

School Board

Qualifications, Term, and Duties of Board Officers ¹

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

President ³

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

1. Preside at all meetings;
2. Focus the Board meeting agendas on appropriate content;
3. Make all Board committee appointments, unless specifically stated otherwise;⁴
4. Attend and observe any Board committee meeting at his or her discretion;⁵
5. Represent the Board on other boards or agencies;
6. Sign official District documents requiring the President's signature, including Board minutes and Certificate of Tax Levy;
7. Call special meetings of the Board;
8. Serve as the head of the public body for purposes of the Open Meetings Act and Freedom of Information Act;⁶
9. Ensure that a quorum of the Board is physically present at all Board meetings, except as otherwise provided by the Open Meetings Act;⁷

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

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

² Districts governed by a board of directors have three officers: a president, clerk, and treasurer. The president and clerk must be board members. 105 ILCS 5/10-5. While there is no prohibition on a board member simultaneously serving in two officer positions, doing so may create either the appearance of impropriety or a compliance issue for purposes of fraud protocols. Consult the board attorney for further guidance and/or request that the board member consult his or her own attorney.

³ 105 ILCS 5/10-13. The board by resolution may decrease to one year the term of office for the president. Of the listed duties, only the following are imposed by law: #1, preside at meetings (Id.); #6, sign minutes (105 ILCS 5/10-7) and sign certificate of tax levy (105 ILCS 5/17-11); #7, call special meetings (105 ILCS 5/10-16); and #8, serve as *head of the public body* for Open Meetings Act (OMA) and Freedom of Information Act (FOIA) purposes (5 ILCS 120/7e (2) and 140/2(e)).

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

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

⁶ The *head of the public body* or its attorney may request an advisory opinion from the Ill. Attorney General Public Access Counselor (PAC) concerning compliance with OMA or FOIA. 5 ILCS 120/3.5(h) and 5 ILCS 140/9.5(h). FOIA defines *head of the public body* to mean *president* or "such person's duly authorized designee." 5 ILCS 140/2(e). Preliminary drafts, recommendations, and other records in which opinions are expressed, or policies are formulated, lose this exemption from disclosure if a relevant portion of a requested record is publicly cited and identified by the *head of the public body*. 5 ILCS 140/7(1)(f).

10. Administer the oath of office to new Board members; ⁸
11. Serve as or appoint the Board's official spokesperson to the media;
12. Except when the Board President is the subject of a complaint of sexual harassment, a witness, or otherwise conflicted, appoint a qualified outside investigator to conduct an independent review of allegations of sexual harassment made against a Board member by another Board member or elected official; and ⁹
13. Ensure that all fingerprint-based criminal history records information checks, screenings, and sexual misconduct related employment history reviews (EHRs) required by State law and policy 5:30, *Hiring Process and Criteria*, are completed for the Superintendent. ¹⁰

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

The Vice President fills a vacancy in the Presidency. ¹¹

Vice President ¹²

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

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

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

⁷ Optional. Requiring the president to monitor the presence of a quorum assists compliance with OMA's mandate that a quorum be physically present at all board meetings, except as otherwise provided by OMA. 5 ILCS 120/7

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

⁹ See sample policy 2:105, *Ethics and Gift Ban, Complaints of Sexual Harassment Made Against Board Members by Elected Officials* subhead. 5 ILCS 430/70-5 requires school districts to amend their sexual harassment policies "to provide for a mechanism for reporting and independent review of allegations of sexual harassment made against an elected official of the governmental unit by another elected official of a governmental unit." If the board has chosen to have the Superintendent appoint an outside investigator in these cases (see 2:105, *Ethics and Gift Ban*, at f/n 12), remove item 12 from the list of board president duties and delete the Cross Reference to 2:105, *Ethics and Gift Ban*.

¹⁰ See the subhead entitled **Screening** in sample policy 4:175, *Convicted Child Sex Offender; Screening; Notifications*, and the subheads entitled **Investigations** and **Sexual Misconduct Related Employment History Review** in sample policy 5:30, *Hiring Process and Criteria*.

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

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

Secretary ¹³

The Board elects a Secretary for a two-year term. The Secretary may be, but is not required to be, a Board member. The Secretary may receive reasonable compensation as determined by the Board before appointment. However, if the Secretary is a Board member, the compensation shall not exceed \$500 per year, as fixed by the Board at least 180 days before the beginning of the term.¹⁴ The duties of the Secretary are to:

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

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

Recording Secretary ¹⁵

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

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

In addition, the Recording Secretary or Superintendent receives notification from Board members who desire to attend a Board meeting by video or audio means. ¹⁶

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

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

Use this alternative for districts in suburban Cook County: replace "Regional Superintendent" in item #4 with "appropriate Intermediate Service Center Executive Director."

¹⁴ 105 ILCS 5/10-14 and 50 ILCS 145/2.

¹⁵ This section is optional.

¹⁶ To allow attendance by video or audio means, a board must adopt policy language conforming to the restrictions in OMA. 5 ILCS 120/2.01 and 120/7. See subhead **Quorum and Participation by Audio or Video Means** in policy 2:220, *School Board Meeting Procedure*, and its f/n 31.

Treasurer¹⁷

The Treasurer of the Board shall be either a member of the Board who serves a one-year term or a non-Board member who serves at the Board's pleasure.¹⁸ A Treasurer who is a Board member may not be compensated.¹⁹ A Treasurer who is not a Board member may be compensated provided it is established before the appointment.²⁰ The Treasurer must:²¹

1. Be at least 21 years old;
2. Not be a member of the County Board of School Trustees; and
3. Have a financial background or related experience, or 12 credit hours of college-level accounting.

The Treasurer shall:²²

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

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

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¹⁷ This section is for: (1) districts in a Class I county (all counties except Cook Co.), or (2) a Class II county (Cook Co.) district that has withdrawn from the authority of the township treasurer or is located in a township in which the office of township treasurer was abolished. 105 ILCS 5/5-1 defines Class I county school units as districts in counties with less than 2,000,000 inhabitants. Those districts in Cook County (Class II county) under the authority of the trustees of schools of the township and the township treasurers should use this alternative: "Qualifications, appointment, and duties of the Treasurer for the School District shall be as provided in the School Code." See 105 ILCS 5/8-1(a) for how the township treasurer is appointed and the term of office; duties are found in 105 ILCS 5/8-2, 5/8-5, 5/8-6, 5/8-7, 5/8-16, and 5/8-17. For districts in a Class II county, in the Legal References insert "5/8-5" before "5/8-6" and insert "5/8-7" after "5/8-6."

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

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

¹⁹ 105 ILCS 5/8-1(b) and (c).

²⁰ 105 ILCS 5/8-3.

²¹ Qualification #1 is required for treasurers in a Class I county or Class II county (Cook Co.) that withdrew from the authority of the township treasurer and township trustees of schools. 105 ILCS 5/8-1(b). This sample policy makes it applicable to Class II county (Cook Co.) districts that were under the authority of the township treasurer and township trustees of schools at the time those offices were abolished.

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

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

²² 105 ILCS 5/8-2, 5/8-6, 5/8-7, and 5/8-16.

LEGAL REF.: 105 ILCS 5/8-1, 5/8-2, 5/8-3, 5/8-6, 5/8-16, 5/8-17, 5/10-1, 5/10-5, 5/10-7, 5/10-8, 5/10-13, 5/10-13.1, 5/10-14, 5/10-16.5, 5/10-21.9, 5/17-1, 5/21B-85, and 5/22-94.
5 ILCS 120/7, Open Meetings Act.
5 ILCS 420/4A-106, Ill. Governmental Ethics Act.

CROSS REF.: 2:80 (Board Member Oath and Conduct), 2:105 (Ethics and Gift Ban), 2:150 (Committees), 2:210 (Organizational School Board Meeting), 2:220 (School Board Meeting Procedure), 5:30 (Hiring Process and Criteria)

School Board

Exhibit - Immediately Available District Public Records and Web-Posted Reports and Records ¹

[For use by only those Districts that have websites.]

The District’s Freedom of Information Officer designates the public records that are listed in this table as being immediately available to the public. The records that are asterisked (*) are posted on the District’s website and may be immediately inspected, downloaded, printed, and/or copied. Any asterisked public record is also immediately available for inspection or copying upon request at the District’s administrative office during its regular business hours, provided any applicable fees are paid. Records not asterisked (*) will be provided within five business days as allowed by the Freedom of Information Act, provided any applicable fees are paid.

Web-posted records and information (use of an * is explained in the paragraph above this table)	Web-posting statutory reference and special instructions
<p>*Annual schedule of regular meetings for the current school year that are posted at the beginning of each calendar or fiscal year</p> <p>*Public notice of each Board meeting that is posted at least 48 hours before the meeting and remains posted until the meeting is concluded</p> <p>*Agenda of each regular meeting that is posted at least 48 hours before a meeting and remains posted until the meeting is concluded</p> <p>Note: For school districts that do not post board meeting notices and/or agendas on a website (because they do not have a website maintained by a full-time staff member), the notice and agenda must be continuously available for public review during the entire 48-hour period preceding the meeting</p>	<p>5 ILCS 120/2.02.</p>

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¹ This exhibit has two purposes: (1) to identify the data and documents that must be posted on a district’s website, if the district has a website; and (2) to fulfill the requirement in the Freedom of Information Act (FOIA) for the district’s FOIA officer to designate the public records that are immediately available to the public. 5 ILCS 140/3.5(a). Many attorneys agree that using the required items for web-posting is an easy and practical way for the FOIA Officer to develop a list of public records that are *immediately available*. Some attorneys prefer that the district also retain copies of its web-posted public records for immediate inspection and/or copying upon request at the administrative office. The introductory paragraph manages this issue by indicating that copies of certain identified public records will also be immediately available in the district’s administrative office. This exhibit suggests identifying public records for immediate availability that are easily reproduced and stored, i.e., not voluminous. The FOIA Officer should customize this list as appropriate to the district’s circumstances.

Districts may respond to a FOIA request for a public record published on the district website by directing the requester to the website. However, if the requester is unable to reasonably access the record, the requester may re-submit his or her request, and the district must then make the record available for inspection and copying. See 5 ILCS 140/8.5; see also reference in Ill. Public Access Counselor binding opinion 10-1. Consult the board attorney for ideas to manage the district’s specific FOIA compliance issues.

Web-posted records and information (use of an * is explained in the paragraph above this table)	Web-posting statutory reference and special instructions
*Official open meeting minutes that are posted within 10 days of the Board’s approval and remain posted for at least 60 days (required if the District has a website maintained by a full-time staff member)	5 ILCS 120/2.06(b).
*Description of the District and its records including: <ol style="list-style-type: none"> 1. Summary of the District’s purpose 2. Functional subdivisions 3. Total amount of operating budget 4. Number and location of all of its separate offices 5. Approximate number of full- and part-time employees (see also, salary and benefits information report for the Superintendent, administrators, and teachers, District’s Statement of Affairs) 6. Identification and membership of the Board 7. Brief description of the methods whereby the public may request information and public records 8. Directory information for the Freedom of Information Officer 9. Address where requests for public records should be directed 10. Fees 	5 ILCS 140/4. The District must prominently post the list at each administrative office and make it available for inspection and copying.
*A hyperlink to an email address(es) for members of the public to communicate with members of the Board	50 ILCS 205/20. The hyperlink must be easily accessible from the District’s home page.
Annual budget for current fiscal year, itemized by receipts and expenditures	105 ILCS 5/17-1.2. This may be accomplished using the Ill. State Board of Education (ISBE) <i>School District Budget Form</i> (50-36) or the summary pages from it. ² The District must notify its students’ parents/guardians when the budget is web-posted along with its website address.
*District Report Card and a Report Card for each School (the Report Cards will be provided by ISBE by Oct. 31	105 ILCS 5/10-17a, amended by P.A.s 102-16, 102-294, 102-539, and 102-594.

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² For school officials who are concerned that some of their district’s constituents may not have the proper software to access these documents, ISBE provides links to free *viewer or reader* products that support the ISBE School District Budget Form (50-36). These products can be downloaded and used to access the budget as posted on the district’s website. See www.isbe.net/Pages/School-District-Joint-Agreement.aspx.

Web-posted records and information (use of an * is explained in the paragraph above this table)	Web-posting statutory reference and special instructions
of each year, unless otherwise provided by law)	<p>Annually, no more than 30 calendar days after receiving the Report Cards from the State Superintendent, the District must: (1) present them at a regular Board meeting, (2) post them on the District's website, (3) make them available to a newspaper of general circulation serving the District, and (4) upon request, send them home to parents/guardians. 105 ILCS 5/10-17a(5).</p> <p>The District also must send a written notice home to parents/guardians stating: (1) that the Report Cards are available on the website, (2) the website's address, (3) that a printed copy will be sent upon request, and (4) the telephone number to request a printed copy. <u>Id.</u></p>
*The District's discipline plan and progress on the plan, in the event the District is identified by ISBE to be in the top 20% (for three consecutive years) of districts for out-of-school suspensions, out-of-school expulsions, or racial disproportionality in the use of out-of-school suspensions and expulsions	<p>105 ILCS 5/2-3.162.</p> <p>If the District is required to submit a plan to ISBE, it must be approved at a public board meeting and posted on the District's website. Within one year after being identified by ISBE, the District must submit to ISBE and post on its website a progress report describing implementation of the plan and the results achieved.</p>
*A list of all contracts in excess of \$25,000 and any contracts with an exclusive bargaining representative	<p>105 ILCS 5/10-20.44.</p> <p>There is no statutory timeline for web-posting.</p> <p>Each year, in conjunction with the submission of the Statement of Affairs to ISBE, before Dec. 1, the District must submit to ISBE an annual report on all contracts over \$25,000 awarded during the previous fiscal year.</p>
*Contract(s) with any commercial driver training school(s) for driver education	<p>105 ILCS 5/27-24.2.</p> <p>The District is required to web-post this document if it has a website. If the District has no website, it must make the contract available upon request.</p>
Annual Statement of Affairs	105 ILCS 5/10-17.

Web-posted records and information (use of an * is explained in the paragraph above this table)	Web-posting statutory reference and special instructions
	The District is not required to web-post this document. It must, annually by Dec. 1, submit the Statement to ISBE for posting on ISBE’s website, have copies of the Statement available in the main administrative office, and publish a summary of the Statement in a newspaper of general circulation published in the District.
*Fiscal Efficiency Report, summarizing the District’s attempts to improve fiscal efficiency through shared services or outsourcing in the prior fiscal year	105 ILCS 5/17-1.1, amended by P.A. 102-1088. The report must be: (1) approved by the Board at an open meeting, ³ and (2) primarily in checklist form and approximately one page in length.
Beginning in levy year 2022, if the District has an aggregate property tax levy greater than \$5,000,000, it will make good faith efforts to electronically publish the following data from all vendors and subcontractors doing business with the District: <ol style="list-style-type: none"> 1. Whether the vendor or subcontractor is minority-owned, women-owned, or veteran-owned 2. Whether the vendor or subcontractor holds a certification as a minority-owned, women-owned, or veteran-owned business as defined in 30 ILCS 575/, or if they are self-certifying; and 3. If the vendor self-certifies, whether it qualifies as a small business under federal Small Business Administration standards (See www.sba.gov/federal-contracting/contracting-guide/size-standards). 	35 ILCS 200/18-50.2, added by P.A. 102-265. The law does not define <i>electronically publish</i> ; website posting is a means of compliance. This item is not asterisked should the District choose to electronically publish the information offline.

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³ 105 ILCS 5/17-1.1, amended by P.A. 102-1088, specifies that the report must be approved by the board at an “open meeting that allows for public comment.” The public comment qualification is omitted here because it is redundant; all open meetings must have a period during which the public can offer comments. See sample policy 2:230, *Public Participation at School Board Meetings and Petitions to the Board*. This report is included in a district’s annual financial report as the *Report on Shared Services or Outsourcing*. See www.isbe.net/Pages/Annual-Financial-Report.aspx.

Web-posted records and information (use of an * is explained in the paragraph above this table)	Web-posting statutory reference and special instructions
<p>*Explanation of the data elements of <i>covered information</i>⁴ that the District collects, maintains, or discloses to any person, entity, third party, or governmental agency.</p> <p>*A description of the procedures⁵ that parents/guardians may use to carry out their rights under 105 ILCS 85/33(c)(1), (2), & (3), including the right to:</p> <ol style="list-style-type: none"> 1. Inspect and review their child’s covered information 2. Request a paper or electronic copy of their child’s covered information 3. Request corrections for factual inaccuracies contained in their child’s covered information 	<p>105 ILCS 85/27(a)(1).</p> <p>The explanation of data elements of covered information must be clear and understandable by a layperson and cover the following: (1) how the District uses the covered information; (2) to whom or what entities the District discloses the covered information; and (3) for what purpose the District discloses the covered information.</p> <p>The explanation of data elements and description of parent rights procedures must be updated by Jan. 31 and July 31 each year, as needed.</p>
<p>*A list of operators with whom the District has written agreements and the following for each operator:</p> <ol style="list-style-type: none"> 1. Copy of the agreement 2. Business address 3. List of any subcontractors to whom covered information may be disclosed or a link to a page on the operator’s website that clearly lists the subcontractors 	<p>105 ILCS 85/27(a)(2) & (3).</p> <p>The District must post new operator contracts and an explanation of the data elements of covered information disclosed to the operator (see immediate row above) within 10 business days after entering into the contract. 105 ILCS 85/27(c).</p> <p>This list must also be updated by Jan. 31 and July 31 each year, as needed.</p>
<p>*A list of <i>breaches</i> of covered information maintained by the school or an operator involving 10% or more of the District’s student enrollment. The list must include:</p> <ol style="list-style-type: none"> 1. Number of students whose covered information was involved in the breach, unless the breach involved <i>personal information</i> as defined in the Personal Information Protection Act, 815 ILCS 530/5, in which case the number of students 	<p>105 ILCS 85/27(a)(5).</p> <p>The District must update breach information by Jan. 31 and July 31 each year, and it must remain on the District’s website for at least five years after the District adds it to the list. Breaches that occurred (or were estimated to have occurred) prior to 7-1-21 or breaches that</p>

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⁴ *Covered information* means personally identifiable information or material (PII) or information linked to PII in any media or format that is not publicly available and is any of the following: (1) created by or provided to an operator by a student or the student’s parent/guardian in the course of the student’s/guardian’s use of the operator’s site, service or application for K-12 school purposes; (2) created by or provided to an operator by an employee or agent of the District; or (3) gathered by an operator through the operation of its site, service, or application. 105 ILCS 85/5. *Operators* are entities that operate Internet websites, online services, online applications, or mobile applications that are designed, marketed, and used for K-12 school purposes. *Id.* See sample administrative procedure 7:345-AP, *Use of Educational Technologies; Student Data Privacy and Security*, for additional information regarding posting requirements under Student Online Personal Protection Act, 105 ILCS 85/, and exhibit 7:345-AP, E1, *Student Covered Information Reporting Form*, for a sample reporting format.

