

Education Law

The newsletter of the Illinois State Bar Association's Section on Education Law

Newly Enacted 'Betrayed Bill' Seeks to Protect Students From Sex Abuse in Schools

BY ANGELA BRANCATO

On August 23, 2019, Governor Pritzker signed SB 456 into law (P.A. 101-0531), dubbed the "Betrayed Bill," which establishes new policies and amends current law to address and prevent sexual abuse in schools. The "Betrayed Bill" was so named after a 2018 investigative

report by The Chicago Tribune revealed serious incidents of student sexual abuse by CPS school personnel that were either ignored or insensitively and/or improperly investigated.

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2019 Legislative Update Part 2

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BY PHIL MILSK

In addition to the bills reported in the October 2019 issue of this newsletter, the following bills became law in 2019. Note that we are unable to report on every bill concerning education and related subjects due to the large number of such bills in 2019 and space limitations.

Special Education

HB 3302—Chicago Public Schools / ISBE Public Inquiry

Sponsors: House: Crespo
Senate: Koehler

Chapter Reference:

105 ILCS 14-8.02e

105 ILCS 14-8.02g (new)

Extends the time for a complainant to file a State Complaint with the State Board of Education to September 30, 2021, if it alleges a delay or denial of special education or related services in the 2016-2017 or 2017-2018 school years as a result of policies and procedures adopted by the Chicago Public Schools and identified as unlawful by the State Board of Education's 2018 public inquiry. Requires the Chicago Public Schools to notify parents and

guardians in writing within the first 30 days of the 2019-2020 school year of their procedural safeguards regarding such unlawful policies and procedures, including the extended time to file a State Complaint. Changes the ISBE State Complaint procedures to require a respondent to share corrective action documentation with the complainant.

Last Action: Public Act 101-0507, effective August 23, 2019.

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Transgender Student Rights Updates

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Effective immediately, this legislation was sponsored by Representative Fred Crespo (D-Hoffman Estates) and Senator Iris Martinez (D-Chicago), who worked with advocates and administrators to provide the Illinois State Board of Education (ISBE) and school districts additional tools to combat educator misconduct.

Public Act 101-0531 includes amendments to current law and the creation of new law. The following summarizes significant features of the Act:

105 ILCS 5/10-20.69 is a new addition to the Illinois School Code. It requires that every two years, each school district review its existing policies and procedures regarding sexual abuse investigations in compliance with the newly-created section 22-85 (105 ILCS 5/22-85).

The Act makes changes to 105 ILCS 5/10-21.9, which addresses criminal history checks, checks of the Statewide Sex Offender Database, and checks of the Statewide Murderer and Violent Offender Against Youth Database in the hiring and retention of school staff. It includes the following amendments:

- Districts must check the Sex Offender Database, the Murderer and Violent Offender Against Youth Database for all applicants, but now must also conduct these checks every five years that an individual remains employed by the district.
- School districts must now consider the status of a person who has been issued an indicated finding of abuse or neglect of a child under the Abused or Neglected Child Reporting Act (ANCRA) or by a child welfare agency of another jurisdiction.
- Superintendents of school districts or regional superintendents must notify ISBE in writing within 15 days upon learning that a license holder has a disqualifying conviction (enumerated in section

21B-80 of the School Code) or appears on the Statewide Murderer and Violent Offender Against Youth Database or the Statewide Sex Offender Database. ISBE can then initiate proceedings to suspend or revoke the educator's license. In the past, districts were only required to report to ISBE if the individual was terminated or otherwise left his or her employment following an allegation of abuse or neglect of a child.

- Districts may now hire individuals with prior drug convictions once seven years have elapsed following the completion of their sentences. This provision was added to be consistent with prior changes to existing law.
- Upon discovery that an applicant for educator licensure has a conviction or finding of child abuse within six months of being issued an Illinois educator's license, the State Superintendent may rescind the license.

