

## 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. <sup>2</sup>

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

<sup>1</sup> 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](http://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](http://www.idph.state.il.us/envhealth/ipm/index.htm), or [www.idph.state.il.us/envhealth/entpestfshs.htm](http://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.

<sup>2</sup> 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.
- ~~50 ILCS 200/, Illinois Pesticide Act.~~
- 415 ILCS 65/, Lawn Care Products Application and Notice Act.
- ~~100 ILCS 130/, Confined Space Entry and Rescue 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:<sup>2</sup> (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,<sup>3</sup> and define prohibited grooming behaviors,<sup>4</sup> 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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<sup>1</sup> 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*).

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

<sup>3</sup> *Id.* at (b).

<sup>4</sup> *Id.* at (b).

- a. An age-appropriate and evidence-informed health and safety education<sup>5</sup> curriculum that includes methods for how to report child sexual abuse and grooming behaviors to authorities,<sup>6</sup> through policy 6:60, *Curriculum Content*; <sup>7</sup>
  - 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,<sup>8</sup> and (ii) community-based Children’s Advocacy Centers and sexual assault crisis centers and how to access those serving the District. <sup>9</sup>
2. Train District employees about child sexual abuse and grooming behaviors by January 31 of each school year with materials that include: <sup>10</sup>
    - a. A definition of prohibited grooming behaviors and boundary violations pursuant to policy 5:120, *Employee Ethics; Conduct; and Conflict of Interest*;
    - b. Evidence-informed<sup>11</sup> 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 signs<sup>12</sup> of child sexual abuse, grooming behaviors, and boundary violations with evidence-informed educational information that also includes: <sup>13</sup>

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<sup>5</sup> *Id.* at (b)(1).

<sup>6</sup> *Id.* at (b)(4).

<sup>7</sup> 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.

<sup>8</sup> *Id.* at (b)(2) and (3).

<sup>9</sup> *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.

<sup>10</sup> 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).

<sup>11</sup> 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.”

<sup>12</sup> 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](http://www.ilprincipals.org/resources/model-student-handbook).

<sup>13</sup> 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,<sup>14</sup> 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.<sup>15</sup>

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).

<sup>14</sup> 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)).

<sup>15</sup> 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.<sup>2</sup> 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;<sup>3</sup>

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<sup>1</sup> 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) (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](http://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](http://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.

<sup>2</sup> 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?

<sup>3</sup> 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<sup>2</sup>) 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](http://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](http://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](http://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;<sup>4</sup> 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. <sup>5</sup>

#### School Safety Drill Plan <sup>6</sup>

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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<sup>4</sup> 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*.

<sup>5</sup> 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*<sup>®</sup>; 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*.

<sup>6</sup> 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](http://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.



personnel and students present at school at the time of the drill, except for those exempted by administrators or school support personnel. 4:170-AP6.7

#### Annual Review

The Board or its designee will annually review each school building's emergency operations and crisis response plan(s), protocols, and procedures, as well as each building's compliance with the school safety drill plan. This annual review shall be in accordance with the School Safety Drill Act (105 ILCS 128/) and the Joint Rules of the Office of the State Fire Marshal and the Ill. State Board of Education (ISBE). 29 Ill.Admin.Code Part 1500.8

#### Automated External Defibrillator (AED)9

The Superintendent or designee shall implement a written plan for responding to medical emergencies at the District's physical fitness facilities in accordance with the Fitness Facility Medical Emergency Preparedness Act and shall file a copy of the plan with the Ill. Dept. of Public Health (IDPH). The plan shall provide for at least one automated external defibrillator (AED) to be available at every physical fitness facility on the premises according to State law requirements.

The District shall have an AED on site as well as a trained AED user: (1) on staff during staffed business hours; and (2) available during activities or events sponsored and conducted or supervised by the District.10 The Superintendent or designee shall ensure that every AED on the District's premises is properly tested and maintained in accordance with rules developed by the IDPH.11 This policy does not create an obligation to use an AED.

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<sup>7</sup> 105 ILCS 128/20(c), amended by P.A. 1009-03-0100, 1009-03-0101, 1009-03-0102, 1009-03-0103, 1009-03-0104, 1009-03-0105, 1009-03-0106, 1009-03-0107, 1009-03-0108, 1009-03-0109, 1009-03-0110, 1009-03-0111, 1009-03-0112, 1009-03-0113, 1009-03-0114, 1009-03-0115, 1009-03-0116, 1009-03-0117, 1009-03-0118, 1009-03-0119, 1009-03-0120, 1009-03-0121, 1009-03-0122, 1009-03-0123, 1009-03-0124, 1009-03-0125, 1009-03-0126, 1009-03-0127, 1009-03-0128, 1009-03-0129, 1009-03-0130, 1009-03-0131, 1009-03-0132, 1009-03-0133, 1009-03-0134, 1009-03-0135, 1009-03-0136, 1009-03-0137, 1009-03-0138, 1009-03-0139, 1009-03-0140, 1009-03-0141, 1009-03-0142, 1009-03-0143, 1009-03-0144, 1009-03-0145, 1009-03-0146, 1009-03-0147, 1009-03-0148, 1009-03-0149, 1009-03-0150, 1009-03-0151, 1009-03-0152, 1009-03-0153, 1009-03-0154, 1009-03-0155, 1009-03-0156, 1009-03-0157, 1009-03-0158, 1009-03-0159, 1009-03-0160, 1009-03-0161, 1009-03-0162, 1009-03-0163, 1009-03-0164, 1009-03-0165, 1009-03-0166, 1009-03-0167, 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## Carbon Monoxide Alarms <sup>12</sup>

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 <sup>13</sup>

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 <sup>14</sup>

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

<sup>12</sup> 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.

<sup>13</sup> 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](http://www.dph.illinois.gov/topics-services/prevention-wellness/injury-violence-prevention/soccer-goal-safety).

<sup>14</sup> 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.

2. Any student who is a victim of a violent criminal offense, as defined by 725 ILCS 120/3, that occurred on school grounds during regular school hours or during a school-sponsored event.

The Superintendent or designee shall develop procedures to implement the unsafe school choice option.

#### Lead Testing in Water <sup>15</sup>

The Superintendent or designee shall implement testing for lead in each source of drinking water in school buildings in accordance with the Ill. Plumbing License Law and guidance published by the IDPH.<sup>16</sup> The Superintendent or designee shall notify parent(s)/guardian(s) about the sampling results from their children's respective school buildings.<sup>17</sup>

#### Emergency Closing

The Superintendent is authorized to close school(s) in the event of hazardous weather or other emergency that threatens the safety of students, staff members, or school property.<sup>18</sup>

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

<sup>15</sup> 225 ILCS 320/35.5 *Lead Testing in School Buildings*. Requires that each source of potable water in school buildings constructed on or before 1-1-00, which may be occupied by more than 10 children in grades pre-K through 5, be tested for lead. Testing for buildings constructed prior to 1-1-87 must have been conducted by 12-31-17. 225 ILCS 320/35.5(c)(4). Testing for buildings constructed between 1-2-87 and 1-1-00 must have been conducted by 12-31-18. *Id.* By 6-30-19, the IDPH was to determine whether it is necessary and appropriate to require testing for buildings constructed after 1-1-00. *Id.* 225 ILCS 320/35.5(d). *Id.* Copyright Lexipol, LLC 2019/06/19. All rights reserved. Published with permission by the Illinois State Board of Education. This document is intended to provide accurate and authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting, or other professional service. If legal advice or other expert assistance is required, the services of a competent professional should be sought. Please delete this notice if you print this document.

Boards may, by resolution, use excess taxes levied for fire prevention, safety, energy conservation, and school security purposes for sampling lead in drinking water in schools and for repair and mitigation due to lead levels in the drinking water supply. 105 ILCS 5/17-2.11(j)(1).

<sup>16</sup> 225 ILCS 320/35.5(e) requires the IDPH to post on its website guidance on mitigation actions for lead in drinking water, and ongoing water management practices, in schools. On 5-9-17, the IDPH posted *Mitigation Strategies for Lead Found in School Drinking Water* at: [www.dph.illinois.gov/sites/default/files/publications/school-lead-mitigation-strategies-050917.pdf](http://www.dph.illinois.gov/sites/default/files/publications/school-lead-mitigation-strategies-050917.pdf). **Note:** Page 2 of *Mitigation Strategies* states "IDPH is requiring the mitigation strategies and requirements contained in this guidance document to be followed for all plumbing fixtures identified with any level of lead," however the statute does not authorize the IDPH to impose such additional requirements.

<sup>17</sup> If any samples taken in the school exceed five parts per billion, a district must provide individual notification of sampling results, via written or electronic communication, to parents/guardians of all enrolled students that must include: (1) the corresponding sampling location within the school building; and (2) the U.S. Environmental Protection Agency's website for information about lead in drinking water at: [www.epa.gov/ground-water-and-drinking-water/basic-information-about-lead-drinking-water](http://www.epa.gov/ground-water-and-drinking-water/basic-information-about-lead-drinking-water). 225 ILCS 320/35.5(c)(3). If any samples taken in the school are at or below five parts per billion, notification may be made in the same manner or by posting on the school's website. *Id.*

<sup>18</sup> When a school is closed or its starting time is delayed due to adverse weather conditions or a health or safety threat, the district may count a partial day of attendance as a full day for State aid purposes, provided: (1) at least one hour of instruction was provided or the normal start time was delayed; and (2) the superintendent provides the Regional Superintendent or the Suburban Cook County Intermediate Service Center, whichever is appropriate, with a written report in support of the partial day within 30 days. 105 ILCS 5/18-12. *Id.*

105 ILCS 5/18-12.5 governs claiming State aid if a district closes one or more schools, but not all schools, during the public health emergency, as determined by ISBE in consultation with the IDPH.

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:<sup>2</sup>

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.<sup>3</sup> If a student is a sex offender, the Superintendent or designee shall develop guidelines for managing his or her presence in school.<sup>4</sup>

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

<sup>2</sup> 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*.

<sup>3</sup> 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*.

<sup>4</sup> 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](http://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).

## Screening<sup>5</sup>

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.<sup>6</sup>

## 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.

<sup>5</sup> 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/](http://www.isp.state.il.us/sor/), and (2) the Violent Offender Against Youth Registry maintained by the ISP, [www.isp.state.il.us/cmvo/](http://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*.

<sup>6</sup> 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.

Violent Offender Against Youth Community Notification Law.<sup>7</sup> The Superintendent or designee shall serve as the District contact person for purposes of these laws. The Superintendent and Building Principal shall manage a process for schools to notify the parents/guardians during school registration that information about sex offenders is available to the public as provided in the Sex Offender Community Notification Law.<sup>8</sup> This notification must occur during school registration and at other times as the Superintendent or Building Principal determines advisable.

**LEGAL REF.:** 20 U.S.C. §7926, Elementary and Secondary Education Act.  
20 ILCS 2635/, Uniform Conviction Information Act.  
720 ILCS 5/11-9.3 (Amended 3/3/2013),  
730 ILCS 152/, Sex Offender Community Notification Law.  
730 ILCS 154/75-105, Murderer and Violent Offender Against Youth Community Notification Law.

**CROSS REF.:** 4:11 (Qualifications, Term, and Duties of Board Officers), 3:49 (Organization and Administrative Personnel), 4:15 (Attendance and Absences), 4:26 (Responsibility of the Board), 4:27 (Confidentiality), 4:28 (Responsibility of the Board), 4:29 (Confidentiality), 4:30 (Hiring Process and Criteria), 5:260 (Student Teachers), 6:250 (Community Resource Persons and Volunteers), 8:30 (Visitors to and Conduct on School Property), 8:100 (Relations with Other Organizations and Agencies)

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<sup>7</sup> Sex Offender Community Notification Law, 730 ILCS 152/; Murderer and Violent Offender Against Youth Community Notification Law, 730 ILCS 154/75-154/105. Law enforcement officials must notify school districts of the names, addresses, and offenses of registered offenders residing in their respective jurisdictions who have committed sex offenses and violent offenses against youth. 730 ILCS 152/120 and 154/95. These laws are silent with regard to what, if anything, districts do with the information. The Sex Offender Community Notification Law, however, provides immunity for “any person who provides or fails to provide information relevant to the procedures set forth in this Law.” 730 ILCS 152/130.

Naming a contact person will facilitate communication and cooperation with local law enforcement agencies. Any school official may be used as the contact person, and boards may wish to have a contact person from each building. See administrative procedure 4:175-API, *Criminal Offender Notification Laws: Screening*, for implementing procedures.

Upon arrest after commencement of a prosecution for a sex offense against an individual known to be a school employee, the State’s Attorney must provide the superintendent or school administrator of the employing school with a copy of the complaint, information, or indictment. 725 ILCS 5/111-1(e), added by P.A. 101-521.

<sup>8</sup> 730 ILCS 152/120(g) requires a principal or teacher to notify the parents/guardians during school registration or parent-teacher conferences that information about sex offenders is available to the public as provided in the Sex Offender Community Notification Law. In an effort to keep this policy aligned with good governance practices, the responsibility is given to the superintendent and building principal to manage. While State law allows the notification to be made during registration or parent-teacher conferences, the sample policy makes a notification mandatory just during registration to be sure that all parents/guardians are informed.

## General Personnel

### Equal Employment Opportunity and Minority Recruitment 1

The School District shall provide equal employment opportunities<sup>2</sup> to all persons regardless of their race; color; creed; religion;<sup>3</sup> national origin; sex;<sup>4</sup> sexual orientation;<sup>5</sup> age;<sup>6</sup> ancestry; marital status;<sup>7</sup>

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<sup>1</sup> 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.**

<sup>2</sup> *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](http://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;<sup>8</sup> military status; order of protection status;<sup>9</sup> unfavorable military discharge;<sup>10</sup> citizenship status provided the individual is authorized to work in the United States;<sup>11</sup>

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<sup>3</sup> 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.

<sup>4</sup> 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).

<sup>5</sup> *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).

<sup>6</sup> 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.

<sup>7</sup> 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).

<sup>8</sup> 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](http://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](http://www.eeoc.gov/laws/guidance/arrest_conviction.cfm).

<sup>9</sup> 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).

<sup>10</sup> *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.*

<sup>11</sup> 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;<sup>13</sup> being a victim of domestic violence, sexual violence, or gender violence;<sup>14</sup> genetic information;<sup>15</sup> physical or mental handicap or disability, if otherwise able to perform the essential functions of the job with reasonable accommodation;<sup>16</sup> pregnancy, childbirth, or related medical conditions;<sup>17</sup> credit history, unless a satisfactory credit history is an established bona fide

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<sup>12</sup> 820 ILCS 180/10(12.5), added by P.A. 101-221 and 101-222, 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, including a residence, a vehicle, or a public place. 820 ILCS 180/10(12.5), added by P.A. 101-221.

<sup>13</sup> 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.

<sup>14</sup> 820 ILCS 180/30, amended by P.A. 101-221 and 101-222, 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, including a residence, a vehicle, or a public place. 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.

<sup>15</sup> 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, however, 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.

<sup>16</sup> 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.*).

<sup>17</sup> 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](http://www.eeoc.gov/laws/guidance/pregnancy_qa.cfm).

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

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<sup>18</sup> 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.

<sup>19</sup> 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.

<sup>20</sup> 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.

<sup>21</sup> 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*.

<sup>22</sup> 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.

<sup>23</sup> 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/. <sup>24</sup>

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. <sup>25</sup>

### 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. <sup>26</sup>

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<sup>24</sup> 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.

<sup>25</sup> 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).

<sup>26</sup> 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.<sup>27</sup>

**Nondiscrimination Coordinator:**<sup>28</sup>

\_\_\_\_\_  
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.<sup>29</sup>

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

<sup>27</sup> 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.

<sup>28</sup> 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.

<sup>29</sup> 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 <sup>30</sup>

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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<sup>30</sup> 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, religion<sup>2</sup>, 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*

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

<sup>1</sup> 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.

<sup>2</sup> 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 Prohibited<sup>3</sup>

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.<sup>4</sup>

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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<sup>3</sup> 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.

<sup>4</sup> 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.<sup>5</sup> 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*<sup>6</sup> (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 Complaint<sup>7</sup>

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.<sup>8</sup>

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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<sup>5</sup> 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).

<sup>6</sup> 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.

<sup>7</sup> 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.

<sup>8</sup> 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.<sup>9</sup>

**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.<sup>10</sup> 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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<sup>9</sup> 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.

<sup>10</sup> 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."

designee<sup>11</sup> 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*,<sup>12</sup> 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 Personnel <sup>13</sup>

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*.

#### Enforcement <sup>14</sup>

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

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<sup>11</sup> “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.

<sup>12</sup> See administrative procedure 5:120-AP2, *Employee Conduct Standards and its exhibit 5:120 AP2*, <https://www.isdnet.org/Portals/0/PolicyLibrary/5:120-AP2.pdf>.

<sup>13</sup> 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*.

<sup>14</sup> 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.

<sup>15</sup> 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 *Workplace Transparency Act*. 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. <sup>16</sup>

#### 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/). <sup>17</sup>

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 <sup>18</sup>

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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<sup>16</sup> 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.

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

<sup>17</sup> *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/)).

<sup>17</sup> *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).

<sup>18</sup> 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 also* <http://www.idhr.state.il.us/IDHR/IDHRHome.asp>



## 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.<sup>2</sup> The Superintendent is responsible for recruiting personnel and making hiring recommendations to the Board.<sup>3</sup> If the Superintendent’s recommendation is rejected, the Superintendent must submit another.<sup>4</sup> No individual will be employed who has been convicted of a criminal offense listed in 105 ILCS 5/21B-80(c).<sup>5</sup>

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<sup>1</sup> 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.

<sup>2</sup> 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.

<sup>3</sup> 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.

<sup>4</sup> 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.

<sup>5</sup> 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](http://www2.illinois.gov/dhr/Pages/Conviction_Record_Protection_Frequently_Asked_Questions.aspx).

All copies of public records are made available to the public upon request. The Illinois Freedom of Information Act (FOIA) provides a procedure for requesting and receiving public records. If you have any questions regarding public records, you may contact the Board Attorney for a list of this list. See administrative procedure 5:30-AP2, *Investigations*, and its footnotes for more detail regarding the IHRA notice requirements. The notice requirements apply to all employees with the same pay scale as the employee who is the subject of the notice. See 105 ILCS 5/2-103.1.

**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. <sup>6</sup>

### 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. <sup>7</sup>

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. <sup>8</sup>

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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 ¶ns 5 and 6 in policy 4:175, *Convicted Child Sex Offender: Screening; Notifications*.

<sup>6</sup> 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](http://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 ¶n 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.

<sup>7</sup> 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/](http://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.

<sup>8</sup> 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.<sup>9</sup> 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.<sup>10</sup> 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.<sup>11</sup> 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](http://www.eeoc.gov/laws/regulations/adaaa_fac_sheet.cfm). Consult the board attorney regarding how these amendments impact the district's hiring processes.

<sup>9</sup> 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](http://www.isp.state.il.us/sor). The Statewide Murderer and Violent Offender Against Youth Database is available at: [www.isp.state.il.us/cmvo/](http://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.

<sup>10</sup> *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.

<sup>11</sup> 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

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12 *Id.* at 5/10-21.9(b), amended by P.A.s 101-72 and 101-531. See *Ill. School Code* § 5/10-21.9(b). 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 substituting "and" for "or" in the second sentence, and adding the following sentence at the end of the section: "The Board may also require a criminal history records check for a student teacher or applicant for employment, or any District employee, when the applicant or employee is applying for a position that requires access to a student's or employee's confidential information, or when the applicant or employee is applying for a position that requires access to a student's or employee's confidential information, or when the applicant or employee is applying for a position that requires access to a student's or employee's confidential information." 105 ILCS 5/21B-80.

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 ¶n 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 ¶n 2 in 5:150-AP, *Personnel Records*, for a more detailed discussion of *E-Verify* issues.

14 See ¶n 5, above.

15 105 ILCS 5/10-21.9(c) and (g), amended by P.A. 101-531. See ¶n 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. <sup>18</sup>
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. <sup>19</sup>
4. The District does not request or require an applicant to disclose wage or salary history as a condition of employment. <sup>20</sup>
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. <sup>21</sup>
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. <sup>22</sup>
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. <sup>23</sup>

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<sup>17</sup> 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.

<sup>18</sup> 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.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> 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.

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

<sup>23</sup> *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 <sup>24</sup>

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.<sup>25</sup> 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.

<sup>24</sup> 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. 29 C.F.R. §1630.2(r); 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.

<sup>25</sup> 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. <sup>2</sup>

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

<sup>1</sup> 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.

<sup>2</sup> 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*<sup>3</sup> for the District: <sup>4</sup>

1. Unlawful manufacture, dispensing, distribution, possession, or use of an illegal or controlled substance. <sup>5</sup>
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. <sup>6</sup>
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.<sup>7</sup> 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?

<sup>3</sup> 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~~.

<sup>4</sup> 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*).

<sup>5</sup> 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.

<sup>6</sup> 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).

<sup>7</sup> "[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 symptoms<sup>8</sup> 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)).

<sup>8</sup> 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.

<sup>9</sup> 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)).



is retained in any version of the policy adopted by the board of education, and any other version of the policy adopted by the board of education is void.

For purposes of this policy, a controlled substance means a substance that is:

1. Not legally obtainable,
2. Being used in a manner different than prescribed,
3. Legally obtainable, but has not been legally obtained, or
4. Referenced in federal or State controlled substance acts.

For purposes of this policy, *District premises*<sup>11</sup> means workplace as defined in the (405/105) Regulation and Tax Act (CRTA) in addition to District and school buildings, grounds, and parking areas; vehicles used for school purposes; and any location used for a School Board meeting, school athletic event, or other school-sponsored or school-sanctioned events or activities. *School grounds* means the real property comprising any school, any conveyance used to transport students to school or a school-related activity, and any public way within 1,000 feet of any school ground, designated school bus stops where students are waiting for the school bus, and school-sponsored or school-sanctioned events or activities. "Vehicles used for school purposes" means school buses or other school vehicles.

As a condition of employment, each employee shall:<sup>12</sup>

1. Abide by the terms of the Board policy respecting a drug- and alcohol-free workplace; and
2. Notify his or her supervisor of his or her conviction under any criminal drug statute for a violation occurring on the District premises or while performing work for the District, no later than five calendar days after such a conviction.

Unless otherwise prohibited by this policy, prescription and over-the-counter medications are not prohibited when taken in standard dosages and/or according to prescriptions from the employee's licensed health care provider, provided that an employee's work performance is not impaired.<sup>13</sup>

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<sup>11</sup> The CRTA defines workplace as the real property, including any building, grounds, and parking area, used for the performance of the employee's job duties, and vehicles, whether leased, rented, or owned – and may be further defined by the employer's written policy when it is consistent with this definition.

<sup>12</sup> 410 ILCS 705/10-35 and 10-50(a), added by P.A. 101-27 and amended by P.A. 101-593, allows employers to prohibit cannabis in the workplace. Many attorneys agree it is a best practice for employers to define workplace in policies that prohibit cannabis. 410 ILCS 705/10-50(h), added by P.A. 101-27, defines workplace as the employer's premises, including any building, real property, and parking area under the control of the employer or area used by an employee while in performance of the employee's job duties, and vehicles, whether leased, rented, or owned – and may be further defined by the employer's written policy when it is consistent with this definition.

<sup>13</sup> 410 ILCS 705/10-35 and 10-50(a), added by P.A. 101-27 and amended by P.A. 101-593, allows employers to prohibit cannabis in the workplace. Many attorneys agree it is a best practice for employers to define workplace in policies that prohibit cannabis. 410 ILCS 705/10-50(h), added by P.A. 101-27, defines workplace as the employer's premises, including any building, real property, and parking area under the control of the employer or area used by an employee while in performance of the employee's job duties, and vehicles, whether leased, rented, or owned – and may be further defined by the employer's written policy when it is consistent with this definition.

This policy's definition of workplace expands the above CRTA definition to areas that board policy and/or the School Code impose duties upon districts to keep students safe, including:

1. The *school property* definition from policy 8:30, *Visitors to and Conduct on School Property*;
2. The *school grounds* definition at 105 ILCS 5/10-27.1A(d); and
3. Places that school districts must prevent and respond to bullying, including vehicles used for school purposes. 105 ILCS 5/27-23.7(a).

<sup>12</sup> Required by the State and federal Drug-Free Workplace Acts.

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

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. <sup>15</sup>
3. Make available materials from local, State, and national anti-drug and alcohol-abuse organizations. <sup>16</sup>
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. <sup>17</sup>

#### E-Cigarette, Tobacco, and Cannabis Prohibition <sup>18</sup>

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,<sup>19</sup> tobacco, and cannabis

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<sup>13</sup> 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.

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

<sup>15</sup> 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.

<sup>16</sup> 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.

<sup>17</sup> Optional. This statement serves as a display of good judgement and a reminder to employees that 105 ILCS 5/27-13.2, 105 ILCS 5/27-27 and 23.4 (provided it can be funded by private grants or the federal government) require districts to educate students about the dangers of drug and substance abuse.

<sup>18</sup> 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.<sup>20</sup>

#### District Action Upon Violation of Policy

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

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<sup>19</sup> 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](http://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](http://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/](http://www.cdc.gov/tobacco/basic_information/e-cigarettes/severe-lung-disease/); and  
[www.cdc.gov/tobacco/basic\\_information/e-cigarettes/severe-lung-disease/health-departments/index.html](http://www.cdc.gov/tobacco/basic_information/e-cigarettes/severe-lung-disease/health-departments/index.html).

<sup>20</sup> 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).”

<sup>21</sup> 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. <sup>22</sup>

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. <sup>23</sup>

Disclaimer <sup>24</sup>

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)

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<sup>22</sup> Required by both the federal and State Drug-Free Workplace Acts.

<sup>23</sup> *Id.*

<sup>24</sup> 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 disability<sup>2</sup>, 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

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<sup>1</sup> State or federal law controls this policy's content. The Abused and Neglected Child Reporting Act (ANCRA) (325 ILCS 5/3) 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 report~~ *to be made* 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 ~~child~~ *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 5/22-85.5~~, added by P.A. 101-531. 105 ILCS 5/10-20, ~~and 105 ILCS 5/10-20.5~~, added by P.A. 101-531. See sample policy 7:20, *Harassment of Students Prohibited*.

<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup> *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.<sup>6</sup>

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](http://www.report.cybertip.org) or [www.missingkids.org](http://www.missingkids.org). The Superintendent or Building Principal shall also be promptly notified of the discovery and that a report has been made.<sup>7</sup>

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<sup>3</sup> 325 ILCS 5/7, amended by P.A. 101-583, *eff. 1-1-02*. 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.

<sup>4</sup> 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.

<sup>5</sup> 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](http://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."

<sup>6</sup> 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.

<sup>7</sup> 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).

Any District employee who observes any act of hazing that does bodily harm to a student must report that act to the Building Principal, Superintendent, or designee who will investigate and take appropriate action. If the hazing results in death or great bodily harm, the employee must first make the report to law enforcement and then to the Superintendent or Building Principal. Hazing is defined as any intentional, knowing, or reckless act directed to or required of a student for the purpose of being initiated into, affiliating with, holding office in, or maintaining membership in any group, organization, club, or athletic team whose members are or include other students.<sup>8</sup>

Abused and Neglected Child Reporting Act (ANCRA), School Code, and Erin's Law Training

The Superintendent or designee shall provide staff development opportunities for District employees in the detection, reporting, and prevention of child abuse and neglect.<sup>9</sup>

All District employees shall:

1. Before beginning employment, sign the *Acknowledgement of Mandated Reporter Status* form provided by DCFS. The Superintendent or designee shall ensure that the signed forms are retained.
2. Complete mandated reporter training as required by law within three months of initial employment and at least every three years after that date.<sup>10</sup>

*Abused and Neglected Child Reporting Act (ANCRA) Mandated Reporter Training* is a mandatory training requirement for all District employees who are in a position of professional development that requires regular use of trade and technical skills and may be conducted in a variety of ways, including but not limited to, self-paced learning and on-site training.

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<sup>8</sup> 720 ILCS 5/12C-50.1(b) creates a duty for *school officials* to report hazing. The term *school official* includes all school employees and volunteer coaches. 720 ILCS 5/12C-50.1(a). The duty to report hazing is triggered only when the school employee, while performing his or her responsibilities as a school official and observing hazing which results in bodily harm. 720 ILCS 5/12C-50.1(b). A report must be made to *supervising educational authorities*, which is not defined in the Act. *Id.* Common sense, however, would require the individual witnessing hazing to report it to the building principal or superintendent. Failure to report hazing is a Class B misdemeanor. 720 ILCS 5/12C-50.1(c). Failure to report hazing that resulted in death or great bodily harm is a Class A misdemeanor. *Id.* 7:190-AP1, *et al.*, *Illinois Hazing Prohibited*, uses the same definition of *hazing*; this definition is based on 720 ILCS 5/12C-50.

<sup>9</sup> While it is unclear whether this is a duty or power, 105 ILCS 5/10-23.12(a), amended by P.A. 100-413, authorizes boards "[t]o provide staff development for local school site personnel who work with pupils in grades kindergarten through 8, in the detection, reporting, and prevention of child abuse and neglect."

The drill during such training should be: "If in question, report."

<sup>10</sup> ANCRA also requires staff members, within three months of employment, to complete mandated reporter training. 325 ILCS 5/4(j), amended by P.A. 101-564. This training must be completed again at least every three years. *Id.* The initial ANCRA three-month training requirement applies to the first time staff engage in their professional or official capacity. *Id.* While the law allows an extension to six months, it is unclear when such an extension is permissible. Consult the board attorney for guidance. As a best practice, to ensure compliance with the requirement in 105 ILCS 5/22-85(c), added by P.A. 101-531, that mandated reporters annually review ISBE materials regarding notification of DCFS (see fn 15, below), and to ease the administrative burden to track employee training schedules, a district may consider requiring annual training for all employees.

To reduce liability and align with best practices, ANCRA training for existing district employees appears prudent; however, consult the board attorney about:

1. Whether mandating existing employees to participate in ANCRA training is 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.
2. How to comply with both the new ANCRA training requirements and whether compliance with them would also satisfy the School Code's more limited district-provided training requirement discussed in fn 9 above.







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

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. <sup>22</sup>

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. <sup>22</sup>

**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)

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<sup>21</sup> 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.

<sup>22</sup> 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*.

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.



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

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. <sup>4 5 6</sup>

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<sup>3</sup> 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.

<sup>4</sup> 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.

<sup>5</sup> 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*.<sup>7</sup>

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<sup>6</sup> 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.

<sup>7</sup> 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.<sup>2</sup> In addition, the *Code of Ethics for Illinois Educators*, adopted by the Illinois State Board of Education, is incorporated by reference into this policy.<sup>3</sup> 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);<sup>4</sup> or otherwise violates an employee conduct standard will be subject to discipline up to and including dismissal.<sup>6</sup>

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

<sup>1</sup> 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.

<sup>2</sup> 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.

<sup>3</sup> 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.

<sup>4</sup> 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.

<sup>5</sup> 325 ILCS 5-4(a)(4), amended by P.A. 101-564, requires reporting of child abuse or neglect. Reporting is required for all employees, regardless of their position. Reporting is required for all employees, regardless of their position. Reporting is required for all employees, regardless of their position. Reporting is required for all employees, regardless of their position.

<sup>6</sup> 325 ILCS 5-4(a)(4), amended by P.A. 101-564, requires reporting of child abuse or neglect. Reporting is required for all employees, regardless of their position. Reporting is required for all employees, regardless of their position. Reporting is required for all employees, regardless of their position.

<sup>7</sup> 325 ILCS 5-4(a)(4), amended by P.A. 101-564, requires reporting of child abuse or neglect. Reporting is required for all employees, regardless of their position. Reporting is required for all employees, regardless of their position. Reporting is required for all employees, regardless of their position.

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."

2. 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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4. 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."

5. 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."



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.<sup>14</sup> An employee having an interest in instructional materials must file an annual statement with the Board Secretary.<sup>15</sup>

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.<sup>16</sup> 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.<sup>17</sup>

Employees shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to agreements or contracts.<sup>18</sup> 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*.<sup>19</sup>

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<sup>14</sup> 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.

<sup>15</sup> *Id.*

<sup>16</sup> 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](http://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](http://www.isbe.net/Pages/Audit-and-Monitoring-Review-Requirements-and-Tools.aspx).

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *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.
2. 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.
3. 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.
4. 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.
5. 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.
6. 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.
7. 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.
8. 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.
9. 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.
10. 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.

This policy is intended to be consistent with applicable laws and regulations. The policy is intended to provide a framework for the school district to manage outside employment of its employees.

**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.

The footnotes are not intended to be part of the adopted policy; they should be removed before the policy is adopted.  
<sup>1</sup> This policy is intended to be consistent with applicable laws and regulations. The policy is intended to provide a framework for the school district to manage outside employment of its employees.



## 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.<sup>2</sup> This includes, but is not limited to, services such as *Facebook*, *LinkedIn*, *Twitter*, *Instagram*, *Snapchat*, and *YouTube*.<sup>3</sup>

**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.<sup>4</sup> 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®).<sup>5</sup>

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<sup>1</sup> 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 cases are 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 (1999) § 552 (allows suspensions or revocations of teachers and principals for, among other things, 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.”

<sup>2</sup> 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](http://www.en.wikipedia.org/wiki/Social_media). Merriam-Webster's definition is at [www.merriam-webster.com/dictionary/social%20](http://www.merriam-webster.com/dictionary/social%20).

<sup>3</sup> 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.

<sup>4</sup> *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/](http://www.allthingsd.com/author/walt/). Many of the reviewed devices operate as described in this sample definition.

<sup>5</sup> Optional.

## Usage and Conduct <sup>6</sup>

All District employees who use personal technology and social media shall: <sup>7</sup>

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 (regarding, for example, the use of personal technology or social media).
5. Report any misuse of personal technology or media discovered through the use of social media or personal technology to the appropriate school employee responsibilities policy 5:90, *Employee and Non-employee Responsibilities and Reporting*.
6. Not disclose student or other information, including student names, addresses, or students' names of siblings, or a teacher or other employee's identity, in connection with student, or compliance with policy 5:130, *Responsibilities Concerning Internal Information*. Employees that provide or use technology or media in their work should be held liable for transmitting information over technology or other media in a manner appropriate to a proper

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<sup>6</sup> 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.*

<sup>7</sup> 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 *Policy 5:100, Staff Development Program*. *Illinois State Board of Education, Policy 5:100, Staff Development Program*. *Illinois State Board of Education, Policy 5:100, Staff Development Program*. *Illinois State Board of Education, Policy 5:100, Staff Development Program*. *Illinois State Board of Education, Policy 5:100, Staff Development Program*. 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.<sup>8</sup>

- 3.7 Refrain from using the District's logos without permission and follow Board policy 5:170, *Copyright*, and all District copyright compliance procedures.<sup>9</sup>
- 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.<sup>10</sup>
- 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.<sup>11</sup>
- 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.<sup>12</sup>

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<sup>8</sup> 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.

<sup>9</sup> 17 U.S.C. §101 *et seq.*

<sup>10</sup> 105 ILCS 5/24-9; Fair Labor Standards Act, 29 U.S.C. §201 *et seq.* See also *fn*s 1 and 6 above.

<sup>11</sup> 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.

<sup>12</sup> 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: <sup>13</sup>

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 employee or applicant does or may be deemed to do so, in their school district, or within the state, or in any other jurisdiction.~~ <sup>14</sup>
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.

<sup>13</sup> 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).

<sup>14</sup> 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-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.<sup>2</sup>
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*.<sup>3</sup>

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

<sup>1</sup> 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)."

<sup>2</sup> 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.

<sup>3</sup> 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.<sup>4</sup> The Superintendent shall:<sup>5</sup>

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3. *Information prohibited from being disclosed under the Illinois Educational Labor Relations Act (IELRA).* 5 ILCS 140/7.5(y)(e), 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.

<sup>4</sup> 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.*

<sup>5</sup> 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](http://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 1/14 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,<sup>6</sup> 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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<sup>6</sup> 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. <sup>2</sup>

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. <sup>3</sup>

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. <sup>4</sup> All policies and rules regarding the

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<sup>1</sup> 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 regulations 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](http://www.dol.gov/whd/fmla)). It also contains a link to the complete FMLA rules, 29 C.F.R. Part 825.

<sup>2</sup> 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.

<sup>3</sup> 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*.

<sup>4</sup> 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. <sup>5</sup>

FMLA leave is available in one or more of the following instances: <sup>6</sup>

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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<sup>5</sup> 29 C.F.R. § 825.207(d). 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). 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).

<sup>6</sup> 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*, 576 U.S. 913 (2015).

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.

<sup>5</sup> 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.

<sup>6</sup> 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*, 576 U.S. 913 (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.<sup>7</sup>

An employee may be permitted to work on an intermittent or reduced-leave schedule in accordance with federal rules.<sup>8</sup>

### Eligibility<sup>9</sup>

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.

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<sup>7</sup> 29 C.F.R. §§825.120(a)(3) (birth) and 825.121(a)(3) (adoption and foster care).

<sup>8</sup> 29 C.F.R. §§825.121(b), 825.202 - 825.205 and 825.601.

<sup>9</sup> 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](http://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 <sup>10</sup>

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 <sup>11</sup>

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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<sup>10</sup> 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.

<sup>11</sup> 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 [www.dhs.gov/eis/vvt/ohrt/ohrt.html](http://www.dhs.gov/eis/vvt/ohrt/ohrt.html). 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 <sup>12</sup>

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 <sup>13</sup>

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. <sup>14</sup>

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. <sup>15</sup>

Classroom teachers may be required to wait to return to work until the next semester in certain situations as provided by the FMLA regulations. <sup>16</sup>

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<sup>12</sup> 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.

<sup>13</sup> 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.

<sup>14</sup> 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.

<sup>15</sup> 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).

<sup>16</sup> 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;<sup>17</sup> 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.<sup>18</sup>

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.  
*Family and Medical Leave Act*

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)

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<sup>17</sup> 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](http://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](http://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.

<sup>18</sup> 29 C.F.R. §825.102.



### School Day

Teachers are required to work the school day adopted by the Board.<sup>5</sup> Teachers employed for at least four hours per day shall receive a duty-free lunch equivalent to the student lunch period, or 30 minutes, whichever is longer. <sup>6</sup>

The District accommodates employees who are nursing mothers according to provisions in State and federal law. <sup>7</sup>

### Salary

Teachers shall be paid according to the salaries fixed by the Board, but in no case less than the minimum salary provided by the School Code.<sup>8</sup> Teachers shall be paid at least monthly on a 10- or 12-month basis. <sup>9</sup>

### Assignments and Transfers

The Superintendent is authorized to make teaching, study hall, extra class duty, and extracurricular assignments.<sup>10</sup> In order of priority, assignments shall be made based on the District's needs and best interests, employee qualifications, and employee desires.

### School Social Worker Services Outside of District Employment

School social workers may not provide services outside of their District employment to any student(s) attending school in the District. *School social worker* has the meaning stated in 105 ILCS 5/14-1.09a. <sup>11</sup>

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<sup>5</sup> A school day is required to consist of a minimum of five clock hours under the direct supervision of a teacher or non-teaching personnel or volunteer personnel that provides non-teaching or supervisory duties as specified in 105 ILCS 5/10-22.34(a) in order to qualify as a full day of attendance. 105 ILCS 5/10-19.05(a) and (j-5), added by P.A. 101-12 and amended by P.A. 101-643. See [www.isbe.net/school-calendar](http://www.isbe.net/school-calendar) for ISBE's instructional day changes notice regarding this law. See 105 ILCS 5/10-19.05, added by P.A. 101-12 and amended by P.A. 101-643, for additional exceptions to the attendance calculation.

<sup>6</sup> 105 ILCS 5/24-9.

<sup>7</sup> 740 ILCS 137; 820 ILCS 260/1-10. Illinois law requires more of employers than federal law. Consult the board attorney to ensure the district is properly accommodating nursing mothers. See 5:10-AP, *Workplace Accommodations for Nursing Mothers*.

<sup>8</sup> 105 ILCS 5/10-20.7, 5/10-21.1, 5/24-1, and 5/24-8, amended by P.A. 101-443 (minimum salary). Salaries are a mandatory subject of collective bargaining. 115 ILCS 5/10. Annually, by Oct. 1, each district must: (1) during an open school board meeting, report salary and benefits information for the superintendent, administrators, and teachers; (2) publish that information on the district's website, if any; and (3) provide this information to ISBE. 105 ILCS 5/10-20.47. According to a Public Access Counselor (PAC) *Informal Mediation* letter interpreting 5 ILCS 120/7.3, an IMRF employer must post on its website the names of employees having a total compensation package that exceeds \$75,000 per year. 2012 PAC 19808 (Informal Mediation by the Ill. Attorney General's Public Access Counselor (PAC)); see PAC Annual Report for 2012 at [www.foia.illattorneygeneral.net/pdf/Public\\_Access\\_Counselor\\_Annual\\_Report\\_2012.pdf](http://www.foia.illattorneygeneral.net/pdf/Public_Access_Counselor_Annual_Report_2012.pdf).

<sup>9</sup> 105 ILCS 5/24-21.

<sup>10</sup> Districts are required to have a policy on the distribution of the listed assignments. 23 Ill.Admin.Code §1.420(d).

Absent an individual or collective bargaining agreement, the board has unilateral discretion to assign or retain a teacher to or in an extracurricular duty. *Betebenner v. Bd. of Educ.*, 336 Ill.App. 448 (4th Dist. 1949); *Dist. 300 Educ. Assoc. v. Bd. of Educ.*, 31 Ill.App.3d 550 (2nd Dist. 1975); *Lewis v. Bd. of Educ.*, 181 Ill.App. 3d 689 (5th Dist. 1989).

<sup>11</sup> Optional. This subhead provides information to district employees and the community that 105 ILCS 5/14-1.09a prohibits school social workers from moonlighting by providing services to students attending the districts in which they are employed. Delete "5/10-20.65, 5/14-1.09a," from the Legal References if the board deletes this subhead.

## Dismissal

The District will follow State law when dismissing a teacher. <sup>12</sup>

## Evaluation

The District's teacher evaluation system will be conducted under the plan developed pursuant to State law. <sup>13</sup>

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<sup>12</sup> All dismissal laws in the chart below were amended by the *Education Reform Acts*. 105 ILCS 5/24A-5.5, added by P.A. 101-591, requires districts to develop and implement a local appeals process for unsatisfactory ratings issued to teachers under 105 ILCS 5/24A-5, amended by P.A. 101-643. Districts must: (1) develop the process in cooperation with the bargaining unit or teachers, if applicable, and (2) include an assessment of the original rating by a panel of qualified evaluators agreed to by the PERA joint committee (105 ILCS 5/24A-4(b)).

<b>Non-tenure Teacher Discharge</b>	105 ILCS 5/24-11, amended by P.A. 101-643
<b>Tenured and Non-tenure Teachers</b> Reduction in Force	105 ILCS 5/24-12(b), amended by P.A. 101-643, and (c)
<b>Tenured Teacher Discharge</b> Where Cause Remediable	105 ILCS 5/24-12(d) (prior reasonable warning required) 105 ILCS 5/24-12(d) (procedural mandates) 105 ILCS 5/10-22.4 (general authority)
<b>Tenured Teacher Discharge</b> Where Cause Irremediable	105 ILCS 5/24-12(d) (no prior warning required) 105 ILCS 5/24-12(d) (procedural mandates) 105 ILCS 5/10-22.4 (general authority)
<b>Tenured Teacher Discharge</b> Failure to complete remediation plan with a rating of <i>Proficient</i> or better	105 ILCS 5/24A-5(m) (participation in remediation plan after unsatisfactory evaluation) 105 ILCS 5/24-12(d)(1), amended by P.A. 101-643 (no prior warning required if cause(s) were subject of remediation plan) 105 ILCS 5/24-12(d) (procedural mandates) 105 ILCS 5/10-22.4 (general authority)
<b>Tenured Teacher Discharge - Optional Alternative Evaluative Dismissal Process for PERA Evaluation</b> Failure to complete remediation plan with a <i>Proficient</i> or better rating 105 ILCS 5/24A-2.5	105 ILCS 5/24-16.5(d) (provide written notice) 105 ILCS 5/24-16.5 (pre-remediation and remediation procedural mandates) 105 ILCS 5/24-16.5(e) and (f) (school board makes final decision with only PERA-trained board members participating in vote)
<b>Tenured Teacher Discharge</b> <i>Unsatisfactory</i> PERA evaluation within 36 months of completing a remediation plan 105 ILCS 5/24A-2.5	105 ILCS 5/24A-5(n) (forego remediation and proceed to dismissal) 105 ILCS 5/24-12(d) (procedural mandates) 105 ILCS 5/10-22.4 (general authority)
<b>Educational Support Personnel Employees</b> (non-licensed)	105 ILCS 5/10-23.5, amended by PA. 101-46
<b>Probationary Teacher</b> (non-tenure teacher)	105 ILCS 5/24-11, amended by P.A. 101-643

Various components of a RIF (e.g., impact and decision to RIF) and an evaluation plan (e.g., development, implementation, and impact) may be subject to mandatory collective bargaining. *Central City Educ. Assoc. v. IELRB*, 149 Ill.2d 496 (Ill. 1992).

Teacher RIF procedures were changed by 105 ILCS 5/24-12, amended by P.A. 101-643. See *PERA Overview for School Board Members*, question 13, "What is the process for selecting teachers for a reduction in force/layoff (RIF)" at: [www.iasb.com/law/PERAoverview.pdf](http://www.iasb.com/law/PERAoverview.pdf).

According to a binding opinion from the Ill. Public Access Counselor, a board must identify an employee by name in a motion to dismiss him or her. PAO 13-16. As this may be a significant change in practice with possible other legal consequences, a board should consult with the board attorney on this issue before dismissing an employee.

<sup>13</sup> Teacher evaluation plans are covered in *PERA Overview for School Board Members* at: [www.iasb.com/law/PERAoverview.pdf](http://www.iasb.com/law/PERAoverview.pdf).

On an annual basis, the Superintendent will provide the Board with a written report which outlines the results of the District's teacher evaluation system.

LEGAL REF.: 105 ILCS 5/10-19, 5/10-19.05, 5/10-20.65, 5/14-1.09a, 5/22.4, 5/24-16.5, 5/24-2,  
5/24-8, 5/24-9, 5/24-11, 5/24-12, 5/24-21, 5/24A-1 through 24A-20.  
820 ILCS 260/ (School Year Calendar and Day)  
23 Ill.Admin.Code Parts 50 (Evaluation of Educator Licensed Employees) and 51  
(Dismissal of Tenured Teachers).  
Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532 (1985).

CROSS REF.: 5:290 (Employment Termination and Suspensions), 6:20 (School Year Calendar  
and Day)



## Professional Personnel

### Substitute Teachers 1

The Superintendent may employ substitute teachers as necessary to replace teachers who are temporarily absent.

A substitute teacher must hold either a valid teaching or substitute license or short-term substitute license and may teach in the place of a licensed teacher who is under contract with the Board.<sup>2</sup> There is no limit on the number of days that a substitute teacher may teach in the District during the school year, except as follows:<sup>3</sup>

1. A substitute teacher holding a substitute license may teach for any one licensed teacher under contract with the District only for a period not to exceed 90 paid school days in any one school term.
2. A teacher holding a Professional Educator License<sup>4</sup> or Educator License with Stipulations<sup>5</sup> may teach for any one licensed teacher under contract with the District only for a period not to exceed 120 paid school days.
3. A short-term substitute teacher holding a short-term substitute teaching license may teach for any one licensed teacher under contract with the District only for a period not to exceed five consecutive school days.<sup>6</sup>

The Illinois Teachers' Retirement System (TRS) limits a substitute teacher who is a TRS annuitant to substitute teaching for a period not to exceed 120 paid days or 600 paid hours in each school year, but not more than 100 paid days in the same classroom. Beginning July 1, 2021, a substitute teacher

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<sup>1</sup> State law controls this policy's content. Policy 5:30, *Hiring Process and Criteria*, contains the requirements for pre-employment investigations, e.g., a fingerprint based criminal history records check. See also 5:30-AP2, *Investigations*. Each board may require new substitute teacher employees to furnish evidence of physical fitness to perform duties assigned and must require new substitute teacher employees to furnish evidence of freedom from communicable disease. 105 ILCS 5/24-5(b-5), *Substitute Teacher License*. Evidence may consist of a physical examination, which must be performed within 90 days before the time it is presented to the board, and the substitute teacher bears the cost of the physical examination. *Id.* A new or existing substitute teacher may also be subject to additional health examinations as required by the Ill. Dept. of Public Health or by order of a local public health official. *Id.*

<sup>2</sup> 23 Ill.Admin.Code §1.790(a)(2), requires that any individual who serves as a substitute teacher for driver's education be endorsed for driver's education pursuant to 23 Ill.Admin.Code §25.100(k). *Illinois Administrative Code Manual*, available at <http://www.legis.state.il.us/online/index.cfm>.

<sup>3</sup> Substitute teaching licenses are governed by 105 ILCS 5/21B-20(3). *Illinois Administrative Code Manual*; 23 Ill.Admin.Code §§1.790 and 25.520.

<sup>4</sup> Professional educator licenses are governed by 105 ILCS 5/21B-20(1) and 23 Ill.Admin.Code Part 25.

<sup>5</sup> Educator licenses with stipulations are governed by 105 ILCS 5/21B-20(2), amended by P.A. 10-107, *Illinois Education Act*, and 23 Ill.Admin.Code Part 25. 105 ILCS 5/21B-20(2)(E), *Professional Educator License*, permits an individual who holds a valid career and technical educator endorsement on an Educator License with Stipulations but who does not hold a bachelor's degree to substitute teach in career and technical education classrooms. Similarly, 105 ILCS 5/21B-20(2)(F), *Provisional Career and Technical Educator License*, permits an individual who holds a provisional or part-time provisional career and technical educator endorsement on an Educator License with Stipulations but who does not hold a bachelor's degree to substitute teach in career and technical education classrooms.

<sup>6</sup> 105 ILCS 5/21B-20(4), *Short-Term Substitute Teaching License*. Districts may not hire a short-term substitute teacher for teacher absences lasting six or more days. *Id.*

who is a TRS annuitant may substitute teach for a period not to exceed 100 paid days or 500 paid hours in any school year, unless the subject area is one where the Regional Superintendent has certified that a personnel shortage exists.<sup>7</sup>

The School Board establishes a daily rate of pay for substitute teachers. Substitute teachers receive only monetary compensation for time worked and no other benefits.<sup>8</sup>

### Short-Term Substitute Teachers<sup>9</sup>

A short-term substitute teacher must hold a valid short-term substitute teaching license and have completed the District's short-term substitute teacher training program.<sup>10</sup> Short-term substitutes may teach no more than five consecutive school days for each licensed teacher who is under contract with the Board.<sup>11</sup>

### Emergency Situations<sup>12</sup>

A substitute teacher may teach when no licensed teacher is under contract with the Board if the District has an emergency situation as defined in State law. During an emergency situation, a substitute teacher is limited to 30 calendar days of employment per each vacant position. The Superintendent shall notify the appropriate Regional Office of Education within five business days after the employment of a substitute teacher in an emergency situation.

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<sup>7</sup> 40 ILCS 5/16-118, amended by P.A.s 101-101, 101-102, 101-103, 101-645 (specifying permissible paid days and hours for TRS annuitants) and 16-150.1, and 16-150.1, amended by P.A.s 101-49 and 101-50 (TRS annuitants may return to teaching in a subject shortage area until 6-30-23). Use this alternative for districts in suburban Cook County: replace "Regional Superintendent" with "appropriate Intermediate Service Center."

<sup>8</sup> If a board provides substitute teachers other benefits, it may consider listing them here.

<sup>9</sup> 105 ILCS 5/21B-20(4), amended by P.A.s 101-101, 101-102, 101-103, 101-104, 101-105, 101-106, 101-107, 101-108, 101-109, 101-110, 101-111, 101-112, 101-113, 101-114, 101-115, 101-116, 101-117, 101-118, 101-119, 101-120, 101-121, 101-122, 101-123, 101-124, 101-125, 101-126, 101-127, 101-128, 101-129, 101-130, 101-131, 101-132, 101-133, 101-134, 101-135, 101-136, 101-137, 101-138, 101-139, 101-140, 101-141, 101-142, 101-143, 101-144, 101-145, 101-146, 101-147, 101-148, 101-149, 101-150, 101-151, 101-152, 101-153, 101-154, 101-155, 101-156, 101-157, 101-158, 101-159, 101-160, 101-161, 101-162, 101-163, 101-164, 101-165, 101-166, 101-167, 101-168, 101-169, 101-170, 101-171, 101-172, 101-173, 101-174, 101-175, 101-176, 101-177, 101-178, 101-179, 101-180, 101-181, 101-182, 101-183, 101-184, 101-185, 101-186, 101-187, 101-188, 101-189, 101-190, 101-191, 101-192, 101-193, 101-194, 101-195, 101-196, 101-197, 101-198, 101-199, 101-200, 101-201, 101-202, 101-203, 101-204, 101-205, 101-206, 101-207, 101-208, 101-209, 101-210, 101-211, 101-212, 101-213, 101-214, 101-215, 101-216, 101-217, 101-218, 101-219, 101-220, 101-221, 101-222, 101-223, 101-224, 101-225, 101-226, 101-227, 101-228, 101-229, 101-230, 101-231, 101-232, 101-233, 101-234, 101-235, 101-236, 101-237, 101-238, 101-239, 101-240, 101-241, 101-242, 101-243, 101-244, 101-245, 101-246, 101-247, 101-248, 101-249, 101-250, 101-251, 101-252, 101-253, 101-254, 101-255, 101-256, 101-257, 101-258, 101-259, 101-260, 101-261, 101-262, 101-263, 101-264, 101-265, 101-266, 101-267, 101-268, 101-269, 101-270, 101-271, 101-272, 101-273, 101-274, 101-275, 101-276, 101-277, 101-278, 101-279, 101-280, 101-281, 101-282, 101-283, 101-284, 101-285, 101-286, 101-287, 101-288, 101-289, 101-290, 101-291, 101-292, 101-293, 101-294, 101-295, 101-296, 101-297, 101-298, 101-299, 101-300, 101-301, 101-302, 101-303, 101-304, 101-305, 101-306, 101-307, 101-308, 101-309, 101-310, 101-311, 101-312, 101-313, 101-314, 101-315, 101-316, 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101-761, 101-762, 101-763, 101-764, 101-765, 101-766, 101-767, 101-768, 101-769, 101-770, 101-771, 101-772, 101-773, 101-774, 101-775, 101-776, 101-777, 101-778, 101-779, 101-780, 101-781, 101-782, 101-783, 101-784, 101-785, 101-786, 101-787, 101-788, 101-789, 101-790, 101-791, 101-792, 101-793, 101-794, 101-795, 101-796, 101-797, 101-798, 101-799, 101-800, 101-801, 101-802, 101-803, 101-804, 101-805, 101-806, 101-807, 101-808, 101-809, 101-810, 101-811, 101-812, 101-813, 101-814, 101-815, 101-816, 101-817, 101-818, 101-819, 101-820, 101-821, 101-822, 101-823, 101-824, 101-825, 101-826, 101-827, 101-828, 101-829, 101-830, 101-831, 101-832, 101-833, 101-834, 101-835, 101-836, 101-837, 101-838, 101-839, 101-840, 101-841, 101-842, 101-843, 101-844, 101-845, 101-846, 101-847, 101-848, 101-849, 101-850, 101-851, 101-852, 101-853, 101-854, 101-855, 101-856, 101-857, 101-858, 101-859, 101-860, 101-861, 101-862, 101-863, 101-864, 101-865, 101-866, 101-867, 101-868, 101-869, 101-870, 101-871, 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LEGAL REF.: 105 ILCS 5/10-20.68, 5/21B-20(2), 5/21B-20(3), and 5/21B-20(4).  
23 Ill.Admin.Code §1.790 (Substitute Teacher) and §25.520 (Substitute Teaching License).

