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PRESS

ISSUE 71, February 2010

Policy Reference Education Subscription Service

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This **PRESS** issue contains the policies and procedures that needed updating due to legislative action during the veto session of the 2009 General Assembly or due to rule changes made by the Illinois State Board of Education (ISBE). In addition, several policies needed important revisions.

Operations

- ▶ 4:30, *Revenue and Investments*, is edited to omit the requirement that the board approve collateral agreements. It now requires the superintendent or designee to keep the board informed of collateral agreements.
- ▶ 4:60, *Purchases and Contracts*, is updated in response to new legislation that increased reporting and posting requirements for contracts. The policy makes the superintendent or designee responsible for them. A footnote contains an alternative policy provision that describes the mandates, i.e.:

The Superintendent or designee shall execute the reporting and website posting mandates in State law concerning District contracts, including, but not limited to: (a) listing expenditures as required in the Annual Statement of Affairs (105 ILCS 5/10-17, www.isbe.state.il.us/sfms/af/asp.htm); (b) listing on the District's website all contracts in excess of \$25,000 (105 ILCS 5/10-20.44, added by P.A. 95-707); (c) posting on the District's website, on or before October 1 of each year, an itemized salary compensation report for administrators and any contract with an exclusive bargaining representative (105 ILCS 5/10-20.46, added by P.A. 96-434); and (d) annually reporting to ISBE, on or

before July 1, the salaries and benefits for administrators and teachers (105 ILCS 5/10-20.46, amended by P.A. 96-266).

Recent legislation is described in the footnotes as follows:

1. 820 ILCS 130/4, amended by P.A. 96-437, adds a requirement to the Prevailing Wage Act that, whenever a contract is awarded without a public bid or project specification, the public body must provide the contractor with a written notice on the purchase order or on a separate document indicating that not less than the prevailing wage rate must be paid to workers.
2. 105 ILCS 5/10-20.21, amended by P.A. 96-392, adds an exception to mandatory bidding for contracts providing for the transportation of students with special needs or disabilities. For more information, see 4:60-AP1, below.
3. 105 ILCS 5/10-20.21, amended by P.A. 96-841, adds a process for electronic bid opening; however, bids for construction purposes are prohibited from being opened electronically.

Other non-substantive updates are made.

- ▶ 4:60-AP1, *Administrative Procedure - Purchases*. In addition to non-substantive edits, the procedure is amended to add:

1. A new exception to the bidding process as allowed by 105 ILCS 5/10-20.21(a), amended by P.A. 96-392. This exception applies to contracts or purchases "providing for the transportation of students with special needs or disabilities, which contracts must be advertised in the same manner as competitive bids and awarded by first considering the bidder or bidders most able to provide safety and comfort for the pupils with special needs or disabilities, stability of service, and any other factors set forth in the request for proposal regarding quality of service, and then price."
2. A provision on electronic bid opening. With the exception of bids for construction purposes, bids may be communicated, accepted, and opened electronically. 105 ILCS 5/10-20.21, amended by P.A. 96-841. The statutory safeguards are included in the procedure, i.e.:
 - a. On the date and time of a bid opening, the primary person conducting the electronic bid process shall log onto a specified database using a unique username and password previously assigned to the bidder to allow access to the bidder's specific bid project number.
 - b. The specified electronic database must be on a network that: (i) is in a secure environment behind a firewall; (ii) has specific encryption tools; (iii) maintains specific intrusion detection systems; (iv) has redundant systems architecture with data storage

back-up, whether by compact disc or tape; and (v) maintains a disaster recovery plan.

- ▶ 4:90, *Activity Funds*, is amended to clarify that the treasurer is not exclusively responsible for complying with ISBE's rules for school activity funds.

