

## School Board

### Board Member Conflict of Interest 1

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

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

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

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

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

A board member does not have a prohibited interest in a contract with the district he or she serves "if the board member is an employee of a business that is involved in the transaction of business with the school district, provided that the board member has no financial interests other than as an employee," (105 ILCS 5/10-9, amended by P.A. 96-998).

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

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

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

<sup>3</sup> 5 ILCS 420/4A-101 and 4A-105 through 107, amended by P.A. 96-1336. Any county clerk may ~~use~~ implement a ~~mandatory~~ system of Internet-based filing ~~of for~~ economic interest statements ~~;-if done~~, but must allow filers the option to use a standardized form (5 ILCS 420/4A-108, amended by P.A. 97-212). If an Internet-based filing system is used, the clerk must post the statements, without the filers' addresses, of the filers, on a publicly accessible website. (5 ILCS 420/4A-108, added by P.A. 96-1336, eff. 1-1-11);Id.)

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

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

## School Board

### Board Member Development 1

The School Board desires that its individual members learn, understand, and practice effective governance principles. <sup>2</sup> The Board is responsible for Board member orientation and development. Board members have an equal opportunity to attend State and national meetings designed to familiarize members with public school issues, governance, and legislation.

The Board President and/or Superintendent shall provide all Board members with information regarding pertinent education materials, publications, and notices of training or development.

### Mandatory Board Member Training 3

Each Board member is responsible for his or her own compliance with the mandatory training laws that are described below:

1. Each Board member taking office after June 13, 2011 must complete at least 4 hours of professional development leadership training in education and labor law, financial oversight and accountability, and fiduciary responsibilities within the first year of his or her first term that begins after that date. <sup>4</sup>
2. Each Board member who was in office on January 1, 2012 must complete training on the Open Meetings Act within one year of that date. Each Board member taking office after January 1, 2012 must complete this training no later than 90 days after taking the oath of office. After completing the training, each Board member must file a copy of his or her certificate of completion with his or her Board. <sup>5</sup>
3. After the District's implementation of the Performance Evaluation Reform Act (PERA) evaluations, each Board member must complete a training program on PERA evaluations

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<sup>1</sup> ~~This optional policy is up to the local board's discretion. State law governs the mandatory board member training provisions in this sample policy.~~

<sup>2</sup> The IASB *Foundational Principles of Effective Governance* is available online at [www.iasb.com](http://www.iasb.com).

<sup>3</sup> ~~A board may omit the description of mandatory training requirements by deleting "that are described below" and deleting the numbered list.~~

<sup>4</sup> 105 ILCS 5/10-16a, added by P.A. 97-8. The statute provides two deadlines for compliance but only the most applicable is used in the policy. To include the second deadline, substitute the following sentence for #1:

Any board member who takes office after June 13, 2011 must complete at least 4 hours of training in education and labor law, financial oversight and accountability, and fiduciary responsibilities within a year after June 13, 2011 or within the first year of his or her first term that begins after that date.

IASB is an authorized provider of this training.

<sup>5</sup> 5 ILCS 120/1.05(b) and (c), amended by P.A. 97-504. IASB is an authorized provider of this training.

before participating in a vote on a dismissal based on an optional alternative evaluative dismissal process. 6

The Superintendent or designee shall maintain on the District website a log identifying the complete training and development activities of each Board member, including both mandatory and non-mandatory training. 7

#### Board Self-Evaluation

The Board will conduct periodic self-evaluations with the goal of continuous improvement. 8

#### New Board Member Orientation 9

The orientation process for newly elected or appointed Board members includes:

1. The Board President or Superintendent, or their designees, shall give each new Board member a copy of or online access to the Board Policy Manual, the Board's regular meeting minutes for the past year, and other helpful information including material describing the District and explaining the Board's roles and responsibilities.
2. The Board President or designee shall schedule one or more special Board meetings, or schedule time during regular meetings, for Board members to become acquainted and to review Board processes and procedures.
3. The Board President may request a veteran Board member to mentor a new member. 10
4. All new members are encouraged to attend workshops for new members conducted by the Illinois Association of School Boards.

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6 105 ILCS 5/24-16.5, added by P.A. 97-8. This mandatory training requirement will be phased-in as districts phase-in teacher evaluations that incorporate student growth, otherwise known as Performance Evaluation Reform Act (PERA) evaluations. The implementation timeline for PERA evaluations varies from district to district but will be one of the following: (a) the date in an applicable grant agreement; (b) beginning Sept. 1, 2015 for those districts whose student performance ranks in the lowest 20% among all districts of their type; and (c) beginning Sept. 1, 2016 for all remaining districts. After the implementation of PERA evaluations, a district may use an optional alternative evaluative dismissal process using the PERA evaluation. Before voting on a dismissal based upon an optional alternative evaluative dismissal process, a board member must complete a training program on PERA evaluations.

7 105 ILCS 5/10-16a, added by P.A. 97-8, requires each school district to post on its website, if any, the names of all board members who have completed the minimum of 4 hours of training described in #1. Recognizing that a board may want to highlight all training and development achievements, the sample policy extends this reporting requirement to all training and development activities. For a website reporting template, see 2:120-E2, *Website Listing of Development and Training Completed by Board Members*.

A board may choose to strictly follow the statute by using the following alternative: "The Superintendent or designee shall post on the District website the names of all Board members who have completed the professional development leadership training described in number 1, above."

**8** Boards are not required to conduct self-evaluations, but may hold a closed meeting with representatives of a State association authorized under Article 23 of the School Code for the purpose of discussing self-evaluation practices and procedures, or professional ethics (5 ILCS 120/2(B)(6)).

**9** New board member orientation is a critical step in helping new board members become effective and in promoting a smooth functioning *new team*. The first paragraph should be customized to add references to the IASB policy services that the district receives (e.g., **PRESS, PRESS Online, School Board Policies Online, and PRESS Plus**).

**10** See 2:120-E, *Guidelines for Serving as a Mentor to a New School Board Member*.

### Candidates

The Superintendent or designee shall invite all current candidates for the office of Board member to attend: (1) Board meetings, except that this invitation shall not extend to any closed meetings, and (2) pre-election workshops for candidates.

LEGAL REF.: 5 ILCS 120/[1.05 and 120/2.](#)  
[105 ILCS 5/10-16a and 5/24-16.5.](#)

CROSS REF.: 2:80 (Board Member Oath and Conduct), 2:125 (Board Member Expenses),  
2:200 (Types of School Board Meetings)

## School Board

### **Exhibit - Website Listing of Development and Training Completed by Board Members**

*District webmaster: Post this template (including the explanatory paragraphs) on the District's website and update the table as information is provided.*

All Illinois school board members must receive training in *professional development leadership* (P.A. 97-8) and the *Open Meetings Act* (P.A. 97-504). Mandatory training will also be required after the new teacher evaluation requirements are implemented in each school district. For additional information, see Board policy 2:120, *Board Member Development*.

The following table contains mandatory and non-mandatory training and development activities that were completed by each Board member. When the training was provided by the Illinois Association of School Boards, the acronym "IASB" follows the listed activity.

Name	Development and Training Activity and Provider	Date Completed (beginning in 2012 unless otherwise noted)

The Illinois Association of School Boards (IASB) is a voluntary organization of local boards of education dedicated to strengthening the Illinois public schools through local citizen control. Although not a part of State government, IASB is organized by member school boards as a private not-for-profit corporation under authority granted by Article 23 of the School Code. The mission of the IASB is excellence in local school governance in support of quality public education.

For more information regarding IASB and its programs visit [www.iasb.com](http://www.iasb.com).

**School Board**

**Mailing Lists for Receiving Board Material 1**

The Superintendent shall maintain a mailing list of the people who have made a written request to receive any of the items listed below. The Superintendent shall mail copies of the following, provided they have pre-paid the subscription fee, to the mailing list at least one year:



- School Board Agenda
- Budgets
- Audits
- Official Board minutes (mailed within 10 days after approval)

The Superintendent shall annually set the subscription fee in an amount sufficient to cover reproduction and mailing costs. The subscription period shall be the same as the District's fiscal year. 3

LEGAL REF.: 105 ILCS 5/10-21.6.

CROSS REF.: 2:220 (School Board Meeting Procedure)

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- 1 State or federal law controls this policy's content.
- 2 The contents of this policy are required by 105 ILCS 5/10-21.6.
- 3 This paragraph is optional (105 ILCS 5/10-21.6). Boards may, but are not required to, charge a subscription fee.

## School Board

### Types of School Board Meetings 1

#### General

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

The Superintendent is designated on behalf of the Board and each Board committee to receive the training on compliance with the Open Meetings Act that is ~~administered~~ required by ~~the Illinois Attorney General’s Public Access Counselor~~ Section 1.05(a) of that Act. The Superintendent may identify other employees to receive the training. <sup>4</sup> Each Board member ~~is encouraged to take the~~ must complete a course of training once during his or her term on the Open Meetings Act as required by Section 1.05(b) or her term (c) of that Act. <sup>5</sup>

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

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

<sup>3</sup> State law only requires that meetings be held in a location convenient and open to the public and no open meeting is allowed to be held on a legal holiday unless the regular meeting day falls on that holiday (5 ILCS 120/2.01). With limited exceptions, any person may record an open meeting (5 ILCS 120/2.05). See policy 2:220, *School Board Meeting Procedure*.

<sup>4</sup> Each board must designate at least one employee or member to receive training on compliance with OMA (5 ILCS 120/1.05). Revise this paragraph if the board designates other individual(s) to receive the training. A list of designated individual(s) must be submitted to the Attorney General’s Public Access Counselor. ~~By July 1, 2010, the designated individual(s) must successfully complete an electronic training curriculum administered by the Attorney General’s Public Access Counselor within 30 days after that designation, and thereafter must successfully complete an annual training program. Whenever a public body designates an additional employee or member to receive this training, that person must successfully complete the electronic training curriculum within 30 days after that designation.~~ The OMA does not specify duties for the designated individuals who receive the training but presumably they would assist the board in its OMA compliance efforts. ~~Recognizing that compliance with the OMA is a shared responsibility of board members, the sample policy urges each member to take the training. This sentence may be deleted or replaced by:~~

~~Alternative 1: Each Board member will, if possible, also take the training even though no Board member is specifically designated.~~

~~Alternative 2: Each Board member may also take the training [continue as in the alternative above].~~

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



## Regular Meetings

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

A meeting agenda shall be posted at the District's main office and the Board's meeting room, or other location where the meeting is to be held, at least 48 hours before the meeting. <sup>8</sup> Items not specifically on the agenda may still be considered during the meeting. <sup>9</sup>

## Closed Meetings

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

1. The appointment, employment, compensation, discipline, performance, or dismissal of specific employees of the public body or legal counsel for the public body, including hearing testimony on a complaint lodged against an employee of the public body or against legal counsel for the public body to determine its validity. 5 ILCS 120/2(c)(1).
2. Collective negotiating matters between the public body and its employees or their representatives, or deliberations concerning salary schedules for one or more classes of employees. 5 ILCS 120/2(c)(2).
3. The selection of a person to fill a public office, as defined in the Open Meetings Act, including a vacancy in a public office, when the public body is given power to appoint under law or ordinance, or the discipline, performance or removal of the occupant of a public office, when the public body is given power to remove the occupant under law or ordinance. 5 ILCS 120/2(c)(3).
4. Evidence or testimony presented in open hearing, or in closed hearing where specifically authorized by law, to a quasi-adjudicative body, as defined in the Open Meetings Act, provided that the body prepares and makes available for public inspection a written decision setting forth its determinative reasoning. 5 ILCS 120/2(c)(4).
5. The purchase or lease of real property for the use of the public body, including meetings held for the purpose of discussing whether a particular parcel should be acquired. 5 ILCS 120/2(c)(5).

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

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

<sup>8</sup> 5 ILCS 120/2.02.

<sup>9</sup> Id. On January 24, 2002, in a non-school case, the Ill. Appellate Court held that the OMA prohibits a board from voting on a matter at a regular meeting that is not on the agenda (Rice v. Board of Trustees, Adams Co., 762 N.E.2d 1205 (Ill.App.4, 2002)). Consult the board attorney for guidance. The posting location should be modified, if necessary, to comply with the law's requirement that the agenda be posted at the district's main office. The agenda's format is up to the board.

6. The setting of a price for sale or lease of property owned by the public body. 5 ILCS 120/2(c)(6).
7. The sale or purchase of securities, investments, or investment contracts. 5 ILCS 120/2(c)(7).
8. Security procedures and the use of personnel and equipment to respond to an actual, a threatened, or a reasonably potential danger to the safety of employees, students, staff, the public, or public property. 5 ILCS 120/2(c)(8).
9. Student disciplinary cases. 5 ILCS 120/2(c)(9).
10. The placement of individual students in special education programs and other matters relating to individual students. 5 ILCS 120/2(c)(10).
11. Litigation, when an action against, affecting or on behalf of the particular public body has been filed and is pending before a court or administrative tribunal, or when the public body finds that an action is probable or imminent, in which case the basis for the finding shall be recorded and entered into the minutes of the closed meeting. 5 ILCS 120/2(c)(11).
12. The establishment of reserves or settlement of claims as provided in the Local Governmental and Governmental Employees Tort Immunity Act, if otherwise the disposition of a claim or potential claim might be prejudiced, or the review or discussion of claims, loss or risk management information, records, data, advice or communications from or with respect to any insurer of the public body or any intergovernmental risk management association or self insurance pool of which the public body is a member. 5 ILCS 120/2(c)(12).
13. Self evaluation, practices and procedures or professional ethics, when meeting with a representative of a statewide association of which the public body is a member. 5 ILCS 120/2(c)(16). **10**
14. Discussion of minutes of meetings lawfully closed under the Open Meetings Act, whether for purposes of approval by the body of the minutes or semi-annual review of the minutes as mandated by Section 2.06. 5 ILCS 120/2(c)(21).
15. Meetings between internal or external auditors and governmental audit committees, finance committees, and their equivalents, when the discussion involves internal control weaknesses, identification of potential fraud risk areas, known or suspected frauds, and fraud interviews conducted in accordance with generally accepted auditing standards of the United States of America. 5 ILCS 120/2(c)(28). **11**

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

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

**11** P.A. 97-318.

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

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

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

#### Reconvened or Rescheduled Meetings

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

#### Special Meetings

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

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

No matters will be discussed, considered, or brought before the Board at any special meeting other than such matters as were included in the stated purpose of the meeting. **18**

#### Emergency Meetings

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

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

**13** Id.

**14** 5 ILCS 120/2(e).

**15** 5 ILCS 120/2.02.

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

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

**18** Id. and 5 ILCS 120/2.02. The validity of any board action that is germane to a subject on the agenda is not affected by other errors or omissions in the agenda (Id.).

