

School Board

School District Elections 1

School District elections are non-partisan, governed by the general election laws of the State, and include the election of School Board members, various public policy propositions, and advisory questions. 2 Board members are elected at the consolidated election held on the first Tuesday in April in odd-numbered years. 3 If, however, that date conflicts with the celebration of Passover, the consolidated election is postponed to the first Tuesday following the last day of Passover. 4 The canvass of votes is conducted by the election authority within 21 days after the election. 5

~~The Board's election duties are:~~

The Board, by proper resolution, may ~~place~~ cause to be placed on the ballot: (a) public policy referendum according to Article 28 of the Election Code, or (b) advisory questions of public policy according to Section 9-1.5 of the School Code. 6

~~The Board President, Secretary, and the member with the longest continuous service compose the Education Officers Electoral Board to hear and rule on objections to candidate nominating petitions and public questions. However, if any member of the Electoral Board is a candidate for the office for which the objection petition is filed, he or she is replaced on the Electoral Board by the School Board member with the second longest continuous service.~~

~~The Board Secretary or clerk serves as the local election official, assisted by designated representatives appointed by the Board. The Board Secretary serves as the local election official. He or she receives petitions for the submission of a public question to referenda and forwards them to the~~

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1 State law controls this policy's content. Consult the board attorney early concerning any election question.

2 105 ILCS 5/9-10, amended by P.A. 98-115, provides that nominating petitions are filed with the county clerk or the county board of election commissioners if one was created pursuant to 10 ILCS 5/6A-1. Objections to nominating petitions or to a petition for a public question are submitted to the county officers electoral board (10 ILCS 5/10-8 and 10-9, amended by P.A. 98-115). P.A. 98-115 amended the Election Code regarding reportable campaign contributions (10 ILCS 9-1.8); simultaneous filing of nominating petitions (10 ILCS 5/10-6.2); withdrawal from nomination (10 ILCS 5/10-7); Electoral Board duties (10 ILCS 5/10-10); and advertising in proximity of a polling place (10 ILCS 5/19A-70). See also 10 ILCS 5/1-3 (definitions), 5/2A (time of holding elections), and 5/28 (submitting public questions). The school board secretary or clerk has no statutory duties regarding the election of members to the school board. He or she is well advised to refer all questions to the county clerk or the county board of election commissioners, whichever is applicable.

3 10 ILCS 5/2A-1.1.

4 10 ILCS 5/2A-1.1a.

5 ~~All local canvassing boards were abolished in 2006 and school boards no longer canvass elections.~~ The appropriate *election authority* (county clerk or election commission) canvasses the vote for school district elections (10 ILCS 5/1-8). The election authority must canvass the vote within 21 days after the election (10 ILCS 5/22-17 and 5/22-18). Within 28 days after the consolidated election, boards must hold an organizational meeting to elect officers and fix a time and place for regular meetings (105 ILCS 5/10-16). See policy 2:210, *Organizational School Board Meeting*.

6 This policy addresses two types of public questions: (1) binding referendum governed by 10 ILCS 5/28, and (2) advisory questions of public policy governed by 105 ILCS 5/9-1.5. An advisory question must be authorized by majority vote of the board. A third type of public question – a voter-initiated petition – is not covered in the policy; the board does not have any duties regarding this type of petition. A voter-initiated petition must be filed with the school board secretary who, if the timelines are met, must certify the question to be placed on the ballot to the county clerk (10 ILCS 5/10-15, 5/28-2, and 5/28-5).

proper election officer and otherwise provides information to the community concerning District elections. ⁷

LEGAL REF.: 10 ILCS 5/1-3, 5/2A, 5/10-9, 5/22-17, 5/22-18, and 5/28.
105 ILCS 5/9 and 5/9-1.5.

CROSS REF.: 2:40 (Board Member Qualifications), 2:50 (Board Member Term of Office),
2:210 (Organizational School Board Meeting)

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⁷ 10 ILCS 5/28-6 provides that any petition for the submission of a public question to referendum must be filed with the local election official. The board secretary or clerk is the local election official (105 ILCS 5/9-2 and 10 ILCS 5/1-3). P.A. 98-115 reassigned many duties of the local election official; see f/n 2. The board may delete the following PR function: “and otherwise provides information to the community concerning District elections.”

School Board

Board Member Conflict of Interest ¹

No School Board member shall have a beneficial interest directly or indirectly in any contract, work, or business of the District unless permitted by State law. ²

Board members must annually file a *Statement of Economic Interests* as required by the Illinois Governmental Ethics Act. ³ Each Board member is responsible for filing the statement with the county clerk of the county in which the District's main office is located by May 1.

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¹ State law controls this policy's content. Conflict of interest is comprehensively discussed in the Ill. Council of School Attorneys' publication, *Answers to FAQs, Conflict of Interest and Incompatible Offices*, www.iasb.com/law/conflict.cfm.

² The School Code prohibits a school board member from having an interest in a contract with the district he or she serves. Exceptions to this rule permit a board member to provide materials, merchandise, property, services, or labor if: (1) the board member has less than a 7½% share in the ownership of the business; the board member publicly discloses the interest; the board member abstains from voting on the contract; the contract is approved by a majority vote; the contract is awarded after sealed bids to the lowest responsible bidder if the amount of the contract exceeds \$1500, or awarded without bidding if the amount of the contract is less than \$1500; and the award of the contract would not cause the aggregate amount of all such contracts so awarded in the same fiscal year to exceed \$25,000; OR (2) the contract is approved by a majority vote, provided that any such interested member shall abstain from voting; the amount of the contract does not exceed \$1000 or the award of the contract does not cause the aggregate amount of such contracts to the same individual to exceed \$2000 in the same fiscal year, or \$5,000 in the same fiscal year if the labor or materials to be provided are not otherwise available in the district; and the interested member publicly discloses the interest. See 105 ILCS 5/10-9 for other exceptions.

A board member does not have a prohibited interest in a contract with the district he or she serves "if the board member is an employee of a business that is involved in the transaction of business with the school district, provided that the board member has no financial interests other than as an employee," (105 ILCS 5/10-9).

The Public Officer Prohibited Activities Act prohibits a governing body member from being "in any manner financially interested directly in his own name or indirectly in the name of any other person, association, trust, or corporation, in any contract or the performance of any work in the making or letting of which such officer may be called upon to act or vote," (50 ILCS 105/3). Exceptions to this prohibition are similar to those in the School Code.

Generally, an individual may be a board member at a school district that employs his or her spouse. Indeed, 105 ILCS 5/10-22.3a specifically allows a board member to participate in a group health insurance program provided to a district employee if the board member is that employee's dependent, i.e., spouse or child. However, this is a fact-sensitive inquiry; a board member should seek legal counsel before voting on anything related to his or her spouse. See the *Answers to FAQs*, referenced in footnote 1.

A violation of the School Code or Public Officer Prohibited Activities Act is a Class 4 felony. Due to the severity of this penalty as well as to avoid the appearance of impropriety, a legal opinion should be obtained before a board member becomes financially interested in any contract with his or her district. Abstaining on the vote, or absence from the meeting when the vote is taken, does not negate an otherwise illegal conflict of interest.

³ 5 ILCS 420/4A-101 and 4A-105 through 107. Any county clerk may implement a system of Internet-based filing for economic interest statements, but must allow filers the option to use a standardized form (5 ILCS 420/4A-108). If an Internet-based filing system is used, the clerk must post the statements, without filers' addresses, on a publicly accessible website (*Id.*).

Each candidate for the school board must file with the county clerk or the county board of election commissioners, whichever is applicable, a receipt from the county clerk showing that the candidate has filed a *Statement of Economic Interests* as required by the Ill. Governmental Ethics Act (5 ILCS 420/4A). A candidate's name will be stricken from the ballot if he or she files the incorrect *Statement of Economic Interests* form (Ferrand v. Chicago Bd of Election Comm., 2014 Ill.App.1st 140225 (2-13-2014); Cortez v. Municipal Officers Electoral Board, 986 N.E.2d 689 (Ill. App., 2-25-2013).

LEGAL REF.: 5 ILCS 420/4A-101, 420/4A-105, 420/4A-106, and 420/4A-107.
50 ILCS 105/3.
105 ILCS 5/10-9.

CROSS REF.: 2:105 (Ethics and Gift Ban), 5:120 (Ethics and Conduct)

School Board

Qualifications, Term, and Duties of Board Officers 1

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

President 3

The Board elects a President from its members for a 2-year term. The duties of the President are to:

1. Focus the Board meeting agendas on appropriate content and preside at all meetings;
2. Make all Board committee appointments, unless specifically stated otherwise; ⁴
3. Attend and observe any Board committee meeting at his or her discretion; ⁵
4. Represent the Board on other boards or agencies;
- ~~5. Serve as chairperson of the Education Officers Electoral Board which hears challenges to Board candidate nominating petitions;~~
- ~~6.5.~~ Sign official District documents requiring the President's signature, including Board minutes and Certificate of Tax Levy;
- ~~7.6.~~ Call special meetings of the Board;
- ~~8.7.~~ Serve as the *head of the public body* for purposes of the Open Meetings Act and Freedom of Information Act; ⁶
- ~~9.8.~~ Ensure that a quorum of the Board is physically present at all Board meetings; ⁷
- ~~10.9.~~ Administer the oath of office to new Board members; and ⁸

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

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

² Districts governed by a board of directors have 3 officers: a president, clerk, and treasurer. The president and clerk must be board members (105 ILCS 5/10-5).

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

Of the listed duties, only the following are imposed by law: #1, preside at meetings (Id.); #5, ~~chair Education Officers Electoral Board (10 ILCS 5/10-8); #6,~~ sign minutes (105 ILCS 5/10-7) and sign certificate of tax levy (105 ILCS 5/17-11); #~~7~~ ⁶, call special meetings (105 ILCS 5/10-16); and #~~8~~ ⁷, serve as *head of the public body* for OMA and FOIA purposes (5 ILCS 140/2(e), 140/7(f), and 140/9.5).

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

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

⁶ The *head of the public body* or its attorney may request an advisory opinion from the Attorney General concerning compliance with the Open Meetings Act or the Freedom of Information Act (5 ILCS 120/3.5(h) and 5 ILCS 140/9.5(h)). The Freedom of Information Act defines *head of the public body* to mean *president* or "such person's duly authorized designee" (5 ILCS 140/2(e)). Preliminary drafts, recommendations, and other records in which opinions are expressed, or policies are formulated, lose this exemption from disclosure if a relevant portion of a requested record is publicly cited and identified by the *head of the public body* (5 ILCS 140/7(f)).

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

~~11.10.~~ 10. Serve as the Board's official spokesperson to the media.

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

The Vice President fills a vacancy in the Presidency. ⁹

Vice President 10

The Board elects a Vice President from its members for a 2-year term. The Vice President performs the duties of the President if:

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

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

Secretary 11

The Board elects a Secretary for a 2-year term. The secretary may be, but is not required to be, a Board member. The Secretary may receive reasonable compensation as determined by the Board before appointment. However, if the secretary is a Board member, the compensation shall not exceed \$500 per year, as fixed by the Board at least 180 days before the beginning of the term. The duties of the Secretary are to:

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

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

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

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

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

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

Use this alternative for districts in suburban Cook County: replace "Regional Superintendent" in item #4 with "appropriate Intermediate Service Center." P.A. 96-893 abolished the Regional Office of Education for Suburban Cook County and transferred its duties and powers to Intermediate Service Centers.

8. Sign official District documents requiring the Secretary's signature; and
9. Maintain Board policy and such other official documents as directed by the Board.

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

Recording Secretary 12

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

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

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

Treasurer 13

The Treasurer of the Board shall be either a member of the Board who serves a 1-year term or a non-Board member who serves at the Board's pleasure. **14** A Treasurer who is a Board member may not be compensated. **15** A Treasurer who is not a Board member may be compensated provided it is established before the appointment. **16** The Treasurer must: **17**

1. Be at least 21 years old;
2. Not be a member of the County Board of School Trustees; and

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12 This section is optional.

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

14 105 ILCS 5/8-1(b). The treasurer's term of office is 2 years if the district is located in a Class II county (Cook Co.) that was under the jurisdiction and authority of the township treasurer and township trustees of schools at the time those offices were abolished (105 ILCS 5/8-1(c)). Those boards should use the following alternative:

The Treasurer of the Board shall serve a 2-year term beginning and ending on the first day of July.

15 105 ILCS 5/8-1(b) and (c).

16 105 ILCS 5/8-3.

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

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

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

3. Have a financial background or related experience, or 12 credit hours of college-level accounting.

The Treasurer shall: **18**

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

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

LEGAL REF.: 5 ILCS 120/7 and 420/4A-106.
105 ILCS 5/8-1, 5/8-2, 5/8-3, 5/8-6, 5/8-16, 5/8-17, 5/10-1, 5/10-5, 5/10-7, 5/10-8,
5/10-13, 5/10-13.1, 5/10-14, 5/10-16.5, and 5/17-1.

CROSS REF.: 2:80 (Board Member Oath and Conduct), 2:210 (Organizational School Board Meeting)

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18 105 ILCS 5/8-2, 5/8-6, and 5/8-16.

Operational Services

Revenue and Investments ¹

Revenue

The Superintendent or designee is responsible for making all claims for property tax revenue, State Aid, special State funds for specific programs, federal funds, and categorical grants.

Investments

The Superintendent shall either appoint a Chief Investment Officer or serve as one. ² The Chief Investment Officer shall invest money that is not required for current operations, in accordance with this policy and State law. ³

The Chief Investment Officer and Superintendent shall use the standard of prudence when making investment decisions. They shall use the judgment and care, under circumstances then prevailing, that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the safety of their capital as well as its probable income. ⁴

Investment Objectives ⁵

The objectives for the School District's investment activities are:

1. Safety of Principal - Every investment is made with safety as the primary and over-riding concern. Each investment transaction shall ensure that capital loss, whether from credit or market risk, is avoided.
2. Liquidity - The investment portfolio shall provide sufficient liquidity to pay District obligations as they become due. In this regard, the maturity and marketability of investments shall be considered.
3. Rate of Return - The highest return on investments is sought, consistent with the preservation of principal and prudent investment principles.
4. Diversification - The investment portfolio is diversified as to materials and investments, as appropriate to the nature, purpose, and amount of the funds.

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¹ Each district must have an investment policy (30 ILCS 235/2.5); its detail and complexity must be appropriate to the nature of the funds, the funds' purpose, and the amount of the public funds within the investment portfolio.

² 30 ILCS 235/2.5(a)(7). Districts having a chief business official may use this alternative: "The Chief Business Official shall serve as the District's Chief Investment Officer." If a Township Treasurer manages the district funds, substitute this sentence: "The Township Treasurer shall serve as the Chief Investment Officer."

³ Township and school treasurers are authorized by 105 ILCS 5/8-7 to enter into agreements regarding the deposit, investment, and withdrawal of district funds.

⁴ The policy must include a standard of care (30 ILCS 235/2.5(a)(2).

⁵ The policy must address safety, liquidity, return (30 ILCS 235/2.5(a), as well as diversification (30 ILCS 235/2.5(a)(4). These objectives also serve as investment guidelines (30 ILCS 235/2.5(a)(3). How these are addressed is at the board's discretion.

Authorized Investments 6

The Chief Investment Officer may invest District funds in one or more of the following:

1. Bonds, notes, certificates of indebtedness, treasury bills, or other securities now or hereafter issued, that are guaranteed by the full faith and credit of the United States of America as to principal and interest.
2. Bonds, notes, debentures, or other similar obligations of the United States of America, its agencies, and its instrumentalities.

The term “agencies of the United States of America” includes: (i) the federal land banks, federal intermediate credit banks, banks for cooperative, federal farm credit banks, or any other entity authorized to issue debt obligations under the Farm Credit Act of 1971 and Acts amendatory thereto, (ii) the federal home loan banks and the federal home loan mortgage corporation, and (iii) any other agency created by Act of Congress.

3. Interest-bearing savings accounts, interest-bearing certificates of deposit or interest-bearing time deposits or any other investments constituting direct obligations of any bank as defined by the Illinois Banking Act.
4. Short term obligations of corporations organized in the United States with assets exceeding \$500,000,000 if: (i) such obligations are rated at the time of purchase at one of the 3 highest classifications established by at least 2 standard rating services and that mature not later than 270 days from the date of purchase, (ii) such purchases do not exceed 10% of the corporation’s outstanding obligations, and (iii) no more than one-third of the District’s funds may be invested in short term obligations of corporations.
5. Money market mutual funds registered under the Investment Company Act of 1940, provided that the portfolio of any such money market mutual fund is limited to obligations described in paragraph (1) or (2) and to agreements to repurchase such obligations.

6. Interest-bearing bonds of any county, township, city, village, incorporated town, municipal corporation, school district, the State of Illinois, any other state, or any political subdivision or agency of the State of Illinois or any other state, whether the interest earned is taxable or tax-exempt under federal law. The bonds shall be (a) registered in the name of the municipality, county, or other governmental unit, or held under a custodial agreement at a bank, and (b) rated at the time of purchase within the 4 highest general classifications established by a rating service of nationally recognized expertise in rating bonds of states and their political subdivisions.

