

OFFICE OF THE SUPERINTENDENT

Millburn Public Schools

INFORMATION ITEM

January 3, 2011

To: Board of Education Members

From: Ellen E. Mauer, PhD

Subject: Policy 5:270- Employment at Will, Compensation, and Assignment

This policy has been changed to reflect wording that indicates an employee may not be discharged for a reason prohibited by law. Compensation and assignment have been given separate headings. Wording is added that indicates that satisfactory performance is required for a salary increase. All legal references have been updated.

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

Educational Support Personnel

Employment At-Will, Compensation, and Assignment ¹

Employment At-Will ²

Unless otherwise specifically provided, District employment is at-will, meaning that employment may be terminated by the District or employee at any time for any reason, other than a reason prohibited by law, or no reason at all. ³ Nothing in School Board policy is intended or should be construed as altering the employment at-will relationship.

Exceptions to employment at-will may include employees who are employed annually, have an employment contract, or are otherwise granted a legitimate interest in continued employment. The Superintendent is authorized to make exceptions to employing non-certificated employees at-will but shall maintain a record of positions or employees who are not at-will and the reason for the exception.

Compensation

The Board will determine salary and wages for educational support personnel. Increments are dependent on evidence of continuing satisfactory performance. An employee covered by the overtime provisions in State or federal law, shall not work overtime without the prior authorization

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 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.

A collective bargaining agreement may contain provisions that supersede this policy, in which case, the policy might state: "Please refer to the current bargaining agreement between the Educational Support Personnel and the School Board."

While the term "educational support personnel" is not defined in The School Code, at least one appellate court and one circuit court decision have found in dicta that the term refers to noncertified employees, such as clerical workers, custodians, cafeteria workers, bus drivers, and teachers' aides. Laukhuf v. Congerville-Eureka-Goodfield School Dist., 2003 WL 23936148 (Ill.Cir., 2003)(non-precedential); Buckellew v. Georgetown-Ridge Farm Community Unit School Dist., 575 N.E.2d 556 (Ill.App. 4, 1991).

² Illinois law does not specifically create a protected property interest in continued employment for non-certificated employees, except in a reduction in force. However, whether an employee is actually employed at-will depends on the specific facts. This determination is important because the dismissal of an employee having a protected property right in continued employment requires a notice and hearing. Cleveland Bd of Educ. v. Loudermill, 105 S.Ct. 1487 (1985). *See also* Baird v. Warren Community Unit School Dist No. 205, 389 F.3d 685 (7th Cir., 2004)(board members denied qualified immunity for denying a dismissed superintendent his procedural due process rights).

It is safest to presume that all non-certificated employees not covered by a contract are annually employed. This is a good assumption because districts routinely assure next-year employment so that the employee will not qualify for summer unemployment. In addition, annual employment may be created through a collective bargaining agreement, past practice, an employees' handbook, personnel policy manual, or an oral promise. Arneson v. Bd of Trustees, McKendree College, 569 N.E.2d 252 (Ill.App.5, 1991). Keeping accurate records of which positions or employees are at-will, will help determine the level of due process needed in the event of a dismissal. Consult the district's attorney for help determining which employees are employed "at-will."

A district, by policy or handbook, may not take-away a previously given a property interest in continued employment to current employees; only those employees hired afterwards could be affected. Duldulao v. St. Mary of Nazareth Hospital, 483 N.E.2d 956 (Ill.App.1, 1985); Kaiser v. Dixon, 468 N.E.2d 822 (Ill.App.2, 1984).

For a discussion of prohibited dismissal reasons, *see* 5:10, *Equal Employment Opportunity and Minority Recruitment*. Volunteer firefighters may not be fired for responding to an emergency (50 ILCS 748/).

³ 105 ILCS 5/10-23.5. For more information on RIF, *see* policy 5:290, *Employment Termination and Suspensions*.

from the employee's immediate supervisor. ⁴ Educational support personnel are paid at least twice a month. ⁵

Assignment

The Superintendent is authorized to make assignments and transfers of educational support personnel.

LEGAL REF.: 105 ILCS 5/10-22.34 and 5/10-23.5.
Cook v. Eldorado Community Unit School District, No. 03-MR-32 (Ill.App.5, 2004).
Duldulao v. St. Mary of Nazareth Hospital, 483 N.E. 2d 956 (Ill.App.1, 1985),
aff'd in part and remanded, 505 N.E.2d 314 (Ill. 1987).
Kaiser v. Dixon, 468 N.E. 2d 822 (Ill.App.2, 1984).

CROSS REF.: 5:10 (Equal Employment Opportunity and Minority Recruitment) 5:35
(Compliance with the Fair Labor Standards Act), 5:290 (Educational Support
Personnel - Employment Termination and Suspensions), 5:310 (Educational
Support Personnel - Compensatory Time-Off)

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

⁴ For information regarding overtime, see IASB sample policy 5:35, *Compliance with the Fair Labor Standards Act*.

⁵ 820 ILCS 115/3. However, the wages of employees who are *exempt* as defined in the Fair Labor Standards Act (FLSA), 29 U.S.C. §201 *et seq.*, may be paid once a month. For a discussion of the FLSA, see 5:35, *Compliance with the Fair Labor Standards Act*.

Educational Support Personnel

Employment At-Will, Compensation, and Assignment

Employment At-Will

Unless otherwise specifically provided, District employment is at-will, meaning that employment may be terminated by the District or employee at any time for any reason or no reason at all. A dismissal for reduction in force requires 30 days notice before the employee is removed or dismissed.

For the purposes of reduction in force, educational support personnel are granted seniority and recall rights within their respective categories of position. Nothing in Board of Education policy is intended or should be construed as altering the employment at-will relationship.

Compensation and Assignment

The Board of Education will determine salary and wages for educational support personnel. Increments are dependent on evidence of continuing satisfactory performance. An employee covered by the overtime provisions in the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*, works overtime whenever the employee works more than 40 hours during a single workweek. Overtime will not be allowed without prior authorization from the employee's immediate supervisor. Educational support personnel are paid every 2 weeks. The Superintendent is authorized to make assignments and transfers of educational support personnel.

LEGAL REF.: Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*
105 ILCS 5/10-22.34 and 5/10-23.5.
Duldulao v. St. Mary of Nazareth Hospital, 483 N.E. 2d 956 (1st Dist. Ill. 1985),
aff'd in part and remanded, 505 N.E.2d 314 (Ill. 1987).
Kaiser v. Dixon, 468 N.E. 2d 822 (Ill. App. 2d Dist. 1984).
Molitor v. Chicago Title & Trust Co., 59 N.E. 2d 695 (1st Dist. 1945).

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

ADOPTED: May 20, 2002