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The primary purpose of the *Illinois State Education Law and Policy Journal* (formerly *Illinois School Law Quarterly On-Line*) is to provide a forum for the interchange of ideas, theories, and issues on various aspects of school law among practitioners, professors, and attorneys. The emphasis is on analyzing issues in school law for the purposes of developing new theories to explain current and past developments in the law and to provide the theoretical framework which can be used to anticipate and predict future developments in school law.

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## DEVELOPMENTS IN THE COURTS

### New Decisions From The United States Supreme Court

*Parents Involved in Cmty. Schools v Seattle Sch. Dist. No. 1*, No. 05-908; *Meredith v Jefferson County Bd. of Educ.*, No. 05-915 (U.S. June 28, 2007): The school districts in both Seattle, Washington and Louisville, Kentucky used a system to determine assignment to individual attendance centers which used race as a criteria. In ruling that the student assignment plans impermissibly took the student's race in to consideration in violation of the Equal Protection Clause of the 14th Amendment, the Court narrowly framed the issue in both cases as whether a school district that had not operated legally segregated schools or that had been found unitary may choose to classify students by race and rely upon that classification in making school assignments. The decision was 5-4 with Roberts, Scalia, Thomas, Alito, and Kennedy in the majority. This decision reverses rulings by the U.S. Court of Appeals for the Sixth and Ninth Circuits.

The Court recognized to instances in which race could be taken into account when determining school admissions. One instances was when there had been past intentional discrimination. The other instance was the interest in diversity in higher education which had been espoused in the earlier Supreme Court case of *Grutter v Bollinger*, 539 U.S. 306 (2003). Unlike the law school admission plan in *Grutter*, however, the school assignment policies in question did not use race as just one criterion among many but rather used it as the decisive factor in making assignments. Moreover, the Court found that the school districts had not provided evidence of using methods other than racial classifications to reach their stated goals. Consequently, the majority could distinguish the higher education cases in deciding the case at hand. Kennedy discussed explicitly that the school districts had not voiced a desire for "diversity" among the students, but rather seemed fixated on a black/white racial balance. While the plurality talked in terms of racial balancing not being a compelling state interest, Kennedy continued to stress that a desire for diversity is a compelling state interest, but that the two school systems had not tailored their policies narrowly enough to pass constitutional muster. Kennedy state that "the plurality opinion is too dismissive of the legitimate interest government has in ensuring all people have equal opportunity regardless of their races."

Justice Thomas wrote a concurring opinion which disputed Justice Breyer's statement in his dissent that resegregation is occurring in Seattle or Louisville. Thomas characterized Breyer's dissent as "disfavoring a color-blind interpretation of the Constitution" claiming that the "dissent would give school boards a free hand to make decisions on the basis of race an approach reminiscent of the advocated by the segregationists in *Brown*." The invoking of the *Brown* decision in this manner caused a rather heated discussion in raised voices among the Justices. This viewpoint was addressed in Justice Stevens' separate dissent where he took issue with the Chief Justice's misinterpretation of *Brown* stating that "the Chief Justice fails to note that it was only black schoolchildren who were so ordered." He went on to state that "no Member of the Court I joined in 1975 would have agreed with today's decision."

*Morse v Frederick*, No. 06-278 (U.S. June 25, 2007): This case has been more commonly known as the "Bong Hits 4 Jesus" case, because of the speech being argued about by the Court. The case arose out of an occurrence during the Olympic torch run in Juneau, Alaska. The students at Juneau-Douglas High School were released to watch the Olympic torch pass by the

school. The event was school sanctioned and supervised by not required of the students. Frederick went across the street from the school and, with the assistance of some other individuals, held up a banner that read “Bong Hits 4 Jesus.” The principal, Morse, demanded that they take down the banner, confiscated it, and then suspended Frederick. He sued claiming a violation of his First Amendment right to Free Speech. Citing *Tinker v Des Moines Indep. Cmty Sch. Dist.*, 393 U.S. 503 (1969) the Ninth Circuit found in favor of Frederick stating that the school had failed to show a “risk of substantial disruption.”

The United States Supreme Court reversed the Ninth Circuit on a 5-4 decision. Not surprisingly Roberts, Scalia, Kennedy, Thomas, and Alito were in the majority. First the Court rejected the idea that this was not school-related speech. Next the Court found that Morse’s interpretation that the banner conveyed a “pro-drug” message was a reasonable interpretation. Combining three previous Court decisions, *Tinker*, *Bethel Sch. Dist. No. 403 v Fraser*, 478 U.S. 675 (1986), and *Hazelwood Sch. Dist. v Kuhlmeier*, 484 U.S. 260 (1988), the Court devised two basic principals regarding student speech: (1) students’ free speech rights as construed “in light of the special characteristics of the school environment,” and (2) “the mode of analysis set forth in *Tinker* is not absolute or the only basis for restricting student speech.” The Court added a final dimension to their consideration of this case when they found that the message was a “pro drug” message. By making this decision, the Court could bring in prior Court rhetoric that deterring drug use among students is “perhaps a compelling interest.”

