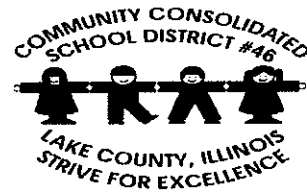


New Business

Community Consolidated School District 46



565 Frederick Road • Grayslake • Illinois • 60030 (847) 223-3650 FAX (847) 223-3695

To: CCSD 46 Board of Education

From: Chris Wolk, Director of Human Resources

Date: March 1, 2022

Memo: 2022-23 Enrollment Projections and Preliminary Staffing BOE Report Memo

Background

In preparation for the 2022-23 School Year, I present to you the Enrollment Projections and Preliminary Staffing Plan. As in the past, I used the Cohort Survival Method and took the current number of students and moved them up a grade level (21-22 Kindergarten enrollment to the 22-23 1st grade, 21-22 1st grade to 22-23 2nd grade, etc). The projections in the report were based on the current enrollment as of January 7, 2022.

Based on the current information available to us we anticipate a slight decrease in enrollment for the 2022-23 school year. A constant variable is our enrollment in Pre K and K programs.

Administrative Considerations

As mentioned above, based on the information that is currently available to us, we anticipate a slight decrease in enrollment for the 2022-23 school year.

Due to the low enrollment numbers in the elementary bilingual programs at Park, Meadowview, and Woodview, we are planning to combine certain grade levels at specific schools. Kindergarten and 1st grade bilingual students who live within Park boundaries will be transported to Prairieview and students at those grades who live within Woodview boundaries will be transported to Meadowview. We will be adding an 8th grade bilingual teacher at GMS as part of the continual roll up of bilingual instruction. We will also need to add a bilingual teacher at Prairieview and an EL/bilingual teacher at Park Campus to be in compliance with state regulations.

Other staffing changes will be a reduction of 2 classroom sections (5th grade at Park and 2nd grade at Woodview). We are not recommending a RIF for these two FTE due to the teacher shortage. We will place these staff members into positions as they become available due to resignations or addition of sections. Also, we will be adding a Special Education teacher at Meadowview School for the 22-23 school year. This is a position that was RIFd several years ago due to low caseload numbers and we attempted to fill the position mid year 21-22 but we did not have an appropriate candidate.

Mission: Empowering learners, creating equity, cultivating community.

Vision: CCSD 46 provides opportunities that expand learning beyond our walls so that all learners grow locally, connect globally, and excel universally.

District Goal

Finance:

Review, expand, and clarify financial practices to increase transparency and communication, with a focus on aligning financial decision making to district goals.

Board Policy Reference

4:150 - Facility Management and Building Programs

Recommendation

It is recommended that English-only staffing numbers remain similar to that of the 2021-22 school year due to the minimal decrease in projected enrollment.

It is recommended that due to the extremely low enrollment numbers in the elementary bilingual programs at Park, Meadowview, and Woodview, which were created last year, we will combine certain grade levels at specific schools. Kindergarten and 1st grade bilingual students who live within Park boundaries will be transported to Prairieview and students at those grades who live within Woodview boundaries will be transported to Meadowview. We will be adding an 8th grade bilingual teacher at GMS as part of the continual roll up of bilingual instruction. We will also need to add a bilingual teacher at Prairieview and an EL/bilingual teacher at Park Campus to be in compliance with state regulations.

It is recommended to reduce 2 classroom sections (5th grade at Park and 2nd grade at Woodview). We are not recommending a RIF of these FTE due to the teacher shortage. We will place these staff members into positions as they become available due to resignations or addition of sections. Also, it is recommended to add a Special Education teacher at Meadowview School for the 22-23 school year. This is a position that was RIFd several years ago due to low caseload numbers.

It is recommended that, similar to last year, the district budget for 3 positions be held in reserve in case of additional student enrollment or if other needs are identified.

BOARD RECOMMENDATION

BE IT RESOLVED: Discussion only.

Preliminary 2022-23 Enrollment Projections and Staffing Plan

- Process
- Data
- Summary



CCSD 46 Mission

**Empowering learners,
creating equity,
cultivating community**



One District - One Direction - #OneD46

Process

- In early January, staffing meetings took place with each building administrator and department head
- Cohort Survival Method:
 - Pre K and Kindergarten numbers stay the same
 - Move the 21-22 Kindergarten numbers to the 22-23 1st grade, 21-22 1st grade to 22-23 2nd grade, etc
- Class size parameters are:
 - K - 2nd Grade = 25 students
 - 3rd Grade - 8th Grade = 30 students
 - Projected class numbers for next year range between 17-25 at K - 4 and 22 - 29 at 5-8



Current and Projected Student Population (1/7/22)

<i>Grade</i>	ECC	AV	PV	MV	WV	PC	FS	MS	Self Contained	<i>Projected 22-23</i>	Current 21-22	21-22 Start
Pre-K	165									165	165	119
K		65	60	76	69	58			6	334	334	302
1st		65	60	76	69	58			6	334	343	351
2nd		67	72	66	70	59			9	343	380	359
3rd		77	68	67	92	69			7	380	369	336
4th		59	74	71	89	70			6	369	343	387
5th						59	279		5	343	386	369
6th						88	292		6	386	373	388
7th						65		300	8	373	403	450
8th						95		298	10	403	454	427
Total	165	333	334	356	389	621	571	598	63	3430	3550	3488

Pre K and Kindergarten numbers

Pre K

- Starts the year with low numbers and then increases with screening of more students
- We continually trend towards maintaining a full ECC program

Kindergarten

January 21-22	January 20-21	January 19-20	January 18-19	January 17-18
334	308	360	345*	330



K-8

	AV	PV	MV	WV	PC	FS	MS	FY23 TOTAL	FY22 TOTAL	FY21 TOTAL
K	4	4	4	3	3			18	20	18
1st	4	4	3.5	3	3			17.5	17	17.5
2nd	4	4	3.5	3	3			17.5	18	17.5
3rd	4	4	3	4	3			18	16.5	16.5
4th	3	4	3	4	3			17	16.5	15.5
5th					3	11		14	15	15
6th					4	11		15	15	16
7th					4		12	16	16	16
8th					4		12	16	16	16

Encores and EL

	AV	PV	MV	WV	PC	FS	MS	DIST	FY23 TOTAL	FY22 TOTAL	FY21 TOTAL
Art	0.6	0.6	0.5	0.5	1	1	1		5.2	5.2	5.2
EL	2	2	2	2	5	4	4		21	19	17
Info Spec.	1	1	1	1	2	2	1		9	9	10
Instructional Coach	2	1	1	1	1	1	1		8	8	8
EL Interventionist								1	1	1	1
EL Coach								1	1	1	1
Music	0.5	0.6	0.5	0.5	1.4	1	1		5.5	5.5	5.5
P.E./Health	1.5	1.8	1.7	1.5	4	5	4		19.5	19.5	18.65
Band					1.5	3	1		5.5	5.5	6
Subject Specialists	2	2	2	2	4	4	4		20	20	21
Speech/Drama							1		1	1	1
Dean of Students							1		1	1	1

Pupil Services

	ECC	AV	PV	MV	WV	PC	FS	MS	DIST	FY23 TOTAL	FY22 TOTAL	FY21 TOTAL
EC Coordinator	1									1	1	1
Hearing Itinerant	0.9									0.9	0.9	0.9
Social Worker	1	1	1	1	1	3	3	3		14	14	14
Behavior Interventionist									1	1	1	1
Psychologist		0.5	0.5	0.5	0.5	1	1	1		5	5	5
Pre-K Teacher	7									7	7.5	7
Teacher		3	3	3	3	6	7	7		32	31	32
LINK		1				1				2	2	2
MILE				3		3				6	6	5
Pre K EL Teacher	1									1	1	1
Speech/Lang Pathologist	3	1	1	1	1	2	1	1		11	11	11
Occupational Therapists (OT)	1	0.5		0.5		0.5	0.5			3	3	4
Certified OT Assistants			0.5	0.5	0.5	1		0.5		3	3	1
LINK/MILE Assistants		1		6		10				17	17	17
Nurse									5	5	5	3
ECAT - Speech	0.8									0.8	0.8	0.8
ECAT - Psychologist	0.8									0.8	0.8	0.8
ECAT - OT	0.8									0.8	0.8	0.8

Summary

Enrollment

- We see a decrease in our projected enrollment for next year

Staffing Changes for 22-23

General Education

- A reduction in 2 classroom sections due to enrollment (5th grade PC and 2nd grade WV)
 - A RIF is not recommended at this time due to the teacher shortage

Special Education

- Increase of 1.0 FTE for MV Special Education teacher



Summary

Staffing Changes for 22-23 (continued)

Bilingual Education (One Way Dual) and EL

- Addition of:
 - 1 8th grade teacher as part of the roll up of services
 - To maintain compliance with ISBE regulations
 - Addition of a bilingual teacher at PV
 - Addition of an EL teacher at PC
- Due to numbers program enrollment numbers we will be combining certain grade levels at specific schools
 - Kindergarten and 1st grade
 - PC students will be attending PV
 - WV students will be attending MV



Preliminary 2022-23 Enrollment Projections and Staffing Plan

- Process
- Data
- Summary



School Board

Powers and Duties of the School Board; Indemnification

The major powers and duties of the School Board include, but are not limited to:

1. Organizing the Board after each consolidated election by electing officers and establishing its regular meeting schedule and, thereafter, taking action during lawfully called meetings to faithfully fulfill the Board's responsibilities in accordance with State and federal law. ¹
2. Formulating, adopting, and modifying Board policies, at its sole discretion, subject only to mandatory collective bargaining agreements and State and federal law. ²
3. Employing a Superintendent and other personnel, making employment decisions, dismissing personnel, including determining whether an employee has willfully or negligently failed to report an instance of suspected child abuse or neglect as required by 325 ILCS 5/,³ and establishing an equal employment opportunity policy that prohibits unlawful discrimination. ⁴
4. Directing, through policy, the Superintendent, in his or her charge of the District's administration. ⁵
5. Approving the annual budget, tax levies, major expenditures, payment of obligations, annual audit, and other aspects of the District's financial operation; and making available a statement of financial affairs as provided in State law. ⁶

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

¹ State law controls this policy's content. School board powers listed in the School Code are not exclusive, meaning that a board may exercise "all other powers not inconsistent with this Act that may be requisite or proper for the maintenance, operation, and development of any school or schools under the jurisdiction of the board." 105 ILCS 5/10-20. This policy's intent is to list the *major* statutory powers and duties – not all of them. See also 105 ILCS 5/10-20.5 and 5/10-21.

For power/duty #1, see 105 ILCS 5/10-16 and 5/10-16.5 and policies 2:80, *Board Member Oath and Conduct*, and 2:210, *Organizational School Board Meeting*. Boards that elect officers for one-year terms and/or hold organizational meetings yearly, replace the default text in number 1 with the following:

Annually organizing the Board by electing officers and establishing its regular meeting schedule and, thereafter, taking action during lawfully called meetings to faithfully fulfill the Board's responsibilities in accordance with Board policy and State and federal law.

² 105 ILCS 5/10-20.5 and policy 2:240, *Board Policy Development*; 105 ILCS 5/10-21; and 115 ILCS 5/, Ill. Educational Labor Relations Act.

³ 105 ILCS 5/10-23.12(c), added by P.A. 101-531; 105 ILCS 5/21B-75(b), amended by P.A.s 101-531 and 101-552. For further discussion see ¶n 22 in policy 5:90, *Abused and Neglected Child Reporting*. **Note:** While 105 ILCS 5/10-23.12(c) permits boards to *immediately* dismiss certain employees upon the determination that he or she has willfully or negligently failed to report, this does not negate a board's responsibility to provide employees with due process required by the law and district policies and procedures. Consult the board attorney for further guidance.

⁴ 105 ILCS 5/10-21.4 (employing superintendent); 5/10-20.7 and 5/10-21.1 (teachers); 5/10-21.9 (criminal history records checks); 5/10-22.34 (non-certificated personnel (this statute still uses *certificated* rather than *licensed*)); 5/10-22.4 (dismissing teachers for cause); and 5/10-23.5 and 5/24-12 (reduction in force). See policies in the **PRESS Policy Reference Manual** Sections 3, General School Administration, and 5, Personnel.

⁵ 105 ILCS 5/10-16.7.

6. Entering contracts using the public bidding procedure when required. ⁷
7. Providing, constructing, controlling, and maintaining adequate physical facilities; making school buildings available for use as civil defense shelters; and establishing a resource conservation policy. ⁸
8. Establishing an equal educational opportunities policy that prohibits unlawful discrimination. ⁹
9. Approving the curriculum, textbooks, and educational services. ¹⁰
10. Evaluating the educational program and approving School Improvement and District Improvement Plans. ¹¹
11. Presenting the District report card and School report card(s) to parents/guardians and the community; these documents report District, School, and student performance. ¹²
12. Establishing and supporting student behavior policies designed to maintain an environment conducive to learning, including deciding individual student suspension or expulsion cases brought before it. ¹³
13. Establishing attendance units within the District and assigning students to the schools. ¹⁴
14. Establishing the school year. ¹⁵
15. Requiring a moment of silence to recognize veterans during any type of school event held at a District school on November 11. ¹⁶
16. Providing student transportation services pursuant to State law. ¹⁷
17. Entering into joint agreements with other boards to establish cooperative educational programs or provide educational facilities. ¹⁸

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

⁶ 105 ILCS 5/10-20.19 and 5/17-1 *et seq.* See policies in the **PRESS Policy Reference Manual** Section 4, Operational Services.

⁷ 105 ILCS 5/10-20.21. See policy 4:60, *Purchases and Contracts*.

⁸ For the first clause, see 105 ILCS 5/10-20.6, 5/10-20.12, 5/10-22.10, 5/10-22.35A, and 5/10-22.36; and policy 4:150, *Facility Management and Building Programs*. For the second clause, see 105 ILCS 5/10-22.35. For the third clause, see 105 ILCS 5/10-20.19c and policy 4:70, *Resource Conservation*.

⁹ Many civil rights laws guarantee equal educational opportunities; see policy 7:10, *Equal Educational Opportunities*.

¹⁰ 105 ILCS 5/10-20.8. See policies in the **PRESS Policy Reference Manual** Section 6, Instruction.

¹¹ 105 ILCS 5/2-3.25d, which addressed school and district improvement plans, was repealed by P.A. 100-1046. 105 ILCS 5/2-3.25f, and 105 ILCS 5/27-1. For more specific information about school and district improvement plans, see policy 6:10, *Educational Philosophy and Objectives*, and f/n 6 in policy 6:15, *School Accountability*.

¹² 105 ILCS 5/10-17a, amended by P.A.s 99-0439, 100-035, 100-201, 00-353, 100-041, and 100-045. This statute details the requirements for *presenting* the district report card and school report card(s), including presenting them at a regular school board meeting and posting them on the district's website.

¹³ 105 ILCS 5/2-20.10, 5/10-22.6, amended by P.A.s 99-0439, 100-035, 100-201, 00-353, 100-041, and 100-045. See policies 7:190, *Student Behavior*; 7:200, *Suspension Procedures*; and 7:210, *Expulsion Procedures*.

¹⁴ 105 ILCS 5/10-21.3 and 5/10-22.5. See policy 7:30, *Student Assignment and Intra-District Transfer*.

¹⁵ 105 ILCS 5/10-19, amended by P.A.s 100-035, 101-12, and 101-643, and 23 Ill.Admin.Code §1.420. See policy 6:20, *School Year Calendar and Day*.

¹⁶ Recognizing veterans on Nov. 11 is required by 105 ILCS 5/10-20.46.

¹⁷ 105 ILCS 5/10-22.22. See policy 4:110, *Transportation*.

18. Complying with requirements in the Abused and Neglected Child Reporting Act (ANCRA). Specifically, each individual Board member must, if an allegation is raised to the member during an open or closed Board meeting that a student is an abused child as defined in ANCRA, direct or cause the Board to direct the Superintendent or other equivalent school administrator to comply with ANCRA's requirements concerning the reporting of child abuse. ¹⁹

- 19.21. Communicating the schools' activities and operations to the community and representing the needs and desires of the community in educational matters. ²²

Indemnification ²³

To the extent allowed by law, the Board shall defend, indemnify, and hold harmless School Board members, employees, volunteer personnel (pursuant to 105 ILCS 5/10-22.34, 10-22.34a and 10-22.34b), mentors of certified staff (pursuant to 105 ILCS 5/2-3.53a, 2-3.53b, and 105 ILCS 5/21A-5 *et seq.*), and student teachers who, in the course of discharging their official duties imposed or authorized by law, are sued as parties in a legal proceeding. Nothing herein, however, shall be construed as obligating the Board to defend, indemnify, or hold harmless any person who engages in criminal activity, official misconduct, fraud, intentional or willful and wanton misconduct, or acts beyond the authority properly vested in the individual.

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

¹⁸ 105 ILCS 5/10-22.31a. See policy 1:20, *District Organization, Operations, and Cooperative Agreements*.

¹⁹ 325 ILCS 5/4(d), amended by P.A. 101-564. *Abuse and neglect* are defined in 325 ILCS 5/3. For an *abused or adult student*, see 20 ILCS 1305/1-17(b). For a *neglected child*, see 20 ILCS 1305/1-17(c). The definitions of *abused child* and *neglected child* provided by the U.S. Department of Justice are not applicable to the reporting requirements of ANCRA. The reporting requirements of ANCRA apply to all children, regardless of age, who are in the custody of a parent or guardian. The reporting requirements of ANCRA apply to all children, regardless of age, who are in the custody of a parent or guardian. The reporting requirements of ANCRA apply to all children, regardless of age, who are in the custody of a parent or guardian.

²² See policy 8:10, *Connection with the Community*.

²³ 105 ILCS 5/10-20.20 (duty to indemnify) and 5/10-22.3 (duty to insure against loss or liability). These statutes identify the same individuals for protection except that the indemnification statute includes mentors of certified staff members. See ¶ 3 in policy 4:100, *Insurance Management*.

Public officials or employees who are sued or incur loss because of the performance of their duties imposed or authorized by law on behalf of the public entity are entitled to indemnification. *McQuillan on Municipal Corporations* §12.137 (3rd ed. 1973). Public employees who must defend themselves in actions based upon the performance of official duties are entitled to indemnification. *Wayne Twp. Bd. of Auditors v. Ludwig*, 154 Ill.App.3d 899 (2nd Dist. 1987). The public's interest is served by indemnifying public officials and employees in the performance of their official duties in order to recruit and retain qualified public employees and officials.

LEGAL REF.: 105 ILCS 5/10, 5/17-1, and 5/27-1.
115 ILCS 5/, Ill. Educational Labor Relations Act.
325 ILCS 5/, Abused and Neglected Child Reporting Act.

CROSS REF.: 1:10 (School District Legal Status), 1:20 (District Organization, Operations, and Cooperative Agreements), 2:10 (School District Governance), 2:80 (Board Member Oath and Conduct), 2:140 (Communications To and From the Board), 2:210 (Organizational School Board Meeting), 2:240 (Board Policy Development), 4:60 (Purchases and Contracts), 4:70 (Resource Conservation), 4:100 (Insurance Management), 4:110 (Transportation), 4:150 (Facility Management and Building Programs),
5:10 (Equal Employment Opportunity and Minority Recruitment), 5:90 (Abused and Neglected Child Reporting),
6:10 (Educational Philosophy and Objectives),
6:15 (School Accountability), 6:20 (School Year Calendar and Day), 7:10 (Equal Educational Opportunities), 7:30 (Student Assignment and Intra-District Transfer), 7:190 (Student Behavior), 7:200 (Suspension Procedures), 7:210 (Expulsion Procedures), 8:10 (Connection with the Community), 8:30 (Visitors to and Conduct on School Property)

School Board

Ethics and Gift Ban 1

Prohibited Political Activity

The following precepts govern political activities being conducted by District employees and School Board members:

1. No employee shall intentionally perform any *political activity* during any *compensated time*, as those terms are defined herein. ²
2. No Board member or employee shall intentionally use any District property or resources in connection with any political activity. ³
3. At no time shall any Board member or employee intentionally require any other Board member or employee to perform any political activity: (a) as part of that Board member's or employee's duties, (b) as a condition of employment, or (c) during any compensated time off, such as, holidays, vacation, or personal time off.
4. No Board member or employee shall be required at any time to participate in any political activity in consideration for that Board member or employee being awarded additional compensation or any benefit, whether in the form of a salary adjustment, bonus, compensatory time off, continued employment or otherwise; nor shall any Board member or employee be awarded additional compensation or any benefit in consideration for his or her participation in any political activity.

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

¹ The State Officials and Employees Ethics Act (SOEEA) (5 ILCS 430/) requires a policy on this subject matter and controls its content. 5 ILCS 430/70-5, amended by P.A. 101-221. This policy contains items on which collective bargaining may be required. Any policy that impacts wages, hours, or terms and conditions of employment, is subject to collective bargaining upon request by the employee representative, even if the policy involves an inherent managerial right. This policy concerns an area in which the law is unsettled.

The Ill. Attorney General developed a model ethics ordinance to assist units of local government and school districts. See www.ag.state.il.us/government/ethics_ordinance.html. The model ordinance provides that the local governmental entity will enforce the policy through quasi-criminal proceedings or through hiring an attorney to prosecute violators. These penal enforcement provisions present an obvious difficulty for school districts – the legislature has **not** granted school districts the power to adopt penal ordinances and penalties. This sample policy, while based on the Attorney General's model ordinance, does **not** contain penal provisions and penalties and it does **not** contemplate the hiring of an attorney to prosecute violators.

² In addition to constitutional free speech rights, two State laws must be considered when enforcing the SOEEA. The first law, the Local Governmental Employees Political Rights Act (50 ILCS 135/), prohibits: (1) districts from inhibiting or prohibiting employees in the exercise their political rights, and (2) employees from using their employment to coerce or inhibit others in the free exercise of their political rights and from engaging in political activities while at work. The other law, the Personnel Record Review Act (820 ILCS 40/9), prohibits districts from gathering records about an employee's political activities unless the activities interfere with the performance of work duties or could cause the district financial liability.

³ The Election Interference Prohibition Act prohibits the use of public funds to "urge any elector to vote for or against any candidate or proposition." 10 ILCS 5/9-25.1. Spending within the statutory definition of public funds to disseminate facts to the public is permitted under section 9-25.1 and is not *electioneering*. Consequently, a district should not become a political committee by spending funds to disseminate facts. 10 ILCS 5/9-1.14, legislatively overturning Citizens Organized to Save the Tax Cap v. State Bd. of Elections, Northfield Twp. High Sch. Dist., 392 Ill.App.3d 392 (1st Dist. 2009). Consult the board attorney for advice.

stepson, stepdaughter, stepbrother, stepsister, half brother, half sister, and including the father, mother, grandfather, or grandmother of the individual's spouse and the individual's fiancé or fiancée.

7. Anything provided by an individual on the basis of a personal friendship unless the recipient has reason to believe that, under the circumstances, the gift was provided because of the official position or employment of the recipient or his or her spouse or immediate family member and not because of the personal friendship. In determining whether a gift is provided on the basis of personal friendship, the recipient shall consider the circumstances under which the gift was offered, such as: (a) the history of the relationship between the individual giving the gift and the recipient of the gift, including any previous exchange of gifts between those individuals; (b) whether to the actual knowledge of the recipient the individual who gave the gift personally paid for the gift or sought a tax deduction or business reimbursement for the gift; and (c) whether to the actual knowledge of the recipient the individual who gave the gift also at the same time gave the same or similar gifts to other Board members or employees, or their spouses or immediate family members.
8. Food or refreshments not exceeding \$75 per person in value on a single calendar day; provided that the food or refreshments are: (a) consumed on the premises from which they were purchased or prepared; or (b) catered. *Catered* means food or refreshments that are purchased ready to consume, which are delivered by any means.
9. Food, refreshments, lodging, transportation, and other benefits resulting from outside business or employment activities (or outside activities that are not connected to the official duties of a Board member or employee), if the benefits have not been offered or enhanced because of the official position or employment of the Board member or employee, and are customarily provided to others in similar circumstances.
10. Intra-governmental and inter-governmental gifts. *Intra-governmental gift* means any gift given to a Board member or employee from another Board member or employee, and *inter-governmental gift* means any gift given to a Board member or employee from an officer or employee of another governmental entity.
11. Bequests, inheritances, and other transfers at death.
12. Any item or items from any one prohibited source during any calendar year having a cumulative total value of less than \$100.

Each of the listed exceptions is mutually exclusive and independent of every other.

A Board member or employee, his or her spouse or an immediate family member living with the Board member or employee, does not violate this policy if the recipient promptly takes reasonable action to return a gift from a prohibited source to its source or gives the gift or an amount equal to its value to an appropriate charity that is exempt from income taxation under 26 U.S.C. §501(c)(3).

Enforcement

The Board President and Superintendent shall seek guidance from the Board attorney concerning compliance with and enforcement of this policy and State ethics laws.⁶ The Board may, as necessary or prudent, appoint an Ethics Advisor for this task.

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

⁶ This provision is consistent with sample policy 2:160. *Board Attorney*.

Written complaints alleging a violation of this policy shall be filed with the Superintendent or Board President. If attempts to correct any misunderstanding or problem do not resolve the matter, the Superintendent or Board President shall, after consulting with the Board Attorney, either place the alleged violation on a Board meeting agenda for the Board's disposition or refer the complainant to Board policy 2:260, *Uniform Grievance Procedure*. A Board member who is related, either by blood or by marriage, up to the degree of first cousin, to the person who is the subject of the complaint, shall not participate in any decision-making capacity for the Board. If the Board finds it more likely than not that the allegations in a complaint are true, it shall notify the State's Attorney and/or consider disciplinary action for the employee. ⁷

Definitions ⁸

Unless otherwise stated, all terms used in this policy have the definitions given in the State Officials and Employees Ethics Act, 5 ILCS 430/1-5.

Political activity means:

1. Preparing for, organizing, or participating in any political meeting, political rally, political demonstration, or other political event.
2. Soliciting contributions, including but not limited to the purchase of, selling, distributing, or receiving payment for tickets for any political fundraiser, political meeting, or other political event.
3. Soliciting, planning the solicitation of, or preparing any document or report regarding anything of value intended as a campaign contribution.
4. Planning, conducting, or participating in a public opinion poll in connection with a campaign for elective office or on behalf of a political organization for political purposes or for or against any referendum question.
5. Surveying or gathering information from potential or actual voters in an election to determine probable vote outcome in connection with a campaign for elective office or on behalf of a political organization for political purposes or for or against any referendum question.
6. Assisting at the polls on Election Day on behalf of any political organization or candidate for elective office or for or against any referendum question.
7. Soliciting votes on behalf of a candidate for elective office or a political organization or for or against any referendum question or helping in an effort to get voters to the polls.

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⁷ The Ill. Attorney General's model ethics ordinance includes the specific penalties from the Ethics Act, 5 ILCS 430/50-5. Elsewhere the Act states that a "governmental entity **may** provide in [its] ordinance or resolution ... for penalties similar to those provided in this Act for similar conduct." 5 ILCS 430/70-10. Thus, school boards do not need to enact policy containing criminal sanctions. Rather, as provided in this sample policy, violations can be referred to the State's Attorney.

The Ill. Attorney General's guidance document provides for the unit of local government to use an Ethics Commission to manage complaints. A board that wants to use an Ethics Commission should replace this paragraph, after the first sentence, with the following:

As soon as possible after a complaint is filed, the Superintendent shall appoint a 3-member Ethics Commission. If the Superintendent is the subject of the complaint, the Board President shall perform this duty. Commission members may be any District resident, except that no person shall be appointed who is related, either by blood or by marriage, up to the degree of first cousin, to the person who is the subject of the complaint. If the Commission finds it more likely than not that the allegations in a complaint are true, it shall notify the State's Attorney and/or recommend disciplinary action for the employee.

⁸ The definitions contained in this policy are all from 5 ILCS 430/5-15 with minor adaptations.

8. Initiating for circulation, preparing, circulating, reviewing, or filing any petition on behalf of a candidate for elective office or for or against any referendum question.
9. Making contributions on behalf of any candidate for elective office in that capacity or in connection with a campaign for elective office.
10. Preparing or reviewing responses to candidate questionnaires.
11. Distributing, preparing for distribution, or mailing campaign literature, campaign signs, or other campaign material on behalf of any candidate for elective office or for or against any referendum question.
12. Campaigning for any elective office or for or against any referendum question.
13. Managing or working on a campaign for elective office or for or against any referendum question.
14. Serving as a delegate, alternate, or proxy to a political party convention.
15. Participating in any recount or challenge to the outcome of any election.

With respect to an employee whose hours are not fixed, *compensated time* includes any period of time when the employee is on premises under the control of the District and any other time when the employee is executing his or her official duties, regardless of location. ⁹

Prohibited source means any person or entity who:

1. Is seeking official action by: (a) a Board member, or (b) an employee, or by the Board member or another employee directing that employee;
2. Does business or seeks to do business with: (a) a Board member, or (b) an employee, or with the Board member or another employee directing that employee;
3. Conducts activities regulated by: (a) a Board member, or (b) an employee or by the Board member or another employee directing that employee;
4. Has an interest that may be substantially affected by the performance or non-performance of the official duties of the Board member or employee;
5. Is registered or required to be registered with the Secretary of State under the Lobbyist Registration Act, except that an entity does not become a prohibited source merely because a registered lobbyist is one of its members or serves on its board of directors; or
6. Is an agent of, a spouse of, or an immediate family member living with a prohibited source.

Gift means any gratuity, discount, entertainment, hospitality, loan, forbearance, or other tangible or intangible item having monetary value including but not limited to, cash, food and drink, and honoraria for speaking engagements related to or attributable to government employment or the official position of a Board member or employee.

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

⁹ The Ethics Act prohibits employees from engaging in political activities on *compensated time* but does not define the term. *Compensated time* is easy to determine for employees with fixed working hours. Determining *compensated time* for a salaried employee who does not have obligatory hours of attendance is more difficult. For this reason, the term *compensated time* should include both the time when the employee is physically present on district premises as well as any other time when the employee is engaged in official duties.

Complaints of Sexual Harassment Made Against Board Members by Elected Officials ¹⁰

Pursuant to the State Officials and Employees Ethics Act (5 ILCS 430/70-5), members of the Board and other elected officials are encouraged to promptly report claims of sexual harassment by a Board member. Every effort should be made to file such complaints as soon as possible, while facts are known and potential witnesses are available. If the official feels comfortable doing so, he or she should directly inform the individual that the individual's conduct or communication is offensive and must stop.

Board members and elected officials should report claims of sexual harassment against a member of the Board to the Board President or Superintendent. If the report is made to the Superintendent, the Superintendent shall promptly notify the President, or if the President is the subject of the complaint, the Vice President. Reports of sexual harassment will be confidential to the greatest extent practicable. ¹¹

When a complaint of sexual harassment is made against a member of the Board by another Board member or other elected official, the Board President shall appoint a qualified outside investigator who is not a District employee or Board member to conduct an independent review of the allegations. If the allegations concern the President, or the President is a witness or otherwise conflicted, the Vice President shall make the appointment. If the allegations concern both the President and Vice President, and/or they are witnesses or otherwise conflicted, the Board Secretary shall make the appointment. The investigator shall prepare a written report and submit it to the Board. ¹²

If a Board member has engaged in sexual harassment, the matter will be addressed in accordance with the authority of the Board. ¹³

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

¹⁰ Required. Under the SOEEA, by P.A. 101-221, school districts must, by resolution, amend their sexual harassment policies "to provide for a mechanism for reporting and independent review of allegations of sexual harassment made against an elected official of the governmental unit by another elected official of a governmental unit." 5 ILCS 430/70-5, amended by P.A. 101-221. This policy includes both elected and appointed board members to effectuate the intent of the law, to comprehensively address sexual harassment in the workplace, and for consistent treatment. The statute does not address whether the *independent review* must or may be limited to a board member's conduct in his or her official capacity, or if it can extend to a board member's behavior in his or her individual capacity. Consult the board attorney for advice. See [policy 5:20, *Workplace Harassment Prohibited*](#), and its fns for information about what types of conduct may rise to the level of unlawful sexual harassment under federal and State laws. This policy only addresses the requirements of the SOEEA; it does not address harassment complaints made by employees or other non-elected individuals against board members. Such complaints may be processed under [policy 2:260, *Uniform Grievance Procedure*](#). See [p. 2:260](#) at fn 16.

Unlike employees, board members are not legally required to take sexual harassment prevention training; however, it is a best practice. The Ill. Dept. of Human Rights [offers](#) a free online training module. See [policy 5:20, *Workplace Harassment Prohibited*](#), at fn 4 for more information.

¹¹ The Open Meetings Act (OMA) does not provide a specific exemption for discussion of complaints against a members of a public body in closed session. 5 ILCS 120/2(c)(1), amended by P.A. 101-459.

¹² 5 ILCS 430/70-5(a), amended by P.A. 101-221, [enacts](#) this law. The law requires governmental units, including school districts, to conduct an *independent review* of allegations of sexual harassment made against an elected official by another elected official; however, that term is not defined. Consult the board attorney about how to investigate such complaints.

For boards that wish to authorize the superintendent to appoint the outside investigator in these cases, substitute "Superintendent" for "Board President" in the first sentence, delete the second and third sentences in the paragraph, and delete the Cross Reference to 2:110, [Qualifications, Term, and Duties of Board Officers](#).

¹³ A board's ability to address the harassing behavior of a board member is relatively limited because it does not have the legal authority to remove one of its members. See [policy 2:60, *Board Member Removal from Office*](#), and its footnotes for more information about board member removal. Consult the board attorney when dealing with a claim of sexual harassment by a board member to discuss enforcement options, as well as the accused board member's participation in any decisions regarding the complaint.

The Superintendent will post this policy on the District website and/or make this policy available in the District's administrative office. ¹⁴

LEGAL REF.: 100 ILCS 5/2-110 (Qualifications of Board Members);
5 ILCS 430/, State Officials and Employees Ethics Act.
10 ILCS 5/9-25.1, Election Interference Prohibition Act.

CROSS REF.: 2:100 (Board Member Conflict of Interest), 2:110 (Qualifications, Term, and Duties of Board Officers), 2:260 (Uniform Grievance Procedure), 4:60 (Purchases and Contracts), 5:120 (Employee Ethics; Conduct; and Conflict of Interest)

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¹⁴ This paragraph is optional, but it aligns with the intent of P.A. 101-221. See footnote above.

School Board

Qualifications, Term, and Duties of Board Officers 1

The School Board officers are: President, Vice President, Secretary, and Treasurer.² These officers are elected or appointed by the Board at its organizational meeting.

President 3

The Board elects a President from its members for a two-year term. The duties of the President are to:

1. Preside at all meetings;
2. Focus the Board meeting agendas on appropriate content;
3. Make all Board committee appointments, unless specifically stated otherwise; ⁴
4. Attend and observe any Board committee meeting at his or her discretion; ⁵
5. Represent the Board on other boards or agencies;
6. Sign official District documents requiring the President's signature, including Board minutes and Certificate of Tax Levy;
7. Call special meetings of the Board;
8. Serve as the head of the public body for purposes of the Open Meetings Act and Freedom of Information Act; ⁶
9. Ensure that a quorum of the Board is physically present at all Board meetings, ⁷ or otherwise provided for by the Open Meetings Act; ⁷

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¹ State law controls this policy's content. Selection of officers must be in open session. 5 ILCS 120/2. Board officer vacancies are discussed in *Answers to FAQs: Vacancies on the Board of Education*, Ill. Council of School Attorneys, www.iasb.com/law/vacancies.cfm.

² Districts governed by a board of directors have three officers: a president, clerk, and treasurer. The president and clerk must be board members. 105 ILCS 5/10-5. and/or req. st that t. board member consult his or her own attorney

³ 105 ILCS 5/10-13. The board by resolution may decrease to one year the term of office for the president.

Of the listed duties, only the following are imposed by law: #1, preside at meetings (Id.); #6, sign minutes (105 ILCS 5/10-7) and sign certificate of tax levy (105 ILCS 5/17-11); #7, call special meetings (105 ILCS 5/10-16); and #8, serve as *head of the public body* for the Open Meetings Act (OMA) and the Freedom of Information Act (FOIA) purposes (5 ILCS 140/2(e)).

⁴ Alternatively, strike the "unless" clause and substitute: "subject to Board approval." Be sure this treatment is consistent with policy 2:150, *Committees*.

⁵ Optional. A board that wants the president to participate in committee meetings may use the following alternative: "Be a member of all Board committees." Using this alternative, the president would be counted to determine the number of members that constitutes a quorum for each board committee meeting. If a board would like the superintendent to attend any or all meetings of a board committee, it should consider asking the superintendent to be a committee resource person (or other such title) rather than an ex-officio member of the board committee itself. That way, the superintendent will not count to determine the number of committee members that constitutes a quorum.

⁶ The *head of the public body* or its attorney may request an advisory opinion from the Ill. Attorney General Public Access Counselor (PAC) concerning compliance with OMA or FOIA. 5 ILCS 120/3.5(h) and 5 ILCS 140/9.5(h). FOIA defines *head of the public body* to mean *president* or "such person's duly authorized designee." 5 ILCS 140/2(e). Preliminary drafts, recommendations, and other records in which opinions are expressed, or policies are formulated, lose this exemption from disclosure if a relevant portion of a requested record is publicly cited and identified by the *head of the public body*. 5 ILCS 140/7.1(f).

⁷ Optional. Requiring the president to monitor the presence of a quorum assists compliance with OMA's mandate that a quorum be physically present at all board meetings. 5 ILCS 120/7.

10. Administer the oath of office to new Board members; **8**
11. Serve as or appoint the Board's official spokesperson to the media; ~~and~~
 Except when the Board President is the subject of a complaint of sexual harassment, a witness, or otherwise conflicted, appoint a qualified outside investigator to conduct an independent review of allegations of sexual harassment made against a Board member by another Board member or elected official; ~~and~~ **9**

10 105 ILCS 5/10-13.1 provides that the "vice-president shall perform the duties of the president if there is a vacancy in the office of president or in case of the president's absence or inability to act" However, an earlier enacted statute calls for the appointment of a *president pro tempore* if the president is absent from any meeting or refuses to perform his or her duties, and specifies that the "vice-president, if the board elects such officer, shall be appointed the president pro tempore." 105 ILCS 5/10-13. This policy resolves any confusion by implementing the latter enacted statute and stating that the vice president fills a vacancy in the presidency.

The President is permitted to participate in all Board meetings in a manner equal to all other Board members, including the ability to make and second motions.

The Vice President fills a vacancy in the Presidency. **11**

Vice President 12

The Board elects a Vice President from its members for a two-year term. The Vice President performs the duties of the President if:

1. The office of President is vacant;
2. The President is absent; or
3. The President is unable to perform the office's duties.

A vacancy in the Vice Presidency is filled by a special Board election.

Secretary 13

The Board elects a Secretary for a two-year term. The Secretary may be, but is not required to be, a Board member. The Secretary may receive reasonable compensation as determined by the Board before appointment. However, if the Secretary is a Board member, the compensation shall not exceed \$500

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8 Optional. Omit this duty if policy 2:80, *Board Member Oath and Conduct* provides that the board member oath is given by other means.

9 See policy 2:105, *Ethics and Gift Ban, Complaints of Sexual Harassment Made Against Board Members by Elected Officials* subhead. 5 ILCS 430/70-5, amended by P.A. 101-221, requires school districts to amend their sexual harassment policies "to provide for a mechanism for reporting and independent review of allegations of sexual harassment made against an elected official of the governmental unit by another elected official of a governmental unit." If the board has chosen to have the Superintendent appoint an outside investigator in these cases (see 2:105, *Ethics and Gift Ban*, at fn 11), remove item 12 from the list of board president duties and delete the Cross Reference to 2:105, *Ethics and Gift Ban*.

10 105 ILCS 5/10-13.1 provides that the "vice-president shall perform the duties of the president if there is a vacancy in the office of president or in case of the president's absence or inability to act" However, an earlier enacted statute calls for the appointment of a *president pro tempore* if the president is absent from any meeting or refuses to perform his or her duties, and specifies that the "vice-president, if the board elects such officer, shall be appointed the president pro tempore." 105 ILCS 5/10-13. This policy resolves any confusion by implementing the latter enacted statute and stating that the vice president fills a vacancy in the presidency.

11 105 ILCS 5/10-13.1 states that the "vice-president shall perform the duties of the president if there is a vacancy in the office of president or in case of the president's absence or inability to act" However, an earlier enacted statute calls for the appointment of a *president pro tempore* if the president is absent from any meeting or refuses to perform his or her duties, and specifies that the "vice-president, if the board elects such officer, shall be appointed the president pro tempore." 105 ILCS 5/10-13. This policy resolves any confusion by implementing the latter enacted statute and stating that the vice president fills a vacancy in the presidency.

12 105 ILCS 5/10-13.1. The board by resolution may decrease to one year the term of office for the vice president.

13 105 ILCS 5/10-14. The board by resolution may decrease to one year the term of office for the secretary. In districts governed by a board of directors, a clerk who is a board member performs these duties. 105 ILCS 5/10-5. The policy's provisions regarding compensation are required by 105 ILCS 5/10-14 (governs secretaries who are board members and non-board members) and by 50 ILCS 145/2 (governs secretaries who are board members).

Of the listed duties, only the following are imposed by law: #1, board meeting minutes (105 ILCS 5/10-7; see policy 2:220, *School Board Meeting Procedure*, for the requirements for minutes); #3, records board's official acts and submits them to the treasurer (105 ILCS 5/10-7); #4, treasurer's report (105 ILCS 5/10-8); #5, local election official (see fns 2 and 7 of policy 2:30, *School District Elections*); #6, public inspection of the budget (105 ILCS 5/17-1).

Use this alternative for districts in suburban Cook County: replace "Regional Superintendent" in item #4 with "appropriate Intermediate Service Center."

per year, as fixed by the Board at least 180 days before the beginning of the term.¹⁴ The duties of the Secretary are to:

1. Keep minutes for all Board meetings, and keep the verbatim record for all closed Board meetings;
2. Mail meeting notification and agenda to news media who have officially requested copies;
3. Keep records of the Board's official acts, and sign them, along with the President, before submitting them to the Treasurer at such times as the Treasurer may require;
4. Report to the Treasurer on or before July 7, annually, such information as the Treasurer is required to include in the Treasurer's report to the Regional Superintendent;
5. Act as the local election official for the District;
6. Arrange public inspection of the budget before adoption;
7. Publish required notices;
8. Sign official District documents requiring the Secretary's signature; and
9. Maintain Board policy and such other official documents as directed by the Board.

The Secretary may delegate some or all of these duties, except when State law prohibits the delegation. The Board appoints a secretary pro tempore, who may or may not be a Board member, if the Secretary is absent from any meeting or refuses to perform the duties of the office. A permanent vacancy in the office of Secretary is filled by special Board election.

Recording Secretary 15

The Board may appoint a Recording Secretary who is a staff member. The Recording Secretary shall:

1. Assist the Secretary by taking the minutes for all open Board meetings;
2. Assemble Board meeting material and provide it, along with prior meeting minutes, to Board members before the next meeting; and
3. Perform the Secretary's duties, as assigned, except when State law prohibits the delegation.

In addition, the Recording Secretary or Superintendent receives notification from Board members who desire to attend a Board meeting by video or audio means. ¹⁶

Treasurer 17

The Treasurer of the Board shall be either a member of the Board who serves a one-year term or a non-Board member who serves at the Board's pleasure.¹⁸ A Treasurer who is a Board member may not be

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¹⁴ 105 ILCS 5/10-14 and 50 ILCS 145/2.

¹⁵ This section is optional.

¹⁶ To allow attendance by video or audio means, a board must adopt policy language conforming to the restrictions in OMA, 5 ILCS 120/2.01 and 120/7. See subhead **Quorum and Participation by Audio or Video Means** in policy 2:220, *School Board Meeting Procedure*, and its En 31.

