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Senate Bill 100 and Recent Student Discipline Cases

Illinois Legislature Dramatically Reforms Out-Of-School Disciplinary Procedures

Governor Rauner signed Senate Bill 100 into law as Public Act 99-456 on August 24, 2015. The bill, which aims to address the school-to-prison pipeline, dramatically reforms the circumstances under and the processes by which a school district can impose out-of-school discipline. School districts do not need to adopt policies incorporating SB100's provisions until September 15, 2016, but it would be wise to begin revising policies and providing professional development now given the depth and breadth of the changes to the existing law.

In SB 100, the Illinois legislature cautions school officials that out-of-school suspensions and expulsions are among the most serious of disciplinary interventions and, as such, school officials must limit them and only use them only for legitimate educational purposes. This is consistent with recent guidance

from the U.S. Department of Education and Department of Justice that, among other matters, emphasizes positive interventions over student removal.

Under the new law:

- Expulsions
 - May be used if the student's continuing presence would:
 - Pose a threat to the safety of other students, staff or members of the school community; or
 - Substantially disrupt, impede, or interfere with the operation of the school
 - If the Board expels a student, the written expulsion decision must:
 - Detail the specific reasons why removing the student is in the best interest of the school;
 - Include a rationale as to the specific duration of the expulsion; and
 - Document whether other interventions were attempted or whether it was determined that there were no other appropriate and available interventions

- Out-of-School Suspensions
 - Out-of-school suspensions of **three days or less** may be used only if the student's continuing presence in school would pose a threat to school safety or a disruption to other students' learning opportunities. These are things that need to be determined on a case-by-case basis by the school board or its designee.
 - Out-of-school suspensions and disciplinary removals for **more than three days** may be used if other appropriate and available behavioral and disciplinary interventions have been exhausted and the student's continuing presence would:
 - Pose a threat to the safety of other students, staff or members of the school community; or
 - Substantially disrupt, impede, or interfere with the operation of the school
 - All suspension decisions must document:
 - The specific act of gross disobedience or misconduct resulting in the decision to suspend;
 - A rationale as to the specific duration of the

suspension; and

- Whether other interventions were attempted or whether it was determined that there were no other appropriate and available interventions. This is something that is left to the discretion of school officials.
- For out-of-school suspensions longer than four school days, that school officials will provide appropriate and available support services during the period of suspension or whether it was determined that there are no such appropriate and available services. “Appropriate and available support services” are to be determined by school authorities.

There are several board policy provisions within PA 99-456:

- Unless otherwise required by federal or state law, districts are forbidden from instituting zero-tolerance policies that require suspensions or expulsions.
- Districts must create a policy to facilitate the re-engagement of students who are suspended out-of-school, expelled, or returning from an alternative school setting.

- Districts must create a policy by which students have an opportunity to make up work for equivalent academic credit. This includes students suspended from the school bus who do not have alternate transportation to school.
- Districts are forbidden from advising or encouraging students to drop out voluntarily due to behavioral or academic difficulties.
- Districts may not issue a monetary fine or fee as a disciplinary consequence, but may still require restitution for lost, stolen, or damaged property.

Additionally, PA 99-456 states that:

- Parent-Teacher Advisory Committees are encouraged to create MOU with local law enforcement agencies that clearly define the agency's role in schools.
- Districts must make reasonable efforts to provide professional development to their staff and board members on the adverse consequences of school exclusion and justice-system involvement, effective classroom management strategies, culturally responsive discipline, and developmentally appropriate disciplinary methods that promote positive and healthy school climates.



If you have questions regarding this guidance or would like to discuss your school district's disciplinary policies, please contact one of our attorneys in Oak Brook (630.928.1200) or Flossmoor (708.799.6766).

Recent Student Discipline Cases

ADMINISTRATIVE TRANSFERS

Leak v. Bd. of Educ. of Rich Twp. High Sch. Dist. 227, (Ill. App. 9/9/15)

According to the Illinois Appellate Court, an administrative transfer of a student to an alternative program for more than 10 days is tantamount to an expulsion. As such, a due process hearing before the Board of Education is required.

The Board of Education voted to terminate Superintendent Leak's employment contract for cause on the grounds that Leak administratively transferred 48 disruptive students to alternative schools without Board action. The administrative transfers for each of the 48 students were for more than 10



days.