Public Act 101-0531 makes changes to section 10-23.12 of the School Code, which addresses the detection, reporting and prevention of child abuse and neglect in schools. It adds "willful or negligent failure to report" as a basis for school districts to immediately dismiss an unlicensed employee upon determination that the employee willfully or negligently failed to report an instance of suspected child abuse or neglect.

In addition, section 5/21B-75 of the School Code, governing suspension and revocation of educator licenses, was amended to add "willful or negligent failure to report... child abuse" as a basis for suspension or revocation of license.

The section of the School Code detailing the types of criminal offenses that result in revocation of educator licenses or denial of applications for licensure, section 5/21B-80, was also amended by the Act. Newly-

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added subsection (b-5) provides that if a person is criminally charged with any of the enumerated offenses under subsection A (which includes sex offenses and Class X felonies), the state superintendent “shall immediately suspend the license or deny the application until the criminal charges are adjudicated...” If person is acquitted, the license is reinstated. (However, a licensee may still be subject to licensure sanction under 21B-75.) The Act also adds criminal offenses to subsection A of 21B-80.

Section 5/22-85 has been added to the School Code and makes changes to how school districts must address allegations and investigations of student sexual abuse. Provisions of this new law include:

- A mandated reporter in a school with knowledge of alleged sexual abuse must call the DCFS hotline and report the abuse immediately.
- ISBE must make available materials detailing the information necessary to enable notification to DCFS of an alleged incident of sexual abuse. Schools must ensure that mandated reporters review these materials.
- Reports of student sex abuse made to DCFS or law enforcement must be directed to the local Children’s Advocacy Center (CAC), which will coordinate the investigation and facilitate communication between the team investigating the allegations and specified school personnel (e.g., school resource officer or Title IX officer).
- Schools may not interview a victim of alleged sexual abuse until the completion of forensic interview by the CAC.
- Schools must inform DCFS and/or law enforcement of any evidence it has gathered related to the alleged incident of sexual abuse.
- Within certain parameters (including approval by the CAC’s multidisciplinary team coordinating the investigation), schools may view recording of forensic interview in lieu of additional interviews with the victim.
- If a school needs to interview the victim for its own investigation,

a child advocate must be made available for students under 18 and be present during the school’s interview.

- DCFS must notify the school when its sex abuse investigation is complete, including the outcome.
- Law enforcement must notify the school when its investigation is complete or has been suspended, including the outcome.

The Act also creates a new task force to study the problem of sexual abuse in schools and make recommendations to the Governor and General Assembly. 105 ILCS 5/22-86 provides for the creation of the SAFE (Make Sexual and Severe Physical Abuse Fully Extinct) Task Force. Comprised of 25 members, the SAFE Task Force includes legislators and representatives of Illinois Children Advocacy Centers, the State Board of Education, State’s Attorney’s Offices, law enforcement, DCFS, teachers’ organizations, and school districts.

The SAFE Task Force will review and study best practices for the prevention of sexual abuse in school-related settings and how to support students. The task force must conclude its findings and recommendations by September 15, 2020, and report to the Governor and General Assembly.

Section 24-12 of the School Code addresses tenured teacher dismissal. The Act adds a provision that if a witness in a teacher dismissal hearing is a student or under 18, the hearing officer must make accommodations for the witness. If the charges against teacher involve sexual or severe physical abuse, the hearing officer must make alternative arrangements to protect the witness from intimidation or traumatization. This can include testimony by a device outside of the hearing room and away from the teacher and hearing participants or non-public testimony. A witness cannot be asked about their own sexual behavior.

The section of the School Code having to do with teachers who break a contract with insufficient notice is 105 ILCS 5/24-14. An amendment has been added that provides for alternative resolution to these cases in order to facilitate enforcement of the statute, discourage teachers from

untimely resignations, and facilitate prompt resolution of these cases. Teachers found to have violated this section can face licensure sanction up to one year.