~~6.7.~~ Short term discount obligations of the Federal National Mortgage Association or in shares or other forms of securities legally issuable by savings banks or savings and loan associations

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⁶ The policy must contain a “listing of authorized investments” (30 ILCS 235/2.5(a)(1). 30 ILCS 235/2(a-1), amended by P.A. 98-297, now allows school districts to invest public funds in interest-bearing bonds of any local government (see paragraph 6). Investments from which a board may choose are all listed in this policy (see 30 ILCS 235/2). Alternatively, a board may refer to that law by stating: “The Chief Investment Officer may invest any District funds in any investment as authorized in 30 ILCS 235/2, and Acts amendatory thereto.”

As part of its mission to protect public entities, the Municipal Securities Rulemaking Board (MSRB) has the following resources available that school officials may find helpful:

1. A State and Local Government Toolkit at: www.msrb.org/MSRB-For/Issuers/Issuer-Toolkit.aspx. It provides information about bond issuance and required disclosures.
2. Resources about issuing bonds at: www.msrb.org/MSRB-For/Issuers.aspx.

incorporated under the laws of this State or any other state or under the laws of the United States. Investments may be made only in those savings banks or savings and loan associations, the shares, or investment certificates that are insured by the Federal Deposit Insurance Corporation. Any such securities may be purchased at the offering or market price thereof at the time of such purchase. All such securities so purchased shall mature or be redeemable on a date or dates prior to the time when, in the judgment of the Chief Investment Officer, the public funds so invested will be required for expenditure by the District or its governing authority.

~~7.8.~~ Dividend-bearing share accounts, share certificate accounts, or class of share accounts of a credit union chartered under the laws of this State or the laws of the United States; provided, however, the principle office of any such credit union must be located within the State of Illinois. Investments may be made only in those credit unions the accounts of which are insured by applicable law.

~~8.9.~~ A Public Treasurers' Investment Pool created under Section 17 of the State Treasurer Act. The District may also invest any public funds in a fund managed, operated, and administered by a bank, subsidiary of a bank, or subsidiary of a bank holding company or use the services of such an entity to hold and invest or advise regarding the investment of any public funds.

~~9.10.~~ The Illinois School District Liquid Asset Fund Plus. ⁷

~~10.11.~~ Repurchase agreements of government securities having the meaning set out in the Government Securities Act of 1986, as now or hereafter amended or succeeded, subject to the provisions of said Act and the regulations issued there under. The government securities, unless registered or inscribed in the name of the District, shall be purchased through banks or trust companies authorized to do business in the State of Illinois.

Except for repurchase agreements of government securities that are subject to the Government Securities Act of 1986, as now or hereafter amended or succeeded, the District may not purchase or invest in instruments that constitute repurchase agreements, and no financial institution may enter into such an agreement with or on behalf of the District unless the instrument and the transaction meet all of the following requirements:

- a. The securities, unless registered or inscribed in the name of the District, are purchased through banks or trust companies authorized to do business in the State of Illinois.
- b. The Chief Investment Officer, after ascertaining which firm will give the most favorable rate of interest, directs the custodial bank to "purchase" specified securities from a designated institution. The "custodial bank" is the bank or trust company, or agency of government, that acts for the District in connection with repurchase agreements involving the investment of funds by the District. The State Treasurer may act as custodial bank for public agencies executing repurchase agreements.

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⁷ The Illinois School District Liquid Asset Fund Plus is an Illinois trust organized to permit Illinois school districts, community colleges, and educational service regions to pool their investment funds to obtain the highest possible investment yield consistent with maintaining liquidity and preserving capital, and to engage in cooperative cash management activities resulting in more efficient financial resource utilization. The program was developed in cooperation with the Illinois Association of School Boards, the Illinois Association of School Business Officials, and the Illinois Association of School Administrators. To receive marketing information and the name of the marketing representative, contact: PMA Financial Network, Inc., Illinois School District Liquid Asset Fund Plus, www.isdlafplus.com, 27545 Diehl Road, Warrenville, Illinois 60555; or call 1-866-747-4477.

- c. A custodial bank must be a member bank of the Federal Reserve System or maintain accounts with member banks. All transfers of book-entry securities must be accomplished on a Reserve Bank's computer records through a member bank of the Federal Reserve System. These securities must be credited to the District on the records of the custodial bank and the transaction must be confirmed in writing to the District by the custodial bank.
- d. Trading partners shall be limited to banks or trust companies authorized to do business in the State of Illinois or to registered primary reporting dealers.
- e. The security interest must be perfected.
- f. The District enters into a written master repurchase agreement that outlines the basic responsibilities and liabilities of both buyer and seller.
- g. Agreements shall be for periods of 330 days or less.
- h. The Chief Investment Officer informs the custodial bank in writing of the maturity details of the repurchase agreement.
- i. The custodial bank must take delivery of and maintain the securities in its custody for the account of the District and confirm the transaction in writing to the District. The custodial undertaking shall provide that the custodian takes possession of the securities exclusively for the District; that the securities are free of any claims against the trading partner; and that any claims by the custodian are subordinate to the District's claims to rights to those securities.
- j. The obligations purchased by the District may only be sold or presented for redemption or payment by the fiscal agent bank or trust company holding the obligations upon the written instruction of the Chief Investment Officer.
- k. The custodial bank shall be liable to the District for any monetary loss suffered by the District due to the failure of the custodial bank to take and maintain possession of such securities.

~~11.12.~~ Any investment as authorized by the Public Funds Investment Act, and Acts amendatory thereto. Paragraph 11 supersedes paragraphs 1-10 and controls in the event of conflict.

Except as provided herein, investments may be made only in banks, savings banks, savings and loan associations, or credit unions that are insured by the Federal Deposit Insurance Corporation or other approved share insurer. **8**

Selection of Depositories, Investment Managers, Dealers, and Brokers **9**

The Chief Investment Officer shall establish a list of authorized depositories, investment managers, dealers and brokers based upon the creditworthiness, reputation, minimum capital requirements, qualifications under State law, as well as a long history of dealing with public fund entities. The Board will review and approve the list at least annually.

In order to be an authorized depository, each institution must submit copies of the last 2 sworn statements of resources and liabilities or reports of examination that the institution is required to furnish to the appropriate State or federal agency. **10** Each institution designated as a depository shall, while acting as such depository, furnish the District with a copy of all statements of resources and

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

8 30 ILCS 235/2.

9 The policy must address these topics (30 ILCS 235/2.5(a)(11).

10 30 ILCS 235/6.

liabilities or all reports of examination that it is required to furnish to the appropriate State or federal agency. **11**

The above eligibility requirements of a bank to receive or hold public deposits do not apply to investments in an interest-bearing savings account, interest-bearing certificate of deposit, or interest-bearing time deposit if: (1) the District initiates the investment at or through a bank located in Illinois, and (2) the invested public funds are at all times fully insured by an agency or instrumentality of the federal government. **12**

The District may consider a financial institution's record and current level of financial commitment to its local community when deciding whether to deposit funds in that financial institution. The District may consider factors including: **13**

1. For financial institutions subject to the federal Community Reinvestment Act of 1977, the current and historical ratings that the financial institution has received, to the extent that those ratings are publicly available, under the federal Community Reinvestment Act of 1977;
2. Any changes in ownership, management, policies, or practices of the financial institution that may affect the level of the financial institution's commitment to its community;
3. The financial impact that the withdrawal or denial of District deposits might have on the financial institution;
4. The financial impact to the District as a result of withdrawing public funds or refusing to deposit additional public funds in the financial institution; and
5. Any additional burden on the District's resources that might result from ceasing to maintain deposits of public funds at the financial institution under consideration.

Collateral Requirements **14**

All amounts deposited or invested with financial institutions in excess of any insurance limit shall be collateralized in accordance with the Public Funds Investment Act, 30 ILCS 235/. The Superintendent or designee shall keep the Board informed of collateral agreements.

Safekeeping and Custody Arrangements **15**

The preferred method for safekeeping is to have securities registered in the District's name and held by a third-party custodian. Safekeeping practices should qualify for the Governmental Accounting Standards Board Statement No. 3 Deposits with Financial Institutions, Investments (including Repurchase Agreements), and Reverse Repurchase Agreements, Category I, the highest recognized safekeeping procedures.

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11 Id.

12 30 ILCS 235/6.5.

13 This paragraph is optional, but is authorized by 30 ILCS 235/8.

14 Collateral requirements are permissive; if used, guidelines regarding their use must be included in the policy (30 ILCS 235/2.5(a)(5)). The requirements for collateral agreements are in 30 ILCS 235/6(d). The sample policy contains one guideline, that is, that the board be kept informed of collateral agreements. An optional guideline follows: "In addition, the financial institution must provide the Board with a copy of its board of directors' meeting minutes evidencing that the board of directors approved the collateral agreement."

15 The policy must address safekeeping and custody arrangements (30 ILCS 235/2.5(a)(5)). Registration requirements are in 30 ILCS 235/3.

Controls and Report 16

The Chief Investment Officer shall establish a system of internal controls and written operational procedures to prevent losses arising from fraud, employee error, misrepresentation by third parties, or imprudent employee action.

The Chief Investment Officer shall provide a quarterly investment report to the Board. The report will: (1) assess whether the investment portfolio is meeting the District's investment objectives, (2) identify each security by class or type, book value, income earned, and market value, (3) identify those institutions providing investment services to the District, and (4) include any other relevant information. The investment portfolio's performance shall be measured by appropriate and creditable industry standards for the investment type. **17**

The Board will determine, after receiving the Superintendent's recommendation, which fund is in most need of interest income and the Superintendent shall execute a transfer. This provision does not apply when the use of interest earned on a particular fund is restricted. **18**

Ethics and Conflicts of Interest 19

The Board and District officials will avoid any investment transaction or practice that in appearance or fact might impair public confidence. Board members are bound by the Board policy 2:100, *Board Member Conflict of Interest*. No District employee having influence on the District's investment decisions shall:

1. Have any interest, directly or indirectly, in any investments in which the District is authorized to invest,
2. Have any interest, directly or indirectly, in the sellers, sponsors, or managers of those investments, or
3. Receive, in any manner, compensation of any kind from any investments in that the agency is authorized to invest.

LEGAL REF.: 30 ILCS 235/
105 ILCS 5/8-7, 5/10-22.44, 5/17-1, and 5/17-11.

CROSS REF.: 2:100 (Board Member Conflict of Interest), 4:10 (Fiscal and Business Management), 4:80 (Accounting and Audits)

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16 The policy must provide for internal controls, periodic review, and at least quarterly written investment reports (30 ILCS 235/2.5(a)(6), (9), and (10)). The operational procedures to prevent losses are best addressed by each district in consultation with its auditor and legal counsel. See 4:80, *Accounting and Audits*, and 4:80-AP, *Checklist for Internal Controls*.

17 The policy must include performance measures (30 ILCS 235/2.5(8)).

18 105 ILCS 5/10-22.44. "Chief Business Official" may replace "Superintendent." Interest income earned on any funds for IMRF, Tort Immunity Act, Fire Prevention, Safety and Environmental Energy, and Capital Improvement Act are restricted to the respective fund. *Id.*

19 The policy must address these topics (30 ILCS 235/2.5(a)(12)). The conflict of interest prohibition is in 30 ILCS 235/2.

General Personnel

Equal Employment Opportunity and Minority Recruitment 1

The School District shall provide equal employment opportunities² to all persons regardless of their race; color; creed; religion;³ national origin; sex;⁴ sexual orientation;⁵ age;⁶ ancestry; marital status;⁷ arrest record;⁸ military status; order of protection status;⁹ unfavorable military discharge;¹⁰

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

¹ Federal and State law (see the policy’s legal references) require that all districts have a policy on equal employment opportunities and control this policy’s content.

² *Equal employment opportunities* applies to virtually all terms and conditions of employment, e.g., discharge, hire, promotion, pay, demotion, and benefits (see legal references). The Illinois Constitution protects the following categories from discrimination in employment: race, color, creed, national ancestry, and handicap (Art. I, §§17, 18, and 19). The Ill. Human Rights Act protects the following categories from discrimination in employment: race, color, religion, national origin, ancestry, age, sex, marital status, handicap, military status, order of protection status, sexual orientation, and unfavorable discharge from military service (775 ILCS 5/1-102).

The Equal Employment Opportunities Act (Title VII) prohibits discrimination because of an individual’s race, color, religion, sex, or national origin (42 U.S.C. §2000e, amended by The Lilly Ledbetter Fair Pay Act, Pub.L. 111-2).

The Lilly Ledbetter Fair Pay Act 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. Consult the board attorney for guidance regarding the Lilly Ledbetter Fair Pay Act’s specific applications to the district.

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

³ In addition to the Ill. Human Rights Act and the federal Equal Employment Opportunities Act (discussed in footnote 2); see the Religious Freedom Restoration Act (775 ILCS 35/).

⁴ In addition to the Ill. Human Rights Act and the federal Equal Employment Opportunities Act (discussed in footnote 2), see Title IX of the Education Amendments, 20 U.S.C. §1681 et seq. The federal Equal Pay Act prohibits an employer from paying persons of one gender less than the wage paid to persons of the opposite gender for equal work (29 U.S.C. §206(d). The State Equal Pay Act of 2003, 820 ILCS 112/, offers greater protection by prohibiting the payment of wages to one gender less than another gender *for the same or substantially similar work*. Similar to the Lilly Ledbetter Fair Pay Act, now 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 Ill. Dept. of Labor. The Pregnancy Discrimination Act amended the Equal Employment Opportunities Act to prohibit discrimination on the basis of pregnancy, childbirth, or related medical conditions (42 U.S.C. §2000e(k).

⁵ Illinois Human Rights Act, 775 ILCS 5/1-101 et seq. *Sexual orientation* means actual or perceived heterosexuality, homosexuality, bisexuality, or gender-related identity; it does not include a physical or sexual attraction to a minor by an adult (775 ILCS 5/1-103(O-1).

⁶ Age Discrimination in Employment Act (ADEA), 29 U.S.C. §621 et seq., amended by The Lilly Ledbetter Fair Pay Act, Pub.L. 111-2 (see f/n 2 above). 29 C.F.R. Part 1625, amended the EEOC regulations under ADEA to reflect the U.S. Supreme Court’s decision in General Dynamic Systems, Inc. v. Cline, 540 U.S. 581(2004), holding the ADEA to permit employers to favor older workers because of age. Thus favoring an older person over a younger person is not unlawful discrimination, even when the younger person is at least 40 years old.

⁷ 105 ILCS 5/10-22.4 and 775 ILCS 5/1-103(Q). 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, 664 N.E.2d 61 (1996).

⁸ Districts may not make employment decisions on the basis of arrest history, but may use conviction information (775 ILCS 5/2-103).

⁹ 775 ILCS 5/1-103(Q). The term *order of protection status* means a person protected under an order of protection issued pursuant to the Illinois Domestic Violence Act of 1986 or an order of protection issued by a court of another state (775 ILCS 5/1-103(K-5).

citizenship status provided the individual is authorized to work in the United States;¹¹ use of lawful products while not at work;¹² being a victim of domestic or sexual violence;¹³ genetic information;¹⁴ physical or mental handicap or disability, if otherwise able to perform the essential functions of the job with reasonable accommodation;¹⁵ pregnancy, childbirth, or related medical conditions; ¹⁶ credit history, unless a satisfactory credit history is an established bona fide occupational requirement of a particular position;¹⁷ or other legally protected categories. ^{18 19 20 21} No one will be penalized solely

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¹⁰ *Military status* means a person's status on active duty in the U.S. Armed Forces (775 ILCS 5/1-103). *Unfavorable military discharge* does not include those characterized as RE-4 or *dishonorable*, (Id.). The Uniformed Services Employment and Reemployment Rights Act, 38 U.S.C. §§4301 et seq., prohibits employers from discriminating or retaliating against any person for reasons related to past, present, or future service in a *uniformed service*. See footnote 9 in policy 5:30, *Hiring Process and Criteria*.

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

¹² 820 ILCS 55/5 prohibits discrimination based on use of lawful products, e.g., alcohol and tobacco, off premises during non-working hours.

¹³ Victims' Economic Security and Safety Act, 820 ILCS 180/30.

¹⁴ Illinois' Genetic Information Protection 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. See footnote 5 in 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. In 2011, EEOC published an informative guidance letter, *ADA & GINA: Incentives for Workplace Wellness Program*, [EEOC Informal Discussion Letter](#). Consult the board attorney for guidance regarding specific application of these laws and how they integrate with other related laws, e.g., the Family Medical Leave Act, the Americans with Disabilities Act, and other State laws governing time off for sickness and workers' compensation.

¹⁵ Americans with Disabilities Act, 42 U.S.C. §§12111 et seq., amended by the Americans with Disabilities Act Amendments Act (ADAAA), Pub. L. 110-325 and modified by the Lilly Ledbetter Fair Act, Pub. L. 111-2; Rehabilitation Act of 1973, 29 U.S.C. §791 et seq., modified by the Lilly Ledbetter Fair Pay Act, Pub. L. 111-2.