CROSS REF.: 5:30 (Hiring Process and Criteria)

## Professional Personnel

### Leaves of Absence 1

Each of the provisions in this policy applies to all professional personnel to the extent that it does not conflict with an applicable collective bargaining agreement or individual employment contract or benefit plan; in the event of a conflict, such provision is severable and the applicable bargaining agreement or individual agreement will control.

### Sick and Bereavement Leave 2

Each full-time professional staff member is granted 10 days sick leave each school year at full pay. Unused days are allowed to accumulate to 180 days. Sick leave is defined in State law as personal illness, quarantine at home, serious illness or death in the immediate family or household, or birth, adoption, or placement for adoption, or the acceptance of a child in trust or custody.

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

<sup>1</sup> 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. The introductory paragraph recognizes that an applicable collective bargaining agreement or individual employment contract will supersede a conflicting provision of the policy. It also provides policy coverage for those professional personnel who are not included in a bargaining unit or have employment contracts with conflicting provisions. Alternatively, if the policy's subject matter is superseded by a bargaining agreement, the board policy may state, "Please refer to the applicable collective bargaining agreement."

Districts must coordinate leaves provided by State law and the local bargaining agreement with the leave granted by the Family and Medical Leave Act (FMLA) (29 U.S.C. §2612), amended by Sec. 565 of the National Defense Authorization Act for Fiscal Year 2010 (Pub. L. 111-84). The FMLA grants eligible employees 12 weeks unpaid leave each year for: (1) the birth and first-year care of a child; (2) the adoption or foster placement of a child; (3) the serious health condition of an employee's spouse, parent, or child; (4) the employee's own serious health condition; (5) the existence of any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is on covered active duty; and (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. Districts are permitted to count paid leave (granted by State law or board policy) taken for an FMLA purpose against an employee's FMLA entitlement. 29 C.F.R. §825.207. See policy 5:185, *Family and Medical Leave*.

A plethora of State laws grant leaves to employees of the State and municipalities but are not applicable to school districts, including the Employee Blood Donation Leave Act (820 ILCS 149/), Local Government Disaster Service Volunteer Act (50 ILCS 122/), Organ Donor Leave Act (5 ILCS 327/), and Civil Air Patrol Leave Act (820 ILCS 148/).

<sup>2</sup> The provisions in this section are required by 105 ILCS 5/24-6, amended by P.A. 1009-0000. Each specified number of days in this section is the statutory minimum. Before adopting this policy or applying its provisions, the district should examine any applicable bargaining agreements.

Consult the board attorney about the Employee Sick Leave Act (820 ILCS 191/). The Act prohibits employers from limiting the use of sick time to an employee's own illnesses and allows employees to use employer-provided sick leave for their own illness or injury. The Act also prohibits employers from limiting the use of sick leave to an employee's own illness or injury. The Act defines family members as a spouse, child, stepchild, spouse, domestic partner, sibling, parent, mother- or father-in-law, grandchild, grandparent, or stepparent. Id. The Act also states that leave may be taken under the same terms for which the employee would be permitted to take leave for his or her own illness or injury.



Leave Act. Child bereavement leave allows for: (1) attendance by the bereaved staff member at the funeral or alternative to a funeral of his or her child, (2) making arrangements necessitated by the death of the staff member's child, or (3) grieving the death of the staff member's child, without any adverse employment action.

The leave must be completed within 60 days after the date on which the employee received notice of the death of his or her child. However, in the event of the death of more than one child in a 12-month period, an employee is entitled to up to a total of six weeks of bereavement leave during the 12-month period, subject to certain restrictions under State and federal law. Other existing forms of leave may be substituted for the leave provided in the Child Bereavement Leave Act. This policy does not create any right for an employee to take child bereavement leave that is inconsistent with the Child Bereavement Leave Act.

#### Sabbatical Leave <sup>7</sup>

Sabbatical leave may be granted in accordance with the School Code.

#### Personal Leave <sup>8</sup>

Professional staff members are granted one personal leave day per year. A personal leave day is defined as a day to allow professional personnel time to conduct personal business (but not vacation, travel, or work stoppage), which is impossible to schedule at a time other than during a school day. Any unused personal leave day in a school year will be credited to the cumulative sick leave.

The use of a personal day is subject to the following conditions:

1. Except in cases of emergency or unavoidable situations, personal leave requests should be submitted to the Building Principal three days in advance of the requested date.
2. No personal leave days may be used immediately before or immediately after a holiday unless the Superintendent grants prior approval.
3. Personal leave may not be used in increments of less than one-half day.
4. Personal leave days are subject to a substitute's availability.
5. Personal leave days may not be used during the first and/or last five days of the school year.
6. Personal leave days may not be used on in-service and/or institute training days, and
7. Personal leave may not be used by more than 10% of the teaching staff in each building at the same time.

#### Leave of Absence Without Pay <sup>9</sup>

The Board may grant a leave of absence without pay to tenured professional staff members who have rendered satisfactory service and desire to return to employment in a similar capacity at a time determined by the Board.

Each leave of absence shall be of the shortest possible duration required to meet the leave's purpose consistent with a reasonable continuity of instruction for students.

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<sup>7</sup> State law provides guidelines for sabbatical leaves but does not require boards to offer them. 105 ILCS 5/24-6.1.

<sup>8</sup> State law does not address personal leave. It is not uncommon for professional staff to be granted more than one day of personal leave a year.

<sup>9</sup> State law does not address leaves of absence without pay other than stating that a mutually agreed leave will not affect a teacher's contractual continued service. 105 ILCS 5/24-13.

### Leave to Serve as an Election Judge <sup>10</sup>

Any staff member who was appointed to serve as an election judge under State law may, after giving at least 20-days' written notice to the District, be absent without pay for the purpose of serving as an election judge. The staff member is not required to use any form of paid leave to serve as an election judge. No more than 10% of the District's employees may be absent to serve as election judges on the same Election Day.

### Child-Rearing Leave <sup>11</sup>

The Board shall grant a professional staff member's request for a non-paid, child-rearing leave, not to exceed the balance of the school year plus one additional school year (but in no event shall such leave exceed three semesters), provided the request complies with this policy. Nothing in this section shall prohibit a professional staff member from using paid sick days as provided in this policy. <sup>12</sup>

A teacher should request, if possible, a child-rearing leave by notifying the Superintendent in writing no later than 90 days before the requested leave's beginning date.<sup>13</sup> The request should include the proposed leave dates. The leave shall end before a new school year begins or before the first day of school after winter recess. <sup>14</sup>

Subject to the insurance carrier's approval, the teacher may maintain insurance benefits at his or her own expense during a child-rearing leave.

A professional staff member desiring to return before the leave's expiration will be assigned to an available vacancy for which the teacher is qualified, subject to scheduling efficiency and instruction continuity.

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<sup>10</sup> This paragraph restates 10 ILCS 5/13-2.5. The statute does not state whether the notice requirement is *calendar* days or *business* days. Support for it being *calendar* days is found in 10 ILCS 5/1-6; support for it being *business* days is found in 10 ILCS 5/1-3.

Rather than duplicate the statute's requirements in separate policies, policy 5:330, *Sick Days, Vacation, Holidays, and Leaves*, grants the leave to support personnel on the terms applicable to professional staff.

<sup>11</sup> The School Code does not address child-rearing. FMLA grants eligible employees a combined total of 12 weeks each year, with exceptions for teachers at the end of the school year, for, among other things, a child's: (1) birth and first-year care, and (2) adoption or foster placement (see policy 5:185, *Family and Medical Leave*). Districts not covered by the FMLA must treat a request for child-care leave to care for an adopted infant on terms comparable to those given biological mothers. McWright v. Alexander, 982 F.2d 222 (7th Cir. 1992).

<sup>12</sup> Districts offering a child-rearing or maternity leave must be very careful not to violate anti-discrimination laws. Districts can prohibit pregnant teachers from combining paid disability leave with an unpaid maternity leave, provided that non-pregnant teachers are likewise prohibited from combining a paid disability leave with an unpaid general leave of absence. Maganuco v. Leyden Comm. High Sch. Dist. 212, 939 F.2d 440 (7th Cir. 1991); U.S. v. Consol. High Sch. Dist. 230, 983 F.2d 790 (7th Cir. 1993); E.E.O.C. v. Elgin Teachers' Ass'n., 780 F.Supp. 1195 (N.D.Ill. 1991). A sick leave bank exclusion of maternity benefits violates Title VII. U.S. v. Consol. High Sch. Dist. 230, *supra*.

<sup>13</sup> The length of the notice - here 90 days - is *not* covered by State or federal law. If an employee fails to provide this notice, the employee still has the right to request a family and medical leave which has a much shorter notice requirement (see policy 5:185, *Family and Medical Leave*), and could be followed by a child-rearing leave.

<sup>14</sup> For a high school, omit "the first day of school after winter recess" and insert "at the semester break." Alternatively, the board may want to be more flexible by stating:

Every effort shall be made to have the leave minimally interrupt instructional continuity by ending . . .





Leaves for Victims of Domestic Violence, Sexual Violence, or Gender Violence, 5:330, 21

An unpaid leave from work is available to any staff member who: (1) is a victim of domestic violence, sexual violence, or gender violence, or has a family or household member who is a victim of such violence whose interests are not adverse to the employee as it relates to the domestic violence, sexual violence, or gender violence. The unpaid leave allows the employee to seek medical help, legal assistance, counseling, safety planning, and other assistance without suffering adverse employment action.

The Victims' Economic Security and Safety Act governs the purpose, requirements, scheduling, and continuity of benefits, and all other terms of the leave. Accordingly, if the District employs at least 50 employees, an employee is entitled to a total of 12 work weeks of unpaid leave during any 12-month period.<sup>22</sup> Neither the law nor this policy creates a right for an employee to take unpaid leave that exceeds the unpaid leave time allowed under, or is in addition to the unpaid leave time permitted by, the federal Family and Medical Leave Act of 1993 (29 U.S.C. §2601 *et seq.*).<sup>23</sup>

Leaves to Serve as an Officer or Trustee of a Specific Organization

Upon request, the Board will grant: (1) an unpaid leave of absence to an elected officer of a State or national teacher organization that represents teachers in collective bargaining negotiations,<sup>24</sup> (2) twenty days of paid leave of absence per year to a trustee of the Teachers' Retirement System in accordance with 105 ILCS 5/24-6.3,<sup>25</sup> and (3) a paid leave of absence for the local association

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<sup>21</sup> Required by the Victims' Economic Security and Safety Act, (VESSA) (820 ILCS 180/, amended by P.A. 101-221 and 101-222) and 56 Ill.Admin.Code §280). *Gender violence* means: (1) one or more acts of violence or aggression that is 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. *Sexual violence* is not specifically defined in VESSA. While the law applies to all school districts (820 ILCS 180/10(10)), the number of employees determines the number of total workweeks of leave available during any 12-month period (820 ILCS 180/20(a)(2)). The term *employee* includes part-time workers. The Ill. Dept. of Labor must furnish to all employers a notice summarizing the law's requirements (*Your Rights Under Illinois Employment Laws* at: [www2.illinois.gov/idol/Documents/flsposter.pdf#search=Your%20Rights%20Under%20Illinois%20Employment%20Laws](http://www2.illinois.gov/idol/Documents/flsposter.pdf#search=Your%20Rights%20Under%20Illinois%20Employment%20Laws)). All districts must post this notice in a conspicuous place where notices to employees are customarily posted.

<sup>22</sup> If the district employs fewer than 50 employees, it may substitute the following sentence: "Accordingly, if the District employs at least 15 but not more than 49 employees, an employee is entitled to a total of eight work weeks of unpaid leave during any 12-month period." 820 ILCS 180/20(a)(2).

If the district employs at least one but not more than 14 employees, it may substitute the following sentence: "Accordingly, if the District employs at least one but not more than 14 employees, an employee is entitled to a total four (4) work weeks of leave during any 12-month period." 820 ILCS 180/20(a)(2).

<sup>23</sup> VESSA states that an employee does not have a right to take unpaid leave that exceeds the unpaid leave time allowed under the FMLA. 820 ILCS 180/20(a)(2). Section 25 creates an ambiguity by stating, "[t]he employer may not require the employee to substitute available paid or unpaid leave for [leave available to victims of domestic violence, sexual violence, or gender violence]." 820 ILCS 180/25, amended by P.A. 101-221. Contact the board attorney for advice resolving this ambiguity.

<sup>24</sup> Required by 105 ILCS 5/24-13.

<sup>25</sup> Required by 105 ILCS 5/24-6.3. See policy 5:330, *Sick Days, Vacation, Holidays, and Leaves*, for the leave for an elected trustee for the Ill. Municipal Retirement Fund.

president of a State teacher association that is an exclusive bargaining agent in the District, or his or her designee, to attend meetings, workshops, or seminars as described in 105 ILCS 5/24-6.2. <sup>26</sup>

LEGAL REF.: 10 ILCS 5/13-2.5,  
105 ILCS 5/24-6, 5/24-6.1, 5/24-6.2, 5/24-6.3, 5/24-13, and 5/24-13.1.  
330 ILCS 61/, Service Member Employment and Reemployment Rights Act.  
820 ILCS 147/, School Visitation Rights Act.  
820 ILCS 154/, Child Bereavement Leave Act.  
820 ILCS 180/, Victims' Economic Security and Safety Act.

CROSS REF.: 5:180 (Temporary Illness or Temporary Incapacity), 5:185 (Family and Medical Leave), 5:330 (Sick Days, Vacation, Holidays, and Leaves)

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

<sup>26</sup> Required by 105 ILCS 5/24-6.2.

## Educational Support Personnel

### Sick Days, Vacation, Holidays, and Leaves 1

Each of the provisions in this policy applies to all educational support personnel to the extent that it does not conflict with an applicable collective bargaining agreement or individual employment contract or benefit plan; in the event of a conflict, such provision is severable and the applicable bargaining agreement or individual agreement will control.

#### Sick and Bereavement Leave 2

Full or part-time educational support personnel who work at least 600 hours per year receive 10 paid sick leave days per year. Part-time employees will receive sick leave pay equivalent to their regular

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<sup>1</sup> 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. The introductory paragraph recognizes that an applicable collective bargaining agreement or individual employment contract will supersede a conflicting provision of the policy. Alternatively, if the policy's subject matter is superseded by a bargaining agreement, the board policy may state, "Please refer to the applicable collective bargaining agreement."

Districts must coordinate leaves provided by State law and the local bargaining agreement with the leave granted by the Family and Medical Leave Act (FMLA) (29 U.S.C. §2612), amended by Sec. 565 of the National Defense Authorization Act for Fiscal Year 2010 (Pub. L. 111-84). The FMLA grants eligible employees 12 weeks unpaid leave each year for: (1) the birth and first-year care of a child; (2) the adoption or foster placement of a child; (3) the serious health condition of an employee's spouse, parent, or child; (4) the employee's own serious health condition; (5) the existence of any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is on (or has been notified of an impending call to) *covered active duty* in the Armed Forces; and (6) to care for the employee's spouse, child, parent, or next of kin who is a covered service member with a serious injury or illness. The definition of *covered servicemember* includes a veteran "who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness" if the veteran was a member of the Armed Forces "at any time during the period of 5 years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy." 29 U.S.C. §2611. Districts are permitted to count paid leave (granted by State law or board policy) taken for an FMLA purpose against an employee's FMLA entitlement. 29 C.F.R. §825.207. See policy 5:185, *Family and Medical Leave*.

A plethora of State laws grant leaves to employees of the State and municipalities, but are not applicable to school districts, including the Employee Blood Donation Leave Act (820 ILCS 149-), Local Government Disaster Service Volunteer Act (50 ILCS 122-), Organ Donor Leave Act (5 ILCS 327-), and Civil Air Patrol Leave Act (820 ILCS 148-).

<sup>2</sup> This section contains the minimum benefits provided by 105 ILCS 5-24-6. Each specified number of days in this section is the statutory minimum. The School Code does not address whether an employee's 10 paid sick leave days are available upon employment, accrued over months, or after working for a certain period of time, e.g., one year. Also be aware that the Employee Sick Leave Act (820 ILCS 191-) allows employees to use employer-provided sick leave to care for an ill or injured *family* member or to attend a medical appointment with a family member. The law defines family members as a child, stepchild, spouse, domestic partner, sibling, parent, mother- or father-in-law, grandchild, grandparent, or stepparent. *Id.* at 191-10(b). Leave may be taken under the same terms for which the employee would be permitted to take leave for his or her own illness or injury. Before adopting this policy or applying its provisions, the district should examine any applicable bargaining agreements. Strict accounting of unused sick days is important to avoid:

1. Employees accumulating sick time on a full time basis when they are truly working part-time hours;
2. Inconsistent treatment; and
3. Inaccurate reporting to IMRF (credit is given for full day unused sick days upon retirement). 40 ILCS 5-7-139(a)(8).



2-3.25g. The Superintendent may require that the employee provide evidence that the formal adoption of the policy process is underway.<sup>5</sup>

#### Vacation<sup>6</sup>

Twelve-month employees shall be eligible for paid vacation days according to the following schedule:

<u>Length of Employment</u>		<u>Monthly Accumulation</u>	<u>Maximum Vacation Leave Earned Per Year</u>
<u>From:</u>	<u>To:</u>		
Beginning of year 2	End of year 5	0.83 Days	10 Days per year
Beginning of year 6	End of year 15	1.25 Days	15 Days per year
Beginning of year 16	End of year	1.67 Days	20 Days per year

Part-time employees who work at least half-time are entitled to vacation days on the same basis as full-time employees, but the pay will be based on the employee's average number of part-time hours per week during the last vacation accrual year. The Superintendent will determine the procedure for requesting vacation.

Vacation days earned in one fiscal year must be used by the end of the following fiscal year; they do not accumulate. Employees resigning or whose employment is terminated are entitled to the monetary equivalent of all earned vacation.<sup>7</sup>

#### Holidays<sup>8</sup>

Unless the District has a waiver or modification of the School Code pursuant to Section 2-3.25g or 2-4-2(b) allowing it to schedule school on a legal school holiday listed below, District employees will not be required to work on:

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<sup>5</sup> 105 ILCS 5-24-6, amended by P.A. 100-513 and 101-642.

<sup>6</sup> State law does not require districts to give employees vacations.

<sup>7</sup> Required by 820 ILCS 115-5 and 56 Ill.Admin. Code §300.520 (Earned Vacations).

<sup>8</sup> Holidays are listed in 105 ILCS 5-24-2(a), (e), amended by P.A. 101-642, 102-0171, and 102-0172. The list of holidays is subject to change by the Illinois State Board of Education pursuant to 105 ILCS 5-24-2(d) and 10 ILCS 5-2B-10, added by P.A. 101-642. For information on the waiver process allowed by 105 ILCS 5-24-2(b), see 2-20-E, *Waiver and Modification Request Resource Guide*. Holidays not specified in the School or Election Codes may be added to the policy; however, boards adding additional holidays should monitor and review to ensure the list remains current.

A State-mandated school holiday on Good Friday is unconstitutional according to *Metz v. Leininger*, 57 F.3d 618 (7th Cir. 1995). Closing school on religious holidays may be permissible for those districts able to demonstrate that remaining open would be a waste of educational resources because of widespread absenteeism. Also, districts may be able to close school on Good Friday by adopting a spring holiday rationale or ensuring that it falls within spring break. School districts should discuss their options, including the collective bargaining implications, with their board attorney.

For more information about Election Day, see the discussion in En 4 in 5:200, *Terms and Conditions of Employment and Dismissal*, a 700-page manual for school board members and administrators published by the Illinois State Board of Education.

New Year's Day	Labor Day
Martin Luther King Jr.'s Birthday	Columbus Day
Abraham Lincoln's Birthday	Veteran's Day
Casimir Pulaski's Birthday	20 ... Election Day
Memorial Day	Thanksgiving Day
Independence Day	Christmas Day

A holiday will not cause a deduction from an employee's time or compensation. The District may require educational support personnel to work on a school holiday during an emergency or for the continued operation and maintenance of facilities or property.

Personal Leave<sup>9</sup>

Full-time educational support personnel have one paid personal leave day per year. The use of a personal day is subject to the following conditions:

1. Except in cases of emergency or unavoidable situations, a personal leave request should be submitted to the Building Principal three days before the requested date.
2. No personal leave day may be used immediately before or immediately after a holiday, or during the first and/or last five days of the school year, unless the Superintendent grants prior approval.
3. Personal leave may not be used in increments of less than one-half day.
4. Personal leave is subject to any necessary replacement's availability.
5. Personal leave may not be used on an in-service training day and/or institute training days.
6. Personal leave may not be used when the employee's absence would create an undue hardship.

Leave to Serve as a Trustee of the Illinois Municipal Retirement Fund

Upon request, the Board will grant 20 days of paid leave of absence per year to a trustee of the Ill. Municipal Retirement Fund in accordance with 105 ILCS 5/24-6.3.<sup>10</sup>

Other Leaves

Educational support personnel receive the following leaves on the same terms and conditions granted professional personnel in Board policy 5:250, *Leaves of Absence*:

- 1. Leave for Service in the Military<sup>11</sup>
- 2. School Visitation Leave<sup>12</sup>
- 3. School Visitation Leave.<sup>13</sup>

**Commented [DJ1]:** Text formerly in En 11 now appears in a new En 12.

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

<sup>9</sup> State law does not address personal leave. It is not uncommon for boards to grant educational support personnel the same number of personal leave days as are granted to professional staff.

<sup>10</sup> Required by 105 ILCS 5/24-6.3. A similar leave exists for an elected trustee for the Ill. Teachers' Retirement System. See 5:250, *Leaves of Absence*.

<sup>11</sup> Military leave is governed by the School Code (105 ILCS 5-10-20.7b, 5-24-13, and 13.1); the Service Member Employment and Reemployment Rights Act (38 U.S.C. 61, added by P.A. 100-1101, streamlining several job-related protection laws into one statute, mandating leave for *active service* and requiring the public employer to make up the difference between military pay and regular compensation); and the Uniformed Services Employment and Reemployment Rights Act (38 U.S.C. §4301 et seq.).

<sup>12</sup> Granting General Assembly leave to ESPs is optional.

- 14. Leaves for Victims of Domestic Violence, Sexual Violence, Gender Violence, [Child Abuse, and Child Neglect](#).<sup>14</sup>
- 15. Child Bereavement Leave.<sup>15</sup>
- 16. Leave to serve as an election judge.<sup>16</sup>

LEGAL REF.: 105 ILCS 5/10-20.7b, 5/24-2, and 5/24-6.  
 330 ILCS 617, Service Member Employment and Reemployment Rights Act.  
 820 ILCS 147, School Visitation Rights Act.  
 820 ILCS 154, Child Bereavement Leave Act.  
 820 ILCS 180, Victims' Economic Security and Safety Act.  
School Dist. 151 v. ISBE, 154 Ill.App.3d 375 (1st Dist. 1987); Elder v. Sch. Dist. No.127 1/2, 60 Ill.App.2d 56 (1st Dist. 1965).

CROSS REF.: 5:180 (Temporary Illness or Temporary Incapacity), 5:185 (Family and Medical Leave), 5:250 (Leaves of Absence)

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<sup>13</sup> 820 ILCS 147, amended by P.A. 101-486. See policy 5:250, *Leaves of Absence*, and 5:250-AP, *School Visitation Leave*.

<sup>14</sup> Required by Victims' Economic Security and Safety Act (820 ILCS 180), amended by P.A. 101-221 (S.B. 1115) and 56 Ill.Admin.Code Part 280. Important information about this leave is discussed in Fns 21, 22 and 25 of 5:250, *Leaves of Absence*.

<sup>15</sup> 820 ILCS 154, amended by P.A. 101-486. Important information about this leave is discussed in Fn 2 of 5:250, *Leaves of Absence*.

<sup>16</sup> 10 ILCS 5-13-2.5.

## Instruction

### School Accountability 1

According to the Illinois General Assembly, the primary purpose of schooling is the transmission of knowledge and culture through which students learn in areas necessary to their continuing development and entry into the world of work.<sup>2</sup> To fulfill that purpose, the Ill. State Board of Education (ISBE) prepared *State Goals for Learning* with accompanying *Illinois Learning Standards*.<sup>3</sup>

The School Board gives priority in the allocation of resources, including funds, time, personnel, and facilities, to fulfilling this purpose.

### Quality Assurance

The Board continuously monitors student achievement and the quality of the District's work. The Superintendent shall supervise the following quality assurance components, in accordance with State law and ISBE rules, and continuously keep the Board informed:

1. Prepare each school's annual recognition application and quality assurance appraisal, whether internal or external, to assess each school's continuous school improvement.<sup>4</sup>
2. Continuously assess the District's and each school's overall performance in terms of both academic success and equity. This includes, without limitation, a thorough analysis of ISBE's balanced accountability measure and each school's *Multiple Measure Index* and corresponding *Annual Measurable Objective* provided by ISBE.<sup>5</sup>

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

<sup>1</sup> State or federal law controls this policy's content.

<sup>2</sup> 105 ILCS 5/27-1.

<sup>3</sup> 23 Ill.Admin.Code §1, Appendix D.

<sup>4</sup> 105 ILCS 5/2-3.25 - 2-3.25b, as amended by P.A. 101-643; 23 Ill.Admin.Code §§1.10(a) and 1.20.

<sup>5</sup> 105 ILCS 5/2-3.25a, as amended by P.A. 101-643; 105 ILCS 5/2-3.64a-5, amended by P.A. 101-643; 101-643. First, the Department of Education (ISBE) significantly revised the system of standards for school districts and schools. Next, the Department of Education (ISBE) delayed certain implementation dates by one school year. Then, the Department of Education (ISBE) further revised the system of standards for school districts and schools. Annual state assessments required by 105 ILCS 5/2-3.64a-5(c), amended by P.A. 101-643, are not required if ISBE receives a waiver from the administration of assessments from the U.S. Dept. of Education. 105 ILCS 5/2-3.64a-5(c), as amended by P.A. 101-643. ISBE must establish recognition standards for student performance and school improvement for all districts and their individual schools and outline accountability measures in its State plan that it submits to the U.S. Dept. of Education under the Every Student Succeeds Act (ESSA) (Pub. L. 114-95). If ESSA ceases to require a state plan, then ISBE must develop a written plan in consultation with the Ill. Balanced Accountability Measure (IBAM) Committee. 105 ILCS 5/2-3.25a, as amended by P.A. 101-643, and 101-643.



3. If applicable, develop District and School Improvement Plans, present them for Board approval, and supervise their implementation. <sup>6</sup>
4. Prepare a school report card, present it at a regular Board meeting, and disseminate it as provided in State law. <sup>7</sup>
5. In accordance with 105 ILCS 5/2-3.153, annually administer a climate survey on the instructional environment within the school to, at minimum, students in grades 4 through 12 and teachers. <sup>8</sup>

LEGAL REF.: 105 ILCS 5/2-3.25, 5/2-3.25a, 5/2-3.25b, 5/2-3.25c, 5/2-3.25d-5, 5/2-3.25e-5, 5/2-3.25f, 5/2-3.25f-5, 5/2-3.63, 5/2-3.64a-5, 5/2-3.153, 5/10-21.1, 5/10-21.3a, and 5/27-1.  
23 Ill.Admin.Code Part 1, Subpart A: Recognition Requirements.

CROSS REF.: 6:170 (Title I Programs), 6:340 (Student Testing and Assessment Program), 7:10 (Equal Educational Opportunities)

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<sup>6</sup> The requirements around district and school improvement plans are unknown until ISBE revises its rules at 23 Ill.Admin.Code Part 1, Subpart A: Recognition Requirements following P.A.s 99-193 and 100-1046. P.A. 99-193 deleted the requirements concerning improvement plans as well as the sanctions for failing to make adequate yearly progress contained in 105 ILCS 5/2-3.25d, but then P.A. 100-1046 repealed 105 ILCS 5/2-3.25d in its entirety. 105 ILCS 5/2-3.25f(a) continues to state that ISBE “shall provide technical assistance to assist with the development and implementation of School and District Improvement Plans” and that schools or districts “that fail to make reasonable efforts to implement an approved Improvement Plan may suffer loss of State funds by school district, attendance center, or program as the State Board of Education deems appropriate.”

<sup>7</sup> 105 ILCS 5/10-17a, amended by P.A.s 99-193, 100-1046, and 101-68. *105 ILCS 5/10-17a* (a) requires that the report card be made available to the public, including parents/guardians, and that the report card be disseminated to the public in a manner that is consistent with the Illinois Freedom of Information Act. The report card shall be made available to the public in a manner that is consistent with the Illinois Freedom of Information Act. The report card shall be made available to the public in a manner that is consistent with the Illinois Freedom of Information Act.

Districts must present the report card at a regular board meeting, post it on the district’s website, make it available to newspapers of general circulation in the district, notify parents/guardians of its availability on the district’s website, provide it to parents/guardians on request, submit it to the regional superintendent or appropriate Intermediate Service Center, and otherwise disseminate it as required by State law. See 2:250-E2, *Immediately Available District Public Records and Web-Posted Reports and Records*.

<sup>8</sup> Required by 105 ILCS 5/2-3.153, 105 ILCS 5/2-3.153a, 105 ILCS 5/2-3.153b, and 23 Ill.Admin.Code §1.97. The State Superintendent must publicly report on the survey indicators of learning conditions resulting from the administration of the instrument at the individual school, district, and State levels. A district may use an alternate learning instrument approved by the State Superintendent at its own cost. These survey instruments are authorized by July 1 each year and posted at: [www.isbe.net/Pages/SEssentials-Survey.aspx](http://www.isbe.net/Pages/SEssentials-Survey.aspx). 23 Ill.Admin.Code §1.97(g)(1)-(2). To use an alternate survey instrument, the district must submit a form developed for this purpose and posted at [www.isbe.net/Pages/SEssentials-Survey.aspx](http://www.isbe.net/Pages/SEssentials-Survey.aspx) to the State Superintendent on or before a date established by the State Superintendent each year. *Id.*

Insert the following sentence for districts that administer an alternate survey of learning conditions at their own cost: “The District has elected to use an alternate climate survey of learning conditions instrument.”

## Instruction

### School Year Calendar and Day 1

#### School Calendar

The School Board, upon the Superintendent's recommendation and subject to State regulations, annually establishes the dates for opening and closing classes, teacher institutes and in-services, the length and dates of vacations, and the days designated as legal school holidays.<sup>2</sup> The school calendar shall have a minimum of 185 days to ensure 176 days of actual student attendance.<sup>3</sup>

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

<sup>1</sup> 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.

<sup>2</sup> State-mandated school holidays are found in 105 ILCS 5/24-2, amended by P.A. 101-642. See policy 5:330, *Sick Days, Vacation, Holidays, and Leaves*, for a holiday listing. The law allows a school board to hold school or schedule teachers' institutes, parent-teacher conferences, or staff development on five identified school holidays if: (1) the school board first holds a public hearing on the proposal; and (2) the person or persons honored by the holiday are recognized through instructional activities conducted on the school holiday or on the first school day preceding or following the school holiday. Districts must redo the public hearing process in the event they change plans for use of holidays. See Ill. State Board of Education (ISBE) guidance at: [www.isbe.net/Documents/district-holiday-plans13.pdf](http://www.isbe.net/Documents/district-holiday-plans13.pdf). This is an item on which collective bargaining may be required, and a board that wishes to implement this law should consult its attorney.

A State mandated school holiday on *Good Friday* is unconstitutional according to *Metzl v. Leininger*, 57 F.3d 618 (7th Cir. 1995). Closing school on religious holidays may still be permissible for those districts able to demonstrate, e.g., through surveys, that remaining open would be a waste of educational resources due to widespread absenteeism. Also, districts may be able to close school on Good Friday by adopting a *spring holiday* rationale or ensuring that it falls within spring break. School districts should discuss all of these options, and collective bargaining implications with their board attorneys.

If the county board or board of election commissioners chooses a school to be a polling place, the school district must make the school available. 10 ILCS 5/11-4.1. For the Election Day, the law encourages a school district to either: (1) close the school; or (2) hold a teachers' institute on that day with the students not in attendance. *Id.* 105 ILCS 5/24-2, amended by P.A. 101-642, required all government offices, with the exception of election authorities, to be closed, unless authorized to be used as a location for election day services or as a polling place for *2020 General Election Day*, and it required schools to be available to an election authority as a polling place for *2020 General Election Day*.

<sup>3</sup> The school calendar must have a minimum 185 days to ensure 176 days of actual pupil attendance that may include remote learning days, blended remote learning days, and up to five remote and blended remote learning planning days pursuant to 105 ILCS 5/10-30, added by P.A. 101-643, 105 ILCS 5/10-19, amended by P.A. s. 101-12 and 101-643, and 5/24-1; 23 Ill.Admin.Code §1.420. See policy 4:180, *Pandemic Preparedness; Management; and Recovery*, for information about remote and/or blended remote learning day plans. Schools must be closed during county institute. 105 ILCS 5/24-3. The school calendar may be a mandatory subject of collective bargaining. The calendar for the school term and any changes must be submitted to and approved by the regional superintendent before the calendar or changes may take effect. 105 ILCS 5/10-19.

E-learning days allow a school district to provide instruction to students electronically while they are not physically present due to inclement weather and other unexpected events. 105 ILCS 5/10-20.56, added by P.A. 101-12 and amended by P.A.s 101-643 and 101-584, opened the use of e-learning days from three pilot districts to all districts that meet the requirements of the statute. Before a school district can implement an e-learning program and use e-learning days it must, along with other requirements (1) hold a public hearing on the initial proposal for the e-learning program, (2) obtain verification from the Regional Office of Education (ROE) or Intermediate Service Center (ISC) for the school district that the initial proposal meets the requirements specified in the law, and (3) by resolution adopt a research-based program for district-wide e-learning days. Before implementing an e-learning program, boards must collectively bargain the impact of the program on the wages, hours, terms and conditions of employment with employee representative(s). More information about e-learning is available at: [www.isbe.net/Pages/Electronic-Learning.aspx](http://www.isbe.net/Pages/Electronic-Learning.aspx).

## Commemorative Holidays

The teachers and students shall devote a portion of the school day on each commemorative holiday designated in the School Code to study and honor the commemorated person or occasion.<sup>4</sup> The Board may, from time to time, designate a regular school day as a commemorative holiday.

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<sup>4</sup> 105 ILCS 5/24-2(c), which lists the following as commemorative holidays: Jan. 28 (Christa McAuliffe Day commemorating space exploration); Feb. 15 (Susan B. Anthony's birthday); Mar. 29 (Vietnam War Veterans' Day); Sept. 11 (Sept. 11th Day of Remembrance); the school day immediately preceding Veterans' Day (Korean War Veterans' Day); Oct. 1 (Recycling Day); Oct. 7 (Iraq and Afghanistan Veterans Remembrance Day); and Dec. 7 (Pearl Harbor Veterans' Day).

Other commemorative holidays include, but are not limited to: Arbor and Bird Day on the last Friday in April (105 ILCS 5/27-18); Leif Erickson Day on October 9 if a school day and otherwise on a school day nearest the date (105 ILCS 5/27-19); American Indian Day on the 4th Friday of September (105 ILCS 5/27-20); Ill. Law Week during the first full school week in May (105 ILCS 5/27-20.1); Just Say No Day on a school day in May designated by official proclamation of the Governor (105 ILCS 5/20.2); Ronald Reagan Day on Feb. 6 (5 ILCS 490/2); Barack Obama Day on August 4 (5 ILCS 490/3); Indigenous Peoples Day on the last Monday in September (5 ILCS 490/7); Lincoln's Birthday February 12 (5 ILCS 490/60); Martin Luther King, Jr. Birthday the third Monday in January (5 ILCS 490/65); Prairie Week the third full week in September (5 ILCS 490/75); Retired Teachers' Week the fourth week in May (5 ILCS 490/80); Veterans Day November 11 (5 ILCS 490/90); Preventing Lost Potential Day September 19 (5 ILCS 490/141); Day of Remembrance of the Victims of Slavery and the Transatlantic Slave Trade on March 25 (5 ILCS 490/155); the first full week of January is Emancipation Proclamation Week (5 ILCS 490/160); Mother Mary Ann Bickerdyke Day on the second Wednesday in May (5 ILCS 490/175); and April is Arab American Heritage Month (5 ILCS 490/6).

## School Day

The Board establishes the length of the school day with the recommendation of the Superintendent and subject to State law requirements.<sup>5</sup> The Superintendent or designee shall ensure that observances required by State law are followed during each day of school attendance.<sup>6</sup>

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<sup>5</sup> A school day is required to consist of a minimum five clock-hours under the direct supervision of a teacher or non-teaching personnel or volunteer personnel that provides non-teaching or supervisory duties as specified in 105 ILCS 5/10-22.34(a), in order to qualify as a full day of attendance, unless (1) the Governor issues a disaster declaration due to a public health emergency pursuant 20 ILCS 3305/7, and (2) the State Superintendent of Education establishes minimum clock-hour requirements to align with the circumstances of the Governor's disaster declaration. 105 ILCS 5/10-19.05, added by P.A. 101-12 and amended by P.A. 101-643. See [www.isbe.net/Documents/SB28Instructional-Day.pdf](http://www.isbe.net/Documents/SB28Instructional-Day.pdf) for ISBE's notice regarding this law. See 105 ILCS 5/10-19.05, added by P.A. 101-12, for additional exceptions to the attendance calculation.

Contrast 105 ILCS 5/18-12, *Attendance for Days of School Closure*. It allows a partial day of attendance to be counted as a full day due to an adverse weather condition, condition beyond the control of the school district that poses a health and safety threat, or use of school facilities by local or county authorities for holding a memorial or funeral service in remembrance of a community member (up to two school days per school year) provided one of following conditions is met: (1) the school district has provided at least one hour of instruction prior to the closure of the school district; (2) a school building has provided at least one hour of instruction prior to the closure of the school building; or (3) the normal start time of the school district is delayed. The law also outlines the process to claim attendance prior to providing any instruction when a school district must close a building or buildings, but not the entire district, after consultation with a local emergency response agency or due to a condition beyond the control of the district. Additionally, 105 ILCS 5/18-12.5 outlines the process for claiming attendance when a school district must close a building or buildings, but not the entire district, specifically because of a public health emergency. Attendance for such days may only be claimed if the school building(s) was scheduled to be in operation on those days.

Alternative education programs may provide fewer than five hours under certain circumstances. 105 ILCS 5/2-3.33a and 5/13B-50.

<sup>6</sup> 105 ILCS 5/27-3 requires the Pledge of Allegiance to be recited every day in elementary and secondary schools. Note that the Illinois statute does not require every student to recite the Pledge – that kind of mandatory participation would violate the U.S. Constitution. Schools may not coerce a student into saying the Pledge, nor may they punish students for refusing to participate in any aspect of the flag ritual, including standing, saluting the flag, and reciting the Pledge. West Virginia State Bd. of Educ. v. Barnette, 319 U.S. 624 (1943); Sherman v. Community Consol. Sch. Dist. 21 of Wheeling, T. W. Va., 980 F.2d 437 (7th Cir. 1992). Consider using permissive rather than mandatory language to introduce the recitation of the Pledge, such as, "You may now stand to recite the Pledge." Schools may, of course, require that non-participants maintain order and decorum appropriate to the school environment.

The Silent Reflection and Student Prayer Act mandates a *brief period of silence* for all Illinois public school students at the opening of each school day. 105 ILCS 20/1. A student filed a federal lawsuit challenging the constitutionality of this law under the First Amendment, but the law was ultimately upheld by the Appeals Court. Sherman v. Koch, 623 F.3d 501 (7th Cir. 2010), *cert denied by* 565 U.S. 815 (2011). 105 ILCS 5/10-20.46 requires a moment of silence to recognize veterans during any type of event held at a district school on Nov. 11. See fn 2 above for more discussion.

LEGAL REF.: 105 ILCS 5/10-19, 5/10-19.05, 5/10-20.56, 5/10-24.46, 5/10-30, 5/18-12, 5/18-12.5,  
5/24-2, 5/27-3, 5/27-18, 5/27-19, 5/27-20, 5/27-20.1, 5/27-20.2, and 20/1.  
10 ILCS 5/11-4.1.

105 ILCS 5/18-12.5(a)(1) (Powers and Duties of the Board)

23 Ill.Admin.Code §1.420(f).

Metzl v. Leininger, 850 F.Supp. 740 (N.D. Ill. 1994), *aff'd by* 57 F.3d 618 (7th Cir. 1995).

CROSS REF.: 2:20 (Powers and Duties of the School Board; Indemnification), 4:180 (Pandemic Preparedness; Management; and Recovery), 5:200 (Terms and Conditions of Employment and Dismissal), 5:330 (Sick Days, Vacation, Holidays, and Leaves), 6:60 (Curriculum Content), 6:70 (Teaching About Religions), 7:90 (Release During School Hours)

## Instruction

### School Wellness 1

Student wellness, including good nutrition and physical activity, shall be promoted in the District's educational program, school-based activities, and meal programs.<sup>2</sup> This policy shall be interpreted consistently with Section 204 of the Child Nutrition and WIC Reauthorization Act of 2004 and the Healthy Hunger-Free Kids Act of 2010 (HHFKA).<sup>3</sup>

The Superintendent will ensure: <sup>4</sup>

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<sup>1</sup> State or federal law requires this subject matter to be covered in policy and controls its content. The federal Child Nutrition and WIC Reauthorization Act of 2004 (Child Nutrition Act) requires school districts participating in a program authorized by the National School Lunch Act (NSLA) (42 U.S.C. §1751 *et seq.*) or the Child Nutrition Act to have a school wellness policy. Pub. L. 108-265, Sec. 204. State law required the Ill. State Board of Education (ISBE) to "establish a State goal that all school districts have a wellness policy." 105 ILCS 5/2-3.139. ISBE complied in October 2007 by "instruct[ing] all public school districts to establish a School Wellness Policy." The federal and State laws list mandatory topics for the policy. The second sentence of this policy should be deleted if the district does not participate in the NSLA or the Child Nutrition Act.

See ISBE's numerous resources at: [www.isbe.net/Pages/Nutrition-and-Wellness.aspx](http://www.isbe.net/Pages/Nutrition-and-Wellness.aspx). Action for Healthy Kids is a national organization dedicated to overcoming the "epidemic of overweight, undernourished and sedentary youth by focusing on changes in schools;" see its resources at: [www.actionforhealthykids.org/index.php](http://www.actionforhealthykids.org/index.php).

This sample policy seeks to be both legally compliant and consistent with good governance principles. Both federal and State laws allow each school district to determine how the required topics are addressed. Good governance principles suggest that the board should establish goals with community and stakeholder input. The administration should determine how to achieve the goals. The board should monitor this policy by requesting and reviewing periodic implementation data.

The Ill. Dept. of Agriculture and ISBE are directed to create the Farm Fresh Schools Program. 105 ILCS 124/, Farm Fresh Schools Program Act: 30 ILCS 105/5.728, Farm Fresh Schools Program Fund. They are also directed to administer a grant program to further the Program's intent of "reduc[ing] obesity and improve[ing] nutrition and public health, as well as strengthen[ing] local agricultural economies by increasing access to and promoting the consumption of locally grown fruits and vegetables in schools and increasing physical activities and programs that promote pupil wellness." 105 ILCS 124/10.

<sup>2</sup> 7 C.F.R. §210.31(a) and (c)(1). The law does not require *school-based activities* to be listed in policy – only that boards implement them. Federal law requires consideration of *evidence-based strategies and techniques* when implementing school-based activities. A board that chooses to list these activities must update them as they change by readopting the policy.

For boards that have developed and wish to list their chosen evidence-based school-based activities, add the following sentence to the paragraph as the second sentence: "The District's school-based activities include: *[list the chosen evidence-based school-based activities]*."

For boards that have not yet developed and implemented their evidence-based school-based activities and need technical assistance, see the websites for:

1. The U.S. Dept. of Agriculture (USDA) at: <https://healthymeals.fns.usda.gov/local-wellness-policy-resources/wellness-policy-elements/other-school-based-activities>; and
2. The Alliance for a Healthier Generation (AHG) at: <https://www.healthiergeneration.org/>.

<sup>3</sup> Healthy Hunger-Free Kids Act of 2010 (HHFKA); 42 U.S.C. §1758b (Pub.L. 111-296); 7 C.F.R. §§210.10 and 210.31(a).

<sup>4</sup> *Id.*; 7 C.F.R. §210.31(c)(4) (identification of school official responsible for implementation of the policy), §210.31 (d)(2) (informing the public about the policy and making it available on an annual basis), §210.31 (d)(3) (informing the public of the progress toward meeting the goals of the policy by making triennial assessments available), and §210.31(e) (policy implementation, assessments, and updates). See also fn 20, below.

1. Each school building complies with this policy;
2. The policy is available to the community on an annual basis through copies of or online access to the Board Policy Manual<sup>5</sup>; and
3. The community is informed about the progress of this policy's implementation.

#### Goals for Nutrition Education and Nutrition Promotion <sup>6</sup>

The goals for addressing nutrition education and nutrition promotion include the following:

- Schools will support and promote sound nutrition for students.
- Schools will foster the positive relationship between sound nutrition, physical activity, and the capacity of students to develop and learn.
- Nutrition education will be part of the District's comprehensive health education curriculum. See Board policy 6:60, *Curriculum Content*. <sup>7</sup>

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This sample policy identifies the superintendent as the school official responsible to ensure compliance and oversee the policy. When the rules require specific identification of a school official, the policy does not include the delegation language *or designee*. **[School boards] must identify the [school official(s)] responsible for oversight of [its wellness policy] to ensure compliance. [Boards] have discretion and are the most qualified to identify the best candidate for [their wellness] policy leadership as size, resources, and needs vary greatly among [school districts]**. See Federal Register Vol. 81, No. 146 at 50155 at: [www.gpo.gov/fdsys/pkg/FR-2016-07-29/pdf/2016-17230.pdf](http://www.gpo.gov/fdsys/pkg/FR-2016-07-29/pdf/2016-17230.pdf).

For boards that wish to identify a school official other than the superintendent, delete ~~Superintendent~~ and replace it with the responsible school official's title.

The intent of the rule is that schools "notify households on an annual basis of the availability of the local school wellness policy information and provide information that would enable *interested households* to obtain additional details." Fed. Reg. Vol. 81, No. 146 at 50160. However, the rule states, "[i]nform the *public* about the content and implementation of the local school wellness policy, and make the policy and any updates to the policy available to the public on an annual basis."

To achieve the intent of this requirement, the regulations suggest several methods for districts, which include a common method many districts likely already use: post the policy on the websites for the *public*, and use the student handbook to distribute important information to *interested households*.

<sup>5</sup> For boards that distribute their wellness policies via student handbooks and want to list that in the text of their policies, insert "and distributed to students and their parents/guardians through student handbooks". For sample handbook language, see the Illinois Principals Association *Online Model Student Handbook (MSH)* at: [www.ilprincipals.org/resources/model-student-handbook](http://www.ilprincipals.org/resources/model-student-handbook).

<sup>6</sup> Goals for nutrition education and nutrition promotion are required topics, but the local board may determine what goals are appropriate. Pub. L. 108-265, Sec. 204(a)(1) and Pub. L. 111-296; 105 ILCS 5/2-3.139(a)(2); and 7 C.F.R. §210.31(c)(1). Replace this policy's text with a board's own locally-developed nutritional education and promotion goals.

*Nutrition promotion*, required by Pub. L. 111-296, is not well-described or defined. The Food Nutrition Service (FNS) describes *nutrition promotion* more clearly in its technical assistance materials and the proposed 7 C.F.R. Part 210 rules (Fed. Reg. Vol. 79, No. 38 at 10695), dated Feb. 26, 2014, which state, "... evidence based techniques and scientifically-based nutrition messages targeted to a specific audience to inspire and motivate them to take action and use these techniques and messages to create environments and food service venues (classroom, cafeteria, a la carte, vending machines, school stores, snack bars, fundraisers, home, etc.) that encourage healthy nutrition choices, as well as enhance and encourage participation in school meal programs."

More specific materials about nutrition education and promotion, including songs, games, posters, videos, event-planning booklets, wellness communication toolkits, school garden activities, and a graphics library, have also been developed by the FNS' Team Nutrition at: [www.fns.usda.gov/tn/resource-library](http://www.fns.usda.gov/tn/resource-library).

Technical assistance for:

1. *Nutritional promotion* at: [healthymeals.fns.usda.gov/local-wellness-policy-resources/wellness-policy-elements/nutrition-promotion](http://healthymeals.fns.usda.gov/local-wellness-policy-resources/wellness-policy-elements/nutrition-promotion).
2. Goals development for and implementation of nutrition education and promotion are available from AHG at: [www.healthiergeneration.org/](http://www.healthiergeneration.org/).

<sup>7</sup> 105 ILCS 110-3 and 23 Ill.Admin.Code §1.420(n).

## Goals for Physical Activity<sup>8</sup>

The goals for addressing physical activity include the following:

- Schools will support and promote an active lifestyle for students.
- Physical education will be taught in all grades and shall include a developmentally planned and sequential curriculum that fosters the development of movement skills, enhances health-related fitness, increases students' knowledge, offers direct opportunities to learn how to work cooperatively in a group setting, and encourages healthy habits and attitudes for a healthy lifestyle. See *State policy* 6:60, *Curriculum Content* and *Board policy* 7:260, *Exemption from Physical Education*.<sup>9</sup>
- During the school day, all students will be required to engage in a daily physical education course, unless otherwise exempted. See *State policy* 6:60, *Curriculum Content* and *Board policy* 7:260, *Exemption from Physical Education*.<sup>10</sup>
- The curriculum will be consistent with and incorporate relevant *Illinois Learning Standards for Physical Development and Health* as established by the Illinois State Board of Education (ISBE).<sup>11</sup>

## Nutrition Guidelines for Foods Available During the School Day; Marketing Prohibited<sup>12</sup>

Students will be offered and schools will promote nutritious food and beverage choices during the school day that are consistent with Board policy 4:120, *Food Services* (requiring compliance with the nutrition standards specified in the U.S. Dept. of Agriculture's (USDA) *Smart Snacks* rules).<sup>13</sup>

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<sup>8</sup> This is a required topic, but the local board may determine what goals are appropriate. Pub.L. 108-265, Sec. 204(a)(1); 105 ILCS 5/2-3.139(a)(2); and 7 C.F.R. §210.31(a) and (c)(1).

<sup>9</sup> 105 ILCS 5/27-5 and 27-6; 23 Ill.Admin.Code §1.425 (f) and (h). See also Board policy 6:60, *Curriculum Content*. For standards-based lesson plans and curricula for pre-kindergarten through grade 12, classroom-based lesson plans, recipes, guidance to improve the quality of school meals, and other materials for nutrition education and promotion, including songs, games, posters, videos, event-planning booklets, wellness communication toolkits, school garden activities, and a graphics library, see the resources developed by the FNS' Team Nutrition at: [www.fns.usda.gov/tn/resource-library](http://www.fns.usda.gov/tn/resource-library).

<sup>10</sup> *Id.* For more information on the requirements for physical education, see the *Illinois Learning Standards for Physical Development and Health* published by the Illinois State Board of Education (ISBE) at: [www.isbe.net/Pages/Learning-Standards.aspx](http://www.isbe.net/Pages/Learning-Standards.aspx). For more information on the requirements for physical education, see the *Illinois Learning Standards for Physical Development and Health* published by the Illinois State Board of Education (ISBE) at: [www.isbe.net/Pages/Learning-Standards.aspx](http://www.isbe.net/Pages/Learning-Standards.aspx).

<sup>11</sup> Schools must "set student learning objectives which meet or exceed goals established by the State." 105 ILCS 5/2-3.63. The *Learning Standards* can be found on ISBE's website at: [www.isbe.net/Pages/Learning-Standards.aspx](http://www.isbe.net/Pages/Learning-Standards.aspx). See *State Goal 20: Achieve and maintain a health-enhancing level of physical fitness based upon continual self-assessment* at: <https://www.isbe.net/Pages/Physical-Education-and-Health.aspx>.

105 ILCS 5/27-6.5 describes physical fitness assessments required, beginning with the 2016-17 school year and every school year thereafter, for grades 3-12 in an effort to meet State Goal 20 of the *Illinois Learning Standards for Physical Development and Health*. See also 23 Ill.Admin.Code §1.425 (f) and (h); ISBE's *IL Fitness Assessments and Data Reporting Requirements Questions and Answers (Rev. 5-22-17)* at: <https://www.isbe.net/documents/fitness-asmt-faq.pdf>.

<sup>12</sup> The policy must include the nutrition guidelines selected by the board for "all foods available during the school day with the objective of promoting student health and reducing childhood obesity." Pub. L. 108-265, Sec. 204(a)(2); 105 ILCS 5/2-3.139(a)(1); and 7 C.F.R. §210.10 and 210.31(a), (c)(2), and (c)(3)(i)-(iv). 42 U.S.C. 1758b(b)(2)(A) requires that each local school wellness policy include nutrition guidelines for all foods and beverages available for sale on the school campus during the school day to ensure they are consistent with the statutory and regulatory provisions governing school meals (7 C.F.R. §§210.10, 220.8 and 220.10) and competitive foods (7 C.F.R. §210.11) as applicable.

Prior to July 2016 when 7 C.F.R. § 210.10 and 7 C.F.R. § 210.31(c) (respectively) became effective, the current *Dietary Guidelines for Americans* published jointly by the U.S. Depts. of Health and Human Services and Agriculture (USDA) were used as nutrition guidelines.



In addition, in order to promote student health and reduce childhood obesity,<sup>14</sup> the Superintendent or designee shall:

1. Restrict the sale of *competitive foods*, as defined by the USDA, in the food service areas during meal periods;
2. Comply with all ISBE rules; and
3. Prohibit marketing during the school day of foods and beverages that do not meet the standards listed in Board policy 4:120, *Food Services*, i.e., in-school marketing of food and beverage items must meet *competitive foods* standards.<sup>15</sup>

*Competitive foods* standards do not apply to foods and beverages available, but not sold in school during the school day; e.g., brown bag lunches, foods for classroom parties, school celebrations, and reward incentives.<sup>16</sup>

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<sup>13</sup> 7 C.F.R. §§210.10 (meal requirements for lunches and after-school snacks); 210.11(c) (general nutrition standards for competitive food, i.e., *Smart Snacks*); and 210.31(a) and (c) (encompassing all other nutrition requirements, including foods not sold to students during the school day (classroom parties)).

<sup>14</sup> 7 C.F.R. §210.31(c)(3)(iv).

<sup>15</sup> 7 C.F.R. §§210.11(a)(2) and 210.31(c)(3)(iii); 23 Ill. Admin. Code §305.5. For a definition of *competitive foods*, see 4:120-AP, *Food Services; Competitive Foods; Exemptions*.

<sup>16</sup> 7 C.F.R. §210.31(c)(2). This sample policy does not apply competitive food standards to foods not sold in schools; i.e., foods that students bring into the school from home, etc.

**The final [federal] rule does not require that local school wellness policy standards for foods provided in schools during the school day but not available for sale conform to the school meal requirements or the competitive foods standards.** In fact, the preamble to the final rule reiterates this saying, “[a]gain, it should be noted that with regard to foods provided, but not sold, in schools, local jurisdictions have the discretion to adopt standards that conform to [the competitive food standards] or to adopt more or less stringent standards.” Similarly, the preamble to the final rule clearly states the rule does not require school boards to address standards for food brought from home for individual consumption. See Federal Register Vol. 81, No. 146 at 50158 at: [www.gpo.gov/fdsys/pkg/FR-2016-07-29/pdf/2016-17230.pdf](http://www.gpo.gov/fdsys/pkg/FR-2016-07-29/pdf/2016-17230.pdf). Emphasis added.