The existing statute for educator licensure renewal, 5/21B-45, was amended to allow ISBE to randomly audit teachers to ensure their completion of the professional development hours (120 hours every 5 years) required to maintain their licenses. Teachers unable to demonstrate completion of these hours will be notified that their licenses have lapsed and advised of the steps necessary to reinstate them (i.e., pay a fee of \$500 or complete nine credit hours). Previously, failure to complete required professional development was cause for licensure suspension.

The amendments to sections 24-14 and 21B-45 were made to expedite the resolution of these matters so that ISBE can direct greater resources to the investigation and adjudication of more serious cases of educator misconduct, such as allegations of severe physical abuse and sexual abuse of students.

Finally, it should be noted that the additions and amendments cited above either expressly apply to the Chicago Public Schools or have been added to section 34 of the School Code, which governs the Chicago Public Schools. ■

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HB 3586-Special Education Various Changes

Sponsors: House: Crespo

Senate: Koehler

Chapter Reference:

105 ILCS 5/10/2

105 ILCS 5/14-6.01

105 ILCS 5/14-8.02f

105 ILCS 5/14-8.02g(new)

Requires the Chicago Public Schools to post on its publicly available website any proposed changes to the its special education policies, directives, guidelines or procedures that impact the provision of services to students or procedural safeguards and to allow for virtual public comments on the proposed changes. Requires the Chicago Public Schools to make its Special Education Procedures Manual and other guidance documents available in print and on its website in both English and Spanish, and, upon request, in other languages, and accessible for individuals with disabilities.

For all Illinois school districts, the bill provides that no later than 3 school days prior to an IEP meeting to determine a child's eligibility for special education or to review a child's IEP, the district shall provide to the parents copies of all written material that will be considered by the IEP team at the meeting, with exceptions to prevent predetermination of certain matters.

Further, the bill requires all school districts to make related services logs that record the provision of related services to a child available as part of the student's school records, to inform the parents of the availability of related services logs within 20 school days after the start of each school year or upon the establishment of an IEP for the child.

The bill also requires notification to parents within 3 school days of non-compliance with the child's IEP if a service is not provided within 10 school days after a date or frequency set forth in the child's IEP.

HB 3586 also added provisions to the School Code regarding Response to

Intervention or Multi-Tiered Systems of Support by defining the process, requiring a collaborative team approach including the child's parents, and describing how data collected in RTI/MTSS will be used in an evaluation to determine if a child is eligible for special education.

Last Action: Public Act 101-0515, effective August 23, 2019

SB 460—Trailer Bill to P.A. 101-0515

Sponsors: House: Crespo

Senate: Bertino-Tarrant

Chapter Reference:

105 ILCS 14-8.02f

105 ILCS 14-8.02h

Veto Session trailer bill to P.A. 101-0515 that makes two changes: (1) Pushes back to July 1, 2020, the implementation date for the requirement that IEP meeting materials must be provided to the parent at least 3 school days prior to the IEP eligibility or review meeting; and (2) makes a change in the language pertaining to RTI/MTSS to state that an evaluator "may", rather than "must" use the RTI/MTSS data collected in the process of determining whether a child is eligible for special education due to a specific learning disability.

Last Action: Public Act 101-0598, effective December 6, 2019.

SB 209—Withdrawal from Special Education Joint Agreement

Sponsors: Senate: Bertino-Tarrant

House: Davis

Chapter Reference:

105 ILCS 5/10-22.31

Adds requirements regarding the withdrawal of a school district from a special education joint agreement. Provides that under no circumstances shall a petition for withdrawal be presented to other member districts less than 12 months from the date of the proposed withdrawal. Following approval by the member districts, the district seeking to withdraw must submit its comprehensive plan to ISBE for review. Requires a public hearing on the district's plan for serving

students with disabilities after withdrawal prior to a hearing before a hearing panel.