- ▶ 4:110, *Transportation*. A new ISBE rule requires a district to have a policy if it considers locations other than individual students' residences as pick-up and drop-off locations for purposes of determining entitlement to free transportation. 23 Ill.Admin.Code §120.30. We added a new paragraph to the policy containing the new rule's requirements. The new paragraph is not needed unless a district considers locations as described above and wants to receive State reimbursement. The new paragraph states:

If a student is at a location within the District, other than his or her residence, for child care purposes at the time for transportation to and/or from school, that location may be considered for purposes of determining the 1½ miles from the school attended. Unless the Superintendent or designee establishes new routes, pick-up and drop-off locations for students in day care must be along the District's regular routes. The District will not discriminate among types of locations where day care is provided, which may include the premises of licensed providers, relatives' homes, or neighbors' homes.

The footnote explains that to qualify for State reimbursement, districts electing to provide transportation must afford the same service to all students in that same situation. 23 Ill.Admin.Code §1.510(b).

In response to feedback, the following change is also made: "In setting the routes, the pick-up and discharge points should be as safe ~~and convenient~~ for students as possible."

- ▶ 4:170, *Safety*, is amended to delete redundant language regarding wireless and cellular telephone use by bus drivers. Based upon feedback, we made non-substantive changes to the language in the "Convicted Child Sex Offender and Notification Laws" section. It is updated in the footnotes to reflect five new Public Acts.

1. Two Public Acts make it clear that the Ill. General Assembly does not expect schools to provide AEDs and trained AED users when a third party uses a school's physical fitness facility. A "physical fitness facility" is defined to include *only* activities or programs organized by schools and supervised by employees of the school (210 ILCS 74/5.25, amended by P.A. 96-873). An option is also added for a board to add this definition into the policy. Every school with a "physical fitness facility" must ensure that there is: (1) an AED on site, and (2) a trained AED user on staff during staffed business hours (210 ILCS 74/15 (b), amend-

ed by P.A. 96-748). For the concerns regarding outdoor facilities, the law clarifies that a school must have: (1) an AED on site, and (2) a trained AED user available only during activities or events sponsored and conducted or supervised by the school and school employees (210 ILCS 74/15(b-15), amended by P.A. 96-873). A reference to the proposed rules at 77 Ill.Admin.Code Part 527 is also added.

2. 625 ILCS 5/12-610.1(e), amended by P.A. 96-131, prohibits a person from using a wireless telephone at any time while operating a motor vehicle on a roadway in a school speed zone unless the person is using the telephone for emergency purposes.
3. 105 ILCS 5/18-12, amended by P.A. 96-734, allows a district to claim a full day of attendance for a delayed start due to adverse weather conditions.
4. 105 ILCS 5/10-21.9(c), amended by P.A. 96-431, moved the list of employment disqualifying criminal offenses to 105 ILCS 5/21-23a.

The footnote for the section on "Unsafe School Choice Option" is amended to offer alternative policy language for districts that operate only one school or grade center. Alternative language is tricky because the statute requires districts to have a policy implementing this law without exception. The amended footnote states:

A policy provision is required on this topic (105 ILCS 5/10-21.3a). See also 20 U.S.C. §7912. ISBE maintains a list of persistently dangerous schools. Districts having only one school or attendance center may substitute the following provision for this paragraph:

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

The footnote for the section on "Student Insurance" now states that the provision is optional but reflects best practice.

- ▶ 4:170-AP6, *Administrative Procedure - Plan for Responding to a Medical Emergency at a Physical Fitness Facility*, is updated to reflect the proposed amendments to the Ill. Department of Public Health Rules, Part 527, "Physical Fitness Medical Emergency Preparedness Code" at 33 Ill. Reg. 10947. The proposed amendments to the rules are in response to P.A. 95-712, which included outdoor physical fitness facilities in the definition of "physical fitness facility." We generally wait for rules to become final before updating **PRESS** material. However, with the passage of other Public Acts that affect AEDs, we wanted

to simplify with one AED update to avoid confusion. Many proposed changes in the rules mirror the language of P.A. 95-712 and are already in policy and procedure; we do not anticipate any changes to the proposed rules based upon the new legislation discussed above. For simplicity, we generalized the citations so that the administrative procedure remains up-to-date if there are changes before the proposed rules become final. We also moved the citations from the footnotes into the procedure for ease of use.