¹⁶ 775 ILCS 5/2-102(I), added by P.A. 97-596.

¹⁷ Employee Credit Privacy Act, 820 ILCS 70/. Unless a satisfactory credit history is an *established bona fide occupational requirement* of a particular position, an employer may not: (1) refuse to hire, discharge, or otherwise discriminate against an individual with respect to employment because of the individual's credit history or credit report, (2) inquire about an applicant's or employee's credit history, or (3) order or obtain an applicant's or employee's credit report from a consumer reporting agency. The Act identifies circumstances that permit a satisfactory credit history to be a job requirement, such as, the position's duties include custody of or unsupervised access to cash or marketable assets valued at \$2,500 or more.

¹⁸ Optional sentence (775 ILCS 5/1-103 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.

¹⁹ Optional provision (29 U.S.C. §705(10)(A) and (B), 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 or drug 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 *handicapped*.

²⁰ Districts may not make residency in the district a condition of employment for teachers or educational support personnel (105 ILCS 5/24-4.1 and 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 School Dist., 632 N.E.2d 1073 (Ill.App.3, 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).

for his or her status as a registered qualifying patient or a registered designated caregiver for purposes of the Compassionate Use of Medical Cannabis Pilot Program Act, 410 ILCS 130/. 22

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 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. 23

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 Superintendent shall insert into this policy the names, addresses, and telephone numbers of the District's current Nondiscrimination Coordinator and Complaint Managers. 24

Nondiscrimination Coordinator:

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

21 School districts must accommodate mothers who choose to continue breastfeeding after returning to work. See the Right to Breastfeed Act, 740 ILCS 137/; Nursing Mothers in the Workplace Act, 820 ILCS 260/; and Fair Labor Standards Act, 29 U.S.C. §207(r), added by P.L. 111-148. See sample language for a personnel handbook in 5:10-AP, *Administrative Procedure - Workplace Accommodations for Nursing Mothers*.

22 410 ILCS 130/40, added by P.A. 98-122. 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 Pilot Program Act (410 ILCS 130/, added by P.A. 98-122). There are many situations in which no one, even a registered qualifying patient, may possess or use cannabis, including in a school bus or on the grounds of any preschool, or primary or secondary school (410 ILCS 130/30(a)(2) & (3). See policy 5:50, *Drug- and Alcohol-Free Workplace; Tobacco Prohibition*. Contact the board attorney for advice concerning medical cannabis.

23 Most discrimination laws prohibit retaliation against employees who oppose practices made unlawful by those laws, including, for example, the Equal Employment Opportunities Act, Title IX, Americans with Disabilities Act, Age Discrimination in Employment Act, Victims' Economic Security and Safety Act, the Ill. Equal Pay Act, and the Ill. Whistleblower Act, 740 ILCS 174/.

The Ill. Whistleblower Act specifically prohibits employers from retaliating against employees for: (1) disclosing information to a government or law enforcement agency (740 ILCS 174/15(a)), (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(b)), (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 the Freedom of Information Act (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 and 20.2).

The Ill. False Claims Act, 740 ILCS 175/, defines *State* to include school districts. Thus, boards may seek a penalty from a person for making a false claim for money or property (740 ILCS 175/4). For additional information regarding the Ill. Whistleblower Act and the tort of retaliatory discharge, see Thomas v. Guardsmark, 487 F.3d 531 (7th Cir., 2007)(discussing the elements of Ill. tort of retaliatory discharge and Ill. Whistleblower Act), and Sherman v. Kraft General Foods, Inc., 651 N.E.2d 708 (Ill.App.4th Dist., 1995)(finding employee who reported asbestos hazard had a cause of action for tort of retaliatory discharge).

24 Title IX regulations require districts to identify the name, address, and telephone number of the person who is responsible for coordinating the district's compliance efforts. A policy should not be adopted with a person's name in it; rather, the identifying information can be added and amended as necessary. Thus the policy should be adopted with blanks for the superintendent to fill in later.

Name

Address

Telephone

Complaint Managers:

Name

Name

Address

Address

Telephone

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. 25

Minority Recruitment 26

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.

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25 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) and 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.

26 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.* (Equal Employment Opportunity Commission's guidelines for affirmative action plans); *Wygant v. Jackson Board of Education*, 106 S.Ct. 1842 (1986) (The goal of remedying societal discrimination does not justify race-based layoffs.); *City of Richmond v. J.A. Croson Co.*, 109 S.Ct. 706 (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 Ill. Human Rights Act, 775 ILCS 5/1-101.1, 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.

- LEGAL REF.: Age Discrimination in Employment Act, 29 U.S.C. §621 et seq.
 Americans With Disabilities Act, Title I, 42 U.S.C. §12111 et seq.
 Civil Rights Act of 1991, 29 U.S.C. §§621 et seq., 42 U.S.C. §1981 et seq.,
 §2000e et seq., and §12101 et seq.
 Equal Employment Opportunities Act (Title VII of the Civil Rights Act of 1964),
 42 U.S.C. §2000e et seq., 29 C.F.R. Part 1601.
 Equal Pay Act, 29 U.S.C. §206(d).
 Genetic Information Nondiscrimination Act, 42 U.S.C. §2000ff et seq.
 Immigration Reform and Control Act, 8 U.S.C. §1324a et seq.
 Rehabilitation Act of 1973, 29 U.S.C. §791 et seq.
 Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d et seq.
 Pregnancy Discrimination Act, 42 U.S.C. §2000e(k).
 Title IX of the Education Amendments, 20 U.S.C. §1681 et seq., 34 C.F.R. Part
 106.
 Uniformed Services Employment and Reemployment Rights Act (1994), 38
 U.S.C. §§4301 et seq.
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.
[Compassionate Use of Medical Cannabis Pilot Program Act, 410 ILCS 130/40.](#)
 Genetic Information Protection Act, 410 ILCS 513/25.
 Ill. Whistleblower Act, 740 ILCS 174/.
 Ill. Human Rights Act, 775 ILCS 5/1-103 and 5/2-102.
 Religious Freedom Restoration Act, 775 ILCS 35/5.
 Employee Credit Privacy Act, 820 ILCS 70/.
 Ill. Equal Pay Act of 2003, 820 ILCS 112/.
 Victims' Economic Security and Safety Act, 820 ILCS 180/30.
 23 Ill.Admin.Code §1.230.
- CROSS REF.: 2:260 (Uniform Grievance Procedure), 5:20 (Workplace Harassment Prohibited),
 5:30 (Hiring Process and Criteria, 5:40 (Communicable and Chronic Infectious
 Disease), 5:[50 \(Drug- and Alcohol-Free Workplace; Tobacco Prohibition\)](#), 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 (Preventing Bullying,
 Intimidation, and Harassment), 8:70 (Accommodating Individuals with
 Disabilities)

General Personnel

Hiring Process and Criteria 1

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

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

Job Descriptions

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.⁷

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

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

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

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

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

Subject to an applicable collective bargaining agreement in effect on June 13, 2011, 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 (105 ILCS 5/24-1.5). The statute does not define "new or vacant teaching positions." This new requirement does not apply to filling vacant positions under 105 ILCS 5/24-12 (reduction in force). Consult the board attorney about how this requirement applies to the district's circumstances.

⁴ An additional optional sentence follows:

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

⁵ 105 ILCS 5/10-21.9(c), amended by P.A. 97-607.

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

Each employment application for a certificated position 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.

⁷ 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)). 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. **8** The Superintendent or designee shall notify an applicant if the applicant is identified in either database. **9** 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 purposes of clarifying the information, the Department of State Police and/or Statewide Sex Offender Database. **10**

Each newly hired employee must complete an Immigration and Naturalization Service Form as required by federal law. **11**

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 Section 5/21B-80 of the School Code or who falsifies, or omits facts from, his or her employment application or other employment documents.

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: **12**

A job description is evidence of a position's *essential functions* (29 C.F.R. §1630.2(n)). The Americans with Disabilities Act 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, 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 particular function to be essential: (1) the employer must actually require employees in the position to perform it, and (2) the position would be *fundamentally altered* if the function were removed (*Id.*). Whether a particular function is essential is a factual determination.

Important: The ADAAA makes significant changes to the ADA's definition of disability that broadens the scope of coverage and overturns a series of U.S. Supreme Court decisions that made it difficult to prove that an impairment was a disability. The final regulations were by a bipartisan vote and approved on March 25, 2011. There is information about the regulations and a link to them at: www.eeoc.gov/laws/regulations/adaaa_fact_sheet.cfm. Consult the board attorney regarding how these amendments impact the district's hiring processes.

8 The policy's requirements on criminal records checks are mandated by 105 ILCS 5/10-21.9. See administrative procedure 5:30-AP2, *Investigations*, for the process and positions requiring criminal background investigation. The Statewide Sex Offender Database (a/k/a Sex Offender Registry) is available at: www.isp.state.il.us/sor. The Statewide Murderer and Violent Offender Against Youth Database is available at: www.isp.state.il.us/cmvo/.

9 *Id.*

10 105 ILCS 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.

Use this alternative for districts in suburban Cook County: replace "Regional Superintendent" with "appropriate Intermediate Service Center." The Regional Office of Education for Suburban Cook County was abolished and its duties and powers transferred to the intermediate service center for the area by P.A. 96-893.

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

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

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. **13**
2. 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. **14**
3. The District does not request of an applicant or employee access in any manner to his or her social networking website, including a request for passwords to such sites. **15**
4. The District provides equal employment opportunities to all persons. See policy 5:10, *Equal Employment Opportunity and Minority Recruitment*.

Physical Examinations

New employees must furnish evidence of physical fitness to perform assigned duties and freedom from communicable disease, including tuberculosis. **16** All physical fitness examinations and tests for

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”

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

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

15 Id., 820 ILCS 55/10, added by P.A. 97-875 (known as the Facebook Password Law) and amended by P.A. 98-501. The exception for a professional account added by P.A. 98-501 is so limited that it appears to be unavailable to school employers. A professional account is defined as “an account, service, or profile created, maintained, used, or accessed by a current or prospective employee for business purposes of the employer.” Bracketed explanations follow the statutory language:

“Provided that the password, account information, or access sought by the employer relates to a professional account, and not a personal account, nothing in this subsection shall prohibit or restrict an employer from complying with a duty to screen employees or applicants prior to hiring”

[When read with the definition of professional account, it is implausible that an applicant would have an account, service, or profile for business purposes of a school employer.]

“... or to monitor or retain employee communications as required under Illinois insurance laws or federal law or by a self-regulatory organization as defined in the [Securities Exchange Act].”

[This clause appears to be inapplicable to school districts.]

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 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. Consult the board attorney about these issues.

16 Pre-employment medical inquiries must be limited to whether the applicant is able to perform job-related functions; required medical examinations of applicants is forbidden (American with Disabilities Act [ADA], 42 U.S.C. §12112(d)(2), as amended by the ADA AAA, Pub. L. 110-325); see also f/n 7 for an explanation regarding the ADA AAA. 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. Boards must require new employees to furnish evidence of a physical examination and a tuberculin skin test and, if appropriate, an X-ray (105 ILCS 5/24-5).

tuberculosis must be performed by a physician licensed in Illinois, or any other state, to practice medicine and surgery in any of its branches, or an advanced practice nurse who has a written collaborative agreement with a collaborating physician that authorizes the advanced practice nurse to perform health examinations, or a 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 and tuberculin test performed no more than 90 days before submitting evidence of it to the Board.

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, or an advanced practice nurse who has a written collaborative agreement with a collaborating physician that authorizes the advanced practice nurse to perform health examinations, or a 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. ¹⁷ 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.

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.

¹⁷ The State law (105 ILCS 5/24-5) allowing boards to require physicals of current employees "from time to time," has been superseded by federal law (ADA, 42 U.S.C. §12112(d)(4), as amended by the ADAAA, Pub. L. 110-325). 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. Part 1630.2(r)). See f/n 7 for an explanation regarding the ADAAA.

See the f/n 16 for a discussion of examinations by spiritual leaders/practitioners.

- LEGAL REF.: 105 ILCS 5/10-21.9.
Employee Credit Privacy Act, 820 ILCS 70/.
Right to Privacy in the Workplace Act, 820 ILCS 55/.
Americans with Disabilities Act, 42 U.S.C. §12112, 29 C.F.R. Part 1630.
Immigration Reform and Control Act, 8 U.S.C. §1324a et seq.
105 ILCS 5/10-16.7, 5/10-20.7, 5/10-21.4, 5/10-21.9, 5/21B-10, 5/21B-80, 5/10-22.34, 5/10-22.34b, 5/22-6.5, and 5/24-1 et seq.
820 ILCS 55/ and 70/.
Duldulao v. St. Mary of Nazareth Hospital, 483 N.E.2d 956 (Ill.App.1, 1985), *aff'd in part and remanded* 505 N.E.2d 314 (Ill., 1987).
Kaiser v. Dixon, 468 N.E.2d 822 (Ill.App.2, 1984).
Molitor v. Chicago Title & Trust Co., 59 N.E.2d 695 (Ill.App.1, 1945).
- CROSS REF.: 3:50 (Administrative Personnel Other Than the Superintendent), 5:10 (Equal Employment Opportunity and Minority Recruitment), [5:90 \(Abused and Neglected Child Reporting\)](#), 5:40 (Communicable and Chronic Infectious Disease), 5:125 (Personal Technology and Social Media; Usage and Conduct), 5:220 (Substitute Teachers), 5:280 (Educational Support Personnel - Duties and Qualifications)

General Personnel

Compliance with the Fair Labor Standards Act 1

Job Classifications

The Superintendent will ensure that all job positions are identified as either “exempt” or “non-exempt” according to State law and the Fair Labor Standards Act (FLSA) and that employees are informed whether they are “exempt” or “non-exempt.” 2 “Exempt” and “non-exempt” employee categories may include certificated and non-certificated job positions. All non-exempt employees, whether paid on a salary or hourly basis, are covered by minimum wage and overtime provisions.

Workweek and Compensation

The workweek for District employees will be 12:00 a.m. Saturday until 11:59 p.m. Friday. 3 Non-exempt employees will be compensated for all hours worked in a workweek including overtime. For non-exempt employees paid a salary, the salary is paid for a 40-hour workweek even if an employee is scheduled for less than 40 hours. 4 “Overtime” is time worked in excess of 40 hours in a single workweek.

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

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

The Illinois Minimum Wage Law, 820 ILCS 105/4a, covers all school employees, although many are exempt from overtime requirements. The federal Fair Labor Standards Act (FLSA) also covers school employees (29 U.S.C. 201 et seq.). The law offering the greatest benefits to employees will control specific issues.

School districts in several states are experiencing widespread action by non-exempt employees to recoup unpaid overtime wages. Many of these actions have been successful because the school district did not strictly comply with overtime requirements or recordkeeper’s requirements. See:

[29 C.F.R. Part 785, Hours Worked \(www.dol.gov/dol/allefr/ESA/Title_29/Part_785/toe.htm\)](http://www.dol.gov/dol/allefr/ESA/Title_29/Part_785/toe.htm)

[29 C.F.R. Part 516, Records to Be Kept by Employers \(www.dol.gov/dol/allefr/ESA/Title_29/Part_516/toe.htm\)](http://www.dol.gov/dol/allefr/ESA/Title_29/Part_516/toe.htm)

[The U.S. Dept. of Labor frequently finds employees misclassified as independent contractors or exempt employees.](#)

School officials are strongly encouraged to seek assistance from their attorney when making decisions involving wage and hour issues.

2 “Exempt” employees are exempt from overtime requirements. An exempt employee, according to Illinois law, is “any employee employed in a bona fide executive, administrative or professional capacity, . . . , as defined by or covered by the Federal Fair Labor Standards Act of 1938 and the rules adopted under that Act, as both exist on March 30, 2003, but compensated at the amount of salary specified [in the current rules].” 820 ILCS 105/4a. By referring to the definitions in the former federal rules, the Illinois legislature rejected the U.S. Department of Labor’s effort to expand the number of employees who are exempt from overtime requirements. To qualify for exemption in Illinois, employees generally must meet certain tests regarding their job duties and be paid on a “salary basis” at not less than \$455 per week. To check compliance, districts should review their list of exempt employees with their attorneys.

3 Employers must identify the workweek, but may designate any 7-day period. **Boards should ascertain what is currently used as a workweek to avoid inadvertently adopting a policy containing a different designation.** The workweek in this sample policy allows supervisors to adjust employee schedules at the end of the week if an employee was required to work the weekend.

4 Setting the workweek at 40 hours avoids having to pay an employee additional “straight time” compensation for the extra hours up to 40.

