

School Board

Powers and Duties of the School Board; Indemnification

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

1. Organizing the Board after each consolidated election by electing officers and establishing its regular meeting schedule and, thereafter, taking action during lawfully called meetings to faithfully fulfill the Board’s responsibilities in accordance with State and federal law. 1
- ~~1.2.~~ Formulating, adopting, and modifying Board policies, at its sole discretion, subject only to mandatory collective bargaining agreements and State and federal law. 2
- ~~2.3.~~ Employing a Superintendent and other personnel, making employment decisions, dismissing personnel, and establishing an equal employment opportunity policy that prohibits unlawful discrimination. 3
- ~~3.4.~~ Directing, through policy, the Superintendent, in his or her charge of the District’s administration. 4
- ~~4.5.~~ Approving the annual budget, tax levies, major expenditures, payment of obligations, annual audit, and other aspects of the District’s financial operation; and making available a statement of financial affairs as provided in State law. 5
- ~~5.6.~~ Entering contracts using the public bidding procedure when required. 6
- ~~6. Indemnifying, protecting, and insuring against any loss or liability of the School District, Board members, employees, and agents as provided or authorized by State law.~~

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

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

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

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

2 105 ILCS 5/10-20.5 and policy 2:240, *Board Policy Development*. 5/10-21.and 115 ILCS 5/1 et seq. (Illinois Educational Labor Relations Act).

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

4 105 ILCS 5/10-16.7.

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

6 105 ILCS 5/10-20.21. See policy 4:60, *Purchases and Contracts*.

7. Providing, constructing, controlling, and maintaining adequate physical facilities; making school buildings available for use as civil defense shelters; and establishing a resource conservation policy. **7**
8. Establishing an equal educational opportunities policy that prohibits unlawful discrimination. **8**
9. Approving the curriculum, textbooks, and educational services. **9**
10. Evaluating the educational program and approving School Improvement and District Improvement Plans. **10**
11. Presenting the District report card and School report card(s) to parents/guardians and the community; these documents report District, School, and student performance. **11**
12. Establishing and supporting student discipline policies designed to maintain an environment conducive to learning, including deciding individual student suspension or expulsion cases brought before it. **12**
13. Establishing attendance units within the District and assigning students to the schools. **13**
14. Establishing the school year. **14**
15. Requiring a moment of silence to recognize veterans during any type of school event held at a District school on November 11. **15**
16. Providing student transportation services- [pursuant to State law](#). **16**
17. Entering into joint agreements with other boards to establish cooperative educational programs or provide educational facilities. **17**
18. Complying with requirements in the Abused and Neglected Child Reporting Act. Specifically, each individual Board member must, if an allegation is raised to the member during an open or closed Board meeting that a student is an abused child as defined in the Act, direct or cause the Board to direct the Superintendent or other equivalent school administrator to comply with the Act's requirements concerning the reporting of child abuse. **18**

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

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

9 105 ILCS 5/10-20.8. See policies in Section 6, Instruction.

10 105 ILCS 5/2-3.25d and 105 ILCS 5/27-1. See policies 6:10, *Educational Philosophy and Objectives*; and 6:15, *School Accountability*.

11 105 ILCS 5/10-17a. This statute details the requirements for *presenting* the district report card and school report card(s), including presenting them at a regular school board meeting and posting them on the district's website.

12 105 ILCS 5/10-22.6. See policies 7:190, *Student Discipline*; 7:200, *Suspension Procedures*; and 7:210, *Expulsion Procedures*.

13 105 ILCS 5/10-21.3 and 5/10-22.5. See policy 7:30, *Student Assignment and Intra-District Transfer*.

14 105 ILCS 5/10-19 and 23 Ill.Admin.Code §1.420. See policy 6:20, *School Year Calendar and Day*.

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

16 105 ILCS 5/10-22.22. See policy 4:110, *Transportation*.

17 105 ILCS 5/10-22.31a. See policy 1:20, *District Organization, Operations, and Cooperative Agreements*.

18 325 ILCS 5/4. *Abuse* and *neglect* are defined in 325 ILCS 5/3; for a disabled adult student see 20 ILCS1305/1-17(b).

19. Communicating the schools' activities and operations to the community and representing the needs and desires of the community in educational matters. **19**

Indemnification **20**

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

LEGAL REF.: 105 ILCS 5/2-3.25d, 5/10, 5/17-1, and 5/27-1.
115 ILCS 5/
325 ILCS 5/4.

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

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

20 105 ILCS 5/10-20.20 (duty to indemnify) and 5/10-22.3 (duty to insure against loss or liability). These statutes identify the same individuals for protection except that the indemnification statute includes mentors of certified staff members. See policy 4:100, *Insurance Management*.

Public officials or employees who are sued or incur loss because of the performance of their duties imposed or authorized by law on behalf of the public entity are entitled to indemnification. McQuillan on Municipal Corporations §12.137 (3rd ed.). Public employees who must defend themselves in actions based upon the performance of official duties are entitled to indemnification. Wayne Twsp Bd of Auditors v. Ludwig, 507 N.E.2d 199 (Ill. App. 2d, 1987). The public's interest is served by indemnifying public officials and employees in the performance of their official duties in order to recruit and retain qualified public employees and officials.

School Board

Types of School Board Meetings 1

General

For all meetings of the School Board and its committees, the Superintendent or designee shall satisfy all notice and posting requirements contained herein as well as in the Open Meetings Act. This shall include mailing meeting notifications to news media that have officially requested them and to others as approved by the Board. 2 Unless otherwise specified, all meetings are held in the District’s main office. 3 Board policy 2:220, *School Board Meeting Procedure*, governs meeting quorum requirements.

The Superintendent is designated on behalf of the Board and each Board committee to receive the training on compliance with the Open Meetings Act that is required by Section 1.05(a) of that Act. The Superintendent may identify other employees to receive the training. 4 Each Board member must complete a course of training on the Open Meetings Act as required by Section 1.05(b) or (c) of that Act. 5

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1 State law controls this policy’s content. The provisions of the Open Meetings Act (OMA) do not apply to collective bargaining negotiations and grievance arbitrations as provided in 115 ILCS 5/18.

2 5 ILCS 120/2.02. These responsibilities may be given to anyone.

3 State law only requires that meetings be held in a location convenient and open to the public and no open meeting is allowed to be held on a legal holiday unless the regular meeting day falls on that holiday (5 ILCS 120/2.01). According to an Ill. Atty. Gen. Public Access Counselor Opinion, a board may not meet in a private residence because it would not be convenient and open to the public (~~Public Access Opinion~~ 12-8). A board meeting 26 miles away from its regular location, while open to the public, was inconvenient because “the public, as a practical matter, would be deterred from attending it” (PAO 13-14). Any person may record an open meeting (5 ILCS 120/2.05). See policy 2:220, *School Board Meeting Procedure*.

4 Each board must designate at least one employee or member to receive training on compliance with OMA (5 ILCS 120/1.05). Revise this paragraph if the board designates other individual(s) to receive the training. A list of designated individual(s) must be submitted to the Attorney General’s Public Access Counselor. The designated individual(s) must successfully complete an electronic training curriculum administered by the Attorney General’s Public Access Counselor within 30 days after that designation, and thereafter must successfully complete an annual training program. The OMA does not specify duties for the designated individuals who receive the training but presumably they would assist the board in its OMA compliance efforts.

5 5 ILCS 120/1.05(b) applies to training administered by the Attorney General’s office; 1.05(c) applies to training administered by IASB (~~both subparts added by P.A. 97-504~~). ~~Board members seated on or before 1-1-2012 must complete the training by 1-1-2013 (Id.)~~. Board members elected or appointed after 1-1-2012 must complete the training not later than 90 days after taking the oath of office (~~Id.~~). Even before this law, compliance with the OMA has always been considered a shared responsibility of board members. Failing to complete the OMA training does not affect the validity of an action taken by the board nor is it considered a criminal violation (5 ILCS 120/1.05(b) and 120/4. However, a person found to have violated any other provisions of the OMA is guilty of a Class C misdemeanor punishable by a \$1500 fine or 30 days in jail (5 ILCS 120/4.

Regular Meetings

The Board announces the time and place for its regular meetings at the beginning of each fiscal year. ⁶ The Superintendent shall prepare and make available the calendar of regular Board meetings. The regular meeting calendar may be changed with 10 days' notice in accordance with State law. ⁷

A meeting agenda shall be posted at the District's main office and the Board's meeting room, or other location where the meeting is to be held, at least 48 hours before the meeting. ⁸

Closed Meetings ⁹

The Board and Board committees may meet in a closed meeting to consider the following subjects:

1. The appointment, employment, compensation, discipline, performance, or dismissal of specific employees of the public body or legal counsel for the public body, including hearing testimony on a complaint lodged against an employee of the public body or against legal counsel for the public body to determine its validity. ⁵ ILCS 120/2(c)(1). ¹⁰
2. Collective negotiating matters between the public body and its employees or their representatives, or deliberations concerning salary schedules for one or more classes of employees. ⁵ ILCS 120/2(c)(2).
3. The selection of a person to fill a public office, as defined in the Open Meetings Act, including a vacancy in a public office, when the public body is given power to appoint under law or ordinance, or the discipline, performance or removal of the occupant of a public office,

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⁶ The OMA and the School Code have different provisions regarding the establishment of a regular meeting schedule. The OMA requires each public body to prepare and make available a regular meeting schedule at the beginning of each calendar or fiscal year (⁵ ILCS 120/2.03). The School Code states that this task is accomplished during the organizational meeting. By *announcing* the schedule at the beginning of each calendar or fiscal year and by *fixing* the schedule at the organizational meeting, a board can implement both laws. Note that the phrase in this sample policy, "at the beginning of each fiscal year," can be changed to "at the beginning of each calendar year."