**19** 5 ILCS 120/2.02(a).

Posting on the District Website **20**

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

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

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

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

## School Board

### Exhibit - Motion to Adjourn to Closed Meeting

#### **Motion to Adjourn to Closed Meeting**

Date: \_\_\_\_\_ Time: \_\_\_\_\_

Location: \_\_\_\_\_

A motion was made by \_\_\_\_\_, and seconded by \_\_\_\_\_, to adjourn to closed meeting to discuss:

- The appointment, employment, compensation, discipline, performance, or dismissal of specific employees of the District or legal counsel for the District, including hearing testimony on a complaint lodged against an employee or against legal counsel for the District to determine its validity. 5 ILCS 120/2(c)(1).
- Collective negotiating matters between the District and its employees or their representatives, or deliberations concerning salary schedules for one or more classes of employees. 5 ILCS 120/2(c)(2).
- The selection of a person to fill a public office, including a vacancy in a public office, when the District is given power to appoint under law or ordinance, or the discipline, performance or removal of the occupant of a public office, when the District is given power to remove the occupant under law or ordinance. 5 ILCS 120/2(c)(3).
- Evidence or testimony presented in open hearing, or in closed hearing where authorized by law, to a quasi-adjudicative body, as defined in the Open Meetings Act, provided that the body prepares and makes available for public inspection a written decision with its determinative reasoning. 5 ILCS 120/2(c)(4).
- The purchase or lease of real property for the use of the District, including meetings held for the purpose of discussing whether a particular parcel should be acquired. 5 ILCS 120/2(c)(5).
- The setting of a price for sale or lease of property owned by the District. 5 ILCS 120/2(c)(6).
- The sale or purchase of securities, investments, or investment contracts. 5 ILCS 120/2(c)(7).
- Security procedures and the use of personnel and equipment to respond to an actual, a threatened, or a reasonably potential danger to the safety of employees, students, staff, the public, or public property. 5 ILCS 120/2(c)(8).
- Student disciplinary cases. 5 ILCS 120/2(c)(9).
- The placement of individual students in special education programs and other matters relating to individual students. 5 ILCS 120/2(c)(10).
- Litigation, when an action against, affecting or on behalf of the particular District has been filed and is pending before a court or administrative tribunal, or when the District finds that an action is probable or imminent, in which case the basis for the finding shall be recorded and entered into the closed meeting minutes. 5 ILCS 120/2(c)(11).
- The establishment of reserves or settlement of claims as provided in the Local Government and Governmental Employees Tort Immunity Act, if otherwise the disposition of a claim or potential claim might be prejudiced, or the review or discussion of claims, loss or risk management information, records, data, advice or communications from or with respect to any insurer of the District or any intergovernmental risk management association or self insurance pool of which the District is a member. 5 ILCS 120/2(c)(12).
- Self-evaluation, practices and procedures or professional ethics, when meeting with a representative of a statewide association of which the District is a member. 5 ILCS 120/2(c)(16).
- Discussion of minutes of meetings lawfully closed, whether for purposes of approval by the body of the minutes or semi-annual review of the minutes as mandated by Section 2.06. 5 ILCS 120/2(c)(21).
- Meetings between internal or external auditors and governmental audit committees, finance committees, and their equivalents, when the discussion involves internal control weaknesses, identification of potential fraud risk areas, known or suspected frauds, and fraud interviews conducted in accordance with generally accepted auditing standards of the United States of America. 5 ILCS 120/2(c)(28), amended by P.A. 97-318.

**Closed Meeting Roll Call:**

“Yeas”	“Nays”
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**Motion:**  Carried     Failed

## School Board

### **Exhibit - Log of Closed Meeting Minutes**

The purpose of this log is to facilitate the Board’s semi-annual review of closed meeting minutes. See 2:220-E5, *Semi-Annual Review of Closed Meeting Minutes*.

The Board Secretary or Recording Secretary shall maintain a list of closed meeting minutes, arranged according to the reason for the closed meeting, that have not been released for public inspection.

<b>Closed Session Held to Discuss:</b>	<b>Dates of Closed Sessions</b>		
Specific employee(s) or District legal counsel. 5 ILCS 120/2(c)(1).			
Collective negotiating matters or deliberations concerning salary schedules for one or more classes of employees. 5 ILCS 120/2(c)(2).			
Selection of a person to fill a vacancy on the Board. 5 ILCS 120/2(c)(3).			
Evidence or testimony presented in a hearing where authorized by law. 5 ILCS 120/2(c)(4).			
Purchase or lease of real property. 5 ILCS 120/2(c)(5).			
Setting of a price for sale or lease of District property. 5 ILCS 120/2(c)(6).			
Sale or purchase of securities, investments, or investment contracts. 5 ILCS 120/2(c)(7).			
Security procedures and the use of personnel and equipment to respond to an actual, a threatened, or a reasonably potential danger. 5 ILCS 120/2(c)(8).			

Closed Session Held to Discuss:	Dates of Closed Sessions		
Student disciplinary cases. 5 ILCS 120/2(c)(9). <i>Minutes of meetings held for this reason shall never be released to protect the individual student's privacy.</i>			
Any matter involving an individual student. 5 ILCS 120/2(c)(10). <i>Minutes of meetings held for this reason shall never be released to protect the individual student's privacy.</i>			
Litigation, when an action against, affecting, or on behalf of the District has been filed and is pending before a court or administrative tribunal, or when the Board finds that an action is probable or imminent. 5 ILCS 120/2(c)(11).			
Establishment of reserves or settlement of claims as provided in the Local Government and Governmental Employees Tort Immunity Act or discussion of claims, loss or risk management information, records, data, advice or communications from or with respect to any insurer of the District or any intergovernmental risk management association or self insurance pool. 5 ILCS 120/2(c)(12).			
Self-evaluation, practices and procedures or professional ethics, when meeting with an IASB representative. 5 ILCS 120/2(c)(16).			
Minutes of meetings lawfully closed, whether for purposes of approval or semi-annual review. 5 ILCS 120/2(c)(21).			
<u>Meetings between internal or external auditors and governmental audit committees, finance committees, and their equivalents, when the discussion involves internal control weaknesses, identification of potential fraud risk areas, known or suspected frauds, and fraud interviews conducted in accordance with generally accepted auditing standards of the United States of America. 5 ILCS 120/2(c)(28).</u>			



## School Board

### Uniform Grievance Procedure 1

A student, parent/guardian, employee, or community member should notify any District Complaint Manager if he or she believes that the School Board, its employees, or agents have violated his or her rights guaranteed by the State or federal Constitution, State or federal statute, or Board policy, or have a complaint regarding any one of the following:

1. Title II of the Americans with Disabilities Act <sup>2</sup>
2. Title IX of the Education Amendments of 1972
3. Section 504 of the Rehabilitation Act of 1973
4. Title VI of the Civil Rights Act, 42 U.S.C. §2000d et seq.
5. Equal Employment Opportunities Act (Title VII of the Civil Rights Act), 42 U.S.C. §2000e et seq.
6. Sexual harassment (Illinois Human Rights Act, Title VII of the Civil Rights Act of 1964, and Title IX of the Education Amendments of 1972) <sup>3</sup>

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

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

A grievance procedure is required by many civil rights acts and implementing regulations, including those listed. This policy consolidates all board grievance procedures into one policy, except those contained in collective bargaining agreements. See the cross references for the policies referring to uniform grievance procedure.

Employee grievance procedures are a mandatory subject of bargaining and cannot be changed without the employee exclusive representative's consent. This policy is in addition to, and not a substitute for, the employee grievance procedure contained in a collective bargaining agreement.

Attorneys disagree whether the Individuals with Disabilities Education Act (IDEA) should be included in the list of statutes that may serve as the basis of a grievance. Many believe that IDEA provides the exclusive remedy; others believe that including IDEA allows parents an opportunity to get their position before the board. Unique and specific complaint resolution mechanisms are expressly provided under IDEA, Article 14 of the School Code, and their respective implementing regulations. These mechanisms follow: (1) IDEA at 20 U.S.C. §1415 (procedural safeguards-mediation and due process); (2) IDEA regulations at 34 C.F.R. §§300.151-300.153 (state complaints), 300.506 (mediation), and 300.507 et seq. (due process); (3) School Code at §§14/8.02a (mediation and due process) and 14/8.02b (expedited due process); and (4) special education regulations at 23 Ill.Admin.Code §§226.560 (State complaints), 226.570 (mediation), and Subpart G (due process). A board that would like to include IDEA should consult the board attorney.

<sup>2</sup> The Americans with Disabilities Act Amendments Act (ADAAA), Pub. L. 110-325, made significant changes to the Americans with Disabilities Act's definition of disability by broadening the scope of coverage. ADAAA also overturned a series of U.S. Supreme Court decisions that interpreted the Americans with Disabilities Act of 1990 in a way that made it difficult to prove that impairments were a disability. EEOC's regulations, 29 C.F.R. Part 1630, can be found at: [www.eeoc.gov/laws/types/disability\\_regulations.cfm](http://www.eeoc.gov/laws/types/disability_regulations.cfm).

Boards should consult with their attorneys regarding how the ADAAA and its implementing regulations impact their districts.

7. Bullying, 105 ILCS 5/27-23.7 <sup>4</sup>
8. Misuse of funds received for services to improve educational opportunities for educationally disadvantaged or deprived children <sup>5</sup>
9. Curriculum, instructional materials, and/or programs
10. Victims' Economic Security and Safety Act, 820 ILCS 180
11. Illinois Equal Pay Act of 2003, 820 ILCS 112
12. Provision of services to homeless students
13. Illinois Whistleblower Act, 740 ILCS 174/. <sup>6</sup>
14. Misuse of genetic information (Illinois Genetic Information Privacy Act (GIPA), 410 ILCS 513/ and Titles I and II of the Genetic Information Nondiscrimination Act (GINA), 42 U.S.C. §2000ff et seq.) <sup>7</sup>

<sup>3</sup> Consult the board attorney to ensure the district's non-discrimination coordinator and complaint managers are trained to appropriately respond to allegations of discrimination based upon bullying and/or sexual violence under Title IX's sexual harassment umbrella. The U.S. Dept. of Education's guidance states that while acts of sexual violence are crimes, they may also be discrimination under Title IX. Many attorneys agree these guidance documents are a heads-up to schools to ensure appropriate responses and training to these issues. The guidance documents highlight appropriate responses to sexual violence under Title IX. They are titled as follows: (1) *Dear Colleague Letter: Sexual Violence Background, Summary, and Fast Facts*, 111 LRP 23852 (OCR 04/04/11) and available at: [www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.html](http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.html), and (2) *Dear Colleague Letter: Harassment and Bullying*, 55 IDELR 174 (OCR 10/26/10) and available at: [www2.ed.gov/about/offices/list/ocr/docs/dcl-factsheet-201010.html](http://www2.ed.gov/about/offices/list/ocr/docs/dcl-factsheet-201010.html), and (3) *Revised Sexual Harassment Guidance: Harassment of Student by School Employees, Other Students, or Third Parties, January 2001*, at [www2.ed.gov/offices/OCR/archives/pdf/shguide.pdf](http://www2.ed.gov/offices/OCR/archives/pdf/shguide.pdf).

<sup>4</sup> All districts must have a policy on bullying (105 ILCS 5/27-23.7). See policy 7:180, *Preventing Bullying, Intimidation, and Harassment*. The inclusion of *bullying* in the list of topics that may serve as the basis of a grievance furthers the obligation to communicate this policy to students and their parents/guardians.

<sup>5</sup> Parents/guardians of educationally disadvantaged children may sue a district for misuse of funds allocated by State law for the benefit of such children. *Noyola v. Board of Education*, 688 N.E.2d 81 (1997), (affirming the appellate court's conclusion in *Noyola v. Board of Education*, 671 N.E.2d 802 (Ill.App.1, 1996) that parents/guardians may pursue a claim to enforce the requirements of the School Code but holding that the proper action for enforcement is by means of mandamus not an implied right of action).

<sup>6</sup> The Illinois Whistleblower Act, 740 ILCS 174/, includes school districts in the definition of employer. It protects employees from employer retaliation for disclosing information to a government or law enforcement agency. Section 15 also contains language prohibiting employers from retaliating against employees who disclose information in a court, an administrative hearing, or before a legislative commission or committee, or in any other proceeding where the employee has reasonable cause to believe that the information reveals a violation of a State or federal law, rule or regulation. The Public Act also amends the Illinois Whistleblower Reward and Protection Act (740 ILCS 175/). Its definition of "State" includes school districts. A strict interpretation of this language appears to allow school boards to collect civil penalties and costs against someone making a false claim. Before disciplining any employee, Boards should thoroughly investigate the ramifications of this Public Act in consultation with their attorney and liability insurance carriers.