¹⁷ This section is for: (1) districts in a Class I county that withdrew from the authority of the township treasurer, or (2) a Class II county (Cook Co.) district that has withdrawn from the authority of the township treasurer or is located in a township in which the office of township treasurer was abolished. 105 ILCS 5/5-1 defines Class I county school units as districts in counties with less than 2,000,000 inhabitants. Those districts in Cook County (Class II county) under the authority of the trustees of schools of the township and the township treasurers should use this alternative: "Qualifications, appointment, and duties of the Treasurer for the School District shall be as provided in the School Code." See 105 ILCS 5/8-1(a) for how the township treasurer is appointed and the term of office; duties are found in 105 ILCS 5/8-2, 5/8-6, 5/8-16, and 5/8-17.

¹⁸ 105 ILCS 5/8-1(b). The treasurer's term of office is two years if the district is located in a Class II county (Cook Co.) that was under the jurisdiction and authority of the township treasurer and township trustees of schools at the time those offices were abolished. 105 ILCS 5/8-1(c). Those boards should use the following alternative:

The Treasurer of the Board shall serve a two-year term beginning and ending on the first day of July.

compensated.¹⁹ A Treasurer who is not a Board member may be compensated provided it is established before the appointment.²⁰ The Treasurer must: **21**

1. Be at least 21 years old;
2. Not be a member of the County Board of School Trustees; and
3. Have a financial background or related experience, or 12 credit hours of college-level accounting.

The Treasurer shall: **22**

1. Furnish a bond, which shall be approved by a majority of the full Board;
2. Maintain custody of school funds;
3. Maintain records of school funds and balances;
4. Prepare a monthly reconciliation report for the Superintendent and Board; and
5. Receive, hold, and expend District funds only upon the order of the Board.

A vacancy in the Treasurer's office is filled by Board appointment.

LEGAL REF.: 5 ILCS 120/7 and 420/4A-106.
105 ILCS 5/8-1, 5/8-2, 5/8-3, 5/8-6, 5/8-16, 5/8-17, 5/10-1, 5/10-5, 5/10-7, 5/10-8,
5/10-13, 5/10-13.1, 5/10-14, 5/10-16.5, § 10, 21, 2, and 5/17-1, and 5/21-1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100.

CROSS REF.: 2:80 (Board Member Oath and Conduct), 2:105 (Ethics and Gift Ban), 2:150 (Committees), 2:210 (Organizational School Board Meeting), 2:220 (School Board Meeting Procedure)

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¹⁹ 105 ILCS 5/8-1(b) and (c).

²⁰ 105 ILCS 5/8-3.

²¹ Qualification #1 is required for treasurers in a Class I county or Class II county (Cook Co.) that withdrew from the authority of the township treasurer and township trustees of schools. 105 ILCS 5/8-1(b). This sample policy makes it applicable to Class II county (Cook Co.) districts that were under the authority of the township treasurer and township trustees of schools at the time those offices were abolished.

Qualification #2 is required for treasurers in a Class I county or Class II county (Cook Co.) that withdrew from the authority of the township treasurer and township trustees of schools. 105 ILCS 5/8-1(b). Districts in a Class II county (Cook Co.) that were under the authority of the township treasurer and township trustees of schools at the time those offices were abolished should replace this qualification as follows: "2. Not be the District Superintendent." 105 ILCS 5/8-1(c).

Qualification #3 is required for treasurers in a Class I county. 105 ILCS 5/8-1(d). This qualification should be replaced by the following for districts in a Class II county (Cook Co.): "Upon being appointed for his or her first term, be a certified public accountant or a certified chief school business official as defined in the School Code; experience as a township treasurer in a Class II county school before July 1, 1989 is deemed equivalent." 105 ILCS 5/8-1(e).

²² 105 ILCS 5/8-2, 5/8-6, 5/8-16, 5/8-17, and 5/8-16.

The Superintendent or designee shall maintain on the District website a log identifying the complete training and development activities of each Board member, including both mandatory and non-mandatory training.⁷

Professional Development; Adverse Consequences of School Exclusion; Student Behavior⁸

The Board President or Superintendent, or their designees, will make reasonable efforts to provide ongoing professional development to Board members about the adverse consequences of school exclusion and justice-system involvement, effective classroom management strategies, culturally responsive discipline, appropriate and available supportive services for the promotion of student attendance and engagement, and developmentally appropriate disciplinary methods that promote positive and healthy school climates.

Board Self-Evaluation

The Board will conduct periodic self-evaluations with the goal of continuous improvement.⁹

New Board Member Orientation¹⁰

The orientation process for newly elected or appointed Board members includes:

1. The Board President or Superintendent, or their designees, shall give each new Board member a copy of or online access to the Board Policy Manual, the Board's regular meeting minutes for the past year, and other helpful information including material describing the District and explaining the Board's roles and responsibilities.
2. The Board President or designee shall schedule one or more special Board meetings, or schedule time during regular meetings, for Board members to become acquainted and to review Board processes and procedures.
3. The Board President may request a veteran Board member to mentor a new member.¹¹
4. All new members are encouraged to attend workshops for new members conducted by the Illinois Association of School Boards.

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⁷ 105 ILCS 5/10-16a requires each school district to post on its website, if any, the names of all board members who have completed the minimum of four hours of training described in #1. Recognizing that a board may want to highlight all training and development achievements, the sample policy extends this reporting requirement to all training and development activities. For a website reporting template, see 2:120-E2, *Website Listing of Development and Training Completed by Board Members*.

A board may choose to strictly follow the statute by using the following alternative: "The Superintendent or designee shall post on the District website the names of all Board members who have completed the professional development leadership training described in number 1, above."

⁸ Optional. 105 ILCS 5/10-22.6(c-5). *Information about professional development opportunities is available through IASB's Online Learning Center (OLC). Inquire at: onlinelearning@iasb.com.*

⁹ Boards are not required to conduct self-evaluations, but may hold a closed meeting with representatives of a State association authorized under Article 23 of the School Code for the purpose of discussing self-evaluation practices and procedures, or professional ethics. 5 ILCS 120/2(1)(c-6).

¹⁰ New board member orientation is a critical step in helping new board members become effective and in promoting a smooth functioning *new team*. The first paragraph should be customized to add references to the IASB policy services that the district receives, e.g., **PRESS**, **PRESS Online**, **School Board Policies Online**, and **PRESS Plus**.

¹¹ See 2:120-E1, *Guidelines for Serving as a Mentor to a New School Board Member*.

Candidates

The Superintendent or designee shall invite all current candidates for the office of Board member to attend: (1) Board meetings, except that this invitation shall not extend to any closed meetings, and (2) pre-election workshops for candidates.

LEGAL REF.: 5 ILCS 120/1.05 and 120/2.
105 ILCS 5/10-16a and 5/24-16.5.

CROSS REF.: 2:80 (Board Member Oath and Conduct), 2:125 (Board Member Compensation; Expenses), 2:200 (Types of School Board Meetings)

School Board

School Board Meeting Procedure 1

Agenda

The School Board President is responsible for focusing the Board meeting agendas on appropriate content.² The Superintendent shall prepare agendas in consultation with the Board President. The President shall designate a portion of the agenda as a consent agenda for those items that usually do not require extensive discussion before Board action. Upon the request of any Board member, an item will be withdrawn from the consent agenda and placed on the regular agenda for independent consideration.³

Each Board meeting agenda shall contain the general subject matter of any item that will be the subject of final action at the meeting.⁴ Items submitted by Board members to the Superintendent or the President shall be placed on the agenda for an upcoming meeting.⁵ District residents may suggest inclusions for the agenda.⁶ The Board will take final action only on items contained in the posted agenda; items not on the agenda may still be discussed.⁷

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

¹ State law requires boards to have a policy concerning: (1) the public's right to record meetings (5 ILCS 120/2.05), and (2) if applicable, attendance by video or audio means (5 ILCS 120/7, amended by P.A. 101-640). Boards are not mandated to have a policy on the remaining topics covered in this policy. The following items are matters of local discretion: agenda preparation and contents, process for board members to have items placed on agenda, receipt and handling of residents' requests for agenda inclusions, and order of business.

² Appropriate agenda content includes: establishing board processes, clarifying the district's purpose, delegating authority, defining operating limits, monitoring district progress, and taking legally required board action. See *IASB's Foundational Principles of Effective Governance* (https://www.iasb.org/~/media/Files/2019/06/20190601_FoundationalPrinciplesofEffectiveGovernance.pdf).

³ To comply with the Open Meetings Act's (OMA's) mandate that minutes contain a "summary of discussion on all matters proposed, deliberated, or decided," a board should include a list of consent items in the agenda. OMA also requires that any final action "be preceded by a public recital of the nature of the matter being considered and other information that will inform the public of the business being conducted." 405 ILCS 120/2(e). Some level of explanation of the consent agenda items must be verbally given before a board votes to approve a consent agenda. The Ill. Supreme Court has held that "the recital must announce the nature of the matter under consideration, with sufficient detail to identify the particular transaction or issue, but need not provide an explanation of its terms or its significance." Bd. of Educ. v. Bd. of Springfield Sch. Dist., No. 186 v. Atty. Gen. of Ill., 77 N.E.3d 625 (Ill. 2017).

⁴ 5 ILCS 120/2.02(c). The Ill. Appellate Court held that OMA prohibits a board from voting on a matter at a regular meeting that is not on the pre-meeting published agenda. Rice v. Bd. of Trustees of Adams County, 326 Ill.App.3d 1120 (4th Dist. 2002).

⁵ An alternative follows:

Any Board member may submit suggested agenda items to the Board President for his or her consideration.

⁶ See policy 2:230, *Public Participation at School Board Meetings and Petitions to the Board*. In districts governed by a board of school directors, an appointed board official must give a person requesting consideration of a matter by the board a formal written response no later than 60 days after receiving the request. The response must establish a meeting before the board or list the reasons for denying the request. 105 ILCS 5/10-6.

Options follow to restrict the addition of new agenda items: the phrases between [] may be used together, separately, or eliminated.

Discussion items may be added to the agenda [at the beginning of a regular meeting] [upon unanimous approval of those Board members present].

⁷ An opinion from the Ill. Public Access Counselor found no violation of the OMA when a board removed an item from the agenda within the 48-hour notice time period. PAO 14-3. Removals inform the public that the board does not plan to proceed on the topic.

The Superintendent shall provide a copy of the agenda, with adequate data and background information, to each Board member at least 48 hours before each meeting, except a meeting held in the event of an emergency.⁸ The meeting agenda shall be posted in accordance with Board policy 2:200, *Types of School Board Meetings*.

The Board President shall determine the order of business at regular Board meetings. Upon consent of a majority of members present, the order of business at any meeting may be changed.

Voting Method

Unless otherwise provided by law, when a vote is taken upon any measure before the Board, with a quorum being present, a majority of the votes cast shall determine its outcome.⁹ A vote of *abstain* or *present*, or a vote other than *yea* or *nay*, or a failure to vote, is counted for the purposes of determining whether a quorum is present. A vote of *abstain* or *present*, or a vote other than *yea* or *nay*, or a failure to vote, however, is not counted in determining whether a measure has been passed by the Board, unless otherwise stated in law. The sequence for casting votes is rotated. ¹⁰

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⁸ State law does not require this, except that 105 ILCS 5/10-16 requires members to receive a written notice of a special meeting that includes the meeting's purpose.

⁹ In most situations, the failure of a member to vote has the effect of acquiescence or concurrence with the majority of votes cast. *Prosser v. Village of Fox Lake*, 438 N.E.2d 134 (Ill. 1982); *People v. Bertrand*, 978 N.E.2d 681 (1st Dist. 2012). For example, a motion passes with a vote of two *yeas*, one *nay*, and four *abstentions*. A motion fails with a vote of two *yeas*, three *nays*, and two *abstentions*. A motion fails with a vote of three *yeas*, three *nays*, and one *abstain* because there is no majority. Exceptions include when a statute requires the *affirmative vote* of a majority or extra. Statutory exceptions include the following board actions:

1. Dismissing a teacher for any reason other than reduction of staff or elimination of that position requires approval by the majority of all members. 105 ILCS 5/24-12.
2. Directing the sale of district real property or buildings thereon must be approved by at least 2/3 of the board members (105 ILCS 5/5-22), unless the sale is residential property constructed or renovated by students as part of a curricular program, in which case, the board could engage the services of a licensed real estate broker to sell the property for a commission not to exceed 7%, contingent upon the public listing of the property on a multiple listing service for a minimum of 14 calendar days and a sale of the property happens within 120 days.
3. Making or renewing a lease of school property to another school district or municipality or body politic and corporate for a term longer than ten years, or to alter the terms of such a lease whose unexpired term exceeds 10 years, requires approval by at least 2/3 of the board's full membership. 105 ILCS 5/10-22.11.
4. Leasing any building, rooms, grounds, and appurtenances to be used by the district for school or administration purposes for a term longer than ten years, or to alter the terms of such a lease whose unexpired term exceeds ten years, requires approval by at least 2/3 of the board's full membership. 105 ILCS 5/10-22.12.
5. Obtaining personal property by lease or installment contract requires approval by an affirmative vote of at least 2/3 of the board members. *Personal property* includes computer hardware and software and all equipment, fixtures, and improvements to existing district facilities to accommodate computers. 105 ILCS 5/10-22.25a.
6. Adopting a supplemental budget after a successful referendum requires approval by a majority of the full board. 105 ILCS 5/17-3.2.
7. Petitioning the circuit court for an emergency election requires approval by a majority of the members. 10 ILCS 5/2A-1.4.
8. Expending funds in emergency situation in the absence of required bidding requires approval by at least 3/4 of the board. 105 ILCS 5/10-20.21.
9. Exchanging school building sites requires approval by at least a 2/3 majority of the board. 105 ILCS 5/5-23.
10. Waiving the administrative cost cap requires approval by an affirmative vote of at least 2/3 of the board. 105 ILCS 5/17-1.5.
11. Authorizing an advisory question of public policy to be placed on the ballot at the next regularly scheduled election requires approval by a majority of the board. 105 ILCS 5/9-1.5.

¹⁰ Voting sequence is at the board's discretion. A board may indicate how frequently it changes the voting sequence by adding *after each vote*, *monthly*, or *annually* to the end of the sentence. All board members, including officers, may make motions and vote.

On all questions involving the expenditure of money and on all questions involving the closing of a meeting to the public, a roll call vote shall be taken and entered in the Board's minutes. An individual Board member may request that a roll call vote be taken on any other matter; the President or other presiding officer may approve or deny the request but a denial is subject to being overturned by a majority vote of the members present. ¹¹

Minutes

The Board Secretary shall keep written minutes of all Board meetings (whether open or closed), which shall be signed by the President and the Secretary. ¹² The minutes include: ¹³

1. The meeting's date, time, and place;
2. Board members recorded as either present or absent;
3. A summary of the discussion on all matters proposed, deliberated, or decided, and a record of any votes taken;
4. On all matters requiring a roll call vote, a record of who voted *yea* and *nay*;
5. If the meeting is adjourned to another date, the time and place of the adjourned meeting;
6. The vote of each member present when a vote is taken to hold a closed meeting or portion of a meeting, and the reason for the closed meeting with a citation to the specific exception contained in the Open Meetings Act (OMA) authorizing the closed meeting;
7. A record of all motions, including individuals making and seconding motions;
8. Upon request by a Board member, a record of how he or she voted on a particular motion; ¹⁴ and
9. The type of meeting, including any notices and, if a reconvened meeting, the original meeting's date.

The minutes shall be submitted to the Board for approval or modification at its next regularly scheduled open meeting. Minutes for open meetings must be approved within 30 days after the meeting or at the second subsequent regular meeting, whichever is later. ¹⁵

At least once annually, but no more than once on any day, is it permissible in an open meeting, the Board: (1) reviews minutes from all closed meetings that are currently unavailable for public release, and (2) determines which, if any, no longer require confidential treatment and are available for

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¹¹ This paragraph's first sentence contains the requirements in 105 ILCS 5/10-7. The second sentence is optional and may be deleted or amended. Other optional provisions include:

Option 1: Any Board member may include a written explanation of his or her vote in the District file containing individual Board member statements; the explanation will not be part of the minutes.

Option 2: Any Board member may request that his or her vote be changed before the President announces the result.

¹² 105 ILCS 5/10-7 and 5 ILCS 120/2.06. The minutes are the only record showing that the board took official action, including necessary prerequisites to make such action legally sufficient. A non-member recording secretary or clerk may be given these responsibilities. 105 ILCS 5/10-14.

¹³ All items listed are required to be recorded in minutes **except** items 7-9; other items may be included at the board's discretion. 5 ILCS 120/2.06 and 120/2a; 105 ILCS 5/10-7. The Ill. Public Access Counselor (PAC) found a board's vague reference to a *personnel matter* insufficient to meet the requirements of #3. PAO 13-7.

¹⁴ The intent behind this optional item is to give an individual member a means of recording his or her support or opposition to a motion that was taken by oral vote: it will record that the individual took an alternative position to that of the majority without having the minutes recite unnecessary detail.

¹⁵ Required by 5 ILCS 120/2.06(b).

public inspection.¹⁶ The Board may meet in a prior closed session to review the minutes from closed meetings that are currently unavailable for public release, but it reports their distribution only in summary.¹⁷

The Board's meeting minutes must be submitted to the Board Treasurer at such times as the Treasurer may require.¹⁸

The official minutes are in the custody of the Board Secretary.¹⁹ Open meeting minutes are available for inspection during regular office hours within 10 days after the Board's approval;²⁰ they may be inspected in the District's main office, in the presence of the Secretary, the Superintendent or designee, or any Board member.

Minutes from closed meetings are likewise available, but only if the Board has released them for public inspection, except that Board members may access closed session minutes not yet released for public inspection (1) in the District's administrative offices or their official storage location, and (2) in the presence of the Recording Secretary, the Superintendent or designated administrator, or any elected Board member.²¹ The minutes, whether reviewed by members of the public or the Board, shall not be removed from the District's administrative offices or their official storage location except by vote of the Board or by court order.²²

The Board's open meeting minutes shall be posted on the District website within ten days after the Board approves them; the minutes will remain posted for at least 60 days.²³

Verbatim Record of Closed Meetings

The Superintendent, or the Board Secretary when the Superintendent is absent, shall audio record all closed meetings.²⁴ If neither is present, the Board President or presiding officer shall assume this

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¹⁶ Required by 5 ILCS 120/2.06(b), amended by Public Act 09-0653. The statute requires that the board report the distribution of minutes only in summary. The board may meet in a prior closed session to review the minutes from closed meetings that are currently unavailable for public release, but it reports their distribution only in summary. 5 ILCS 120/2.06(b). The committee also proposed 5 ILCS 120/2.06(b) to read: "The board may meet in a prior closed session to review the minutes from closed meetings that are currently unavailable for public release, but it reports their distribution only in summary." Public Act 09-0653.

While board notes from closed sessions may be confidential under the Freedom of Information Act (FOIA), they may be discoverable by the opposing party in a lawsuit. *Bobkoski v. Cary Sch.*, Dist. 26, 141 F.R.D. 88 (N.D. Ill. 1992).

The failure to strictly comply with the semi-annual review does not cause the written minutes or related verbatim record to become public, provided that the board, within 60 days of discovering its failure to strictly comply, reviews the closed session minutes and reports the result of that review in open session. 5 ILCS 120/2.06(b), amended by Public Act 09-0653.

¹⁷ 5 ILCS 120/2.06(b) allows boards to discuss the confidentiality needs of closed meeting minutes in closed meetings.

¹⁸ Required by 105 ILCS 5/10-7.

¹⁹ Optional provision: "A copy of the minutes is kept in a secure location appropriate for valuables."

²⁰ Required by 5 ILCS 120/2.06(b).

²¹ 5 ILCS 120/2.06(b). The listed individuals in the statute are matched to the titles in the IASB Policy Reference Manual. If the board wishes to mirror the statutory language, delete: ~~the Recording Secretary, the Superintendent or designated administrator, or any elected Board member~~ and replace with: "a records secretary, an administrative official of the public body, or any elected official of the public body."

See the discussion in paragraph two of fn 27 below about what *in the presence of* means.

²² *Id.*

²³ Posting on the website is required *only if* the district has a website that is maintained by a full-time staff member; if not, this sentence may be omitted. 5 ILCS 120/2.06(b).

²⁴ Boards must keep a verbatim record of their closed meetings in the form of an audio or video recording. 5 ILCS 120/2.06(b). This sample policy uses audio recording only; a board that uses a video recording should amend this policy and exhibit 2:220-E1, *Board Treatment of Closed Meeting Verbatim Recordings and Minutes*.

The interests of continuity, efficiency, and ease of holding someone accountable suggest that the superintendent be made responsible for making and storing the verbatim recordings. If the superintendent is not present, e.g., during discussions concerning the superintendent's contract, the tasks should be given to a board member.

responsibility. After the closed meeting, the person making the audio recording shall label the recording with the date and store it in a secure location. The Superintendent shall ensure that: (1) an audio recording device and all necessary accompanying items are available to the Board for every closed meeting, and (2) a secure location for storing closed meeting audio recordings is maintained close to the Board's regular meeting location. ²⁵

After 18 months have passed since being made, the audio recording of a closed meeting is destroyed provided the Board approved: (1) its destruction, and (2) minutes of the particular closed meeting. ²⁶

Individual Board members may access verbatim recordings in the presence of the Recording Secretary, the Superintendent or designated administrator, or any elected Board member.²⁷ Access to the verbatim recordings is available at the District's administrative offices or the verbatim recording's official storage location.²⁸ Requests shall be made to the Superintendent or Board President. While a Board member is listening to a verbatim recording, it shall not be re-recorded or removed from the District's main office or official storage location, except by vote of the Board or by court order. ²⁹

Before making such requests, Board members should consider whether such requests are germane to their responsibilities, service to District, and/or Oath of Office in policy 2:80, *Board Member Oath and Conduct*. In the interest of encouraging free and open expression by Board members during closed

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²⁵ Alternatively, use: "is maintained within the District's administrative offices or their official storage location."

²⁶ This paragraph paraphrases 5 ILCS 120/2.06(e). No notification to, or the approval of, a records commission or the State Archivist is needed if a recording is destroyed under the conditions listed.

²⁷ 5 ILCS 120/2.06(e). The listed individuals align with the other titles used in the IASB Policy Reference Manual. If the board wishes to mirror the statute, delete: ~~the Recording Secretary, the Superintendent or designated administrator, or any elected Board member~~ and replace with: "a records secretary, an administrative official of the public body, or any elected official of the public body."

The intent of the *in the presence of* language is meant to protect both (1) the verbatim recordings/closed session minutes (see fn 21 above), and (2) the board members requesting access to them. It ensures that a school district official is present at all times when a requesting board member accesses the verbatim recording/closed session minutes. The requirement is meant to prevent misuse and removal of the verbatim recording/closed session minutes from the district offices or official storage location. It is also meant to protect the board member who requests the access from being alone and in a situation where ~~the board member~~ could potentially be accused of tampering with or taking the verbatim recording/closed session minutes.

Consult the board attorney about:

1. The practice of sending an *appointed* board member to be present with a board member who requests access to verbatim recordings/closed session minutes. 5 ILCS 120/2.06(e) states, "any *elected* member of the Board;" appointed is not listed but is mentioned elsewhere in the language of this section of the law;
2. Access to verbatim recordings/closed session minutes by other officials employed by the district, e.g., superintendent or other high-level administrators and even the board attorney; and
3. How this law affects the sharing of closed session minutes with board members prior to a meeting at which the closed session minutes will be approved.

The intent of P.A. 99-515, which amended 5 ILCS 120/2.06(e), was to manage a board member's *individual* request for access to these items in *their individual capacity* (see 2:80, *Board Member Oath and Conduct*), not change prior practices in regard to other officials and board attorneys or the required work of school boards under various laws. While many attorneys do not interpret the *new* law to restrict access or change procedures for these other high-level school officials and attorneys employed by the district, some attorneys do and it is important to obtain legal advice on this specific issue.

²⁸ *Id.*

²⁹ *Id.*

meetings, the recordings of closed meetings should not be used by Board members to confirm or dispute the accuracy of recollections. ³⁰

Quorum and Participation by Audio or Video Means ³¹

A quorum of the Board must be physically present at all Board meetings. A majority of the full membership of the Board constitutes a quorum.

Provided a quorum is physically present, a Board member may attend a meeting by video or audio conference if he or she is prevented from physically attending because of: (1) personal illness or disability, (2) employment or District business, or (3) a family or other emergency. If a member wishes to attend a meeting by video or audio means, he or she must notify the recording secretary or Superintendent at least 24 hours before the meeting unless advance notice is impractical. The recording secretary or Superintendent will inform the Board President and make appropriate arrangements. A Board member who attends a meeting by audio or video means, as provided in this policy, may participate in all aspects of the Board meeting including voting on any item.

No Physical Presence of Quorum and Participation by Audio or Video; Disaster Declaration ³²

The ability of the Board to meet in person with a quorum physically present at its meeting location may be affected by the Governor or the Director of the Ill. Dept. of Public Health issuing a disaster

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³⁰ This paragraph is optional. It provides boards an opportunity to discuss and encourage each member to carefully think about purposes for their requests to listen to verbatim recordings, which historically has been and should continue to be to “access information relevant to the exercise of duties” for the public body. Intra-board conflicts may escalate if the recording is used to confirm or dispute who-said-what. Prior to P.A. 99-515, OMA did (and still does) allow boards to release these types of information. 5 ILCS 120/2.06(e). Further, Ill. Atty. Gen. Op. 32, 1996, opined that board members cannot be denied access to information relevant to the exercise of his or her duties. Board members should evaluate whether their requests under 5 ILCS 120/2.06(e) are “relevant to the exercise of their duties” before making such requests. Confirming or disputing who-said-what diverts resources away from operations of the district in educating its students. Additional considerations in listening to verbatim recordings may include personnel and student records confidentiality issues, which should be discussed with the board attorney.

³¹ 5 ILCS 120/2.01 and 120/7, amended by P.A. 101-640. See also 105 ILCS 5/10-6 and 5/10-12. In order to allow attendance by video or audio means, a board must adopt a policy conforming to the restrictions in OMA. The statute requires the board member who wishes to attend remotely to notify the “recording secretary or clerk of the public body.” The policy includes the superintendent as a possible person to receive the notice. Everything in this section is required aside from provisions on the length of notification that is given the secretary and the process for accommodating the request. Alternatively, a board may: (1) prohibit members from participating by video or audio means by omitting this section, (2) add other requirements, or (3) alter the 24 hour notification. Note that the statute does not contemplate someone either approving or denying a request, only that the request be accommodated if the notification is provided.

In a non-binding opinion, the PAC found a public body violated OMA when it allowed a board member to join a closed session meeting remotely without first taking action at that particular meeting in open session to approve the remote participation. 2019 PAC 57660. Therefore, even with the adoption of this policy to approve remote participation, best practice is to ensure the public is informed of any board members that are participating remotely for a particular board meeting. Consult the board attorney for advice on whether the board should take action every time it wishes to permit a member to participate remotely or in those instances where a board member objects to such participation.

³² 5 ILCS 120/2.01 and 120/7(e)(1)-(10), amended by P.A. 101-640. See also 105 ILCS 5/10-6 and 5/10-12. During the 2020 COVID-19 pandemic, Ill. Gov. Pritzker issued Executive Order (EO) 2020-07 pursuant to 20 ILCS 3305/7 (disaster proclamation due to public health emergency) that temporarily suspended OMA’s physical quorum requirement. The Governor extended this OMA relief through subsequent Executive Orders as the crisis continued. <https://www.legis.gov/submitter/2020/07/07/EO%2020-07%20-%20Public%20Health%20Emergency%20-%20COVID-19%20-%20SUSPENDING%20THE%20PHYSICAL%20QUORUM%20REQUIREMENT%20-%202020-07-07> 5 ILCS 120/120/7(e), amended by P.A. 101-640 was enacted, immediately requiring public bodies to meet a number of conditions before suspending the physical quorum requirement.

Boards must remember that public comment is still required when a quorum is not physically present at the meeting location. See Public Comment section of the Ill. Atty. Gen.’s guidance entitled *Guidance to Public Bodies on the Open Meetings Act and the Freedom of Information Act During the COVID-19 Pandemic* on p. 5 at: www.foia.ilattorneygeneral.net/pdf/OMA_FOIA_Guide.pdf.

declaration related to a public health emergency.³³ The Board President or, if the office is vacant or the President is absent or unable to perform the office's duties, the Vice President determines that an in-person meeting or a meeting conducted under the **Quorum and Participation by Audio or Video Means** subhead above, is not practical or prudent because of the disaster declaration; if neither the President nor Vice President are present or able to perform this determination, the Superintendent shall serve as the duly authorized designee for purposes of making this determination.³⁴

The individual who makes this determination for the Board shall put it in writing, include it on the Board's published notice and agenda for the audio or video meeting and in the meeting minutes,³⁵ and ensure that the Board meets every OMA requirement for the Board to meet by video or audio conference without the physical presence of a quorum.³⁶

Rules of Order

Unless State law or Board-adopted rules apply, the Board President, as the presiding officer, will use the most recent edition of Robert's Rules of Order, Newly Revised (11th Edition), as a guide when a question arises concerning procedure.³⁷

Broadcasting and Recording Board Meetings

Any person may record or broadcast an open Board meeting.³⁸ Special requests to facilitate recording or broadcasting an open Board meeting, such as seating, writing surfaces, lighting, and access to electrical power, should be directed to the Superintendent at least 24 hours before the meeting.

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³³ The phrase "due to public health emergency" aligns with Ill. Emergency Act (IEMA), 20 ILCS 3305/4 and 7, which provides the governor with the power to declare a disaster. 5 ILCS 120/7(e)(1), amended by P.A. 101-640, uses the phrase "related to public health concerns because [the governor has declared] a disaster" and while not aligning with IEMA text, means "public health emergency." For ease of understanding and alignment with IEMA, this policy uses "public health emergency."

To avoid confusion, note that the triggers under 5 ILCS 120/7(e), amended by P.A. 101-640, for when a school board may conduct its meetings by audio or video conference without the physical presence of a quorum are a bit more broad than the School Code's triggers to implement remote and/or blended remote learning days (RLD/BRLDs). OMA states (1) the "governor or the director of IDPH has issued a disaster declaration of a disaster as defined in 20 ILCS 3305/..." This means that it is possible for the board to meet remotely if the director of IDPH declares a disaster under OMA, but that may not mean a district must implement RLD/BRLDs because the School Code states that the governor must declare the disaster.

³⁴ 5 ILCS 120/7(e)(2), amended by P.A. 101-640 states "the head of the public body as defined in [the Freedom of Information Act (FOIA), 5 ILCS 140/2(e), FOIA]." FOIA defines *head of the public body* to mean the *president* or "such person's duly authorized designee." 5 ILCS 140/2(e). Policy 2:110, *Qualifications, Term, and Duties of Board Officers*, designates the vice president to perform the duties of the president if that office is vacant or he or she is absent or unable to perform the office's duties.

For practical purposes if a disaster is declared due to a public health concern, this policy designates the superintendent as "[the president or vice president's] duly authorized designee" pursuant to the authority of 5 ILCS 140/2(e) for the board to move forward with the required determination to meet by audio or video with no physical presence of a quorum.

³⁵ While this phrase of the sentence is not required in OMA, many attorneys agree that transparency best practices in this situation include the individual making the determination to: (1) put it in writing referring to the specific disaster declaration applicable to the board's jurisdiction and the public health concern/public health emergency that applies to not having an in-person meeting; and (2) include that written determination (a) on the board's published notice and agenda for the audio or video meeting, and (b) in the meeting minutes.

³⁶ See 2:220-E9, *Requirements for No Physical Presence of Quorum and Participation by Audio or Video During Disaster Declaration*.

³⁷ Boards are not required to follow any particular rules of order. Rules, however, must be in writing and available for public inspection, in order to have any legal effect. 105 ILCS 5/10-20.5.

³⁸ The public's right to record meetings must be addressed in board policy. 5 ILCS 120/2.05. However, a provision requiring advance notice to record a meeting is invalid. PAO 12-10.

Recording meetings shall not distract or disturb Board members, other meeting participants, or members of the public. The Board President may designate a location for recording equipment, may restrict the movements of individuals who are using recording equipment, or may take such other steps as are deemed necessary to preserve decorum and facilitate the meeting.

LEGAL REF.: 5 ILCS 120/2a, 120/2.02, 120/2.05, 120/2.06, and 120/7.
105 ILCS 5/10-6, 5/10-7, 5/10-12, and 5/10-16.

CROSS REF.: 2:80 (Board Member Oath and Conduct), 2:150 (Committees), 2:200 (Types of School Board Meetings), 2:210 (Organizational School Board Meeting), 2:230 (Public Participation at School Board Meetings and Petitions to the Board)

School Board

Uniform Grievance Procedure 1

A student, parent/guardian, employee, or community member should notify any District Complaint Manager if he or she believes that the School Board, its employees, or its agents have violated his or her rights guaranteed by the State or federal Constitution, State or federal statute, or Board policy², or have a complaint regarding any one of the following:³

1. Title II of the Americans with Disabilities Act, 42 U.S.C. §12101 et seq.⁴

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¹ State or federal law requires this subject matter be covered by policy and controls this policy's content. This policy contains an item on which collective bargaining may be required. Any policy that impacts upon wages, hours, and terms and conditions of employment is subject to collective bargaining upon request by the employee representative, even if the policy involves an inherent managerial right. Employee grievance procedures are a mandatory subject of bargaining and cannot be changed without the employee exclusive representative's consent. This policy and its companion policy 2:265, *Title IX Sexual Harassment Grievance Procedure*, are in addition to, and not a substitute for, the employee grievance procedure contained in a collective bargaining agreement.

A grievance procedure is required by many civil rights acts and implementing regulations, including those listed. For the sake of consistency and ease of administration, this policy consolidates all board grievance procedures, excluding Title IX sexual harassment complaints (see sample policy 2:265, *Title IX Sexual Harassment Grievance Procedure*) into one policy, except those contained in collective bargaining agreements. See the cross references for the policies referring to this uniform grievance procedure policy.

² Including the phrase "guaranteed by the State or federal Constitution, State or federal statute, or Board policy" broadens the scope of this policy beyond the items listed. Consult the board attorney regarding whether to retain this phrase and/or to otherwise limit the scope of this policy.

³ The Individuals with Disabilities Education Act (IDEA) (20 U.S.C. §1400 et seq.) is not included in the list of statutes that may serve as the basis of a grievance, and attorneys disagree whether it should be. Many believe that IDEA provides the exclusive remedy; others believe that including IDEA allows parents an opportunity to get their position before the board. Unique and specific complaint resolution mechanisms are expressly provided under IDEA, Article 14 of the School Code, and their respective implementing regulations. These mechanisms follow: (1) IDEA at 20 U.S.C. §1415 (procedural safeguards-mediation and due process); (2) IDEA regulations at 34 C.F.R. §§300.151-300.153 (state complaints), 300.506 (mediation), and 300.507 et seq. (due process); (3) School Code at §§14:8.02a (mediation and due process) and 14:8.02b (expedited due process); and (4) special education regulations at 23 Ill.Admin.Code §§226.560 (Mediation), 226.570 (State Complaint Procedures), and Subpart G (due process). A board that would like to include IDEA should consult the board attorney.

⁴ The Americans with Disabilities Act Amendments Act (ADAAA) (Pub. L. 110-325), made significant changes to the Americans with Disabilities Act's definition of disability by broadening the scope of coverage. The ADAAA also overturned a series of U.S. Supreme Court decisions that interpreted the Americans with Disabilities Act of 1990 in a way that made it difficult to prove that impairments were a disability. The U.S. Equal Employment Opportunity Commission's (EEOC) regulations, 29 C.F.R. Part 1630, are at: www.eeoc.gov/laws/types/disability_regulations.cfm.

Boards should consult with their attorneys regarding how the ADAAA and its implementing regulations impact their districts.

Title II of the ADA of 1990 also includes website accessibility. Addressing website accessibility is complicated. Many entities addressing website accessibility use *Web Content Accessibility Guidelines (WCAG) 2.0*, a frequently cited accessibility standard that contains guidelines developed by a private group of accessibility experts. While not a legal standard, WCAG 2.0 is widely used and is often cited in court decisions. While not a legal standard, WCAG 2.0 is widely used and is often cited in court decisions. While not a legal standard, WCAG 2.0 is widely used and is often cited in court decisions.

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2. Title IX of the Education Amendments of 1972, 20 U.S.C. §1681 et seq., excluding Title IX sexual harassment complaints governed by policy 2:265, *Title IX Sexual Harassment Grievance Procedure*
3. Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §791 et seq.⁵
4. Title VI of the Civil Rights Act, 42 U.S.C. §2000d et seq.
5. Equal Employment Opportunities Act (Title VII of the Civil Rights Act), 42 U.S.C. §2000e et seq.
6. Sexual harassment prohibited by the State Officials and Employees Ethics Act⁶, 5 ILCS 430/70-5(a); Illinois Human Rights Act, 775 ILCS 5/; and Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e et seq. (Title IX sexual harassment complaints are addressed under policy 2:265, *Title IX Sexual Harassment Grievance Procedure*)⁷

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⁵ See ¶n 4's discussion of website accessibility above. For general information on digital accessibility, see the Illinois Department of State Police's *Website Accessibility* document, available at <https://www.isp.state.il.gov/Website-Accessibility>. For more information on the discussion in ¶n 2 of policy 8:70, *Accommodating Individuals with Disabilities*.

⁶ 5 ILCS 430/70-5(a), amended by P.A. 101-221, requires governmental entities (including school districts) to adopt an ordinance or resolution establishing a policy to prohibit sexual harassment that contains certain prescribed elements. See sample policy 5:20, *Workplace Harassment Prohibited*, at ¶n 3 and subhead **Complaints of Sexual Harassment Made Against Board Members by Elected Officials** in sample policy 2:105, *Ethics and Gift Ban*, for further detail. Complaints of sexual harassment made against board members by fellow board members or other elected officials of governmental units must undergo an *independent review*, which is not a term defined in the statute. Unlike the powers granted by the Ill. General Assembly to municipalities to pass ordinances, school boards govern by rules referred to as *policies*. 105 ILCS 5/10-20.5. Further, school boards may only exercise powers given to them that are consistent with the School Code that may be requisite or proper for the maintenance, operation, and development of any school or schools under the jurisdiction of the board. 105 ILCS 5/10-20. School districts are also required to create, maintain, and implement an age-appropriate sexual harassment policy. 105 ILCS 5/10-20.69. See also P.A. 101-418, added by P.A. 101-418. See sample policy 7:20, *Harassment of Students Prohibited*, and its ¶n 29 for further information.

⁷ 50 ILCS 205/3c, added by P.A. 101-221, requires a school district to post on its website and make available to news media specific information about severance agreements that it enters into because an employee or contractor was "found to have engaged in sexual harassment or sexual discrimination, as defined by the Ill. Human Rights Act or Title VII of the Civil Rights Act of 1964." Consult the board attorney about the word *found*. It raises many practical application questions, e.g., when does the word *found* trigger a board's compliance responsibility pursuant to this law. Such questions include, but are not limited to:

1. Must a school board make a *finding* to trigger this requirement? If the severance agreement is entered into post-termination, a record of board *findings* rarely exists.
2. Are charges for termination *findings*? Often superintendents submit charges for termination, but these are not technically *findings*.
3. Are charges based on a complaint manager's report and determination(s) *findings* under the law when a board still has the ability to review and reject the complaint manager's determination(s)?

Next, contrast the above publication law with the Government Severance Pay Act (GSPA), 5 ILCS 415/10(a)(2), which prohibits an employee of a school district with contract provisions for severance pay from receiving any severance if he or she is fired for *misconduct* by the board. GSPA defines *misconduct* to include sexual harassment and/or discrimination. *Id.* at 415/5.

Consult the board attorney about how to reconcile whether sexual harassment and/or sexual discrimination is misconduct for which a severance would be prohibited under the GSPA, and therefore, not available to be published under 50 ILCS 205/3c. And for further discussion and other applicable transparency laws that apply to this issue, see also ¶n 15 in sample policy 5:20, *Workplace Harassment Prohibited*.

⁷ Consult the board attorney regarding proper filing and storage of these investigation documents, including whether certain student-related investigation documents are *sole possession records*, a Family Policy Compliance Office (FPCO)-created exemption to the Family Education Rights Privacy Act (FERPA) (20 U.S.C. §1232g). See *Letter to Ruscio*, 115 LRP 18601 (FPCO 12-17-14).

7. Breastfeeding accommodations for students, 105 ILCS 5/10-20.60 ⁸
8. Bullying, 105 ILCS 5/27-23.7 ⁹
9. Misuse of funds received for services to improve educational opportunities for educationally disadvantaged or deprived children ¹⁰
10. Curriculum, instructional materials, and/or programs
11. Victims' Economic Security and Safety Act, 820 ILCS 180/
12. Illinois Equal Pay Act of 2003, 820 ILCS 112/
13. Provision of services to homeless students
14. Illinois Whistleblower Act, 740 ILCS 174/ ¹¹
15. Misuse of genetic information prohibited by the Illinois Genetic Information Privacy Act, 410 ILCS 513/; and Titles I and II of the Genetic Information Nondiscrimination Act, 42 U.S.C. §2000ff et seq. ¹²

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⁸ 105 ILCS 5/10-20.60 requires schools to implement the Ill. sex equity grievance procedures when processing student complaints about breastfeeding accommodations. Complainants must be informed that the board's decision may be appealed to the Regional Superintendent and, thereafter, to the State Superintendent. 23 Ill.Admin.Code §200.40. **Note:** Certain claims brought under Sec. 10-20.60 may also be covered by the anti-discrimination protections of Title IX; consult the board attorney for further advice. Guidance from U.S. Dept. of Education on Title IX requirements for pregnant and parenting students (June 2013) is available at: <http://www.gpo.gov/digital/assets/documents/TitleIXRequirementsforPregnantandParentingStudents.pdf>

⁹ All districts must have a policy on bullying, 105 ILCS 5/27-23.7. See sample policy 7:180, *Prevention of and Response to Bullying, Intimidation, and Harassment*. The inclusion of *bullying* in the list of topics that may serve as the basis of a grievance furthers the obligation to communicate this policy to students and their parents/guardians.

¹⁰ Parents/guardians of educationally disadvantaged children may sue a district for misuse of funds allocated by State law for the benefit of such children. *Noyola v. Bd. of Educ.*, 177 Ill.2d 121 (Ill. 1997) (affirming the appellate court's conclusion in *Noyola v. Bd. of Educ.*, 284 Ill.App.3d 128 (1st Dist. 1996) that parents/guardians may pursue a claim to enforce the requirements of the School Code but holding that the proper action for enforcement is by means of mandamus not an implied right of action).

¹¹ The Whistleblower Act (740 ILCS 174/) includes school districts in the definition of employer. It protects employees from employer retaliation for disclosing information to a government or law enforcement agency. Section 15 also contains language prohibiting employers from retaliating against employees who disclose information in a court, an administrative hearing, or before a legislative commission or committee, or in any other proceeding where the employee has reasonable cause to believe that the information reveals a violation of a State or federal law, rule or regulation. The Ill. Whistleblower Act (740 ILCS 174/) includes school districts in its definition of *State*. A strict interpretation of this language appears to allow school boards to collect civil penalties and costs against someone making a false claim. Before disciplining any employee, boards should thoroughly investigate the ramifications of these acts in consultation with their attorney and liability insurance carriers.

¹² The Genetic Information Nondiscrimination Act (GINA) (42 U.S.C. §2000ff et seq.) is a federal law. Title I addresses the use of genetic information pertaining to health insurance. Title II protects job applicants, current and former employees, labor union members, and apprentices and trainees from discrimination based on their genetic information. GINA covers employers with 15 or more employees.