⁷ Regular meeting dates may be changed by giving at least 10 days' notice in a newspaper of general circulation and posting a notice at the district's main office (⁵ ILCS 120/2.03). Districts with a population of less than 500, in which no newspaper is published, may give the 10 days' notice by posting a notice in at least 3 prominent places within the district, in addition to posting a notice at the district's main office (*Id.*). Notice shall also be given to those news media having filed an annual request to receive notifications (*Id.*).

⁸ ⁵ ILCS 120/2.02(a). The posting location may need modification to comply with the law's requirement that the agenda be posted at the district's main office. For agenda requirements, see policy 2:220, *School Board Meeting Procedure*.

OMA also requires that "any required notice and agenda be *continuously available* for public viewing during the entire 48-hour period preceding the meeting." Emphasis added, ⁵ ILCS 120/2.02(c). The requirement for *continuously available* is satisfied if the district posts any required notice and agenda on its website. However, to comply with the legislative intent, posting on the district website does not replace the posting described in this sentence. See Rep. Pihos remarks reported in *New open-meetings law; is hard-copy posting of agendas still required?*, Sept. 2012, Illinois Bar Journal.

For districts that do not post board meeting agendas on a website (because they do not have a website maintained by a fulltime staff member), add the following sentence:

The agenda shall be continuously available for public review during the entire 48-hour period preceding the meeting.

If a notice or agenda is not continuously available for the full 48-hour period due to actions outside of the district's control, the lack of availability does not invalidate any meeting or action taken.

⁹ The reasons for closed meetings are frequently addressed in court decisions and Attorney General opinions; only a few of these decisions/opinions are mentioned in the footnotes.

¹⁰ According to a Public Access Counselor [opinion](#), "The exception is not intended to allow private discussion of fiscal matters, notwithstanding that they may directly or indirectly impact the employees of the public body," (~~Public Access Opinion~~ 12-11).

when the public body is given power to remove the occupant under law or ordinance. 5 ILCS 120/2(c)(3).

4. Evidence or testimony presented in open hearing, or in closed hearing where specifically authorized by law, to a quasi-adjudicative body, as defined in the Open Meetings Act, provided that the body prepares and makes available for public inspection a written decision setting forth its determinative reasoning. 5 ILCS 120/2(c)(4).
5. The purchase or lease of real property for the use of the public body, including meetings held for the purpose of discussing whether a particular parcel should be acquired. 5 ILCS 120/2(c)(5).
6. The setting of a price for sale or lease of property owned by the public body. 5 ILCS 120/2(c)(6).
7. The sale or purchase of securities, investments, or investment contracts. 5 ILCS 120/2(c)(7).
8. Security procedures and the use of personnel and equipment to respond to an actual, a threatened, or a reasonably potential danger to the safety of employees, students, staff, the public, or public property. 5 ILCS 120/2(c)(8).
9. Student disciplinary cases. 5 ILCS 120/2(c)(9).
10. The placement of individual students in special education programs and other matters relating to individual students. 5 ILCS 120/2(c)(10).
11. Litigation, when an action against, affecting or on behalf of the particular public body has been filed and is pending before a court or administrative tribunal, or when the public body finds that an action is probable or imminent, in which case the basis for the finding shall be recorded and entered into the minutes of the closed meeting. 5 ILCS 120/2(c)(11).
12. The establishment of reserves or settlement of claims as provided in the Local Governmental and Governmental Employees Tort Immunity Act, if otherwise the disposition of a claim or potential claim might be prejudiced, or the review or discussion of claims, loss or risk management information, records, data, advice or communications from or with respect to any insurer of the public body or any intergovernmental risk management association or self insurance pool of which the public body is a member. 5 ILCS 120/2(c)(12).
13. Self evaluation, practices and procedures or professional ethics, when meeting with a representative of a statewide association of which the public body is a member. 5 ILCS 120/2(c)(16). **11**
14. Discussion of minutes of meetings lawfully closed under the Open Meetings Act, whether for purposes of approval by the body of the minutes or semi-annual review of the minutes as mandated by Section 2.06. 5 ILCS 120/2(c)(21).
15. Meetings between internal or external auditors and governmental audit committees, finance committees, and their equivalents, when the discussion involves internal control weaknesses, identification of potential fraud risk areas, known or suspected frauds, and fraud interviews conducted in accordance with generally accepted auditing standards of the United States of America. 5 ILCS 120/2(c)(29).

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11 IASB field services directors are available to facilitate a board self-evaluation.

The Board may hold a closed meeting, or close a portion of a meeting, by a majority vote of a quorum, taken at an open meeting. The vote of each Board member present, and the reason for the closed meeting, will be publicly disclosed at the time of the meeting and clearly stated in the motion and the meeting minutes. **12**

A single motion calling for a series of closed meetings may be adopted when such meetings will involve the same particular matters and are scheduled to be held within 3 months of the vote. **13**

No final Board action will be taken at a closed meeting. **14**

Reconvened or Rescheduled Meetings

A meeting may be rescheduled or reconvened. Public notice of a rescheduled or reconvened meeting shall be given in the same manner as that for a special meeting, except that no public notice is required when the original meeting is open to the public and: (1) is to be reconvened within 24 hours, or (2) an announcement of the time and place of the reconvened meeting was made at the original meeting and there is no change in the agenda. **15**

Special Meetings

Special meetings may be called by the President or by any 3 members of the Board by giving notice thereof, in writing, stating the time, place, and purpose of the meeting to remaining Board members by mail at least 48 hours before the meeting, or by personal service at least 24 hours before the meeting. **16**

Public notice of a special meeting is given by posting a notice at the District's main office at least 48 hours before the meeting and by notifying the news media that have filed a written request for notice. A meeting agenda shall accompany the notice. **17**

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12 5 ILCS 120/2a. Provided the open meeting was properly noticed, no additional notice is required to close the meeting. A motion to close a meeting can be as simple as, "I move that the Board hold [go into] a closed session to discuss [state one of the closed meeting grounds with reference to the specific section authorizing the closed meeting]."

The adequacy of a motion to go into closed session was discussed in Henry v. Anderson and Champaign Community Unit School Dist. No. 4, 827 N.E.2d 522 (Ill.App.4, 2005). A statutory citation is not required in the motion to go into closed session, but the OMA does require a reference to the specific exception. The *litigation* exception is tricky. If the litigation has been filed and is pending, the motion to go into closed session need only state that the board will discuss litigation that has been filed and is pending. If the litigation has not been filed, the board must: (1) find that the litigation is probable or imminent, and (2) record and enter into the minutes the basis for that finding.

13 Id.

14 5 ILCS 120/2(e). [See also PAOs 13-03 and 13-07.](#)

15 5 ILCS 120/2.02.

16 105 ILCS 5/10-16 (2 members of a board of directors; 105 ILCS 5/10-6). Lawyers disagree whether 3 members may call a special meeting without violating the OMA, although there is general agreement that no violation occurs if 3 members call a special meeting while they are participating in a lawful board committee meeting with the matter on the agenda.

17 5 ILCS 120/2.02. News media that gave the board an address or telephone number within the district's territorial jurisdiction must be given notice in the same manner as given board members.

OMA requires that "any required notice and agenda be *continuously available* for public viewing during the entire 48-hour period preceding the meeting." Emphasis added, 5 ILCS 120/2.02(c). The requirement for *continuously available* is satisfied if the district posts any required notice and agenda on its website. Posting on the district website does not replace the posting described in this paragraph. See f/n 8.

For districts that do not post board meeting notices and agendas on a website (because they do not have a website maintained by a fulltime staff member), add the following sentence:

The notice and agenda shall be continuously available for public review during the entire 48-hour period preceding the meeting.

All matters discussed by the Board at any special meeting must be related to a subject on the meeting agenda. **18**

Emergency Meetings

Public notice of emergency meetings shall be given as soon as practical, but in any event, before the meeting to news media that have filed a written request for notice. **19**

Posting on the District Website **20**

In addition to the other notices specified in this policy, the Superintendent or designee shall post the following on the District website: (1) the annual schedule of regular meetings, which shall remain posted until the Board approves a new schedule of regular meetings; (2) a public notice of all Board meetings; and (3) the agenda for each meeting which shall remain posted until the meeting is concluded.

LEGAL REF.: 5 ILCS 120/, Open Meeting Act.
5 ILCS 140/, Freedom of Information Act.
105 ILCS 5/10-6 and 5/10-16.

CROSS REF.: 2:110 (Qualifications Term, and Duties of Board Officers), 2:120 (Board Member Development), 2:210 (Organizational School Board Meetings), 2:220 (School Board Meeting Procedure), 2:230 (Public Participation at School Board Meetings and Petitions to the Board), 6:235 (Access to Electronic Networks)

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18 Lawyers disagree whether the Open Meetings Act mandates this restriction, i.e., whether it restricts board *discussions* to items related to an item on the special meeting agenda. The Act limits board *action* to items on the agenda (5 ILCS 120/2.02(c); it states that the validity of any action taken “which is germane to a subject on the agenda shall not be affected by other errors or omissions in the agenda,” (5 ILCS 120/2.02(a). For agenda requirements, see policy 2:220, *School Board Meeting Procedure*.

19 5 ILCS 120/2.02(a).