Overtime

~~The School Board discourages overtime work by non-exempt employees.~~ A non-exempt employee shall not work overtime without his or her supervisor's express approval. ⁵ All supervisors of non-exempt employees shall: (1) monitor overtime use on a weekly basis and report such use to the business office, (2) seek the Superintendent or designee's written pre-approval for any long term or repeated use of overtime that can be reasonably anticipated, (3) ensure that overtime provisions of this policy and the FLSA are followed, and (4) ensure that employees are compensated for any overtime worked. Accurate and complete time sheets of actual hours worked during the workweek shall be signed by each employee and submitted to the business office. The business office will review work records of employees on a regular basis, make an assessment of overtime use, and provide the assessment to the Superintendent. In lieu of overtime compensation, non-exempt employees may receive compensatory time-off, according to Board policy 5:310, *Compensatory Time-Off*. ⁶

Suspension Without Pay

No exempt employee shall have his or her salary docked, such as by an unpaid suspension, if the deduction would cause a loss of the exempt status. ⁷ ~~Certificated~~ Licensed employees may be suspended without pay in accordance with Board policy 5:240, *Professional Personnel - Suspension*. ~~Non-certificated~~ licensed employees may be suspended without pay in accordance with Board policy 5:290, *Educational Support Personnel - Employment Termination and Suspensions*.

Implementation ⁸

The Superintendent or designee shall implement the policy in accordance with the FLSA, including its required notices to employees. In the event of a conflict between the policy and State or federal law, the latter shall control.

LEGAL REF.: 820 ILCS 105/4a.
Fair Labor Standards Act, 29 U.S.C. §201 et seq., 29 C.F.R. Parts 516, 541, 548, 553, 778, and 785.

CROSS REF.: 5:240 (Suspension), 5:290 (Employment Termination and Suspensions), 5:310 (Compensatory Time-Off)

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

⁵ Employees must be compensated for all time worked, even if it is unauthorized overtime. However, employees who intentionally work unauthorized overtime may be subject to disciplinary action.

⁶ Optional. The FLSA regulates the use of *comp-time* (29 C.F.R. §§553.22-553.28). Before offering comp-time, a board must have a compensatory time-off policy or the topic must be covered in an applicable collective bargaining agreement. See 5:310, *Compensatory Time-Off* and 5:310-E, *Exhibit - Agreement to Receive Compensatory Time-Off*.

⁷ Docking an exempt employee's salary (e.g., for a disciplinary suspension) may result in the loss of the exemption unless the deduction was specifically authorized. Teachers, however, are not covered by this restriction.

⁸ The FLSA is administered by the Wage and Hour Division of the U.S. Department of Labor. Its website contains compliance guidance, posters, and e-tools (~~www.dol.gov/esa/whd/flsa/index.htm~~; www.dol.gov/compliance/laws/comp-flsa.htm).

General Personnel

Personal Technology and Social Media; Usage and Conduct 1

Definitions

Includes - Means “includes without limitation” or “includes, but is not limited to.”

Social media - Media for social interaction, using highly accessible communication techniques through the use of web-based and mobile technologies to turn communication into interactive dialogue. ² This includes *Facebook, LinkedIn, MySpace, Twitter, and YouTube*. ³

Personal technology - Any device that is not owned or leased by the District or otherwise authorized for District use and: (1) transmits sounds, images, text, messages, videos, or electronic information, (2) electronically records, plays, or stores information, or (3) accesses the Internet, or private communication or information networks. ⁴ This includes laptop computers (e.g., laptops, ultrabooks, and chromebooks), tablets (e.g., iPads®, Kindle®, Microsoft Surface®, and other Android® platform or Windows® devices), smartphones such as (e.g., iPhone®, BlackBerry®, Android®, iPhone®, platform phones, and Windows Phone®), and other devices (e.g., iPod®), such as iPads® and iPods®. ⁵

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

¹ This policy is optional. Consult the board attorney because personal technology and social media involve an unprecedented area of the law. Public employees’ First Amendment rights involve an unsettled area of the law. 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, *Ethics and Conduct*, the Ill. Educators’ Code of Ethics at 23 Ill.Admin.Code §22.20, and 105 ILCS 5/21B-75 by P.A. 97-607 (allows suspensions or revocations of certificates for *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*, 847 N.E.2d 810, 819 (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 f/n 6 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 current [insert name of CBA].”

² Several definitions of social media exist, and a board may wish to use another definition or create its own with the board attorney. This sample policy’s definition is very broad. It is adapted from a frequently cited Wikipedia definition at en.wikipedia.org/wiki/Social_media. Merriam-Webster’s definition is at www.merriam-webster.com/dictionary/social%20.

³ Optional. A board may want to add other sites. As of October 2010, the publication *eBizMBA Inc.* lists the top 4 social networking sites as Facebook, Myspace, Twitter, and LinkedIn, respectively.

⁴ *Personal technology* is not yet defined. It is the title of a weekly column in *The Wall Street Journal*. The column was created and is authored by Walt Mossberg, who frequently directs readers to his review of new technologies on a website titled *All Things Digital* at to allthingsd.com/author/walt/. Many of the reviewed devices operate as described in this sample definition.

⁵ Optional.

Usage and Conduct

All District employees who use personal technology and social media shall: **6**

1. Adhere to the high standards for appropriate school relationships ~~is~~ **required by** policy 5:120, *Ethics and Conduct* 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*; 5:120, *Ethics and Conduct*; 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. Comply with policy 5:130, *Responsibilities Concerning Internal Information*. This means that personal technology and social media may not be used to share, publish, or transmit information about or images of students and/or District employees without proper approval. For District employees, proper approval may include implied consent under the circumstances. **7**
5. Refrain from using the District's logos without permission and follow Board policy 5:170, *Copyright*, and all District copyright compliance procedures. **8**
6. 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. **9**
7. 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

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6 The following list is optional and may contain items on which collective bargaining may be required (see f/n 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 f/n 2 of policy 5:120, *Ethics and Conduct*, for more discussion about how to initiate this conversation). 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.

7 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 Facebook.

8 17 U.S.C. §101 *et seq.*

9 105 ILCS 5/24-9; Fair Labor Standards Act, 29 U.S.C. §201 *et seq.* See also f/ns 1 and 6 above.

disclaims any responsibility for imposing content filters, blocking lists, or monitoring of its employees' personal technology and social media. **10**

8. 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. **11**

The Superintendent shall: **12**

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, *Ethics and Conduct*.
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.

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

10 The Children's Internet Protection Act (CIPA), 47 U.S.C. §254, 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.

11 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*.

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 f/ns 1 and 6). 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.*).

12 105 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, *Ethics and Conduct*."

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)).

4. Ensure that no one for the District, or on its behalf, requests of an employee or applicant access in any manner to his or her social networking website or requests passwords to such sites. **13**
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.

LEGAL REF.: 105 ILCS 5/21B-75 and 5/21B-80.
 Ill. Human Rights Act, 775 ILCS 5/5A-102.
 Code of Ethics for Ill. Educators, 23 Ill.Admin.Code §22.20.
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),
 5:120 (Ethics and Conduct), 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)

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

13 Right to Privacy in the Workplace Act, 820 ILCS 55/10(b), added by P.A. 97-875 and amended by P.A. 98-501 (known as the Facebook Password Law). The exception for professional accounts, added by P.A. 98-501, is unlikely to be available to school districts; see the explanation in a footnote 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 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 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. Consult the board attorney about these issues.

General Personnel

Temporary Illness or Temporary Incapacity 1

A temporary illness or temporary incapacity is an illness or other capacity of ill-being that renders an employee physically or mentally unable to perform assigned duties. During such a period, the employee can use accumulated sick leave benefits. ² However, income received from other sources (worker's compensation, District-paid insurance programs, etc.) will be deducted from the District's compensation liability to the employee. The School Board's intent is that in no case will the employee, who is temporarily disabled, receive more than 100 percent of ~~their~~ his or her gross salary. Those insurance plans privately purchased by the employee and to which the District does not contribute, are not applicable to this policy.

If illness, incapacity, or any other condition causes ~~an~~ a teacher or other licensed employee to be absent in one school year, after exhaustion of all available leave, for more than 90 consecutive work days, such absence may be considered a permanent disability and the Board may ~~consider beginning~~ begin dismissal proceedings subject to State and federal law, including the Americans with Disabilities Act. ³ The Superintendent may recommend this paragraph's use when circumstances strongly suggest that the teacher or other licensed employee returned to work intermittently in order to avoid this paragraph's application. This paragraph shall not be considered a limitation on the

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

This policy 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 current [insert name of CBA or use a generic reference, e.g., 'agreement between the bargaining representative and the School Board']".

² Temporary mental or physical incapacity as determined by a medical examination is not cause for dismissing a teacher (105 ILCS 5/10-22.4 and 5/24-13).

³ A teacher's contractual continued service status is not affected by an absence caused by temporary illness or temporary incapacity (105 ILCS 5/24-13). Two cases, decided before the Americans with Disabilities Act was enacted, held that this statute grants school boards the power to define, through policy, temporary illness or incapacity. School Dist 151 v. ISBE, 507 N.E.2d 134 (Ill.App.1, 1987); Elder v. School Dist. No.127 1/2, 208 N.E.2d 423 (Ill.App.1, 1965).

Important: Until February 2014, this paragraph in the PRESS sample policy applied to all employees. We limited its application to teachers in response to feedback that the paragraph should align with the statute. Section 24-13, which this paragraph implements, applies only to teachers and, thus, we amended the paragraph to make it applicable only to teachers. This change may trigger a bargaining requirement with a bargaining unit for educational support personnel.

The Illinois appellate court decisions cited above upheld a board policy designating when a temporary [illness or] incapacity becomes permanent for the purpose of being a cause of dismissal. The court approved using 90 days of absence due to illness, after the exhaustion of sick days, as the point at which the district considers termination. The court upheld a hearing officer decision noting that a policy providing for a 90-school-day absence following exhaustion of sick leave was sufficient under Section 24-13. The court noted that applying that particular policy over a 2-year period would not be appropriate because the 2-year period would have the effect of allowing the school board to define a temporary illness or incapacity out of existence; i.e., making it impossible for a teacher to qualify for such an absence. Important: a district should consult the board attorney before determining that a teacher's temporary illness or incapacity became permanent.

The point at which any employee's temporary disability becomes permanent must be analyzed using the Americans with Disabilities Act, 42 U.S.C. §12102, also referred to as the ADA or the ADA Amendments Act (ADAAA). This federal law prohibits employers from discriminating against individuals with a disability who can perform the essential functions of a job with or without reasonable accommodation. A district should regularly analyze each position's job description to ensure that it identifies the position's essential functions. Consult the board attorney concerning compliance with the ADA.

Board's authority to take any action concerning an employee that is authorized by State and federal law. 4

Any employee may be required to have an examination, at the District's expense, by a physician who is licensed in Illinois to practice medicine and surgery in all its branches, an advanced practice nurse who has a written collaborative agreement with a collaborating physician that authorizes the advanced practice nurse to perform health examinations, or a physician assistant who has been delegated the authority by his or her supervisor to perform health examinations if the examination is job-related and consistent with business necessity. 5

LEGAL REF.: Americans with Disabilities Act, 42 U.S.C. §12102.
105 ILCS 5/10-22.4, 5/24-12, and 5/24-13.
Elder v. School Dist. No.127 1/2, 208 N.E.2d 423 (Ill.App.1, 1965).
School District No. 151 v. ISBE, 507 N.E.2d 134 (Ill.App.1, 1987).

CROSS REF.: 5:30 (Hiring Process and Criteria), 5:185 (Family and Medical Leave), 5:250 (Leaves of Absence), 5:330 (Sick Days, Vacation, Holidays, and Leaves)

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

4 This optional sentence recognizes that the board may take action concerning an employee in situations beyond this policy's scope.

5 The State law (105 ILCS 5/24-5), allowing boards to require physicals of current employees "from time to time," has been 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 neither eliminate the risk nor reduce it to an acceptable level (42 U.S.C. §12113; 29 C.F.R. Part 1630.2(r)).

Note that while examination by a spiritual leader/practitioner is sufficient for leaves, the statute does not authorize an examination by a spiritual leader/practitioner for district-ordered physicals of an employee. The difference may present a constitutional issue; contact the board attorney for an opinion if the employee wants to use an examination by a spiritual leader/practitioner.

Professional Personnel

Teacher Qualifications 1

A teacher, as the term is used in this policy, refers to a District employee who is required to be certified licensed under State law. ² The following qualifications apply:

1. Each teacher must: ³
 - a. Have a valid Illinois ~~certificate that legally qualifies~~ Professional Educator License issued by the teacher for State Superintendent of Education with the duties for which required endorsements as provided in the teacher-is-employed School Code.
 - b. Provide the District Office with a complete transcript of credits earned in institutions of higher education.
 - c. On or before September 1 of each year, unless otherwise provided in an applicable collective bargaining agreement, provide the District Office with a transcript of any credits earned since the date the last transcript was filed.
 - d. Notify the Superintendent of any change in the teacher's transcript.
2. All teachers with primary responsibility for instructing students in the core academic subject areas (science, the arts, reading or language arts, English, history, civics and government,

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

² P.A. 97-607 repealed 105 ILCS 5/21-0.01 et seq., and added Article 21B titled *Educator Licensure* to the School Code. 23 Ill.Admin.Code §1.610 et seq., ~~§1.705 et seq. and Part 25~~, still refers to this repealed section of the School Code. ~~Teacher- 23 Ill.Admin.Code §1.705 et seq. still refers to certification-will become, and Part 25 continues to incorporate P.A. 97-607. This law changed teacher certification to educator licensure on or before as of July 1, 2013 (P.A. 97-607) Once, ISBE's proposal to amend these rules is pending as of Feb. 2014. When the licensure system is became operational, all certified employees will automatically be transitioned to having the corresponding applicable licensure.~~

School boards may participate in the Illinois Teacher Corps; however as of Sept. 1, 2011 individuals may no longer be admitted to Illinois Teacher Corps programs (105 ILCS 5/21-11.4, amended by P.A. 97-607 and ~~scheduled to be~~ repealed on June 30, 2013).

³ Subparagraph 1a is required for all teachers by 105 ILCS 5/21-2, ~~amended by P.A. 97-607 (certificates) and 5/21B-15, added by P.A. 97-607 (professional educator licenses).~~ See f/n 2 above. ~~ISBE plans to institute a system of educator licensure with the requirements and qualifications in Article 21B of the School Code by July 1, 2013 (P.A. 97-607). The types of certificates are still listed in 105 ILCS 5/21-2, amended by P.A. 97-607 and scheduled to be repealed on June 30, 2013.~~ The types of licenses are listed in 105 ILCS 5/21B-20, added by P.A. 97-607. See also 23 Ill.Admin.Code §1.610 et seq., §1.705 et seq. and Part 25 (teachers are no longer certified in any course subjects in which they earn grades lower than a "C" in college), although ~~some of~~ some of the rules ~~still~~ still refer to repealed sections of the School Code. Note that part-time provisional certificates issued to professionals and craftsmen are ~~addressed in no longer issued~~ (105 ILCS 5/21-10, amended by P.A. 97-607 and ~~scheduled to be~~ repealed on June 20, 2013). ISBE's ~~Educator's Certification Licensure Information System (ECS ELIS)~~ Educator's Certification Licensure Information System (ECS ELIS) is a web-based system that allows educators ~~and district administrators, and the public to~~ access to certification data from ISBE's Teacher Certification Information System (TCIS) licensure information. See www.isbe.state.il.us/ELIS/default.htm.

Contact ISBE with all ~~certification and~~ licensure questions during this time of implementation of the new Article 21B, added by P.A. 97-607.

Subparagraph 1b and 1c are required of all teachers by 105 ILCS 5/24-23. Some boards add the word "official" to the phrase, "complete official transcript of credits."

Subparagraph 1d is ~~not required, optional~~ but informs the superintendent when a teacher should change lanes on the salary schedule.

economics, geography, foreign language, and mathematics) must be *highly qualified* for those assignments as determined by State and federal law. ⁴

The Superintendent or designee shall:

1. Monitor compliance with State and federal law requirements that teachers be appropriately ~~certified~~ licensed and *highly qualified* for their assignments; ⁵
2. Through incentives for voluntary transfers, professional development, recruiting programs, or other effective strategies, ensure that minority students and students from low-income families are not taught at higher rates than other students by unqualified, out-of-field, or inexperienced teachers; and ⁶
3. Ensure parents/guardians of students in schools receiving Title I funds are notified: (a) of their right to request their students' classroom teachers' professional qualifications, and (b) whenever their child is assigned to, or has been taught for 4 or more consecutive weeks by, a teacher who is not *highly qualified*. ⁷

LEGAL REF.: 20 U.S.C. §6319.
34 C.F.R §200.55, 56, 57, and 61.
105 ILCS 5/10-20.15, 5/21-~~10, 5/21~~-11.4, 5/21B-20, and 5/24-23.
23 Ill.Admin.Code §1.610 et seq., §1.705 et seq., and Part 25.

CROSS REF.: 6:170 (Title I Programs)

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⁴ 20 U.S.C. §6319; 34 C.F.R. §200.55; 23 Ill. Admin.Code Part 25, Appendix D. ISBE's website contains numerous resources on *highly qualified* requirements and determinations; see www.isbe.net/nclb/htmls/edquality.htm.

⁵ 20 U.S.C. §6319(a)(3); 34 C.F.R. §200.57(b).

