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Revisiting Common Graduation Issues

By Jacqueline M. Litra

Graduation is an important event for school districts, students and their families. While high school seniors prepare for graduation, principals must evaluate each student's eligibility for graduation. Unfortunately, school districts frequently must inform students that they are unable to graduate and/or attend commencements. As a result, there are a variety of legal issues that may arise.

Denying Students a Diploma

Any student that has successfully completed the district requirements for graduation has a constitutional right to a high school diploma. Similarly, school districts cannot deny students a diploma based on poor performance on the Prairie State Achievement Examination. However, a student cannot be awarded a diploma without taking the Prairie State Achievement Examination, unless the student is otherwise exempted from taking the test.

A school district can deny a diploma for failing to meet the school district's community service requirement. Community service requirements must have an educational purpose and should not infringe on students' constitutional rights to free speech or free exercise of religion. Community service requirements should not force students to participate in specific community service programs.

School districts are encouraged to communicate in writing all graduation expectations to students and parents at the beginning of each school year.

Participation in Graduation Ceremonies

Unlike a student's right to a diploma upon completion of the graduation requirements, participating in the graduation ceremony is a privilege. Students do not have a protected Constitutional interest in participating in a graduation ceremony and may be excluded as a disciplinary measure pursuant to school board policy. Students with disabilities have certain statutory rights to participate in graduation ceremonies, however.

Because of the emotional and social significance of graduation and commencement activities, litigation frequently results after a student is denied the opportunity to participate in those activities. Disciplinary decisions prohibiting participation in graduation activities should be invoked sparingly and must be administered in a fair and non-arbitrary manner. The best practice is to afford students any due process to which they are entitled, prior to denying them the opportunity to participate in a graduation ceremony.

Graduation would not be complete without an occasional challenge by a student who refuses to wear the traditional cap and gown. School districts may establish rules for conduct at the graduation ceremony. The rules should be outlined clearly in the student handbook. Schools may enforce a dress code outlining appropriate graduation attire and may prohibit students who violate the dress code from participating in the graduation ceremony.



What Information Must a School District Post on its Website?

By Kimberly Payne

Most public school districts in Illinois have full-time personnel who maintain Internet websites for their districts. Those school districts are generally aware that they are required by law to post certain information on those websites. Unfortunately, these mandates are scattered throughout the *School Code* and other statutes pertaining to public bodies. This article responds to the question, “What should we post?”

First, the *Freedom of Information Act* (“FOIA”), requires that a school district provide a description of itself on its website, including, at a minimum, the following documents and information:

1. A short summary of the school district’s purpose;
2. A block diagram of the school district’s functional subdivisions;
3. The total amount of the school district’s operating budget;
4. The number and location of all of the school district’s separate offices;
5. The approximate number of the school district’s full and part-time employees;
6. The identification and membership of all commissions, boards, councils and committees that advise the school district in its operations; that control the school district’s policies or procedures; or, to which the school district must report and be accountable for its operations;
7. A description of the methods the public can utilize to request public records of and other information about the school district;
8. A directory identifying the school district’s FOIA officers;
9. The address to which the public should send requests for information; and,
10. A schedule of fees permitted under FOIA.

Second, website posting requirements for school district meetings – whether open or closed to the public – are set forth in the *Open Meetings Act*:

1. Notice of schedule of all regular board of education meetings. At the beginning of each calendar or fiscal year, the board must post a schedule of all regular meetings (including

the dates, times and places of such meetings), until a new public notice of the schedule of regular meetings is approved by the board. Once that is approved, the board should post a revised scheduling notice.

2. Notices of all board meetings. At least 48 hours prior to meetings (unless an emergency meeting, in which case as soon as is practicable), a school district must post a notice of each regular meeting (if not already on the posted schedule and was rescheduled), special meeting, emergency meeting and, in some cases, reconvened meeting. Notice of any regular meeting approved by the board can be removed from the website once the meeting has ended.