20 Required *only if* the district has a website that is maintained by a full-time staff member; if not, this section may be omitted (5 ILCS 120/2.02). Note that 5 ILCS 120/2.02(b) requires that a notice of *all* meetings be posted on the district website, but only notices of *regular* meetings must remain posted until the *regular* meeting is concluded. As this is an obvious oversight, it is wise to leave the notice of every meeting on the website until after the meeting occurred. The agenda must remain on the district website until the meeting is concluded (Id.).

School Board

School Board Meeting Procedure 1

Agenda

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

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

The Superintendent shall provide a copy of the agenda, with adequate data and background information, to each Board member at least 48 hours before each meeting, except a meeting held in

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

² Appropriate agenda content includes: establishing board processes, clarifying the district’s purpose, delegating authority, defining operating limits, monitoring district progress, and taking legally required board action. See *IASB Foundational Principles of Effective Governance*.

³ To comply with the Open Meetings Act’s mandate that minutes contain a “summary of discussion on all matters proposed, deliberated, or decided,” a board should include a list of consent items in the agenda.

⁴ 5 ILCS 120/2.02(c), amended by P.A. 97-827 (eff. 1-1-2013). The Ill. Appellate Court held that the Open Meetings Act prohibits a board from voting on a matter at a regular meeting that is not on the pre-meeting published agenda (Rice v. Board of Trustees of Adams County, 762 N.E.2d 1205 (Ill.App.4, 2002)).

⁵ An alternative follows:

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

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

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

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

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

the event of an emergency. **8** The meeting agenda shall be posted in accordance with Board policy 2:200, *Types of School Board Meetings*.

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

Voting Method

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

On all questions involving the expenditure of money and on all questions involving the closing of a meeting to the public, a roll call vote shall be taken and entered in the Board's minutes. An individual Board member may request that a roll call vote be taken on any other matter; the President

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

9 In most situations, the failure of a member to vote has the effect of acquiescence or concurrence with the majority of votes cast. *Prosser v. Village of Fox Lake*, 438 N.E.2d 134 (1982); *People v. Bertrand*, 2012 IL App (1st) 111419 (9-28-2012). For example, a motion passes with a vote of 2 *yeas*, 1 *nay*, and 4 *abstentions*. A motion fails with a vote of 2 *yeas*, 3 *nays*, and 2 *abstentions*. A motion fails with a vote of 3 *yeas*, 3 *nays*, and one *abstain* because there is no majority. Exceptions include when a statute requires the *affirmative vote* of a majority or extra. Statutory exceptions include the following board actions:

1. Dismissing a teacher for any reason other than reduction of staff or elimination of that position requires approval by the majority of all members (105 ILCS 5/24-12).
2. Directing the sale of district real property or buildings thereon must be approved by at least 2/3 of the board members (105 ILCS 5/5-22).
3. Making or renewing a lease of school property to another school district or municipality or body politic and corporate for a term longer than 10 years, or to alter the terms of such a lease whose unexpired term exceeds 10 years, requires approval by at least 2/3 of the board's full membership (105 ILCS 5/10-22.11).
4. Leasing any building, rooms, grounds, and appurtenances to be used by the district for school or administration purposes for a term longer than 10 years, or to alter the terms of such a lease whose unexpired term exceeds 10 years, requires approval by at least 2/3 of the board's full membership (105 ILCS 5/10-22.12).
5. Obtaining personal property by lease or installment contract requires approval by an affirmative vote of at least 2/3 of the board members. *Personal property* includes computer hardware and software and all equipment, fixtures, and improvements to existing district facilities to accommodate computers (105 ILCS 5/10-22.25a).
6. Adopting a supplemental budget after a successful referendum requires approval by a majority of the full board (105 ILCS 5/17-3.2).
7. Petitioning the circuit court for an emergency election requires approval by a majority of the members (10 ILCS 5/2A-1.4).
8. Expending funds in emergency situation in the absence of required bidding requires approval by at least 3/4 of the board (105 ILCS 5/10-20.21).
9. Exchanging school building sites requires approval by at least a 2/3 majority of the board (105 ILCS 5/5-23).
10. Waiving the administrative cost cap requires approval by an affirmative vote of at least 2/3 of the board (105 ILCS 5/17-1.5).
11. Authorizing an advisory question of public policy to be placed on the ballot at the next regularly scheduled election requires approval by a majority of the board (105 ILCS 5/9-1.5).

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

or other presiding officer may approve or deny the request but a denial is subject to being overturned by a majority vote of the members present. **11**

Minutes

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

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

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

At least semi-annually in an open meeting, the Board: (1) reviews minutes from all closed meetings that are currently unavailable for public release, and (2) decides which, if any, no longer require confidential treatment and are available for public inspection. **16** The Board may meet in a prior

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

- Option 1: Any Board member may include a written explanation of his or her vote in the District file containing individual Board member statements; the explanation will not be part of the minutes.
- Option 2: Any Board member may request that his or her vote be changed before the President announces the result.

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

13 All items listed are required to be recorded in minutes **except** items 7-9; other items may be included at the board's discretion (5 ILCS 120/2.06 and 120/2a; 105 ILCS 5/10-7). [The Ill. Public Access Counselor found a board's vague reference to a personnel matter insufficient to meet the requirements of #3 \(PAO 13-07\).](#)

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

15 Required by 5 ILCS 120/2.06(b).

16 Required by 5 ILCS 120/2.06(c). While board notes from closed sessions may be confidential under the Freedom of Information Act, they may be discoverable by the opposing party in a lawsuit. [Bobkoski v. Cary School Dist. 26](#), 141 F.R.D. 88 (N.D. Ill., 1992).

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

closed session to review the minutes from closed meetings that are currently unavailable for public release. **17**

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

The official minutes are in the custody of the Board Secretary. **19** Open meeting minutes are available for inspection during regular office hours within 10 days after the Board's approval; **20** they may be inspected in the District's main office, in the presence of the Secretary, the Superintendent or designee, or any Board member. Minutes from closed meetings are likewise available, but only if the Board has released them for public inspection. The minutes shall not be removed from the Superintendent's office except by vote of the Board or by court order.

The Board's open meeting minutes shall be posted on the District website within 10 days after the Board approves them; the minutes will remain posted for at least 60 days. **21**

Verbatim Record of Closed Meetings

The Superintendent, or the Board Secretary when the Superintendent is absent, shall audio record all closed meetings. **22** If neither is present, the Board President or presiding officer shall assume this responsibility. After the closed meeting, the person making the audio recording shall label the recording with the date and store it in a secure location. The Superintendent shall ensure that: (1) an audio recording device and all necessary accompanying items are available to the Board for every closed meeting, and (2) a secure location for storing closed meeting audio recordings is maintained close to the Board's regular meeting location. **23**

After 18 months have passed since being made, the audio recording of a closed meeting is destroyed provided the Board approved: (1) its destruction, and (2) minutes of the particular closed meeting. **24**

Individual Board members may listen to verbatim recordings when that action is germane to their responsibilities. In the interest of encouraging free and open expression by Board members during closed meetings, the recordings of closed meetings should not be used by Board members to confirm or dispute the accuracy of recollections. **25**

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

17 5 ILCS 120/2 allows boards to discuss the confidentiality needs of closed meeting minutes in closed meetings.

18 Required by 105 ILCS 5/10-7.

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

20 Required by 5 ILCS 120/2.06.

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

22 Boards must keep a verbatim record of their closed meetings in the form of an audio or video recording (5 ILCS 120/2.06). This sample policy uses audio recording only; a board that uses a video recording should amend this policy.

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

23 Alternatively, use: "is maintained within the District's main office."

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

25 This sentence is optional. Intra-board conflicts may escalate if the recording is used to confirm or dispute who-said-what.

Quorum and Participation by Audio or Video Means 26

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

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

Rules of Order

Unless State law or Board-adopted rules apply, the Board President, as the presiding officer, will use Robert's Rules of Order, Newly Revised (10th Edition), as a guide when a question arises concerning procedure. 27

Broadcasting and Recording Board Meetings

Any person may record or broadcast an open Board meeting. 28 Special requests to facilitate recording or broadcasting an open Board meeting, such as seating, writing surfaces, lighting, and access to electrical power, should be directed to the Superintendent at least 24 hours before the meeting.

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

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

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

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

26 5 ILCS 120/2.01 and 120/7. See also 105 ILCS 5/10-6 and 5/10-12. In order to allow attendance by video or audio means, a board must adopt a policy conforming to the restrictions in the Open Meetings Act. The statute requires the board member who wishes to attend remotely to notify the "recording secretary or clerk of the public body." The policy includes the superintendent as a possible person to receive the notice. Everything in this section is required aside from provisions on the length of notification that is given the secretary and the process for accommodating the request. Alternatively, a board may: (1) prohibit members from participating by video or audio means by omitting this section, (2) add other requirements, or (3) alter the 24 hour notification. Note that the statute does not contemplate someone either *approving* or *denying* a request, only that the request be accommodated if the notification is provided.

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

28 The public's right to record meetings must be addressed in board policy (5 ILCS 120/2.05). However, a provision requiring advance notice to record a meeting is invalid (~~Public Access Opinion~~ 12-10).

School Board

Public Participation at School Board Meetings and Petitions to the Board 1

At each regular and special open meeting, members of the public and District employees may comment to or ask questions of the School Board, subject to reasonable constraints. 2

The individuals appearing before the Board are expected to follow these guidelines: 3

1. Address the Board only at the appropriate time as indicated on the agenda and when recognized by the Board President.
2. Identify oneself and be brief. Ordinarily, comments shall be limited to 5 minutes. In unusual circumstances, and when an individual has made a request in advance to speak for a longer period of time, the individual may be allowed to speak for more than 5 minutes.
3. Observe the Board President's decision to shorten public comment to conserve time and give the maximum number of individuals an opportunity to speak.
4. Observe the Board President's decision to determine procedural matters regarding public participation not otherwise covered in Board policy.
5. Conduct oneself with respect and civility toward others and otherwise abide by Board policy, 8:30, *Visitors to and Conduct on School Property*. 4

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

1 The Open Meetings Act (OMA) and the School Code grant any person the right to address a school board during any open meeting (5 ILCS 120/2.06; 105 ILCS 5/10-6 (board of directors) and 5/10-16 (board of education). ~~The Open Meetings Act~~ requires public bodies to have rules (a policy) on public comment (Id.).