⁶ 34 C.F.R. §200.57(b)(2).

⁷ 20 U.S.C. §6311(h)(6); 34 C.F.R. §200.61.

Professional Personnel

Suspension 1

Suspension Without Pay 2

The School Board may suspend without pay: (1) a professional employee pending a dismissal hearing, or (2) a teacher as a disciplinary measure for up to 30 employment days for misconduct that is detrimental to the School District. Administrative staff members may not be suspended without pay as a disciplinary measure. ³

Misconduct that is detrimental to the School District includes:

- Insubordination, including any failure to follow an oral or written directive from a supervisor;
- Violation of Board policy or Administrative Procedure;
- Conduct that disrupts or may disrupt the educational program or process;
- Conduct that violates any State or federal law that relates to the employee's duties; and
- Other sufficient causes.

The Superintendent or designee is authorized to issue a pre-suspension notification to a professional employee. This notification shall include the length and reason for the suspension as well as the deadline for the employee to exercise his or her right to appeal the suspension to the Board or Board-appointed hearing examiner before it is imposed. At the request of the professional employee made within 5 calendar days of receipt of a pre-suspension notification, the Board or Board-appointed

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¹ State and federal law control this policy's content. The School Code provides that, "[i]f, in the opinion of the board, the interests of the school require it, the board may suspend the teacher **without pay**, pending the hearing, but if the board's dismissal or removal is not sustained, the teacher shall not suffer the loss of any salary or benefits by reason of the suspension," 105 ILCS 5/24-12(d)(1).

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. A board policy will be superseded by a collective bargaining agreement that contains provisions exceeding the requirements of the policy; in that case, the policy should state, "Please refer to the current [*insert name of CBA or use a generic reference, e.g., 'agreement between the bargaining representative and the School Board'*]."

A superintendent or board should consult the board attorney before taking any action to suspend a licensed employee, with or without pay.

² Under the wage and hours rules, employees who are exempt from overtime requirements become eligible for overtime if they are subject to disciplinary suspensions without pay. *Auer v. Robbins*, 117 S.Ct. 905 (1997). Teachers are exempt from this rule. Although the U.S. Dept. of Labor modified this rule in 2004, the Illinois legislature rejected these rule changes (820 ILCS 105/4a). Illinois employers must use the federal rules as they existed on March 30, 2003. This sample policy takes a conservative approach: it does not subject non-teaching professional employees to disciplinary suspensions without pay. Some attorneys believe that non-teaching exempt employees (e.g., administrators) will remain exempt from the Fair Labor Standards Act's overtime requirements as long as suspensions are in increments of a full work week - not day-by-day. Contact the board attorney for an opinion.

The 30-day limit may be modified or deleted.

³ A difference of opinion exists among attorneys concerning whether a board is permitted to authorize the superintendent to suspend teachers without pay. Some attorneys believe such a delegation is void because of the language in 105 ILCS 5/24-12(d)(1), quoted in f/n 1. Others believe that a board may delegate the authority to the superintendent to suspend teachers without pay as a disciplinary measure as opposed to pending a dismissal hearing. Contact the board attorney for advice if the board wants to authorize the superintendent to suspend professional employees without pay.

hearing examiner will conduct a pre-suspension hearing. ⁴ The Board or its designee shall notify the professional employee of the ~~alleged charges and the~~ date and time of the hearing. At the pre-suspension hearing, the professional employee or his/her representative may present evidence. If the employee does not appeal the pre-suspension notification, the Superintendent or designee shall report the action to the Board at its next regularly scheduled meeting.

Suspension With Pay

The Board or Superintendent or designee may suspend a professional employee with pay: (1) during an investigation into allegations of disobedience or misconduct whenever the employee's continued presence in his or her position would not be in the School District's best interests, (2) as a disciplinary measure for misconduct that is detrimental to the School District as defined above, or (3) pending a Board hearing to suspend a teacher without pay.

The Superintendent shall meet with the employee to present the allegations and give the employee an opportunity to refute the charges. The employee will be told the dates and times the suspension will begin and end. ⁵

Repayment of Compensation and Benefits

If a professional employee is suspended with pay, either voluntarily or involuntarily, pending the outcome of a criminal investigation or prosecution, and the employee is later dismissed as a result of his or her criminal conviction, the employee must repay to the District all compensation and the value of all benefits received by him or her during the suspension. ⁶ The Superintendent will notify the employee of this requirement when the employee is suspended.

LEGAL REF.: 5 ILCS 430/5-60(b).
105 ILCS 5/24-12.
Cleveland Board of Education v. Loudermill, 105 S.Ct. 1487 (1985).
Barszcz v. Community College District No. 504, 400 F.Supp. 675 (N.D. Ill., 1975).
Massie v. East St. Louis School District No.189, 561 N.E.2d 246 (Ill.App.5, 1990).

CROSS REF.: 5:290 (Educational Support Personnel - Employment Termination and Suspensions)

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⁴ Some case law suggests a separate hearing must be held before any suspension without pay is invoked: Cleveland Board of Education v. Loudermill, 105 S.Ct. 1487 (1985); Barszcz v. Community College District No. 504, 400 F.Supp. 675 (N.D. Ill., 1975); Massie v. East St. Louis School District No. 189, 561 N.E.2d 246 (Ill.App.5, 1990); Spinelli v. Immanuel Lutheran Evangelical Congregation, Inc., 515 N.E.2d 1222 (1987).

⁵ Only minimal due process is required before a suspension with pay because the property interests at stake are insignificant. Some due process is recommended, however, because a suspension might jeopardize a teacher's good standing in the community and thus infringe the teacher's liberty interests protected by the Constitution. The following option places a ceiling on the number of suspension-with-pay days; the 30-day limit may be modified:

No suspension with pay shall exceed 30 school or working days in length.

⁶ This sentence restates State law (5 ILCS 430/5-60(b)).

Instruction

Student Social and Emotional Development 1

Social and emotional learning (SEL) is defined as the process through which students enhance their ability to integrate thinking, feeling, and behaving to achieve important life tasks. Students competent in SEL are able to recognize and manage their emotions, establish healthy relationships, set positive goals, meet personal and social needs, and make responsible and ethical decisions. ²

The Superintendent shall incorporate SEL into the District's curriculum and other educational programs consistent with the District's mission and the goals and benchmarks of the Ill. Learning Standards. ³ The Ill. Learning Standards include three goals for students: ⁴

1. Develop self-awareness and self-management skills to achieve school and life success.
2. Use social-awareness and interpersonal skills to establish and maintain positive relationships.
3. Demonstrate decision-making skills and responsible behaviors in personal, school, and community contexts.

The incorporation of SEL objectives into the District's curriculum and other educational programs may include but is not limited to: ⁵

1. Classroom and school-wide programming to foster a safe, supportive learning environment where students feel respected and valued. This may include incorporating scientifically based, age-and-culturally appropriate classroom instruction, District-wide, and school-wide strategies that teach SEL skills, promote optimal mental health, and prevent risk behaviors for all students.

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¹ State law requires this subject matter be covered by policy; it required districts to submit it to ISBE by 8/31/04.

² See the definition on the Ill. Children's Mental Health Partnership website:

www.icmhp.org/initiatives/SocialandEmotionalStandards.htm.

³ Required by the Children's Mental Health Act of 2003, 405 ILCS 49/. ISBE incorporated social and emotional development standards into the Ill. Learning Standards. For more information see: www.isbe.net/ils/social_emotional/standards.htm. [School social workers may implement a continuum of social and emotional education programs and services in accordance with students' needs \(405 ILCS 49/15\(b\), amended by P.A. 98-338\)](#).

105 ILCS 5/2-3.142, created the Ensuring Success in School Task Force. Supervised by ISBE, this task force developed policies, procedures, and protocols for school boards to adopt to address the education and related needs of students who are parents, expectant parents, or victims of domestic or sexual violence; the goal is to encourage these students to stay in school, stay safe while in school, and successfully complete their education. School boards and superintendents may want to create their own study group to prepare for implementing of the task force's policies, procedures, and protocols. A report of the task force's findings was made to the General Assembly and is available here:

<http://karenymbrough.com/2010/News&Events/FinalESSAExecutiveSummary.pdf>
[povertylaw.org/sites/default/files/webfiles/final-essa-task-force-report-with-appendix%20\(1\).pdf](http://povertylaw.org/sites/default/files/webfiles/final-essa-task-force-report-with-appendix%20(1).pdf).

⁴ The goals, along with their benchmarks, descriptors and indicators are available at:

www.isbe.net/ils/social_emotional/pdf/SEL_goal1.pdf.

The specific listing of indicators is listed at: www.isbe.net/learningsupports/html/conditions.htm. The Ill. Children's Mental Health Partnership provides a more visual listing of the SEL Learning Standards in its links to Goals 31, 32 & 33 at:

www.icmhp.org/initiatives/SocialandEmotionalStandards.htm.

⁵ The objectives are a matter of local school board discretion. A board may replace the sample objectives with its own local objectives. This sample policy lists the suggested core components of a comprehensive social and emotional development policy, available on ISBE's website at: www.isbe.net/spec-ed/pdfs/cmh_core_components.pdf.

2. Staff development and training to promote students' SEL development. This may include providing all personnel with age-appropriate academic and SEL and how to promote it. ⁶
3. Parent/Guardian and family involvement to promote students' SEL development. This may include providing parents/guardians and families with learning opportunities related to the importance of their children's optimal SEL development and ways to enhance it. ⁷
4. Community partnerships to promote students' SEL development. This may include establishing partnerships with diverse community agencies and organizations to assure a coordinated approach to addressing children's mental health and SEL development.
5. Early identification and intervention to enhance students' school readiness, academic success, and use of good citizenship skills. This may include development of a system and procedures for periodic and universal screening, assessment, and early intervention for students who have significant risk factors for social, emotional, or mental health conditions that impact learning. ⁸
6. Treatment to prevent or minimize mental health conditions in students. This may include building and strengthening referral and follow-up procedures for providing effective clinical services for students with social, emotional, and mental health conditions that impact learning. This may include student and family support services, school-based behavioral health services, and school-community linked services and supports.
7. Assessment and accountability for teaching SEL skills to all students. This may include implementation of a process to assess and report baseline information and ongoing progress about school climate, students' social and emotional development, and academic performance. ⁹

LEGAL REF.: Children's Mental Health Act of 2003, 405 ILCS 49/.

CROSS REF.: 1:30, (School District Philosophy), 6:10 (Educational Philosophy and Objectives), 6:40 (Curriculum Development), 6:60 (Curriculum Content), 6:270 (Guidance and Counseling Program), 7:100 (Health, Eye, and Dental Examinations; Immunizations; and Exclusion of Students), 7:180 (Preventing Bullying, Intimidation, and Harassment), 7:250 (Student Support Services)

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⁶ SEL trainers for each region in Ill. are listed here: www.icmhp.org/initiatives/SELTrainingandSupport.htm.

⁷ The Ill. Children's Mental Health Partnership provides SEL Parent Newsletters at: www.icmhp.org/initiatives/SELresources.html.

⁸ The Ill. Children's Mental Health Partnership provides information about Early Childhood Mental Health Consultation at: www.icmhp.org/initiatives/earlychildconsult.html.

⁹ For information on this objective, see ISBE's Comprehensive System of Learning Supports at: www.isbe.net/learningsupports/.

Information about school climate is available from ISBE at: www.isbe.net/learningsupports/climate/default.htm.

Instruction

English Language Learners 1

The District offers opportunities for resident English Language Learners to develop high levels of academic attainment in English and to meet the same academic content and student academic achievement standards that all children are expected to attain. The Superintendent or designee shall develop and maintain a program for English Language Learners that will:

1. Assist all English Language Learners to achieve English proficiency, facilitate effective communication in English, and encourage their full participation in school activities and programs as well as promote participation by the parents/guardians of English Language Learners. ²
2. Appropriately identify students with limited English-speaking ability. ³
3. Comply with State law regarding the Transitional Bilingual Educational Program (TBE) or Transitional Program of Instruction (TPI), whichever is applicable. ⁴
4. Comply with any applicable State and federal requirements for the receipt of grant money for English Language Learners and programs to serve them. ⁵

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¹ State or federal law controls this policy's content. The assessment and accountability provisions in NCLB and State law include limited English proficient students (20 U.S.C. §6312-6319 and 34 C.F.R. Part 200). NCLB also provides funding to support schools' efforts to help children who are ~~limited English proficient learners~~ "develop high levels of academic attainment in English and meet the same challenging State academic content and student academic achievement standards as all children are expected to meet," (20 U.S.C. §6801 et seq.). Reimbursement for programs is contingent on the submission and approval of a program plan and request for reimbursement in accordance with the requirements in 105 ILCS 5/14C-12 and 23 Ill.Admin.Code Part 228. This policy uses "English Language Learners" (ELL) rather than "Limited English Proficient" ~~—the labels are interchangeable for the purpose of this (LEP). LEP is no longer a term used generally among educators and researchers in the field of English language acquisition (37 Ill. Reg. 16804). ISBE now uses the term English learners, which is synonymous with ELL. A board may use either term in its policy.~~

For purposes of this policy, *English Language Learners* is synonymous with the State law definition of ~~"children of limited English speaking ability," that is, all children English learners, which means any student in preschool, kindergarten, or any of grades pre-K 1 through 12 who, (1) were not born in the U. S., whose home language background is a language other than English; and who are incapable of performing ordinary class work in whose proficiency in speaking, reading, writing, or understanding English; or is not yet sufficient to provide the student with (1) the ability to meet the State's proficiency level of achievement on State assessments, (2) were born in the U. S. of parents possessing no or limited English speaking the ability and who are incapable of performing ordinary class work in to successfully achieve in classrooms where the language of instruction is English, or (3) the opportunity to participate fully in the school setting.~~ "Limited English proficient student" and "students with limited English proficiency," as used in Article 14C of the School Code, are now English learners (105 ILCS 5/14C-2, as amended by P.A. 95-793; and 23 Ill.Admin.Code §228.10).

² This policy's first sentence and the first numbered paragraph both allow a school board to consider the goals for its English Language Learners programs; a board should amend the sample policy accordingly.

³ Districts must administer a home language survey to each student entering the district's schools for the first time for the purpose of identifying students of non-English background (23 Ill.Admin.Code §228.15). ISBE's website contains useful information about communicating with parents/guardians, including sample Home Language Surveys and program letters in many languages (www.isbe.net/bilingual/htmls/tbe_tpi.htm).

For purposes of identifying students eligible to receive special education, districts must administer non-discriminatory procedures to English Language Learners coming from homes in which a language other than English is used (105 ILCS 5/14-8.02).

⁴ 105 ILCS 5/14C-3 and 23 Ill.Admin.Code §§228.25 and 228.30.

5. Determine the appropriate instructional program and environment for English Language Learners. **6**
6. Annually assess the English proficiency of English Language Learners and monitor their progress in order to determine their readiness for a mainstream classroom environment. **7**
7. Include English Language Learners, to the extent required by State and federal law, in the District's student assessment program to measure their achievement in reading/language arts and mathematics. **8**
8. Provide information to the parents/guardians of English Language Learners about: **(1 (a))** the reasons for their child's identification, **(2 (b))** their child's level of English proficiency, **(3 (c))** the method of instruction to be used, **(4 (d))** how the program will meet their child's needs, **(5 (e))** specific exit requirements of the program, **(6 (f))** how the program will meet their child's individualized education program, if applicable, and **(7 (g))** information on parent/guardian rights. Parents/guardians will be regularly apprised of their child's progress and involvement will be encouraged. **9**

Parent Involvement **10**

Parents/guardians of English Language Learners will be: (1) given an opportunity to provide input to the program, and (2) provided notification regarding their child's placement in, and information about, the District's English Language Learners programs.

LEGAL REF.: 20 U.S.C. §§6312-6319 and 6801.
34 C.F.R. Part 200.
105 ILCS 5/14C-1 et seq.
23 Ill.Admin.Code Part 228.

CROSS REF.: 6:15 (School Accountability), 6:170 (Title I Programs), 6:340 (Student Testing and Assessment Program)

5 20 U.S.C. §§6312-6319 and 6801 et seq.; 34 C.F.R. Part 200; 105 ILCS 5/14C-1 et seq.; and 23 Ill.Admin.Code Part 228.

6 23 Ill.Admin.Code §228.25.

7 23 Ill.Admin.Code §228.15(c).

8 34 C.F.R. Part 200.

9 20 U.S.C. §7012(a) and 23 Ill.Admin.Code §228.40.

10 20 U.S.C. §7012(e) and 23 Ill.Admin.Code Part 228.