This sample policy adopts less stringent standards for foods not sold in schools. For boards that wish to adopt standards that conform to the competitive food standards or apply even more stringent standards to foods available, but not sold during the school day, delete the last sentence of this subhead: ~~*Competitive foods standards do not apply to foods and beverages available, but not sold in school during the school day; e.g., foods for classroom parties, school celebrations, and reward incentives.*~~ and choose one of the following sentences to replace it:

**Option 1:** The District applies *competitive foods* standards listed in Board policy 4:120, *Food Services*, to foods available, but not sold, in schools.

**Option 2:** The District applies more stringent standards than the *competitive foods* standards to foods available, but not sold, in schools. These include [*list the chosen standards to foods available, but not sold, in schools*].

The AHG encourages school officials to consider prohibiting foods as a reward and using the *Smart Snacks* standards for foods available, but not sold during the school day. However, enforcing such standards against students who are sent to school with snacks from their parents/guardians is difficult and may be considered overreach. Further, such a standard may open the district to challenges. Consult the board attorney about enforcement of standards that meet the *competitive foods* standards – or even more stringent standards – upon foods available, but not sold during the school day, i.e., choosing Options 1 or 2, above.

Exempted Fundraising Day (EFD) Requests <sup>17</sup>

All food and beverages sold to students on the school campuses of participating schools during the school day must comply with the “general nutrition standards for competitive foods” specified in federal law.

ISBE rules prohibit EFDs for grades 8 and below in participating schools.

The Superintendent or designee in a participating school may grant an EFD for grades 9 through 12 in participating schools. To request an EFD and learn more about the District’s related procedure(s), contact the Superintendent or designee. The District’s procedures are subject to change. The number of EFDs for grades 9 through 12 in participating schools is set by ISBE rule.

Guidelines for Reimbursable School Meals <sup>18</sup>

Reimbursable school meals served shall meet, at a minimum, the nutrition requirements and regulations for the National School Lunch Program and/or School Breakfast Program. <sup>19</sup>

Unified Food Planning Plan <sup>20</sup>

In collaborating with the local health department, the Superintendent or designee will:

1. Develop a comprehensive food plan (including annual food and nutrition education studies);
2. Implement the Plan through the District;
3. Insure use of the plan by all schools (National School Lunch Act) with its accompanying guidance from the U.S. Department of Agriculture on the School Breakfast Program; <sup>21</sup>
4. Insure that any leftover food is appropriately donated to combat potential food insecurity in the District’s community. <sup>22</sup> In accordance with all federal regulations and state and local health and safety codes.

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<sup>17</sup> Required by 23 Ill.Admin.Code §305.15(c)(2), 7 C.F.R. §§210.11(b)(4), (c)(2) and 210.30(c)(2) for participating schools that want to grant EFDs.

For elementary districts, delete these sentences: ~~The Superintendent or designee in a participating school may grant an EFD for grades 9 through 12 in participating schools. To request an EFD and learn more about the District’s related procedure(s), contact the Superintendent or designee. The District’s procedures are subject to change. The number of EFDs for grades 9 through 12 in participating schools is set by ISBE rule.~~

For high school districts, delete this sentence: ~~EFDs are prohibited for grades eight and below in participating schools.~~

Detailed procedures are subject to change and are too complicated for policy text. This policy seeks to balance the requirement to include procedures in the policy for requesting an EFD by providing information about the initial steps and directing the superintendent or designee to inform the requestor of the current procedure. For a list of the number of available EFDs and a more detailed sample step-by-step procedure to request them, see 4:120-AP, *Food Services: Competitive Foods; Exemptions*.

<sup>18</sup> Inclusion in the policy is required for only those districts that participate in a program authorized by the NSLA or the Child Nutrition Act.

<sup>19</sup> Child Nutrition Act of 1966 (42 U.S.C. §1771 et seq.) and NSLA (42 U.S.C. §1758).

<sup>20</sup> ~~Ill. Admin. Code 23 Ill. Admin. Code 305.15(c)(2)~~

<sup>21</sup> ~~Ill. Admin. Code 23 Ill. Admin. Code 305.15(c)(2)~~

<sup>22</sup> ~~Ill. Admin. Code 23 Ill. Admin. Code 305.15(c)(2)~~

~~Ill. Admin. Code 23 Ill. Admin. Code 305.15(c)(2)~~

~~Ill. Admin. Code 23 Ill. Admin. Code 305.15(c)(2)~~

### Monitoring <sup>23</sup>

At least every three years, the Superintendent shall provide implementation data and/or reports to the Board concerning this policy's implementation sufficient to allow the Board to monitor and adjust the policy (a triennial report).<sup>24</sup> This triennial report must include without limitation each of the following:

- An assessment of the District's implementation of the policy
- The extent to which schools in the District are in compliance with the policy
- The extent to which the policy compares to model local school wellness policies
- A description of the progress made in attaining the goals of the policy
- How the District will make the results of the assessment available to the public
- Where the District will retain records of the assessment <sup>25</sup>

The Board will monitor and adjust the policy pursuant to policy 2:240, *Board Policy Development*.

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<sup>23</sup> The policy must establish a plan for measuring implementation of the local wellness policy, including designation of one or more persons within the local educational agency at each school, as appropriate, charged with operational responsibility for ensuring that the school meets the local wellness policy. Pub. L. 108-265, Sec. 204(a)(4); 105 ILCS 5/2-3.139(a)(4); and 7 C.F.R. §210.31(c)(5), (6), and (c)(1). 105 ILCS 110/3.5(a) requires ISBE to develop and maintain a nutrition and physical activity best practices database. Materials may be found at: [www.isbe.net/Pages/Nutrition-and-Wellness.aspx](http://www.isbe.net/Pages/Nutrition-and-Wellness.aspx).

<sup>42</sup> U.S.C. §1758b (Pub. L. 111-296) requires the public to receive periodic measures with the listed items. The accepted practice is annual reports. There is very little guidance to assist school districts in complying with this requirement, and school districts were expected to be working toward developing a reasonable method to implement this requirement by the end of the 2011-2012 school year. Without guidance, to ensure compliance, superintendents should contact their Regional Office of Education regarding their school districts' efforts to comply with this requirement. A guide to help school districts conduct an evaluation of local wellness policies is available, along with more guidance at: [www.fns.usda.gov/tn/healthy/wellnesspolicy\\_tools.html](http://www.fns.usda.gov/tn/healthy/wellnesspolicy_tools.html).

<sup>24</sup> 7 C.F.R. §210.31(e)(2)(i)-(iii) and (3).

<sup>25</sup> *Id.* and §210.31(f); see also the Local Records Act, 50 ILCS 205/. It governs retention of district records; its definition of *public record* is narrower than the definition in the Freedom of Information Act. These communications must be retained only when they contain: (1) evidence of the district's organization, function, policies, procedures, or activities, or (2) informational data appropriate for preservation. Consult the board attorney for a more thorough analysis and a legal opinion about how to meet both of the federal records retention requirements discussed in ¶n 25, below, and the Local Records Act.

## Community Involvement <sup>26</sup>

The Board and Superintendent will actively invite suggestions and comments concerning the development, implementation, periodic reviews, and updates of the school wellness policy from parents, students, representatives of the school food authority, teachers of physical education, school health professionals, the school board, school administrators, and the community. Community involvement methods shall align their suggestions and comments to policy 2:140, *Communications To and From the Board* and/or the **Community Engagement** subhead in policy 8:10, *Connection with the Community*. <sup>27</sup>

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<sup>26</sup> A board must establish a plan in its wellness policy for involving parents, students, and representatives of the school food authority, teachers of physical education, school health professionals, the school board, school administrators, and the public in the development of the school wellness policy. Pub.L. 108-265, Sec. 204(a)(5), amended by 42 U.S.C. §1758b (Pub.L. 111-296); 105 ILCS 5/2-3.139(a)(3); 7 C.F.R. §210.31(c)(5) (requirement to describe involvement plan in policy), and 7 C.F.R. §210.31(d)(1)(requirement to allow certain stakeholders to participate in policy development, etc.).

**School districts have discretion in exactly how they implement this requirement, and [each [school district] is best suited to determine the distinctive needs of the community it serves.** See Federal Register Vol. 81, No. 146 at 50155 at: [www.gpo.gov/fdsys/pkg/FR-2016-07-29/pdf/2016-11730.pdf](http://www.gpo.gov/fdsys/pkg/FR-2016-07-29/pdf/2016-11730.pdf).

This requirement's awkward wording notwithstanding, a board may take compliance steps by:

1. Seeking community input or involvement during this policy's adoption and monitoring phases, and inviting suggestions and comments during the public comment portion of board meetings from time to time. This method aligns with 2:140, *Communications To and From the Board* and 2:240, *Board Policy Development*.
2. Establishing a "local school wellness committee." This method is discussed in the preamble to 7 C.F.R. §210.31(d)(1), which suggests "identifying individuals" to serve on a "local school wellness policy committee." **However, the final text of 7 C.F.R. §210.31(d)(1) does not specifically require districts to establish a local school wellness policy committee – only that they “permit [groups listed in the policy above] to participate ... .”** See also the citation to the Federal Register, in the second paragraph of this fn, above, discussing policy implementation discretion.

The default text of this policy follows item #1 above and does not establish a local school wellness committee. For a district that wants to appoint or approve a local school wellness committee, add the following optional sentence as the last sentence of this subhead: "As necessary, the Superintendent or designee will convene a Wellness Committee with at least one representative from each of the listed groups." Also list the Wellness Committee in 2:150-AP, *Superintendent Committees*. As much of the work of developing a plan to involve local stakeholders is administrative/staff work rather than governance work, best practice is for a Wellness Committee be an administrative committee, but consult the board attorney for guidance. See fn 3 in policy 2:150, *Committees* for a discussion of Open Meetings Act implications of the Wellness Committee being a board committee.

If a board wants to comply with the USDA's *encouragement* to include Supplemental Nutrition Assistance Program Education (SNAP-ED) coordinators or educators in the group to provide input about the policy, add:

“, Supplemental Nutrition Assistance Program Education (SNAP-ED) coordinators, educators” to the end of the first sentence in this subhead, immediately before: “, and community.”

<sup>27</sup> If a board has not adopted the **Community Engagement** subhead in policy 8:10, *Connection with the Community*, delete the phrase at the end of the second sentence: "Individuals shall align their suggestions and comments to policy 2:140, *Communications To and From the Board* and/or the **Community Engagement** subhead in policy 8:10, *Connection with the Community*."

A board may also choose to post this policy on its website and include it in the student handbook.

## Recordkeeping <sup>28</sup>

The Superintendent shall retain records to document compliance with this policy, the District's records retention protocols, and the Local Records Act.

**LEGAL REF.:** 42 U.S.C. § 1771, as implemented by 7 C.F.R. §§ 210.11 and 210.31.  
42 U.S.C. § 1779, as implemented by 7 C.F.R. §§ 210.11 and 210.31.  
Local Records Act, 50 ILCS 205/ Local Records Act, 105 ILCS 5/2-3.139.  
23 Ill.Admin.Code Part 305, Food Program.  
ISBE's "School Wellness Policy" Goal, adopted Oct. 2007.

**CROSS REF.:** 2:140 (Communications To and From the Board), 2:150 (Committees), 2:240 (Board Policy Development), 4:120 (Food Services), 5:100 (Staff Development Program), 6:60 (Curriculum Content), 7:260 (Exemption from Physical Education), 8:10 (Connection with the Community)

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<sup>28</sup> 7 C.F.R. § 210.31(f). Records must include: (1) the policy; (2) documentation demonstrating compliance with community involvement requirements, including requirements to make the local school wellness policy and triennial assessments available to the public; and (3) documentation of the triennial assessment of the local school wellness policy for each school under its jurisdiction.

See fn 22, above regarding the Local Records Act and 2:250-AP2, *Protocols for Record Preservation and Development of Retention Schedules*.

While 7 C.F.R. § 210.31(f) does not require the policy text to state what records must be kept, a board that wants to include that information may insert the following text: "Records must include: (1) this policy; (2) documentation demonstrating compliance with community involvement, including requirements to make the policy and triennial assessments available to the public; and (3) documentation of the triennial assessment of this policy for each school under its jurisdiction."

## Instruction

### Curriculum Content 1

The curriculum shall contain instruction on subjects required by State statute or regulation as follows:

1. In kindergarten through grade 8, subjects include: (a) language arts, (b) reading, (c) other communication skills, (d) science, (e) mathematics,<sup>2</sup> (f) social studies, (g) art, (h) music,<sup>3</sup> and (i) drug and substance abuse prevention including the dangers of opioid abuse.<sup>4</sup> A reading opportunity of 60 minutes per day will be promoted for all students in kindergarten through grade 3 whose reading levels are one grade level or more lower than their current grade level.<sup>5</sup> Daily time of at least 30 minutes (with a minimum of at least 15 consecutive minutes if divided) will be provided for supervised, unstructured, child-directed play for all students in kindergarten through grade 5.<sup>6</sup> Before the completion of grade 5, students will be offered

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<sup>1</sup> Districts must have a policy on physical education (23 Ill.Admin.Code §1.425, amended by 42 Ill. Reg. 11540) and what grade level(s) students will be offered cursive writing instruction (105 ILCS 5/27-20.7, added by P.A. 100-548). Policies on the remaining topics in this policy are optional. State or federal law controls this policy's content. 23 Ill.Admin.Code §1.420, amended at 42 Ill. Reg. 11527, recommends that activities, including student internships and observations of government in action, be a part of the instructional program where appropriate.

State law mandates certain courses of study but local school boards may set requirements exceeding State-law mandated courses of study. 105 ILCS 5/10-20.8 and 5/27-1 et seq.

<sup>2</sup> 105 ILCS 5/2-3.156 requires the Ill. State Board of Education (ISBE) to coordinate, adapt and develop middle and high school math curriculum models. There is no consistent definition for *middle school* or *high school* in either State or federal law. Districts are not required to use ISBE's models and may develop their own mathematics curricula.

The purpose of the math curriculum models will be to aid school districts and teachers in implementing the *Common Core Standards*. The ISBE has adopted new math and English language arts (ELA) standards for K-12 education referred to as the *New Ill. State Learning Standards Incorporating the Common Core*. The goal of incorporating the *Common Core Standards* into the *State Goals for Learning* is to better prepare Ill. students for success in college and the workforce in a competitive global economy. See [www.isbe.net/Documents/ccs-faq-0813.pdf](http://www.isbe.net/Documents/ccs-faq-0813.pdf).

The terms *Common Core Standards* and the *New Ill. State Learning Standards Incorporating the Common Core* are synonymous. Referencing the *Ill. Learning Standards* includes them both. That is because they are incorporated by reference into ISBE's rules and *State Goals for Learning*. A district that wants to include the term *Common Core Standards* in its policy may do so; however, districts should understand that referring to the *Common Core Standards* only will cover only math and ELA learning standards and goals and not any other subject areas that the *Ill. Learning Standards* cover. The best practice is to continue using *Ill. Learning Standards*, which includes the *Common Core Standards*.

<sup>3</sup> 23 Ill.Admin.Code §1.430.

<sup>4</sup> 105 ILCS 5/27-13.2, amended by P.A. 102-195, requires that in addition to instruction, study, and discussion of effective methods for the prevention and avoidance of drugs and substance abuse, the subject must also cover the dangers of opioid abuse. House Resolution 824 (98<sup>th</sup> General Assembly, 2014) urges all Illinois schools to educate youth about the dangers of using heroin and the rising numbers of accidental deaths from heroin overdoses through comprehensive drug education programs, including the *Drug Abuse Resistance Education* (DARE) program. No guidance on age appropriate instruction for heroin abuse is provided in the resolution.

<sup>5</sup> 105 ILCS 5/10-20.53.

<sup>6</sup> 105 ILCS 5/27-6.3, added by P.A. 102-351. Schools must provide at least 30 minutes of play time for any school day five clock hours or longer in length. For any school days less than that, the total time allotted during the school day must be at least one-tenth of a day of attendance for the student. Time spent dressing or undressing for outdoor play may not count towards the daily time allotment. Play time must be computer-, tablet-, phone-, and video-free. Play time may be withheld as a disciplinary or punitive action only if a student's participation poses an immediate threat to the safety of the student or others. Id.

at least one unit of cursive instruction.<sup>7</sup> Beginning with the 2020-2021 school year, in grades 6, 7, or 8, students must receive at least one semester of civics education in accordance with Illinois Learning Standards for social science.<sup>8</sup>

2. In grades 9 through 12, subjects include:<sup>9</sup> (a) language arts, (b) writing intensive courses, (c) science, (d) mathematics,<sup>10</sup> (e) social studies including U.S. history, American government and one semester of civics,<sup>11</sup> (f) foreign language,<sup>12</sup> (g) music, (h) art, (i) driver and safety education,<sup>13</sup> and (j) vocational education.

Students otherwise eligible to take a driver education course must receive a passing grade in at least eight courses during the previous two semesters before enrolling in the course. The Superintendent or designee may waive this requirement if he or she believes a waiver to be in

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<sup>7</sup> 105 ILCS 5/27-20.7, added by P.A. 100-548, requires districts to offer students a unit of cursive instruction before they complete grade 5. Other than before completing grade 5, the law is silent about what grade level(s) in which students must receive their unit of cursive instruction. This provides an opportunity for a board to have a conversation with the superintendent about local community expectations and direct him or her to determine the appropriate grade level(s) in which students will be offered a unit of cursive instruction.

Use the following alternative if the board wants to specify grade level(s) before the end of grade 5 in which cursive instruction will be offered:

A unit of cursive instruction will be offered in grade(s) \_\_\_\_\_.

<sup>8</sup> 105 ILCS 5/27-3.10, added by P.A. 101-254, eff. 7-1-20. The statute specifically states that school districts may utilize private funding available for offering civics education.

<sup>9</sup> 105 ILCS 5/27-22, amended by P.A.s 101-651 and 652; 23 Ill. Admin. Code §1.440. ISBE may adopt rules to modify these requirements for students in grades 9-12 if the Governor declares a disaster due to a public health emergency pursuant to 26 ILCS 3305.2. 105 ILCS 5/27-22(e)(3.5), added by P.A. 101-651 requires "a year of a course that includes intensive instruction in computer literacy, which may be English, social studies, or any other subject." Because computer literacy may be included within another subject, it is not included but in line 6 of this policy with line 25, below.

<sup>10</sup> 105 ILCS 5/2-3.156. See fn 2.

105 ILCS 5/27-22(e)(3), amended by P.A. 101-464, eff. 1-1-20, allows the substitution of an advanced placement computer science course for a year of mathematics. For specific requirements, see 6:300-F2, *State Law Graduation Requirements*, and 6:310, *High School Credit for Non-District Experiences: Course Substitutions; Re-entering Students*.

<sup>11</sup> 105 ILCS 5/27-22(e)(5). The statute specifically states that school districts may utilize private funding available for offering civics education.

<sup>12</sup> The General Assembly encouraged school boards to implement American Sign Language courses into the school foreign language curriculum. 105 ILCS 5/10-20.52. Senate Joint Resolution 68 (96th General Assembly, 2010) encourages school districts to explore the introduction of Arabic as a foreign language in their curriculums.

<sup>13</sup> The ISBE rule on driver education personnel is found at 23 Ill. Admin. Code §252.40, amended at 42 Ill. Reg. 8957. School districts may contract with a commercial driver training school (CDTS) for driver education. 105 ILCS 5/27-24.2, amended by P.A.s 100-465 and 101-450. To qualify to contract with a school district, a CDTS must: (a) hold a valid license issued by the Ill. Sec. of State; (b) provide teachers who meet the educator licensure and endorsement requirements under 105 ILCS 5-21B; and (c) follow the same evaluation and observation requirements that apply to non-tenured teachers under 105 ILCS 5-24 Aa. Id. A district contracting with a CDTS must provide a list to ISBE of the CDTS instructors. Id. The list must include the name, personal ISBE identification number, birth date and driver's license number of each instructor who will teach driver education. Id. Although a formal waiver for outsourcing of driver's education is no longer required, districts must consider their applicable collective bargaining agreement(s), board policy, and the reduction in force (RIF) provisions of the School Code as they relate to outsourcing of instructional staff. Consult the board attorney for guidance.

A school district may decide to allow a student to take a portion of the driver education course through a distance learning course. This is determined on a case-by-case basis and must be approved by the district's administration, the student's driver's education teacher, and the student's parent/guardian. 105 ILCS 5/27-24.2, amended by P.A. 101-183, eff. 4-1-20; 23 Ill. Admin. Code §252.20(c)(2).

the student's best interest.<sup>14</sup> The course shall include: (a) instruction necessary for the safe operation of motor vehicles, including motorcycles, to the extent that they can be taught in the classroom,<sup>15</sup> (b) classroom instruction on distracted driving as a major traffic safety issue,<sup>16</sup> (c) instruction on required safety and driving precautions that must be observed at emergency situations, highway construction and maintenance zones, and railroad crossings and their approaches,<sup>17</sup> and (d) instruction concerning law enforcement procedures for traffic stops, including a demonstration of the proper actions to be taken during a traffic stop and appropriate interactions with law enforcement.<sup>18</sup> Automobile safety instruction covering traffic regulations and highway safety must include instruction on the consequences of alcohol consumption and the operation of a motor vehicle.<sup>19</sup> The eligibility requirements contained in State law for the receipt of a certificate of completion from the Secretary of State shall be provided to students in writing at the time of their registration. <sup>20</sup>

3. In grades 7 through 12, as well as in interscholastic athletic programs, steroid abuse prevention must be taught. <sup>21</sup>
4. In kindergarten through grade 12, provided it can be funded by private grants or the federal government, violence prevention and conflict resolution must be stressed, including: (a) causes of conflict, (b) consequences of violent behavior, (c) non-violent resolution, and (d) relationships between drugs, alcohol, and violence. <sup>22</sup> In addition, anti-bias education and intergroup conflict resolution may be taught as an effective method for preventing violence and lessening tensions. In schools, these prevention methods are most effective when they are

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<sup>14</sup> 105 ILCS 5/27-24.1, amended by P.A. 100-425, 101-1-22, and 5/27-24.2, amended by P.A. 100-465; 23 Ill. Admin. Code §252.20(c)(2).

<sup>15</sup> Id.

<sup>16</sup> Id.

<sup>17</sup> Id.

<sup>18</sup> Id.

<sup>19</sup> 105 ILCS 5/27-17.

<sup>20</sup> The Ill. Vehicle Code, 625 ILCS 5/6-408.5, contains these requirements; they are paraphrased below and may be added to the policy or otherwise disseminated.

Before a certificate of completion will be requested from the Secretary of State, a student must receive a passing grade in at least eight courses during the two semesters last ending before requesting the certificate. A certificate of completion will not be requested for any person less than 18 years of age who has dropped out of school unless the individual provides:

1. Written verification of his or her enrollment in a high school equivalency or alternative education program or a high school equivalency certificate (formerly GED certificate);
2. Written verification that before dropping out, the individual had received passing grades in at least eight courses during the two previous semesters last ending before requesting a certificate;
3. Written consent from the individual's parent/guardian and the Regional Superintendent; or
4. Written waiver from the Superintendent of the School District in which the individual resides or resided at the time he or she dropped out of school, or from the chief school administrator with respect to a dropout who attended a non-public high school. A waiver may be given if the Superintendent or chief administrator deems it to be in the individual's best interests.

<sup>21</sup> 105 ILCS 5/27-23.3.

<sup>22</sup> 105 ILCS 5/27-23.4.



respectful of individuals and their divergent viewpoints and religious beliefs, which are protected by the First Amendment to the Constitution of the United States.<sup>23</sup>

5. In grades kindergarten through 12, age-appropriate Internet safety must be taught, the scope of which shall be determined by the Superintendent or designee. The curriculum must incorporate policy 6:235, *Access to Electronic Networks*, and, at a minimum, include: (a) education about appropriate online behavior, (b) interacting with other individuals on social networking websites and in chat rooms, and (c) cyberbullying awareness and response.<sup>24</sup>

6. In all grades, students must receive developmentally appropriate opportunities to gain computer literacy skills that are embedded in the curriculum.<sup>25</sup>

5-7. In all grades, character education must be taught including respect, responsibility, fairness, caring, trustworthiness, and citizenship in order to raise students' honesty, kindness, justice, discipline, respect for others, and moral courage.<sup>26</sup> Instruction in all grades will include

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<sup>23</sup> Optional 105 ILCS 5/27-13.6 on *Character Education* allows districts to incorporate activities to address intergroup conflict, with the objectives of improving intergroup relations on and beyond the school campus, defusing intergroup tensions, and promoting peaceful resolution of conflict.

Boards that adopt a policy to incorporate activities to address intergroup conflict pursuant to this law must make information available to the public that describe the manner in which the district has implemented the activities. Methods for making this information available include, but are not limited to, the district's website, if any, and in the district's offices upon request. See 2:250-E2, *Immediately Available District Public Records and Web-Based Reports and Records*. Districts may also include the information in a student handbook and in district newsletters. The Illinois 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/](http://www.ilprincipals.org/resources/model-student-handbook/)

See Lin 12 in sample policy 6:180, *Extended Instructional Programs*, and ensure that these policies align.

<sup>24</sup> 47 C.F.R. § 54.520 and 105 ILCS 5/27-13.3 control this section. "Grades kindergarten through 12" is used because federal law requires school districts that receive E-rate funding to certify that they have an Internet safety education policy for all minors. 47 C.F.R. §54.520(c)(1)(i). This federal law defines *minors* as any individual who has not attained the age of 17 years. 47 C.F.R. §54.520(a)(4)(i).

105 ILCS 5/27-13.3 only requires a unit on Internet safety for students in grades 3 or above. It recommends seven topics for the unit on Internet safety and required ISBE to "make available resource materials for educating children regarding child online safety." It also invites schools to "adopt an age-appropriate curriculum for Internet safety instruction of students in grades kindergarten through 12."

For boards that do not receive E-rate funds and do not want to exceed the requirements of the School Code, replace this section with the following sentence:

In grades 3 or above, the curriculum contains a unit on Internet safety, the scope of which shall be determined by the Superintendent or designee.

For boards that do not receive E-rate funds, but want to exceed the requirements of the 105 ILCS 5/27-13.3 to include grades K-2, replace this section with the following sentences:

In grades 3 or above, the curriculum contains a unit on Internet safety, the scope of which shall be determined by the Superintendent or designee. In kindergarten through grade 2, age-appropriate Internet safety must be taught.

<sup>25</sup> 105 ILCS 5/10-20-73 (final citation pending), 5/10-20-74, and 5/27-22(c)(3)(5), added by P.A. 101-654, 105 ILCS 5/10-20-74, added by P.A. 101-654, requires that districts submit an annual report to ISBE regarding educational technology capacities and policies. See the subhead *Educational Technology Committee and Lin 20 in 2:150-AP, Superintendent Committees*.

<sup>26</sup> 105 ILCS 5/27-12.

examples of behaviors that violate policy 7:180, *Prevention of and Response to Bullying, Intimidation, and Harassment*.<sup>27</sup>

6.8. In all schools, citizenship values must be taught, including: (a) American patriotism, (b) democratic principles of representative government (the American Declaration of Independence, the Constitution of the United States of America and the Constitution of the State of Illinois) freedom, justice, and equality, (c) proper use and display of the American flag, (d) the Pledge of Allegiance, and (e) the voting process.<sup>28</sup>

7.9. In all grades, physical education must be taught including a developmentally planned and sequential curriculum that fosters the development of movement skills, enhances health-related fitness, increases students' knowledge, offers direct opportunities to learn how to work cooperatively in a group setting, and encourages healthy habits and attitudes for a healthy lifestyle. Unless otherwise exempted, all students are required to engage in a physical education course with such frequency as determined by the Board after recommendation from the Superintendent,<sup>29</sup> but at a minimum of three days per five-day week.<sup>30</sup> For exemptions and substitutions, see policies 6:310, *High School Credit for Non-District Experiences; Course Substitutions; Re-Entering Students* and 7:260, *Exemption from Physical Education*.<sup>31</sup>

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<sup>27</sup> Required as part of a district's Bullying Prevention and Response Plan pursuant to 105 ILCS 5/27-23.1. "Because of the negative outcomes associated with bullying in schools, the Ill. General Assembly has found "that [school districts] should educate students, parents, and [school district personnel] about what behaviors constitute prohibited bullying." 105 ILCS 5/27-23.7(a). This language aligns with policy 7:180, *Prevention of and Response to Bullying, Intimidation, and Harassment*, which requires bullying prevention instruction as part of a district's Bullying Prevention and Response Plan.

The Ill. General Assembly invited boards to "make suitable provisions for instruction in gang resistance education and training in all grades and include such instruction in the courses of study regularly taught in those grades." See 105 ILCS 5/27-23.10(c). A board that shares this concern may add the following option: "In addition, in all grades gang resistance education and training must be taught."

<sup>28</sup> 105 ILCS 5/27-3 requires the Pledge of Allegiance to be recited every day in elementary and secondary schools. See also *Palmer v. City of Chicago*, 466 F. Supp. 600 (N.D. Ill. 1979) (teacher would not teach and direct the Pledge of Allegiance to the flag of the United States for religious reasons and was terminated for not doing so because it was part of the curriculum). Requirements for displaying a U.S. flag at each school and in each classroom are found in 5 ILCS 465/3 and 465/3a.

Note that the Illinois statute does not require every student to recite the *Pledge* -- that kind of mandatory participation would violate the U.S. Constitution. Schools may not coerce a student into saying the *Pledge*, nor may they punish students for refusing to participate in any aspect of the flag ritual, including standing, saluting the flag, and reciting the *Pledge*. *West Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624 (1943); *Sherman v. Community Consol. Sch. Dist. 21 of Wheeling Township*, 980 F.2d 437 (7th Cir. 1992). Consider using permissive rather than mandatory language to introduce the recitation of the *Pledge*, such as, "You may now stand to recite the *Pledge*." Schools may, of course, require that non-participants maintain order and decorum appropriate to the school environment.

<sup>29</sup> The phrase "after recommendation by the Superintendent" is optional. If a superintendent does not bring this topic to the board for discussion, the board may not have a trigger to make the determination.

<sup>30</sup> 23 Ill. Admin. Code §1.425(b), amended at 42 Ill. Reg. 11540. Boards that want their daily physical education requirement to align with their goal in policy 6:20, *School Wellness*, may replace "minimum of three days per five-day week" with their local daily requirements. See also 10 in policy 6:20, *School Wellness*.

<sup>31</sup> 105 ILCS 5/27-5 requires school boards to provide for students' physical education and allows the P.E. course offered in grades 5 through 10 to include the health education courses required by State law. See also 23 Ill. Admin. Code §1.425, added at 40 Ill. Reg. 2990.

105 ILCS 5/27-6, amended by P.A. 100-465, describes when students may be excused from P.E. See also 23 Ill. Admin. Code §1.425(d), amended at 42 Ill. Reg. 11540.

105 ILCS 5/27-6, amended by P.A. 100-465, contains an exception to the minimum of three days per five-day week P.E. requirement for schools engaged in block scheduling; if this is applicable, substitute this sentence for the second-to-last sentence in this paragraph:

8:10. In all schools, health education must be stressed, including:<sup>33</sup> (a) proper nutrition, (b) physical fitness, (c) components necessary to develop a sound mind in a healthy body, (d) dangers and avoidance of abduction, and (e) age-appropriate and evidence-informed sexual abuse and assault awareness and prevention education in all grades.<sup>33</sup> The Superintendent shall implement a comprehensive health education program in accordance with State law.<sup>34</sup>

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Unless otherwise exempted, all students are required to engage with such frequency as determined by the Board, but at a minimum of three days per five-day week, during the school day, except on block scheduled days, in a physical education course.

105 ILCS 5/27-6.5 describes physical fitness assessments required, beginning with the 2016-17 school year and every school year thereafter, for grades 3-12 in an effort to meet State Goal 20 of the Illinois Learning Standards for Physical Development and Health at: [www.isbe.net/Pages/Physical-Education-and-Health.aspx](http://www.isbe.net/Pages/Physical-Education-and-Health.aspx). See also 23 Ill.Admin.Code §1.425 (f) and (h), amended at 42 Ill. Reg. 11540; ISBE's *IL Fitness Assessments and Data Reporting Requirements Questions and Answers* (Rev. 2017-15-18) at: [www.isbe.net/Documents/fitness-assmt-faq.pdf](http://www.isbe.net/Documents/fitness-assmt-faq.pdf);

[www.isbe.net/Documents/Physical-Fitness-Assessment-FAQ.pdf?search=Fitness%20Assessments%20and%20Data%20Reporting%20Requirements%20Questions%20and%20Answers](http://www.isbe.net/Documents/Physical-Fitness-Assessment-FAQ.pdf?search=Fitness%20Assessments%20and%20Data%20Reporting%20Requirements%20Questions%20and%20Answers) and [www.isbe.net/Documents/Physical-Fitness-Assessment-FAQ.pdf?search=Fitness%20Assessments%20and%20Data%20Reporting%20Requirements%20Questions%20and%20Answers](http://www.isbe.net/Documents/Physical-Fitness-Assessment-FAQ.pdf?search=Fitness%20Assessments%20and%20Data%20Reporting%20Requirements%20Questions%20and%20Answers).

105 ILCS 5/27-7 describes the goals and requirements for P.E. courses; these are re-stated in this sample policy.

<sup>32</sup> Citations for letters (a) - (e) required by the Comprehensive Health Education Program (105 ILCS 110/3) in this paragraph follow:

- (a) 105 ILCS 5/2-3.139 and 105 ILCS 5/27-7 (proper nutrition) and see also policy 6:50, *School Wellness*.
- (b) Id. (physical fitness) and see also policy 6:50, *School Wellness*.
- (c) Id. (sound mind and healthy body).
- (d) 105 ILCS 5/27-13.2 (dangers and avoidance of abduction). The Ill. Dept. of State Police and ISBE must develop instruction on child abduction prevention. 20 ILCS 2605/2605-480.
- (e) 105 ILCS 110/3 and 105 ILCS 5/10-23.13, amended by P.A. 102-610 a/k/a *Erin's Law* (child sexual abuse prevention). While 105 ILCS 5/10-23.13(b) refers to K through 12th, this policy uses *at grades* for brevity and ease of administration. *Erin's Law* requires a policy addressing child sexual abuse prevention and curriculum content on that subject (see sample policy 4:15, *Prevention of Child Sexual Abuse and Grooming Behaviors*). A sentence in 6:60-API, *Comprehensive Health Education Program*, restates the basic recommendations for a child sexual abuse prevention program from page 16 of the *Erin's Law* Taskforce Final Report (Report) to Governor Quinn at: [www.isbe.net/Documents/erins-law-final0512.pdf](http://www.isbe.net/Documents/erins-law-final0512.pdf), which was the basis for HB 1975 text, which did not pass in the first year, the 101st Ill. General Assembly but is used as the basis for sample content to implement P.A. 102-610 due to that Public Act's vague terms. The professional educator training component of *Erin's Law* is addressed in policies 5:90, *Abused and Neglected Child Reporting* and 5:100, *Staff Development Program*. The Report also encouraged parental involvement because parents play a key role in protecting children from child sexual abuse.

<sup>33</sup> See full text in sample policy 4:165, *Abuse and Prevention of Child Sexual Abuse and Grooming Behaviors*, for a definition of *evidence informed*. 105 ILCS 5/10-23.13, amended by P.A. 102-610.

<sup>34</sup> 105 ILCS 110/3, amended by P.A.s 101-305 and P.A. 102-464, eff. 1-1-20, and 23 Ill.Admin.Code §1.420(n). Each school system shall provide a program in compliance with the Critical Health Problems and Comprehensive Health Education Act, 105 ILCS 110/.

More detailed critical health problems and comprehensive health education program content is described in administrative procedure 6:60-API, *Comprehensive Health Education Program*. That procedure follows the Comprehensive Health Education Program Law (CHPEP), 105 ILCS 110/3, amended by P.A. 102-464, and that formerly included the requirements for the development of then now-repealed family life and sex education programs in 105 ILCS 5/27-9.1 and 9.2, amended by P.A.s 100-684, and 101-579, eff. 1-1-20, 102-412 and repealed by P.A. 102-522.

The former family life and sex education programs were replaced with the National Sex Education Standards (NSESS), (105 ILCS 5/27-9.1a, added by P.A. 102-522) and a developmentally appropriate consent education curriculum (105 ILCS 5/27-9.1b, added by P.A. 102-522) and (but at the time of PRESS Issue 108's publication, the term *family life*, including evidence-based and medically accurate information regarding sexual abstinence, remained in the CHPEP (105 ILCS 110/3, amended by P.A. 102-464). The CHPEP also includes many among other health education topics that all elementary and secondary schools in Illinois must provide, including *teen dating violence* (105 ILCS 110/3.10, see 7:185, *Teen Dating Violence Prohibited*, for the required "teen dating violence policy") and cardiopulmonary resuscitation and automated external defibrillator use (105 ILCS 110.30(d)).

- 9.1.1. In all schools, career/vocational education must be taught, including: (a) the importance of work, (b) the development of basic skills to enter the world of work and/or continue formal education, (c) good work habits and values, (d) the relationship between learning and work, and (e) if possible, a student work program that provides the student with work experience as

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For ease of administration, 6-60-AP1, *Comprehensive Health Education Program*, content includes reference to the new NSES curriculum that is outlined in more detail at 6-60-AP2, *Comprehensive Personal Health and Safety and Sexual Health Education Program (National Sex Education Standards (NSES))*, 105 ILCS 5.27-9.1a, added by P.A. 102-522. While the NSES law is effective immediately, ISBE has until 8-1-22 to develop its learning standards and resources, and at the time of PRESS Issue 108's publication, no guidance existed about whether districts that provide the now-repealed family life and sex education programs formerly in 105 ILCS 5.27-9.1 and 9.2, repealed by P.A. 102-522, could continue to do so for: (a) their 21-22 school years, and/or (b) continuing into the 22-23 school year and school years beyond that into the future. Consult the board attorney if the district offered the now-repealed family life and sex education program to assess whether that program may continue during the 21-22 school and/or school years beyond.

Two choices exist for school boards related to providing students with a sex education curriculum:

1. No sex education; or
2. NSES aka Comprehensive Personal Health and Safety and Sexual Health Education Program (105 ILCS 5.27-9.1a, added by P.A. 102-522, and see 6-60-AP2, *Comprehensive Personal Health and Safety and Sexual Health Education Program (National Sex Education Standards (NSES))*;

While boards are not required to include sex education curriculum information in their policies, if they offer it, the new law requires them to identify the curriculum their districts use along with the name and contact information, including an email address, of a school staff member who can respond to inquiries about instruction and materials. 105 ILCS 5.27-9.1a(e), added by P.A. 102-522. Methods for making this information available include: the district's website, if any, and in the district's offices upon request. See 2-250-E2, *Immediately Available District Public Records and Web-Posted Reports and Records*.

For boards that do offer NSES but do not wish to communicate it in this policy, ensure that superintendents: (1) identify the curriculum along with the name and contact information, including an email address of the school staff member designated to respond to inquiries about instruction and materials (see 2-250-12, *Immediately Available District Public Records and Web-Posted Reports and Records*); and (2) implement both 6-60-AP1, *Comprehensive Health Education Program*, and 6-60-AP2, *Comprehensive Personal Health and Safety and Sexual Health Education Program (National Sex Education Standards (NSES))*.

For boards that want to communicate to their communities in this policy that they offer NSES, insert the following text into the last sentence in number 10:

The Superintendent shall implement a comprehensive health education program in accordance with State law, including a personal health and safety and sexual health education program (National Sex Education Standards) pursuant to 105 ILCS 5.27-9.1a.

Legal Reference insertions are not necessary with the statute in the text of the policy. Ensure: (1) the implementation of both 6-60-AP1, *Comprehensive Health Education Program* and 6-60-AP2, *Comprehensive Personal Health and Safety and Sexual Health Education Program (National Sex Education Standards (NSES))*, align with this policy; and (2) that the superintendent identifies the curriculum along with the name and contact information, including an email address of the school staff member designated to respond to inquiries about instruction and materials (see 2-250-12, *Immediately Available District Public Records and Web-Posted Reports and Records*).

For boards that communicated NSES in this policy and also want to communicate that they additionally offer developmentally appropriate consent education curriculum, insert the following sentence as the last sentence of the number 10 paragraph:

The Superintendent shall also implement a developmentally appropriate consent education curriculum pursuant to 105 ILCS 5.27-9.1b.

Legal Reference insertion is not necessary with the statute in the text of the policy. Ensure the implementation of 6-60-AP3, *Developmentally Appropriate Consent Education*, aligns with this policy.

For boards that do offer NSES and do not communicate that in policy AND/OR boards that do not offer NSES, but want to communicate that they offer developmentally appropriate consent education curriculum, insert the following text into the last sentence in number 10:

The Superintendent shall implement a comprehensive health education program in accordance with State law, including a developmentally appropriate consent education curriculum pursuant to 105 ILCS 5.27-9.1b.

Legal Reference insertion is not necessary with the statute in the text of the policy. Ensure that implementation of 6-60-AP3, *Developmentally Appropriate Consent Education*, aligns with this policy.

an extension of the regular classroom. A career awareness and exploration program must be available at all grade levels. <sup>35</sup>

12. In grades 9 through 12, consumer education must be taught, including: (a) financial literacy, including consumer debt and installment purchasing (including credit scoring, managing credit debt, and completing a loan application); budgeting; savings and investing; banking (including balancing a checkbook, opening a deposit account, and the use of interest rates); understanding simple contracts; State and federal income taxes; personal insurance policies; the comparison of prices; higher education student loans; identity-theft security; and homeownership (including the basic process of obtaining a mortgage and the concepts of fixed and adjustable rate mortgages, subprime loans, and predatory lending); and (b) the roles of consumers interacting with agriculture, business, labor unions and government in formulating and achieving the goals of the mixed free enterprise system. <sup>36 37</sup>
13. Beginning in the fall of 2022, in grades 9 through 12, intensive instruction in computer literacy, which may be included as a part of English, social studies, or any other subject. <sup>38</sup>
14. Beginning in the fall of 2022, in grades 9 through 12, a unit of instruction on media literacy that includes, but is not limited to, all of the following topics: (a) accessing information to evaluate multiple media platforms and better understand the general landscape and economics of the platforms; an issue regarding the trustworthiness of the source of information; (b) analyzing content to identify media messages to deconstruct media representations according to the authors, target audience, techniques, agenda setting, stereotypes, and authenticity to distinguish fact from opinion; (c) creating media to convey a coherent message using multimodal practices to a specific target audience that includes, but is not limited to, writing blogs, composing songs, designing video games, producing podcasts, making videos, or coding a mobile or software application; (d) reflecting on media consumption to assess how media affects the consumption of information and how it triggers emotions and behavior; and (e) social responsibility and civics. <sup>39</sup> suggest a plan of action in the class, school, or

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<sup>35</sup> 23 Ill.Admin.Code §1.420(i). See 105 ILCS 435/ Vocational Education Act.

A unit of high school district may offer workplace preparation instruction in grades 9 through 12 that covers legal protections in the workplace, including protection against sexual harassment and racial and other forms of discrimination and protections for employees. 105 ILCS 5/27-23.1413 (final citation pending), added by P.A. 101-347-~~eff.~~4-1-20.

For high school and unit boards, insert “5/27-23.1413 (final citation pending),” after 105 ILCS 5/27-23.11 in the Legal References or if a board offers a course on hunting safety as part of its curriculum during the school day (see the option in 105 ILCS 5/27-23.13, added by P.A. 102-1172, insert an optional number 13, and amend numbers after it accordingly).

In grades 9-12, workplace preparation instruction will be offered, covering legal protections in the workplace, including protection against sexual harassment and racial and other forms of discrimination and protections for employees.

<sup>36</sup> 105 ILCS 5/27-12.1, amended by P.A. 99-284; 23 Ill.Admin.Code §1.420(k). P.A. 99-284 added these new subjects to the required consumer education course: consumer debt, higher education student loans, and identity-theft security.

<sup>37</sup> For high school and unit boards that want to offer a unit of instruction about the process of naturalization pursuant to 105 ILCS 5/27-23.13, added by P.A. 102-1172, insert an optional number 13, and amend numbers after it accordingly.

13. In grades 9 through 12, a unit of instruction about the process of naturalization by which a foreign citizen or foreign national becomes a U.S. citizen that includes content from the components of the naturalization test administered by the U.S. Citizenship and Immigration Services.

<sup>38</sup> 105 ILCS 5/27-22(e)(3.5), added by P.A. 101-654. At the time of PRESS Issue 198’s publication, no definition or further information from ISBE existed about what *computer literacy* means. A common sense approach presumes the term includes those concepts carved out of computer science, such as everyday use of computers, keyboarding, accessing the Internet, etc.

community for engaging others in a respectful, thoughtful, and inclusive dialogue over a specific issue using facts and reason.<sup>39</sup>

10.15.Beginning in the fall of 2023, in grades 9 through 12, an opportunity for students to take at least one computer science course aligned to Illinois learning standards. *Computer science* means the study of computers and algorithms, including their principles, hardware and software designs, implementation, and impact on society. Computer science does not include the study of everyday uses of computers and computer applications; e.g., keyboarding or accessing the Internet.<sup>40</sup>

11.16.In all schools, conservation of natural resources must be taught, including: (a) home ecology, (b) endangered species, (c) threats to the environment, and (d) the importance of the environment to life as we know it.<sup>41</sup>

12.17.In all schools, United States (U.S.) history must be taught, including: (a) the principles of representative government, (b) the Constitutions of the U.S. and Illinois, (c) the role of the U.S. in world affairs, (d) the role of labor unions, (e) the role and contributions of ethnic groups, including but not limited to, the African Americans, Albanians, Asian Americans, Bohemians, Czechs, French, Germans, Hispanics (including the events related to the forceful removal and illegal deportation of Mexican-American U.S. citizens during the Great Depression), Hungarians, Irish, Italians, Lithuanians, Polish, Russians, Scots, and Slovaks in the history of this country and State, (f) a study of the roles and contributions of lesbian, gay, bisexual, and transgender (LGBT) people in the history of the U.S. and Illinois, and (g) Illinois history, and (n) the contributions made to society by Americans of different faith practices, including, but not limited to, Muslim Americans, Jewish Americans, Christian Americans, Hindu Americans, Sikh Americans, Buddhist Americans, and any other collective community of faith that has shaped America.<sup>42</sup>

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

<sup>39</sup> 105 ILCS 5/27-20(8), added by P.A. 102-55. *Means, interact* means the ability to access, analyze, evaluate, create, and communicate using a variety of objective forms, including, but not limited to, print, visual, audio, interactive, and digital texts.

<sup>40</sup> Optional until fall 2023; 105 ILCS 5/27-23.15(b), added by P.A. 101-65.

<sup>41</sup> 105 ILCS 5/27-13.1; 23 Ill.Admin.Code §1.420(l), amended at 42 Ill. Reg. 11555.

<sup>42</sup> 105 ILCS 5/27-21, amended by P.A. § 101-227, eff. 7-1-20 (adding the roles and contributions of LGBT people in U.S. and Illinois), and P.A. 101-341, eff. 1-1-20 (beginning with the 2020-2021 school year, adding Illinois history), -101-643 (during a public health emergency, allowing schools to obtain demonstrated evidence from students remotely that they have comprehensive knowledge of United States history), and 102-55 (adding contributions made to society by Americans of different faith practices); 23 Ill.Admin.Code §1.420(r). “[O]btain demonstrated evidence from students remotely” is not clear. The practical reading is that it refers to teachers collecting evidence through remote assessments when students are engaged in a remote learning program during a disaster declaration due to a public health emergency.

105 ILCS 5/27-21, amended by P.A. 101-643, does not specify at what grade level districts must cover these topics as part of U.S. history instruction; however, no student may graduate from grade 8 unless the student has received instruction in U.S. history and demonstrated comprehensive knowledge of the subject matter.

For guidance about the requirements of adding the roles and contributions of LGBT people in U.S. and Illinois, see

- 1) [Inclusive Curriculum Law Frequently Asked Questions \(FAQs\) at www.phime.org/wp-content/uploads/2020/05/Inclusive-Curriculum-FAQs.pdf](http://www.phime.org/wp-content/uploads/2020/05/Inclusive-Curriculum-FAQs.pdf)
- 2) <https://www.phime.org/wp-content/uploads/2020/05/Inclusive-Curriculum-FAQs.pdf>
- 3) <https://www.phime.org/wp-content/uploads/2020/05/Inclusive-Curriculum-FAQs.pdf>
- 4) <https://www.phime.org/wp-content/uploads/2020/05/Inclusive-Curriculum-FAQs.pdf>

In addition, all schools shall hold an educational program on the United States Constitution on Constitution Day, each September 17, commemorating the September 17, 1787 signing of the Constitution. However, when September 17 falls on a Saturday, Sunday, or holiday, Constitution Day shall be held during the preceding or following week. <sup>43</sup>

13.18. In grade 7 and all high school courses concerning U.S. history or a combination of U.S. history and American government, students must view a Congressional Medal of Honor film made by the Congressional Medal of Honor Foundation, provided there is no cost for the film. <sup>44</sup>

14.19. In all schools, the curriculum includes instruction as determined by the Superintendent or designee on the Holocaust and crimes of genocide, including Nazi atrocities of 1933-1945, Armenian Genocide, the Famine-Genocide in Ukraine, and more recent atrocities in Cambodia, Bosnia, Rwanda, and Sudan. <sup>45</sup>

15.20. In all schools, the curriculum includes instruction as determined by the Superintendent or designee on the history, struggles, and contributions of women. <sup>46</sup>

16.21. In all schools, the curriculum includes instruction as determined by the Superintendent or designee on Black History, including the history of the pre-enslavement of Black people from 3,000 B.C.E. to A.D. 1619, the African slave trade, slavery in America, the study of the reasons why Black people came to be enslaved, and the vestiges of slavery in this country, the study of the American civil rights renaissance, as well as the struggles and contributions of African-Americans. <sup>47</sup>

17.22. In all schools offering a secondary agricultural education program, the curriculum includes courses as required by 105 ILCS 5/2-3.80. <sup>48</sup>

23. In all schools, instruction during courses as determined by the Superintendent or designee on disability history, awareness, and the disability rights movement. <sup>49</sup>

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<sup>43</sup> Section 111 of Division J of Pub. L. 108-447, the Consolidated Appropriations Act, 2005, 12-8-04; 118 Stat. 2809, 3344-45 (Section 111). Section 111(b) states: “[e]ach educational institution that receives Federal funds for a fiscal year shall hold an educational program on the U.S. Constitution on September 17 of such year for the student served by the educational institution.”

<sup>44</sup> 105 ILCS 5/27-3.5. The Congressional Medal of Honor film is available on ISBE’s website for no cost at: [www.isbe.net/Pages/Medal-of-Honor.aspx](http://www.isbe.net/Pages/Medal-of-Honor.aspx).

<sup>45</sup> 105 ILCS 5/27-20.3. The statute requires the school board to determine the minimum amount of instructional time. The sample policy complies by delegating this responsibility to the superintendent or designee.

<sup>46</sup> 105 ILCS 5/27-20.5. The statute requires the school board to determine the minimum amount of instructional time. The sample policy complies by delegating this responsibility to the superintendent or designee. House Resolution 365 (98<sup>th</sup> General Assembly, 2013) and Senate Resolution 1073 (98<sup>th</sup> General Assembly, 2014) both urge all Illinois educators to share with students of an appropriate age the story of *comfort women* when discussing the history of Asia or World War II, or the issue of human trafficking.

<sup>47</sup> 105 ILCS 5/27-20.4, amended by P.A. 101-654. The statute requires the school board to determine the minimum amount of instructional time. The sample policy complies by delegating this responsibility to the superintendent or designee. A school may meet this curriculum requirement through an online program or course. Id., as amended by P.A. 100-634.

<sup>48</sup> 105 ILCS 5/2-3.80(c) or (f), as applicable.

48.24. Beginning in the fall of 2022, in all schools, instruction as determined by the Superintendent or designee on the events of Asian American history, including the history of Asian Americans in Illinois and the Midwest, as well as the contributions of Asian Americans toward advancing civil rights from the 19th century onward, which must include the contributions made by individual Asian Americans in government and the arts, humanities, and sciences, as well as the contributions of Asian American communities to the economic, cultural, social, and political development of the United States. <sup>50</sup>

49.25. In kindergarten through grade 8, education must be available to students concerning effective methods of preventing and avoiding traffic injuries related to walking and bicycling. <sup>51</sup> <sup>52</sup>

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<sup>49</sup> 105 ILCS 5/27-23.8. The statute requires the school board to determine the minimum amount of instructional time. The sample policy complies by delegating this responsibility to the superintendent or designee. The statute requires that the instruction be founded on the principle that all students, including students with disabilities, have the right to exercise self-determination. It urges districts to request individuals with disabilities to assist with the development and delivery of this instruction and allows instruction to be supplemented by knowledgeable guest speakers.

<sup>50</sup> 105 ILCS 5/27-20.8, added by P.A. 102-44. Id. at (c) states that the regional superintendent of schools (or Intermediate Service Center, Emergency Center, or both, whichever is appropriate) will monitor districts' compliance with this law during the annual compliance review visits. Districts may meet this law's requirements through online programs or courses. Id. at (d). 105 ILCS 5/3-0.01 states any reference to "superintendent" must include the chief administrative officer or Intermediate Service Centers. <http://www.ilga.gov/legislation/ilcs/ilcs5.htm?ch=05&sl=0001&edid=17317>.

<sup>51</sup> 105 ILCS 5/27-23.11, added by P.A. 100-1056, requires districts that maintain any of the grades kindergarten through 8 to adopt a policy. The law is silent about how to educate students on this topic. See 6:60-AP1, E2, *Resources for Biking and Walking Safety Education*, for additional information.

<sup>52</sup> A school district may offer a course on hunting safety as part of its curriculum during the school day. 105 ILCS 5/27-23.13 (final citation pending), added by P.A. 101-152. No grade levels are specified in the statute. Insert "5/27-23.13 (final citation pending)," after 105 ILCS 5/27-23.11 in the Legal References, and an optional number <sup>2621</sup>, if the board wants to offer a course on hunting safety as part of its curriculum:

In grade(s) [insert grade level(s)], a course on hunting safety will be offered during the school day.



LEGAL REF.: Pub. L. No. 108-447, Section 111 of Division J, Consolidated Appropriations Act of 2005.  
Pub. L. No. 110-385, Title II, 122 stat. 4096 (2008), Protecting Children in the 21st Century Act.  
47 C.F.R. §54.520,  
5 ILCS 465/3 and 465/3a.  
20 ILCS 2605/2605-480.  
105 ILCS 5/2-3.80(e) and (f), 5/10-20.73 (final citation pending), 5/10-23.13, 5/27-3, 5/27-3.5, 5/27-5, 5/27-6, 5/27-6.5, 5/27-7, 5/27-12, 5/27-12.1, 5/27-13.1, 5/27-13.2, 5/27-20.08, 5/27-20.3, 5/27-20.4, 5/27-20.5, 5/27-20.7, 5/27-20.8, 5/27-21, 5/27-22, 5/27-23.3, 5/27-23.4, 5/27-23.7, 5/27-23.8, 5/27-23.10, 5/27-23.11, 5/27-23.15, 5/27-24.1, and 5/27-24.2;  
105 ILCS 435- and 110/3, Comprehensive Health Education Program,  
105 ILCS 435, Vocational Education Act,  
625 ILCS 5/6-408.5, Ill. Vehicle Code,  
23 Ill.Admin.Code §§1.420, 1.425, 1.430, and 1.440.