3. Agendas. Only agendas for regular meetings need be posted on the website. The posting should take place at least 48 hours in advance of the meeting. Agendas must remain on the website until the meeting is concluded. “Regular” meetings include regular meetings that were rescheduled or reconvened. In addition, although the statute is unclear, it is still prudent to post on the school district’s website agendas of special and emergency meetings, as this is consistent with the philosophy of providing a fair and open government.

4. Special note regarding reconvened meetings: A school district need not publish notices *anywhere* of a reconvened open public meeting if (a) it is to be reconvened within 24 hours; or (2) the time and place of the reconvened meeting was announced at the original meeting and the agenda remains unchanged.

The *Open Meetings Act* also mandates that each school district post the minutes of each regular open meeting on its website within 10 days of the board’s approval of those minutes. In addition, any minutes of open meetings posted on the website – whether required to be posted or not – must remain there for at least 60 days after it is initially posted.

Third, the *School Code* mandates that school districts post on their websites their current school report cards issued by the Illinois State Board of Education (“ISBE”). Also, school districts addressing intergroup conflict rooted in such issues as social stereotyping, prejudice, discrimination and the like, and who have chosen to incorporate anti-bias education and conflict resolution into their curriculum or activities, must use their website to disseminate information on these educational opportunities and activities to students, staff and the community.

Moreover, the *School Code* requires that each school district provide certain financial information on its website. Districts must post their current itemized fiscal year budgets, detailing

expenditures and receipts. In addition, on or before October 1 of every year, each school district must post an annual Administrator Salary Compensation Report (the “Report”). The Report must include a detailed, itemized report of compensation for the superintendent and all other administrators at the district. For each such employee, the Report must include base salaries, bonuses, wellness or other incentives, pension contributions, annuities, retirement increases, health and life insurance costs, payouts for paid sick and vacation days, reimbursement costs for business expenses and automobile use/travel, and any other form of compensation paid to or expenses paid on behalf of the employee. The school district must also present the Report at a regular board of education meeting and to its applicable regional superintendent of schools.

Finally, the *School Code* requires that school districts post all collective bargaining agreements to which they are parties on their websites. School districts must also post on their websites: (a) a list of all current contracts over \$25,000 to which it is a party, including, without limitation, personal service contracts with school district employees; as well as (b) post the annual report of all contracts over \$25,000 awarded during the school district’s prior fiscal year that it submitted to ISBE prior to December 1 pursuant to Section 10-17 of the *School Code* as part of its “Statement of Affairs.”

According to guidance issued by ISBE, in determining whether a contract is to be in the annual report for a particular fiscal year, school districts must include only contracts (a) in which the consideration paid therefor is more than \$25,000 over the entire life of the contract, regardless of the number of years that the contract is in effect; and (b) awarded during that particular fiscal year (which eliminates the need to report a multi-year contract for each year in which it is in effect). Furthermore, the annual report submitted to ISBE, as well as posted on the school district’s website, must include, at a minimum, the following information about contracts over \$25,000 awarded during the previous fiscal year:

1. The total number of all contracts;
2. The total value of all contracts;
3. The number of contracts with businesses owned by (a) persons with disabilities, females and minorities, as currently defined in the *Business Enterprise for Minorities, Females and Persons with Disabilities Act*; and (b) locally-owned businesses; and,
4. The total value of contracts awarded to those businesses owned as specified in “3” above.

Responding to Resident Requests for Board Consideration

By Kevin B. Gordon

School board members and district administrators are familiar with the requirement to allow the public an opportunity for comment at school board meetings. A lesser known rule is the right of residents of the school district to request the school board to consider specific matters at its meetings.

Section 10-6 of the *School Code* permits a resident of a school district to file a written request with the superintendent or board president that the school board, as a whole, consider a specific matter. The board president or superintendent has 60 days from receipt of the request to respond in writing, setting forth the school board’s position on the request, and either setting a meeting date or listing the reasons for denying the request.