Justices Alito and Kennedy wanted to narrow the ruling to saying that a public school may restrict speech that a reasonable observer would interpret as advocating illegal drug use, not that it would provide support for any restriction of speech that can arguably be interpreted as commenting on any political or social issue, including speech on issues such as “the wisdom of the war on drugs or of legalizing marijuana for medicinal use.” In his concurrence, Justice Thomas didn’t mince any words when he plainly stated that the standard set forth in *Tinker* had no constitutional basis – basically call for *Tinker* to be overruled. Thomas would defer to school administrators to a much greater degree in the day to day operations and discipline of their schools – a return in a way to the common law concept of unfettered in loco parentis. As stated by the NSBA, this case is more important, perhaps, for what it doesn’t say than for what it does say.

## **Employment and Labor**

*AARP v EEOC*, No. 05-4594 (3rd Cir. June 4, 2007): This decision dealt with the issue of age discrimination in certain retirement options. In an earlier case decided by the 3rd Circuit, *Erie County Retiree Association v County of Erie*, 220 F.3d 193 (3rd Cir. 2000) the court had held that employers could not cut off retiree’s health benefits under a retirement plan when that retiree became eligible for Medicare. When the EEOC attempted to enact rules which would effectively overrule that holding, the AARP filed suit. At the district court level it was determined that an administrative agency could not enact rules which contradicted a court ruling. While the EEOC appeal of the decision was pending, the Supreme Court handed down a decision in *National Cable and Telecommunications Association v Brand X Internet Services*, 125 S.Ct. 2688 (2005) which essentially allowed an administrative agency to interpret a statute differently than a court, so long as the court did not state that its interpretation was the only appropriate interpretation. In light of that ruling, the 3rd district made an about face, and it became the AARP appealing the decision.

There were two issues up for consideration in the appeal. First, was whether the EEOC was operating within its authority under the ADEA (Age Discrimination in Employment Act) when it proposed the regulations. To that issue the court said that the ADEA does give the EEOC the authority to make minor exemptions from the ADEA's prohibitions. The court decided that exemptions being proposed were reasonable and necessary and proper in the public interest. The second issue was whether the proposed regulations were valid under the APA (Administrative Procedures Act.) The court rejected the AARP's argument that the proposed regulations were arbitrary and capricious, finding them instead that the EEOC had engaged in a reasoned analysis that was neither arbitrary nor capricious. The bottom line is that the EEOC has the ability to create an exemption under the federal Age Discrimination in Employment Act to allow employers to offer retirees health plans that are coordinated with Medicare.

*Ramirez v New York City Bd. of Educ.*, 481 F.Supp.2d 209 (E.D.N.Y. March 30, 2007): Mr. Ramirez had been diagnosed with epilepsy, depression, high blood pressure, and arrhythmia. These ailments caused him to be absent from his classroom for approximately one-third of the school year. When he was terminated for excessive absenteeism, Ramirez sued stating that he had been fired in violation of the ADA. In ruling that Mr. Ramirez was not disabled under the definition of the ADA it looked at several factors. In the end, it was decided that Mr. Ramirez did not have an impairment which substantially limited his life activity because, as he himself admitted, his symptoms were largely alleviated by medication. Moreover, the court found that because of his excessive absences from the classroom he was not "otherwise qualified" and thus did not fall under the protection of the ADA.

The possibility of random drug tests for teachers is still on the horizon and being seriously considered by several states. So far only Hawaii has proposed the policy as a plank of the new labor contract. As with all testing, however, cost is still a major issue since, although a negative test only cost \$15 – 20, confirmation tests which would be required should the test show positive could run in the hundreds of dollars. Another major voice is coming from Kanawha County, South Carolina after more than one drug arrest of a teacher has occurred. This is something to keep an eye on, especially since the Supreme Court has based its approval of suspicionless drug testing of students on "the need to maintain a safe school environment."

### **Student Rights**

*Rice v Gans-Rugebregt*, No. 233600 (Cal. Super. Ct. May 15, 2007): Rice alleges that during freshman humanities class that several classmates began teasing her about being a Mormon. In response, Rice yelled "That's so gay!" at the offending students. This phrase ended up having a disciplinary file placed in her file. Rice and her parents filed suit seeking monetary damages from the school for failure to protect Rice from being teased and to have the disciplinary note removed from her file. Their theory was the Rice was singled out for punishment because of her religious beliefs. The court made short shrift of the case stating that monetary damages were unavailable. Moreover, there was insufficient proof of teachers having any knowledge of the teasing to support the claim of religious discrimination.

