

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

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 noncertificated 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 Cir., 2003)(non-precedential); Buckelw v. Georgetown-Ridge Farm Community Unit School Dist., 575 N.E.2d 556 (Ill.App. 4, 1991).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 748f).

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

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.

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)

Educational Support Personnel

Duties and Qualifications 1

All support staff: (1) must meet qualifications specified in job descriptions, (2) must be able to perform the essential tasks listed and/or assigned, and (3) are subject to School Board policies as they may be changed from time to time at the Board's sole discretion.

Paraprofessionals and Teacher Aides 2

"Paraprofessionals" and "teacher aides" are noncertificated personnel with instructional duties; the terms are synonymous. Service as a paraprofessional or teacher aide requires a "statement of approval" issued by the Illinois State Board of Education (ISBE), unless the individual holds certification of at least a bachelor's degree, a professional vocational certificate, is completing an approved clinical experience, and/or is student teaching.

A paraprofessional or teacher aide in a targeted assistance program that is paid with federal funds under Title I, Part A, or in a school-wide program that is supported with such funds, shall hold a "statement of approval," issued by the ISBE, for this purpose. 3

Individuals with only non-instructional duties (e.g., providing technical support for computers, providing personal care services, or performing clerical duties) are not paraprofessionals or teacher aides and the requirements in this section do not apply. In addition, individuals who are completing their clinical experiences and/or student teaching do not need to comply with this section, provided they otherwise qualify for instructional duties under ISBE rules. 4

Noncertificated Personnel Working with Students Performing Non-Instructional Duties

Noncertificated personnel performing non-instructional duties may be used:

1. For supervising study halls, long distance teaching reception areas used incident to instructional programs transmitted by electronic media (e.g., computers, video, and audio) detention and discipline areas, and school-sponsored extracurricular activities; 5
2. As supervisors, chaperones, or sponsors for non-academic school activities; or 6
3. For non-teaching duties not requiring instructional judgment or student evaluation.7

Nothing in this policy prevents a noncertificated person from serving as a guest lecturer or resource person under a certificated teacher's direction and with the administration's approval. 8

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.

² 23 Ill.Admin.Code §25.510; 23 Ill.Admin.Code §1.630(b)(2).

³ 23 Ill.Admin.Code §25.510(d).

⁴ 105 ILCS 5/10-22.34(d); 23 Ill.Admin.Code §1.630(f).

⁵ 105 ILCS 5/10-22.34(a)(2).

⁶ 105 ILCS 5/10-22.34a.

⁷ 105 ILCS 5/10-22.34(a)(1).

⁸ 105 ILCS 5/10-22.34b, last paragraph. Noncertificated personnel may be used to provide specialized instruction in a field that an individual is particularly qualified by reason of specialized knowledge or skill (23 Ill.Admin.Code §1.630(g). Districts that frequently use noncertificated individuals to provide such instruction may consider adding the following optional sentence:

When appropriate, the Superintendent may seek approval from the responsible Regional Superintendent for a noncertificated individual to provide specialized instruction, that is not otherwise readily available in the school environment, in the field that the individual is particularly qualified by reason of specialized knowledge or skill.

Coaches and Athletic Trainers

Athletic coaches and trainers shall have the qualifications required by any association in which the School District maintains a membership. ⁹ The coach for an extracurricular athletic activity sponsored or sanctioned by the Illinois High School Association (IHSA) at or above the ninth grade level must have completed the IHSA's educational program and competency testing on preventing abuse of performance-enhancing substances. ¹⁰ Regardless of whether the athletic activity is governed by an association, the Superintendent or designee shall ensure that each athletic coach: (1) is knowledgeable regarding coaching principles, (2) has first aid training, and (3) is a trained Automated External Defibrillator user according to rules adopted by the Illinois Department of Public Health. ¹¹ Anyone performing athletic training services shall be licensed under the Illinois Athletic Trainers Practice Act, be an athletic trainer aide performing care activities under the on-site supervision of a licensed athletic trainer, or otherwise be qualified to perform athletic trainer activities under State law. ¹²

Bus Drivers

All school bus drivers must have a valid school bus driver permit. ¹³ The Superintendent or designee shall inform the Illinois Secretary of State, within 30 days of being informed by a school bus driver, that the bus driver permit holder has been called to active duty. ¹⁴ New bus drivers and bus drivers who are returning from a lapse in their employment are subject to the requirements contained in Board policy 5:30, *Hiring Process and Criteria* and Board policy 5:285, *Drug and Alcohol Testing for School Bus and Commercial Vehicle Drivers*.

⁹ A district should consult the handbooks and by-laws of the appropriate associations, e.g., the Illinois High School Association, the Southern Illinois Junior High School Athletic Association, and the Illinois Elementary School Association.

¹⁰ Required by 105 ILCS 25/2, added by P.A. 96-132, recodified by P.A. 96-1000.

¹¹ Optional and may be amended. The first requirement identifies a basic competency and the second two requirements are intended to ensure coaches are trained emergency responders. For AED training program requirements, see Automated External Defibrillator Act (410 ILCS 4/15) and Automated External Defibrillator Code (77 Ill.Admin.Code Part 525).

¹² 225 ILCS 5/3 and 5/4.

¹³ The regional superintendent is authorized to conduct school bus driver instruction courses and investigate whether persons hired to operate school buses have valid school bus driver permits (105 ILCS 5/3-14.23).

School bus driver permits are issued by the Secretary of State (625 ILCS 5/6-106.1, amended by P.A. 96-962 and P.A. 96-1182). Districts must conduct a pre-employment interview with bus driver candidates, distribute bus driver applications and medical forms, and submit the applicant's fingerprint cards to the State Police for criminal background investigations. Districts must also certify in writing to the Secretary of State that all pre-employment conditions were completed, including an Illinois-specific criminal background investigation through the State Police and the submission of necessary fingerprints to the Federal Bureau of Investigation for criminal history information (*Id.*). The applicant presents this certification to the Secretary of State when submitting the school bus driver permit application (*Id.*).

A school bus driver operating a school bus at the time of an accident is deemed by the implied consent law to agree to submit to tests at the direction of a law enforcement officer of the driver's breath, blood, or urine to determine the presence of alcohol, or other drugs, in the person's system (625 ILCS 5/6-516).

Anyone driving a bus chartered to transport students to or from interscholastic athletic or interscholastic or school sponsored activities must have a valid school bus driver permit; this does not apply to any driver employed by a public transportation provider when the bus is on a regularly scheduled route for transporting other fare paying passengers (625 ILCS 5/6-104(d-5)).

¹⁴ This sentence is optional but the notification is required by 625 ILCS 5/6-106.1(h), added by P.A. 96-89. "Active duty" is defined in the statute as active duty pursuant to an executive order of the U.S. President, an act of the Congress, or an order of the Governor. Upon notification, the Secretary of State will characterize the permit as inactive until a permit holder renews the permit pursuant to 625 ILCS 5/6-106.1(b).

LEGAL REF.: No Child Left Behind Act of 2001, 20 U.S.C. §6319(c).
34 C.F.R. §§200.58 and 200.59.
105 ILCS 5/10-22.34, 5/10-22.34a, 5/10-22.34b, and 25/2.
625 ILCS 5/6-104 and 5/6-106.1.
23 Ill.Admin.Code §§25.510, 25.520.