It is important to remember that the school board need only respond to the requests of school district residents. There is

no obligation to grant the request to hold a meeting. However, if a meeting is denied, the requester is entitled to a letter listing the reasons for denial. It is also important to determine the subject matter of the request. Many residents desire to address the school board regarding specific matters that are properly discussed in a closed session meeting, particularly if they deal with student or personnel issues. A resident does not have the right to demand that a meeting be held in open session of a board meeting, if the board has otherwise properly determined that it will discuss the matter in closed session. Finally, there is no requirement that the school board take any action on the matter, but only “consider” the matter.

Regardless of whether a school board grants or denies a resident’s request that it consider a specific matter, the resident continues to have the right to speak during the public comment portion of the school board meeting.



Food Programs During Summer School

By Kimberly Payne

The Summer Food Service Program (the “SFSP”) and the National School Lunch Program’s Seamless Summer Option (the “SSO,” formerly known as the “Seamless Summer Waiver”) are entitlement programs that provide free breakfasts and/or lunches during the summer months. Administered nationally by the Food and Nutrition Service of the U.S. Department of Agriculture, the SFSP and SSO provide federal assistance to “local sponsors” who provide food and activities in the summer for children and/or disabled adults from impoverished communities. On the local level, the Illinois State Board of Education (the “ISBE”) oversees the SFSP and the SSO. Public schools, among other organizations, are eligible to serve as “local sponsors” of a SFSP or SSO programs.

However, as accommodating as the phrase “local sponsor” might appear to be, Illinois requires that many of its public schools which offer summer school programs participate in these programs. Specifically, the *Childhood Hunger Relief Act*, 105 ILCS 126/1 *et al.* (“CHRA”), mandates that Illinois public school districts provide documentation to the ISBE, and, if a school building is approved as a summer meal service site, provide SFSP or SSO services at that building.

It is important to note that, if so approved, a school must provide free SFSP or SSO meals to *all* children and certain disabled adults in the community at that site – *regardless of whether those recipients would otherwise be eligible for free or reduced-price meals during the school year*. If the summer school is an academic or enrichment program (which the CHRA defines as a qualifying “summer school program,” regardless of the number of weeks it runs), all children in the community who are 18 years of age or younger may receive free meals, regardless of whether they would otherwise qualify for free or reduced-price meals during the school year. If a school merely offers a camp that would not be classified as an academic or enrichment program, only those children who are eligible for free or reduced-price meals receive free meals.

How does the ISBE decide whether a school is a summer meal service site? Prior to February 15 of each year, school districts must have a meal service plan in place for each of its schools that have (1) summer school programs, *and* (2) a minimum of 50% of students in attendance during the regular school year who are eligible for free or reduced-price meals. To determine whether a school district has a minimum of 50% of students who are eligible for free or reduced-price meals in a particular building, schools that participate in the National School Lunch Program must use the data from the current school year’s October Claim

for Reimbursement. For schools that do not participate in the National School Lunch Program, school districts must use the Fall Housing Report’s low income data by enrollment to determine the percentage of students at a particular site who would be eligible for free or reduced-price meals. Once a school district determines that it must submit a plan and does so, and the ISBE formally approves the school as a meal service site, the school is required to provide reimbursable SFSP or SSO meals consistent with its plan. A school that is designated as a reimbursable summer meal service site has the choice of serving breakfast, lunch or both meals, and (in some cases) snacks, all of which should be set forth in the school district’s plan.

Section 10(d) of the CHRA does provide some “opting out” provisions for school districts: If a school district finds that it is not receiving adequate reimbursement from state and federal sources for implementing and operating its summer food program and that the program is cost-prohibitive, it may petition its regional superintendent of schools to be exempt from offering such a program. The ISBE has reported that in 2010, thirteen public school districts within the State of Illinois were granted “opt out” status; nine school districts were allowed to opt out as of the date of this Article for summer food programs in 2011.

How does a school district know which summer food program to choose for a school building that is identified as an ISBE-approved meal service site? The SSO and SFSP are very similar. However, as a general rule, it appears that reimbursement rates for the SSO are slightly lower than those for the SFSP. If the sponsor is serving breakfast only, the rates between the two programs are close. However, if a sponsor serves both breakfast and lunch, then the SFSP does offer \$0.20 more per lunch in reimbursement. We advise school district business managers to “crunch the numbers” and see which program provides the best reimbursement for each applicable school building. If the programs provide no substantial difference in reimbursement, then in considering which program to choose, a district should consider, among other things, that the SSO requires less monitoring and paperwork than the SFSP and generally is more flexible for administrators. In fact, nearly three times as many school districts in Illinois choose the SSO over the SFSP. However, the SSO is only available to districts already participating in the National School Lunch Program and/or the School Breakfast Program during the regular school year.