<sup>7</sup> The Genetic Information Nondiscrimination Act (GINA) is a federal law. Title I, eff. 5-2-08, addresses the use of genetic information pertaining to health insurance. Title II, eff. 11-21-09, protects job applicants, current and former employees, labor union members, and apprentices and trainees from discrimination based on their genetic information. GINA covers employers with 15 or more employees.

GINA broadly defines genetic information to include information about an individual's genetic tests, their family members, and, among other things, the manifestation of a disease or disorder in the individual or family members. Information about an individual's or family member's age or gender is excluded from genetic information. Its remedies mirror those available under a Title VII of the Civil Rights Act claim: back pay, reinstatement, attorneys' fees and compensatory and punitive damages. Retaliation against an individual who brings a claim under GINA is also prohibited. Federal regulations have been proposed and are available at: [www.eeoc.gov/policy/docs/qanda\\_geneticinfo.html](http://www.eeoc.gov/policy/docs/qanda_geneticinfo.html). An FAQ titled, "FAQs on the Genetic Information Nondiscrimination Act" is available at: [www.dol.gov/ebsa/faqs/faq-GINA.html](http://www.dol.gov/ebsa/faqs/faq-GINA.html).

15. Employee Credit Privacy Act, 820 ILCS 70/. 8

The Complaint Manager will attempt to resolve complaints without resorting to this grievance procedure and, if a complaint is filed, to address the complaint promptly and equitably. The right of a person to prompt and equitable resolution of a complaint filed hereunder shall not be impaired by the person's pursuit of other remedies. Use of this grievance procedure is not a prerequisite to the pursuit of other remedies and use of this grievance procedure does not extend any filing deadline related to the pursuit of other remedies. All deadlines under this procedure may be extended by the Complaint Manager as he or she deems appropriate. As used in this policy, "school business days" means days on which the District's main office is open.

Filing a Complaint

A person (hereinafter Complainant) who wishes to avail him or herself of this grievance procedure may do so by filing a complaint with any District Complaint Manager. The Complainant shall not be required to file a complaint with a particular Complaint Manager and may request a Complaint Manager of the same gender. The Complaint Manager may request the Complainant to provide a written statement regarding the nature of the complaint or require a meeting with a student's parent(s)/guardian(s). The Complaint Manager shall assist the Complainant as needed.

Investigation

The Complaint Manager will investigate the complaint or appoint a qualified person to undertake the investigation on his or her behalf. 9 If the Complainant is a student under 18 years of age, the Complaint Manager will notify his or her parent(s)/guardian(s) that they may attend any investigatory meetings in which their child is involved. The complaint and identity of the Complainant will not be disclosed except: (1) as required by law, this policy, or (2) as necessary to fully investigate the complaint, or (3) as authorized by the Complainant.

The identity of any student witnesses will not be disclosed except: (1) as required by law or any collective bargaining agreement, or (2) as necessary to fully investigate the complaint, or (3) as

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The Ill. Genetic Information Protection Act (GIPA), 410 ILCS 513/ ~~4~~ also prohibits employers from making employment decisions on the basis of any employee's genetic testing information. ~~P.A. 95-927 amended~~ This amendment to GIPA ~~to include~~ includes the federal GINA's definition of genetic information and created more stringent obligations on Ill. employers. While the federal GINA exempts small employers (those with less than 15 employees), Illinois' GIPA covers all employers, even those with one employee. ~~P.A. 95-297~~ GIPA's also ~~increased GIPA's~~ provides penalties for negligent and intentional mishandling of genetic information. Note that Title II of GINA does not preempt GIPA's greater protections to Illinois employees.

Before using any sort of genetic information, consult the board's attorney for guidance regarding the GINA's and GIPA's specific applications to the district and how these laws integrate with other related federal laws, such as the Family Medical Leave Act (FMLA) and the Americans with Disabilities Act (ADA), and State laws governing time off for sickness and workers' compensation.

8 820 ILCS 70/. Unless a satisfactory credit history is an *established bona fide occupational requirement* of a particular position, an employer may not: (1) refuse to hire, discharge, or otherwise discriminate against an individual with respect to employment because of the individual's credit history or credit report, (2) inquire about an applicant's or employee's credit history, or (3) order or obtain an applicant's or employee's credit report from a consumer reporting agency. The Act identifies circumstances that permit a satisfactory credit history to be a job requirement, such as, when the position's duties include custody of or unsupervised access to cash or marketable assets valued at \$2,500 or more. A person who is injured by a violation of this Act may bring a civil action to obtain injunctive relief and/or damages (820 ILCS 70/25). The court must award costs and reasonable attorney's fees to a prevailing plaintiff.

9 The Ill. sex equity regulations require districts to have "specific timelines for completion of each step and rendering of a written decision, and shall provide for final appeal of grievance decisions made at the system level to the system's governing board" (23 Ill.Admin.Code §200.40). To avoid arguments over these timelines, this sample policy provides that the failure to strictly follow the timelines does not prejudice any party. The grievance procedure is worthless if complaints are not thoroughly and promptly investigated.

authorized by the parent/guardian of the student witness, or by the student if the student is 18 years of age or older.

Within 30 school business days of the date the complaint was filed, the Complaint Manager shall file a written report of his or her findings with the Superintendent. The Complaint Manager may request an extension of time. If a complaint of sexual harassment contains allegations involving the Superintendent, the written report shall be filed with the Board, which will make a decision in accordance with the following section of this policy. The Superintendent will keep the Board informed of all complaints.

Decision and Appeal

Within 5 school business days after receiving the Complaint Manager’s report, the Superintendent shall mail his or her written decision to the Complainant by U.S. mail, first class, as well as to the Complaint Manager.

Within 10 school business days after receiving the Superintendent’s decision, the Complainant may appeal the decision to the Board by making a written request to the Complaint Manager. The Complaint Manager shall promptly forward all materials relative to the complaint and appeal to the Board. Within 30 school business days, the Board shall affirm, reverse, or amend the Superintendent’s decision or direct the Superintendent to gather additional information. Within 5 school business days of the Board’s decision, the Superintendent shall inform the Complainant of the Board’s action. **10**

This grievance procedure shall not be construed to create an independent right to a hearing before the Superintendent or Board. The failure to strictly follow the timelines in this grievance procedure shall not prejudice any party.

Appointing Nondiscrimination Coordinator and Complaint Managers **11**

The Superintendent shall appoint a Nondiscrimination Coordinator to manage the District’s efforts to provide equal opportunity employment and educational opportunities and prohibit the harassment of employees, students, and others.

The Superintendent shall appoint at least one Complaint Manager to administer the complaint process in this policy. If possible, the Superintendent will appoint 2 Complaint Managers, one of each gender. The District’s Nondiscrimination Coordinator may be appointed as one of the Complaint Managers.

The Superintendent shall insert into this policy and keep current the names, addresses, and telephone numbers of the Nondiscrimination Coordinator and the Complaint Managers.

**Nondiscrimination Coordinator:**

\_\_\_\_\_

Name

\_\_\_\_\_

Address

\_\_\_\_\_

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

**10** Note: ISBE is authorized “[t]o hear and determine all controversies arising under the school laws of the State, coming to it by appeal from a regional superintendent of schools,” (105 ILCS 5/2-3.8, 5/3-10).

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

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Telephone

**Complaint Managers:**

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Name

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Name

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Address

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Address

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Telephone

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Telephone

LEGAL REF.: Age Discrimination in Employment Act, 29 U.S.C. §621 et seq.  
Americans With Disabilities Act, 42 U.S.C. §12101 et seq.  
Equal Employment Opportunities Act (Title VII of the Civil Rights Act), 42 U.S.C. §2000e et seq.  
Equal Pay Act, 29 U.S.C. §206(d).  
Genetic Information Nondiscrimination Act, 42 U.S.C. §2000ff et seq.  
Immigration Reform and Control Act, 8 U.S.C. §1324a et seq.  
McKinney Homeless Assistance Act, 42 U.S.C. §11431 et seq.  
Rehabilitation Act of 1973, 29 U.S.C. §791 et seq.  
Title VI of the Civil Rights Act, 42 U.S.C. §2000d et seq.  
Title IX of the Education Amendments, 20 U.S.C. §1681 et seq.  
105 ILCS 5/2-3.8, 5/3-10, 5/10-20.7a, 5/10-22.5, 5/22-19, 5/24-4, 5/27-1, 5/27-23.7, and 45/1-15.  
Illinois Genetic Information Privacy Act, 410 ILCS 513/.  
Illinois Whistleblower Act, 740 ILCS 174/.  
Illinois Human Rights Act, 775 ILCS 5/.  
Victims' Economic Security and Safety Act, 820 ILCS 180, 56 Ill.Admin.Code Part 280.  
Equal Pay Act of 2003, 820 ILCS 112/.  
Employee Credit Privacy Act, 820 ILCS 70/.  
23 Ill.Admin.Code §§1.240 and 200-40.

CROSS REF.: 5:10 (Equal Employment Opportunity and Minority Recruitment), 5:20 (Workplace Harassment Prohibited), 5:30 (Hiring Process and Criteria), 6:140 (Education of Homeless Children), 6:170 (Title I Programs), 6:260 (Complaints About Curriculum, Instructional Materials, and Programs), 7:10 (Equal Educational Opportunities), 7:20 (Harassment of Students Prohibited), 7:180 (Preventing Bullying, Intimidation, and Harassment), 8:70 (Accommodating Individuals with Disabilities), 8:110 (Public Suggestions and Concerns)

## Operational Services

### Transportation 1

The District shall provide free transportation for any student in the District who resides: (1) at a distance of one and one-half miles or more from his or her assigned school, unless the School Board has certified to the Illinois State Board of Education that adequate public transportation is available, 2 or (2) within one and one-half miles from his or her assigned school where walking to school or to a pick-up point or bus stop would constitute a serious hazard due to vehicular traffic or rail crossing, and adequate public transportation is not available. 3 A student's parent(s)/guardian(s) may file a petition with the Board requesting transportation due to the existence of a serious safety hazard. 4 Free transportation service and vehicle adaptation is provided for a special education student if included in the student's individualized educational program. 5 Non-public school students shall be transported in accordance with State law. 6 Homeless students shall be transported in accordance with Section 45/1-15 of the McKinney Education for Homeless Assistance Children 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 or federal law controls this policy's content. A district that chooses to consider locations other than individual students' residences as pick-up and drop-off locations must adopt a policy establishing this practice to receive State reimbursement (23 Ill.Admin.Code §120.30). Each district must have a pre-trip and post-trip inspection policy (625 ILCS 5/12-816). An ISBE rule requires boards to "institute policies and practices that promote the safety and well-being of school bus passengers," (23 Ill.Admin.Code §1.510). See the cross references for these.

**2** Only the following districts must provide free transportation as described in the sample policy: community consolidated districts, community unit districts, consolidated districts, consolidated high school districts, and combined school districts if the combined district includes any district that was previously required to provide transportation (105 ILCS 5/29-3 and 23 Ill.Admin.Code §1.510(a)). Districts that are not required to provide free transportation may do so (Id.). To qualify for State reimbursement, districts electing to provide transportation when they are not required to do so must afford the same service to all students in that same situation (23 Ill.Admin.Code §1.510(b)). Districts may provide transportation within 1-1/2 miles and may charge for such transportation (105 ILCS 5/29-2).

**Important:** the board of a district that is *not* required to provide free transportation **must** amend this policy, preferably after consulting the board attorney, if the district charges for transportation or does not provide transportation.

Optional provision: (105 ILCS 5/29-3.1)

The District may provide transportation to and from school-sponsored activities and may charge for such transportation.

**3** 105 ILCS 5/29-3 and 23 Ill.Admin.Code §1.510.

**4** Required by 105 ILCS 5/29-3. If a petition is filed, the district must conduct a study and forward its findings to the Illinois Department of Transportation for review.

**5** 34 C.F.R. §300.34 and 23 Ill.Admin.Code §226.750.

**6** 105 ILCS 5/29-3.2 and 5/29-4.

**7** ~~105 ILCS 45/. State law implements the McKinney Homeless Assistance Act, 42 U.S.C. §11431 et seq. 42 U.S.C. §11431 et seq., amended by the No Child Left Behind Legislation of 2001. This federal legislation requires a district to provide transportation to a homeless student at the request of the parent/guardian (or in the case of an unaccompanied youth, the Liaison for Homeless Children), to and from the school of origin [42 U.S.C. §11432(g)(1)(J)(iii)]. The term *school of origin* means the school that the student attended when permanently housed or the school in which the student was last enrolled [42 U.S.C. §11432(g)(3)(G)]. Transportation must be arranged as follows:~~

~~1. If the homeless student continues to live in the area served by the school district in which the school of origin is located, the student's transportation to and from the school of origin shall be provided or arranged by the district in which the school of origin is located [42 U.S.C. §11432(g)(1)(J)(iii)(D)].~~

If a student is at a location within the District, other than his or her residence, for child care purposes at the time for transportation to and/or from school, that location may be considered for purposes of determining the 1½ miles from the school attended. Unless the Superintendent or designee establishes new routes, pick-up and drop-off locations for students in day care must be along the District's regular routes. The District will not discriminate among types of locations where day care is provided, which may include the premises of licensed providers, relatives' homes, or neighbors' homes. **8**

Bus schedules and routes shall be determined by the Superintendent or designee and shall be altered only with the Superintendent or designee's approval and direction. In setting the routes, the pick-up and discharge points should be as safe for students as possible. **9**

No school employee may transport students in school or private vehicles unless authorized by the administration. **10**

Every vehicle regularly used for the transportation of students must pass safety inspections in accordance with State law and Illinois Department of Transportation regulations. **11** The strobe light on a school bus may be illuminated any time a only when the bus is actually being used as a school bus and (1) is stopping or stopped for loading or discharging students on a highway outside an urban area, or (2) is bearing one or more students. **12** The Superintendent shall implement procedures in accordance with State law for accepting comment calls about school bus driving. **13**

~~If the homeless student's living arrangements in the area served by the district of origin terminate and the student, though continuing his or her education in the school of origin, begins living in an area served by another school district, the district of origin and the district in which the homeless student is living shall agree upon a method to apportion the responsibility and costs for providing the student with transportation to and from the school of origin. If the local educational agencies are unable to agree upon such method, the responsibility and costs for transportation shall be shared equally [42 U.S.C. §11432(e)(1)(J)(iii)(B)].~~

**8** This paragraph may be deleted if a district will not seek State reimbursement for transportation to and from locations other than individual students' residences. As a condition for receiving State reimbursement, an ISBE rule requires boards to have a policy with the provisions in this paragraph (23 Ill.Admin.Code §120.30). This rule also contains the non-discrimination language.