CROSS REF.: 4:110 (Transportation), 4:170 (Safety), 5:30 (Hiring Process and Criteria), 5:35 (Compliance with the Fair Labor Standards Act), 5:285 (Drug and Alcohol Testing for School Bus and Commercial Vehicle Drivers), 6:250 (Community Resource Persons and Volunteers)

Educational Support Personnel

Drug and Alcohol Testing for School Bus and Commercial Vehicle Drivers ¹

The District shall adhere to federal law and regulations requiring a drug and alcohol testing program for school bus and commercial vehicle drivers.

This program shall comply with the requirements of federal law. The Superintendent or designee shall adopt and enact regulations consistent with the federal regulations, defining the circumstances and procedures for the testing. ²

LEGAL REF.: 49 U.S.C. §31301 *et seq.*, Alcohol and Controlled Substances Testing (Omnibus Transportation Employee Testing Act of 1991).
49 C.F.R. Parts 40 (Procedures for Transportation Workplace Drug and Alcohol Testing Programs), 382 (Controlled Substance and Alcohol Use and Testing), and 395 (Hours of Service of Drivers).

CROSS REF.: 4:110 (Transportation), 5:30 (Hiring Process and Criteria), 5:280 (Duties and Qualifications)

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. This policy concerns an area in which the law is unsettled.

The federal Omnibus Transportation Testing Act of 1991 requires that all persons subject to commercial driver's license requirements be tested for alcohol, marijuana, cocaine, amphetamines, opiates (including heroin), and phencyclidine (PCP). State law also requires testing for bus driver permit applicants who are not subject to the federal Omnibus Transportation Testing Act of 1991 (625 ILCS 5/6-106.1). State law also allows for drug and alcohol testing for any driver on a public roadway; i.e., *implied consent* (625 ILCS 5/11-501.1). Drug testing by government entities constitutes a search of an individual, thereby invoking State and federal constitutional law. In determining whether post-employment testing of a school bus driver is permissible, a court will balance the privacy interests of the employee against the district's interest. International Brotherhood of Teamsters v. Department of Transportation, 932 F.2d 1292 (9th Cir. 1991). For districts that employ staff members in positions requiring a commercial driver's license, see the U.S. Dept. of Transportation - Office of the Secretary, Office of Drug and Alcohol Policy and Compliance's guidance and best practices document titled "What Employers Need to Know About DOT Drug and Alcohol Testing," available at: www.dot.gov/ost/dapc/documents/EmployerGuidelinesOctober012010.pdf.

² Additional provision for districts that contract-out their transportation services:

This policy shall not be implemented, and no administrative procedures will be needed, until it is reasonably foreseeable that the District will hire staff for a position(s) requiring a commercial driver's license.

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Educational Support Personnel

Administrative Procedure - Drug and Alcohol Testing for School Bus and Commercial Vehicle Drivers ¹

The District's drug and alcohol testing program shall apply to all employees who operate a commercial motor vehicle, including any vehicle designed to transport 16 or more passengers. This includes casual, intermittent, or occasional drivers as well as full-time, regularly employed drivers. ²

Drivers shall inform their supervisors if at any time they are using a controlled substance which their physician has prescribed for therapeutic purposes. Drivers using such a substance may continue to perform safety-sensitive functions only if the physician has advised the driver that the substance will not adversely affect his/her ability to safely operate a commercial motor vehicle. ³

Pre-Employment Tests

A pre-employment drug test shall be required of an applicant only after he/she has been offered the position. ⁴

Drug tests shall be conducted before the first time a driver performs any safety-sensitive function for the District. ⁵

Safety-sensitive functions include all on-duty functions performed from the time a driver begins work or is required to be ready to work until he/she is relieved from work and all responsibility for performing work. It includes driving; waiting to be dispatched; inspecting and servicing equipment; supervising, performing or assisting in loading and unloading; repairing or obtaining and waiting for help with a disabled vehicle; performing other requirements related to accidents; and performing any other work for the District or paid work for any other entity. ⁶

Exceptions may be made for drivers who have participated in the drug testing program required by law within the previous 30 days, provided that the District has been able to make all verifications required by law. ⁷

¹ *These sample procedures and reference notes are reprinted with the permission of the California School Boards Association, copyright 1996. Text in italic was added. Inapplicable text was removed.*

Federal regulations do not provide authority for this program until the compliance date required by federal regulations.

² 49 C.F.R. § 382.107.

³ Pursuant to 49 C.F.R. § 382.213, the district may require a driver to inform the district when using a controlled substance prescribed by a physician who has advised the driver that the substance does not adversely affect the driver's ability to safely operate a commercial motor vehicle.

⁴ The following section reflects federal requirements for pre-employment drug testing. On May 10, 1995, the federal Department of Transportation (DOT) suspended indefinitely its requirement for pre-employment alcohol testing. If desired, however, the district can do a pre-employment alcohol test under its own authority. *The following optional paragraph defers drug testing until after a job offer is made in order to limit the number of applicants tested.*

⁵ 49 C.F.R. § 382.301.

⁶ 49 C.F.R. § 382.107 and 395.2.

⁷ 49 C.F.R. § 382.301.

Pre-employment testing shall also be required of employees returning to work after a layoff period if the employee was removed from the random testing pool. If the employee remains in the random testing pool, additional testing shall not be necessary. ⁸

Post-Accident Tests

Alcohol and controlled substance tests shall be conducted as soon after an accident as practicable on any driver:

1. who was performing safety-sensitive functions with respect to the vehicle, if the accident involved loss of human life; ⁹
2. who receives a citation under State or local law for a moving traffic violation arising from the accident; ¹⁰
3. who was performing safety-sensitive functions with respect to the vehicle, if the accident involved a serious medical injury; ¹¹ or
4. whose performance cannot be excluded as a contributing factor based on information available at the time of the accident. ¹²

Drivers shall make themselves readily available for testing, absent the need for immediate medical attention. ¹³

No such driver shall use alcohol for 8 hours after the accident, or until after he/she undergoes a post-accident alcohol test, whichever occurs first. ¹⁴

If an alcohol test is not administered within 2 hours of the accident or if a drug test is not administered within 32 hours, the District shall prepare and maintain records explaining why the test was not conducted. Tests will not be given if not administered within 8 hours after the accident for alcohol or within 32 hours for drugs. ¹⁵

Tests conducted by authorized federal, State, or local officials shall fulfill post-accident testing requirements provided they conform to applicable legal requirements and are obtained by the District. Breath tests will validate only the alcohol test and cannot be used to fulfill controlled substance testing obligations. ¹⁶

⁸ 49 C.F.R. § 382.301.

⁹ 49 C.F.R. § 382.303.

¹⁰ 49 C.F.R. § 382.303.

¹¹ 49 C.F.R. § 382.303. [*A school bus driver operating a school bus at the time of an accident is deemed by the II. implied consent law to have given consent to submit to tests to be administered at the direction of a law enforcement officer of the driver's breath, blood, or urine for the purpose of determining the presence of alcohol, or other drugs, in the person's system (625 ILCS 5/6-516)*].

