

## Students

### Equal Educational Opportunities <sup>1</sup>

Equal educational and extracurricular opportunities shall be available for all students without regard to color, race,<sup>2</sup> national origin, religion, sex,<sup>3</sup> sexual orientation, ancestry, age, physical or mental disability, gender identity,<sup>4</sup> status of being homeless, immigration status, order of protection status,

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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. Many civil rights laws guarantee equal educational opportunities; see citations in the Legal References.

<sup>2</sup> The Ill. Human Rights Act (IHRA) defines *race* to include traits associated with race, including, but not limited to, hair texture and protective hairstyles such as braids, locks, and twists. 775 ILCS 5/1-103(M-5). The Ill. Dept. of Human Rights' (IDHR) jurisdiction over schools as "places of public accommodation" is limited, see f/n 4, below. See also sample policy 7:160, *Student Appearance*, regarding hairstyles associated with race.

<sup>3</sup> 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 sex, 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). See sample policy 2:265, *Title IX Grievance Procedure*, for further discussion.

Title IX implementing regulations at 34 C.F.R. §106.40 and 49 C.F.R. §25.445 prohibit "any rule concerning a student's actual or potential parental, family, or marital status which treats students differently on the basis of sex." Ill. State Board of Education (ISBE) sex equity regulation at 23 Ill.Admin.Code §200.50(e) prohibits discrimination against a student "because of his or her actual or potential marital or parental status," and it specifies that: (1) pregnancy shall be treated as any other temporary disability, (2) pregnancy or parenthood shall not be considered cause for dismissal or exclusion from any program or activity, (3) participation in special programs provided for pregnant students or students who are parents shall be at the student's option, and (4) systems shall eliminate administrative and programmatic barriers to school attendance and school completion by pregnant students or students who are parents. *Id.* See f/n 8, below, regarding support services for pregnant and parenting students.

<sup>4</sup> The IHRA and an ISBE rule prohibit schools from discriminating against students on the basis of *sexual orientation* and *gender identity*. 775 ILCS 5/1-103(Q), 5/5-101(11), and 5/5-102; 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 IHRA. The IHRA permits schools to maintain single-sex facilities that are distinctly private in nature, e.g., restrooms and locker rooms. 775 ILCS 5/5-103.

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, national origin, religion, etc. Governor Pritzker issued Executive Order (EO) 2019-11, titled "Strengthening Our Commitment to Affirming and Inclusive Schools" which 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.

military status, unfavorable military discharge, reproductive health decisions, or actual or potential marital or parental status, including pregnancy.<sup>5</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 Board policy 8:20, *Community Use of School Facilities*.<sup>6</sup> Any student may file a discrimination complaint by using Board policy 2:260, *Uniform Grievance Procedure*, or in the case of discrimination on the basis of race, color, or national origin, Board policy 2:270, *Discrimination and Harassment on the Basis of Race, Color, and National Origin Prohibited*.<sup>7</sup>

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**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 sample administrative procedure 7:10-AP1, *Accommodating Transgender, Nonbinary, or Gender Nonconforming 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 sample exhibit 7:10-E, *Equal Educational Opportunities Within the School Community*.

<sup>5</sup> 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)).”

775 ILCS 5/1-102(A), amended by P.A.s 103-472 and 103-785, lists the following protected categories: race, color, religion, sex, national origin, ancestry, age, order of protection status, marital status, physical or mental disability, military status, sexual orientation, pregnancy, reproductive health decisions, or unfavorable discharge from military service in connection with employment, real estate transactions, access to financial credit, and the availability of public accommodations, including in elementary, secondary, and higher education. See sample policy 5:10, *Equal Employment Opportunity and Minority Recruitment*, and its footnotes for definitions of some of these terms.

The IHRA prohibits schools from discriminating against students on the bases of *reproductive health decisions*. 775 ILCS 5/1-103(Q), amended by P.A. 103-785. See 775 ILCS 5/1-103(O-2), amended by P.A. 103-785, for a definition of *reproductive health decisions*.