16. Employee Credit Privacy Act, 820 ILCS 70/ 13

The Complaint Manager will first attempt to resolve complaints without resorting to this grievance procedure. If a formal complaint is filed under this policy, the Complaint Manager will address the complaint promptly and equitably. A student and/or parent/guardian filing a complaint under this policy may forego any informal suggestions and/or attempts to resolve it and may proceed directly to this grievance procedure. The Complaint Manager will not require a student or parent/guardian complaining of any form of harassment to attempt to resolve allegations directly with the accused (or the accused's parents/guardians); this includes mediation.

Right to Pursue Other Remedies Not Impaired

The right of a person to prompt and equitable¹⁴ resolution of a complaint filed under this policy shall not be impaired by the person's pursuit of other remedies, e.g., criminal complaints, civil actions, etc. Use of this grievance procedure is not a prerequisite to the pursuit of other remedies and use of this grievance procedure does not extend any filing deadline related to the pursuit of other remedies. If a person is pursuing another remedy subject to a complaint under this policy, the District will continue with a simultaneous investigation under this policy.

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GINA broadly defines genetic information to include information about an individual's genetic tests, their family members, and, among other things, the manifestation of a disease or disorder in the individual or the individual's family members. Information about an individual's or family member's age or gender is excluded from genetic information. Its remedies mirror those available under a Title VII of the Civil Rights Act claim: back pay, reinstatement, attorneys' fees and compensatory and punitive damages. Retaliation against an individual who brings a claim under GINA is also prohibited. Federal regulations are available at 29 C.F.R. Part 1635, and background information on these regulations is available at: <http://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/gina>. An FAQ entitled *FAQs on the Genetic Information Nondiscrimination Act* is available at: www.dol.gov/agencies/ebsa/laws-and-regulations/laws/gina.

The Ill. Genetic Information Protection Act (GIPA) (410 ILCS 513/ 1-10-10) also prohibits employers from making employment decisions on the basis of any employee's genetic testing information and from penalizing employees who do not want to disclose their genetic information as part of a workplace wellness program. GIPA includes the federal GINA's definition of genetic information and creates more stringent obligations on Ill. employers. While the federal GINA exempts small employers (those with less than 15 employees), Illinois' GIPA covers all employers, even those with one employee. GIPA also provides penalties for negligent and intentional mishandling of genetic information. Note that Title II of GINA does not preempt GIPA's greater protections to Illinois employees.

Before using any sort of genetic information, consult the board attorney for guidance regarding GINA's and GIPA's specific applications to the district and how these laws integrate with other related federal laws, such as the Family and Medical Leave Act (29 U.S.C. §2612 et seq.) and the ADA, and State laws governing time off for sickness and workers' compensation.

¹³ 820 ILCS 70/. Unless a satisfactory credit history is an *established bona fide occupational requirement* of a particular position, an employer may not: (1) refuse to hire, discharge, or otherwise discriminate against an individual with respect to employment because of the individual's credit history or credit report; (2) inquire about an applicant's or employee's credit history; or (3) order or obtain an applicant's or employee's credit report from a consumer reporting agency. The Act identifies circumstances that permit a satisfactory credit history to be a job requirement, such as, when the position's duties include custody of or unsupervised access to cash or marketable assets valued at \$2,500 or more. <http://www.ilga.gov/legislation/ilcs/ilcs5.htm>. A person who is injured by a violation of this Act may bring a civil action to obtain injunctive relief and/or damages. 820 ILCS 70/25. The court must award costs and reasonable attorneys' fees to a prevailing plaintiff. <http://www.ilga.gov/legislation/ilcs/ilcs5.htm>.

¹⁴ The phrase "prompt and equitable resolution" comes from Title IX implementing regulation 34 C.F.R. §106.8(c) which requires schools to "adopt and publish grievance procedures that provide for the prompt and equitable resolution of student and employee complaints" of sex discrimination.

Deadlines

All deadlines under this policy may be extended by the Complaint Manager as he or she deems appropriate. As used in this policy, *school business days* means days on which the District's main office is open.

Filing a Complaint

A person (hereinafter Complainant) who wishes to avail him or herself of this grievance procedure may do so by filing a complaint with any District Complaint Manager. The Complainant shall not be required to file a complaint with a particular Complaint Manager and may request a Complaint Manager of the same gender.¹⁵ The Complaint Manager may request the Complainant to provide a written statement regarding the nature of the complaint or require a meeting with a student's parent(s)/guardian(s). The Complaint Manager shall assist the Complainant as needed.

For any complaint alleging bullying and/or cyberbullying of students, the Complaint Manager shall process and review the complaint according to Board policy 7:180, *Prevention of and Response to Bullying, Intimidation, and Harassment*, in addition to any response required by this policy. For any complaint alleging sexual harassment or other violation of Board policy 5:20, *Workplace Harassment Prohibited*, the Complaint Manager shall process and review the complaint according to that policy, in addition to any response required by this policy.

Investigation Process

The Complaint Manager will investigate the complaint or appoint a qualified person to undertake the investigation on his or her behalf.¹⁶ The Complaint Manager shall ensure both parties have an equal opportunity to present evidence during an investigation. If the Complainant is a student under 18 years of age, the Complaint Manager will notify his or her parents/guardians that they may attend any investigatory meetings in which their child is involved. The complaint and identity of the Complainant will not be disclosed except: (1) as required by law by this policy, or a collective bargaining agreement, (2) as necessary to fully investigate the complaint, or (3) as authorized by the Complainant.

The identity of any student witnesses will not be disclosed except: (1) as required by law, this policy, or any collective bargaining agreement, (2) as necessary to fully investigate the complaint, or (3) as authorized by the parent/guardian of the student witness, or by the student if the student is 18 years of age or older.

The Complaint Manager will inform, at regular intervals, the person(s) filing a complaint under this policy about the status of the investigation. Within 30 school business days after the date the complaint was filed, the Complaint Manager shall file a written report of his or her findings with the Superintendent. The Complaint Manager may request an extension of time.

The Superintendent will keep the Board informed of all complaints.

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¹⁵ This is a best practice.

¹⁶ This policy gives complaint managers the flexibility to appoint another individual to conduct an investigation, which may be appropriate in cases where the neutrality or efficacy of the complaint manager is an issue, and/or where the district wishes to have the expertise and related attorney-client and work product privileges that an in-house or outside attorney may afford an investigation. Such alternative appointments are often made in consultation with the superintendent or other district-level administrator (except in cases involving complaints about those individuals).

If a complaint contains allegations involving the Superintendent or Board member(s), the written report shall be filed directly with the Board, which will make a decision in accordance with paragraph four of the following section of this policy.

Decision and Appeal

Within five school business days after receiving the Complaint Manager's report, the Superintendent shall mail his or her written decision to the Complainant and the accused by *first class mail, return receipt requested, and by registered mail*¹⁷ as well as to the Complaint Manager. All decisions shall be based upon the *preponderance of evidence* standard.¹⁸

Within 10 school business days after receiving the Superintendent's decision, the Complainant or the accused may appeal the decision to the Board by making a written request to the Complaint Manager. The Complaint Manager shall promptly forward all materials relative to the complaint and appeal to the Board.

Within 30 school business days after the appeal of the Superintendent's decision, the Board shall affirm, reverse, or amend the Superintendent's decision or direct the Superintendent to gather additional information. Within five school business days after the Board's decision, the Superintendent shall inform the Complainant and the accused of the Board's action.

For complaints containing allegations involving the Superintendent or Board member(s), within 30 school business days after receiving the Complaint Manager's or outside investigator's report, the Board shall mail its written decision to the Complainant and the accused by *first class mail, return receipt requested, and by registered mail*¹⁹ as well as to the Complaint Manager.

This policy shall not be construed to create an independent right to a hearing before the Superintendent or Board. The failure to strictly follow the timelines in this grievance procedure shall not prejudice any party.²⁰

Appointing a Nondiscrimination Coordinator and Complaint Managers²¹

The Superintendent shall appoint a Nondiscrimination Coordinator to manage the District's efforts to provide equal opportunity employment and educational opportunities and prohibit the harassment of

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¹⁷ *First class mail, return receipt requested, and by registered mail* are the preferred methods.

¹⁸ *Preponderance of evidence* is a standard used in civil cases. It means "the greater weight of the evidence, not necessarily established by the greater number of witnesses testifying to a fact but by evidence that has the most convincing force." See *Black's Law Dictionary, 11th ed. 2019*.

¹⁹ *First class mail, return receipt requested, and by registered mail*.

²⁰ The Ill. sex equity regulations require districts to have "specific timelines for completion of each step and rendering of a written decision, and shall provide for final appeal of grievance decisions made at the system level to the system's governing board." 23 Ill.Admin.Code §200.40(c)(1). To avoid arguments over these timelines, this sample policy provides that the failure to strictly follow the timelines does not prejudice any party. The grievance procedure is worthless if complaints are not thoroughly and promptly investigated.

²¹ Title IX regulations require districts to designate and authorize at least one employee to coordinate efforts to comply with Title IX and to refer to that employee as the *Title IX Coordinator*. 34 C.F.R. §106.8(a). Districts must identify the Title IX coordinator by name, office address, email address, and telephone number. *Id.*

A district must prominently display its Title IX non-discrimination policies (this policy 2:260, *Uniform Grievance Procedure*, and sample policy 2:265, *Title IX Sexual Harassment Grievance Procedure*) and contact information for its Title

employees, students, and others. The Nondiscrimination Coordinator also serves as the District's Title IX Coordinator. ²²

The Superintendent shall appoint at least one Complaint Manager to administer this policy. If possible, the Superintendent will appoint two Complaint Managers, one of each gender. The District's Nondiscrimination Coordinator may be appointed as one of the Complaint Managers.

The Superintendent shall insert into this policy and keep current the names, office addresses, email addresses, and telephone numbers of the Nondiscrimination Coordinator and the Complaint Managers. ²³

Nondiscrimination Coordinator:

Name

Address

Email

Telephone

Complaint Managers:

_____ Name	_____ Name
_____ Address	_____ Address
_____ Email	_____ Email

The footnotes are not intended to be part of the adopted policy. They should be removed before the policy is adopted. Title IX coordinator(s) on its website, if any, and in each handbook made available to students, applicants for employment, parents/guardians, employees, and collective bargaining units. 34 C.F.R. §106.8(a) and (b). Notifications must state that nondiscrimination extends to employment, and that inquiries about the application of Title IX and its regulations may be referred to the district's Title IX coordinator, to the U.S. Dept. of Education's Assistant Secretary of Education, or both. 34 C.F.R. §106.8(b). See sample exhibit 2:250-E2, *Immediately Available District Public Records and Web-Posted Reports and Records*.

While the names and contact information are required by law to be listed, they are not part of the adopted policy and do not require board action. This allows for additions and amendments to the names and contact information when necessary. It is important for updated names and contact information to be inserted into this policy and regularly monitored.

²² The Nondiscrimination and Title IX Coordinator(s) need not be the same person. If the district uses a separate Title IX Coordinator who does not also serve as the Nondiscrimination Coordinator, delete "~~The Nondiscrimination Coordinator also serves as the District's Title IX Coordinator.~~," insert a hard return to create a new paragraph, and insert "The Superintendent shall appoint a Title IX Coordinator to coordinate the District's efforts to comply with Title IX." Then, list the Title IX and Nondiscrimination Coordinators' names and contact information separately in this policy.

Best practice is that throughout the board policy manual, the same individual be named as Nondiscrimination Coordinator. In contrast, Complaint Managers identified in individual policies may vary depending upon local district needs.

²³ The board may include the following option to address publication of such contact information:

"The Superintendent or designee shall ensure that students, parents/guardians, employees, and members of the community are informed of the contact information for the District's Nondiscrimination Coordinator and Complaint Managers on an annual basis."

Publicizing the contact information for the Nondiscrimination Coordinator and Complaint Managers through personnel handbooks, student handbooks, and/or on the district's website is a best practice. The Illinois Principals Association maintains a handbook service that coordinates with **PRESS** material, *Online Model Student Handbook (MSH)*, at www.ilprincipals.org/resources/model-student-handbook.

Telephone

Telephone

General School Administration

Superintendent 1

Duties and Authority

The Superintendent is the District's executive officer and is responsible for the administration and management of the District schools in accordance with School Board policies and directives, and State and federal law. District management duties include, without limitation, preparing, submitting, publishing, and posting reports and notifications as required by State and federal law.² The Superintendent is authorized to develop administrative procedures and take other action as needed to implement Board policy and otherwise fulfill his or her responsibilities. The Superintendent may delegate to other District staff members the exercise of any powers and the discharge of any duties imposed upon the Superintendent by Board policies or by Board vote. The delegation of power or duty, however, shall not relieve the Superintendent of responsibility for the action that was delegated.

4

Qualifications

The Superintendent must be of good character and of unquestionable morals and integrity. The Superintendent shall have the experience and the skills necessary to work effectively with the Board, District employees, students, and the community. The Superintendent must have and maintain a

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¹ State law controls this policy's content. Unless the district has only one school with fewer than four teachers, the board must employ a superintendent or a chief executive officer as allowed under specific circumstances. 105 ILCS 5/10-21.4. This statute assigns some specific duties to the superintendent including to: (1) make recommendations to the board concerning the budget, building plans, the locations of sites, the selection, retention, and dismissal of teachers and all other employees, the selection of textbooks, instructional material, and courses of study; (2) report to the board, Ill. State Board of Education (ISBE), and chief administrative official any employee named in an abused child report; and (3) keep or cause to be kept the records and accounts as directed and required by the board, aid in making reports required by the board, and perform such other duties as the board may delegate to him/her. 105 ILCS 5/10-16.7 requires boards to direct, through policy, the superintendent, in his or her charge of the district's administration.

ISBE is required, subject to an annual appropriation by the General Assembly, to establish a new superintendent mentoring program. With limited exceptions, any individual serving as a first-time superintendent in Illinois must participate in the mentoring program for two school years. 105 ILCS 5/2-3.53b. The ISBE-selected provider will assign a mentor to a new superintendent based on similarity of grade level or type of district, learning needs, and geographical proximity. The mentor must not be required to evaluate the new superintendent on the basis of the mentoring relationship.

² Sec 2:250-E2, *Immediately Available District Public Records and Web-Posted Reports and Records*, for an annotated list of documents and reports that must be posted on the district's website, if the district has a website. While not comprehensive, see the IASB's *Annual School Calendar* for the required reports that do not need web-posting, available on the IASB website at: www.iasb.com/pdf/schoolcal.pdf.

³ This paragraph is based on the IASB's *Foundational Principles of Effective Governance*, which states that the superintendent is responsible for the day-to-day operations of the district and for the implementation of the board's policies and directives.

⁴ This paragraph strengthens the policy's connection to the IASB's *Foundational Principles of Effective Governance*. See www.iasb.com/principles.efm. It allows the superintendent broad delegation authority even when a policy fails to specifically provide for delegation.

Professional Educator License with a superintendent endorsement issued by the Illinois State Educator Preparation and Licensure Board.⁵

Evaluation

The Board will evaluate, at least annually, the Superintendent's performance and effectiveness, using standards and objectives developed by the Superintendent and Board that are consistent with the Board's policies and the Superintendent's contract.⁶ A specific time should be designated for a formal evaluation session with all Board members present. The evaluation should include a discussion of professional strengths as well as performance areas needing improvement.

The Superintendent shall annually present evidence of professional growth through attendance at educational conferences, in-service training, or similar continuing education pursuits.⁷

Compensation and Benefits⁸

The Board and the Superintendent shall enter into an employment agreement that conforms to Board policy and State law. This contract shall govern the employment relationship between the Board and the Superintendent. The terms of the Superintendent's employment agreement, when in conflict with this policy, will control.

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⁵ 105 ILCS 5/21B-20 and 5/21B-25 govern Professional Educator Licenses and superintendent endorsements. See also 23 Ill.Admin.Code §§25.355 (superintendent endorsement) and 29.100 (Ill. Professional School Leader Standards).

⁶ 105 ILCS 5/10-16.7 requires a board to evaluate the superintendent. See *The Superintendent Evaluation Process* at: www.iasb.com/training/superintendent-evaluation-process.pdf. While greater detail may be added to this paragraph (e.g., a timeline, self-evaluation provision, and discussion requirements), a board must be sure that the policy and the superintendent's contract are consistent.

⁷ The reporting requirements in this paragraph are optional, but school boards must "require evaluators to participate in an in-service training on the evaluation of licensed personnel provided or approved by [ISBE] prior to undertaking any evaluation and at least once during each license renewal cycle." 105 ILCS 5/24A-3.

⁸ According to 105 ILCS 5/10-23.8, a superintendent must be employed under either: (1) a one-year contract, in which case he or she gains and retains tenure rights; or (2) a multi-year performance-based contract, in which case he or she waives all tenure rights but does not lose any previously acquired tenure credit with the district. A multi-year performance-based contract must contain specific student performance and academic improvement goals and indicators; see 3:40-E, *Checklist for the Superintendent Employment Contract Negotiation Process*. Residency requirements, if desired, should be included in a superintendent's employment contract.

The employment contract should be *in writing* even though the School Code does not require it to be written. Contact the board attorney for assistance. An administrator who is not working under a written contract is presumed to have a contract of one year's duration. *Bd. of Educ. of Schaumburg Community, Consolidated Sch. Dist. No. 54 v. TRS*, 368 Ill.Dec. 341 (4th Dist. 2013)(interpreting 105 ILCS 5/10-23.8a). The Ill. Statute of Frauds may make it impossible to execute an *oral* multi-year administrator contract or to *orally* extend a multi-year written contract. 740 ILCS 80/1.

The Open Meetings Act requires all Ill. Municipal Retirement Fund (IMRF) employers, which includes school boards, to: (1) within six business days after approving a budget, web-post each employee's total compensation package if it exceeds \$75,000 per year; and (2) at least six days before approval, web-post an employee's total compensation package if it is \$150,000 or more. 5 ILCS 120/7.3. Conflicting opinions concern whether school districts must comply with these posting requirements for their employees who do not participate in IMRF. Contact the board attorney for advice.

Annually by Oct. 1, each school board must report to ISBE the base salary and benefits of the superintendent, administrators, and teachers it employs. 105 ILCS 5/10-20.47. Before this annual reporting to ISBE, the information must be presented at a regular school board meeting and then posted on the district's website, if any.

General School Administration

Administrative Personnel Other Than the Superintendent 1

Duties and Authority

The School Board establishes District administrative and supervisory positions in accordance with the District's needs and State law. This policy applies to all administrators other than the Superintendent, including without limitation, Building Principals. The general duties and authority of each administrative or supervisory position are approved by the Board, upon the Superintendent's recommendation, and contained in the respective position's job description.² In the event of a conflict, State law and/or the administrator's employment agreement shall control.

Qualifications

All administrative personnel shall be appropriately licensed and shall meet all applicable requirements contained in State law and Illinois State Board of Education rules.³

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¹ State or federal law controls this policy's content. 105 ILCS 5/10-23.8a requires each principal, assistant principal, and other school administrator to be employed under either: (1) a one-year contract, in which case he or she gains and retains tenure rights, or (2) a multi-year performance-based contract, in which case he or she waives all tenure rights but does not lose any previously acquired tenure credit with the district. A multi-year performance-based contract must contain specific student performance and academic improvement goals and indicators.

² Job descriptions are advisable, but optional. See policy 5:30, *Hiring Process and Criteria*, for a discussion of job descriptions. An Ill. State Board of Education (ISBE) rule (23 Ill.Admin.Code §1.310) allows *divided service*, meaning that a superintendent or principal may be employed by two school districts or serve in two professional capacities provided that full-time equivalency results in a maximum of one full-time position. In districts with an enrollment of 100 or fewer, an individual may serve as superintendent/principal and teach up to one-half day.

³ 105 ILCS 5/21B-20 and 5/21B-25 govern Professional Educator Licenses and administrative, principal, and chief school business official endorsements. The requirements for supervisory or administrative staff are in 23 Ill.Admin.Code §1.705; the requirements for endorsements are in 23 Ill.Admin.Code Part 25, Subpart E. Standards for Administrative Endorsements are in 23 Ill.Admin.Code Part 29.

The following option may be added at the end of this paragraph:

Administrative personnel must reside in the District within a specified period as provided in their initial employment agreement.

State law (105 ILCS 5/24-4.1) prohibiting residency requirements for teachers does not apply to non-instructional personnel, e.g., assistant principals. Owen v. Kankakee School Dist., 261 Ill.App.3d 298 (3rd. Dist. 1994). A board may impose residency requirements on a principal or assistant principal only if the individual's initial contract with the district made residency an express condition of employment or continued employment as a principal. 105 ILCS 5/10-21.4a. Residency within a district may not be considered in determining a principal's compensation, assignment, or transfer id.

Evaluation

The Superintendent or designee shall evaluate all administrative personnel and make employment and salary recommendations to the Board. ⁴

Administrators shall annually present evidence to the Superintendent of professional growth through attendance at educational conferences, additional schooling, in-service training, and Illinois Administrators' Academy courses, or through other means as approved by the Superintendent. ⁵

Administrative Work Year

The work year for administrators shall be the same as the District's fiscal year, July 1 through June 30, unless otherwise stated in the employment agreement. In addition to legal holidays, administrators shall have vacation periods as approved by the Superintendent. All administrators shall be available for work when their services are necessary. ⁶

Compensation and Benefits

The Board and each administrator shall enter into an employment agreement that complies with Board policy and State law.⁷ The terms of an individual employment contract, when in conflict with this policy, will control.

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⁴ All licensed school district employees must be evaluated. 105 ILCS 5/24A-1, 23 Ill.Admin.Code §1.320. Each district must implement a performance evaluation plan for its principals and assistant principals. 105 ILCS 5/24A-15, 23 Ill.Admin.Code §50.300. The statutory deadline for evaluating principals and assistant principals depends on whether the individual's employment contract is for one year or multiple years: (1) the evaluation of individuals on a single year contract must take place annually by March 1, and (2) the evaluation of individuals on a multi-year contract must take place by March 1 of the contract's final year. 105 ILCS 5/24A-15. Individual contracts may require an earlier deadline. 105 ILCS 5/24A-3 requires that an individual who conducts an evaluation of a teacher, principal, or assistant principal, (1) be prequalified before undertaking any evaluation, and (2) participate in a regularly scheduled retraining program.

⁵ The professional growth reporting requirements in this paragraph are optional. However, professional development activities are required for license renewal. 105 ILCS 5/21B-45, amended by P.A. 01-85, eff. 1-1-20, contains the license renewal process, along with the professional development hours and carry over of these hours.

A school board must require the administrators who evaluate employees to complete training on the evaluation of licensed personnel that is provided or approved by ISBE. 105 ILCS 5/24A-3 and 5/24A-20(a)(4). Any prequalification process or retraining program developed and used by a school district must, at a minimum, meet the requirements of 23 Ill.Admin.Code Part 50, Subpart E. Administrative personnel must participate in this training (1) before they evaluate, and (2) at least once during each certificate renewal cycle. 105 ILCS 5/24-3.

⁶ Legal holidays are provided by 105 ILCS 5/24-2. <http://www.ilga.gov/legislation/ilcs/ilcs5.htm?ch=24&subch=2&sl=2&am=1>

⁷ According to 105 ILCS 5/10-23.8a, a principal, assistant principal, and any other school administrator must be employed under either: (1) a one-year contract, in which case he or she gains and retains tenure rights, or (2) a multi-year performance-based contract, in which case he or she waives all tenure rights but does not lose any previously acquired tenure credit with the district. A multi-year performance-based contract must contain specific student performance and academic improvement goals and indicators.

The employment contract should be *in writing* even though the School Code does not require it to be written. Contact the board attorney for assistance. An administrator who is not working under a written contract is presumed to have a contract of one year's duration. [Schaumburg Community Consolidated School Dist. v. TRS, 984 N.E.2d 66 \(4th Dist. 2013\)](http://www.ilga.gov/legislation/ilcs/ilcs5.htm?ch=10&subch=23&sl=8a&am=1)(interpreting 105 ILCS 5/10-23.8a). The Ill. Statute of Frauds may make it impossible to execute an *oral* multi-year administrator contract or to *orally* extend a multi-year written contract. 740 ILCS 80/1.

The Open Meetings Act requires all Ill. Municipal Retirement Fund (IMRF) employers, which includes school boards, to: (1) within six business days after approving a budget, web-post each employee's total compensation package if it exceeds \$75,000 per year; and (2) at least six days before approval, web-post an employee's total compensation package if it is \$150,000 or more. 5 ILCS 120/7.3. Conflicting opinions concern whether school districts must comply with these posting requirements for their employees who do not participate in IMRF. Contact the board attorney for advice.

The Board will consider the Superintendent's recommendations when setting compensation for individual administrators. These recommendations should be presented to the Board no later than the March Board meeting or at such earlier time that will allow the Board to consider contract renewal and nonrenewal issues.⁸

Unless stated otherwise in individual employment contracts, all benefits and leaves of absence available to teaching personnel are available to administrative personnel.⁹

LEGAL REF: 105 ILCS 5/10-21.4a, 5/10-23.8a, 5/10-23.8b, 5/21B, and 5/24A.
23 Ill.Admin.Code §§1.310, 1.705, and 50.300; and Parts 25 and 29.

CROSS REF: 3:60 (Administrative Responsibility of the Building Principal), 4:100 (Attendance and Punctuality of Child Support, Absence and Excusing Policy), 4:101 (Attendance, Child Support, Student Support, Non-gradings), 5:30 (Hiring Process and Criteria), 5:90 (Absence and Nonwork of CTE Recruitment), 5:100 (Professional Development and Contract Extensions), 5:110 (Teacher Recruitment), 5:150 (Compensation), and 5:250 (Leaves of Absence), 5:250 (The provision, maintenance and management of)

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Annually by Oct. 1, each school board must report to ISBE the base salary and benefits of the superintendent, administrators, and teachers it employs. 105 ILCS 5/10-20.47. Before this annual reporting to ISBE, the information must be presented at a regular school board meeting and then posted on the district's website, if any.

⁸ State law does not address when the board should consider salary issues. The March deadline was chosen because the statutory notice deadline for reclassification is April 1 of the year in which a principal or assistant principal's contract expires unless the contract provides for an earlier deadline. 105 ILCS 5/10-23.8b. Alternatively, the policy could require that recommendations be presented "in a timely manner."

⁹ State law does not require that administrative and teaching personnel receive identical benefits and leaves of absence, but it does set the minimum in days and type for all certificated personnel.

General School Administration

Administrative Responsibility of the Building Principal 1

Duties and Authority

The School Board, upon the recommendation of the Superintendent, employs Building Principals as the chief administrators and instructional leaders of their assigned schools, and may employ Assistant Principals. The primary responsibility of a Building Principal is the improvement of instruction.² Each Building Principal shall perform all duties as described in State law as well as such other duties as specified in his or her employment agreement or as the Superintendent may assign, that are consistent with the Building Principal's education and training.³ Each Building Principal and Assistant Principal shall complete State law requirements to be a prequalified evaluator before conducting an evaluation of a teacher or assistant principal.⁴

Evaluation Plan

The Superintendent or designee shall implement an evaluation plan for Principals and Assistant Principals that complies with Section 24A-15 of the School Code and relevant Illinois State Board of

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¹ State or federal law controls this policy's content.

² Required by 105 ILCS 5/10-21.4a.

³ An alternative follows: "...or as agreed upon by the Building Principal and Superintendent."

The principal's duties are generally described in 105 ILCS 5/10-21.4a and 5/24A-15(c-5). However, many other statutes impose additional duties, e.g., 105 ILCS 127/2 (requires principals to report to the police certain violations of the Cannabis Control Act, Controlled Substance Act, and Methamphetamine Control and Community Protection Act occurring at specified locations); 105 ILCS 5/10-27.1A(b) (requires the principal or designee to immediately notify local law enforcement upon receiving a report of a person in possession of a firearm on school grounds, and, if that person is a student, to notify a student's parent/guardian); and 730 ILCS 152/ and 154/ (require notification to parents/guardians that information about sex offenders and violent offenders against youth is available). The county clerk may appoint high school principals or their designees as deputy registrars to accept voter registrations of any qualified resident of the State. 10 ILCS 5/4-6.2(a), amended by P.A. 100-1027. The Firearm Concealed Carry Act requires a principal to notify the Ill. Dept. of State Police whenever he or she determines that a student (or any person) poses a "clear and present danger to himself, herself or to others." 430 ILCS 66/105; 405 ILCS 5/6-103.3. Lawyers disagree whether this requirement violates the federal Family Educational Rights and Privacy Act. Contact the board attorney for advice.

⁴ This restates 105 ILCS 5/24A-3 and 23 Ill.Admin.Code Part 50, Subpart E. Individuals who evaluate teachers, principals, or assistant principals must: (1) be prequalified, and (2) participate in a regularly scheduled retraining program. The prequalification and retraining programs must be either developed or approved by the Ill. State Board of Education (ISBE).

105 ILCS 5/24A-5 permits a first-year principal to evaluate a teacher; however, a new two-year evaluation plan must be established for any tenured teacher who is evaluated by a first-year principal. 105 ILCS 5/24A-5.

Anyone who has not previously been a principal in Ill. must participate in ISBE's *new principal mentoring program*; however, implementation of a principal mentoring program in any given year is dependent upon an appropriation. If appropriations are not likely sufficient to serve all anticipated first year principals in any given year, the program is voluntary. Mentoring services are extended to second year principals only if appropriations are sufficient to serve all first year principals. If mentoring services are extended to second year principals but appropriations are not sufficient to serve all second year principals who wish to participate in the new principal mentoring program, then priority access to mentoring services is provided to second year principals who are in the highest need schools as determined by the State Superintendent of Education. 105 ILCS 5/2-3.53a, amended by P.A. 102-521 (adding, subject to annual appropriation, a competitive grant program to support the new principal mentoring program for districts to participate in); 23 Ill.Admin.Code Part 35. Annually by June 1, each superintendent must report to the State Superintendent or designee the expected number of first-year and second-year principals along with information specified in 23 Ill.Admin.Code §35.20.

Education rules.⁵ Using that plan, the Superintendent or designee shall evaluate each Building Principal and Assistant Principal.⁶ The Superintendent or designee may conduct additional evaluations.

Qualifications and Other Terms and Conditions of Employment

Qualifications and other terms and conditions of employment are found in Board policy 3:50, *Administrative Personnel Other Than the Superintendent*.

LEGAL REF.: ~~10 ILCS 5/4-6.2,~~
105 ILCS 5/2-3.53a, 5/10-20.14, 5/10-21.4a, 5/10-23.8a, 5/10-23.8b, and 5/24A-15.
~~10 ILCS 5/4-6.2, Election Code,~~
105 ILCS 127/, School Reporting of Drug Violations Act,
23 Ill.Admin.Code Parts 35 and 50, Subpart D.

CROSS REF.: 3:50 (*Administrative Personnel Other Than the Superintendent*), 4:165 (*Awareness and Prevention of Child Sexual Abuse and Grooming Behaviors*), 4:175 (*Conviction of Child Sex Offender; Screening; Notifications*), 5:90 (*Abused and Neglected Child Reporting*), 5:120 (*Employee Ethics; Conduct; and Conflict of Interest*), 5:150 (*Personnel Records*), 5:210 (*Resignations*), 5:250 (*Leaves of Absence*), 5:29 (*Employment Termination and Suspensions*)

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⁵ Each district must implement a performance evaluation plan for its principals and assistant principals. 105 ILCS 5/24A-15, 23 Ill.Admin.Code §50.300. A board may substitute this alternative for the first sentence: "The Superintendent or designee shall implement a principal and assistant principal evaluation plan that complies with State law." The statutory deadline for evaluating principals and assistant principals depends on whether the individual's employment contract is for one year or multiple years: (1) the evaluation of individuals on a single-year contract must take place annually by March 1, and (2) the evaluation of individuals on a multi-year contract must take place by March 1 of the contract's final year. 105 ILCS 5/24A-15. Individual contracts may require an earlier deadline.

⁶ Required by 105 ILCS 5/10-21.4a and 5/24A-15. For a principal who also serves as the district superintendent, the evaluator must be appointed by the school and not be the person whose performance as principal is being evaluated. 23 Ill.Admin.Code §50.300. In addition, the evaluator must hold a valid professional educator license endorsed for superintendent issued under Article 21B and have completed the prequalification process and any retraining, as applicable. Add this option if appropriate: "...or, in the absence of the Superintendent or his or her designee, an individual appointed by the School Board who holds a valid professional educator license endorsed for superintendent."

Operational Services

Purchases and Contracts 1

The Superintendent shall manage the District’s purchases and contracts in accordance with State law, the standards set forth in this policy, and other applicable School Board policies.

Standards for Purchasing and Contracting

All purchases and contracts shall be entered into in accordance with applicable local and State law. The Board Attorney shall be consulted as needed regarding the legal requirements for purchases or contracts. All contracts shall be approved or authorized by the Board.

All purchases and contracts should support a recognized District function or purpose as well as provide for good quality products and services at the lowest cost, with consideration for service, reliability, and delivery promptness, and in compliance with State law.² No purchase or contract shall be made or entered into as a result of favoritism, extravagance, fraud, or corruption.

Adoption of the annual budget authorizes the Superintendent or designee to purchase budgeted supplies, equipment, and services, provided that State law is followed. Purchases of items outside budget parameters require prior Board approval, except in an emergency.³

When presenting a contract or purchase for Board approval, the Superintendent or designee shall ensure that it complies with applicable local and State law, including but not limited to, those specified below:

1. Supplies, materials, or work involving an expenditure in excess of \$25,000 must comply with the State law bidding procedure, 105 ILCS 5/10-20.21, unless specifically exempted.⁴
2. Construction, lease, or purchase of school buildings must comply with State law and Board policy 4:150, *Facility Management and Building Programs*.
3. Guaranteed energy savings must comply with 105 ILCS 5/19b-1 et seq.

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¹ State law controls this policy’s content. 105 ILCS 5/10-20.21, amended by P.A. 101-570, contains bidding plus other requirements. Other laws also govern district contracts. For example, the Prevailing Wage Act requires, among other things, that a district specify in all contracts for public works that the prevailing wage rate must be paid. 820 ILCS 130/. When a district awards work to a contractor without a public bid, contract, or project specification, the district must provide the contractor with written notice on the purchase order or a separate document indicating that not less than the prevailing rate of wages shall be paid to all laborers, workers, and mechanics performing work on the project. In addition, the district must notify all contractors of any rate changes by the Ill. Dept. of Labor (IDOL). 820 ILCS 130/4(a-2). The law allows a district to discharge this duty by including the following language in all contracts: “Any prevailing rate of wages as they are revised by the Ill. Dept. of Labor (IDOL) shall apply to this contract. You are notified that any rate changes to the prevailing wage rate are available on IDOL’s official website.” 820 ILCS 130/4(l). See 4:60-E, *Notice to Contractors*, for sample language.

² This end statement should be amended according to local board discretion.

³ An optional addition follows: “Notwithstanding the above, the Superintendent shall not commit to any single, non-customary purchase or expenditure, excluding personnel, of greater than \$ _____ without prior Board approval.” This optional provision’s intent is to provide an internal control as well as to keep the board involved when the district is making a large purchase or expenditure, e.g., copiers, computers, textbooks, or something that might not happen every year. It is intended to cover purchases/expenditures regardless of whether they were previously budgeted.

⁴ See 4:60-API, *Purchases*, for bidding exemptions and the requirements for electronic bid opening. A board may set a lower bidding threshold by policy but should first seek its attorney’s advice because such action may expand a board’s vulnerability to a bidding challenge.

4. Third party non-instructional services must comply with 105 ILCS 5/10-22.34c.⁵
5. Goods and services that are intended to generate revenue and other remunerations for the District in excess of \$1,000, including without limitation vending machine contracts, sports and other attire, class rings, and photographic services, must comply with 105 ILCS 5/10-20.21(b-5). The Superintendent or designee shall keep a record of: (1) each vendor, product, or service provided, (2) the actual net revenue and non-monetary remuneration from each contract or agreement, and (3) how the revenue was used and to whom the non-monetary remuneration was distributed. The Superintendent or designee shall report this information to the Board by completing the necessary forms that must be attached to the District's annual budget.⁶
6. Any contract to purchase food with a bidder or offeror must comply with 105 ILCS 5/10-20.21(b-10).⁷
7. The purchase of paper and paper products must comply with 105 ILCS 5/10-20.19c and Board policy 4:70, *Resource Conservation*.⁸
8. Each contractor with the District is bound by each of the following:
 - a. In accordance with 105 ILCS 5/10-21.9(f): (1) prohibit any of its employees who is or was found guilty of a criminal offense listed in 105 ILCS 5/10-21.9(c) and 5/21B-80(c)⁹ to have direct, daily contact at a District school or school-related activity with one or more student(s); (2) prohibits any of the contractor's employees from having direct, daily contact with one or more students if the employee was found guilty of any offense in 5/21B-80(b) (certain drug offenses) until seven years following the end of the employee's sentence for the criminal offense;¹⁰ and (3) require each of its employees who will have direct, daily contact with student(s) to cooperate during the District's fingerprint-based criminal history records check on him or her.¹¹
 - b. In accordance with 105 ILCS 5/24-5: (1) concerning each new employee of a contractor that provides services to students or in schools, provide the District with evidence of physical fitness to perform the duties assigned and freedom from communicable disease if the employee will have direct, daily contact with one or more student(s); and (2) require any new or existing employee who has and will have direct, daily contact with one or more student(s) to complete additional health examinations as required by the District and be subject to additional health examinations, including tuberculosis

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⁵ Concerning collective bargaining requirements, see *McLean Co. Unit Dist. 5 v. AFSCME & IELRB*, 12 N.E.2d 120 (4th Dist. 2014) (good faith bargaining on the decision to subcontract requires notice of the consideration of the subcontract before it is finalized; meeting with the union to provide an opportunity to discuss and explain the decision; providing information to the union; and giving consideration to any counterproposal the union makes).

⁶ 105 ILCS 5/10-20.21(b-5).

⁷ 105 ILCS 5/10-20.21(b-10).

⁸ 105 ILCS 5/10-20.19c.

⁹ 105 ILCS 5/10-21.9(c), amended by P.A. 101-531; 105 ILCS 5/21B-80(c), amended by P.A. 101-531.

¹⁰ *Id.*

¹¹ The implementation process is in 4:60-AP3, *Criminal History Records Check of Contractor Employees*. See 5:30-AP2, *Investigations*, for a list of offenses which disqualify an individual from having direct, daily contact with one or more students until seven years following the end of the individual's sentence for the criminal offense.

Operational Services

Food Services 1

Good nutrition shall be promoted in the District's meal programs and in other food and beverages that are sold to students during the school day. The Superintendent shall manage a food service program that complies with this policy and is in alignment with School Board policy 6:50, *School Wellness*.

Food or beverage items sold to students as part of a reimbursable meal under federal law must follow the nutrition standards specified in the U.S. Dept. of Agriculture rules that implement the National School Lunch and Child Nutrition Acts. Schools being reimbursed for meals under these laws are *participating schools*.²

The food service program in participating schools shall comply with the nutrition standards specified in the U.S. Dept. of Agriculture's *Smart Snacks rules* when it offers competitive foods to students on the school campus during the school day.³ *Competitive foods* are all food and beverages that are offered by any person, organization or entity for sale to students on the school campus during the school day that are not reimbursed under programs authorized by federal law.⁴ The food service programs in participating schools shall also comply with any applicable mandates in the Illinois State Board of Education's School Food Service rules implementing these federal laws and the Ill. School Breakfast and Lunch Program Act.

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¹ State or federal law controls this policy's content. Districts that participate in programs under the National School Lunch Act and Child Nutrition Acts must establish policies and procedures as are necessary to ensure compliance with 7 C.F.R. §210.1(b).

The Ill. State Board of Education (ISBE) limits the sale of competitive food and beverages sold to students on the school campus of any school that participates in the School Breakfast Program or the National School Lunch Program, (23 Ill. Admin. Code §305.15(a)).

This policy's first sentence provides an opportunity for a school board to consider goals for the food service program and, if appropriate, amend the sentence. For example, a board may want to address the role of parents, alignment with curriculum, or the purpose of vending machines.

² 7 C.F.R. Parts 210 & 220.

³ Russell B. National School Lunch Act, 42 U.S.C. §1751 et seq., as amended by the Healthy Hunger-Free Kids Act of 2010 (P.L. 111-296); 7 C.F.R. §210.11(c).

⁴ 7 C.F.R. §210.11(a)(2); 23 Ill. Admin. Code §305.5.

Operational Services

Environmental Quality of Buildings and Grounds 1

The Superintendent shall take all reasonable measures to protect: (1) the safety of District personnel, students, and visitors on District premises from risks associated with hazardous materials, and (2) the environmental quality of the District's buildings and grounds. ²

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¹ State and/or federal law control this policy's content and require districts to:

1. Have a procedure to comply with the Structural Pest Control Act (225 ILCS 235/) and the Lawn Care Products Application and Notice Act (415 ILCS 65/). See 4:160-AP, *Environmental Quality of Buildings and Grounds*.
2. Designate a staff person to be responsible for district compliance with the safety acts listed in #1 above. This policy designates the superintendent or designee.

Many State and federal laws regulate the environmental quality of schools. For example:

1. Several federal laws regulate asbestos as a hazardous substance, the most significant for schools being the Asbestos Hazard Emergency Response Act of 1986. 15 U.S.C. § 2641 *et seq.* The Asbestos Abatement Act, 105 ILCS 105/, requires schools to perform a variety of functions regarding asbestos. <http://www.idph.state.il.us/airquality/indoorairqualityguidelines.htm>
2. The Indoor Air Quality Act, 410 ILCS 87/. The Ill. Dept. of Public Health Guidelines for Indoor Air Quality are advisory, i.e., not enforceable. www.idph.state.il.us/envhealth/factsheets/indoorairqualityguide_fs.htm
3. The Smoke-Free Illinois Act, 410 ILCS 82/, bans tobacco smoking inside schools.
4. The Structural Pest Control Act, 225 ILCS 235/ requires the Ill. Dept. of Public Health to establish guidelines for an integrated pest management program for schools. See www.idph.state.il.us/envhealth/ipm/index.htm, or www.idph.state.il.us/envhealth/entpestfshs.htm.
5. Notices to employees and parents/guardians before pesticide applications are required by the Structural Pest Control Act, 225 ILCS 235/10.3. The Lawn Care Products Application and Notice Act requires similar notices but only to parents/guardians. 415 ILCS 65/3.
6. The Green Cleaning School Act, 105 ILCS 140/, and Green Cleaning for Elementary and Secondary Schools, 23 Ill.Admin.Code Part 2800, contain guidelines for green cleaning. See policy 4:150, *Facility Management and Building Programs*.
7. The Green Buildings Act requires all new State-funded building construction and major renovation projects to meet specified environmental requirements. 20 ILCS 3130/. Waivers may be granted by the Capital Development Board in certain situations. *Id.*
8. The Ill. legislature recommended that each occupied school building be tested every five years for radon and provided a process for the screening in 105 ILCS 5/10-20.48.

Employers must provide all employees with an education and training program with respect to all toxic substances to which an employee is routinely exposed while working. 820 ILCS 255/16; 23 Ill.Admin.Code §1.330. However, this section and most of the Toxic Substances Disclosure to Employees Act (820 ILCS 255/) are **inoperative**: its implementing rules (56 Ill.Admin.Code Part 205) were repealed. Instead, the Ill. Dept. of Labor enforces the federal Occupational Safety and Health Administration Hazard Communication Standards at 29 C.F.R. §1910.1200. 820 ILCS 255/1.5. Thus, school districts must follow the federal disclosure and training requirements.

² A board persuaded by #8 in the above footnote may add the following option:

If economically feasible, the Superintendent or designee shall manage the testing of each occupied school building for radon pursuant to Section 10-20.48 of the School Code.