¹² *Optional.*

¹³ 49 C.F.R. § 382.303.

¹⁴ 49 C.F.R. § 382.209.

¹⁵ 49 C.F.R. § 382.303.

¹⁶ 49 C.F.R. § 382.303.

Random Tests

Alcohol and drug tests shall be conducted on a random basis at unannounced times throughout the year. The number of random alcohol and drug tests shall be at least equal to those required by federal regulations. Drivers shall be selected by a scientifically valid random process, and each driver shall have an equal chance of being tested each time selections are made. Tests for alcohol shall be conducted just before, during, or just after the performance of safety-sensitive functions. 49 C.F.R. § 382.305. 17

Employees off work due to leaves, vacation, and layoffs shall be informed that they remain subject to random testing. Employees drawn for such testing shall be notified and tested as soon as practicable after they return to duty. 18

Reasonable Suspicion Tests

An alcohol or drug test shall be conducted if a supervisor or District official trained in accordance with law has reasonable suspicion that a driver has violated the District's alcohol or drug prohibitions. This reasonable suspicion must be based on specific, contemporaneous, articulable observations concerning the driver's appearance, behavior, speech, or body odors. The observations may include indications of the chronic and withdrawal effects of controlled substances. 19

Alcohol tests are authorized for reasonable suspicion only if the required observations are made during, just before, or just after the period of the work day when the driver must comply with alcohol prohibitions. An alcohol test may not be conducted by the person who determines that reasonable suspicion exists to conduct such a test. If an alcohol test is not administered within two hours of a determination of reasonable suspicion, the District shall prepare and maintain a record explaining why this was not done. Attempts to conduct alcohol tests shall terminate after 8 hours. 20

A supervisor or District official who makes observations leading to a controlled substance reasonable suspicion test shall make a written record of his/her observations within 24 hours of the observed behavior or before the results of the drug test are released, whichever is earlier. 21

The Superintendent or designee shall ensure that an employee under reasonable suspicion is transported to the designated collection or testing site. 22

17 The random tests described above must be conducted throughout the calendar year, not just at one time. Further, they should not be conducted at the same time each calendar year, and employees should be tested the same day as the tests are announced. Pursuant to 49 C.F.R. § 382.305, the number of random alcohol tests annually must equal 10 percent of the average number of driver positions and the number of random drug tests annually must equal 50 percent of the average number of driver positions; however, the Federal Highway Administration administrator is authorized to modify these percentages annually based on reported industry violation rates.

18 *Optional.*

19 Pursuant to 49 C.F.R. § 382.603, persons designated to determine whether reasonable suspicion exists must receive at least 60 minutes of training that covers the physical, behavioral, speech, and performance indicators of alcohol misuse and an additional 60 minutes of training covers these indicators of controlled substance use.

20 49 C.F.R. § 382.307.

21 49 C.F.R. § 382.307.

22 *Optional.*

Enforcement

Any driver who refuses to submit to a post-accident, random, reasonable suspicion test, or follow-up test as described below, shall not perform or continue to perform safety-sensitive functions. ²³ Therefore, any driver who so refuses shall be immediately suspended and subject to additional disciplinary action, up to and including dismissal. ²⁴

A driver who is tested and found to have an alcohol concentration greater than 0.00 may not perform or continue to perform safety-sensitive functions, including driving a commercial motor vehicle, until the start of the driver's next regularly scheduled duty period, but not less than 24 hours after the test was administered. ²⁵

A driver who tests positive for drugs or is found to have an alcohol concentration of greater than 0.04 shall be subject to disciplinary action up to and including dismissal. ²⁶

A driver who violates District prohibitions related to drugs and alcohol shall receive from the District the names, addresses, and telephone numbers of substance abuse professionals and counseling and treatment programs available to evaluate and resolve drug and alcohol-related problems. The employee shall be evaluated by a substance abuse professional who shall determine what help, if any, the driver needs in resolving such a problem. Any substance abuse professional who determines that a driver needs assistance shall not refer the driver to a private practice, person, or organization in which he/she has a financial interest, except under circumstances allowed by law. ²⁷

An employee identified as needing help in resolving a drug or alcohol problem shall be evaluated by a substance abuse professional to determine that he/she has properly followed the prescribed rehabilitation program. ²⁸

Return-to-Duty Tests

If a driver who has violated the District's drug or alcohol prohibition is returned to performing safety-sensitive duties, a drug or alcohol test shall be conducted. ²⁹

Employees whose conduct involved drugs shall not return to duty in a safety-sensitive function until the return-to-duty drug test produces a verified negative result. Employees whose conduct involved

²³ 49 C.F.R. § 382.211.

²⁴ *Optional.*

²⁵ 625 ILCS 5/6-106.1a and 5/6-106.1b. Illinois law (0.00) is more stringent than federal law (0.04) (49 C.F.R. § 382.505).

²⁶ State and federal codes are silent regarding employment sanctions. State law prohibits discrimination based on the use of lawful products during non-work hours (820 ILCS 55/5). Thus, it may be hard to defend discipline measures for alcohol concentration below 0.4. The sample procedure, therefore, states that drivers may not drive with a concentration above 0.00; however a driver will not be disciplined unless the concentration is 0.04 or greater.

²⁷ The choice of substance abuse professional and assignment of costs shall be made in accordance with employer/driver agreements and employer policies. The assignment of costs of the substance abuse professional may be a matter within the scope of negotiations.

²⁸ 49 C.F.R. § 382.605.

²⁹ 49 C.F.R. § 382.309.

alcohol shall not return to duty in a safety-sensitive function until the return-to-duty alcohol test indicates an alcohol concentration of 0.00 or less. ³⁰

Follow-up Tests

A driver who violates the District's drug or alcohol prohibition and is subsequently identified by a substance abuse professional as needing assistance in resolving a drug or alcohol problem shall be subject to unannounced follow-up testing as directed by the substance abuse professional in accordance with the law. Follow-up alcohol testing shall be conducted just before, during, or just after the time when the driver is performing safety-sensitive functions. ³¹

Follow-up testing shall consist of at least 6 tests in the first 12 months following the driver's return to duty. The substance abuse professional may terminate the follow-up testing at any time after the first 6 tests if he/she determines that testing is no longer needed. Testing shall not occur beyond 60 months from the date of the driver's return to duty. ³²

Maintenance of Records

Employee drug and alcohol test results and records shall be maintained under strict confidentiality and released only in accordance with the law. Upon written request, a driver shall receive copies of any records pertaining to his/her use of drugs or alcohol, including any records pertaining to his/her drug or alcohol tests. Records shall be made available to a subsequent employer or other identified persons only as expressly requested in writing by the driver. ³³

Notifications

Each driver shall receive educational materials that explain the requirements of the Code of Federal Regulations, Title 49, Part 382, together with a copy of the District's policy and regulations for meeting these requirements. Representatives of employee organizations shall be notified of the availability of this information. ³⁴ The information shall identify all of the following: ³⁵

1. The person designated by the District to answer drivers' questions about the materials;
2. The categories of drivers who are subject to the Code of Federal Regulations, Title 49, Part 382;
3. Sufficient information about the safety-sensitive functions performed by drivers to make clear what period of the work day the driver is required to comply with Part 382;
4. Specific information concerning driver conduct that is prohibited by Part 382;

³⁰ 49 C.F.R. § 382.605; 625 ILCS 5/6-106 and 5/6-106.1b.