Students

Attendance and Truancy 1

Compulsory School Attendance 2

This policy applies to individuals who have custody or control of a child: ~~(a) between the ages of 7 and 17 years of age (unless the child has graduated from high school), (a) whose age meets the compulsory attendance age listed in State law, or (b) who is enrolled in any of grades, kindergarten through 12, in the public school regardless of age. These individuals must cause the child to attend the District school wherein the child is assigned, except as provided herein or by State law. Unless a student has already graduated from high school, compulsory attendance ages are as follows:~~

- ~~1. Before the 2014-2015 school year, students between the ages of 7 and 17 years.~~
- ~~2. Beginning with the 2014-2015 school year, students between the ages of 6 (on or before September 1) and 17 years.~~

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 his or her religion forbids secular activity on a particular day, and (6) any child 16 years of age or older 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, observance of a religious holiday, death in the immediate family, family emergency, other situations beyond the control of the student, other circumstances that cause reasonable concern to the

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¹ State law requires boards to adopt a policy covering some of the topics herein and controls this policy's content. 105 ILCS 5/26-13 requires a policy on supportive services and available resources for truants. 23 Ill.Admin.Code §1.290 requires the same plus contains a definition of *valid cause* for absence.

² 105 ILCS 5/26-2, ~~amended by P.A. 98-544, eff. 7-1-14,~~ addresses enrolled students below ~~age 7~~ or over ~~set compulsory attendance ages, age 17~~. The ~~amendment law also~~ requires any persons having custody or control of a child who is enrolled in grades kindergarten through 12 in the public school to cause the child to attend school.

~~After the 2014-2015 school year begins, amend the first paragraph as follows:~~

~~This policy applies to individuals who have custody or control of a child: (a) between the ages of 6 (on or before September 1) and 17 years (unless the child has graduated from high school) whose age meets the compulsory attendance age listed in State law, or (b) who is enrolled in any of grades, kindergarten through 12, in the public school regardless of age. Unless a student has already graduated from high school, compulsory attendance ages are as follows:~~

- ~~1. Before the 2014-2015 school year, students between the ages of 7 and 17 years.~~
- ~~2. Beginning with the 2014-2015 school year, students between the ages of 6 (on or before September 1) and 17 years.~~

105 ILCS 5/26-1, amended by P.A. 98-544, eff. 7-1-14, contains the compulsory school age exemptions. Each listed exception is specifically included in the statute, except the reference to *home school*. See policy 7:40, *Nonpublic School Students, Including Parochial and Home-Schooled Students*, regarding assigning students who enroll from a non-public school. See policy 6:150, *Home and Hospital Instruction*, regarding providing instruction to a pregnant student who is medically unable to attend school.

parent/guardian for the student's safety or health, or other reason as approved by the Superintendent or designee. ³

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. ⁴
2. A process to telephone, within 2 hours after the first class, the parents/guardians of students in grade 8 or below who are absent without prior parent/guardian notification. ⁵
3. A process to identify and track students who are truants, chronic or habitual truants, or truant minors as defined in the School Code, Section 26-2a.
4. Methods 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. ⁶
5. The identification of supportive services that may be offered to truant or chronically truant students, including parent-teacher conferences, student and/or family counseling, or information about community agency services. ⁷ See Board policy 6:110, *Programs for Students At Risk of Academic Failure and/or Dropping Out of School and Graduation Incentives Program*.

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³ These reasons are in 105 ILCS 5/26-2a, amended by P.A. 97-218, except that "other reason as approved by the Superintendent" was added. ISBE rule requires that the absenteeism and truancy policy defines valid causes for absence (23 Ill.Admin.Code §1.290). P.A. 97-218 changed the definition of *chronic or habitual truant*, which is now "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." P.A. 97-975 replaced the Juvenile Court Act's definition of *chronic truant* with a reference to the definition in Sec. 26-2a of the School Code.

⁴ 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).

⁵ This notification is required by 105 ILCS 5/26-3b.

⁶ Each district must have a policy describing diagnostic procedures to identify the cause(s) of absenteeism and supportive services and available resources for truants and chronic truants (105 ILCS 5/26-13; 23 Ill.Admin.Code §1.290).

⁷ 23 Ill.Admin.Code §1.290. 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) (State Board of Education report).

6. 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. **8**
7. 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. **9**
8. An acknowledgement that no punitive action, including out-of-school suspensions, expulsions, or court action, shall be taken against a chronic truant for his or her truancy unless available supportive services and other school resources have been provided to the student. **10**
9. 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. **11**

[For high school and unit districts only]

10. A process for a 17 year old resident to participate in the District's various programs and resources for truant. **12** The student must provide documentation of his/her dropout status for

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8 Use this alternative for districts in suburban Cook County: replace "Regional Office of Education" with "appropriate Intermediate Service Center." Use this alternative for districts in suburban Cook County: replace "Regional Superintendent" with "appropriate Intermediate Service Center." P.A. 96-893 abolished the Regional Office of Education for Suburban Cook County and transferred its duties and powers to Intermediate Service Centers.

9 105 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 and municipalities may regulate truant by ordinance and impose fines and/or community services on truant or, if the truant is under 10 years of age, on the parent or custodian (55 ILCS 5/5-1078.2 and 65 ILCS 5/11-5-9). Such local officials or authorities that enforce, prosecute, or adjudicate municipal ordinances adopted under 55 ILCS 5/5-1078.2 and 65 ILCS 5/11-5-9, or that work with school districts to address truancy problems, are designated as (i) part of the juvenile justice system, established by the Juvenile Court Act of 1987, and (ii) *juvenile authorities* within the definition set forth in subsection (a)(6.5) of Section 10-6 of the Ill. School Student Records Act ([Id.](#)). **A superintendent should consult with the board attorney before disclosing school student records to non-district entities.** See 7:340-AP, *Student Records* for a sample procedure for release of such records to juvenile authorities.

10 105 ILCS 5/26-12 prohibits punitive action "unless available supportive services and other school resources have been provided to the student."

11 105 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 truant; or were previously certified as chronic or habitual truant 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, www.isbe.net/board/archivemessages/message_082807.pdf, p.2, that ISBE is delaying implementing this statute based upon legal guidance from the U.S. Department of Education's Family Policy Compliance Office that its implementation would violate the Federal Education Rights and Privacy Act.

12 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).

the previous 6 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, *Students School Admissions and Student Transfers To and From Non-District Schools*.

11. A process for the temporary exclusion of a student 17 years of age or older for failing to meet minimum academic or attendance standards according to provisions in State law. A parent/guardian has the right to appeal a decision to exclude a student. **13**

LEGAL REF.: 105 ILCS 5/26-1 through 16.
705 ILCS 405/3-33.5.
23 Ill.Admin.Code §§1.242 and 1.290.

CROSS REF.: 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), 7:190 (Student Discipline), 7:340 (Student Records)

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13 Optional, but provided in 105 ILCS 5/26-2(c); ISBE's rule controls the appeal process, 23 Ill.Admin.Code §1.242.

Students

Search and Seizure 1

In order to maintain order and security in the schools, school authorities are authorized to conduct reasonable searches of school property and equipment, as well as of students and their personal effects. "School authorities" includes school liaison police officers. 2

School Property and Equipment as well as Personal Effects Left There by Students

School authorities may inspect and search school property and equipment owned or controlled by the school (such as, lockers, desks, and parking lots), as well as personal effects left there by a student, without notice to or the consent of the student. Students have no reasonable expectation of privacy in these places or areas or in their personal effects left there. 3

The Superintendent may request the assistance of law enforcement officials to conduct inspections and searches of lockers, desks, parking lots, and other school property and equipment for illegal

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1 State or federal law controls this policy's content. This policy concerns an area in which the law is unsettled. Consult the board's attorney with questions about implementing this policy and searching students or seizing their possessions.

According to Fourth Amendment cases, a search by the police requires "probable cause" supported by a warrant. However, in a U.S. Supreme Court decision, cited in every student search case, the Court upheld the warrantless search of a student. A search is: (1) justified at its inception when there are reasonable grounds for suspecting the search of a particular student will turn up evidence that the student violated the law or school rules, and (2) permissible in its scope when it is reasonably related to the search's objective and not excessively intrusive. T.L.O. v. New Jersey, 105 S.Ct. 733 (1985).

2 The Ill. Supreme Court upheld a search conducted by a school liaison officer, saying: "Decisions ... that involve police officers in school settings can generally be grouped into three categories: (1) those where school officials initiate a search or where police involvement is minimal, (2) those involving school police or liaison officers acting on their own authority, and (3) those where outside police officers initiate a search. Where school officials initiate the search or police involvement is minimal, most courts have held that the reasonable suspicion test [applies]. ...The same is true in cases involving school police or liaison officers acting on their own authority. ...However, where outside police officers initiate a search, or where school officials act at the behest of law enforcement agencies, the probable cause standard has been applied. In the present case, the record shows that Detective Ruettiger was a liaison police officer on staff at the Alternate School, which is a high school student with behavioral disorders. ... We hold that the reasonable suspicion standard applies under these facts." People v. Dilworth, 661 N.E.2d 310 (Ill., 1996).

3 A State statute 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 (105 ILCS 5/10-22.6(e)). This law does not mean that school officials have an excuse for unjustifiably opening students' possessions looking for contraband (see footnote 1). See Doe v. Little Rick School Dist., 380 F.3d 349 (8th Cir., 2004) (Searches conducted pursuant to the following policy were unconstitutional: "[B]ook bags, backpacks, purses and similar containers are permitted on school property as a convenience for students," and "if brought onto school property, such containers and their contents are at all times subject to random and periodic inspections by school officials.").

The Fourth Amendment protects individuals from searches only when the person has a legitimate expectation of privacy. While case law supports that lockers, as school property, may be searched without individualized suspicion of wrongdoing, many cases suggest that in order to search a student's possessions left in the locker, school officials need individualized suspicion of wrongdoing. This paragraph, as well as 105 ILCS 5/10-22.6(e), attempts to avoid Fourth Amendment protection for personal property left by students on school property by telling students not to expect privacy in these places or in their personal property left there. **This is an unsettled area of the law and should be reviewed with the school board's attorney.**

Option for high school and unit districts:

This paragraph applies to student vehicles parked on school property. In addition, Building Principals shall require each high school student, in return for the privilege of parking on school property, to consent in writing to school searches of his or her vehicle, and personal effects therein, without notice and without suspicion of wrongdoing.

drugs, weapons, or other illegal or dangerous substances or materials, including searches conducted through the use of specially trained dogs. 4

Students 5

School authorities may search a student and/or the student's personal effects in the student's possession (such as, purses, wallets, knapsacks, book bags, lunch boxes, etc.) when there is a reasonable ground for suspecting that the search will produce evidence the particular student has violated or is violating either the law or the District's student conduct rules. 6 The search itself must be conducted in a manner that is reasonably related to its objective and not excessively intrusive in light of the student's age and sex, and the nature of the infraction. 7

When feasible, the search should be conducted as follows: 8

1. Outside the view of others, including students,
2. In the presence of a school administrator or adult witness, and
3. By a certificated employee or liaison police officer of the same sex as the student.

Immediately following a search, a written report shall be made by the school authority who conducted the search, and given to the Superintendent.

Seizure of Property

If a search produces evidence that the student has violated or is violating either the law or the District's policies or rules, such evidence may be seized and impounded by school authorities, and disciplinary action may be taken. When appropriate, such evidence may be transferred to law enforcement authorities. 9

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4 105 ILCS 5/10-22.6(e). The sample policy may be amended to name other staff members who are authorized to request law enforcement aid.

5 For more information about searches, seizures and interviews of students, see *Guidelines for Interviews of Students at School by Law Enforcement Authorities*, published by the Ill. Council of School Attorneys and available at: www.iasb.com/law/icsaguidelines.cfm.

6 TLO, 105 S. Ct. at 743. An unsubstantiated tip from a student may serve as the grounds for a search. People v. Pruitt, 662 N.E.2d 540 (Ill.App.1, 1996).

7 105 ILCS 5/10-22.6(e) and TLO, 105 S. Ct. at 735.

8 Optional; these are practical guidelines that will help to ensure that all searches comply with constitutional requirements. State or federal law requires nothing in this paragraph. For an alternative to intrusive pat-down searches and guidelines on strip searches, see Cornfield v. Consolidated High School Dist. No. 230, 991 F.2d 1316 (7th Cir. 1993). There, school officials had reason to believe that a high school student was concealing illegal drugs in his crotch area. Believing a pat down to be excessively intrusive and ineffective at detecting drugs, the school officials required the student to change into his gym clothes in a locked locker room while male school officials observed him. The search was upheld. But see, Stuczynski v. Bremen High School, 423 F.Supp.2d 823 (N.D.Ill., 2006) (The requisite individualized, reasonable suspicion to conduct a strip search was missing where the only reason for the strip search was the dean's belief that the students were the last students in a locker room before the money was reported missing.). See also, Safford Unified School Dist. v. Redding, 129 S. Ct. 2633 (2009) (finding a strip search of student was not justified under the circumstances even though the asst. principal had reasonable suspicion but still awarded qualified immunity to the asst. principal because the law was unclear).

A school district may randomly conduct a mass search by using a metal detector. People v. Pruitt, 662 N.E.2d 540 (Ill.App.1, 1996). The use of a metal detector must be according to the district's standards for when and how metal detector searches are to be conducted.

The U.S. Supreme Court upheld a random drug testing policy for student athletes and extracurricular participants, (Vernonia School Dist. 47J v. Acton, 115 S.Ct. 2386 (1995); and Independent School Dist. of Pottawatomie County v. Earls, 122 S.Ct. 2559 (2002)). The circumstances justifying random drug searches do not exist for the entire student body; thus, random drug tests of the student body would probably not survive constitutional scrutiny.

9 See 105 ILCS 5/10-22.6(e).

Notification Regarding Student Accounts or Profiles on Social Networking Websites

State law requires the District to notify students and their parents/guardians that school officials may request or require a student or his or her parent/guardian to provide a password or other related account information to gain access to the student's account or profile on a social networking website. This request may be made only if there is reasonable cause to believe that the student's account contains evidence that he or she violated a school disciplinary rule or Board policy. **10**

- LEGAL REF.: 105 ILCS 5/10-20.14, 5/10-22.6, and 5/10-22.10a.
Right to Privacy in the School Setting Act, 105 ILCS 75/.
Cornfield v. Consolidated High School Dist. No. 230, 991 F.2d 1316 (7th Cir., 1993).
People v. Dilworth, 661 N.E.2d 310 (Ill., 1996), *cert. denied*, 116 S.Ct. 1692 (1996).
People v. Pruitt, 662 N.E. 2d 540 (Ill.App.1, 1996), *app. denied*, 667 N.E. 2d 1061 (Ill.App.1, 1996).
T.L.O. v. New Jersey, 105 S.Ct. 733 (1985).
Vernonia School Dist. 47J v. Acton, 115 S.Ct. 2386 (1995).
Safford Unified School Dist. No. 1 v. Redding, 129 S. Ct. 2633 (2009).
- CROSS REF.: 7:130 (Student Rights and Responsibilities), 7:150 (Agency and Police Interviews), 7:190 (Student Discipline)

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10 Right to Privacy in the School Setting Act, 105 ILCS 75/1 and 15, added by P.A. 98-129. This law does not change the TLO standard (see f/n 6 above); it requires districts to provide parents/guardians with notice of the standard. Depending upon the social media platform and settings chosen by the student and his or her parents, a student may have a legitimate expectation of privacy in his or her social media accounts and profile(s) (see f/n 3, second paragraph, above for a discussion about the Fourth Amendment).

In addition to policy, the law also lists a school's student handbook as an additional method for publication of this information. For sample handbook language, see the Illinois Principals Association Online Model Student Handbook (MSH) at: www.ilprincipals.org/resources/model-student-handbook.

Students

Preventing 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 is an important District goal.

Bullying on the basis of actual or perceived race, color, nationality, 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:

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.

For purposes of this policy, the term *bullying* means any severe or pervasive physical or verbal act or conduct, including communications made in writing or electronically, directed toward a student that has or can be reasonably predicted to have the effect of one or more of the following:

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

Bullying, intimidation, and/or harassment may take various forms, including without limitation: threats, stalking, physical violence, sexual harassment, sexual violence, theft, public humiliation,

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¹ All districts must have a policy on bullying (105 ILCS 5/27-23.7). The policy must be filed with ISBE; it must be updated every 2 years and again filed with ISBE. State law does not specify the content of the bullying policy. This sample policy's first paragraph allows a school board to consider its goals for eliminating and preventing bullying and should be amended accordingly. The second paragraph is directly from the statute requiring districts to have a bullying policy, except that the statute also includes *unfavorable discharge from military service* (105 ILCS 5/27-23.7(a); see also 775 ILCS 5/1-103 and 23 Ill.Admin.Code §1.240). *Unfavorable discharge from military service* is not included because of its general inapplicability to students in K-12. This policy's list of protected classifications is identical to the list in 7:20, *Harassment of Students Prohibited*. The definition of *bullying* (3rd paragraph) and the examples of various forms of bullying (4th paragraph) are from 105 ILCS 5/27-23.7.

Boards must annually communicate their bullying policy to students and their parents/guardians (see item 8 in the policy). This may be accomplished, in part, by including a statement, such as the following, in the student handbook and school website:

Bullying, intimidation, and harassment are not acceptable in any form and will not be tolerated at school or any school-related activity. The School District will protect students against retaliation for reporting incidents of bullying, intimidation, or harassment, and will take disciplinary action against any student who participates in such conduct.

destruction of property, or retaliation for asserting or alleging an act of bullying. For purposes of this policy, the term *bullying* includes harassment, intimidation, retaliation, and school violence.