A board may want to add the following option if it is concerned that employees who are eligible for district-paid hepatitis B vaccination are unaware of their eligibility:

The Superintendent or designee shall notify all employees who must be offered, according to State or federal law, District-paid hepatitis B vaccine and vaccination.

LEGAL REF.:

- ~~29 C.F.R. §1910.1030, Occupational Exposure to Bloodborne Pathogens, as adopted by the Illinois Department of Labor, 56 Ill.Admin.Code §350.700(b).~~
- 29 C.F.R. §1910.1200, Occupational Safety and Health Administration Hazard Communication Standards, as adopted by 820 ILCS 255/1.5, Toxic Substances Disclosure to Employees Act.
- 20 ILCS 3130/, Green Buildings Act.
- ~~105 ILCS 135/, Toxic Art Supplies in Schools Act.~~
- 105 ILCS 140/, Green Cleaning School Act.
- 225 ILCS 235/, Structural Pest Control Act.
- ~~415 ILCS 65/, Lawn Care Products Application and Notice Act.~~
- ~~415 ILCS 135/, Cooling and Heating Deployment Act.~~
- 820 ILCS 255/, Toxic Substances Disclosure to Employees Act. (*inoperative*)
- 23 Ill.Admin.Code §1.330.

CROSS REF.:

4:150 (Facility Management and Building Programs), 4:170 (Safety)

Operational Services

Awareness and Prevention of Child Sexual Abuse and Grooming Behaviors 1

Child sexual abuse and grooming behaviors harm students, their parents/guardians, the District's environment, its school communities, and the community at large, while diminishing a student's ability to learn. The Board has a responsibility and obligation to increase awareness and knowledge of:² (1) issues regarding child sexual abuse, (2) likely warning signs that a child may be a victim of sexual abuse, (3) grooming behaviors related to child sexual abuse and grooming, (4) how to report child sexual abuse, (5) appropriate relationships between District employees and students based upon State law, and (6) how to prevent child sexual abuse.

To address the Board's obligation to increase awareness and knowledge of these issues, prevent sexual abuse of children,³ and define prohibited grooming behaviors,⁴ the Superintendent or designee shall implement an Awareness and Prevention of Sexual Abuse and Grooming Behaviors Program. The Program will:

1. Educate students with:

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¹ Required by *Erin's Law*, 105 ILCS 5/10-23.13, amended by P.A. 102-610. Also infused into this policy are concepts from HB 1975 text, which did not pass in the first half of the 102nd Ill. General Assembly; however, its content (a) includes the results of collaboration to implement some of the recommendations of the *Make Sexual and Severe Physical Abuse Fully Extinct (Make S.A.F.E.) Taskforce* and was endorsed by Stop Educator Sexual Abuse Misconduct & Exploitation (S.F.S.A.M.E.), a national organization working to prevent sexual exploitation, abuse, and harassment of students by teachers and other school staff, and (b) provides helpful guidance for districts to implement P.A. 102-610 due to P.A. 102-610's vagueness. Three additional statutes address a district's responsibility to provide age-appropriate sexual abuse and assault awareness and prevention education programs:

1. 105 ILCS 110/3, Critical Health Problems and Comprehensive Health Education Act (requires districts to establish a Comprehensive Health Education Program that includes age-appropriate sexual abuse and assault awareness and prevention education in grades pre-K through 12) (see sample policy 6:60, *Curriculum Content*, and administrative procedure 6:60-AP1, *Comprehensive Health Education Program*);
2. 105 ILCS 5/27-9.1a(b), added by P.A. 102-552 (requires comprehensive personal health and safety and comprehensive sexual health education a/k/a National Sex Education Standards (NSES) to: (a) be age and developmentally appropriate, medically accurate, complete, culturally appropriate, inclusive, and trauma informed, (b) replicate evidence-based or evidence-informed programs or substantially incorporate elements of evidence-based programs or evidence-informed programs or characteristics of effective programs, (c) provide information about local resources where students can obtain additional information and confidential services related to sexual violence (including sexual abuse and assault), and (d) provide information about State laws related to mandated reporting of child abuse and neglect, and school policies addressing the prevention of and response to sexual violence) (see sample policy 6:60, *Curriculum Content*, and administrative procedure 6:60-AP2, *Comprehensive Personal Health and Safety and Sexual Health Education Program (National Sex Education Standards (NSES))*); and
3. 105 ILCS 5/27-13.2 (addresses (a) written objections to sexual abuse prevention instruction and notice provisions (minimum five days) for students in grades K through 8, and (b) distribution by the Ill. State Board of Education (ISBE) and Ill. Dept. of Children and Family Services (DCFS) of information for districts to provide to their communities about this instruction) (see sample policy 6:60, *Curriculum Content*, and administrative procedure exhibit 6:60-AP1, E1, *Notice to Parents/Guardians of Sexual Abuse and Assault Awareness and Prevention Education; Requests to Examine Materials; Written Objections*) and/or *Opt-outs*).

² 105 ILCS 5/10-23.13, amended by P.A. 102-610, at (b)(1).

³ *Id.* at (b).

⁴ *Id.* at (b).

- a. An age-appropriate and evidence-informed health and safety education⁵ curriculum that includes methods for how to report child sexual abuse and grooming behaviors to authorities,⁶ through policy 6:60, *Curriculum Content*; ⁷
 - b. Information in policy 7:250, *Student Support Services*, about: (i) District counseling options, assistance, and intervention for students who are victims of or affected by sexual abuse,⁸ and (ii) community-based Children’s Advocacy Centers and sexual assault crisis centers and how to access those serving the District. ⁹
2. Train District employees about child sexual abuse and grooming behaviors by January 31 of each school year with materials that include: ¹⁰
 - a. A definition of prohibited grooming behaviors and boundary violations pursuant to policy 5:120, *Employee Ethics; Conduct; and Conflict of Interest*;
 - b. Evidence-informed¹¹ content on preventing, recognizing, reporting, and responding to child sexual abuse, grooming behaviors, and boundary violations pursuant to policies 2:260, *Uniform Grievance Procedure*; 2:265, *Title IX Sexual Harassment Grievance Procedure*; 5:90, *Abused and Neglected Child Reporting*; 5:100, *Staff Development Program*; and 5:120, *Employee Ethics; Conduct; and Conflict of Interest*; and
 - c. How to report child sexual abuse, grooming behaviors, and/or boundary violations pursuant to policies 2:260, *Uniform Grievance Procedure*; 2:265, *Title IX Sexual Harassment Grievance Procedure*; and 5:90, *Abused and Neglected Child Reporting*.
 3. Provide information to parents/guardians in student handbooks about the warning signs¹² of child sexual abuse, grooming behaviors, and boundary violations with evidence-informed educational information that also includes: ¹³

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⁵ Id. at (b)(1).

⁶ Id. at (b)(4).

⁷ 105 ILCS 5/10-23.13(b). See policy 6:60, *Curriculum Content*, and administrative procedure 6:60-API, *Comprehensive Health Education Program*, for information on school board choices related to health and safety education, including sex education.

⁸ Id. at (b)(2) and (3).

⁹ Id. at (b)(5). See policy 5:90, *Abused and Neglected Child Reporting*, and administrative procedure 5:90-AP, *Coordination with Children’s Advocacy Center*, for more information on Children’s Advocacy Centers.

¹⁰ Citations for each letter:

a. 105 ILCS 5/10-23.13(b).

b. Id. at (b), (b)(1.5), and (c).

c. Id. at (b) and (b)(1.5).

¹¹ Two Illinois laws address “evidence-informed.” *Evidence-informed* per *Erin’s Law* means modalities that were created utilizing components of evidence-based treatments or curriculums. 105 ILCS 5/10-23.13(a), added by P.A. 102-610. Contrast with NSES at 105 ILCS 5/27-9.1a(a), added by P.A. 102-552, which defines an *evidence-informed program* as “a program that uses the best available research and practice knowledge to guide program design and implementation.”

¹² 105 ILCS 5/10-23.13(b) and (b)(1); warning signs and *likely* warning signs are mentioned twice in the law. This policy uses likely in the purpose introduction. The Ill. Principals Association (IPA) maintains a handbook service that coordinates with PRESS material, Online Model Student Handbook (MSH), at: www.ilprincipals.org/resources/model-student-handbook.

¹³ This information is listed in 7:190-E2, *Student Handbook Checklist*. Citations for each letter:

a. 105 ILCS 5/10-23.13(b) and (b)(1).

- a. Assistance, referral, or resource information, including how to recognize grooming behaviors,¹⁴ appropriate relationships between District employees and students based upon policy 5:120, *Employee Ethics; Conduct; and Conflict of Interest*, and how to prevent child sexual abuse from happening;
 - b. Methods for how to report child sexual abuse, grooming behaviors, and/or boundary violations to authorities; and
 - c. Available counseling and resources for children who are affected by sexual abuse, including both emotional and educational support for students affected by sexual abuse, so that the student can continue to succeed in school pursuant to policy 7:250, *Student Support Services*.
4. Provide parents/guardians of students in any of grades K through 8 with not less than five days' written notice before commencing any class or course providing instruction in recognizing and avoiding sexual abuse, as well as the opportunity to object in writing.¹⁵

LEGAL REF.: 105 ILCS 5/10-23.13, 5/27-9.1a, and 5/27-13.2.
 105 ILCS 110/3, Critical Health Problems and Comprehensive Health Education Act.
 325 ILCS 5/, Abused and Neglected Child Reporting Act.
 720 ILCS 5/11-25, Criminal Code of 2012.

CROSS REF.: 2:260 (Uniform Grievance Procedure), 2:265 (Title IX Sexual Harassment Grievance Procedure), 4:175 (Convicted Child Sex Offender; Screening; Notifications), 5:90 (Abused and Neglected Child Reporting), 5:100 (Staff Development Program), 5:120 (Employee Ethics; Conduct; and Conflict of Interest), 6:60 (Curriculum Content), 7:20 (Harassment of Students Prohibited), 7:250 (Student Support Services)

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- b. Id. at (b)(4) and (5).
- c. Id. at (b).

¹⁴ Providing information to parents/guardians about how to recognize grooming behaviors is not in *Erin's Law*; it only addresses informing parents/guardians about the methods for increasing their awareness and knowledge of grooming behaviors. 105 ILCS 5/10-23.13(b)(1). This policy requires the district to provide information to parents/guardians about how to recognize grooming behaviors to: (1) effect the purpose of *Erin's Law*, (2) align with the intent of the statutes cited in f/n 1, above (educating all students to recognize and avoid sexual abuse and assault), and (3) align with the notification requirements in 105 ILCS 5/27-13.2 (parents/guardians of K-8 students prior to commencing instruction in recognizing and avoiding sexual abuse (see f/n 15, below)).

¹⁵ Required by 105 ILCS 5/27-13.2. See 6:60-API, E1, *Notice to Parents/Guardians of Sexual Abuse and Assault Awareness and Prevention Education; Requests to Examine Materials; Written Objection(s) and/or Opt-outs*. Delete for high school districts.

Operational Services

Safety 1

Safety and Security

All District operations, including the education program, shall be conducted in a manner that will promote the safety and security of everyone on District property or at a District event.² The Superintendent or designee shall develop, implement, and maintain a comprehensive safety and security plan that includes, without limitation:

1. An emergency operations and crisis response plan(s) addressing prevention, preparation, response, and recovery for each school;³

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¹ State law requires a policy on several topics in this policy and otherwise controls this policy's content. Topics previously assigned to this code number were moved in May 2014 and placed in 4:100, *Insurance Management* and 4:175, *Convicted Child Sex Offender: Screening; Notifications*.

Grants may be available from the Ill. State Board of Education (ISBE) to support school security improvements, including professional development, safety-related upgrades to school buildings, equipment, and facilities. 105 ILCS 5/2-3.1(b)(2)(i), added by P.A. 101-413.

Based upon the recommendation of the Federal Commission on School Safety in 2018 (www2.ed.gov/documents/school-safety/school-safety-report-18), the U.S. Dept. of Homeland Security, Education, Justice, and Health and Human Services created a central school safety clearinghouse website at www.schoolsafety.gov, to share actionable recommendations to help schools protect, prevent, investigate, respond to, and recover from emergency situations. Topics include bullying/cyberbullying, student mental health, school climate, threat assessment, emergency planning, security, recovery, and drills.

² This simple end statement should be discussed and altered accordingly before board adoption. Ask: what effect or impact will this statement have on the students and the community?

³ The term *emergency operations and crisis response plan* is used because federal agencies refer to school *emergency operations plans* and the School Safety Drill Act (105 ILCS 128) refers to *emergency and crisis response plans*.

See administrative procedure 4:170-API, *Comprehensive Safety and Security Plan*. This procedure follows the recommendations in the *Guide for Developing High-Quality School Emergency Operations Plans*, produced by a collaboration of federal agencies in June 2013 at: www.rems.ed.gov/docs/REMS_K-12_Guide_508.pdf. The *Guide* informs schools what they *need* to do, not *what* to do. It recommends a process for developing, implementing, and continually refining a school emergency operations plan as well as a discussion of its form, function, and content. www.isbe.net/Pages/School-Emergency-and-Crisis-Response-Plan-Guide.aspx

ISBE maintains a comprehensive website on school emergency and crisis response planning in compliance with the School Safety Drill Act and Joint Rules of the Office of the State Fire Marshal and ISBE (29 Ill.Admin.Code Part 1500), at www.isbe.net/Pages/School-Emergency-and-Crisis-Response-Plan-Guide.aspx. ISBE's website includes a *Sample School Emergency Operations Plan* which aligns with the federal *Guide for Developing High-Quality School Emergency Operations Plans*.

105 ILCS 128/45, added by P.A. 101-455, requires school districts to implement a threat assessment procedure by 12-6-19, and to establish a threat assessment team by 2-19-20. The threat assessment procedure may be part of a board policy on targeted school violence prevention that includes the creation of a threat assessment team. For more discussion, see policy 4:190, *Targeted School Violence Prevention Program*.

105 ILCS 5/10-20, added by P.A. 101-548, allows school districts to install a door security locking means on a door of a school building to prevent unwanted entry through the door only if the door security locking means is used: (1) by a trained school district employee; (2) during an emergency that threatens the health and safety of students and employees or during an active shooter drill; and (3) when local law enforcement officials and the local fire department have been notified of its installation prior to its use. *Id.*

2. Provisions for a coordinated effort with local law enforcement and fire officials, emergency medical services personnel, and the Board Attorney;
3. A school safety drill plan;
4. Instruction in safe bus riding practices;⁴ and
5. A clear, rapid, factual, and coordinated system of internal and external communication.

In the event of an emergency that threatens the safety of any person or property, students and staff are encouraged to follow the best practices discussed for their building regarding the use of any available cellular telephones. ⁵

School Safety Drill Plan ⁶

During every academic year, each school building that houses school children shall conduct, at a minimum, each of the following in accordance with the School Safety Drill Act (105 ILCS 128/):

1. Three school evacuation drills to address and prepare students and school personnel for fire incidents. One of these three drills shall require the participation of the local fire department or district.
2. One bus evacuation drill.
3. One severe weather and shelter-in-place drill to address and prepare students and school personnel for possible tornado incidents.
4. One law enforcement lock-down drill to address a school shooting incident and to evaluate the preparedness of school personnel and students. This drill shall occur no later than 90 days after the first day of school of each year, and shall require the participation of all school

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⁴ Required by 105 ILCS 128/20(b) and 105 ILCS 5/10-20.14(c) for all students. See 4:110-AP3, *School Bus Safety Rules*.

⁵ 105 ILCS 5/10-20.28. Consider discussing with local law enforcement what its preference would be and encourage staff and students to follow the recommendation. A wave of 911 cell phone calls can jam phone lines. Student use of cell phones is addressed in 7:190, *Student Behavior*.

625 ILCS 5/12-610.1(e) prohibits wireless telephone use at any time while operating a motor vehicle on a roadway in a school speed zone except for: (1) highway construction or maintenance workers within their work zones; (2) any use for emergency purposes; (3) law enforcement officers or emergency responders performing their duties; (4) a person using a wireless telephone in voice-operated mode with or without use of a headset; (5) a person with technology that uses a single button to initiate or terminate a voice communication, e.g., *HandsFreeLink*[®]; and (6) a person using an electronic communication device solely to report an emergency and for continued communication with emergency personnel. 625 ILCS 5/12-813.1 limits cell phone use by school bus drivers; see policy 4:110, *Transportation*.

⁶ Each of the listed drills is required by the School Safety Drill Act. Each drill's requirements are comprehensively covered in 4:170-AP1, *Comprehensive Safety and Security Plan*. For information about documenting minimum compliance with the School Safety Drill Act, see www.isbe.net/Pages/School-Emergency-and-Crisis-Response-Plan-Guide.aspx.

105 ILCS 5/2-3.12(f) authorizes the Ill. State Fire Marshal or a qualified fire official to whom the Ill. State Fire Marshal has delegated his or her authority to conduct an annual fire safety inspection of each school building, provided the inspection is coordinated with the regional superintendent. See also 105 ILCS 5/3-14.21(c) and 23 Ill.Admin.Code §180.300(b). To effectively implement this law and ensure the education of students in the district is not disturbed, school officials should discuss with the Ill. State Fire Marshal and regional superintendent whether written notice may be provided to the principal requesting to schedule a mutually agreed upon time.

Carbon Monoxide Alarms ¹²

The Superintendent or designee shall implement a plan with the District's local fire officials to:

1. Determine which school buildings to equip with approved *carbon monoxide alarms* or *carbon monoxide detectors*,
2. Locate the required carbon monoxide alarms or carbon monoxide detectors within 20 feet of a carbon monoxide emitting device, and
3. Incorporate carbon monoxide alarm or detector activation procedures into each school building that requires a carbon monoxide alarm or detector. The Superintendent or designee shall ensure each school building annually reviews these procedures.

Soccer Goal Safety ¹³

The Superintendent or designee shall implement the Movable Soccer Goal Safety Act in accordance with the guidance published by the IDPH. Implementation of the Act shall be directed toward improving the safety of movable soccer goals by requiring that they be properly anchored.

Unsafe School Choice Option ¹⁴

The unsafe school choice option allows students to transfer to another District school or to a public charter school within the District. The unsafe school choice option is available to:

1. All students attending a persistently dangerous school, as defined by State law and identified by the ISBE.

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¹² 105 ILCS 5/10-20.57. *Carbon monoxide detector* and *detector* mean a device having a sensor that responds to carbon monoxide gas and that is connected to an alarm control unit and approved in accordance with rules adopted by the Ill. State Fire Marshal. 105 ILCS 5/10-20.57(a). *Approved carbon monoxide alarm* or *alarm* means a carbon monoxide alarm that complies with all the requirements of the rules and regulations of the Ill. State Fire Marshal, bears the label of a nationally recognized testing laboratory, and complies with the most recent standards of the Underwriters Laboratories or the Canadian Standard Association. 430 ILCS 135/5.

Consult both the board attorney and the local fire officials about whether a school building is exempt from this law. Remove this subhead if the board attorney determines that every building across the entire school district is exempt. The law applies to school buildings that have or are close to any *sources of carbon monoxide*; however, it does not specifically define what that means. 430 ILCS 135/20 defines exemptions for residential units and may provide guidance on the exemption for schools. The law also fails to define *carbon monoxide emitting device*, which triggers the placement point in a school building for a carbon monoxide alarm or carbon monoxide detector.

¹³ Include this section **only if** the school district owns and controls a movable soccer goal Movable Soccer Goal Safety Act, a/k/a *Zach's Law*, 430 ILCS 145/. The Act requires: (1) organizations that own and control a movable soccer goal to create a soccer goal safety and education policy that outlines how the organization will specifically address the safety issues associated with movable soccer goals; and (2) the IDPH to provide technical assistance materials. 430 ILCS 145/10, 20. See www.dph.illinois.gov/topics-services/prevention-wellness/injury-violence-prevention/soccer-goal-safety.

¹⁴ This topic must be covered in board policy. 105 ILCS 5/10-21.3a. See also 20 U.S.C. §7912. ISBE maintains a list of persistently dangerous schools. Districts having only one school may substitute the following for this paragraph:

The unsafe school choice option provided in State law permits students to transfer to another school within the District in certain situations. This transfer option is unavailable in this District because the District has only one school or attendance center. A student, who would otherwise have qualified for the choice option, or such a student's parent/guardian, may request special accommodations from the Superintendent or designee.

Districts with each grade in only one attendance center may substitute the following for this paragraph:

The unsafe school choice option provided in State law permits students to transfer to another school within the District in certain situations. This transfer option is unavailable in this District because each grade is in only one attendance center. A student, who would otherwise have qualified for the choice option, or such a student's parent/guardian, may request special accommodations from the Superintendent or designee.

LEGAL REF.: 105 ILCS 5/10-20.2, 5/10-20.57, 5/18-12, and 5/18-12.5.
105 ILCS 128/, School Safety Drill Act. Department of 29 Ill.Admin.Code Part 1500.
210 ILCS 74/, Physical Fitness Facility Medical Emergency Preparedness Act.
225 ILCS 320/35.5, Ill. Plumbing License Law.

CROSS REF.: 4:110 (Transportation), 4:175 (Convicted Child Sex Offender; Screening; Notifications), 4:180 (Pandemic Preparedness),
5:30 (Hiring Process and Criteria), 8:30 (Visitors to and Conduct on School Property), 8:100 (Relations with Other Organizations and Agencies)

Operational Services

Convicted Child Sex Offender; Screening; Notifications 1

Persons Prohibited on School Property without Prior Permission

State law prohibits a child sex offender from being present on school property or loitering within 500 feet of school property when persons under the age of 18 are present, unless the offender meets either of the following two exceptions:²

1. The offender is a parent/guardian of a student attending the school and has notified the Building Principal of his or her presence at the school for the purpose of: (i) attending a conference with school personnel to discuss the progress of his or her child academically or socially, (ii) participating in child review conferences in which evaluation and placement decisions may be made with respect to his or her child regarding special education services, or (iii) attending conferences to discuss other student issues concerning his or her child such as retention and promotion; or
2. The offender received permission to be present from the School Board, Superintendent, or Superintendent's designee. If permission is granted, the Superintendent or Board President shall provide the details of the offender's upcoming visit to the Building Principal.

In all cases, the Superintendent or designee shall supervise a child sex offender whenever the offender is in a child's vicinity.³ If a student is a sex offender, the Superintendent or designee shall develop guidelines for managing his or her presence in school.⁴

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¹ The topic covered by this policy was previously a part of 4:170, *Safety*.

² 720 ILCS 5/11-9.3 contains these requirements concerning a child sex offender's presence on school property. An Illinois federal court denied a father's request to enjoin a school's policy that prohibited him, as a child sex offender, from attending his children's school activities in *Doe v. Paris Union School Dist.*, 2006 WL 44304 (C.D.Ill. 2006). See also 8:30, *Visitors to and Conduct on School Property*.

³ 720 ILCS 5/11-9.3(a). The statute assigns the child sex offender the "duty to remain under the direct supervision of a school official." In order to ensure this happens and to protect students, the sample policy requires the superintendent or designee to supervise a child sex offender whenever the offender is in a child's vicinity. See also 8:30, *Visitors to and Conduct on School Property*.

⁴ Aside from rumor and notoriety, there are three ways that school officials may learn that an enrolled student is a sex offender or a violent offender against youth:

1. By being informed by the student or the student's parent/guardian.
2. Through the Illinois State Police (ISP) Sex Offender Registry, www.isp.state.il.us/sor. A juvenile sex offender is listed there after the juvenile becomes 17 years old and will be listed for the remaining registration period. 730 ILCS 150/2. The database is updated daily and allows searching by name, city, county, zip code, compliance status, or any combination thereof.
3. By receiving notification from a law enforcement agency that a juvenile sex offender or juvenile violent offender against youth is enrolled in a school. The law enforcement agency having jurisdiction to register the juvenile must provide a copy of the offender registration form to the building principal and the school counselor designated by the principal; the school must keep the registration form separately from the student's school records. 730 ILCS 152/121(b).

Screening⁵

The Superintendent or designee shall perform fingerprint-based criminal history records information checks and/or screenings required by State law or Board policy for employees; student teachers; students doing field or clinical experience other than student teaching; contractors' employees who have direct, daily contact with one or more children; and resource persons and volunteers.

He or she shall take appropriate action based on the result of any criminal background check and/or screen.⁶

Notification to Parents/Guardians

The Superintendent shall develop procedures for the distribution and use of information from law enforcement officials under the Sex Offender Community Notification Law and the Murderer and

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If a sex offender is enrolled in a school, guidelines for managing the sex offender's presence in school should be prepared. The components will depend on the situation but generally should include asking the parent/guardian of a sex offender below the age of 17 years for permission to share the information with certain staff for the protection of both the student and other students. In addition, the guidelines should include a supervision plan providing supervision for the student during all aspects of his or her school day. Finally, the guidelines must respect the privacy of juvenile records and comply with the Ill. School Student Records Act (105 ILCS 10/). The board attorney should be consulted.

⁵ The law is silent with regard to *screening* volunteers and individuals in the proximity of a school. Screening and *fingerprint-based criminal history records checks* are different. See procedure 4:175-AP1, *Criminal Offender Notification Laws: Screening*, for further distinctions.

The School Code requires school districts to perform a *fingerprint-based criminal history records check* through (a) the ISP for an individual's Criminal History Records Information (CHRI) and (b) the Federal Bureau of Investigation's national crime information databases. 105 ILCS 5/10-21.9(a), (a-5) and (a-6), amended by P.A. 101-531.

Screening only involves checking an individual's name and address against publicly-available databases and information provided for local law enforcement like the: (1) Illinois Sex Offender Registry, www.isp.state.il.us/sor/, and (2) the Violent Offender Against Youth Registry maintained by the ISP, www.isp.state.il.us/cmvo/. Screening must be done for employment applicants and repeatedly at least once every five years that an individual remains employed by the district. 105 ILCS 5/10-21.9(a-5) and (a-6), amended by P.A. 101-531. See policy 5:30, *Hiring Process and Criteria*; procedure 5:30-AP2, *Investigations*; policy 6:250, *Community Resource Persons and Volunteers*; and procedure 6:250-AP, *Screening and Screening Resource Persons and/or School Volunteers*; *Sc. .ing*.

⁶ If permitted by federal or State law, when a fingerprint-based criminal history records check returns a *conviction* of a crime set forth in 105 ILCS 5/21B-80 or when a screening finds a *registration* for an individual licensed by the Ill. State Board of Education (ISBE), the superintendent or regional superintendent must notify the ISBE Superintendent in writing within 15 business days. 105 ILCS 5/10-21.9(c), amended by P.A.s 101-531 and 101-643. Contact the board attorney for guidance regarding disclosures permitted by federal or State law.

By comparison, when a fingerprint-based criminal history records check returns a *pending* criminal charge for an offense set forth in 105 ILCS 5/21B-80, the superintendent, regional office of education, or entity that provides background checks, must notify the ISBE Superintendent within 10 days. *Id.* 105 ILCS 5/10-21.9(e), amended by P.A. 101-643, does not state whether the notice requirement is *calendar* days or *business* days. Support for it being *business* days is found later in 105 ILCS 5/10-21.9(e), which requires that notice for *convictions* be provided within 15 business days. Additionally, while notice for *pending* criminal charges is not required to be "in writing," for ease of use, consistency in administration, alignment with the requirement to provide written notice for *convictions*, and best practices this sample text states the State Superintendent will also be notified of *pending* criminal charges in writing. Consult the board attorney for further guidance.

If an indicated report by the Ill. Dept. of Children and Family Services or by a child welfare agency of another jurisdiction is found, the board must consider the individual's status as a condition of student teaching or employment. 105 ILCS 5/10-21.9(c) and (g), amended by P.A. 101-531. The statute does bar an individual with an indicated finding from student teaching; however, that is the most logical interpretation.

When a fingerprint-based criminal history records check returns a conviction of a crime set forth in 105 ILCS 5/21B-80 or when a screening finds a registration for an individual licensed by the Ill. State Board of Education (ISBE), the superintendent or regional superintendent must notify the ISBE Superintendent in writing within 15 business days. 105 ILCS 5/10-21.9(c), amended by P.A.s 101-531 and 101-643. Contact the board attorney for guidance regarding disclosures permitted by federal or State law.

General Personnel

Equal Employment Opportunity and Minority Recruitment 1

The School District shall provide equal employment opportunities² to all persons regardless of their race; color; creed; religion;³ national origin; sex;⁴ sexual orientation;⁵ age;⁶ ancestry; marital status;⁷

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¹ Federal and State law (see the policy's Legal References) require that all districts have a policy on equal employment opportunities and control this policy's content. **This is a complex, confusing, and highly litigated area of the law; consult the board attorney for advice on the application of these laws to specific fact situations.**

² *Equal employment opportunities* apply to virtually all terms and conditions of employment, e.g., discharge, hire, promotion, pay, demotion, and benefits (see the policy's Legal References). The Ill. Constitution protects the following categories from discrimination in employment: race, color, creed, national ancestry, sex, and handicap. Art. I, §§17, 18, and 19. The Ill. Human Rights Act (IHRA) protects the following categories from discrimination in employment, whether *actual or perceived*: race, color, religion, sex, national origin, ancestry, age, marital status, physical or mental disability, military status, order of protection status, sexual orientation, pregnancy, unfavorable discharge from military service, and citizenship status. 775 ILCS 5/1-102 and 5/1-103, amended by P.A. 101-221. The IHRA requires employers to annually disclose to the Ill. Dept. of Human Rights (IDHR) certain information about adverse judgments and administrative rulings where there was a finding of sexual harassment or unlawful discrimination under any federal, State, or local law, as well as data regarding settlement agreements, if requested by an IDHR investigator. 775 ILCS 5/2-108, added by P.A. 101-221, scheduled to be repealed on 1-1-30.

The Equal Employment Opportunities Act (EEOA, *a/k/a* Title VII of the Civil Rights Act of 1964) prohibits discrimination because of an individual's race, color, religion, sex, or national origin. 42 U.S.C. §2000e *et seq.*, amended by The Lilly Ledbetter Fair Pay Act of 2009 (LLFPA), Pub.L. 111-2.

Under the Workplace Transparency Act (WTA) (820 ILCS 96/, added by P.A. 101-221), employers may not, as a condition of employment or continued employment, prevent prospective or current employees from making truthful statements or disclosures about alleged unlawful employment practices, including discrimination. *Id.* at 96/1-25.

The LLFPA clarifies that a discriminatory compensation decision or other practice occurs each time an employee is paid or receives a last benefits check pursuant to the discriminatory compensation decision as opposed to only from the time when the discriminatory compensation decision or other practice occurred. The Act has no legislative history available to define what the phrase *or other practice* might mean beyond a discriminatory compensation decision; however, in a guidance document, the U.S. Equal Employment Opportunity Commission (EEOC) states that practices "may include employer decisions about base pay or wages, job classifications, career ladder or other noncompetitive promotion denials, tenure denials, and failure to respond to requests for raises." See *Equal Pay Act of 1963 and Lilly Ledbetter Fair Pay Act of 2009* (2014), at www.eeoc.gov/laws/guidance/equal-pay-act-1963-and-lilly-ledbetter-fair-pay-act-2009.

The Ill. Equal Pay Act of 2003 (EPA) offers additional protection by prohibiting the payment of wages to one sex less than the opposite sex or to an African-American less than a non-African-American *for the same or substantially similar work*. 820 ILCS 112/, amended by P.A. 101-177. The Ill. Dept. of Labor (IDOL) enforces the EPA. The EPA also prohibits employers from requesting or requiring applicants to disclose wage or salary history as a condition of being considered for employment or as a condition of employment. *Id.* at 112/10(b-5), added by P.A. 101-177. If an applicant voluntarily offers such information without prompting, an employer still cannot use that information in making an offer or determining future pay. See administrative procedure 5:30-AP1, *Interview Questions*, for sample permissible inquiries on this topic. Employers may seek wage or salary history from an applicant's current or former employer if that information is a matter of public record under the Freedom of Information Act (FOIA); however, districts that wish to undertake such searches should exercise caution: the fact a district seeks out publicly available wage information could still be used against it in a pay discrimination claim. *Id.* at 112/10(b-10), added by P.A. 101-177. Consult the board attorney for further guidance.

While not exhaustive, other laws protecting these and additional classifications are named in subsequent footnotes.

arrest record;⁸ military status; order of protection status;⁹ unfavorable military discharge;¹⁰ citizenship status provided the individual is authorized to work in the United States;¹¹

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³ 775 ILCS 5/2-102 of the IHRA, amended by P.A.s 101-100, 100-588, and 101-221, contains a *religious discrimination* subsection. It expressly prohibits employers from requiring a person to violate a sincerely held religious belief to obtain or retain employment unless, after engaging in a bona fide effort, the employer demonstrates that it is unable to reasonably accommodate the employee's or prospective employee's sincerely held religious belief, practice, or observance without undue hardship on the conduct of the employer's business. Religious beliefs include, but are not limited to: the wearing of any attire, clothing, or facial hair in accordance with the requirements of his/her religion. 775 ILCS 5/2-102(E-5). Employers may, however, enact a dress code or grooming policy that restricts attire, clothing, or facial hair to maintain workplace safety or food sanitation. *Id.*

In addition to the IHRA and the federal EEOA (discussed in ¶n 2), see 775 ILCS 35/, Religious Freedom Restoration Act.

⁴ Discrimination on the basis of sex under the EEOA includes discrimination on the basis of sexual orientation or transgender status. *Bostock v. Clayton Cnty.*, 140 S.Ct. 1731 (2020); *Hively v. Ivy Tech*, 853 F.3d 339 (7th Cir. 2017). In addition to the IHRA and the federal EEOA (discussed in ¶n 2), see Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §1681 *et seq.*; 34 C.F.R. Part 106. See policy 2:265, *Title IX Sexual Harassment Grievance Procedure*. The federal Equal Pay Act prohibits an employer from paying persons of one sex less than the wage paid to persons of the opposite sex for equal work. 29 U.S.C. §206(d). See ¶n 2 above for more information on State equal pay protections, including on the basis of sex. The LLFPA defines *date of underpayment* as each time wages are underpaid. Employees have one year from the time they become aware of the underpayment to file a complaint with the IDOL. 820 ILCS 112/15(b).

⁵ *Sexual orientation* means actual or perceived heterosexuality, homosexuality, bisexuality, or gender-related identity; it does not include a physical or sexual attraction to a minor by an adult. 775 ILCS 5/1-103(O-1).

⁶ Age Discrimination in Employment Act (ADEA) (29 U.S.C. §621 *et seq.*), amended by LLFPA (see ¶n 2), 29 C.F.R. Part 1625, amended the EEOC regulations under ADEA to reflect the U.S. Supreme Court's decision in *General Dynamic Systems, Inc. v. Cline*, 540 U.S. 581 (2004), holding the ADEA to permit employers to favor older workers because of age. Thus, favoring an older person over a younger person is not unlawful discrimination, even when the younger person is at least 40 years old.

⁷ 105 ILCS 5/10-22.4 and 775 ILCS 5/1-103(Q), amended by P.A. 101-221. The term *marital status* means an individual's legal status of being married, single, separated, divorced, or widowed. 775 ILCS 5/1-103(J). This statutory definition does not encompass the identity of one's spouse. Thus, school districts may adopt no-spouse policies. *Boaden v. Dept. of Law Enforcement*, 171 Ill.2d 230 (Ill. 1996).

⁸ Districts may not make employment decisions on the basis of arrest history, but may use job-disqualifying criminal convictions provided specific conditions are met. 775 ILCS 5/2-103 and 5/2-103.1, added by P.A. 101-656. See ¶n 18, below. The Job Opportunities for Qualified Applicants Act prohibits an employer from asking about a criminal record until the employer determines that the applicant is qualified for the position; however, this does not apply when employers are required to exclude applicants with certain criminal convictions from employment. School employers should limit their requests for criminal convictions to *job-disqualifying* convictions, as permitted by the IHRA. 775 ILCS 5/2-103.1, added by P.A. 101-656; 820 ILCS 75/15. See also the IDHR's guidance, *Conviction Record Protection – Frequently Asked Questions*, at www2.illinois.gov/dhr/Pages/Conviction_Record_Protection_Frequently_Asked_Questions.aspx and the EEOC's guidance, *Consideration of Arrest and Conviction Records in Employment Decisions*, at www.eeoc.gov/laws/guidance/arrest_conviction.cfm.

⁹ 775 ILCS 5/1-103(Q), amended by P.A. 101-221. The term *order of protection status* means a person protected under an order of protection issued pursuant to the Ill. Domestic Violence Act of 1986, Article 112A of the Code of Criminal Procedure of 1963, the Stalking No Contact Order Act, the Civil No Contact Order Act, or an order of protection issued by a court of another state. 775 ILCS 5/1-103(K-5).

¹⁰ *Military status* means a person's status on active duty or in status as a veteran in the U.S. Armed Forces, veteran of any reserve component of U.S. Armed Forces, or current member or veteran of the Ill. Army National Guard or Ill. Air National Guard. 775 ILCS 5/1-103(J-1). *Unfavorable military discharge* does not include those characterized as RE-4 or *dishonorable*. 775 ILCS 5/1-103(P). The Uniformed Services Employment and Reemployment Rights Act of 1994 prohibits employers from discriminating or retaliating against any person for reasons related to past, present, or future service in a *uniformed service*. 38 U.S.C. §4301 *et seq.*

¹¹ 775 ILCS 5/1-102(C). According to the Immigration Reform and Control Act of 1986, all employers must verify that employees are either U.S. citizens or authorized to work in the U.S. 8 U.S.C. §1324(a) *et seq.*

11 use of lawful products while not at work;¹³ being a victim of domestic violence, sexual violence, or gender violence;¹⁴ genetic information;¹⁵ physical or mental handicap or disability, if otherwise able to perform the essential functions of the job with reasonable accommodation;¹⁶ pregnancy, childbirth, or related medical conditions;¹⁷ credit history, unless a satisfactory credit history is an established bona fide

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¹² 820 ILCS 180/10(12.5), added by P.A. 101-221 and 101-277, Victims' Economic Security and Safety Act. *Gender violence* means: (1) one or more acts of violence or aggression that are a criminal offense under State law committed, at least in part, on the basis of a person's actual or perceived sex or gender, (2) a physical intrusion or invasion of a sexual nature under coercive conditions that is a criminal offense under State law, or (3) a threat to commit one of these acts. 820 ILCS 180/10(12.5), added by P.A. 101-221. *Off premises* means any location, other than the workplace, where an individual is engaged in a lawful activity, including a private residence, a public place, or a vehicle. 820 ILCS 180/10(12.5), added by P.A. 101-221.

¹³ The Right to Privacy in the Workplace Act prohibits discrimination based on use of lawful products, e.g., alcohol, cannabis, and tobacco, off premises during non-working hours. 820 ILCS 55/5, amended by P.A. 101-27.

¹⁴ 820 ILCS 180/30, amended by P.A. 101-221 and 101-277, Victims' Economic Security and Safety Act. *Gender violence* means: (1) one or more acts of violence or aggression that are a criminal offense under State law committed, at least in part, on the basis of a person's actual or perceived sex or gender, (2) a physical intrusion or invasion of a sexual nature under coercive conditions that is a criminal offense under State law, or (3) a threat to commit one of these acts. 820 ILCS 180/10(12.5), added by P.A. 101-221. *Off premises* means any location, other than the workplace, where an individual is engaged in a lawful activity, including a private residence, a public place, or a vehicle. 820 ILCS 180/10(12.5), added by P.A. 101-221.

An employer is prohibited from discriminating against any individual, e.g. an applicant for employment, because he or she "is an employee whose employer is subject to Section 21 of the Workplace Violence Prevention Act." The Workplace Violence Prevention Act allows an employer to seek a *workplace protection restraining order* when there is a credible threat of violence at the workplace. 820 ILCS 275/. Section 21 requires the employer seeking a *workplace protection restraining order* to notify the employee who is a victim of unlawful violence. 820 ILCS 275/21.

¹⁵ Illinois' Genetic Information Privacy Act (GIPA) (410 ILCS 513/25) and Title II of Genetic Information Nondiscrimination Act (GINA) (42 U.S.C. §2000ff *et seq.*). Both laws protect job applicants and current and former employees from discrimination based on their genetic information. Note that GIPA provides greater protections to Illinois employees than Title II of GINA. GIPA, *inter alia*, prohibits employers from penalizing employees who do not disclose genetic information or do not choose to participate in a program requiring disclosure of the employee's genetic information. See /n 12 in policy 2:260, *Uniform Grievance Procedure*, for the definition of genetic information and a detailed description of both statutes, including of Title I of GINA affecting the use of genetic information in health insurance. The EEOC vacated certain 2016 ADA and GINA wellness program regulations following an adverse court ruling. 83 Fed. Reg. 65296. Those rules provided guidance to employers on the extent to which they could use incentives (such as discounted health plan costs) to encourage employees to participate in wellness programs that asked for employee and family health information. Consult the board attorney for guidance regarding specific application of ADA and GINA and how they integrate with other related laws, e.g., the Family Medical Leave Act and other State laws governing time off for sickness and workers' compensation.

¹⁶ Americans with Disabilities Act of 1990 (ADA) (42 U.S.C. §12101 *et seq.*), amended by the Americans with Disabilities Act Amendments Act of 2008 (ADAAA) (Pub. L. 110-325) and modified by the LLFPA: Rehabilitation Act of 1973 (29 U.S.C. §701 *et seq.*).

¹⁷ 775 ILCS 5/2-102(I). Employers must provide reasonable accommodations to employees with conditions related to pregnancy, childbirth, or related conditions. 775 ILCS 5/2-102(J). Employers are required to post a notice summarizing the right to be free from unlawful discrimination and the right to certain reasonable accommodations. 775 ILCS 5/2-102(K). The IDOL is required to prepare such a notice, retrievable from its website, which employers may use.

Federal law also prohibits employers from discriminating against employees and applicants on the basis of pregnancy, childbirth, or related medical conditions. 42 U.S.C. §2000e(k). State law also prohibits the State, which includes school districts, from interfering with or discriminating against an individual's fundamental right to continue a pregnancy or to have an abortion. 775 ILCS 55/, added by P.A. 101-13. Pregnant workers with pregnancy-related impairments may have disabilities for which they may be entitled to reasonable accommodation under the ADA. Guidance from the EEOC (6-25-15) is available at: www.eeoc.gov/laws/guidance/pregnancy_qa.cfm.

occupational requirement of a particular position;¹⁸ conviction record, unless authorized by law;¹⁹ or other legally protected categories.^{20 21 22 23} No one will be penalized solely for his or her status as a

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¹⁸ 820 ILCS 707, Employee Credit Privacy Act. Unless a satisfactory credit history is an *established bona fide occupational requirement* of a particular position, an employer may not: (1) refuse to hire, discharge, or otherwise discriminate against an individual with respect to employment because of the individual's credit history or credit report; (2) inquire about an applicant's or employee's credit history; or (3) order or obtain an applicant's or employee's credit report from a consumer reporting agency. The Act identifies circumstances that permit a satisfactory credit history to be a job requirement, such as, the position's duties include custody of or unsupervised access to cash or marketable assets valued at \$2,500 or more.

¹⁹ 775 ILCS 5/2-103.1(A), added by P.A. 101-656. The IHRA prohibits an employer from *disqualifying* or taking other *adverse action* against an applicant or employee based on a *conviction record* unless: (1) otherwise authorized by law; (2) there is a *substantial relationship* between the criminal offense and the employment sought; or (3) granting the employment would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public. *Id.* Disqualification or adverse action includes refusal to hire, segregation, and actions with respect to recruitment, hiring, promotion, renewal of employment, selection for training or apprenticeship, discharge, discipline, tenure or terms, privileges, or conditions of employment. *Id.* If a board wants to terminate or take other adverse action against a *current* district employee based in whole or in part on a conviction record, it still must comply with all applicable statutory, policy, and bargaining agreement provisions. Boards should consult the board attorney to ensure all legal obligations are met.