³¹ 49 C.F.R. § 382.311.

³² 49 C.F.R. § 382.605.

³³ 49 C.F.R. § 382.401 and 382.403 identified records that the district must keep for varying periods of time. 49 C.F.R. § 382.405 prohibits the release of this information except as required by law.

³⁴ Required by 49 C.F.R. § 382.601.

³⁵ 49 C.F.R. § 382.601.

5. The circumstances under which a driver will be tested for drugs and/or alcohol under Part 382;
6. The procedures that will be used to test for the presence of drugs and alcohol, protect the driver and the integrity of the testing processes, safeguard the validity of test results, and ensure that test results are attributed to the correct driver; ³⁶
7. The requirement that a driver submit to drug and alcohol tests administered in accordance with Part 382;
8. An explanation of what constitutes a refusal to submit to a drug or alcohol test and the attendant consequences;
9. The consequences for drivers found to have violated the drug and alcohol prohibitions of Part 382, including the requirement that the driver be removed immediately from safety-sensitive functions and the procedures for referral, evaluation, and treatment;
10. The consequences for drivers found to have an alcohol concentration of greater than 0.00;
11. The effects of drugs and alcohol on an individual's health, work, and personal life; signs and symptoms of a drug or alcohol problem (the driver's or a coworker's); and available methods of intervening when a drug or alcohol problem is suspected, including confrontation, referral to an employee assistance program, and/or referral to management; and
12. Other legal requirements, District policies, and disciplinary consequences related to the use of alcohol and drugs. ³⁷

Each driver shall sign a statement certifying that he/she has received a copy of the above materials. ³⁸

Before any driver operates a commercial motor vehicle, the District shall provide him/her with post-accident procedures that will make it possible to comply with post-accident testing requirements. ³⁹

Before drug and alcohol tests are performed, pursuant to 49 C.F.R. § 382, the District shall inform drivers that the tests are required by these regulations. ⁴⁰

The District shall notify a driver of the results of a pre-employment drug test if the driver requests such results within 60 calendar days of being notified of the disposition of his/her employment application. ⁴¹

³⁶ 49 C.F.R. § 40 specifies detailed testing procedures that must be used to ensure accuracy, reliability, and confidentiality. These procedures include training and proficiency requirements and requirements for a suitable test location. Firms with which the district contracts for collection and laboratory services can be expected to provide information about the procedures they use; these procedures should be distributed to employees and included in the district's regulation.

³⁷ Pursuant to 49 C.F.R. § 382.601, materials supplied to drivers may also include information about other policies and disciplinary consequences based on the district's authority independent of 49 C.F.R. § 382 and described as such.

³⁸ 49 C.F.R. § 382.601.

³⁹ 49 C.F.R. § 382.303.

⁴⁰ 49 C.F.R. § 382.113 requires the district to inform the employee, before tests are performed, that the tests are required by 49 C.F.R. § 382. 49 C.F.R. § 382.113 also states that employers shall not falsely represent that a test administered under their own or other authority is being administered under the authority of the Federal Highway Administration.

⁴¹ 49 C.F.R. § 382.411.

The District shall notify a driver of the results of random, reasonable suspicion, and post-accident drug tests if the test results are verified positive. The District shall also tell the driver which controlled substance(s) were verified as positive. 42

Educational Support Personnel

Employment Termination and Suspensions ¹

Resignation and Retirement

An employee is requested to provide 2 weeks' notice of a resignation. ² A resignation notice cannot be revoked once given. An employee planning to retire should notify his or her supervisor at least 2 months before the retirement date.

Non-RIF Dismissal ³

The District may terminate an at-will employee at any time for any or no reason, but not for a reason prohibited by State or federal law.

Employees who are employed annually or have a contract, or who otherwise have a legitimate expectation of continued employment, may be dismissed: (1) at the end of the school year or at the end of their respective contract after being provided appropriate notice and after compliance with any applicable contractual provisions, or (2) mid-year or mid-contract provided appropriate due process procedures are provided.

The Superintendent is responsible for making dismissal recommendations to the School Board consistent with the Board's goal of having a highly qualified, high performing staff.

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. School officials should consult with their attorneys before adopting this policy or taking any action under it.

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 may state, "Please refer to the current [*insert name of educational support CBA*]."

Administrative procedures implementing this policy should include guidelines for exit interviews. These guidelines should include a list of items to discuss with the employee, e.g., the reasons for the termination; how the district could improve its policies, procedures, and working conditions; how to reduce employee turnover; and information about the employee's benefits, including continued health insurance coverage.

² Optional provision:

In most cases, resigning employees are permitted to work until their effective resignation date.

³ If employed at-will, the employee may be dismissed at any time for a non-discriminatory reason unless the dismissal is for a reduction in force. See policy 5:270, *Employment At-Will, Compensation, and Assignment*. However, whether a specific 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 Comm. Unit Schl Dist. No. 205*, 389 F.3d 685 (7th Cir., 2004)(because board members denied a dismissed superintendent procedural due process rights, they were denied qualified immunity).

It is safest to presume that all non-certificated employees are employed for the school year. In other words, the exception out numbers the rule. 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. Thus, the sample policy addresses those employees "with an annual or longer contract or who otherwise have a legitimate expectation of continued employment." A dismissal at the end of the school year or end of a contract generally requires only minimal due process. A mid-year or mid-contract dismissal will require significantly greater due process.

Even if an employee is at-will, a district should consider giving a dismissal reason. The failure to give a reason may provoke an employee into challenging the dismissal, e.g., by alleging illegal discrimination or retaliation for exercising a protected right or whistleblowing.

Consult the board attorney to determine: (1) which employees are at-will, have annual employment, or have a different expectation for their length of employment, and (2) the level of due process to provide specific employees in the event of a dismissal.

Reduction in Force and Recall 4

This section is applicable whenever the Board decides to decrease the number of educational support personnel or to discontinue some particular type of educational support service and, as a result of that action, an educational support employee is removed, dismissed, or his or her hours are reduced.