2 Prohibiting public comment and/or restricting public comment to written filings violates the mandates and overarching purpose of the OMA (Roxana CUSD No. 1 v. EPA, 998 N.E.2d 961 (Ill.App.4, 2013)).

3 State law does not provide specific rules and these guidelines may be amended. The guidelines for public comment should be reviewed with the board attorney. Restrictions on public comment during board meetings must respect free speech rights guaranteed by the First Amendment. Do not use viewpoint-based restrictions on public comment time unless approved by the board attorney. Many decisions address the tension between free speech and rules for public comment during meetings. See, for example:

Lowery v. Jefferson Co. Bd of Educ., 586 F.3d 427 (6th Cir., 2009)(upheld a rule prohibiting speakers from being frivolous, repetitive, or harassing).

Steinburg v. Chesterfield County Planning Commission, 527 F.3d 377 (4th Cir., 2008), *cert. denied* (upheld removal of a man from a public meeting for behaving in a hostile manner).

Norse v. City of Santa Cruz, 586 F.3d 697 (9th Cir. 2009)(upheld community member's removal from city council meeting after community member gave Nazi salute in presiding officer's direction).

Fairchild v. Liberty Indep. School Dist., 597 F.3d 747 (5th Cir., 2010)(upheld a policy banning discussion of personnel matters during public comment; the rationale turned, at least in part, on the Texas open meetings law).

Bach v. School Board of the City of Virginia Beach, 139 F.Supp.2d 738 (E.D.Va., 2001)(struck down a rule that prohibited personal attacks during public comments at meetings).

Mnyofu v. Rich Tp. High School Dist., 2007 WL 1308523 (N.D.Ill., 2007)(school boards may impose guidelines for running meetings to maintain effectiveness).

4 See Nuding v. Cerro Gordo Community Unit School Dist., 730 N.E.2d 96 (Ill.App. 4, 2000)(board was authorized to ban parent from attending all school events and extracurricular activities by 105 ILCS 5/24-24; the ban was based on the parent's exposing a toy gun and a pocketknife at a board meeting).

Petitions or written correspondence to the Board shall be presented to the Board in the next regular Board packet. 5

LEGAL REF.: 5 ILCS 120/2.06.
105 ILCS 5/10-6 and 5/10-16.

CROSS REF.: 2:220 (School Board Meeting Procedure), 8:10 (Connection with the Community), 8:30 (Visitors to and Conduct on School Property)

Initiating lawsuits against citizens over their uncivil public comments is tricky. Always consult the board attorney, and in some instances, a board member may need to consult his or her own private attorney. The Ill. Citizen Participation Act (CPA) (735 ILCS 110/15) provides citizens a mechanism to stop lawsuits brought against them for their public comments. The law, referred to as “anti-SLAPP legislation,” prohibits public officials from suing citizens for “any act or acts in furtherance of [their] rights of petition, speech, association, or to otherwise participate in government.” SLAPP means “Strategic Lawsuits Against Public Participation.”

The CPA does not bar public officials from seeking relief when they can allege that (a) the citizen’s comments were “not genuinely aimed at procuring favorable government action, result, or outcome,” and/or (b) the citizen engaged in defamation or another intentional tort causing the public official damage (Sandholm v. Kuecker, 962 N.E.2d 418 (Ill., 2012)).

5 A board of directors must reply to a written request for consideration of a matter within 60 days from the board’s receipt of the request (105 ILCS 5/10-6). Boards of education may treat petitions or correspondence according to a uniform, locally developed process.

Operational Services

Purchases and Contracts 1

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

Standards for Purchasing and Contracting

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

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

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

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

1. Supplies, materials, or work involving an expenditure in excess of \$25,000 must comply with the State law bidding procedure, 105 ILCS 5/10-20.21, unless specifically exempted. 4
2. Construction, lease, or purchase of school buildings must comply with State law and Board policy 4:150, *Facility Management and Building Programs*.
3. Guaranteed energy savings must comply with 105 ILCS 5/19b-1 et seq.
4. Third party non-instructional services must comply with 105 ILCS 5/10-22.34c. 5

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. 105 ILCS 10-20.21 contains bidding plus other requirements. Other laws also govern district contracts. For example, the Prevailing Wage Act requires, among other things, that a district specify in all contracts for public works that the prevailing wage rate must be paid (820 ILCS 130/). When a district awards work to a contractor without a public bid, contract, or project specification, the district must provide the contractor with written notice on the purchase order or a separate document indicating that not less than the prevailing rate of wages shall be paid to all laborers, workers, and mechanics performing work on the project. In addition, the district must notify all contractors of any rate changes by the Dept. of Labor. The law allows a district to discharge this duty by including the following language in all contracts: “Any prevailing rate of wages as they are revised by the Dept. of Labor shall apply to this contract. You are notified that any rate changes to the prevailing wage rate are available on the Dept.’s official website.” (820 ILCS 130/4, amended by P.A. 97-964, eff. 1-1-13, and see 4:60-E, *Notice to Contractors* for sample language).

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

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

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

5. Goods and services that are intended to generate revenue and other remunerations for the District in excess of \$1,000, including without limitation vending machine contracts, sports and other attire, class rings, and photographic services, must comply with 105 ILCS 5/10-20.21. The Superintendent or designee shall keep a record of: (1) each vendor, product, or service provided, (2) the actual net revenue and non-monetary remuneration from each contract or agreement, and (3) how the revenue was used and to whom the non-monetary remuneration was distributed. The Superintendent or designee shall report this information to the Board by completing the necessary forms that must be attached to the District's annual budget. **6**
6. The purchase of paper and paper products must comply with 105 ILCS 5/10-20.19c and Board policy 4:70, *Resource Conservation*. **7**

7. Each contractor with the District is bound by each of the following:

- a. In accordance with 105 ILCS 5/10-21.9(f): (1) prohibit any of its employees who is or was found guilty of a criminal offense listed in 105 ILCS 5/21B-80 to have direct, daily contact at a District school or school-related activity with one or more student(s); and (2) require each of its employees who will have direct, daily contact with student(s) to cooperate during the District's fingerprint-based criminal history records check on him or her. **8**
- b. In accordance with 105 ILCS 5/24-5: (1) concerning each employee who begins providing services in the District after June 16, 2014, provide the District with evidence of physical fitness to perform the duties assigned and freedom from communicable disease if the employee will have direct, daily contact with one or more student(s); and (2) require any new or existing employee who has and will have direct, daily contact with one or more student(s) to complete additional health examinations as required by the District and be subject to additional health examinations, including tuberculosis screening, as required by the Illinois Department of Public Health rules or order of a local health official. **9**

The Superintendent or designee shall: (1) execute the reporting and website posting mandates in State law concerning District contracts, and (2) monitor the discharge of contracts, contractors' performances, and the quality and value of services or products being provided. **10**

5 Concerning collective bargaining requirements, see *McLean Co. Unit Dist. 5 v. AFSCME & IELRB*, 2014 Ill.App. (4th), No. 4-13-0294 (6-4-2014)(good faith bargaining on the decision to subcontract requires notice of the consideration of the subcontract before it is finalized; meeting with the union to provide an opportunity to discuss and explain the decision; providing information to the union; and giving consideration to any counterproposal the union makes).

6 105 ILCS 5/10-20.21(b-5).

7 105 ILCS 5/10-20.19c.

8 The implementation process is in 4:60-AP3, *Administrative Procedure - Criminal History Records Check of Contractor Employees*.

9 P.A. 98-716, effective 7-16-2014, expanded the scope of 105 ILCS 5/24-5 by adding a definition of *employee* that includes contractors' employees for whom a criminal history records check is required. As of Aug. 2014, the Ill. Dept. of Public Health does not require school employees to be screened for tuberculosis other than workers in child day care and preschool settings (77 Ill.Admin.Code §696.140(a)(3)). Before requesting a contractor's employee for a health examination, contact the board attorney concerning this action's legality under other personnel laws, including the Americans with Disabilities Act.

10 This is an optional provision. The numerous reporting and website posting mandates are in 2:250-E2, *Immediately Available District Public Records and Web-Posted Reports and Records*. As an alternative to the policy's default language, a board may insert the underscored:

LEGAL REF.: 105 ILCS 5/10-20.19c, 5/10-20.21, 5/10-[21.9](#), [5/10-22.34c](#), ~~and~~ 5/19b-1 et seq.,
[and 5/24-5](#).
820 ILCS 130/.

CROSS REF.: 2:100 (Board Member Conflict of Interest), 4:70 (Resource Conservation), 4:150 (Facility Management and Building Programs), [4:175 \(Convicted Child Sex Offender; Criminal Background Check and/or Screening; Notifications\)](#)

The Superintendent or designee shall: (1) execute the reporting and website posting mandates in State law concerning District contracts and maintain a status report for monthly presentation to the Board, and (2) monitor the discharge of contracts, contractors' performances, and the quality and value of services or products being provided.

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." The requirement does not apply to filling vacant positions under 105 ILCS 5/24-12, [amended by P.A. 98-648](#) (reduction in force [and recall](#)). Consult the board attorney about these issues.