Districts that wish to disqualify or take other adverse action against an applicant or employee based on a conviction record must first engage them in an *interactive assessment*, providing the individual with the opportunity to submit evidence in mitigation or to dispute the accuracy of the conviction record. See policy 5:30, *Hiring Process and Criteria*, at ¶n 5, and administrative procedure 5:30-AP2, *Investigations*, for more information.

²⁰ Insert the following optional sentence (775 ILCS 5/1-103(A) and 29 U.S.C. §631):

Age, as used in this policy, means the age of a person who is at least 40 years old.

²¹ Insert the following optional provision (29 U.S.C. §705(10)(A)-(B), (20)(C)(v), (20)(D) and 42 U.S.C. §12114):

Handicap and disability, as used in this policy, excludes persons:

1. Currently using illegal drugs;
 2. Having a currently contagious disease or infection and who, by reason of such disease or infection, would constitute a direct threat to the health or safety of other individuals or who, by reason of the currently contagious disease or infection, are unable to perform the duties of the job; or
 3. Whose current alcohol use prevents them from performing the job's duties or constitutes a direct threat to the property or safety of others.
- Persons who have successfully completed or are participating in a drug rehabilitation program are considered *disabled*.

²² Districts may not make residency in the district a condition of employment for teachers or educational support personnel. 105 ILCS 5/24-4.1, 5/10-23.5. This ban on residency requirements for teachers applies only to instructional personnel, and not, for example, to assistant principals. *Owen v. Kankakee Sch. Dist.*, 261 Ill.App.3d 298 (3rd Dist. 1994). Districts also may not ask an applicant, or the applicant's previous employer, whether the applicant ever received, or filed a claim for, benefits under the Workers' Compensation Act or Workers' Occupational Diseases Act. 820 ILCS 55/10(a). Districts are also prohibited from requiring, requesting, or coercing an employee or potential employee to provide a user name and password or any password or other related account information to gain or demand access to his or her personal online account. 820 ILCS 55/10(b). While the law does not prohibit employers from viewing public information, consult the board attorney before engaging in this practice.

²³ School districts must accommodate mothers who choose to continue breastfeeding after returning to work. See 740 ILCS 1377, Right to Breastfeed Act; 820 ILCS 2607, *Illinois Nursing Mothers in the Workplace Act*; and 29 U.S.C. §207(r), Fair Labor Standards Act. At least one court has ruled an implied private right of action may exist under the NMWA. *Sprisch v. City of Chicago*, 2017 WL 4864913 (N.D.Ill. 2017). See sample language for a personnel handbook in 5:10-AP, *Workplace Accommodations for Nursing Mothers*.

registered qualifying patient or a registered designated caregiver for purposes of the Compassionate Use of Medical Cannabis Program Act, 410 ILCS 130/. ²⁴

Persons who believe they have not received equal employment opportunities should report their claims to the Nondiscrimination Coordinator and/or a Complaint Manager for the Uniform Grievance Procedure. These individuals are listed below. No employee or applicant will be discriminated or retaliated against because he or she: (1) requested, attempted to request, used, or attempted to use a reasonable accommodation as allowed by the Illinois Human Rights Act, or (2) initiated a complaint, was a witness, supplied information, or otherwise participated in an investigation or proceeding involving an alleged violation of this policy or State or federal laws, rules or regulations, provided the employee or applicant did not make a knowingly false accusation nor provide knowingly false information. ²⁵

Administrative Implementation

The Superintendent shall appoint a Nondiscrimination Coordinator for personnel who shall be responsible for coordinating the District's nondiscrimination efforts. The Nondiscrimination Coordinator may be the Superintendent or a Complaint Manager for the Uniform Grievance Procedure. The Nondiscrimination Coordinator also serves as the District's Title IX Coordinator. ²⁶

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²⁴ 410 ILCS 130/40, amended by P.A. 101-363; 77 Ill.Admin.Code Part 946. To legally use medical cannabis, an individual must first become a *registered qualifying patient*. Their *use* of cannabis, e.g. permissible locations, is governed by the Compassionate Use of Medical Cannabis Program Act, 410 ILCS 130/, amended by P.A.s 100-660 and 101-363. There are many situations in which no one, even a registered qualifying patient, may possess or use cannabis except as provided under *Ashley's Law* (105 ILCS 5/22-33, added by P.A.s 100-660, and amended by P.A.s 101-363, and 101-370), including in a school bus or on the grounds of any preschool, or primary or secondary school. 410 ILCS 130/30(a)(2)(3), amended by P.A.s 100-660 and 101-363. See policy 5:50, *Drug- and Alcohol-Free Workplace; E-Cigarette, Tobacco, and Cannabis Prohibition*, at ¶n 9 for further discussion.

²⁵ 775 ILCS 5/6-101. Discrimination on the basis of a request for or use of a reasonable accommodation is a civil rights violation under the IHRA. *Id.* Most discrimination laws prohibit *retaliation against employees* who oppose practices made unlawful by those laws, including, for example, the EEOA, Title IX, ADA, ADEA, Victims' Economic Security and Safety Act, the EPA, and the Ill. Whistleblower Act (IWA).

The IWA specifically prohibits employers from retaliating against employees for: (1) disclosing information to a government or law enforcement agency, where the employee has reasonable cause to believe that the information discloses a violation of a State or federal law, rule, or regulation (740 ILCS 174/15(b)); (2) disclosing information in a court, an administrative hearing, or before a legislative commission or committee, or in any other proceeding where the employee has reasonable cause to believe that the information reveals a violation of a State or federal law, rule or regulation (740 ILCS 174/15(a)); (3) refusing to participate in an activity that would result in a violation of a State or federal law, rule, or regulation, including, but not limited to, violations of FOIA (740 ILCS 174/20); and (4) disclosing or attempting to disclose public corruption or wrongdoing (740 ILCS 174/20.1). The definition of retaliation is expanded to include *other retaliation* and *threatening retaliation*. 740 ILCS 174/20.1, 20.2.

The Ill. False Claims Act defines *State* to include school districts. 740 ILCS 175/2(a). Thus, boards may seek a penalty from a person for making a false claim for money or property. 740 ILCS 175/4. For information regarding the IWA and the tort of retaliatory discharge, see *Thomas v. Guardsmark*, 487 F.3d 531 (7th Cir. 2007)(discussing the elements of retaliatory discharge and IWA); *Sherman v. Kraft General Foods, Inc.*, 272 Ill.App.3d 833 (4th Dist. 1995)(finding employee who reported asbestos hazard had a cause of action for retaliatory discharge).

²⁶ The Nondiscrimination and Title IX Coordinator(s) need not be the same person. If the district uses a separate Title IX Coordinator who does not also serve as the Nondiscrimination Coordinator, delete "~~The Nondiscrimination Coordinator also serves as the District's Title IX Coordinator.~~" insert a hard return to create a new paragraph, and insert "The Superintendent shall appoint a Title IX Coordinator to coordinate the District's efforts to comply with Title IX." Then, list the Title IX and Nondiscrimination Coordinators' names and contact information separately in this policy.

The Superintendent shall insert into this policy the names, office addresses, email addresses, and telephone numbers of the District's current Nondiscrimination Coordinator and Complaint Managers.²⁷

Nondiscrimination Coordinator:²⁸

Name

Address

Email

Telephone

Complaint Managers:

Name

Address

Email

Telephone

Name

Address

Email

Telephone

The Superintendent shall also use reasonable measures to inform staff members and applicants that the District is an equal opportunity employer, such as, by posting required notices and including this policy in the appropriate handbooks.²⁹

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²⁷ Title IX regulations require districts to designate and authorize at least one employee to coordinate their efforts to comply with Title IX and to refer to that employee as the *Title IX Coordinator*. 34 C.F.R. §106.8(a). Districts must identify the Title IX Coordinator by name, office address, email address, and telephone number. Id. See fn 19 in policy 2:260, *Uniform Grievance Procedure*.

While the names and contact information are required by law to be listed, they are not part of the adopted policy and do not require board action. This allows for additions and amendments to the names and contact information when necessary. It is important for updated names and contact information to be inserted into this policy and regularly monitored.

²⁸ Best practice is that throughout the district's board policy manual, the same individual be named as Nondiscrimination Coordinator. In contrast, Complaint Managers identified in individual policies may vary depending upon local district needs.

²⁹ In addition to notifying employees of the Uniform Grievance Procedure, a district must notify them of the person(s) designated to coordinate the district's compliance with Title IX and the Rehabilitation Act of 1973. 34 C.F.R. §§106.8(a), 104.8(a). The Nondiscrimination Coordinator may be the same individual for both this policy and policy 7:10, *Equal Educational Opportunities*, as well as a Complaint Manager for policy 2:260, *Uniform Grievance Procedure*. A comprehensive faculty handbook can provide required notices, along with other important information, to recipients. The handbook can be developed by the building principal, but should be reviewed and approved by the superintendent and school board. Any *working conditions* contained in the handbook may be subject to mandatory collective bargaining.

Minority Recruitment ³⁰

The District will attempt to recruit and hire minority employees. The implementation of this policy may include advertising openings in minority publications, participating in minority job fairs, and recruiting at colleges and universities with significant minority enrollments. This policy, however, does not require or permit the District to give preferential treatment or special rights based on a protected status without evidence of past discrimination.

LEGAL REF.: 8 U.S.C. §1324a et seq., Immigration Reform and Control Act.
20 U.S.C. §1681 et seq., Title IX of the Education Amendments of 1972; 34 C.F.R. Part 106.
29 U.S.C. §206(d), Equal Pay Act.
29 U.S.C. §621 et seq., Age Discrimination in Employment Act.
29 U.S.C. §701 et seq., Rehabilitation Act of 1973.
38 U.S.C. §4301 et seq., Uniformed Services Employment and Reemployment Rights Act (1994).
42 U.S.C. §1981 et seq., Civil Rights Act of 1991.
42 U.S.C. §2000e et seq., Title VII of the Civil Rights Act of 1964; 29 C.F.R. Part 1601.
42 U.S.C. §2000ff et seq., Genetic Information Nondiscrimination Act of 2008.
42 U.S.C. §2000d et seq., Title VI of the Civil Rights Act of 1964.
42 U.S.C. §2000e(k), Pregnancy Discrimination Act.
42 U.S.C. §12111 et seq., Americans with Disabilities Act, Title I.
Ill. Constitution, Art. I, §§17, 18, and 19.
105 ILCS 5/10-20.7, 5/10-20.7a, 5/10-21.1, 5/10-22.4, 5/10-23.5, 5/22-19, 5/24-4, 5/24-4.1, and 5/24-7.
410 ILCS 130/40, Compassionate Use of Medical Cannabis Program Act.
410 ILCS 513/25, Genetic Information Privacy Act.
740 ILCS 174/, Ill. Whistleblower Act.
775 ILCS 5/1-103, 5/2-101, 5/2-102, 5/2-103, 5/2-103.1, 5/2-104.1, and 5/6-101, Ill. Human Rights Act.
775 ILCS 35/, Religious Freedom Restoration Act.
820 ILCS 55/10, Right to Privacy in the Workplace Act.
820 ILCS 70/, Employee Credit Privacy Act.
820 ILCS 75/, Job Opportunities for Qualified Applicants Act.
820 ILCS 112/, Ill. Equal Pay Act of 2003.
820 ILCS 180/30, Victims' Economic Security and Safety Act.
820 ILCS 260/, Nursing Mothers in the Workplace Act.

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³⁰ All districts must have a policy on minority recruitment. 105 ILCS 5/10-20.7a. Unlike minority recruitment efforts, affirmative action plans are subject to significant scrutiny because of the potential for reverse discrimination. The U.S. Constitution's guarantee of equal protection prohibits school districts from using racial hiring quotas without evidence of past discrimination. See 29 C.F.R. §1608.1 et seq. (EEOC's guidelines for affirmative action plans); Wygant v. Jackson Bd. of Ed., 476 U.S. 267 (1986) (The goal of remedying societal discrimination does not justify race-based layoffs.); City of Richmond v. J.A. Croson Co., 488 U.S. 469 (1989) (Minority contractor quota struck: quotas must be narrowly tailored to remedy past discrimination and the city failed to identify the need for remedial action and whether race-neutral alternatives existed.).

The IHRA states that it shall not be construed as requiring any employer to give preferential treatment or special rights based on sexual orientation or to implement affirmative action policies or programs based on sexual orientation. 775 ILCS 5/1-101.1.

CROSS REF.: 2:260 (Uniform Grievance Procedure), 2:265 (Title IX Sexual Harassment Grievance Procedure), 5:20 (Workplace Harassment Prohibited), 5:30 (Hiring Process and Criteria), 5:40 (Communicable and Chronic Infectious Disease), 5:50 (Drug- and Alcohol-Free Workplace; E-Cigarette, Tobacco, and Cannabis Prohibition), 5:70 (Religious Holidays), 5:180 (Temporary Illness or Temporary Incapacity), 5:200 (Terms and Conditions of Employment and Dismissal), 5:250 (Leaves of Absence), 5:270 (Employment, At-Will, Compensation, and Assignment), 5:300 (Schedules and Employment Year), 5:330 (Sick Days, Vacation, Holidays, and Leaves), 7:10 (Equal Educational Opportunities), 7:180 (Prevention of and Response to Bullying, Intimidation, and Harassment), 8:70 (Accommodating Individuals with Disabilities)

General Personnel

Workplace Harassment Prohibited 1

The School District expects the workplace environment to be productive, respectful, and free of unlawful discrimination, including harassment. District employees shall not engage in harassment or abusive conduct on the basis of an individual's actual or perceived race, color, religion², national origin, ancestry, sex, sexual orientation, age, citizenship status, work authorization status, disability, pregnancy, marital status, order of protection status, military status, or unfavorable discharge from military service, nor shall they engage in harassment or abusive conduct on the basis of an individual's other protected status identified in Board policy 5:10, *Equal Employment Opportunity and Minority*

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¹ State or federal law controls this policy's content. Federal law requires districts to take action to prevent sexual harassment and to disseminate a policy regarding its prohibition of sex discrimination. 29 C.F.R. §1604.11(f); 34 C.F.R. §106.8(b). State law requires districts to establish a policy to prohibit sexual harassment. 5 ILCS 430/70-5(a), amended by P.A. 101-221. See ¶n 3 below. Harassment based on a protected status is a form of discrimination that violates many State and federal laws (see the policy's Legal References).

Workplace harassment policies have typically focused on *sexual* harassment since it receives the most attention. However, the broad prohibitions against discrimination in State and federal civil rights laws will cover harassing conduct that is motivated by animus against any protected status. See *Porter v. Erie Foods International, Inc.*, 576 F.3d 629 (7th Cir. 2009) (recognizing a cause of action for race harassment). For a list of protected statuses, see sample policy 5:10, *Equal Employment Opportunity and Minority Recruitment*. This policy prohibiting harassment has a separate section on sexual harassment because of the extensive statutory and case law regarding it.

Under the Ill. Human Rights Act (IHRA), harassment is unlawful if it has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment. 775 ILCS 5/2-101(E-1), added by P.A. 101-221. *Working environment* is not limited to a physical location to which an employee is assigned. Id. Harassment is unlawful on the basis of the specifically-listed categories in this policy whether that status is *actual* or *perceived*. Id.

An employer is liable under Title VII of the Civil Rights Act of 1964 (Title VII) for an employee's harassment of a co-worker if the employer was negligent with respect to the offensive behavior by, for example, failing to take remedial action when it knew or should have known about the harassment. 42 U.S.C. §2000e et seq. An employer is liable under the IHRA for harassment by its nonmanagerial and nonsupervisory employees if it becomes aware of the conduct and fails to take reasonable corrective measures. 775 ILCS 5/2-102(A), amended by P.A. 101-221. However, when the perpetrator is the victim's supervisor, the employer will be vicariously liable for the supervisor's actions. Lack of knowledge of a supervisor's misconduct is no defense. *Burlington Industries v. Ellerth*, 524 U.S. 742 (1998); *Faragher v. City of Boca Raton*, 524 U.S. 775 (1998). A *supervisor* is someone who has the authority to demote, discharge, or take other negative job action against the victim. *Vance v. Ball State University*, 133 S.Ct. 2434 (2013). Note that the IHRA (775 ILCS 5/2-102(D)) imposes strict liability on the employer when an employee has been sexually harassed by supervisory personnel regardless of whether the harasser has any authority over the complainant. *Sangamon County Sheriff's Dept. v. Ill. Human Rights Comm'n*, 233 Ill.2d 125 (Ill. 2009). Additionally, under the IHRA, an employer is liable for the harassment of *nonemployees* by nonmanagerial and nonsupervisory employees if it becomes aware of the conduct and fails to take reasonable corrective measures. 775 ILCS 5/2-102(A-10) and (D-5), added by P.A. 101-221. Nonemployees are those who are directly performing services for an employer pursuant to a contract, such as contractors or consultants. Id.

Not all harassing conduct is unlawful discrimination, even if it is disruptive and hurtful. If a board wants to include language in this policy prohibiting employees from engaging in intimidating or offensive conduct that is *not* a civil rights violation, it should consult the board attorney.

² Section 2-102 of the IHRA (775 ILCS 5/2-102) contains a *religious discrimination* subsection. It expressly prohibits employers from requiring a person to violate a sincerely held religious belief to obtain or retain employment unless, after engaging in a bona fide effort, the employer demonstrates that it is unable to reasonably accommodate the employee's or prospective employee's sincerely held religious belief, practice, or observance without undue hardship on the conduct of the employer's business. Religious beliefs include, but are not limited to: the wearing of any attire, clothing, or facial hair in accordance with the requirements of his/her religion. 775 ILCS 5/2-102(E-5). Employers may, however, enact a dress code or grooming policy that restricts attire, clothing, or facial hair to maintain workplace safety or food sanitation. Id.

Recruitment. Harassment of students, including, but not limited to, sexual harassment, is prohibited by Board policies 2:260, *Uniform Grievance Procedure*; 2:265, *Title IX Sexual Harassment Grievance Procedure*; 7:20, *Harassment of Students Prohibited*; 7:180, *Prevention of and Response to Bullying, Intimidation, and Harassment*; and 7:185, *Teen Dating Violence Prohibited*.

The District will take remedial and corrective action to address unlawful workplace harassment, including sexual harassment.

Sexual Harassment Prohibited³

The District shall provide a workplace environment free of verbal, physical, or other conduct or communications constituting harassment on the basis of sex as defined and otherwise prohibited by State and federal law. The District provides annual sexual harassment prevention training in accordance with State law.⁴

District employees shall not make unwelcome sexual advances or request sexual favors or engage in any unwelcome conduct of a sexual nature when: (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; (2) submission to or rejection

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³ The IHRA (775 ILCS 5/2-102(D)) provides that sexual harassment is a civil rights violation:

For any employer, employee, agent of any employer, employment agency or labor organization to engage in sexual harassment; provided, that an employer shall be responsible for sexual harassment of the employer's employees by non-employees or non-managerial and non-supervisory employees only if the employer becomes aware of the conduct and fails to take reasonable corrective measures.

See sample policy 2:265, *Title IX Sexual Harassment Grievance Procedure*, for the definition of Title IX sexual harassment (20 U.S.C. §1681 *et seq.*), and see ¶n 3 of it for examples of employee sexual harassment that may violate Title IX. Title IX's reach is broad because an alleged complainant or alleged respondent may be *anyone* in the district's educational program or activity. This includes applicants for employment, students, parents/guardians, any employee, and third parties. Districts are liable for Title IX sexual harassment when *any* district employee has *actual knowledge* of sexual harassment or allegations of sexual harassment against anyone in the district (except when the only employee with knowledge is the perpetrator of the alleged sexual harassment). 34 C.F.R. §106.30.

The State Officials and Employees Ethics Act (SOEEA) (5 ILCS 430/70-5(a), amended by P.A. 1009-01-101-221) requires governmental entities (including school districts) to adopt an ordinance or resolution establishing a policy to prohibit sexual harassment. Unlike the powers granted by the Ill. General Assembly to municipalities to pass ordinances, school boards govern by rules referred to as *policies*. 105 ILCS 5/10-20.5. Further, school boards may only exercise powers given to them that are consistent with the School Code that may be requisite or proper for the maintenance, operation, and development of any school or schools under the jurisdiction of the board. 105 ILCS 5/10-20.

The policy must include, at a minimum: (1) a prohibition on sexual harassment; (2) details on how an individual can report an allegation of sexual harassment, including options for making a confidential report to a supervisor, ethics officer, Inspector General, or the Ill. Dept. of Human Rights (IDHR); (3) a prohibition on retaliation for reporting sexual harassment allegations, including availability of whistleblower protections under the SOEEA, the Whistleblower Act (740 ILCS 174/), and the IHRA (775 ILCS 5/); (4) the consequences: (a) of a violation of the prohibition on sexual harassment and (b) for knowingly making a false report; and (5) a mechanism for reporting and independent review of allegations of sexual harassment made against an elected official of the governmental unit by another elected official of a governmental unit. 5 ILCS 430/70-5(a), amended by P.A. 1009-01-101-221. Sample policy 2:105, *Ethics and Gift Ban*, covers item (5) of this list.

⁴ 775 ILCS 5/2-109, added by P.A. 101-221. See sample policy 5:100, *Staff Development Program*, at ¶n 4. Districts may use a free, online model program to be offered by the Ill. Dept. of Human Rights (IDHR), develop their own program, or utilize a combination of the two, as long as it includes the following, at a minimum: (1) an explanation of sexual harassment consistent with the IHRA, (2) examples of conduct that constitutes unlawful harassment, (3) a summary of relevant federal and State law concerning sexual harassment and remedies available to victims of sexual harassment, and (4) a summary of responsibilities of employers in the prevention, investigation, and corrective measures of sexual harassment. *Id.* at 5/2-109(B), added by P.A. 101-221. For IDHR's online model program, see its *Model Sexual Harassment Prevention Training Program* page at: <https://www2.illinois.gov/dhr/Training/Pages/State-of-Illinois-Sexual-Harassment-Prevention-Training-Model.aspx>. Employers that fail to comply with this training requirement may face financial penalties. *Id.* Training on other types of workplace harassment is not required by law; however it is best practice.

of such conduct by an individual is used as the basis for employment decisions affecting such individual; or (3) such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.⁵ Sexual harassment prohibited by this policy includes, but is not limited to, verbal, physical, or other conduct. The terms intimidating, hostile, or offensive include, but are not limited to, conduct that has the effect of humiliation, embarrassment, or discomfort. Sexual harassment will be evaluated in light of all the circumstances.

Making a Report or Complaint

Employees and *nonemployees*⁶ (persons who are not otherwise employees and are directly performing services for the District pursuant to a contract with the District, including contractors, and consultants) are encouraged to promptly report information regarding violations of this policy. Individuals may choose to report to a person of the individual's same gender. Every effort should be made to file such reports or complaints as soon as possible, while facts are known and potential witnesses are available.

Aggrieved individuals, if they feel comfortable doing so, should directly inform the person engaging in the harassing conduct or communication that such conduct or communication is offensive and must stop.

Whom to Contact with a Report or Complaint⁷

An employee should report claims of harassment, including making a confidential report, to any of the following: his/her immediate supervisor, the Building Principal, an administrator, the Nondiscrimination Coordinator, and/or a Complaint Manager.⁸

Employee may also report claims using Board policy 2:260, *Uniform Grievance Procedure*. If a claim is reported using Board policy 2:260, then the Complaint Manager shall process and review the claim according to that policy, in addition to any response required by this policy.

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⁵ This definition is from State and federal law. 775 ILCS 5/2-101(E) and 29 C.F.R. §1604.11. *Working environment* is not limited to a physical location to which an employee is assigned. 775 ILCS 5/2-101(E), amended by P.A. 101-221. The harassing conduct must be severe or pervasive so as to alter the conditions of the employee's work environment by creating a hostile or abusive situation. *Williams v. Waste Management*, 361 F.3d 1021 (7th Cir. 2004). The surrounding circumstances, expectations, and relationships will distinguish between teasing or rough-housing and conduct that a reasonable person would find severely hostile or abusive. In addition, while same-sex gender harassment claims are actionable, the victim must show that s/he suffered disadvantageous employment conditions to which members of the other sex were not exposed. *Oncala v. Sundowner Offshore Services*, 523 U.S. 75 (1998).

⁶ 775 ILCS 5/2-102(A-10) and (D-5), added by P.A. 101-221. See also ¶n 1, above, for discussion regarding nonemployees.

⁷ While the names and contact information are required by law to be listed, they are not part of the adopted policy and do not require board action. This allows for additions and amendments to the names and contact information when necessary. It is important for updated names and contact information to be inserted into this policy and regularly monitored.

⁸ 5 ILCS 430/70-5(a) requires that a school board policy prohibiting sexual harassment include details for reporting an allegation of sexual harassment, including options for making a confidential report to a supervisor and an ethics officer. 5 ILCS 430/20-23 defines ethics officers as being designated by State agencies under the jurisdiction of the Executive Ethics Commission. School districts are not State agencies (5 ILCS 430/1-5) and do not have ethics officers; thus, this sample policy substitutes Complaint Manager for ethics officer. Note also that the IDHR has established a Sexual Harassment Hotline Call Center and website to help the public find resources and assistance for the filing of sexual harassment complaints. The hotline can be reached Monday through Friday with the exception of State holidays, between the hours of 8:30 a.m. and 5:00 p.m., at 1-877-236-7703. See <http://www.idhr.org/sexual-harassment-hotline>. All communications received by the IDHR are exempt from disclosure under the Freedom of Information Act (FOIA).

The Superintendent shall insert into this policy the names, office addresses, email addresses, and telephone numbers of the District's current Nondiscrimination Coordinator and Complaint Managers. The Nondiscrimination Coordinator also serves as the District's Title IX Coordinator.⁹

Nondiscrimination Coordinator:

Name

Address

Email

Telephone

Complaint Managers:

_____ Name	_____ Name
_____ Address	_____ Address
_____ Email	_____ Email
_____ Telephone	_____ Telephone

Investigation Process

Any District employee who receives a report or complaint of harassment must promptly forward the report or complaint to the Nondiscrimination Coordinator or a Complaint Manager.¹⁰ Any employee who fails to promptly forward a report or complaint may be disciplined, up to and including discharge.

Reports and complaints of harassment will be confidential to the greatest extent practicable, subject to the District's duty to investigate and maintain a workplace environment that is productive, respectful, and free of unlawful discrimination, including harassment.

For any report or complaint alleging sexual harassment that, if true, would implicate Title IX of the Education Amendments of 1972 (20 U.S.C. §1681 et seq.), the Nondiscrimination Coordinator or

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⁹ Title IX regulations require districts to identify the name, office address, email address, and telephone number of the person who is responsible for coordinating the district's compliance efforts. The Nondiscrimination and Title IX Coordinator(s) need not be the same person. If the district uses a separate Title IX Coordinator who does not also serve as the Nondiscrimination Coordinator, delete "~~The Nondiscrimination Coordinator also serves as the District's Title IX Coordinator.~~" and supplement the previous sentence to state "The Superintendent shall insert into this policy the names, office addresses, email addresses, and telephone numbers of the District's current Nondiscrimination Coordinator, Title IX Coordinator, and Complaint Managers." Then, list the Title IX and Nondiscrimination Coordinators' names and contact information separately in this policy.

¹⁰ If the district's Nondiscrimination Coordinator does not also serve as the Title IX Coordinator, supplement this sentence to state "Any District employee who receives a report or complaint of harassment must promptly forward the report or complaint to the Nondiscrimination Coordinator, Title IX Coordinator, or a Complaint Manager."

designee¹¹ shall consider whether action under policy 2:265, *Title IX Sexual Harassment Grievance Procedure*, should be initiated.

For any other alleged workplace harassment that does not require action under policy 2:265, *Title IX Sexual Harassment Grievance Procedure*, the Nondiscrimination Coordinator or a Complaint Manager or designee shall consider whether an investigation under policy 2:260, *Uniform Grievance Procedure*, and/or 5:120, *Employee Ethics: Conduct, and Conflict of Interest*,¹² should be initiated, regardless of whether a written report or complaint is filed.

Reports That Involve Alleged Incidents of Sexual Abuse of a Child by School Personnel¹³

An *alleged incident of sexual abuse* is an incident of sexual abuse of a child, as defined in 720 ILCS 5/11-9.1A(b), that is alleged to have been perpetrated by school personnel, including a school vendor or volunteer, that occurred: on school grounds during a school activity; or outside of school grounds or not during a school activity.

Any complaint alleging an incident of sexual abuse shall be processed and reviewed according to policy 5:90, *Abused and Neglected Child Reporting*. In addition to reporting the suspected abuse, the complaint shall also be processed under policy 2:265, *Title IX Sexual Harassment Grievance Procedure*, or policy 2:260, *Uniform Grievance Procedure*.

Enforcement¹⁴

A violation of this policy by an employee may result in discipline, up to and including discharge.¹⁵ A violation of this policy by a third party will be addressed in accordance with the authority of the Board

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¹¹ “Nondiscrimination Coordinator or designee” is used where Title IX is potentially implicated. In contrast, if Title IX is likely not implicated then “Nondiscrimination Coordinator or a Complaint Manager or designee” is used (see next paragraph in policy text). If the district’s Nondiscrimination Coordinator does not also serve as the Title IX Coordinator, delete “Nondiscrimination” and insert “Title IX” in its place.

¹² See administrative procedure 5:120-AP2, *Employee Conduct Standards and its exhibit 5:120 AP2*, <https://www.isbe.net/Portals/0/Forms/Employee%20Conduct%20Standards%20and%20its%20exhibit%205:120%20AP2.pdf>.

¹³ Required for districts located within a county served by an accredited Children’s Advocacy Center (CAC). Delete this subhead if your school district is within a county not served by an accredited CAC. 105 ILCS 5/22-85 *Sexual Abuse of Children*, added by P.A. 101-531 (governing the investigation of an *alleged incident of sexual abuse* of any child within any Illinois counties served by a CAC). For further discussion see fn 14 in sample policy 5:90, *Abused and Neglected Child Reporting*.

¹⁴ See *Berry v. Delta Airlines*, 260 F.3d 803, 811 (7th Cir. 2001) (“If an employer takes reasonable steps to discover and rectify the harassment of its employees ... it has discharged its legal duty.”)

In addition to violating other civil rights laws, a school district violates the *public accommodations* article in the IHRA if it fails to take corrective action to stop severe or pervasive harassment. 775 ILCS 5/5-102 and 5/5-102.2.

¹⁵ 5 ILCS 430/70-5(a). *Consequences of a violation of the prohibition on sexual harassment*. (consequences of a violation of the prohibition on sexual harassment). When discharge is the penalty, examine 50 ILCS 205/3c *Severance Agreements*. It requires a school district to post on its website and make available to news media specific information about severance agreements that it enters into because an employee or contractor was found to have engaged in sexual harassment or sexual discrimination, as defined by the IHRA or Title VII. *Id.* Additionally, under the Workplace Transparency Act (WTA), employers may not require confidentiality clauses in settlement or termination agreements involving alleged unlawful employment practices under federal or State civil rights laws, except under specific conditions. 820 ILCS 96/1-30, added by P.A. 101-221.

in the context of the relationship of the third party to the District, e.g., vendor, parent, invitee, etc. Any person making a knowingly false accusation regarding harassment will likewise be subject to disciplinary action, which for an employee that may be up to and including discharge. ¹⁶

Retaliation Prohibited

An employee's employment, compensation, or work assignment shall not be adversely affected by complaining or providing information about harassment. Retaliation against employees for bringing complaints or providing information about harassment is prohibited (see Board policy 2:260, *Uniform Grievance Procedure*), and depending upon the law governing the complaint, whistleblower protection may be available under the State Officials and Employees Ethics Act (5 ILCS 430/), the Whistleblower Act (740 ILCS 174/), and the Ill. Human Rights Act (775 ILCS 5/). ¹⁷

An employee should report allegations of retaliation to his/her immediate supervisor, the Building Principal, an administrator, the Nondiscrimination Coordinator, and/or a Complaint Manager.

Employees who retaliate against others for reporting or complaining of violations of this policy or for participating in the reporting or complaint process will be subject to disciplinary action, up to and including discharge.

Recourse to State and Federal Fair Employment Practice Agencies ¹⁸

The District encourages all employees who have information regarding violations of this policy to report the information pursuant to this policy. The following government agencies are available to assist employees: the Ill. Dept. of Human Rights and the U.S. Equal Employment Opportunity Commission.

The Superintendent shall also use reasonable measures to inform staff members, applicants, and nonemployees of this policy, which shall include posting on the District website and/or making this

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¹⁶ Prior to the passage of 50 ILCS 205/3c, added by P.A. 101-090, and the WTA, members of the public could already access copies of severance agreements between school districts and their former employees under FOIA. The Ill. Atty. Gen. Public Access Counselor (PAC) directed a public body to release a settlement agreement that arose out of claims of sexual harassment. PAO 14-4. The PAC noted that the public body could not withhold the entire settlement agreement under 5 ILCS 140/7(1)(c), which exempts personal information that would constitute a clearly unwarranted invasion of privacy. Instead, it could redact personal information from the agreement, such as the complainants' names in order to protect their privacy. *Id.* However, data regarding settlement agreements involving allegations of sexual harassment or other unlawful discrimination that an employer must report to IDHR under 775 ILCS 5/2-108 is categorically exempt from FOIA. 5 ILCS 140/7.5(oo), added by P.A. 101-221. See fn 6 in sample policy 2:260, *Uniform Grievance Procedure*, for more discussion about reconciling 50 ILCS 205/3c, added by P.A. 101-090, with another new law, the Government Severance Pay Act (GSPA) (5 ILCS 415/10(a)(1) added by P.A. 101-221), which prohibits school district employees with contract provisions for severance pay to receive any severance pay if they are fired for *misconduct* by the board.

¹⁶ 5 ILCS 430/70-5(a), *enacted by P.A. 101-090* (consequences for knowingly making a false report of sexual harassment).

¹⁷ *Id.* (prohibition on retaliation for reporting sexual harassment allegations, including availability of whistleblower protections under the SOEEA, the Whistleblower Act (740 ILCS 174/), and the IHRA (775 ILCS 5/)).

¹⁷ *Crawford v. Metro. Gov't of Nashville & Davidson County*, 555 U.S. 271 (2009) (holding the anti-retaliation provision in EEOA protects an employee who spoke out about harassment, not only on his or her own initiative, but also in answering questions during an employer's internal investigation).

¹⁸ 5 ILCS 430/70-5(a), *enacted by P.A. 101-090*, (how an individual can report an allegation of sexual harassment, including options for making a confidential report to the Inspector General or the IDHR). This sample policy does not reference the Inspector General because the Inspector General does not have jurisdiction over public school districts. 5 ILCS 430/1. School districts must also annually disclose to IDHR certain data about *adverse judgment or administrative rulings* made against them where there was a finding of sexual harassment or unlawful discrimination under federal, State, or local laws. 775 ILCS 5/2-108, added by P.A. 101-221. *See* <http://www.idhr.state.il.us/IDHR/IDHRMainPage.aspx>

General Personnel

Hiring Process and Criteria 1

The District hires the most qualified personnel consistent with budget and staffing requirements and in compliance with School Board policy on equal employment opportunity and minority recruitment.² The Superintendent is responsible for recruiting personnel and making hiring recommendations to the Board.³ If the Superintendent’s recommendation is rejected, the Superintendent must submit another.⁴ No individual will be employed who has been convicted of a criminal offense listed in 105 ILCS 5/21B-80(c).⁵

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¹ State or federal law controls this policy’s content. This policy contains an item on which impact bargaining may be required. Any policy that impacts upon wages, hours, and terms and conditions of employment, is subject to collective bargaining upon request by the employee representative, even if the policy involves an inherent managerial right.

² See policy 5:10, *Equal Employment Opportunity and Minority Recruitment*. Districts may not classify a job as either a male or female job. 29 C.F.R. §1604.5, 34 C.F.R. §106.55.

³ Boards must consider the superintendent’s recommendations concerning, among other things, “the selection, retention, and dismissal of employees.” 105 ILCS 5/10-16.7. The board may want to use this alternative sentence:

All personnel decisions are made by the Board, but only on the recommendation of the Superintendent.

Subject to an applicable collective bargaining agreement in effect on 6-13-11, a board that fills a “new or vacant teaching position” must select a candidate based on: (1) certifications, (2) qualifications, (3) merit and ability (including performance evaluation, if available), and (4) relevant experience, provided that the length of continuing service with the district must not be considered a factor, unless all other factors are determined by the school district to be equal. 105 ILCS 5/24-1.5. The statute does not define “new or vacant teaching positions.” The requirement does not apply to filling vacant positions under 105 ILCS 5/24-12 (reduction in force and recall). Consult the board attorney about these issues.

⁴ An additional optional sentence follows:

The Superintendent may select personnel on a short-term basis for a specific project or emergency condition before the Board’s approval.

⁵ 775 ILCS 5/2-103.1, added by P.A. 101-656, prohibits employers from using conviction records as a basis to refuse to hire or to take any adverse action against an applicant or employee unless: (1) otherwise authorized by law; (2) there is a *substantial relationship* between the criminal offense and the employment sought; or (3) granting the employment would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public. For the disqualifying offenses listed in 105 ILCS 5/21B-80, added by P.A. 102-311, a district does not have to show a *substantial relationship* between the offense and the position or that hiring or continuing to employ the person would involve an unreasonable risk. However, the Ill. Dept. of Human Rights (IDHR) interprets the Ill. Human Rights Act (IHRA) to still require the employer to notify the applicant of the disqualification pursuant to law and to afford the applicant at least five business days to respond in case the applicant wants to dispute the accuracy of the conviction record. *Id.* at 5/2-103.1(C). See IDHR’s *Conviction Record Protection – Frequently Asked Questions* (March 2021), at:

www2.illinois.gov/dhr/Pages/Conviction_Record_Protection_Frequently_Asked_Questions.aspx.

All reports regarding notices of disqualification under the IHRA, issued by the IDHR, are available at www2.illinois.gov/dhr/Pages/Conviction_Record_Protection_Frequently_Asked_Questions.aspx. If you have any questions regarding notices of disqualification, you should consult the board attorney for a letter on this issue. See administrative procedure 5:30-AP2, *Investigations*, and its footnotes for more detail regarding the IHRA notice requirements. The notice requirements do not apply with the same frequency to certain categories of offenses listed in 105 ILCS 5/21B-80(c). See 105 ILCS 5/21B-80(c).

Note: The protections of 775 ILCS 5/2-103.1 do not cover *unpaid interns*, which may include student teachers in the K-12 context. The definition of *employee* in the IHRA only extends to include unpaid interns for civil rights violations involving sexual harassment. 775 ILCS 5/2-101(A)(1)(c) and 5/2-102(D).

105 ILCS 5/10-21.9(c), amended by P.A. 101-531; 105 ILCS 5/21B-80, amended by P.A. 101-531, added by P.A. 101-531, allows individuals with criminal histories involving certain drug convictions to apply for or to reinstate their educator licenses seven years after their sentence for the criminal offense is completed. Consult the board attorney about whether the board wants to continue prohibiting employment for any individual who has a criminal history involving these exempted drug offenses.

All applicants must complete a District application in order to be considered for employment. ⁶

Job Descriptions

The Board maintains the Superintendent's job description and directs, through policy, the Superintendent, in his or her charge of the District's administration. ⁷

The Superintendent shall develop and maintain a current comprehensive job description for each position or job category; however, a provision in a collective bargaining agreement or individual contract will control in the event of a conflict. ⁸

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For more discussion regarding criminal history records checks and screenings required by 105 ILCS 5/10-21.9, amended by P.A.s 101-531 and 101-643, and by 105 ILCS 5/22-6.5, see fn's 5 and 6 in policy 4:175, *Convicted Child Sex Offender: Screening; Notifications*.

⁶ Any person who applies for employment as a teacher, principal, superintendent, or other certificated employee who willfully makes a false statement on his or her application for employment, material to his or her qualifications for employment, which he or she does not believe to be true, is guilty of a Class A misdemeanor. 105 ILCS 5/22-6.5. District employment applications must contain a statement to this effect. *Id.* Each employment application for these positions must state the following (*Id.*):

Failure to provide requested employment or employer history which is material to the applicant's qualifications for employment or the provision of statements which the applicant does not believe to be true may be a Class A misdemeanor.

Many districts ask applicants about disqualifying criminal convictions on their employment applications or at another point before a job offer is made. State law does not expressly prohibit this practice; however, guidance issued by IDHR regarding implementation of 775 ILCS 5/1-103(G-5) and 5/2-103.1, added by P.A. 101-656, states "[u]nless authorized by law, an employer is prohibited from inquiring about an applicant's conviction record prior to making a job offer to the applicant." See IDHR's *Conviction Record Protection – Frequently Asked Questions* guidance issued by IDHR (March 2021), at:

www2.illinois.gov/dhr/Pages/Conviction_Record_Protection_Frequently_Asked_Questions.aspx.

While the law does not prohibit an employer from asking about an applicant's conviction record prior to making a job offer, the law does prohibit an employer from asking about an applicant's conviction record prior to making a job offer to the applicant. It is also unclear if an applicant's mere disclosure of a disqualifying conviction on an application, absent results of a fingerprint-based criminal history records check, Ill. Sex Offender Registry check, or Violent Offender Against Youth Registry check, triggers the district's obligation to provide notice to the applicant under 775 ILCS 5/2-103.1(C); see also fn 5, above. Consult the board attorney for advice on these issues and how they may affect application processes.

Any employer that asks applicants to record video interviews and uses an artificial intelligence analysis of the applicant-submitted videos must comply with the Artificial Intelligence Video Interview Act, 820 ILCS 42/, added by P.A. 101-260.

⁷ 105 ILCS 5/10-16.7. The foundation for a productive employment relationship begins with a board's policy, a thoughtfully crafted employment contract and job description, and procedures for communications and ongoing assessment. See IASB's *Foundational Principles of Effective Governance, Principle 3. The board employs a superintendent*, at:

www.iasb.com/conference-training-and-events/training/training-resources/foundational-principles-of-effective-governance/.

See also 3:40-E, *Checklist for the Superintendent Employment Contract Negotiation Process*, for best practice discussions about establishing the board-superintendent employment relationship and contract.

⁸ Job descriptions will become the basis for categorizing a teacher into one or more positions that the teacher is qualified to hold for reduction in force (RIF) dismissal and recall purposes. 105 ILCS 5/24-12(b), amended by P.A. 101-643. A board should consult with its attorney to review its current list of job descriptions and discuss the district's specific responsibilities.

Investigations

The Superintendent or designee shall ensure that a fingerprint-based criminal history records check and a check of the Statewide Sex Offender Database and Violent Offender Against Youth Database is performed on each applicant as required by State law.⁹ When the applicant is a successful superintendent candidate who has been offered employment by the Board, the Board President shall ensure that these checks are completed.¹⁰ The Superintendent or designee, or if the applicant is a successful superintendent candidate, then the Board President shall notify an applicant if the applicant is identified in either database.¹¹ The School Code requires the Board President to keep a conviction record confidential and share it only with the Superintendent, Regional Superintendent, State Superintendent, State Educator Preparation and Licensure Board, any other person necessary to the hiring decision, or for clarification purposes, the Ill. Dept. of State Police and/or Statewide Sex Offender Database for purposes of identifying the information and/or the length of

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A job description is evidence of a position's *essential functions*. 29 C.F.R. §1630.2(n). The Americans with Disabilities Act (ADA) protects individuals who have a disability and are qualified, with reasonable accommodation, to perform the *essential functions* of the job. 42 U.S.C. §12101 *et seq.*, amended by the ADA Amendments Act (ADAAA), Pub. L. 110-325. Determining which functions are essential may be critical to determining if an individual with a disability is qualified. An individual is qualified to perform a job even though he or she is unable, due to a disability, to perform tasks which are incidental to the job. Only when an individual is unable to perform the *essential functions* of a job may a district deny the individual employment opportunities. 29 C.F.R. §1630.2(m). For a definition of essential functions see *Id.* at 1630.2(n). Whether a particular function is essential is a factual determination.

