtering software to control Internet activities of students

• Update and post school rules, policies
  o Include the policy, as well as student handbook, a statement that students have a limited expectation of privacy on the school’s Internet system, and that routine monitoring or maintenance may lead to discovery that a user has violated district policy or law. Also, individual targeted searches will be conducted if there is reasonable suspicion that a user has violated policy or law.
  o Include an “Internet Acceptable Use” policy to stress that students are prohibited from name-calling, bullying, or harassment online during school on personal or school equipment.
  o Include a statement that the personal electronic devices of any student suspected of violation of the above policy will be confiscated for investigation and may be turned over to law enforcement.

• Implement a prevention-intervention curriculum such as the one in Part VII of this document

VI. RESOURCES

Web sites⁶::

⁶ The inclusion or exclusion of a Web site does not indicate approval or disapproval by the Iowa Department of Education. Any known Web sites regarding the topic of cyberbullying that may be helpful to educators have been included. The educator can determine for himself or herself the helpfulness of the site.
VII. CURRICULUM

An anti-cyberbullying curriculum is free and available for everyone at these Web sites7:

http://www.seattleschools.org/area/prevention/cbms.html
http://www.incredibleinternet.com

(Either link takes the educator to the same program, which is used in the Seattle school district, and is Olweus-based.)

7 See footnote #2.
VIII. FORMS

Harassment/Bullying Complaint Form

Is this form being filed because of retaliation for filing an earlier complaint? Yes____ No____

Name of complainant:____________________________________________________________
(Student, Parent, Employee, Other – Please Specify)

Date of complaint:____________________________

Name(s) of student(s) alleged to be responsible for incident:_____________________________
_____________________________________________________________________________
_____________________________________________________________________________

Date and place of incident or incidents:______________________________________________

Describe what happened: (Use back of form or attach additional pages if necessary)____________________
_____________________________________________________________________________
_____________________________________________________________________________
_____________________________________________________________________________

Name(s) of witness(es)___________________________________________________________
_____________________________________________________________________________

Is there any documentation of the incident? Yes____ No____ Please attach evidence OR
explain why not.________________________________________________________________
_____________________________________________________________________________

Any other relevant information:____________________________________________________
_____________________________________________________________________________
_____________________________________________________________________________
_____________________________________________________________________________

I feel I was harassed based upon:__________________________________________________
(List All That Apply) sexual orientation, gender identity, physical attribute, race, color, creed, age,
national origin, religion, disability, ethnicity, political party preference, sex,
marital status, familial status, socioeconomic status, political belief, ancestry

I agree that all of the information on this form is true to the best of my knowledge.
Interview Notes Form

Signature of Interviewee: ___________________________ Date: ____________

Signature of Interviewer: ___________________________

Name of Interviewee: _______________________________

Name of Interviewer: _______________________________

Date of Interview: ________________________________

Description of Incident: ____________________________

(Attach additional pages if necessary)

________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________

Any other information: ______________________________

(Attach additional pages if necessary)

________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
State Superintendent of Education shall, within 60 days of receipt of the report, notify the district and any affected local school council. The district shall within 45 days of receipt of that notification inform the State Superintendent of Education of the remedial or corrective action to be taken, whether by amendment of the current plan, if feasible, or by adjustment in the plan for the following year. Failure to provide the expenditure report or the notification of remedial or corrective action in a timely manner shall result in a withholding of the affected funds.

The State Board of Education shall promulgate rules and regulations to implement the provisions of this subsection. No funds shall be released under this subdivision (H)(4) to any district that has not submitted a plan that has been approved by the State Board of Education.

(I) (Blank).

(J) Supplementary Grants in Aid.

(1) Notwithstanding any other provisions of this Section, the amount of the aggregate general State aid in combination with supplemental general State aid under this Section for which each school district is eligible shall be no less than the amount of the aggregate general State aid entitlement that
was received by the district under Section 18-8 (exclusive of amounts received under subsections 5(p) and 5(p-5) of that Section) for the 1997-98 school year, pursuant to the provisions of that Section as it was then in effect, provided that the district, for the 2009-2010 school year through the 2012-2013 school year, also received a supplementary payment under this subsection (J) during the prior school year. If a school district qualifies to receive a supplementary payment made under this subsection (J), the amount of the aggregate general State aid in combination with supplemental general State aid under this Section which that district is eligible to receive for each school year shall be no less than the amount of the aggregate general State aid entitlement that was received by the district under Section 18-8 (exclusive of amounts received under subsections 5(p) and 5(p-5) of that Section) for the 1997-1998 school year, pursuant to the provisions of that Section as it was then in effect.

(2) If, as provided in paragraph (1) of this subsection (J), a school district is to receive aggregate general State aid in combination with supplemental general State aid under this Section for the 1998-99 school year and any subsequent school year that in any such school year is less than the amount of the aggregate general State aid entitlement that the district received for the 1997-98 school year, the school district shall also receive, from a separate appropriation made for purposes of this subsection (J), a supplementary payment
that is equal to the amount of the difference in the aggregate State aid figures as described in paragraph (1), provided that the school district, for the 2009-2010 school year through the 2012-2013 school year, also received a supplementary payment under this subsection (J) during the prior school year. These supplementary payments shall be calculated as follows:

(a) For the 2009-2010 school year only, the Supplementary Grants in Aid shall be no more than 80% of the eligible amount under this subsection (J).

(b) For the 2010-2011 school year only, the Supplementary Grants in Aid shall be no more than 60% of the eligible amount under this subsection (J).

(c) For the 2011-2012 school year only, the Supplementary Grants in Aid shall be no more than 40% of the eligible amount under this subsection (J).

(d) For the 2012-2013 school year only, the Supplementary Grants in Aid shall be no more than 20% of the eligible amount under this subsection (J).

(e) For the 2013-2014 school year and every school year thereafter, no Supplementary Grants in Aid shall be made available under this subsection (J).

(3) (Blank).

(K) Grants to Laboratory and Alternative Schools.

In calculating the amount to be paid to the governing board of a public university that operates a laboratory school under