**9** The paragraph is optional. As an alternative, a board may state that pick-up and discharge points "should be as safe and convenient as possible."

**10** Optional. This presents an opportunity for each board to discuss this issue with the superintendent and direct the superintendent to include it in the curriculum for the required in-service on educator ethics, teacher-student conduct, and school employee-student conduct for all personnel (105 ILCS 5/10-22.39). See 5:120, *Ethics and Conduct* (f/n 2), and 5:100 *Staff Development* (f/n 3), for more detailed discussions. Include policies 5:100, *Staff Development* and 5:120, *Ethics and Conduct*, in the cross references when this sentence is used.

**11** 625 ILCS 5/13-109.

625 ILCS 5/11-1414.1 requires districts to transport students to and from any curriculum-related school activity in a school bus or vehicle as defined at 625 ILCS 5/1-182. This transportation includes: (1) to and from home and school, (2) tripper or shuttle services between school attendance centers, (3) to and from a vocational or career center or other trade-skill development site, (4) to and from a regional safe school, (5) to and from a school-sponsored alternative learning program, and (6) trips directly related to the regular curriculum of a student for which he or she earns credit.

105 ILCS 5/29-6.3, amended by P.A. 97-378, requires districts to transport students to and from specified interscholastic or school-sponsored activities in: (1) a school bus (see definition in ~~above paragraph~~ 625 ILCS 5/1-182), (2) a vehicle manufactured to transport not more than 10 persons including the driver, or (3) a multifunction school-activity bus manufactured to transport ~~not 11 or more than 15~~ persons including the driver (defined at 625 ILCS 5/1-148.3a-5, amended by P.A. 97-378). These activities do not require student participation as part of the education services of the district and are not associated with the regular class-for-credit schedule or required 5 clock hours of instruction.

**12** 625 ILCS 5/12-815.

**13** 625 ILCS 5/12-821(b) requires districts that own school busses and multifunction school activity busses to establish procedures for accepting comment calls and responding to them. In accordance with good governance principles, this duty is delegated to the superintendent. For a sample procedure, see 4:110-AP2, *Bus Driver Communication Devices; Pre-Trip and Post-Trip Inspection; Bus Driving Comments*.

All contracts for charter bus services must contain the clause prescribed by State law regarding criminal background checks for bus drivers. **14**

#### Pre-Trip and Post-Trip Vehicle Inspection 15

The Superintendent or designee shall develop and implement a pre-trip and post-trip inspection procedure to ensure that the school bus driver: (1) tests the two-way radio and ensures that it is functioning properly before the bus is operated, and (2) walks to the rear of the bus before leaving the bus at the end of each route, work shift, or work day, to check the bus for children or other passengers in the bus.

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**14** 105 ILCS 5/10-20.21a, requires all contracts for providing charter bus services to transport students to or from interscholastic athletic or interscholastic or school sponsored activities to contain clause (A) except that a contract with an out-of-state company may contain clause (B) or clause (A). The clause must be set forth in the contract's body in at least 12 points typeface and all upper case letters:

(A) "ALL OF THE CHARTER BUS DRIVERS WHO WILL BE PROVIDING SERVICES UNDER THIS CONTRACT HAVE, OR WILL HAVE BEFORE ANY SERVICES ARE PROVIDED:

(1) SUBMITTED THEIR FINGERPRINTS TO THE DEPARTMENT OF STATE POLICE IN THE FORM AND MANNER PRESCRIBED BY THE DEPARTMENT OF STATE POLICE. THESE FINGERPRINTS SHALL BE CHECKED AGAINST THE FINGERPRINT RECORDS NOW AND HEREAFTER FILED IN THE DEPARTMENT OF STATE POLICE AND FEDERAL BUREAU OF INVESTIGATION CRIMINAL HISTORY RECORDS DATABASES. THE FINGERPRINT CHECK HAS RESULTED IN A DETERMINATION THAT THEY HAVE NOT BEEN CONVICTED OF COMMITTING ANY OF THE OFFENSES SET FORTH IN SUBDIVISION (C-1)(4) OF SECTION 6-508 OF THE ILLINOIS VEHICLE CODE; AND

(2) DEMONSTRATED PHYSICAL FITNESS TO OPERATE SCHOOL BUSES BY SUBMITTING THE RESULTS OF A MEDICAL EXAMINATION, INCLUDING TESTS FOR DRUG USE, TO A STATE REGULATORY AGENCY."

(B) "NOT ALL OF THE CHARTER BUS DRIVERS WHO WILL BE PROVIDING SERVICES UNDER THIS CONTRACT HAVE, OR WILL HAVE BEFORE ANY SERVICES ARE PROVIDED:

(1) SUBMITTED THEIR FINGERPRINTS TO THE DEPARTMENT OF STATE POLICE IN THE FORM AND MANNER PRESCRIBED BY THE DEPARTMENT OF STATE POLICE. THESE FINGERPRINTS SHALL BE CHECKED AGAINST THE FINGERPRINT RECORDS NOW AND HEREAFTER FILED IN THE ~~DEPARTMENT~~ DEPARTMENT OF STATE POLICE AND FEDERAL BUREAU OF INVESTIGATION CRIMINAL HISTORY RECORDS DATABASES. THE FINGERPRINT CHECK HAS RESULTED IN A DETERMINATION THAT THEY HAVE NOT BEEN CONVICTED OF COMMITTING ANY OF THE OFFENSES SET FORTH IN SUBDIVISION (C-1)(4) OF SECTION 6-508 OF THE ILLINOIS VEHICLE CODE; AND

(2) DEMONSTRATED PHYSICAL FITNESS TO OPERATE SCHOOL BUSES BY SUBMITTING THE RESULTS OF A MEDICAL EXAMINATION, INCLUDING TESTS FOR DRUG USE, TO A STATE REGULATORY AGENCY."

**15** 625 ILCS 5/12-816(a) requires school districts to have a school bus pre- and post-trip inspection policy with the components as contained in this policy. See also 23 Ill.Admin.Code §1.510(i)(3) and 92 Ill.Admin.Code §440-3. For a sample procedure, see 4:110-AP2, *Bus Driver Communication Devices; Pre-Trip and Post-Trip Inspection; Bus Driving Comments*. School district contracts with a private sector school bus company must require the company to have a pre- and post-trip inspection policy that is equivalent to this section of the policy (625 ILCS 5/12-816(b).

Each school bus must contain an operating two-way radio while the school bus driver is in possession of a school bus (625 ILCS 5/12-813). The two-way radio must be turned on and adjusted in a manner that would alert the driver of an incoming communication request. Two-way radios may not be as effective as cell phones: they do no good when the bus driver is out of the bus with children (the radio is in the bus but the driver is with the children on a field trip, for example) and their range may be inferior to that of cell phones. Four important exceptions allow a driver to use a cell phone while operating a bus: (1) in an emergency situation to communicate with an emergency response operator; a hospital; a physician's office or health clinic; an ambulance service; a fire department, fire district, or fire company; or a police department; (2) in the event of a "mechanical breakdown or other mechanical problem;" (3) to communicate with school authorities about bus operation or the safety of a passenger on the bus; and (4) when the bus is parked. However under no circumstances may the cell phone be used for anything else including personal use (625 ILCS 5/12-813.1).



- LEGAL REF.: McKinney Homeless Assistance Act, 42 U.S.C. §11431 et seq.  
105 ILCS 5/10-22.22 and 5/29-1 et seq.  
105 ILCS 45/1-15.  
625 ILCS 5/1-148.3a-5, 5/1-182, 5/11-1414.1, 5/12-813, 5/12-813.1, 5/12-815,  
5/12-816, 5/12-821, and 5/13-109.  
23 Ill.Admin.Code §§1.510 and 226.750; Part 120.  
92 Ill.Admin.Code §440-3.
- CROSS REF.: 4:170 (Safety), 5:100 (Staff Development), 5:120 (Ethics and Conduct), 5:280  
(Educational Support Personnel - Duties and Qualifications), 6:140 (Education of  
Homeless Children), 7:220 (Bus Conduct)
- ADMIN. PROC.: 4:110-AP2 (Bus Driver Communication Devices; Pre-Trip and Post-Trip  
Inspection; Bus Driving Comments), 4:170-AP3 (School Bus Safety Rules),  
4:170-E3 (Emergency Medical Information for Students Having Special Needs  
or Medical Conditions Who Ride School Buses), 6:140-AP (Education of  
Homeless Children)

## Operational Services

### Safety 1

#### Safety Program

All District operations, including the education program, shall be conducted in a manner that will promote the safety of everyone on District property or at a District event. <sup>2</sup>

The Superintendent or designee shall develop and implement a comprehensive safety and crisis plan incorporating both avoidance and management guidelines. <sup>3</sup> The comprehensive safety and crisis plan shall specifically include provisions for: injury prevention; bomb threats, weapons, and explosives on campus; school safety drill program; <sup>4</sup> tornado protection; instruction in safe bus riding practices;<sup>5</sup> emergency aid; post-crisis management; and, responding to medical emergencies at an indoor and outdoor physical fitness facility. <sup>6</sup> During each academic year, each school building that houses school children must conduct a minimum of: <sup>7</sup>

1. Three school evacuation drills,
2. One bus evacuation drill, ~~and~~

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

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

<sup>2</sup> This simple end statement should be discussed (what effect or impact will this district statement have on the students and the community?) and altered accordingly before board adoption.

<sup>3</sup> See administrative procedure 4:170-API, *Comprehensive Safety and Crisis Program*.

<sup>4</sup> See the School Safety Drill Act, 105 ILCS 128/.

<sup>5</sup> Required by 105 ILCS 128/20(b) and 105 ILCS 5/10-20.14 for all students.

<sup>6</sup> The Physical Fitness Facility Medical Emergency Preparedness Act, 210 ILCS 74/, broadened the definition of physical fitness facility to include outdoor facilities. Entities operating a "physical fitness facility must adopt and implement a written plan for responding to medical emergencies that occur at the facility during the time that the facility is open for use by its members or by the public." Administrative procedures, consistent with the Ill. Dept. of Public Health rules (77 Ill.Admin.Code Part 527), must support this policy in order to comply with the law.

A school with a physical fitness facility must ensure that there is a trained AED user on staff during staffed business hours (210 ILCS 74/15 (b)). "During staffed business hours" is not well defined and may change based upon the school's various circumstances. "Physical fitness facility" excludes any activity or program organized by a private or not-for-profit organization and organized and supervised by a person or persons other than the employees of the school (210 ILCS 74/5.25). Schools with an outdoor physical fitness facility must have an AED on site and a trained AED user available only during activities or events sponsored and conducted or supervised by a person or persons employed by the school (210 ILCS 74/15(b-15)). There is no longer a requirement for a person supervising an activity at an outdoor physical fitness facility to bring an AED along if there is no building within 300 feet of the outdoor physical fitness facility (Id. at (b-10), amended by P.A. 96-1268). However, when there is a building within 300 feet of the outdoor facility where an event or activity is being conducted, an AED must still be housed within that building and the building must provide unimpeded and open access to the housed AED along with marked directions to it (Id.). Consult the board attorney about AED issues and how to manage compliance with the Act and its implementing rules.

Insert the following language if a board wants to define "physical fitness facility" in the policy:

The term "physical fitness facility" excludes any activity or program organized by a private or not-for-profit organization and organized and supervised by a person or persons other than the employees of the school.

<sup>7</sup> Required by the School Safety Drill Act, 105 ILCS 128/. 105 ILCS 5/2-3.12 authorizes fire officials to conduct routine fire safety checks, provided written notice is given to the principal requesting to schedule a mutually agreed upon time. No more than 2 routine inspections may be made in a calendar year. **For information about documenting minimum compliance with the School Safety Drill Act, see [www.isbe.net/safety/guide.htm](http://www.isbe.net/safety/guide.htm).**

3. One severe weather and shelter-in-place drill, and
4. One law enforcement drill. The Superintendent or appropriate designee must conduct a law enforcement drill in one of the District's school buildings during the academic year. Any appropriate local law enforcement agency may conduct and participate in this law enforcement drill. <sup>8</sup>

The law enforcement drill must be conducted according to the District's comprehensive safety and crisis plan and it, with the participation of the appropriate law enforcement agency. This drill may be conducted on days and times that students are not present in the building. <sup>9</sup>

In the event of an emergency that threatens the safety of any person or property, students and staff are encouraged to use any available cellular telephone. <sup>10</sup>

The Superintendent or designee shall implement the Movable Soccer Goal Safety Act in accordance with the guidance published by the Illinois Department of Public Health. Implementation of the Act shall be directed toward improving the safety of moveable soccer goals by requiring that they be properly anchored. <sup>11</sup>

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<sup>8</sup> ~~A law enforcement drill is not mandatory for every school building that houses school children; 105 ILCS 128/20(c), amended by P.A. 95-1015, does not contain the same language in 105 ILCS 128/20 (a), (b), and (d) that requires during each academic year, school evacuation, bus evacuation, and severe weather and shelter in place drills shall be conducted at each school building that houses school children. 105 ILCS 128/20(c) requires the appropriate local law enforcement agency to contact the appropriate school administrator during each calendar year and the school district must have at least one law enforcement drill in one of its buildings during each academic year.~~

<sup>9</sup> Required by 105 ILCS 128/20(c); Schools must conduct a law enforcement drill to address incidents, including without limitation reverse evacuation, lock-downs, shooting, bomb threat, or hazardous materials. See footnote 3 supra.

