

OFFICE OF THE SUPERINTENDENT

Millburn Public Schools

INFORMATION ITEM

December 6, 2010

To: Board of Education Members

From: Ellen E. Mauer, PhD

Subject: Policy 5:200-Terms and Conditions of Employment and Dismissal

This policy has been changed to reflect the minimum requirements by law under all sections. This replaces the wording that refers to the collective bargaining agreement. It is advisable to delete this type of wording in order to be sure we are in compliance with all state and federal laws and that we do not need to change the collective bargaining agreement each time the policy is updated.

We can use this as our first reading and place this on the consent agenda for next time.

## Professional Personnel

### Terms and Conditions of Employment and Dismissal <sup>1</sup>

The School Board delegates authority and responsibility to the Superintendent to manage the terms and conditions for the employment of professional personnel. The Superintendent shall act reasonably and comply with State and federal law as well as any applicable collective bargaining agreement in effect. The Superintendent is responsible for making dismissal recommendations to the Board consistent with the Board's goal of having a highly qualified, high performing staff. <sup>2</sup>

#### Duty-Free Lunch

Teachers employed for at least 4 hours per day shall receive a duty-free lunch equivalent to the student lunch period, or 30 minutes, whichever is longer. <sup>3</sup>

#### Holidays

Teachers shall be paid for, but shall not be required to work on, legal school holidays. <sup>4</sup>

#### School Year and Day

Teachers shall work according to the school calendar adopted by the Board, which shall have a minimum of 176 student attendance days and a minimum of 180 teacher work days, including teacher institute days. <sup>5</sup>

Teachers are required to work the school day adopted by the Board. <sup>6</sup> The District accommodates employees who are nursing mothers according to provisions in the Nursing Mothers in the Workplace Act. <sup>7</sup>

---

The footnotes are not intended to be part of the adopted policy; they should be removed before the policy is adopted.

<sup>1</sup> State or federal law controls this policy's content. This policy contains items on which collective bargaining may be required. Any policy that impacts upon wages, hours, and terms and conditions of employment, is subject to collective bargaining upon request by the employee representative, even if the policy involves an inherent managerial right. The local collective bargaining agreement may contain provisions that exceed these requirements. When a policy's subject matter is superseded by a bargaining agreement, the board policy can state, "Please refer to the current Professional Agreement between the Classroom Teachers' Association and the School Board."

<sup>2</sup> This paragraph is consistent with the IASB's "Foundational Principles of Effective Governance." Boards have 3 options for using this paragraph: (1) use it as an introduction to the rest of the policy, (2) use it alone leaving the specific other topics for administrative implementation, or (3) do not use it.

<sup>3</sup> 105 ILCS 5/24-9.

<sup>4</sup> 105 ILCS 5/24-2. See policy 5:330, *Sick Days, Vacation, Holidays, and Leaves*, for a holiday listing as well as a discussion of the case finding the State-mandated school holiday on "Good Friday" unconstitutional.

<sup>5</sup> 105 ILCS 5/10-19.

<sup>6</sup> The length of the school day is left to the board's discretion absent an individual or collective bargaining contract. With several exceptions, the student attendance day must include at least 5 class hours of direct teacher supervision (105 ILCS 5/18-8).

<sup>7</sup> 820 ILCS 260/1 *et seq.* The following is for an administrative procedure or staff handbook:

An employee who is a nursing mother may take reasonable unpaid breaks each day to express breast milk. The employee's supervisor shall help the employee arrange a break schedule accommodating the nursing mother while minimizing disruption. The break time must, if possible, run concurrently with any break time already provided to the employee. The supervisor shall make reasonable efforts to provide a location, in close proximity to the work area, other than a toilet stall, where an employee can express her milk in private.

## Salary

Teachers shall be paid according to the salary schedule adopted by the Board, but in no case less than the minimum salary provided by The School Code. **8** Teachers shall be paid at least monthly on a 10- or 12-month basis. **9**

## Assignments and Transfers

The Superintendent is authorized to make teaching, study hall, extra class duty, and extracurricular assignments. **10** In order of priority, assignments shall be made based on the District's needs and best interests, employee qualifications, and employee desires.

## Dismissal

The District will follow State law when dismissing a teacher. **11**

---

An employer is not required to provide break time if to do so would unduly disrupt its operations. A school employer would find this difficult to demonstrate. Thus, the sample AP omits this provision. La Leche's web site contains additional information on breast feeding and a summary of legal ramifications, <http://www.laleche.org>.

**8** 105 ILCS 5/10-20.7, 5/10-21.1, and 5/24-1. Minimum salary is found in 105 ILCS 5/24-8. The board's authority to set salaries has been significantly eroded by mandatory collective bargaining (115 ILCS 5/1 et seq.).

**9** 105 ILCS 5/24-21.

**10** Districts are required to have a policy on the distribution of the listed assignments (23 Ill.Admin.Code §1.420(d); inclusion in a collective bargaining agreement, however, should fulfill this requirement.