The Board shall use a seniority list to determine the order of dismissal or removal. The seniority list, categorized by positions, shows the length of continuing service of each full-time educational support employee. The employee with the shorter length of continuing service within the respective category of position shall be dismissed first. 5

Except as provided below, written notice will be given the employee by certified mail, return receipt requested, at least 30 days before the employee is removed or dismissed, or his or her hours are reduced, together with a statement of honorable dismissal and the reason therefore if applicable. 6 The prior written notice will be extended to at least 90 days if the lay-off is due to the District entering into a contract with a third party for non-instructional services. 7 The prior written notice will be shortened to at least 5 days before an employee's hours are reduced as a result of an unforeseen reduction in the student population. 8

Any vacancies for the following school term or within one calendar year from the beginning of the following school term, shall be offered to the employees so removed or dismissed from that category or any other category of position provided they are qualified to hold such positions. 9

Final Paycheck

A terminating employee's final paycheck will be adjusted for any unused, earned vacation credit. 10 Employees are paid for all earned vacation. Terminating employees will receive their final pay on the next regular payday following the date of termination, except that an employee dismissed due to a reduction in force shall receive his or her final paycheck on or before the next regular pay date following the last day of employment. 11

Suspension

Except as provided below, the Superintendent is authorized to suspend an employee without pay as a disciplinary measure, during an investigation into allegations of misconduct or pending a dismissal

4 105 ILCS 5/10-23.5 grants educational support personnel significant protection during a RIF. This policy's provisions do not include the rights of the employee's exclusive bargaining representative because, where employees are represented by an exclusive representative, the bargaining agreement's RIF provision typically includes those rights and supersedes a board policy.

5 Unlike dismissal due to RIF, State law does not require districts to use seniority to select the employees whose hours will be reduced.

"Category of position" is not statutorily defined. Unless otherwise defined by a collective bargaining agreement, the board can define the position categories. Cook v. Eldorado Community Unit School District, 820 N.E.2d 481 (Ill.App.5, 2004). While the statute gives boards the discretion to define categories of positions, boards may not define categories differently for lay-off and recall purposes than for other purposes.

6 This procedure is required by 105 ILCS 5/10-23.5, amended by P.A. 96-998.

7 This notice is required by 105 ILCS 5/10-22.34c. This statute contains the conditions precedent to entering into a contract for third party non-instructional service. These requirements are in 4:60-AP2, *Third Party Non-Instructional Contracts*.

8 Allowed by 105 ILCS 5/10-23.5, amended by P.A. 96-998.

9 Recall provisions are in 105 ILCS 5/10-23.5, amended by P.A. 96-998. State law does not require employees whose hours were reduced to be on the recall list.

10 A district may also adjust an employee's final paycheck for advanced vacation leave, *provided* that the employee agreed to deduct a specified amount of pay equaling the advanced vacation (56 Ill.Admin.Code §300.760). If employees are required to execute such an agreement before taking unearned vacation leave, add the following phrase to this sentence: "or, if the employee agreed in writing, vacation time taken that was not earned."

11 These final paycheck requirements are in 105 ILCS 5/10-23.5, amended by P.A. 96-998.

hearing whenever, in the Superintendent's judgment, the employee's presence is detrimental to the District. A disciplinary suspension shall be with pay: (1) when the employee is exempt from the overtime provisions,¹² or (2) until an employee with an employment contract for a definite term is provided a notice and hearing according to the suspension policy for professional employees. ¹³

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. ¹⁴

LEGAL REF.: 5 ILCS 430 et seq.
105 ILCS 5/10-22.34c and 5/10-23.5.
820 ILCS 105/4a.

CROSS REF.: 5:240 (Professional Personnel - Suspension), 5:270 (Educational Support Personnel - Employment At-Will, Compensation, and Assignment)

¹² 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). 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.

¹³ A suspension of an employee having a protected property right in continued employment requires a notice and hearing. See footnote 3 for additional discussion.

¹⁴ The repayment requirements in the first sentence of this paragraph are in 5 ILCS 430/5-60(b). The second sentence is optional.

Educational Support Personnel

Employment Termination and Suspensions ¹

Resignation and Retirement

An employee is requested to provide 2 weeks' notice of a resignation. ² A resignation notice cannot be revoked once given. An employee planning to retire should notify his or her supervisor at least 2 months before the retirement date.

Non-RIF Dismissal ³

The District may terminate an at-will employee at any time for any or no reason, but not for a reason prohibited by State or federal law.

Employees who are employed annually or have a contract, or who otherwise have a legitimate expectation of continued employment, may be dismissed: (1) at the end of the school year or at the end of their respective contract after being provided appropriate notice and after compliance with any applicable contractual provisions, or (2) mid-year or mid-contract provided appropriate due process procedures are provided.

¹ State or federal law requires this subject matter be covered by policy. 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. School officials should consult with their attorneys before adopting this policy or taking any action under it.

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 may state, "Please refer to the current [*insert name of educational support CBA*]."

Administrative procedures implementing this policy should include guidelines for exit interviews. These guidelines should include a list of items to discuss with the employee, e.g., the reasons for the termination; how the district could improve its policies, procedures, and working conditions; how to reduce employee turnover; and information about the employee's benefits, including continued health insurance coverage.

² Optional provision:

In most cases, resigning employees are permitted to work until their effective resignation date.

³ If employed at-will, the employee may be dismissed at any time for a non-discriminatory reason unless the dismissal is for a reduction in force. See policy 5:270, *Employment At-Will, Compensation, and Assignment*. However, whether a specific 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 Comm. Unit Schl Dist. No. 205*, 389 F.3d 685 (7th Cir., 2004)(because board members denied a dismissed superintendent procedural due process rights, they were denied qualified immunity).

It is safest to presume that all non-certificated employees are employed for the school year. In other words, the exception out numbers the rule. 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. Thus, the sample policy addresses those employees "with an annual or longer contract or who otherwise have a legitimate expectation of continued employment." A dismissal at the end of the school year or end of a contract generally requires only minimal due process. A mid-year or mid-contract dismissal will require significantly greater due process.

Even if an employee is at-will, a district should consider giving a dismissal reason. The failure to give a reason may provoke an employee into challenging the dismissal, e.g., by alleging illegal discrimination or retaliation for exercising a protected right or whistleblowing.

Consult the board attorney to determine: (1) which employees are at-will, have annual employment, or have a different expectation for their length of employment, and (2) the level of due process to provide specific employees in the event of a dismissal.

The Superintendent is responsible for making dismissal recommendations to the School Board consistent with the Board's goal of having a highly qualified, high performing staff.

Reduction in Force and Recall 4

This section is applicable whenever the Board decides to decrease the number of educational support personnel or to discontinue some particular type of educational support service and, as a result of that action, an educational support employee is removed, dismissed, or his or her hours are reduced.

The Board shall use a seniority list to determine the order of dismissal or removal. The seniority list, categorized by positions, shows the length of continuing service of each full-time educational support employee. The employee with the shorter length of continuing service within the respective category of position shall be dismissed first. 5

Except as provided below, written notice will be given the employee by certified mail, return receipt requested, at least 30 days before the employee is removed or dismissed, or his or her hours are reduced, together with a statement of honorable dismissal and the reason therefore if applicable. 6 The prior written notice will be extended to at least 90 days if the lay-off is due to the District entering into a contract with a third party for non-instructional services. 7 The prior written notice will be shortened to at least 5 days before an employee's hours are reduced as a result of an unforeseen reduction in the student population. 8

Any vacancies for the following school term or within one calendar year from the beginning of the following school term, shall be offered to the employees so removed or dismissed from that category or any other category of position provided they are qualified to hold such positions. 9

Final Paycheck

A terminating employee's final paycheck will be adjusted for any unused, earned vacation credit. 10 Employees are paid for all earned vacation. Terminating employees will receive their final pay on the next regular payday following the date of termination, except that an employee dismissed due to a reduction in force shall receive his or her final paycheck on or before the third business day following the last day of employment. 11

4 105 ILCS 5/10-23.5, as amended by P.A. 95-396, grants educational support personnel significant protection during a RIF. This policy's provisions do not include the rights of the employee's exclusive bargaining representative because, where employees are represented by an exclusive representative, the bargaining agreement's RIF provision typically includes those rights and supersedes a board policy.