In her lawsuit challenging her dismissal, Leak sought a declaratory judgment that the transfers were permitted under section 13A-4 of the School Code which states, in pertinent part, that “[a] student who is determined to be subject to suspension or expulsion in the manner provided by Section 10-22.6 may be immediately transferred to the alternative program.” 105 ILCS 5/13A-4. The trial court dismissed Leak’s argument that she had been discharged for no cause and she appealed.

The Illinois Appellate Court reviewed sub-paragraphs (a) and (b) within Section 10-22.6. Subparagraph (a) permits the immediate transfer to an alternative program following board approval while subparagraph (b) only authorizes school personnel to suspend pupils for a period not to exceed 10 school days without board approval. The court determined that when read in their entirety, the School Code provisions establish an intent by the legislature to expel students only “after the parents have been requested to appear at a meeting of the board, or with a hearing officer appointed by it.” 105 ILCS 5/10.22.6(a). Accordingly, since these administrative transfers were for more than 10 days,



the transfers were tantamount to an expulsion, the students' due process rights were violated, and there should have been a board hearing.

CONFIDENTIALITY OF STUDENT RECORDS

Letter to Soukup, (FPCO 2/9/15)

The Illinois School Code requires school district anti-bullying policies to provide parents the opportunity to discuss with the school the bullying investigation, findings and actions taken by the school. Similarly, U.S. Department of Education guidance indicates that schools should advise harassed students and their parents about bullying investigations, findings, and actions taken with regard to complaints of bullying.

Concerned that USD0E guidance contradicts confidentiality laws, an inquiry was made to the Family Policy Compliance Office ("FPCO") that implements the Family Educational Rights and Privacy Act ("FERPA"). The FPCO indicated, that in accordance with civil rights guidance, *FERPA* permits a school to disclose to the parent of a harassed student information about sanctions



imposed on a perpetrator which directly relate to the harassed student. According to the FPCO, examples of these sanctions include a requirement that the harasser stay away from the victim; the separation of students; change of classes, and that the harasser is prohibited from attending school for a period of time.

Bryner v. Canyons Sch. Dist., (UT. App. 5/29/15)

In Illinois, videos created for safety or security purposes are not student records unless used for specific purposes, such as student discipline. In the following case, the District was required to provide a redacted video only if the parent paid to redact it:

A parent of a student involved in an altercation in a middle school hallway filed a complaint in court because the district refused to produce a copy of the surveillance video showing the fight. The Court agreed with the school that the video, in which students were clearly identifiable by face, body shape, clothing or otherwise, was a student record that directly related to students and was maintained by the school. The Court cited FERPA guidance that parents have the right to inspect and review a



videotape showing their own child engaged in misbehavior if no other students are pictured. The Court held that school must provide a redacted copy of the video to the parent within fifteen days of receipt of the parent's payment of the \$120 cost to redact the video.

MANIFESTATION DETERMINATIONS

In re Student with Disability, (IL SEA 5/15/15)

An Illinois special education due process hearing officer overturned the manifestation determination and expulsion of a student who came to school under the influence of marijuana when the school failed to follow proper procedures:

A high school senior with ED and ADD was suspended for ten days and expelled for 2 years for coming to school under the influence of marijuana. The district determined his behavior was not a manifestation of his disability and he was transferred to an alternative school. Hearing Officer Milsk found that the parents did not receive proper notice of the manifestation meeting ("MDR") because the school scheduled the meeting with



the parents by phone, rather than sending written notice, and it was unclear if the parents understood the purpose and possible consequences of the MDR. The MDR team was inappropriately made up of school personnel who did not have direct involvement with the student and testimony at the due process hearing showed that team members knew little, if anything, about the student's disability. The District did not have sufficient information about the student because the team found reevaluation to be unnecessary in 2010 and 2013 and the last psychological evaluation of the student was done by his previous district. As a result, the MDR and expulsion were struck down.

Districts must give parents 10 calendar days' notice of a manifestation determination and the meeting must be held within ten school days of the decision to suspend the student for more than ten days, expel or transfer the student to an Interim Alternative Educational Setting. The IEP team must carefully consider the student's disability and its effect on the student's misbehavior.

If you have questions regarding these cases or about student discipline, please contact one of our attorneys in Oak Brook (630.928.1200) or Flossmoor (708.799.6766).

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