<sup>10</sup> Cell phone use is addressed in 105 ILCS 5/10-20.28 (allows boards to regulate student use of cell phones; also see 7:190, *Student Discipline*) and 625 ILCS 5/12-610.1(e) (prohibits wireless telephone use at any time while operating a motor vehicle on a roadway in a school speed zone except for emergency purposes). 625 ILCS 5/12-813.1, amended by P.A. 96-1066, provides four exceptions that allow a driver to use a cell phone while operating a bus: (1) in an emergency situation to communicate with an emergency response operator; a hospital; a physician's office or health clinic; an ambulance service; a fire department, fire district, or fire company; or a police department; (2) in the event of a "mechanical breakdown or other mechanical problem;" (3) to communicate with school authorities about bus operation or the safety of a passenger on the bus; and (4) when the bus is parked. However, under no circumstances may the cell phone be used for anything else including personal use (625 ILCS 5/12-813.1, amended by P.A. 96-1066). See policy 4:110, *Transportation*, for a more detailed discussion of two-way radios and cellular telephone use.

<sup>11</sup> The Movable Soccer Goal Safety Act, a/k/a Zach's Law, 430 ILCS 145/, added by P.A. 97-234. This paragraph is required only if the school district owns and controls a movable soccer goal, and it should be included in this policy only by those districts. The Act requires: (1) organizations that own and control a movable soccer goal to create a soccer goal safety and education policy that outlines how the organization will specifically address the safety issues associated with movable soccer goals, and (2) the Ill. Department of Public Health to provide technical assistance materials no later than June 30, 2012.

## Convicted Child Sex Offender and Notification Laws 12

State law prohibits a child sex offender from being present on school property or loitering within 500 feet of school property when persons under the age of 18 are present, unless the offender meets either of the following two exceptions:

1. The offender is a parent/guardian of a student attending the school and has notified the Building Principal of his or her presence at the school for the purpose of: (i) attending a conference with school personnel to discuss the progress of his or her child academically or socially, (ii) participating in child review conferences in which evaluation and placement decisions may be made with respect to his or her child regarding special education services, or (iii) attending conferences to discuss other student issues concerning his or her child such as retention and promotion; or
2. The offender received permission to be present from the School Board, Superintendent, or Superintendent's designee. If permission is granted, the Superintendent or Board President shall provide the details of the offender's upcoming visit to the Building Principal.

In all cases, the Superintendent, or designee who is a certified employee, shall supervise a child sex offender whenever the offender is in a child's vicinity. 13

If a student is a sex offender, the Superintendent or designee shall develop guidelines for managing his or her presence in school. 14

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

12 Four laws are relevant to this section:

1. Paragraphs 1-3 contain the requirements in the Criminal Code, 720 ILCS 5/11-9.3, regulating a child sex offender's presence on school property;
2. Paragraph 4 concerns the Sex Offender Community Notification Law, 730 ILCS 152/101 et seq., and Child Murderer and Violent Offender Against Youth Community Notification Law, 730 ILCS 154/75-105, amended by P.A. 97-154;
3. Paragraph 5 contains the requirements in the School Code concerning mandatory criminal history records check on those contractors' employees who have a "direct, daily contact with students," (105 ILCS 5/10-21.9(f). Sample policy 5:30, *Hiring Process and Criteria*, and administrative procedure 5:30-AP2, *Investigations*, address the criminal offenses listed at 105 ILCS 5/~~21-23a~~, 21B-80, added by P.A. 97-607. Being convicted of one will disqualify an individual from work at the school district employment (105 ILCS 5/10-21.9, amended by P.A. 97-607). If the board president or district (see f/n #17 infra) receives information concerning the record of conviction as a sex offender of any contractor's employee, the district must provide the information to another school, school district, community college district, or private school that requests it (105 ILCS 5/10-21.9(h), amended by P.A. ~~96-431~~ 97-248).

An Illinois federal court denied a father's request to enjoin a school's policy that prohibited him, as a child sex offender, from attending his children's school activities in Doe v. Paris Union School Dist., No. 05-2249, 2006 WL 44304 (C.D.Ill., 2006).

13 720 ILCS 5/11-9.3. The statute assigns the child sex offender the "duty to remain under the direct supervision of a school official." In order to ensure this happens and to protect students, the sample policy requires the superintendent, or designee who is a certified employee, to supervise a child sex offender whenever the offender is in a child's vicinity. See also policy 8:30, *Visitors to and Conduct on School Property*.

14 Aside from rumor and notoriety, there are 3 ways that school officials may learn that an enrolled student is a sex offender or a violent offender against youth, that is:

1. By being informed by the student or the student's parent/guardian.
2. Through the Illinois State Police Sex Offender Database, [www.isp.state.il.us/sor](http://www.isp.state.il.us/sor). A juvenile sex offender is listed there after the juvenile becomes 17 years old and will be listed for the remaining registration period (730 ILCS 150/2). The database is updated daily and allows searching by name, city, county, zip code, compliance status, or any combination thereof.
3. By receiving notification from a law enforcement agency that a juvenile sex offender or juvenile violent offender against youth is enrolled in a school. The law enforcement agency having jurisdiction to register the juvenile must provide a copy of the offender registration form to the building principal and guidance counselor designated by the

The Superintendent shall develop procedures for the distribution and use of information from law enforcement officials under the Sex Offender Community Notification Law and the **Child Murderer** and Violent Offender Against Youth Community Notification Law. The Superintendent or designee shall serve as the District contact person for purposes of these laws. **15** The Superintendent and Building Principal shall manage a process for schools to notify the parents/guardians during school registration that information about sex offenders is available to the public as provided in the Sex Offender Community Notification Law. **16** This notification must occur during school registration and at other times as the Superintendent or Building Principal determines advisable.

All contracts with the School District that may involve an employee or agent of the contractor having any contact, direct or indirect, with a student, shall contain the following: **17**

The contractor shall not send to any school building or school property any employee or agent who would be prohibited from being employed by the District due to a conviction of a crime listed in 105 ILCS 5/10-21.9, or who is listed in the Statewide Sex Offender Registry or the Statewide Violent Offender Against Youth Database. The contractor shall obtain a fingerprint-based criminal history records check before sending any employee or agent to any school building or school property. Additionally, at least quarterly, the contractor shall check

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principal; the school must keep the registration form separately from the student's school records (730 ILCS 152/121).

If a sex offender is enrolled in a school, guidelines for managing the sex offender's presence in school should be prepared. The components will depend on the situation but generally should include asking the parent/guardian of a sex offender below the age of 17 years for permission to share the information with certain staff for the protection of both the student and other students. In addition, the guidelines should include a supervision plan providing supervision for the student during all aspects of his or her school day. Finally, the guidelines must respect the privacy of juvenile records and comply with the Ill. School Student Records Act, 105 ILCS 10/. The board attorney should be consulted.

**15** Law enforcement officials must notify school districts of the names, addresses, and offenses of registered offenders residing in their respective jurisdictions who have committed sex offenses and violent offenses against youth (see footnote 9). These laws are silent with regard to what, if anything, districts do with the information. The Sex Offender Community Notification Law, however, provides immunity for "any person who provides, or fails to provide, information relevant to the procedures set forth in this Law," (730 ILCS 152/130).

Naming a contact person will facilitate communication and cooperation with local law enforcement agencies. Any school official may be used as the contact person and boards may wish to have a contact person from each building. See administrative procedure 4:170-AP2, *Criminal Offender Notification Laws*, for sample implementing procedures.

**16** State law requires a principal or teacher to notify the parents/guardians during school registration or parent-teacher conferences that information about sex offenders is available to the public as provided in the Sex Offender Community Notification Law, 730 ILCS 152/101 et seq. In an effort to keep this policy aligned with good governance practices, the responsibility is given to the superintendent and building principal to manage. While State law allows the notification to be made during registration or parent-teacher conferences, the sample policy makes a notification mandatory just during registration to be sure that all parents/guardians are informed.

**17** 105 ILCS 5/10-21.9, amended by P.A.s 97-248 and 97-607, Section 5/10-21.9(f) requires a criminal history background investigation to be performed on those contractors' employees who have a "direct, daily contact with students". State law places the same restrictions on contractors' employees that it does on district employees. Board policy should address these issues:

- Who performs the background checks? It is virtually impossible to screen all contractors' employees. Thus, a contractor should warrant that none of its employees who may have contact with a student at school has committed an offense that would prohibit district employment.
- On whom are the checks performed? State law requires the check on those who have a "direct, daily contact with students". The sample policy is more comprehensive by requiring checks for any contractor's employee who may work in any school building or on school property - after all, the burden is on the contractor to do the checking.
- How is compliance assured? This sample policy requires the inclusion of a clause in district contracts prohibiting the use of any sex offender on school property.

See administrative procedure 5:30-AP2, *Investigations*.

if an employee or agent is listed on the Statewide Sex Offender Registry or the Statewide Violent Offender Against Youth Database.

If the District receives information that concerns the record of conviction as a sex offender of any employee of a District contractor, the District will provide the information to another school, school district, community college district, or private school that requests it. 18

#### Unsafe School Choice Option 19

The unsafe school choice option allows students to transfer to another District school or to a public charter school within the District. The unsafe school choice option is available to:

1. All students attending a persistently dangerous school, as defined by State law and identified by the Illinois State Board of Education.
2. Any student who is a victim of a violent criminal offense, as defined by 725 ILCS 120/3, that occurred on school grounds during regular school hours or during a school-sponsored event.

The Superintendent or designee shall develop procedures to implement the unsafe school choice option.

#### Student Insurance 20

The Board shall annually designate a company to offer student accident insurance coverage. The Board does not endorse the plan nor recommend that parents/guardians secure the coverage, and any contract is between the parents/guardians and the company. Students participating in athletics, cheerleading, or pompons must have school accident insurance unless the parents/guardians state in writing that the student is covered under a family health insurance plan.

#### Emergency Closing

The Superintendent is authorized to close the schools in the event of hazardous weather or other emergencies that threaten the safety of students, staff members, or school property. 21

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

18 Id. at 5/10-21.9(h), amended by P.A. 97-248. The School Code defines the board president's role in conducting criminal background investigations and receiving the results of these investigations. Many districts delegate this task to a human resource department. However, because the report involves a contractor's employee, the immunity provisions in the Employment Record Disclosure Act (745 ILCS 46/10) may not apply. Consult the board attorney based upon this and all relevant employment record disclosure laws. See policy 5:150, Personnel Records, f/n #4 for more discussion about employment record disclosure laws.

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

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

**20** This subhead is optional. 105 ILCS 5/22-15 allows districts to purchase insurance on athletes. A form on which parents/guardians check-off whether they want school accident insurance or already have the student covered by other health insurance will suffice for purposes of this policy. Requiring students participating in athletics to have accident insurance is a best practice because: (1) waivers of liability do not prevent a student from bringing suit, and (2) waivers of liability are not favored by Illinois courts.

LEGAL REF.: 105 ILCS 5/10-20.28, 5/~~10-21.3a~~ 21B-80, 5/10-21.9, and 128/  
210 ILCS 74/  
625 ILCS 5/12-813.1.  
720 ILCS 5/11-9.3.  
730 ILCS 152/101 et seq.

CROSS REF.: 5:30 (Hiring Process and Criteria), 6:190 (Extracurricular and Co-Curricular Activities), 6:250 (Community Resource Persons and Volunteers), 7:220 (Bus Conduct), 7:300 (Extracurricular Athletics), 8:30 (Visitors to and Conduct on School Property), 8:100 (Relations with Other Organizations and Agencies)

ADMIN. PROC.: 4:170-AP2 (Criminal Offender Notification Laws), 4:170-AP3 (School Bus Safety Rules), 4:170-AP6 (Responding to Medical Emergencies Occurring at Physical Fitness Facilities with an AED), 5:30-AP2 (Investigations)

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**21** When adverse weather conditions force a school's closing or a delayed start, the district may count a partial day of attendance as a full day for State aid purposes, provided: (1) at least one hour of instruction was provided, and (2) the superintendent provides the Regional Superintendent or the Suburban Cook County Intermediate Service Center, whichever is appropriate, with a written report in support of the partial day within 30 days (105 ILCS 5/18-12, amended by P.A. 96-734). P.A. 96-893 abolished the Regional Office of Education for Suburban Cook County and transferred its duties and powers to the Intermediate Service Center for the area.