5 Unlike dismissal due to RIF, State law does not require districts to use seniority to select the employees whose hours will be reduced.

"Category of position" is not statutorily defined. Unless otherwise defined by a collective bargaining agreement, the board can define the position categories. *Cook v. Eldorado Community Unit School District*, 820 N.E.2d 481 (Ill.App.5, 2004). While the statute gives boards the discretion to define categories of positions, boards may not define categories differently for lay-off and recall purposes than for other purposes.

6 Required by 105 ILCS 5/10-23.5, as amended by P.A. 95-396.

7 Required by 105 ILCS 5/10-22.34c, as amended by P.A. 95-241. This statute contains the conditions precedent to entering into a contract for third party non-instructional service. These requirements are in 4:60-AP2, *Third Party Non-Instructional Contracts*.

8 Required by 105 ILCS 5/10-23.5, as amended by P.A. 95-396.

9 *Id.* State law does not require employees whose hours were reduced to be on the recall list.

10 A district may also adjust an employee's final paycheck for advanced vacation leave, *provided* that the employee agreed to deduct a specified amount of pay equaling the advanced vacation (56 Ill.Admin.Code §300.760). If employees are required to execute such an agreement before taking unearned vacation leave, add the following phrase to this sentence: "or, if the employee agreed in writing, vacation time taken that was not earned."

11 Required by 105 ILCS 5/10-23.5, as amended by P.A. 95-396.

Suspension

Except as provided below, the Superintendent is authorized to suspend an employee without pay as a disciplinary measure, during an investigation into allegations of misconduct or pending a dismissal hearing whenever, in the Superintendent's judgment, the employee's presence is detrimental to the District. A disciplinary suspension shall be with pay: (1) when the employee is exempt from the overtime provisions,¹² or (2) until an employee with an employment contract for a definite term is provided a notice and hearing according to the suspension policy for professional employees. ¹³

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. ¹⁴

LEGAL REF.: 5 ILCS 430 et seq.
105 ILCS 5/10-22.34c and 5/10-23.5.
820 ILCS 105/4a.

CROSS REF.: 5:240 (Professional Personnel - Suspension), 5:270 (Educational Support Personnel - Employment At-Will, Compensation, and Assignment)

¹² 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). 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.

¹³ A suspension of an employee having a protected property right in continued employment requires a notice and hearing. See footnote 3 for additional discussion.

¹⁴ 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.
5:290

Educational Support Personnel

Schedules and Employment Year ¹

The Superintendent shall supervise a process for setting work schedules and an employment year for educational support employees in accordance with State and federal law, School Board policy, and applicable agreements and shall:

1. Assign each employee one supervisor who will establish a work schedule, including breaks, as required by building or District needs, work load, and the efficient management of human resources;
2. Allow for the ability to respond to changing circumstances by altering work schedules as needed; and
3. Consider the well-being of the employee. The Superintendent's approval is required to establish a flexible work schedule or job-sharing.

Breaks

An employee who works at least 7.5 continuous hours shall receive a 30-minute duty-free meal break that begins within the first 5 hours of the employee's workday. ² The District accommodates employees who are nursing mothers according to State and federal law. ³

LEGAL REF.: Fair Labor Standards Act, 29 U.S.C. §207 et seq.
820 ILCS 105/, Minimum Wage Law.
820 ILCS 260/, Nursing Mothers in the Workplace Act.
105 ILCS 5/10-20.14a, 5/10-22.34, and 5/10-23.5.

CROSS REF.: 5:35 (Compliance with the Fair Labor Standards Act)

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.

This policy's provisions should be customized to meet the district's needs. A collective bargaining agreement may contain provisions that supersede the policy, in which case, the policy should state: "Please refer to the current [*insert name of any applicable CBA*]."

The standards listed should be customized to reflect the local board's desires and/or district practices.

² This is the minimum required by 105 ILCS 5/10-20.14a.

³ School districts must accommodate mothers who choose to continue breastfeeding after returning to work. See the Right to Breastfeed Act, 740 ILCS 137/; Nursing Mothers in the Workplace Act, 820 ILCS 260/; and Fair Labor Standards Act, 29 U.S.C. §207(r), added by P.L. 111-148. See sample language for a personnel handbook in 5:10-AP, *Administrative Procedure - Workplace Accommodations for Nursing Mothers*.

Educational Support Personnel

Compensatory Time-Off ¹

This policy governs the use of compensatory time-off by employees who: (1) are covered by the overtime provisions of the Fair Labor Standards Act, 29 U.S.C. §201 *et seq.*, and (2) are not represented by an exclusive bargaining representative.

Employees may be given 1-1/2 hours of compensatory time-off in lieu of cash payment for each hour of overtime worked. Other than as provided below, at no time may an employee's accumulated compensatory time-off exceed 240 hours, which represents compensation for 160 hours of overtime. ² An employee whose work regularly includes public safety, emergency response, or seasonal activities may accumulate a maximum of 480 hours of compensatory time, which represents compensation for 320 hours of overtime. ³ If an employee accrues the maximum number of compensatory time-off hours, the employee: (1) is paid for any additional overtime hours worked, at

¹ The federal regulations implementing the Fair Labor Standards Act (FLSA) governs the use of "comp-time" (29 C.F.R. §§553.21-553.28 and 553.50, [www.dol.gov/dol/allcfr/ESA/Title 29/Part 553/Subpart A.htm](http://www.dol.gov/dol/allcfr/ESA/Title%2029/Part%20553/Subpart%20A.htm)). See IASB sample policy 5:35, *Compliance with the Fair Labor Standards Act*, for discussion of the FLSA. In order for a district to offer comp-time, it must have a compensatory time-off policy or the topic must be covered in an applicable collective bargaining agreement. 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. School officials should consult with the board attorney before adopting this policy.

The terms "comp-time" and "compensatory time-off" mean paid time-off that is earned and accrued by a non-exempt employee in lieu of overtime pay for over 40 hours worked in one workweek. Compensatory time-off in lieu of overtime pay must be at the premium rate of 1.5 hours of compensatory time for each hour of overtime worked (just as the monetary rate for overtime is calculated at 1.5 times the regular rate of pay). As a condition for using comp-time in lieu of overtime pay, the employer and employee must have an "agreement or understanding" before the work is performed. Further, the employee's decision to accept comp-time must be made freely. For employees represented by an exclusive bargaining agent, the agreement to use comp-time must be between the district and the bargaining agent.

For non-exempt employees who are not covered by a collective bargaining agreement, the "agreement or understanding" concerning comp-time must be between the district and employee. See exhibit 5:310-E, *Agreement to Receive Compensatory Time-Off*. If the district had a regular practice of comp-time before April 15, 1986, that is deemed an "agreement." Notice to the non-exempt employees that comp-time will be given in lieu of overtime pay for overtime through bulletin board notices is sufficient to constitute an "agreement or understanding," provided that the decision to accept compensatory time-off is made freely.