⁴ An additional optional sentence follows:

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

⁵ 105 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*.

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.

Physical Examinations 16

~~New employees~~ Each new employee must furnish evidence of physical fitness to perform assigned duties and freedom from communicable disease, ~~including tuberculosis.~~ All ~~The~~ physical fitness ~~examinations and tests for tuberculosis examination~~ 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~~ District.

Any employee may be required to have an additional examination by a physician who is licensed in Illinois to practice medicine and surgery in all its branches, 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*.

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

16 105 ILCS 5/24-5, amended by P.A. 98-716. According to this statute, "[a] new or existing employee may be subject to additional health examinations, including tuberculosis screening, as required by rules adopted by the Ill. Dept. of Public Health or by order of a local public health official." As of Aug. 2014, the Ill. Dept. of Public Health does not require school employees to be screened for tuberculosis other than workers in child day care and preschool settings (77 Ill.Admin.Code §696.140(a)(3).

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

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

Federal law limits pre-employment medical inquiries to whether the applicant is able to perform job-related functions; required medical examinations of applicants is forbidden (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.

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 ADA AAA, 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 ADA AAA.

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

LEGAL REF.:

105 ILCS 5/10-21.9 [and 5/24-5](#).
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), [4:175 \(Convicted Child Sex Offender; Criminal Background Check and/or Screen; Notifications\)](#), 5:10 (Equal Employment Opportunity and Minority Recruitment), 5:40 (Communicable and Chronic Infectious Disease), 5:90 (Abused and Neglected Child Reporting), 5:125 (Personal Technology and Social Media; Usage and Conduct), 5:220 (Substitute Teachers), 5:280 (Educational Support Personnel - Duties and Qualifications)

Professional Personnel

Student Teachers 1

The Superintendent is authorized to accept students from university-approved teacher-training programs to do student teaching in the District. ~~Prior to a student teacher beginning any field experiences in the District, the Superintendent or designee will ensure that the District performs a complete criminal history records check pursuant to 105 ILCS 5/10-21.9; i.e. background check or background investigation. No individual who has been convicted of a criminal offense listed in Section 5/21B-80 of the School Code is permitted to student teach or complete field or other clinical experience.~~

~~Before permitting an individual to student teach or participate in any field experience in the District, the Superintendent or designee shall ensure that:~~

- ~~1. The District performed a *complete criminal history records check* as described below; and~~
- ~~2. The individual furnished evidence of physical fitness to perform assigned duties and freedom from communicable disease pursuant to 105 ILCS 5/24-5. 2~~

~~A complete criminal history records check pursuant to 105 ILCS 5/10-21.9 shall include:~~

- ~~1. Fingerprint-based checks through (a) the Illinois State Police (ISP) for criminal history records information (CHRI) pursuant to the Uniform Conviction Information Act (20 ILCS 2635/1), and (b) the FBI national crime information databases pursuant to the Adam Walsh Child Protection and Safety Act (P.L. 109-248);~~
- ~~2. A check of the Illinois Sex Offender Registry (see the Sex Offender Community Notification Law (730 ILCS 152/101 et seq.); and~~
- ~~3. A check of the Illinois Murderer and Violent Offender Against Youth Registry (Murderer and Violent Offender Against Youth Community Notification Law (730 ILCS 154/75-105, amended by 97-154).~~

~~Each student teacher must provide written authorization for, and pay the costs of, his or her criminal history records check (including any applicable vendor's fees), and the Superintendent or designee will provide each student teacher with a copy of his or her report. 3~~

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

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

~~This sample policy is consistent with the minimum requirements of State law. The local collective bargaining agreement may contain provisions which exceed these requirements. When a policy's subject matter is superseded by a bargaining agreement, the school board policy may state, "Please refer to the current Professional Agreement between the Classroom Teachers' Association and the Board of Education."~~

~~² The requirements for physical fitness and freedom from communicable disease apply to student teachers as of 7-16-2014 (105 ILCS 5/24-5, amended by P.A. 98-716).~~

Assignment

The Superintendent or designee shall be responsible for coordinating placements of all student teachers within the District. Student teachers should be assigned to supervising teachers whose qualifications are acceptable to the District and the students' respective colleges or universities. A teacher may be eligible for Continuing Professional Development Units (CPDU) for supervising a student teacher or teacher education candidate in clinical supervision. ⁴

LEGAL REF.: Adam Walsh Child Protection and Safety Act, P.L. 109-248.
Uniform Conviction Information Act, 20 ILCS 2635/1.
105 ILCS 5/21-14(e)(3)(E)(viii), ~~and~~ 5/10-22.34, ~~and~~ 5/24-5.
23 Ill.Admin.Code §25.875.

CROSS REF.: 5:190 (Teacher Qualifications), 4:175 (Convicted Child Sex Offender; Criminal Background Check and/or Screen; Notifications)

³ 105 ILCS 5/10-21.9(g), amended by P.A.s 97-154 and 97-607, require a student teacher to undergo a fingerprint-based State and national criminal history records check and checks of the Statewide Sex Offender Registry and Statewide Murderer and Violent Offender Against Youth Registry prior to participating in any field experiences in the school. The statutory phrase "...prior to participating in any field experiences" involves student teaching only. For information about criminal history records checks for students doing field or clinical experience other than student teaching, see the subhead **Students Doing Field or Clinical Experience other than Student Teaching** in 4:175-AP1, *Criminal Offender Notification Laws; Screening*.

20 ILCS 2635/7(A) requires the student teacher's written authorization and a district to provide a copy of the reports, and 105 ILCS 5/10-21.9 requires the student teacher to pay for the costs of the criminal history records check. *LiveScan* is the recommended equipment for criminal history records checks. The language in this policy does not distinguish whether the district uses an authorized LiveScan vendor or owns or leases its own LiveScan equipment. Delete "(including applicable vendor's fees)" if the district owns or leases its own LiveScan equipment.

For more guidance and information on navigating the records laws surrounding criminal history records checks, along with a LiveScan vendor directory, see ISBE's non-regulatory guidance document, *Criminal History Records Information (CHRI) Checks for Certified and Non-certified School Personnel*, available at: www.isbe.net/pdf/guidance_chr.pdf.

⁴ 105 ILCS 5/21-14(e)(3)(E)(viii); 23 Ill.Admin.Code §25.875.

Educational Support Personnel

Sick Days, Vacation, Holidays, and Leaves ¹

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

Sick and Bereavement Leave ²

Full or part-time educational support personnel who work at least 600 hours per year receive 10 paid sick leave days per year. Part-time employees ~~will receive~~ who work at least half-time are entitled to sick leave days on the same basis as full-time employees, but the pay equivalent to their regular

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

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

This policy is consistent with the minimum requirements of State law. The local collective bargaining agreement may contain provisions that exceed these requirements. The introductory paragraph recognizes that an applicable collective bargaining agreement or individual employment contract will supersede a conflicting provision of the policy. Alternatively, if the policy's subject matter is superseded by a bargaining agreement, the board policy may state, "Please refer to the current [insert name of educational support CBA]."

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

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

² This section contains the minimum benefits provided by 105 ILCS 5/24-6. Each specified number of days in this section is the statutory minimum. ~~The School Code does not address whether an employee's 10 paid sick leave days are available upon employment, accrued over months, or after working for a certain period of time, e.g., one year.~~ Before adopting this policy or applying its provisions, the district should examine any applicable bargaining agreements. Strict accounting of unused sick days is important to avoid:

~~1. Employees accumulating sick time on a full-time basis when they are truly working part-time hours;~~

~~2. Inconsistent treatment;~~ and

~~3. Inaccurate to ensure accurate~~ reporting to IMRF (credit is given for full day unused sick days upon retirement) (40 ILCS 5/7-139(a)(8)).

workday will be based on the employee's average number of part-time hours per week. Unused sick leave shall accumulate to a maximum of 180 days, including the leave of the current year. ³

Sick leave is defined in State law as personal illness, quarantine at home, serious illness or death in the immediate family or household, or birth, adoption, or placement for adoption. The Superintendent and/or designee shall monitor the use of sick leave.

As a condition for paying sick leave after 3 days absence for personal illness or 30 days for birth or as the Board or Superintendent deem necessary in other cases, the Board or Superintendent may require that the staff member provide a certificate from: (1) a physician licensed in Illinois to practice medicine and surgery in all its branches, (2) a chiropractic physician licensed under the Medical Practice Act, (3) an advanced practice nurse who has a written collaborative agreement with a collaborating physician that authorizes the advanced practice nurse to perform health examinations, (4) a physician assistant who has been delegated the authority to perform health examinations by his or her supervising physician, or (5) if the treatment is by prayer or spiritual means, a spiritual adviser or practitioner of the employee's faith. If the Board or Superintendent requires a certificate during a leave of less than 3 days for personal illness, the District shall pay the expenses incurred by the employee.

The use of paid sick leave for adoption or placement for adoption is limited to 30 days unless a longer leave is provided in an applicable collective bargaining agreement. The Superintendent may require that the employee provide evidence that the formal adoption process is underway. ⁴

Vacation ⁵

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

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

³ As this policy is consistent with the minimum requirements of State law, this provision on the maximum number of sick days that may be accumulated is based on the minimum number required as stated in 105 ILCS 5/24-6. The number may be increased to meet or exceed the number IMRF will recognize for retirement credit purposes. The following alternative does this: "Unused sick leave shall accumulate to the maximum number of days that IMRF will recognize for retirement credit purposes."