- ▶ 4:170-AP6, E1, *Exhibit - School Staff AED Notification Letter*, now specifies: (1) where to find the response plan referred to in the newly updated 4:170-AP6, *Plan for Responding to a Medical Emergency at a Physical Fitness Facility*, and (2) that the Physical Fitness Facility Medical Emergency Preparedness Act and the Local Governmental and Governmental Employees Tort Immunity Act protect staff members from liability.
- ▶ 4:170-AP6, E2, *Exhibit - ~~Automatic~~ Automated External Defibrillator Incident Report*, is renamed and updated with a reference that the superintendent or designee will follow the requirements of 77 Ill.Admin.Code §527.500. The proposed amendment to 77 Ill.Admin.Code §527.500 at 33 Ill.Reg. 10947 will no longer require the superintendent to fax the incident report to the EMS System Resource Hospital. Referencing that the superintendent or designee will simply follow the administrative rule keeps the form up-to-date.

Personnel

- ▶ 5:20, ~~*Sexual Harassment*~~ is renamed, *Workplace Harassment Prohibited*. As the title suggests, the policy now has broader coverage. Unlawful harassment is a form of discrimination that violates many State and federal laws (see the policy's Legal References). Workplace harassment policies have typically focused on sexual harassment because it receives the most attention. However, the broad prohibitions against discrimination in State and federal civil rights laws prohibit harassing conduct that is motivated by animus against any protected status. See *Porter v. Erie Foods International, Inc.*, 576 F.3d 629 (7th Cir. 2009)(recognizing a cause of action for race harassment). For a list of protected statuses, see policy 5:10, *Equal Employment Opportunity and Minority Recruitment*.

The policy has a separate section on sexual harassment because of the extensive statutory and case law regarding it. It also has a separate section on making a complaint and enforcement. The contents of these new sections are from the policy's former version with a few changes.

A new footnote highlights the importance of an employer's response to workplace harassment. It quotes the Seventh Circuit Court of Appeals, second only to the U.S.

Supreme Court in federal court jurisdictions over Illinois: "If an employer takes reasonable steps to discover and rectify the harassment of its employees ... it has discharged its legal duty." Berry v. Delta Airlines, 260 F.3d 803, 811 (7th Cir., 2001).

Other significant footnote updates include:

1. The Ill. Human Rights Act, 775 ILCS 5/2-102(D), imposes strict liability on the employer, regardless of whether the employer knew of the offending conduct, when an employee has been sexually harassed by supervisory personnel regardless of whether the harasser has any authority over the complainant. Sangamon County Sheriff's Dept. v. Ill. Human Rights Com'n, 908 N.E.2d 39 (Ill., 2009).
2. In addition to violating other civil rights laws, a school district violates the public accommodations article in the Ill. Human Rights Act if it fails to take corrective action to stop severe or pervasive harassment (775 ILCS 5/5-102 and 5/5-102.2, amended by P.A. 96-814).

Instruction

- ▶ 6:120-AP2, *Administrative Procedure - Access to Classrooms and Personnel*, is **NEW**. It implements 105 ILCS 5/14-8.02(g-5), added by P.A. 96-657, which grants the parent/guardian of a student receiving special education services, or being evaluated for eligibility, reasonable access to educational facilities, personnel, classrooms, buildings, and to the child. The same right of access is afforded an independent educational evaluator or a qualified professional retained by or on behalf of a parent/guardian or child. The law is silent on many implementation issues making it important to consult the attorney who handles the district's special education matters.

We are grateful to the Ill. Council of School Attorneys' special education committee for its review of our procedure and exhibit implementing the new law granting parents/guardians of special education students access to classrooms and personnel. The procedure and exhibit are available on the IASB website as well as in this **PRESS** issue. We appreciate the assistance of Kathryn Vander Broek, Hinshaw & Culbertson LLP. In addition to reviewing our procedure, she allowed us to adapt her work product for our 6:120-AP2, E1, *Exhibit - Request to Access Classroom(s) or Personnel for Special Education Evaluation/Observation Purposes*, described below.