Absent an individual or collective bargaining agreement, the board has unilateral discretion to assign or retain a teacher to or in an extracurricular duty. Betebenner v. Bd. of Educ., 84 N.E.2d 569 (Ill.App.4, 1949); Dist. 300 Educ. Assoc. v. Bd. of Educ., 334 N.E.2d 165 (Ill.App.2, 1975); Lewis v. Bd. of Educ., 537 N.E.2d 435 (Ill.App.5, 1989).

**11** State personnel laws include:

Non-tenure Teacher Discharge	105 ILCS 5/24-11
Reduction in Force	105 ILCS 5/24-12
Tenured Teacher Discharge Where Cause Remediable	105 ILCS 5/24-12 (prior warning required) 105 ILCS 5/24-12 (procedural mandates) 105 ILCS 5/10-22.4 (general authority)
Tenured Teacher Discharge Where Cause Irremediable	105 ILCS 5/24-12 (no prior warning required) 105 ILCS 5/24-12 (procedural mandates) 105 ILCS 5/10-22.4 (general authority)
Tenured Teacher Discharge Unsatisfactory Evaluation	105 ILCS 5/24A-5 (participation in remediation plan) 105 ILCS 5/24-12 (no prior warning required if causes were subject of prior remediation plan) 105 ILCS 5/24-12 (procedural mandates) 105 ILCS 5/10-22.4 (general authority)
Educational Support Personnel Employees (non-certificated)	105 ILCS 5/10-23.5
Probationary Teacher (non-tenure teacher)	105 ILCS 5/24-11

Various components of a RIF (e.g., impact and decision to RIF) and an evaluation plan (e.g., development, implementation, and impact) may be subject to mandatory collective bargaining. Central City Educ. Assoc. v. IELRB, 599 N.E.2d 892 (Ill. 1992). Districts should contact their attorneys on this matter.

Volunteer firefighters may not be fired for responding to an emergency (P.A. 93-1027).

The successful dismissal of a professional employee requires early assistance from the district's attorney. The plethora of recent decisions includes:

1. Baird v. Warren Community Unit School District No. 205, No. 03-3630 (7th Cir., 2004)(because board members denied a dismissed superintendent procedural due process rights, they were denied qualified immunity);
2. Joliet Township High School District v. ISBE, 770 N.E.2d 711(Ill.App.3, 2002)(a teacher's misuse of sick leave was remediable misconduct for which a warning was required before the teacher could be dismissed);
3. Community Consolidated School District No. 54 v. Spangler, 767 N.E.2d 452 (Ill.App.1, 2002)(teacher failed to satisfactorily complete remediation plan; hearing officer found that the unsatisfactory rating was unwarranted because the offenses were not serious);

## Evaluation

The District's teacher evaluation system will be conducted under the plan filed with the Illinois State Board of Education. **12**

On an annual basis, the Superintendent will provide the Board with a written report which outlines the results of the District's teacher evaluation system.

LEGAL REF.: 105 ILCS 5/10-19, 5/18-8, 5/24-2, 5/24-8, 5/24-9, 5/24-21, 5/24A-4, and 5/24A-5.  
820 ILCS 260/1 et seq.  
Cleveland Board of Education v. Loudermill, 105 S.Ct. 1487(1985).

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

- 
4. Lifton v. Board of Education of City of Chicago, 318 F.Supp.2d 674 (N.D.Ill., 2004)(issuance of warning resolution was not pretext for retaliating against teacher for exercise of her free speech rights and she was not entitled to due process before issuance of warning);
  5. Younge v. Board of Education of City of Chicago, 788 N.E.2d 1153 (Ill.App.1, 2003)(reporting to work under the influence of marijuana was irremediable);
  6. Buchna v. ISBE, 795 N.E.2d 1045 (Ill.App.3, 2003)(district required to rate teacher's performance according to statutory classifications of "excellent," "satisfactory," and "unsatisfactory").

**12** All certificated school district employees must be evaluated and remedial action taken when appropriate (105 ILCS 5/24A-1 et seq.). Each school district must develop "in cooperation with" its teachers or, where applicable, the exclusive bargaining representative of its teachers, an evaluation plan for all tenured teachers. The term "teacher" includes administrators.

## **Professional Personnel**

### **Terms and Conditions of Employment and Dismissal**

Duty-Free Lunch, School Year, School Day, Salary, Dismissal, Evaluation

**Please refer to the “Agreement between the District #24 Board of Education Millburn Community Consolidated School Lake County, Illinois and the Millburn Teachers.”**

Also, the District accommodates employees who are nursing mothers according to provisions in the Nursing Mothers in the Workplace Act. P.A. 92-0068.

Assignments

The Superintendent is authorized to make teaching, study hall, extra class duty, and extracurricular assignments. In order of priority, assignments shall be made based on the District's needs and best interests, employee qualifications, and employee desires.

Transfers

**Please refer to the “Agreement between the District #24 Board of Education Millburn Community Consolidated School Lake County, Illinois and the Millburn Teachers.”**

LEGAL REF.: P.A. 92-0068 (Nursing Mothers in the Workplace Act).

105 ILCS 5/10-19, 5/18-8, 5/24-2, 5/24-8, 5/24-9, 5/24-21, 5/24A-4, and 5/24A-5.

Metzl v. Leininger, 57 F.3d 618 (7th Cir. 1995).

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

ADOPTED: May 20, 2002