Insert the following sentence if a board wants to comply with the IMRF's requirement that public bodies have a written plan allowing eligible employees to convert their eligible accumulated sick leave to service credit upon their retirement (40 ILCS 5/7-139(a)(8); see also IMRF General Memorandum #555 at www.imrf.org/pubs/er_pubs/gen_memos/2007_gm/gm_555.pdf.

This policy is the District's written plan allowing eligible employees to convert eligible accumulated sick leave to service credit upon a District employee's retirement under the Illinois Municipal Retirement Fund.

The local collective bargaining agreement may contain this written plan. If it does, the board policy can refer to the agreement.

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'] for the District's written plan allowing eligible employees to convert eligible accumulated sick leave to service credit upon an employee's retirement under the Illinois Municipal Retirement Fund.

If a district maintains two separate sick leave plans, one for employees under a collective bargaining agreement, and one for non-unionized employees, insert both options.

If either or both options are chosen, add 40 ILCS 5/7-139 to the Legal References.

If the board does not have a written sick leave plan for purposes of IMRF sick leave to service credit conversion or does not wish to include it in the policy, do not include any of the options or add the citation to the Legal Reference.

⁴ 105 ILCS 5/24-6.

⁵ State law does not require districts to give employees vacations.

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

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

Vacation days earned in one fiscal year must be used by the end of the following fiscal year; they do not accumulate. Employees resigning or whose employment is terminated are entitled to the monetary equivalent of all earned vacation. ⁶

Holidays ⁷

Unless the District has a waiver or modification of the School Code pursuant to Section 2-3.25g or 24-2(b) allowing it to schedule school on a holiday listed below, District employees will not be required to work on:

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

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

Personal Leave ⁸

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

1. Except in cases of emergency or unavoidable situations, a personal leave request should be submitted to the Building Principal 3 days before the requested date.

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

⁶ Required by 820 ILCS 115/5.

⁷ Holidays are listed in 105 ILCS 5/24-2. For information on the waiver process, see 2:20-E, *Waiver and Modification Request Resource Guide*.

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

⁸ State law does not address personal leave.

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

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

Upon request, the Board will grant 20 days of paid leave of absence per year to a trustee of the Illinois Municipal Retirement Fund in accordance with 105 ILCS 5/24-6.3. **9**

Other Leaves

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

1. Leaves for Service in the Military and General Assembly. **10**
2. School Visitation Leave. **11**
3. Leaves for Victims of Domestic or Sexual Violence. **12**

LEGAL REF.: 20 ILCS 1805/30.1 et seq.
 105 ILCS 5/10-20.7b, 5/24-2, and 5/24-6.
 820 ILCS 147 and 180/1 et seq.

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

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

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

10 Military leave is governed by: The School Code (105 ILCS 5/10-20.7b, 5/24-13, and 5/24-13.1); the Military Leave of Absence Act (5 ILCS 325/ added mandatory leave for "other training or duty required by the United States Armed Forces" and to require the public employer to make-up the difference between military pay and regular compensation); Service Member's Employment Tenure Act (330 ILCS 60/4); Public Employee Armed Services Rights Act (5 ILCS 330/4); National Guard Employment Rights (20 ILCS 1805/30.20); and Uniformed Services Employment and Reemployment Rights Act (38 U.S.C. §4301).

Granting General Assembly leave to ESPs is optional.

11 820 ILCS 147/. See policy 5:250, *Leaves of Absence*, and administrative procedure 5:250-AP, *School Visitation Leave*.

12 Required by Victims' Economic Security and Safety Act, 820 ILCS 180/, and 56 Ill.Admin.Code §280. Important information about this leave is discussed in the footnotes in policy 5:250, *Professional Personnel - Leaves of Absence*.

Students

Harassment of Students Prohibited 1

Bullying, Intimidation, and Harassment Prohibited

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

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

1 State or federal law requires this subject matter be covered by policy and controls this policy's content. Each district must have a policy on bullying (105 ILCS 5/27-23.7, amended by P.A. 98-669); see 7:180, ~~Preventing Prevention of and Response to Bullying, Intimidation, and Harassment~~.

This policy's list of protected classifications is identical to the list in 7:180, ~~Preventing Prevention of and Response to Bullying, Intimidation, and Harassment~~. The protected classifications are found in 105 ILCS 5/27-23.7(a); 775 ILCS 5/1-103; and 23 Ill.Admin.Code §1.240. ~~The bullying statute also includes unfavorable discharge from military service (105 ILCS 5/27-23.7(1), amended by P.A. 96-952); it is not included because of its irrelevance to students in K-12.~~

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

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

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

Sexual Harassment Prohibited

Sexual harassment of students is prohibited. ³ Any person, including a district employee or agent, or student, engages in sexual harassment whenever he or she makes sexual advances, requests sexual favors, and/or engages in other verbal or physical conduct, including sexual violence, of a sexual or sex-based nature, imposed on the basis of sex, that:

1. Denies or limits the provision of educational aid, benefits, services, or treatment; or that makes such conduct a condition of a student's academic status; or
2. Has the purpose or effect of:
 - a. Substantially interfering with a student's educational environment;
 - b. Creating an intimidating, hostile, or offensive educational environment;
 - c. Depriving a student of educational aid, benefits, services, or treatment; or
 - d. Making submission to or rejection of such conduct the basis for academic decisions affecting a student.

The terms "intimidating," "hostile," and "offensive" include conduct that has the effect of humiliation, embarrassment, or discomfort. Examples of sexual harassment include touching, crude jokes or pictures, discussions of sexual experiences, teasing related to sexual characteristics, and spreading rumors related to a person's alleged sexual activities. The term sexual violence includes a number of different acts. Examples of sexual violence include, but are not limited to, rape, sexual assault, sexual battery, sexual abuse, and sexual coercion.

Making a Complaint: Enforcement

Students are encouraged to report claims or incidences of bullying, harassment, sexual harassment, or any other prohibited conduct to the Nondiscrimination Coordinator, Building Principal, Assistant Building Principal, Dean of Students, or a Complaint Manager. A student may choose to report to a person of the student's same sex. Complaints will be kept confidential to the extent possible given the need to investigate. Students who make good faith complaints will not be disciplined.

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~~³ Title IX of the Education Amendments of 1972 prohibits discrimination on the basis of sex in any educational program or activity receiving federal financial assistance (20 U.S.C. §1681). For purposes of Title IX, sexual harassment of students includes acts of sexual violence. Consult the board attorney to ensure the non-discrimination coordinator and complaint managers are trained to appropriately respond to allegations of discrimination based upon sexual violence under Title IX's sexual harassment umbrella. The U.S. Dept. of Education has issued guidance indicating that while acts of sexual violence are crimes, they may also be discrimination under Title IX. Many attorneys agree these guidance documents are a "heads up" to schools to ensure appropriate responses and training. The Several guidance documents highlight appropriate responses to sexual violence under Title IX. See f/n 3 in policy 2:260, *Uniform Grievance Procedure* for a listing and links to these documents.~~

The sample policy's definition of *sexual harassment* does not distinguish between *welcome* and *unwelcome* behaviors - each is prohibited if it has a result described in sub-paragraph 1 or 2. See Mary M. v. North Lawrence Community School Corp., 131 F.3d 1220 (7th Cir., 1997) (An eighth grade student did not need to show that a school employee's sexual advances were *unwelcome* in order to prove sexual harassment.).

School districts are liable for damage awards for an employee's sexual harassment of a student in limited situations. Liability occurs only when a district official who, at a minimum, has authority to institute corrective action, has actual notice of and is deliberately indifferent to the employee's misconduct. Gebser v. Lago Vista Independent School District, 118 S.Ct. 1989 (1998). Schools are liable in student-to-student sexual harassment cases when school agents are deliberately indifferent to sexual harassment, of which they have actual knowledge, that is so severe, pervasive, and objectively offensive that it can be said to deprive the victims of access to the educational opportunities or benefits provided by the school. Davis v. Monroe County Board of Education, 119 S.Ct. 1661 (1999). The Ill. Dept. of Human Rights now has jurisdiction over allegations that a school failed to take corrective action to stop severe or pervasive harassment of an individual based upon a protected category (775 ILCS 5/5-102.2).

An allegation that a student was a victim of any prohibited conduct perpetrated by another student shall be referred to the Building Principal, Assistant Building Principal, or Dean of Students for appropriate action.

The Superintendent shall insert into this policy the names, addresses, and telephone numbers of the District's current Nondiscrimination Coordinator and Complaint Managers. ⁴ At least one of these individuals will be female, and at least one will be male.

Nondiscrimination Coordinator:

Name

Address

Email

Telephone

Complaint Managers:

_____ Name	_____ Name
_____ Address	_____ Address
_____ <u>Email</u>	_____ <u>Email</u>
_____ Telephone	_____ Telephone

The Superintendent shall use reasonable measures to inform staff members and students of this policy, such as, by including it in the appropriate handbooks. ⁵

Any District employee who is determined, after an investigation, to have engaged in conduct prohibited by this policy will be subject to disciplinary action up to and including discharge. Any District student who is determined, after an investigation, to have engaged in conduct prohibited by this policy will be subject to disciplinary action, including but not limited to, suspension and expulsion consistent with the discipline policy. Any person making a knowingly false accusation regarding prohibited conduct will likewise be subject to disciplinary action up to and including discharge, with regard to employees, or suspension and expulsion, with regard to students.

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⁴ Title IX regulations require districts to identify the person, address, and telephone number of the individual responsible for coordinating the district's compliance efforts. Each district must communicate its bullying policy to students and their parents/guardians (105 ILCS 5/27-23.7); see 7:180, ~~Preventing~~ Prevention of and Response to Bullying, Intimidation, and Harassment.