*Smith v Novato Unified Sch. Dist.*, No. A112083 (Cal. App. May 21, 2007): Smith was an Opinions Editor for his high school newspaper. In the position he wrote an editorial about illegal immigration in which he criticized Spanish-speaking immigrants, suggesting that most of them were illegally in the country and involved in criminal activity and should be barred from entering the US. His editorial was approved for publication. However, when the principal who had approved the publication was confronted by upset Latino parents she apologized and stated that editorial should not have been published. In addition she notified both parents, through a letter, and the board of education that the editorial should not have been printed given applicable board policies. Later Smith wrote an editorial titled "Reverse Racism" which was approved for publication with the suggestion that a counter-point editorial be added. Since there was no time for a counter-point to be written, Smith's original editorial was not printed.

Smith sued the school district for infringement on his freedom of speech under both the Federal and California constitutions. After first determining that Smith's first editorial was protected speech under the California code, the court held that although the school could provide a forum for individuals upset with the editorial to voice their reactions, the statements that the editorial should not have been printed was a violation of Smith's speech. By behaving as it did, the school district "chilled" subsequent protected student speech. As for the second editorial the court found no infringement because it was run at a later date.

*Busch v Marple Newtown Sch. Dist.*, No. 05-2094 (E.D. Pa. May 31, 2007): As part of the kindergarten social studies curriculum the teacher included a unit called "All About Me" as a method for the students to share their individual interests and learn about their classmates. One component of the unit was to invite the parents to come to school and share a talent, short game, small craft, or a story with the class. The parent of one kindergartener was invited and planned to read the Bible to the class. Upon learning of the reading selected, the principal informed Ms Busch that she could not read the Bible and would need to pick another book. His reasoning was the reading from a religious text would violated the First Amendment because it would appear to the young children that the school was endorsing one religion over another. Ms Busch sued claiming a violation of her freedom of speech and freedom of religion.

Addressing the free speech claim, the court found that the classroom was, at best, a limited public forum, over which the school district may impose restrictions that were reasonable and viewpoint neutral. Even though the restriction in the instant case could be construed as viewpoint discrimination, relying on the standard set by the Supreme Court decision in *Hazelwood v Kuhlmeier*, 484 U.S. 260 governing school-sponsored speech. Specifically, when there is a likelihood of a perception that the speech is endorsed by the school, the school has the right to restrict the speech so long as their actions are reasonably related to legitimate pedagogical concerns. The court found that the principal was justified in his concerns that reading the Bible would appear to be a school endorsement of that religion in violation of the Establishment Clause of the First Amendment. Moreover, since it would be the school "inviting" the reading, the appearance of endorsement was even greater. As to the freedom of religion claim, the court found that the principal's action complied with the guidelines set out in *Lemon v Kurtzman*, 403 U.S. 601 (1971), as it had a secular purpose (avoiding a constitutional violation) and a neutral effect.

*Layshock v Hermitage Sch. Dist.*, No. 06-116 (July 10, 2007): Non-school related speech, at least in Pennsylvania, stills seems to be off bounds for school discipline. A student,

Layshock, created an off-campus parody MySpace profile of the school principal. Eventually this profile was accessed by various students from school computers. Once the administration found out who had created the profile, Layshock was disciplined by placing him in an alternative education program. Layshock sued citing a violation of his freedom of speech

The court lost little time in distinguishing the recent Supreme Court decision in *Morse v Frederick*, 2007 WL 18043417 (U.S. June 25, 2007) because *Morse* dealt with school-related speech and the issue in question dealt with off-campus speech. School officials control over off-campus speech is more limited; the school district must demonstrate an appropriate connection with the school which goes beyond the conclusions of the school administration. The court looked at and then dismissed the applicability of *Bethel Sch. Dist. No. 403 v Fraser*, 478 U.S. 675 (1986) stating that even if the profile was “lewd, vulgar, and profane” it was still off-campus and out of the reach of the ruling in *Fraser*. As to the “material and substantial disruption” test formed in *Tinker v Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503 (1969) the court concluded that the necessary connection was lacking between the off-campus speech and any disruption on campus. Moreover, the viewing on-campus by student of the parody had, in fact, caused little disruption. The majority of any disruption, if any, was the method in which the administration chose to deal with the off-campus speech.

*Holton v City of Thomasville Sch. Dist. No. 06-12984* (11th Cir. July 3, 2007): Even though tracking may cause a substantial percentage of minority students to be tracked on the lower levels, such programs which groups students by ability are not a violation of the Equal Protection Clause of the Fourteenth Amendment or Title VI of the Civil Rights Act of 1964. Under the program in the instant case, teachers first group student in kindergarten and early elementary school by their “perceived” abilities and actual performance. In middle school students are placed in classes based primarily on standardized test scores and performance recommendations of former teachers. In high school students chose their own classes under the guidance of teachers, counselors, and parents. So long as the ability grouping is not done to perpetuate past discrimination, such systems may be allowed even if their ultimate results are segregative.