## Operational Services

### Administrative Procedure - Criminal Offender Notification Laws

The following list describes laws protecting students on school grounds from individuals convicted of serious crimes:

1. A child sex offender is prohibited from being present on school property or loitering within 500 feet of school property when persons under the age of 18 are present unless specifically permitted by statute (720 ILCS 5/11-9.3). See School Board policies 4:170, *Safety*; 8:30, *Visitors to and Conduct on School Property*; and administrative procedure 8:30-AP, *Definition of Child Sex Offender*.
2. Law enforcement must notify schools of offenders who reside or are employed in the county. See: (a) Sex Offender Community Notification Law, 730 ILCS 152/101 *et seq.*, and (b) ~~Child~~ Murderer and Violent Offender Against Youth Community Notification Law, 730 ILCS 154/75-105, amended by P.A. 97-154. These laws are hereafter referred to as “offender notification laws.” See also policy 4:170, *Safety*.
3. The School Code (105 ILCS 5/10-21.9, amended by P.A. ~~96-431~~ 97-607) lists criminal offenses that disqualify an individual from District employment if the individual was convicted of one. It requires any person hired by the District to submit to a fingerprint-based criminal history records check. The law also requires a school district to check 2 offender databases for each applicant, (a) the Statewide Sex Offender Database (a/k/a Sex Offender Registry), [www.isp.state.il.us/cmvo/](http://www.isp.state.il.us/cmvo/), and (b) the Statewide ~~Child~~ Murderer and Violent Offender Against Youth Database, [www.isp.state.il.us/cmvo/](http://www.isp.state.il.us/cmvo/). See School Board policy 5:30, *Hiring Process and Criteria*; and administrative procedure 5:30-AP2, *Investigations*.
4. The provisions in the School Code described above also apply to employees of persons or firms holding contracts with a school district who have direct, daily contact with students. See School Board policy 4:170, *Safety*.
5. Conviction of an offense listed in 105 ILCS 5/10-21.9, amended by P.A. ~~96-431~~ 97-607, results in the automatic revocation of ~~a teacher’s teaching~~ the individual’s certificate (105 ILCS 5/21-23a, repealed by P.A. 97-607 and moved to 105 ILCS 5/21B-80).
6. The offender notification laws require law enforcement to ascertain whether a juvenile sex offender or violent offender against youth is enrolled in a school and, if so, to provide a copy of the registration form to the Building Principal and any guidance counselor designated by him or her. This registration form must be kept separately from any and all school records maintained on behalf of the juvenile sex offender. See School Board policy 4:170, *Safety*.

#### Receipt of the Information from Law Enforcement <sup>1</sup>

The Superintendent or designee shall notify the local law enforcement official or county sheriff that he or she is the District’s official contact person for purposes of the offender notification laws. <sup>2</sup> The

**The footnotes should be removed before the material is used.**

<sup>1</sup> The law is silent with regard to what, if anything, districts do with the information. It does, however, provide that “any person who provides, or fails to provide, information relevant to the procedures set forth in this Law shall not be liable in any civil or criminal action,” (730 ILCS 152/130).

<sup>2</sup> Naming a contact person will facilitate communication and cooperation with local law enforcement agencies. Any school official may be used as the contact person and the superintendent may wish to have a contact person from each building.



Superintendent and/or Building Principal may at any time request information from law enforcement officials regarding sex offenders or violent offenders against youth.

The Superintendent will provide Building Principals and other supervisors with a copy of all lists received from law enforcement officials containing the names and addresses of sex offenders and violent offenders against youth.

The Building Principal or designee shall provide the lists to staff members in his or her building on a need-to-know basis, but in any event:

- A teacher will be told if one of his or her students, or a student's parent/guardian, is on a list.
- The school counselor, nurse, social worker, or other school service personnel will be told if a student or the parent/guardian of a student for whom he or she provides services is on a list.

No person receiving a list shall provide it to any other person, except as provided in these procedures, State law, <sup>3</sup> or as authorized by the Superintendent. Requests for information should be referred to the local law enforcement officials or State Police.

#### Screening Individuals Who Are Likely to Have Contact with Students at School or School Events <sup>4</sup>

Upon receiving a list of sex offenders or violent offenders against youth from law enforcement, the Superintendent or Building Principal, or designees, shall determine if anyone is listed who is currently a District employee, student teacher, or school volunteer.

In addition, the Superintendent and/or Building Principal(s) shall screen individuals who are likely to come in contact with students at school or school events as follows:

##### Volunteers

Each staff member shall submit to the Building Principal the name and address of each volunteer the staff member is supervising or whose services are being used as soon as that person is identified. The Building Principal or designee shall immediately screen the volunteer's name and address against the: (1) National Sex Offender Public Registry, [www.nsopr.gov](http://www.nsopr.gov), (2) Illinois Sex Offender Registry, [www.isp.state.il.us/cmvo/](http://www.isp.state.il.us/cmvo/), and (3) the violent offenders against youth database maintained by the State Police, [www.isp.state.il.us/cmvo/](http://www.isp.state.il.us/cmvo/). If a match is found, the Building Principal shall notify the Superintendent, who shall contact the local law enforcement officials to confirm or disprove the match.

If a match is confirmed, the Superintendent shall inform the individual, by mail and telephone call, that he or she may not be used as a volunteer. The Superintendent also shall inform relevant staff members and the Building Principal that the individual may not be used as a volunteer.

##### Student Teachers

The student teacher's higher education institution will facilitate the required background check with the Department of State Police and FBI. The Department of State Police and FBI will furnish records of convictions (unless expunged) pursuant to the fingerprint-based criminal history records check, to the higher education institution where the student teacher is

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The footnotes should be removed before the material is used.

<sup>3</sup> The list of child sex offenders may be a *public record* subject to disclosure under the Illinois Freedom of Information Act (5 ILCS 140/1 *et seq.*). Consult the district counsel when a request is made using this Act.

<sup>4</sup> The law is silent with regard to screening volunteers and individuals in the proximity of a school.

enrolled and the Superintendent. See 105 ILCS 5/10-21.9(g), amended by P.A. 96-1452. See 5:30-AP2, *Administrative Procedure-Investigations*. Each student teacher must provide a written authorization for, and payment of the costs of, the fingerprint-based criminal history records check and checks of the Statewide Sex Offender Database and Statewide **Child Murderer and Violent Offender Against Youth Database** prior to participating in any field experiences in the District.

#### Other Students Doing Clinical Experience

The Building Principal shall screen the name and address of each student seeking to do clinical experience in the school as described above for volunteers. If a match is found, the Building Principal and Superintendent shall proceed as above for volunteers.

#### Contractors' Employees <sup>5</sup>

The Superintendent shall include the following in all District contracts that may involve an employee of the contractor having any contact, direct or indirect, with a student:

The contractor shall not send to any school building or school property any employee or agent who would be prohibited from being employed by the District due to a conviction of a crime listed in 105 ILCS 5/10-21.9, amended by P.A.s ~~96-434~~ 97-248 and 97-607, or who is listed in the Statewide Sex Offender Registry or the Statewide Violent Offender Against Youth Database. The contractor shall obtain a fingerprint-based criminal history records check before sending any employee or agent to any school building or school property. Additionally, at least quarterly, the contractor shall check if an employee or agent is listed on the Statewide Sex Offender Registry or the Statewide Violent Offender Against Youth Database.

If a staff member at any time becomes aware or suspicious that a contractor's employee is a sex offender or violent offender against youth, the employee shall immediately notify the Superintendent. The Superintendent shall screen the name of the individual as described above for volunteers and/or contact the contractor.

If the District receives information that concerns the record of conviction as a sex offender of any District contractor's employee, the District will provide the information to another school, school district, community college district, or private school that requests it.

#### Individuals in the Proximity of a District's School

Each time a list of sex offenders and/or violent offenders against youth is received from a law enforcement official, the Building Principal shall review it to determine if anyone listed lives in the proximity of his or her school. The Building Principal shall attempt to alter school bus stops and the route students travel to and from school in order to avoid contact with an individual on such a list.

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The footnotes should be removed before the material is used.

<sup>5</sup> Districts would find it virtually impossible to screen all contractors' employees. Thus, a contractor should warrant that none of its employees who may have contact with a student at school is a child sex offender. The last sentence of this contract clause will help districts comply with 105 ILCS 5/10-21.9, amended by ~~P.A. 96-434~~ P.A.s 97-248 and 97-607. That law requires a criminal history records check to be performed on only those contractors' employees who have *direct, daily contact with students*. In order to be comprehensive and to eliminate uncertainty, this contract clause requires background checks for any contractor's employee who may work in any school building or on school property.

The last sentence of the last paragraph in this section is a new duty required by 105 ILCS 5/10-21.9(h), amended by P.A. 97-248. See f/n 17 in policy 4:170, *Safety*, for more discussion about this requirement.

## Employees

All applicants considered for District employment shall submit to a fingerprint-based criminal history records check, according to State law and School Board policy 5:30, *Hiring Process and Criteria*, and administrative procedure 5:30-AP2, *Investigations*. See 105 ILCS 5/10-21.9, amended by P.A.s 96-1452 and 97-607.

Each time a list of sex offenders or violent offenders against youth is received from a law enforcement official, the Superintendent shall review the list to determine if an employee is on the list. If a match is found, the Superintendent shall immediately contact the local police officials to confirm or disprove the match. The Superintendent shall immediately notify the Board if a match is confirmed. The Board President will contact the Board Attorney and the Board will take the appropriate action to comply with State law that may include terminating the individual's employment.

## Informing Staff Members and Parents/Guardians About the Law <sup>6</sup>

Building Principals or their designees shall inform parents/guardians about the availability of information concerning sex offenders during school registration and, if feasible, during parent-teacher conferences. Information should be distributed about the Statewide Sex Offender Database (a/k/a Sex Offender Registry), [www.isp.state.il.us/cmvo/](http://www.isp.state.il.us/cmvo/), and the Statewide Child Murderer and Violent Offender Against Youth Database, [www.isp.state.il.us/cmvo/](http://www.isp.state.il.us/cmvo/). Information may also be included in the Student Handbook. See the Sex Offender Community Notification Law, 730 ILCS 152/101 *et seq.*, and exhibit 4:170-E8, *Informing Parents About Offender Community Notification Laws*.

Requests for additional information shall be referred to local law enforcement officials.

CROSS REF.: 5:30 (Hiring Process and Criteria), 6:250 (Community Resource Persons and Volunteers), 8:30 (Visitors to and Conduct on School Property)

ADMIN. PROC.: 4:170-E8 (Informing Parents About Offender Community Notification Laws), 5:30-AP2 (Investigations), 6:250-AP (Securing and Screening Resource Persons and Volunteers), 6:250-E (Resource Person and Volunteer Information Form and Waiver of Liability), 8:30-AP (Definition of Child Sex Offender), 8:30-E1 (Letter to Parent Regarding Visits to School by Child Sex Offenders), 8:30-E2 (Child Sex Offender's Request for Permission to Visit School Property)

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The footnotes should be removed before the material is used.

<sup>6</sup> State law requires a principal or teacher to notify the parents/guardians during school registration or parent-teacher conferences that information about sex offenders is available to the public as provided in the Sex Offender Community Notification Law, 730 ILCS 152/101 *et seq.* While State law allows the notification to be made during registration or parent-teacher conferences, the sample procedure makes a notification mandatory just during registration to be sure that all parents/guardians are informed.

**Operational Services**

**Administrative Procedure - National Terrorism Advisory System**

The National Terrorism Advisory System (NTAS) replaced the Homeland Security Advisory System (HSAS). The HSAS was a color-coded scale in which each color corresponded to a particular risk of terrorist attack. Instead of a color-coded scale, NTAS provides information that is specific to a credible threat.

Posting of NTAS Alerts

NTAS Alerts are only issued when credible information is available. NTAS Alerts are announced by the Secretary of Homeland Security, and are posted at [www.dhs.gov/alerts](http://www.dhs.gov/alerts). Additionally, the Department of Homeland Security distributes the alerts to the news media and across its social media channels.

Levels of Information Available

Depending on the circumstances, the NTAS Alert may include information pertaining to the threat’s nature, the geographic region, mode of transportation, or critical infrastructure potentially affected by the threat, as well as steps that individuals and communities can take to protect themselves and help prevent, mitigate, or respond to the threat. NTAS Alerts carry an expiration date and will be automatically cancelled on that date. Updates to an Alert, as well the cancellation of an Alert, will be distributed in the same way as the original Alert.

Threat Levels

NTAS Alerts will state whether a threat is *elevated* or *imminent* as follows:

A threat is *elevated* if there is no specific information about the timing or location.

A threat is *imminent* if the threat is believed to be impending or occurring very soon.

District Response Measures

The following position is responsible for tracking NTAS Alerts and disseminating NTAS Alerts that merit administrative review: \_\_\_\_\_.

After receiving an NTAS Alert, each administrator shall review the information contained in it and determine what response measures, if any, should be taken. To determine the appropriate response, the administrator should gauge the threat to District activities for which he or she is responsible and examine the suggested response measures below. Administrators should strongly consider closing the school whenever there is an *imminent* threat to the District.

<b>Risk Level to District as Determined by District Administrators after Reviewing an NTAS Alert</b>	<b>Potential Response Measures in Addition to Those Suggested by the NTAS Alert</b>
Low or general risk of terrorist attack	Response measures: Update the school site-based safety plans, specifically the emergency and disaster response procedures. Coordinate emergency plans with county, State, and federal agencies.

