

OFFICE OF THE SUPERINTENDENT

Millburn Public Schools

INFORMATION ITEM

December 6, 2010

To: Board of Education Members

From: Ellen E. Mauer, PhD

Subject: Policy 5:240-Suspension

This policy has been changed to reflect the minimum requirements by law in 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

Suspension 1

Suspension Without Pay 2

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

Misconduct that is detrimental to the School District includes:

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

At the request of the professional employee made within 5 calendar days of receipt of a pre-suspension notification, the Board or Board-appointed hearing examiner will conduct a pre-suspension hearing. ³ The Board or its designee shall notify the professional employee of the alleged charges and the date and time of the hearing. At the pre-suspension hearing, the professional employee or his/her representative may present evidence.

Suspension With Pay

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

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

¹ State or federal law controls this policy's content. This policy contains an item on which collective bargaining may be required. Any policy that impacts upon wages, hours, and terms and conditions of employment, is subject to collective bargaining upon request by the employee representative, even if the policy involves an inherent managerial right.

A board policy will be superseded by a collective bargaining agreement that contains provisions exceeding the requirements of the policy; in that case, the policy should state, "Please refer to the current [*insert name of professional CBA*]."

Boards should seek the advice of their attorneys concerning any disciplinary suspension.

² Under the wage and hours rules, employees who are exempt from overtime requirements become eligible for overtime if they are subject to disciplinary suspensions without pay. Auer v. Robbins, 117 S.Ct. 905 (1997). Teachers are exempt from this rule. Although the U.S. Dept. of Labor modified this rule in 2004, the Illinois legislature rejected these rule changes (820 ILCS 105/4a). Illinois employers must use the federal rules as they existed on March 30, 2003. This sample policy takes a conservative approach: it does not subject non-teaching professional employees to disciplinary suspensions without pay. Some attorneys believe that non-teaching exempt employees (e.g., administrators) will remain exempt from the Fair Labor Standards Act's overtime requirements as long as suspensions are in increments of a full work week - not day-by-day. Contact the board attorney for an opinion.

The 30-day limit may be modified or deleted.

³ Some case law suggests a separate hearing must be held before any suspension without pay is invoked: Cleveland Board of Education v. Loudermill, 105 S.Ct. 1487 (1985); Barszcz v. Community College District No. 504, 400 F.Supp. 675 (N.D. Ill., 1975); Massie v. East St. Louis School District No. 189, 561 N.E.2d 246 (Ill.App.5, 1990); Spinelli v. Immanuel Lutheran Evangelical Congregation, Inc., 515 N.E.2d 1222 (1987).

The Superintendent shall meet with the employee to present the allegations and give the employee an opportunity to refute the charges. The employee will be told the dates and times the suspension will begin and end. ⁴

Any criminal conviction resulting from the investigation or allegations shall require the employee to repay to the District all compensation and the value of all benefits received by the employee during the suspension. The Superintendent will notify the employee of this requirement when the employee is suspended. ⁵

LEGAL REF.: 5 ILCS 430 et seq.
105 ILCS 5/24-12.
Cleveland Board of Education v. Loudermill, 105 S.Ct. 1487 (1985).
Barszcz v. Community College District No. 504, 400 F.Supp. 675 (N.D. Ill., 1975).
Massie v. East St. Louis School District No.189, 561 N.E.2d 246 (Ill.App.5, 1990).

CROSS REF.: 5:290 (Educational Support Personnel - Employment Termination and Suspensions)

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

⁴ Only minimal due process is required before a suspension with pay because the property interests at stake are insignificant. Some due process is recommended, however, because a suspension might jeopardize a teacher's good standing in the community and thus infringe the teacher's liberty interests protected by the Constitution. The following option places a ceiling on the number of suspension-with-pay days; the 30-day limit may be modified:

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

⁵ The first sentence of this paragraph is required by 5 ILCS 430/5-60(b), as amended by P.A. 95-947. The second sentence is optional.

Professional Personnel

Suspension

Suspension Without Pay

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

Suspension With Pay

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

The Superintendent shall meet with the professional employee to present the allegations and give the professional employee an opportunity to refute the charges. The professional employee will be told the dates and times the suspension will begin and end. No suspension with pay shall exceed 30 school or working days in length.

LEGAL REF.: 105 ILCS 5/24-12. Auer v. Robbins, 117 S.Ct. 905 (1997); 29 C.F.R. § 541.3.

Cleveland Board of Education v. Loudermill, 105 S.Ct. 1487, *on remand* 763 F.2d 202 (6th Cir. 1985), *on remand* 651 F.Supp.92 (N.D. Ohio 1986), *aff'd* by 844 F.2d 304 (6th Cir. 1988), *cert. denied* 488 U.S. 946 (1988).

Jones v. Board of Education of Township High School District No. 211, 651 F. Supp. 760 (N.D. Ill. 1986).

Barszcz v. Board of Trustees of Community College District No. 504, Cook County, 400 F.Supp. 675 (N.D. Ill. 1975), *aff'd* by 539 F.2d 715 (7th Cir. 1976), *cert. dismissed* by 429 U.S. 1080 (1977).

Spinelli v. Immanuel Lutheran Evangelical Congregation, Inc., 515 N.E.2d 1222 (1987).

Kamrath v. Board of Education of School District 150, 515 N.E.2d 1222 (1987).

Massie v. East St. Louis School District No. 189, 561 N.E.2d 246 (5th Dist. 1990).

Kearns v. Board of Education of North Palos Elementary School District No. 117, 392 N.E.2d 148 (1st Dist. 1979).

ADOPTED: May 20, 2002