*Scott v Napa Valley Unified Sch. Dist.*, No. 26-37082 (Cal. Super. Ct. July 2, 2007): In an attempt to address the growing problem of gangs in the middle school, the school adopted a policy which forbid the wearing of anything but “plain” clothes – no pictures, no patterns, no stripes or logos. As a result students were being disciplined for wearing shirts with Winnie-the-Pooh on them, the American Cancer pink ribbon, blue jeans, and a backpack bearing the makers names. The students sued alleging the dress code violated their freedom of speech and the California Constitution Sec. 48907 of the California Education Code. The student claimed that the dress code policy was overly broad thereby having a chilling effect on protected speech and that the broad restrictions bear no substantial relationship to the goals being sought (i.e. discouragement of a gang presence.)

While “making a fashion statement” is not protected speech, the court found that some students had been wearing clothing with a message which was protected. At that point the burden shifted to the school to justify the breadth of its policy. The principal stated that the policy made it easier to identify non-students who may have come on school grounds as well as to identify gang members. In finding for the students, the court stated that the need to identify non-students was not a reason given by the school for its policy, therefore the policy was overbroad and not reasonably related to the stated goals.

Wisniewski v Bd. of Educ. of Weedsport Cent. Sch. Dist., No. 06-3394-cv (2d Cir. July 5, 2007): Wisniewski, and 8th grader, created an instant messaging (IM) icon showing his teacher being shot using AOL Instant Messenger at home. An icon can be sent along with the text message. The icon included a gun firing, blood splatters, and the words “Kill Mr. VanderMolen” who was his English teacher. Wisniewski created the icon shortly after the students were informed that threats would not be tolerated and would be considered as acts of violence. After creating the icon he sent it to about 15 people, some of whom were classmates. One of the classmates showed it to Mr. VanderMolen who told administrators, and they in turn contacted the local police, the superintendent, and Wisniewski’s parents.

The student was suspended for five days and then let back into school pending further action. Mr. VanderMolen quit teaching the English class. The police determined that the icon was meant as a joke and that there was no danger. A psychologist evaluated Wisniewski and agreed with the police. The school hearing officer, however, found that the icon was threatening and should not be seen as a joke. Following the advice of the hearing officer the school suspended Wisniewski for a semester. His parents sued alleging a violation of Wisniewski freedom of speech.

Unlike the lower court, when the case reached the 2nd Circuit Court, it declined to determine whether the icon was a “true threat.” Instead, the court applied the standard from *Tinker v Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503 (1969) requiring a “material and substantial disruption” before a student’s speech can be restricted. Despite the fact that the icon was created off-campus, the court found that it was foreseeable that the icon would come to the attention of the school, therefore the *Tinker* test was met and the student’s punishment was appropriate.

## **Vouchers**

*Snow v Office of Legislative Research and General Counsel*, No. 20070417 (June 8, 2007): It appears that the topic of private school vouchers in Utah is something which needs to be brought before the voters. Voucher legislation was recently passed, but the Utah Supreme Court stated that the law was subject to a voter referendum. Moreover, should the first law fail to pass, a subsequent voucher measure which was also passed by the legislature would also be without legal effect. While much of this ruling was very specific to Utah law, it is considered a win for voucher opponents because up to this point, every time private school vouchers have been put before the voters, such proposals have always failed.

## **Local Governance**

The Missouri State Board of Education was successful in blocking the temporary restraining order filed by the St. Louis School Board which would have stopped the State Board from unaccrediting the school district and turn its operation over to a transitional school board. The transition board is comprised of one appointee each from Governor Blunt, St. Louis Mayor Francis Slay, and St. Louis aldermanic president Lewis Reed. As a result the St. Louis schools are now under the control of the state board and the transitional school board.



### **Athletics**

*Tennessee Secondary School Athletic Association v Brentwood Academy*, No. 06-427 (U.S. S.Ct. June 21, 2007): Brentwood Academy fell afoul of the TSSAA's rules when one of its football coaches sent a letter to a student, who although he had already enrolled at Brentwood he had not been attendance for 3 days, and invited him to football practice. As a punishment the school was excluded from football and basketball playoffs for two years. The school sued. In reviewing lower court rulings which gave Brentwood First Amendment protections, the Supreme Court held that the TSSAA's recruiting rule struck "nowhere near the heart of the First Amendment." The Court noted that although direct solicitation was not allowed, the school was still free to send brochures, post bill boards, and otherwise advertise their athletic programs. While joining the TSSAA could not necessitate that member schools give up their constitutional rights, the Court found that the recruit rule was necessary to efficiently administer the state interscholastic athletic league.