<b>Risk Level to District as Determined by District Administrators after Reviewing an NTAS Alert</b>	<b>Potential Response Measures in Addition to Those Suggested by the NTAS Alert</b>
	<p>Instruct employees and students to report suspicious activities or persons to the administrative office.</p> <p>Conduct emergency and disaster response training for employees at all levels.</p> <p>Implement visitor control procedures.</p> <p>Inventory emergency supplies and equipment.</p> <p>Maintain current emergency communication lists.</p> <p>Review parent/guardian notification procedures.</p> <p>Disseminate emergency communications methods and resources (i.e., where to get information) to employees, parents, and community.</p>
<p>Significant risk of terrorist attack</p>	<p>In addition to the measures listed above, the following responses may be instituted:</p> <ul style="list-style-type: none"> <li>Assess increased risk with public safety officials.</li> <li>Review schools' site-based safety plans with all staff.</li> <li>Reassess facility security measures, e.g., lock exterior doors.</li> <li>Limit visitor access to school.</li> <li>Update employee and student emergency contact numbers.</li> <li>Test alternative communication capabilities.</li> <li>Test parent/guardian notification procedures.</li> </ul>
<p>High risk of terrorist attack</p>	<p>In addition to the measures listed above, the following responses may be instituted:</p> <ul style="list-style-type: none"> <li>Take additional precautions at public events, e.g., hiring additional security staff, restricting public access, or canceling the event.</li> <li>Review field and class trip decisions.</li> <li>Designate an alternative communications center located off school property.</li> <li>Increase communication with parents/guardians and community via website and email distribution.</li> <li>Inform parents/guardians of procedures to reunite children with parents/guardians should schools close mid-day.</li> </ul>
<p>Severe risk of terrorist attack</p>	<p>In addition to the measures listed above, the following measures may be instituted:</p> <ul style="list-style-type: none"> <li>Assess threat circumstances to determine status of school openings and closings.</li> <li>Address critical emergency needs under the direction of public safety officials.</li> <li>Review and communicate parent-child reunification process.</li> <li>Increase building security throughout the school system.</li> <li>Continue staff, parent, and community communication.</li> </ul> <p>If school is open:</p>

Risk Level to District as Determined by District Administrators after Reviewing an NTAS Alert	Potential Response Measures in Addition to Those Suggested by the NTAS Alert
	Cancel outside activities and field trips. Curtail regular and/or extracurricular bus service. Prohibit visitor access. Request police department to increase patrols around school. Prohibit parking near buildings. In case of a building lockdown, ensure each school building has a reasonable supply of food, drinking water, medical supplies, back-up communication equipment, generator, batteries, etc.

To access NTAS Alerts please refer to the following link:

NTAS Alert Website: [www.dhs.gov/alerts](http://www.dhs.gov/alerts)

To sign up to receive NTAS Alerts via email:

[public.govdelivery.com/accounts/USDHS/subscriber/new?topic\\_id=USDHS\\_164](http://public.govdelivery.com/accounts/USDHS/subscriber/new?topic_id=USDHS_164)

To add NTAS Alerts to a website:

[www.dhs.gov/files/programs/ntas-developer-resources.shtm](http://www.dhs.gov/files/programs/ntas-developer-resources.shtm)

For further information on the NTAS please refer to the following links:

[www.dhs.gov/files/programs/ntas.shtm](http://www.dhs.gov/files/programs/ntas.shtm)

[www.dhs.gov/files/publications/ntas-public-guide.shtm](http://www.dhs.gov/files/publications/ntas-public-guide.shtm)

[www.dhs.gov/files/publications/ntas-questions-answers.shtm](http://www.dhs.gov/files/publications/ntas-questions-answers.shtm)

For a sample NTAS Alert please refer to the following link:

[www.dhs.gov/xlibrary/assets/ntas/ntas-sample-alert.pdf](http://www.dhs.gov/xlibrary/assets/ntas/ntas-sample-alert.pdf)

## Operational Services

### **Administrative Procedure - Plan for Responding to a Medical Emergency at a Physical Fitness Facility with an AED**

The following operations implement School Board policy 4:170, *Safety*, requiring a plan for responding to medical emergencies at a physical fitness facility. These operations shall be completed consistent with the Physical Fitness Facility Medical Emergency Procedures Act, 210 ILCS 74/, and the Illinois Department of Public Health Rules, Part 527, “Physical Fitness Medical Emergency Preparedness Code.” Any definitions of terms found in this Act and IDPH implementing Rules are used as the definitions of those terms in this Procedure. **1**

Actor	Action								
<p>Superintendent or designee</p>	<p>Appoints a staff member to coordinate the operations in this Procedure who will be known as the “Plan Coordinator.” <b>2</b></p> <p>Plan Coordinator:</p> <table style="width: 100%; border: none;"> <tr> <td style="border: none;">_____</td> <td style="border: none;">_____</td> </tr> <tr> <td style="border: none;">Name</td> <td style="border: none;">Position</td> </tr> </table> <p>Files this plan with the Dept. of Public Health, Division of EMS &amp; Highway Safety, 500 E. Monroe - 8<sup>th</sup> Floor, Springfield, IL 62701. 77 Ill.Admin.Code §527.400(a). Files an updated plan with the IDPH after a change in the facility that affects the ability to comply with a medical emergency, such as the facility was closed for more than 45 days. 77 Ill.Admin.Code §527.400(c).</p> <p>Dates plan submitted:</p> <table style="width: 100%; border: none;"> <tr> <td style="border: none;">_____</td> <td style="border: none;">_____</td> </tr> <tr> <td style="border: none;">_____</td> <td style="border: none;">_____</td> </tr> </table> <p>Decides, with input from the Plan Coordinator, the schedule for purchasing AEDs. 210 ILCS 74/50.</p> <p><b>Indoor Facility</b> - Every district must have all applicable facilities equipped with an AED.</p> <p><b>Outdoor Facility</b> - A district with 4 or fewer physical fitness facilities must have at least two such facilities in compliance; its third facility by July 1, 2011; and its fourth facility by July 1, 2012. A district with more than 4 physical fitness facilities must have 50% of those facilities in compliance; 75% by July 1, 2011; and 100% by July 1, 2012.</p> <p>If the AED becomes inoperable, the district must replace or repair it</p>	_____	_____	Name	Position	_____	_____	_____	_____
_____	_____								
Name	Position								
_____	_____								
_____	_____								

**The footnotes should be removed before the material is used.**

**1** 77 Ill.Admin.Code Part 527, amended by 33 Ill.Reg. 10947. The amendments provide direction regarding outdoor physical fitness facilities ~~in response to P.A. 95-712~~.

**2** According to sample procedure 4:170-AP1, *Comprehensive Safety and Crisis Program*, the Superintendent appoints a district “Safety Program Coordinator.” If a district uses 4:170-AP1, consider giving that person the responsibilities of the “Plan Coordinator” and substituting “Safety Program Coordinator” for “Plan Coordinator” throughout this procedure.

Actor	Action																
	<p>within 30 days. 77 Ill.Admin.Code §527.600.</p> <p>Designates each Building Principal as the individual who must be notified in the event of a medical emergency. 3 77 Ill.Admin.Code §527.400(a).</p> <table border="0" style="width: 100%;"> <tr> <td style="width: 50%; text-align: center;">Building</td> <td style="width: 50%; text-align: center;">Office Contact</td> </tr> <tr> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> </tr> <tr> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> </tr> <tr> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> </tr> </table> <p>Follows the requirements of 77 Ill.Admin.Code §525.500 upon receiving a completed report that an AED was used (4:170-AP6, E2, <i>Automated External Defibrillator Incident Report</i>).</p>	Building	Office Contact	_____	_____	_____	_____	_____	_____								
Building	Office Contact																
_____	_____																
_____	_____																
_____	_____																
Plan Coordinator	<p><b>Responsibilities Concerning Emergency Responders</b></p> <p>With the Building Principal, identifies all staff members who, through their education or training, are appropriate emergency responders for specific facilities. If possible, train all emergency responders in CPR and AED use.</p> <table border="0" style="width: 100%;"> <tr> <td style="width: 50%; text-align: center;">Facility</td> <td style="width: 50%; text-align: center;">Emergency Response Providers</td> </tr> <tr> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> </tr> <tr> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> </tr> <tr> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> </tr> </table> <p><b>Responsibilities Concerning AED Users</b></p> <p>Determines the appropriate number of trained AED users and anticipated rescuers or users needed for each facility equipped with an AED. Each facility with an AED must have at least one trained AED user on staff during staffed business hours (210 ILCS 74/15, amended by P.A. 96-748) and take reasonable measures to ensure that anticipated rescuers or users are trained pursuant to 410 ILCS 4/15 and 77 Ill.Admin.Code §527.800.</p> <p>Working with the Building Principal, identifies trained AED users and requests that other appropriate staff members and anticipated rescuers or users become trained.</p> <table border="0" style="width: 100%;"> <tr> <td style="width: 50%; text-align: center;">Facility</td> <td style="width: 50%; text-align: center;">Trained AED Users</td> </tr> <tr> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> </tr> <tr> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> </tr> <tr> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> </tr> </table> <p><b>Responsibilities Concerning AED Registration</b></p> <p>Coordinates with local emergency medical services systems. 77 Ill.Admin.Code §527.500.</p> <p>Notifies an agent of the local emergency communications or vehicle dispatch center of the existence, location, and type of the automated external</p>	Facility	Emergency Response Providers	_____	_____	_____	_____	_____	_____	Facility	Trained AED Users	_____	_____	_____	_____	_____	_____
Facility	Emergency Response Providers																
_____	_____																
_____	_____																
_____	_____																
Facility	Trained AED Users																
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_____	_____																

The footnotes should be removed before the material is used.

3 The IDPH Rules only require that an “office contact” for a specific facility be designated to receive notification of a medical emergency; the Rules do not assign any responsibilities to this individual. Someone other than the Building Principal could be named.



Actor	Action								
	<p>defibrillator (410 ILCS 4/20(b); 77 Ill.Admin.Code §527.500).</p> <p><del>Makes any other required notifications in accordance with 77 Ill.Admin.Code §527.500. Cooperates and provides any information requested by the local emergency communications or vehicle dispatch, so they can complete the Data Collection and Submission report about the use of the AED (77 Ill.Admin.Code § 515.350). 77 Ill.Admin.Code §525.500.</del></p> <p><b>Responsibilities Concerning Location of AED and Other First Aid Equipment</b></p> <p><b>Indoor Facility</b> - Decides, with input from the Building Principal or designee, where to place the AED and other first aid equipment so that their location will be conspicuous, easily accessible, and convenient; the AED must be mobile and accessible at all times. 77 Ill.Admin.Code §527.600.</p> <p><b>Outdoor Facility</b> – Ensures that the AED is placed within 300 feet of the outdoor facility in an open building with unimpeded access that has marked directions to the location of the AED at its entrances. 77 Ill.Admin.Code §527.600 (c). 4</p> <table data-bbox="560 850 1421 1008"> <thead> <tr> <th data-bbox="560 850 1031 892">Facility</th> <th data-bbox="1031 850 1421 892">First Aid &amp; AED Location</th> </tr> </thead> <tbody> <tr> <td data-bbox="560 913 1031 934">_____</td> <td data-bbox="1031 913 1421 934">_____</td> </tr> <tr> <td data-bbox="560 955 1031 976">_____</td> <td data-bbox="1031 955 1421 976">_____</td> </tr> <tr> <td data-bbox="560 997 1031 1018">_____</td> <td data-bbox="1031 997 1421 1018">_____</td> </tr> </tbody> </table> <p>Keeps a copy of the AED’s manual with the AED. 77 Ill.Admin.Code §527.700(b).</p> <p><b>Responsibilities Concerning Notification and Posting</b></p> <p>Along with the Building Principal, notifies all staff members of the location of any AEDs as well as the instructions for responding to medical emergencies. 77 Ill.Admin.Code §527.800(b).</p> <p><b>Responsibilities Concerning Training</b></p> <p>Coordinates, with input from the Building Principal, the training of: (1) all staff members who regularly supervise students in physical fitness facilities in the use of CPR and, if appropriate, AEDs, and (2) any non-employee coaches, instructors or other similarly situated anticipated rescuers or users. 77 Ill.Admin.Code §527.800 and 210 ILCS 74/15(b-5) and (b-10).</p> <p><b>Responsibilities Concerning Instructions for Responding to Medical Emergencies</b></p> <p>Along with the Building Principal, notifies all facility staff of the location of any AEDs and the <i>Step-by-Step Emergency Response Plan</i> described below. 77 Ill.Admin.Code §527.800(b).</p>	Facility	First Aid & AED Location	_____	_____	_____	_____	_____	_____
Facility	First Aid & AED Location								
_____	_____								
_____	_____								
_____	_____								

The footnotes should be removed before the material is used.

4 210 ILCS 74/15, amended by P.A. 96-1268. AED legislation and rules have been amended several times in as many years. Rule-making by administrative agencies always lags behind legislation. P.A. 96-1268 supersedes the requirement in 77 Ill.Admin.Code §527.600(c) that requires the person responsible for supervising the activity at the outdoor physical fitness facility to ensure that an AED was available.

