

General Personnel

Hiring Process and Criteria 1

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

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

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~~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. (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.~~

~~5 105 ILCS 5/10-21.9(c); 105 ILCS 5/21B-80, amended by P.A. 99-667, 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.~~

~~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.):~~

~~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.~~

~~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/pdf/found_prin.pdf.~~

~~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.~~

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

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

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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.

A job description is evidence of a position's *essential functions*. ~~(29 C.F.R. §1630.2(n)).~~ The Americans with Disabilities Act (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 makes 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. ~~The final regulations were by a bipartisan vote and approved on 3-25-11.~~ 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. See administrative procedure 5:30-AP2, *Investigations*, for the process and positions requiring criminal background investigation. The Statewide Sex Offender Database (a/k/a Sex Offender Registry) is available at: www.isp.state.il.us/sor. The Statewide Murderer and Violent Offender Against Youth Database is available at: www.isp.state.il.us/cmvof/. See policy 4:60, *Purchases and Contracts*, for requirements concerning criminal background checks of employees of contractors who have direct, daily contact with 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, including the federal *Rap Back Service* (20 ILCS 2630/3.3, added by P.A. 100-718) 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 schools, state Educator Preparation and Licensure Board, any other person necessary to the hiring decision, or for clarification purposes, the Ill. Dept. of State Police and/or Statewide Sex Offender Registry.

hiring decision, or for purposes of clarifying the information, the ~~Ill. Department-Dept.~~ of State Police and/or Statewide Sex Offender Database. **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 an Immigration and Naturalization Service 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 Section 5/21B-80 of the School Code or who falsifies, or omits facts from, his or her employment application or other employment documents.

The Superintendent shall ensure that the District does not engage in any investigation or inquiry prohibited by law and complies with each of the following: **14**

1. The District uses an applicant's credit history or report from a consumer reporting agency only when a satisfactory credit history is an established bona fide occupational requirement of a particular position. **15**
2. The District does not ask an applicant or applicant's previous employers about claim(s) made or benefit(s) received under the Workers' Compensation Act. **16**
3. 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 ~~sites~~accounts. **17**

Commented [DJ1]: This language and the footnotes have been revised to more closely align to the legislative changes made by P.A. 99-610.

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

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

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 55/3). 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 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 ..."

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

16 Right to Privacy in the Workplace Act, 820 ILCS 55/10(a), amended by P.A. 99-610, ~~eff. 1-1-17.~~

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

Physical Examinations 18

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, or an advanced practice nurse who has a written collaborative agreement with a collaborating physician that authorizes the advanced practice nurse to perform health examinations, or a physician assistant who has been delegated the authority by his or her supervising physician to perform health examinations. The employee must have the physical examination 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, or an advanced practice nurse who has a written collaborative agreement with a collaborating physician that authorizes the advanced practice nurse to perform health examinations, or a physician assistant who has been delegated the authority

~~17~~ Id. at 55/10(b)(~~6~~)(B); amended by P.A. 99-610, ~~eff. 1-1-17~~ (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. ~~professional account.~~ Id. at 55/10(b)(5), amended by P.A. 99-610, ~~eff. 1-1-17~~. A professional account is defined as "an account, service, or profile created, maintained, used, or accessed by a current or prospective employee for business purposes of the employer." Bracketed explanations follow the statutory language:

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

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

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

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

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

18 105 ILCS 5/24-5. According to this statute, "[a] new or existing employee may be subject to additional health examinations, including tuberculosis screening, as required by rules adopted by the Ill. Dept. of Public Health or by order of a local public health official." The Ill. Dept. of Public Health does not require school employees to be screened for tuberculosis other than workers in child day care and preschool settings. (77 Ill.Admin.Code §696.140(a)(3)).

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

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

Federal law limits pre-employment medical inquiries to whether the applicant is able to perform job-related functions; required medical examinations of applicants is forbidden. (American with Disabilities Act (ADA), 42 U.S.C. §12112(d)(2)); see also f/n 87 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.

by his or her supervising physician to perform health examinations, if the examination is job-related and consistent with business necessity.¹⁹ 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.: 105 ILCS ~~5/10-16.7, 5/10-20.7, 5/10-21.4, 5/10-21.9, 5/21B-10, 5/21B-80, 5/10-22.34, 5/10-22.34b, 5/22-6.5, -and 5/24-5.~~
~~20 ILCS 2630/3.3. Criminal Identification Act.~~
~~820 ILCS 55/, Right to Privacy in the Workplace Act.~~
~~Employee Credit Privacy Act, 820 ILCS 70/, Employee Credit Privacy Act.~~
~~Right to Privacy in the Workplace Act, 820 ILCS 55/.~~
Americans with Disabilities Act, 42 U.S.C. §12112, and 29 C.F.R. Part 1630.
Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq.
Immigration Reform and Control Act, 8 U.S.C. §1324a et seq.
~~105 ILCS 5/10-16.7, 5/10-20.7, 5/10-21.4, 5/10-21.9, 5/21B-10, 5/21B-80, 5/10-22.34, 5/10-22.34b, 5/22-6.5, and 5/24-1 et seq.~~
~~820 ILCS 55/ and 70/.~~
Duldulao v. St. Mary of Nazareth Hospital, 136 Ill. App. 3d 763 (1st Dist. 1985)483 N.E.2d 956 (Ill.App.1, 1985), aff'd in part and remanded 115 Ill.2d 482505 N.E.2d 314 (Ill., 1987).
Kaiser v. Dixon, 127 Ill. App. 3d 251 (2nd Dist. 1984)468 N.E.2d 822 (Ill.App.2, 1984).
Molitor v. Chicago Title & Trust Co., 325 Ill. App. 124 (1st Dist. 1945)59 N.E.2d 695 (Ill.App.1, 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), 5:125 (Personal Technology and Social Media; Usage and Conduct), 5:220 (Substitute Teachers), 5:280 (Educational Support Personnel - Duties and Qualifications)

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~~¹⁹ The State law (105 ILCS 5/24-5) allowing boards to require physicals of current employees "from time to time," has is been superseded by federal law (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. Part 1630.2(r)). See f/n ~~87~~ for an explanation regarding the ADAAA.~~

~~See the f/n ~~186~~ for a discussion of examinations by spiritual leaders/practitioners.~~