Important: The ADAAA made significant changes to the ADA's definition of disability that broadened the scope of coverage and overturned a series of U.S. Supreme Court decisions that made it difficult to prove that an impairment was a qualifying disability. There is information about the regulations and a link to them at: www.eeoc.gov/laws/regulations/adaaa_fac_sheet.cfm. Consult the board attorney regarding how these amendments impact the district's hiring processes.

⁹ The policy's requirements on criminal records checks for applicants for employment are mandated by 105 ILCS 5/10-21.9, amended by P.A.s 101-72, 101-531, and 101-643. See administrative procedure 5:30-AP2, *Investigations*, for the process and positions requiring criminal background investigation and what steps a district must take if it wants to disqualify an applicant based on a conviction record. The Statewide Sex Offender Database (a/k/a Sex Offender Registry) is available at: www.isp.state.il.us/sor. The Statewide Murderer and Violent Offender Against Youth Database is available at: www.isp.state.il.us/cmvo/. For more discussion regarding criminal history records checks and screenings required by 105 ILCS 5/10-21.9, amended by P.A.s 101-531 and 101-643, see ¶n 5 in policy 4:175, *Convicted Child Sex Offender; Screening; Notifications*. See policy 4:60, *Purchases and Contracts*, for requirements concerning criminal background checks of employees of contractors who have *direct, daily contact* with students.

¹⁰ *Id.* If a board wants to require additional background inquiries beyond the fingerprint-based criminal history records information check required by 105 ILCS 5/10-21.9, amended by P.A.s 101-72, 101-531, and 101-643, including the federal *Rap Back Service* (20 ILCS 2630/3.3) and/or checks through consumer reporting agencies regulated by the Fair Credit Reporting Act (15 U.S.C. §1681 *et seq.*), consult the board attorney. For more detailed information, see the laws listed in sample exhibit 3:40-E, *Checklist for the Superintendent Employment Contract Negotiation Process*, under the checklist item entitled **Conditions of Employment**, in the **Other Background Check Laws** row.

¹¹ 105 ILCS 5/10-21.9(b), amended by P.A.s 101-72 and 101-531, and 105 ILCS 5/21B-10. The School Code requires the board president to keep a conviction record confidential. It is impossible to know whether a fingerprint-based criminal history records check and a check of the Statewide Sex Offender and Violent Offender Against Youth Databases on a successful superintendent candidate will come back with a conviction record.

Therefore, in accordance with best practice (ensuring compliance and aligning with good governance principles), this policy does not assign a designee for the board president to complete this task. However, to balance the requirement to keep conviction records confidential with the practical implementation of ensuring a fingerprint-based criminal history records check and a check of the Statewide Sex Offender and Violent Offender Against Youth Databases are performed on each successful superintendent applicant, a board president may want to designate the duty to order these checks to the individuals otherwise listed in 105 ILCS 5/10-21.9(b), amended by P.A.s 101-72 and 101-531. Those individuals include the board president, the superintendent or designee, regional superintendent (if the check was requested by the district), state superintendent of education, state Educator Preparation and Licensure Board, any other person necessary to the hiring decision, or for clarification purposes, the Ill. Dept. of State Police and/or Statewide Sex Offender Registry.

12 The Board reserves its right to authorize additional background inquiries beyond a fingerprint-based criminal history records check when it deems it appropriate to do so, in accordance with applicable laws.

Each newly hired employee must complete a U.S. Citizenship and Immigration Services Form as required by federal law. 13

The District retains the right to discharge any employee whose criminal background investigation reveals a conviction for committing or attempting to commit any of the offenses outlined in 105 ILCS 5/21B-8014 or who falsifies, or omits facts from, his or her employment application or other employment documents. If an indicated finding of abuse or neglect of a child has been issued by the Ill. Department of Children and Family Services or by a child welfare agency of another jurisdiction for any applicant for student teaching, applicant for employment, or any District employee, then the Board must consider that person's status as a condition of employment. 15

The Superintendent shall ensure that the District does not engage in any investigation or inquiry prohibited by law and complies with each of the following: 16

1. The District uses an applicant's credit history or report from a consumer reporting agency only when a satisfactory credit history is an established bona fide occupational requirement of a particular position. 17

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

12 *Id.* at 5/10-21.9(b), amended by P.A.s 101-72 and 101-531. See *fn 6* in policy 4:175, *Convicted Child Sex Offender: Screening; Notifications*. The School Code continues to define the board president's role in conducting criminal background investigations and receiving the results of these investigations, including the results for employees of district contractors. 105 ILCS 5/10-21.9. Many districts delegate this task in the hiring process to a human resources department.

105 ILCS 5/21B-80 is amended by P.A. 101-531 to be substituted to read: "The board shall ensure that the board of trustees of the Illinois Department of Children and Family Services (DCFS) is notified of any conviction, including a conviction for abuse or neglect of a child, of any applicant for student teaching, applicant for employment, or any District employee, then the board must consider that person's status as a condition of employment." The board shall ensure that the District does not engage in any investigation or inquiry prohibited by law and complies with each of the following:

Use this alternative for districts in suburban Cook County: replace "Regional Superintendent" with "appropriate Intermediate Service Center."

For more discussion regarding responses to results obtained by criminal history records checks and screenings as required by 105 ILCS 5/10-21.9(c), amended by P.A.s 101-531 and 101-643, see *fn 6* in policy 4:175, *Convicted Child Sex Offender: Screening; Notifications*.

13 Immigration Reform and Control Act, 8 U.S.C. §1324a *et seq.* Consult with the board attorney regarding the district's rights and responsibilities under all Illinois laws if the district uses any electronic employment verification system, including *E-Verify* and/or the Basic Pilot Program. 820 ILCS 55/12. This statute urges employers who voluntarily use *E-Verify* (formerly known as the Basic Pilot/Employment Eligibility Verification Program) to consult the Ill. Dept. of Labor's website for current information on the accuracy of *E-Verify* and to review and understand their legal responsibilities relating to the use of any electronic employment verification systems. See *fn 2* in 5:150-AP, *Personnel Records*, for a more detailed discussion of *E-Verify* issues.

14 See *fn 5*, above.

15 105 ILCS 5/10-21.9(c) and (g), amended by P.A. 101-531. See *fn 6* in 4:175, *Convicted Child Sex Offender: Screening; Notifications*, for further discussion.

16 As an alternative to describing the prohibited investigations, a board may substitute this sentence:

The Superintendent shall ensure that the District does not engage in any investigation or inquiry prohibited by law, including without limitation, investigation into or inquiry concerning: (1) credit history or report unless a satisfactory credit history is an established bona fide occupational requirement of a particular position; (2) claim(s) made or benefit(s) received under Workers' Compensation Act; and (3) access to an employee's or applicant's social networking website, including a request for passwords to such sites.

The default policy provision and the alternative stated above – whichever is selected – may be made a prohibition rather than a duty of the superintendent: to do this, delete the stricken text as follows: "The Superintendent shall ensure that the District does not engage"

2. The District does not screen applicants based on their current or prior wages or salary histories, including benefits or other compensation, by requiring that the wage or salary history satisfy minimum or maximum criteria. ¹⁸
3. The District does not request or require a wage or salary history as a condition of being considered for employment, being interviewed, continuing to be considered for an offer of employment, an offer of employment, or an offer of compensation. ¹⁹
4. The District does not request or require an applicant to disclose wage or salary history as a condition of employment. ²⁰
5. The District does not ask an applicant or applicant's current or previous employers about wage or salary history, including benefits or other compensation. ²¹
6. The District does not ask an applicant or applicant's previous employers about claim(s) made or benefit(s) received under the Workers' Compensation Act. ²²
7. The District does not request of an applicant or employee access in any manner to his or her personal online account, such as social networking websites, including a request for passwords to such accounts. ²³

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

¹⁷ Employee Credit Privacy Act, 820 ILCS 70/10. This Act allows inquiries into an applicant's credit history or credit report or ordering or obtaining an applicant's credit report from a consumer reporting agency when a satisfactory credit history is an *established bona fide occupational requirement* of a particular position. The Act identifies circumstances that permit a satisfactory credit history to be a job requirement, such as, the position's duties include custody of or unsupervised access to cash or marketable assets valued at \$2,500 or more.

¹⁸ 820 ILCS 112/10(b-5), added by P.A. 101-177. If an employer violates this subsection, the employee may recover in a civil action any damages incurred, special damages up to \$10,000, injunctive relief, and costs and reasonable attorney's fees. 820 ILCS 112/30(a-5), added by P.A. 101-177.

¹⁹ *Id.*

²⁰ *Id.*

²¹ 820 ILCS 112/10(b-10), added by P.A. 101-177. **Note:** Attorneys caution that using the exceptions in 820 ILCS 112/10(b-10)(1) and (2), added by P.A. 101-177, may trigger litigation. Violating this subsection entitles an employee to recover in a civil action any damages incurred, special damages up to \$10,000, injunctive relief, and costs and reasonable attorney's fees. 820 ILCS 112/30(a-5), added by P.A. 101-177.

A school board that wishes to preserve these exceptions should consult its board attorney; then they may supplement number 5 by adding the following after "compensation":

unless the applicant's wage or salary history is a matter of public record, or is contained in a document completed by the applicant's current or former employer and then made available to the public by the employer, or then submitted or posted by the employer to comply with State or federal law; or the applicant is a current employee applying for a position with the same current employer.

²² Right to Privacy in the Workplace Act, 820 ILCS 55/10(a).

²³ *Id.* at 55/10(b)(6)(B) (commonly known as the *Facebook Password Law*). A *personal online account* is defined as an online account used primarily by a person for personal purposes. *Personal online account* does not include an account created, maintained, used, or accessed for the business purpose of a person's employer or prospective employer. *Id.* at 55/10(b)(5). Bracketed explanations follow the statutory language:

"Nothing in this subsection shall prohibit or restrict an employer from complying with a duty to screen employees or applicants prior to hiring...provided that the password, account information, or access sought by the employer only relates to an online account that:

(A) an employer supplies or pays; or

(B) an employee creates or maintains on behalf of under the direction of an employer in connection with that employee's employment."

[Based on this explanation, it is implausible that an applicant would have an account, service, or profile for business purposes of a school employer.]

8. The District provides equal employment opportunities to all persons. See policy 5:10, *Equal Employment Opportunity and Minority Recruitment*.

Physical Examinations ²⁴

Each new employee must furnish evidence of physical fitness to perform assigned duties and freedom from communicable disease. The physical fitness examination must be performed by a physician licensed in Illinois, or any other state, to practice medicine and surgery in any of its branches, a licensed advanced practice registered nurse, or a licensed physician assistant who has been delegated the authority by his or her supervising physician to perform health examinations. The employee must have the physical examination performed no more than 90 days before submitting evidence of it to the District.

Any employee may be required to have an additional examination by a physician who is licensed in Illinois to practice medicine and surgery in all its branches, a licensed advanced practice registered nurse, or a licensed physician assistant who has been delegated the authority by his or her supervising physician to perform health examinations, if the examination is job-related and consistent with business necessity.²⁵ The Board will pay the expenses of any such examination.

Orientation Program

The District's staff will provide an orientation program for new employees to acquaint them with the District's policies and procedures, the school's rules and regulations, and the responsibilities of their position. Before beginning employment, each employee must sign the *Acknowledgement of Mandated Reporter Status* form as provided in policy 5:90, *Abused and Neglected Child Reporting*.

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The statute specifically permits an employer to: (1) maintain workplace policies governing the use of the employer's electronic equipment, including policies regarding Internet use, social networking site use, and electronic mail use; and (2) monitor usage of the employer's (district's) electronic equipment and electronic mail. The statute also states that it does *not prohibit* an employer from obtaining information about an applicant or an employee that is in the public domain or that is otherwise obtained in compliance with the statute. Finally, the statute does not apply to all types of personal technology that employees may use to communicate with students or other individuals, such as text messages on a personal phone. Consult the board attorney about these issues.

²⁴ 105 ILCS 5/24-5, amended by P.A. 09-037, eff. 10-1-09, and 101-81. According to this statute, a new or existing employee or substitute teacher employee may be subject to additional health examinations, including tuberculosis screening, as required by rules adopted by the Ill. Dept. of Public Health (IDPH) or by order of a local public health official. The statute does not require school employees to be screened for tuberculosis other than workers in child day care and preschool settings. 77 Ill.Admin.Code §696.140(a)(3).

The last sentence of the first paragraph exceeds State law requirements and may be deleted.

Note that while examination by a spiritual leader/practitioner is sufficient for purposes of leaves, the statute does not permit an examination by a spiritual leader/practitioner for initial employment exams. This difference may present a constitutional issue; contact the board attorney for an opinion if an applicant wants to use an examination by a spiritual leader/practitioner.

Federal law limits pre-employment medical inquiries to whether the applicant is able to perform job-related functions; required medical examinations of applicants is forbidden. *See* *Merit Systems Protection Board v. United States*, 443 U.S. 574 (1980); ADA, 42 U.S.C. §12112(d)(2); see also ¶n 8 for an explanation regarding the ADA. Districts may condition an employment offer on taking and passing medical inquiries or physical exams, provided that all entering employees in the same classification receive the same conditional offer.

²⁵ The State law (105 ILCS 5/24-5, amended by P.A. 09-037, eff. 10-1-09, and 101-81) allowing boards to require physicals of current employees "from time to time," is superseded by the ADA. 42 U.S.C. §12112(d)(4). The ADA allows medical inquiries of current employees only when they are job-related and consistent with business necessity or part of a voluntary employee wellness program. *Id.* Districts may deny jobs to individuals with disabilities who pose a direct threat to the health or safety of others in the workplace, provided that a reasonable accommodation would not either eliminate the risk or reduce it to an acceptable level. 42 U.S.C. §12113; 29 C.F.R. §1630.2(r). See ¶n 8 for an explanation regarding the ADA.

See ¶n 24 for a discussion of examinations by spiritual leaders/practitioners.

General Personnel

Drug- and Alcohol-Free Workplace; E-Cigarette, Tobacco, and Cannabis Prohibition 1

All District workplaces are drug- and alcohol-free workplaces. ²

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

¹ State or federal law controls this policy's content. This policy contains an item on which collective bargaining may be required. Any policy that impacts upon wages, hours, and terms and conditions of employment, is subject to collective bargaining upon request by the employee representative, even if the policy involves an inherent managerial right. The Right to Privacy in the Workplace Act (RPWA) allows employers to regulate employees' use of lawful products that impair an employee's ability to perform his or her assigned duties. 820 ILCS 55/5(b), amended by P.A. 101-27. The Cannabis Regulation and Tax Act (CRTA), 410 ILCS 705/10-35(a)(8), amended by P.A. 101-593, allows penalties issued by employers of law enforcement officers for consumption, possession, sale, purchase, or delivery of cannabis or cannabis-infused substances while on or off-duty to be collectively bargained; districts that employ school resource officers should consult their board attorneys about this provision of the CRTA.

The federal Drug-Free Workplace Act applies only to the specific programs receiving federal funds. 41 U.S.C. §8101 *et seq.* For ease of administration, this policy makes its requirements applicable to all employees to avoid confusion during implementation and to avoid complications when obtaining and maintaining federal funds. The CRTA, 410 ILCS 705/, added by P.A. 101-27 and amended by P.A. 101-593, legalized cannabis, but it remains a *Schedule I* (c)(17) controlled substance under federal law, meaning that it has no currently accepted medical use in addition to a high potential for abuse. 21 U.S.C.A. §812 (exempting hemp as defined at 7 U.S.C.A. §1639o). 41 U.S.C. §§8101, 8102 and 8103. While not law, in June 2019, the U.S. House of Representatives, in a voice vote, voted in favor of an amendment to H.R. 3055, which was introduced by Reps. Earl Blumenauer (D-OR), Tom McClintock (R-CA), and Eleanor Holmes Norton (D-D.C.), prohibiting the U.S. Dept. of Justice (DOJ) from interfering with a state's decision to implement laws governing the legalization of cannabis (recreational and medicinal). This marked the first time that either branch of the U.S. Congress has voted to protect state recreational cannabis laws from federal enforcement actions. If the amendment becomes law, it would block the DOJ from using funds to intervene in state and territory cannabis legalization laws. This policy continues to prohibit employees from using cannabis as allowed by the CRTA. See *fn* 9, below.

The federal Safe and Drug-Free Schools and Communities Act provides funds, upon application, for drug and violence prevention programs; it does not contain policy mandates. Illinois also has a Drug Free Workplace Act (30 ILCS 580) that applies to districts with 25 or more employees working under a state contract or a grant of \$5,000 or more.

² Replace this sentence with the district's drug- and alcohol- free policy goal(s), if any.

With the passage of the CRTA, 410 ILCS 705/, added by P.A. 101-27 and amended by P.A. 101-593, each board and superintendent may wish to engage in a risk-management conversation about the district's drug- and alcohol- free policy enforcement and discipline goals. Enforcement and discipline goals depend upon a board's risk-level tolerance and community expectations. Risk-level-tolerance decisions will depend upon many factors, including, but not limited to: (1) the board attorney's recommendations, (2) the district's budget parameters, if any, for reasonable suspicion training on identification of symptoms of impairment and/or being under the influence, (3) drug testing, and (4) the community's expectations. Answers to the following questions might structure this risk-management conversation:

1. Does the board want to implement a reasonable suspicion program (or any other type of *just cause* provisions in an applicable collective bargaining agreement) to identify employees suspected of being impaired and/or under the influence to enhance its ability to discipline?

2. Does the board want the superintendent to secure training for designated district employees to educate them to identify symptoms of impairment or being under the influence of the substances prohibited in this policy?

3. How does the board want to address employees in positions of leadership, e.g., the superintendent and/or building principal(s), who are perpetually on call due to the nature of their positions and responsibilities (see *fn* 3, below)?

4. How will the district manage its duty to educate students about the dangers of drugs and alcohol against the reality that employees are allowed to use lawful products off-duty and off the district's premises (820 ILCS 55/5(b), amended by P.A. 101-27)?

5. Will licensed educators be held to a higher standard than non-licensed employees due to their professional code of conduct expectations?

All employees are prohibited from engaging in any of the following activities while on District premises or while performing work or being *on call*³ for the District: ⁴

1. Unlawful manufacture, dispensing, distribution, possession, or use of an illegal or controlled substance. ⁵
2. Distribution, consumption, use, possession, or being impaired by or under the influence of an alcoholic beverage; being present on District premises or while performing work for the District when alcohol consumption is detectable, regardless of when and/or where the use occurred. ⁶
3. Distribution, consumption, possession, use, or being impaired by or under the influence of cannabis; being present on District premises or while performing work for the District when impaired by or under the influence of cannabis, regardless of when and/or where the use occurred, unless distribution, possession, and/or use is by a school nurse or school administrator pursuant to *Ashley's Law*, 105 ILCS 5/22-33.⁷ The District considers

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6. Will employees working directly with students be held to a higher standard than employees not working directly with students?

³ An employee is *on call* when the employer schedules him or her with at least 24 hours' notice to be on standby or otherwise responsible for performing employment-related tasks either at the employer's location or another previously-designated location. 820 ILCS 55/5, amended by P.A. 101-27. Consult the board attorney regarding how the board wants to treat employees who may be considered on call, e.g., superintendents, principals, coaches, and/or maintenance workers, etc.

For boards that do not want this text, delete ~~or being on call~~.

⁴ To align with best practices for identifying and subsequently initiating discipline of employees for violating this policy (especially with the passage of the CRTA) and any possible collective bargaining agreement provisions, the superintendent may want to convene the **Employee Substance Abuse Prevention Committee** (see 2:150-AP, *Superintendent Committees*).

⁵ These actions are prohibited by both federal (41 U.S.C.A. §§8101, 8102 and 8103) and State Workplace Acts. See fn 3, below. These laws do not address *under the influence* but a board may add: ", or being impaired by or under the influence of any illegal substance or any detectable use of any illegal substance regardless of when or where the use occurred." This option is limited to *illegal* substances to avoid prohibiting employees from using lawfully prescribed controlled substances. See fn 3, above. Contact the board attorney for advice concerning this provision and whenever the district wants to discipline or dismiss an employee using it. If a hearing is required before the district may discipline or discharge an employee under this provision, the district must put forth evidence that the employee violated it. A district would also have this burden if a grievance is filed under a *just cause* provision in a collective bargaining agreement. This policy's third paragraph addresses prescribed medications other than cannabis.

⁶ Optional; alcohol is not addressed in either the federal or State Drug-Free Workplace Acts. Contact the board attorney for advice concerning this provision and whenever the district wants to discipline or dismiss an employee using it. If a hearing is required before the district may discipline or discharge an employee under this provision, the district must put forth evidence that the employee violated it. A district would also have this burden if a grievance is filed under a *just cause* provision in a collective bargaining agreement. The Ill. Court of Appeals held that when the policy defines *under the influence* as any "mental, emotional, sensory or physical **impairment** due to the use of drugs or alcohol," the school district must prove that the teacher showed signs of impairment even though she registered 0.056 blood-alcohol level on a Breathalyzer. *Kinsella v. Bd. of Ed. of the City of Chicago*, 27 N.E.3d 226 (Ill.App.1st 2015).

⁷ "[R]egardless of when and/or where the use occurred" is intended to mean that an employer may reach an employee's conduct on or off-duty depending upon the facts of the disciplinary situation; however, the CRTA contains a specific requirement that law enforcement employers adopt a policy outlining penalties for discipline of law enforcement employees for their on or off-duty conduct involving consumption, possession, sale, purchase, or delivery of cannabis or cannabis-infused substances. *Id.* at 10-35(a)(8), amended by P.A. 101-593. See also fns 1, above, and 9, below. Consult the board attorney if the district employs a school resource officer(s) (SRO(s)) as opposed to contracting with a local law enforcement agency for SRO services.

employees impaired by or under the influence of cannabis when there is a good faith belief that an employee manifests the specific articulable symptoms⁸ of being impaired by or under the influence of cannabis. 410 ILCS 130/50(f), added by P.A. 101-27, and scheduled to be repealed on 7-1-20.

410 ILCS 130/50(f) does not prohibit an employer from disciplining an employee for being impaired by or under the influence of cannabis when there is a good faith belief that an employee manifests the specific articulable symptoms of being impaired by or under the influence of cannabis. 410 ILCS 130/50(f), added by P.A. 101-27, and scheduled to be repealed on 7-1-20.

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

410 ILCS 130/25(b) prohibits discipline or arrest of school nurses and/or administrators for acting in accordance with *Ashley's Law*, 105 ILCS 5/22-33, amended by P.A. 101-370. Employers may enforce drug-free workplace policies when they are applied in a nondiscriminatory manner. 410 ILCS 705/10-50(a), added by P.A. 101-27, includes disciplining employees – even those who are *registered qualifying patients* – for violating drug-free workplace policies (410 ILCS 130/50 and 705/10-35(a)(1), added by P.A. 101-27). Contact the board attorney for advice concerning the Compassionate Use of Medical Cannabis Program Act (Medical Cannabis Program Act (MCPA)).

⁸ Specific articulable symptoms listed in 410 ILCS 705/10-50(d), added by P.A. 101-27, include: the employee's speech, physical dexterity, agility, coordination, demeanor, irrational or unusual behavior, or negligence or carelessness in operating equipment or machinery; disregard for the safety of the employee or others, or involvement in any accident that results in serious damage to equipment or property; disruption of a production or manufacturing process; or carelessness that results in any injury to the employee or others. In contrast to the CRTA, the MCPA, while listing the same specific, articulable, symptoms, does not require an employer to have a *good faith belief* that a *registered qualifying patient* is under the influence of cannabis. 410 ILCS 130/50(f), and scheduled to be repealed on 7-1-20.

⁹ 410 ILCS 705/10-35 and 10-50(a), added by P.A. 101-27 allows reasonable, nondiscriminatory, zero-tolerance policies. If the district seeks to discipline an employee on the basis that he or she is under the influence of or impaired by cannabis, it must afford the employee a reasonable opportunity to contest the basis of the determination. *Id.* at 10-50(d), added by P.A. 101-27. See also fn 7, above. **Contact the board attorney for advice concerning this provision and whenever the district seeks disciplinary action or dismissal of an employee on the basis of the cannabis prohibitions in the policy.**

See also the Ill. Vehicle Code 625 ILCS 5/11-501.2(b-5) number one: when an individual's tetrahydrocannabinol concentration (THC) is five nanograms or more in whole blood or 10 nanograms or more in another bodily substance, e.g., saliva, urine, etc., as defined in 625 ILCS 5/11-501.2(a), a presumption under Illinois law exists that the individual is under the influence of cannabis. Under 625 ILCS 5/11-501.2(b-5) number two: when an individual's [THC] is less than five nanograms in whole blood or less than 10 nanograms or more in another bodily substance, e.g., saliva, urine, etc., as defined in 625 ILCS 5/11-501.2(a), the individual may still be considered impaired.

In addition to a zero-tolerance policy, the CRTA also allows civil, criminal, or other penalties for:

1. Engaging in tasks under the influence of cannabis when doing so would constitute negligence, professional malpractice, or professional misconduct (410 ILCS 705/10-35(a)(1));
2. Possessing cannabis on a school bus or on school grounds (*Id.* at 10-35(a)(2)(A)-(B) unless permitted under the MCPA);
3. Using cannabis on a school bus or on school grounds (*Id.* at 10-35(a)(3)(A)-(B) unless permitted under the MCPA);
4. [Using cannabis] in a public place [while impaired or under the influence of cannabis] (*Id.* at 10-35(a)(3)(F));
5. Knowingly being [impaired by or under the influences of cannabis] in close physical proximity to anyone under 21 years of age who is not a registered medical cannabis patient under the MCPA (*Id.* at 10-35(a)(3)(G));
6. Smoking [and/or *vaping* (see fn 7, above, below for a definition of vaping)] it in any place where smoking is prohibited under the Smoke Free Illinois Act (*Id.* at 10-35(a)(4));
7. Using [cannabis] as an on-duty law enforcement officer, corrections officer, probation officer, or firefighter (*Id.* at 10-35(a)(8)), or consuming, possessing, selling, purchasing, or delivering cannabis or a cannabis-infused substance(s) while on or off-duty [only if a policy has been adopted] *Id.* at 10-35(a)(8), amended by P.A. 101-593; or
8. [Using cannabis while [b]eing on duty as an individual holding a school bus permit or Commercial Driver's License (*Id.* at 10-35(a)(9)).

To make employees aware of the dangers of drug and alcohol abuse, the Superintendent or designee shall perform each of the following: ¹⁴

1. Provide each employee with a copy of this policy.
2. Post notice of this policy in a place where other information for employees is posted. ¹⁵
3. Make available materials from local, State, and national anti-drug and alcohol-abuse organizations. ¹⁶
4. Enlist the aid of community and State agencies with drug and alcohol informational and rehabilitation programs to provide information to District employees.
5. Establish a drug-free awareness program to inform employees about:
 - a. The dangers of drug abuse in the workplace,
 - b. Available drug and alcohol counseling, rehabilitation, re-entry, and any employee assistance programs, and
 - c. The penalties that the District may impose upon employees for violations of this policy.
6. Remind employees that policy 6:60, *Curriculum Content*, requires the District to educate students, depending upon their grade, about drug and substance abuse prevention and relationships between drugs, alcohol, and violence. ¹⁷

E-Cigarette, Tobacco, and Cannabis Prohibition ¹⁸

All employees are covered by the conduct prohibitions contained in policy 8:30, *Visitors to and Conduct on School Property*. The prohibition on the use of e-cigarettes,¹⁹ tobacco, and cannabis

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

¹³ This optional paragraph is not addressed in State or federal drug-free workplace acts. An employer should generally not ask an employee about his or her use of medication. See rules implementing the Americans with Disabilities Act, 29 C.F.R. § 1630.14. Consult the board attorney if an employee is suspected of working while impaired or under the influence.

¹⁴ Numbers one through five in this paragraph are required by the State and federal Drug-Free Workplace Acts. 30 ILCS 580/3.

¹⁵ As an alternative, replace the phrase “in a place where other information for employees is posted” with the district’s local method, e.g., staff intranet, Internet, etc.

¹⁶ Grants may be available from the Ill. State Board of Education for developing a drug-free awareness program. 105 ILCS 5/2-3.93. The drug-free awareness program requirement can be met by developing a brochure on drug abuse or by contacting local, State, or national anti-drug abuse organizations for materials. The materials should be distributed to employees along with a list of places employees may call for assistance.

¹⁷ Optional. This statement serves as a display of good judgement and a reminder to employees that 105 ILCS 5/27-13.2, 5/27-13.3, 5/27-13.4, 5/27-13.5, 5/27-13.6, 5/27-13.7, 5/27-13.8, 5/27-13.9, 5/27-13.10, 5/27-13.11, 5/27-13.12, 5/27-13.13, 5/27-13.14, 5/27-13.15, 5/27-13.16, 5/27-13.17, 5/27-13.18, 5/27-13.19, 5/27-13.20, 5/27-13.21, 5/27-13.22, 5/27-13.23, 5/27-13.24, 5/27-13.25, 5/27-13.26, 5/27-13.27, 5/27-13.28, 5/27-13.29, 5/27-13.30, 5/27-13.31, 5/27-13.32, 5/27-13.33, 5/27-13.34, 5/27-13.35, 5/27-13.36, 5/27-13.37, 5/27-13.38, 5/27-13.39, 5/27-13.40, 5/27-13.41, 5/27-13.42, 5/27-13.43, 5/27-13.44, 5/27-13.45, 5/27-13.46, 5/27-13.47, 5/27-13.48, 5/27-13.49, 5/27-13.50, 5/27-13.51, 5/27-13.52, 5/27-13.53, 5/27-13.54, 5/27-13.55, 5/27-13.56, 5/27-13.57, 5/27-13.58, 5/27-13.59, 5/27-13.60, 5/27-13.61, 5/27-13.62, 5/27-13.63, 5/27-13.64, 5/27-13.65, 5/27-13.66, 5/27-13.67, 5/27-13.68, 5/27-13.69, 5/27-13.70, 5/27-13.71, 5/27-13.72, 5/27-13.73, 5/27-13.74, 5/27-13.75, 5/27-13.76, 5/27-13.77, 5/27-13.78, 5/27-13.79, 5/27-13.80, 5/27-13.81, 5/27-13.82, 5/27-13.83, 5/27-13.84, 5/27-13.85, 5/27-13.86, 5/27-13.87, 5/27-13.88, 5/27-13.89, 5/27-13.90, 5/27-13.91, 5/27-13.92, 5/27-13.93, 5/27-13.94, 5/27-13.95, 5/27-13.96, 5/27-13.97, 5/27-13.98, 5/27-13.99, 5/27-14.00 require districts to educate students about the dangers of drug and substance abuse.

¹⁸ 105 ILCS 5/10-20.5b, The Smoke Free Illinois Act, 410 ILCS 82/, and the CRTA, 410 ILCS 705/10-35(a)(4)(smoking anyplace where smoking is prohibited under the Smoke Free Illinois Act). Federal law prohibits smoking inside schools. 20 U.S.C. § 6083(a).

The prohibition in 8:30, *Visitors to and Conduct on School Property*, referred to here, applies “on school property or at a school event.” Here, “at a school event” is clarified with the phrase “while ... performing work for the District” in order to align with this policy’s other prohibitions.

products applies both (1) when an employee is on school property, and (2) while an employee is performing work for the District at a school event regardless of the event's location.

Tobacco has the meaning provided in 105 ILCS 5/10-20.5b.

Cannabis has the meaning provided in the CRTA, 410 ILCS 705/1-10.

E-Cigarette is short for electronic cigarette and includes, but is not limited to, any electronic nicotine delivery system (ENDS), electronic cigar, electronic cigarillo, electronic pipe, electronic hookah, vape pen, or similar product or device, and any components or parts that can be used to build the product or device.²⁰

District Action Upon Violation of Policy

An employee who violates this policy may be subject to disciplinary action, including termination.²¹ In addition or alternatively, the Board may require an employee to successfully complete an appropriate drug- or alcohol-abuse rehabilitation program.

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

¹⁹ While 720 ILCS 675, amended by P.A. 101-2, excludes e-cigarettes from its definition of tobacco, it does not address vaporization. Prohibiting *e-cigarettes* aligns with the district's obligation to maintain a safe, smoke-free environment and is logical extension of 105 ILCS 5/10-20.5b, The Smoke Free Illinois Act (410 ILCS 82/), and The Prevention of Tobacco Use by Minors and Sale and Distribution of Tobacco Products Act, 720 ILCS 675, amended by P.A. 101-2 (raising the legal age to buy tobacco and e-cigarette products to 21 years of age). In addition, the U.S. Food and Drug Administration now regulates e-cigarettes. 21 C.F.R. Parts 1100, 1140, and 1143, amended by 81 Fed.Reg. 28973.

E-Cigarettes may resemble cigarettes but contain a battery-operated heating element that turns a liquid into an aerosol (or vapor) that sometimes includes nicotine, flavorings, and other chemicals. The act of inhaling and exhaling the aerosol is known as *vaping*. See www.centeronaddiction.org/e-cigarettes/recreational-vaping/what-vaping. For ease of administration, this policy treats *vaping*, whether tobacco products or not, and smoking tobacco the same due to the outbreaks of lung disease associated with the use of e-cigarettes and vaping. Some e-cigarettes do not look like tobacco products; they are designed to resemble other objects, such as USB flash drives, to be more easily concealed. Like smoking tobacco, vaporization products may include nicotine, which is derived from and is the addictive drug in tobacco, and other potentially harmful chemicals. See *Tobacco/Nicotine and E-Cigs* at: www.drugabuse.gov/drugs-abuse/tobacco/nicotine-e-cigs. Unlike smoking tobacco, vaping does not produce smoke, but rather the aerosol, often mistaken for water vapor and consisting of fine particles. Many of these particles contain varying amounts of toxic chemicals, which have been linked to cancer and respiratory and heart disease. An outbreak of lung disease has been associated with e-cigarette use and vaping. See articles at:

www.cdc.gov/tobacco/basic_information/e-cigarettes/severe-lung-disease/; and
www.cdc.gov/tobacco/basic_information/c-cigarettes/severe-lung-disease/health-departments/index.html.

²⁰ Optional. If a district does not want to include the statutory example that includes the term *vape pen*, which provides notice that vaping products are also prohibited through the term e-cigarette, replace ~~includes but is not limited to, any electronic nicotine delivery system (ENDS), electronic cigar, electronic cigarillo, electronic pipe, electronic hookah, vape pen, or similar product or device, and any components or parts that can be used to build the product or device~~ with “shall have the meaning provided in the Prevention of Tobacco Use by Minors and Sale and Distribution of Tobacco Products Act, 720 ILCS 675/1(a-9).”

²¹ An employee who currently uses *illegal* drugs is not protected under the Americans With Disabilities Act (ADA) when the district acts on the basis of such use. 42 U.S.C. §12114. Legal drug abusers and alcoholics may still be protected as *handicapped* under the Rehabilitation Act of 1973 (29 U.S.C. §706 *et seq.*) or the Ill. Human Rights Act (IHRA), 775 ILCS 5/1-101 *et seq.* and 56 Ill.Admin.Code §2500.20. The Rehabilitation Act, however, excludes from protection “an alcohol or drug abuser whose current use of alcohol or drugs prevents such individual from performing the duties of the job in question or whose employment ... would constitute a direct threat to the property or the safety of others.” 29 U.S.C. §706(7)(B).

The ADA neither authorizes nor prohibits drug testing; it allows the results of such tests to be used as the basis for disciplinary action. 42 U.S.C. §12114; 29 C.F.R. §1630.16 (c). Drug tests may still violate other laws, e.g., Title VI and the Rehabilitation Act. 42 U.S.C. §2000e *et seq.*; and 29 U.S.C. §706 *et seq.* Drug tests may also be a subject of collective bargaining. See paragraph one of ¶n 1, above. Consult the board attorney before implementing a drug testing program to enforce this policy.

The Board shall take disciplinary action with respect to an employee convicted of a drug offense in the workplace within 30 days after receiving notice of the conviction. ²²

Should District employees be engaged in the performance of work under a federal contract or grant, or under a State contract or grant of \$5,000 or more, the Superintendent shall notify the appropriate State or federal agency from which the District receives contract or grant monies of the employee's conviction within 10 days after receiving notice of the conviction. ²³

Disclaimer ²⁴

The Board reserves the right to interpret, revise or discontinue any provision of this policy pursuant to the **Suspension of Policies** subhead in policy 2:240, *Board Policy Development*.

LEGAL REF.: ~~42 U.S.C. §12114, Americans With Disabilities Act; 42 U.S.C. §12114.~~
~~21 U.S.C. §812; 21 C.F.R. §1308.11-1308.15, Controlled Substances Act;~~ 21
~~U.S.C. §812; 21 C.F.R. §1308.11-1308.15.~~
41 U.S.C. §8101 et seq., Drug-Free Workplace Act of 1988; ~~41 U.S.C. §8101 et~~
~~seq.~~
20 U.S.C. § 7101 et seq., Safe and Drug-Free School and Communities Act of 1994;~~;~~
~~20 U.S.C. §7101 et seq.~~
30 ILCS 580/, Drug-Free Workplace Act.
105 ILCS 5/10-20.5b.
410 ILCS 82/, Smoke Free Illinois Act.
410 ILCS 130/, Compassionate Use of Medical Cannabis Program Act.
410 ILCS 705/1-1 et seq., Cannabis Regulation and Tax Act.
720 ILCS 675, Prevention of Tobacco Use by Persons under 21 Years of Age and
Sale and Distribution of Tobacco Products Act.
820 ILCS 55/, Right to Privacy in the Workplace Act.
21 C.F.R. Parts 1100, 1140, and 1143.
23 Ill.Admin.Code §22.20.

CROSS REF.: 5:10 (Equal Employment Opportunity and Minority Recruitment), 5:120
(Employee Ethics; Conduct; and Conflict of Interest), 6:60 (Curriculum Content),
8:30 (Visitors to and Conduct on School Property)

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

²² Required by both the federal and State Drug-Free Workplace Acts.

²³ *Id.*

²⁴ Optional best practice text.

General Personnel

Abused and Neglected Child Reporting 1

Any District employee who suspects or receives knowledge that a student may be an abused or neglected child or, for a student aged 18 through 21, an abused or neglected individual with a disability², shall: (1) immediately report or cause a report to be made to the Ill. Dept. of Children and Family Services (DCFS) on its Child Abuse Hotline 1-800-25-ABUSE (1-800-252-2873)(within Illinois); 1-217-524-2606 (outside of Illinois); or 1-800-358-5117 (TTY), and (2) follow directions given by DCFS concerning filing a written report within 48 hours with the nearest DCFS field

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

¹ State or federal law controls this policy's content. The Abused and Neglected Child Reporting Act (ANCRA) (325 ILCS 5/4) requires *education personnel* to immediately report or cause a report to be made to DCFS when they have reasonable cause to believe a child known to them in their professional or official capacities may be abused or neglected; *education personnel* includes school personnel (including administrators and certified and non-certified school employees) and educational advocates assigned to a child in accordance with the School Code. 325 ILCS 5/4(a)(4), added by P.A. 101-564, 10/1/09; ANCRA states that such personnel "may also notify the person in charge of [the] school[.]" 325 ILCS 5/4(e). If the report involves a ~~child~~ *adult student*, employees should expect DCFS to instruct them to call the Ill. Dept. of Human Services Office (DHS) office of the Inspector General's statewide 24 hour toll-free telephone number at 1-800-358-5117. ~~Reports involving a child should be made to DCFS.~~ 325 ILCS 5/4.4a and 20 ILCS 1305/1-17(b). Reports involving an ~~abused~~ *adult student* ~~with a disability~~ may be made directly to DHS; however, for simplicity, and to preserve a superintendent's duty to disclose certain reports involving an employee or former district employee (see discussion in fn 18 below) and the immunity for such disclosures, the sample policy directs the initial phone call ~~and written report~~ to DCFS.

Abuse and neglect are defined in 325 ILCS 5/3 and, for ~~abused~~ *adult students*, ~~in 20 ILCS 1305/1-17(b)~~. Abuse may be generally understood as any physical or mental injury or sexual abuse inflicted on a child or ~~abused~~ *adult student* ~~with a disability~~ other than by accidental means or creation of a risk of such injury or abuse by a person who is responsible for the ~~care of a child~~ ~~or abused adult student~~ ~~with a disability~~. Neglect may be generally understood as abandoning a child or ~~abused~~ *adult student* ~~with a disability~~ or failing to provide the proper support, education, medical, or remedial care required by law by one who is responsible for the child's or ~~abused~~ *adult student* ~~with a disability~~'s welfare.

Any person required by law to report abuse and neglect who willfully fails to report is guilty of a Class A misdemeanor. A teaching license may be suspended for willful or negligent failure to report suspected child abuse or neglect as required by law. 105 ILCS 5/21B-75, amended by P.A.s 101-531, 10/1/09, and 20 ILCS 1305/1-17(k)(1). 20 ILCS 1305/1-17(k)(1) allows mandated reporters for ~~abused~~ *adults* ~~with a disability~~ four hours to report after the initial discovery of the incident, allegation, or suspicion of any one or more of the following: mental abuse, physical abuse, sexual abuse, neglect, or financial exploitation.

District employees who make a report in good faith receive immunity, except in cases of willful or wanton misconduct. See 325 ILCS 5/4 and 9. Further, for the purpose of any proceedings, civil or criminal, good faith of the person making the report is presumed. Id.

Every two years, each district within an Illinois county served by an accredited Children's Advocacy Center (CAC) must review its sexual abuse investigation policies and procedures to ensure consistency with 105 ILCS 5/22-85 ~~and 105 ILCS 5/22-85.4~~, added by P.A. 101-531. 105 ILCS 5/10-20, ~~and 105 ILCS 5/10-20.1~~, added by P.A. 101-531. See sample policy 7:20, *Harassment of Students Prohibited*.

² State child and disabled adult protection laws define the same class of individuals differently, but with the same goal: to protect a ~~child~~ *adult student* ~~with a disability~~, not living in a DCFS licensed facility, who is still finishing school with an Individual Education Plan (IEP). The Dept. of Human Services Act (DHS Act) defines "adult student with a disability" as an adult student, age 18 through 21, inclusive (through the day before the student's 22nd birthday), with an IEP other than a resident of a facility licensed by DCFS. 20 ILCS 1305/1-17(b). ~~This statutory definition is the basis for this sample policy's language.~~ ~~This statutory definition is the basis for this sample policy's language.~~ This statutory definition is the basis for this sample policy's language.

For elementary districts, delete the following phrase from the first sentence: "or, for a student aged 18 through 21, an abused or neglected individual with a disability."

office.³ Any District employee who believes a student is in immediate danger of harm, shall first call 911. The employee shall also promptly notify the Superintendent or Building Principal that a report has been made.⁴ The Superintendent or Building Principal shall immediately coordinate any necessary notifications to the student's parent(s)/guardian(s) with DCFS, the applicable school resource officer (SRO), and/or local law enforcement.⁵ *Negligent failure to report* occurs when a District employee personally observes an instance of suspected child abuse or neglect and reasonably believes, in his or her professional or official capacity, that the instance constitutes an act of child abuse or neglect under the Abused and Neglected Child Reporting Act (ANCRA) and he or she, without willful intent, fails to immediately report or cause a report to be made of the suspected abuse or neglect to DCFS.⁶

Any District employee who discovers child pornography on electronic and information technology equipment shall immediately report it to local law enforcement, the National Center for Missing and Exploited Children's CyberTipline 1-800-THE-LOST (1-800-843-5678) or online at www.report.cybertip.org or www.missingkids.org. The Superintendent or Building Principal shall also be promptly notified of the discovery and that a report has been made.⁷

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³ 325 ILCS 5/7, amended by P.A. 101-583, effective 12/1/07. For a board that wants to include what a DCFS report should contain, an optional sentence follows:

The report shall include, if known:

1. The name and address of the child, parent/guardian names, or other persons having custody;
2. The child's age;
3. The child's condition, including any evidence of previous injuries or disabilities; and
4. Any other information that the reporter believes may be helpful to DCFS for its investigation.