CROSS REF.: 7:165 (Awareness and Prevention of Child Sex Abuse and Grooming Behaviors),  
6:20 (School Year Calendar and Day), 6:40 (Curriculum Development), 6:70 (Teaching About Religions), 6:235 (Access to Electronic Networks), 7:180 (Prevention of and Response to Bullying, Intimidation, and Harassment), 7:185 (Teen Dating Violence Prohibited), 7:190 (Student Behavior), 7:260 (Exemption from Physical Education)

## Instruction

### Education of Children with Disabilities 1

The School District shall provide a free appropriate public education in the least restrictive environment and necessary related services to all children with disabilities enrolled in the District, as required by the Individuals With Disabilities Education Act (IDEA) and implementing provisions of the School Code, Section 504 of the Rehabilitation Act of 1973, and the Americans With Disabilities Act.<sup>2</sup> The term *children with disabilities*, as used in this policy, means children between ages 3 and 21 (inclusive)<sup>3</sup> for whom it is determined, through definitions and procedures described in the Ill. State Board of Education (ISBE) *Special Education* rules, that special education services are needed. Conflicts with disabilities laws begin 12 years and during the school year are eligible for such services through the end of the school year.<sup>4</sup>

It is the intent of the District to ensure that students who are disabled within the definition of Section 504 of the Rehabilitation Act of 1973 are identified, evaluated, and provided with appropriate educational services. Students may be disabled within the meaning of Section 504 of the Rehabilitation Act even though they do not require services pursuant to the IDEA.

For students eligible for services under IDEA, the District shall follow procedures for identification, evaluation, placement, and delivery of services to children with disabilities provided in the ISBE *Special Education* rules. For those students who are not eligible for services under IDEA, but, because of disability as defined by Section 504 of the Rehabilitation Act of 1973, need or are believed to need special instruction or related services, the District shall establish and implement a system of procedural safeguards. The safeguards shall cover students' identification, evaluation, and educational placement. This system shall include notice, an opportunity for the student's parent(s)/guardian(s) to

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

<sup>1</sup> State or federal law controls this policy's content. Each school district and special education cooperative must develop written special education policies and procedures in conformance with ISBE rules. 23 Ill.Admin.Code §226.710. In its continuing commitment to help school districts and special education cooperatives comply with ISBE requirements for policy and procedure, the Ill. Council of School Attorneys, special education committee, reviewed this policy and prepared extensive procedures, *Special Education Procedures Assuring the Implementation of Comprehensive Programming for Children with Disabilities*, at: [www.iasb.com/law/](http://www.iasb.com/law/).

<sup>2</sup> Opinions vary regarding the extent of a district's responsibility for providing FAPE to dually enrolled students, i.e., whether the responsibility is limited to the extent necessary to access the public portion of their education. Contact the board attorney for advice.

<sup>3</sup> The ISBE rules define the term "child" as a person who is under the age of 21 and who is enrolled in a public school district or a special education cooperative. The ISBE rules also define the term "child" as a person who is under the age of 21 and who is enrolled in a public school district or a special education cooperative. The ISBE rules also define the term "child" as a person who is under the age of 21 and who is enrolled in a public school district or a special education cooperative.

<sup>4</sup> For elementary districts, edit ages as follows: ages 3 and 1-21 to 21

For high school districts, edit ages as follows: ages 3-14 to 14 and 17-21 to 21

<sup>5</sup> The ISBE rules define the term "child" as a person who is under the age of 21 and who is enrolled in a public school district or a special education cooperative. The ISBE rules also define the term "child" as a person who is under the age of 21 and who is enrolled in a public school district or a special education cooperative. The ISBE rules also define the term "child" as a person who is under the age of 21 and who is enrolled in a public school district or a special education cooperative.

examine relevant records, an impartial hearing with opportunity for participation by the student's parent(s)/guardian(s), representation by counsel, and a review procedure. <sup>5</sup>

The District may maintain membership in one or more cooperative associations of school districts that shall assist the District in fulfilling its obligations to the District's students with disabilities.

If necessary, students may also be placed in nonpublic special education programs or education facilities. <sup>6</sup>

LEGAL REF.: 20 U.S.C. §1400 et seq., Individuals With Disabilities Education Improvement Act of 2004.  
29 U.S.C. §794, Rehabilitation Act of 1973, Section 504.  
42 U.S.C. §12101 et seq., Americans With Disabilities Act.  
34 C.F.R. Part 300.  
34 C.F.R. Part 300.  
105 ILCS 5/14-1.01 et seq., 5/14-7.02, and 5/14-7.02b.  
23 Ill.Admin.Code Part 226.

CROSS REF.: 2:150 (Committees), 7:230 (Misconduct by Students with Disabilities)

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<sup>5</sup> Districts must use ISBE's procedural safeguards for students who qualify for services under IDEA. For students who qualify for services exclusively under Section 504, the district must establish a system of procedural safeguards or use the ones provided by ISBE *Special Education* rules. 23 Ill.Admin.Code §§226.500-570. ISBE rules are more extensive than is required by Section 504 and districts may, as the policy provides, develop their own procedures. See 6:120-API\_E, *Notice to Parents/Guardians Regarding Section 504*.

<sup>6</sup> The district may be eligible to receive reimbursement from the State for the student's expenses. 105 ILCS 5/14-7.02.

## Instruction

### Accelerated Placement Program 1

The District provides an Accelerated Placement Program (APP). The APP advances the District’s goal of providing educational programs with opportunities for each student to develop to his or her maximum potential.<sup>2</sup> The APP provides an educational setting with curriculum options usually reserved for students who are older or in higher grades than the student participating in the APP.<sup>3</sup> APP options include, but may not be limited to: (a) accelerating a student in a single subject; (b) other grade-level acceleration; and (c) early entrance to kindergarten or first grade.<sup>4</sup> Participation in the APP is open to all students who demonstrate high ability and who may benefit from accelerated placement. It is not limited to students who have been identified as gifted and talented.<sup>5</sup> Eligibility to participate in the District’s APP shall not be conditioned upon the protected classifications identified in School Board policy 7:10, *Equal Educational Opportunities*, or any factor other than the student’s identification as an accelerated learner.<sup>6</sup>

The Superintendent or designee shall implement an APP that includes:

1. Decision-making processes that are fair, equitable, and involve multiple individuals, e.g. District administrators, teachers, and school support personnel, and a student’s parent(s)/guardian(s);<sup>7</sup>
2. Notification processes that notify a student’s parent(s)/guardian(s) of a decision affecting a student’s participation in the APP;<sup>8</sup>

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<sup>1</sup> State law requires this subject matter be covered by policy and controls its content. 105 ILCS 5/14A. (Accelerated Placement Act (APA)); 23 Ill.Admin.Code Part 227. Ill. State Board of Education (ISBE) rules require this policy to be posted on the district website, if available. 23 Ill.Admin.Code §227.60(a). ISBE rules also require districts to annually report, by July 31, demographic information regarding students participating in accelerated placement. 23 Ill.Admin.Code §227.60(c).

<sup>2</sup> Optional. Ensure this statement matches the board’s current educational philosophy and objectives. See policy 6:10, *Educational Philosophy and Objectives*.

<sup>3</sup> 105 ILCS 5/14A-17. *Accelerated Placement Act*; 23 Ill.Admin.Code §227.5.

<sup>4</sup> *Id.* For high school districts, delete “(c) early entrance to kindergarten or first grade” and insert the word “and” between (a) and (b).

Attorneys disagree whether the APA conflicts with 105 ILCS 5/10-20.12 (*School year – School age*). The APA requires accelerated placement to include “early entrance to kindergarten or first grade.” 105 ILCS 5/14A-17. 105 ILCS 5/10-20.12 *permits* districts to offer early entrance to kindergarten or first grade “based upon an assessment of the student’s readiness to attend school.” 105 ILCS 5/10-20.12 also states that students may enter first grade early when they: (1) are assessed for readiness; (2) have attended a non-public preschool and continued their education at that school through kindergarten; (3) were taught in kindergarten by an appropriately certified teacher; and (4) will attain the age of 6 years on or before December 31. *Id.* See sample policy 7:50, *School Admissions and Student Transfers To and From Non-District Schools*. **Consult the board attorney for guidance.**

<sup>5</sup> 105 ILCS 5/14A-32(a)(1) *Accelerated Placement Act*; 23 Ill.Admin.Code §227.5.

<sup>6</sup> 105 ILCS 5/14A-25, *Accelerated Placement Act*.

<sup>7</sup> 105 ILCS 5/14A-32(a)(2) *Accelerated Placement Act* requires that the accelerated placement policy include “a fair and equitable decision-making process that involves multiple persons and includes a student’s parents or guardians” but does not specify what individuals are to be involved or limit those individuals to district employees. Amend this listing to align with the local board’s preference.

- 3. Assessment processes that include multiple valid, reliable indicators <sup>9</sup>

4. For the fall of 2021, the assessment and testing activity of any student whose placement in the next highest level is based on a grade level assessment process as the ILCS 5/14A-32(b)(1) states, the district shall ensure that assessment activities are designed and administered to ensure the student's academic growth and progress. <sup>10</sup>

- a. A student whose grade or credits have advanced in English language arts shall be automatically promoted into the next highest level of advanced course coursework.

- b. A student whose grade or credits have advanced in mathematics shall be automatically promoted into the next highest level of advanced course coursework.

- c. A student whose grade or credits have advanced in science shall be automatically promoted into the next highest level of advanced course coursework in science.

The Superintendent or designee shall annually notify the community, parent(s)/guardian(s), students, and school personnel about the APP, the process for referring a student for possible evaluation for accelerated placement, and the methods used to determine whether a student is eligible for accelerated placement, including strategies to ensure groups of students and families who have been historically underserved are included in accelerated programs and advanced coursework. <sup>11</sup> Notification may: (a) include varied communication methods, such as student handbooks and District or school websites; and (b) be provided in multiple languages, as appropriate. <sup>12</sup>

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

<sup>8</sup> 105 ILCS 5/14A-32(a)(3), added by P.A. 100-47.

<sup>9</sup> 105 ILCS 5/14A-32(a)(4), added by P.A. 100-47.

<sup>10</sup> Required by 105 ILCS 5/14A-32(b)(1), added by P.A. 100-47. For all districts, including elementary-only districts, the assessment and testing activity of any student whose placement in the next highest level is based on a grade level assessment process as the ILCS 5/14A-32(b)(1) states, the district shall ensure that assessment activities are designed and administered to ensure the student's academic growth and progress. through the assessment and testing activity of any student whose placement in the next highest level is based on a grade level assessment process as the ILCS 5/14A-32(b)(1) states, the district shall ensure that assessment activities are designed and administered to ensure the student's academic growth and progress. **sample** assessment and testing activity of any student whose placement in the next highest level is based on a grade level assessment process as the ILCS 5/14A-32(b)(1) states, the district shall ensure that assessment activities are designed and administered to ensure the student's academic growth and progress.

<sup>11</sup> Optional. 105 ILCS 5/14A-32(b)(1), proposed by 100-47, permits, but does not require "procedures for annually informing the community at-large, including parents or guardians, about the accelerated placement program and the methods used for the identification of children eligible for accelerated placement" (105 ILCS 5/14A-32(b)(1) states, "procedures for annually informing the community at-large, including parents or guardians, about the accelerated placement program and the methods used for the identification of children eligible for accelerated placement").

<sup>12</sup> Optional. 105 ILCS 5/14A does not require this but it is a recommended best practice and aligns with sample policy 7:10, *Equal Educational Opportunities*.

LEGAL REF.: 105 ILCS 5/14A.  
23 Ill.Admin.Code Part 227, Gifted Education.

CROSS REF.: 6:10 (Educational Philosophy and Objectives), 6:130 (Program for the Gifted),  
7:10 (Equal Educational Opportunities), 7:50 (School Admissions and Student  
Transfers To and From Non-District Schools)

## Instruction

### Extended Instructional Programs 1

The District may offer the following programs in accordance with State law and the District's educational philosophy:

1. Nursery schools for children between the ages of 2 and 6 years. <sup>2</sup>
2. Before-and after-school programs for students in grades K-6. <sup>3</sup>
3. Child care and training center for pre-school children and for students whose parents work. <sup>4</sup>
4. Model day care services program in cooperation with the State Board of Education. <sup>5</sup>
5. Tutorial program. <sup>6</sup>
6. Adult education program. <sup>7</sup>
7. Outdoor education program. <sup>8</sup>
8. Summer school, whether for credit or not. <sup>9</sup>
9. Independent study, whether for credit or not. <sup>10</sup>
10. Support services and instruction for students who are, or whose parents/guardians are, chemically dependent. <sup>11</sup>

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

<sup>1</sup> State or federal law controls this policy's content. However, all programs listed in this policy are optional. The district may charge a fee for programs numbered 1-4, 6, 8, 9, and 14.

<sup>2</sup> 105 ILCS 5/10-23.2. A school district may offer a course on hunting safety as part of its curriculum during the school day or as part of an after-school program. 105 ILCS 5/10-23.13 (final citation pending), added by P.A. 101-152. Unlike the before-and-after-school programs authorized by 105 ILCS 5/10-23.2, no grade levels are specified for the hunting safety course or the after-school program in which it may be offered. 105 ILCS 5/27-23.1 (final citation pending).

<sup>3</sup> 105 ILCS 5/10-22.18b. A school district may offer a course on hunting safety as part of its curriculum during the school day or as part of an after-school program. 105 ILCS 5/27-23.14, added by P.A. 101-152 and renumbered by P.A. 102-558. Unlike the before-and-after-school programs authorized by 105 ILCS 5/10-23.2, no grade levels are specified for the hunting safety course or the after-school program in which it may be offered. Id.

<sup>4</sup> 105 ILCS 5/10-22.18a.

<sup>5</sup> 105 ILCS 5/10-22.18c. Student parents cannot be charged a fee for such day care services, however school personnel who use the services may be charged a fee. Id.

<sup>6</sup> 105 ILCS 5/10-22.20c.

<sup>7</sup> 105 ILCS 5/10-22.20, amended by P.A. 101-289. A school board may appoint a director of adult education. 105 ILCS 5/10-22.20b.

<sup>8</sup> 105 ILCS 5/10-22.29.

<sup>9</sup> 105 ILCS 5/10-22.33A and 5/10-22.33B. Each course offered for high school graduation must provide at least 60 hours of classroom instruction for the equivalent of one semester of high school course credit. 105 ILCS 5/27-22.1. 105 ILCS 5/10-22.33B authorizes districts to conduct a *high-quality* summer school program. Students at risk in language arts or mathematics may be required to attend such programs. Section 10-22.33A permits districts "to fix and collect a charge for attendance at such courses in an amount not to exceed the per capita cost of the operation" or to waive such charges if the family of a pupil is indigent or if the pupil is required to attend such courses.

<sup>10</sup> Independent study allows students to expand their knowledge in curricular areas not offered as part of the district's basic program.

<sup>11</sup> 105 ILCS 110/3. Such services and instruction may be offered as part of existing curricula during the school day or as part of an after school program. Id.

11. Anti-bias education and activities to address intergroup conflict. <sup>12</sup>
12. Volunteer service credit program. <sup>13</sup>
13. Vocational academy. <sup>14</sup>
14. Advanced vocational training and/or career education program. <sup>15</sup>

LEGAL REF.: 105 ILCS 5/10-22.18a, 5/10-22.18b, 5/10-22.18c, 5/10-22.20, 5/10-22.20a, 5/10-22.20b, 5/10-22.20c, 5/10-22.29, 5/10-22.33A, 5/10-22.33B, 5/10-23.2, 5/27-22.1, 5/27-22.3, 5/27-23.6,<sup>5</sup>  
105 ILCS 110/3, Comprehensive Health Education and  
105 ILCS 433/, Vocational Academies Act.

CROSS REF.: 6:310 (High School Credit for Non-District Experiences: Course Substitutions; Re-Entering Students), 6:320 (High School Credit for Proficiency)

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

<sup>12</sup> 105 ILCS 5/27-23.6. The statutory objectives of such a program are to “improve intergroup relations on and beyond the school campus, defusing intergroup tensions, and promoting peaceful resolution of conflict.” A board that adopts a policy to incorporate activities to address intergroup relations and intergroup conflict shall make certain information available to the public and shall disseminate it as specified in this statute include it on the district’s website, if any, and make it available in the district’s offices upon request. See 2.250-E2, Immediately Available District Public Records and Web-Posted Reports and Records. Districts may also include the information in a student handbook and in district newsletters. ~~105 ILCS 5/27-23.6(e).~~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](http://www.ilprincipals.org/resources/model-student-handbook).

See also fn 23 in policy 6:60, Curriculum Content. ~~105 ILCS 5/27-23.6(e).~~ Districts may also include the information in a student handbook and in district newsletters. ~~105 ILCS 5/27-23.6(e).~~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](http://www.ilprincipals.org/resources/model-student-handbook).

<sup>13</sup> 105 ILCS 5/27-22.3. For secondary school students only. Id.

<sup>14</sup> Vocational Academies Act. 105 ILCS 433/. The Act’s purpose is to “integrate workplace competencies and career and technical education with core academic subjects.” School districts are permitted to partner with community colleges, local employers, and community-based organizations to establish a vocational academy that functions as a 2-year school within a school for grades 10 through 12. Grant funds may be available from ISBE at: [www.isbe.net/Pages/Grants.aspx](http://www.isbe.net/Pages/Grants.aspx).

<sup>15</sup> 105 ILCS 5/10-22.20a, permits districts to enter joint agreements with community college districts and other school districts to provide career education or advanced vocational training to students in grade 11 and higher to prepare for a trade. The duration of such program may not exceed two years for any district pupil. Participating community colleges may bill participating districts, but payments may not exceed actual operating costs. Participating high schools may use State aid monies to pay the charges. Id.



## **Policy 6:210 Instructional Materials**

All District classrooms and learning centers should be equipped with an evenly-proportioned, wide assortment of instructional materials, including textbooks, workbooks, audio-visual materials, and electronic materials. These materials should provide quality learning experiences for students and:

1. Enrich and support the curriculum;
2. Stimulate growth in knowledge, literary appreciation, aesthetic values, and ethical standards;
3. Provide background information to enable students to make informed judgments and promote critical reading and thinking;
4. Depict in an accurate and unbiased way the cultural diversity and pluralistic nature of American society; and
5. Contribute to a sense of the worth of all people regardless of sex, race, religion, nationality, ethnic origin, sexual orientation, disability, or any other differences that may exist.

The Superintendent or designee shall annually provide a list or description of textbooks and instructional materials used in the District to the Board of Education. Anyone may inspect any textbook or instructional material.

The Superintendent shall approve the selection of all textbooks and instructional materials according to the standards described in this policy. The School Code governs the adoption and purchase of textbooks and instructional materials.

Teachers are encouraged to use age-appropriate supplemental material only when it will enhance, or otherwise illustrate, the subjects being taught.

1. No movie shall be shown in its entirety unless prior approval is received from the Superintendent or designee.
2. In grades 7-8, no R-rated or PG-13 movie segments shall be shown to students unless prior approval is received from the Superintendent or designee, as well as parent approval.
3. In grades 4-8, only movie segments with a rating of PG or G may be shown.
4. In grades K-3, only movie segments with a rating of G may be shown.
5. No movie rated NC-17 (no one 17 and under admitted), shall be shown under any circumstances.

LEGAL REF.:

105 ILCS 5/10-20.8, 5/10-20.9, and 5/28-19.1.

CROSS REF.: 6:30 (Organization of Instruction), 6:40 (Curriculum Development), 6:80 (Teaching About Controversial Issues), 6:170 (Title I Programs), 6:260 (Complaints About Curriculum, Instructional Materials, and Programs), 7:10 (Equal Educational Opportunities), 7:15 (Student and Family Privacy Rights), 8:110 (Public Suggestions and Concerns)

ADOPTED: October 4, 2017

Comm. Cons. SD 46

Teachers are encouraged to use age-appropriate supplemental material only when it will enhance, or otherwise illustrate, the subjects being taught.

1. No movie shall be shown in its entirety unless prior approval is received from the Superintendent or designee.
2. In grades 7-8, no R-rated or PG-13 movie segments shall be shown to students unless prior approval is received from the Superintendent or designee, as well as parent approval.
3. In grades 4-8, only movie segments with a rating of PG or G may be shown.
4. In grades K-3, only movie segments with a rating of G may be shown.
5. No movie rated NC-17 (no one 17 and under admitted), shall be shown under any circumstances.

Paul is suggesting the following revisions that are highlighted and the order of the bullets.

Teachers are encouraged to use age-appropriate supplemental material only when it will enhance, or otherwise illustrate, the subjects being taught. The decision to show movie segments or full movies should be made on a very limited basis and closely connected to the scope and sequence documents. Movies should not be shown as a reward. (Unsure if a definition of what a movie segment is (a short clip or portion of the movie highlighting a scene or story element) should be included.)

1. In grades K-3, only movie segments with a rating of G may be shown.
2. In grades 4-8, only movie segments with a rating of PG or G may be shown.
3. In grades 7-8, no R-rated or PG-13 movie segments shall be shown to students unless prior approval is received from the Superintendent or designee, as well as parent approval.
4. No movie rated NC-17 (no one 17 and under admitted), shall be shown under any circumstances.
5. No movie rated G, PG, or PG-13 shall be shown in its entirety unless prior approval is received from the Building Principal and Superintendent or designee, as well as parent approval.

## INSTRUCTION

### **6:210 Instructional Materials**

All District classrooms and learning centers should be equipped with an evenly-proportioned, wide assortment of instructional materials, including textbooks, workbooks, audio-visual materials, and electronic materials. These materials should provide quality learning experiences for students and:

1. Enrich and support the curriculum;
2. Stimulate growth in knowledge, literary appreciation, aesthetic values, and ethical standards;
3. Provide background information to enable students to make informed judgments and promote critical reading and thinking;
4. Depict in an accurate and unbiased way the cultural diversity and pluralistic nature of American society; and
5. Contribute to a sense of the worth of all people regardless of sex, race, religion, nationality, ethnic origin, sexual orientation, disability, or any other differences that may exist.

The Superintendent or designee shall annually provide a list or description of textbooks and instructional materials used in the District to the Board of Education. Anyone may inspect any textbook or instructional material.

The Superintendent shall approve the selection of all textbooks and instructional materials according to the standards described in this policy. The School Code governs the adoption and purchase of textbooks and instructional materials.

Teachers are encouraged to use age-appropriate supplemental material only when it will enhance, or otherwise illustrate, the subjects being taught. The decision to show movie segments or full movies should be made on a very limited basis and closely connected to the scope and sequence documents. Movies should not be shown as a reward.

1. In grades K-3, only movie segments with a rating of G may be shown. No movie shall be shown in its entirety unless prior approval is received from the Superintendent or designee.
2. In grades 4-8, only movie segments with a rating of PG or G may be

~~shown no R-rated or PG-13 movie segments shall be shown to students unless prior approval is received from the Superintendent or designee, as well as parent approval.~~

3. ~~In grades 7-8, no R-rated or PG-13 movie segments shall be shown to students unless prior approval is received from the Superintendent or designee, as well as parent approval. only movie segments with a rating of PG or G may be shown.~~
4. ~~No movie rated NC-17 (no one 17 and under admitted), shall be shown under any circumstances. In grades K-3, only movie segments with a rating of G may be shown.~~
5. ~~No movie rated G, PG, or PG-13 shall be shown in its entirety unless prior approval is received from the Building Principal and Superintendent or designee, as well as parent approval. NC-17 (no one 17 and under admitted), shall be shown under any circumstances.~~

LEGAL REF.:

105 ILCS 5/10-20.8, 5/10-20.9, and 5/28-19.1.

CROSS REF.: 6:30 (Organization of Instruction), 6:40 (Curriculum Development), 6:80 (Teaching About Controversial Issues), 6:170 (Title I Programs), 6:260 (Complaints About Curriculum, Instructional Materials, and Programs), 7:10 (Equal Educational Opportunities), 7:15 (Student and Family Privacy Rights), 8:110 (Public Suggestions and Concerns)

ADOPTED: October 4, 2017

## Instruction

### **Bring Your Own Technology (BYOT) Program; Responsible Use and Conduct 1**

The Superintendent or designee shall establish a *Bring Your Own Technology* (BYOT) Program. The program will: 2

1. Promote educational excellence by facilitating resource sharing, innovation, and communication to enhance (a) technology use skills; (b) web-literacy and critical thinking skills about Internet resources and materials, including making wise choices; and (c) habits for responsible digital citizenship required in the 21st century. 3
2. Provide sufficient wireless infrastructure within budget parameters. 4
3. Provide access to the Internet only through the District's electronic networks. 5
4. Identify approved BYOT devices and what District-owned technology devices may be available; e.g., laptops, tablet devices, E-readers, and/or smartphones.
5. Align with Board policies 4:140, *Waiver of Student Fees*; 5:120, *Protections of the Privacy and Confidentiality of Information*; 5:125, *Personal Technology and Social Media; Usage and Conduct*; 5:170, *Copyright*; 6:120, *Education of Children with Disabilities*; 6:235, *Access to Electronic Networks*; 7:140, *Search and Seizure*; 7:180, *Prevention of and Response to Bullying*,

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

<sup>1</sup> This policy is optional. It concerns an area in which the law is unsettled. 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. Consult the board attorney and the district's information technology professional(s) for advice to create a legally sound program that fits your district's mission statement for instruction.

<sup>2</sup> Customize paragraphs 1-8 to reflect the how the program will align with the board's mission statement for instruction and goals for its program.

<sup>3</sup> 105 ILCS 5/27-13.3 and 47 C.F.R. § 54.520(c)(1)(i) require Internet safety instruction. See ¶n 20.3 in 6:60, *Curriculum Content* for more discussion.

<sup>4</sup> Districts may want to consider a *guest network*, similar to what hotels and other service industry hosts provide to their customers. This can protect a district's network from malicious software, which is discussed in ¶n 5 below.

<sup>5</sup> Care must be taken to comply with the Children's Internet Protection Act (CIPA) (47 U.S.C. §254). CIPA requires the district to provide content filters, blocking lists, or district monitoring of Internet website traffic for patterns of usage that could indicate inappropriate network usage. While a program using district-owned technology devices is always subject to the district's electronic network rules, a BYOT program creates the possibility for students to bypass the district's electronic network and access the Internet through their own wireless providers' signals. This *bypass* complicates a district's duty under CIPA because it cannot guarantee students use its electronic network; preventing bypassing is hard for school officials to control.

Consult the board attorney about managing CIPA compliance issues in the context of a BYOT program. This sample policy is conservative, and it requires that CIPA govern the use of any BYOT device's Internet access capability while the device is at school. If the board will allow a student to bypass the district's electronic network and access his or her wireless providers' signals, consult the board attorney.

Care must also be taken to reduce the electronic network's vulnerability to malicious viruses and malware. Malicious viruses and malware are increasingly being targeted to smartphone users. This is evidenced by the Federal Trade Commission (FTC) filing lawsuits around the country accusing companies of ordering or engineering the sending of hundreds of millions of spam text messages to mobile phone users. The district may want to require students to ensure their BYOT devices contain an anti-virus and/or anti-malware software product. While many of these software products are free, some are not. Requiring all BYOT devices to have this type of software presents equity issues between students because it may require parents/guardians to spend funds to participate (see the discussion in ¶n 6 below).

*Intimidation, and Harassment*; 7:190, *Student Behavior*; and 7:340, *Student Records*. See also 105 ILCS 5/10-22.6(c) re: BYOT programs, 6

6. Provide relevant staff members with BYOT professional development opportunities, including the provision of:
  - a. Classroom management information about issues associated with the program, e.g., technical support, responsible use, etc.;
  - b. A copy of or access to this policy and any building-specific rules for the program;
  - c. Additional training, if necessary, about 5:170, *Copyright*; and

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

6 A BYOT program must continue to follow established policies. Boards may use this alternative, "Align with established Board policies."

Managing the following issues may require a consultation with the board attorney:

1. 4:140, *Waiver of Student Fees*, needs examination because most BYOT programs require parents/guardians to spend funds to participate. 105 ILCS 5/10-20.13 requires districts, at a minimum, to waive charges for textbooks and other fees for children whose families are unable to afford them. See also policy 6:210, *Instructional Materials*, stating that district classrooms and learning centers should be equipped with an evenly-proportioned, wide assortment of instructional materials, including textbooks, workbooks, audio-visual materials, and electronic materials.
2. Management issues concerning 5:125, *Personal Technology and Social Media: Usage and Conduct*, and 5:170, *Copyright* are discussed in f/n 7 and 8 below.
3. 6:120, *Education of Children with Disabilities*, requires consideration for students with disabilities when integrating any technology programs into the educational environment. As with district-provided devices (often referred to as 1:1 technology programs), devices must be accessible to students with disabilities, including those who are blind, have low vision or have a disability that affects their ability to access print information. The use of mobile devices that do not allow a student with a disability to access the instructional materials would be a violation of the student's right under the Individuals With Disabilities Education Act (IDEA) (20 U.S.C. §1400 *et seq.*).
4. 6:235, *Access to Electronic Networks*, is discussed in f/n 5 above.
5. 7:140, *Search and Seizure*, still applies in a BYOT program. The Fourth Amendment protects individuals from searches only when the person has a legitimate expectation of privacy. However, 105 ILCS 5/10-22.6(c) allows school officials to inspect the personal effects left by a student on property owned or controlled by the school, e.g., lockers, desks, and parking lots. Many cases suggest that to search a student's possessions left in the locker, school officials need individualized suspicion of wrongdoing. Many of the issues re: the search of electronic devices that are discussed in 7:190-AP6, *Guidelines for Investigating Sexting Allegations*, will apply to investigations involving BYOT devices. To minimize mediating with law enforcement for parents/guardians about confiscated devices, districts should distinguish whether they are acting upon their own initiative or need to contact law enforcement. See f/n in policy 7:140, *Search and Seizure*, and the policy's **Seizure of Property** subhead.
6. 7:180, *Prevention of and Response to Bullying, Intimidation, and Harassment*, and 7:190, *Student Behavior*, present similar issues to #3 and #4 above. Students must be aware that traditional expectations for appropriate behavior, and the consequences for inappropriate behavior, apply to a BYOT program. See 7:340, *Student Records*. The law is not clear whether materials created by students participating in a BYOT program through a district's network access are *school student records*.

§ 105-10-22.6(c) BYOT programs must continue to follow established policies. Boards may use this alternative, "Align with established Board policies." Managing the following issues may require a consultation with the board attorney: 1. 4:140, Waiver of Student Fees, needs examination because most BYOT programs require parents/guardians to spend funds to participate. 105 ILCS 5/10-20.13 requires districts, at a minimum, to waive charges for textbooks and other fees for children whose families are unable to afford them. See also policy 6:210, Instructional Materials, stating that district classrooms and learning centers should be equipped with an evenly-proportioned, wide assortment of instructional materials, including textbooks, workbooks, audio-visual materials, and electronic materials. 2. Management issues concerning 5:125, Personal Technology and Social Media: Usage and Conduct, and 5:170, Copyright are discussed in f/n 7 and 8 below. 3. 6:120, Education of Children with Disabilities, requires consideration for students with disabilities when integrating any technology programs into the educational environment. As with district-provided devices (often referred to as 1:1 technology programs), devices must be accessible to students with disabilities, including those who are blind, have low vision or have a disability that affects their ability to access print information. The use of mobile devices that do not allow a student with a disability to access the instructional materials would be a violation of the student's right under the Individuals With Disabilities Education Act (IDEA) (20 U.S.C. §1400 et seq.). 4. 6:235, Access to Electronic Networks, is discussed in f/n 5 above. 5. 7:140, Search and Seizure, still applies in a BYOT program. The Fourth Amendment protects individuals from searches only when the person has a legitimate expectation of privacy. However, 105 ILCS 5/10-22.6(c) allows school officials to inspect the personal effects left by a student on property owned or controlled by the school, e.g., lockers, desks, and parking lots. Many cases suggest that to search a student's possessions left in the locker, school officials need individualized suspicion of wrongdoing. Many of the issues re: the search of electronic devices that are discussed in 7:190-AP6, Guidelines for Investigating Sexting Allegations, will apply to investigations involving BYOT devices. To minimize mediating with law enforcement for parents/guardians about confiscated devices, districts should distinguish whether they are acting upon their own initiative or need to contact law enforcement. See f/n in policy 7:140, Search and Seizure, and the policy's Seizure of Property subhead. 6. 7:180, Prevention of and Response to Bullying, Intimidation, and Harassment, and 7:190, Student Behavior, present similar issues to #3 and #4 above. Students must be aware that traditional expectations for appropriate behavior, and the consequences for inappropriate behavior, apply to a BYOT program. See 7:340, Student Records. The law is not clear whether materials created by students participating in a BYOT program through a district's network access are school student records.

7 See f/n 1 above re: collective bargaining. Moving forward without properly training educators to manage BYOT issues may create pedagogical problems. One option for this training is to incorporate it into the training required 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*. Many issues involved in BYOT programs intersect with maintenance of appropriate behavior and policy 5:125, *Personal Technology and Social Media: Usage and Conduct*.

- d. Information concerning appropriate behavior of staff members as required by State law and policy 5:120, *Employee Ethics; Conduct; and Conflict of Interest*.<sup>8</sup>
- 7. Provide a method to inform parents/guardians and students about this policy.
- 8. Include the program in the annual report to the Board as required under policy 6:10, *Education Philosophy and Objectives*.

The District reserves the right to discontinue its BYOT program at any time. The District does not provide liability protection for BYOT devices, and it is not responsible for any damages to them.

Responsible Use<sup>9</sup>

The District recognizes students participating in the program as responsible young adults and holds high expectations of their conduct in connection with their participation in the program. Teachers may encourage students to bring their own devices as supplemental in-class materials when: (a) using the devices will appropriately enhance, or otherwise illustrate, the subjects being taught; (b) the Building Principal has approved their use and found that their use is age-appropriate; and (c) the student’s parent/guardian has signed the *Bring Your Own Technology (BYOT) Program Participation Authorization and Responsible Use Agreement Form*. A student’s right to privacy in his or her device is limited; any reasonable suspicion of activities that violate law or Board policies will be treated according to policy 7:140, *Search and Seizure*.

Responsible use in the program incorporates into this policy the individual’s *Acceptable Use of Electronic Networks* agreement pursuant to policy 6:235, *Access to Electronic Networks*. Responsible use also incorporates the established usage and conduct rules in policy 5:125, *Personal Technology and Social Media; ~~and Personal Technology; Usage and Conduct~~*, for staff and 7:190, *Student Behavior*, for students. Failure to follow these rules and the specific BYOT program student guidelines may result in: (a) the loss of access to the District’s electronic network and/or student’s BYOT privileges; (b) disciplinary action pursuant to 7:190, *Student Behavior*; 7:200, *Suspension Procedures*; or 7:210, *Expulsion Procedures*; and/or (c) appropriate legal action, including referrals of suspected or alleged criminal acts to appropriate law enforcement agencies.

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<sup>8</sup> 23 Ill.Admin.Code §22.20 and 105 ILCS 5/21B-75, amended by P.A. 11-0101, § 10-1.

<sup>9</sup> This section provides general guidelines. A BYOT program will require a parent/guardian authorization to participate in it and specific guidelines for students. See 6:220-E1, *Authorization to Participate in the Bring Your Own Technology (BYOT) Program: Responsible Use and Conduct Agreement*; 6:220-E2, *Bring Your Own Technology (BYOT) Program Student Guidelines*; and 6:235-E5, *Children’s Online Privacy Protection Act*. See ¶ns 7 and 8 above re: teachers’ guidelines. See ¶n 1, above discussing how the application of additional guidelines for teachers may have collective bargaining implications.

LEGAL REF.: 15 U.S.C. §§6501-6508, Children's Online Privacy Protection Act, implemented by 16 C.F.R. Part 312, Children's Online Privacy Protection Rule.  
20 U.S.C §6751 *et seq.*, Enhancing Education Through Technology Act.  
47 U.S.C. §254(h) and (l), Children's Internet Protection Act.  
47 C.F.R. Part 54, Subpart F, Universal Service Support for Schools and Libraries.  
105 ILCS 5/10-20.28.

CROSS REF.: 1:30 (School District Philosophy), 4:140 (Waiver of Student Fees), 5:120 (Employee Ethics; Conduct; and Conflict of Interest), 5:125 (Personal Technology and Social Media; Usage and Conduct), 5:170 (Copyright), 6:10 (Educational Philosophy and Objectives), 6:40 (Curriculum Development), 6:120 (Education of Children with Disabilities), 6:210 (Instructional Materials), 6:235 (Access to Electronic Networks), 7:140 (Search and Seizure), 7:180 (Prevention of and Response to Bullying, Intimidation, and Harassment), 7:190 (Student Behavior), 7:340 (Student Records)



## Instruction

### Student Testing and Assessment Program 1

The District student assessment program provides information for determining individual student achievement and instructional needs, curriculum and instruction effectiveness, and school performance measured against District student learning objectives and statewide norms.

The Superintendent or designee shall manage the student assessment program that, at a minimum:

1. Administers to students all standardized assessments required by the Ill. State Board of Education (ISBE) and/or any other appropriate assessment methods and instruments, including norm and criterion-referenced achievement tests, aptitude tests, proficiency tests, and teacher-developed tests.
2. Informs students of the timelines and procedures applicable to their participation in every State assessment.<sup>2</sup>
3. Provides each student’s parents/guardians with the results or scores of each State assessment and an evaluation of the student’s progress. See policy 6:280, *Grading and Promotion*.<sup>3</sup>
4. Utilizes professional testing practices.<sup>4</sup>

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

<sup>1</sup> State and federal law control this policy’s content. 105 ILCS 5/2-3.64a-5(b) requires “the State Board of Education (ISBE) to “establish the academic standards that are to be applicable to students who are subject to State assessments.” It contains the schedule for assessing students by calendar year and grade. The State Board of Education (ISBE) also has the authority to “establish the schedule for assessing students by calendar year and grade.” The State Board of Education (ISBE) also has the authority to “establish the schedule for assessing students by calendar year and grade.” The State Board of Education (ISBE) also has the authority to “establish the schedule for assessing students by calendar year and grade.”

105 ILCS 5/2-3.64a-5(c), amended by P.A. 101-643, requires that the assessment administered by ISBE for the purpose of student application to or admissions consideration by institutions of higher education be administered on a school day during regular student attendance hours.

105 ILCS 5/2-3.64a-5(d) contains the requirements for assessing students receiving special education services and students determined to be English learners.

105 ILCS 5/2-3.64a-5(e), amended by P.A. 101-643, no longer requires that the scores attained by a student on an assessment that includes a college and career readiness determination be entered on the student’s transcript. The scores, however, must be placed in the student’s permanent record. See 23 Ill.Admin.Code §375.10.

105 ILCS 5/2-3.64a-5(f), amended by P.A. 101-643, requires that the results of the assessment be provided to the student’s parents/guardians.

<sup>2</sup> Required by 105 ILCS 5/2-3.64a-5(c), amended by P.A. 101-643.

<sup>3</sup> 105 ILCS 5/2-3.64a-5(e), amended by P.A. 101-643, requires districts to provide State assessment results/scores to students’ parents/guardians. The second part of this provision is optional and may be deleted, i.e., “and an evaluation of the student’s progress.”

<sup>4</sup> 105 ILCS 5/2-3.107; 23 Ill.Admin.Code §1.30(b).

Overall student assessment data on tests required by State law will be aggregated by the District and reported, along with other information, on the District's annual report card.<sup>5</sup> All reliable assessments administered by the District and scored by entities outside of the District must be (1) reported to ISBE on its form by the 30<sup>th</sup> day of each school year, and (2) made publicly available to parents/guardians of students.<sup>6</sup> Board policy 7:340, *Student Records*, and its implementing procedures govern recordkeeping and access issues.<sup>7</sup>

LEGAL REF.: 20 U.S.C. §1232g, Family Educational Rights and Privacy Act.  
105 ILCS 10/, Illinois School Student Records Act.  
105 ILCS 5/2-3.63, 5/2-3.64a-5, ~~5/2-3.64b-5~~, 5/2-3.107, 5/2-3.153, 5/10-17a,  
5/22-82, and 5/27-1.  
23 Ill. Admin. Code §1.30(b) and § 375.10.

CROSS REF.: 6:15 (School Accountability), 6:280 (Grading and Promotion), 7:340 (Student Records)

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

<sup>5</sup> Required by 105 ILCS 5/10-17a, *Annual Report Card Policy*, 2011-12, § 406. School districts must annually, no more than 30 days after receipt from the State Superintendent release their district's and schools' report cards assessing the performance of its schools and students. Districts must: (1) present the report cards at a regular Board meeting, (2) post them on the District's website, (3) make them available to a newspaper of general circulation serving the District, and (4) upon request, send them home to parents/guardians. 105 ILCS 5/10-17a(5). The school report card must describe, among other items, student characteristics, curriculum information, student outcomes and progress, and school environment. The environment report must include indicators from the *school climate survey* approved under 105 ILCS 5/2-3.153 (requires ISBE, in addition to its default school climate survey, to identify two or three alternative school survey instruments from which districts may select).

<sup>6</sup> 105 ILCS 5/22-82 requires every school district to report to ISBE for each of its schools, by the 30th day of each school year, all reliable assessments the district administers that are scored by entities outside of the district. The district must make the report on an ISBE-provided form.

Each school must also make this information publicly available to the parents and guardians of its students through the district's Internet website or distribute the information in paper form. Id. at (b). See 2:250-E2, *Immediately Available District Public Records and Web-Posted Reports and Records*. Although not required by law, if a board wants to direct that this information be shared more broadly with the public for greater transparency, add "and to the community" after "parents/guardians of students."

<sup>7</sup> 105 ILCS 5/2-3.64a-5(e), *Annual Report Card Policy*, 2011-12, § 406 governs recording assessment results in school student records. See also the Ill. School Student Records Act, 105 ILCS 10:; 23 Ill.Admin.Code §375.10.

## Students

### Equal Educational Opportunities 1

Equal educational and extracurricular opportunities shall be available for all students without regard to color, race, nationality, religion, sex, sexual orientation, ancestry, age, physical or mental disability, gender identity,<sup>2</sup> status of being homeless, immigration status, order of protection status, actual or potential marital or parental status, including pregnancy.<sup>3</sup> Further, the District will not knowingly enter into agreements with any entity or any individual that discriminates against students on the basis of sex or any other protected status, except that the District remains viewpoint neutral when granting access to school facilities under School Board policy 8:20, *Community Use of School*

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<sup>1</sup> State or federal law requires this subject matter be covered by policy and controls this policy's content.

<sup>2</sup> Adopting separate policies or inserting policy statements about accommodations and inclusion of transgender students in the educational program are unsettled areas of the law. Some lawyers believe doing so may open boards to equal protection challenges for not creating separate policies for other protected statuses, e.g., race, nationality, religion, etc. Executive Order (EO) 2019-11, titled "Strengthening Our Commitment to Affirming and Inclusive Schools" established the Affirming and Inclusive Schools Task Force (Task Force) to identify strategies and best practices for ensuring welcoming, safe, supportive, and inclusive school environments for transgender, nonbinary, and gender nonconforming students. The Task Force delivered a report that served as the basis for two non-regulatory guidance documents entitled *Supporting Transgender, Nonbinary and Gender Nonconforming Students* and *Sample District Policy and Administrative Procedures* at [www.isbe.net/supportallstudents](http://www.isbe.net/supportallstudents). The Ill. State Board of Education (ISBE) hosts these documents on its website.

Consult the board attorney if your board wishes to adopt a separate policy or insert policy statements about accommodations and inclusion of transgender students.

For boards that want to incorporate ISBE's *Sample District Policy and Administrative Procedures* policy recommendation into this policy, insert the following in place of "gender identity.": gender, gender identity (whether or not traditionally associated with the student's sex assigned at birth), gender expression.

**If the board inserts this option, it must also insert the options in f/n 7, below and in f/n 2 of sample policy 7:20, *Harassment of Students Prohibited*, BUT NOTE THE PROTECTED STATUSES LIST IN THIS POLICY IS DIFFERENT AND SHOULD NOT BE COPIED FROM HERE INTO 7:20, *HARASSMENT OF STUDENTS PROHIBITED*.**

See 7:10-AP1, *Accommodating Transgender Students or Gender Non-Conforming Students*, for a case-by-case procedure that school officials may use when a student requests an accommodation based upon his or her gender identity.

For a list of policies that address the equal educational opportunities, health, safety, and general welfare of students within the District, see 7:10-E, *Equal Educational Opportunities Within the School Community*.

<sup>3</sup> Many civil rights laws guarantee equal education opportunities; see citations in the Legal References.

In 23 Ill.Admin.Code §1.240, ISBE states that "no school system may deny access to its schools or programs to students who lack documentation of their immigration status or legal presence in the United States, and no school system may inquire about the immigration status of a student (*Plyler v. Doe*, 457 U.S. 202 (1982))."

The Ill. Human Rights Act (IHRA) and an ISBE rule prohibit schools from discriminating against students on the basis of *sexual orientation* and *gender identity*. 775 ILCS 5/5-101(11); 23 Ill.Admin.Code §1.240. *Sexual orientation* is defined as the "actual or perceived heterosexuality, homosexuality, bisexuality, or gender related identity, whether or not traditionally associated with the person's designated sex at birth." 775 ILCS 5/1-103(O-1). *Gender identity* is included in the definition of sexual orientation in the Act. The Act permits schools to maintain single-sex facilities that are distinctly private in nature, e.g., restrooms and locker rooms. 775 ILCS 5/5-103. 775 ILCS 5/1-102(A) makes *order of protection status* a protected category.

The IHRA's jurisdiction is specifically limited to: (1) failing to enroll an individual, (2) denying access to facilities, goods, or services, or (3) failing to take corrective action to stop severe or pervasive harassment of an individual. 775 ILCS 5/5-102.2.

*Facilities.*<sup>4</sup> Any student may file a discrimination grievance by using Board policy 2:260, *Uniform Grievance Procedure*.<sup>5</sup>

### Sex Equity<sup>6</sup>

No student shall, based on sex, sexual orientation, or gender identity<sup>7</sup> be denied equal access to programs, activities, services, or benefits or be limited in the exercise of any right, privilege, advantage, or denied equal access to educational and extracurricular programs and activities.

Any student may file a sex equity complaint by using Board policy 2:260, *Uniform Grievance Procedure*. A student may appeal the Board's resolution of the complaint to the Regional

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

<sup>4</sup> 23 Ill.Admin.Code §200.40(b) prohibits entering into agreements with entities that discriminate against students on the basis on sex. Section 200.80(a)(4) contains an exception for single sex youth organizations, e.g., Boy and Girl Scouts. Note that the U.S. Supreme Court refused to apply N.J.'s public accommodation law to the Boy Scouts because forcing the Scouts to accept a homosexual as a member would violate the Scouts' freedom of expressive association. Boy Scouts of America v. Dale, 530 U.S. 640 (2002). When deciding whether to allow non-school groups to use its facilities, a public school district may not engage in viewpoint discrimination. Good News Club v. Milford Central Sch., 533 U.S. 98 (2001).

<sup>5</sup> Districts must have a grievance procedure. See Legal References following policy. Absent a specific statute or rule, there is no consensus on whether students have the right to appeal a board's decision to the Regional Superintendent and thereafter to the State Superintendent pursuant to 105 ILCS 5/2-3.8.

<sup>6</sup> Every district must have a policy on sex equity. 23 Ill.Admin.Code §200.40(b). The IHRA, Public Accommodation section, prohibits schools from: (1) failing to enroll an individual, (2) denying a individual access to its facilities, goods, or services, or (3) failing take corrective action to stop severe or pervasive harassment of an individual (775 ILCS 5/5-102.2), on the basis of the individual's sex or sexual orientation, among other classifications (775 ILCS 5/5-101). Districts must periodically evaluate their policies and practices to identify and eliminate sex discrimination as well as evaluate course enrollment data to identify disproportionate enrollment based on sex. In-service training for all staff members is required. 23 Ill.Admin.Code §1.420.

With some exceptions, Title IX of the Education Amendments of 1972 (Title IX) guarantees that "[n]o person in the United States shall, on the basis of gender, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance..." 20 U.S.C. §§1681(a). Equal participation and equal opportunity in athletics is addressed in the U.S. Dept. of Education's implementing rules. 34 C.F.R. §106.41. Generally, when a school district offers a team for one gender but not for the other, a member of the excluded gender is allowed to try out for the team unless the sport is a *contact sport*. Contact sports are boxing, wrestling, rugby, ice hockey, football, basketball, and other sports involving bodily contact. The rules also list the factors that determine whether equal opportunities are available to both genders. These include: whether the selection of athletics accommodates the interests and abilities of both genders; equipment and supplies; scheduling; opportunity to receive coaching and academic tutoring; locker rooms, practice facilities, and fields; and publicity. Title IX prohibits any person from sexually harassing a student. See sample policy 2:265, *Title IX Sexual Harassment Grievance Procedure*, for further discussion.

105 ILCS 5/10-20.60 (~~final citation pending~~), ~~added by P.A. 100-29~~, requires public schools to provide reasonable accommodations to breastfeeding students. See sample administrative procedure 7:10-AP-2, *Accommodating Breastfeeding Students*, for specific *reasonable accommodations* under Illinois law.

105 ILCS 5/10-20.630 (~~final citation pending~~), ~~added/amended by P.A. 102-340-163~~, requires school districts to make ~~feminine~~menstrual hygiene products (defined as tampons and sanitary napkins for use in connection with the menstrual cycle) available, at no cost to students, in ~~the~~every school buildings ~~that is open for serving~~ students use in grades ~~64~~ 6 through 12 during the regular school day. Note: While P.A. 102-340 expanded the availability of menstrual hygiene products to students in grades 4 and 5, it did not expand the definition of school building, which remains defined as serving students in grades 6 through 12. ~~The statute does not delineate between types of bathrooms (student, staff, girls, boys, unisex, etc.).~~ Consult with the board attorney about implementing this law.

<sup>7</sup> For boards that want to incorporate ISBE's *Sample District Policy and Administrative Procedures* policy recommendations into this policy (see fn 2 above), insert:

1. In place of "or gender identity" as follows: "~~or~~ gender identity, or gender expression".
2. The following sentence as the second sentence of this subhead: "Students shall be supported in a manner consistent with their gender identity. This will include, but not be limited to, use of restrooms, locker rooms, and other facilities that correspond with the student's gender identity."

Superintendent (pursuant to 105 ILCS 5/3-10) and, thereafter, to the State Superintendent of Education (pursuant to 105 ILCS 5/2-3.8).<sup>8</sup>

#### Administrative Implementation

The Superintendent shall appoint a Nondiscrimination Coordinator, who also serves as the District's Title IX Coordinator.<sup>9</sup> The Superintendent and Building Principal shall use reasonable measures to inform staff members and students of this policy and related grievance procedures.<sup>10</sup>

LEGAL REF.: 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. §791 et seq., Rehabilitation Act of 1973.  
42 U.S.C. §11431 et seq., McKinney-Vento Homeless Assistance Act.  
Good News Club v. Milford Central Sch., 533 U.S. 98 (2001).  
Ill. Constitution, Art. I, §18.  
105 ILCS 5/3.25b, 5/3.25d(b), 5/10-20.12, 5/10-20.60, ~~5/10-20.63 (P.A.s 100-29 and 10-163, final citations pending)~~, 5/10-22.5, and 5/27-1.  
775 ILCS 5/1-101 et seq., Illinois Human Rights Act.  
775 ILCS 35/5, Religious Freedom Restoration Act.  
23 Ill.Admin.Code §1.240 and Part 200.

CROSS REF.: 2:260 (Uniform Grievance Procedure), 2:265 (Title IX Sexual Harassment Grievance Procedure), 6:65 (Student Social and Emotional Development), 7:20 (Harassment of Students Prohibited), 7:50 (School Admissions and Student Transfers To and From Non-District Schools), 7:60 (Residence), 7:130 (Student Rights and Responsibilities), 7:160 (Student Appearance), 7:165 (Student Dress and Uniforms), 7:180 (Prevention of and Response to Bullying, Intimidation, and Harassment), 7:185 (Teen Dating Violence Prohibited), 7:250 (Student Support Services), 7:330 (Student Use of Buildings - Equal Access), 7:340 (Student Records), 8:20 (Community Use of School Facilities)

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

<sup>8</sup> Districts must have a grievance procedure and must tell students that they may appeal a board's resolution of a sex equity complaint to the Regional Superintendent and, thereafter, to the State Superintendent. 23 Ill.Admin.Code §200.40. Student complaints regarding breastfeeding accommodations must also be processed in accordance with these procedures. See sample policy 2:260, *Uniform Grievance Procedure*, at ¶n 8.

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

<sup>9</sup> Required by regulations implementing Title IX. 34 C.F.R. Part 106.8(a). See ¶n 19 in sample policy 2:260, *Uniform Grievance Procedure*. If the district's Nondiscrimination Coordinator does not also serve as the Title IX Coordinator, amend this sentence to state: "The Superintendent shall appoint a Nondiscrimination Coordinator and a Title IX Coordinator."

<sup>10</sup> Required by regulations implementing Title IX. 34 C.F.R. Part 106; 23 Ill.Admin.Code §200.40. Comprehensive faculty and student handbooks can provide required notices, along with other important information, to recipients. Handbooks can be developed by the building principal, but should be reviewed and approved by the superintendent and board. Faculty handbooks may contain working conditions and be subject to mandatory collective bargaining. The Ill Principals Association maintains a handbook service that coordinates with PRESS material. *Online Model Student Handbook (MSH)*, at: [www.ilprincipals.org/resources/model-student-handbook](http://www.ilprincipals.org/resources/model-student-handbook).

## Students

### Harassment of Students Prohibited 1

No person, including a School District employee or agent, or student, shall harass, intimidate, or bully a student on the basis of actual or perceived: race; color; national origin; military status; unfavorable discharge status from military service; sex; sexual orientation; gender identity<sup>2</sup>; gender-related identity or expression; ancestry; age; religion; physical or mental disability; order of protection status; status of being homeless; actual or potential marital or parental status, including pregnancy; association with a person or group with one or more of the aforementioned actual or perceived characteristics; or any other distinguishing characteristic. The District will not tolerate harassing, intimidating conduct, or bullying whether verbal, physical, sexual, or visual, that affects the tangible benefits of education, that unreasonably interferes with a student's educational performance, or that creates an intimidating, hostile, or offensive educational environment. Examples of prohibited conduct include name-calling, using derogatory slurs, stalking, sexual violence, causing psychological harm, threatening or causing physical harm, threatened or actual destruction of

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<sup>1</sup> State or federal law requires this subject matter be covered by policy, controls this policy's content, and 105 ILCS 5/10-20.1, *Sexual Abuse Investigation Policies*, added by P.A. 101-531, requires that every two years, each district within an Illinois county served by an accredited Children's Advocacy Center review all its existing sexual abuse investigation policies and procedures to ensure consistency with 105 ILCS 5/22-85, *Sexual Abuse Investigation Policies*, added by P.A. 101-531. Each district must also have a policy on bullying. 105 ILCS 5/27-23.7, *Prevention of and Response to Bullying, Intimidation, and Harassment*; see sample policy 7:180, *Prevention of and Response to Bullying, Intimidation, and Harassment*.

This policy's list of protected classifications is identical to the list in 7:180, *Prevention of and Response to Bullying, Intimidation, and Harassment*. The protected classifications are found in 105 ILCS 5/27-23.7(a); 775 ILCS 5/1-103, amended by P.A. 101-221; and 23 Ill.Admin.Code §1.240.

The list of protected classifications in sample policy 7:10, *Equal Educational Opportunities*, is different – it does not contain the classifications that are exclusively identified in the bullying statute. 105 ILCS 5/27-23.7.

The Ill. Human Rights Act (IHRA) and an ISBE rule prohibit schools from discriminating against students on the basis of *sexual orientation* and *gender identity*. 775 ILCS 5/5-101(11); 23 Ill.Admin.Code §1.240. *Sexual orientation* is defined as the "actual or perceived heterosexuality, homosexuality, bisexuality, or gender related identity, whether or not traditionally associated with the person's designated sex at birth." 775 ILCS 5/1-103(O-1). *Gender identity* is included in the definition of sexual orientation in the Act. The Act permits schools to maintain single-sex facilities that are distinctly private in nature, e.g., restrooms and locker rooms. 775 ILCS 5/5-103. 775 ILCS 5/1-102(A), added *order of protection status* to its list of protected categories. The IHRA's jurisdiction is specifically limited to: (1) failing to enroll an individual, (2) denying access to facilities, goods, or services, or (3) failing to take corrective action to stop severe or pervasive harassment of an individual. 775 ILCS 5/5-102.2.