A student who is being bullied is encouraged to immediately report it orally or in writing to the District Complaint Manager or any staff member with whom the student is comfortable speaking. Anyone who has information about actual or threatened bullying is encouraged to report it to the District Complaint Manager or any staff member. The District will not punish anyone because he or she made a complaint or report, supplied information, or otherwise participated in an investigation or proceeding, provided the individual did not make a knowingly false accusation or provide knowingly false information.

The Superintendent or designee shall develop and maintain a program that:

1. Fully implements and enforces each of the following Board policies: ²
 - a. 2:260, *Uniform Grievance Procedure*. This policy contains the process for an individual to seek resolution of a complaint. A student may use this policy to complain about bullying. The District Complaint Manager shall address the complaint promptly and equitably. After an investigation, the Complaint Manager shall file a written report of his or her findings with the Superintendent for his or her action. The student may appeal any decision to the Board.
 - b. 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. It subjects any individual to the loss of privileges, disciplinary action, and/or appropriate legal actions for violating the District's *Authorization of Electronic Network Access*.
 - ~~a-c.~~ 7:20, *Harassment of Students Prohibited*. This policy prohibits any person from harassing, intimidating, or bullying a student based on an actual or perceived characteristic that is identified in the policy. ~~Each of~~ Those characteristics ~~is~~ are also identified in ~~this policy's~~ the second paragraph of 7:180, *Preventing Bullying, Intimidation, and Harassment*.
 - d. 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. It encourages anyone with information about an incident of teen dating violence to report it to any school staff member.
 - ~~b-e.~~ 7:190, *Student Discipline*. This policy prohibits students from engaging in hazing, bullying, or any kind of aggressive behavior that does physical or psychological harm to another or any urging of other students to engage in such conduct; prohibited conduct includes any use of violence, force, noise, coercion, threats, intimidation, fear, harassment, or other comparable conduct.
 - ~~e-f.~~ 7:310, *Restrictions on Publications*. This policy prohibits students from: (~~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 photographs and Internet

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² Be sure the referenced board policies, as adopted locally, contain the language paraphrased in this policy. If not, either substitute similar language from the locally adopted board policies on the same topic, or just insert the titles from relevant locally adopted policies.

material and blogs, that causes substantial disruption to school operations or interferes with the rights of other students or staff members. ³

~~d. 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. It subjects any individual to the loss of privileges, disciplinary action, and/or appropriate legal actions for violating the District's Authorization of Electronic Network Access.~~

Full implementation of the above policies includes: ~~(a (1) conducting a prompt and thorough investigation of alleged incidents of bullying, intimidation, harassing behavior, or similar conduct;~~ ~~(b (2) providing each student who violates one or more of these policies with appropriate consequences and remedial action, and~~ ~~(c (3) protecting students against retaliation for reporting such conduct~~ bullying.

2. Examines the appropriate steps to understand and rectify conditions that foster bullying, intimidation, and harassment; this contemplates taking action to eliminate or prevent these disruptive behaviors beyond traditional punitive disciplinary actions.
3. Includes bullying prevention and character instruction in all grades in accordance with State law and Board policy 6:60, *Curriculum Content*. ⁴ This includes incorporating student social and emotional development into the District's educational program as required by State law and in alignment with Board policy 6:65, *Student Social and Emotional Development*. ⁵
4. Fully informs 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 ~~the~~ State law requirement — that teachers and other certificated or licensed employees maintain discipline. ⁶
 - 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.

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³ 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. However, school officials may generally: (1) remove a student from extracurricular activities when the conduct code for participation requires students to conduct themselves at all times as good citizens and exemplars of the school (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 or violates the rights of others. But see Brandt v. Zamecnik v. Indian Prairie School Dist. #204, 636 F.3d 874 (7th Cir. 2011) (school district violated students' free speech rights by forbidding them from wearing at school a T-shirt saying *Be Happy, Not Gay*).

⁴ 105 ILCS 5/27-23.7, 105 ILCS 5/14-1.09.2, amended by P.A. 98-338, states that social work services may include establishing and implementing bullying prevention and intervention programs.

⁵ 405 ILCS 49/, amended by P.A. 98-338.

⁶ Required by 105 ILCS 5/24-24.

~~a.d.~~ Establishing a process for staff members to fulfill their obligation to report alleged acts of bullying, ~~intimidation, harassment, and other acts of actual or threatened violence.~~

~~4.5.~~ Encourages all members of the school community, including students, parents, volunteers, and visitors, to report: (a) alleged acts of bullying, intimidation, harassment, and other acts of actual or threatened violence, and (b) locations on school grounds where additional supervision or monitoring may be needed to prevent bullying.

~~5.6.~~ Actively involves students' parents/guardians in the remediation of the behavior(s) of concern. This includes ensuring that all parents/guardians are notified, as required by State law, whenever their child engages in aggressive behavior. ⁷

~~6.7.~~ Communicates the District's expectation that all students conduct themselves with a proper regard for the rights and welfare of other students. This includes a process for commending or acknowledging students for demonstrating appropriate behavior.

~~7.8.~~ Annually communicates this policy to students and their parents/guardians. ⁸ This includes annually disseminating information to all students and parents/guardians explaining the serious disruption caused by bullying, intimidation, or harassment and that these behaviors will be taken seriously and are not acceptable in any form.

~~8.9.~~ Engages in ongoing monitoring that includes collecting and analyzing appropriate data on the nature and extent of bullying in the District's schools and, after identifying appropriate indicators, assesses the effectiveness of the various strategies, programs, and procedures and reports the results of this assessment to the Board along with recommendations to enhance effectiveness.

~~9.10.~~ Complies with State and federal law and is in alignment with Board policies. This includes prompting the Board to update the policy beginning every 2 years after its initial adoption and filing this policy with the Illinois State Board of Education after the Board adopts or updates it. ⁹

This policy is not 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 or 4 of Article 1 of the Ill. Constitution. ¹⁰

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

⁷ 105 ILCS 5/10-20.14; see 7:190-E1, *Aggressive Behavior Reporting Letter and Form*.

⁸ Required by 105 ILCS 5/27-23.7(d).

⁹ *Id.*

¹⁰ The bullying statute also contains this caveat (*Id.*).

LEGAL REF.: 405 ~~HS~~ ILCS 49/, Children's Mental Health Act.
105 ILCS 5/10-20.14, 5/24-24, and 5/27-23.7.
23 Ill.Admin.Code §§1.240 and §1.280.

CROSS REF.: 2:240 (Board Policy Development), 2:260 (Uniform 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 Discipline), 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)

Students

Teen Dating Violence Prohibited ¹

Engaging in teen dating violence that takes place at school, on school property, at school-sponsored activities, or in vehicles used for school-provided transportation is prohibited. ² For purposes of this policy, the term *teen dating violence* occurs whenever a student who is 13 to 19 years of age uses or threatens to use physical, mental, or emotional abuse to control an individual in the dating relationship; or uses or threatens to use sexual violence in the dating relationship. ³

The Superintendent or designee shall develop and maintain a program to respond to incidents of teen dating violence that: ⁴

1. Fully implements and enforces each of the following Board policies: ⁵
 - a. 7:20, *Harassment of Students Prohibited*. This policy prohibits any person from harassing, intimidating, or bullying a student based on the student's actual or perceived characteristics of sex; sexual orientation; gender identity; and gender-related identity or expression (this policy includes more protected statuses).
 - b. 7:180, *Preventing Bullying, Intimidation, and Harassment*. This policy prohibits students from engaging in bullying, intimidation, and harassment at school, school-related events and electronically. Prohibited conduct includes threats, stalking, physical violence, sexual harassment, sexual violence, theft, public humiliation, destruction of property, or retaliation for asserting or alleging an act of bullying.

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

¹ All school boards ~~with students enrolled in grades 7 through 12~~ must have a policy on teen dating violence (105 ILCS 110/3.10, added by P.A. 98-190). This sample policy is designed to align with a district's already-existing procedures for reporting bullying and school violence. See f/n 7. The curriculum components for teen dating violence education, which apply to districts with students enrolled in grades 7 through 12, are listed in administrative procedure 6:60-AP, *Comprehensive Health Education Program*.

² 105 ILCS 110/3.10(b), added by P.A. 98-190. School officials must proceed carefully before disciplining a student for out-of-school conduct. A school's authority over off-campus conduct is much more limited than incidents that occur on school grounds. However, school officials may generally: (1) remove a student from extracurricular activities when the conduct code for participation requires students to conduct themselves at all times as good citizens and exemplars of the school (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.

³ 105 ILCS 110/3.10(a), added by P.A. 98-190. For districts that wish to broaden the ages (e.g., perhaps include 11-12 year olds in a middle school setting), delete the following phrase from the first sentence: "~~who is 13 to 19 years of age~~". The law defines *dating* or *dating relationship* as an "ongoing social relationship of a romantic or intimate nature between two persons." The terms do not include "a casual relationship or ordinary fraternization between two persons in a business or social context."

⁴ Required by 105 ILCS 110/3.10(b)(3), added by P.A. 98-190.

⁵ Be sure the referenced board policies, as adopted locally, contain the language paraphrased in this policy. If not, either substitute similar language from the locally adopted board policies on the same topics, or just insert the titles from relevant locally adopted policies.

The statutory content requirements for a teen dating policy include "establish[ing] procedures for the manner in which employees of a school are to respond to incidents of teen dating violence." This policy fulfills this requirement by incorporating by reference the following administrative procedure: 7:180-AP1, *Prevention, Identification, Investigation, and Response to Bullying and School Violence*. This means that 7:180-AP1 should be considered to be part of this policy.

2. Encourages anyone with information about incidents of teen dating violence to report them to any of the following individuals: **6**
 - a. Any school staff member. School staff shall respond to incidents of teen dating violence by following the District’s established procedures for the prevention, identification, investigation, and response to bullying and school violence. **7**
 - b. The Nondiscrimination Coordinator, Building Principal, Assistant Building Principal, Dean of Students, or a Complaint Manager identified in policy 7:20, *Harassment of Students Prohibited*. **8**
3. Incorporates age-appropriate instruction in grades 7 through 12, in accordance with the District’s comprehensive health education program in Board policy 6:60, *Curriculum Content*. This includes incorporating student social and emotional development into the District’s educational program as required by State law and in alignment with Board policy 6:65, *Student Social and Emotional Development*. **9**
4. Incorporates education for school staff, as recommended by the Nondiscrimination Coordinator, Building Principal, Assistant Building Principal, Dean of Students, or a Complaint Manager. **10**
5. Notifies students and parents/guardians of this policy. **11**

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6 105 ILCS 110/3.10(b)(4), added by P.A. 98-190, requires the policy to identify by job title which school officials are responsible for receiving reports related to teen dating violence.

7 *Id.* at f/ns 5 & 6. Sexual violence is one listed component of teen dating violence (105 ILCS 110/3.10 (a), added by P.A. 98-190). Sexual violence has also been found by the Ill. Gen. Assembly to be a component of bullying and school violence (105 ILCS 5/27-23.7). Thus, identifying *any school staff member* is consistent with 7:180-AP1, *Prevention, Identification, Investigation, and Response to Bullying and School Violence*, which uses the student-friendly reporting system outlined in 7:180-AP1, E2, *Be a Hero by Reporting Bullying and School Violence*.

8 *Id.* Under any reporting system, a report involving bullying and school violence that is based upon a protected status (often teen dating violence will involve conduct based upon the target’s sex) must be referred to the district’s Nondiscrimination Coordinator, Building Principal, Assistant Building Principal, Dean of Students, or a Complaint Manager (7:20, *Harassment of Students Prohibited*). Customize this list to reflect local conditions. These individuals may also take reports directly from students.

9 Required by 105 ILCS 110/3.10(b)(2). The curriculum-specific components for teen dating violence education are listed in administrative procedure 6:60-AP, *Comprehensive Health Education Program*.

10 *Id.* For boards that add the optional paragraphs in policy 5:100, *Staff Development*, add the phrase “and policy 5:100, *Staff Development*.”

11 Required by 105 ILCS 110/3.10(b)(5). Boards must communicate this policy to students and their parents/guardians. This may be accomplished, in part, by (1) sending 7:185-E, *Memo to Parents/Guardians Regarding Teen Dating Violence*, and (2) amending the district’s anti-bullying campaign statement(s), such as the following, in the student handbook and school website:

Bullying, teen dating violence, intimidation, and harassment are not acceptable in any form and will not be tolerated at school or any school-related activity. The School District will take disciplinary action against any student who participates in such conduct or who retaliates against someone for reporting incidents of bullying, teen dating violence, intimidation, or harassment.

Incorporated
by Reference: 7:180-AP1, (Prevention, Identification, Investigation, and Response to Bullying
and School Violence)

LEGAL REF.: 105 ILCS 110/3.10.

CROSS REF.: 2:240 (Board Policy Development), 5:100 (Staff Development), 5:230
(Maintaining Student Discipline), 6:60 (Curriculum Content), 6:65 (Student
Social and Emotional Development), 7:20 (Harassment of Students Prohibited),
7:180 (Preventing Bullying, Intimidation, and Harassment), 7:190 (Student
Discipline), 7:220 (Bus Conduct), 7:230 (Misconduct by Students with
Disabilities), 7:240 (Conduct Code for Participants in Extracurricular Activities)

Students

Student Discipline ¹

Prohibited Student Conduct ²

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 materials. ³
2. Using, possessing, distributing, purchasing, or selling alcoholic beverages. ⁴ 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, or selling:
 - a. Any illegal drug, or controlled substance, or cannabis (including medical cannabis, marijuana, and hashish). ⁵
 - b. Any anabolic steroid unless being administered in accordance with a physician's or licensed practitioner's prescription. ⁶
 - 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. ⁷

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¹ All districts must have a policy on student discipline, including corporal punishment (105 ILCS 5/10-20.14; 23 Ill.Admin.Code §1.280). Teachers and other certificated employees must maintain discipline (105 ILCS 5/24-24). Staff members may *not* use isolated time out or physical restraint unless 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 f/n 36 and 7:190-AP4, *Use of Isolated Time Out and Physical Restraint*. Given the unique concerns facing school officials, school disciplinary codes are not required to be drafted as narrowly or with the same precisions as criminal statutes. Bethel School Dist. v. Fraser, 106 S.Ct. 3159 (1986).

² Boards for elementary districts may customize the items listed as *prohibited student conduct* that clearly will not apply to their students.

³ 105 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). Districts that fail to comply risk a civil penalty of up to \$1,000 per violation per day. See policy 8:30, *Visitors to and Conduct on School Property*, for more information.

State and federal law have not yet addressed electronic cigarettes. An electronic or e-cigarette resembles a regular cigarette. It contains a battery-operated heating element that turns a liquid into a mist for inhaling. The liquid may contain nicotine. Information, albeit limited, is posted on the U.S. Food and Drug Administration website at:

www.fda.gov/tobaccoproducts/default.htm, and
www.fda.gov/newsevents/publichealthfocus/ucm252360.htm.

Boards may use the following alternative to prohibit electronic cigarettes: "Using, possessing, distributing, purchasing, or selling tobacco materials or electronic cigarettes."

⁴ Alcoholic beverages are defined in 235 ILCS 5/1-3.01 to 3.05.

⁵ Controlled substance is defined in 720 ILCS 570/102; cannabis is defined in 720 ILCS 550/3. Either spelling, *marihuana* or *marijuana*, is correct; however, *marijuana* is more common. See f/n 8 for a discussion of medical cannabis.

⁶ Anabolic steroid is defined in 720 ILCS 570/102.

⁷ 105 ILCS 25/2 requires IHSA to prohibit a student from participating in an IHSA-sponsored athletic competition unless the student has agreed not to use any performance-enhancing substances on IHSA's current banned drug list and to submit to performance-enhancing substance testing. See policy 7:240, *Conduct Code for Participants in Extracurricular Activities*.

- 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. ⁸
- 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. "Look-alike" or counterfeit drugs, including a substance not containing an illegal drug or controlled substance, but one: (a) that a student believes to be, or represents to be, an illegal drug or controlled substance; 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 or controlled substance. ⁹
- g. 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. ¹⁰

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. ¹¹
- 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, 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 and out-of-sight during the regular school day unless: (a) the

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⁸ 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 Pilot Program (410 ILCS 130/, added by P.A. 98-122). There are many situations in which no one, even a registered qualifying patient, may possess or use cannabis, including in a school bus or on the grounds of any preschool, or primary or secondary school (410 ILCS 130/30(a)(2)&(3). See also www2.illinois.gov/gov/mcpp/Pages/default.aspx. Contact the board attorney for advice concerning medical cannabis.

⁹ Look-alike and counterfeit substances are defined in 720 ILCS 570/102. Look-alike drugs should be defined; an unpublished Ill. appellate decision in 2000 found a policy prohibiting possession of look-alikes had vagueness problems.