² This sample policy contains the maximum hours that the FLSA allows an employee to accumulate. It is a ceiling that an employee may hit several times, but never go over without using some of the time-off. A school board may forfeit flexibility and set this ceiling lower.

³ "Seasonal activities" include activities during periods of significantly increased demand, that are of a regular and recurring nature. A seasonal activity is not limited strictly to those operations that are very susceptible to changes in the weather. However, mere periods of short but intense activity do not make an employee's job seasonal. However, the 480-hour accrual limit will not apply to office personnel or other employees who may perform such seasonal activities only in emergency situations, even if they spend substantially all of their time in a particular workweek engaged in such activities.

the rate of one and one-half times the employee's regular hourly rate of pay, and (2) does not accumulate compensatory time-off until the employee uses an equal amount of accrued time-off. ⁴

An employee who has accrued compensatory time-off shall be permitted to use such time in at least half-day components provided such requests do not unduly disrupt the District's operations. ⁵ The employee's supervisor must approve a request to use compensatory time-off.

Upon termination of employment, an employee will be paid for unused compensatory time at the higher of:

1. The average regular rate received by such employee during the last three years of employment; or
2. The final regular rate received by such employee.

Compensatory time-off is time during which the employee is not working and is, therefore, not counted as "hours worked" for purposes of overtime compensation.

Implementation

The Superintendent or designee shall implement this policy in accordance with the FLSA. In the event of a conflict between the policy and the FLSA, the latter shall control.

LEGAL REF.: Fair Labor Standards Act, 29 U.S.C. §201 et seq.; 29 C.F.R. Part 553.

CROSS REF.: 5:35 (Compliance with the Fair Labor Standards Act), 5:185 (Family and Medical Leave), 5:270 (Employment At-Will, Compensation, and Assignment)

⁴ The FLSA permits a board to require that employees reduce their accumulated compensatory time or face having their supervisor schedule the compensatory time-off for them. Christensen et al. v. Harris County et al., 529 U.S. 576, 120 S.Ct. 1655, 146 L.Ed.2d 621 (2000). Such an optional provisions follows:

Notwithstanding the above and to avoid hardship to the District, an employee's supervisor may require the employee to reduce accumulated compensatory time, or schedule the compensatory time-off for the employee, so that the employee does not accumulate more than 75 hours of compensatory time, which represents compensation for 50 hours of overtime.

⁵ Optional.

Educational Support Personnel

Exhibit - Agreement to Receive Compensatory Time-Off

The School Board has a policy of granting compensatory time-off to non-exempt employees in lieu of overtime pay for time worked in excess of 40 hours in any workweek. I have either received a copy of the policy or been told where it may be found or downloaded. I understand that:

1. I must obtain my supervisor's express authorization to work overtime before working in excess of 40 hours in any workweek.
2. I will earn compensatory time-off at a rate of not less than one and one-half (1.5) hours for each one hour of overtime worked.
3. I will be allowed to use accrued compensatory time-off within a reasonable period after making a request to use it, provided that my absence would not unduly disrupt operations considering factors like emergency requirements for staff and the availability of qualified substitute staff.
4. My supervisor may require that I use my accrued compensatory time-off within a certain time period, may prohibit my use of accrued compensatory time-off on certain days, may require that I cash out my compensatory time-off after a particular time period, and may otherwise limit my use of compensatory time-off.

I agree to receive compensatory time-off in lieu of overtime pay for time worked in excess of 40 hours in any workweek, and I accept this as a condition of my employment.

Employee Signature

Date

Supervisor Signature (or designee)

Date

Educational Support Personnel

Evaluation 1

The Superintendent is responsible for designing and implementing a program for evaluating the job performance of each educational support staff member according to standards contained in School Board policies as well as in compliance with State law and any applicable collective bargaining agreement. The standards for the evaluation program shall include, but not be limited to:

1. Each employee shall be evaluated annually, preferably before the annual salary review.
2. The direct supervisor shall provide input.
3. The employee's work quality, promptness, attendance, reliability, conduct, judgment, and cooperation shall be considered.
4. The employee shall receive a copy of the annual evaluation.
5. All evaluations shall comply with State and federal law and any applicable collective bargaining agreement.

CROSS REF.: 5:10 (Equal Employment Opportunity and Minority Recruitment), 5:150
(Personnel Records)

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

¹ 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 collective bargaining agreement may contain provisions which supersede the policy, in which case, the policy should state: "Please refer to the current [*insert name of the Educational Support Personnel CBA*]." State law does not address evaluation of educational support personnel.

The numbered items are at the local board's discretion.

Educational Support Personnel

Sick Days, Vacation, Holidays, and Leaves ¹

Each of the provisions in this policy applies to all educational support personnel to the extent that it does not conflict with an applicable collective bargaining agreement or individual employment contract or benefit plan; in the event of a conflict, such provision is severable and the applicable bargaining agreement or individual agreement will control.

Sick and Bereavement Leave ²

Full or part-time educational support personnel who work at least 600 hours per year receive 10 paid sick leave days per year. Part-time employees will receive sick leave pay equivalent to their regular workday. Unused sick leave shall accumulate to a maximum of 180 days, including the leave of the current year. ³

Sick leave is defined in State law as personal illness, quarantine at home, serious illness or death in the immediate family or household, or birth, adoption, or placement for adoption. The Superintendent and/or designee shall monitor the use of sick leave.

As a condition for paying sick leave after 3 days absence for personal illness or 30 days for birth or as the Board or Superintendent deem necessary in other cases, the Board or Superintendent may require

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.

This policy is consistent with the minimum requirements of State law. The local collective bargaining agreement may contain provisions that exceed these requirements. The introductory paragraph recognizes that an applicable collective bargaining agreement or individual employment contract will supersede a conflicting provision of the policy. Alternatively, if the policy's subject matter is superseded by a bargaining agreement, the board policy may state, "Please refer to the current [insert name of educational support CBA]."

Districts must coordinate leaves provided by State law and the local bargaining agreement with the leave granted by the Family and Medical Leave Act (FMLA), 29 U.S.C. §2612, amended by Sec. 565 of the National Defense Authorization Act for Fiscal Year 2010 (P.L. 111-84). The FMLA grants eligible employees 12 weeks unpaid leave each year for: (1) the birth and first-year care of a child, (2) the adoption or foster placement of a child, (3) the serious health condition of an employee's spouse, parent, or child, (4) the employee's own serious health condition, (5) the existence of any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is on (or has been notified of an impending call to) *covered active duty* in the Armed Forces, and (6) to care for the employee's spouse, child, parent, or next of kin who is a covered servicemember with a serious injury or illness. The definition of *covered servicemember* includes a veteran "who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness" if the veteran was a member of the Armed Forces "at any time during the period of 5 years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy." Districts are permitted to count paid leave (granted by State law or board policy) taken for an FMLA purpose against an employee's FMLA entitlement (29 C.F.R. §825.207). See policy 5:185, *Family and Medical Leave*.