- ▶ 6:120-AP2, E1, *Exhibit - Request to Access Classroom(s) or Personnel for Special Education Evaluation/Observation Purposes*, is **NEW**. See the above description of the

accompanying procedure. This exhibit allows a school district to prepare for a visit and secure a written: (1) acknowledgement of the visitor's understanding that during the course of his/her visit, s/he may learn or receive confidential information protected by various privacy laws, e.g., the identity of students eligible for special education services, and (2) agreement from the visitor to comply with the privacy laws and not re-release the information except as authorized by law. The law is silent on many implementation issues making it important to consult the attorney who handles the district's special education matters.

Students

- ▶ 7:50, *School Admissions and Student Transfers To and From Non-District Schools*, is revised to implement P.A. 96-844. Based on a readiness assessment, schools must allow children to attend first grade who have attended a non-public preschool through kindergarten, were taught by an appropriately certified teacher, and will attain the age of 6 years on or before December 31 of the school term.

Community Relations

- ▶ 8:20-E, *Exhibit - Application and Procedures for Use of School Facilities* is updated to reflect 210 ILCS 74/5.25 and 74/15, amended by P.A.s 96-748 and 96-873. Both address AEDs and are discussed above in 4:170, *Safety*. The exhibit is updated to delete the reference to an indoor physical fitness facility. It also notifies third parties who want to use a school's physical fitness facility that the district will not supervise the activity nor will it supply trained AED users to act as emergency responders at any time, including staffed business hours.

Based upon feedback, other practical updates are included.

- ▶ 8:30, *Visitors to and Conduct on School Property*. The following paragraph is added to implement 105 ILCS 5/14-8.02(g-5), added by P.A. 96-657:

Requests to access a school building, facility, and/or educational program, or to interview personnel or a student for purposes of assessing the student's special education needs, should be made at the appropriate building. Access shall be facilitated according to guidelines from the Superintendent or designee.

Miscellaneous Future Updates

The following policies or topics, among others, will be covered in a future **PRESS** issue:

1. A recent addition to The School Code prohibits the disclosure of the performance evaluations of teachers,

principals, and superintendents. 105 ILCS 5/24A-7.1, added by P.A. 96-861, eff. 1-15-2010. Our policy and procedure implementing the revised Freedom of Information Act do not conflict with this new legislation. We will, however, update our material to specifically mention this new legislation as well as other developments as the dust settles around the revised FOIA.

2. Management of Food Allergies. 105 ILCS 5/2-3.148, added by P.A. 96-349, requires each school board, not later than January 1, 2011, to implement a policy based on the guidelines developed by ISBE and the Ill. Dept. of Public Health for the management of students with life-threatening food allergies.

3. 7:340, *Student Records*. The policy and footnotes will be revised to incorporate:

- a. 105 ILCS 10/5, amended by P.A. 96-628, which shields from disclosure information communicated in confidence to a school social worker, school counselor, school psychologist, or an intern who works under the direct supervision of a school social worker, school counselor, or school psychologist.
- b. ISBE's upcoming revisions to 23 Ill.Admin.Code Part 375, *Student Records*, that will discuss videotapes, medical information, and changes needed for conformance with federal requirements under the Family Educational Rights and Privacy Act.

Progress Report:

Topics	Our Response
<p>The U.S. Department of Education updated its rules implementing the Family Educational Rights and Privacy Act, effective December 9, 2008. These rules can be found at: www.ed.gov/legislation/FedRegister/finrule/2008-4/120908a.pdf.</p> <p>ISBE is reviewing the changes to determine the impact on the Ill. Student Records Act and its rules.</p>	<p>We will update our student records material after conferring with ISBE.</p>
<p>On July 2, 2008 the final guidelines to implement the Sex Offender Registration and Notification Act (SORNA) were adopted. They set forth standards to address the various aspects of sex offender tracking and public notification with the objective of establishing a national baseline for sex offender registration and notification. States must reach substantial implementation of SORNA by July 27, 2009. Substantial implementation is satisfied if a jurisdiction carries out the requirements of SORNA as interpreted and explained in the final guidelines. Compliance with the SORNA requirements or requests for extensions must be received by the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART Office) by April 27, 2009. States, tribes, and territories that fail to substantially implement SORNA by July 27, 2009 (and have not been granted a time extension) are subject to a 10% reduction in funding under 42 U.S.C. §3750 <i>et seq.</i> (<i>Byrne Justice Assistance Grant</i> funding). To date, no state or jurisdiction has met the requirements mandated in SORNA, and the Attorney General approved a one-year extension to all states.</p>	<p>We will update all applicable policies and procedures affected by SORNA when Illinois reaches substantial implementation.</p>