⁵ See 7:345-AP, E4, *Notice of Parent Rights Regarding Student Covered Information*. Districts may choose to, but are not required to, include a description of these procedures in a student handbook.

Web-posted records and information (use of an * is explained in the paragraph above this table)	Web-posting statutory reference and special instructions
<p>involved may not be disclosed</p> <p>2. Date, estimated date, or estimated date range of the breach</p> <p>3. Name of the operator, if applicable</p>	<p>were posted more than five years prior to updating the current list do not need to be posted.⁶</p>
<p>*Board policy 7:180, <i>Prevention of and Response to Bullying, Intimidation, and Harassment</i></p> <p>*Information developed as a result of the evaluation and assessment of the bullying policy’s outcomes and effectiveness</p>	<p>105 ILCS 5/27-23.7(b)(10) and (11).</p>
<p>*Contact information for the District’s Title IX Coordinator(s) and Board policies 2:260, <i>Uniform Grievance Procedure</i>; and 2:265, <i>Title IX Sexual Harassment Grievance Procedure</i></p>	<p>34 C.F.R. §106.8.</p>
<p>*Training materials for any individuals designated as Title IX Coordinator(s), investigators, decision-makers, and informal resolution facilitators</p>	<p>34 C.F.R. §106.45(b)(10)(i)(D).</p> <p>Naming only the training provider and course does not meet this requirement. The U.S. Dept. of Education (DOE) requires training materials be publicly available “so that a district’s approach to training Title IX personnel may be transparently viewed by the [district’s] educational community and the public, including for the purpose of holding a [district] accountable for using training materials that comply with [Title IX] regulations.” 85 Fed. Reg. 30254. Consult the board attorney regarding this requirement; making training materials of third-party consultants publicly available may violate their intellectual property rights. The DOE acknowledged the potential for intellectual property violations, suggesting that districts either “secure permission from the consultant to publish the training materials” or create their own training materials. 85 Fed. Reg. 30412.</p>

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⁶ 105 ILCS 85/27(d) states that individual notification to the parent/guardian of a child whose covered information was breached may be delayed if a law enforcement agency determines that notification will interfere with a criminal investigation and provides the District with a written request for a delay of notice. This basis for delay does not specifically apply to the more general website notification of a breach, however, such a delay may also be warranted depending upon the circumstances. Consult the board attorney for guidance on this issue.

Web-posted records and information (use of an * is explained in the paragraph above this table)	Web-posting statutory reference and special instructions
*Board policy 7:20, <i>Harassment of Students Prohibited</i> , and age-appropriate explanations of its contents in student handbook(s)	105 ILCS 5/10-20.69. The District must have an age-appropriate policy on sexual harassment (1) in the student handbook(s), (2) posted on the District's website, and (3) posted in any other area where policies, rules and standards of conduct are posted in each school.
*Board policy 7:290, <i>Suicide and Depression Awareness and Prevention</i>	105 ILCS 5/2-3.166, amended by P.A. 102-267.
*Contact information for the National Suicide Prevention Lifeline (1-800-273-8255) and Crisis Text Line (Text 741741), if the District does not issue student identification cards to all students	105 ILCS 5/10-20.76, added by P.A. 102-134 and renumbered by P.A. 102-813.
*Administrator and Teacher Salary and Benefits Report (itemized salary report for the Superintendent and all administrators and teachers); <i>benefits</i> includes, without limitation, vacation days, sick days, bonuses, annuities, and retirement enhancements	105 ILCS 5/10-20.47. ⁷ Annually on or before Oct. 1: (1) the information must be presented at a regular Board meeting and posted on the District's website, and (2) after the Board meeting at which the information was presented, the Report must be provided to ISBE.
*All records pertaining to the creation, alteration or revision of school attendance areas shall be open to the public	105 ILCS 5/10-21.3. This law also requires school attendance areas to be periodically revised, if necessary, to prevent or eliminate segregation by color, race, or nationality. See policy 7:30, <i>Student Assignment and Intra-District Transfer</i> .
*Vacancies for teaching positions in a subject shortage area, before hiring a retired teacher to any such position	40 ILCS 5/16-150.1, amended by P.A. 102-440. The District must, on an ongoing basis, post the vacancy for a period of at least 90 days during the six months preceding either the fall or spring term for which it seeks to employ a retired teacher in a

The footnotes should be removed before the material is used.

⁷ 105 ILCS 5/10-20.47 does not specify whether a district must provide employee names as part of its salary and benefits report. The general practice of districts has been to include names in the report. Consult the board attorney for guidance on this issue.

2:250-E2

Page 7 of 11

Web-posted records and information (use of an * is explained in the paragraph above this table)	Web-posting statutory reference and special instructions
	subject shortage area. This posting requirement is in effect for employment ending no later than June 30, 2024.
*Information regarding a Severance Agreement entered into because an employee or contractor was found to have engaged in sexual harassment or sexual discrimination	<p>50 ILCS 205/3c.</p> <p>Within 72 hours of Board approval, the District must post: (1) the name/title of person receiving payment under the severance agreement, (2) the amount of payment, (3) that the employee or contractor was found to have engaged in sexual harassment or sexual discrimination, as applicable, and (4) the date, time, and location of the meeting at which the agreement was approved.</p> <p>Note: The Government Severance Pay Act (GSPA), 5 ILCS 415/10(a)(2), prohibits an employee of a school district with contract provisions for severance pay from receiving any severance if the employee is fired by the board for <i>misconduct</i>, which includes sexual harassment and/or discrimination. <i>Id.</i> at 415/5. For more discussion about the reconciling these laws, see f/n 6 in sample policy 2:260, <i>Uniform Grievance Procedure</i>.</p>
*As an employer that participates in the Ill. Municipal Retirement Fund (IMRF), a compensation report for employees who have a total compensation package that exceeds \$75,000 per year; <i>total compensation package</i> means salary, health insurance, a housing allowance, a vehicle allowance, a clothing allowance, bonuses, loans, vacation days granted, and sick days granted	<p>5 ILCS 120/7.3.</p> <p>The report must be posted within six business days after the District approves a budget. The District may choose to post a physical copy of this information at its principal office in lieu of posting the information directly on the website in which case it must post directions on the website for accessing that information.</p> <p>The Ill. Attorney General's office has not provided guidance concerning whether this requirement applies to employees who do not participate in IMRF, e.g., Teachers' Retirement System (TRS) participants.</p>
*As an employer that participates in the IMRF, a compensation report for employees who have a total	5 ILCS 120/7.3.

Web-posted records and information (use of an * is explained in the paragraph above this table)	Web-posting statutory reference and special instructions
<p>compensation package that is equal to or in excess of \$150,000 per year; total compensation package means payment by the employer to the employee for salary, health insurance, a housing allowance, a vehicle allowance, a clothing allowance, bonuses, loans, vacation days granted, and sick days granted</p>	<p>The report must be posted at least six days before the District approves an employee's total compensation package that is equal to or in excess of \$150,000. The District may choose to post a physical copy of this information at its principal office in lieu of posting the information directly on the website in which case it must post directions on the website for accessing that information.</p> <p>The Ill. Attorney General's office has not provided guidance concerning whether this requirement applies to employees who do not participate in IMRF, e.g., TRS participants.</p>
<p>*As an employer that participates in IMRF, a link to information posted on the IMRF website at: www.imrf.org/en/about-imrf/transparency/employer-cost-and-participation-information</p>	<p>40 ILCS 5/7-135.5.</p>
<p>*Board policy 5:120, <i>Employee Ethics; Code of Professional Conduct; and Conflict of Interest</i></p>	<p>105 ILCS 5/22-85.5(e), added by P.A. 102-676.</p>
<p>A description of activities to address intergroup conflict (an optional program authorized by Sec. 27-23.6)</p>	<p>105 ILCS 5/27-23.6(c).</p>
<p>The total number of personnel with a school support personnel endorsement, and for each endorsement area:</p> <ol style="list-style-type: none"> 1. Those actively employed by the District on a full-time basis; 2. Those actively employed by the District on a part-time basis; and 3. Those actively employed by a special education cooperative providing services to students in the District 	<p>105 ILCS 5/10-20.80, added by P.A. 102-302 and renumbered by P.A. 102-813.</p> <p>Annually by Dec. 1st, the District must report its school support personnel information as of Oct. 1 to ISBE and web-post it.</p>
<p>The total number of students enrolled in the District and of that total, the number of students with an individualized education program (IEP) or Section 504 plan</p>	<p>105 ILCS 5/2-3.182, added by P.A. 102-302 and renumbered by P.A. 102-813.</p> <p>Annually by Dec. 1st, the District must report its enrollment information as of Oct. 1 to ISBE and web-post it.</p>
<p>*Notice that students with disabilities who do not qualify for an IEP may qualify for services under Section 504</p>	<p>105 ILCS 5/14-6.01, amended by P.A. 102-1072. The notice shall: (1) identify the location and phone number of the District office or employee to whom</p>

Web-posted records and information (use of an * is explained in the paragraph above this table)	Web-posting statutory reference and special instructions
	inquiries about the identification, assessment, and placement of children with disabilities should be directed, and (2) inform parents who are deaf or do not typically communicate using spoken English that they are entitled to the services of an interpreter when participating in a Section 504 meeting.
*Names of Board members who have completed professional development leadership training	<p>105 ILCS 5/10-16a, amended by P.A. 102-638, requires the District to post on its website the names of all Board members who have completed professional development leadership training. The web-posting may be expanded to log all Board members' training and development activities.</p> <p>5 ILCS 120/1.05(b) and (c) require each Board member to complete training on the Open Meetings Act. After completing the training, each Board member must file a copy of their certificate of completion with the Board.</p> <p>105 ILCS 5/24-16.5 requires each Board member to complete a training program on performance evaluations before voting on a dismissal based on a performance evaluation pursuant to the Performance Evaluation Reform Act.</p>
Immunization data reported to ISBE by each Nov. 15	<p>105 ILCS 5/27-8.1(6).</p> <p>By Dec. 1, the District must annually make the immunization <i>data</i> that it must report to ISBE each year publicly available. The data, not its format, must be identical to the data reported to ISBE. Boards have control over the method(s) used to make this data publicly available. One method is to instruct the reader to ask for the data directly from ISBE.</p>
Information on mental health issues and local treatment resources	The Ill. House of Representatives encouraged this in HR 478 (99th General Assembly, 5-31-15).
*All reliable assessments, scored by entities other than	105 ILCS 5/22-82(b).

Web-posted records and information (use of an * is explained in the paragraph above this table)	Web-posting statutory reference and special instructions
the District that are administered in each of the District's schools	These must be made available to parents and/or guardians through the District's website or paper handouts.
*The District's Remote and/or Blended Remote Learning Day Plan, when the Governor has declared a public health emergency pursuant to 20 ILCS 3305/7.	105 ILCS 5/10-30(6).
<p>*When the Board allows for student participation in registered apprenticeship programs:</p> <ol style="list-style-type: none"> 1. Notification to students and parents of the opportunities for registered apprenticeships, which includes the following statements: <ol style="list-style-type: none"> a. Students may participate in any registered apprenticeship program listed by the District, and b. Students may find a registered, but not listed, apprenticeship program with a business or organization if a registered apprenticeship program is not offered in the District. 2. Board policy 6:310, <i>High School Credit for Non-District Experiences; Course Substitutions; Re-Entering Students</i> (specifically, the section titled Registered Apprenticeship Program) 3. A form for a parent/guardian to request that when their child successfully completes a registered apprenticeship program, it be substituted for a course 	23 Ill.Admin.Code §255.200(b)(4) and (c).
*If offered by the District, identification of the curriculum the District uses to provide comprehensive personal health and safety and comprehensive sexual health education (National Sex Education Standards (NSES)), the scope and sequence of these instructional materials, and the name and contact information, including an email address, of a school staff member who can respond to inquiries about instruction and materials	105 ILCS 5/27-9.1a, added by P.A. 102-522.
*Board policy 6:135, <i>Accelerated Placement Program</i>	23 Ill.Admin.Code §227.60(a).
*Board policy 7:70, <i>Attendance and Truancy</i>	23 Ill.Admin.Code §207.20(b).

General School Administration

Superintendent¹

Duties and Authority

The Superintendent is the District's executive officer and is responsible for the administration and management of the District schools in accordance with School Board policies and directives, and State and federal law. District management duties include, without limitation, preparing, submitting, publishing, and posting reports and notifications as required by State and federal law,² including the special reporting responsibilities in policy 5:90, *Abused and Neglected Child Reporting*.³ The Superintendent is authorized to develop administrative procedures and take other action as needed to implement Board policy and otherwise fulfill his or her responsibilities. The Superintendent may delegate to other District staff members the exercise of any powers and the discharge of any duties imposed upon the Superintendent by Board policies or by Board vote. The delegation of power or duty, however, shall not relieve the Superintendent of responsibility for the action that was delegated.⁴

Qualifications

The Superintendent must be of good character and of unquestionable morals and integrity. The Superintendent shall have the experience and the skills necessary to work effectively with the Board, District employees, students, and the community. The Superintendent must have and maintain a

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. Unless the district has only one school with fewer than four teachers, the board must employ a superintendent or a chief executive officer as allowed under specific circumstances. 105 ILCS 5/10-21.4. This statute assigns some specific duties to the superintendent including to: (1) make recommendations to the board concerning the budget, building plans, the locations of sites, the selection, retention, and dismissal of teachers and all other employees, the selection of textbooks, instructional material, and courses of study; (2) report to the board, Ill. State Board of Education (ISBE), and chief administrative official any employee named in an abused child report; and (3) keep or cause to be kept the records and accounts as directed and required by the board, aid in making reports required by the board, and perform such other duties as the board may delegate to him/her. 105 ILCS 5/10-16.7 requires boards to direct, through policy, the superintendent, in his or her charge of the district's administration.

ISBE is required, subject to an annual appropriation by the General Assembly, to establish a new superintendent mentoring program. With limited exceptions, any individual serving as a first-time superintendent in Illinois must participate in the mentoring program for two school years. 105 ILCS 5/2-3.53b. The ISBE-selected provider will assign a mentor to a new superintendent based on similarity of grade level or type of district, learning needs, and geographical proximity. The mentor must not be required to evaluate the new superintendent on the basis of the mentoring relationship.

² See 2:250-E2, *Immediately Available District Public Records and Web-Posted Reports and Records*, for an annotated list of documents and reports that must be posted on the district's website, if the district has a website. While not comprehensive, see the IASB's *Annual School Calendar* for the required reports that do not need web-posting, available on the IASB website at: www.iasb.com/policy-services-and-school-law/illinois-laws-affecting-schools/annual-school-calendar/.

³ 105 ILCS 5/10-21.9(e-5), amended by P.A.s 102-552 and 102-702. See the discussion in the f/n's tied to the text of the **Special Superintendent Responsibilities** subhead in sample policy 5:90, *Abused and Neglected Child Reporting*.

⁴ This paragraph strengthens the policy's connection to the IASB's *Foundational Principles of Effective Governance*. See www.iasb.com/principles.cfm. It allows the superintendent broad delegation authority even when a policy fails to specifically provide for delegation.

Professional Educator License with a superintendent endorsement issued by the Illinois State Educator Preparation and Licensure Board.⁵

Evaluation

The Board will evaluate, at least annually, the Superintendent's performance and effectiveness, using standards and objectives developed by the Superintendent and Board that are consistent with State law, the Board's policies, and the Superintendent's contract.⁶ A specific time should be designated for a formal evaluation session with all Board members present. The evaluation should include a discussion of professional strengths as well as performance areas needing improvement.

The Superintendent shall annually present evidence of professional growth through attendance at educational conferences, in-service training, or similar continuing education pursuits.⁷

Compensation and Benefits⁸

The Board and the Superintendent shall enter into an employment agreement that conforms to Board policy and State law. This contract shall govern the employment relationship between the Board and the Superintendent. The terms of the Superintendent's employment agreement, when in conflict with this policy, will control.

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

⁵ 105 ILCS 5/21B-20 and 5/21B-25 govern Professional Educator Licenses and superintendent endorsements. See also 23 Ill.Admin.Code §§25.355 (superintendent endorsement) and 29.100 (Ill. Professional School Leader Standards).

⁶ 105 ILCS 5/10-16.7 requires a board to evaluate the superintendent. See *The Superintendent Evaluation Process* at: www.iasb.com/iasb/media/documents/superintendent-evaluation-process.pdf. While greater detail may be added to this paragraph (e.g., a timeline, self-evaluation provision, and discussion requirements), a board must be sure that the policy and the superintendent's contract are consistent.

⁷ The reporting requirements in this paragraph are optional, but school boards must "require evaluators to participate in an in-service training on the evaluation of licensed personnel provided or approved by [ISBE] prior to undertaking any evaluation and at least once during each license renewal cycle." 105 ILCS 5/24A-3.

⁸ According to 105 ILCS 5/10-23.8, a superintendent must be employed under either: (1) a one-year contract, in which case he or she gains and retains tenure rights; or (2) a multi-year performance-based contract, in which case he or she waives all tenure rights but does not lose any previously acquired tenure credit with the district. A multi-year performance-based contract must contain specific student performance and academic improvement goals and indicators; see 3:40-E, *Checklist for the Superintendent Employment Contract Negotiation Process*. Residency requirements, if desired, should be included in a superintendent's employment contract.

The employment contract should be *in writing* even though the School Code does not require it to be written. Contact the board attorney for assistance. An administrator who is not working under a written contract is presumed to have a contract of one year's duration. *Bd. of Educ. of Schaumburg Cmty. Consol. Sch. Dist. No. 54 v. TRS*, 368 Ill.Dec. 341 (4th Dist. 2013)(interpreting 105 ILCS 5/10-23.8a). The Ill. Statute of Frauds may make it impossible to execute an *oral* multi-year administrator contract or to *orally* extend a multi-year written contract. 740 ILCS 80/1.