A plethora of State laws grant leaves to employees of the State and municipalities, but are not applicable to school districts, including the Employee Blood Donation Leave Act (820 ILCS 149/), Local Government Disaster Service Volunteer Act (50 ILCS 122/), Organ Donor Leave Act (5 ILCS 327/), and Civil Air Patrol Leave Act (820 ILCS 148/).

² This section contains the minimum benefits provided by 105 ILCS 5/24-6, amended by P.A. 96-367 and P.A. 96-51. Each specified number of days in this section is the statutory minimum. Before adopting this policy or applying its provisions, the district should examine any applicable bargaining agreements. Strict accounting of unused sick days is important to avoid inconsistent treatment and to ensure accurate reporting to IMRF (credit is given for full day unused sick days upon retirement).

³ As this policy is consistent with the minimum requirements of State law, this provision on the maximum number of sick days that may be accumulated is based on the minimum number required as stated in 105 ILCS 5/24-6. The number may be increased to meet or exceed the number IMRF will recognize for retirement credit purposes. The following alternative does this: "Unused sick leave shall accumulate to the maximum number of days that IMRF will recognize for retirement credit purposes."

that the staff member provide a certificate from: (1) a physician licensed in Illinois to practice medicine and surgery in all its branches, (2) a chiropractic physician licensed under the Medical Practice Act, (3) an advanced practice nurse who has a written collaborative agreement with a collaborating physician that authorizes the advanced practice nurse to perform health examinations, (4) a physician assistant who has been delegated the authority to perform health examinations by his or her supervising physician, or (5) if the treatment is by prayer or spiritual means, a spiritual adviser or practitioner of the employee's faith. If the Board or Superintendent requires a certificate during a leave of less than 3 days for personal illness, the District shall pay the expenses incurred by the employee.

The use of paid sick leave for adoption or placement for adoption is limited to 30 days unless a longer leave is provided in an applicable collective bargaining agreement. The Superintendent may require that the employee provide evidence that the formal adoption process is underway. ⁴

Vacation ⁵

Twelve-month employees shall be eligible for paid vacation days according to the following schedule:

<u>Length of Employment</u>		<u>Monthly Accumulation</u>	<u>Maximum Vacation Leave Earned Per Year</u>
<u>From:</u>	<u>To:</u>		
Beginning of year 2	End of year 2	0.42 Days	5 Days per year
Beginning of year 3	End of year 10	0.83 Days	10 Days per year
Beginning of year 11	End of year 20	1.25 Days	15 Days per year
Beginning of year 21	End of year	1.67 Days	20 Days per year

Part-time employees who work at least half-time are entitled to vacation days on the same basis as full-time employees, but the pay will be based on the employee's average number of part-time hours per week during the last vacation accrual year. The Superintendent will determine the procedure for requesting vacation.

Vacation days earned in one fiscal year must be used by the end of the following fiscal year; they do not accumulate. Employees resigning or whose employment is terminated are entitled to the monetary equivalent of all earned vacation. ⁶

⁴ 105 ILCS 5/24-6, amended by P.A. 96-51.

⁵ State law does not require districts to give employees vacations.

⁶ Required by 820 ILCS 115/5.

Holidays ⁷

Unless the District receives a waiver or modification of The School Code pursuant to Section 2-3.25g allowing it to schedule school on a holiday listed below, District employees will not be required to work on:

New Year's Day	Labor Day
Martin Luther King Jr.'s Birthday	Columbus Day
Abraham Lincoln's Birthday	Veteran's Day
Casimir Pulaski's Birthday	Thanksgiving Day
Memorial Day	Christmas Eve Day
Independence Day	Christmas Day
	New Year's Eve Day

A holiday will not cause a deduction from an employee's time or compensation. The District may require educational support personnel to work on a school holiday during an emergency or for the continued operation and maintenance of facilities or property.

Personal Leave ⁸

Full-time educational support personnel have two paid personal leave day per year. Personal days can accumulate to three days. The use of a personal day is subject to the following conditions:

1. Except in cases of emergency or unavoidable situations, a personal leave request should be submitted to the Building Principal 1 day before the requested date.
2. Personal leave may not be used in increments of less than one-quarter day.
3. Personal leave is subject to any necessary replacement's availability.
4. Personal leave may not be used when the employee's absence would create an undue hardship.

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Leave to Serve as a Trustee of the Illinois Municipal Retirement Fund

Upon request, the Board will grant 20 days of paid leave of absence per year to a trustee of the Illinois Municipal Retirement Fund in accordance with 105 ILCS 5/24-6.3. ⁹

Other Leaves

Educational support personnel receive the following leaves on the same terms and conditions granted professional personnel in Board policy 5:250, *Leaves of Absence*:

1. Leaves for Service in the Military and General Assembly. ¹⁰
2. School Visitation Leave. ¹¹

⁷ Found in 105 ILCS 5/24-2. A State-mandated school holiday on "Good Friday" is unconstitutional according to Metz v. Leininger, 57 F.3d 618 (7th Cir. 1995). Closing school on religious holidays may still be permissible for those districts able to demonstrate, e.g., through surveys, that remaining open would be a waste of educational resources because of widespread absenteeism. Also, districts may be able to close school on Good Friday by adopting a "spring holiday" rationale or ensuring that it falls within spring break. School districts should discuss their options, including the collective bargaining implications, with their board attorney.

⁸ State law does not address personal leave.

⁹ Required by 105 ILCS 5/24-6.3, amended by P.A. 96-357. A similar leave exists for an elected trustee for the Ill. Teachers' Retirement System. See 5:250, *Professional Personnel - Leaves of Absence*.

¹⁰ Military leave is governed by: The School Code (105 ILCS 5/10-20.7b, 5/24-13, and 5/24-13.1); the Military Leave of Absence Act (5 ILCS 325/, amended by P.A. 96-346 to add mandatory leave for "other training or duty required by the United States Armed Forces" and to require the public employer to make-up the difference between military pay and regular compensation); Service Member's Employment Tenure Act (330 ILCS 60/4); Public Employee Armed Services Rights Act (5 ILCS 330/4); National Guard Employment Rights (20 ILCS 1805/30.20); and Uniformed Services Employment and Reemployment Rights Act (38 U.S.C. §4301).

Granting General Assembly leave to ESPs is optional.

¹¹ 820 ILCS 147/. See policy 5:250, *Leaves of Absence*, and administrative procedure 5:250-AP, *School Visitation Leave*.

3. Leaves for Victims of Domestic or Sexual Violence. **12**

LEGAL REF.: 20 ILCS 1805/30.1 et seq.
105 ILCS 5/10-20.7b, 5/24-2, and 5/24-6.
820 ILCS 147 and 180/1 et seq.

CROSS REF.: 5:180 (Temporary Illness or Temporary Incapacity), 5:185 (Family and Medical Leave), 5:250 (Professional Personnel - Leaves of Absence)

¹² Required by Victims' Economic Security and Safety Act, 820 ILCS 180/, amended by P.A. 96-635, and 56 Ill.Admin.Code §280. Important information about this leave is discussed in the footnotes in policy 5:250, *Professional Personnel - Leaves of Absence*.