⁵ In addition to notifying students of the Uniform Grievance Procedure, a district must notify them of the person(s) designated to coordinate the district's compliance with Title IX (34 C.F.R. Part 106.8(a)). A comprehensive student 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.

LEGAL REF.: 20 U.S.C. §1681 et seq., Title IX of the Educational Amendments.
34 C.F.R. Part 106.
105 ILCS 5/10-20.12, 10-22.5, 5/27-1, and 5/27-23.7.
775 ILCS 5/1-101 et seq., Illinois Human Rights Act.
23 Ill.Admin.Code §1.240 and Part 200.
Davis v. Monroe County Board of Education, 119 S.Ct. 1661 (1999).
Franklin v. Gwinnett Co. Public Schools, 112 S.Ct. 1028 (1992).
Gebser v. Lago Vista Independent School District, 118 S.Ct. 1989 (1998).
West v. Derby Unified School District No. 260, 206 F.3d 1358 (10th Cir., 2000).

CROSS REF.: 2:260 (Uniform Grievance Procedure), 5:20 (Workplace Harassment Prohibited),
7:10 (Equal Educational Opportunities), 7:180 (~~Preventing~~ Prevention of and
Response to Bullying, Intimidation, and Harassment), 7:185 (Teen Dating
Violence Prohibited), 7:190 (Student Discipline), 7:240 (Conduct Code for
Participants in Extracurricular Activities)

Students

Prevention of and Response to Bullying, Intimidation, and Harassment 1

Bullying, intimidation, and harassment diminish a student's ability to learn and a school's ability to educate. Preventing students from engaging in these disruptive behaviors and providing all students equal access to a safe, non-hostile learning environment are important District goals.

Bullying on the basis of actual or perceived race, color, national origin, military status, unfavorable discharge status from the military service, sex, sexual orientation, gender identity, gender-related identity or expression, ancestry, age, religion, physical or mental disability, order of protection status, status of being homeless, or actual or potential marital or parental status, including pregnancy, association with a person or group with one or more of the aforementioned actual or perceived characteristics, or any other distinguishing characteristic **is prohibited** in each of the following situations: ²

1. During any school-sponsored education program or activity.
2. While in school, on school property, on school buses or other school vehicles, at designated school bus stops waiting for the school bus, or at school-sponsored or school-sanctioned events or activities.
3. Through the transmission of information from a school computer, a school computer network, or other similar electronic school equipment.
4. Through the transmission of information from a computer that is accessed at a nonschool-related location, activity, function, or program or from the use of technology or an electronic device that is not owned, leased, or used by the School District or school if the bullying causes a substantial disruption to the educational process or orderly operation of a school. This paragraph (item #4) applies only when a school administrator or teacher receives a report that bullying through this means has occurred; it does not require staff members to monitor any nonschool-related activity, function, or program.

Definitions from Section 27-23.7 of the School Code (105 ILCS 5/27-23.7) 3

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

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¹ All districts must have a policy on bullying (105 ILCS 5/27-23.7, amended by P.A.s 98-669 and 98-801 (eff. 1-1-2015)). Every 2 years, each district must review and re-evaluate this policy, make necessary and appropriate revisions, and file the updated policy with ISBE. This sample policy's first paragraph allows a school board to consider its goals for preventing bullying and remedying its consequences; it may be amended.

In addition to a bullying prevention policy, all districts must have a policy on student discipline (105 ILCS 5/10-20.14; 23 Ill.Admin.Code §1.280). Boards must, in consultation with their parent-teacher advisory committees and other community-based organizations, address aggressive behavior, including bullying, in their student discipline policy. See 7:190, *Student Discipline*; 7:190-E1, *Aggressive Behavior Reporting Letter and Form*.

² This paragraph and its subparts 1-4 are from the bullying prevention statute (105 ILCS 5/27-23.7(a); see also 775 ILCS 5/1-103 and 23 Ill.Admin.Code §1.240). The protected statuses are mandated by the bullying prevention statute; the list of protected statuses is identical to the list in 7:20, *Harassment of Students Prohibited*.

³ All definitions are directly from 105 ILCS 5/27-23.7, amended by P.A.s 98-669 and 98-801 (eff. 1-1-2015).

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

Cyber-bullying means bullying through the use of technology or any electronic communication, including without limitation any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic system, photo-electronic system, or photo-optical system, including without limitation electronic mail, Internet communications, instant messages, or facsimile communications. *Cyber-bullying* includes the creation of a webpage or weblog in which the creator assumes the identity of another person or the knowing impersonation of another person as the author of posted content or messages if the creation or impersonation creates any of the effects enumerated in the definition of *bullying*. *Cyber-bullying* also includes the distribution by electronic means of a communication to more than one person or the posting of material on an electronic medium that may be accessed by one or more persons if the distribution or posting creates any of the effects enumerated in the definition of *bullying*.

Restorative measures means a continuum of school-based alternatives to exclusionary discipline, such as suspensions and expulsions, that: (i) are adapted to the particular needs of the school and community, (ii) contribute to maintaining school safety, (iii) protect the integrity of a positive and productive learning climate, (iv) teach students the personal and interpersonal skills they will need to be successful in school and society, (v) serve to build and restore relationships among students, families, schools, and communities, and (vi) reduce the likelihood of future disruption by balancing accountability with an understanding of students' behavioral health needs in order to keep students in school.

School personnel means persons employed by, on contract with, or who volunteer in a school district, including without limitation school and school district administrators, teachers, school guidance counselors, school social workers, school counselors, school psychologists, school nurses, cafeteria workers, custodians, bus drivers, school resource officers, and security guards.

Bullying Prevention and Response Plan

The Superintendent or designee shall develop and maintain a bullying prevention and response plan that advances the District's goal of providing all students with a safe learning environment free of bullying and harassment. This plan must be consistent with the requirements listed below; each numbered requirement, 1-12, corresponds with the same number in the list of required policy components in 105 ILCS 5/27-23.7(b) 1-12. ⁴

1. The District uses the definition of *bullying* as provided in this policy. ⁵

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⁴ As each numbered requirement, 1-12, corresponds with the same number in 5/27-23.7(b) 1-12, there are no reference citations in footnotes. All non-statutory requirements, plus alternatives and optional provisions, are described in footnotes.

⁵ A board may augment the School Code requirement by using this alternative:

Using the definition of *bullying* as provided in this policy, the Superintendent or designee shall emphasize to the school community that: (a) the District prohibits bullying, and (b) all students should conduct themselves with a proper regard for the rights and welfare of other students. This may include a process for commending or acknowledging students for demonstrating appropriate behavior.

2. Bullying is contrary to State law and the policy of this District. However, nothing in the District’s bullying prevention and response plan is intended to infringe upon any right to exercise free expression or the free exercise of religion or religiously based views protected under the First Amendment to the U.S. Constitution or under Section 3 of Article I of the Illinois Constitution.
3. Students are encouraged to immediately report bullying. A report may be made orally or in writing to the District Complaint Manager or any staff member with whom the student is comfortable speaking. ⁶ Anyone, including staff members and parents/guardians, who has information about actual or threatened bullying is encouraged to report it to the District Complaint Manager or any staff member. Anonymous reports are also accepted.

Complaint Manager:

Name

Address

Email

Telephone

4. Consistent with federal and State laws and rules governing student privacy rights, the Superintendent or designee shall promptly inform the parent(s)/guardian(s) of every student involved in an alleged incident of bullying and discuss, as appropriate, the availability of social work services, counseling, school psychological services, other interventions, and restorative measures. ⁷
5. The Superintendent or designee shall promptly investigate and address reports of bullying, by, among other things:
 - a. Making all reasonable efforts to complete the investigation within 10 school days after the date the report of a bullying incident was received and taking into consideration additional relevant information received during the course of the investigation about the reported bullying incident.
 - b. Involving appropriate school support personnel and other staff persons with knowledge, experience, and training on bullying prevention, as deemed appropriate, in the investigation process.
 - c. Notifying the Building Principal or school administrator or designee of the reported incident of bullying as soon as possible after the report is received.
 - d. Consistent with federal and State laws and rules governing student privacy rights, providing parents/guardians of the students who are parties to the investigation information about the investigation and an opportunity to meet with the Building

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⁶ The statute requires that the policy contain the email address and telephone number for the staff person(s) responsible for receiving bullying reports. Using the district Complaint Manager or Nondiscrimination Coordinator is consistent with 2:260, *Uniform Grievance Procedure*. A board may substitute or add the Nondiscrimination Coordinator, Building Principal, or other position in this paragraph and below with the contact information. A board may also add a telephone number for making anonymous reports.

⁷ 105 ILCS 5/10-20.14 contains a similar requirement. See 7:190-E1, *Aggressive Behavior Reporting Letter and Form*.

Principal or school administrator or his or her designee to discuss the investigation, the findings of the investigation, and the actions taken to address the reported incident of bullying.