⁴ The sample policy makes the report to the superintendent or building principal mandatory to keep the administration informed. The administration may not force the staff member to change or modify his or her report.

⁵ Optional. The sample policy makes coordination with DCFS, the SRO, and local law enforcement a step in the process of reporting, so the local agencies and school district are better able to prevent and manage the risks school officials and parents/guardians face when a DCFS report has been made, e.g., situations where parents/guardians, upon learning a DCFS report has been made involving their child(ren), commit an act of self-harm in response to the information.

For school districts in DuPage County, the DuPage County State's Attorney (SAO), Regional Office of Education (ROE), Police Dept. (PD), and DCFS have created a *Model Policy Reporting Abuse and Neglect for School Officials in DuPage County*, at: www.dupageroe.org/wp-content/uploads/Mandated_Reporting.pdf. Consult the board attorney about this reporting policy – its intent is for school officials to immediately inform the SAO that a report to DCFS has been made to allow the SAO to investigate and prevent evidence spoliation. **Note:** The DuPage SAO, ROE, and PD lack authority under ANCRA over school officials to enforce compliance with this "model reporting policy;" only DCFS has the authority under ANCRA to enforce penalties under ANCRA, not the "model reporting policy." The DuPage SAO, ROE, and PD did not consult school officials in the creation of its "model reporting policy."

⁶ 105 ILCS 5/10-23.12(c) (all district employees), added by P.A. 101-531; 105 ILCS 5/21B-75(b) (teachers), amended by P.A. 101-531.

⁷ ANCRA requires an electronic and information technology equipment worker or the worker's employer to report a discovery of child pornography depicted on an item of electronic and information technology equipment. 325 ILCS 5/4.5(b). Consult the board attorney to determine whether any district employees fit the definition of an *electronic and information technology worker*, i.e., are "persons who in the scope and course of their employment or business install, repair, or otherwise service electronic and information technology equipment for a fee."

The paragraph exceeds the State requirements by requiring *all* district employees to report a discovery of child pornography on electronic and information technology equipment. This furthers the National Center for Missing and Exploited Children's public policy goal of "empowering the public to take immediate and direct action to enforce a zero tolerance policy regarding child sexual exploitation."

Similar to school personnel who are mandated reporters, electronic and information technology equipment workers and their employers have broad immunities from criminal, civil, or administrative liabilities when they report a discovery of child pornography as required under 325 ILCS 5/4.5(b), except for willful or wanton misconduct, e.g., knowingly filing a false report. Failure to report a discovery of child pornography is a business offense subject to a fine of \$1001. 325 ILCS 5/4.5(e).

Alleged Incidents of Sexual Abuse; Investigations ¹³

An *alleged incident of sexual abuse* is an incident of sexual abuse of a child, as defined in 720 ILCS 5/11-9.1A, that is alleged to have been perpetrated by school personnel, including a school vendor or volunteer, that occurred: on school grounds during a school activity; or outside of school grounds or not during a school activity. ¹⁴

If a District employee reports an alleged incident of sexual abuse to DCFS¹⁵ and DCFS accepts the report for investigation, DCFS will refer the matter to the local Children's Advocacy Center (CAC).¹⁶ The Superintendent or designee will implement procedures to coordinate with the CAC.

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¹¹ *Erin's Law*, *Supplemental Code of Illinois Regulations*, 23 Ill. Code Regs. 101.005, created by Public Act 101-531, effective January 1, 2012, requires that school districts display information about the Department of Children and Family Services (DCFS) in each school building. The law requires that the information include the DCFS toll-free telephone number and methods for making a report under the Act.

¹² 105 ILCS 5/10-23.12(b) *Child Abuse Reporting*, added by P.A. 101-531, permits DCFS to cooperate with school officials to distribute informational ANCRA materials in school buildings. The following optional sentence provides that information: "The Superintendent or designee will display DCFS-issued materials that list the DCFS toll-free telephone number and methods for making a report under ANCRA in a clearly visible location in each school building."

¹³ Delete this subhead if your school district is not within a county served by an accredited CAC. 105 ILCS 5/22-85 *Child Abuse Reporting*, added by P.A. 101-531, governs the investigation of an *alleged incident of sexual abuse* of any child within any Illinois counties served by a CAC. For a map of accredited CACs, and to identify a CAC that may serve your district, see www.childrensadvocacycentersofillinois.org/about/map. The law is silent about investigations in counties without CACs.

¹⁴ Though 105 ILCS 5/22-85(b) *Child Abuse Reporting*, added by P.A. 101-531, defines *alleged incident of sexual abuse*, its definition is circular, using the term *sexual abuse* without defining what that means. To provide boards with clarity, the definition of *sexual abuse* used in the Ill. Criminal Code of 2012 is used.

¹⁵ 105 ILCS 5/22-85(c) *Child Abuse Reporting*, added by P.A. 101-531, provides that if a mandated reporter within a school has knowledge of an alleged incident of sexual abuse, the reporter must call the DCFS hotline immediately after obtaining the minimal information necessary to make a report, including the names of the affected parties and the allegations. It further requires the Ill. State Board of Education (ISBE) to make available materials detailing the information necessary to enable notification to DCFS of an alleged incident of sexual abuse, and that all mandated reporters annually review ISBE's materials.

¹⁶ 105 ILCS 5/22-85(d) *Child Abuse Reporting*, added by P.A. 101-531.

DCFS and/or the appropriate law enforcement agency will inform the District when its investigation is complete or has been suspended, as well as the outcome of its investigation.¹⁷ The existence of a DCFS and/or law enforcement investigation will not preclude the District from conducting its own parallel investigation into the alleged incident of sexual abuse in accordance with policy 7:20, *Harassment of Students Prohibited*.

Special Superintendent Responsibilities

The Superintendent shall execute the requirements in Board policy 5:150, *Personnel Records*, whenever another school district requests a reference concerning an applicant who is or was a District employee and was the subject of a report made by a District employee to DCFS.¹⁸

The Superintendent shall notify the State Superintendent and the Director of Superintendents in writing **when** the Superintendent has reasonable cause to believe that a license holder (or holder) an individual act of abuse, neglect, or mistreatment of a child as defined in (b) of a prohibited child abuse, ANCR, and that occurred in the license holder's state of licensure, as the Director has requested from the State Superintendent and the Director of Superintendents, or by providing the ID File Identification Number as well as a brief description of the individual alleged abuse, neglect, or mistreatment, to the State Superintendent and the Director of Superintendents.¹⁹ The Superintendent must make the report within 30 days of the dismissal or resignation and mail a copy of the notification to the license holder.²⁰

Special School Board Member Responsibilities

Each individual Board member must, if an allegation is raised to the member during an open or closed Board meeting that a student is an abused child as defined in ANCR, direct or cause the

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¹⁷ 105 ILCS 5/22-85(j), (k) (amended by P.A. 101-531).

¹⁸ ANCR requires a superintendent, upon being requested for a reference concerning an employee or former employee, to disclose to the requesting school district the fact that a district employee has made a report involving the conduct of the applicant or caused a report to be made to DCFS. 325 ILCS 5/4(d). When a report involves an abused adult student, DCFS must instruct mandated reporters making these reports to call the DHS' Office of the Inspector General's statewide 24 hour toll-free telephone number: 1-800-368-1463 (325 ILCS 5/4.4a) to make a report under the DHS Act.

The DHS Act (20 ILCS 1305/1-17(l)) then requires a determination of whether a report involving an abused adult student should be investigated under it or the Abuse of Adults with Disabilities Intervention Act (20 ILCS 2435), however that Act was repealed by P.A. 99-049 (eff. 7-1-13). The DHS Act does not outline a duty for the superintendent, upon being requested for a reference concerning an employee or former employee, to disclose to the requesting school district the fact that a district employee has made a report involving the conduct of the applicant or caused a report to be made to DHS involving an adult student with a disability.

Given the public policy behind the amendments to 325 ILCS 5/4, a reasonable interpretation of the law is that the superintendent's duty to disclose now involves DHS reports concerning adult students with disabilities. However, with no mechanism requiring DHS to report back to the superintendent a *non-substantiated report* (DHS version of a DCFS *unfounded* report), a superintendent's duty to disclose cannot end. Consult the board attorney about managing the duty to disclose reports that involve adult students when DCFS redirects the reporter to DHS. For more information, see policy 5:150, *Personnel Records*.

Superintendents of schools in Cook County should be notified by the State Superintendent of Superintendents when DCFS redirects the reporter to DHS. For more information, see policy 5:150, *Personnel Records*.

¹⁹ Alternative for districts in suburban Cook County: replace "Regional Superintendent" with "appropriate Intermediate Educational Service Center."

²⁰ 105 ILCS 5/10-21.9(c-5), amended by P.A. 101-531, requires these notifications and provides superintendents immunity from any liability, whether civil or criminal or that otherwise might result by complying with the statute.

Board to direct the Superintendent or other equivalent school administrator to comply with ANCRA's requirements concerning the reporting of child abuse. ²¹

If the Board determines that any District employee, other than an employee licensed under 105 ILCS 5/21B, has willfully or negligently failed to report an instance of suspected child abuse or neglect as required by ANCRA, the Board may dismiss that employee immediately. ²²

When the Board determines that a school administrator or employee has willfully or negligently failed to report an instance of suspected child abuse or neglect as required by ANCRA, the Board may dismiss that employee immediately. ²²

LEGAL REF.: 105 ILCS 5/10-21.9
105 ILCS 5/10-21.9
20 ILCS 1305/1-1 et seq., Department of Human Services Act.
325 ILCS 5/, Abused and Neglected Child Reporting Act.
720 ILCS 5/12C-50.1, Criminal Code of 2012.

CROSS REF.: 2:20 (Powers and Duties of the School Board; Indemnification), 5:100 (Staff Development Program), 5:120 (Employee Ethics; Conduct; and Conflict of Interest), 5:150 (Personnel Records), 5:200 (Terms and Conditions of Employment and Dismissal), 5:290 (Employment Termination and Suspensions), 6:120 (Education of Children with Disabilities), 6:250 (Community Resource Persons and Volunteers), 7:20 (Harassment of Students Prohibited), 7:150 (Agency and Police Interviews)

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

²¹ 325 ILCS 5/4(d). This statute makes board members mandatory child abuse reporters "to the extent required in accordance with other provisions of this section expressly concerning the duty of school board members to report suspected child abuse." Thus, a board member's duty is "to direct the superintendent or other equivalent school administrator to comply with the Act's requirements concerning the reporting of child abuse" whenever an "allegation is raised to a school board member during the course of an open or closed school board meeting that a child who is enrolled in the school district of which he or she is a board member is an abused child." Of course, any board member with reason to doubt that a report was or will be made should directly contact DCFS.

²² 105 ILCS 5/10-23.12(c), added by P.A. 101-531. See ¶n 6, above, and ¶n 3 in policy 2:20, *Powers and Duties of the School Board; Indemnification*.

5:90

General Personnel

Staff Development Program 1

The Superintendent or designee shall implement a staff development program. The goal of such program shall be to update and improve the skills and knowledge of staff members in order to achieve and maintain a high level of job performance and satisfaction. Additionally, the development program for licensed staff members shall be designed to effectuate the District and School Improvement Plans so that student learning objectives meet or exceed goals established by the District and State.

The staff development program shall include the following: (a) the District and State goals, (b) the Illinois State Board of Education (ISBE) goals, and (c) the goals and objectives of the District and School Improvement Plans. The staff development program shall be designed to effectuate the District and School Improvement Plans so that student learning objectives meet or exceed goals established by the District and State.

1. Staff development shall be provided for personnel who work with students in grades Kindergarten through 12th grade for the identification, reporting, and prevention of child abuse and neglect.
2. Within the district's establishment, staff development must comprise individual, group, and on-site training. Staff development shall include the following: (a) reporting child abuse and neglect; (b) mandatory reporting; (c) child abuse and neglect; and (d) child abuse and neglect prevention.
3. By January 31, 2021, all district and school personnel must complete a review of the following: (a) reporting child abuse and neglect; (b) mandatory reporting; (c) child abuse and neglect; and (d) child abuse and neglect prevention.

The staff development program shall provide, at a minimum, at least once every two years, the in-service training of licensed school personnel and administrators on current best practices regarding the identification and treatment of attention deficit disorder and attention deficit hyperactivity.

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¹ State law requires the subject matter in paragraph 2 to be covered by policy. State or federal law controls this policy's content. A school board may set and enforce professional growth requirements. 105 ILCS 5/24-5. Failure to meet professional growth requirements is considered remediable. Morris v. Ill. State Bd. of Educ., 198 Ill.App.3d 51 (3rd Dist. 1990).

105 ILCS 5/2-3.62 requires the Ill. State Board of Education (ISBE) to establish a regional network of educational service centers to coordinate and combine existing services in a manner that is practical and efficient for schools. Their purposes are to provide, among other things, continuing education, in-service training, and staff development services to all local school districts in Illinois.

² The Illinois State Board of Education (ISBE) shall establish a regional network of educational service centers to coordinate and combine existing services in a manner that is practical and efficient for schools. Their purposes are to provide, among other things, continuing education, in-service training, and staff development services to all local school districts in Illinois.

disorder, the application of non-aversive behavioral interventions in the school environment, and the use of psychotropic or psychostimulant medication for school-age children. ³

The staff development program shall provide, at a minimum, once every two years, the in-service training of all District staff on educator ethics, teacher-student conduct, and school employee-student conduct. ^{4 5 6}

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

³ This paraphrases 105 ILCS 5/10-20.36(b). The topic covered in this paragraph must be in a board policy. Id. A school medical staff, an individualized educational program team, or a professional worker (as defined in 105 ILCS 5/14-1.10) may recommend that a student be evaluated by an appropriate medical practitioner. School personnel may consult with the practitioner, with the consent of the student's parent/guardian.

⁴ 105 ILCS 5/10-22.39(f) requires boards to conduct this in-service. While the language of this paragraph is not required to be in board policy, including it provides a way for boards to monitor that it is being done. Including this language provides an opportunity for each board and the superintendent to examine all current policies, collective bargaining agreements, and administrative procedures on this subject. Each board may then want to have a conversation with the superintendent and direct him or her to develop a curriculum for the in-service that instructs all district staff to maintain boundaries and act appropriately, professionally, and ethically with students. See also sample policy 5:120, *Employee Ethics; Conduct; and Conflict of Interest*, and ¶n 11 in sample policy 4:110, *Transportation*. These expectations will be most effective when they reflect local conditions and circumstances. Employee conduct issues may be subjects of mandatory collective bargaining, therefore consulting the board attorney should be a part of this process. A district would commit an unfair labor practice by implementing new employee conduct rules without first offering to negotiate them with the applicable exclusive bargaining representative.

⁵ Insert the following option if a board wants to list in-services and/or trainings that State and federal law require, but are not required to be specified in board policy. Insert the following option if a board wants to list in-services and/or trainings that State and federal law require, but are not required to be specified in board policy. The only non-School Code State and/or federal law training requirements listed are from the Abused and Neglected Child Reporting Act, Ill. Human Rights Act, Seizure Smart School Act, and Title IX of the Education Amendments of 1972 (Title IX).

In addition, the staff development program shall include each of the following:

1. At least, once every two years, training of all District staff by a person with expertise on anaphylactic reactions and management.
2. At least every two years, an in-service to train school personnel, at a minimum, to understand, provide information and referrals, and address issues pertaining to youth who are parents, expectant parents, or victims of domestic or sexual violence.
3. Training that, at a minimum, provides District staff with a basic knowledge of matters relating to acquired immunodeficiency syndrome (AIDS) and the availability of appropriate sources of counseling and referral.
4. Training for licensed school personnel and administrators who work with students in grades kindergarten through 12 to identify the warning signs of mental illness and suicidal behavior in youth along with appropriate intervention and referral techniques.

- a. Addressing and preventing student bullying, including:
 - a. Staff training on the signs and symptoms of bullying, the impact of bullying on students, and the role of staff in preventing and addressing bullying.
 - b. Staff training on the signs and symptoms of bullying, the impact of bullying on students, and the role of staff in preventing and addressing bullying.
 - c. Staff training on the signs and symptoms of bullying, the impact of bullying on students, and the role of staff in preventing and addressing bullying.
- b. Education for staff instructing students in grades 7 through 12, concerning teen dating violence as recommended by the District's Nondiscrimination Coordinator, Building Principal, Assistant Building Principal, Dean of Students or Complaint Manager.

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- c. Ongoing professional development for teachers, administrators, school resource officers, and staff regarding the adverse consequences of school exclusion and justice-system involvement, effective classroom management strategies, culturally responsive discipline, the appropriate and available supportive services for the promotion of student attendance and engagement, and developmentally appropriate disciplinary methods that promote positive and healthy school climates.
- 8.7 Annual continuing education and/or training opportunities (*professional standards*) for school nutrition program directors, managers, and staff. Each school food authority's director shall document compliance with this requirement by the end of each school year and maintain documentation for a three year period.
- 9.8. All high school coaching personnel, including the head and assistant coaches, and athletic directors must obtain online concussion certification by completing online concussion awareness training in accordance with 105 ILCS 25/1.15. Coaching personnel and athletic directors hired on or after 8-19-14 must be certified before their position's start date.
- 10.9. The following individuals must complete concussion training as specified in the Youth Sports Concussion Safety Act: coaches and assistant coaches (whether volunteer or employee) of an interscholastic athletic activity; nurses, licensed and/or non-licensed healthcare professionals serving on the Concussion Oversight Team; athletic trainers; game officials of an interscholastic athletic activity; and physicians serving on the Concussion Oversight Team.
- 14.10. Every two years, school personnel who work with students must complete an in-person or online training program on the management of asthma, the prevention of asthma symptoms, and emergency response in the school setting.
- 14.11. Training for school personnel to develop cultural competency, including understanding and reducing implicit racial bias.
- 14.12. For school personnel who work with hazardous or toxic materials on a regular basis, training on the safe handling and use of such materials.
- 14.13. For nurses, administrators, counselors, teachers, persons employed by a local health department and assigned to a school, and persons who contract with the District to perform services in connection with a student's seizure action plan, training in the basics of seizure recognition, first aid, and appropriate emergency protocols.
- 14.14. For all District staff, annual sexual harassment prevention training.
- 14.15. Title IX requirements for training as follows (see policy 2:265, *Title IX Sexual Harassment Grievance Procedure*):
 - a. For all District staff, training on the definition of sexual harassment, the scope of the District's education program or activity, all relevant District policies and procedures, and the necessity to promptly forward all reports of sexual harassment to the Title IX Coordinator.
 - b. For school personnel designated as Title IX coordinators, investigators, decision-makers, or informal resolution facilitators, training on the definition of sexual harassment, the scope of the District's education program or activity, how to conduct an investigation and grievance process (including hearings, appeals, and informal resolution processes, as applicable), and how to serve impartially.
 - c. For school personnel designated as Title IX investigators, training on issues of relevance to create an investigative report that fairly summarizes relevant evidence.
 - d. For school personnel designated as Title IX decision-makers, training on issues of relevance of questions and evidence, including when questions and evidence about a complainant's sexual predisposition or prior sexual behavior are not relevant.

Alternative to paragraph number 2:

2. At least every two years, an in-service to train school personnel who work with students on how to: (a) communicate with and listen to youth victims of domestic or sexual violence and expectant and parenting youth, (b) connect youth victims of domestic or sexual violence and expectant and parenting youth to appropriate in-school services and other agencies, programs and services as needed, and (c) implement the School District's policies, procedures, and protocols with regard to such youth, including confidentiality. The in-service shall be conducted by persons with expertise in domestic and sexual violence and the needs of expectant and parenting youth.

Citations for this option follow:

1. 105 ILCS 5/10-22.39(e) (refers to anaphylactic reactions/management).
2. 105 ILCS 5/10-22.39(d) (refers to sexual violence).

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

3. 105 ILCS 5/10-22.39(c).
4. 105 ILCS 5/10-22.39(b), amended by P.A. 101-350. The law allows districts to use the Ill. Mental Health First Aid training program to provide this training. If a licensed employee or an administrator obtains mental health first aid training outside of an in-service training program, he or she may present a certificate of successful completion of that training to the school district to satisfy the requirements of this law.
5. 105 ILCS 5/10-22.39(d).
6. 105 ILCS 110/3.10(b)(2).
7. 105 ILCS 5/10-22.6(c-5), amended by P.A. 101-350. School board members are also included.
8. 7 C.F.R. Parts 210 and 235. Section 210.2 defines school nutrition program directors, managers and staff. 7 C.F.R. §§210.15(b)(8) (recordkeeping requirements) and 210.31(a), (c), (d), and (e) (professional standards requirements); 210.31(g)(requiring school food authority director to keep records), amended by 7 CFR 210.31(g) (6/20/2018). Food service funds may be used for reasonable, allocable, and necessary training costs. 7 C.F.R. §210.31(f). The U.S. Dept. of Agriculture (USDA) has established implementation resources that contain training opportunities and resources covering the four core training areas: nutrition, operations, administration, and communications/marketing at: <https://www.fns.usda.gov/food-education-and-nutrition-operations-administration-and-marketing>.
9. 105 ILCS 25/1.15.
10. 105 ILCS 5/22-80(h).
11. 105 ILCS 5/22-30(j-15). Consult the board attorney about whether:
 - a. All asthma action plans should require immediate 911 calls based upon In re Estate of Stewart, 406 Ill.Dec. 345 (2nd Dist. 2016); In re Estate of Stewart, 412 Ill.Dec. 914 (Ill. 2017) (school district's appeal denied). The court held that a teacher's failure to dial 911 immediately upon a student's asthma attack was *willful and wanton* conduct, subjecting the school district to liability under the Local Governmental and Governmental Employees Tort Immunity Act.
 - b. The duties and responsibilities of the district when it asks for, but does not receive an asthma action plan from a parent/guardian and the logistics of distributing any received plans to those employees who need to know based upon Stewart, above.
12. 105 ILCS 5/10-20.61.
13. 105 ILCS 5/10-20.17a; 23 Ill.Admin.Code §1.330.
14. 105 ILCS 150/25, added by P.A. 101-50.
15. 775 ILCS 5/2-109, added by P.A. 101-221.
16. 34 C.F.R. §106.45(b)(1)(iii).

Putting this optional list into the policy will help the board monitor that the required in-service and training topics are being covered. While it is possible to *pick and choose*, this practice is likely to add more confusion to an already confusing responsibility. Unless noted, the School Code does not mandate the frequency with which the training must occur. Several other trainings that are mentioned in laws other than the School Code are addressed in other policies. Many of those policies are listed in the cross-references to this policy, e.g., training requirements under the Care of Students with Diabetes Act. 105 ILCS 145/.

The Superintendent shall develop protocols for administering youth suicide awareness and prevention education to staff consistent with Board policy 7:290, *Suicide and Depression Awareness and Prevention*.⁷

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⁶ Different from the in-service training that school districts must provide to their staff, 105 ILCS 5/3-11, contains requirements that the regional superintendents must include during teachers institutes. Instruction on prevalent student chronic health conditions, as well as educator ethics and teacher-student conduct training is also required. See also ¶n 3 above discussing the board's requirement in Section 10-22.39. Beginning with the 2016-17 school year, teachers' institutes must also include instruction on the Americans with Disabilities Act of 1990 (ADA) (42 U.S.C. §12101 *et seq.*) as it pertains to the school environment at least every two years. Contact the Regional Superintendent or the appropriate Intermediate Service Center with questions about online training for this component of a teachers' institute. Discuss with the board attorney the best practices of documenting trainings and evaluations of trainings; many attorneys in the field prefer documentation of ADA trainings to assist in their defense of any potential ADA claims against the district.

For districts that have a practice of providing instruction in life-saving techniques and first-aid in their staff development programs, insert the following optional paragraph that restates 105 ILCS 5/3-11, 105 ILCS 110/3, and 77 Ill.Admin.Code §527.800:

An opportunity shall be provided for all staff members to acquire, develop, and maintain the knowledge and skills necessary to properly administer life-saving techniques and first aid, including the Heimlich maneuver, cardiopulmonary resuscitation, and the use of an automated external defibrillator, in accordance with a nationally recognized certifying organization. Physical fitness facilities' staff must be trained in cardiopulmonary resuscitation and use of an automated external defibrillator.

Persons performing CPR are generally exempt from civil liability if they are trained in CPR (745 ILCS 49/10); persons performing automated external defibrillation are generally exempt from civil liability if they were trained and acted according to the standards of the American Heart Association (745 ILCS 49/12).

The board may also want to address other staff development opportunities. While not required to be policy, 105 ILCS 5/27-23.10 requires a school board to collaborate with State and local law enforcement agencies on gang resistance education and training. It also states that ISBE may assist in the development of instructional materials and teacher training for gang resistance education and training, which may be helpful to include in the staff development program. Other mandated and recommended staff development opportunities that are not located in the School Code or ISBE rules are found in the Ill. Administrative Code or federal regulations. Many of them are cross referenced in this policy.

⁷ Required by 105 ILCS 5/2-3.166(e)(2).

LEGAL REF.: 20 U.S.C. §1681 et seq., Title IX of the Educational Amendments of 1972; 34 C.F.R. Part 106.
 42 U.S.C. §1758b, Pub. L. 111-296, Healthy, Hunger-Free Kids Act of 2010; 7 C.F.R. Parts 210 and 235.
 105 ILCS 5/2-3.62, 5/10-20.17a, 5/10-20.61, 5/10-22.6(c-5), 5/10-22.39, 5/10-23.12, 5/22-80(h), and 5/24-5.
 105 ILCS 25/1.15, Interscholastic Athletic Organization Act.
 105 ILCS 150/25, Seizure Smart School Act.
 105 ILCS 110/3, Critical Health Problems and Comprehensive Health Education Act.
 325 ILCS 5/4, Abused and Neglected Child Reporting Act.
 745 ILCS 49/, Good Samaritan Act.
 775 ILCS 5/2-109, Ill. Human Rights Act.
 23 Ill.Admin.Code §§ 22.20, 226.800, and Part 525.
 77 Ill.Admin.Code §527.800.

CROSS REF.: 2:265 (Title IX Sexual Harassment Grievance Procedure), 3:40 (Superintendent), 3:50 (Administrative Personnel Other Than the Superintendent), 4:160 (Environmental Quality of Buildings and Grounds), 4:170-AP6 (Plan for Responding to a Medical Emergency at a School Physical Fitness Facility), 5:20 (Workplace Harassment Prohibited), 5:90 (Abused and Neglected Child Reporting), 5:120 (Employee Ethics; Conduct; and Conflict of Interest), 5:250 (Leaves of Absence), 6:15 (School Accountability), 6:20 (School Year Calendar and Day), 6:50 (School Wellness), 6:160 (English Learners), 7:10 (Equal Educational Opportunities), 7:20 (Harassment of Students Prohibited), 7:180 (Prevention of and Response to Bullying, Intimidation, and Harassment), 7:185 (Teen Dating Violence Prohibited), 7:270 (Administering Medicines to Students), 7:285 (Food Allergy Management Program), 7:290 (Suicide and Depression Awareness and Prevention), 7:305 (Student Athlete Concussions and Head Injuries)

ADMIN. PROC.: 2:265-AP1 (Title IX Sexual Harassment Response), 2:265-AP2 (Formal Title IX Sexual Harassment Complaint Grievance Process), 4:160-AP (Environmental Quality of Buildings and Grounds), 4:170-AP6 (Plan for Responding to a Medical Emergency at a School Physical Fitness Facility), 5:100-AP (Staff Development Program), 5:110 (Employee Ethics; Conduct; and Conflict of Interest), 5:150-AP (Personnel Records), 6:120-AP4 (Care of Students with Diabetes), 7:250-AP1 (Measures to Control the Spread of Head Lice at School)

General Personnel

Employee Ethics; Conduct; and Conflict of Interest 1

Professional and Appropriate Conduct

All District employees are expected to maintain high standards in their school relationships, to demonstrate integrity and honesty, to be considerate and cooperative, and to maintain professional and appropriate relationships with students, parents, staff members, and others.² In addition, the *Code of Ethics for Illinois Educators*, adopted by the Illinois State Board of Education, is incorporated by reference into this policy.³ Any employee who sexually harasses a student, willfully or negligently fails to report an instance of suspected child abuse or neglect as required by the Abused and Neglected Child Reporting Act (325 ILCS 5);⁴ or otherwise violates an employee conduct standard will be subject to discipline up to and including dismissal.⁶

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¹ The State Officials and Employees Ethics Act (305 ILCS 430), requires a policy on a subject-matter covered in this sample policy: State and federal law controls its content. This policy contains items on which collective bargaining may be required. Any policy that impacts upon wages, hours, and terms and conditions of employment, is subject to collective bargaining upon request by the employee representative, even if the policy involves an inherent managerial right.

² 105 ILCS 5-10-22.39 requires each board to conduct in-service training on educator ethics, teacher-student conduct, and school employee-student conduct for all personnel. These expectations will be most effective when the in-service curriculum reflects local conditions and circumstances. While the School Code only requires the in-service, the requirement presents an opportunity for each board and the superintendent to examine all current policies, collective bargaining agreements, and administrative procedures on this subject. Each board may then want to have a conversation with the superintendent and direct him or her to develop a curriculum for the in-service that instructs all district employees to maintain boundaries and act appropriately, professionally, and ethically with students. See discussion in the appendix to fn 3, 5:100, *Staff Development Program*. After its discussion of these issues, the board may have further expectations and may choose to reflect those expectations here.

³ 775 ILCS 5-2-109, added by P.A. 101-221, requires districts to provide annual workplace sexual harassment prevention training to all employees. See fn 4 in policy 5:20, *Workplace Harassment Prohibited*, for further detail about the training requirements.

⁴ 23 Ill.Admin.Code Part 22. Boards are not required to include ISBE's *Code of Ethics for Illinois Educators* in a board policy. Incorporating it by reference into a policy demonstrates a board's commitment to the *Code's* principles and may allow a board to enforce the *Code* independently from any action taken by the State Superintendent.

⁵ The Illinois State Board of Education requires that the laws and regulations of the State Board of Education, including any applicable discipline, conduct, and grievance procedures, be incorporated into the district's policies and procedures. The Board of Education also requires that the district's policies and procedures be consistent with the laws and regulations of the State Board of Education. The Board of Education also requires that the district's policies and procedures be consistent with the laws and regulations of the State Board of Education. The Board of Education also requires that the district's policies and procedures be consistent with the laws and regulations of the State Board of Education.

⁶ 325 ILCS 5-4(a)(4), amended by P.A. 101-564, and 105 ILCS 5-10-23.1(c) (all district employees), added by P.A. 101-531; 105 ILCS 5-21B-75(b) (teachers), amended by P.A. 101-531.

⁷ 305 ILCS 430-10. The Ill. Human Rights Act makes it a civil rights violation to fail to take remedial action, or to fail to take appropriate disciplinary action, against any employee when the district knows that the employee committed or engaged in sexual harassment of a student. 775 ILCS 5-5A-102. Sexual harassment of a student is also prohibited by 775 ILCS 5-5A-102. Sexual harassment of a student is also prohibited by 775 ILCS 5-5A-102. Sexual harassment of a student is also prohibited by 775 ILCS 5-5A-102. Sexual harassment of a student is also prohibited by 775 ILCS 5-5A-102.

1. The Board shall have the authority to determine the appropriate level of funding for the school district's operations. The Board shall have the authority to determine the appropriate level of funding for the school district's operations.

Commented [MB1]: F n 7 was excerpted from En3, with some of the contents moved into the policy and some into new En 7.

2. The Board shall have the authority to determine the appropriate level of funding for the school district's operations. The Board shall have the authority to determine the appropriate level of funding for the school district's operations.

- a. A regular annual meeting.
- b. A special meeting.
- c. A meeting to consider a resolution.
- d. A meeting to consider a resolution.
- e. A meeting to consider a resolution.
- f. A meeting to consider a resolution.

3. The Board shall have the authority to determine the appropriate level of funding for the school district's operations. The Board shall have the authority to determine the appropriate level of funding for the school district's operations.

- a. A regular annual meeting.
- b. A special meeting.
- c. A meeting to consider a resolution.
- d. A meeting to consider a resolution.

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

1. This section shall be amended to read as follows: "The Board shall have the authority to determine the appropriate level of funding for the school district's operations. The Board shall have the authority to determine the appropriate level of funding for the school district's operations."

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6. This section shall be amended to read as follows: "The Board shall have the authority to determine the appropriate level of funding for the school district's operations. The Board shall have the authority to determine the appropriate level of funding for the school district's operations."

7. This section shall be amended to read as follows: "The Board shall have the authority to determine the appropriate level of funding for the school district's operations. The Board shall have the authority to determine the appropriate level of funding for the school district's operations."

1. The following employees must file a *Statement of Economic Interests* as required by the Illinois Governmental Ethics Act:¹²
 - a. Superintendent;
 - b. Building Principal;
 - c. Head of any department;
 - d. Any employee who, as the District's agent, is responsible for negotiating one or more contracts including collective bargaining agreement(s), in the amount of \$1,000 or greater;
 - e. Hearing officer;
 - f. Any employee having supervisory authority for 20 or more employees; and
 - g. Any employee in a position that requires an administrative or a chief school business official endorsement.

Statement of Economic Interests

The following employees must file a *Statement of Economic Interests* as required by the Illinois Governmental Ethics Act:¹²

1. Superintendent;
2. Building Principal;
3. Head of any department;
4. Any employee who, as the District's agent, is responsible for negotiating one or more contracts including collective bargaining agreement(s), in the amount of \$1,000 or greater;
5. Hearing officer;
6. Any employee having supervisory authority for 20 or more employees; and
7. Any employee in a position that requires an administrative or a chief school business official endorsement.

Ethics and Gift Ban

School Board policy 2:105, *Ethics and Gift Ban*, applies to all District employees.¹³ Students shall not be used in any manner for promoting a political candidate or issue.

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

¹² 5 ILCS 420-4A-101, amended by 2019-01-01.

¹² 5 ILCS 420-4A-101, amended by 2019-01-01. The Act requires all school districts to adopt an ordinance or resolution "in a manner no less restrictive" than the Act's provisions. See policy 2:105, *Ethics and Gift Ban*. Districts may not inhibit or prohibit employees from petitioning, making public speeches, campaigning for or against political candidates, speaking out on public policy questions, distributing political literature, making campaign contributions, and seeking public office. 50 ILCS 135, et seq. Governmental Employees Political Rights Act. An employee may not use his/her position of employment to coerce or inhibit others in the free exercise of their political rights or engage in political activities at work. Id.

¹³ The Statewide Gift Ban, 5 ILCS 420-4A-108, amended by 2019-01-01, prohibits State employees from engaging in certain political activities and accepting certain gifts. 5 ILCS 430, et seq. requires all school districts to adopt an ordinance or resolution "in a manner no less restrictive" than the Act's provisions. See policy 2:105, *Ethics and Gift Ban*.

Districts may not inhibit or prohibit employees from petitioning, making public speeches, campaigning for or against political candidates, speaking out on public policy questions, distributing political literature, making campaign contributions, and seeking public office. 50 ILCS 135, et seq. Governmental Employees Political Rights Act. An employee may not use his/her position of employment to coerce or inhibit others in the free exercise of their political rights or engage in political activities at work. Id.

Prohibited Interests; Conflict of Interest; and Limitation of Authority

In accordance with Section 22-5 of the School Code, "no school officer or teacher shall be interested in the sale, proceeds, or profits of any book, apparatus, or furniture used or to be used in any school with which such officer or teacher may be connected," except when the employee is the author or developer of instructional materials listed with the Illinois State Board of Education and adopted for use by the Board.¹⁴ An employee having an interest in instructional materials must file an annual statement with the Board Secretary.¹⁵

For the purpose of acquiring profit or personal gain, no employee shall act as an agent of the District nor shall an employee act as an agent of any business in any transaction with the District. This includes participation in the selection, award or administration of a contract supported by a federal award or State award governed by the Grant Accountability and Transparency Act (GATA) (30 ILCS 708/) when the employee has a real or apparent conflict of interest.¹⁶ A conflict of interest arises when an employee or any of the following individuals has a financial or other interest in the entity selected for the contract:

1. Any person that has a close personal relationship with an employee that may compromise or impair the employee's fairness and impartiality, including a member of the employee's immediate family or household;
2. An employee's business partner; or
3. An entity that employs or is about to employ the employee or one of the individuals listed in one or two above.¹⁷

Employees shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to agreements or contracts.¹⁸ Situations in which the interest is not substantial or the gift is an unsolicited item of nominal value must comply with State law and Board policy 2:105, *Ethics and Gift Ban*.¹⁹

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¹⁴ This sentence quotes 105 ILCS 5-22-5 because the statute does not define important terms making it difficult to paraphrase. No appellate decision defines *school officer* or *apparatus*, or what is meant by *connected*. The statute was enacted in 1961 but earlier versions were in the School Code much longer. A violation of this prohibition is a Class A misdemeanor.

¹⁵ *Id.*

¹⁶ 2 C.F.R. §200.318(c)(1) prohibits employees, officers, or agents of a school district from participating in the selection, award, or administration of a contract supported by a federal award if they have a real or apparent *conflict of interest*. The uniform federal rules on procurement standards in 2 C.F.R. Part 200 also apply to eligible State grants through the Grant Accountability and Transparency Act (GATA) (30 ILCS 708-1). Authoritative sources and guidance regarding conflict of interest and financial disclosure are provided through the GATA Resource Library at www.grants.illinois.gov. See also the Ill. State Board of Education's *Procurement and Purchasing Checklist* at: www.isbe.net/Pages/Audit-and-Monitoring-Review-Requirements-and-Tools.aspx.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* The rule provides flexibility for school districts to "set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value," along with "disciplinary actions to be applied for violations." Referring to sample policy 2:105, *Ethics and Gift Ban*, for these standards provides clarity and consistency. Policy 2:105, *Ethics and Gift Ban*, refers to **Limitations on Receiving Gifts** in the Ethics Act at 5 ILCS 430-10-10 - 10-30, along with discussion of the specific penalties available under the Ethics Act at 5 ILCS 430-50-5 in its **Enforcement** subhead.

2.000 - Outside Employment

This policy shall apply to all employees of the school district. The purpose of this policy is to ensure that employees are able to perform their duties effectively and efficiently. This policy is intended to provide a framework for the school district to manage outside employment of its employees. The policy is intended to be consistent with applicable laws and regulations.

1. Employees shall not engage in any other employment or in any private business during regular working hours or at such other times as are necessary to fulfill appropriate assigned duties.
- a. Available activities
2. An employee shall not engage in any other employment or in any private business during regular working hours or at such other times as are necessary to fulfill appropriate assigned duties if such other employment or private business would conflict with the employee's duties as an employee of the school district. The school district shall have the right to require an employee to resign from any other employment or private business if such other employment or private business would conflict with the employee's duties as an employee of the school district.
3. The school district shall have the right to require an employee to resign from any other employment or private business if such other employment or private business would conflict with the employee's duties as an employee of the school district.
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6. The school district shall have the right to require an employee to resign from any other employment or private business if such other employment or private business would conflict with the employee's duties as an employee of the school district.
7. The school district shall have the right to require an employee to resign from any other employment or private business if such other employment or private business would conflict with the employee's duties as an employee of the school district.

This policy is intended to be consistent with applicable laws and regulations. The school district shall have the right to require an employee to resign from any other employment or private business if such other employment or private business would conflict with the employee's duties as an employee of the school district.

Outside Employment

Employees shall not engage in any other employment or in any private business during regular working hours or at such other times as are necessary to fulfill appropriate assigned duties.

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¹ This policy is intended to be consistent with applicable laws and regulations. The school district shall have the right to require an employee to resign from any other employment or private business if such other employment or private business would conflict with the employee's duties as an employee of the school district.

Incorporated
by reference: 5:120-E (Code of Ethics for Illinois Educators)

LEGAL REF.: U.S. Constitution, First Amendment.
2 C.F.R. §200.318(e)(1).
5 ILCS 420/4A-101, Ill. Governmental Ethics Act.
5 ILCS 430/, State Officials and Employee Ethics Act.
30 ILCS 708/, Grant Accountability and Transparency Act.
50 ILCS 135/, Local Governmental Employees Political Rights Act.
105 ILCS 5/10-22.39 (a) - (b) (1), (c) 5/22-5, (d) 5/22-5, (e) 5/22-5, (f) 5/22-5, (g) 5/22-5, (h) 5/22-5, (i) 5/22-5, (j) 5/22-5, (k) 5/22-5, (l) 5/22-5, (m) 5/22-5, (n) 5/22-5, (o) 5/22-5, (p) 5/22-5, (q) 5/22-5, (r) 5/22-5, (s) 5/22-5, (t) 5/22-5, (u) 5/22-5, (v) 5/22-5, (w) 5/22-5, (x) 5/22-5, (y) 5/22-5, (z) 5/22-5.
325 ILCS 5/, Abused and Neglected Child Reporting Act.
775 ILCS 5/5A-102, Ill. Human Rights Act.
23 Ill.Admin.Code Part 22, Code of Ethics for Illinois Educators.
Pickering v. Board of Township H.S. Dist. 205, 391 U.S. 563 (1968).
Garcetti v. Ceballos, 547 U.S. 410 (2006).

CROSS REF.: 2:105 (Ethics and Gift Ban), 4:60 (Purchases and Contracts), 5:100 (Staff Development Program), 5:125 (Personal Technology and Social Media; Usage and Conduct)

General Personnel

Personal Technology and Social Media; Usage and Conduct 1

Definitions

Includes - Means “includes without limitation” or “includes, but is not limited to.”

Social media - Media for social interaction, using highly accessible communication techniques through the use of web-based and mobile technologies to turn communication into interactive dialogue.² This includes, but is not limited to, services such as *Facebook*, *LinkedIn*, *Twitter*, *Instagram*, *Snapchat*, and *YouTube*.³

Personal technology - Any device that is not owned or leased by the District or otherwise authorized for District use and: (1) transmits sounds, images, text, messages, videos, or electronic information, (2) electronically records, plays, or stores information, or (3) accesses the Internet, or private communication or information networks.⁴ This includes laptop computers (e.g., laptops, ultrabooks, and chromebooks), tablets (e.g., iPads®, Kindle®, Microsoft Surface®, and other Android® platform or Windows® devices), smartphones (e.g., iPhone®, BlackBerry®, Android® platform phones, and Windows Phone®), and other devices (e.g., iPod®).⁵

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¹ This policy is optional. Consult the board attorney because personal technology and social media use is rapidly changing. This policy may involve an unprecedented use of technology in schools. Laws and court rulings may be in an unsettled area of the law, and both personal technology and social media platforms change continually.

Therefore, instead of prohibiting specific actions, this sample policy focuses on what will not change - maintaining appropriate behavior as outlined in 5:120, *Employee Ethics; Conduct; and Conflict of Interest*, the Ill. Educators' Code of Ethics at 23 Ill.Admin.Code §22.20, and 105 ILCS 5/21B-75, amended by P.A. 101-531 (2009) § 552 (allows suspensions or revocations of teachers and principals for, among other things, abuse or neglect of a child, willful or negligent failure to report suspected child abuse or neglect, *immorality*, and *unprofessional conduct*, among other things). *Immoral* has been defined by one court to mean “shameless conduct showing moral indifference to the opinions of the good and respectable members of the community.” See *Ahmad v. Board of Education of City of Chicago*, 356 Ill.App.3d 155 (1st Dist. 2006).