The Open Meetings Act requires all Ill. Municipal Retirement Fund (IMRF) employers, which includes school boards, to: (1) within six business days after approving a budget, web-post each employee's total compensation package if it exceeds \$75,000 per year; and (2) at least six days before approval, web-post an employee's total compensation package if it is \$150,000 or more. 5 ILCS 120/7.3. Conflicting opinions concern whether school districts must comply with these posting requirements for their employees who do not participate in IMRF. Contact the board attorney for advice.

Annually by Oct. 1, each school board must report to ISBE the base salary and benefits of the superintendent, administrators, and teachers it employs. 105 ILCS 5/10-20.47. Before this annual reporting to ISBE, the information must be presented at a regular school board meeting and then posted on the district's website, if any.

LEGAL REF.: 105 ILCS 5/10-16.7, 5/10-20.47, 5/10-21.4, 5/10-21.9, 5/10-23.8, 5/21B-20, 5/21B-25, 5/24-11, and 5/24A-3.
5 ILCS 120/7.3, Open Meetings Act.
23 Ill.Admin.Code §§1.310, 1.705, and 25.355.

CROSS REF: 2:20 (Powers and Duties of the School Board; Indemnification), 2:130 (Board-Superintendent Relationship), 2:240 (Board Policy Development), 3:10 (Goals and Objectives), 4:165 (Awareness and Prevention of Child Sexual Abuse and Grooming Behaviors), 4:175 (Convicted Child Sex Offender; Screening; Notifications), 5:30 (Hiring Process and Criteria), 5:90 (Abused and Neglected Child Reporting), 5:120 (Employee Ethics; Code of Professional Conduct; and Conflict of Interest), 5:150 (Personnel Records), 5:210 (Resignations), 5:290 (Employment Termination and Suspensions)

General School Administration

Exhibit - Checklist for the Superintendent Employment Contract Negotiation Process

1

The School Board hires and employs the Superintendent. The Superintendent shall be in charge of the administration of the schools under the direction of the Board, through its policies. See 105 ILCS 5/10-21.4 and 105 ILCS 5/10-16.7. As an effective employer, the Board must develop and maintain a productive relationship with the Superintendent. See IASB's *Foundational Principles of Effective Governance*, **Principle 3. The board employs a superintendent**, at: www.iasb.com/conference-training-and-events/training/training-resources/foundational-principles-of-effective-governance/.

The foundation for a productive employment relationship begins when the Board identifies the most qualified superintendent candidate (*successful superintendent candidate*) after an established interview process. The Board then extends an offer of employment to the successful superintendent candidate. The employment search process and resulting relationship should consist of mutual respect and a clear understanding of respective roles, responsibilities, and expectations. This relationship should begin with the Board's policy, a thoughtfully crafted employment contract and job description, and procedures for communications and ongoing assessment. See *Principles* at the link above.

Below, the *Checklist for the Superintendent Employment Contract Negotiation Process (Checklist)* provides a column entitled **Superintendent Contract Term Considerations for the Board**. It lists common superintendent employment contract terms and points of consideration for boards to prepare for during the contract formation process. Another column entitled **Explanation, Special Considerations, and Resources** provides extra information about these common superintendent employment contract terms.

The *Checklist* is intended to serve as a resource to educate and guide the Board through the employment contract negotiation process with its successful superintendent candidate. Board members who are educated about the content within the *Checklist* are crucial to successful negotiation processes. An educated contract formation and negotiation process, along with a well-written contract and job description for the Superintendent, all set the foundation for mutual respect and a clear understanding of the Board and Superintendent's respective roles, responsibilities, and expectations. **Important:** This *Checklist* is a resource for contract formation; it is not a list of must have items for a superintendent's employment contract or a basis for a board to re-open contracts currently in effect.

Prior to providing the successful superintendent candidate an offer for employment and contract for review, consideration, and negotiation, consult the Board Attorney about the *Checklist* and the scope of the terms the Board wishes to offer the successful superintendent candidate. The Board and the successful superintendent candidate should expect and encourage the other to seek the advice of their respective attorneys during the employment contract formation process.

Many attorneys agree and best practices suggest that boards and successful superintendent candidates work with their own separate attorneys in an amicable and cooperative manner to complete the employment contract negotiation process.

The footnotes should be removed before the material is used.

¹ The General Counsels of the Ill. Association of School Administrators (IASA) and Ill. Association of School Boards (IASB) collaborated on the content of this document.

Board Attorney. Prior to providing any successful superintendent candidate with an offer for employment and a contract for review, consideration, and negotiation, best practices suggest consulting the Board Attorney about the *Checklist*. **Note:** Boards should view a successful superintendent candidate retaining his or her own attorney as a best practice (as opposed to a warning sign). Each party is beginning the employment relationship in a cooperative manner to set an appropriate foundation to the future working relationship.

Power and Duties of the Superintendent

Superintendent Contract Term Considerations for the Board	Explanation, Special Considerations, and Resources
Duties	<p>Does the Board enumerate the duties of the Superintendent in the employment contract?</p> <ol style="list-style-type: none"> 1. Are the statutory duties of the Superintendent listed? 2. Has the Board incorporated policy references to the other duties related to the Superintendent's employment? <p>See 105 ILCS 5/10-21.4 and 105 ILCS 5/10-16.7.</p>
Full-time, Attention and Energy Clause	<p>How will the Board address outside activities of the Superintendent?</p> <ol style="list-style-type: none"> 1. How will the Board define <i>outside activities</i>? 2. Will the Board restrict the Superintendent from engaging in outside activities during the term of the employment contract? 3. Will the Board require approval/notification before the Superintendent engages in outside activities?

Employment and Compensation

Superintendent Contract Term Considerations for the Board	Explanation, Special Considerations, and Resources
Duration of Contract	<p>A superintendent's employment contract may not exceed five years. If its duration is two to five years, the contract must reference goals and suspension of tenure. No performance-based contract shall be extended or rolled over prior to its scheduled expiration unless all the performance and improvement goals contained in the contract have been met. See 105 ILCS 5/10-23.8.</p> <p>If the duration is one year or less, then the contract need not reference goals or suspension of tenure.</p>
Salary	<p>Special Considerations for the Board may include:</p> <ol style="list-style-type: none"> 1. What is the estimated Board contribution to the Teachers' Retirement System (TRS) for any

Superintendent Contract Term Considerations for the Board	Explanation, Special Considerations, and Resources
	<p>raises above six percent (40 ILCS 5/15-155(g)) prior to retirement?</p> <ol style="list-style-type: none"> 2. What is the <i>cost shift</i> implication for the District if the Board offers or later agrees to a salary that is equal to or greater than the governor's statutory salary? School districts are responsible for paying the actuarial cost of the pension benefits earned on the portion of a TRS member's salary that exceeds the governor's statutory salary. The governor's annual salary is published by TRS at: www.trsil.org/employers/payments/contribution-rates_earnings-limitations. 3. Do any administrative cost cap triggers exist (105 ILCS 5/17-1.5)? <p>Items the Board may see the successful superintendent candidate request of it:</p> <ol style="list-style-type: none"> 1. A fixed salary for each year of the contract. 2. A guaranteed minimum salary. 3. Compensation increases.
Severance Agreements	<p>Any contract that contains a condition of severance pay must include the following provisions required by the Government Severance Pay Act (GSPA), 5 ILCS 415/10:</p> <ol style="list-style-type: none"> 1. A restriction to an amount not exceeding 20 weeks of compensation; and 2. A prohibition for any severance if the Superintendent is fired for <i>misconduct</i> by the Board. See the <i>Severance Pay</i> row under the Changes to the Superintendent's Employment Contract subhead below for a definition of what misconduct means in the context of this law.
Teachers Retirement System (TRS) & Teacher Health Insurance (THIS)	<p>How does the Board want to address:</p> <ol style="list-style-type: none"> 1. Pension contributions (TRS-THIS)? 2. Inclusion of salary and other compensation in the payment of TRS and THIS? Or, will TRS and THIS be in addition to salary and other compensation? 3. Unforeseen pension reform issues?

Conditions of Employment

Superintendent Contract Term Considerations for the Board	Explanation, Special Considerations, and Resources
Administrative License	Does the Board want to require the successful superintendent candidate to guarantee that as the future Superintendent of the District, he or she has and will maintain the appropriate licensure throughout the employment contract?
Criminal Background Check Law	105 ILCS 5/10-21.9. See also PRESS sample policy 5:30, <i>Hiring Process and Criteria</i> , and the subhead entitled Fingerprint-based Criminal History Records Information Check in administrative procedure 5:30-AP2, <i>Investigations</i> .
Sexual Misconduct Related Employment History Review Law	105 ILCS 5/22-94, added by P.A. 102-702, eff. 7-1-23. See also PRESS sample policy 5:30, <i>Hiring Process and Criteria</i> and PRESS sample administrative procedure 5:30-AP3, <i>Sexual Misconduct Related Employment History Review (EHR)</i> .
Other Background Check Laws	<p>Does the Board want to require additional background inquiries beyond the fingerprint-based criminal history records information check required by 105 ILCS 5/10-21.9 and sexual misconduct related employment history review required by 105 ILCS 5/22-94, added by P.A. 102-702, eff. 7-1-23 and discussed above? If yes, consult the Board Attorney and consider the following laws:</p> <p>15 U.S.C. § 1681 <i>et seq.</i>, Federal Fair Credit Reporting Act (FCRA), is a federal law that regulates the gathering and use of information about consumers by third party <i>consumer reporting agencies</i>, including credit information, criminal background, driving record, personal characteristics/reputation, etc. The law requires consumer reporting agencies to comply with certain procedural notice requirements when gathering information from a consumer.</p> <p>820 ILCS 75/, Ill. Job Opportunities for Qualified Applicants Act, prohibits employers from inquiring about an applicant's criminal history until the application has been determined qualified and notified that he/she has been selected for an interview (a/k/a <i>ban the box</i> law).</p> <p>820 ILCS 55/, Ill. Right to Privacy in the Workplace Act (RPWA), prohibits employers from:</p> <ol style="list-style-type: none"> 1. Requesting, coercing, or requiring any employee or prospective employee to provide a user name and password for any personal online account; 2. Requesting, coercing, or requiring an employee

Superintendent Contract Term Considerations for the Board	Explanation, Special Considerations, and Resources
	<p>or applicant to invite the employer to have access to that individual's personal online account; and</p> <p>3. Taking an adverse employment action against an individual (including refusal to hire) based on that individual's use of a lawful product off District property during nonworking hours, i.e., tobacco, cannabis, or alcohol. (Note: RPWA allows employers to regulate employees' use of those lawful products that impair an employee's ability to perform the employee's assigned duties. See policy 5:50, <i>Drug- and Alcohol-Free Workplace; E-Cigarette, Tobacco, and Cannabis Prohibition</i>, and its f/ns).</p> <p>820 ILCS 70/, Ill. Employee Credit Privacy Act, prohibits employers from inquiring into an individual's credit history or taking action against an employee based such history unless a satisfactory credit history is a <i>bona fide occupational requirement</i>, which is further defined in the statute. The job descriptions of superintendents generally meet this standard because they: (1) describe a managerial position that involves direction of school districts; (2) include signatory power over more than \$100; and (3) involve having access to confidential and financial information. Note: Any one of these grounds alone is sufficient.</p>
Medical Examination	<p>105 ILCS 5/24-5 requires new employees to submit evidence of physical fitness to perform assigned duties and freedom from communicable diseases.</p> <p>The Americans with Disabilities Act 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. 42 U.S.C. §12112(d)(4). Districts may deny jobs to individuals with disabilities who pose a direct threat to the health or safety of others in the workplace, provided that a reasonable accommodation would not either eliminate the risk or reduce it to an acceptable level. 42 U.S.C. §12113; 29 C.F.R. §1630.2(r).</p> <p>See also PRESS sample policy 5:30, <i>Hiring Process and Criteria</i>, specifically f/ns 25 and 26.</p>
Tenure	<p><u>Suspension of Tenure</u></p> <p>With multi-year contracts and multi-year extensions, superintendents waive their rights to tenure in a school district, but no previously acquired tenure may be lost.</p>

Superintendent Contract Term Considerations for the Board	Explanation, Special Considerations, and Resources
	<p><u>Continued Tenure</u></p> <p>Superintendents serving multiple one year contracts may still accrue service toward and acquire tenure.</p> <p>See 105 ILCS 5/10-23.8 and the <i>Duration of Contract</i> row in the Employment and Compensation checkbox, above.</p>

Evaluations and Goals

Superintendent Contract Term Considerations for the Board	Explanation, Special Considerations, and Resources
<p>Board Goals and Indicators of Student Performance and Academic Achievement for the Superintendent</p>	<p>105 ILCS 5/10-23.8 requires each performance-based contract to include the goals and indicators of student performance and academic improvement determined and used by the Board to measure the performance and effectiveness of the Superintendent and other information as the Board may determine.</p> <p>Regarding its goals and indicators, has the Board:</p> <ol style="list-style-type: none"> 1. At minimum, addressed student performance and academic achievement (105 ILCS 5/10-23.8 states “and other information as the Board may determine”)? 2. Included them in the body of the employment contract? Or as an exhibit to it? 3. Set them to be: <ol style="list-style-type: none"> a. Measurable and achievable, i.e., are they within the Superintendent’s control? b. Objective, subjective or a combination of both? 4. Set a timeline for achievement, and if so is it on an: <ol style="list-style-type: none"> a. Annual basis? b. Prior to completion of the employment contract? 5. Set them as procedural, substantive, or a combination of both? <p>For more information about setting goals and indicators for superintendents regarding student performance and academic achievement, see:</p> <p>www.iasb.com/conference-training-and-events/training/workshops/</p> <p>Contact a Field Services Director regarding the following IASB workshops and/or offerings that may set the stage for school boards to hold their superintendents</p>

Superintendent Contract Term Considerations for the Board	Explanation, Special Considerations, and Resources
	<p>accountable for district performance, including academic achievement:</p> <p><i>Setting District Goals and Direction</i> (leads a board and superintendent to develop their own district language for specific measurable, and attainable goals and indicators)</p> <p><i>The Superintendent Evaluation Process</i> (describes an effective method of holding the superintendent accountable)</p>
Superintendent Evaluation	<p>Once the Board has developed its goals and indicators (as discussed immediately above), 105 ILCS 5/10-20, 5/10-23, and 5/10-23.8 require the Board to:</p> <ol style="list-style-type: none"> 1. “Direct, through policy, its superintendent in his or her charge of the administration of the school district;” and 2. Evaluate the superintendent in his or her “administration of school board policies and his or her stewardship of the assets of the district.” <p>How will the Board evaluate the successful superintendent candidate upon its outlined goals and indicators?</p> <p>Does the Board state when it will evaluate the successful superintendent candidate upon the goals and indicators that it set? Note: Some districts do not consider the superintendent evaluation to be a <i>one-time event</i> and put an on-going process into place. Contrast other districts, which depending upon their preferences, generally find the best time of year to evaluate is in the winter or early springtime.</p> <p>Is the Board or the successful superintendent candidate responsible to trigger the components of the Superintendent’s evaluation process?</p> <p>What evaluation instrument will be used? How will the evaluation be documented?</p> <p>Will an evaluation instrument be outlined by the Board in its employment contract with the successful superintendent candidate?</p> <p>Is the evaluation instrument the Board will use tied to its goals and indicators of student performance and academic improvement and other information as the Board may determine?</p> <p>For more information about best practices when planning for and evaluating the Superintendent, see:</p>

Superintendent Contract Term Considerations for the Board	Explanation, Special Considerations, and Resources
	<p><i>The Superintendent Evaluation Process</i> at: www.iasb.com/iasb/media/documents/superintendent-evaluation-process.pdf;</p> <p>IASB's <i>Foundational Principles of Effective Governance</i>, Principle 3. The board employs a superintendent, at: www.iasb.com/conference-training-and-events/training/training-resources/foundational-principles-of-effective-governance/; stating "the board employs and evaluates one person — the superintendent — and holds that person accountable for district performance and compliance with written board policy."</p>

Expenses and Benefits

Superintendent Contract Term Considerations for the Board	Explanation, Special Considerations, and Resources
Expenses and Allowances	<p>How will the Board address expenses and allowances in its employment contract negotiations with the successful superintendent candidate?</p> <p><u>Business</u></p> <ol style="list-style-type: none"> 1. What standard will the Board use, e.g., reasonable, itemized, etc.? 2. Will the Board designate the Board President or another individual to review and/or approve the Superintendent's expenses? <p><u>Transportation</u></p> <p>Will the Board reimburse travel? If yes, what types of travel will the board reimburse? Some transportation topics that successful superintendent candidates request discussion about include:</p> <ol style="list-style-type: none"> 1. Vehicle insurance reimbursement(s) 2. Vehicle repair reimbursement(s) 3. A travel allowance only at either a set amount or the District's per mile rate 4. A vehicle 5. Out-of-district travel
Insurance	<p>Will the Board address insurance in its employment contract negotiations with the successful superintendent candidate?</p> <p>Some items successful superintendent candidates request include:</p> <ol style="list-style-type: none"> 1. Insurance contributions as part of a Cafeteria Plan, or in the alternative, the Board paying the premiums.