If you have any questions regarding summer school food service programs, please consult an attorney at Scariano, Himes and Petrarca, Chtd.

Freedom of Information Act Update

By A. Lynn Himes and Jessica M. Bargnes



Over the past year and half, school districts have navigated the murky waters of the new *Freedom of Information Act (FOIA)*. Without case law to interpret its meaning and intent, those school districts have heavily relied on the Attorney General for guidance.

Much of the guidance received has come from the Public Access Counselor (PAC). In fact, one of the areas of the new *FOIA* that has most affected school districts has been the advent of the PAC. The PAC is empowered with the authority to review denials of or other responses to *FOIA* requests upon the request of a requester, which it may resolve through the issuance of a binding decision, which would be subject to judicial review, or through “other means.”

The bulk of the PAC’s work, though, has been its power to approve or deny school districts’ requests to use the exemptions described in Section 7(1)(c) and (f) of *FOIA*. The exemptions described in Section 7(1)(c) and (f) of *FOIA* are, respectively, the exemptions for “personal information” and “preliminary drafts, notes, recommendations, memoranda and other records in which opinions are expressed, or policies or actions are formulated, except that a specific record or relevant portion thereof shall not be exempt when the record is publicly cited and identified by the head of the public body.”

The PAC has termed this process “preauthorization.” Thus, the public body sends the PAC a request for preauthorization, and the PAC either grants or denies the request, thus “authorizing” use of the exemption, or finding that the public body is without authority to use the exemption.

This process, as outlined in the statute, is unique, in that (1) *FOIA* is silent as to how such decisions are to be treated by the public body – as simply advisory, or as binding, with which the public body must comply; and (2) *FOIA* is silent as to a public body’s rights following a preauthorization decision with which it disagrees.

The Attorney General, representing the PAC, recently stated, in litigation on this topic, that a public body need not abide by a preauthorization decision. The Attorney General states that the PAC is empowered, by *FOIA*, to resolve issues through the issuance of binding opinions subject to administration review or “other means,” and that the “preauthorization decisions” are the “other means” so described in *FOIA*.

Thus, per the Attorney General, preauthorization decisions do not bind public bodies and are not subject to administrative review, and in fact, the decision to release or withhold a document is “ultimately the decision of the public body.”

By finding the preauthorization decisions to be not binding, the Attorney General is seemingly removing any teeth that the legislature intended when drafting the new *FOIA*, and the interpretation essentially deprives the PAC of any authority with regard to preauthorization requests. In fact, public bodies had the right under the old *FOIA* to determine whether or not they would release a document or apply the exemptions described in Sections 7(1)(c) and 7(1)(f). Now, public bodies still have that right, but with an additional step in the determination process. Further, the “additional step” may be of disadvantage to the public body, because, as before, the requester has the right to sue the public body, requesting disclosure. Now, the requester may have a decision from the Attorney General supporting his or her request for disclosure.

Whether you choose to withhold a document after receiving an unfavorable preauthorization decision should be at your discretion, and you may wish to discuss the issue with your attorney at Scariano, Himes and Petrarca, Chtd., on a case-by-case basis, as the failure to disclose each document at issue may pose differing levels of liability to a district.

We will keep you updated on all *FOIA* issues. Please do not hesitate to contact your attorney at Scariano, Himes and Petrarca, Chtd. with all of your *FOIA* needs.



Congratulations to Tony Scariano for being selected to receive the Council of School Attorneys (“COA”) Lifetime Achievement Award. The award is given periodically to recognize a person who has provided exemplary leadership and distinguished service in support of the COA mission over an extended period of time. Mr. Scariano was presented with the award at the April 2011, COA conference in San Francisco.