Last Action: Public Act 101-0164, effective July 26, 2019

HB 424—Language Interpreter for Parent at IEP Meetings

Sponsors: House: E. Hernandez

Senate: Martinez

Chapter Reference:

105 ILCS 5/14-8.02

Requires ISBE to adopt rules to establish criteria for bilingual interpreter services to assist parents of limited English proficiency at IEP meetings.

Last Action: Public Act 101-0124, effective January 1, 2020.

Health and Safety

HB 1561—Threat Assessment Policies

Sponsors: House: Crespo

Senate: T. Cullerton

Chapter Reference:

5 ILCS 140/7

50 ILCS 470/10

55 ILCS 5/5-1006.7

105 ILCS 5/3-14.31

105 ILCS 5/10-20.43

105 ILCS 5/10-22.36

105 ILCS 5/17-2.11

105 ILCS 128/25

105 ILCS 128/45 (new)

105 ILCS 230/5-25

Requires school boards to develop threat assessment protocols and to create threat assessment teams. Allows county sales tax revenues to be used for school security purposes.

Last Action: Public Act 101-0455, effective August 26, 2019.

SB 455—Medical Cannabis Administration at School

Sponsors: Senate: Castro

House: Morgan

Chapter Reference:

105 ILCS 5/22-33

410 ILCS 130/25

Amends "Ashley's Law" regarding the

administration of medical cannabis at school. Provides that a school district, public school, charter school or nonpublic school must allow a school nurse or school administrator to administer a medical cannabis infused product to a student who is a registered qualifying patient while on school premises, at a school-sponsored activity or before or after normal school hours or while the student is being transported to a from school, and may allow the self-administration of a medical cannabis infused product under the direct supervision of a school nurse or school administrator. Requires written authorization of the parent or guardian of the student along with a copy of the student's registry ID card and the parent's or guardian's ID card as a registered designated caregiver. Requires ISBE to develop a training curriculum for school nurses and school administrators on the administration of medical cannabis and a certification of completion of the training by any nurse or administrator who administers medical cannabis.

Last Action: Public Act 101-0370, effective January 1, 2020.

SB 1250—Self-Administration of Medication

Sponsors: Senate: Murphy
House: Villa
Chapter Reference:
105 ILCS 5/22-31 (new)
105 ILCS 5/34-18.61(new)

Provides that a school district must allow any student with an asthma action plan, an Individual Health Care Action Plan, an Illinois Food Allergy Emergency Action Plan and Treatment Authorization Form, a section 504 plan, or an IEP to self-administer any medication required under those plans if the student's parent or guardian provides written permission and written authorization from the student's physician, physician's assistant, or advanced practice registered nurse. The parent or guardian of the student must also provide the prescription label for the medication to the school district, which must contain the name of the medication, the prescribed dosage, and the time or times at which or the circumstances under which the medication must be administered. The legislation requires that the information received by the school district be kept on

file in the office of the school nurse or, in the absence of the school nurse, in the office of the school administrator. The district must also adopt an emergency action plan for each student who self-administers medication, including an action plan if the student is unable to self-administer. The bill provides for immunity from liability except for wanton and willful misconduct.

Last Action: Public Act 101-0205, effective January 1, 2020.

School Personnel

HB 2627—Interrogation of Students

Sponsors: House: Kifowit
Senate: Castro
Chapter Reference:
105 ILCS 5/22-85 (new)

Before detaining and questioning a student under 18 on school grounds who is suspected of committing a crime, the bill requires reasonable efforts to be made to contact the student's parent or guardian, and if the parent is unavailable or cannot be reached, to have a school staff person present during the interrogation such as a social worker, counselor, psychologist or nurse. Legislative intent is that the school staff person is present as a neutral observer. There is an exception to the notification requirement if it an imminent threat to the student or others exists.

Last Action: Public Act 101-0478, effective August 23, 2019.