Revisions to Policies, Administrative Procedures, and Exhibits

Immediate action is suggested	Number	Title	Reason The memo more completely describes the actions taken.
	4:30	Revenue and Investments	Edited to omit the requirement for board approval of collateral agreements. It now requires the superintendent or designee to keep the board informed of collateral agreements.
	4:60	Purchases and Contracts	Updated in response to new legislation that: 1. Increased reporting and posting requirements for contracts; 2. Requires that whenever a contract is awarded without a public bid or project specification, the public body must provide the contractor with a written notice concerning compliance with the prevailing wage rate; 3. Adds an exception to mandatory bidding for contracts providing for the transportation of students with special needs or disabilities; and 4. Adds a process for electronic bid opening; however, bids for construction purposes are prohibited from being opened electronically.
	4:60-AP1	Administrative Procedure - Purchases	In addition to non-substantive edits, updated in response to new legislation that added: 1. An exception to the bidding process for contracts or purchases "providing for the transportation of students with special needs or disabilities;" and 2. A provision on electronic bid opening. The statutory safeguards are included in the procedure.
	4:90	Activity Funds	Amended to clarify that the treasurer is not exclusively responsible for complying with ISBE's rules for school activity funds.
✓	4:110	Transportation	Updated in response to a new ISBE rule requiring a district to have a policy if it considers locations other than individual students' residences as pick-up and drop-off locations for purposes of determining entitlement to free transportation.
	4:170	Safety	Amended to delete redundant language regarding wireless and cellular telephone use by bus drivers. Footnotes updated in response to new legislation that: 1. Clarifies that the Ill. General Assembly does not expect schools to provide AEDs and trained AED users when a third party uses a school's physical fitness facility; 2. Prohibits a person from using a wireless telephone at any time while operating a motor vehicle on a roadway in a school speed zone unless the person is using the telephone for emergency purposes; 3. Allows a district to claim a full day of attendance for a delayed start due to adverse weather conditions; and 4. Moved the list of employment disqualifying criminal offenses to a new School Code section. The footnote for the section on "Unsafe School Choice Option" is amended to offer alternative policy language for districts that operate only one school or grade center.
	4:170-AP6	Administrative Procedure - Plan for Responding to a Medical Emergency at a Physical Fitness Facility	Updated to reflect the proposed amendments to the Dept. of Public Health rules, "Physical Fitness Medical Emergency Preparedness Code." We generally wait for rules to become final before updating PRESS material. However, with the passage of other public acts that affect AEDs, we wanted to simplify with one AED update to avoid confusion.