Superintendent Contract Term Considerations for the Board	Explanation, Special Considerations, and Resources
	<ol style="list-style-type: none"> 2. Specific insurance coverages from the Board, such as health, dental, vision, life, disability, etc.
Vacation	<p>Will the Board address vacation days in its employment contract negotiations with the successful superintendent candidate? If yes, then:</p> <ol style="list-style-type: none"> 1. How many days? 2. Will vacation days accumulate? And, if so, how? 3. Will the Board designate itself, the Board President, or a Board officer to approve or receive notification from the Superintendent prior to taking a vacation? If yes, describe the process. 4. Will the Board address reimbursement for unused days? 5. Will vacation days need to be used for days off during winter or spring breaks?
Sick Leave/Days	<p>Will the Board address sick days in its employment contract negotiations with the successful superintendent candidate? If yes, then:</p> <ol style="list-style-type: none"> 1. Will sick leave be limited to annual sick leave days in the District's teachers' contract or will a different amount be provided? 2. How will sick day accumulation be addressed? 3. Will the Board designate itself, the Board President, or a Board officer to approve or receive notification from the Superintendent prior to taking or upon returning from a sick day? If yes, describe the process.
Professional Activities and Organizations Memberships in Community Organizations	<p>Will the Board address memberships in professional activities/organizations and/or community organizations its employment contract negotiations with the successful superintendent candidate? If yes, then:</p> <ol style="list-style-type: none"> 1. How many organizations will the Board allow the Superintendent to join? 2. Which organizations will be allowed? 3. What is the Board's limit for the cost of dues to professional organizations?
Retirement	<p>Will the Board address any type of payment(s) upon the Superintendent's retirement? If yes, then:</p> <ol style="list-style-type: none"> 1. Has the Board thoroughly examined and addressed: <ol style="list-style-type: none"> a. Any consequences or other penalties to

Superintendent Contract Term Considerations for the Board	Explanation, Special Considerations, and Resources
	<p>it?</p> <ul style="list-style-type: none"> b. The impact of any prior salary increases? c. Potential pension reform issues? <p>2. Often, a successful superintendent candidate's attorney has interest in the following issues:</p> <ul style="list-style-type: none"> a. Available post-retirement options available, e.g., payments for sick/vacation days, post-retirement insurance, longevity annuity payment, etc. b. Whether a potential retirement payment will be properly creditable for TRS purposes. Note: Ultimately, only TRS has the authority to determine creditability.
Annuities and Other Deferred Compensation	<p>Will the Board address any type of annuities and other deferred compensation issues? If yes, then:</p> <ul style="list-style-type: none"> 1. Will it offer such compensation in addition to the Superintendent's agreed-upon salary? 2. Will it contribute creditable earnings for TRS purposes?

Changes to the Superintendent's Employment Contract

Superintendent Contract Term Considerations for the Board	Explanation, Special Considerations, and Resources
Non-Renewal at End of Contract	<p>How will the Board and successful superintendent candidate agree to address orderly end to the employment contract when the Board chooses not to renew it?</p> <ul style="list-style-type: none"> 1. Will there be a non-renewal notification date? Do both parties' attorneys find it reasonable? 2. Will the Board require the Superintendent to remind it of the non-renewal date? 3. Will there be any agreement to a clause for an automatic one-year renewal if the Board fails to provide end-of-contract non-renewal notification? 4. Will the Board agree to language in the employment contract that would provide the Superintendent with a hearing upon non-renewal?
Renewal at End of Contract	<p>Will the Board agree to a procedure for renewing the employment contract at its end? If yes, then:</p>

Superintendent Contract Term Considerations for the Board	Explanation, Special Considerations, and Resources
	<ol style="list-style-type: none"> 1. What date would be the earliest that the Board could renew its employment contract with the Superintendent? 2. What criteria will the Board base its renewal upon? For example, some boards base renewal upon superintendents achieving their stated goals and indicators of student performance and academic improvement and other information they required.
Contract Extensions	<p>Will the Board agree to allow for an extension of its employment contract during its term? If yes, then:</p> <ol style="list-style-type: none"> 1. Will the Board agree to extend it during its term if the Board determines that the Superintendent successfully met all of the Board's stated goals and indicators of student performance and academic improvement and other information it required? 2. Will the Board agree to extend a one-year contract when the Superintendent is not required to meet any goals? <p>See 105 ILCS 5/10-23.8.</p>
Terminations	<p>If the successful superintendent candidate accepts employment with the Board and becomes the Superintendent, how will the Board outline the grounds and procedures for terminating the Superintendent's employment during the contract's term?</p> <ol style="list-style-type: none"> 1. Will the Board and the successful superintendent candidate agree to terminate it upon mutual agreement? 2. Will the Board allow retirement to be an appropriate reason for terminating its employment contract with the Superintendent? And if so, will the Board require reasonable notice from its Superintendent? 3. Could either the Board or Superintendent terminate the employment contract without cause by providing notice to the other? 4. Will the Board terminate the employment contract for permanent disability of the Superintendent? <ol style="list-style-type: none"> a. How will the Board define permanent disability in the contract? b. Will the Board require the Superintendent to obtain a permanent

Superintendent Contract Term Considerations for the Board	Explanation, Special Considerations, and Resources
	<p>disability determination through physician certification, and/or</p> <p>c. Will the Board consider duration of absence; e.g., 90-days after exhaustion of available leave, whichever is greater? See PRESS sample policy 5:180, <i>Temporary Illness or Temporary Incapacity</i>.</p> <p>5. What standard will the Board use to terminate the employment contract for cause? Items to consider include:</p> <ul style="list-style-type: none"> a. Any conduct detrimental/prejudicial to the District;* b. Just cause; c. Sufficient to dismiss a tenured teacher; d. Material breach of contract; or e. Not arbitrary and capricious. <p>*50 ILCS 205/3c, requires a school district to post on its website and make available to news media specific information about severance agreements that it enters into because an employee or contractor was found to have engaged in sexual harassment or sexual discrimination, as defined by the Ill. Human Rights Act or Title VII of the Civil Rights Act of 1964. See Severance Pay row directly below.</p> <p>6. Will the Board agree to provisions for hearing and due process for the Superintendent?</p> <p>7. How will the Board address death of its Superintendent during the duration of the employment contract?</p>
Severance Pay	<p>Any renewal or renegotiation that adds a condition of severance pay must include the following provisions of GSPA, 5 ILCS 415/10(a)(1):</p> <p>A restriction to an amount not exceeding 20 weeks of compensation; and</p> <p>A prohibition for any severance if the Superintendent is fired for <i>misconduct</i> by the Board. This law defines misconduct to include sexual harassment and/or discrimination. But 50 ILCS 205/3c limits sexual harassment or discrimination to instances when an employee is “found to have engaged in sexual harassment or sexual discrimination, as defined by the Ill. Human Rights Act or Title VII of the Civil Rights Act of 1964.” For more discussion about these laws, see</p>

Superintendent Contract Term Considerations for the Board	Explanation, Special Considerations, and Resources
	<i>f/n 6 in policy 2:260, Uniform Grievance Procedure.</i>
Liquidated Damages	<p>Will the Board agree to liquidate damages with its Superintendent if one or the other terminates the employment contract?</p> <ol style="list-style-type: none"> 1. Have both the Board and the successful superintendent candidate discussed the practical consequences of a liquidated damages clause with their respective attorneys? 2. If the Board terminates the contract, has it discussed with the Board Attorney how it can avoid litigation with its former Superintendent?
Amendments	How will the Board and Superintendent agree to allow for amendments to the employment contract?

What technical clauses need to be in the Superintendent's employment contract?

Superintendent Contract Term Considerations for the Board	Explanation, Special Considerations, and Resources
Technical clauses (common in contracts)	<p>If the employment contract contains any of the following technical provisions, have the Board Attorney and Superintendent's attorney reviewed them?</p> <ol style="list-style-type: none"> 1. Notice 2. Applicable law 3. Headings and numbers 4. Complete understanding, i.e., do the Board members and Superintendent share the same understanding of the various provisions written in the employment contract? 5. Counterparts 6. Effect of Policy Amendments 7. Severability 8. Advice of Counsel

Miscellaneous Issues

Superintendent Contract Term Considerations for the Board	Explanation, Special Considerations, and Resources
Board Obligations Under the Employment Contract	<p>Do all members of the Board understand the District's obligations under the employment contract and what not complying with them will mean to the District?</p> <p>Specifically, are Board members aware of the Board's specific obligations regarding:</p> <ol style="list-style-type: none"> 1. The Superintendent Evaluation 2. Goal setting

Superintendent Contract Term Considerations for the Board	Explanation, Special Considerations, and Resources
	3. Required notifications/actions by each party prior to termination of the employment contract
Ongoing Monitoring of Each Party's Compliance with the Contract	Are the Board and Superintendent actually complying with the terms of the employment contract? Has the Board Attorney explained how the Board should monitor compliance with the employment contract?
Legislative Issues	How might pending pension reform legislation or other trending legislation affect the employment contract?

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 applicable federal and 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 federal and 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.

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 5/10-20.21, amended by P.A. 102-1101, 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 Ill. Dept. of Labor (IDOL). 820 ILCS 130/4(f). 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 Ill. Dept. of Labor (IDOL) shall apply to this contract. You are notified that any rate changes to the prevailing wage rate are available on IDOL's official website." 820 ILCS 130/4(l). 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-AP1, *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.

4. Third party non-instructional services must comply with 105 ILCS 5/10-22.34c.⁵
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(b-5). 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. Any contract to purchase food with a bidder or offeror must comply with 105 ILCS 5/10-20.21(b-10).⁷
7. The purchase of paper and paper products must comply with 105 ILCS 5/10-20.19c and Board policy 4:70, *Resource Conservation*.⁸
8. 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 5/10-21.9(c) and 5/21B-80(c)⁹ to have direct, daily contact at a District school or school-related activity with one or more student(s); (2) prohibit any of the contractor's employees from having direct, daily contact with one or more students if the employee was found guilty of any offense in 5/21B-80(b) (certain drug offenses) until seven years following the end of the employee's sentence for the criminal offense;¹⁰ and (3) 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.¹¹
 - b. In accordance with 105 ILCS 5/22-94: (1) prohibit any of its employees from having *direct contact with children or students* if the contractor has not performed a sexual misconduct related employment history review (EHR) of the employee or if the District objects to the employee's assignment based on the employee's involvement in an instance of sexual misconduct as provided in 105 ILCS 5/22-94(j)(3), which the contractor is required to disclose; (2) discipline, up to and including termination or denial of employment, any employee who provides false information or willfully fails to disclose information required by the EHR; (3) maintain all records of EHRs

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⁵ Concerning collective bargaining requirements, see *McLean Co. Unit Dist. 5 v. AFSCME & IELRB*, 12 N.E.3d 120 (4th Dist. 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 5/10-20.21(b-10).

⁸ 105 ILCS 5/10-20.19c.

⁹ 105 ILCS 5/10-21.9(c); 105 ILCS 5/21B-80(c).

¹⁰ *Id.*

¹¹ The implementation process is in 4:60-AP3, *Criminal History Records Check of Contractor Employees*. See 5:30-AP2, *Investigations*, for a list of offenses which disqualify an individual from having direct, daily contact with one or more students until seven years following the end of the individual's sentence for the criminal offense.

and provide the District access to such records upon request; and (4) refrain from entering into any agreements prohibited by 105 ILCS 5/22-94(g).¹²

- c. In accordance with 105 ILCS 5/24-5: (1) concerning each new employee of a contractor that provides services to students or in schools, provide the District with evidence of physical fitness to perform the duties assigned and freedom from communicable disease; and (2) require any new or existing employee who provides services to students or in schools to complete additional health examinations as required by the District and be subject to additional health examinations, including tuberculosis screening, as required by the Ill. Dept. of Public Health rules or order of a local health official.¹³
9. Any pavement engineering project using a coal tar-based sealant product or high polycyclic aromatic hydrocarbon sealant product for pavement engineering-related use must comply with the Coal Tar Sealant Disclosure Act.¹⁴
10. Purchases made with federal or State awards must comply with 2 C.F.R. Part 200 and 30 ILCS 708/, as applicable, and any terms of the award.¹⁵

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.¹⁶

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

¹² 105 ILCS 5/22-94, added by P.A. 102-702, eff. 7-1-23. See 4:60-AP4, *Sexual Misconduct Related Employment History Review (EHR) of Contractor Employees*. For the definition of *sexual misconduct*, see 105 ILCS 5/22-85.5(c), added by P.A. 102-676, and sample policy 5:120, *Employee Ethics; Code of Professional Conduct; and Conflict of Interest. Direct contact with children or students* is defined as "the possibility of care, supervision, guidance, or control of children or students or routine interaction with children or students." 105 ILCS 5/22-94(b), added by P.A. 102-702, eff. 7-1-23. This standard, which triggers the EHR, appears on its face to be broader than the *direct, daily contact* standard that triggers the *complete criminal history records check* in 105 ILCS 5/10-21.9(f). See 5:30-AP2, *Investigations*, 4:60-AP3, *Criminal History Records Check of Contractor Employees*, and 4:60-AP4, *Sexual Misconduct Related Employment History Review (EHR) of Contractor Employees*, for more information. For example, a contracted night custodian who may have some passing, routine interaction with students who are on campus for afterschool events, but does not have direct, daily contact with students triggers an EHR but not necessarily a *complete criminal history records check*. It is less clear if the reverse scenario could arise where a *complete criminal history records check* under 105 ILCS 5/10-21.9(f) would be required but an EHR would not be required. For ease of administration, a district may wish to require contractors to undergo a *complete criminal history records check* whenever the obligation to conduct an EHR is triggered, and vice versa.

105 ILCS 5/22-94(g), added by P.A. 102-702, eff. 7-1-23, prohibits contractors from entering any agreement that: (1) has the effect of suppressing information concerning a pending or completed investigation in which an allegation of sexual misconduct was substantiated, (2) affects the ability of the contractor to report sexual misconduct to the appropriate authorities, or (3) requires the contractor to expunge information about allegations or findings of suspected sexual misconduct, unless an allegation is found to be false, unfounded, or unsubstantiated following an investigation.

¹³ 105 ILCS 5/24-5. P.A. 98-716, 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. Since Aug. 2014, the Ill. Dept. of Public Health (IDPH) has not required 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 of 1990 (42 U.S.C. §12101 *et seq.*).

¹⁴ 410 ILCS 170/10(b), added by P.A. 102-242.

¹⁵ 2 C.F.R. §§200.318-200.327; 30 ILCS 708/. The Grant Accountability and Transparency Act (GATA) adopts the federal uniform guidance for all grants, unless the Office of the Governor grants an exception. 30 ILCS 708/55; 44 Ill.Admin.Code §7000.60. For information about the scope of GATA as it pertains to grants administered by the Ill. State Board of Education, see www.isbe.net/gata.

LEGAL REF.: 2 C.F.R. Part 200.
105 ILCS 5/10-20.19c, 5/10-20.21, 5/10-21.9, 5/10-22.34c, 5/19b-1 et seq., 5/22-94, and 5/24-5.
30 ILCS 708/, Grant Accountability and Transparency Act.
410 ILCS 170/, Coal Tar Sealant Disclosure Act.
820 ILCS 130/, Prevailing Wage Act.

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; Screening; Notifications), 5:90 (Abused and Neglected Child Reporting)

¹⁶ 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:

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.

Operational Services

Administrative Procedure - Purchases

The Board Attorney should be consulted, as needed, regarding the legal requirements presented by this administrative procedure as well as before a contract is presented to the Board. ¹

Requirements for Purchases and Contracts

- A. Each of the following requirements describes the type of purchase and/or contract to which it applies; requirements in Sections B and C may also apply to a specific purchase or contract.
1. All purchases of goods or services must be made through the use of contracts or purchase orders, except for those purchases made from petty cash funds or the Imprest Fund, or as otherwise specifically authorized by the Superintendent.
 2. Ill. Use Tax Act compliance (105 ILCS 5/10-20.21(b) and 35 ILCS 105/):
 - a. Persons bidding for and awarded a contract, and all affiliates of the person, must collect and remit Ill. Use Tax on all sales of tangible personal property into the State of Illinois in accordance with the provision of the Ill. Use Tax Act.
 - b. All bids and contracts must include: (1) a certification that the bidder or contractor is not barred from bidding for or entering into a contract, and (2) an acknowledgment that the Board may declare the contract void if the certification is false.
 3. All entities seeking to enter into a contract with the District must provide written certification to the District that it will provide a drug free workplace by complying with the Ill. Drug Free Workplace Act, 30 ILCS 580/. All contractors must comply with the notification mandates and other requirements in the Ill. Drug Free Workplace Act. "Contractor" is defined in the Ill. Drug Free Workplace Act as "a corporation, partnership, or other entity with 25 or more employees at the time of letting the contract, or a department, division, or unit thereof, directly responsible for the specific performance under a contract of \$5,000 or more."
 4. Before soliciting bids or awarding a contract for supplies, materials, equipment, or services, a certified education purchasing contract that is already available through a State education purchasing entity (as defined in the Education Purchasing Program, 105 ILCS 5/28A), may be considered as a bid. 105 ILCS 5/10-20.21(d).
 5. All contracts must include provisions required by State or federal law, as applicable. Topics commonly requiring a provision include equal opportunity employment, prevailing wage, minimum wage, and performance bond. ²
 6. The procurement of architectural, engineering, and land surveying services is governed by the Local Government Professional Services Selection Act, 50 ILCS 510/, implemented by 2:170-AP, *Qualification Based Selection*.

The footnotes should be removed before the material is used.

¹ Many legal problems will be avoided by early and frequent consultation with the board attorney. A board cannot use its failure to follow proper bidding or contracting procedures to later avoid payment to contractors or vendors that perform a contract in good faith. *Restore Construction Co., Inc. v. Bd. of Educ. of Proviso Twp. High Sch. Dist. 209*, 444 Ill.Dec. 663 (Ill. 2020).

² For contract provisions required for non-federal entity contracts under federal awards and State awards governed by the Grant Accountability and Transparency Act (30 ILCS 708/), see Appendix II to 2 C.F.R. Part 200, available at: www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200?toc=1.

7. A list must be posted on the District's website, if any, of all contracts in excess of \$25,000 and any contract with an exclusive bargaining representative. 105 ILCS 5/10-20.44(b).
8. Each contractor with the District must comply with 105 ILCS 5/10-21.9(f) and: (a) not allow any of its employees to have direct, daily contact with one or more students if the employee was found guilty of any offense listed in 105 ILCS 5/10-21.9(c) or 5/21B-80(c)³; (b) prohibit any of its employees from having direct, daily contact with one or more students if the employee was found guilty of any offense in 5/21B-80(b) (certain drug offenses) until seven years following the end of the employee's sentence for the criminal offense; (c) require each of its employees who will have direct, daily contact with one or more student(s) to cooperate during the District's fingerprint-based criminal history records check on him or her; and (d) reimburse the District for the cost of the fingerprint-based criminal history records check that the District obtains on each employee of a contractor who will have direct, daily contact with a student(s). See 4:60-AP3, *Criminal History Records Check of Contractor Employees*.
9. For each position involving *direct contact with children or students*,⁴ each contractor must perform sexual misconduct related employment history reviews (EHRs) of its employees as required by 105 ILCS 5/22-94, added by P.A. 102-702, eff. 7-1-23, and: (a) prohibit any of its employees from having direct contact with children or students if the contractor has not performed an EHR; (b) discipline, up to and including termination or denial of employment, any employee who provides false information or willfully fails to disclose information required by an EHR, and prohibit any such employee from having direct contact with children or students⁵; (c) immediately inform the District of any instances of sexual misconduct involving an employee as provided in 105 ILCS 5/22-94(j)(3); (d) prohibit any of its employees from having direct contact with children or students if the District objects to the employee's assignment after being informed of an instance of sexual misconduct; (e) maintain all records of EHRs and provide copies of such records upon the District's request; and (f) not enter into any agreements prohibited by 105 ILCS 5/22-94(g).⁶ See 4:60-AP4, *Sexual Misconduct Related Employment History Review (EHR) of Contractor Employees*.
10. Each contractor with the District must comply with 105 ILCS 5/24-5 and: (a) concerning each new employee who will provide services to students or in schools, provide the District with evidence of physical fitness to perform the duties assigned and freedom from communicable disease; and (b) require any new or existing employee who provides services to students or in schools to complete additional health examinations as required by the

The footnotes should be removed before the material is used.