The Summer and Special Education

By Trisha A. Olson

The length of a “normal” school year differs from district to district, and sometimes even school to school. The *Illinois School Code* requires that school district calendars have a minimum of 185 days, including five emergency days and four teacher institute days in order to ensure 176 days of student attendance. Beyond these required days, students often enroll in “summer school” or partake in extended school year (“ESY”).

“Summer school” is not a synonym for ESY. A school board may operate a summer school program, and may charge for participation in such a program. Students participate in summer school for personal enrichment, advancement of academic credit, or because their attendance is required because the student is regarded as academically at-risk.

On the other hand, ESY means those services that are provided beyond the length of a normal school year in accordance with a student’s IEP and provided at no cost to the parents. All school districts are required to offer ESY to those students who require it for the provision of a free appropriate public education (“FAPE”). Not every special education student will be eligible for ESY. Each student’s IEP team determines, on an individual basis, if ESY is necessary.

Regression/Recoupment Analysis

Although all students face the chance of experiencing some regression during lengthy breaks from school, ESY is offered to those special education students who face excessive regression and recoupment time due to breaks in the school year. In determining if a student faces excessive regression and recoupment time, courts have looked at many factors, including:

- (1) Degree of regression suffered in the past;
- (2) Exact time of the regression;
- (3) Ability of the parents to provide educational structure at home;
- (4) The student’s rate of progress;
- (5) The student’s behavioral and physical problems;
- (6) Availability of alternative resources;
- (7) Ability of the student to interact with nondisabled children;
- (8) Areas of the student’s curriculum that need continuous attention;
- (9) The student’s vocational needs; and
- (10) Whether the requested services are extraordinary for the student’s disabling condition, as opposed to an integral part of a program for populations of students with the same disabilities.

The Illinois State Board of Education put out guidance in 2001, titled “Communication on Extended School Year Services for Students with Disabilities,” which provides guidance on what it believes to be a reasonable amount of time for a student with a disability to relearn lost skills or knowledge. That guidance states “long standing guidance from the Illinois State Board of Education suggests that review and re-teaching should not extend beyond the *first thirty school days of the school year.*”

ESY and IEPs

If an IEP team determines a student requires ESY, that student’s IEP must include a statement setting forth: (1) the amount of service, (2) frequency, (3) duration, (4) implementer, (5) placement, and (6) how these services will be evaluated. The student’s IEP team should also determine the academic and/or functional areas to be addressed in ESY. Students may not need to address every goal, benchmark or objective during ESY.

Furthermore, ESY services are not required to be provided at a level that allows a student to continue to make progress on or acquire new skills. The level or intensity of ESY is often less than what is called for in a student’s IEP during the regular school year. For some students, the level or intensity of ESY needed to combat excessive regression and recoupment time is synonymous with summer school. However, other students may require additional programming based upon their individualized needs.

Least Restrictive Environment (“LRE”)

Because the purpose of ESY is typically to prevent excessive regression and recoupment time, a student’s ESY placement may differ from the placement during the school year. However, a student’s ESY program must be in the least restrictive environment (“LRE”).

For example, a school district may offer its summer school, or its summer school in conjunction with services contracted through another district, cooperative or agency. Alternatively, a school district may offer placement through a private agency or provider. Overall, a school district is not required to establish public programs for ESY services if it does not offer any public programs for nondisabled students during the same time. In that instance, however, a district would be responsible for offering ESY through a private agency or provider.

Teacher and Provider Qualifications

ESY teachers and related service providers are not exempt from the *Individuals with Disabilities Education Improvement Act's* (“IDEA”) highly qualified requirement. The U.S. Office of Special Education Program’s guidance on the *Elementary and Secondary Education Act*, formerly know as the *No Child Left Behind Act*, provides that the “highly qualified” requirement applies to ESY teachers and services providers.