<sup>2</sup> See fn 2 in sample policy 7:10, *Equal Educational Opportunities*, for a discussion about Executive Order (EO) 2019-11 establishing the Affirming and Inclusive Schools Task Force (Task Force) that made policy and administrative procedure recommendations to the Ill. State Board of Education (ISBE) that are discussed in a its publication *Sample District Policy and Administrative Procedures* at [www.isbe.net/supportallstudents](http://www.isbe.net/supportallstudents).

For boards that want to incorporate ISBE's sample policy recommendation, insert the following in place of "gender identity;": gender; gender identity (whether or not traditionally associated with the student's sex assigned at birth);

**If the board inserts this option, it must also insert the options in f/ns 2 and 7 of policy 7:10, *Equal Educational Opportunities*, BUT NOTE THE PROTECTED STATUSES LIST IN THIS POLICY IS DIFFERENT AND SHOULD NOT BE COPIED FROM HERE INTO 7:10, *EQUAL EDUCATIONAL OPPORTUNITIES*.**

property, or wearing or possessing items depicting or implying hatred or prejudice of one of the characteristics stated above.<sup>3</sup>

### Sexual Harassment Prohibited

The District shall provide an educational 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.<sup>4</sup> See policies 2:265, *Title IX Sexual Harassment Grievance Procedure*, and 2:260, *Uniform Grievance Procedure*.

### Making a Report or Complaint

Students are encouraged to promptly report claims or incidences of bullying, intimidation, harassment, sexual harassment, or any other prohibited conduct to the Nondiscrimination Coordinator, Building Principal, Assistant Building Principal, Dean of Students, a Complaint Manager, or any employee with whom the student is comfortable speaking.<sup>5</sup> A student may choose to report to an employee of the student's same gender.

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

<sup>3</sup> This list of examples of prohibited conduct is optional. While hate speech is not specifically mentioned in this paragraph, any hate speech used to harass or intimidate is banned. Hate speech without accompanying misconduct may be prohibited in response to actual incidences when hate speech interfered with the educational environment. West v. Derby Unified Sch. Dist., 206 F.3d 1358 (10th Cir. 2000).

<sup>4</sup> Two laws apply to sexual harassment of students in Illinois. Title IX of the Education Amendments of 1972 (Title IX) and the IHRA prohibit discrimination on the basis of sex and sexual harassment in any educational program or activity receiving federal financial assistance. 20 U.S.C. §1681. Title IX defines sexual harassment as conduct on the basis of sex that meets one or more of the following: (1) a district employee conditions the provision of an aid, benefit, or service on an individual's participation in unwelcome sexual conduct; (2) unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it denies a person equal access to the District's education program or activity; or (3) sexual assault, dating violence, domestic violence, or stalking as defined in federal law. 34 C.F.R. §106.30. See sample policy 2:265, *Title IX Sexual Harassment Grievance Procedure*, and sample exhibit 2:265-E, *Title IX Sexual Harassment Glossary of Terms*. Consult the board attorney to ensure the nondiscrimination coordinator and complaint managers are trained to appropriately respond to allegations of Title IX sexual harassment. See sample procedures 2:265-AP1, *Title IX Sexual Harassment Response*, and 2:265-AP2, *Formal Title IX Sexual Harassment Complaint Grievance Process*.

The IHRA prohibits any district employee or agent from sexually harassing a student, and defines sexual harassment as any unwelcome sexual advances or requests for sexual favors made to a student, or any conduct of a sexual nature toward a student, when: (1) such conduct has the purpose of substantially interfering with the student's educational performance or creating an intimidating, hostile or offensive educational environment; or (2) the district employee or agent either explicitly or implicitly makes the student's submission to or rejection of such conduct as a basis for making various enumerated education-related determinations. 775 ILCS 5/5A-201(F).

School districts are liable for damage awards for an employee's sexual harassment of a student in limited situations. Liability occurs only when a district official who, at a minimum, has authority to institute corrective action, has actual notice of and is deliberately indifferent to the employee's misconduct. Gebser v. Lago Vista Independent Sch. Dist., 524 U.S. 274 (1998). Schools are liable in student-to-student sexual harassment cases when school agents are deliberately indifferent to sexual harassment, of which they have actual knowledge that is so severe, pervasive, and objectively offensive that it can be said to deprive the victims of access to the educational opportunities or benefits provided by the school. Davis v. Monroe County Bd. of Educ., 526 U.S. 629 (1999). The Ill. Dept. of Human Rights investigates charges of sexual harassment in violation of the IHRA, and it is a civil rights violation when a district fails to take remedial or disciplinary action against an employee the district knows engaged in sexual harassment. 775 ILCS 5/5A-102.

<sup>5</sup> Using "or any employee with whom the student is comfortable speaking" ensures compliance with Title IX regulations providing that "any employee" of an elementary or secondary school who has notice of sexual harassment or allegations of sexual harassment is deemed to have *actual knowledge* which triggers a district's duty to respond. 34 C.F.R. §106.30. By including "any employee" in this list, 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.

Reports under this policy will be considered a report under Board policy 2:260, *Uniform Grievance Procedure*, and/or Board policy 2:265, *Title IX Sexual Harassment Grievance Procedure*. The Nondiscrimination Coordinator and/or Complaint Manager shall process and review the report according to the appropriate grievance procedure.<sup>6</sup> 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.<sup>7</sup> The Nondiscrimination Coordinator also serves as the District's Title IX Coordinator.<sup>8</sup>

**Nondiscrimination Coordinator:**

\_\_\_\_\_  
Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Email

\_\_\_\_\_  
Telephone

**Complaint Managers:**

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

The Superintendent shall use reasonable measures to inform staff members and students of this policy by including:

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

<sup>6</sup> If the district's Nondiscrimination Coordinator does not also serve as the Title IX Coordinator, supplement this sentence to state "The Nondiscrimination Coordinator, Title IX Coordinator, and/or Complaint Manager shall process and review the report according to the appropriate grievance procedure."

<sup>7</sup> 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.

Each district must communicate its bullying policy to students and their parents/guardians. 105 ILCS 5:27-23.7. *Amended by Public Act 10-1-1; see sample policy 7:180, Prevention of and Response to Bullying, Intimidation, and Harassment.*

<sup>8</sup> 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.~~" 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.



1. For students, age-appropriate information about the contents of this policy in the District’s student handbook(s), on the District’s website, and, if applicable, in any other areas where policies, rules, and standards of conduct are otherwise posted in each school.<sup>9</sup>
2. For staff members, this policy in the appropriate employee handbook(s), if applicable, and/or in any other areas where policies, rules, and standards of conduct are otherwise made available to staff.

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.<sup>10</sup> Any employee who fails to promptly comply 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 an educational 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 designee<sup>11</sup> shall consider whether action under policy 2:265, *Title IX Sexual Harassment Grievance Procedure*, should be initiated.

For any other alleged student 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 policies 2:260, *Uniform Grievance Procedure*, and/or 7:190, *Student Behavior*, should be initiated, regardless of whether a written report or complaint is filed.

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

<sup>9</sup> In addition to notifying students of policies 2:260, *Uniform Grievance Procedure*, and 2:265, *Title IX Sexual Harassment Grievance Procedure*, a district must notify them of the name, office address, email address, and telephone number of district’s Title IX Coordinator. 34 C.F.R. §106.8(a). 105 ILCS 5/10-20.69, amended by P.A. 101-418, requires districts to maintain and implement an *age-appropriate* policy on sexual harassment that is included in the school district’s student handbook, as well as on a district’s website and, if applicable, other areas where such information is posted in each school. The law does not expressly state that the age-appropriate policy is for students; however, that is the most logical interpretation. In practice, most districts maintain a student handbook for each building. Because the law only requires one policy, this policy manages the age-appropriate requirement by directing age-appropriate explanations of the policy be included in the building-level student handbook(s). Student handbooks can be developed by the building principals, but should be reviewed and approved by the superintendent and school board.

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](http://www.ilprincipals.org/resources/model-student-handbook).

<sup>10</sup> 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.”

<sup>11</sup> “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.

### Reports That Involve Alleged Incidents of Sexual Abuse of a Child by School Personnel <sup>12</sup>

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*.

### Enforcement

Any District employee who is determined, after an investigation, to have engaged in conduct prohibited by this policy will be subject to disciplinary action up to and including discharge. Any third party who is determined, after an investigation, to have engaged in conduct prohibited by this policy will be addressed in accordance with the authority of the Board in the context of the relationship of the third party to the District, e.g., vendor, parent, invitee, etc. Any District student who is determined, after an investigation, to have engaged in conduct prohibited by this policy will be subject to disciplinary action, including but not limited to, suspension and expulsion consistent with the behavior policy. Any person making a knowingly false accusation regarding prohibited conduct will likewise be subject to disciplinary action.

### Retaliation Prohibited

Retaliation against any person for bringing complaints or providing information about harassment is prohibited (see policies 2:260, *Uniform Grievance Procedure*, and 2:265, *Title IX Sexual Harassment Grievance Procedure*).

Students should report allegations of retaliation to the Building Principal, an administrator, the Nondiscrimination Coordinator, and/or a Complaint Manager.

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

<sup>12</sup> 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 (governing 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](http://www.childrensadvocacycentersofillinois.org/about/map). For further discussion see ¶ 14 in policy 5:90, *Abused and Neglected Child Reporting*.

LEGAL REF.: 20 U.S.C. §1681 et seq., Title IX of the Educational Amendments of 1972; 34 C.F.R. Part 106.  
105 ILCS 5/10-20.12, 5/10-22.5, 5/10-23.1, 5/27-1, and 5/27-23.7.  
775 ILCS 5/1-101 et seq., Illinois Human Rights Act.  
23 Ill.Admin.Code §1.240 and Part 200.  
Davis v. Monroe County Bd. of Educ., 526 U.S. 629 (1999).  
Franklin v. Gwinnett Co. Public Schs., 503 U.S. 60 (1992).  
Gebser v. Lago Vista Independent Sch. Dist., 524 U.S. 274 (1998).  
West v. Derby Unified Sch. Dist. No. 260, 206 F.3d 1358 (10th Cir. 2000).

CROSS REF.: 2:260 (Uniform Grievance Procedure), 2:265 (Title IX Sexual Harassment Grievance Procedure), 7:180 (Prevention of and Response to Bullying, Intimidation, and Harassment), 5:20 (Workplace Harassment Prohibited), 5:90 (Abused and Neglected Child Reporting), 7:10 (Equal Educational Opportunities), 7:180 (Prevention of and Response to Bullying, Intimidation, and Harassment), 7:185 (Teen Dating Violence Prohibited), 7:190 (Student Behavior), 7:240 (Conduct Code for Participants in Extracurricular Activities)

## Students

### Student Assignment and Intra-District Transfer 1

#### Attendance Areas

The School District is divided into school attendance areas. The Superintendent will:

- 1. Review the boundary lines annually and recommend to the school board any changes or revisiting the existing boundaries;
- 2. Create new boundaries that promote balanced enrollment and the efficient operation of the District's schools, taking into account the recommendations of the School Board;<sup>2</sup>

The Superintendent or designee shall maintain a map of the District showing current school attendance areas. The records pertaining to the creation, adoption, or revision of attendance areas are open to the public.<sup>3</sup> Students living in a given school attendance area will be assigned to that school.<sup>4</sup> Homeless children shall be assigned according to Board policy 6:140, *Education of Homeless Children*.

#### Transfers Within the District 5

A student's parent(s)/guardian(s) may request a transfer for their child to a District school other than the one assigned. A request should be directed to the Superintendent, who, at his or her sole discretion, may grant the request when the parent(s)/guardian(s) demonstrate that the student could be better accommodated at another school, provided space is available. If a request is granted, the parent/guardian shall be responsible for transportation.<sup>6</sup> The provisions in this section have no applicability to transfers pursuant to the Unsafe School Choice Option covered in Board policy 4:170, *Safety*.

#### Class Assignments

The Superintendent or designee shall assign students to classes.

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

<sup>1</sup> 105 ILCS 5/10-27.3(a) requires that intra-district transfers be covered by policy and controls this policy's content (105 ILCS 5/10-27.3(a)).

<sup>2</sup> 105 ILCS 5/10-27.3(a) requires school attendance areas "may be periodically revised, if necessary, to prevent or eliminate segregation by color, race, or nationality" (105 ILCS 5/10-27.3(a)).

<sup>3</sup> (b)

<sup>4</sup> 105 ILCS 5/10-27.3(a) grants boards broad authority concerning assignment of students to schools (105 ILCS 5/10-27.3(a)). A child is presumed to be a resident of the district in which the child's legal custodian resides (105 ILCS 5/10-20.12b). The facts surrounding a transfer of custody will determine whether residency for school attendance purposes has changed. Turner v. Board of Education North Chicago Community High School District 123, 294 N.E.2d 264 (Ill. 1973).

<sup>5</sup> The details for intra-district transfers are determined locally: State law does not address when, or even if, intra-district transfers should be granted. For districts that maintain one attendance center, delete this subhead.

<sup>6</sup> To limit the acceptable reasons supporting a transfer request, a board should consider this alternative: "...when the parent(s)/guardian(s) demonstrate that the student could be better accommodated by the educational program at another school ..."

LEGAL REF.: 105 ILCS 5/10-21.3, 5/10-21.3a, and 5/10-22.5.

CROSS REF.: 4:170 (Safety), 6:30 (Organization of Instruction), 6:140 (Education of Homeless Children)

## Students

### Residence 1

#### Resident Students

Only students who are residents of the District may attend a District school without a tuition charge, except as otherwise provided below or in State law.<sup>2</sup> A student's residence is the same as the person who has legal custody of the student.<sup>3</sup>

A person asserting legal custody over a student, who is not the child's natural or adoptive parent, shall complete a signed statement, stating: (a) that he or she has assumed and exercises legal responsibility for the child, (b) the reason the child lives with him or her, other than to receive an education in the District, and (c) that he or she exercises full control over the child regarding daily educational and medical decisions in case of emergency. If the District knows the current address of the child's natural or adoptive parent, the District shall request in writing that the person complete a signed statement or Parent of Minor Child Affidavit stating: (a) the role and responsibility of the person with whom their child is living, and (b) that the person with whom the child is living has full control over the child regarding daily educational and medical decisions in case of emergency.<sup>4</sup>

A student whose family moves out of the District during the school year will be permitted to attend school for the remainder of the year without payment of tuition.<sup>5</sup>

When a student's change of residence is due to the military service obligation of the student's legal custodian, the student's residence is deemed to be unchanged for the duration of the custodian's military service obligation if the student's custodian made a written request. The District, however, is not responsible for the student's transportation to or from school.<sup>6</sup>

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

<sup>1</sup> State or federal law controls this policy's content. Illinois State Board of Education, Policy Reference Education Subscription Service, <https://www.isbe.net/Policy-Reference-Education-Subscription-Service>

<sup>2</sup> In certain cases, no tuition may be charged for nonresident children placed: (1) by the Department of Children and Family Services with a foster parent or childcare facility (105 ILCS 5/10-20.12b); or (2) with a person who (i) has temporary custody of a child of a person who is on active military duty, and (ii) is responsible for making decisions for that child (105 ILCS 70/). When special education services are provided, *resident district* is determined by 105 ILCS 5/14-1.11 and 14-1.11a Illinois State Board of Education.

<sup>3</sup> In the case of divorced or divorcing parents, the Illinois Marriage and Dissolution of Marriage Act (5/2015), 750 ILCS 5/1, Illinois State Board of Education, provides that "for purposes of Section 10-20.12b of the School Code only, the parent with the majority of parenting time is considered to have legal custody." See 750 ILCS 5/606.10. Illinois State Board of Education also requires a *parenting plan* that sets forth a child's residential address for school enrollment purposes (750 ILCS 5:602.10(f)(6)). **Consult the board attorney when the residential address set forth in a parenting plan is not the address of the parent with the majority of parenting time.**

<sup>4</sup> 105 ILCS 5/10-20.12b. In order to establish residence, a school district may not require a parent to transfer custody/guardianship to the person with whom the child is living. Israel S. by Owens v. Board of Education of Oak Park and River Forest High Sch., et Dist. 200, 1992 IL App (1) 100 (6/11/92, 1992). See also Joel R. v. Board of Education of Manheim Sch., et Dist. 83, 1997 IL App (1) 100 (6/11/97, 1997).

<sup>5</sup> 105 ILCS 5/10-20.12a.

<sup>6</sup> 105 ILCS 5/10-20.12b(a-5).

If, at the time of enrollment, a dependent child of military personnel is housed in temporary housing located outside of the District, but will be living within the District within 30 days after the time of initial enrollment, the child is allowed to enroll, subject to the requirements of State law, and must not be charged tuition.<sup>7</sup>

#### Requests for Nonresident Student Admission<sup>8</sup>

Nonresident students may attend District schools upon the approval of a request submitted by the student's parent(s)/guardian(s) for nonresident admission. The Superintendent may approve the request subject to the following:<sup>9</sup>

1. The student will attend on a year-to-year basis. Approval for any one year is not authorization to attend a following year.
2. The student will be accepted only if there is sufficient room.
3. The student's parent(s)/guardian(s) will be charged the maximum amount of tuition as allowed by State law.<sup>10</sup>
4. The student's parent(s)/guardian(s) will be responsible for transporting the student to and from school.

#### Admission of Nonresident Students Pursuant to an Agreement or Order<sup>11</sup>

Nonresident students may attend District schools tuition-free pursuant to:

1. A written agreement with an adjacent school district to provide for tuition-free attendance by a student of that district, provided both the Superintendent or designee and the adjacent district determine that the student's health and safety will be served by such attendance.
2. A written agreement with cultural exchange organizations and institutions supported by charity to provide for tuition-free attendance by foreign exchange students and nonresident pupils of charitable institutions.
3. According to an intergovernmental agreement.
4. Whenever any State or federal law or a court order mandates the acceptance of a nonresident student.

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<sup>7</sup> 105 ILCS 5/10-22.5a) requires military personnel to provide proof that the child will be living within the district within 30 days after the date of initial enrollment. Proof of residency may include postmarked mail addressed to the military personnel and sent to an address located within the district, a lease agreement for occupancy of a residence located within the district, or proof of ownership of a residence located within the district.

<sup>8</sup> Optional.- A district that wants to include this subhead should specify and customize the listed criteria to match local conditions.

<sup>9</sup> State law is silent regarding nonresident student enrollment except to require the parent(s)/guardian(s) to pay tuition 105 ILCS 5/10-20.12a and 5/10-20.12b .

<sup>10</sup> 105 ILCS 5/10-20.12a specifies a formula for calculating the maximum amount a district can charge nonresident students.

<sup>11</sup> The agreement described in #1 is optional (105 ILCS 5/10-22.5a) and districts are not required to enter into such agreements nor to alter existing transportation services due to the attendance of such nonresident students. The agreement described in #2 is optional (105 ILCS 5/10-22.5a); districts should be sure it is consistent with policy 7:50, *School Admissions and Student Transfers To and From Non-District Schools*. An example of an agreement described in #3 is one to accept nonresident students; entering into such an agreement is optional.

Homeless Children

Any homeless child shall be immediately admitted, even if the child or child’s parent/guardian is unable to produce records normally required to establish residency.<sup>12</sup> School Board policy 6:140, *Education of Homeless Children*, and its implementing administrative procedure, govern the enrollment of homeless children.

Challenging a Student’s Residence Status <sup>13</sup>

If the Superintendent or designee determines that a student attending school on a tuition-free basis is a nonresident of the District for whom tuition is required to be charged, he or she on behalf of the School Board shall notify the person who enrolled the student of the tuition amount that is due. The notice shall detail the specific reasons why the Board believes that the student is a nonresident of the District<sup>14</sup> and shall be given by certified mail, return receipt requested. The person who enrolled the student may challenge this determination and request a hearing as provided by the School Code, 105 ILCS 5/10-20.12b.

- LEGAL REF.: McKinney-Vento Homeless Assistance Act, 42 U.S.C. §11431 et seq., 2 federal regulations, 24 CFR 200.100-200.107, and the McKinney-Vento Homeless Assistance Act, 105 ILCS 5/10-20.12a, 5/10-20.12b, and 5/10-22.5, and 23 Ill. Admin. Code 230.100-230.107, 105 ILCS 45/10-100-105/10-107, and the Illinois Education of Homeless Children Act, 105 ILCS 5/10-100-105/10-107, and the Illinois Education of Homeless Children Act, 23 Ill. Admin. Code §1.240.
- Israel S. by Owens v. Board of Educ. of Oak Park and River Forest High Sch., Dist. 200, 428 Ill. App. 3d 673 (Ill. App. 1, 3d Cir. 1992).
- Joel R. v. Board of Education of Manheim School District 83, 686 N.E.2d 850 (Ill. App. 1st Cir. 1997).
- Kraut v. Rachford, 496 N.E.2d 1051 (Ill. App. 1st Cir. 1977).
- CROSS REF.: 6:140 (Education of Homeless Children), 7:50 (School Admissions and Student Transfers To and From Non-District Schools), 7:70 (Attendance and Truancy)

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

<sup>12</sup> Required by 105 ILCS 45/10-100 and the McKinney-Vento Homeless Assistance Act, 42 U.S.C. §11431 et seq. See §11432 (g)(3)(C)(i).

<sup>13</sup> Id. See administrative procedure 7:60-API, *Challenging a Student’s Residence Status*, for sample procedures implementing this paragraph.

<sup>14</sup> 105 ILCS 5/10-20.12b as amended by 2019-01-01-14-17.



**Students**

**Attendance and Truancy 1**

Compulsory School Attendance<sup>2</sup>

This policy applies to individuals who have custody or control of a child: (a) between the ages of six (on or before September 1) and 17 years (unless the child has graduated from high school), or (b) who is enrolled in any of grades kindergarten through 12 in the public school regardless of age.

Subject to specific requirements in State law, the following children are not required to attend public school: (1) any child attending a private school (including a home school) or parochial school, (2) any child who is physically or mentally unable to attend school (including a pregnant student suffering medical complications as certified by her physician), (3) any child lawfully and necessarily employed, (4) any child over 12 and under 14 years of age while in confirmation classes, (5) any child absent because of illness, or (6) any child whose parents are observing the Sabbath or other religious day, or whose his or her religion forbids secular activity on a particular day, or (7) any child over 12 and under 14 years of age who is employed and is enrolled in a graduation incentives program.

The parent/guardian of a student who is enrolled must authorize all absences from school and notify the school in advance or at the time of the student’s absence. A valid cause for absence includes illness, the observance of a religious holiday, observance of a religious holiday, death in the immediate family, family emergency, other situations beyond the control of the student as determined by the Board, voting pursuant to policy 7:90, *Release During School Hours* (10 ILCS 5-7-42 and 5-17-15), other circumstances that cause reasonable concern to the parent/guardian for the

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

<sup>1</sup> State law requires boards to adopt a policy covering some of the topics herein and controls this policy’s content. 105 ILCS 5-10-20, 105 ILCS 5-10-20.1, 105 ILCS 5-10-20.2, 105 ILCS 5-10-20.3, 105 ILCS 5-10-20.4, 105 ILCS 5-10-20.5, 105 ILCS 5-10-20.6, 105 ILCS 5-10-20.7, 105 ILCS 5-10-20.8, 105 ILCS 5-10-20.9, 105 ILCS 5-10-20.10, 105 ILCS 5-10-20.11, 105 ILCS 5-10-20.12, 105 ILCS 5-10-20.13, 105 ILCS 5-10-20.14, 105 ILCS 5-10-20.15, 105 ILCS 5-10-20.16, 105 ILCS 5-10-20.17, 105 ILCS 5-10-20.18, 105 ILCS 5-10-20.19, 105 ILCS 5-10-20.20, 105 ILCS 5-10-20.21, 105 ILCS 5-10-20.22, 105 ILCS 5-10-20.23, 105 ILCS 5-10-20.24, 105 ILCS 5-10-20.25, 105 ILCS 5-10-20.26, 105 ILCS 5-10-20.27, 105 ILCS 5-10-20.28, 105 ILCS 5-10-20.29, 105 ILCS 5-10-20.30, 105 ILCS 5-10-20.31, 105 ILCS 5-10-20.32, 105 ILCS 5-10-20.33, 105 ILCS 5-10-20.34, 105 ILCS 5-10-20.35, 105 ILCS 5-10-20.36, 105 ILCS 5-10-20.37, 105 ILCS 5-10-20.38, 105 ILCS 5-10-20.39, 105 ILCS 5-10-20.40, 105 ILCS 5-10-20.41, 105 ILCS 5-10-20.42, 105 ILCS 5-10-20.43, 105 ILCS 5-10-20.44, 105 ILCS 5-10-20.45, 105 ILCS 5-10-20.46, 105 ILCS 5-10-20.47, 105 ILCS 5-10-20.48, 105 ILCS 5-10-20.49, 105 ILCS 5-10-20.50, 105 ILCS 5-10-20.51, 105 ILCS 5-10-20.52, 105 ILCS 5-10-20.53, 105 ILCS 5-10-20.54, 105 ILCS 5-10-20.55, 105 ILCS 5-10-20.56, 105 ILCS 5-10-20.57, 105 ILCS 5-10-20.58, 105 ILCS 5-10-20.59, 105 ILCS 5-10-20.60, 105 ILCS 5-10-20.61, 105 ILCS 5-10-20.62, 105 ILCS 5-10-20.63, 105 ILCS 5-10-20.64, 105 ILCS 5-10-20.65, 105 ILCS 5-10-20.66, 105 ILCS 5-10-20.67, 105 ILCS 5-10-20.68, 105 ILCS 5-10-20.69, 105 ILCS 5-10-20.70, 105 ILCS 5-10-20.71, 105 ILCS 5-10-20.72, 105 ILCS 5-10-20.73, 105 ILCS 5-10-20.74, 105 ILCS 5-10-20.75, 105 ILCS 5-10-20.76, 105 ILCS 5-10-20.77, 105 ILCS 5-10-20.78, 105 ILCS 5-10-20.79, 105 ILCS 5-10-20.80, 105 ILCS 5-10-20.81, 105 ILCS 5-10-20.82, 105 ILCS 5-10-20.83, 105 ILCS 5-10-20.84, 105 ILCS 5-10-20.85, 105 ILCS 5-10-20.86, 105 ILCS 5-10-20.87, 105 ILCS 5-10-20.88, 105 ILCS 5-10-20.89, 105 ILCS 5-10-20.90, 105 ILCS 5-10-20.91, 105 ILCS 5-10-20.92, 105 ILCS 5-10-20.93, 105 ILCS 5-10-20.94, 105 ILCS 5-10-20.95, 105 ILCS 5-10-20.96, 105 ILCS 5-10-20.97, 105 ILCS 5-10-20.98, 105 ILCS 5-10-20.99, 105 ILCS 5-10-20.100.

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

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

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

student's mental, emotional, or physical health or safety, or other reason as approved by the Superintendent or designee.<sup>4</sup> ~~5. A student may be excused from attendance for a day or days if the student is absent for a day or days because of a family emergency.~~

#### Absenteeism and Truancy Program

The Superintendent or designee shall manage an absenteeism and truancy program in accordance with the School Code and School Board policy. The program shall include but not be limited to:

1. A protocol for excusing a student from attendance who is necessarily and lawfully employed. The Superintendent or designee is authorized to determine when the student's absence is justified.<sup>6</sup>
2. A protocol for excusing a student in grades 6 through 12 from attendance to sound *Taps* at a military honors funeral held in Illinois for a deceased veteran.<sup>7</sup>
3. A protocol for excusing a student from attendance on a particular day(s) or at a particular time of day when his/her parent/guardian is an active duty member of the uniformed services

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

<sup>4</sup> 105 ILCS 5-7-42(1), (2) and (3) and amended by Illinois State Board of Education (ISBE) Policy 7:90, Release During School Hours (the Election Code), 10 ILCS 5-7-42 and 5-17-15, amended by P.A. 101-624, (1) and (2) were added. An Illinois State Board of Education (ISBE) rule requires that the absenteeism and truancy policy defines valid causes for absence. 23 Ill. Admin. Code §1.290.

For elementary districts, delete the following phrase from the second sentence of this paragraph: "~~voting pursuant to policy 7:90, Release During School Hours (10 ILCS 5-7-42 and 5-17-15),~~" and delete 7:90, Release During School Hours, from the Cross References.

For high school and unit districts that do not wish to include the **Voting** subhead in policy 7:90, Release During School Hours, amend the second sentence of this paragraph as follows: "~~policy 7:90, Release During School Hours (the Election Code), 10 ILCS 5-7-42 and 5-17-15,~~" and delete 7:90, Release During School Hours from the Cross References.

<sup>5</sup> 105 ILCS 5-7-42(1), (2) and (3) and amended by Illinois State Board of Education (ISBE) Policy 7:90, Release During School Hours (the Election Code), 10 ILCS 5-7-42 and 5-17-15, amended by P.A. 101-624, (1) and (2) were added. An Illinois State Board of Education (ISBE) rule requires that the absenteeism and truancy policy defines valid causes for absence. 23 Ill. Admin. Code §1.290.

<sup>6</sup> Any child "necessarily and lawfully employed" may be exempted from attendance by the superintendent "on certification of the facts by and the recommendation of the school board." 105 ILCS 5-26-1. The policy's language serves to delegate this "certification of the facts" to the superintendent or designee. The following option allows a board to consider and include specific criteria in the policy:

A student may be excused, at the Superintendent's discretion, when: (1) the student has a last period study hall, (2) the parent/guardian provides written permission, (3) the student's employer provides written verification of employment, (4) the student provides evidence of a valid work permit, or (5) other reason deemed justifiable by the Superintendent.

Child Labor laws include: 29 C.F.R. Part 570 (minimum age standards, occupations, conditions, etc.); 820 ILCS 205, (child labor laws); 56 Ill. Admin. Code Part 250 (child labor regulations).

<sup>7</sup> 105 ILCS 5-26-1. A student must notify the building principal or other administrator at least two days prior to the absence providing the date, time, and location of the military honors funeral. This requirement may be waived if the student did not receive notice at least two days in advance, but the student shall notify the administration as soon as possible of the absence.

A student whose absence is excused to sound *Taps* shall be counted in attendance for purposes of calculating the average daily attendance of students in the district. The district must allow the student reasonable time to make up school work and if school work is satisfactorily completed, the day of absence is counted as an attendance day for the student.

- and has been called to duty for, is on leave from, or has immediately returned from deployment to a combat zone or combat-support postings.<sup>8</sup>
4. A process to telephone, within two hours after the first class, the parents/guardians of students in grade 8 or below who are absent without prior parent/guardian notification.<sup>9</sup>
  5. A process to identify and track students who are truants, chronic or habitual truants, or truant minors as defined in 105 ILCS 5-26-2a.
  6. A description of diagnostic procedures for identifying the cause(s) of a student's unexcused absenteeism, including interviews with the student, his or her parent(s)/guardian(s), and staff members or other people who may have information about the reasons for the student's attendance problem.<sup>10</sup>
  7. The identification of supportive services that may be offered to truant, chronically truant, or chronically absent students, including parent-teacher conferences, student and/or family counseling, or information about community agency services.<sup>11</sup> See Board policy 6:110, *Programs for Students At Risk of Academic Failure and/or Dropping Out of School and Graduation Incentives Program*.
  8. A process for developing a multi-tiered system of supports for students with learning difficulties, including a review of the progress of the student and a determination regarding the need for additional supports or other interventions.
  9. A process for working with parents/guardians to ensure that the student is present in school.<sup>12</sup>
  10. Reasonable efforts to provide ongoing professional development to teachers, administrators, Board members, school resource officers, and staff on the appropriate and available supportive services for the promotion of student attendance and engagement.<sup>13</sup>

**Commented [MB1]:** The second paragraph from this footnote was moved to footnote 12.

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<sup>8</sup> 105 ILCS 5-26-1, *amended by P.A. 09-012*. Such a student must be granted five days of excused absences in any school year and, at the board's discretion, may be granted additional excused absences to visit the student's parent/guardian. The student and his/her parent/guardian are responsible for obtaining assignments from the student's teacher prior to any period of excused absence and for ensuring that such assignments are completed by the student prior to his/her return to school from the excused absence period. *Id.*

<sup>9</sup> This notification is required by 105 ILCS 5-26-3b.

<sup>10</sup> 105 ILCS 5-26-1, *amended by P.A. 09-012*; 23 Ill.Admin.Code §1.290(b)(2).

<sup>11</sup> 105 ILCS 5-26-1, *amended by P.A. 09-012*; 23 Ill.Admin.Code §1.290(b)(3). The School Code references to dropout prevention include: 105 ILCS 5-26-3a (regional superintendent activities and annual report); 105 ILCS 5-10-20.25a (annual report by boards); and 105 ILCS 5-1A-4(E) (ISBE report).

<sup>12</sup> 105 ILCS 5-26-1, *amended by P.A. 09-012*; 23 Ill.Admin.Code §1.290(b)(2). 105 ILCS 5-26-18 requires districts to collect and review chronic absence data and determine what systems of support and resources are needed to engage chronically absent students and their families to encourage the habit of daily attendance and promote success. 105 ILCS 5-26-18(c). The review must include an analysis of chronic absence data from each attendance center. *Id.* Districts are also encouraged to: (1) provide a system of support to students at risk of reaching or exceeding chronic absence levels, i.e., those available through the Illinois Multi-tiered Systems of Support Network; and (2) make resources available to families, i.e., those available through ISBE's Family Engagement Framework, to support and engage students and their families. 105 ILCS 5-26-18(d). *Chronic absence* means "absences that total 10% or more of school days of the most recent school year, including absences with and without valid cause, as defined in Section 26-2a of this Code, and out-of-school suspensions for an enrolled student." 105 ILCS 5-26-18(a). In contrast, a *chronic or habitual truant* is "a child who is subject to compulsory school attendance and who is absent without valid cause from such attendance for 5% or more of the previous 180 regular attendance days." 105 ILCS 5-26-2a.

<sup>13</sup> 105 ILCS 5-10-22.6(c)-(5), *amended by P.A. 09-012*.

- 110 A process to request the assistance and resources of outside agencies, such as, the juvenile officer of the local police department or the truant office of the appropriate Regional Office of Education, if truancy continues after supportive services have been offered. <sup>14</sup>
- 120 A protocol for cooperating with non-District agencies including County or municipal authorities, the Regional Superintendent, truant officers, the Community Truancy Review Board, and a comprehensive community based youth service agency. Any disclosure of school student records must be consistent with Board policy 7:340, *Student Records*, as well as State and federal law concerning school student records. <sup>15</sup>
- 130 An acknowledgement that no punitive action, including out-of-school suspensions, expulsions, or court action, shall be taken against a truant minor for his or her truancy unless available supportive services and other school resources have been provided to the student. <sup>16</sup>
- 140 The criteria to determine whether a student's non-attendance is due to extraordinary circumstances shall include economic or medical necessity or family hardship and such other criteria that the Superintendent believes qualifies. <sup>17</sup>
- [For high school and unit districts only]
- 150 A process for a 17-year-old resident to participate in the District's various programs and resources for truant. <sup>18</sup> The student must provide documentation of his/her dropout status for

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<sup>14</sup> Use this alternative for districts in suburban Cook County: replace "Regional Office of Education" with "appropriate Intermediate Service Center."

<sup>15</sup> 105 ILCS 5-26-9 requires school officers and superintendents to assist truant officers. A minor who is reported by the regional superintendent as a chronic truant may be adjudicated a "truant minor in need of supervision" if the minor declines or refuses to fully participate in truancy intervention services. 705 ILCS 405/3-33.5.

Counties may regulate truants by ordinance and impose fines and/or community services on truants or, if the truant is under 10 years of age, on the parent or custodian. 55 ILCS 5-5-1078.2. Municipalities may regulate truants by ordinance and impose fines and or community services on truants or, if the truant is under 13 years of age, on the parent or custodian. 65 ILCS 5-11-5-9. Local officials or authorities that enforce, prosecute, or adjudicate municipal ordinances adopted under 65 ILCS 5-11-5-9, or that work with school districts to address truancy problems, are designated as: (a) part of the juvenile justice system, established by the Juvenile Court Act of 1987, and (b) *juvenile authorities* within the definition set forth in subsection (a)(6.5) of Section 10-6 of the Ill. School Student Records Act. 105 ILCS 10/6(a)(6.5). **Id.** A superintendent should consult with the board attorney before disclosing school student records to non-district entities. See 7:340-AP1, *School Student Records*, for a sample procedure for release of such records to juvenile authorities.

<sup>16</sup> 105 ILCS 5-26-12, *added by Public Act 09-025*, prohibits punitive action "unless available supportive services and other school resources have been provided to the student." In addition, "a truant minor may not be expelled for nonattendance unless he or she has accrued 15 consecutive days of absences without valid cause and the student cannot be located by the school district or the school district has located the student but cannot, after exhausting all available support services, compel the student to return to school." **Id.**

<sup>17</sup> 105 ILCS 5-26-3a requires the district to "establish, in writing, a set of criteria for use by the local superintendent of schools in determining whether a pupil's failure to attend school is the result of extraordinary circumstances, including but not limited to economic or medical necessity or family hardship."

This statute also requires the "clerk or secretary" of the board to quarterly report to the regional superintendent and Secretary of State the identity of students who were removed from the regular attendance roll, exclusive of transferees, because they were expelled; have withdrawn; left school; withdrew due to extraordinary circumstances; have re-enrolled in school since their names were removed from the attendance rolls; were certified to be chronic or habitual truants; or were previously certified as chronic or habitual truants who have resumed regular school attendance. The statute provides that the status of a driver's license or instructional permit will be jeopardized for a student who is the subject of this notification because of non-attendance unless the non-attendance is due to extraordinary circumstances as determined by the local district. State Superintendent Koch announced in his *Weekly Message*, 8-28-07, see **Funding & Disbursements** subhead, p.2, at: [www.isbe.net/Documents\\_Superintendent\\_Weekly\\_Message/message\\_082807.pdf](http://www.isbe.net/Documents_Superintendent_Weekly_Message/message_082807.pdf), that ISBE is delaying implementing this statute based upon legal guidance from the U.S. Dept. of Education's Family Policy Compliance Office that its implementation would violate the federal Family Educational Rights and Privacy Act.

the previous six months. A request from an individual 19 years of age or older to re-enroll after having dropped out of school is handled according to provisions in 7:50, *School Admissions and Student Transfers To and From Non-District Schools*.

<sup>18</sup> (c) A process for the temporary exclusion of a student 17 years of age or older for failing to meet minimum attendance standards according to provisions in State law. A parent/guardian has the right to appeal a decision to exclude a student. <sup>19</sup>

LEGAL REF.: 105 ILCS 5:26-1 through 1:26-14,  
705 ILCS 405:3-33.5, Juvenile Court Act of 1987,  
23 Ill.Admin.Code §§1.242 and 1.290.

CROSS REF.: 5:100 (Staff Development Program), 6:110 (Programs for Students At Risk of Academic Failure and/or Dropping Out of School and Graduation Incentives Program), 6:150 (Home and Hospital Instruction), 7:10 (Equal Educational Opportunities), 7:50 (School Admissions and Student Transfers To and From Non-District Schools), 7:60 (Residence), 7:80 (Release Time for Religious Instruction/Observance), 7:90 (Release During School Hours), 7:190 (Student Behavior), 7:340 (Student Records)

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<sup>18</sup> A district must allow this participation; the length of the drop-out period and the documentation requirement contained in the next sentence are permissive. 105 ILCS 5-26-14.

<sup>19</sup> Optional, but provided in 105 ILCS 5-26-2(c)(3). *Illinois State Board of Education*: ISBE's rule controls the appeal process. 23 Ill.Admin Code §1.242.

## Students

### Release Time for Religious Instruction/Observance 1

A student shall be released from school, as an excused absence, to participate in religious observance, including to observe a religious holiday, or for religious instruction, or to attend religious confirmation classes, provided that such release is for a limited time of day. The student's parent/guardian must give written notice to the Building Principal at least five calendar days before the student's anticipated absence(s).<sup>2</sup> The Superintendent or designee shall develop and distribute to teachers appropriate procedures regarding student absences for religious reasons and, unless a specific religious holiday or rite for which a student shall be excused is specified, including how teachers are notified of a student's impending absence, and the State law requirement that teachers provide the student with an equivalent opportunity to make up any examination, study, or work requirement.<sup>3</sup>

The Superintendent or designee shall develop and distribute to teachers appropriate procedures regarding student absences for religious reasons and, unless a specific religious holiday or rite for which a student shall be excused is specified, including how teachers are notified of a student's impending absence, and the State law requirement that teachers provide the student with an equivalent opportunity to make up any examination, study, or work requirement.<sup>3</sup>

LEGAL REF.: 105 ILCS 5/26-1 and 5/26-2b. 105 ILCS 5/26-1 and 5/26-2b.

CROSS REF.: 7:70 (Attendance and Truancy)

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<sup>1</sup> State and federal laws control this policy's content. 105 ILCS 5/26-1(5) requires school boards to adopt a policy on student absences for religious holidays. See also 105 ILCS 5/26-2b. 105 ILCS 5/26-1(4) allows a child over 12 and less than 14 years of age to be absent from school while in attendance at confirmation classes. The sample policy does not contain these age or specific religious rite limitations in order to be consistent with First Amendment jurisprudence. According to the United States Supreme Court, a release time policy does not violate the Establishment Clause; it only accommodates a program of outside religious instruction. *Zorach v. Clauson*, 353 U.S. 222 (1952).

<sup>2</sup> Five days is the most prior notice that can be required. 105 ILCS 5/26-1(5).

<sup>3</sup> 105 ILCS 5/26-1 and 5/26-2b.

## Students

### Agency and Police Interviews 1

The Superintendent shall develop procedures to manage requests by agency officials or police officers to interview students at school. Procedures will:

1. Recognize individual student rights and privacy,
2. Recognize the potential impact an interview may have on an individual student,
3. Minimize potential disruption,
4. Foster a cooperative relationship with public agencies and law enforcement, and
5. Comply with State law including, but not limited to, ensuring that before a law enforcement officer, school resource officer, or other school security person detains and questions on school grounds a student under 18 years of age who is suspected of committing a criminal act, the Superintendent or designee will: <sup>2</sup>
  - a. Notify or attempt to notify the student's parent/guardian and document the time and manner in writing;

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<sup>1</sup> State or federal law controls this policy's content. The listed standards for procedures, other than compliance with State law, are at the local school board's discretion and may be omitted altogether. The Illinois TRUST Act, 5 ILCS 805/10-10, added by P.A. 100-464, prohibits law enforcement agencies and officials from enforcing federal civil immigration laws. Under Section 15(b), law enforcement cannot stop, arrest, search, detain, or continue to detain a person solely based on an individual's citizenship or immigration status.

An excellent resource is the *Guidelines for Interviews of Students*, published by the Ill. Council of School Attorneys (ICSA) at: [www.iasb.com/law/ICSAGuidelinesforInterviewsofStudents.pdf](http://www.iasb.com/law/ICSAGuidelinesforInterviewsofStudents.pdf). The publication, *Policing in Schools, Developing a Governance Document for School Resource Officers in K-12 Schools*, was developed by the American Civil Liberties Union, and is available at: [www.aclu.org/racial-justice/policing-schools-developing-governance-document-school-resource-officers-k-12-schools](http://www.aclu.org/racial-justice/policing-schools-developing-governance-document-school-resource-officers-k-12-schools). It, like the ICSA *Guidelines*, highlights the need for collaboration between law enforcement and school officials. It recommends that school officials provide law enforcement agencies with information about the school's mission to ensure a safe school environment while respecting student rights. To accomplish this, the white paper recommends that school officials create a *model governance document*, e.g., 7:150-AP, *Agency and Police Interviews*, and provide it to the law enforcement authorities with whom they work.

Another helpful resource is *School Resource Officers, School Law Enforcement Units, and the Family Educational Rights and Privacy Act (FERPA)*, published by PTAC (2019), at: [www.studentprivacy.ed.gov/resources/school-resource-officers-school-law-enforcement-units-and-ferpa](http://www.studentprivacy.ed.gov/resources/school-resource-officers-school-law-enforcement-units-and-ferpa). 105 ILCS 5/10-20.64, added by P.A. 100-464, prohibits *student booking stations* from being established or maintained on school grounds. A *student booking station* is "a building, office, room, or any indefinitely established space or site, mobile or fixed, which operates concurrently as: (1) predominantly or regularly a place of operation for a municipal police department, county sheriff department, or other law enforcement agency, or under the primary control thereof, and (2) a site at which students are detained in connection with criminal charges or allegations against those students, taken into custody, or engaged with law enforcement personnel in any process that creates a law enforcement record of that contact with law enforcement personnel or processes." 105 ILCS 5/10-20.64(d).

<sup>2</sup> 105 ILCS 5/22-8, added by P.A. 101-478 and amended by P.A. 102-021, requires that "before detaining or questioning a student on school grounds, a law enforcement officer, school resource officer, or other school security personnel must ensure these conditions are met before detaining and questioning a student on school grounds. For ease of implementation, this policy assigns these duties to a school official as they routinely contact parents/guardians and can arrange for the presence of school personnel during an interview. See the ICSA *Guidelines* for further discussion of school officials' responsibilities when law enforcement authorities interview students at school.

- b. Make reasonable efforts to ensure the student’s parent/guardian is present during questioning or, if they are not present, ensure that school employees (including, but not limited to, a school social worker, psychologist, nurse, guidance counselor, or any other mental health professional) are present during the questioning; and
- c. If practicable, make reasonable efforts to ensure a trained law enforcement officer to promote safe interactions and communications with the student is present during questioning.<sup>3</sup>

LEGAL REF.: 105 ILCS 5/10-20.64, 5/22-83, 5/22-83.1, 5/22-83.2, 5/22-83.3, 5/22-83.4, 5/22-83.5, 5/22-83.6, 5/22-83.7, 5/22-83.8, 5/22-83.9, 5/22-83.10, 5/22-83.11, 5/22-83.12, 5/22-83.13, 5/22-83.14, 5/22-83.15, 5/22-83.16, 5/22-83.17, 5/22-83.18, 5/22-83.19, 5/22-83.20, 5/22-83.21, 5/22-83.22, 5/22-83.23, 5/22-83.24, 5/22-83.25, 5/22-83.26, 5/22-83.27, 5/22-83.28, 5/22-83.29, 5/22-83.30, 5/22-83.31, 5/22-83.32, 5/22-83.33, 5/22-83.34, 5/22-83.35, 5/22-83.36, 5/22-83.37, 5/22-83.38, 5/22-83.39, 5/22-83.40, 5/22-83.41, 5/22-83.42, 5/22-83.43, 5/22-83.44, 5/22-83.45, 5/22-83.46, 5/22-83.47, 5/22-83.48, 5/22-83.49, 5/22-83.50, 5/22-83.51, 5/22-83.52, 5/22-83.53, 5/22-83.54, 5/22-83.55, 5/22-83.56, 5/22-83.57, 5/22-83.58, 5/22-83.59, 5/22-83.60, 5/22-83.61, 5/22-83.62, 5/22-83.63, 5/22-83.64, 5/22-83.65, 5/22-83.66, 5/22-83.67, 5/22-83.68, 5/22-83.69, 5/22-83.70, 5/22-83.71, 5/22-83.72, 5/22-83.73, 5/22-83.74, 5/22-83.75, 5/22-83.76, 5/22-83.77, 5/22-83.78, 5/22-83.79, 5/22-83.80, 5/22-83.81, 5/22-83.82, 5/22-83.83, 5/22-83.84, 5/22-83.85, 5/22-83.86, 5/22-83.87, 5/22-83.88, 5/22-83.89, 5/22-83.90, 5/22-83.91, 5/22-83.92, 5/22-83.93, 5/22-83.94, 5/22-83.95, 5/22-83.96, 5/22-83.97, 5/22-83.98, 5/22-83.99, 5/22-83.100, 55 ILCS 80/, Children’s Advocacy Center Act, 325 ILCS 5/, Abused and Neglected Child Reporting Act, 720 ILCS 5/31-1 et seq., Interference with Public Officers Act, 725 ILCS 120/, Rights of Crime Victims and Witnesses Act.

CROSS REF.: 5:90 (Abused and Neglected Child Reporting), 7:130 (Student Rights and Responsibilities), 7:140 (Search and Seizure), 7:190 (Student Behavior)

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<sup>3</sup> 105 ILCS 5/22-83.1 (b)(4) (final citation pending), added by P.A. 101-478. A trained law enforcement officer is someone who: (1) received training in youth investigations approved or is certified by his/her law enforcement agency as a school resource officer per 50 ILCS 705/10.22, or (2) is a juvenile police officer per 705 ILCS 405/1-3(17).



## Students

### Student Appearance 1

A student's appearance, including dress and grooming, must not disrupt the educational process, interfere with an individual student's personal pursuit of learning, or compromise acceptable standards of health and safety, and otherwise, the District does not intend to apply a uniform dress code, including, but not limited to, uniformed attire, such as blouses, skirts, and slacks. Students who adhere to the applicable standards of health and safety will receive their appearance. Procedures for handling student appearance, including students who dress in a manner appropriate will be developed by the Superintendent in consultation and included in the *Student Handbook(s)*.<sup>3</sup>

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<sup>1</sup> *Board of Education of the City of Chicago v. American Civil Liberties Union*, 2017 WL 1100000 (N.D. Ill. 2017). The court held that the Board of Education's policy was not a First Amendment violation because it was a content-neutral regulation of student appearance. The court also held that the Board of Education's policy was not a First Amendment violation because it was a content-neutral regulation of student appearance. The court also held that the Board of Education's policy was not a First Amendment violation because it was a content-neutral regulation of student appearance. State or federal law may control this policy's content.

<sup>2</sup> 105 ILCS 5/10-22.25b, which specifically authorizes a school board to adopt a school uniform or dress code policy. **There are hundreds of decisions on dress codes and uniform policies, making it imperative that a board contact its attorney for assistance in applying the law to specific fact situations.**

Generally, if a student's dress has sufficient communicative content, it will warrant First Amendment protection. If protected, a school's ability to regulate the dress will be analyzed according to *Tinker v. Des Moines Indep. Sch. Dist.*, 89 S.Ct. 733 (1969) – it may be regulated only if it would substantially disrupt school operations or interfere with the right of others. In *Brandt v. Board of Educ. of City of Chicago*, 2006 WL 623651 (N.D.Ill. 2006), *earlier decision*, 326 F.Supp.2d 916 (N.D.Ill., 2004), an Illinois federal court upheld a school's authority to punish students for wearing t-shirts portraying a one-handed boy; the court said: "A school need not tolerate student speech that is inconsistent with the school's basic educational mission even though the First Amendment would protect similar speech or expressive conduct outside of the school setting. This holding is suspect after the Seventh Circuit decision in *Zamecnik v. Indian Prairie Sch. Dist.*, #204, 636 F.3d 874 (7th Cir. 2011). There the court held that the school district violated students' free speech rights by forbidding them from wearing during school hours a T-shirt saying "Be Happy, Not Gay."

A school may regulate student dress that does not have sufficient communicative content to receive free speech protection, provided the regulation is not arbitrary or excessive. Although many courts have ruled similarly with respect to grooming, e.g., hair length, and non-earring piercings, the Seventh Circuit, the federal appellate court that governs Illinois, has struck down school regulations governing hair length and earrings (See *Breen v. Kahl*, 419 F.2d 1034 (7th Cir., 1969); *Crews v. Clones*, 432 F.2d 1259 (7th Cir., 1970) (exclusion of long-haired student from class constituted denial of equal protection to male students); *Arnold v. Carpenter*, 459 F.2d 939 (7th Cir., 1972); *Holsapple v. Woods*, 500 F.2d 49 (7th Cir. 1974) (limitation of ruling recognized by *Hayden ex rel. v. Greensburg Community Sch. Corp.*, 743 F.3d 569 (7th Cir. 2014) (recognizing school's right to set policy); *Olesen v. Olesen v. Board of Educ. Dist. 228*, 676 F.Supp. 820, 822 (N.D.Ill.1987) (male students have a liberty interest in wearing an earring to school). But see *Blau v. Fort Thomas Public Sch. Dist.*, 401 F.3d 381 (6th Cir. 2005) (upheld a Kentucky middle school's student dress code that prohibited visible body piercing other than ears). A school's uniform policy was upheld in *Alwood v. Clark and Belleville Twp. High Sch. Dist.*, 201 WL 2001317 (S.D.Ill., 2005).

<sup>3</sup> The Board of Education should consult with its attorney before adopting a policy that restricts student appearance.

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<sup>3</sup> A comprehensive Student Handbook can provide notice to parents and students of the school's conduct rules, extracurricular and athletic participation requirements, and other important information. The Handbook can be developed by the building principal, but should be reviewed and approved by the superintendent and board.

LEGAL REF.: 105 ILCS 5/10-22.25b.  
Tinker v. Des Moines Indep. School Dist., 397 U.S. 697 (1969).

CROSS REF.: 7:130 (Student Rights and Responsibilities), 7:165 (School Uniforms), 7:190 (Student Behavior)

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Members of the Ill. Principals Assoc. may subscribe to the IPA's Model Student Handbook Service. While this service is not a handbook *per se*, it provides principals with quick, user-friendly access to model student handbook provisions that are attorney drafted and fully aligned with IASB's policy services. For more information, see:

[www.ilprincipals.org/resources/model-student-handbook](http://www.ilprincipals.org/resources/model-student-handbook). See also 7:190-F2, *Student Handbook Checklist*.

## Students

### Prevention of and Response to Bullying, Intimidation, and Harassment 1

Bullying, intimidation, and harassment diminish a student's ability to learn and a school's ability to educate. Preventing students from engaging in these disruptive behaviors and providing all students equal access to a safe, non-hostile learning environment are important District goals.

Bullying on the basis of actual or perceived race, color, national origin, military status, unfavorable discharge status from the military service, sex, sexual orientation, gender identity, gender-related identity or expression, ancestry, age, religion, physical or mental disability, order of protection status, status of being homeless, or actual or potential marital or parental status, including pregnancy, association with a person or group with one or more of the aforementioned actual or perceived characteristics, or any other distinguishing characteristic **is prohibited** in each of the following situations: <sup>2</sup>

1. During any school-sponsored education program or activity.
2. While in school, on school property, on school buses or other school vehicles, at designated school bus stops waiting for the school bus, or at school-sponsored or school-sanctioned events or activities.
3. Through the transmission of information from a school computer, a school computer network, or other similar electronic school equipment.
4. Through the transmission of information from a computer that is accessed at a nonschool-related location, activity, function, or program or from the use of technology or an electronic device that is not owned, leased, or used by the School District or school if the bullying causes a substantial disruption to the educational process or orderly operation of a school. This paragraph (item #4) applies only when a school administrator or teacher receives a report that bullying through this means has occurred; it does not require staff members to monitor any nonschool-related activity, function, or program.

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<sup>1</sup> All districts must have a policy on bullying, monitor it, review and re-evaluate it, and file it with the I S B E every two years (see *f/n 16, below*). 105 ILCS 5/27-23.7, ~~amended by P.A. 100-137. Every two years, each district must review and re-evaluate this policy, make necessary and appropriate revisions, and file the updated policy with the Ill. State Board of Education (ISBE).~~ This sample policy's first paragraph allows a school board to consider its goals for preventing bullying and remedying its consequences; it may be amended.

In addition to a bullying prevention policy, all districts must have a policy on student behavior. 105 ILCS 5/10-20.14; 23 Ill.Admin.Code §1.280. Boards must, in consultation with their parent-teacher advisory committees and other community-based organizations, address aggressive behavior, including bullying, in their student behavior policy. See 7:190, *Student Behavior*; 7:190-E1, *Aggressive Behavior Reporting Letter and Form*.