³ 105 ILCS 5/10-21.9(c), amended by P.A. 101-531; 105 ILCS 5/21B-80(c), amended by P.A. 101-531.

⁴ See sample policy 4:60, *Purchases and Contracts*, at f/n 12, for the definition of *direct contact with children or students* and its distinction from *direct, daily contact*, which requires a *complete criminal history records check*.

⁵ The law requires contractors to discipline employees who provide false information or willfully fail to disclose information required by a sexual misconduct related employment history review (EHR), but it does not specifically require contractors to prohibit such employees from having direct contact with children or students. 105 ILCS 5/22-94(d), added by P.A. 102-702, eff. 7-1-23. This procedure prohibits contractors who have not provided the required EHR information from having direct contact with students as a best practice.

⁶ See sample policy 4:60, *Purchases and Contracts*, at f/n 12, for more information about the types of agreements that are prohibited by 105 ILCS 5/22-94(g), added by P.A. 102-702, eff. 7-1-23.

District and be subject to additional health examinations, including tuberculosis screening, as required by the Ill. Dept. of Public Health rules or order of a local health official.⁷

11. Any contract to purchase food with a bidder or offeror must comply with 105 ILCS 5/10-20.21(b-10) (food donations).⁸
 12. Any pavement engineering project using a coal tar-based sealant product or high polycyclic aromatic hydrocarbon sealant product for pavement engineering-related use must comply with the Coal Tar Sealant Disclosure Act by (a) requesting a bid with an alternative for asphalt-based or latex-based sealant product, and (b) considering whether an asphalt-based or latex-based sealant product should be used for the project based upon costs and life cycle costs that regard preserving pavements, product warranties, and the benefits to public health and safety.⁹
- B. To the extent feasible, the following govern all purchases and/or the award of contracts for supplies, materials, or work, and/or contracts with private carriers for transporting students, involving: (a) an expenditure of \$25,000 or less, or (b) in an emergency, an expenditure in excess of \$25,000, provided such expenditure is approved by three-quarters of the Board. See 105 ILCS 5/10-20.21(a)(xiv) (3/4s of the members of the Board must approve an emergency expenditure in excess of \$25,000 when the bidding process is not used) and 5/29-6.1 (time limitations for transportation contracts).
1. Telephone quotations, verbal quotations, or catalog prices are used to purchase materials that are needed urgently, or small quantity orders.
 2. Written quotations are used to purchase materials or services when time requirements allow. Whenever possible, quotations should be received from at least two competitors. The Superintendent or designee may negotiate with vendors at any time, including after receiving quotations.
- C. The following govern all purchases and/or the award of contracts involving an expenditure in excess of \$25,000 for supplies and materials or work. 105 ILCS 5/10-20.21(a).¹⁰
1. Contracts are awarded to the lowest responsible bidder, considering conformity with specifications, terms of delivery, quality and serviceability, except contracts or purchases for:
 - a. Services of individuals possessing a high degree of professional skill where the ability or fitness of the individual plays an important part;
 - b. Printing of finance committee reports and departmental reports;
 - c. Printing or engraving of bonds, tax warrants, and other evidences of indebtedness;
 - d. Perishable foods and perishable beverages;
 - e. Materials and work that have been awarded to the lowest responsible bidder after due advertisement, but due to unforeseen revisions, not the fault of the contractor for

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⁷ 105 ILCS 5/24-5. Since 2014, the Ill. Dept. of Public Health has only required school employees in daycare and preschool settings to be screened for tuberculosis. 77 Ill.Admin.Code §696.140(a)(3). Consult the board attorney before requesting a contractor's employee to complete a health examination, to ensure it is legal under other personnel laws, including the Americans with Disabilities Act of 1990 (42 U.S.C. §12101 *et seq.*).

⁸ 105 ILCS 5/10-20.21(b-10).

⁹ 410 ILCS 170/10(b), added by P.A. 102-242. The IDPH and Ill. State Board of Education (ISBE) must post on their websites on or before 5-1-23 guidance on screening for coal tar-based sealant product or high polycyclic aromatic hydrocarbon sealant product, requirements for a request for proposals, and requirements for disclosure. *Id.* at (d), added by P.A. 102-242.

¹⁰ 105 ILCS 5/10-20.21(a), amended by P.A. 102-1101.

materials and work, must be revised causing expenditures not in excess of 10% of the contract price;

- f. Maintenance or servicing of, or provision of repair parts for, equipment which are made with the manufacturer or authorized service agent of that equipment where the provision of parts, maintenance, or servicing can best be performed by the manufacturer or authorized service agent;
- g. Use, purchase, delivery, movement, or installation of data processing equipment, software, or services and telecommunications and interconnect equipment, software, and services;
- h. Duplicating machines and supplies;
- i. Fuel, including diesel, gasoline, oil, aviation, natural gas, or propane, lubricants, or other petroleum products;
- j. Equipment previously owned by some entity other than the District itself;
- k. Repair, maintenance, remodeling, renovation, or construction, or a single project involving an expenditure not to exceed \$50,000 and not involving a change or increase in the size, type, or extent of an existing facility;
- l. Goods or services procured from another governmental agency;
- m. Goods or services that are economically procurable from only one source, such as for the purchase of magazines, books, periodicals, pamphlets and reports, and for utility services such as water, light, heat, telephone, or telegraph;¹¹
- n. Emergency expenditures when such an emergency expenditure is approved by three-quarters of the members of the Board;
- o. Goods procured through an education master contract, as defined in the Education Purchasing Program, 105 ILCS 5/28A; and
- p. Providing for the transportation of students, which contracts must be advertised in the same manner as competitive bids and awarded by first considering the bidder(s) most able to provide safety and comfort for the students, stability of service, and any other factors set forth in the request for proposal regarding quality of service, and then price.
- q. Goods, services, or management in the operation of a school's food service, including a school that participates in any of the U.S. Dept. of Agriculture's (USDA) child nutrition programs if a good faith effort is made on behalf of the District to give preference to contracts that: (a) procure food that promotes the health and well-being of students, in compliance with USDA nutrition standards for school meals, and contracts should also promote the production of scratch-made, minimally processed foods; (b) give a preference to State or regional suppliers that source local food products; (c) utilize producers that adopt hormone and pest management practices recommended by the USDA; (d) give a preference to food suppliers that value animal welfare; and (e) increase opportunities for businesses owned and operated by minorities, women, or persons with disabilities.

When this exemption applies, the bidder shall submit to the District at the time of the bid, to the best of the bidder's ability, and annually thereafter during the term of the contract, the food supplier data required in this Section q. The food supplier data

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¹¹ See Tarsitano v. Twp. H.S. Dist. No. 211, 385 Ill.App.3d 868 (1st Dist. 2008)(holding that school districts may enter into contracts for utility services, such as "water, light, heat, telephone or telegraph," without using the competitive bidding process).

shall also include the name and address of each supplier, distributor, processor, and producer involved in the provision of the products that the bidder is to supply.

2. Competitive bidding process:
 - a. An invitation for bids is advertised, where possible, by public notice at least 10 days before the bid date in a newspaper published in the District, or if no newspaper is published in the District, in a newspaper of general circulation in the area of the District. 105 ILCS 5/10-20.21(a).
 - b. The following information should be included in the advertisement for bids:
 - i. A description of the materials, supplies, or work involved;
 - ii. Completion or delivery date requirements;
 - iii. Requirements for bids, bonds, and/or deposits;
 - iv. Requirements for performance, labor, and material payment bonds;
 - v. Date, time, and place of the bid opening;
 - vi. The approximate time period between the opening of bids and the award of the contract; and
 - vii. Any other useful information.
 - c. If specifications are available, the advertisement for bids describes where they may be obtained and/or inspected.
 - d. All bids must be sealed by the bidder. 105 ILCS 5/10-20.21(a).
 - e. A Board member or District employee opens the bids at a public bid opening at which time the contents are announced. 105 ILCS 5/10-20.21(a). Bids may be communicated, accepted, and opened electronically. The following safeguards apply to an electronic bid opening (105 ILCS 5/10-20.21(a)):
 - i. 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.
 - ii. 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.
 - f. Each bidder is given at least three days' notice of the time and place of the bid opening. 105 ILCS 5/10-20.21(a).
 - g. Conduct that promotes deception and collusion during the bidding process is prohibited and may violate the Ill. Criminal Code, 720 ILCS 5/33E-1 et seq. Examples include interference with public contracting, bid-rigging, and acquisition or disclosure of bidding information by a public official.
3. Following the opening of bids, the Superintendent (and Board Attorney, if needed) determines the lowest responsible bidder and verifies the bidders' qualifications. Contracts are awarded at a properly called open meeting of the Board. If the Superintendent recommends a bidder other than the lowest bidder, the Superintendent must provide the Board with the factual basis for the recommendation in writing. The Board, if it accepts a bid from a bidder other than the lowest, records the factual basis for its decision in its minutes. A contract arises only when the Board votes to accept a bid, although written notice of the award will later be given to the successful bidder.

4. Notwithstanding the foregoing, the District is relieved from bidding when making joint purchases with other public entities in compliance with the Governmental Joint Purchasing Act. 30 ILCS 525/.

LEGAL REF.: 105 ILCS 5/10-20.21, 5/10-20.44, 5/10-21.9, 5/21B-80, 5/22-94, and 5/24-5.
30 ILCS 580/, Ill. Drug Free Workplace Act.
35 ILCS 105/, Ill. Use Tax Act.
50 ILCS 510/, Local Government Professional Services Selection Act.
410 ILCS 170/10, Coal Tar Sealant Disclosure Act.

Operational Services

Administrative Procedure - Third Party Non-Instructional Contracts

When completed, this procedure documents that the requirements in 105 ILCS 5/10-22.34c have been fulfilled, thereby allowing the School Board to approve a contract for third party non-instructional services currently performed by any employee or bargaining unit member (such as, but not limited to, custodial services, student transportation, and school meal services). However, these conditions are not mandatory for the Board to enter into a contract, of no longer than three months in duration, with a third party for non-instructional services currently performed by an employee or bargaining unit member for the purpose of augmenting the current workforce in an emergency situation that threatens the safety or health of the District’s students or staff, provided that the Board meets all of its obligations under the Ill. Educational Labor Relations Act.

Name of proposed contractor: _____

Name and description of proposed contract for third party non-instructional services: _____

Effective date of proposed contract: _____

Each of the following conditions must be checked to document that it was present or fulfilled:

- Any lay-off resulting from entering into the contract for third party non-instructional services will comply with the applicable collective bargaining agreement and/or Board policy 5:290, *Employment Terminations and Suspensions*.
- The proposed contract will not be entered into or become effective during the term of an applicable collective bargaining agreement covering any employees who perform the non-instructional services.
- The proposed contract will take effect upon or after the expiration of an existing collective bargaining agreement.
- The proposed contractor has submitted a bid that includes the following:
 - A. Evidence of liability insurance in scope and amount equivalent to the liability insurance provided by the Board pursuant to 105 ILCS 5/10-22.3;
 - B. A benefits package for the third party’s employees who will perform the non-instructional services comparable to the benefits package provided to District employees who perform those services;
 - C. A list of the number of employees who will provide the non-instructional services, the job classifications of those employees, and the wages the proposed contractor will pay those employees;
 - D. A minimum three-year cost projection, using generally accepted accounting principles, and which the proposed contractor is prohibited from increasing if the bid is accepted by the Board, for each and every expenditure category and account for performing the non-instructional services;
 - E. Composite information about the criminal and disciplinary records, including alcohol or other substance abuse, Ill. Dept. of Children and Family Services complaints and investigations, traffic violations, and license revocations or any other licensure problems, of any employees who may perform the non-instructional services, provided that the individual names and other identifying

information of employees need not be provided with the submission of the bid, but must be made available upon request of the Board; and

F. An affidavit, notarized by the president or chief executive officer of the proposed contractor, that each of its employees has completed a criminal background check as required by 105 ILCS 5/10-21.9 within three months prior to submission of the bid, provided that the results of such background checks need not be provided with the submission of the bid, but must be made available upon request of the Board.

The following is attached or otherwise available: a cost comparison, using generally accepted accounting principles, of each and every expenditure category and account that the District projects it would incur over the term of the contract if it continued to perform the non-instructional services using its own employees with each and every expenditure category and account that is projected the proposed contractor would incur if it performed the non-instructional services.

The Board reviewed and considered all bids by third parties to perform the non-instructional services in open session of a regularly scheduled Board meeting, unless the exclusive bargaining representative of the employees who perform the non-instructional services, if any such exclusive bargaining representative exists, agreed in writing that such review and consideration could take place in open session at a specially scheduled Board meeting.

Date of Board meeting: _____

Each of the following occurred:

1. A minimum of one public hearing, conducted by the Board prior to a regularly scheduled Board meeting, to discuss the proposed contract was held before the Board entered such contract.

Date of hearing: _____

2. The Board provided notice to the public of the date, time, and location of the first public hearing on or before the initial date that bids to provide the non-instructional services are solicited or a minimum of 30 days prior to entering into such a contract, whichever provides a greater period of notice.

Date and manner of notice: _____

The proposed contract contains provisions requiring the proposed contractor to offer available employee positions pursuant to the contract to qualified School District employees whose employment is terminated because of the contract.

The proposed contract contains provisions requiring the proposed contractor to comply with a policy of nondiscrimination and equal employment opportunity for all persons and to take affirmative steps to provide equal opportunity for all persons.

Operational Services

Administrative Procedure - Criminal History Records Check of Contractor Employees

Use this procedure to implement the *complete criminal history records check* referenced in 5:30-AP2, *Investigations*, that is required when an employee of a contractor will have direct, daily contact with one or more students.

Actor	Action
<p>Firm contracting with the District, referred to herein as “contractor”</p>	<p>Prohibits any of the contractor’s employees from having direct, daily contact with one or more students if the employee was found guilty of any offense in 105 ILCS 5/10-21.9(c) or 5/21B-80(c), amended by P.A. 102-552.</p> <p>Prohibits any of the contractor’s employees from having direct, daily contact with one or more students if the employee was found guilty of any offense in 5/21B-80(b) (certain drug offenses) until seven years following the end of the employee’s sentence for the criminal offense.</p> <p>Requires each employee 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. 105 ILCS 5/10-21.9(f).¹</p> <p>Reimburses the District for the cost of the fingerprint-based criminal history records check that the District obtains on each employee of a contractor who will have direct, daily contact with student(s).</p> <p>Follows 4:60-AP4, <i>Sexual Misconduct Related Employment History Review (EHR) of Contractor Employees</i>, if the contractor’s employees will have <i>direct contact with children or</i></p>

The footnotes should be removed before the material is used.

¹ The Ill. Human Rights Act (IHRA) prohibits employers from using conviction records as a basis to refuse to hire or to take any adverse action against an applicant or employee unless: (1) otherwise authorized by law; (2) there is a *substantial relationship* between the criminal offense and the employment sought; or (3) granting the employment would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public. 775 ILCS 5/2-103.1(A).

Employers must give specific written notifications to applicants/employees when relying on conviction records to disqualify or take adverse action against them. *Id.* at 5/2-103.1(C). See sample policy 5:30, *Hiring Process and Criteria*, at f/n 5 and administrative procedure 5:30-AP2, *Investigations*. When school districts perform criminal history record information checks on contractor employees and disqualify them based on their conviction records, it is unclear if those employees are entitled to the protections of 775 ILCS 5/2-103.1. In this situation, the district is not the employer (and therefore not the entity that must give the employee notice), but it may disqualify the employee from working at the district based on a conviction record that it is not legally authorized to share with the contractor. Consult the board attorney for guidance on this issue.

Actor	Action
	<i>students</i> , as defined by 105 ILCS 5/22-94(b), added by P.A. 102-702, eff. 7-1-23. ²
Superintendent, Business Manager, or designee	<p>To ensure that a contractor complies with the fingerprint-based criminal history records check under 105 ILCS 5/10-21.9, may require that the following sample language or similar language be included in each contract with any firm whenever any employee of the firm will have direct, daily contact with one or more students.</p> <p>The contractor shall not send to any school building or school property any employee or agent who has been convicted of a crime listed in 105 ILCS 5/10-21.9(c) and/or 5/21B-80(c), as amended from time to time, or who is listed in the Ill. Sex Offender Registry or the Ill. Murderer and Violent Offender Against Youth Registry. The contractor shall not send to any school building or school property any employee or agent who has been convicted of a crime listed in 105 ILCS 5/21B-80(b) (certain drug offenses) until seven years following the end of the employee’s sentence for the criminal offense. The contractor shall make every employee who will have direct, daily contact with one or more students available to the District for the purpose of submitting to a fingerprint-based criminal history records check. The check shall occur before any employee or agent is sent to any school building or school property. The contractor will reimburse the District for the cost of each check. The District must also provide a copy of the report to the individual employee of the contractor, but is not authorized to release it to the contractor. Additionally, at least quarterly, the contractor shall check if any of its employees or agents having direct, daily contact with one or more students is listed on the Ill. Sex Offender Registry or the Ill. Murderer and Violent Offender Against Youth Registry. ³</p> <p>Completes the required forms to request a fingerprint-based criminal history record check on each contractor’s employee who will have direct, daily contact with one or more students. 105 ILCS 5/10-21.9(f). See 5:30-AP2, <i>Investigations</i>. Screens the individual’s name and address against the: (1) Ill. Sex Offender Registry, www.isp.illinois.gov/Sor/Disclaimer, and (2) the Violent Offender Against Youth Registry maintained by the Ill.</p>

The footnotes should be removed before the material is used.