Illinois is thinking of jumping on the "random testing for steroids bandwagon" which started with a state mandate to that effect in New Jersey. Texas and Florida are also jumping on and are close to starting their own testing programs. In Illinois, the Illinois High School Athletic Association has plans to move ahead with a testing program as early as next year, regardless of whether the General Assembly has passed any legislation. A sports-medicine committee of the IHSAA is putting the finishing touches on such a proposal. The hang up at this time, however, is how to finance the proposal since the General Assembly is not involved.

### **Special Education**

*Winkelman v Parma City School District*, 127 S.Ct. 1994 (U.S. 2007): In 2003-04 parents of a child with autism spectrum disorder felt that the program offered by their local school district was inappropriate. While taking the issue to due process the parents enrolled their child in a private school. The parents lost the due process hearing and the filed an appeal alleging procedural violations. They sought reimbursement for their son's private school tuition. During the appeal they were not represented by counsel. Once again they lost so they filed an appeal with the Sixth Circuit Court of Appeals. The Sixth Circuit dismissed the appeal because the parents were not represented by counsel.

The question before the Supreme Court is whether the IDEA conferred rights to only the disabled student or to the student's parents as well such that they have the constitutional right to represent themselves in litigation. In a 7-2 vote the Supreme Court held that indeed the parents of the disabled student, as well as the student, have rights under the IDEA which makes it allowable for the parents to represent themselves, and therefore also their disabled child, in all levels of litigation.

### **Liability**

*Wilson v Cahokia Sch. Dist.* No. 187, 470 F. Supp. 2d 897 (S.D. Ill. 2007): A sixth grade student alleged that she was sexually assaulted after school hours by a student who was serving after-school detention. She filed suit. Upon dismissing the suit the court stated that the school

district has no duty to protect a student from sexual assault after school hours when the student had no legal compulsion to be at the school. Moreover there was no proof that the district knew that the assailant was capable or likely to commit such an attack. Finally the school district did not violate her Fourth Amendment rights by interviewing her without her mother being present because of the overriding need for a prompt investigation.

## **DEVELOPMENTS IN LEGISLATION**

Here are excerpts from the Illinois Association of School Boards' Digest of Bills Passed in spring 2007 which have been sent to the Governor for his signature. For a complete listing of bills, along with more detailed information regarding the sponsors of the bill and the voting record in both House and Senate, please go to the IASB's home page at [www.iasb.com](http://www.iasb.com) and proceed to Digest of Bills Passed which are now available on-line. As always, the IASB, the Illinois Principals Association, and the Illinois Association of School Administrators are an invaluable resource in keeping up with what is going on with our elected officials in Springfield.

### **Boards of Education**

#### **HB 18—Bullying Policy**

Summary: The bill requires school districts to create and maintain a policy on bullying. The policies must be filed with the State Board of Education, and must be updated every 2 years and re-filed. The bill also provides that the Illinois State Board of Education will monitor the implementation of the policy.

#### **HB 425—Pest Management Training**

Summary: The bill changes the Integrated Pest Management (IPM) law for school districts. It requires schools to "develop and implement" an IPM program and notify the Department of Public Health (DPH) of the development of the program. Additionally, the bill requires the school district to "assign a designated person" to assume responsibility for oversight of the IPM program, and it requires that the person attend a training course. If a school finds that it is not economically feasible to adopt an IPM program, then the district must provide written notification to DPH and include projected pest control cost comparisons. The bill also authorizes DPH to request copies of the school's IPM program plans and notifications.

#### **HB 438—Gang Resistance Education**

Summary: The bill provides that, in addition to providing for instruction in bullying prevention, each school district may provide instruction in gang resistance.

#### **HB 817—Children with Disabilities**

Summary: The bill allows students eligible for special education services to continue those services through age 21, which means the day before the student's 22nd birthday.

HB 895—Green Cleaning Schools Act

Summary: The bill creates the Green Cleaning Schools Act to require school districts to establish a green cleaning policy and purchase and use environmentally-sensitive cleaning products when it is economically feasible. It states that adopting a green cleaning policy is not economically feasible if such adoption would result in an increase in the cleaning costs of the school. If it is not economically feasible, then the school must provide annual written notification to the Illinois Green Government Coordinating Council (IGGCC). The IGGCC, in consultation with other agencies, must establish and amend on an annual basis guidelines and specifications for environmentally-sensitive cleaning and maintenance products for use in school facilities.

HB 1347—Third Party Contracts

Summary: The bill adds burdensome new restrictions for a school board entering into a contract with a third party to perform non-instructional services. For the school board:

- a 90 day written notice would have to be given to the educational support personnel (ESP) before being laid off because of a third party contract (instead of the current 30 day notice);
- the contract could not be entered into during the term of a collective bargaining agreement;
- a contract may only take effect upon the expiration of an existing collective bargaining agreement;
- a contract must not be entered into unless a cost comparison is completed for all expenditure categories and accounts that the school board projects it would incur over the term of the contract; and
- a minimum of one public hearing, conducted by the school board prior to a regularly scheduled board meeting, must be held to discuss the proposal to contract with a third party. The board must give notice of the first hearing on or before the initial date that bids are solicited for the contract or a minimum of 30 days prior to entering into such a contract, whichever provides the greater period of notice.

