Confidentiality - Law

- **Illinois School Student Records Act (ISSRA)**
  - 105 ILCS 10/1 et seq.

- **Federal Educational Privacy Records Act (FERPA)**

- **Abused and Neglected Child Reporting Act (ANCRA)**
  - 325 ILCS 5/1 et seq.

- **HIPAA, Freedom of Information Act (FOIA)**
  - P.L. 104-191, 5 ILCS 140/1 et seq.

Confidentiality - Law

- Illinois School Student Records Act (ISSRA)
  - No school student records or information contained therein may be released, transferred, disclosed or otherwise disseminated, except as follows:
    - To a parent or student or person specifically designated as a representative by a parent,
    - To an employee or official of the school or school district or State Board with current demonstrable educational or administrative interest in the student, in furtherance of such interest,
    - To the official records custodian of another school within Illinois or an official with similar responsibilities of a school outside Illinois, in which the student has enrolled, or intends to enroll, upon the request of such official or student;
Confidentiality - Law

- Illinois School Student Records Act (ISSRA)
  - No school student records or information contained therein may be released, transferred, disclosed or otherwise disseminated, except as follows:
    - To any person for the purpose of research, statistical reporting, or planning
    - Pursuant to a court order
    - To any person as specifically required by State or federal law
    - To juvenile authorities when necessary for the discharge of their official duties who request information prior to adjudication of the student and who certify in writing that the information will not be disclosed to any other party except as provided under law or order of court
    - And others...

Confidentiality - Law

- HIPAA
  - Prevents disclosure of patient health records
  - Establishes procedures to challenge the disclosure or maintenance of records
  - Establishes repercussions for failing to protect patient privacy

Confidentiality - Law

- What is a "record"?
  - Means any writing or other recorded information concerning a student and by which a student may be individually identified, maintained by a school or at its direction or by an employee of a school, regardless of how or where the information is stored.
  - The following shall not be deemed school student records under ISSRA:
    - writings or other recorded information maintained by an employee of a school or other person at the direction of a school for his or her exclusive use, provided that all such writings and other recorded information are destroyed not later than the student's graduation or permanent withdrawal from the school.
Student Records

TEACH: Will u b attending iep mtg 4 smith kid?
PRINC: I wasn't planning on it. Should I?
TEACH: Mom wants 1on1 aide. Not sure if needed.
PRINC: What will the recommendation be?
TEACH: Not sure. Will decide at mtg.
PRINC: If you want me there, let me know.

Cause

105 ILCS 5/10-22.4
To dismiss a teacher for incompetency, cruelty, negligence, immorality or other sufficient cause, to dismiss any teacher on the basis of performance and to dismiss any teacher whenever, in its opinion, he is not qualified to teach, or whenever, in its opinion, the interests of the schools require it…

Social Media

Behavior is considered irremediable when it (1) damages the student, the faculty, and/or the school; and (2) once the behavior occurs, the “damage” cannot be undone.
Connecticut teacher Jeffrey Spanierman was fired because of two cyber conversations with students on his MySpace page. In one posting, he teased a student about his girlfriend, and the student responded, "don't be jealous cause you can't get any lol." Spanierman replied: "What makes you think I want any? I'm not jealous. I just like to have fun and goof on you guys. If you don't like it, Kiss my brass! LMAO." He also jokingly threatened another student with lifelong detention for calling him "sir."

But a federal court ruled that Spanierman’s termination didn’t violate the First Amendment because his speech "was likely to disrupt school activities." The court faulted the teacher for failing "to maintain a professional, respectful association with students" and for communicating with students "as if he were their peer, not their teacher." Such conduct, "could very well disrupt the learning atmosphere of a school," the court said.