² See sample policy 4:60, *Purchases and Contracts*, at f/n 12, for a discussion of the overlapping standards that trigger *complete criminal history records checks* of contractor employees under 105 ILCS 5/10-21.9(f) and sexual misconduct related employment history reviews (EHRs) of contractor employees under 105 ILCS 5/22-94, added by P.A. 102-702, eff. 7-1-23. For ease of administration, a district may wish to require contractors to conduct an EHR whenever a *complete criminal history records check* of a contractor employee is required, and vice versa.

³ The last sentence of this sample paragraph goes beyond what is required of contractors under the law but is included as a best practice.

Actor	Action
<p>Superintendent, Business Manager, or designee, cont'd</p>	<p>State Police (ISP), www.isp.illinois.gov/MVOAY/Disclaimer. The fingerprint-based criminal history record check and two registry screens constitute the complete criminal history background check that must be conducted under 105 ILCS 5/10-21.9(f), as described in 5:30-AP2, <i>Investigations</i>.</p> <p>Whenever a contractor sends an employee who will have direct, daily contact with a student(s) to the District for the first time, ASKS the contractor:</p> <p>Will this employee be assigned to more than one school district? IF YES, may request the applicable Regional Superintendent to be responsible for obtaining a fingerprint-based criminal history records check and checking the Statewide Sex Offender Database for each such employee. The Regional Superintendent is required to promptly report to the District any information concerning the employee's record of conviction and identification as a sex offender. 105 ILCS 5/10-21.9(f).</p> <p>Has another Illinois school district already conducted a fingerprint-based criminal history records check on the employee within the last year? IF YES, may request a copy of it for that contractor's employee from the school district where the contractor's employee worked or works. The District may rely on a check done by another district within the last year. 105 ILCS 5/10-21.9(f-5).</p> <p>Note: State law does not define "within the last year."</p> <p>Upon a request from any school, school district, community college district, or private school for a copy of a fingerprint-based criminal history records check for an employee of a contractor, FIRST determines if the District conducted the check within the last year. IF YES, provides a copy of it to the requesting entity. 105 ILCS 5/10-21.9(f-5). Note: An immunity provision, contained in 20 ILCS 2635/7(A)(3), makes the District not liable to an individual for its reasonable actions taken in reliance on the individual's Criminal History Records Information (CHRI) report. The District will lose the immunity if it was notified by the individual or by the ISP that the CHRI report is inaccurate or incomplete.</p> <p>Follows 4:60-AP4, <i>Sexual Misconduct Related Employment History Review (EHR) of Contractor Employees</i>, if the contractor's employees will have <i>direct contact with children or students</i>, as defined by 105 ILCS 5/22-94(b), added by P.A. 102-702, eff. 7-1-23. ⁴</p>

The footnotes should be removed before the material is used.

⁴ See f/n 2, above.

Operational Services

Administrative Procedure - Sexual Misconduct Related Employment History Review (EHR) of Contractor Employees

Use this procedure to implement the sexual misconduct related employment history review (EHR) required by 105 ILCS 5/22-94 when an employee of a contractor will have direct contact with children or students. A copy of this procedure may be provided to a contractor to inform or remind the contractor of its legal obligations.

Glossary of Terms

Contractor - A firm holding a contract with any school including, but not limited to, food service workers, school bus drivers, and other transportation employees who have direct contact with children or students. 105 ILCS 5/22-94(b), added by P.A. 102-702, eff. 7-1-23.

Direct contact with children or students - The possibility of care, supervision, guidance, or control of children or students or routine interaction with children or students. 105 ILCS 5/22-94(b), added by P.A. 102-702, eff. 7-1-23.

School - A public or nonpublic elementary or secondary school. 105 ILCS 5/22-94(b), added by P.A. 102-702, eff. 7-1-23.

Sexual misconduct - Any act, including but not limited to, any verbal, nonverbal, written, or electronic communication or physical activity, by an employee with direct contact with a student, that is directed toward or with a student to establish a romantic or sexual relationship with the student. Examples include but are not limited to: 1) a sexual or romantic invitation, 2) dating or soliciting a date, 3) engaging in sexualized or romantic dialog, 4) making sexually suggestive comments that are directed toward or with a student, 5) self-disclosure or physical exposure of a sexual, romantic, or erotic nature, 6) a sexual, indecent, romantic, or erotic contact with the student. 105 ILCS 5/22-94(b), added by P.A. 102-702, eff. 7-1-23; 105 ILCS 5/22-85.5(c), added by P.A. 102-676.

EHR of Contractor Employees

Actor	Action
Contractor	<p>At the time of initial hiring of an employee or prior to the assignment of an employee to perform work involving <i>direct contact with children or students</i>, conducts an EHR of the employee, in accordance with 105 ILCS 5/22-94, added by P.A. 102-702, eff. 7-1-23, specifically:</p> <p>Provides the employee with: (a) a <i>Sexual Misconduct Disclosure</i> form, using the Ill. State Board of Education’s (ISBE) <i>Sexual Misconduct Disclosure Template for Applicant</i> at www.isbe.net/Documents/Temp1-ISBE-Sexual-Misconduct-Disclosure-Form-Applicant.pdf and (b) copies of the <i>Authorization for Release of Sexual Misconduct-Related Information and Current/Former Employer Response</i> form, using ISBE’s <i>Authorization for Release of Sexual Misconduct-Related Information and Current/Former Employer Response Template</i> at www.isbe.net/Documents/Temp2-Auth-Release-Sexual-Misconduct-Related-Info.pdf for the applicant to</p>

Actor	Action
	<p>complete for each current employer and for each former employer where the applicant worked in direct contact with children or students.¹ The Contractor cannot hire an applicant for a position involving direct contact with children or students who does not provide the information required by the forms (105 ILCS 5/22-94(f), added by P.A. 102-702, eff. 7-1-23).</p> <p>Reviews the applicant’s completed <i>Sexual Misconduct Disclosure</i> form and <i>Authorization for Release of Sexual Misconduct-Related Information and Current/Former Employer Response</i> form(s).</p> <p>Provides to all employers identified by the applicant in Section 3 of the <i>Authorization for Release of Sexual Misconduct-Related Information and Current/Former Employer Response</i> form a copy of the <i>Authorization for Release of Sexual Misconduct-Related Information and Current/Former Employer Response</i> form (105 ILCS 5/22-94(c)(4), added by P.A. 102-702, eff. 7-1-23). The employer(s) must return the completed form(s) to the Contractor within 20 calendar days (105 ILCS 5/22-94(e), added by P.A. 102-702, eff. 7-1-23) after receipt.²</p> <p>Informs the District of any instance known to the Contractor in which the employee: (a) has been the subject of a sexual misconduct allegation unless a subsequent investigation resulted in a finding that the allegation was false, unfounded, or unsubstantiated; (b) has ever been discharged, been asked to resign from, resigned from, or otherwise been separated from any employment, been removed from a substitute list, been disciplined by an employer, or had an employment contract not renewed due to an adjudication or finding of sexual misconduct or while an allegation of sexual misconduct was pending or under investigation, unless the investigation was false, unfounded, or unsubstantiated; or (c) has ever had a license or certificate suspended, surrendered, or revoked due to an adjudication or finding of sexual misconduct or while an allegation of sexual misconduct was pending or under investigation, unless the investigation resulted in a finding that the allegation was false, unfounded, or unsubstantiated. 105</p>

The footnotes should be removed before the material is used.

¹ Districts must use Ill. State Board of Education templates to develop their sexual misconduct related employment history review (EHR) forms. 105 ILCS 5/22-94(c), added by P.A. 102-702, eff. 7-1-23. Districts may incorporate the templates into existing forms and/or add to the templates’ requirements, but they cannot alter the templates’ contents.

² Consult the board attorney for guidance in the event a district wants to move forward with the assignment of a contractor employee who will have direct contact with children or students before a contractor has completed the EHR of the employee. The law states a contractor shall “initiate” the EHR, but it also states that the EHR “shall be performed,” either at the time of the initial hiring of the employee or prior to the assignment of the employee, and it requires contractors to inform schools of any instances of sexual misconduct *prior* to assigning the employee. 105 ILCS 5/22-94(c)(1), (4) and (j)(3), added by P.A. 102-702, eff. 7-1-23.

Actor	Action
<p>Superintendent, Business Manager, or designee</p>	<p>ILCS 5/22-94(j)(3)(A-C), added by P.A. 102-702, eff. 7-1-23.</p> <p>Confirms that the Contractor has performed or will perform an EHR for each of its employees who will perform work involving direct contact with children or students. The EHR remains valid as long as the employee remains employed by Contractor, even if the employee is assigned to perform work for another school.³ 105 ILCS 5/22-94(j)(1), added by P.A. 102-702, eff. 7-1-23.</p> <p>To ensure the EHR is performed, may require the following sample language or similar language be included in each contract with the Contractor:</p> <p>Either at the time of initial hiring or prior to assigning any employee to perform work in the District involving direct contact with children or students, the Contractor will perform an Employment History Review (EHR) for the employee, in accordance with the requirements of 105 ILCS 5/22-94, as it may be amended from time to time. Notwithstanding the foregoing, if Contractor is furnishing substitute staffing services, Contractor shall perform the EHR upon initial hiring of the substitute employee.</p> <p>In performing the EHR, the Contractor agrees it will provide the employee with: (1) a <i>Sexual Misconduct Disclosure</i> form, using the Ill. State Board of Education’s (ISBE) <i>Sexual Misconduct Disclosure Template for Applicant</i> at www.isbe.net/Documents/Temp1-ISBE-Sexual-Misconduct-Disclosure-Form-Applicant.pdf and (2) copies of the <i>Authorization for Release of Sexual Misconduct-Related Information and Current/Former Employer Response</i> form, using ISBE’s <i>Authorization for Release of Sexual Misconduct-Related Information and Current/Former Employer Response Template</i> at www.isbe.net/Documents/Temp2-Auth-Release-Sexual-Misconduct-Related-Info.pdf for the employee to complete for each current employer and for each former employer where the employee worked in direct contact with children or students. The Contractor shall provide to all employers identified by the employee in Section 3 of the <i>Authorization for Release of Sexual Misconduct-Related Information and Current/Former Employer Response</i> form a copy of the <i>Authorization for Release of Sexual Misconduct-Related Information and Current/Former Employer Response</i> form</p>

The footnotes should be removed before the material is used.

³ Consult the board attorney for guidance on whether the EHR remains valid when a contractor employee moves from one district (or non-public school) to another district. 105 ILCS 5/22-94 broadly defines *school* to mean a public or nonpublic elementary or secondary school, which lends support to the interpretation that a contractor need only perform the EHR for an employee once, as long as the employee remains employed by the contractor.

Actor	Action
	<p>(105 ILCS 5/22-94(c)(4), added by P.A. 102-702, eff. 7-1-23). The Contractor will instruct the identified employer(s) to return the completed form(s) to the Contractor within 20 calendar days after receipt. The Contractor shall immediately inform the District of any instances of sexual misconduct involving the employee as set forth in 105 ILCS 5/22-94(j)(3). The Contractor shall maintain all records of EHRs and upon the District’s request shall provide the District with access to and copies of records pertaining to the EHRs of Contractor employees. The Contractor shall not send to any school building or other District property: (1) any employee for whom an EHR has not been performed, (2) any employee who provides false information or willingly fails to disclose information required by the EHR⁴, or (3) any employee to whom the District objects after the Contractor informs it of an instance of sexual misconduct involving the employee as set forth in 105 ILCS 5/22-94(j)(3). 105 ILCS 5/22-94(e) provides that a “contractor who provides information or records about a current or former employee or applicant under this Section [105 ILCS 5/22-94] is immune from criminal and civil liability for the disclosure of the information or records, unless the information or records provided were knowingly false.”</p> <p>For the duration of this Agreement, and in accordance with 105 ILCS 5/22-94(g), the Contractor agrees it will not enter into any collective bargaining agreement, employment contract, agreement for resignation or termination, severance agreement, or any other contract or agreement that: (1) has the effect of suppressing information concerning a pending investigation or a completed investigation in which an allegation was substantiated related to a report of suspected sexual misconduct by a current or former employee, (2) affects the ability of the Contractor to report suspected sexual misconduct to the appropriate authorities, or (3) requires the Contractor to expunge information about allegations or findings of suspected sexual misconduct from any documents maintained by the Contractor, unless, after an investigation, an allegation is found to be false, unfounded, or unsubstantiated.</p> <p>Whenever a Contractor sends an employee who will have direct contact with children or students to the District for the first time, requests that the Contractor provide the District with copies of the records pertaining to the EHR of any employee involved in</p>

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⁴ See f/n 6 below, for more information about item #2 of this paragraph.

Actor	Action
	an instance of sexual misconduct as set forth in 105 ILCS 5/22-94(j)(3). ⁵

Following the EHR of Contractor Employees

Actor	Action
Contractor	<p>Maintains records documenting EHRs as required by law and upon the District’s request, provides the District access to records pertaining to the employment history reviews of employees. 105 ILCS 5/22-94(j)(2), added by P.A. 102-702, eff. 7-1-23.</p> <p>Prohibits the assignment of an employee to a position at the District involving direct contact with children or students if: (1) the employee does not provide the information required by 105 ILCS 5/22-94(c) or provides false information or willfully fails to disclose information required by the EHR⁶ (2) the Contractor determines the employee is unfit for the position, or (3) the District objects to the assignment after the Contractor informs it of an instance of sexual misconduct as listed in the section above. 105 ILCS 5/22-94(f) and j(4), added by P.A. 102-702, eff. 7-1-23.</p> <p>Disciplines, up to and including termination or denial of employment, any employee who provides false information or willfully fails to disclose information required by the EHR. 105 ILCS 5/22-94(d), added by P.A. 102-702, eff. 7-1-23.</p> <p>As appropriate, reports responses received from an applicant’s employer(s) to ISBE, a state licensing agency, a law enforcement agency, a child protective services agency, another school or contractor, or a prospective employer. Note: A contractor or district that reports information or records about a current or former employee or applicant under 105 ILCS 5/22-94 is immune from criminal and civil liability for the disclosure of the information or records unless the information or records provided were knowingly false. 105 ILCS 5/22-94(e), added by P.A. 102-702, eff. 7-1-23.</p>

The footnotes should be removed before the material is used.

⁵ Whether a district requests EHR records from a contractor is at a district’s discretion. 105 ILCS 5/22-94(j)(2), added by P.A. 102-702, eff. 1-1-23. If a district wants to request that contractors provide *all* EHR records of contractor employees, delete the phrase “of any employee involved in an instance of sexual misconduct as set forth in 105 ILCS 5/22-94(j)(3)” from the sentence.

⁶ The law requires contractors to discipline employees who provide false information or willfully fail to disclose information required by a sexual misconduct related employment history review, but it does not specifically require contractors to prohibit such employees from having direct contact with children or students. 105 ILCS 5/22-94(d), added by P.A. 102-702, eff. 7-1-23. This procedure includes that prohibition as a best practice.

Actor	Action
<p>Superintendent, Business Manager, or designee</p>	<p>Reviews all EHR records provided by the Contractor to evaluate the employee’s fitness to be assigned to work in the District.</p> <p>As appropriate, reports responses received from an applicant’s employers to ISBE, a state licensing agency, a law enforcement agency, a child protective services agency, another school or contractor, or a prospective employer.</p> <p>If a Contractor employee is alleged to have engaged in sexual misconduct with an enrolled student, ensures notice to the student and parent(s)/guardian(s) of the student is provided and the allegations are investigated in accordance with administrative procedure 5:90-AP2, <i>Parent/Guardian Notification of Sexual Misconduct</i>, see the Notification of Alleged Sexual Misconduct subhead.</p> <p>If any of the Contractor’s employees will have direct, daily contact with one or more students, conducts a <i>complete criminal history records check</i> of the Contractor employees under 105 ILCS 5/10-21.9(f) by following 4:60-AP3, <i>Criminal History Records Check of Contractor Employees</i>.⁷</p>

The footnotes should be removed before the material is used.

⁷ See sample policy 4:60, *Purchases and Contracts*, at f/n 12, for a discussion of the overlapping standards that trigger *complete criminal history records checks* of contractor employees under 105 ILCS 5/10-21.9(f) (see 5:30-AP2, *Investigations*, and 4:60-AP3, *Criminal History Records Check of Contractor Employees*) and EHRs of contractor employees under 105 ILCS 5/22-94, added by P.A. 102-702, eff. 7-1-23. For ease of administration, a district may wish to require contractors to undergo a *complete criminal history records check* whenever the obligation to conduct an EHR is triggered, and vice versa.

Operational Services

Administrative Procedure - Federal and State Award Procurement Procedures

In addition to the State legal requirements for purchases and contracts set forth in Board policy 4:60, *Purchases and Contracts*, and 4:60-AP1, *Purchases*, the following procedures apply to District procurement under federal awards and State awards governed by the Grant Accountability and Transparency Act (GATA).¹ The District maintains oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.²

Consult the Board Attorney regarding the legal requirements presented by this administrative procedure as well as before a contract is presented to the Board.³

Code of Conduct⁴

Board policies 2:100, *Board Member Conflict of Interest*, and 5:120, *Employee Ethics; Code of Professional Conduct; and Conflict of Interest*, contain standards of conduct covering conflicts of interest and governing the actions of board members and employees engaged in the selection, award, and administration of contracts.

General Procurement Standards⁵

- A. The District shall avoid acquisition of unnecessary or duplicative items. Consideration will be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach. **Note:** A conflict between this regulation's requirements and the Ill. Criminal Code of 2012 may exist. See 720 ILCS 5/33E-2(i-5) and 5/33E-18 (defines and prohibits bid stringing, a Class 4 felony) and 720 ILCS 5/33E-3 (prohibits bid rigging, a Class 3 felony).
- B. To foster greater economy and efficiency, the District may enter into State and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services.
- C. The District may use federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.
- D. The District may use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost. **Note:** A conflict between this regulation's requirements and the Ill.

The footnotes should be removed before the material is used.