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. See *f/n 107, below*.

<sup>2</sup> This paragraph and its subparts 1-4 are from the bullying prevention statute. 105 ILCS 5/27-23.7(a); see also 775 ILCS 5/1-103 and 23 Ill.Admin.Code §1.240. The protected statuses are mandated by the bullying prevention statute; the list of protected statuses is identical to the list in 7:20, *Harassment of Students Prohibited*.

Definitions from 105 ILCS 5/27-23.7<sup>3</sup>

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

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

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

*Cyberbullying* means bullying through the use of technology or any electronic communication, including without limitation any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic system, photo-electronic system, or photo-optical system, including without limitation electronic mail, Internet communications, instant messages, or facsimile communications. *Cyberbullying* includes the creation of a webpage or weblog in which the creator assumes the identity of another person or the knowing impersonation of another person as the author of posted content or messages if the creation or impersonation creates any of the effects enumerated in the definition of *bullying*. *Cyberbullying* also includes the distribution by electronic means of a communication to more than one person or the posting of material on an electronic medium that may be accessed by one or more persons if the distribution or posting creates any of the effects enumerated in the definition of *bullying*.

*Restorative measures* means a continuum of school-based alternatives to exclusionary discipline, such as suspensions and expulsions, that: (i) are adapted to the particular needs of the school and community, (ii) contribute to maintaining school safety, (iii) protect the integrity of a positive and productive learning climate, (iv) teach students the personal and interpersonal skills they will need to be successful in school and society, (v) serve to build and restore relationships among students, families, schools, and communities, and (vi) reduce the likelihood of future disruption by balancing accountability with an understanding of students' behavioral health needs in order to keep students in school, and (vii) increase student accountability if the incident of bullying is based on religion, race, ethnicity, or any other category that is identified in the Ill. Human Rights Act.<sup>4</sup>

*School personnel* means persons employed by, on contract with, or who volunteer in a school district, including without limitation school and school district administrators, teachers, school guidance

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<sup>3</sup> All definitions are directly from 105 ILCS 5/27-23.7, ~~amended by P.A. 100-137~~. See also resources from Cyberbullying Research Center, available at: [cyberbullying.org/](http://cyberbullying.org/), and the U.S. School Safety Clearinghouse website at [www.SchoolSafety.gov](http://www.SchoolSafety.gov), discussed in fn 1, para. 3 of policy 4:170, *Safety*.

<sup>4</sup> 105 ILCS 5/27-23.7(b), amended by P.A. 102-241.

counselors, school social workers, school counselors, school psychologists, school nurses, cafeteria workers, custodians, bus drivers, school resource officers, and security guards. <sup>5</sup>

### Bullying Prevention and Response Plan

The Superintendent or designee shall develop and maintain a bullying prevention and response plan that advances the District's goal of providing all students with a safe learning environment free of bullying and harassment. This plan must be consistent with the requirements listed below; each numbered requirement, 1-12, corresponds with the same number in the list of required policy components in 105 ILCS 5/27-23.7(b) 1-12. <sup>6</sup>

1. The District uses the definition of *bullying* as provided in this policy. <sup>7</sup>
2. Bullying is contrary to State law and the policy of this District. However, nothing in the District's bullying prevention and response plan is intended to infringe upon any right to exercise free expression or the free exercise of religion or religiously based views protected under the First Amendment to the U.S. Constitution or under Section 3 of Article I of the Illinois Constitution.
3. Students are encouraged to immediately report bullying. A report may be made orally or in writing to the Nondiscrimination Coordinator, Building Principal, Assistant Building Principal, Dean of Students, a Complaint Manager, or any staff member with whom the student is comfortable speaking.<sup>8</sup> Anyone, including staff members and parents/guardians, who has information about actual or threatened bullying is encouraged to report it to the District named officials or any staff member. The District named officials and all staff members are available for help with a bully or to make a report about bullying.<sup>9</sup> Anonymous reports are also accepted; however, this shall not be construed to permit formal disciplinary action solely on the basis of an anonymous report.

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<sup>5</sup> 105 ILCS 5/27-23.7(b), amended by P.A. 102-197.

<sup>6</sup> As each numbered requirement, 1-12, corresponds with the same number in 5/27-23.7(b)1-12, there are no reference citations in footnotes. All non-statutory requirements, plus alternatives and optional provisions, are described in footnotes.

<sup>7</sup> 105 ILCS 5/27-23.7(b), para. 3(1). See fn 4, above and ISBE's *School Policies for Bullying Prevention* at: [www.isbe.net/Documents/Bullying-Prev-Policy-Req.pdf](http://www.isbe.net/Documents/Bullying-Prev-Policy-Req.pdf).

A board may augment the School Code requirement by using this alternative:

Using the definition of *bullying* as provided in this policy, the Superintendent or designee shall emphasize to the school community that: (a) the District prohibits bullying, and (b) all students should conduct themselves with a proper regard for the rights and welfare of other students. This may include a process for commending or acknowledging students for demonstrating appropriate behavior.

<sup>8</sup> The statute requires that the policy contain the email address and telephone number for the staff person(s) responsible for receiving bullying reports. Using the district Nondiscrimination Coordinator and Complaint Managers is consistent with 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. A telephone number for making anonymous reports may also be added.

<sup>9</sup> 105 ILCS 5/27-23.7(d), amended by P.A. 100-137, requires that "[s]chool personnel available for help with a bully or to make a report about bullying" be made known to parents/guardians, students, and school personnel.

**Nondiscrimination Coordinator: <sup>10</sup>**

\_\_\_\_\_  
Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Email

\_\_\_\_\_  
Telephone

**Complaint Managers:**

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

4. Consistent with federal and State laws and rules governing student privacy rights, the Superintendent or designee shall promptly inform the parent(s)/guardian(s) of every student involved in an alleged incident of bullying and discuss, as appropriate, the availability of social work services, counseling, school psychological services, other interventions, and restorative measures. <sup>11</sup>
5. The Superintendent or designee shall promptly investigate and address reports of bullying, by, among other things:
  - a. Making all reasonable efforts to complete the investigation within 10 school days after the date the report of a bullying incident was received and taking into consideration additional relevant information received during the course of the investigation about the reported bullying incident.
  - b. Involving appropriate school support personnel and other staff persons with knowledge, experience, and training on bullying prevention, as deemed appropriate, in the investigation process.
  - c. Notifying the Building Principal or school administrator or designee of the reported incident of bullying as soon as possible after the report is received.

\_\_\_\_\_  
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<sup>10</sup> Sample policy 2:260, *Uniform Grievance Procedure*, states that a district's Nondiscrimination Coordinator also serves as its Title IX Coordinator. If the district uses a separate Title IX Coordinator who does not also serve as the Nondiscrimination Coordinator, list the Title IX and Nondiscrimination Coordinators' names separately in this policy. 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.

<sup>11</sup> 105 ILCS 5/10-20.14 contains a similar requirement. See 7:190-E1, *Aggressive Behavior Reporting Letter and Form*.

- d. Consistent with federal and State laws and rules governing student privacy rights, providing parents/guardians of the students who are parties to the investigation information about the investigation and an opportunity to meet with the Building Principal or school administrator or his or her designee to discuss the investigation, the findings of the investigation, and the actions taken to address the reported incident of bullying.

The Superintendent or designee shall investigate whether a reported incident of bullying is within the permissible scope of the District's jurisdiction and shall require that the District provide the victim with information regarding services that are available within the District and community, such as counseling, support services, and other programs. <sup>12</sup>

6. The Superintendent or designee shall use interventions to address bullying, that may include, but are not limited to, school social work services, restorative measures, social-emotional skill building, counseling, school psychological services, and community-based services. <sup>13</sup>
7. A reprisal or retaliation against any person who reports an act of bullying **is prohibited**. ~~Any person's act of reprisal or retaliation will be subject to disciplinary action, up to and including discharge with regard to employees, or suspension and/or expulsion<sup>14</sup> with regard to students treated as bullying for purposes of determining any consequences or other appropriate remedial actions.~~
8. A student will not be punished for reporting bullying or supplying information, even if the District's investigation concludes that no bullying occurred. However, a person who is found to have knowingly, making a false accusation another of bullying, as a means of retaliation, as a means of bullying, or providing knowingly false information will be treated as either: (a) bullying, (b) student discipline including suspension and/or expulsion, and/or (c) both (a) and (b) for purposes of determining any consequences or other appropriate remedial actions.
9. The District's bullying prevention and response plan ~~must be~~ based on the engagement of a range of school stakeholders, including students and parents/guardians.
10. The Superintendent or designee shall post this policy on the District's website, if any, and include it in the student handbook, and, where applicable, post it where other policies, rules, and standards of conduct are currently posted. The policy must be distributed annually to parents/guardians, students, and school personnel (including new employees when hired), and must also be provided periodically throughout the school year to students and faculty. <sup>15</sup>
11. Pursuant to State law and policy 2:240, Board Policy Development, the Board monitors this policy every two years by conducting a review and re-evaluation of this policy to make any necessary and appropriate revisions. The Superintendent or designee shall assist the Board

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<sup>12</sup> This sentence contains requirements found in 105 ILCS 5/27-23.7(d).

<sup>13</sup> A grant may be available from ~~the State of Illinois~~ for the promotion of a safe and healthy learning environment. 105 ILCS ~~5/2-3.1765/2-3.180 and 3.181~~, added by P.A. 101-438 and renumbered by P.A. 102-558. A list of grant funding opportunities is available at: [www.isbe.net/Pages/Grants.aspx](http://www.isbe.net/Pages/Grants.aspx).

<sup>14</sup> Consult the board attorney about the potential conflict of 105 ILCS 5/27-23.7(b)(7) (allowance of suspension and/or expulsion of students for reprisal/retaliation against reports of bullying) with 105 ILCS 5/10-22.6(b-20) (districts must resolve threats, address disruptions, and minimize the length (and implementation of) suspensions and expulsions to the greatest extent practicable). See 7:200, Suspension Procedures, at fn 8 and policy 7:210, Expulsion Procedures, at fns 11 and 13.

<sup>15</sup> 105 ILCS 5/27-23.7(b)(10), amended by P.A. 100-137.

with its re-evaluation and assessment of this policy's outcomes and effectiveness. Updates to this policy will reflect any necessary and appropriate revisions. This process shall include, without limitation: <sup>16</sup>

- a. The frequency of victimization;
- b. Student, staff, and family observations of safety at a school;
- c. Identification of areas of a school where bullying occurs;
- d. The types of bullying utilized; and
- e. Bystander intervention or participation.

The evaluation process may use relevant data and information that the District already collects for other purposes. Acceptable documentation to satisfy the re-evaluated policy submission includes one of the following:

- 1) An updated version of the policy with the amendment/modification date included in its reference portion of the policy;
- 2) If no revisions are deemed necessary, a copy of board minutes indicating that the policy was re-evaluated and no changes were deemed to be necessary, or a signed statement from the board; or
- 3) A signed statement from the Board President indicating that the Board re-evaluated the policy and no changes were necessary.

The Superintendent or designee must post the information developed as a result of the policy re-evaluation on the District's website, or if a website is not available, the information must be provided to school administrators, Board members, school personnel, parents/guardians, and students. Reviews and re-evaluations in every year are due must be submitted to ISBE by September 30.

12. The Superintendent or designee shall fully implement the Board policies, including without limitation, the following: <sup>17</sup>

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<sup>16</sup> 105 ILCS 5/27-23.7. See the guidance document that is cited in ¶ 7, above. In 2020, ISBE extended submission to 12-30 in 2020.

<sup>17</sup> The statute requires that the bullying policy *be consistent with* other board policies. The list of policies may be deleted and the following alternative used: "12. The District's bullying prevention plan must be consistent with other Board policies." If a policy list is included, be sure the referenced policies were adopted locally and amend the list accordingly.

The bullying statute does not identify staff member duties regarding the prevention of or response to student bullying. The following optional provision addresses staff member responsibilities and may be added as a new paragraph 13:

13. The Superintendent or designee shall fully inform staff members of the District's goal to prevent students from engaging in bullying and the measures being used to accomplish it. This includes each of the following:
  - a. Communicating the District's expectation and State law requirement that teachers and other certificated or licensed employees maintain discipline.
  - b. Establishing the expectation that staff members: (1) intervene immediately to stop a bullying incident that they witness or immediately contact building security and/or law enforcement if the incident involves a weapon or other illegal activity, (2) report bullying, whether they witness it or not, to an administrator, and (3) inform the administration of locations on school grounds where additional supervision or monitoring may be needed to prevent bullying.
  - c. Where appropriate in the staff development program, providing strategies to staff members to effectively prevent bullying and intervene when it occurs.
  - d. Establishing a process for staff members to fulfill their obligation to report alleged acts of bullying.



- a. 2:260, *Uniform Grievance Procedure*. A student may use this policy to complain about bullying.
- b. 2:265, *Title IX Sexual Harassment Grievance Procedure*. Any person may use this policy to complain about sexual harassment in violation of Title IX of the Education Amendments of 1972.
- c. 6:60, *Curriculum Content*. Bullying prevention and character instruction is provided in all grades in accordance with State law.
- d. 6:65, *Student Social and Emotional Development*. Student social and emotional development is incorporated into the District's educational program as required by State law.
- e. 6:235, *Access to Electronic Networks*. This policy states that the use of the District's electronic networks is limited to: (1) support of education and/or research, or (2) a legitimate business use.
- f. 7:20, *Harassment of Students Prohibited*. This policy prohibits any person from harassing, intimidating, or bullying a student based on an identified actual or perceived characteristic (the list of characteristics in 7:20 is the same as the list in this policy).
- g. 7:185, *Teen Dating Violence Prohibited*. This policy prohibits teen dating violence on school property, at school sponsored activities, and in vehicles used for school-provided transportation.
- h. 7:190, *Student Behavior*. This policy prohibits, and provides consequences for, hazing, bullying, or other aggressive behaviors, or urging other students to engage in such conduct.
- i. 7:310, *Restrictions on Publications; Elementary Schools*, and 7:315, *Restrictions on Publications; High Schools*. These policies prohibit students from and provide consequences for: (1) accessing and/or distributing at school any written, printed, or electronic material, including material from the Internet, that will cause substantial disruption of the proper and orderly operation and discipline of the school or school activities, and (2) creating and/or distributing written, printed, or electronic material, including photographic material and blogs, that causes substantial disruption to school operations or interferes with the rights of other students or staff members. <sup>18</sup>

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<sup>18</sup> For elementary districts, delete: ~~and 7:315, *Restrictions on Publications; High Schools*~~ and delete the Cross Reference to 7:315, *Restrictions on Publications; High Schools*. For high school districts, delete ~~7:310, *Restrictions on Publications; Elementary Schools*, and~~ and delete the Cross Reference to 7:310, *Restrictions on Publications; Elementary Schools*. In both cases, revise the beginning of the sentence to read: "These policies prohibit students from and provides."

LEGAL REF.: 105 ILCS 5/10-20.14, \_\_\_\_\_, 5/24-24, and 5/27-23.7.  
405 ILCS 49/, Children’s Mental Health Act.  
Ill. Human Rights Act

23 Ill.Admin.Code §1.240 and §1.280.

CROSS REF.: 2:240 (Board Policy Development), 2:260 (Uniform Grievance Procedure), 2:265 (Title IX Sexual Harassment Grievance Procedure), 4:170 (Safety), 5:230 (Maintaining Student Discipline), 6:60 (Curriculum Content), 6:65 (Student Social and Emotional Development), 6:235 (Access to Electronic Networks), 7:20 (Harassment of Students Prohibited), 7:185 (Teen Dating Violence Prohibited), 7:190 (Student Behavior), 7:220 (Bus Conduct), 7:230 (Misconduct by Students with Disabilities), 7:240 (Conduct Code for Participants in Extracurricular Activities), 7:285 (Food Allergy Management Program), 7:310 (Restrictions on Publications; Elementary Schools), 7:315 (Restrictions on Publications; High Schools)

## Students

### Student Behavior 1

The goals and objectives of this policy are to provide effective discipline practices that: (1) ensure the safety and dignity of students and staff; (2) maintain a positive, weapons-free, and drug-free learning environment; (3) keep school property and the property of others secure; (4) address the causes of a student's misbehavior and provide opportunities for all individuals involved in an incident to participate in its resolution; and (5) teach students positive behavioral skills to become independent, self-disciplined citizens in the school community and society. <sup>2</sup>

### When and Where Conduct Rules Apply 3

A student is subject to disciplinary action for engaging in prohibited student conduct, as described in the section with that name below, whenever the student's conduct is reasonably related to school or school activities, including, but not limited to:

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<sup>1</sup> All districts must have a policy on student discipline, including school searches and bullying prevention (105 ILCS 5/10-20.14); re-engagement of students returning from an exclusionary discipline or an alternative school (105 ILCS 5/10-22.6(b-25)); and corporal punishment (105 ILCS 5/24-24). See also 23 Ill.Admin.Code §1.280. See the Cross References for policies on searches and bullying. Each district must furnish a copy of the discipline policy to parents/guardians within 15 days after the beginning of the school year, or within 15 days after starting classes for a student who transfers into the district. 105 ILCS 5/10-20.14(a). The school board must require that each school inform its pupils of the discipline policy's contents. Id.

School boards, along with the parent-teacher advisory committee, must annually review their pupil discipline policies, those policies' implementation, and any other factors related to the safety of their schools, students, and staff. Id. For more information about the parent-teacher advisory committee, see 2:150, *Committees*. The parent-teacher advisory committee, in cooperation with local law enforcement agencies, must develop, with the school board, a reciprocal reporting system. 105 ILCS 5/10-20.14(b). See 7:190-AP3, *Guidelines for Reciprocal Reporting of Criminal Offenses Committed by Students*. School districts are encouraged to create memoranda of understanding that define law enforcement's role in schools. See 7:190-E3, *Memorandum of Understanding*.

Given the unique concerns facing school officials, school disciplinary codes are not required to be drafted as narrowly or with the same precision as criminal statutes. Bethel Sch. Dist. v. Fraser, 478 U.S. 675 (1986).

<sup>2</sup> The goals and objectives in this policy give the board a focus for monitoring it. This list can be deleted, replaced, or modified by the board. Data on student discipline is available at: [www.isbe.net/Pages/Expulsions-Suspensions-and-Truants-by-District.aspx](http://www.isbe.net/Pages/Expulsions-Suspensions-and-Truants-by-District.aspx).

<sup>3</sup> See *Ill. Admin. Code* 23.120, Section 1.280, which states that the Illinois State Board of Education will not review or approve a policy that is inconsistent with the Illinois State Board of Education's policies.

<sup>3</sup> Board policy should provide a jurisdictional statement telling students and staff the circumstances under which the district will take disciplinary action. Jurisdictional rules in board policy should generally be as broad as possible to give staff members authority to respond to unforeseen situations. Taking jurisdiction over off-campus misconduct generally survives the test of reasonableness when the misconduct has a direct nexus to the school. A countervailing interest concerns liability for off-campus student injuries, i.e., the greater the jurisdiction a district is willing to impose, the greater the scope of liability it may be assuming. Ultimately, a decision whether to discipline for off-campus misconduct requires a thorough factual inquiry to determine the degree of nexus and impact on the school. *See* [www.isbe.net/Pages/Expulsions-Suspensions-and-Truants-by-District.aspx](http://www.isbe.net/Pages/Expulsions-Suspensions-and-Truants-by-District.aspx).

A U.S. Supreme Court decision and many lower court decisions address disciplining a student for off-campus misconduct. See *Mahanoy Area Sch. Dist. v. B.L.*, 141 S.Ct. 2038 (2021). For example, *see* *J.S. v. Blue Mountain Sch. Dist.*, 650 F.3d 915 (3rd Cir. 2011), combined with *Layshock v. Hermitage Sch. Dist.*, 650 F.3d 205 (3d Cir. 2011), cert. denied 565 U.S. 11546 (2012)(absent evidence that parodies of school personnel caused, or could cause, substantial disruption, school districts may not punish out-of-school expressive conduct, even if it is lewd, indecent, or offensive speech).

1. On, or within sight of, school grounds before, during, or after school hours or at any time;
2. Off school grounds at a school-sponsored activity or event, or any activity or event that bears a reasonable relationship to school;
3. Traveling to or from school or a school activity, function, or event; or
4. Anywhere, if the conduct interferes with, disrupts, or adversely affects the school environment, school operations, or an educational function, including, but not limited to, conduct that may reasonably be considered to: (a) be a threat or an attempted intimidation of a staff member; or (b) endanger the health or safety of students, staff, or school property. <sup>4</sup>

#### Prohibited Student Conduct <sup>5</sup>

The school administration is authorized to discipline students for gross disobedience or misconduct, including but not limited to:

1. Using, possessing, distributing, purchasing, or selling tobacco or nicotine materials, including without limitation, electronic cigarettes. <sup>6</sup>

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<sup>4</sup> In *Doe v. Bd. of Educ. of the Weedsport Cent. Sch. Dist.*, 794 F.3d 34 (2d Cir. 2007), cert. denied 552 U.S. 1296 (2008), (holding a student's transmission of an icon of a pistol with blood splattering and the words "Kill Mr. VanDer Molen" crossed the boundary of protected speech and posed a seriously foreseeable risk that the icon would come to the attention of school authorities and materially and substantially disrupt the school).

<sup>5</sup> Note that historically, schools have had more leeway in disciplining law is different regarding participants in athletics and extracurricular activities; however, the *Mahoney v. Bd. of Educ. of the Weedsport Cent. Sch. Dist.*, 794 F.3d 34 (2d Cir. 2007), cert. denied 552 U.S. 1296 (2008), the degree of leeway now afforded by school officials. See policy 7:240, *Conduct Code for Participants in Extracurricular Activities*, fn 3 for further discussion.

A judge may transfer a student to another school for committing stalking or non-consensual sexual contact against another student, or for aiding and abetting such an act; the parents/guardians are responsible for transportation and other costs associated with the transfer. Stalking No Contact Order Act and the Civil No Contact Order Act, 740 ILCS 21/80 and 22/213. A school district is seldom notified when a transfer order is requested. When notified, school officials should immediately seek the board attorney's advice concerning available options.

<sup>4</sup> The factual context will determine the appropriateness of taking jurisdiction. Contact the board attorney before disciplining a student for off-campus conduct. See *Doe v. Superintendent of Schs. of Stoughton*, 767 N.E.2d 1054 (Mass. 2002)(suspension for off-campus commission of a felony was upheld).

<sup>5</sup> Consult the board attorney for advice on deleting or modifying any of the items in this section on prohibited student conduct.

<sup>6</sup> 105 ILCS 5/10-20.5b prohibits use of tobacco on school property. Federal law prohibits smoking within schools by anyone. Pro-Children Act of 1994, 20 U.S.C. §6081 *et seq.* Districts that fail to comply risk a civil penalty of up to \$1,000 per violation per day. 20 U.S.C. §6083(f)(1). See 8:30, *Visitors to and Conduct on School Property*, for more information.

The U.S. Food and Drug Administration now regulates electronic cigarettes. 21 C.F.R. Parts 1100, 1140, and 1143, amended by 81 Fed.Reg. 28973. An electronic or e-cigarette resembles a regular cigarette and contains a battery-operated heating element that turns a liquid into a mist for inhaling. The liquid may contain nicotine. E-cigarettes are sometimes referred to as e-cigs, vapes, e-hookahs, vape pens, and electronic nicotine delivery systems (ENDS), and they are generally involved in *vaping*. Vaping is the act of inhaling and exhaling the aerosol, often referred to as vapor that is produced by an e-cigarette or similar device. An e-cigarette resembles a cigarette and contains a battery-operated heating element that turns a liquid into a mist for inhaling. Some e-cigarettes do not look like tobacco products and are shaped like other objects, such as USB flash drives, and are more easily concealed.

Information and resources are available at:

[www.isbe.net/Pages/School-Health-Issues.aspx](http://www.isbe.net/Pages/School-Health-Issues.aspx)

[www.fda.gov/tobaccoproducts/default.htm](http://www.fda.gov/tobaccoproducts/default.htm)

[www.cdc.gov/tobacco/basic\\_information/e-cigarettes/index.htm](http://www.cdc.gov/tobacco/basic_information/e-cigarettes/index.htm)

[www.dph.illinois.gov/topics-services/prevention-wellness/tobacco/e-cigarettes-and-vapes](http://www.dph.illinois.gov/topics-services/prevention-wellness/tobacco/e-cigarettes-and-vapes)

[www.drugabuse.gov/drugs-abuse/tobacconicotine-vaping](http://www.drugabuse.gov/drugs-abuse/tobacconicotine-vaping)

2. Using, possessing, distributing, purchasing, or selling alcoholic beverages.<sup>7</sup> Students who are under the influence of an alcoholic beverage are not permitted to attend school or school functions and are treated as though they had alcohol in their possession.
3. Using, possessing, distributing, purchasing, selling, or offering for sale:
  - a. Any illegal drug or controlled substance, or cannabis (including marijuana, hashish, and medical cannabis unless the student is authorized to be administered a medical cannabis infused product under *Ashley's Law*).<sup>8</sup>
  - b. Any anabolic steroid unless it is being administered in accordance with a physician's or licensed practitioner's prescription.<sup>9</sup>
  - c. Any performance-enhancing substance on the Illinois High School Association's most current banned substance list unless administered in accordance with a physician's or licensed practitioner's prescription.<sup>10</sup>
  - d. Any prescription drug when not prescribed for the student by a physician or licensed practitioner, or when used in a manner inconsistent with the prescription or prescribing physician's or licensed practitioner's instructions. The use or possession of medical cannabis, even by a student for whom medical cannabis has been prescribed, is prohibited unless the student is authorized to be administered a medical cannabis infused product under *Ashley's Law*.<sup>11</sup>

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<sup>7</sup> *Alcoholic beverages* are defined in 235 ILCS 5/1-3.01 to 3.05.

<sup>8</sup> *Controlled substance* is defined in 720 ILCS 570/102(f); *cannabis* is defined in 720 ILCS 550/3(a) and in 410 ILCS 705/1-10, added by P.A. 101-27. Either spelling, *marihuana* or *marijuana*, is correct; however, *marijuana* is more common. See fn 11 for a discussion of medical cannabis and *Ashley's Law*.

<sup>9</sup> *Anabolic steroid* is defined in 720 ILCS 570/102(c-1).

<sup>10</sup> See policies 7:240, *Conduct Code for Participants in Extracurricular Activities*, and 7:300, *Extracurricular Athletics*.

<sup>11</sup> To legally use medical cannabis, an individual must first become a *registered qualifying patient*. The use of cannabis by a *registered qualifying patient* is permitted only in accordance with the Compassionate Use of Medical Cannabis Program, 410 ILCS 130/, amended by P.A. 101-363, scheduled to be repealed on 7-1-20. There are many situations in which no one, even a *registered qualifying patient*, may possess or use cannabis. This includes in a school bus or on the grounds of any preschool, or primary or secondary school unless the student meets the requirements of 105 ILCS 5/22-33, a/k/a *Ashley's Law*, 410 ILCS 130/30(a)(2) and (3), amended by P.A. 101-363, scheduled to be repealed on 7-1-20. *Ashley's Law* provides that school districts "shall authorize a parent or guardian or any other individual registered with the Department of Public Health as a designated caregiver of a student who is a registered qualifying patient to administer a medical cannabis infused product to the student on the premises of the child's school or on the child's school bus if both the student (as a registered qualifying patient) and the parent or guardian or other individual (as a registered designated caregiver) have been issued registry identification cards under the Compassionate Use of Medical Cannabis Program Act." 105 ILCS 5/22-33(b), amended by P.A. 101-363. Once the product is administered, the designated caregiver must remove the product from the school premises/bus. *Id.*, 105 ILCS 5/22-33(b-5), added by 101-370, allows a properly trained school nurse or administrator to administer medical cannabis infused products to a student while at school, a school-sponsored activity, or before/after normal school activities, including while the student is in before-school or after-school care on school-operated property or while being transported on a school bus. The product may not be administered in a manner that would (in the school or district's opinion) create a disruption or expose other students to the product, and schools are not required to authorize use of the product if the school or district would lose federal funding as a result. 105 ILCS 5/22-33(c) amended by P.A. 101-363. For more discussion, see fn 25 in 7:270, *Administering Medicines to Students*. Contact the board attorney for advice concerning medical cannabis, including whether a federal or State law requires the district to accommodate a student who is a *registered qualifying patient*. See Americans with Disabilities Act of 1990, 42 U.S.C. §12101 *et seq.*; Individuals with Disabilities Education Improvement Act of 2004, 20 U.S.C. §1400 *et seq.*; Rehabilitation Act of 1973, Section 504, 29 U.S.C. §794; 105 ILCS 5/14-1.01 *et seq.*, 5/14-7.02, and 5/14-7.02b; and 23 Ill.Admin.Code Part 226.

- e. Any inhalant, regardless of whether it contains an illegal drug or controlled substance: (a) that a student believes is, or represents to be capable of, causing intoxication, hallucination, excitement, or dulling of the brain or nervous system; or (b) about which the student engaged in behavior that would lead a reasonable person to believe that the student intended the inhalant to cause intoxication, hallucination, excitement, or dulling of the brain or nervous system. The prohibition in this section does not apply to a student's use of asthma or other legally prescribed inhalant medications.
- f. Any substance inhaled, injected, smoked, consumed, or otherwise ingested or absorbed with the intention of causing a physiological or psychological change in the body, including without limitation, pure caffeine in tablet or powdered form. <sup>12</sup>
- g. *Look-alike* or counterfeit drugs, including a substance that is not prohibited by this policy, but one: (a) that a student believes to be, or represents to be, an illegal drug, controlled substance, or other substance that is prohibited by this policy; or (b) about which a student engaged in behavior that would lead a reasonable person to believe that the student expressly or impliedly represented to be an illegal drug, controlled substance, or other substance that is prohibited by this policy. <sup>13</sup>
- h. Drug paraphernalia, including devices that are or can be used to: (a) ingest, inhale, or inject cannabis or controlled substances into the body; and (b) grow, process, store, or conceal cannabis or controlled substances. <sup>14</sup>

Students who are under the influence of any prohibited substance are not permitted to attend school or school functions and are treated as though they had the prohibited substance, as applicable, in their possession.

- 4. Using, possessing, controlling, or transferring a *weapon* as that term is defined in the **Weapons** section of this policy, or violating the **Weapons** section of this policy. <sup>15</sup>
- 5. Using or possessing an electronic paging device. Using a cellular telephone, video recording device, personal digital assistant (PDA), or other electronic device in any manner that disrupts the educational environment or violates the rights of others, including using the device to take photographs in locker rooms or bathrooms, cheat, or otherwise violate student conduct rules. Prohibited conduct specifically includes, without limitation, creating, sending, sharing, viewing,

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<sup>12</sup> The Powdered Caffeine Control and Education Act states: "No person may sell, offer for sale, give away, or provide free samples of powdered pure caffeine to any person under age 18 located within the State or to any person under age 18 making the purchase from within the State." A limited exception to this prohibition exists for "the sale of any powdered pure caffeine product that receives explicit approval as safe and effective for its intended use under the federal Food, Drug, and Cosmetic Act or is lawfully marketed under an over-the-counter monograph issued by the United States Food and Drug Administration." 410 ILCS 647/20.

<sup>13</sup> *Counterfeit* and *look-alike substances* are defined in 720 ILCS 570/102(g) and (y). This provision is broader because it would apply, for example, if a student represents a powdered vitamin to be pure caffeine – pure caffeine is prohibited on campus even though it is a legal substance. Look-alike drugs should be defined; an unpublished Ill. appellate decision in 2000 found a policy prohibiting possession of *look-alikes* had vagueness problems.

<sup>14</sup> *Drug paraphernalia* is defined in 720 ILCS 600/2(d). Contact the board attorney for advice concerning a student who is a *registered qualifying patient*, as explained in *Fn 11*.

<sup>15</sup> This language is broader than the **Weapons** section of this policy. The **Weapons** section contains the statutorily required punishment for "a student who is determined to have brought" a weapon to school along with the statutory definition of *weapon*. 105 ILCS 5/10-22.6(d). The language in item #4 is broader because it prohibits "using, possessing, controlling, or transferring" a weapon in addition to violating the **Weapons** section. See the footnotes in the **Weapons** section for a discussion of the Firearm Concealed Carry Act's provisions.

receiving, or possessing an indecent visual depiction of oneself or another person through the use of a computer, electronic communication device, or cellular phone. Unless otherwise banned under this policy or by the Building Principal, all electronic devices must be kept powered-off or silenced and out-of-sight<sup>16</sup> during the regular school day unless: (a) the supervising teacher grants permission; (b) use of the device is provided in a student's individualized education program (IEP); (c) it is used during the student's lunch period, or (d) it is needed in an emergency that threatens the safety of students, staff, or other individuals. <sup>17</sup>

6. Using or possessing a laser pointer unless under a staff member's direct supervision and in the context of instruction.
7. Disobeying rules of student conduct or directives from staff members or school officials. Examples of disobeying staff directives include refusing a District staff member's request to stop, present school identification, or submit to a search.
8. Engaging in academic dishonesty, including cheating, intentionally plagiarizing, wrongfully giving or receiving help during an academic examination, altering report cards, and wrongfully obtaining test copies or scores.
9. Engaging in hazing or any kind of bullying or aggressive behavior that does physical or psychological harm to a staff person or another student, or urging other students to engage in such conduct. Prohibited conduct specifically includes, without limitation, any use of violence, intimidation, force, noise, coercion, threats, stalking, harassment, sexual harassment, public humiliation, theft or destruction of property, retaliation, hazing, bullying, bullying using a school computer or a school computer network, or other comparable conduct. <sup>18</sup>

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<sup>16</sup> Delete "and out-of-sight" if the district wants to provide greater flexibility.

<sup>17</sup> 105 ILCS 5/10-21.10 prohibits student possession of electronic paging devices, but State law leaves to local boards the discretion whether to prohibit student possession of cellular phones. 105 ILCS 5/10-20.28. The misuse of camera phones can seriously invade a student's privacy. A board wanting a sweeping prohibition may use the following alternative for item #5:

Using or possessing a cellular telephone, electronic signaling device, two-way radio, video recording device, and/or other telecommunication device, unless authorized and approved by the Building Principal.

Operating transmitters designed to jam or block wireless communications violates the federal Communications Act of 1934. 47 U.S.C. §§301, 302a, and 333. Fines are as high as \$10,000 for each violation and/or imprisonment, and the device may also be seized. 47 U.S.C. §§501-510.

Making a video recording or live video transmission of another person without their consent in a restroom, locker room, or changing room is a Class 4 felony. 720 ILCS 5/26-4. A minor who distributes or disseminates an indecent visual depiction of another minor through the use of a computer or electronic communication device may be subject to adjudication as a minor in need of supervision. 705 ILCS 405/3-40.

<sup>18</sup> All districts must have a policy on bullying. 105 ILCS 5/27-23.7(d). Policy 7:180, *Prevention of and Response to Bullying, Intimidation, and Harassment*, contains the statutory definition of bullying. Districts must also have an age-appropriate policy on sexual harassment. 105 ILCS 5/10-20.69. *Sexual Harassment*, added by P.A. 101-418. See policy 7:20, *Harassment of Students Prohibited*, and its fn 7 for further detail.

105 ILCS 5/10-20.14 requires boards, in consultation with their parent-teacher advisory committees and other community-based organizations, to include provisions in their student discipline policy to address aggressive behavior, including bullying. These provisions must include procedures for notifying a student's parents/guardians about his/her aggressive behavior and early intervention procedures based upon available community-based and district resources. See 7:190-E1, *Aggressive Behavior Reporting Letter and Form*.

Suspending students for hazing was upheld in *Gendelman v. Glenbrook North High Sch. and Northfield Township, Sch. Dist.* 225, 2003 WL 21209880 (N.D.Ill. 2003). This decision may have been legislatively overturned by amending 105 ILCS 5/10-20.14.

The failure of a school official (including any administrator, teacher, counselor, support staff, or coach) to report hazing is a Class B misdemeanor. 720 ILCS 5/12C-50.1.

10. Engaging in any sexual activity, including without limitation, offensive touching, sexual harassment, indecent exposure (including mooning), and sexual assault. This does not include the non-disruptive: (a) expression of gender or sexual orientation or preference, or (b) display of affection during non-instructional time.
11. Teen dating violence, as described in Board policy 7:185, *Teen Dating Violence Prohibited*. <sup>19</sup>
12. Causing or attempting to cause damage to, or stealing or attempting to steal, school property or another person's personal property. <sup>20</sup>
13. Entering school property or a school facility without proper authorization.
14. In the absence of a reasonable belief that an emergency exists, calling emergency responders (such as calling 911); signaling or setting off alarms or signals indicating the presence of an emergency; or indicating the presence of a bomb or explosive device on school grounds, school bus, or at any school activity.
15. Being absent without a recognized excuse; State law and School Board policy regarding truancy control will be used with chronic and habitual truants. <sup>21</sup>
16. Being involved with any public school fraternity, sorority, or secret society, by: (a) being a member; (b) promising to join; (c) pledging to become a member; or (d) soliciting any other person to join, promise to join, or be pledged to become a member. <sup>22</sup>
17. Being involved in gangs or gang-related activities, including displaying gang symbols or paraphernalia. <sup>23</sup>
18. Violating any criminal law, including but not limited to, assault, battery, arson, theft, gambling, eavesdropping, vandalism, and hazing.

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A person commits a felony hate crime when, by reason of the actual or perceived race, color, creed, religion, ancestry, gender, sexual orientation, physical or mental disability, or national origin of another individual or group of individuals, regardless of the existence of any other motivating factor or factors, he or she commits assault, battery, aggravated assault, intimidation, stalking, cyberstalking, misdemeanor theft, criminal trespass to residence, misdemeanor criminal damage to property, criminal trespass to vehicle, criminal trespass to real property, mob action, disorderly conduct, transmission of obscene message, harassment by telephone, or harassment through electronic communications as these crimes are defined in the Criminal Code. 720 ILCS 5/12-7.1. The penalty is heightened when the offense is committed in a school or administrative facility.

720 ILCS 5/26-1(a)(3.5) and (b) make transmitting a threat of violence, death, or bodily harm directed against persons at a school, school function, or school event, whether or not school is in session, or causing such a threat to be transmitted, a Class 4 felony.

<sup>19</sup> All school boards must have a policy on prohibited teen dating violence. 105 ILCS 110/3.10. Verify that the board adopted the policy listed and amend its title in this policy, if necessary.

<sup>20</sup> 720 ILCS 5/26-1(a)(3.5) and (b) make threatening to destroy a school building or school property, whether or not school is in session, or causing such a threat to be transmitted, a Class 4 felony.

<sup>21</sup> 105 ILCS 5/26-2a, amended by P.A.s 09-036, 09-037, 09-038, 09-039, 09-040, 09-041, 09-042, 09-043, 09-044, 09-045, 09-046, 09-047, 09-048, 09-049, 09-050, 09-051, 09-052, 09-053, 09-054, 09-055, 09-056, 09-057, 09-058, 09-059, 09-060, 09-061, 09-062, 09-063, 09-064, 09-065, 09-066, 09-067, 09-068, 09-069, 09-070, 09-071, 09-072, 09-073, 09-074, 09-075, 09-076, 09-077, 09-078, 09-079, 09-080, 09-081, 09-082, 09-083, 09-084, 09-085, 09-086, 09-087, 09-088, 09-089, 09-090, 09-091, 09-092, 09-093, 09-094, 09-095, 09-096, 09-097, 09-098, 09-099, 09-100, 09-101, 09-102, 09-103, 09-104, 09-105, 09-106, 09-107, 09-108, 09-109, 09-110, 09-111, 09-112, 09-113, 09-114, 09-115, 09-116, 09-117, 09-118, 09-119, 09-120, 09-121, 09-122, 09-123, 09-124, 09-125, 09-126, 09-127, 09-128, 09-129, 09-130, 09-131, 09-132, 09-133, 09-134, 09-135, 09-136, 09-137, 09-138, 09-139, 09-140, 09-141, 09-142, 09-143, 09-144, 09-145, 09-146, 09-147, 09-148, 09-149, 09-150, 09-151, 09-152, 09-153, 09-154, 09-155, 09-156, 09-157, 09-158, 09-159, 09-160, 09-161, 09-162, 09-163, 09-164, 09-165, 09-166, 09-167, 09-168, 09-169, 09-170, 09-171, 09-172, 09-173, 09-174, 09-175, 09-176, 09-177, 09-178, 09-179, 09-180, 09-181, 09-182, 09-183, 09-184, 09-185, 09-186, 09-187, 09-188, 09-189, 09-190, 09-191, 09-192, 09-193, 09-194, 09-195, 09-196, 09-197, 09-198, 09-199, 09-200, 09-201, 09-202, 09-203, 09-204, 09-205, 09-206, 09-207, 09-208, 09-209, 09-210, 09-211, 09-212, 09-213, 09-214, 09-215, 09-216, 09-217, 09-218, 09-219, 09-220, 09-221, 09-222, 09-223, 09-224, 09-225, 09-226, 09-227, 09-228, 09-229, 09-230, 09-231, 09-232, 09-233, 09-234, 09-235, 09-236, 09-237, 09-238, 09-239, 09-240, 09-241, 09-242, 09-243, 09-244, 09-245, 09-246, 09-247, 09-248, 09-249, 09-250, 09-251, 09-252, 09-253, 09-254, 09-255, 09-256, 09-257, 09-258, 09-259, 09-260, 09-261, 09-262, 09-263, 09-264, 09-265, 09-266, 09-267, 09-268, 09-269, 09-270, 09-271, 09-272, 09-273, 09-274, 09-275, 09-276, 09-277, 09-278, 09-279, 09-280, 09-281, 09-282, 09-283, 09-284, 09-285, 09-286, 09-287, 09-288, 09-289, 09-290, 09-291, 09-292, 09-293, 09-294, 09-295, 09-296, 09-297, 09-298, 09-299, 09-300, 09-301, 09-302, 09-303, 09-304, 09-305, 09-306, 09-307, 09-308, 09-309, 09-310, 09-311, 09-312, 09-313, 09-314, 09-315, 09-316, 09-317, 09-318, 09-319, 09-320, 09-321, 09-322, 09-323, 09-324, 09-325, 09-326, 09-327, 09-328, 09-329, 09-330, 09-331, 09-332, 09-333, 09-334, 09-335, 09-336, 09-337, 09-338, 09-339, 09-340, 09-341, 09-342, 09-343, 09-344, 09-345, 09-346, 09-347, 09-348, 09-349, 09-350, 09-351, 09-352, 09-353, 09-354, 09-355, 09-356, 09-357, 09-358, 09-359, 09-360, 09-361, 09-362, 09-363, 09-364, 09-365, 09-366, 09-367, 09-368, 09-369, 09-370, 09-371, 09-372, 09-373, 09-374, 09-375, 09-376, 09-377, 09-378, 09-379, 09-380, 09-381, 09-382, 09-383, 09-384, 09-385, 09-386, 09-387, 09-388, 09-389, 09-390, 09-391, 09-392, 09-393, 09-394, 09-395, 09-396, 09-397, 09-398, 09-399, 09-400, 09-401, 09-402, 09-403, 09-404, 09-405, 09-406, 09-407, 09-408, 09-409, 09-410, 09-411, 09-412, 09-413, 09-414, 09-415, 09-416, 09-417, 09-418, 09-419, 09-420, 09-421, 09-422, 09-423, 09-424, 09-425, 09-426, 09-427, 09-428, 09-429, 09-430, 09-431, 09-432, 09-433, 09-434, 09-435, 09-436, 09-437, 09-438, 09-439, 09-440, 09-441, 09-442, 09-443, 09-444, 09-445, 09-446, 09-447, 09-448, 09-449, 09-450, 09-451, 09-452, 09-453, 09-454, 09-455, 09-456, 09-457, 09-458, 09-459, 09-460, 09-461, 09-462, 09-463, 09-464, 09-465, 09-466, 09-467, 09-468, 09-469, 09-470, 09-471, 09-472, 09-473, 09-474, 09-475, 09-476, 09-477, 09-478, 09-479, 09-480, 09-481, 09-482, 09-483, 09-484, 09-485, 09-486, 09-487, 09-488, 09-489, 09-490, 09-491, 09-492, 09-493, 09-494, 09-495, 09-496, 09-497, 09-498, 09-499, 09-500, 09-501, 09-502, 09-503, 09-504, 09-505, 09-506, 09-507, 09-508, 09-509, 09-510, 09-511, 09-512, 09-513, 09-514, 09-515, 09-516, 09-517, 09-518, 09-519, 09-520, 09-521, 09-522, 09-523, 09-524, 09-525, 09-526, 09-527, 09-528, 09-529, 09-530, 09-531, 09-532, 09-533, 09-534, 09-535, 09-536, 09-537, 09-538, 09-539, 09-540, 09-541, 09-542, 09-543, 09-544, 09-545, 09-546, 09-547, 09-548, 09-549, 09-550, 09-551, 09-552, 09-553, 09-554, 09-555, 09-556, 09-557, 09-558, 09-559, 09-560, 09-561, 09-562, 09-563, 09-564, 09-565, 09-566, 09-567, 09-568, 09-569, 09-570, 09-571, 09-572, 09-573, 09-574, 09-575, 09-576, 09-577, 09-578, 09-579, 09-580, 09-581, 09-582, 09-583, 09-584, 09-585, 09-586, 09-587, 09-588, 09-589, 09-590, 09-591, 09-592, 09-593, 09-594, 09-595, 09-596, 09-597, 09-598, 09-599, 09-600, 09-601, 09-602, 09-603, 09-604, 09-605, 09-606, 09-607, 09-608, 09-609, 09-610, 09-611, 09-612, 09-613, 09-614, 09-615, 09-616, 09-617, 09-618, 09-619, 09-620, 09-621, 09-622, 09-623, 09-624, 09-625, 09-626, 09-627, 09-628, 09-629, 09-630, 09-631, 09-632, 09-633, 09-634, 09-635, 09-636, 09-637, 09-638, 09-639, 09-640, 09-641, 09-642, 09-643, 09-644, 09-645, 09-646, 09-647, 09-648, 09-649, 09-650, 09-651, 09-652, 09-653, 09-654, 09-655, 09-656, 09-657, 09-658, 09-659, 09-660, 09-661, 09-662, 09-663, 09-664, 09-665, 09-666, 09-667, 09-668, 09-669, 09-670, 09-671, 09-672, 09-673, 09-674, 09-675, 09-676, 09-677, 09-678, 09-679, 09-680, 09-681, 09-682, 09-683, 09-684, 09-685, 09-686, 09-687, 09-688, 09-689, 09-690, 09-691, 09-692, 09-693, 09-694, 09-695, 09-696, 09-697, 09-698, 09-699, 09-700, 09-701, 09-702, 09-703, 09-704, 09-705, 09-706, 09-707, 09-708, 09-709, 09-710, 09-711, 09-712, 09-713, 09-714, 09-715, 09-716, 09-717, 09-718, 09-719, 09-720, 09-721, 09-722, 09-723, 09-724, 09-725, 09-726, 09-727, 09-728, 09-729, 09-730, 09-731, 09-732, 09-733, 09-734, 09-735, 09-736, 09-737, 09-738, 09-739, 09-740, 09-741, 09-742, 09-743, 09-744, 09-745, 09-746, 09-747, 09-748, 09-749, 09-750, 09-751, 09-752, 09-753, 09-754, 09-755, 09-756, 09-757, 09-758, 09-759, 09-760, 09-761, 09-762, 09-763, 09-764, 09-765, 09-766, 09-767, 09-768, 09-769, 09-770, 09-771, 09-772, 09-773, 09-774, 09-775, 09-776, 09-777, 09-778, 09-779, 09-780, 09-781, 09-782, 09-783, 09-784, 09-785, 09-786, 09-787, 09-788, 09-789, 09-790, 09-791, 09-792, 09-793, 09-794, 09-795, 09-796, 09-797, 09-798, 09-799, 09-800, 09-801, 09-802, 09-803, 09-804, 09-805, 09-806, 09-807, 09-808, 09-809, 09-810, 09-811, 09-812, 09-813, 09-814, 09-815, 09-816, 09-817, 09-818, 09-819, 09-820, 09-821, 09-822, 09-823, 09-824, 09-825, 09-826, 09-827, 09-828, 09-829, 09-830, 09-831, 09-832, 09-833, 09-834, 09-835, 09-836, 09-837, 09-838, 09-839, 09-840, 09-841, 09-842, 09-843, 09-844, 09-845, 09-846, 09-847, 09-848, 09-849, 09-850, 09-851, 09-852, 09-853, 09-854, 09-855, 09-856, 09-857, 09-858, 09-859, 09-860, 09-861, 09-862, 09-863, 09-864, 09-865, 09-866, 09-867, 09-868, 09-869, 09-870, 09-871, 09-872, 09-873, 09-874, 09-875, 09-876, 09-877, 09-878, 09-879, 09-880, 09-881, 09-882, 09-883, 09-884, 09-885, 09-886, 09-887, 09-888, 09-889, 09-890, 09-891, 09-892, 09-893, 09-894, 09-895, 09-896, 09-897, 09-898, 09-899, 09-900, 09-901, 09-902, 09-903, 09-904, 09-905, 09-906, 09-907, 09-908, 09-909, 09-910, 09-911, 09-912, 09-913, 09-914, 09-915, 09-916, 09-917, 09-918, 09-919, 09-920, 09-921, 09-922, 09-923, 09-924, 09-925, 09-926, 09-927, 09-928, 09-929, 09-930, 09-931, 09-932, 09-933, 09-934, 09-935, 09-936, 09-937, 09-938, 09-939, 09-940, 09-941, 09-942, 09-943, 09-944, 09-945, 09-946, 09-947, 09-948, 09-949, 09-950, 09-951, 09-952, 09-953, 09-954, 09-955, 09-956, 09-957, 09-958, 09-959, 09-960, 09-961, 09-962, 09-963, 09-964, 09-965, 09-966, 09-967, 09-968, 09-969, 09-970, 09-971, 09-972, 09-973, 09-974, 09-975, 09-976, 09-977, 09-978, 09-979, 09-980, 09-981, 09-982, 09-983, 09-984, 09-985, 09-986, 09-987, 09-988, 09-989, 09-990, 09-991, 09-992, 09-993, 09-994, 09-995, 09-996, 09-997, 09-998, 09-999, 09-1000. See policy 6:110, *Programs for Students At Risk of Academic Failure and/or Dropping Out of School and Graduation Incentives Program*, and 7:70, *Attendance and Truancy*.

<sup>22</sup> State law requires schools to suspend or expel any student who engages in this activity. 105 ILCS 5/31-3.

<sup>23</sup> See *Kelly v. Bd. of Educ. of McHenry Community High Sch. Dist. 156*, 2007 WL 114300 (N.D.Ill. 2007)(upheld student's expulsion for drawing gang symbols while at school; testimony that the danger posed by gang signs and the presence of gangs at school supported the board's insistence on strict enforcement of board policy prohibiting gang related behavior and made expulsion a proper remedy).

740 ILCS 147/15 *et seq.* allows a school district to bring a civil suit against a gang, gang officers, or gang members for losses it suffers due to their criminal activity.



19. Making an explicit threat on an Internet website against a school employee, a student, or any school-related personnel if the Internet website through which the threat was made is a site that was accessible within the school at the time the threat was made or was available to third parties who worked or studied within the school grounds at the time the threat was made, and the threat could be reasonably interpreted as threatening to the safety and security of the threatened individual because of his or her duties or employment status or status as a student inside the school. <sup>24</sup>
20. Operating an unmanned aircraft system (UAS) or drone for any purpose on school grounds or at any school event unless granted permission by the Superintendent or designee. <sup>25</sup>
21. Engaging in any activity, on or off campus, that interferes with, disrupts, or adversely affects the school environment, school operations, or an educational function, including but not limited to, conduct that may reasonably be considered to: (a) be a threat or an attempted intimidation of a staff member; or (b) endanger the health or safety of students, staff, or school property. <sup>26</sup>

For purposes of this policy, the term *possession* includes having control, custody, or care, currently or in the past, of an object or substance, including situations in which the item is: (a) on the student's person; (b) contained in another item belonging to, or under the control of, the student, such as in the student's clothing, backpack, or automobile; (c) in a school's student locker, desk, or other school property; or (d) at any location on school property or at a school-sponsored event. <sup>27</sup>

Efforts, including the use of positive interventions and supports, shall be made to deter students, while at school or a school-related event, from engaging in aggressive behavior that may reasonably produce physical or psychological harm to someone else. The Superintendent or designee shall ensure that the parent/guardian of a student who engages in aggressive behavior is notified of the incident.<sup>28</sup> The failure to provide such notification does not limit the Board's authority to impose discipline, including suspension or expulsion, for such behavior.

No disciplinary action shall be taken against any student that is based totally or in part on the refusal of the student's parent/guardian to administer or consent to the administration of psychotropic or psychostimulant medication to the student. <sup>29</sup>

### Disciplinary Measures <sup>30</sup>

School officials shall limit the number and duration of expulsions and out-of-school suspensions to the greatest extent practicable, and, where practicable and reasonable, shall consider forms of non-

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<sup>24</sup>This statement of misconduct restates 105 ILCS 5/10-22.6(d-5) ~~and is being replaced by a shorter statement~~. The following alternative provides a shorter statement but will require the administrator to check the statute before imposing discipline based on it:

Making an explicit threat on an Internet website against a school, employee, or any school-related personnel under circumstances described in 105 ILCS 5/10-22.6(d-5).

<sup>25</sup> For more information regarding unmanned aircraft systems, see [www.faa.gov/uas/](http://www.faa.gov/uas/).

<sup>26</sup> A catchall provision, e.g., this one, gives staff members authority to respond to unforeseen situations.

<sup>27</sup> If the board adopts a mandatory uniform policy (see 7:165, *School Uniforms*), add the following item to the list as number 22: "Failing to comply with the mandatory uniform policy, but only after repeated attempts to secure compliance, such as conferences with parents/guardians, have been unsuccessful."

<sup>28</sup> *Possession* should be defined to avoid vagueness problems.

<sup>29</sup> See fn 187.

<sup>30</sup> Mandated by 105 ILCS 5/10-20.36.

**30 IMPORTANT:** The practice of suspending or expelling a student based on the number of accumulated disciplinary infractions is illegal under 105 ILCS 5/10-22.6. This includes a system of assigning points to specific infractions and then tallying the points a student receives over a period of time to determine a disciplinary exclusion from school.

exclusionary discipline before using out-of-school suspensions or expulsions.<sup>31</sup> School personnel shall not advise or encourage students to drop out voluntarily due to behavioral or academic difficulties.<sup>32</sup> Potential disciplinary measures include, without limitation, any of the following: <sup>33</sup>

1. Notifying parent(s)/guardian(s).
2. Disciplinary conference.
3. Withholding of privileges.
4. Temporary removal from the classroom.
5. Return of property or restitution for lost, stolen, or damaged property. <sup>34</sup>
6. In-school suspension. The Building Principal or designee shall ensure that the student is properly supervised. <sup>35</sup>
7. After-school study or Saturday study<sup>36</sup> provided the student's parent/guardian has been notified. If transportation arrangements cannot be agreed upon, an alternative disciplinary measure must be used. The student must be supervised by the detaining teacher or the Building Principal or designee.

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Before amendments to 105 ILCS 5/10-22.6, courts used the following factors to determine if a board abused its discretion when it expelled a student: (1) the egregiousness of the student's conduct; (2) the record of the student's past conduct; (3) the likelihood that such conduct will affect the delivery of educational services to other students; (4) the severity of the punishment; and (5) the intent of the child. Robinson v. Oak Park, 213 Ill.App.3d 77 (1st Dist. 1991); Wilson ex rel. Geiger v. Hinsdale Elementary Dist., 349 Ill.App.3d 243 (2nd Dist. 2004). Whether courts will continue to use these factors is yet to be determined. The amendments to 105 ILCS 5/10-22 call into question the validity of relying on past misconduct in suspension or expulsion decisions.