For the third party contractor, the third party that submits a bid to perform the non-educational service shall provide:

- evidence of liability insurance in the scope amount equivalent to that provided by the school board;
- a benefits package comparable to that offered by the school board;
- a list of the number of employees who will provide the service, the job classifications of those employees, and the wages of those employees;
- a minimum 3-year cost projection for every expenditure category and account for performing the service;
- composite information about the criminal and disciplinary records (including alcohol or substance abuse, DCFS complaints, traffic violations, etc.) of all employees who may perform the service;
- an affidavit that each employee has completed a criminal background check; and
- a provision that requires the contractor to offer positions to the laid-off school district employees.

HB 1559—Biometric Information

Summary: The bill requires school districts to adopt a policy before collecting biometric information (fingerprints, retina scans, etc) from students. The bill requires the policy to address:

providing for written permission; the discontinuation of use of the information; the destruction of the information following the discontinuation of use; allowed use of the information; a prohibition on the sale, lease, or other disclosure of the information; and the storage, transmittal, and protection of the information. The bill also provides that the failure to provide written consent for the collection of biometric information shall not be the basis for refusal of any services otherwise available to the student.

**HB 1839—Mandate Waiver Limit for PE**

Summary: The bill limits waivers from the physical education mandate to two year and only allows them to be renewed two times.

**HB 1964—Summer School Food Program**

Summary: The bill requires school districts, before February 15, 2008, to have a plan to offer a summer breakfast or lunch program for the duration of their summer school program in each school that has at least 50% of the students eligible for free or reduced-price lunch. If summer school is not offered, there is no requirement to offer the food service. The program must be implemented during the summer of 2008. A district is allowed to opt out of the summer food program if the expense reimbursement would not fully cover the costs of implementing and operating the program. To opt out, the district must petition the regional superintendent to request an exemption.

**HB 3327—Alcohol Consumption Instruction**

Summary: The bill requires the inclusion of the consequences of alcohol consumption and the operation of a motor vehicle in “safety education” instruction.

**HB 3624—School Bus—Call Numbers**

Summary: The bill requires that each school bus display at the rear of the bus a visible and readable sign indicating the telephone number of the owner of the school bus, and indicating that the number is to be called to report erratic driving by the school bus driver. The owner of each school bus shall establish procedures for accepting and documenting these calls.

**SB 79—Special Education—Autism**

Summary: The bill provides that, in the development of the individualized education program for a student who has a disability on the autism spectrum, the IEP team shall consider and specifically address the following factors:

- the verbal and nonverbal communication needs of the child;
- the need to develop social interaction skills and proficiencies;
- the needs resulting from the child’s unusual responses to sensory experiences;
- the needs resulting from resistance to environmental change or change in daily routines;
- the needs resulting from engagement in repetitive activities and stereotyped movements;
- the need for any positive behavioral interventions, strategies, and supports to address behavioral difficulties resulting from autism spectrum disorder; and
- other needs resulting from the child’s disability that impact progress in the general curriculum, including social and emotional development.

**SB 166—School Bus Inspection**

Summary: The bill provides that each school district shall have in place by January 1, 2008, a policy to ensure that the school bus driver is the last person leaving every school bus and that no passenger is left behind or remains on the vehicle at the end of a route, a work shift, or the work day. The policy's procedure shall include provisions to ensure that the bus driver walk to the rear of the bus and check in and under each seat for sleeping children and to ensure that the bus driver activate the interior lights of the bus to assist the driver's visual sweep of the bus. The policy may include the installation of a mechanical or electronic post-trip inspection reminder system which requires the school bus driver to walk to the rear of the bus to deactivate the system before the driver leaves the bus.

**SB 424—Required High School Courses**

Summary: The bill provides that the school board of a high school is authorized to adopt a policy under which a student enrolled in grade 7 or 8 (who is enrolled in the unit school district or would be enrolled in the high school district upon completion of the 8th grade) may enroll in a high school course required to receive a high school diploma. Such enrollment is provided that the course is offered by the high school that the student will attend, the student participates in the class at the location of the high school, and the pre-high schooler's enrollment would not prevent a high school student from enrolling in the class. The policy must grant academic credit to a pre-high school student who successfully completes the high school course, and that credit shall satisfy the high school graduation requirements.

**SB 495—Fire Sprinkler Inspection**

Summary: The bill provides that inspections and testing of existing fire sprinkler systems and control equipment must be performed by a licensee or an individual employed or contracted by (instead of just employed by) a licensee. It sets criteria used to prove certification.