SB 1941—Safe Schools and Healthy Learning Environments Grant Program

Sponsors: Senate: Lightford
House: Welch
Chapter Reference:
105 ILCS 5/2-3.176 (new)

Creates a new grant program under ISBE, subject to the appropriation of funds. The purpose of the grants is to enable schools and school districts with demonstrated needs to hire new school support staff or contract for services to provide restorative services, conflict resolution programs, alcohol and substance abuse services, or services to address the social and emotional needs of students. Priority is given to districts who have a high student to school support staff ratio averaged over the past 3 school years, and to schools who rank high in the use of

exclusionary discipline of students based on data reported to ISBE.

Last Action: Public Act 101-0438, effective August 20, 2019.

SB 10—Paraprofessional Endorsement

Sponsors: Senate: Manar
House: Crespo
Chapter References:
105 ILCS 5/21B-20
105 ILCS 5/21B-30
105 ILCS 5/27A-10

This bill was amended in the Veto Session to correct an error in SB 1952 (P.A. 101-0220) in which a provision regarding a path to paraprofessional endorsement was unintentionally removed from the School Code. SB 10 restores language that allows the endorsement to be issued to an applicant, who among other qualifications, has passed a paraprofessional competency test. The bill also requires ISBE to adopt rules to implement the test. It also adds provisions to the Charter Schools article to require charter school employees in instructional positions to have passed a content area knowledge test.

Last Action: Public Act 101-0594, effective December 5, 2019.

Student Privacy

HB 3606—Student Online Privacy Protection

Sponsors: House: Martwick
Senate: Aquino
Chapter Reference:
105 ILCS 85/5
105 ILCS 85/10
105 ILCS 85/15
105 ILCS 85/26 (new)
105 ILCS 85/27 (new)
105 ILCS 85/28 (new)
105 ILCS 85/33 (new)
105 ILCS 85/30

Makes significant changes to the Student Online Personal Protection Act: Adds a definition of "breach"; requires an operator to implement and maintain reasonable security procedures and practices that meet or exceed industry standards; requires a written agreement between an operator who seeks covered information from a public school, school district or the State Board of Education and spells out the requirements of the written agreement; prohibits schools

from selling, leasing or trading covered information and from sharing covered information without a written agreement except with the student's parents, school personnel, appointed or elected school board members, local school council members or ISBE; requires each public school to post certain information on its publicly available website regarding information that it maintains or has disclosed and how the school uses the information; grants certain rights to parents and students, including the right to inspect and review a student's covered information and the right to request corrections of factual errors.

Last Action: Public Act 101-0516, effective July 1, 2021

Abused and Neglected Children

SB 1778—Mandated Reporters

Sponsors: Senate: Morrison

House: Feigenholtz

Chapter Reference:

325 ILCS 5/4

325 ILCS 5/11.5

50 ILCS 705/7

Makes various changes regarding mandated reporters of child abuse or neglect. Requires the training curriculum for probationary police officers to include a block of instruction addressing the mandatory reporting requirements under the Abused and Neglected Child Reporting Act (ANCRA) and adds an in-service training requirement for police officers every 3 years. Amends ANCRA to change the list of mandated reporters to break them into categories, including education personnel. Makes members of the clergy mandated reporters if they reasonably suspect that a child has been abused or neglected. Provides that if 2 or more mandated reporters within the same workplace share a reasonable cause to believe that a child may have been abused or neglected, one of the mandated reporters may be designated to file a single report that includes the names and contact information of the other mandated reporters. Defines "a child known (to a mandated reporter) in the course of the reporter's professional or official capacity". Changes the initial and continuing training requirements for

mandated reporters. Requires DCFS to develop culturally sensitive materials on child abuse and neglect and the statewide hotline and the reporting process. Also requires DCFS to reach out to businesses and organizations to seek assistance in raising awareness about reporting child abuse and neglect and using the hotline.

Last Action: Public Act 101-0564, effective January 1, 2020. ■