Consult the board attorney when a board wants to prohibit more specific actions and/or specific speech, e.g., *friending* students on Facebook or similar social media, *tweeting* or otherwise communicating with students on Twitter or similar social media sites, and text messaging or emailing students. See also the discussion in fns 6 & 7 below.

This policy also contains an item on which collective bargaining may be required. Any policy that impacts upon wages, hours, and terms and conditions of employment, is subject to collective bargaining upon request by the employee representative, even if the policy involves an inherent managerial right. When a policy's subject matter is superseded by a bargaining agreement, the board policy can state, “Please refer to the applicable collective bargaining agreement.”

² Several definitions of social media exist, and a board may wish to use another definition or create its own with the board attorney. This sample policy's definition is very broad. It is adapted from a frequently cited Wikipedia definition at www.en.wikipedia.org/wiki/Social_media. Merriam-Webster's definition is at www.merriam-webster.com/dictionary/social%20.

³ Optional. A board may want to add other sites. As of July 2019, the publication *eBizMBA Inc.* lists the top four social networking sites as Facebook, YouTube, Instagram, and Twitter, respectively.

⁴ *Personal technology* is not yet defined. It is the title of a weekly column in *The Wall Street Journal*. The column was created and is authored by Walt Mossberg, who frequently directs readers to his review of new technologies on a website titled *All Things Digital* at to www.allthingsd.com/author/walt/. Many of the reviewed devices operate as described in this sample definition.

⁵ Optional.

Usage and Conduct ⁶

All District employees who use personal technology and social media shall: ⁷

1. Adhere to the high standards for conduct that are required by policy 5:120, *Employee Ethics; Conduct; and Conflict of Interest*, at all times, regardless of the ever-changing social media and personal technology platforms available. This includes District employees posting images or private information about themselves or others in a manner readily accessible to students and other employees that is inappropriate as defined by policy 5:20, *Workplace Harassment Prohibited*; 5:100, *Staff Development Program*; 5:120, *Employee Ethics; Conduct; and Conflict of Interest*; 6:235, *Access to Electronic Networks*; 7:20, *Harassment of Students Prohibited*; and the Ill. Code of Educator Ethics, 23 Ill.Admin.Code §22.20.
2. Choose a District-provided or supported method whenever possible to communicate with students and their parents/guardians.
3. Not interfere with or disrupt the educational or working environment, or the delivery of education or educational support services.
4. Inform the appropriate supervisor of any local policies that conflict with the policies of personal technology or social media.
5. Report any misuse of personal technology or social media discovered through the use of social media or personal technology to the appropriate school employee supervisors under policy 5:90, *Reporting and Investigation Procedures for Reporting*.
6. Not disclose student or confidential information, including student names, addresses, or students' names of siblings, or a teacher or staff member's information about students, to anyone not authorized to receive such information. This includes, but is not limited to, the use of personal technology or social media to disclose such information.

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

⁶ Whether to discipline an employee for his or her speech is always highly fact sensitive and should always occur after a consultation with the board attorney. See fn 1 and 7. The discipline will require careful balancing of the district's obligations to protect its students with employees' rights. Further, a board may not discipline its employees for discussing the terms and conditions of their employment with co-workers and others or otherwise interfere with their employees' efforts to work to improve the terms and conditions of their workplace. 29 U.S.C. §151 *et seq.*

⁷ The following list is optional and may contain items on which collective bargaining may be required. See fn 1. To ensure that the listed expectations match local conditions, boards may want to initiate a conversation with the superintendent about these expectations. Expectations will be most effective when they reflect local conditions and circumstances. This conversation provides an additional opportunity for the board and superintendent to examine all current policies, collective bargaining agreements, and administrative procedures applicable to this subject. See fn 2 of policy 5:120, *Employee Ethics; Conduct; and Conflict of Interest*, for more discussion about how to initiate this conversation. See fn 3 of policy 5:100, *Staff Development Program*, and the district's collective bargaining agreement for more information about the process of collective bargaining. Employee conduct issues may be subjects of mandatory collective bargaining, therefore consulting the board attorney should be a part of this process. After discussing these issues, the board may have further expectations and may choose to reflect those expectations here.

approval. For District employees, proper approval may include implied consent under the circumstances.⁸

- 3.7 Refrain from using the District's logos without permission and follow Board policy 5:170, *Copyright*, and all District copyright compliance procedures.⁹
- 3.8 Use personal technology and social media for personal purposes only during non-work times or hours. Any duty-free use must occur during times and places that the use will not interfere with job duties or otherwise be disruptive to the school environment or its operation.¹⁰
- 3.9 Assume all risks associated with the use of personal technology and social media at school or school-sponsored activities, including students' viewing of inappropriate Internet materials through the District employee's personal technology or social media. The Board expressly disclaims any responsibility for imposing content filters, blocking lists, or monitoring of its employees' personal technology and social media.¹¹
- 3.10 Be subject to remedial and any other appropriate disciplinary action for violations of this policy ranging from prohibiting the employee from possessing or using any personal technology or social media at school to dismissal and/or indemnification of the District for any losses, costs, or damages, including reasonable attorney fees, incurred by the District relating to, or arising out of, any violation of this policy.¹²

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

⁸ Inherent dangers exist when district employees use personal technology and social media without understanding how the information is used within the chosen platform and what choices are available within the platform to control it. Some examples of laws that require the safekeeping of district and school records include: the Federal Educational Rights and Privacy Act, 20 U.S.C. §1232g, and the Ill. School Student Records Act, 105 ILCS 10/ (both prohibit the unauthorized disclosure of student school records); 5 ILCS 140/7 (exempts personnel information and other items such as school security and response plans and maps from disclosure); 45 C.F.R. §164.502 (protects the employees' health information); and 820 ILCS 40/ (governs the release of an employee's disciplinary action). For district employees, implied consent may be sufficient in some circumstances, e.g., teachers taking pictures of each other at a birthday party in the teachers' lounge or at a social event off school grounds and later posting those pictures on social media.

⁹ 17 U.S.C. §101 *et seq.*

¹⁰ 105 ILCS 5/24-9; Fair Labor Standards Act, 29 U.S.C. §201 *et seq.* See also *fn*s 1 and 6 above.

¹¹ The Children's Internet Protection Act (CIPA) (47 U.S.C. §254(l)) requires school districts to maintain a policy and provide Internet access that protects against access to websites containing material that is obscene, pornographic, or harmful to minors. See 6:235, *Access to Electronic Networks*. Because a district cannot subject its employees' usage of personal technology and social media to the same measures required under CIPA (i.e., content filters, blocking lists, or district monitoring of Internet website traffic for patterns of usage that could indicate inappropriate network usage), this statement seeks to balance the district's duty by shifting responsibility for inappropriate behavior to the individual employee.

¹² The Ill. Human Rights Act makes it a civil rights violation to fail to take remedial action, or to fail to take appropriate disciplinary action against any employee, when the district knows that the employee committed or engaged in sexual harassment of a student. 775 ILCS 5/5A-102. Sexual harassment of a student is also prohibited by 7:20, *Harassment of Student Prohibited*, and of an employee by 5:20, *Workplace Harassment Prohibited*.

The Superintendent shall: ¹³

1. Inform District employees about this policy during the in-service on educator ethics, teacher-student conduct, and school employee-student conduct required by Board policy 5:120, *Employee Ethics; Conduct; and Conflict of Interest*.
2. Direct Building Principals to annually:
 - a. Provide their building staff with a copy of this policy.
 - b. Inform their building staff about the importance of maintaining high standards in their school relationships.
 - c. Remind their building staff that those who violate this policy will be subject to remedial and any other appropriate disciplinary action up to and including dismissal.
3. Build awareness of this policy with students, parents, and the community.
4. Ensure that ~~no employee within the District, nor anyone on its behalf, represents or is an agent of the District in any way in the Workplace Act, 820 ILCS 55/10(b), the Right to Privacy in the Workplace Act, 820 ILCS 55/10(b), or any other law, or any other person who is not an employee of the District, or any other person who is not an employee of the District, or any other person who is not an employee of the District, or any other person who is not an employee of the District.~~ ¹⁴
5. Periodically review this policy and any procedures with District employee representatives and electronic network system administrator(s) and present proposed changes to the Board.

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

¹³ 105 ILCS 5/10-16.7. The school board directs, through policy, the superintendent in his or her charge of the district's administration. One logical method for a board to address the issue of district employees' use of personal technology and social media is to include its expectations during its in-service trainings required by 105 ILCS 5/10-22.39. Many experts in social media risk management advocate training employees about the expectations concerning social media usage. For boards that do not want to include this as a part of the in-service, delete the phrase "during the in-service on educator ethics, teacher-student conduct, and school employee-student conduct required by Board policy 5:120, *Employee Ethics; Conduct; and Conflict of Interest*."

Public employee First Amendment issues involve the balance between the importance of the speech and the district's interest in maintaining order and effective school operations. The First Amendment "does not entitle primary and secondary teachers, when conducting the education of captive audiences, to cover topics, or advocate viewpoints, that depart from the curriculum adopted by the school system." See *Mayer v. Monroe County Community School Corp.*, 474 F.3d 477 (7th Cir. 2007). Nor is the First Amendment likely to entitle a teacher to protection for purely personal speech that does not touch on a matter of public concern. See *Pickering v. High School Dist. 205*, 391 U.S. 563 (1968). However, when public employees speak as private citizens on their own time about matters of public concern, they may face only those speech restrictions that are necessary for their employers to operate efficiently and effectively. *Garcetti v. Ceballos*, 547 U.S. 410 (2006).

¹⁴ Right to Privacy in the Workplace Act, 820 ILCS 55/10(b) (also known as the *Facebook Password Law*). The exception for *professional accounts* is unlikely to be available to school districts; see the explanation in fn 19 in policy 5:30, *Hiring Process and Criteria*. The statute specifically permits an employer to: (1) maintain workplace policies governing the use of the employer's electronic equipment, including policies regarding Internet use, social networking site use, and electronic mail use; and (2) monitor usage of the employer's electronic equipment and electronic mail.

The statute does not prohibit an employer from (1) obtaining information about an applicant or an employee that is in the public domain or that is otherwise obtained in compliance with the statute, and (2) requesting or requiring an applicant or employee to share specific content that is reported to the employer to: (a) ensure compliance with laws and regulatory requirements, (b) investigate certain allegations as outlined in the law, and (c) prohibit certain outlined behaviors in the law. Finally, the statute does not apply to other types of personal technology that employees may use to communicate with students or other individuals, such as personal email or text messages on a personal phone. However, employers may access online accounts that the employer pays for or that an employee creates or maintains on behalf of the employer in connection with the employee's employment. Consult the board attorney about these issues.

LEGAL REF.: 105 ILCS 5/21B-75 and 5/21B-80.
Illinois Administrative Code 775 ILCS 5/5A-102, 5/5A-103, 5/5A-104, 5/5A-105, 5/5A-106, 5/5A-107, 5/5A-108, 5/5A-109, 5/5A-110, 5/5A-111, 5/5A-112, 5/5A-113, 5/5A-114, 5/5A-115, 5/5A-116, 5/5A-117, 5/5A-118, 5/5A-119, 5/5A-120, 5/5A-121, 5/5A-122, 5/5A-123, 5/5A-124, 5/5A-125, 5/5A-126, 5/5A-127, 5/5A-128, 5/5A-129, 5/5A-130, 5/5A-131, 5/5A-132, 5/5A-133, 5/5A-134, 5/5A-135, 5/5A-136, 5/5A-137, 5/5A-138, 5/5A-139, 5/5A-140, 5/5A-141, 5/5A-142, 5/5A-143, 5/5A-144, 5/5A-145, 5/5A-146, 5/5A-147, 5/5A-148, 5/5A-149, 5/5A-150, 5/5A-151, 5/5A-152, 5/5A-153, 5/5A-154, 5/5A-155, 5/5A-156, 5/5A-157, 5/5A-158, 5/5A-159, 5/5A-160, 5/5A-161, 5/5A-162, 5/5A-163, 5/5A-164, 5/5A-165, 5/5A-166, 5/5A-167, 5/5A-168, 5/5A-169, 5/5A-170, 5/5A-171, 5/5A-172, 5/5A-173, 5/5A-174, 5/5A-175, 5/5A-176, 5/5A-177, 5/5A-178, 5/5A-179, 5/5A-180, 5/5A-181, 5/5A-182, 5/5A-183, 5/5A-184, 5/5A-185, 5/5A-186, 5/5A-187, 5/5A-188, 5/5A-189, 5/5A-190, 5/5A-191, 5/5A-192, 5/5A-193, 5/5A-194, 5/5A-195, 5/5A-196, 5/5A-197, 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5/5A-798, 5/5A-799, 5/5A-800, 5/5A-801, 5/5A-802, 5/5A-803, 5/5A-804, 5/5A-805, 5/5A-806, 5/5A-807, 5/5A-808, 5/5A-809, 5/5A-810, 5/5A-811, 5/5A-812, 5/5A-813, 5/5A-814, 5/5A-815, 5/5A-816, 5/5A-817, 5/5A-818, 5/5A-819, 5/5A-820, 5/5A-821, 5/5A-822, 5/5A-823, 5/5A-824, 5/5A-825, 5/5A-826, 5/5A-827, 5/5A-828, 5/5A-829, 5/5A-830, 5/5A-831, 5/5A-832, 5/5A-833, 5/5A-834, 5/5A-835, 5/5A-836, 5/5A-837, 5/5A-838, 5/5A-839, 5/5A-840, 5/5A-841, 5/5A-842, 5/5A-843, 5/5A-844, 5/5A-845, 5/5A-846, 5/5A-847, 5/5A-848, 5/5A-849, 5/5A-850, 5/5A-851, 5/5A-852, 5/5A-853, 5/5A-854, 5/5A-855, 5/5A-856, 5/5A-857, 5/5A-858, 5/5A-859, 5/5A-860, 5/5A-861, 5/5A-862, 5/5A-863, 5/5A-864, 5/5A-865, 5/5A-866, 5/5A-867, 5/5A-868, 5/5A-869, 5/5A-870, 5/5A-871, 5/5A-872, 5/5A-873, 5/5A-874, 5/5A-875, 5/5A-876, 5/5A-877, 5/5A-878, 5/5A-879, 5/5A-880, 5/5A-881, 5/5A-882, 5/5A-883, 5/5A-884, 5/5A-885, 5/5A-886, 5/5A-887, 5/5A-888, 5/5A-889, 5/5A-890, 5/5A-891, 5/5A-892, 5/5A-893, 5/5A-894, 5/5A-895, 5/5A-896, 5/5A-897, 5/5A-898, 5/5A-899, 5/5A-900, 5/5A-901, 5/5A-902, 5/5A-903, 5/5A-904, 5/5A-905, 5/5A-906, 5/5A-907, 5/5A-908, 5/5A-909, 5/5A-910, 5/5A-911, 5/5A-912, 5/5A-913, 5/5A-914, 5/5A-915, 5/5A-916, 5/5A-917, 5/5A-918, 5/5A-919, 5/5A-920, 5/5A-921, 5/5A-922, 5/5A-923, 5/5A-924, 5/5A-925, 5/5A-926, 5/5A-927, 5/5A-928, 5/5A-929, 5/5A-930, 5/5A-931, 5/5A-932, 5/5A-933, 5/5A-934, 5/5A-935, 5/5A-936, 5/5A-937, 5/5A-938, 5/5A-939, 5/5A-940, 5/5A-941, 5/5A-942, 5/5A-943, 5/5A-944, 5/5A-945, 5/5A-946, 5/5A-947, 5/5A-948, 5/5A-949, 5/5A-950, 5/5A-951, 5/5A-952, 5/5A-953, 5/5A-954, 5/5A-955, 5/5A-956, 5/5A-957, 5/5A-958, 5/5A-959, 5/5A-960, 5/5A-961, 5/5A-962, 5/5A-963, 5/5A-964, 5/5A-965, 5/5A-966, 5/5A-967, 5/5A-968, 5/5A-969, 5/5A-970, 5/5A-971, 5/5A-972, 5/5A-973, 5/5A-974, 5/5A-975, 5/5A-976, 5/5A-977, 5/5A-978, 5/5A-979, 5/5A-980, 5/5A-981, 5/5A-982, 5/5A-983, 5/5A-984, 5/5A-985, 5/5A-986, 5/5A-987, 5/5A-988, 5/5A-989, 5/5A-990, 5/5A-991, 5/5A-992, 5/5A-993, 5/5A-994, 5/5A-995, 5/5A-996, 5/5A-997, 5/5A-998, 5/5A-999, 5/5A-1000.

Garcetti v. Ceballos, 547 U.S. 410 (2006).
Pickering v. High School Dist. 205, 391 U.S. 563 (1968).
Mayer v. Monroe County Community School Corp., 474 F.3d 477 (7th Cir. 2007).

CROSS REF.: 5/20 (Workplace Harassment Prohibited), 5:30 (Hiring Process and Criteria), 5:100 (Staff Development Program), 5:120 (Employee Ethics; Conduct; and Conflict of Interest), 5:130 (Responsibilities Concerning Internal Information), 5:150 (Personnel Records), 5:170 (Copyright), 5:200 (Terms and Conditions of Employment and Dismissal), 6:235 (Access to Electronic Networks), 7:20 (Harassment of Students Prohibited), 7:340 (Student Records)

General Personnel

Personnel Records 1

Maintenance and Access to Records

The Superintendent or designee shall manage the maintenance of personnel records in accordance with State and federal law and School Board policy. Records, as determined by the Superintendent, are retained for all employment applicants, employees, and former employees given the need for the District to document employment-related decisions, evaluate program and staff effectiveness, and comply with government recordkeeping and reporting requirements. Personnel records shall be maintained in the District's administrative office, under the Superintendent's direct supervision.

Access to personnel records is available as follows:

1. An employee will be given access to his or her personnel records according to State law and guidelines developed by the Superintendent.²
2. An employee's supervisor or other management employee who has an employment or business-related reason to inspect the record is authorized to have access.
3. Anyone having the respective employee's written consent may have access.
4. Access will be granted to anyone authorized by State or federal law to have access.
5. All other requests for access to personnel information are governed by Board policy 2:250, *Access to District Public Records*.³

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

¹ State or federal law controls this policy's content. This policy contains an item on which collective bargaining may be required. Any policy that impacts upon wages, hours, and terms and conditions of employment, is subject to collective bargaining upon request by the employee representative, even if the policy involves an inherent managerial right.

This policy is consistent with the minimum requirements of State law. The local collective bargaining agreement may contain provisions that exceed these requirements. When a policy's subject matter is superseded by a bargaining agreement, the board policy can state, "Please refer to the applicable collective bargaining agreement(s)."

² An employee has the right to view his or her personnel file contents, with a few exceptions. Ill. Personnel Record Review Act (PRRA), 820 ILCS 40/. Thus, personnel files should contain only factual and accurate job-related information. In addition, the PRRA identifies records that may not be kept: a record of an employee's associations, political activities, publications, communications, or non-employment activities (820 ILCS 40/9, amended by P.A. 101-531) and records identifying an employee as the subject of an investigation by the Ill. Dept. of Children and Family Services (DCFS) if the investigation resulted in an unfounded report as specified in the Abused and Neglected Child Reporting Act (820 ILCS 40/13). See ¶n 5.

³ Unless a specific exemption is available, personnel file information is available to anyone making a FOIA request. 5 ILCS 140/. Specific exemptions protect the following:

1. *Private information* meaning "unique identifiers, including a person's social security number, driver's license number, employee identification number, biometric identifiers, personal financial information, passwords or other access codes, medical records, home or personal telephone numbers, and personal email addresses. Private information also includes home address and personal license plates, except as otherwise provided by law or when compiled without possibility of attribution to any person." 5 ILCS 140/7(1)(b); 5 ILCS 140/2(c)-5.
2. *Personal information* "the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." 5 ILCS 140/7(1)(c).

Prospective Employer Inquiries Concerning a Current or Former Employee's Job Performance

The Superintendent or designee shall manage a process for responding to inquiries by a prospective employer concerning a current or former employee's job performance.⁴ The Superintendent shall:⁵

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3. *Information prohibited from being disclosed under the Illinois Educational Labor Relations Act (IELRA).* 5 ILCS 140/7.5(y)(6), added by P.A. 101-620 (final citation pending); 115 ILCS 5/3(d). The prohibitions in the IELRA overlap with some categories of private information identified in FOIA and include: (a) the employee's home address (including ZIP code and county); (b) the employee's date of birth; (c) the employee's home and personal phone number; (d) the employee's personal email address; (e) any information personally identifying employee membership or membership status in a labor organization or other voluntary association affiliated with a labor organization or a labor federation; and (f) e-mails or other communications between a labor organization and its members. Unless a specific exception in the IELRA applies, if a district receives a third party request for any of these six categories of information about an employee, the district must provide the union with a copy of the written request (or written summary of an oral request), as well as a copy of the district's response within five business days of sending the response. If the employee is not in a bargaining unit, then these notices must be given directly to the employee. 115 ILCS 5/3(d). **Note:** It is best practice to maintain union-related documents, such as grievances, separately from an employee's personnel file.
4. *Information prohibited from being disclosed by the PRRA.* 5 ILCS 140/7.5(q). The PRRA prohibits the disclosure of a performance evaluation under FOIA. 820 ILCS 40/11. The treatment of a request for a disciplinary report, letter of reprimand, or other disciplinary action depends on the age and nature of the responsive record. If the responsive record is more than four years old and is not related to an incident or attempted incident of sexual abuse or severe physical abuse, the request must be denied unless the disclosure is permitted by the Act. 5 ILCS 140/7.5(q); 820 ILCS 40/8, amended by P.A. 101-531. If the responsive record is more than four years old and is related to an incident or an attempted incident of sexual abuse or severe physical abuse, the request cannot be denied. 820 ILCS 40/8, amended by P.A. 101-531. If the responsive record is four years old or less (regardless of its nature), the district should provide the record and must notify the employee in written form or through email, if available. 820 ILCS 40/7 and 40/8, amended by P.A. 101-531.

The School Code prohibits the disclosure of school teacher, principal, and superintendent performance evaluations except as otherwise provided in the certified employee evaluation laws. 105 ILCS 5/24A-7.1.

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) (Pub.L. 104-191) created national standards to protect individuals' medical records and other personal health information. If a district is a *covered entity* (i.e., offers a self-insured group health plan or flexible spending account), it must establish clear procedures to protect the employee's health information. 45 C.F.R. §164.502. Such districts should consult their attorneys and insurance provider for assistance.

⁴ The Employment Record Disclosure Act (745 ILCS 46/10) provides conditional immunity to employers responding to a reference request; it states: "Any employer or authorized employee or agent acting on behalf of an employer who, upon inquiry by a prospective employer, provides truthful written or verbal information, or information that it believes in good faith is truthful, about a current or former employee's job performance is presumed to be acting in good faith and is immune from civil liability for the disclosure and the consequences of the disclosure." This immunity statute does not, however, create an exemption to the requirements in the PRRA. The PRRA requires an employer to give an employee written notice before divulging a "disciplinary report, letter of reprimand, or other disciplinary action to a third party." 820 ILCS 40/7. An employment application may contain a waiver of this notice. *Id.*

⁵ 325 ILCS 5/4(d), amended by P.A. 101-564, requires a superintendent, upon being asked for a reference concerning an employee or former employee, to disclose to the requesting school district the fact that a district employee has made a report involving the conduct of the applicant or caused a report to be made to DCFS. For more information, see 5:150-AP, *Personnel Records*.

Required by the Elementary and Secondary Education Act (ESEA) (20 U.S.C. §7926). On 6-27-2018, the U.S. Dept. of Education issued a *Dear Colleague Letter* stating that school policies must explicitly state this requirement. See the resources portion for the letter at: www2.ed.gov/policy/elsee/leg/essa/index.html.

Consult the board attorney about what "or has probable cause to believe, has engaged in sexual misconduct" means. For guidance, policy 5:90, *Abused and Neglected Child Reporting*, and its 1/n 14 analysis define an "alleged incident of sexual abuse" as an incident of sexual abuse of a child, as defined in 720 ILCS 5/11-9.1A, that is alleged to have been perpetrated by school personnel, including a school vendor or volunteer, that occurred: on school grounds during a school activity; or outside of school grounds or not during a school activity.

1. Execute the requirements in the Abused and Neglected Child Reporting Act whenever another school district asks for a reference concerning an applicant who is or was a District employee and was the subject of a report made by a District employee to Ill. Dept. of Children and Family Services (DCFS); and
- 1.2. Comply with the federal law prohibiting the District from providing a recommendation of employment for an employee, contractor, or agent that District knows, or has probable cause to believe, has engaged in sexual misconduct with a student or minor in violation of the law,⁶ but the Superintendent or designee may follow routine procedures regarding the transmission of administrative or personnel files for that employee.

When requested for information about an employee by an entity other than a prospective employer, the District will only confirm position and employment dates unless the employee has submitted a written request to the Superintendent or designee.

LEGAL REF.: 20 U.S.C. §7926.
325 ILCS 5/4, Abused and Neglected Child Reporting Act.
745 ILCS 46/10, Employment Record Disclosure Act.
820 ILCS 40/, Personal Record Review Act.
23 Ill.Admin.Code §1.660.

CROSS REF.: 2:250 (Access to District Public Records), 5:90 (Abused and Neglected Child Reporting), 7:340 (Student Records)

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⁶ Consult the board attorney in these situations for help about what the superintendent may or may not say. Questions exist whether the superintendent says nothing, provides a neutral reference, or whether a *recommendation* could mean positive or negative statements.

General Personnel

Family and Medical Leave 1

Leave Description

An eligible employee may use unpaid family and medical leave (FMLA leave), guaranteed by the federal Family and Medical Leave Act. The U.S. Department of Labor’s rules (federal rules) implementing FMLA, as they may be amended from time to time, control FMLA leave.

An eligible employee may take FMLA leave for up to a combined total of 12 weeks each 12-month period, beginning September 1 and ending August 31 of the next year. ²

During a single 12-month period, an eligible employee’s FMLA leave entitlement may be extended to a total of 26 weeks of unpaid leave to care for a covered servicemember (defined in the federal rules) with a serious injury or illness. The “single 12-month period” is measured forward from the date the employee’s first FMLA leave to care for the covered servicemember begins. ³

While FMLA leave is normally unpaid, the District will substitute an employee’s accrued compensatory time-off and/or paid leave for unpaid FMLA leave provided such leave is available for use in accordance with Board Policy. ⁴ All policies and rules regarding the

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¹ State or federal law controls this policy’s content. This policy contains an item on which collective bargaining may be required. Any policy that impacts upon wages, hours, and terms and conditions of employment, is subject to collective bargaining upon request by the employee representative, even if the policy involves an inherent managerial right. This policy implements the very complex Family and Medical Leave Act, 29 U.S.C. §2612, (FMLA) and a school board is urged to have its attorney review it before adoption. All other policies, rules, and procedures that conflict with the FMLA are hereby null and void. The FMLA is a federal law that provides eligible employees with up to 12 weeks of unpaid leave in a 12-month period to care for a family member with a serious health condition or for the employee’s own serious health condition. The FMLA also provides for the substitution of accrued paid leave for unpaid FMLA leave. For more information, see 29 C.F.R. §825.207.

All public (and private) school employers are covered by the FMLA without regard to their number of employees (29 C.F.R. §§825.104 and 825.600). To be eligible for FMLA leave, however, an educational employee must be employed at a worksite where at least 50 employees are employed within 75 miles (29 C.F.R. §825.600).

The U.S. Department of Labor, Wage & Hour Division, has a very helpful website containing forms, compliance guidance, posters, etc. (www.dol.gov/whd/fmla). It also contains a link to the complete FMLA rules, 29 C.F.R. Part 825.

² 29 C.F.R. §825.200 lists and explains the four methods boards may choose among for determining a 12-month period in which the 12-week entitlement occurs. While using a school year may be the easiest method to administer, **another method may be more suitable for the district**. Before changing to a different method of calculating the 12-month period, an employer must first give all employees at least 60-days’ notice of the intended change; the transition must take place in such a way that the employees retain the full benefit of their leave entitlement under whichever method affords the greatest benefit to the employee. If the district fails to select an option, the one that provides the most beneficial outcome for employees will be used.

³ 29 C.F.R. §825. Section 585 of the National Defense Authorization Act for FY 2008, Pub. L. 110-181, added two types of family military leave – qualifying exigency leave and servicemember family leave. The latter leave extends the possible FMLA leave to 26 weeks in a *single 12-month period*. For more information, see *fn 6*.

⁴ This paragraph presents only one of many possible alternatives. The FMLA permits an employee to choose to substitute paid leave for FMLA leave, and an employer to require an employee to substitute paid leave for FMLA leave (29 C.F.R. §825.207). Substitution of paid leave for FMLA purposes means that the unpaid FMLA leave and the paid leave run concurrently. The sample policy, in the interests of clarity and limiting absences, requires this substitution. For more information, see 29 C.F.R. §825.207.

use of paid leave apply when paid leave is substituted for unpaid FMLA leave. Any substitution of paid leave for unpaid FMLA leave will count against the employee's FMLA leave entitlement. Use of FMLA leave shall not preclude the use of other applicable unpaid leave that will extend the employee's leave beyond 12 weeks, provided that the use of FMLA leave shall not serve to extend such other unpaid leave. Any full workweek period during which the employee would not have been required to work, including summer break, winter break and spring break, is not counted against the employee's FMLA leave entitlement. ⁵

FMLA leave is available in one or more of the following instances: ⁶

1. The birth and first-year care of a son or daughter.
2. The adoption or foster placement of a son or daughter, including absences from work that are necessary for the adoption or foster care to proceed and expiring at the end of the 12-month period beginning on the placement date.
3. The serious health condition of an employee's spouse, child, or parent.
4. The employee's own serious health condition that makes the employee unable to perform the functions of his or her job.

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⁵ 29 C.F.R. §825.207(c). The FMLA does not prohibit an employer from requiring an employee to substitute accrued paid leave for unpaid FMLA leave. An employer may require an employee to substitute accrued paid leave for unpaid FMLA leave if the employer has a bona fide policy of requiring an employee to substitute accrued paid leave for unpaid FMLA leave. An employer may require an employee to substitute accrued paid leave for unpaid FMLA leave if the employer has a bona fide policy of requiring an employee to substitute accrued paid leave for unpaid FMLA leave.

⁶ 29 C.F.R. §825.207(d). The FMLA does not prohibit an employer from requiring an employee to substitute accrued paid leave for unpaid FMLA leave. An employer may require an employee to substitute accrued paid leave for unpaid FMLA leave if the employer has a bona fide policy of requiring an employee to substitute accrued paid leave for unpaid FMLA leave. An employer may require an employee to substitute accrued paid leave for unpaid FMLA leave if the employer has a bona fide policy of requiring an employee to substitute accrued paid leave for unpaid FMLA leave.

Likewise, an employer may require an employee to substitute accrued comp time against the employee's FMLA leave entitlement. 29 C.F.R. §825.207(f). Sample policy 5:310, *Compensatory Time-Off*, addresses the acquisition and use of comp time. The FMLA rules also describe the interaction between FMLA leave and leave taken pursuant to a disability plan and workers' compensation leave. 29 C.F.R. §825.207(d), (e).

If employees have not previously been required to substitute accrued paid leave, this requirement's implementation may give rise to a duty to bargain because it affects the mandatory bargaining subject of employee paid leave.

⁵ 29 C.F.R. §825.200(h). If a holiday occurs within the week taken as FMLA leave, the week is still counted as a week of FMLA leave. However, if an employee is using FMLA leave in increments of less than one week, the holiday will not count against the employee's FMLA entitlement.

⁶ 29 C.F.R. §§825.112 and 825.200. See §§825.120 and 825.121 for birth or placement for adoption or foster care. *Spouse* includes an individual in a same-sex or common law marriage that either: (1) was entered into in a state that recognizes such marriages; or (2) if entered into outside of any state, is valid in the place where entered into and could have been entered into in at least one state (29 C.F.R. §§825.102 and 825.122(b)). See also *Obergefell v. Hodges*, 135 S.Ct. 1358 (2015).

Leave for a qualifying exigency (reason number 5) is governed by 29 C.F.R. §§825.122 (definition) and 825.126.

Leave to care for a covered servicemember (reason number 6) is governed by 29 C.F.R. §§825.122 (definition) & 825.127. An eligible employee may take 26 weeks of leave in different "single 12-month periods" to care for multiple servicemembers or to care for the same servicemember with a subsequent serious injury or illness. 29 C.F.R. §825.127.

Attorneys disagree whether the Illinois Family Military Leave Act, 820 ILCS 151/, applies to schools because its definition of *employer* does not specify school districts. A covered employer must allow a spouse, parent, child, or grandparent of a person called to military service to take an unpaid leave of 15 or 30 days, depending on the number of individuals employed by the employer. Id. at 151/10(a)-(b). The length of leave provided to an employee under State law because his or her spouse or child is called to military service is reduced by the number of days of leave provided under 29 U.S.C. §2612(a)(1)(E) because of any qualifying exigency arising out of the fact that the employee's spouse or child is on covered active duty (or has been notified of an impending call or order to covered active duty) in the Armed Forces. 820 ILCS 151/10(b).

5. The existence of a qualifying exigency arising out of the fact that the employee's spouse, child, or parent is a military member on covered active duty or has been notified of an impending call or order to active duty, as provided by federal rules.
6. To care for the employee's spouse, child, parent, or next of kin who is a covered servicemember with a serious injury or illness, as provided by federal rules.

If spouses are employed by the District, they may together take only 12-weeks for FMLA leaves when the reason for the leave is 1 or 2, above, or to care for a parent with a serious health condition, or a combined total of 26 weeks for item 6 above.⁷

An employee may be permitted to work on an intermittent or reduced-leave schedule in accordance with federal rules.⁸

Eligibility⁹

To be eligible for FMLA leave, an employee must be employed at a worksite where at least 50 employees are employed within 75 miles. In addition, one of the following provisions must describe the employee:

1. The employee has been employed by the District for at least 12 months and has been employed for at least 1,000 hours of service during the 12-month period immediately before the beginning of the leave. The 12 months an employee must have been employed by the District need not be consecutive. However, the District will not consider any period of previous employment that occurred more than seven years before the date of the most recent hiring, except when the service break is due to fulfillment of a covered service obligation under the employee's Uniformed Services Employment and Reemployment Rights Act (USERRA), 38 U.S.C. 4301, et seq., or when a written agreement exists concerning the District's intention to rehire the employee.
2. The employee is a full-time classroom teacher.

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

⁷ 29 C.F.R. §§825.120(a)(3) (birth) and 825.121(a)(3) (adoption and foster care).

⁸ 29 C.F.R. §§825.121(b), 825.202 - 825.205 and 825.601.

⁹ 29 C.F.R. §§825.110, 825.111, and 825.600. **The default policy language exceeds federal and state law requirements because it provides immediate eligibility to full-time classroom teachers.** A board may substitute the following to deny eligibility to classroom teachers who have not worked 12 months for the district, but it should first analyze collective bargaining consequences and seek its board attorney's advice:

To be eligible for FMLA leave, both of the following provisions must describe the employee:

1. The employee is employed at a worksite where at least 50 employees are employed within 75 miles; and
2. The employee has been employed by the District for at least 12 months and has been employed for at least 1,000 hours of service during the 12-month period immediately before the beginning of the leave. The 12 months an employee must have been employed by the District need not be consecutive. However, the District will not consider any period of previous employment that occurred more than 7 years before the date of the most recent hiring, except when the service break is due to fulfillment of a covered service obligation under the employee's Uniformed Services Employment and Reemployment Rights Act (USERRA), 38 U.S.C. 4301, et seq., or when a written agreement exists concerning the District's intention to rehire the employee.

A service break due to fulfillment of covered service obligation is found in the *Glossary of Terms Used in FMLA* available at: webapps.dol.gov/claws/whd/fmla/3.aspx?Glossary_Word=ELIGIBLE.

An employee's eligibility requires analysis of the information available in each case using the guidance in §825.110. Any week during which an employee is maintained on the payroll, even if the employee does not work that week, is counted toward the 12-months' service requirement. Id. at 825.110(b)(3).

Requesting Leave ¹⁰

If the need for the FMLA leave is foreseeable, an employee must provide the Superintendent or designee with at least 30 days' advance notice before the leave is to begin. If 30 days' advance notice is not practicable, the notice must be given as soon as practicable. The employee shall make a reasonable effort to schedule a planned medical treatment so as not to disrupt the District's operations, subject to the approval of the health care provider administering the treatment. The employee shall provide at least verbal notice sufficient to make the Superintendent or designee aware that he or she needs FMLA leave, and the anticipated timing and duration of the leave. Failure to give the required notice for a foreseeable leave may result in a delay in granting the requested leave until at least 30 days after the date the employee provides notice.

Certification ¹¹

Within 15 calendar days after the Superintendent or designee makes a request for certification for a FMLA leave, an employee must provide one of the following:

1. When the leave is to care for the employee's covered family member with a serious health condition, the employee must provide a complete and sufficient certificate signed by the family member's health care provider.
2. When the leave is due to the employee's own serious health condition, the employee must provide a complete and sufficient certificate signed by the employee's health care provider.
3. When the leave is to care for a covered servicemember with a serious illness or injury, the employee must provide a complete and sufficient certificate signed by an authorized health care provider for the covered servicemember.
4. When the leave is because of a qualified exigency, the employee must provide: (a) a copy of the covered military member's active duty orders or other documentation issued by the military indicating that the military member is on active duty or call to active duty status, and the dates of the covered military member's active duty service, and (b) a statement or description, signed by the employee, of appropriate facts regarding the qualifying exigency for which FMLA leave is requested.

The District may require an employee to obtain a second and third opinion at its expense when it has reason to doubt the validity of a medical certification.

The District may require recertification at reasonable intervals, but not more often than once every 30 days. Regardless of the length of time since the last request, the District may request recertification when the, (1) employee requests a leave extension, (2) circumstances described by the original certification change significantly, or (3) District receives information that casts doubt upon the continuing validity of the original certification. Recertification is at the employee's expense and must be provided to the District within 15 calendar days after the request. The District may request recertification every six months in connection with any absence by an employee needing an intermittent or reduced schedule leave for conditions with a duration in excess of six months.

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¹⁰ 29 C.F.R. §§825.302-825.304 require an employee to notify the employer of the need for leave and to generally schedule leave for planned medical treatments in a way that the absences do not unduly disrupt the employer's operations. The policy's notice provisions are the shortest time frame allowable under 29 C.F.R. §825.302. The employee need not expressly request a leave under the FMLA. An employer may require that employees follow its usual and customary notice and procedural requirements for requesting leave.

¹¹ Requests for medical certification, 2nd and 3rd opinions, and recertification are governed by 29 C.F.R. §§825.305-825.310. The appropriate certification forms are available at <http://www.dhs.gov/eis/vvt/ohrt/forms/fmla-certification-forms.pdf>. Districts must inform the employee of the medical certification requirement and of the consequences for failing to provide it.

Failure to furnish a complete and sufficient certification on forms provided by the District may result in a denial of the leave request.

Continuation of Health Benefits ¹²

During FMLA leave, employees are entitled to continuation of health benefits that would have been provided if they were working. Any share of health plan premiums being paid by the employee before taking the leave, must continue to be paid by the employee during the FMLA leave. A District's obligation to maintain health insurance coverage ceases if an employee's premium payment is more than 30 days late and the District notifies the employee at least 15 days before coverage will cease.

Changed Circumstances and Intent to Return ¹³

An employee must provide the Superintendent or designee reasonable notice of changed circumstances (i.e., within two business days if the changed circumstances are foreseeable) that will alter the duration of the FMLA leave. The Superintendent or designee, taking into consideration all of the relevant facts and circumstances related to an individual's leave situation, may ask an employee who has been on FMLA leave for eight consecutive weeks whether he or she intends to return to work.

Return to Work

If returning from FMLA leave occasioned by the employee's own serious health condition, the employee is required to obtain and present certification from the employee's health care provider that he or she is able to resume work. ¹⁴

An employee returning from FMLA leave will be given an equivalent position to his or her position before the leave, subject to: (1) permissible limitations the District may impose as provided in the FMLA or implementing regulations, and (2) the District's reassignment policies and practices. ¹⁵

Classroom teachers may be required to wait to return to work until the next semester in certain situations as provided by the FMLA regulations. ¹⁶

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¹² Required by 29 C.F.R. §825.209. The same health benefits means, for example, that if family member coverage is provided to an employee, family member coverage must be maintained during FMLA leave. If an employer provides a new health plan or benefits or changes health benefits or plans while an employee is on FMLA leave, the employee is entitled to the new or changed plan or benefits to the same extent as if the employee were not on leave. *Health benefits* do not include individual policies paid exclusively by the employee. Districts must provide an advance written description of how premium payments must be made (29 C.F.R. §825.210). See fn 1, above. Consult the board attorney about whether any existing collective bargaining agreements alter a district's obligation to continue health benefits even after exhaustion of FMLA.

If coverage lapses because an employee has not made required premium payments, the employer must still restore the employee to coverage and benefits when the employee returns from leave (29 C.F.R. §825.212). 29 C.F.R. §825.213 governs how districts may recover premium payments if the employee fails to return to work after the leave entitlement is exhausted or expires. The board attorney must be consulted for the appropriate premium recovery method.

¹³ This section is optional but allowed by 29 C.F.R. §825.311. Either or both sentences may be changed or omitted, provided the policy is applied uniformly.

¹⁴ Requiring *fitness for duty* certification is optional but allowed by 29 C.F.R. §825.312. This sentence may be deleted or changed in accordance with the rule.

¹⁵ 29 C.F.R. §§825.214 - 825.216 & 825.604. An equivalent position must have the same pay (including any unconditional pay increases), benefits, and working conditions and involve the same or substantially similar duties (29 C.F.R. §825.215). Determining how an employee will be restored to an *equivalent position* is made on the basis of "established policies and practices" and collective bargaining agreements (29 C.F.R. §825.604).

¹⁶ Optional but allowed by 29 C.F.R. §825.602.

Implementation

The Superintendent or designee shall ensure that: (1) all required notices and responses to leave requests are provided to employees in accordance with the FMLA;¹⁷ and (2) this policy is implemented in accordance with the FMLA. In the event of a conflict between the policy and the FMLA or its regulations, the latter shall control. The terms used in this policy shall be defined as in the FMLA regulations.¹⁸

LEGAL REF.: *Family and Medical Leave Act*, 29 U.S.C. §2601 et seq., *Family and Medical Leave Act*, 29 C.F.R. Part 825.
29 C.F.R. Part 825.

CROSS REF.: 5:180 (Temporary Illness or Temporary Incapacity), 5:250 (Leaves of Absence), 5:310 (Compensatory Time-Off), 5:330 (Sick Days, Vacation, Holidays, and Leaves)

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

¹⁷ School districts must provide employees a general notice explaining the FMLA and the process for filing complaints (29 C.F.R. §825.300(a)). This notice must also be provided to FMLA-covered employees; distribution may be accomplished electronically. A poster is available at www.dol.gov/WHD/fmla, The Family and Medical Leave Act Poster.

When an employee requests FMLA leave or when the employer acquires knowledge that an employee's leave may be for a FMLA-qualifying reason, the employer must provide the employee with a notice of eligibility (within 5 business days absent extenuating circumstances) (29 C.F.R. §825.300(b)). At the same time, the employer must provide the employee with a notice of rights and responsibilities (29 C.F.R. §825.300(c)). Finally, the employer must notify the employee whether it has designated the leave as FMLA-qualifying (29 C.F.R. §825.300(d)). The federal rules contain specific requirements for each of these notices. Fortunately, a prototype for each of these required notices is available at www.dol.gov/WHD/fmla (*WH-381 Notice of Eligibility and Rights & Responsibilities* and *WH-382 Designation Notice*). Willfully failing to provide the notices can subject an employer to a monetary penalty.

¹⁸ 29 C.F.R. §825.102.