¹ 2 C.F.R. §§200.318-200.327; 30 ILCS 708/, Grant Accountability and Transparency Act (GATA). GATA adopts the federal uniform guidance for all grants, unless the Office of the Governor grants an exception. 30 ILCS 708/55; 44 Ill.Admin.Code §7000.60. For information about the scope of GATA as it pertains to grants administered by the Ill. State Board of Education (ISBE), see: www.isbe.net/gata.

² 2 C.F.R. §200.318(b).

³ Many legal issues will be solved by early and frequent consultation with the board attorney.

⁴ 2 C.F.R. §200.318(c).

⁵ 2 C.F.R. §200.318(b), (d)-(k).

Criminal Code of 2012 may exist. See 720 ILCS 5/33E-2(i-5) and 5/33E-18 (defines and prohibits bid stringing, a Class 4 felony).

- E. The District shall only award contracts to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. **Note:** State law requires award to the “lowest responsible bidder.”
- F. The District shall maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.
- G. The District may use a time and materials type contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. **Note:** The Ill. Criminal Code of 2012 (720 ILCS 5/33E-9) requires approval of the Board or designee when a contract cost increases or decreases by \$25,000, a/k/a *change orders*. If a change order will exceed the original contract price by 10%, it must be rebid.
- H. The District shall be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements.

Competition⁶

- A. All procurement transactions for the acquisition of property or services required under an award shall be conducted in a manner providing full and open competition consistent with the standards of State law (105 ILCS 5/10-20.21), policy 4:60, *Purchases and Contracts*, and this section. To ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements. Situations considered to be restrictive of competition include, but are not limited to:
 - 1. Placing unreasonable requirements on firms in order for them to qualify to do business;
 - 2. Requiring unnecessary experience and excessive bonding;
 - 3. Noncompetitive pricing practices between firms or between affiliated companies;
 - 4. Noncompetitive contracts to consultants that are on retainer contracts;
 - 5. Organizational conflicts of interest;
 - 6. Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement; and
 - 7. Any arbitrary action in the procurement process.
- B. The District shall conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographic preferences in the evaluation of bids or proposals, except in those cases where applicable federal statutes expressly mandate or encourage geographic preference. **Note:** State law may also encourage or discourage these preferences. Discuss these with the Board Attorney. See also Doyle Plumbing & Heating Co. v. Bd. of Educ., Quincy Pub. Sch. Dist. No. 172, 291 Ill.App.3d 221 (4th Dist. 1997); Cardinal Glass Co. v. Bd. of Educ. of Mendota Comm. Consol. Sch. Dist. 289, 113 Ill.App.3d 442 (3rd Dist. 1983). Nothing in

The footnotes should be removed before the material is used.

⁶ 2 C.F.R. §200.319.

this section preempts State licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract. **Note:** The Board must also follow the Local Government Professional Services Selection Act. 50 ILCS 510/.

- C. Procurement Transactions. All solicitations will:
1. Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured.
 - a. Such description must not, in competitive procurements, contain features which unduly restrict competition.
 - b. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use.
 - c. Detailed product specifications should be avoided if at all possible.
 - d. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated.
 2. Identify all requirements which offerors must fulfill and all other factors to be used in evaluating bids and proposals.
- D. The District shall ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. **Note:** State laws may conflict with this provision. See 105 ILCS 5/10-20.21 and 50 ILCS 510/.
- E. The District shall not preclude potential bidders from qualifying during the solicitation period.
- F. Noncompetitive procurements can only be awarded in accordance with the requirements detailed in paragraph E of the **Methods of Procurement** subhead below.

Methods of Procurement⁷

The District shall use one of the following methods of procurement:

- A. Micro-purchases. Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold of \$10,000, as may be amended from time to time.⁸ To the extent practicable, the District shall distribute micro-

The footnotes should be removed before the material is used.

⁷ 2 C.F.R. §200.320.

⁸ The *micro-purchase threshold* is set by the Federal Acquisition Regulation (FAR) at 48 C.F.R. Subpart 2.1 (Definitions) and is periodically adjusted for inflation. 2 C.F.R. §200.1. The federal government’s Office of Management and Budget (OMB) issued a memo increasing the micro-purchase threshold to \$10,000, pursuant to the National Defense Authorization Act FY 2018 (Pub. L. No. 115-91), pending amendments to the FAR. OMB Memorandum 18-18 (6-20-18), at: www.whitehouse.gov/wp-content/uploads/2018/06/M-18-18.pdf.

purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the Board considers the price to be reasonable based on research, experience, purchase history, or other information and documents it maintains. **Note:** See 105 ILCS 5/10-20.21 and policy 4:60, *Purchases and Contracts*.

- B. Small purchase procedures. Small purchase procedures may be used for the acquisition of property or services, the aggregate dollar amount of which is higher than the micro-purchase threshold but does not exceed the Simplified Acquisition Threshold⁹ of \$250,000, as may be amended from time to time. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources, as determined appropriate by the District.
- C. Sealed bids. Bids are publicly solicited and a firm fixed price contract¹⁰ (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. **Note:** 105 ILCS 5/10-20.21 requires “lowest responsible bidder.” The sealed bid method is the preferred method for procuring construction, if the conditions in 2 C.F.R. §200.320(b)(1)(i) apply. If sealed bids are used, the requirements in 2 C.F.R. §200.320(b)(1)(ii) apply. **Note:** 105 ILCS 5/10-20.21 requires sealed bids.
- D. Proposals. The use of proposals is a procurement method in which either a fixed price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. Proposals must be solicited from an adequate number of qualified offerors. If this method is used, the requirements in 2 C.F.R. §200.320(b)(2) apply. **Note:** 105 ILCS 5/10-20.21 requires sealed bids.
- E. Noncompetitive procurement. Noncompetitive procurement may be used only when one or more of the circumstances in §200.320(c) apply: (1) the cost does not exceed the micro-purchase

2 C.F.R. §200.320(a)(1) authorizes a district to increase its own micro-purchase threshold up to \$50,000, if it has determined and documented that a higher threshold is appropriate based on its internal controls, an evaluation of risk, and documented procurement procedures. If a district increases its threshold, it must annually self-certify and make supporting documentation available to the awarding agency and auditors during the retention period specified in 2 C.F.R. §200.334. The self-certification must include a justification, clear identification of the threshold, and documentation that the higher threshold is consistent with the bidding statute, 105 ILCS 5/10-20.21. See policy 4:60, *Purchases and Contracts*. A board that wants to increase its threshold should consult the board attorney for guidance on the content and method of self-certification, such as an annual resolution to be adopted by the board. If the district has established a micro-purchase threshold greater than \$10,000, substitute that amount in Item A above. Micro-purchase thresholds higher than \$50,000 must be approved by the *cognizant agency for indirect costs*, which means the federal agency assigned responsibility for reviewing, negotiating, and approving cost allocation plans or indirect cost proposals. 2 C.F.R. §200.1.

⁹ *Simplified acquisition threshold* (SAT) means the dollar amount below which a district may purchase property or services using small purchase methods. Districts may adopt small purchase procedures in order to expedite the purchase of items costing less than the simplified acquisition threshold. The simplified acquisition threshold is set by the Federal Acquisition Regulation (FAR) at 48 CFR Subpart 2.1 (Definitions) and in accordance with 41 U.S.C. §1908 and is periodically adjusted for inflation. See also definition of §200.1 Micro-purchase, 2 C.F.R. §200.1. The OMB issued a memo increasing the simplified acquisition threshold to \$250,000, pursuant to the National Defense Authorization Act FY 2018 (Pub. L. No. 115-91), pending amendments to the FAR. OMB Memorandum 18-18 (6-20-18), at: www.whitehouse.gov/wp-content/uploads/2018/06/M-18-18.pdf.

2 C.F.R. §300.320(a)(2) authorizes a district to use a lower SAT than the one established by the FAR. The district is responsible for determining an appropriate SAT based on its internal controls, an evaluation of risk, and its documented procurement procedures. *Id.* If the district has established a SAT lower than \$250,000, substitute that amount in Item B above.

¹⁰ *Contract* means a legal instrument by which a district purchases property or services needed to carry out the project or program under a federal award. See also the definition of *subaward*, 2 C.F.R. §200.1.

threshold; (2) the item is available only from a single source; (3) public exigency or emergency will not permit a delay resulting from publicizing a competitive solicitation; (4) the awarding agency or pass-through entity expressly authorizes a noncompetitive procurement in response to a written request from the District; or (5) after solicitation of a number of sources, the District determines competition is inadequate. **Note:** 50 ILCS 510/ may conflict with this regulation.

Procurement of Recovered Materials ¹¹

When the District procures items designated by the Environmental Protection Agency (EPA) as capable of being produced with recovered materials¹², and the purchase of the items exceeds \$10,000 or the quantity of the items (or functionally equivalent items) purchased in the preceding fiscal year exceeded \$10,000, the District shall:

- A. Ensure the items contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition. The decision not to procure such items must be based on a determination that the items: (1) are not reasonably available within a reasonable period of time, (2) fail to meet the performance standards in the applicable specifications, or (3) are only available at an unreasonable price. ¹³
- B. Procure solid waste management services in a manner that maximizes energy and resource recovery.
- C. Establish an affirmative procurement program for procurement of recovered materials identified in EPA guidelines. The program must contain the following elements: ¹⁴
 1. Preference program for purchasing the designated items;
 2. Promotion program;
 3. Procedures for obtaining estimates and certifications of recovered materials content and for verifying the estimates and certifications; and
 4. Annual review and monitoring of the effectiveness of the program.

Contracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms ¹⁵

The District shall take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. Affirmative steps shall include:

- A. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- B. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

The footnotes should be removed before the material is used.

¹¹ 42 U.S.C. §6962; 2 C.F.R. §200.323.

¹² 40 C.F.R. Part 247. For recommendations that the EPA has developed for recovered (recycled) content and for its list of designated products, see: www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program, which was developed as part of the EPA's Comprehensive Procurement Guideline (CPG) Program.

¹³ 42 U.S.C. §6962(c)(1).

¹⁴ 40 C.F.R. §247.6. For a summary of the requirements of an Affirmative Procurement Program, see: www.epa.gov/smm/summary-affirmative-procurement-program.

¹⁵ 2 C.F.R. §200.321. See also the Business Enterprise for Minorities, Females, and Persons with Disabilities Act, 30 ILCS 575/.

- C. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women’s business enterprises;
- D. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women’s business enterprises;
- E. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Dept. of Commerce; and
- F. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (A) through (E) of this section.

Contract Cost and Price ¹⁶

- A. The District shall perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the non-federal entity must make independent estimates before receiving bids or proposals.
- B. The District shall negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor’s investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographic area for similar work.
- C. Costs or prices based on estimated costs for contracts under the federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the District under Subpart E, Cost Principles, of 2 C.F.R. Part 200.
- D. The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

Federal Awarding Agency or Pass-Through Entity Review ¹⁷

The District shall make available, upon request of the federal awarding agency¹⁸ or pass-through entity¹⁹ (Ill. State Board of Education):

- A. Technical specifications on proposed procurements where the federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition; and
- B. Procurement documents (such as requests for proposals or invitations for bids, or independent cost estimates) for pre-procurement review when one or more of the circumstances in §200.325(b) apply.

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¹⁶ 2 C.F.R. §200.324.

¹⁷ 2 C.F.R. §200.325.

¹⁸ *Federal awarding agency* means the federal agency that provides a federal award directly to a non-federal entity. 2 C.F.R. §200.1.

¹⁹ *Pass-through entity* means a non-federal entity that provides a subaward to a subrecipient to carry out part of a federal program. 2 C.F.R. §200.1.

Bonding Requirements ²⁰

- A. For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold²¹, the federal awarding agency or pass-through entity may accept the bonding policy and requirements of the District provided that the federal awarding agency or pass-through entity has made a determination that the federal interest is adequately protected.
- B. If such a determination has not been made, the minimum requirements shall be as follows:
 1. A bid guarantee from each bidder equivalent to five percent of the bid price. The *bid guarantee* must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
 2. A performance bond on the part of the contractor²² for 100 percent of the contract²³ price. A *performance bond* is one executed in connection with a contract to secure fulfillment of all the contractor's requirements under such contract.
 3. A payment bond on the part of the contractor for 100 percent of the contract price. A *payment bond* is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

Contract Provisions ²⁴

The District's contracts shall contain the applicable provisions described in Appendix II to 2 C.F.R. Part 200, *Contract Provisions for non-Federal Entity Contracts Under Federal Awards*.

The footnotes should be removed before the material is used.

²⁰ 2 C.F.R. §200.326.

²¹ See f/n 8, above.

²² *Contractor* means an entity that receives a contract as defined in §200.1. 2 C.F.R. §200.1.

²³ *Contract* means a legal instrument by which a non-federal entity purchases property or services needed to carry out the project or program under a federal award. See also definition of *subaward*, 2 C.F.R. §200.1.

²⁴ 2 C.F.R. §200.327.

Operational Services

Exhibit - Internal Procedures for Procurement Transactions

Actor	Action
Staff Member	Identifies a procurement need and makes a written request to the appropriate department head and/or Building Principal.
Building Principal, appropriate department head or designee	Evaluates the staff member’s request by conducting a needs analysis, determining a funding source, and determining if the request should be sent to the Business Manager and/or designee for further analysis. Note: The Principal’s procurement role likely varies based upon each district and type of expense.
Business Manager and/or designee	Upon request of the Building Principal, conducts further analysis of the staff member’s request in order to verify information and determine if funds are available. Provides the Building Principal with results of further analysis.
Building Principal, appropriate department head or designee	Provides the Superintendent and/or designee with the staff member’s written procurement request, his/her analysis of the staff member’s request, and, if applicable, any further analysis conducted by the Business Manager and/or designee.
Superintendent and/or designee	Reviews the staff member’s request and analyses of same; evaluates the educational value of procurement requested. The Superintendent and/or designee may then: <ul style="list-style-type: none"> • Approve the procurement request if it is below the amount set by the School Board and/or State law (105 ILCS 5/10-20.21); • Deny the procurement request; or • If the procurement request amount exceeds the Superintendent’s authority, seek Board permission for procurement. See policy 4:60, <i>Purchases and Contracts</i>, for the amount designated by the Board. When presenting a contract or purchase for Board approval, the Superintendent and/or designee shall ensure it complies with applicable State and federal law, consulting with the Board Attorney as needed. See policies 4:60, <i>Purchases and Contracts</i> and 7:345, <i>Use of Educational Technologies; Student Data Privacy and Security</i> .

Actor	Action
School Board	<p>Considers any procurement requests submitted by the Superintendent and/or designee.</p> <p>Considers any contract requests submitted by the Superintendent and/or designee.</p>
Superintendent and/or designee	Identifies appropriate method of procurement and ensures appropriate method is followed.

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 105 ILCS 5/21B-80(c).⁵

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 6-13-11, a board that fills a "new or vacant teaching position" must select a candidate based on: (1) certifications, (2) qualifications, (3) merit and ability (including performance evaluation, if available), and (4) relevant experience, provided that the length of continuing service with the district must not be considered a factor, unless all other factors are determined by the school district to be equal. 105 ILCS 5/24-1.5. The statute does not define "new or vacant teaching positions." The requirement does not apply to filling vacant positions under 105 ILCS 5/24-12 (reduction in force and recall). Consult the board attorney about these issues.

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.

⁵ 775 ILCS 5/2-103.1 prohibits employers from using conviction records as a basis to refuse to hire or to take any adverse action against an applicant or employee unless: (1) otherwise authorized by law; (2) there is a *substantial relationship* between the criminal offense and the employment sought; or (3) granting the employment would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public. For the disqualifying offenses listed in 105 ILCS 5/21B-80, amended by P.A. 102-552, a district does not have to show a *substantial relationship* between the offense and the position or that hiring or continuing to employ the person would involve an unreasonable risk. However, the Ill. Dept. of Human Rights (IDHR) interprets the Ill. Human Rights Act (IHRA) to still require the employer to notify the applicant of the disqualification pursuant to law and to afford the applicant at least five business days to respond in case the applicant wants to dispute the accuracy of the conviction record. *Id.* at 5/2-103.1(C). See IDHR's *Conviction Record Protection – Frequently Asked Questions* (March 2021), at:

<https://dhr.illinois.gov/conviction-record-protection-frequently-asked-questions.html>.

Attorneys have different opinions as to whether the IHRA requires the *interactive assessment* outlined in 775 ILCS 5/2-103.1(c), which includes preliminary and final notices, when a disqualifying offense listed in 105 ILCS 5/21B-80 is found in a conviction record; **consult the board attorney for guidance on this issue**. See administrative procedure 5:30-AP2, *Investigations*, and its footnotes for more detail regarding the IHRA notice provisions and the need for districts to also comply with the seven-day notification requirement in the Ill. Uniform Conviction Information Act, 20 ILCS 2635/7. **Note:** The protections of 775 ILCS 5/2-103.1 do not cover *unpaid interns*, which may include student teachers in the K-12 context. The definition of *employee* in the IHRA only extends to include unpaid interns for civil rights violations involving sexual harassment. 775 ILCS 5/2-101(A)(1)(c) and 5/2-102(D).

105 ILCS 5/10-21.9(c); 105 ILCS 5/21B-80, amended by P.A. 102-552, allows individuals with criminal histories involving certain drug convictions to apply for or to reinstate their educator licenses seven years after their sentence for the criminal offense is completed. Consult the board attorney about whether the board wants to continue prohibiting employment for any individual who has a criminal history involving these exempted drug offenses.

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

Job Descriptions

The Board maintains the Superintendent's job description and directs, through policy, the Superintendent, in his or her charge of the District's administration.⁷

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.⁸

For more discussion regarding criminal history records checks and screenings required by 105 ILCS 5/10-21.9, amended by P.A.s 102-552 and 102-702, eff. 7-1-23, see f/ns 5 and 6 in policy 4:175, *Convicted Child Sex Offender; Screening; Notifications*.

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 these positions must state the following (*Id.*):

Failure to provide requested employment or employer history which is material to the applicant's qualifications for employment or the provision of statements which the applicant does not believe to be true may be a Class A misdemeanor.

Many districts ask applicants about disqualifying criminal convictions on their employment applications or at another point before a job offer is made. State law does not expressly prohibit this practice; however, guidance issued by IDHR regarding implementation of 775 ILCS 5/1-103(G-5) and 5/2-103.1 states "[u]nless authorized by law, an employer is prohibited from inquiring about an applicant's conviction record prior to making a job offer to the applicant." See *Conviction Record Protection – Frequently Asked Questions* guidance issued by IDHR (March 2021), at:

<https://dhr.illinois.gov/conviction-record-protection-frequently-asked-questions.html>.