Immediate action is suggested	Number	Title	Reason The memo more completely describes the actions taken.
	4:170-AP6-E1	Exhibit - School Staff AED Notification Letter	Updated to specify: (1) where to find the response plan referred to in the newly updated 4:170-AP6, <i>Plan for Responding to a Medical Emergency at a Physical Fitness Facility</i> , and (2) that the Physical Fitness Facility Medical Emergency Preparedness Act and the Local Governmental and Governmental Employees Tort Immunity Act protect staff members from liability.
	4:170-AP6-E2	Exhibit - Automatic Automated External Defibrillator Incident Report	Renamed and updated with a reference that the superintendent or designee will follow the requirements of applicable Dept. of Public Health rules.
✓	5:20	Sexual Workplace Harassment Prohibited	As the new title suggests, the policy now has broader coverage. Unlawful harassment is a form of discrimination that violates many State and federal laws. Workplace harassment policies have typically focused on sexual harassment because it receives the most attention. However, the broad prohibitions against discrimination in civil rights laws prohibit harassing conduct that is motivated by animus against any protected status. A footnote contains an optional sentence prohibiting conduct that may be <i>legal</i> , but still harms the workplace. Footnotes are updated as follows: 1. The Ill. Human Rights Act imposes strict liability on the employer, regardless of whether the employer knew of the offending conduct, when an employee has been sexually harassed by supervisory personnel regardless of whether the harasser has any authority over the complainant. [Relevant Ill. Supreme Court decision cited.] 2. New legislation states that a school district violates the public accommodations article in the Ill. Human Rights Act if it fails to take corrective action to stop severe or pervasive harassment (775 ILCS 5/5-102 and 5/5-102.2, amended by P.A. 96-814).
✓	6:120-AP2	Administrative Procedure - Access to Classrooms and Personnel	NEW. Added in response to legislation that grants the parent/guardian of a student receiving special education services, or being evaluated for eligibility, reasonable access to educational facilities, personnel, classrooms, buildings, and to the child. The same right of access is afforded an independent educational evaluator or a qualified professional retained by or on behalf of a parent/guardian or child.
✓	6:120-AP2-E1	Exhibit - Request to Access Classroom(s) or Personnel for Special Education Evaluation and/or Observation Purposes	NEW. Added in response to legislation described in the accompanying procedure. This exhibit allows a school district to prepare for a visit and secure a written: (1) acknowledgement of the visitor's understanding that during the course of his/her visit, s/he may learn or receive confidential information protected by various privacy laws, and (2) agreement from the visitor to comply with the privacy laws and not re-release the information except as authorized by law.
	7:50	School Admissions and Student Transfers To and From Non-District Schools	Revised to implement legislation allowing children to attend first grade who have attended a non-public preschool through kindergarten, were taught by an appropriately certified teacher, and will attain the age of 6 years on or before December 31 of the school term.
	8:20-E	Exhibit - Application and Procedures for Use of School Facilities	Updated to reflect legislation described in 4:170, <i>Safety</i> . References to an <i>indoor physical fitness facility</i> are deleted.
	8:30	Visitors to and Conduct on School Property	Updated to refer individuals to the appropriate building who seek access to a school building, facility, and/or educational program, or to interview personnel or a student for purposes of assessing the student's special education needs.

Acknowledgement to PRESS Advisory Board

Before each **PRESS** issue is published, a group of distinguished individuals provides input and suggestions. We appreciate their contributions and thank them sincerely.

Melinda Selbee,
PRESS Editor and IASB General Counsel
Kimberly Small, Assistant **PRESS** Editor
and IASB Assistant General Counsel

Sara Boucek, Attorney
Associate Director/Legal Services/IASA

Heather K. Brickman, Attorney
Hodges, Loizzi, Eisenhammer, Rodick & Kohn

Marcy Dutton, Deputy General Counsel
Illinois State Board of Education

Dr. Jane Eichman, Superintendent
Rock Falls Township High School District 301

Dr. James Gay, Superintendent
Community High School District 230

Dr. Michael Kiser, Attorney
Law Office of Michael L. Kiser, Esq.

Larry D. Kuster, Attorney
Rammelkamp Bradney, Attorneys at Law

Fred Munding, Assistant Superintendent
DuPage County Regional Office of Education

Dr. Kay M. Pangle, Regional Superintendent
Iroquois-Kankakee Regional Office of Education

David Requa, Superintendent
Reed Custer Community Unit School District #255

Merry Rhoades, Attorney
Tueth, Keeney, Cooper, Mohan & Jackstadt P.C.

Nanci N. Rogers, Attorney
Robbins, Schwartz, Nicholas, Lifton & Taylor, Ltd.

Brian Schwartz, Attorney
Illinois Principals Association

Dr. John VanPelt, Superintendent
Lake Villa Community Consolidated School District 41

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2921 Baker Drive
Springfield, Illinois 62703-5929
217/528-9688

One Imperial Place
1 East 22nd Street, Suite 20
Lombard, Illinois 60148-6120
630/629-3776

www.iasb.com