The Superintendent or designee shall investigate whether a reported incident of bullying is within the permissible scope of the District's jurisdiction and shall require that the District provide the victim with information regarding services that are available within the District and community, such as counseling, support services, and other programs. ⁸

6. The Superintendent or designee shall use interventions to address bullying, that may include, but are not limited to, school social work services, restorative measures, social-emotional skill building, counseling, school psychological services, and community-based services.
7. A reprisal or retaliation against any person who reports an act of bullying **is prohibited**. A student's act of reprisal or retaliation will be treated as *bullying* for purposes of determining any consequences or other appropriate remedial actions.
8. A student will not be punished for reporting bullying or supplying information, even if the District's investigation concludes that no bullying occurred. However, knowingly making a false accusation or providing knowingly false information will be treated as *bullying* for purposes of determining any consequences or other appropriate remedial actions.
9. The District's bullying prevention and response plan must be based on the engagement of a range of school stakeholders, including students and parents/guardians.
10. The Superintendent or designee shall post this policy on the District's Internet website, if any, and include it in the student handbook, and, where applicable, post it where other policies, rules, and standards of conduct are currently posted. The policy must also be distributed annually to parents/guardians, students, and school personnel, including new employees when hired.
11. The Superintendent or designee shall assist the Board with its evaluation and assessment of this policy's outcomes and effectiveness. This process shall include, without limitation:
 - a. The frequency of victimization;
 - b. Student, staff, and family observations of safety at a school;
 - c. Identification of areas of a school where bullying occurs;
 - d. The types of bullying utilized; and
 - e. Bystander intervention or participation.

The evaluation process may use relevant data and information that the District already collects for other purposes. The Superintendent or designee must post the information developed as a result of the policy evaluation on the District's website, or if a website is not available, the information must be provided to school administrators, Board members, school personnel, parents/guardians, and students.

12. The Superintendent or designee shall fully implement the Board policies, including without limitation, the following: ⁹

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⁸ This sentence contains requirements found in 105 ILCS 5/27-23.7(d), amended by P.A. 98-801 (eff. 1-1-2015).

⁹ The statute requires that the bullying policy *be consistent with* other board policies. The list of policies may be deleted and the following alternative used: "12. The District's bullying prevention plan must be consistent with other Board policies." If a policy list is included, be sure the referenced policies were adopted locally and amend the list accordingly.

The bullying statute does not identify staff member duties regarding the prevention or response to student bullying. The following optional provision addresses staff member responsibilities and may be added as a new paragraph 13:

- a. 2:260, *Uniform Grievance Procedure*. A student may use this policy to complain about bullying.
- b. 6:60, *Curriculum Content*. Bullying prevention and character instruction is provided in all grades in accordance with State law.
- c. 6:65, *Student Social and Emotional Development*. Student social and emotional development is incorporated into the District's educational program as required by State law.
- 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.
- e. 7:20, *Harassment of Students Prohibited*. This policy prohibits *any* person from harassing, intimidating, or bullying a student based on an identified actual or perceived characteristic (the list of characteristics in 7:20 is the same as the list in this policy).
- f. 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.
- g. 7:190, *Student Discipline*. This policy prohibits, and provides consequences for, hazing, bullying, or other aggressive behaviors, or urging other students to engage in such conduct.
- h. 7:310, *Restrictions on Publications*. This policy prohibits students from and provides consequences for: (1) accessing and/or distributing at school any written, printed, or electronic material, including material from the Internet, that will cause substantial disruption of the proper and orderly operation and discipline of the school or school activities, and (2) creating and/or distributing written, printed, or electronic material, including photographic material and blogs, that causes substantial disruption to school operations or interferes with the rights of other students or staff members.

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- 13. The Superintendent or designee shall fully inform staff members of the District's goal to prevent students from engaging in bullying and the measures being used to accomplish it. This includes each of the following:
 - a. Communicating the District's expectation and State law requirement that teachers and other certificated or licensed employees maintain discipline.
 - b. Establishing the expectation that staff members: (1) intervene immediately to stop a bullying incident that they witness or immediately contact building security and/or law enforcement if the incident involves a weapon or other illegal activity, (2) report bullying, whether they witness it or not, to an administrator, and (3) inform the administration of locations on school grounds where additional supervision or monitoring may be needed to prevent bullying.
 - c. Where appropriate in the staff development program, providing strategies to staff members to effectively prevent bullying and intervene when it occurs.
 - d. Establishing a process for staff members to fulfill their obligation to report alleged acts of bullying.

LEGAL REF.: 405 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

Conduct Code for Participants in Extracurricular Activities 1

The Superintendent or designee, using input from coaches and sponsors of extracurricular activities, shall develop a conduct code for all participants in extracurricular activities consistent with School Board policy. 2 The conduct code shall: (1) require participants in extracurricular activities to conduct themselves as good citizens and exemplars of their school at all times, including after school, on days when school is not in session, and whether on ~~and~~ or off school property; (2) emphasize that hazing and bullying activities are strictly prohibited; and (23) notify participants that failure to abide by it could result in removal from the activity. 3 The conduct code shall be reviewed by the Building Principal periodically at his or her discretion and presented to the Board.

All coaches and sponsors of extracurricular activities shall annually review the rules of conduct with participants and provide participants with a copy. In addition, coaches and sponsors of interscholastic athletic programs shall provide instruction on steroid abuse prevention to students in grades 7 through 12 participating in these programs. 4

Extracurricular Drug and Alcohol Testing Program 5

The District maintains an extracurricular drug and alcohol testing program in order to foster the health, safety, and welfare of its students. Participation in extracurricular activities is a privilege and participants need to be exemplars. The program promotes healthy and drug-free participation.

Each student and his or her parent(s)/guardian(s) must consent to random drug and alcohol testing in order to participate in any extracurricular activity. Failure to sign the District's "Random Drug and Alcohol Testing Consent" form will result in non-participation.

If a test is "positive," the student will not participate in extracurricular activities until after a "follow-up" test is requested by the Building Principal or designee and the results are reported. The Building

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

2 Optional:

...and the rules adopted by any association in which the School District maintains a membership.

3 In most cases involving a student's removal from an extracurricular activity, courts have ruled that participation in extracurricular programs is a privilege rather than a right. Clements v. Board of Education of Decatur Public School District No. 61, 478 N.E.2d 1209 (Ill.App.4, 1985). The deprivation of a privilege does not trigger the Constitution's due process provision. Consequently, unlike school attendance, students generally have no constitutional right to participate in extracurricular programs. See also Kevin Jordan v. O'Fallon THSD 203, 706 N.E.2d 137 (Ill.App.5, 1999). This case involved a type of "good citizen" rule in which all student-participants in extracurricular activities agreed to abide by the school's ban on alcohol and drug use. Pursuant to this rule, the school suspended a star football player who police had found intoxicated at a convenience store around 3:00 A.M. The suspension was upheld. Nevertheless, participants who violate the conduct code should be allowed to give an explanation before being removed from the activity.

4 105 ILCS 5/27-23.3.

5 This program is optional. The U.S. Supreme Court upheld the constitutionality of a student activities drug testing policy that required all middle and high school students to consent to random urinalysis testing for drugs in order to participate in any extracurricular activity. Board of Education of Independent School Dist. No. 92 v. Earls et al., 122 S.Ct. 2559 (2002). This sample policy, as well as the procedures and forms implementing it, are based on the policy approved by the Seventh Circuit in Todd v. Rush County Schools, 133 F.3d 984 (7th Cir., 1998). Alternatively, this program may be limited to extracurricular athletic participants; if so, add the Drug and Alcohol Testing Program to policy 7:300, *Extracurricular Athletics*, and delete it from here.

Principal or designee will request a “follow-up” test after such an interval of time that the substance previously found would normally be eliminated from the body. If this “follow-up” test is negative, the student will be allowed to resume extracurricular activities. If a “positive” result is obtained from the “follow-up” test, or any later test, the same previous procedure shall be followed.

The Superintendent or designee shall develop procedures to implement this policy. No student shall be expelled or suspended from school as a result of any verified positive test conducted under this program other than when independent reasonable suspicion of drug and/or alcohol usage exists. This program does not affect the District policies, practices, or rights to search or test any student who at the time exhibits cause for reasonable suspicion of drug and/or alcohol use.

Performance Enhancing Drug Testing 6

State law requires the Illinois High School Association (IHSA) to prohibit a student from participating in an athletic competition sponsored or sanctioned by IHSA unless the student has agreed, (a) not to use any performance-enhancing substances on IHSA’s current banned drug list, and (b) to submit to random testing for these substances in the student’s body if the student is in high school. In addition, the student’s parent/guardian must sign a statement for IHSA containing specific acknowledgments including that the student, if in high school, may be subject to random performance-enhancing substance testing and that violating the laws regulating the use of performance-enhancing substances is a crime.

IHSA, with oversight from the Illinois Department of Public Health, administers a performance-enhancing substance testing program under which high school participants in athletic competition sponsored or sanctioned by IHSA are tested at multiple times throughout the athletic season for the presence in their bodies of performance-enhancing substances on the IHSA’s banned drug list.

LEGAL REF.: Board of Education of Independent School Dist. No. 92 v. Earls, 122 S.Ct. 2559 (2002).
Clements v. Board of Education of Decatur, 478 N.E.2d 1209 (Ill.App.4, 1985).
Kevin Jordan v. O’Fallon THSD 203, 706 N.E.2d 137 (Ill.App.5, 1999).
Todd v. Rush County Schools, 133 F.3d 984 (7th Cir., 1998).
Veronia School Dist. 475 v. Acton, 515 U.S. 646 (1995).
105 ILCS 5/24-24, 5/27-23.3, and 25/2.

CROSS REF.: 5:280 (Duties and Qualifications), 6:190 (Extracurricular and Co-Curricular Activities), 7:180 (Prevention of and Response to Bullying, Intimidation, and Harassment), 7:190 (Student Discipline), 7:300 (Extracurricular Athletics)

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⁶ 105 ILCS 25/2. See IHSA policy #24, *Performance Enhancing Drug Testing Policy* for its requirements, www.ihsa.org/org/policy/2009-10/policies.pdf, www.ihsa.org/Resources/SportsMedicine/PerformanceEnhancingDrugsSteroidEducation/IHSAPerformanceEnhancingSubstancePolicy.aspx.