¹⁰ Drug paraphernalia is defined in 720 ILCS 600/2.

¹¹ 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). 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.

supervising teacher grants permission; (b) use of the device is provided in a student's individualized education program (IEP); or (c) it is needed in an emergency that threatens the safety of students, staff, or other individuals. **12**

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, 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. Teen dating violence, as described in Board policy 7:185, *Teen Dating Violence Prohibited*, is prohibited. **13**

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12 105 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, & 333). Fines are as high as \$11,000 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 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).

13 All districts must have a policy on bullying (105 ILCS 5/27-23.7(d). Policy 7:180, *Preventing Bullying, Intimidation, and Harassment*, contains the statutory definition of *bullying*.

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. Implementing procedures must include a method for informing parents/guardians when their child or ward engaged in aggressive behavior as well as early intervention procedures based upon available community and district resources. See 7:190-E, *Aggressive Behavior Reporting Letter and Form*.

All school boards must have a policy on prohibited teen dating violence (105 ILCS 110/3.10, added by P.A. 98-190). Verify that the board adopted the policy listed and amend its title in this policy, if necessary.

A trial court's order enjoining a student's expulsion for committing aggressive behavior was overturned in *Wilson ex rel. Geiger v. Hinsdale Elementary School Dist.* 181, 810 N.E.2d 637 (Ill.App.2, 2004). The board expelled an 11-year-old student for bringing 2 CDs to school containing a song entitled, "Gonna Kill Mrs. Cox's Baby." Mrs. Cox was the student's pregnant science teacher. The student was expelled for the remainder of the school year for violating the district's policy prohibiting aggressive behavior. The Court of Appeals reversed the trial court's temporary restraining order (that had stopped the penalty's imposition until after a trial) finding that the student had violated school rules subjecting him to exclusion and that the penalty was not unreasonable, arbitrary, capricious, or oppressive.

See also *Gendelman v. Glenbrook North High School and Northfield Township School District* 225, 2003 WL 21209880 (N.D.Ill., 2003)(student suspensions for hazing were upheld).

10. Causing or attempting to cause damage to, or stealing or attempting to steal, school property or another person's personal property. **14**
11. Being absent without a recognized excuse; State law and School Board policy regarding truancy control will be used with chronic and habitual truants. **15**
12. 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. **16**
13. Being involved in gangs or gang-related activities, including displaying gang symbols or paraphernalia. **17**
14. Violating any criminal law, including but not limited to, assault, battery, arson, theft, gambling, eavesdropping, and hazing.
15. 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. **18**
16. 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

[The failure of a school official \(including any administrator, teacher, counselor, support staff, or coach\) to report hazing is a crime \(720 ILCS 5/12C-50.1, added by P.A. 98-393\).](#)

A person commits a felony hate crime when, by reason of the actual or perceived race, color, creed, religion, ancestry, sexual orientation, disability, or national origin of another person, he or she commits assault or battery (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 makes 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.

14 720 ILCS 5/26-1 makes 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.

15 105 ILCS 5/26-2a, 5/26-9, and 5/26-12. 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*.

16 State law requires schools to suspend or expel any student who engages in this activity (105 ILCS 5/31-3).

17 See [Kelly v. Board of Educ. of McHenry Community High School 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). Significantly, the General Assembly recognized in 105 ILCS 5/27-23.7(a), that "[g]iven the higher rates of criminal offending among gang members, as well as the availability of increasingly lethal weapons, the level of criminal activity by gang members has taken on new importance for law enforcement agencies, schools, the community, and prevention efforts."

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.

18This statement of misconduct restates 105 ILCS 5/10-22.6(d-5). 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 Section 10-22.6(d-5) of the School Code.

intimidation of a staff member; or (b) endanger the health or safety of students, staff, or school property. **19**

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. **20**

Efforts, including the use of early intervention and progressive discipline, 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. **21** 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. **22**

The grounds for disciplinary action, including those described more thoroughly later in this policy, apply whenever the student’s conduct is reasonably related to school or school activities, including, but not limited to: **23**

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19 A catchall provision, e.g., this one, gives staff members authority to respond to unforeseen situations.

If the board adopts a mandatory uniform policy (see 7:165, *School Uniforms*), add the following item to the list as number 17: “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.”

20 *Possession* should be defined to avoid vagueness problems.

21 See f/n 13.

22 Mandated by 105 ILCS 5/10-20.36.

23 A school’s power over students does not cease when students leave the campus. Illinois statutes provide little guidance concerning off-campus jurisdiction. Board policy must provide a jurisdictional statement telling students and staff the circumstances under which the district will take disciplinary action. Rules taking jurisdiction of off-campus misconduct generally survive the test of reasonableness if they are limited to situations having a direct nexus to the school. Jurisdictional rules in board policy should generally be as broad as possible in order to give staff members authority to respond to unforeseen situations. However, 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 factual inquiry to determine the degree of nexus and impact on the school. Two decisions issued by the same federal court of appeals are informative. Both cases involved students who created a very unflattering MySpace profile parodying their principal but there was little evidence that the profiles caused, or could cause, substantial disruption in the schools. Absent this factor, the school districts were not empowered to punish out-of-school expressive conduct, even if it is lewd, indecent, or offensive speech. *J.S. v. Blue Mountain Sch. Dist., combined with Layshock v. Hermitage Sch. Dist.*, 650 F.3d 205 (3d Cir. 2011), *cert. denied* 2012 WL 117558 (U.S.).

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. **24**

Disciplinary Measures 25

Disciplinary measures may include: **26**

1. Disciplinary conference.

There are many other decisions on disciplining a student for off-campus misconduct; for examples, see: Morse v. Frederick, 127 S.Ct. 2618 (2007)(held school’s compelling interest in stopping student drug abuse allows schools to prohibit student speech that maybe reasonably regarded as promoting illegal drug use); Boucher v. School Dist. of Greenfield, 134 F.3d 821 (7th Cir. 1998)(upheld expulsion for off-campus speech – an article explaining how to hack into the school’s computers); Giles v. Brookville Area School District, 669 A.2d 1079 (Pa. Commw. 1995)(upheld expulsion for selling marijuana to another student off-campus where negotiations took place on campus); J.S. v. Bethlehem Area School District, 807 A.2d 847 (Pa. 2002)(suspension upheld for posting on a private web site derogatory, offensive, and threatening statements directed toward a teacher); Wisniewski v. Weedsport Cent. School District, 494 F.3d 34 (2nd Cir. 2007), (upheld suspension for off-campus speech - an instant message icon illustrating a pistol firing a bullet at teacher’s head with words “kill Mr. Vandermolen.”); Doe v. Pulaski Co. Special School, 306 F.3d 616 (8th Cir. 2002) (vacated holding in Doe v. Pulaski Co. Special School, 263 F.3d 833 (8th Cir. 2001), holding that the school board did not violate the student's First Amendment rights when it expelled him for writing a letter at home referring to killing his girlfriend).

Note that the law is different regarding participants in athletics and extracurricular activities. See policy 7:240, *Conduct Code for Participants in Extracurricular Activities*.

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. School officials should immediately seek the board attorney’s advice concerning available options.

24 Suspending or expelling a student for off-campus misconduct is problematic when the school’s jurisdiction is premised on nothing more than “the student’s presence at school may reasonably be considered to create an interference with school purposes or an educational function.” If possible, other grounds for jurisdiction should be added. The factual context will determine jurisdiction. Even when there is no other jurisdictional ground, if the nature of the conduct is particularly troublesome, a detrimental impact on the school can be inferred. See Doe v. Superintendent of Schools of Stoughton, 767 N.E.2d 1054 (Mass., 2002)(suspension for off-campus commission of a felony was upheld).

25 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.

An example of the judicial reluctance to interfere is Tun v. Whitticker, 398 F.3d 899 (7th Cir., 2005). A student named Brandon brought a substantive due process claim against the school for expelling him without evidence of wrongdoing. Brandon and three others were expelled for allowing nude pictures of themselves to be taken in the school shower. After Brandon appealed using the school’s procedures, the expulsion was rescinded and his record expunged of any reference to the incident. Brandon, however, brought a federal court action alleging that his substantive due process rights were violated. While the Court believed that school officials overacted to boys “just horsing around,” it did not believe the expulsion amounted to a substantive due process violation - it fell short of the required “shocks the conscience” standard.

26 Most school attorneys advise against using a grade reduction as a disciplinary measure. One case upheld the application of such a policy. Knight v. Board of Education, 348 N.E.2d 299 (Ill.App. 4, 1976). Another case, however, found unconstitutional, a grade reduction policy requiring 9-week grades to be reduced 4% for each day of a suspension. Smith v. School City of Hobart, 811 F.Supp. 391 (N.D.Ind., 1993).

2. Withholding of privileges.
3. Seizure of contraband.
4. Suspension from school and all school activities for up to 10 days, provided that appropriate procedures are followed. **27** A suspended student is prohibited from being on school grounds.
5. Suspension of bus riding privileges, provided that appropriate procedures are followed. **28**
6. Expulsion from school and all school-sponsored activities and events for a definite time period not to exceed 2 calendar years, provided that the appropriate procedures are followed. **29** An expelled student is prohibited from being on school grounds. **30**
7. Notifying juvenile authorities or other law enforcement whenever the conduct involves illegal drugs (controlled substances), “look-alikes,” alcohol, or weapons.
8. Notifying parents/guardians.
9. Temporary removal from the classroom.
10. In-school suspension for a period not to exceed 5 school days. The Building Principal or designee shall ensure that the student is properly supervised. **31**
11. After-school study or Saturday study **32** 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.
12. Community service with local public and nonprofit agencies that enhances community efforts to meet human, educational, environmental, or public safety needs. **33** 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.

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

27 105 ILCS 5/10-22.6. The next sentence is optional.

28 Id.

29 105 ILCS 5/10-22.6. The Indiana Supreme Court upheld a policy to deny semester credit to a student expelled anytime during the semester. South Gibson School Board v. Sollman, 768 N.E.2d 437 (Ind. 2002). An optional provision, such as the following, should be discussed with the board attorney before adoption:

Unless the Building Principal determines otherwise, a student expelled anytime during a semester will be denied credit for the semester regardless of whether the student had completed sufficient course work to earn a passing grade before being expelled.

30 Optional (105 ILCS 5/10-22.6).

31 State law does not cover in-school suspensions. Generally, an educational program must be included in an in-school suspension; otherwise, it may become a regular suspension with procedural requirements.

32 Teachers may not be required to teach on Saturdays (105 ILCS 5/24-2).

33 Optional. See Herndon v. Chapel Hill-Carrboro City Bd., 89 F.3d 174 (C.A. 4, 1996)(upheld policy requiring students to complete community service in order to graduate).

A student may be immediately transferred 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. **34**

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. **35 36**

Weapons **37**

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 2 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

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34 105 ILCS 5/10-22.6(a)&(b). Subsection 10-22.6(b) uses the phrase “is suspended in excess of 20 school days” even though ~~such a 20-consecutive day~~ suspension should be treated as an expulsion. ~~Most school lawyers say that a suspension over 10 days is automatically an expulsion and must be treated as such as per Goss v. Lopez, 95 S.Ct. 729 (1975). It is an open question whether~~ 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 even though s/he would not qualify under subsection (b) of that statute. 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.

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.

35 This paragraph paraphrases 105 ILCS 5/24-24.

36 ~~School district staff may~~ **The sample policy prohibits the use of isolated time out and physical restraint by not specifically permitting their use.** State statute and ISBE rules contain complex restrictions on the use of isolated time out or and physical restraints ~~unless the superintendent or board authorizes its use in a procedure or policy~~ (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 According to the ISBE rule, isolated time out and physical restraints are prohibited unless a board authorizes their use in a policy containing the numerous components identified in the rule. A board that wants to authorize the use of isolated time out and physical restraints should insert the paragraph below. To comply with ISBE’s rule, a board must also incorporate by reference the procedure developed by the superintendent, i.e., 7:190-AP4, Use of Isolated Time Out and Physical Restraint. An ISBE rule states that a district must have a policy on isolated time out and physical restraint in order to authorize their use. As the School Code does not contain such a requirement, ISBE has found that a district procedure will suffice to authorize the use of isolated time out and restraint. A board may, but is not required to, include both or one of the following sentences: By doing this, the procedure becomes part of the policy.~~

School ~~District~~ staff members shall not use isolated time out and physical restraints other than as permitted in Section 10-20.33 of the School Code, State Board of Education rules, and procedures developed by the Superintendent. Neither isolated time out nor physical restraints shall be used in administering to discipline to individual students, i.e., as or punish a student. form of punishment

~~The first sentence in the above optional paragraph will require the superintendent to develop administrative procedures; the second sentence is from ISBE rule 23 Ill.Admin.Code §1.285. If the above option is used, add the following before the Legal References on the final page: “Incorporated by Reference: 7:190-AP4, Use of Isolated Time Out and Physical Restraint.”~~

37 This section restates 105 ILCS 5/10-22.6. See also the Gun-Free Schools Act, 20 U.S.C. §7151 et seq. This section contains the statutorily required punishment for bringing a weapon to school along with the statutory definition of *weapon* (105 ILCS 5/10-22.6). 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.

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. 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, 618 N.E.2d 561 (Ill.App., 1993).

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 1 or 2 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. **38**

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. **39**

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. **40** Upon receiving such a report, the Building Principal or designee shall immediately notify the local law enforcement agency, State Police, and any involved student’s parent/guardian. **41** “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.

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

38 Optional.

39 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(a), added by P.A. 98-63). The Federal Gun-Free Schools Act has a similar provision (20 U.S.C. §7151(g)). The School Code, however, contains no similar exception to the ban on firearms at schools. Contact the board attorney before permitting students with a FOID Card to store their firearms in their vehicle’s trunk while parked at school.

40 105 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.

41 *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, State Police, and, if a student is reportedly in possession of a firearm, also the student’s parents/guardians.

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 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. ⁴² Teachers may temporarily remove students from a classroom for disruptive behavior. ⁴³

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 10 consecutive school days, provided the appropriate procedures are followed. ⁴⁴ The Board may suspend a student from riding the bus in excess of 10 school days for safety reasons. ⁴⁵

Student Handbook

The Superintendent, with input from the parent-teacher advisory committee, ⁴⁶ 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.

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⁴² Required by 105 ILCS 5/24-24 and 23 Ill.Admin.Code §1.280.

⁴³ Id.

⁴⁴ Required by 105 ILCS 5/10-22.6.

⁴⁵ Id.

⁴⁶ The board must establish and maintain a parent-teacher advisory committee to develop guidelines on student discipline. See policy 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. It is called Online Model Student Handbook, and is described at www.ilprincipals.org/resources/model-student-handbook.](http://www.ilprincipals.org/resources/model-student-handbook)

LEGAL REF.: Gun-Free Schools Act, 20 U.S.C. §7151 et seq.
Pro-Children Act of 1994, 20 U.S.C. §6081.
410 ILCS 130/, Compassionate Use of Medical Cannabis Pilot Program.
430 ILCS 66/, Firearm Concealed Carry 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, 5/24-24, 5/26-12, 5/27-23.7, ~~and~~ 5/31-3,
and 110/3.10.
23 Ill.Admin.Code §1.280.

CROSS REF.: 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 (Preventing 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), 8:30 (Visitors to and Conduct on School Property)

Community Relations

Parental Involvement 1

In order to assure collaborative relationships between students' families and the District, and to enable parents/guardians to become active partners in their children's education, the Superintendent shall:

1. Keep parents/guardians thoroughly informed about their child's school and education.
2. Encourage parents/guardians to be involved in their child's school and education.
3. Establish effective two-way communication between parents/guardians and the District.
4. Seek input from parents/guardians on significant school-related issues.
5. Inform parents/guardians on how they can assist their children's learning.

The Superintendent shall periodically report to the School Board on the implementation of this policy.

CROSS REF.: 6:170 (Title I Programs), 6:250 (Community Resource Persons and Volunteers), 8:10 (Connection with the Community), 8:90 (Parent Organizations and Booster Clubs)

ADMIN. PROC.: 6:170-E1 (District Level Parental Involvement Compact in Title I Programs), 6:170-E2 (School Level Parental Involvement Compact in Title I Programs)

1 A board may implement *Bring Your Parents to School Day* the first Monday in October of each year (105 ILCS 5/10-20.55, added by P.A. 98-304). Its purpose is to promote parental involvement and student success. Consult the board attorney for advice before implementing this law. It may be an item upon which collective bargaining may be required. Any policy that impacts wages, hours, or terms and conditions of employment, is subject to collective bargaining upon request by the employee representative, even if the policy involves an inherent managerial right. Boards may also want to consider the impact *Bring Your Parents to School Day* may have upon students' instructional time how the implementation of this day will impact school safety and security. See 4:170, *Safety* and its implementing procedures.

If a board chooses to implement this day, the following optional subhead may be inserted:

Bring Your Parents to School Day

On the first Monday in October of each year, students' parents/guardians are invited to attend class with their children and meet with teachers and administrators during the school day.

The following legal reference must also be inserted into the policy: "105 ILCS 5/10-20.55."