**SB 543—Kindergarten Enrollment Attendance**

Summary: The bill requires parents of a child who is below the compulsory school age (age 7) and who is enrolled in kindergarten in a public school to ensure the child attends.

**SB 654—Diabetes Initiative Act**

Summary: The bill provides that the Department of Human Services shall develop a strategic plan to slow the rate of diabetes as a result of obesity and other environmental factors by the year 2010. The Department shall collaborate with the Illinois State Diabetes Commission and may convene work groups that could include high school or college health educators. Additionally, the bill requires the Department to deliver the plan to the Governor and to the General Assembly on or before December 31, 2008.

**SB 665—Eavesdropping Exemption for School Buses**

Summary: The bill exempts from an eavesdropping violation, an electronic recording made of the interior of a school bus while the school bus is being used in the transportation of students to and from school and school-sponsored activities, when the school board has adopted a policy authorizing such recording. The recordings may only be used by school officials (or their designees) and law enforcement personnel for investigations, school disciplinary actions and hearings,

proceedings under the Juvenile Court Act of 1987, and criminal prosecutions, related to incidents occurring in or around the school bus.

**SB 746—Laptop Computer Project**

Summary: The bill extends the technology immersion pilot project, which provides laptop computers to 7th graders, for another three years.

**SB 843—Wind Turbine Farms**

Summary: The bill allows school districts and community college districts to own and operate wind generation turbine farms that directly or indirectly reduce energy or other operating costs.

**SB 1428—Child Abuse Reporting**

Summary: The bill amends the Abused and Neglected Child Reporting Act to add members of a school board, the Chicago Board of Education, or the governing body of a private school as mandated reporters. The bill, however, clarifies that board members are only mandated reporters if such an allegation is raised to a school board member during the course of a school board meeting.

**PERSONNEL**

**HB 223—Educational Partnership Act**

Summary: The bill amends the Educational Partnership Act to provide that public and private institutions of higher education that have approved teacher education programs may engage pre-service teacher candidates in the tutorial services provided for in the Act. It allows these students to receive compensation for such tutorial services while also receiving academic or clinical experience credit, or both.

**HB 742—Whistleblower Act**

Summary: The bill includes school districts as employers that are covered under the Whistle Blower Protection Act.

**HB 1268—Sexual Harassment—Schools**

Summary: The bill adds elementary and secondary schools to be covered under the “Freedom from Sexual Harassment” provisions of the Illinois Human Rights Act.

**HB 1877—Sick Leave—Birth or Adoption**

Summary: The bill will allow teachers to take sick leave for adoption, or placement for adoption if teachers are allowed to use sick leave for birth.

**SB 122—Professional Worker Definition**

Summary: The bill adds school counselor and school counselor intern to the list of professions included in the definition of “professional worker” under the law regarding special education.

SB 404—AEDs—Immunity

Summary: The bill provides that any person who in good faith and without fee or compensation renders emergency medical care involving the use of an Automated External Defibrillator (AED) in accordance with his or her training is not liable for any civil damages as a result of any act or omission, except for willful and wanton misconduct, by that person in rendering that care.

SB 1224—Teacher Homebuyer Assistance

Summary: The bill requires the Illinois Housing Development Authority to establish and administer a program to provide down payment assistance to public school teachers, who teach in hard-to-staff schools or hard-to-staff positions, for purchasing residences within the school district.

SB 1560—Education Support Personnel—Hours Reduced

Summary: The bill provides that if the hours an educational support personnel (ESP) employee works are reduced for certain reasons, then written notice must be given to the employee. Additionally, if a reduction in hours is due to an unforeseen reduction in the student population, then the written notice must be mailed and given to the employee at least 5 days (instead of 30 days) before the hours are reduced. The bill also requires a school board that has any vacancies for the following school term to offer the positions to the ESP employees who were removed from that category or any other category of position, so far as they are qualified to hold the positions.

## SCHOOL FINANCE

HB 258—Grants—CPR/AED Training

Summary: The bill requires the State Board of Education to establish a matching grant program to pay school districts for half the cost of providing training in CPR or on how to use an automated external defibrillator.

HB 1910—State Aid—Partial Day

Summary: The bill provides that if, during a school day, a school district has provided at least one clock hour of instruction but must dismiss students early due to a condition beyond the control of the school district, then the partial day of attendance may be counted as a full day of attendance.

SB 505—School Construction Grant—Green Building

Summary: The bill amends the School Construction Law to provide that school districts that apply on or after July 1, 2007, for a school construction grant, must receive certification for their project from either the United States Green Building Council's Leadership in Energy and Environmental Design Green Building Rating System, the Green Building Initiative's Green Globes Green Building Rating System, or meet green building standards of the Capital Development Board's Green Building Advisory Committee.