While the School Code and Job Opportunities for Qualified Applicant Act do not prohibit districts from asking about disqualifying convictions before a job offer is made, it is unclear whether they affirmatively *authorize* such inquiries. The IDHR's guidance does not carry the force of law, but it may impact its handling of a discrimination charge based on a conviction record. It is also unclear if an applicant's mere disclosure of a disqualifying conviction on an application, absent results of a fingerprint-based criminal history records check, Ill. Sex Offender Registry check, or Violent Offender Against Youth Registry check, triggers the district's obligation to provide notice to the applicant under 775 ILCS 5/2-103.1(C); see also f/n 5, above. Consult the board attorney for advice on these issues and how they may affect application processes.

Any employer that asks applicants to record video interviews and uses an artificial intelligence (AI) analysis of the applicant-submitted videos must comply with the Artificial Intelligence Video Interview Act, 820 ILCS 42/. Employers should also be careful that use of AI, software, and algorithms to assess applicants does not violate the Americans with Disabilities Act (ADA) (42 U.S.C. §12101 *et seq.*). See *The Americans with Disabilities Act and the Use of Software, Algorithms, and Artificial Intelligence to Assess Job Applicants and Employees* technical assistance document issued by the U.S. Equal Employment Opportunity Commission (May 2022) at: www.eeoc.gov/laws/guidance/americans-disabilities-act-and-use-software-algorithms-and-artificial-intelligence. Given the rapidly changing technologies in this area, please consult the board attorney.

⁷ 105 ILCS 5/10-16.7. The foundation for a productive employment relationship begins with a board's policy, a thoughtfully crafted employment contract and job description, and procedures for communications and ongoing assessment. See IASB's *Foundational Principles of Effective Governance*, **Principle 3. The board employs a superintendent**, at:

www.iasb.com/conference-training-and-events/training/training-resources/foundational-principles-of-effective-governance/.

See also 3:40-E, *Checklist for the Superintendent Employment Contract Negotiation Process*, for best practice discussions about establishing the board-superintendent employment relationship and contract.

⁸ 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.⁹ When the applicant is a successful superintendent candidate who has been offered employment by the Board, the Board President shall ensure that these checks are completed.¹⁰ The Superintendent or designee, or if the applicant is a successful superintendent candidate, then the Board President shall notify an applicant if the applicant is identified in either database.¹¹ 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

A job description is evidence of a position's essential functions. 29 C.F.R. §1630.2(n). The ADA protects individuals who have a disability and are qualified, with reasonable accommodation, to perform the *essential functions* of the job. 42 U.S.C. §12101 *et seq.*, amended by the ADA Amendments Act (ADAAA), Pub. L. 110-325. Determining which functions are essential may be critical to determining if an individual with a disability is qualified. An individual is qualified to perform a job even though he or she is unable, due to a disability, to perform tasks which are incidental to the job. Only when an individual is unable to perform the *essential functions* of a job may a district deny the individual employment opportunities. 29 C.F.R. §1630.2(m). For a definition of essential functions see *Id.* at 1630.2(n). Whether a particular function is essential is a factual determination.

Important: The ADAAA made significant changes to the ADA's definition of disability that broadened the scope of coverage and overturned a series of U.S. Supreme Court decisions that made it difficult to prove that an impairment was a qualifying disability. There is information about the regulations and a link to them at: www.eeoc.gov/laws/regulations/adaaa_fact_sheet.cfm. Consult the board attorney regarding how these amendments impact the district's hiring processes.

⁹ The policy's requirements on criminal records checks for applicants for employment are mandated by 105 ILCS 5/10-21.9, amended by P.A.s 102-552 and 102-702, eff. 7-1-23. See administrative procedure 5:30-AP2, *Investigations*, for the process, timing, and positions requiring criminal background investigation and what steps a district must take if it wants to disqualify an applicant based on a conviction record. The Statewide Sex Offender Database (a/k/a Sex Offender Registry) is available at: <https://isp.illinois.gov/Sor/Disclaimer>. The Statewide Murderer and Violent Offender Against Youth Database is available at: <https://isp.illinois.gov/MVOAY/Disclaimer>. For more discussion regarding criminal history records checks and screenings required by 105 ILCS 5/10-21.9, amended by P.A. 102-702, eff. 7-1-23, see *f/n* 5 in policy 4:175, *Convicted Child Sex Offender; Screening; Notifications*. See policy 4:60, *Purchases and Contracts*, for requirements concerning (1) criminal background checks of employees of contractors who have *direct, daily contact* with students and (2) sexual misconduct related employment history reviews (EHRs) of employees of contractors of have *direct contact with children or students*.

¹⁰ *Id.* If a board wants to require additional background inquiries beyond the fingerprint-based criminal history records information check required by 105 ILCS 5/10-21.9, amended by P.A.s 102-552 and 102-702, eff. 7-1-23, and the EHR required by 105 ILCS 5/22-94, added by P.A. 102-702, eff. 7-1-23, including the federal *Rap Back Service* (20 ILCS 2630/3.3) and/or checks through consumer reporting agencies regulated by the Fair Credit Reporting Act (15 U.S.C. §1681 *et seq.*), consult the board attorney. For more detailed information, see the laws listed in sample exhibit 3:40-E, *Checklist for the Superintendent Employment Contract Negotiation Process*, under the checklist item entitled **Conditions of Employment**, in the **Other Background Check Laws** row.

¹¹ 105 ILCS 5/10-21.9(b) and 105 ILCS 5/21B-10. The School Code requires the board president to keep a conviction record confidential. It is impossible to know whether a fingerprint-based criminal history records check and a check of the Statewide Sex Offender and Violent Offender Against Youth Databases on a successful superintendent candidate will come back with a conviction record.

Therefore, in accordance with best practice (ensuring compliance and aligning with good governance principles), this policy does not assign a designee for the board president to complete this task. However, to balance the requirement to keep conviction records confidential with the practical implementation of ensuring a fingerprint-based criminal history records check and a check of the Statewide Sex Offender and Violent Offender Against Youth Databases are performed on each successful superintendent applicant, a board president may want to designate the duty to order these checks to the individuals otherwise listed in 105 ILCS 5/10-21.9(b). Those individuals include the board president, the superintendent or designee, regional superintendent (if the check was requested by the district), state superintendent of education, state Educator Preparation and Licensure Board, any other person necessary to the hiring decision, or for clarification purposes, the Ill. State Police and/or Statewide Sex Offender Registry.

hiring decision, the Ill. State Police and/or Statewide Sex Offender Database for purposes of clarifying the information, and/or the Teachers' Retirement System of the State of Illinois when required by law.¹² The Board reserves its right to authorize additional background inquiries beyond a fingerprint-based criminal history records check when it deems it appropriate to do so, in accordance with applicable laws.

Each newly hired employee must complete a U.S. Citizenship and Immigration Services Form as required by federal law.¹³

The District retains the right to discharge any employee whose criminal background investigation reveals a conviction for committing or attempting to commit any of the offenses outlined in 105 ILCS 5/21B-80¹⁴ or who falsifies, or omits facts from, his or her employment application or other employment documents. If an indicated finding of abuse or neglect of a child has been issued by the Ill. Department of Children and Family Services or by a child welfare agency of another jurisdiction for any applicant for student teaching, applicant for employment, or any District employee, then the Board must consider that person's status as a condition of employment.¹⁵

The Superintendent shall ensure that the District does not engage in any investigation or inquiry prohibited by law and complies with each of the following:¹⁶

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

¹² *Id.* at 5/10-21.9(b) and 105 ILCS 5/21B-85, amended by P.A. 102-552. The School Code continues to define the board president's role in conducting criminal background investigations and receiving the results of these investigations, including the results for employees of district contractors. 105 ILCS 5/10-21.9. Many districts delegate this task in the hiring process to a human resources department.

105 ILCS 5/21B-85, amended by P.A. 102-552, requires a board to provide prompt written notice to the board of trustees of the Teachers' Retirement System of the State of Illinois (TRS) when it learns that any teacher has been convicted of a felony offense (which provides for a sentence of death or imprisonment for one year or more). The notice to TRS is limited to (1) the name of the license holder, (2) fact of conviction, (3) name and location of the court in which the conviction occurred, and (4) the assigned case number from the court. *Id.*

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

For more discussion regarding responses to results obtained by criminal history records checks and screenings as required by 105 ILCS 5/10-21.9(e), amended by P.A. 102-702, eff. 7-1-23, see f/n 6 in policy 4:175, *Convicted Child Sex Offender; Screening; Notifications*.

¹³ Immigration Reform and Control Act, 8 U.S.C. §1324a *et seq.* Consult with the board attorney regarding the district's rights and responsibilities under all Illinois laws if the district uses any electronic employment verification system, including *E-Verify* and/or the Basic Pilot Program. 820 ILCS 55/12. This statute urges employers who voluntarily use *E-Verify* (formerly known as the Basic Pilot/Employment Eligibility Verification Program) to consult the Ill. Dept. of Labor's website for current information on the accuracy of *E-Verify* and to review and understand their legal responsibilities relating to the use of any electronic employment verification systems. See f/n 2 in 5:150-AP, *Personnel Records*, for a more detailed discussion of *E-Verify* issues.

¹⁴ See f/n 5, above.

¹⁵ 105 ILCS 5/10-21.9(c) and (g). See f/n 6 in 4:175, *Convicted Child Sex Offender; Screening; Notifications*, for further discussion.

¹⁶ As an alternative to describing the prohibited investigations, a board may substitute this sentence:

The Superintendent shall ensure that the District does not engage in any investigation or inquiry prohibited by law, including without limitation, investigation into or inquiry concerning: (1) credit history or report unless a satisfactory credit history is an established bona fide occupational requirement of a particular position; (2) claim(s) made or benefit(s) received under Workers' Compensation Act; and (3) access to an employee's or applicant's social networking website, including a request for passwords to such sites.

The default policy provision and the alternative stated above – whichever is selected – may be made a prohibition rather than a duty of the superintendent; to do this, delete the stricken text as follows: "~~The Superintendent shall ensure that the District does not engage ...~~."

The District uses an applicant's credit history or report from a consumer reporting agency only when a satisfactory credit history is an established bona fide occupational requirement of a particular position.¹⁷

The District does not screen applicants based on their current or prior wages or salary histories, including benefits or other compensation, by requiring that the wage or salary history satisfy minimum or maximum criteria.¹⁸

The District does not request or require a wage or salary history as a condition of being considered for employment, being interviewed, continuing to be considered for an offer of employment, an offer of employment, or an offer of compensation.¹⁹

The District does not request or require an applicant to disclose wage or salary history as a condition of employment.²⁰

The District does not ask an applicant or applicant's current or previous employers about wage or salary history, including benefits or other compensation.²¹

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.²²

The District does not request of an applicant or employee access in any manner to his or her personal online account, such as social networking websites, including a request for passwords to such accounts.²³

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

¹⁷ Employee Credit Privacy Act, 820 ILCS 70/10. This Act allows inquiries into an applicant's credit history or credit report or ordering or obtaining an applicant's credit report from a consumer reporting agency when a satisfactory credit history is an *established bona fide occupational requirement* of a particular position. The Act identifies circumstances that permit a satisfactory credit history to be a job requirement, such as, the position's duties include custody of or unsupervised access to cash or marketable assets valued at \$2,500 or more.

¹⁸ 820 ILCS 112/10(b-5). If an employer violates this subsection, the employee may recover in a civil action any damages incurred, special damages up to \$10,000, injunctive relief, and costs and reasonable attorney's fees. 820 ILCS 112/30(a-5).

¹⁹ *Id.*

²⁰ *Id.*

²¹ 820 ILCS 112/10(b-10). **Note:** Attorneys caution that using the exceptions in 820 ILCS 112/10(b-10)(1) and (2) may trigger litigation. Violating this subsection entitles an employee to recover in a civil action any damages incurred, special damages up to \$10,000, injunctive relief, and costs and reasonable attorney's fees. 820 ILCS 112/30(a-5).

A school board that wishes to preserve these exceptions should consult its board attorney; then they may supplement number 5 by adding the following after "compensation":

unless the applicant's wage or salary history is a matter of public record, or is contained in a document completed by the applicant's current or former employer and then made available to the public by the employer, or then submitted or posted by the employer to comply with State or federal law; or the applicant is a current employee applying for a position with the same current employer.

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

²³ *Id.* at 55/10(b)(6)(B) (commonly known as the *Facebook Password Law*). A *personal online account* is defined as an online account used primarily by a person for personal purposes. *Personal online account* does not include an account created, maintained, used, or accessed for the business purpose of a person's employer or prospective employer. *Id.* at 55/10(b)(5). Bracketed explanations follow the statutory language:

"Nothing in this subsection shall prohibit or restrict an employer from complying with a duty to screen employees or applicants prior to hiring...provided that the password, account information, or access sought by the employer only relates to an online account that:

(A) an employer supplies or pays; or

(B) an employee creates or maintains on behalf of under the direction of an employer in connection with that employee's employment."

The District provides equal employment opportunities to all persons. See policy 5:10, *Equal Employment Opportunity and Minority Recruitment*.

Sexual Misconduct Related Employment History Review (EHR) ²⁴

Prior to hiring an applicant for a position involving *direct contact with children or students*, the Superintendent shall ensure that an EHR is performed as required by State law. When the applicant is a superintendent candidate, the Board President shall ensure that the EHR is initiated before a successful superintendent candidate is offered employment by the Board.

Physical Examinations ²⁵

Each new employee must furnish evidence of physical fitness to perform assigned duties and freedom from communicable disease. The physical fitness examination must be performed by a physician licensed in Illinois, or any other state, to practice medicine and surgery in any of its branches, a licensed advanced practice registered nurse, or a licensed physician assistant who has been delegated the authority by his or her supervising physician to perform health examinations. The employee must have the physical examination performed no more than 90 days before submitting evidence of it to the District.

Any employee may be required to have an additional examination by a physician who is licensed in Illinois to practice medicine and surgery in all its branches, a licensed advanced practice registered nurse, or a licensed physician assistant who has been delegated the authority by his or her supervising

[Based on this explanation, it is implausible that an applicant would have an account, service, or profile for business purposes of a school employer.]

The statute specifically permits an employer to: (1) maintain workplace policies governing the use of the employer's electronic equipment, including policies regarding Internet use, social networking site use, and electronic mail use; and (2) monitor usage of the employer's (district's) electronic equipment and electronic mail. The statute also states that it does *not prohibit* an employer from obtaining information about an applicant or an employee that is in the public domain or that is otherwise obtained in compliance with the statute. Finally, the statute does not apply to all types of personal technology that employees may use to communicate with students or other individuals, such as text messages on a personal phone. Consult the board attorney about these issues.

²⁴ 105 ILCS 5/22-94, added by P.A. 102-702, eff. 7-1-23. See administrative procedure 5:30-AP3, *Sexual Misconduct Related Employment History Review (EHR)*, for the process, timing, and positions requiring an EHR. See policy 4:60, *Purchases and Contracts*, and administrative procedure 4:60-AP4, *Sexual Misconduct Related Employment History Review (EHR) of Contractor Employees*, for EHR requirements for employees of contractors who have *direct contact with children or students*.

²⁵ 105 ILCS 5/24-5. According to this statute, a new or existing employee or substitute teacher employee may be subject to additional health examinations, including tuberculosis screening, as required by rules adopted by the Ill. Dept. of Public Health (IDPH) or by order of a local public health official. The IDPH 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. ADA, 42 U.S.C. §12112(d)(2); see also ¶n 8 for an explanation regarding the ADA. Districts may condition an employment offer on taking and passing medical inquiries or physical exams, provided that all entering employees in the same classification receive the same conditional offer.

physician to perform health examinations, if the examination is job-related and consistent with business necessity.²⁶ 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*.

LEGAL REF.: 42 U.S.C. §12112, Americans with Disabilities Act; 29 C.F.R. Part 1630.
15 U.S.C. § 1681 et seq., Fair Credit Reporting Act.
8 U.S.C. §1324a et seq., Immigration Reform and Control Act.
105 ILCS 5/10-16.7, 5/10-20.7, 5/10-21.4, 5/10-21.9, 5/10-22.34, 5/10-22.34b,
5/21B-10, 5/21B-80, 5/21B-85, 5/22-6.5, 5/22-94, and 5/24-5.
20 ILCS 2630/3.3, Criminal Identification Act.
820 ILCS 55/, Right to Privacy in the Workplace Act.
820 ILCS 70/, Employee Credit Privacy Act.
Duldulao v. St. Mary of Nazareth Hospital, 136 Ill. App. 3d 763 (1st Dist. 1985),
aff'd in part and remanded 115 Ill.2d 482 (Ill. 1987).
Kaiser v. Dixon, 127 Ill. App. 3d 251 (2nd Dist. 1984).
Molitor v. Chicago Title & Trust Co., 325 Ill. App. 124 (1st Dist. 1945).

CROSS REF.: 2:260 (Uniform Grievance Procedure), 3:50 (Administrative Personnel Other Than the Superintendent), 4:60 (Purchases and Contracts), 4:175 (Convicted Child Sex Offender; Screening; Notifications), 5:10 (Equal Employment Opportunity and Minority Recruitment), 5:40 (Communicable and Chronic Infectious Disease), 5:90 (Abused and Neglected Child Reporting), 5:120 (Employee Ethics; Code of Professional Conduct; and Conflict of Interest), 5:125 (Personal Technology and Social Media; Usage and Conduct), 5:220 (Substitute Teachers), 5:280 (Duties and Qualifications)

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

²⁶ The State law (105 ILCS 5/24-5) allowing boards to require physicals of current employees "from time to time," is superseded by the ADA. 42 U.S.C. §12112(d)(4). The ADA allows medical inquiries of current employees only when they are job-related and consistent with business necessity or part of a voluntary employee wellness program. Id. Districts may deny jobs to individuals with disabilities who pose a direct threat to the health or safety of others in the workplace, provided that a reasonable accommodation would not either eliminate the risk or reduce it to an acceptable level. 42 U.S.C. §12113; 29 C.F.R. §1630.2(r). See f/n 8 for an explanation regarding the ADA.

See f/n 25 for a discussion of examinations by spiritual leaders/practitioners.