Other ESY Considerations

- Residential students may be entitled to ESY if they meet the criteria.
- ESY may be provided at other times during the year, for example, before/after school or during other long breaks.
- ESY is available for academic, emotional, physical, behavioral, communicative, etc., needs. Further, ISBE guidance explains that ESY may include only related services (e.g. occupational therapy or speech/language therapy) and do not necessarily have to include special education courses.
- ESY is available to preschool students served under Part B of *IDEA*.

- A hearing officer or court may order reimbursement or compensatory education for failure to offer appropriate ESY.
- A student who graduates from an elementary school district and is transferring to a high school district may not be denied ESY services. If the student’s IEP team determines ESY is necessary, those services are the responsibility of the high school district, regardless of the student’s age.

Students with Disabilities and Summer School

If a student with a disability does not qualify for ESY, that student may elect to participate in any summer school offered by a school district. The student may be subject to any fees and requirements, in the same manner as his or her nondisabled peers.

Accommodations and Modifications

Students are entitled to appropriate accommodations and modifications, as outlined in their IEPs, during both summer school and ESY programs. For example, a summer school student who requires the use of computerized assistive technology, has the right to such technology during that summer programming. The Office for Civil Rights has concluded that failing to provide accommodations and modifications during summer school or ESY is tantamount to a violation of FAPE.

Compensatory Time for Religious Leave

By Darcee C. Williams

The *Illinois Human Rights Act* (the “Act”) prohibits school districts (among other employers) from terminating or otherwise discriminating against employees or job applicants on the basis of their religion, among other characteristics. 775 ILCS 5/2-101. The law obligates a school district to allow an employee to “make up” work time missed for religious observance if allowing the employee to work at a time other than his/her regular work hours is consistent with the operational needs of the District.

To comply with the Act, school officials should evaluate requests by employees to make up unpaid time used for religious observance on a case-by-case basis to determine whether the request to make up work is consistent with the District’s operational needs. With regard to teachers or other employees with student supervisory or teaching duties, school officials should consider whether it is consistent with the operational needs of the District to allow such individuals to make up work on weekends, during summer or during other non-attendance days or times. In addition to determining whether an employee’s request to make up time is consistent with a district’s operational

needs, a district should consider its past practice with regard to allowing such make up of time to ensure its practice is consistent without regard to an individual’s religious beliefs. Further, districts should also look to any applicable collective bargaining agreements for guidance.

In the event a district allows an employee to make up unpaid time used for religious observance, the employee must be compensated at the wage rate which he or she would have earned during the originally scheduled work period. Further, the district may require an employee who plans to take time off from work in order to practice his or her religious beliefs to provide it with no more than five days prior notice of his or her intent to be absent from work.

If you have any questions regarding application of the *Illinois Human Rights Act* or your district’s obligations to allow make up of time used for religious observance, please do not hesitate to contact Scariano, Himes and Petrarca, Chtd.



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4th Annual Administrators' Workshop

We are pleased to invite you to join us for our **4th Annual Administrators' Workshop** to be held on **Friday, June 10, 2011** at The Signature Room at Seven Bridges in Woodridge, Illinois. The schedule is as follows:

8:00 – 8:30	Hospitality / Continental Breakfast
8:30 – 9:45	First Breakout Session
10:00 – 11:15	Second Breakout Session
11:30 – 12:30	Legislative Update
12:30	Reception/Buffer

Guests will have the opportunity to attend two breakout sessions. The Personnel Issues and Student Issues breakout sessions will be presented twice. Attorneys from the firm will discuss the topics of bullying, cyberbullying and sexting during the Student Issues breakout. During the Personnel Issues breakout, the topics of leaves of absence, student achievement tied to teacher evaluations, principal evaluations and bargaining will be discussed.

The Special Education Update and Protecting District Financial Resources breakout sessions will each be presented once. The topics that will be discussed during the Special Education breakout include year-end special education issues, the role of regular education teachers at IEP meetings and special education audits. During the Protecting District Resources breakout the topics of liability insurance and intellectual property will be discussed.

During the Legislative Update, guests will be updated on certain recently enacted legislation impacting school districts.

We welcome both district and building level administrators to attend the Workshop at no cost. Guests will receive continuing professional development credit for attending. You may register to attend at our website, www.edlawyer.com.

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