## SCHOOL SAFETY AND HEALTH

### HB 263—Sex Offender—Early Voting

Summary: The bill provides that when a qualified elector's precinct polling place is a school and the elector will be unable to enter the school to vote because the elector is a child sex offender, the elector may vote early or by absentee ballot. It also requires that an election authority that designates permanent or temporary early voting polling places must designate at least one that a child sex offender may lawfully enter. Further, the bill amends the Criminal Code in the provision prohibiting a child sex offender from entering a school, to remove language providing that a child sex offender has the right to be present in a school building to vote. Finally, it provides that it is a Class 4 felony for a child sex offender to knowingly be present within 100 feet of a bus stop when one or more persons under the age of 18 are present at the site.

### HB 286—Adult Entertainment Facility

Summary: Adult bookstores and video stores are currently prohibited from being located within 1,000 feet of a school. This bill clarifies that an adult bookstore and video store is one in which 25% or more of its merchandise is sexually explicit material.

### HB 1238—School Bus Strobe Lamp

Summary: The bill allows school buses to use strobe lamps any time the bus is in use as a school bus, and is bearing one or more pupils instead of only when the bus is stopped or moving very slowly under those circumstances.

### HB 1475—School Bus—Illegal Passing

Summary: The bill provides that, if the owner of a vehicle that illegally passed a stopped school bus contends that another person was driving the vehicle at the time of the alleged violation, the State's Attorney may require the owner to identify the driver in a written statement or deposition. If the vehicle owner fails to do so, then the vehicle registration shall be suspended for 3 months.

### SB 143—Background Check—Private School

Summary: The bill would require private schools to perform the same background checks of employees as public schools.

### SB 308—School Entrance Road—IDOT

Summary: The bill requires the Department of Transportation to evaluate, fund, and repair within the right-of-way, the entrances to public educational facilities that border State highways.

### SB 441—School Crosswalk—Yield

Summary: The bill creates the offense of failure to stop for or yield the right-of-way to a pedestrian in a crosswalk in a school zone. It provides that a first violation is a petty offense with a minimum fine of \$150, and a second violation is a petty offense with a minimum fine of \$300.

### SB 937—HPV Vaccine

Summary: The bill requires all health insurance plans to cover the vaccination for human papillomavirus (HPV) and requires the Department of Public Health to establish a program that pays for



the HPV vaccination for girls under age 18 in families that do not have other insurance coverage. The bill also changes from 5th to 6th grade when students must have their school health examinations. Additionally, the bill requires the Department of Public Health to provide all female students who are entering 6th grade, and their parents or legal guardians, written information about the link between HPV and cervical cancer and the availability of an HPV vaccine.

## STUDENTS

### HB 518—Driving Records—Minors

Summary: The bill provides that the Secretary of State may, without fee, allow the parent or guardian of a person under the age of 18 years, who holds a graduated driver's license or an instruction permit, to view the person's driving record online.

### SB 140—Cell Phones—Prohibition

Summary: The bill prohibits a person under the age of 19 years (instead of 18 years) who holds an instruction permit or a graduated license from driving on a roadway while using a wireless phone, except for emergency purposes.

### SB 172—Graduated Driver's License

Summary: The bill makes several significant changes to Illinois' graduated drivers' license requirements, including:

- requires students to hold an instruction permit for 9 months (instead of the current 3 months);
- extends the use of the graduated license for those over 18 years old under certain circumstances;
- imposes a curfew for driving with a permit – not after 10:00 p.m. Sunday-Thursday and not after 11:00 p.m. Friday and Saturday;
- changes the curfews for drivers who drive on a graduated license – not after 10:00 p.m. Sunday-Thursday and not after 11:00 p.m. Friday and Saturday;
- limits the number of passengers allowed in a vehicle driven by a newly licensed driver to one person under the age of 20 (and provides that a citation may be given to, not only the driver in this case, but to those extra passengers under the age of 20);
- deletes the provisions that allow school districts to use proficiency examinations for practice driving; and
- prohibits the use of simulators in the classroom (six hours of driving – in a car with an instructor – would be required)

### SB 396—Special Education—Delegation of Rights

Summary: The bill provides that when a student reaches 18 years all rights accorded to the student's parents transfer to the student except for certain provisions under this legislation, and requires the school district to notify the student and student's parents of the transfer of rights in writing during the year that the student turns 17 years.

### SB 397—Special Education—Reimbursement

Summary: The bill provides that when a school district operates a school or program for a num-

ber of days in excess of the adopted school calendar but not to exceed 235 school days, reimbursement shall be increased by  $1/180$  (instead of  $1/185$ ) of the amount or rate paid under the reimbursement provisions for each day the school is operated in excess of 180 (instead of 185) days per calendar year. Additionally, the bill contains provisions about accessible formats of printed textbooks for children with print disabilities.