Aside from procedural due process protection, students have a constitutional substantive due process right. This right protects them from an abuse of government power which "shocks the conscience." While the scope of substantive due process is very limited, it is available to students who believe they were subject to arbitrary and excessive discipline. Generally, however, school officials need not fear being found guilty of a substantive due process violation. Federal courts are loath to second-guess school officials. See Tun v. Whitticker, 398 F.3d 899 (7th Cir. 2005)(expulsion did not amount to a substantive due process violation because it fell short of the required *shocks the conscience* standard).

<sup>31</sup> 105 ILCS 5/10-22.6(b-5). In addition, subsection c-5 states, "[s]chool districts must make reasonable efforts to provide ongoing professional development to teachers, administrators, school board members, school resource officers, and staff on 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." 105 ILCS 5/10-22.6(c-5).

<sup>32</sup> 105 ILCS 5/10-22.6(h).

<sup>33</sup> Most school attorneys advise against using a grade reduction as a disciplinary measure. A decision upholding such a policy is Knight v. Bd. of Educ., 38 Ill.App.3d 603 (4th Dist. 1976). A decision striking one is Smith v. Sch. City of Hobart, 811 F.Supp. 391 (N.D.Ind. 1993)(grade reduction policy requiring 9-week grades to be reduced 4% for each day of a suspension was found unconstitutional).

<sup>34</sup> While restitution is permitted, issuing a fine or fee as a disciplinary consequence is not permitted. 105 ILCS 5/10-22.6(i). Possible parental liability for damages under the Parental Responsibility Law (740 ILCS 115/5) is discussed in a footnote in sample policy 7:170, *Vandalism*.

<sup>35</sup> An in-school suspension program may focus on promoting non-violent conflict resolution and positive interaction with other students and school personnel, and districts may employ a school social worker or a licensed mental health professional to oversee in-school suspension programs. 105 ILCS 5/10-22.6(l). Providing programming during in-school suspensions is not required, however providing such programming will help distinguish them from exclusionary suspensions. See ¶n 3 in policy 5:230, *Maintaining Student Discipline*, for further discussion of in-school suspension programs.

<sup>36</sup> Teachers may not be required to teach on Saturdays. 105 ILCS 5/24-2.

8. Community service with local public and nonprofit agencies that enhances community efforts to meet human, educational, environmental, or public safety needs.<sup>37</sup> The District will not provide transportation. School administration shall use this option only as an alternative to another disciplinary measure, giving the student and/or parent/guardian the choice.
9. Seizure of contraband; confiscation and temporary retention of personal property that was used to violate this policy or school disciplinary rules. <sup>38</sup>
10. Suspension of bus riding privileges in accordance with Board policy 7:220, *Bus Conduct*. <sup>39</sup>
11. Out-of-school suspension from school and all school activities in accordance with Board policy 7:200, *Suspension Procedures*.<sup>40</sup> A student who has been suspended may also be restricted from being on school grounds and at school activities. <sup>41</sup>
12. Expulsion from school and all school activities for a definite time period not to exceed two calendar years in accordance with Board policy 7:210, *Expulsion Procedures*.<sup>42</sup> A student who has been expelled may also be restricted from being on school grounds and at school activities. <sup>43</sup>
13. Transfer to an alternative program if the student is expelled or otherwise qualifies for the transfer under State law. The transfer shall be in the manner provided in Article 13A or 13B of the School Code. <sup>44</sup>
14. Notifying juvenile authorities or other law enforcement whenever the conduct involves criminal activity, including but not limited to, illegal drugs (controlled substances), *look-alikes*,

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<sup>37</sup> See Hemdon v. Chapel Hill-Carrboro City Bd., 89 F.3d 174 (4th Cir. 1996)(upheld policy requiring students to complete community service in order to graduate).

<sup>38</sup> Consult the board attorney for advice concerning confiscated devices. There is no binding Ill. court decision regarding school personnel seizing and retaining a student's property. The Supreme Court of Arkansas held that a teacher and principal did not violate a student's state or federal rights when they confiscated and retained a student's cell phone for two weeks for violating school rules on cell phones. Koch v. Adams, 361 S.W.3d 817 (Ark. 2010).

<sup>39</sup> 105 ILCS 5/10-22.6(b) and (b-30).

<sup>40</sup> A suspension may be imposed in only limited situations that vary according to the suspension's length. 105 ILCS 5/10-22.6(b-15). This is explained in sample board policy 7:200, *Suspension Procedures*, and its footnotes.

<sup>41</sup> This sentence is optional. A board may make this mandatory by replacing "may also be" with "shall also be."

<sup>42</sup> An expulsion may be imposed in only limited situations. 105 ILCS 5/10-22.6(b-20). This is explained in sample policy 7:210, *Expulsion Procedures*, and its footnotes.

105 ILCS 5/10-22.6(d) permits expulsion for a definite period of time not to exceed two calendar years. School officials must document whether other interventions were attempted or whether it was determined that there were no other appropriate and available interventions.

<sup>43</sup> This sentence is optional. A board may make this mandatory by replacing "may also be" with "shall also be."

<sup>44</sup> 105 ILCS 5/10-22.6(a) and (b). Subsection 10-22.6(b) uses the phrase "is suspended in excess of 20 school days" even though a 20-consecutive day suspension should be treated as an expulsion. Goss v. Lopez, 419 U.S. 565 (1975). An alternative program is probably available to a student who is suspended for 11 to 20 consecutive days because that student is technically expelled and, as such, qualifies under subsection (a) of Section 10-22.6. Contact the board attorney if the district wants to interpret the statute as referring to *cumulative* school days so that it can transfer a student to an alternative program upon his or her suspension in excess of 20 *cumulative* school days.

Contact the board attorney regarding the necessary due process procedures before imposing a disciplinary transfer to an alternative school. The court in Leak v. Rich Twp. High Sch. Dist. 227 (397 Ill.Dec. 90 (1st Dist. 2015)), held that placement in an alternative school is tantamount to an expulsion. Thus, according to dicta in this decision, districts must follow expulsion procedures before a student is transferred to an alternative school. Schools may still reach agreements with parents/guardians to transfer students to such schools without completing the expulsion procedures.

The alternative program may not deny the transfer on the basis of the suspension or expulsion, except in cases in which the transfer is deemed to cause a threat to the safety of students or staff in the alternative program.

alcohol, or weapons or in other circumstances as authorized by the reciprocal reporting agreement between the District and local law enforcement agencies. **45**

The above list of disciplinary measures is a range of options that will not always be applicable in every case. In some circumstances, it may not be possible to avoid suspending or expelling a student because behavioral interventions, other than a suspension and expulsion, will not be appropriate and available, and the only reasonable and practical way to resolve the threat and/or address the disruption is a suspension or expulsion. **46**

Corporal punishment is prohibited. *Corporal punishment* is defined as slapping, paddling, or prolonged maintenance of students in physically painful positions, or intentional infliction of bodily harm. Corporal punishment does not include reasonable force as needed to maintain safety for students, staff, or other persons, or for the purpose of self-defense or defense of property. **47**

#### Isolated Time Out, Time Out, and Physical Restraint **48**

Neither isolated time out, time out, nor physical restraint shall be used to discipline or punish a student. These methods are only authorized for use as permitted in 105 ILCS 5/10-20.33, State Board of Education rules (23 Ill.Admin.Code §§ 1.280, 1.285), and the District's procedure(s).

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**45** 105 ILCS 5/22-851 (b)(1) (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). See policy 7:150, *Agency and Police Interviews*.

**46 Note:** Districts that receive early childhood block grant funding (authorized by 105 ILCS 5/1C-2 of the School Code) are prohibited from expelling children from their early childhood programs. 105 ILCS 5/2-3.71(a)(7) and 105 ILCS 5/10-22.6(k), amended by P.A. 100-108. A district may, however, transition a child to a new program if: (1) it has documented evidence that all available interventions and supports recommended by a qualified professional have been exhausted; (2) the program determines that transitioning a child is necessary for the well-being of the child or his or her peers and staff; and (3) the current and pending programs create a transition plan for the child with parent or legal guardian permission. 105 ILCS 5/2-3.71(a)(7)(C). A district may temporarily remove a child from attendance in the group setting in the case of a serious safety threat to a child or others, or in the case of possession of a weapon as described in 105 ILCS 5/10-22.6(d), but it must then begin the process of documenting interventions and supports as outlined in the law. 105 ILCS 5/2-3.71(a)(7)(E). Ill. State Board of Education (ISBE) rules implementing these new requirements are at 23 Ill.Admin.Code §§ 235.300-235.340. As of **PRESS** Issue 104 (June 2020), the ISBE forms required to document steps taken in accordance with these rules were being developed and projected to be available in late summer 2020 at: [www.isbe.net/Pages/Early-Childhood.aspx](http://www.isbe.net/Pages/Early-Childhood.aspx). **Consult the board attorney for advice to ensure compliance with ISBE rules.** Compliance with this law does not relieve a district of its obligations to also comply with the Individuals with Disabilities Education Improvement Act of 2004 when disciplining students with disabilities. For further information, see sample policy 7:230, *Misconduct by Students with Disabilities*. For districts that receive early childhood block grant funding, add the following:

Students enrolled in the District's State-funded preschool program(s) may be temporarily removed or transitioned to a new program in accordance with federal and State law. State law prohibits the expulsion of students from the program(s).

If this language is inserted, add 105 ILCS 5/2-3.71(a)(7) to the Legal References for this policy.

**47** This paragraph paraphrases 105 ILCS 5/24-24.

**48** Isolated time out, time out, or physical restraint may be used by staff members **only if** their use is authorized by policy and administrative procedure. 105 ILCS 5/2-3.130, 5/10-20.33, and 5/24-24; 23 Ill.Admin.Code §§1.280(c) and 1.285. See 7:190-AP4, *Use of Isolated Time Out, Time Out, and Physical Restraint*. **The sample policy allows the use of isolated time out, time out, and physical restraint pursuant only to the conditions allowed in the School Code and ISBE rules.** State statute and ISBE rules contain complex restrictions on the use of isolated time out, time out, and physical restraint. 105 ILCS 5/2-3.130, 5/10-20.33, and 5/24-24; 23 Ill.Admin.Code §§1.280(c) and 1.285. According to the ISBE rule, isolated time out, time out, and physical restraints are allowed only if a board authorizes their use in a policy containing the numerous components identified in the rule. To comply with ISBE's rule, a board must also incorporate by reference the district's procedure, i.e., 7:190-AP4, *Use of Isolated Time Out, Time Out, and Physical Restraint*. By doing this, the policy includes the district's procedure. **For a board that wants to prohibit the use of isolated time out, time out, and physical restraint** (1) delete this subhead and its contents; (2) amend the Legal References as follows "23 Ill.Admin.Code §§1.280, 1.285," and (3) delete "Incorporated by Reference: 7:190-AP4 (Use of Isolated Time Out, Time Out, and Physical Restraint)".

## Weapons 49

A student who is determined to have brought one of the following objects to school, any school-sponsored activity or event, or any activity or event that bears a reasonable relationship to school shall be expelled for a period of at least one calendar year but not more than two calendar years:

1. A *firearm*, meaning any gun, rifle, shotgun, or weapon as defined by Section 921 of Title 18 of the United States Code (18 U.S.C. § 921), firearm as defined in Section 1.1 of the Firearm Owners Identification Card Act (430 ILCS 65/), or firearm as defined in Section 24-1 of the Criminal Code of 1961 (720 ILCS 5/24-1).
2. A knife, brass knuckles, or other knuckle weapon regardless of its composition, a billy club, or any other object if used or attempted to be used to cause bodily harm, including *look-alikes* of any *firearm* as defined above.

The expulsion requirement under either paragraph one or two above may be modified by the Superintendent, and the Superintendent's determination may be modified by the Board on a case-by-case basis. The Superintendent or designee may grant an exception to this policy, upon the prior request of an adult supervisor, for students in theatre, cooking, ROTC, martial arts, and similar programs, whether or not school-sponsored, provided the item is not equipped, nor intended, to do bodily harm. 50

This policy's prohibitions concerning weapons apply regardless of whether: (1) a student is licensed to carry a concealed firearm, or (2) the Board permits visitors, who are licensed to carry a concealed firearm, to store a firearm in a locked vehicle in a school parking area. 51

## Re-Engagement of Returning Students 52

The Superintendent or designee shall maintain a process to facilitate the re-engagement of students who are returning from an out-of-school suspension, expulsion, or an alternative school setting. The goal of re-engagement shall be to support the student's ability to be successful in school following a period of exclusionary discipline and shall include the opportunity for students who have been suspended to complete or make up work for equivalent academic credit. 53

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49 This section paraphrases 105 ILCS 5/10-22.6(d) and contains the statutorily required punishment for bringing a weapon to school along with the statutory definition of *weapon*. When preparing for a due process hearing, a principal needs to use the applicable State and federal law definitions of *firearm* – not just the School Code.

While subsection 105 ILCS 5/10-22.6(b-10) explicitly forbids zero tolerance policies, it provides an exception for those zero tolerance policies established by State or federal law, which includes weapons in school. Section 10-22.6(d) provides that a student who brings a weapon to school, as defined in the section, "shall be expelled for a period not less than one year," unless modified by the superintendent or board. The federal Gun-Free Schools Act (20 U.S.C. §7961 *et seq.*) provides for at least a one year expulsion for students who bring firearms to school. As directed by 20 U.S.C. §7961(b)(1), 105 ILCS 5/10-22.6(d), the superintendent and the board may modify that consequence; however, the superintendent/board may decline to exercise that discretion and instead impose the maximum penalty authorized by law. Analyzing the student's circumstances on a case-by-case basis may avoid a judicial finding that an expulsion is too severe. See *Washington v. Smith*, 248 Ill.App.3d 534 (1st Dist. 1993).

Item #4 in the **Prohibited Student Conduct** section is broader because it prohibits "using, possessing, controlling, or transferring" a weapon in addition to violating the **Weapons** section.

50 Optional.

51 The Firearm Concealed Carry Act permits a properly licensed individual to carry a concealed firearm within a vehicle into a school parking area and store it a locked vehicle out of plain view. 430 ILCS 66/65(b). The federal Gun-Free Schools Act has a similar provision. 20 U.S.C. §7961(g). The School Code, however, contains no similar exception to the ban on firearms at schools. Contact the board attorney before permitting students to store their firearms in their vehicle's trunk while parked at school.

52 Required by 105 ILCS 5/10-22.6(b-25). See 7:190-AP8, *Student Re-Engagement Guidelines*.

53 A goal for re-engagement is optional. Schools must permit students who were suspended to make-up work for equivalent academic credit. 105 ILCS 5/10-22.6(b-30).

### Required Notices

A school staff member shall immediately notify the office of the Building Principal in the event that he or she: (1) observes any person in possession of a firearm on or around school grounds; however, such action may be delayed if immediate notice would endanger students under his or her supervision, (2) observes or has reason to suspect that any person on school grounds is or was involved in a drug-related incident, or (3) observes a battery committed against any staff member.<sup>54</sup> Upon receiving such a report, the Building Principal or designee shall immediately notify the local law enforcement agency, Ill. Dept. of State Police (ISP), and any involved student's parent/guardian.<sup>55</sup> *School grounds* includes modes of transportation to school activities and any public way within 1000 feet of the school, as well as school property itself.

### Delegation of Authority

Each teacher, and any other school personnel when students are under his or her charge, is authorized to impose any disciplinary measure, other than suspension, expulsion, corporal punishment, or in-school suspension, that is appropriate and in accordance with the policies and rules on student discipline. Teachers, other certificated [licensed] educational employees, and other persons providing a related service for or with respect to a student, may use reasonable force as needed to maintain safety for other students, school personnel, or other persons, or for the purpose of self-defense or defense of property. Teachers may temporarily remove students from a classroom for disruptive behavior.<sup>56</sup>

The Superintendent, Building Principal, Assistant Building Principal, or Dean of Students is authorized to impose the same disciplinary measures as teachers and may suspend students guilty of gross disobedience or misconduct from school (including all school functions) and from riding the school bus, up to ten consecutive school days, provided the appropriate procedures are followed.<sup>57</sup> The Board may suspend a student from riding the bus in excess of ten school days for safety reasons.<sup>58</sup>

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<sup>54</sup> 105 ILCS 5/10-27.1A, 5/10-27.1B, and 5/10-21.7. *School grounds* includes the real property comprising any school, any conveyance used to transport students to school or a school-related activity, and any public way within 1,000 feet of any school ground. To satisfy the reporting requirement, ISBE created the School Incident Reporting System (SIRS), a web-based application on IWAS for schools to report incidents electronically. Reporting on SIRS does not satisfy the requirement to report incidents to local law enforcement authorities.

<sup>55</sup> *Id.* State law imposes this duty to report firearm possession only on school officials; this duty may be also imposed on volunteers and community members. Only staff members, however, are vulnerable to committing a petty offense for their failure to report, and only staff members are protected from civil or criminal liability that might arise as a result of making a report (although the liability potential for anyone making a report is remote).

The building principal must notify the student's parents/guardians only when the alleged offense is firearm possession. The policy expands this notification duty; a board disinclined to do this should substitute the following sentence:

Upon receiving such a report, the Building Principal or designee shall immediately notify the applicable local law enforcement agency, Ill. Dept. of State Police (ISP), and, if a student is reportedly in possession of a firearm, also the student's parents/guardians.

<sup>56</sup> 105 ILCS 5/24-24 and 23 Ill.Admin.Code §1.280 require: (1) teachers and other certificated [licensed] employees (except for individuals employed as paraprofessionals) to maintain discipline, and (2) the district to have a policy on discipline that provides that:

[A] teacher, other certificated employee, and any other person, whether or not a certificated employee, providing a related service for or with respect to a student may use reasonable force as needed to maintain safety for the other students, school personnel or persons or for the purpose of self-defense or the defense of property, shall provide that a teacher may remove a student from the classroom for disruptive behavior, and shall include provisions which provide due process to students. The policy shall not include slapping, paddling or prolonged maintenance of students in physically painful positions nor shall it include the intentional infliction of bodily harm. 105 ILCS 5/24-24.

<sup>57</sup> Required by 105 ILCS 5/10-22.6(b).

<sup>58</sup> *Id.*

## Student Handbook

The Superintendent, with input from the parent-teacher advisory committee,<sup>59</sup> shall prepare disciplinary rules implementing the District's disciplinary policies. These disciplinary rules shall be presented annually to the Board for its review and approval.

A student handbook, including the District disciplinary policies and rules, shall be distributed to the students' parents/guardians within 15 days of the beginning of the school year or a student's enrollment.

### Incorporated

by Reference: 7:190-AP4 (Use of Isolated Time Out, Time Out, and Physical Restraint)

### LEGAL REF.:

20 U.S.C. §6081, Pro-Children Act of 1994.  
20 U.S.C. §7961 *et seq.*, Gun Free Schools Act.  
105 ILCS 5/10-20.5b, 5/10-20.14, 5/10-20.28, 5/10-20.36, 5/10-21.7, 5/10-21.10,  
5/10-22.6, 5/10-27.1A, 5/10-27.1B, 5/22-33, 5/24-24, 5/26-12, 5/27-23.7, and  
5/31-3 and 110-110.  
105 ILCS 10-3.10, Control of Health Products and Chemicals, Illinois Liquor Code  
Act.  
410 ILCS 130/, Compassionate Use of Medical Cannabis Pilot Program.  
410 ILCS 647/, Powdered Caffeine Control and Education Act.  
430 ILCS 66/, Firearm Concealed Carry Act.  
23 Ill.Admin.Code §§ 1.280, 1.285.

### CROSS REF.:

2:150 (Committees), 2:240 (Board Policy Development), 5:230 (Maintaining Student Discipline), 6:110 (Programs for Students At Risk of Academic Failure and/or Dropping Out of School and Graduation Incentives Program), 7:70 (Attendance and Truancy), 7:130 (Student Rights and Responsibilities), 7:140 (Search and Seizure), 7:150 (Agency and Police Interviews), 7:160 (Student Appearance), 7:170 (Vandalism), 7:180 (Prevention of and Response to Bullying, Intimidation, and Harassment), 7:185 (Teen Dating Violence Prohibited), 7:200 (Suspension Procedures), 7:210 (Expulsion Procedures), 7:220 (Bus Conduct), 7:230 (Misconduct by Students with Disabilities), 7:240 (Conduct Code for Participants in Extracurricular Activities), 7:270 (Administering Medicines to Students), 7:310 (Restrictions on Publications; Elementary Schools),  
8:30 (Visitors to and Conduct on School Property)

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<sup>59</sup> The board must establish and maintain a parent-teacher advisory committee to develop guidelines on student discipline. See 2:150, *Committees*. This policy's dissemination requirements are from 105 ILCS 5/10-20.14.

A comprehensive student handbook can provide notice of the school's conduct rules, extracurricular and athletic participation requirements, and other important information. The handbook can be developed by the building principal, but should be reviewed and approved by the superintendent and board. 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](http://www.ilprincipals.org/resources/model-student-handbook).

## Students

### Suspension Procedures 1

#### In-School Suspension <sup>2</sup>

The Superintendent or designee is authorized to maintain an in-school suspension program. The program shall include, at a minimum, each of the following:

1. Before assigning a student to in-school suspension, the charges will be explained and the student will be given an opportunity to respond to the charges.
2. Students are supervised by licensed school personnel.
3. Students are given the opportunity to complete classroom work during the in-school suspension for equivalent academic credit.

#### Out-of-School Suspension

The Superintendent or designee shall implement suspension procedures that provide, at a minimum, for each of the following: <sup>3</sup>

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<sup>1</sup> State law requires districts to have a policy on student discipline. 105 ILCS 5/10-20.14; 23 Ill.Admin.Code §1.280. State or federal law controls this policy's content. In 2014, the U.S. Dept. of Education (DOE) and the U.S. Dept. of Justice (DOJ) jointly released a school discipline package, *Guiding Principles: Resource Guide for Improving School Climate and Discipline*, at: [www2.ed.gov/policy/gen-aid/school-discipline/guiding-principles.pdf](http://www2.ed.gov/policy/gen-aid/school-discipline/guiding-principles.pdf). However, *Guiding Principles* was among six student discipline guidance documents rescinded by a 2018 DOE-DOJ *Dear Colleague* letter dated 12-21-18, at: [www2.ed.gov/about/offices-list/oeo/letters-colleagues/20181221-disc](http://www2.ed.gov/about/offices-list/oeo/letters-colleagues/20181221-disc).

Boards may authorize *by policy* the superintendent, building principal, assistant building principal, or dean of students to suspend students guilty of gross disobedience or misconduct from school, including all school functions. 105 ILCS 5/10-22.6(b). See 7:190, *Student Behavior*, for such an authorization.

<sup>2</sup> An in-school suspension program may focus on promoting non-violent conflict resolution and positive interaction with other students and school personnel, and districts may employ a school social worker or a licensed mental health professional to oversee in-school suspension programs. 105 ILCS 5/10-22.6(l), added by P.A. 100-1035. Providing programming during in-school suspensions is not required; however providing educational programs during in-school suspensions will help distinguish them from exclusionary suspensions. See ¶n 3 in policy 5:230, *Maintaining Student Discipline*, for further discussion of in-school suspension programs. Contact the board attorney for advice concerning amending this section.

20 ILCS 1705/76, added by P.A. 101-45, requires the Ill. Dept. of Public Health to create and maintain an online database and resource page on its website that contains mental health resources specifically geared toward school social workers, school counselors, parents, teachers, and school support personnel. See the database at: [www.dhs.state.il.us](http://www.dhs.state.il.us).

<sup>3</sup> Suspension procedures are required by State law. 105 ILCS 5/10-22.6. The right to attend school is a property right protected by the due process clause of the U.S. Constitution. *Goss v. Lopez*, 419 U.S. 565 (1975). Imposing a short deprivation of this property right by suspending a student for 10 or fewer days requires only minimal due process. The student must be generally informed of the reasons for the possible suspension, and be permitted to tell his/her version of the story. Making a decision to suspend before the hearing violates the basic due process requirement that the hearing be meaningful. *Sieck v. Oak Park-River Forest High School*, 807 F.Supp. 73 (N.D. Ill. 1992).

105 ILCS 5/10-22.6(b) allows a student who is suspended in excess of 20 school days to be immediately transferred to an alternative program in the manner provided in Article 13A or 13B of the School Code. A student cannot be denied transfer because of the suspension, except in cases in which such transfer is deemed to cause a threat to the safety of students or staff in the alternative program.



1. A conference during which the charges will be explained and the student will be given an opportunity to respond to the charges before he or she may be suspended.
2. A pre-suspension conference is not required, and the student can be immediately suspended when the student's presence poses a continuing danger to persons or property or an ongoing threat of disruption to the educational process. In such cases, the notice and conference shall follow as soon as practicable.
3. An attempted phone call to the student's parent(s)/guardian(s).
4. A written notice of the suspension to the parent(s)/guardian(s) and the student, which shall: <sup>4</sup>
  - a. Provide notice to the parent(s)/guardian(s) of their child's right to a review of the suspension;
  - b. Include information about an opportunity to make up work missed during the suspension for equivalent academic credit; <sup>5</sup>
  - c. Detail the specific act of gross disobedience or misconduct resulting in the decision to suspend;
  - d. Provide rationale or an explanation of how the chosen number of suspension days will address the threat or disruption posed by the student or his or her act of gross disobedience or misconduct; and
  - e. Depending upon the length of the out-of-school suspension, include the following applicable information:
    - i. For a suspension of 3 school days or less, an explanation that the student's continuing presence in school would either pose: <sup>6</sup>
      - a) A threat to school safety, or
      - b) A disruption to other students' learning opportunities.
    - ii. For a suspension of 4 or more school days, an explanation: <sup>7</sup>

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Consult the board attorney for assistance if a suspension will exceed 10 consecutive school days. Subsection 10-22.6(b) uses the phrase "is suspended in excess of 20 school days" even though a 20-consecutive day suspension should be treated as an expulsion. *Goss v. Lopez*, 419 U.S. 565 (1975). For further discussion, see f/n 43 in policy 7:190, *Student Behavior*.

<sup>4</sup> 105 ILCS 5/10-22.6.

**Consult the board attorney** (1) about the specific documentation required in this portion of the notice, and (2) to ensure that 7:200-E1, *Short Term Out-of-School Suspension (1-3 Days) Reporting Form* and 7:200-F2, *Long Term Out-of-School Suspension (4-10 Days) Reporting Form* reflect the exact practices that the district will use to implement this requirement.

<sup>5</sup> Required by 105 ILCS 5/10-22.6(b-30).

<sup>6</sup> 105 ILCS 5/10-22.6(b-15) explains that "threat to school safety or a disruption to other students' learning opportunities" shall be determined by the school board or its designee on a case-by-case basis. **Consult the board attorney for specific advice regarding the application of these statutory terms in this context (see f/n 8, below).**

<sup>7</sup> 105 ILCS 5/10-22.6(b-20). School officials are granted the sole authority to determine on a case-by-case basis: (1) whether "appropriate and available behavioral and disciplinary interventions have been exhausted;" and (2) whether "the student's continuing presence in school would either (i) pose a threat to the safety of other students, staff, or members of the school community, or (ii) substantially disrupt, impede, or interfere with the operation of the school." Consult the board attorney to request specific training for school officials to apply these statutory terms in this context.

- a) That other appropriate and available behavioral and disciplinary interventions have been exhausted,
  - b) As to whether school officials attempted other interventions or determined that no other interventions were available for the student,<sup>8</sup> and
  - c) That the student's continuing presence in school would either:
    - i) Pose a threat to the safety of other students, staff, or members of the school community, or
    - ii) Substantially disrupt, impede, or interfere with the operation of the school.
  - iii. For a suspension of 5 or more school days, the information listed in section 4.e.ii., above, along with documentation by the Superintendent or designee determining what, if any, appropriate and available support services will be provided to the student during the length of his or her suspension.<sup>9</sup>
5. A summary of the notice, including the reason for the suspension and the suspension length, must be given to the Board by the Superintendent or designee.
6. Upon request of the parent(s)/guardian(s), a review of the suspension shall be conducted by the Board or a hearing officer appointed by the Board.<sup>10</sup> At the review, the student's parent(s)/guardian(s) may appear and discuss the suspension with the Board or its hearing officer and may be represented by counsel. Whenever there is evidence that mental illness may be the cause for the suspension, the Superintendent or designee shall invite a representative from the ~~Illinois Department of Human Services~~ a local mental health agency to consult with the Board.<sup>11</sup> After presentation of the evidence or receipt of the hearing officer's report, the Board shall take such action as it finds appropriate. If the suspension is upheld, the Board's written suspension decision shall specifically detail items (a) and (e) in number 4, above.<sup>12</sup>

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<sup>8</sup> While school officials have discretion to determine the length of suspensions, they must resolve threats, address disruptions, and minimize the length of student exclusions to the greatest extent practicable. 105 ILCS 5/10-22.6(b-20). **Consult the board attorney about the practical implementation of documenting other appropriate and available interventions for the student.**

Last, the law also requires school districts to make reasonable efforts to provide ongoing professional development to teachers, administrators, school board members, school resource officers, and staff on 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. 105 ILCS 5/10-22.6(c-5), amended by P.A. 100-819.

<sup>9</sup> 105 ILCS 5/10-22.6(b-25).

<sup>10</sup> A board may hear student disciplinary cases in a meeting closed to the public. 5 ILCS 120/2(c)(9).

<sup>11</sup> 105 ILCS 5/10-22.6(c), amended by P.A. 102-539.

<sup>12</sup> 105 ILCS 5/10-22.6(b).

LEGAL REF.: ~~105 ILCS 5/10-22.6.~~  
Goss v. Lopez, 95 S.Ct. 729, 419 U.S. 565 (1975).  
~~Sieck v. Oak Park River Forest High School~~, 807 F.Supp. 73 (N.D. Ill., 4/10/1992).  
105 ILCS 5/10-20.14, 5/10-22.6.  
23 Ill. Admin. Code §1.280.

CROSS REF.: 5:100 (Staff Development Program), 7:130 (Student Rights and Responsibilities),  
7:190 (Student Behavior), 7:220 (Bus Conduct)

## Students

### Expulsion Procedures 1

The Superintendent or designee shall implement expulsion procedures that provide, at a minimum, for the following: <sup>2</sup>

1. Before a student may be expelled, the student and his or her parent(s)/guardian(s) shall be provided a written request to appear at a hearing to determine whether the student should be expelled. The request shall be sent by registered or certified mail, return receipt requested. <sup>3</sup> The request shall: <sup>4</sup>
  - a. Include the time, date, and place for the hearing.
  - b. Briefly describe what will happen during the hearing.
  - c. Detail the specific act of gross disobedience or misconduct resulting in the decision to recommend expulsion.
  - d. List the student's prior suspension(s).
  - e. State that the School Code allows the School Board to expel a student for a definite period of time not to exceed 2 calendar years, as determined on a case-by-case basis.
  - f. Ask that the student or parent(s)/guardian(s) or attorney inform the Superintendent or Board Attorney if the student will be represented by an attorney and, if so, the attorney's name and contact information.
2. Unless the student and parent(s)/guardian(s) indicate that they do not want a hearing or fail to appear at the designated time and place, the hearing will proceed. It shall be conducted by the Board or a hearing officer appointed by it. <sup>5</sup> If a hearing officer is appointed, he or she shall report to the Board the evidence presented at the hearing and the Board shall take such final

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<sup>1</sup> State or federal law requires districts to have a policy on student discipline. (105 ILCS 5/10-20.14; 23 Ill.Admin.Code §1.280). State or federal law controls this policy's content. The discipline of special education students must comply with the Individuals With Disabilities Education Improvement Act of 2004 and the Illinois State Board of Education's Special Education rules. See 7:230. *Misconduct by Students with Disabilities*.

<sup>2</sup> Expulsion procedures are required by State law. (105 ILCS 5/10-22.6(a). The right to attend school is a property right protected by the due process clause of the U.S. Constitution. *Goss v. Lopez*, 95 S.Ct. 729, 419 U.S. 565 (1975). Thus, an expulsion of more than 10 days requires due process including, but not limited to, notice of the charges, an opportunity to hear the evidence in support of the charges, an opportunity to refute them, and a decision by an impartial decision maker based on the evidence presented. The adequacy of an expulsion hearing is frequently challenged; the board attorney should be consulted as every due process analysis will be highly fact specific. See fn 9, *infra*.

<sup>3</sup> 105 ILCS 5/10-22.6(a). Whenever the term "registered mail" is used in the School Code, it shall be deemed to authorize the use of either registered mail or certified mail, return receipt requested. (105 ILCS 5/1-3.5).

<sup>4</sup> *Id.* Items a and b address due process, which includes the right to receive a notice with enough detail and with enough time to prepare a defense. Item c details the requirements pertaining to expulsions throughout 105 ILCS 5/10-22.6, amended by P.A. 99-456, eff. 9-15-2016. Items d through f are optional best practice inclusions. **Consult the board attorney about the specific documentation required in this portion of the notice to ensure the district's practice matches the policy language.**

<sup>5</sup> A board may hear student disciplinary cases in a meeting closed to the public. (5 ILCS 120/2(c)(9)).

action as it finds appropriate. Whenever there is evidence that mental illness may be the cause for the recommended expulsion, the Superintendent or designee shall invite a representative from the Dept. of Human Services or a local mental health agency to consult with the Board. <sup>6</sup>

3. During the expulsion hearing, the Board or hearing officer shall hear evidence concerning whether the student is guilty of the gross disobedience or misconduct as charged. School officials must provide: (1) testimony of any other interventions attempted and exhausted or of their determination that no other appropriate and available interventions were available for the student, and (2) evidence of the threat or disruption posed by the student. The student and his or her parent(s)/guardian(s) may be represented by counsel, offer evidence, present witnesses, cross-examine witnesses who testified, and otherwise present reasons why the student should not be expelled. <sup>7</sup> After presentation of the evidence or receipt of the hearing officer's report, the Board shall decide the issue of guilt and take such action as it finds appropriate.
4. If the Board acts to expel the student, its written expulsion decision shall: <sup>8</sup>
  - a. Detail the specific reason why removing the student from his or her learning environment is in the best interest of the school. <sup>9</sup>
  - b. Provide a rationale for the specific duration of the recommended expulsion. <sup>10</sup>
  - c. Document how school officials determined that all behavioral and disciplinary interventions have been exhausted by specifying which interventions were attempted or whether school officials determined that no other appropriate and available interventions existed for the student. <sup>11</sup>

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<sup>6</sup> 105 ILCS 5/10-22.6(c), amended by P.A. 102-537.

<sup>7</sup> A student's opportunity to offer evidence, present witnesses, cross-examine witnesses, and otherwise present reasons why the student should not be expelled generally outweighs a district's interest in not providing the student these opportunities. See, Camlin v. Beecher Comm. Sch. Dist., 594 N.E.2d 427 (Ill. App. Ct. 1013 (Ill-App. 3rd Dist. 2003)) and Colquitt v. Rich Twp H. S. Dist., 699 N.E.2d 1409 (Ill. App. 3d 856 (Ill-App-1st Dist. 1998)). Determining whether denying these opportunities would violate a student's right to due process requires a careful analysis of the facts and federal case law. See Brown v. Plainfield Dist., 500 F. Supp.2d 996 (N.D. Ill. 2007) and Coronado v. Vallevue Sch. Dist., 2008 WL 3346022 (9th Cir. 2008).

<sup>8</sup> **Consult the board attorney to request specific training for school officials to apply these statutory terms in the context of expulsions.** See 7:210-E1, *Notice of Expulsion Hearing*. The law gives school officials discretion while also requiring them to resolve threats, address disruptions, and minimize the length of student exclusions to the greatest extent practicable. (105 ILCS 5/10-22.6(b-20), amended by P.A. 99-456, eff. 9-15-2016). Yet, the law also requires school districts to make reasonable efforts to provide ongoing professional development to teachers, administrators, school board members, school resources offices, and staff on the adverse consequences of school exclusion and justice-system involvement, effective classroom management strategies, culturally responsive discipline, and developmentally appropriate disciplinary methods that promote positive and healthy school climates. (105 ILCS 5/10-22.6(c-5), amended by P.A. 99-456, eff. 9-15-2016).

<sup>9</sup> 105 ILCS 5/10-22.6(a).

<sup>10</sup> *Id.*

<sup>11</sup> 105 ILCS 5/10-22.6(b-20), amended by P.A. 99-456, eff. 9-15-2016 requires and grants school officials the sole authority to determine on a case-by-case basis: (1) whether "appropriate and available behavioral and disciplinary interventions have been exhausted," and (2) whether "the student's continuing presence in school would either (i) pose a threat to the safety of other students, staff, or members of the school community or (ii) substantially disrupt, impede, or interfere with the operation of the school."

- d. Document how the student's continuing presence in school would (1) pose a threat to the safety of other students, staff, or members of the school community, or (2) substantially disrupt, impede, or interfere with the operation of the school. <sup>12</sup>
5. Upon expulsion, the District may refer the student to appropriate and available support services. <sup>13</sup>

LEGAL REF.: ~~405 ILCS 5/10-22.6(a).~~  
Goss v. Lopez, 95 S.Ct. 729/119 U.S. 565 (1975).  
105 ILCS 5/10-20.14, 5/10-22.6.

CROSS REF.: 5:100 (Staff Development Program), 7:130 (Student Rights and Responsibilities), 7:190 (Student Behavior), 7:200 (Suspension Procedures), 7:230 (Misconduct by Students with Disabilities)

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<sup>12</sup> Id.

<sup>13</sup> 105 ILCS 5/10-22.6(b-25). **Consult the board attorney about transfers to an alternative program pursuant to Article 13A of the School Code.** See Leak v. Board of Education of Rich Township, High School District 227, 2015 IL App (1st) 143202, requiring *obiter dictum* that before school officials transfer students to alternative schools for extended periods of time, they must provide students with a meaningful opportunity to be heard.

## Students

### Conduct Code for Participants in Extracurricular Activities 1

The Superintendent or designee, using input from coaches and sponsors of extracurricular activities, shall develop a conduct code for all participants in extracurricular activities consistent with School Board policy. <sup>2</sup> The conduct code shall: (1) require participants in extracurricular activities to conduct themselves as good citizens and exemplars of their school at all times, including after school, on days when school is not in session, and whether on or off school property; (2) emphasize that hazing and bullying activities are strictly prohibited; and (3) notify participants that failure to abide by it could result in ~~disqualification~~ ~~removal~~ ~~including~~ removal from the activity. Participants who violate the conduct code will be allowed to ~~provide an explanation~~ before being ~~disqualified~~ ~~and~~ ~~disciplined~~.<sup>3</sup> The conduct code shall be reviewed by the Building Principal periodically at his or her discretion and presented to the Board.

Participants in extracurricular activities must abide by the conduct code for the activity and Board policy 7:190, *Student Behavior*. All coaches and sponsors of extracurricular activities shall annually review the conduct code with participants and provide participants with a copy. In addition, coaches and sponsors of interscholastic athletic programs shall provide instruction on steroid abuse prevention to students in grades 7 through 12 participating in these programs. <sup>4</sup>

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<sup>1</sup> State or federal law controls this policy's content.

<sup>2</sup> Optional:

...and the rules adopted by any association in which the School District maintains a membership.

<sup>3</sup> In most cases involving a student's removal from an extracurricular activity, courts have ruled that participation in extracurricular programs is a privilege rather than a right. Clements v. Board of Education of Decatur Public School District No. 61, 2013 IL App (1st) 12-0204, 2013 IL App (1st) 12-0204, 2013 IL App (1st) 12-0204. The deprivation of a privilege does not trigger the Constitution's due process provision. Consequently, unlike school attendance, students generally have no constitutional right to participate in extracurricular programs. See also Kevin Jordan v. O'Fallon THSD 203, 2013 IL App (1st) 12-0204, 2013 IL App (1st) 12-0204, 2013 IL App (1st) 12-0204. This case involved a type of "good citizen" rule in which all student-participants in extracurricular activities agreed to abide by the school's ban on alcohol and drug use. Pursuant to this rule, the school suspended a star football player who police had found intoxicated at a convenience store around 3:00 A.M. The suspension was upheld.

<sup>4</sup> 105 ILCS 5-27-23.3.

### Extracurricular Drug and Alcohol Testing Program<sup>5</sup>

The District maintains an extracurricular drug and alcohol testing program in order to foster the health, safety, and welfare of its students. Participation in extracurricular activities is a privilege and participants need to be exemplars. The program promotes healthy and drug-free participation.

Each student and his or her parent/s /guardian/s, must consent to having the student submit to random drug and alcohol testing in order to participate in any extracurricular activity. Failure to sign the District's Random Drug and Alcohol Testing Program Consent Form will result in non-participation.

If a test is *positive*, the student will not participate in extracurricular activities until after a *follow-up* test is requested by the Building Principal or designee and the results are reported. The Building Principal or designee will request a *follow-up* test after such an interval of time that the substance previously found would normally be eliminated from the body. If this *follow-up* test is negative, the student will be allowed to resume extracurricular activities. If a *positive* result is obtained from the *follow-up* test, or any later test, the same previous procedure shall be followed.

The Superintendent or designee shall develop procedures to implement this policy. No student shall be expelled or suspended from school as a result of any verified positive test conducted under this program other than when independent reasonable suspicion of drug and/or alcohol usage exists. This program does not affect the District policies, practices, or rights to search or test any student who at the time exhibits cause for reasonable suspicion of drug and/or alcohol use.

### Performance Enhancing Drug Testing of High School Student Athletes<sup>6</sup>

The Illinois High School Association (IHSA) prohibits participants in an athletic activity sponsored or sanctioned by IHSA from ingesting or otherwise using any performance enhancing substance on its banned substance list, without a written prescription and medical documentation provided by a licensed physician who evaluated the student-athlete for a legitimate medical condition. IHSA administers a performance-enhancing substance testing program. Under this program, student athletes are subject to random drug testing for the presence in their bodies of performance-enhancing substances on the IHSA's banned substance list. In addition to being penalized by IHSA, a student may be disciplined according to Board policy 7:190, *Student Behavior*.

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<sup>5</sup> This program is optional. The U.S. Supreme Court upheld the constitutionality of a student activities drug testing policy that required all middle and high school students to consent to random urinalysis testing for drugs in order to participate in any extracurricular activity. Board of Education of Independent School District No. 92 v. Earls et al., 536 U.S. 82 (2002). This sample policy, as well as the procedures and forms implementing it, are based on the policy approved by the Seventh Circuit in Todd v. Rush County Schools, 133 F.3d 984 (7th Cir. 1998). Alternatively, this program may be limited to extracurricular athletic participants; if so, add the Drug and Alcohol Testing Program to policy 7:300, *Extracurricular Athletics*, and delete it from here.

<sup>6</sup> For a list of banned substances, the testing program, and other related resources, see the IHSA Sports Medicine website.



LEGAL REF.: Board of Education of Independent School Dist. No. 92 v. Earls, 300 F.3d 1017, 2002 WL 1630979 (7th Cir. 2002).  
Clements v. Board of Education of Decatur, 171 Ill. App.3d 241, 1989 Ill. App.3d 113, 511 Ill. App.3d 1130.  
Kevin Jordan v. O'Fallon THSD 203, 2011 WL 4931 (7th Cir. Dec. 12, 2011).  
Todd v. Rush County Schools, 133 F.3d 984 (7th Cir. 1998).  
Virginia School District v. State of Illinois, 2009 WL 489198.  
105 ILCS 5/24-24, 5/27-23.3, and 25/2.

CROSS REF.: 5:280 (Duties and Qualifications), 6:190 (Extracurricular and Co-Curricular Activities), 7:180 (Prevention of and Response to Bullying, Intimidation, and Harassment), 7:190 (Student Behavior), 7:300 (Extracurricular Athletics)



obtained from a student's parent(s)/guardian(s). The results will be given to the parent(s)/guardian(s), with interpretation, as well as to the appropriate professional staff.

3. The services of a school social worker.<sup>5</sup> A student's parent/guardian must consent to regular or continuing services from a social worker.
4. Guidance and school counseling<sup>6</sup> services.
5. A liaison to facilitate the enrollment and transfer of records of students in the legal custody of the Illinois Department of Children and Family Services when enrolling in or changing schools.<sup>7</sup>

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<sup>4</sup> A *school psychologist* means a psychologist who holds a Professional Educator License with a school psychologist endorsement per 105 ILCS 5/21B-25 and either: (1) has graduated with a master's degree or higher degree in psychology or educational psychology from an institution of higher education that maintains equipment, courses of study, and standards of scholarship approved by the Ill. State Board of Education (ISBE), has had at least one school year of full-time supervised experience in the delivery of school psychological service approved by the State Superintendent of Education, and has such additional qualifications as may be required by ISBE; or (2) holds a valid Nationally Certified School Psychologist credential. 105 ILCS 5/14-1.09. *School psychologists* hold a Professional Educator License with a school support personnel endorsement. 105 ILCS 5/21B-25(2)(G); 23 Ill.Admin.Code §§ 1.760(a), 23.130, 25.235.

<sup>5</sup> A *school social worker* means a social worker who has graduated from an accredited graduate school of social work and has such additional qualifications as may be required by ISBE and who holds a Professional Educator License with a school support personnel endorsement for school social work per 105 ILCS 5/21B-25. 105 ILCS 5/14-1.09a. See 105 ILCS 5/21B-25(2)(G); 23 Ill.Admin.Code §§ 1.760(a), 23.140, 25.215. *School social workers* may not provide services outside of their district employment to any student(s) attending school in the district.

<sup>6</sup> *School counselors* hold a Professional Educator License with a school support personnel endorsement. 105 ILCS 5/21B-25(2)(G); 23 Ill.Admin.Code §§ 1.760(a), 23.110, 25.235.

In contrast, *professional counselors* and professional counseling practice in Illinois are governed by the Professional Counselor and Clinical Professional Counselor Licensing and Practice Act and its implementing regulations. 225 ILCS 107; 68 Ill.Admin.Code Part 1375. The Mental Health and Developmental Disabilities Code, 405 ILCS 5/, provides that minors 12 years of age or older may request and receive up to eight 90-minute sessions (previously five 45-minute sessions) of professional counseling services or psychotherapy (provided by a clinical psychologist) without the consent of the minor's parent, guardian, or person in loco parentis. 405 ILCS 5/3-5A-105. Most school districts do not regularly provide *professional* counseling or *clinical* psychological services to students. Instead, most districts provide *school counseling* or *school psychological* services to students, and Illinois law does not specify any limits on the number of school counseling or school psychological sessions which a minor may have before obtaining parent/guardian permission. If your district seeks to regularly provide *professional counseling* or *clinical psychological* services to students, consult with your board attorney about potential changes to board policies and administrative procedures, as well as collective bargaining issues.

<sup>7</sup> Optional. 105 ILCS 5/10-20.59. allows a liaison. Be sure this policy is consistent with policy 7:50, *School Admissions and Student Transfers To and From Non-District Schools*. See ¶n 13 in 7:50, *School Admissions and Student Transfers To and From Non-District Schools*, for liaison responsibilities and requirements.

The Superintendent or designee shall develop protocols for responding to students with social, emotional, or mental health needs that impact learning ability.<sup>8</sup> The District, however, assumes no liability for preventing, identifying, or treating such needs.

*(This section is intentionally blank.)*

This policy shall be implemented in a manner consistent with State and federal laws, including the Individuals with Disabilities Education Act, 42 U.S.C. §12101 et seq.

**LEGAL REF.:** 105 ILCS 110/ (Mental Health and Developmental Disabilities Confidentiality Act) and 405 ILCS 49/ (Children's Mental Health Act of 2003).  
405 ILCS 49/, Children's Mental Health Act of 2003.  
740 ILCS 110/, Mental Health and Developmental Disabilities Confidentiality Act.  
105 ILCS 110/ (Mental Health and Developmental Disabilities Confidentiality Act).

**CROSS REF.:** 6:65 (Student Social and Emotional Development), 6:270 (Guidance and Counseling Program), 7:100 (Health, Eye, and Dental Examinations; Immunizations; and Exclusion of Students), 7:280 (Communicable and Chronic Infectious Disease ), 7:340 (Student Records)

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<sup>8</sup> Required by the Children's Mental Health Act of 2003, 405 ILCS 49/15(b).

*(This section is intentionally blank.)*

## Students

### Exemption from Physical Education 1

In order to be excused from participation in physical education, a student must present an appropriate excuse from his or her parent/guardian or from a person licensed under the Medical Practice Act.<sup>2</sup> The excuse may be based on medical or religious prohibitions. An excuse because of medical reasons must include a signed statement from a person licensed under the Medical Practice Act that corroborates the medical reason for the request. An excuse based on religious reasons must include a signed statement from a member of the clergy that corroborates the religious reason for the request.<sup>3</sup> Upon written notice from a student's parent/guardian, a student will be excused from participating in the physical education component of the regular education program of a public or private district.<sup>4</sup>

Special activities in physical education will be provided for a student whose physical or emotional condition, as determined by a person licensed under the Medical Practice Act, prevents his or her participation in the physical education course.<sup>5</sup>

State law prohibits the Board from honoring parental excuses based upon a student's participation in athletic training, activities, or competitions conducted outside the auspices of the School District.<sup>6</sup>

A student who is eligible for special education may be excused from physical education courses in either of the following situations:<sup>7</sup>

1. He or she (a) is in grades 3-12, (b) his or her IEP requires that special education support and services be provided during physical education time, and (c) the parent/guardian agrees or the IEP team makes the determination; or

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<sup>1</sup> An ISBE rule requires boards to have a policy defining the types of parental excuses that will be accepted in order for a student to be exempted from P.E. 23 Ill.Admin.Code §1.425(c), amended at 42 Ill.Reg. 11542-43. State or federal law controls this policy's content.

For elementary districts, delete 6:310, *High School Credit for Non-District Experiences; Course Substitutions; Re-Entering Students* from the cross references of this policy.

<sup>2</sup> Medical Practice Act is found in 225 ILCS 60/.

<sup>3</sup> Required by 23 Ill.Admin.Code §1.425(d)(1) and (2), *Illinois State Board of Education Policy 1.425(d)*. School boards must identify any evidence/support they will require for excuses they will deem *appropriate*. Before the board adopts this policy, it should have a conversation with the superintendent to discuss and review and/or amend the sample reasons for excusal offered in this policy. Topics for discussion include determining whether (a) the sample reasons are sufficient, (b) more reasons are needed, and/or (c) the sample reasons should be amended. These conversations should be based upon the community's needs.

<sup>4</sup> 105 ILCS 5/27-6(b) and 23 Ill.Admin.Code §1.425(e)(6) require that a student's parent/guardian be notified in writing of the student's excusal from physical education. The notification should be reported by a parent.

<sup>5</sup> Required by 105 ILCS 5/27-6. *Illinois State Board of Education Policy 1.425(d)(3)*, *Illinois State Board of Education Policy 1.425(d)(4)*.

<sup>6</sup> 105 ILCS 5/27-6(b); 23 Ill.Admin.Code §1.425(e)(6) *Illinois State Board of Education Policy 1.425(d)(3)*. See 6:310, *High School Credit for Non-District Experiences; Course Substitutions; Re-Entering Students*, for a list of categories of students in grades 9-12 who may be excused from P.E. due to participation in school district athletic training, activities, or competitions.

<sup>7</sup> 105 ILCS 5/27-6(b) and 23 Ill.Admin.Code §1.425(e)(5)(A) and (B) *Illinois State Board of Education Policy 1.425(d)(3)*.

2. He or she (a) has an IEP, (b) is participating in an adaptive athletic program outside of the school setting, and (c) the parent/guardian documents the student's participation as required by the Superintendent or designee.

A student requiring adapted physical education must receive that service in accordance with his or her Individualized Educational Program/Plan (IEP). <sup>8</sup>

A student in grades 9-12, unless otherwise stated, may submit a written request to the Building Principal to be excused from physical education courses for the reasons stated in 6:310, *High School Credit for Non-District Experiences; Course Substitutions; Re-Entering Students*. <sup>9</sup>

Students in grades 7 and 8 may submit a written request to the Building Principal to be excused from physical education courses because of his or her ongoing participation in an interscholastic or extracurricular athletic program. <sup>10</sup> The Building Principal will evaluate requests on a case-by-case basis.

The Superintendent or designee shall maintain records showing that the criteria set forth in this policy were applied to the student's individual circumstances, as appropriate. <sup>11</sup>

Students who have been excused from physical education shall return to the course as soon as practical. <sup>12</sup> The following considerations will be used to determine when a student shall return to a physical education course: <sup>13</sup>

1. The time of year when the student's participation ceases;
2. The student's class schedule; and
3. The student's future or planned additional participation in activities qualifying for substitutions for physical education as outlined in policy 6:310, *High School Credit for Non-District Experiences; Course Substitutions; Re-Entering Students*. <sup>14</sup>

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

<sup>8</sup> 105 ILCS 5/27-6(b).

<sup>9</sup> 105 ILCS 5/27-6, amended by P.A. 100-465; 23 Ill.Admin.Code §1.425(e), amended by P.A. 100-465. Delete this sentence for elementary school districts.

<sup>10</sup> Optional. *Id.* See fn 10 in 6:310, *High School Credit for Non-District Experiences; Course Substitutions; Re-Entering Students*, for discussion of what constitutes an *interscholastic* or *extracurricular athletic program*. Delete this paragraph for high school districts.

For elementary or unit school boards that want to explain the meaning of *interscholastic or extracurricular athletic program*, insert the following option:

Interscholastic or extracurricular athletic programs are organized school-sponsored or school-sanctioned activities for students that are not part of the curriculum, not graded, not for credit, generally take place outside of school instructional hours, and under the direction of a coach, athletic director, or band leader.

<sup>11</sup> 23 Ill.Admin.Code §1.425(e), amended by P.A. 100-465. Districts must maintain records showing that the criteria set forth in 105 ILCS 5/27-6, amended by P.A. 100-465, was applied to the student's individual circumstances.

<sup>12</sup> 23 Ill.Admin.Code §1.425(e)(1)(A)-(C), amended by P.A. 100-465.

<sup>13</sup> Insert any additional criteria the board may want to use.

<sup>14</sup> Delete item #3 for elementary districts, move "and" to the end of sentence number 1, delete the semicolon at the end of number 2 and insert a period.

LEGAL REF.: 105 ILCS 5/27-6.  
225 ILCS 60/, Medical Practice Act.  
23 Ill.Admin.Code §1.420(p) and §1.425(d), (e).

CROSS REF.: 6:60 (Curriculum Content), 6:310 (High School Credit for Non-District Experiences; Course Substitutions; Re-Entering Students)

## Students

### Suicide and Depression Awareness and Prevention 1

Youth suicide impacts the safety of the school environment. It also affects the school community, diminishing the ability of surviving students to learn and the school's ability to educate. Suicide and depression awareness and prevention are important Board goals.

#### Suicide and Depression Awareness and Prevention Program

The Superintendent or designee shall develop, implement, and maintain a suicide and depression awareness and prevention program (Program) that advances the Board's goals of increasing awareness and prevention of depression and suicide. This program must be consistent with the requirements of *Ann Marie's Law* listed below; each listed requirement, 1-6, corresponds with the list of required policy components in the School Code Section 5/2-3.166(c)(2)-(7). The Program shall include:

1. Protocols for administering youth suicide awareness and prevention education to students and staff.<sup>2</sup>
  - a. For students, implementation will incorporate Board policy 6:60, *Curriculum Content*, which implements 105 ILCS 5/2-3.139 and 105 ILCS 5/27-7 (requiring education for students to develop a sound mind and a healthy body).
  - b. For staff, implementation will incorporate Board policy 5:100, *Staff Development Program*, and teacher's institutes under 105 ILCS 5/3-14.8 (requiring coverage of the warning signs of suicidal behavior).
2. Procedures for methods of suicide prevention with the goal of early identification and referral of students possibly at risk of suicide.<sup>3</sup> Implementation will incorporate:

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<sup>1</sup> A suicide awareness and prevention policy is required by 105 ILCS 5/2-3.166(c). The first sentence of this policy is required by 105 ILCS 5/2-3.166(c)(1).