The IHRA’s jurisdiction in regard to schools as places of public accommodation is specifically limited to: (1) failing to enroll an individual, (2) denying or refusing full and equal enjoyment of 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>6</sup> 23 Ill.Admin.Code §200.40(g) 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., Girl Scouts. Note that the U.S. Supreme Court refused to apply New Jersey’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>7</sup> Districts must have a grievance procedure. See the Legal References following this policy and 105 ILCS 5/22-95, added by P.A. 103-472, regarding the internal complaint process for claims of discrimination on the basis of race, color, or national origin, which is addressed in sample policy 2:270, *Discrimination and Harassment on the Basis of Race, Color, and National Origin Prohibited*. 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.

## Sex Equity<sup>8</sup>

No student shall, based on sex, sexual orientation, or gender identity<sup>9</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 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>10</sup>

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<sup>8</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 or refusing an individual full and equal enjoyment of 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(11)). Every four years, districts must 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 §200.40(e).

Every four years, districts must survey students about their athletic interests and must use survey results in planning for the future and assessing current program comparability. 23 Ill.Admin.Code §200.80(b)(1). Equal participation and equal opportunity in athletics is addressed in Title IX implementing regulations. 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 Grievance Procedure*, for further discussion.

105 ILCS 5/10-20.60 requires public schools to provide reasonable accommodations to breastfeeding students. See sample administrative procedure 7:10-AP2, *Accommodating Breastfeeding Students*, for specific *reasonable accommodations* under Illinois law.

105 ILCS 5/10-20.63 requires school districts to make menstrual hygiene products (defined as tampons and sanitary napkins for use in connection with the menstrual cycle) available, at no cost to students, in bathrooms of every school building that is open for student use in grades 4 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. Consult with the board attorney about implementing this law.

105 ILCS 5/26A-40, added by P.A. 102-466, a/k/a *Ensuring Success in School Law*, eff. 7-1-25, requires schools to "facilitate the full participation of students who are parents, expectant parents, or victims of domestic or sexual violence" by providing certain in-school support services. For further information, see sample policy 7:255, *Students Who are Parents, Expectant Parents, or Victims of Domestic or Sexual Violence*.

<sup>9</sup> For boards that want to incorporate ISBE's *Sample District Policy and Administrative Procedures* policy recommendations into this policy (see f/n 4 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."

<sup>10</sup> Districts must have a sex equity 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 f/n 9.

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

Any student may file a sexual harassment complaint by using Board policy 2:265, *Title IX Grievance Procedure*.

#### Administrative Implementation

The Superintendent shall appoint a Nondiscrimination Coordinator and a Title IX Coordinator.<sup>11</sup> The Superintendent and Building Principal shall use reasonable measures to inform staff members and students of this policy and related grievance procedures.<sup>12</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; 34 C.F.R. Part 104.  
42 U.S.C. §2000d, Title VI of the Civil Rights Act of 1964; 34 C.F.R. Part 100.  
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, 5/10-22.5, 5/26A, 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 Grievance Procedure), 2:270 (Discrimination and Harassment on the Basis of Race, Color, and National Origin Prohibited), 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 (School Uniforms), 7:180 (Prevention of and Response to Bullying, Intimidation, and Harassment), 7:185 (Teen Dating Violence Prohibited), 7:250 (Student Support Services), 7:255 (Students Who are Parents, Expectant Parents, or Victims of Domestic or Sexual Violence), 7:330 (Student Use of Buildings - Equal Access), 7:340 (Student Records), 8:20 (Community Use of School Facilities)

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<sup>11</sup> Required by regulations implementing Title IX. 34 C.F.R. §106.8(a). See f/ns 24 and 25 in sample policy 2:260, *Uniform Grievance Procedure*. The Nondiscrimination Coordinator often also serves as the Title IX Coordinator.

<sup>12</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 (IPA) maintains a handbook service that coordinates with **PRESS** material, *Online Model Student Handbook (MSH)*, at: [www.ilprincipals.org/msh](http://www.ilprincipals.org/msh).