Tara Richardson was a mentor for beginning teachers who sued the Central Kitsap (Washington) School District claiming that she was demoted because of comments she posted on a personal blog. She described one administrator as "a smug know-it-all creep" who has "a reputation of crapping on secretaries...." Last June, a federal appeals court rejected her First Amendment argument, finding that her nasty, personal comments interfered with her job because they "fatally undermined her ability to enter into confidential and trusting mentor relationships" with beginning teachers.
Christine Rubino

- Dismissed in 2011 for private Facebook posts declaring that she would like to take her class to the beach a day after another student drowned on a class field trip.
- Rubino was a 15 year tenured teacher with good evaluations.
- Responded to a comment on her post that she would not send a lifejacket to a drowning child.
- Was dismissed due to 3 charges of immorality and incompetence following an arbitrator’s decision that she was unfit for service due to the posts.
- The court ultimately reduced the dismissal to a suspension – one that would last for two full school years, costing Rubino over $150,000 plus the cost of her defense.
Best Practices

• Do not friend students! (ANCRA, ISSRA)

• Keep discussions outside of school with colleagues limited to social discussion. Discussions about school work should remain in the school context. (ISSRA)

• Do not intermingle personal and private email. (FOIA)

• Do not have school work-related discussions through private email, text message, blog, or social network (FOIA, ISSRA, ANCRA)

Best Practices

• Do NOT put pictures you find on the internet on your website

• Do NOT be an island – ask questions if you have concerns!

• All reports of bullying should be reported to Mr. Shane Gordon, the complaint manager for such reports.

Best Practices
What is bullying?

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105 ILCS 5/27-23.7 – Bullying Prevention.

Bullying on the basis of actual or perceived race, color, religion, sex, national origin, ancestry, age, marital status, physical or mental disability, military status, sexual orientation, gender-related identity or expression, unfavorable discharge from military service, association with a person or group with one or more of the aforementioned actual or perceived characteristics, or any other distinguishing characteristic is prohibited in all school districts...

What is bullying?

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105 ILCS 5/27-23.7 – Bullying Prevention.

“Bullying” means any severe or pervasive physical or verbal act or conduct, including communications made in writing or electronically, directed toward a student or students that has or can be reasonably predicted to have the effect of one or more of the following:

1. placing the student or students in reasonable fear of harm to the student’s or students’ person or property;
2. causing a substantially detrimental effect on the student’s or students’ physical or mental health;
3. substantially interfering with the student’s or students’ academic performance; or
4. substantially interfering with the student’s or students’ ability to participate in or benefit from the services, activities, or privileges provided by a school.

What is bullying?

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105 ILCS 5/27-23.7 – Bullying Prevention.

Bullying, as defined in this subsection (b), may take various forms, including without limitation one or more of the following: harassment, threats, intimidation, stalking, physical violence, sexual harassment, sexual violence, theft, public humiliation, destruction of property, or retaliation for asserting or alleging an act of bullying. This list is meant to be illustrative and non-exhaustive.
What is bullying?

Laws Enforced by U.S. Dept. of Education Office for Civil Rights (OCR)

- Title VI of the Civil Rights Act of 1964 (race, color and national origin)
- Title IX of the Education Amendments of 1972 (sex)
- Section 504 of the Rehabilitation Act of 1973 (disability)
- Title II of the Americans with Disabilities Act of 1990 (disability)
- The Age Discrimination Act of 1975 (age)
- Boy Scouts of America Equal Access Act (patriotic youth groups)

Harassment defined by OCR:

- Harassment is intimidation or abusive behavior toward a student based on [protected class] that creates a hostile environment by interfering with or denying a student's participation in or receipt of benefits, services, or opportunities from an institution's educational program.

Harassing conduct may take many forms, including verbal acts and name-calling, as well as nonverbal behavior, such as graphic and written statements, or conduct that is physically threatening, harmful, or humiliating.

- "may include use of cell phone or the Internet"
- "does not have to include intent to harm, be directed at a specific target, or involve repeated incidents."

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What is our response?

To make a determination regarding a harassment allegation, OCR considers the following:

1) Whether the complainant was harassed based on [protected class];
2) Whether the harassing conduct was sufficiently severe, persistent, or pervasive to create a hostile environment, or limit the complainant’s ability to participate in or benefit from the District’s educational program;
3) Whether the District had actual or constructive notice of the harassment; and
4) Whether the District failed to take prompt and/or effective action to:

- end the harassment,
- prevent it from recurring,
- and, as appropriate, remedy the effects of the harassment on the complainant.

What is our response?

4) Whether the District failed to take prompt and/or effective action to:

- end the harassment,
- prevent it from recurring,
- and, as appropriate, remedy the effects of the harassment on the complainant.

Thank you