This policy contains an item on which collective bargaining may be required. See 105 ILCS 5/10-22.24b. 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.

<sup>2</sup> Required by 105 ILCS 5/2-3.166(c)(2). While this law is titled Youth Suicide Awareness and Prevention, it requires the policy to include protocols for administering youth suicide awareness and prevention education to *staff* and students.

For student protocols, see 105 ILCS 5/2-3.139 and 105 ILCS 5/27-7.

For staff protocols, see 105 ILCS 5/3-14.8, which requires the regional superintendents to cover the warning signs of suicidal behavior in teacher's institutes. In suburban Cook County, an Intermediate Service Center will perform the responsibilities that are performed in other locations by the regional superintendent.

<sup>3</sup> Required by 105 ILCS 5/2-3.166(c)(3). This policy adds *with the goal of* and *possibly* to modify the statute's use of "at risk of suicide." *With the goal of* acknowledges that identifying every student at risk of suicide is impossible. *Possibly* is added to inform the public that these identifications are not definitive. School staff members are not licensed medical professionals who are fully trained to make definitive determinations about whether a student is at risk of suicide, and parents/guardians should not take any referral under this requirement as such.



- a. The training required by 105 ILCS 5/10-22.39 for licensed school personnel and administrators who work with students to identify the warning signs of suicidal behavior in youth along with appropriate intervention and referral techniques, including methods of prevention, procedures for early identification, and referral of students at risk of suicide; and
  - b. Ill. State Board of Education (ISBE)-recommended guidelines and educational materials for staff training and professional development, along with ISBE-recommended resources for students containing age-appropriate educational materials on youth suicide and awareness, if available pursuant to *Ann Marie's Law* on ISBE's website.
3. Methods of intervention, including procedures that address an emotional or mental health safety plan for use during the school day and at school-sponsored events for a student identified as being at increased risk of suicide including those students who: (A) suffer from a mental health disorder; (B) suffer from a substance abuse disorder; (C) engage in self-harm or have previously attempted suicide; (D) display signs of depression; (E) are experiencing life stressors; (F) are taking any form of medication; and (G) are experiencing difficulty (C) are covered by school or (F) have a medical condition or condition of disability. Implementation will incorporate paragraph number 2, above, along with Board policies: <sup>4</sup>
- a. Board Policy 6:65, *Student Social and Emotional Development*, implementing the goals and benchmarks of the Ill. Learning Standards and 405 ILCS 49/15(b) (requiring student social and emotional development in the District's educational program);
  - b. 6:126, *Education of Students with Disabilities*, implementing specific inclusion requirements of the IDEA Act;
  - c. 6:185, *Identification of Gifted and Talented*, and based on provision of District applied to students who are identified;
  - b.d. Board Policy 6:270, *Guidance and Counseling Program*, implementing guidance and counseling program(s) for students, and 105 ILCS 5/10-22.24a and 22.24b, which allow a qualified guidance specialist or any licensed staff member to provide school counseling services;
  - a. 5:10, *Legal Liability of School Personnel*, and its purpose to define and preserve professional and legal responsibilities of school personnel in carrying out their professional duties (see 5:10.1).

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105 ILCS 5/10-22.39, amended by P.A. 100-902, § 101-350, requires licensed school personnel and administrators who work with students in kindergarten through grade 12 to be trained to identify the warning signs of suicidal behavior in youth along with appropriate intervention and referral techniques. While very little guidance is available for students in grades 6 and below, *Ann Marie's Law* directs the Ill. State Board of Education (ISBE) to compile, develop and post these items on its website. Districts may use the Ill. Mental Health training program, established under the Ill. Mental Health First Aid Training Act, to provide the training for this in-service requirement. See ¶n 4 in policy 5:100, *Staff Development Program*, for further discussion of this training requirement.

*Ann Marie's Law* requires ISBE to develop and recommend materials. See the discussion in ¶n 7, below, on ISBE-recommended materials.

<sup>4</sup> Required by 105 ILCS 5/2-3.166(c)(4), *Guidance and Counseling Program*. For further discussion of 105 ILCS 5/10-22.24b, see ¶n 2 in policy 6:270, *Guidance and Counseling Program*. This policy adds "for use during the school day and at school-sponsored events" to inform the public about the limitations concerning what schools can realistically provide students and their parent(s)/guardian(s). See the discussion in ¶n 3 regarding the addition of the word *possibly*.

... (b) State and/or federal resources that address emotional or mental health safety plans for students who are possibly at an increased risk for suicide, if available on the ISBE's website pursuant to *Ann Marie's Law*.

e.g. Board policy 7:250, *Student Support Services*, implementing the Children's Mental Health Act of 2003, 405 ILCS 49/ (requiring protocols for responding to students with social, emotional, or mental health issues that impact learning ability); and

iii. State and/or federal resources that address emotional or mental health safety plans for students who are possibly at an increased risk for suicide, if available on the ISBE's website pursuant to *Ann Marie's Law*.

4. Methods of responding to a student or staff suicide or suicide attempt. Implementation of this requirement shall incorporate building-level Student Support Committee(s) established through Board policy 7:250, *Student Support Services*. <sup>5</sup>
5. Reporting procedures. Implementation of this requirement shall incorporate Board policy 6:270, *Guidance and Counseling Program*, and Board policy 7:250, *Student Support Services*, in addition to other State and/or federal resources that address reporting procedures.<sup>6</sup>
6. A process to incorporate ISBE-recommended resources<sup>7</sup> on youth suicide awareness and prevention programs, including current contact information for such programs in the District's Suicide and Depression Awareness and Prevention Program. <sup>8</sup>

#### Illinois Suicide Prevention Strategic Planning Committee

The Superintendent or designee shall attempt to develop a relationship between the District and the Illinois Suicide Prevention Strategic Planning Committee, the Illinois Suicide Prevention Coalition Alliance, and/or a community mental health agency. The purpose of the relationship is to discuss how to incorporate the goals and objectives of the Illinois Suicide Prevention Strategic Plan into the District's Suicide Prevention and Depression Awareness Program. <sup>9</sup>

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<sup>5</sup> Required by 105 ILCS 5/2-3.166(e)(5). See 7:250-AP2, *Protocol for Responding to Students with Social, Emotional, or Mental Health Needs* for information about building-level Student Support Committees. When sharing information from therapists and counselors, these committees are required to follow the Mental Health and Developmental Disabilities Confidentiality Act, 740 ILCS 110/, and the Children's Mental Health Act of 2003, 405 ILCS 49/.

<sup>6</sup> Required by 105 ILCS 5/2-3.166(c)(6).

<sup>7</sup> 105 ILCS 5/2-3.166(b)(2)(B), directs ISBE to "compile, develop, and post on its publicly accessible Internet website both of the following, which may include materials already publicly available: (A) [r]ecommended guidelines and educational materials for training and professional development, and (B) [r]ecommended resources and age-appropriate educational materials on youth suicide awareness and prevention."

ISBE has created the *Illinois Youth Suicide Prevention Toolkit: A Reference for Administrators, Counselors, Teachers, and Staff*, at: [www.isbe.net/Documents/Suicide-Prevention-Procedures.pdf](http://www.isbe.net/Documents/Suicide-Prevention-Procedures.pdf), as well as listing other resources at: [www.isbe.net/Pages/Suicide-Prevention.aspx](http://www.isbe.net/Pages/Suicide-Prevention.aspx).

<sup>8</sup> Required by 105 ILCS 5/2-3.166(c)(7).

<sup>9</sup> Optional. The *Illinois Suicide Prevention Strategic Plan* is available at: [www.isbe.net/Documents/Suicide-Prevention-Procedures.pdf](http://www.isbe.net/Documents/Suicide-Prevention-Procedures.pdf). Its goals and objectives reflect the input of public and private organizations and stakeholders that are concerned with mental health. It is designed to reduce suicide through a positive public health approach. See also the Suicide Prevention Resource Center and its Illinois page at [www.sprc.org/states/illinois](http://www.sprc.org/states/illinois) for more information on which goals in the Illinois Suicide Prevention Strategic Plan have been implemented. The Suicide Prevention Resource Center also had an awareness public prevention pilot program titled "It Only Takes One," available at: [www.itonlytakesone.org/](http://www.itonlytakesone.org/).

### Monitoring<sup>10</sup>

The Board will review and update this policy pursuant to *Ann Marie's Law* and Board policy 2:240, *Board Policy Development*.

### Information to Staff, Parents/Guardians, and Students

The Superintendent shall inform each school district employee about this policy and ensure its posting on the District's website.<sup>11</sup> The Superintendent or designee shall provide a copy of this policy to the parent or legal guardian of each student enrolled in the District.<sup>12</sup> *(Footnote 12 is not intended to be part of the adopted policy; it should be removed before the policy is adopted.)*

### Implementation

This policy shall be implemented in a manner consistent with State and federal laws, including the Children's Mental Health Act of 2003, 405 ILCS 49/, Mental Health and Developmental Disabilities Confidentiality Act, 740 ILCS 110/, and the Individuals with Disabilities Education Act, 42 U.S.C. §12101 *et seq.*

The District, Board, and its staff are protected from liability by the Local Governmental and Governmental Employees Tort Immunity Act. Services provided pursuant to this policy: (1) do not replace the care of a physician licensed to practice medicine in all of its branches or a licensed medical practitioner or professional trained in suicide prevention, assessments and counseling services, (2) are strictly limited to the available resources within the District, (3) do not extend

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<sup>10</sup> Required by 105 ILCS 5:2-3.166(d).

<sup>11</sup> *Id.* See 2:250-E2, *Immediately Available District Public Records and Web-Posted Reports and Records*. Consult the board attorney about whether a signature is required to prove compliance with the law's specific requirement that *each school district employee and each student enrolled in the District* are informed of and/or provided a copy of the policy.

<sup>12</sup> *Id.* Consult the board attorney about placing the policy in the student handbook instead of and/or in addition to providing a hard copy to each student's parent/guardian. Members of the Ill. Principals Assoc. (IPA) may subscribe to the IPA's Model Student Handbook Service, which are aligned with IASB's policy services. For more information, see: [www.ilprincipals.org/resources/model-student-handbook](http://www.ilprincipals.org/resources/model-student-handbook).

<sup>13</sup> *(Footnote 13 is not intended to be part of the adopted policy; it should be removed before the policy is adopted.)*

beyond the school day and/or school-sponsored events, and (4) cannot guarantee or ensure the safety of a student or the student body. <sup>14</sup>

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<sup>14</sup> **Consult the board attorney for guidance concerning liability in this area.** Except for cases of willful and wanton conduct, the Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/, likely protects districts from liability for failure to properly identify and/or respond to a student's mental health issue that results in suicide. See 745 ILCS 10/3-108 and Grant v. Board of Trustees of Valley View School Dist. No. 365-U, 286 Ill.App.3d. 642 (3rd Dist. 1997). However, attorneys have concerns that failing to inform parents/guardians that services required under *Ann Marie's Law* are limited may open districts to potential litigation if services provided under the policy fail or are deemed inadequate. Every situation is fact specific and the issues require careful evaluation. A disclaimer, such as the one presented here, may not be sufficient. A district may take several actions, after discussion with its board attorney, to minimize liability, such as adding limiting phrases (see discussions in ¶ns 3 & 4) and ensuring other policies are followed. Ultimately, the best way to minimize liability is to be sure that the district's insurance policies cover the training and other requirements under *Ann Marie's Law*.

In addition to the Tort Immunity Act, school officials and districts may also be entitled to qualified immunity in civil rights lawsuits that seek to hold them liable for a suicide. See Sanford v. Stiles, 456 F.3d 298 (3d Cir. 2006); Martin v. Shawano-Gresham School Dist., 295 F.3d 701 (7th Cir. 2002); Armijo v. Wagon Mount Public Schools, 159 F.3d 1253 (10th Cir. 1998). Yet, recent trends in student-on-student harassment cases are emerging where parents whose children die of suicide allege that a school's failure to properly identify or respond to the child's mental health issues was a contributing cause for the suicide.

In these cases, the parents ask courts to apply Davis v. Monroe County Board of Education, 526 U.S. 629 (1999), to *Section 504* cases. Under the *Davis standard*, parents must prove that: (1) their child was an individual with a disability; (2) their child was harassed based upon his or her disability; (3) the harassment was sufficiently severe or pervasive that it altered the condition of the child's education and created an abusive educational environment; (4) the school district knew about the harassment; and (5) the school district was deliberately indifferent to the harassment.

While not precedential in Illinois, several cases illustrate the uncertainty of a school district's liability in the emerging area of suicide prevention liability and/or failure to properly respond to a student's mental health issues and may indicate a trend toward courts allowing juries to determine a district's liability: Armijo v. Wagon Mount Public Schools, 159 F.3d 1253 (10th Cir. 1998) (denying summary judgment to two individual defendant district employees based on a state-created danger theory and as to all defendant employees based on a special relationship theory); Estate of Barnwell ex rel. Barnwell v. Watson, 44 Supp.3d 859 (E.D. Ark. 2014) (allowing plaintiff parents to move forward in litigation alleging that school district's *Section 504* failures contributed to their son's suicide, but summary judgment in favor of school district eventually granted); and Walsh v. Tehachapi Unified School Dist., 997 F.Supp.2d 1071 (E.D. Ca. 2014) (denying summary judgment because the school district's conduct may have been the proximate cause of the student suffering an uncontrollable impulse to commit suicide). But see Estate of Lance v. Lewisville Independent School Dist., 743 F.3d 982 (5th Cir. 2014) (finding in favor of the school district because the claimed special relationship theory and state-created danger theories were not actionable).

LEGAL REF.: 42 U.S.C. § 1201 et seq. Individuals with Disabilities Education Act.  
105 ILCS 5/2-3.166, 105 ILCS 5/2-3.139, 5/3-14.8, 5/10-22.24a, 5/10-22.24b, 5/10-22.39, 5/14-1.01 (final citation pending), 5/14-1.01 et seq., 5/14-7.02, and 5/14-7.02b, 5/27-7.  
405 ILCS 49, Children’s Mental Health Act of 2003.  
740 ILCS 110/, Mental Health and Developmental Disabilities Confidentiality Act.  
745 ILCS 10/, Local Governmental and Governmental Tort Immunity Act.

CROSS REF.: 2:240 (Board Policy Development), 5:100 (Staff Development Program), 6:60 (Curriculum Content), 6:65 (Student Social and Emotional Development), 6:120 (Education of Children with Disabilities), 6:270 (Guidance and Counseling Program), 7:180 (Prevention of and Response to Bullying, Intimidation, and Harassment), 7:250 (Student Support Services)

## Students

### Restrictions on Publications; Elementary Schools 1

*[For elementary or unit districts only]*

#### School-Sponsored Publications and Web Sites

School-sponsored publications, productions, and web sites are part of the curriculum and are not a public forum for general student use.<sup>2</sup> School authorities may edit or delete material that is inconsistent with the District's educational mission.

All school-sponsored communications shall comply with the ethics and rules of responsible journalism. Text that is libelous, obscene, vulgar, lewd, invades the privacy of others, conflicts with the basic educational mission of the school, is socially inappropriate, is inappropriate due to the maturity of the students, or is materially disruptive to the educational process will not be tolerated.

The author's name will accompany personal opinions and editorial statements. An opportunity for the expression of differing opinions from those published/produced will be provided within the same media.

#### Non-School Sponsored Publications Accessed or Distributed On-Campus 3

For purposes of this section and the following section, a *publication* includes, without limitation: (1) written or electronic print material, (2) audio-visual material on any medium including electromagnetic media (e.g., images, flash memory, etc.), or combinations of these whether off-line (e.g., a printed book, , etc.) or online (e.g., any website, social networking site, database for information retrieval, etc.), or (3) information or material on

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<sup>1</sup> State or federal law controls this policy's content. This policy concerns an area in which the law is unsettled. It applies to elementary and unit districts and both elementary and high school students. Unit districts should delete this policy and policy 7:315, *Restrictions on Publications; High Schools*. The Speech Rights of Student Journalists Act, 105 ILCS 80/5, *Speech Rights of Student Journalists Act*, applies to high school and unit districts.

<sup>2</sup> School authorities may reasonably regulate student expression in school-sponsored publications for education-related reasons. *Hazelwood School District v. Kuhlmeier*, 457 U.S. 312, 68 S.Ct. 1328, 42 L.Ed.2d 166 (1982). This policy allows such control by clearly stating that school-sponsored publications are not a "public forum" open for general student use but are, instead, part of the curriculum.

A school board that does not retain control of student publications can anticipate at least two problems: (1) how to keep content consistent with the district's mission, and (2) how to ensure that the Constitutional rights of third parties are not violated by student journalists. Concerning the second problem, a third party may seek to hold the district responsible for the student journalists' acts. See *Yeo v. Town of Lexington*, 131 F.3d 241 (1st Cir. 1997), *cert. denied* (1998).

<sup>3</sup> Non-school sponsored publications, like underground newspapers, cannot be subject to the same degree of regulation by school authorities as school-sponsored publications. Absent a showing of material and substantial interference with the requirements of good discipline, students retain their First Amendment free speech rights. The federal circuits disagree on whether school authorities may require prior approval before a student is allowed to distribute non-school-sponsored publications. The Seventh Circuit, which covers Illinois, refused to approve prior approval regulations. *Fujishima v. Board of Education*, 460 F.2d 1355 (7th Cir. 1972), but see *Baughman v. Freienmuth*, 478 F.2d 1345 (4th Cir. 1973). Non-school sponsored web sites should be regulated in the same manner as non-school sponsored publications.

A school policy prohibiting junior high students from distributing written material at school that is prepared by non-students was upheld in *Hedges v. Wauconda Cmty. Community Unit School Dist. No. 118*, 9 F.3d 1295 (7th Cir. 1993).

electronic devices (e.g., or voice messages delivered by cell phones, tablets, and other hand-held devices).<sup>4</sup>

Creating, distributing, and/or accessing non-school sponsored publications shall occur at a time and place and in a manner that will not cause disruption, be coercive, or result in the perception that the distribution or the publication is endorsed by the School District.

Students are prohibited from creating, distributing, and/or accessing at school any publication that:

1. Will cause substantial disruption of the proper and orderly operation and discipline of the school or school activities;<sup>5</sup>
2. Violates the rights of others, including but not limited to material that is libelous, invades the privacy of others, or infringes on a copyright;<sup>6</sup>
3. Is socially inappropriate or inappropriate due to maturity level of the students, including but not limited to material that is obscene, pornographic, or pervasively lewd and vulgar, contains indecent and vulgar language, or *sexting* as defined by School Board policy and Student Handbooks;<sup>7</sup>
4. Is reasonably viewed as promoting illegal drug use;<sup>8</sup> or
5. Is distributed in kindergarten through eighth grade and is primarily prepared by non-students, unless it is being used for school purposes. Nothing herein shall be interpreted to prevent the

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<sup>4</sup> The definition of *publication* is optional and may be amended. This sample definition uses broad and generally understood terms to keep the policy current with rapid technology changes.

<sup>5</sup> For example, a school district may discipline a student for writing an underground newspaper, and distributing it at school, that contained an article on how to hack into the school's computer. School authorities could reasonably believe the article would be disruptive. Boucher v. Sch. Bd. of the Sch. Dist. of Greenfield, 134 F.3d 821 (7th Cir.: 1998).

<sup>6</sup> School officials may not regulate student speech based upon their fear or apprehension of disturbance. Many decisions address the tension between students' right to free speech and restrictions of it on campus. See, for example:

Brandt v. Board of Educ. of City of Chicago, 480 F.3d 460 (7th Cir.: 2007), *cert. denied* (2007) (school did not violate students' First Amendment rights when it disciplined students for wearing T-shirts with a "talentless infantile drawing" that school officials reasonably found to undermine the educational atmosphere).

Nuxoll v. Indian Prairie Sch. Dist. #204, 523 F.3d 668 (7th Cir.: 2008) (holding that the student was likely to succeed on merits of his claim that the school would violate his speech rights by preventing him from wearing T-shirt with slogan "Be Happy, Not Gay").

J.C. v. Beverly Hills Unified Sch. Dist., 711 F.Supp.2d 1094/593 F.3d 249 (3rd Cir.: 2010) (discussed the "rights of others to be secure and let alone" argument from Tinker, but found that the school district violated a student's First Amendment rights for disciplining her when she posted a video clip on a website).

B.H. v. Easton Area Sch. Dist. #121, 725 F.3d 293 (3rd Cir.: 2013), *cert. denied* (2014) (school violated students' free speech rights by banning the wearing of cancer awareness bracelets containing the caption *I♥hoobies*).

<sup>7</sup> Be sure that the board's definitions for *sexting* in this policy align with other definitions used throughout the board's policy manual. For example, see the discussion within sample administrative procedure 7:190-AP5, *Student Handbook-Electronic Devices*. There, *sexting* encompasses the term *indecent visual depiction* as defined by 705 ILCS\_405/3-40 (repealed by Public Act 99-0037).

Illinois v. Smith, 476 U.S. 527 (1986). It defines indecent visual depiction as a depiction or portrayal in any pose, posture, or setting involving a lewd exhibition of the buttocks, or if such person is a female, a fully or partially developed breast of the person. However, a district may create or have another definition of sexting that may or may not encompass the statutory term.

<sup>8</sup> Morse v. Frederick, 551 U.S. 393 (2007).

inclusion of material from outside sources or the citation to such sources as long as the material to be distributed or accessed is primarily prepared by students.<sup>9</sup>

Accessing or distributing *on-campus* includes accessing or distributing on school property or at school-related activities. A student engages in gross disobedience and misconduct and may be disciplined for: (1) accessing or distributing forbidden material, or (2) for writing, creating, or publishing such material intending for it to be accessed or distributed at school.<sup>10</sup>

#### Non-School Sponsored Publications Accessed or Distributed Off-Campus<sup>11</sup>

A student engages in gross disobedience and misconduct and may be disciplined for creating and/or distributing a publication that: (1) causes a substantial disruption or a foreseeable risk of a substantial disruption to school operations, or (2) interferes with the rights of other students or staff members.

#### Bullying and Cyberbullying<sup>12</sup>

The Superintendent or designee shall treat behavior that is *bullying* and/or *cyberbullying* according to Board policy 7:180, *Prevention of and Response to Bullying, Intimidation, and Harassment*, in addition to any response required by this policy.

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<sup>9</sup> Optional. The rationale for this section is that prior to high school, students have not developed sufficient experience and education in critical review of external resource materials. Accordingly, in order to accomplish the district's educational mission, yet allow students the opportunity to communicate with their fellow students, widespread student distribution of written material in elementary and middle school may be limited to material primarily prepared by the students themselves. Hedges v. Wauconda Cmty. Community Unit Sch. Dist. No. 118, 9 F.3d 1295 (7th Cir. 1993); Leal v. Everett Public Schools, 88 F.Supp.3d 1220, 2015 WL 728651 (W.D.Wash. 2015).

<sup>10</sup> For example, a school district may discipline a student for writing an underground newspaper, and distributing it at school, that contained an article on how to hack into the school's computer. School authorities could reasonably believe the article would be disruptive. Boucher v. Sch. Bd. of the School Dist. #1 of Greenfield, 134 F.3d 821 (7th Cir. 1998).

<sup>11</sup> Optional. School officials must proceed carefully before disciplining a student for out-of-school conduct. A school's authority over off-campus expression is much more limited than expression on school grounds. Many decisions address the tension between public schools' authority to discipline students for off-campus speech and students' right to free speech. However, school officials may generally: (1) remove a student from extracurricular activities

(see 7:240, *Conduct Code for Participants in Extracurricular Activities*); and (2) suspend or expel a student from school attendance when the student's expression causes substantial disruption to school operations, as provided in this policy (see also 7:190, *Student Behavior*). For example, see:

J.S. v. Blue Mountain Sch. Dist., 650 F.3d 915 (3rd Cir. 2011), combined with Layshock v. Hermitage Sch. Dist., 650 F.3d 205 (3d Cir. 2011), *cert. denied* (2012) (schools may not punish students for their off-campus indecent and offensive parodies of their principals, absent a showing that the parodies caused, or could cause, substantial disruption in the schools).

Kowalski v. Berkeley Cnty. Sch., 652 F.3d 565 (4th Cir. 2011), *cert. denied* (2012) (upheld a student's suspension for off-campus posts to a social network site that defamed a classmate because it was foreseeable that the expression would reach the school and the student's conduct involved substantial disruption and interference with the work and discipline of the school).

The statutory definition of *bullying* includes *cyberbullying* (105 ILCS 5/27-23.7); these terms are defined in 7:180, *Prevention of and Response to Bullying, Intimidation, and Harassment*. See also fn 6 and 7:190-AP6, *Guidelines for Investigating Sexting Allegations*.

Consult the board attorney for guidance concerning off-campus speech. Every situation is fact specific and the issues require careful evaluation.

<sup>12</sup> 105 ILCS 5/27-23.7.



LEGAL REF.: 105 ILCS 5/27-23.7,  
Hazelwood v. Kuhlmeier, 457 U.S. 307 (1988).  
Tinker v. Des Moines Indep. Cmty. Sch. Dist., 418 U.S. 165 (1974).  
Tinker v. Des Moines Indep. Cmty. Sch. Dist., 418 U.S. 165 (1974).

CROSS REF.: 6:235 (Access to Electronic Networks), 7:180 (Prevention of and Response to Bullying, Intimidation, and Harassment), 8:25 (Advertising and Distributing Materials in School Provided by Non-School Related Entities)

## Students

### Student Records 1

School student records are confidential. Information from them shall not be released other than as provided by law.<sup>2</sup> A school student record is any writing or other recorded information concerning a

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<sup>1</sup> State law requires school boards to adopt a policy and procedures implementing the Illinois School Student Records Act (ISSRA) and specifying the content of school student records. 23 Ill.Admin.Code §§375.100 and 226.740. Both State and federal law address school student records. See the federal Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. §1232g) implemented by federal rules at 34 C.F.R. Part 99) and ISSRA (105 ILCS 10/, amended by P.A.s 09-091, 10-091, 101-515 and 102-021), implemented by ISBE rules at 23 Ill.Admin.Code Part 375).

In addition, the U.S. Dept. of Education's (DOE) *Protecting Student Privacy* webpage, a service of the Privacy Technical Assistance Center (PTAC) and the Student Privacy Policy Office, is a *one-stop* resource for education stakeholders to learn about student privacy and confidentiality, including data privacy and security practices related to student-level longitudinal data systems, at: [www.studentprivacy.ed.gov/](http://www.studentprivacy.ed.gov/). PTAC published a guide for school officials titled *Protecting Student Privacy While Using Online Educational Services: Requirements and Best Practices* (2014), at: [www.studentprivacy.ed.gov/resources/protecting-student-privacy-while-using-online-educational-services-requirements-and-best](http://www.studentprivacy.ed.gov/resources/protecting-student-privacy-while-using-online-educational-services-requirements-and-best).

The DOE also issued a summary of resources on FERPA and virtual learning (2020) at: [www.studentprivacy.ed.gov/resources/ferpa-and-virtual-learning](http://www.studentprivacy.ed.gov/resources/ferpa-and-virtual-learning). **Boards that wish to enter into cloud computing and other operator contracts must comply with the Student Online Personal Protection Act (SOPPA), 105 ILCS 85/, amended by P.A. 101-516, 102-021, and should contact the board attorney for implementation guidance.** See also ¶n 2, item #7, below.

Confusion persists regarding the interplay between the FERPA and the Health Insurance Portability and Accountability Act of 1996 (HIPAA) (Pub. L. 104-191). The Privacy Rule implementing HIPAA, issued by the U.S. Dept. of Health and Human Services (DHS), addresses the disclosure of individuals' health information by *covered entities*. 45 C.F.R. Parts 160 and 164, Subparts A and E. Generally speaking, a school district becomes a *covered entity*, and must comply with applicable sections in the Privacy Rule, if it provides health care and transmits health information in electronic form in connection with transactions. However, *educational records* as defined by FERPA are excluded from HIPAA's definition of *protected health information*. 45 C.F.R. §160.103. In most cases this exception relieves school districts of complying with burdensome privacy notices and authorization forms. In December 2019, DHS and DOE issued an update to its *Joint Guidance on the Application of FERPA and HIPAA to Student Health Records*, at:

<https://studentprivacy.ed.gov/resources/joint-guidance-application-ferpa-and-hipaa-student-health-records>  
[www.studentprivacy.ed.gov/resources/joint-guidance-application-ferpa-and-hipaa-student-health-records](https://www.studentprivacy.ed.gov/resources/joint-guidance-application-ferpa-and-hipaa-student-health-records)  
<https://www.courts.wisconsin.gov/selfhelp/education/20191219-ferpa-hipaa-student-health-records>  
<https://www.illinois.gov/education/20191219-ferpa-hipaa-student-health-records>

The board attorney should be consulted on all HIPAA-related questions.

<sup>2</sup> A plethora of statutory and decisional law protects student records. Aside from the laws identified in ¶n 1, other laws protecting student records include:

1. Schools may not provide a student's *personal information* to a business organization or financial institution that issues credit or debit cards. 105 ILCS 5/10-20.38.
2. Schools may not sell personal information concerning a child under the age of 16, with a few exceptions, unless a parent has consented. Children's Privacy Protection and Parental Empowerment Act, 325 ILCS 17/.
3. The release of confidential information given by a student to a therapist, e.g., school counselor or psychologist, is governed by the Mental Health and Developmental Disabilities Confidentiality Act. 740 ILCS 110/.
4. Schools must keep a sex offender registration form received from law enforcement separately from school student records maintained on behalf of the juvenile sex offender. 730 ILCS 152/121.
5. Divorced or separated parents/guardians with and without *parental responsibility* (formerly custody) are both permitted to inspect and copy the student's school student records. The Ill. Marriage and Dissolution of Marriage Act (IMDMA), 750 ILCS 5/602.11.
6. Schools may not provide a parent/guardian access to his or her child's school records if the parent is prohibited by an order of protection from inspecting or obtaining such records pursuant to the Domestic Violence Act of 1986 or the Code of Criminal Procedure of 1963. *Id.*

student and by which a student may be identified individually that is maintained by a school or at its direction by a school employee, regardless of how or where the information is stored, except as provided in State or federal law as summarized below: 3

1. Records kept in a staff member's sole possession.
2. Records maintained by law enforcement officers working in the school. 4
3. Video and other electronic recordings (including without limitation, electronic recordings made on school buses<sup>5</sup>) that are created in part for law enforcement, security, or safety reasons or purposes. The content of these recordings may become part of a school student record to the extent school officials create, use, and maintain this content, or it becomes available to them by law enforcement officials, for disciplinary or special education purposes regarding a particular student.
4. Any information, either written or oral, received from law enforcement officials concerning a student less than the age of 18 years who has been arrested or taken into custody. 6

State and federal law grants students and parents/guardians certain rights, including the right to inspect, copy<sup>7</sup>, and challenge school student records.<sup>8</sup> The information contained in school student

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7. SOPPA (105 ILCS 85/, amended by P.A. 101-516 (S.B. 1000)) addresses a school district's obligations related to *covered information* of students and contracts with educational technology operators. In some instances, covered information as defined under SOPPA may also qualify as education records under FERPA and school student records under ISSRA. See policy 7:345, ~~Use of Educational Technology~~ *Technologies Use; Student Data Privacy and Security*, and administrative procedure 7:345-AP4, ~~Use of Educational Technologies~~ *Use; Student Data Privacy and Security*, for a description of SOPPA obligations.

**Note:** Nos. 5 and 6 above may conflict with FERPA in that they restrict a parent/guardian's right to access his or her child's school records more than is expressly permitted by FERPA. 20 U.S.C. § 1232g(a)(1)(A), (B); 34 C.F.R. § 99.10(a). **Consult the board attorney for guidance.**

Allowing students to grade each other's papers does not violate FERPA: such student work is not a *school record* until it is recorded by the teacher. Owasso I.S.D. No. 1-011 v. Falvo, 534 U.S. 426 (2002). School student records are *per se* prohibited from disclosure; a district is under no obligation to redact them. Chicago Tribune Co. v. Chicago Bd. of Educ., 332 Ill.App.3d 60 (1st Dist. 2002).

3 20 U.S.C. § 1232g(a)(4); 34 C.F.R. § 99.3; 105 ILCS 10/2(d); 705 ILCS 405/1-7 and 5-905; 23 Ill.Admin.Code § 375.10. Rather than listing the exceptions in the policy, a school board may choose to end the sentence after the proviso "except as provided in State or federal law."

4 For a helpful resource, see fn 1 in policy 7:150, *Agency and Police Interviews*.

5 For an explanation, see footnotes in policy 7:220, *Bus Conduct*.

6 Many lawyers believe that once these records are received by a school, they are protected as *education records* under FERPA. Consult the board attorney for advice.

7 105 ILCS 10/5(a).

105 ILCS 10/5(c), ~~Student Request for Records~~, requires that a parent's or student's request to inspect and copy records be granted no later than 10 business days (previously 15 school days) after the date of receipt of such a request by the official records custodian.

105 ILCS 10/5(c-5), ~~Student Request for Records~~, outlines how a school district may extend the ~~10 business day~~ timeline for response by not more than five business days from the original due date if one or more of these six reasons applies:

1. The requested records are stored in whole or in part at other locations than the office having charge of the requested records;
2. The request required the collection of a substantial number of specified records;
3. The request is couched in categorical terms and requires an extensive search for the records responsive to it;
4. The requested records have not been located in the course of routine search and additional efforts are being made to locate them;
5. The request for records cannot be complied with by the school district within the time limits prescribed by subsection (c) without unduly burdening or interfering with the operations of the school district; or
6. There is a need for consultation, which shall be conducted with all practicable speed, with another public body or school district among two or more components of a public body or school district having a substantial interest in the determination or in the subject matter of the request.

records shall be kept current, accurate, clear, and relevant. All information maintained concerning a student receiving special education services shall be directly related to the provision of services to that child.<sup>9</sup> The District may release directory information as permitted by law, but a parent/guardian shall have the right to opt-out of the release of directory information regarding his or her child.<sup>10</sup> However, the District will comply with any or federal law, state law, or policy of an applicable court order regarding a student's privacy. The person requesting or disclosing a student's school records, by administrative procedure without notice to, or the consent of, the student's parent/guardian or eligible student.<sup>11</sup> Upon request, the District discloses school student records without parent consent to the official records custodian of another school in which a student has enrolled or intends to enroll, as well as to any other person as specifically required or permitted by State or federal law.<sup>12</sup>

The Superintendent shall fully implement this policy and designate an *official records custodian* for each school who shall maintain and protect the confidentiality of school student records, inform staff

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<sup>8</sup> 23 Ill.Admin.Code §375.10 provides that districts may, through board policy, allow scores received on college entrance examinations to be included on a student's academic transcript if that inclusion is requested in writing by a student, parent or person who enrolled the student. If the board of a unit or high school district wants to allow this, insert:

A student or the student's parent/guardian may request, in writing, that scores received on college entrance examinations be included on the student's academic transcript.

**Note:** Though 23 Ill.Admin.Code §375.10 uses the phrase "student, parent or person who enrolled the student," student records rights under ISSRA and FERPA attach to *eligible students* and their parents/guardians, not to "a person who enrolled the student" (though that person is typically a parent or guardian).

If a board allows for the inclusion of college entrance examination scores on academic transcripts, amend the district's notification to parents/guardians and students of their school student records rights with the process for requesting the inclusion. 23 Ill.Admin.Code §375.30(d)(5). See 7:340-API, E1, *Notice to Parents/Guardians and Students of Their Rights Concerning a Student's School Records*, for an example.

<sup>9</sup> 23 Ill.Admin.Code §226.740(a).

<sup>10</sup> This sentence is required if the board allows schools to release student directory information. 20 U.S.C. §1232g; 23 Ill.Admin.Code §375.80; 34 C.F.R. §99.37. There is at least one instance in Illinois in which parents were upset that their school district released students' names and addresses pursuant to a Freedom of Information Act (FOIA) request. FOIA contains an exemption for home addresses. Many lawyers, however, say that a district must release student information pursuant to a FOIA request when each of the following has occurred: the FOIA request seeks information that is included in the district's definition of student directory information, the district notified parents that it releases directory information, and the parents did not opt out of allowing directory information to be released concerning their child. An opinion from the Ill. Public Access Counselor supports that a district may not rely on the FOIA exemption for home addresses. PAO 12-3.

The **PRESS** policy does not identify the components of *directory information*, leaving that task to implementing material. Boards may want to discuss this quagmire with the superintendent knowing that there are good reasons to release directory information, e.g., to allow the district to publish information about specific students, and good reasons to not release directory information, e.g., to avoid releasing names and addresses pursuant to a FOIA request.

<sup>11</sup> 23 Ill.Admin.Code §375.80(a)(1) no longer includes *gender* as information which may be designated as directory information. This is consistent with attorneys' views that Illinois' past practice of including *gender* within directory information may have violated FERPA. FERPA regulations provide that directory information "means information contained in an education record of a student that would not generally be considered harmful or an invasion of privacy if disclosed" and it "includes, but is not limited to, the student's name; address; telephone listing; electronic mail address; photograph; date and place of birth; major field of study; grade level; enrollment status (e.g., undergraduate or graduate, full-time or part-time); dates of attendance; participation in officially recognized activities and sports; weight and height of members of athletic teams; degrees, honors, and awards received; and the most recent educational agency or institution attended." 34 C.F.R. §99.3. Though FERPA regulations do not explicitly preclude the designation of *gender* as directory information, DOE guidance has consistently advised schools not to disclose a student's sex as directory information because it would be considered harmful or an invasion of privacy. See *Letter to Institutions of Postsecondary Education*, DOE Family Policy Compliance Office (September 2009). Consult the board attorney about the practical implementation of this issue. Some attorneys, for example, believe photos of the "Girls Volleyball Team" may contradict DOE guidance.

<sup>12</sup> 20 U.S.C. §1232g (j), as added by Sec. 507 of the U.S.A. Patriot Act of 2001.

<sup>13</sup> 34 C.F.R. §99.31; 105 ILCS 10/6

members of this policy, and inform students and their parents/guardians of their rights regarding school student records. <sup>13</sup>

#### Student Biometric Information Collection <sup>14</sup>

The Superintendent or designee may recommend a student biometric information collection system solely for the purposes of identification and fraud prevention.<sup>15</sup> Such recommendation shall be consistent with budget requirements and in compliance with State law. Biometric information means any information that is collected through an identification process for individuals based on their unique behavioral or physiological characteristics, including fingerprint, hand geometry, voice, or facial recognition or iris or retinal scans.

Before collecting student biometric information, the District shall obtain written permission from the person having legal custody/parental responsibility<sup>16</sup> or the student (if over the age of 18).<sup>17</sup> Upon a student's 18th birthday, the District shall obtain written permission from the student to collect student biometric information.<sup>18</sup> Failure to provide written consent to collect biometric information shall not be the basis for refusal of any services otherwise available to a student.

All collected biometric information shall be stored and transmitted in a manner that protects it from disclosure. Sale, lease, or other disclosure of biometric information to another person or entity is strictly prohibited. <sup>19</sup>

The District will discontinue use of a student's biometric information and destroy all collected biometric information within 30 days after: (1) the student graduates or withdraws from the School District, or (2) the District receives a written request to discontinue use of biometric information from

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<sup>13</sup> Each school must have an *official records custodian*. 105 ILCS 10/4(a). Districts must notify students and parents/guardians of their rights concerning school student records. 105 ILCS 10/3; 105 ILCS 10/4, amended by P.A. 101-161; 23 Ill.Admin.Code §375.30; 34 C.F.R. §99.7. Comprehensive faculty and student handbooks can provide required notices, along with other important information, to recipients. Handbooks can be developed by the building principal, but should be reviewed and approved by the superintendent and board. See 7:340-AP1, E1, *Notice to Parents/Guardians and Students of Their Rights Concerning a Student's School Records*, and 7:340-AP1, *School Student Records*.

<sup>14</sup> This program is optional; however, districts either wishing to implement such a program or districts that have already engaged in the collection of student biometric information must have a policy consistent with the requirements of 105 ILCS 5/10-20.40. This section restates the School Code's requirements for a student biometric information policy.

<sup>15</sup> For districts already collecting biometric information, the following is an alternative:

The Superintendent or designee shall maintain a biometric screening program that is consistent with budget requirements and in compliance with State law.

<sup>16</sup> Several statutes define legal custody and when a court may grant it; the term requires statutory construction/interpretation and school boards should discuss this issue with their attorney prior to adopting a policy on collection of student biometric information.

105 ILCS 5/10-20.40(b)(1) states the definition of legal custody is the same as the definition of legal custody for purposes of residency, payment of tuition, hearings, and criminal penalties at 105 ILCS 5/10-20.12b(2)(i)-(v).

The IMDMA, 750 ILCS 5/, changed the terms *custody* and *visitation* to *parental responsibility* and *parenting time*, respectively. It also requires a *parenting plan* that allocates: (1) significant decision-making responsibilities; and (2) each parent's right to access his or her child's school records. The *Illinois Marriage and Dissolution of Marriage Act* does not amend ISSRA or the School Code.

<sup>17</sup> Based upon 105 ILCS 5/10-20.40, written permission is not required annually; it is valid until a request for discontinuation of the use of biometric information is received or until the student reaches the age of 18. See 7:340-AP1, E5, *Biometric Information Collection Authorization*.

<sup>18</sup> Districts must reissue 7:340-AP1, E5, *Biometric Information Collection Authorization* to students turning 18 years of age during the school year. This is because all rights and privileges accorded to a parent under ISSRA become exclusively those of the student upon his or her 18th birthday, graduation from secondary school, marriage, or entry into military service, whichever comes first. 105 ILCS 10/2(g).

<sup>19</sup> State law contains two exceptions: (1) the individual who has legal custody/parental responsibility of the student or the student (if over the age of 18) consents to the disclosure; and (2) the disclosure is required by court order. 105 ILCS 10-20.40(b)(5).

the person having legal custody/parental responsibility of the student or the student (if over the age of 18).<sup>20</sup> Requests to discontinue using a student's biometric information shall be forwarded to the Superintendent or designee.

The Superintendent or designee shall develop procedures to implement this policy consistent with State and federal law. <sup>21</sup>

LEGAL REF.: 20 U.S.C. §1232g, Family Educational Rights and Privacy Act, implemented by 34 C.F.R. Part 99.  
50 ILCS 205/7, Illinois Privacy Act  
105 ILCS 5/10-20. 5/10-20.01b, 5/10-20.01, 5/10-20.40, and 5/14-1.01 et seq.  
105 ILCS 10/, Ill. School Student Records Act.  
105 ILCS 85/, Student Online Personal Protection Act.  
325 ILCS 17/, Children's Privacy Protection and Parental Empowerment Act.  
750 ILCS 5/602.11, Ill. Marriage and Dissolution of Marriage Act.  
23 Ill.Admin.Code Parts 226 and 375.  
Owasso I.S.D. No. I-011 v. Falvo, 534 U.S. 426 (2002).  
Chicago Tribune Co. v. Chicago Bd. of Ed., 332 Ill.App.3d 60 (1st Dist. 2002).

CROSS REF.: 5:100 (Staff Development Program), 5:130 (Responsibilities Concerning Internal Information), 7:15 (Student and Family Privacy Rights), 7:220 (Bus Conduct), 7:345 (Use of Educational Technologies; Student Data Privacy and Security)

ADMIN. PROC.: 7:15-E (Notification to Parents of Family Privacy Rights), 7:340-API (School Student Records), 7:340-API, E1 (Notice to Parents/Guardians and Students of Their Rights Concerning a Student's School Records), 7:340-API, E3 (Letter to Parents and Eligible Students Concerning Military Recruiters and Postsecondary Institutions Receiving Student Directory Information), 7:340-API, E4 (Frequently Asked Questions Regarding Military Recruiter Access to Students and Student Information), 7:340-API, E5 (Biometric Information Collection Authorization), 7:340-AP2 (Storage and Destruction of School Student Records), 7:340-AP2, E1 (Letter Containing Schedule for Destruction of School Student Records)

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<sup>20</sup> 105 ILCS 5/10-20.40(d). No notification to or approval from the district's local records commission, pursuant to the Local Records Act, is required to destroy student biometric information. See ¶n 15 for a discussion about the terms *custody* and *parental responsibility*.

<sup>21</sup> Whether the student biometric information is an education record under FERPA or falls under an exception to an education record under FERPA is an issue about which school boards should consult their board attorney. Protected Health Information under the DHS's interpretations of HIPAA excludes education records covered by FERPA, and thus HIPAA requirements are not expected to be triggered by districts collecting student biometric information. However, before implementing policies and procedures to collect student biometric information, a board should discuss these issues with the board attorney.

## Students

### Use of Educational Technologies; Student Data Privacy and Security 1

Educational technologies used in the District shall further the objectives of the District’s educational program, as set forth in Board policy 6:10, *Educational Philosophy and Objectives*, align with the curriculum criteria in policy 6:40, *Curriculum Development*, and/or support efficient District operations. The Superintendent shall ensure that the use of educational technologies in the District meets the above criteria.

The District and/or vendors under its control may need to collect and maintain data that personally identifies students in order to use certain educational technologies for the benefit of student learning or District operations.

Federal and State law govern the protection of student data, including school student records and/or covered information.<sup>2</sup> The sale, rental, lease, or trading of any school student records or covered information by the District is prohibited.<sup>3</sup> Protecting such information is important for legal

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1 The Student Online Personal Protection Act (SOPPA) (105 ILCS 85/), amended by P.A. 101-516, § 10-1, controls the content of this policy. SOPPA specifically requires boards to adopt a policy for designating which district employees are authorized to enter into agreements with operators (see **Operator Contracts** subhead). SOPPA is the State law that governs how educational technology companies, schools, and the Ill. State Board of Education (ISBE) use and protect covered information of students. The amendments to SOPPA were intended to strengthen protections for online student data, in part by centralizing the vetting and contracting process within schools, and to give parents ready access to information about how their children’s data is being used at school. SOPPA does not, however, require a district to obtain parent opt-in or separate consent for the use of online services or applications, nor is such consent required if the operator is acting as a school official pursuant to the delineated exception in the Family Educational Rights and Privacy Act’s (FERPA)(20 U.S.C. §1232g) implementing regulations. See 34 C.F.R. §99.3(a). SOPPA also prohibits the use of educational technology products that collect, store, or transmit personally identifiable information of students to a third party without the district’s prior approval. See 105 ILCS 85/10-1.1. The amendments to SOPPA also prohibit the use of educational technology products that collect, store, or transmit personally identifiable information of students to a third party without the district’s prior approval. See 105 ILCS 85/10-1.1. The amendments to SOPPA also prohibit the use of educational technology products that collect, store, or transmit personally identifiable information of students to a third party without the district’s prior approval. See 105 ILCS 85/10-1.1.

2 SOPPA defines covered information as personally identifiable information that is collected, stored, or transmitted by an educational technology operator to a school, including information about a student’s name, address, phone number, and other information that is used for educational purposes. See 105 ILCS 85/10-1.1. The amendments to SOPPA also prohibit the use of educational technology products that collect, store, or transmit personally identifiable information of students to a third party without the district’s prior approval. See 105 ILCS 85/10-1.1. The amendments to SOPPA also prohibit the use of educational technology products that collect, store, or transmit personally identifiable information of students to a third party without the district’s prior approval. See 105 ILCS 85/10-1.1.

3 See policy 7:340, *Student Records*, and its implementing administrative procedure, 7:340-AP1, *School Student Records*, for requirements addressing school student records under federal and State law. SOPPA does not override or otherwise supersede the requirements of FERPA or the Ill. School Student Records Act (ISSRA) (105 ILCS 10/). 105 ILCS 85/30(9), amended by P.A. 101-516, § 10-1, 11.

Covered information is a broader concept than student records, and may include information that does not qualify as a student record. However, even if the covered information is not maintained as a student record, it may still qualify as a public record under the Local Records Act (50 ILCS 205/), such that a district would have an obligation to maintain it. Consult the board attorney for guidance on these issues.

3 105 ILCS 85/26(1), added by P.A. 101-516, § 10-1, 11. SOPPA includes a clarification that schools and operators are not prohibited from producing and distributing, free or for consideration, student class photos and yearbooks to the school, students, parents, or others authorized by parents, as long as there is a written agreement between the operator and district. 105 ILCS 85/30(10), amended by P.A. 101-516, § 10-1, 11.

compliance, District operations, and maintaining the trust of District stakeholders, including parents, students and staff. <sup>4</sup>

#### Definitions <sup>5</sup>

*Covered information* means personally identifiable information (PII) or information linked to PII in any media or format that is not publicly available and is any of the following: (1) created by or provided to an operator by a student or the student’s parent/guardian in the course of the student’s or parent/guardian’s use of the operator’s site, service or application; (2) created by or provided to an operator by an employee or agent of the District; or (3) gathered by an operator through the operation of its site, service, or application.

*Operators* are entities (such as educational technology vendors) that operate Internet websites, online services, online applications, or mobile applications that are designed, marketed, and primarily used for K-12 school purposes. <sup>6</sup>

*Breach* means the unauthorized acquisition of computerized data that compromises the security, confidentiality or integrity of covered information maintained by an operator or the District. <sup>7</sup>

#### Operator Contracts

The Superintendent or designee designates which District employees are authorized to enter into written agreements with operators for those contracts that do not require separate Board approval.<sup>8</sup> Contracts between the Board and operators shall be entered into in accordance with State law and Board policy 4:60, *Purchases and Contracts*, and shall include any specific provisions required by State law. <sup>9</sup>

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

<sup>4</sup> SOPPA permits, but does not require, districts to designate an appropriate staff person as a Privacy Officer, who may also be an official records custodian under ISSRA, to carry out the duties and responsibilities assigned to schools and to ensure a district’s compliance with the requirements of SOPPA. 105 ILCS 85/27(f), added by P.A. 101-516, § 10-1. For boards that wish to designate a Privacy Officer, add the below sentence to the end of the paragraph. Boards may designate an individual other than the Superintendent to serve in the capacity of Privacy Officer, such as a Business Manager, IT Director, or District Records Custodian.

The Board designates the Superintendent to serve as Privacy Officer, who shall ensure the District complies with the duties and responsibilities required of it under the Student Online Personal Protection Act, 105 ILCS 85/27(f), added by P.A. 101-516, § 10-1.

<sup>5</sup> 105 ILCS 85/5, amended by P.A. 101-516, § 10-1. See fn 3 above for more discussion about *covered information*.

<sup>6</sup> SOPPA specifically provides that it does not apply to general audience websites, online services, online applications, or mobile applications, even if login credentials are required to access the general audience sites, services, or applications. 105 ILCS 85/30(3), amended by P.A. 101-516, § 10-1. Consult the board attorney for guidance regarding whether certain applications that may be widely used by schools, but which may not have been originally marketed to K-12 (e.g., certain video conference applications), come within the scope of SOPPA.

<sup>7</sup> Operators must notify districts of a breach of covered information within the most expedient time possible and without reasonable delay, but no later than 30 calendar days after the determination that a breach has occurred. 105 ILCS 85/15(5), added by P.A. 101-516, § 10-1.

<sup>8</sup> This statement is required by 105 ILCS 85/27(b), added by P.A. 101-516, § 10-1. SOPPA provides that any agreement entered into in violation of SOPPA “is void and unenforceable as against public policy.” *Id.* SOPPA does not provide for a private right of action against school districts; the Ill. Attorney General has enforcement authority under SOPPA through the Consumer Fraud Deceptive Trade Practices Act. 105 ILCS 85/35.

<sup>9</sup> SOPPA requires specific provisions be included in a contract with any operator that seeks to receive covered information from a school district. 105 ILCS 85/15(4) (b)(1)-(3), added by P.A. 101-516, § 10-1. See 7:345-AP, *Use of Educational Technologies: Student Data Privacy and Security*, for details.



Security Standards

The Superintendent or designee shall ensure the District implements and maintains reasonable security procedures and practices that otherwise meet or exceed industry standards designed to protect covered information from unauthorized access, destruction, use, modification, or disclosure.<sup>10</sup> In the event the District receives notice from an operator of a breach or has determined a breach has occurred, the Superintendent or designee shall also ensure that the District provides any breach notifications required by State law. <sup>11</sup>

LEGAL REF.: 20 U.S.C. §1232g, Family and Educational Rights and Privacy Act, implemented by 34 C.F.R. Part 99.  
105 ILCS 10/, Ill. School Student Records Act.  
105 ILCS 85/, Student Online Personal Protection Act.  
*105 ILCS 85/27(a)(5) & (d), added by P.A. 101-516.*

CROSS REF.: 4:15 (Identity Protection), 4:60 (Purchases and Contracts), 6:235 (Access to Electronic Networks), 7:340 (Student Records)

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<sup>10</sup> 105 ILCS 85/27(e), added by P.A. 101-516. *105 ILCS 85/27(e), added by P.A. 101-516.* SOPPA does not provide specifics regarding security procedures or practices, nor is there a formal, nationalized standard specific to K-12. *105 ILCS 85/27(e), added by P.A. 101-516.* However, the Illinois State Board of Education requires ISBE to make available on its website guidance for schools pertaining to reasonable security procedures and practices. *105 ILCS 85/28, added by P.A. 101-516.* *105 ILCS 85/28, added by P.A. 101-516.* Additionally, the Learning Technology Center of Illinois, offers cybersecurity training to administrators and educators throughout the State. See [www.ltc.org](http://www.ltc.org). The U.S. Dept. of Education has also issued multiple guidance documents on security best practices for schools, available at <https://www.ed.gov/privacy/2015/07/2015-07-20-security-best-practices>.

<sup>11</sup> In the event of a breach of covered information of students, SOPPA requires school districts to provide two types of notices: (1) individual notices to the parents of students whose covered information was involved in the breach and (2) a more general notice about the breach on the district's website (or at the district administrative office, if it does not maintain a website) if the breach involved 10% or more of the district's student enrollment. 105 ILCS 85/27(a)(5) & (d), added by P.A. 101-516. *105 ILCS 85/27(a)(5) & (d), added by P.A. 101-516.* See 7:345-AP, *Use of Educational Technologies; Student Data Privacy and Security*, for details about the required notices.

## Community Relations

### Relations with Other Organizations and Agencies

The District shall cooperate with other organizations and agencies, including but not limited to:

- County Health Department
- Law enforcement agencies
- Fire authorities
- Planning authorities
- Zoning authorities <sup>1</sup>
- Illinois Emergency Management Agency (IEMA), local organizations for civil defense, and other appropriate disaster relief organizations concerned with civil defense <sup>2</sup>
- Other school districts

CROSS REF.: 1:20 (District Organization, Operations, and Cooperative Agreements), 4:170 (Safety), 5:50 (Community Organizations, Municipalities, and Counties), 5:90 (Abused and Neglected Child Reporting), 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.

<sup>1</sup> 105 ILCS 5/10-22.13a, as amended by Act No. 1000 and Gruba v. Community High School District 155, 40 N.E.3d 1 (Ill. 2015) (holding school districts are subject to, and school boards must comply with, local government zoning and storm water restrictions, i.e., a city's zoning powers). See also 55 ILCS 5/5-12021, as amended by Act No. 1000; 60 ILCS 1/110-70, as amended by Act No. 1000; and 65 ILCS 5/11-13-27, as amended by Act No. 1000 (outlining specific zoning provisions related to public schools, including requirements for counties, townships, and municipalities to refrain from regulating educational activities and make reasonable efforts to streamline zoning application and review process for public school districts, along with reducing fees and costs).

<sup>2</sup> 105 ILCS 5/10-22.35.

# Closed Session