Actor	Action
	<p>Coordinates, along with the Building Principal, the posting of the <i>Step-by-Step Emergency Response Plan</i> described below. 77 Ill.Admin.Code §527.800(b).</p> <p><b>Responsibilities Concerning Maintenance and Testing of AEDs</b></p> <p>Ensures that all AEDs are maintained and tested according to manufacturer’s guidelines. 77 Ill.Admin.Code §527.700(a).</p> <p>Keeps a copy of the maintenance and testing manual at the facility and keeps a copy of the manual with each AED. 77 Ill.Admin.Code §527.700(b).</p>
Building Principal	<p>In a conspicuous place in the physical fitness facility, posts: (1) the list of all staff members who are emergency responders, and (2) the <i>Step-by-Step Emergency Response Plan</i> described below. 77 Ill.Admin.Code §527.400(a).</p> <p>Posts a notice at the facility’s main entrance stating that an AED is located on the premises.</p> <p>Receives notice in the event of a medical emergency. 77 Ill.Admin.Code §527.400(a).</p>
School Nurse(s)	<p>Along with the Plan Coordinator, helps staff members understand the instructions for responding to medical emergencies.</p> <p>These instructions must provide that the AED should be operated only by trained AED users, unless the circumstances do not allow time to be spent waiting for a trained AED user to arrive. 77 Ill.Admin.Code §527.800(c).</p>
Trained AED User(s) and/or Other Emergency Responder(s)	<p>According to their training, uses appropriate emergency responses upon the occurrence of any sudden, serious, and unexpected sickness or injury that would lead a reasonable person, possessing an average knowledge of medicine and health, to believe that the sick or injured person required urgent or unscheduled medical care. 77 Ill.Admin.Code §527.400(a).</p> <p>According to their training, uses the AED to help restore a normal heart rhythm when a person’s heart is not beating properly. 77 Ill.Admin.Code §527.400(a).</p> <p>Calls 9-1-1 for medical emergencies and whenever an AED is used. 77 Ill.Admin.Code §527.400(b).</p> <p>Informs the Building Principal whenever the AED or other emergency response is used. 77 Ill.Admin.Code §527.400(b).</p> <p>Whenever an AED is used, <del>completes 4:170-AP6, E2, Automated External Defibrillator Incident Report, cooperates and forwards it to provides any information requested by the Superintendent for compliance with local emergency communications or vehicle dispatch, so they can complete a Data Collection and Submission report about the requirements use of the AED (77 Ill.Admin.Code §515.350).</del> 77 Ill.Admin.Code §525.500(a).</p>
All Facility Staff Members and Users	<p>Follow the <i>Step-by-Step Emergency Response Plan</i> described below:</p> <ol style="list-style-type: none"> <li>1. Immediately notify the building’s emergency responder(s) whose contact information is posted in the facility. Under life and death circumstances call 9-1-1 without delay.</li> </ol>

Actor	Action
	<ol style="list-style-type: none"> <li>2. Bring the first aid equipment and AED to the emergency scene. The AED should be operated only by trained AED users for the intended purpose of the AED, unless the circumstances do not allow time for a trained AED user to arrive.</li> <li>3. Immediately inform the Building Principal or designee of the emergency.</li> <li>4. The emergency responder will take charge of the emergency. This person will apply first aid, CPR, and/or the AED, as appropriate.</li> <li>5. If necessary, the emergency responder instructs someone to call 9-1-1, providing the location in the building and which entrance to use. This person should make sure someone is sent to open the door for paramedics and guide them to the scene.</li> <li>6. When paramedics arrive and assume care of the victim, the emergency responder or other staff person notifies the victim's parent/guardian or relative.</li> <li>7. If an AED was used, the person using it <del>completes the Automated External Defibrillator Incident Report, 4:170-AP6, E2</del> <u>cooperates and provides any information requested by the local emergency communications or vehicle dispatch, so they can complete the Data Collection and Submission report about the use of the AED.</u> If appropriate, a supervising staff member completes an accident report.</li> <li>8. If an adult refuses treatment, the emergency responder documents the refusal and, if possible, asks the adult to sign a statement stating that he or she refused treatment.</li> </ol>

**Operational Services**

**Exhibit - Automated External Defibrillator Incident Report**

To be completed by the person who used the AED



Patient name: \_\_\_\_\_ Age: \_\_\_\_\_

Patient identification:  School  Other \_\_\_\_\_

Date of incident: \_\_\_\_\_ Description of incident: \_\_\_\_\_

Name of person who determined victim's unresponsiveness: \_\_\_\_\_

Name of person applying AED: \_\_\_\_\_

Number of times patient was defibrillated: \_\_\_\_\_

Time 9-1-1 was called: \_\_\_\_\_

Patient vitals prior to arrival of EMS: Breathing  Yes  No

Pulse  Yes  No

Heart rhythm: \_\_\_\_\_

Time EMS arrived: \_\_\_\_\_

Patient vitals after arrival of EMS: Breathing  Yes  No

Pulse  Yes  No

Heart rhythm: \_\_\_\_\_

Patient transported to: \_\_\_\_\_

List series of events from start of emergency until conclusion:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*Forward completed incident report to the Superintendent. Upon receipt, the Superintendent or designee shall follow the requirements at 77 Ill.Admin.Code §527.500.*

\_\_\_\_\_  
Signature of person who administered the AED

\_\_\_\_\_  
Date

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone

## General Personnel

### Equal Employment Opportunity and Minority Recruitment 1

The School District shall provide equal employment opportunities<sup>2</sup> to all persons regardless of their race;<sup>3</sup> color;<sup>3</sup> creed;<sup>3</sup> religion;<sup>3</sup> national origin;<sup>3</sup> sex;<sup>4</sup> sexual orientation;<sup>5</sup> age;<sup>6</sup> ancestry;<sup>3</sup> marital status;<sup>7</sup> arrest record;<sup>8</sup> military status;<sup>3</sup> order of protection status;<sup>9</sup> unfavorable military

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

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

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

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

The Lilly Ledbetter Fair Pay Act clarifies that a discriminatory compensation decision or other practice occurs each time an employee is paid or receives a last benefits check pursuant to the discriminatory compensation decision as opposed to only from the time when the discriminatory compensation decision or other practice occurred. The Act has no legislative history available to define what the phrase *or other practice* might mean beyond a discriminatory compensation decision. Consult the board attorney for guidance regarding the Lilly Ledbetter Fair Pay Act’s specific applications to the district.

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

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

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

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

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

<sup>7</sup> 105 ILCS 5/10-22.4 and 775 ILCS 5/1-103(Q). The term *marital status* means an individual’s legal status of being married, single, separated, divorced, or widowed (775 ILCS 5/1-103(J). This statutory definition does not encompass the identity of one’s spouse. Thus, school districts may adopt no-spouse policies. Boaden v. Dept. of Law Enforcement, 664 N.E.2d 61 (1996). ~~See policy 5:30, Hiring Process and Criteria, for a sample no-spouse rule.~~

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

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

discharge;<sup>10</sup> citizenship status provided the individual is authorized to work in the United States;<sup>11</sup> use of lawful products while not at work;<sup>12</sup> being a victim of domestic or sexual violence;<sup>13</sup> genetic information;<sup>14</sup> physical or mental handicap or disability, if otherwise able to perform the essential functions of the job with reasonable accommodation;<sup>15</sup> pregnancy, childbirth, or related medical conditions;<sup>16</sup> credit history, unless a satisfactory credit history is an established bona fide occupational requirement of a particular position;<sup>17</sup> or other legally protected categories. 18 19 20 21

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

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

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

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

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

**14** Illinois' Genetic Information Protection Act (GIPA) (410 ILCS 513/25) and Title II of Genetic Information Nondiscrimination Act (GINA) (42 U.S.C. §2000ff et seq.). Both laws protect job applicants and current and former employees from discrimination based on their genetic information. Note that GIPA provides greater protections to Illinois employees than Title II of GINA. See footnote 5 in 2:260, *Uniform Grievance Procedure* for the definition of genetic information and a detailed description of both statutes, including of Title I of GINA affecting the use of genetic information in health insurance. In 2011, EEOC published an informative guidance letter, ADA & GINA: Incentives for Workplace Wellness Program. EEOC Informal Discussion Letter. Consult the board attorney for guidance regarding specific application of these laws and how they integrate with other related laws, e.g., the Family Medical Leave Act, the Americans with Disabilities Act, and other State laws governing time off for sickness and workers' compensation.

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

**16** 775 ILCS 5/2-102(I), added by P.A. 97-596. Americans with Disabilities Act, 42 U.S.C. §§12111 et seq., amended by the Americans with Disabilities Act Amendments Act (ADAAA), Pub. L. 110-325 and modified by the Lilly Ledbetter Fair Act, Pub. L. 111-2; Rehabilitation Act of 1973, 29 U.S.C. §791 et seq., modified by the Lilly Ledbetter Fair Pay Act, Pub. L. 111-2.

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

**18** Optional sentence (775 ILCS 5/1-103 and 29 U.S.C. §631):

*Age*, as used in this policy, means the age of a person who is at least 40 years old.

**19** Optional provision (29 U.S.C. §705(10)(A) and (B), and 42 U.S.C. §12114):

*Handicap* and *disability*, as used in this policy, excludes persons:

1. Currently using illegal drugs;
2. Having a currently contagious disease or infection and who, by reason of such disease or infection, would constitute a direct threat to the health or safety of other individuals or who, by reason of the currently contagious disease or infection, are unable to perform the duties of the job; or
3. Whose current alcohol or drug use prevents them from performing the job's duties or constitutes a direct threat to the property or safety of others.

Persons who have successfully completed or are participating in a drug rehabilitation program are considered *handicapped*.

Persons who believe they have not received equal employment opportunities should report their claims to the Nondiscrimination Coordinator and/or a Complaint Manager for the Uniform Grievance Procedure. These individuals are listed below. No employee or applicant will be discriminated or retaliated against because he or she initiated a complaint, was a witness, supplied information, or otherwise participated in an investigation or proceeding involving an alleged violation of this policy or State or federal laws, rules or regulations, provided the employee or applicant did not make a knowingly false accusation nor provide knowingly false information. **22**

### Administrative Implementation

The Superintendent shall appoint a Nondiscrimination Coordinator for personnel who shall be responsible for coordinating the District's nondiscrimination efforts. The Nondiscrimination Coordinator may be the Superintendent or a Complaint Manager for the Uniform Grievance Procedure. The Superintendent shall insert into this policy the names, addresses, and telephone numbers of the District's current Nondiscrimination Coordinator and Complaint Managers. **23**

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**20** Districts may not make residency in the district a condition of employment for teachers or educational support personnel (105 ILCS 5/24-4.1 and 10-23.5). This ban on residency requirements for teachers applies only to instructional personnel, and not, for example, to assistant principals. Owen v. Kankakee School Dist., 632 N.E.2d 1073 (Ill.App.3, 1994). Districts also may not ask an applicant, or the applicant's previous employer, whether the applicant ever received, or filed a claim for, benefits under the Workers' Compensation Act or Workers' Occupational Diseases Act (820 ILCS 55/10).

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

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

The Ill. Whistleblower Act specifically prohibits employers from retaliating against employees for: (1) disclosing information to a government or law enforcement agency (740 ILCS 174/15(a)), (2) disclosing information in a court, an administrative hearing, or before a legislative commission or committee, or in any other proceeding where the employee has reasonable cause to believe that the information reveals a violation of a State or federal law, rule or regulation (740 ILCS 174/15(b)), (3) refusing to participate in an activity that would result in a violation of a State or federal law, rule, or regulation, including, but not limited to, violations of the Freedom of Information Act (740 ILCS 174/20), and (4) disclosing or attempting to disclose public corruption or wrongdoing (740 ILCS 174/20.1). The definition of retaliation is expanded to include *other retaliation* and *threatening retaliation* (740 ILCS 174/20.1 and 20.2).

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

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

**Nondiscrimination Coordinator:**

\_\_\_\_\_

Name

\_\_\_\_\_

Address

\_\_\_\_\_

\_\_\_\_\_

Telephone

**Complaint Managers:**

\_\_\_\_\_

Name

\_\_\_\_\_

Name

\_\_\_\_\_

Address

\_\_\_\_\_

Address

\_\_\_\_\_

\_\_\_\_\_

Telephone

\_\_\_\_\_

\_\_\_\_\_

Telephone

The Superintendent shall also use reasonable measures to inform staff members and applicants that the District is an equal opportunity employer, such as, by posting required notices and including this policy in the appropriate handbooks. **24**

Minority Recruitment **25**

The District will attempt to recruit and hire minority employees. The implementation of this policy may include advertising openings in minority publications, participating in minority job fairs, and recruiting at colleges and universities with significant minority enrollments. This policy, however, does not require or permit the District to give preferential treatment or special rights based on a protected status without evidence of past discrimination.

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

**24** In addition to notifying employees of the Uniform Grievance Procedure, a district must notify them of the person(s) designated to coordinate the district's compliance with Title IX and the Rehabilitation Act of 1973 (34 C.F.R. §§106.8(a) and 104.8(a)). The Nondiscrimination Coordinator may be the same individual for both this policy and policy 7:10, *Equal Educational Opportunities*, as well as a Complaint Manager for policy 2:260, *Uniform Grievance Procedure*. A comprehensive faculty handbook can provide required notices, along with other important information, to recipients. The handbook can be developed by the building principal, but should be reviewed and approved by the superintendent and school board. Any *working conditions* contained in the handbook may be subject to mandatory collective bargaining.

**25** All districts must have a policy on minority recruitment (105 ILCS 5/10-20.7a). Unlike minority recruitment efforts, affirmative action plans are subject to significant scrutiny because of the potential for reverse discrimination. The U.S. Constitution's guarantee of equal protection prohibits school districts from using racial hiring quotas without evidence of past discrimination. See 29 C.F.R. §1608.1 *et seq.* (Equal Employment Opportunity Commission's guidelines for affirmative action plans); *Wygant v. Jackson Board of Education*, 106 S.Ct. 1842 (1986) (The goal of remedying societal discrimination does not justify race-based layoffs.); *City of Richmond v. J.A. Croson Co.*, 109 S.Ct. 706 (1989) (Minority contractor quota struck; quotas must be narrowly tailored to remedy past discrimination and the city failed to identify the need for remedial action and whether race-neutral alternatives existed.).

The Ill. Human Rights Act, 775 ILCS 5/1-101.1, states that it shall not be construed as requiring any employer to give preferential treatment or special rights based on sexual orientation or to implement affirmative action policies or programs based on sexual orientation.



LEGAL REF.: Age Discrimination in Employment Act, 29 U.S.C. §621 et seq.  
 Americans With Disabilities Act, Title I, 42 U.S.C. §12111 et seq.  
 Civil Rights Act of 1991, 29 U.S.C. §§621 et seq., 42 U.S.C. §1981 et seq.,  
 §2000e et seq., and §12101 et seq.  
 Equal Employment Opportunities Act (Title VII of the Civil Rights Act of 1964),  
 42 U.S.C. §2000e et seq., 29 C.F.R. Part 1601.  
 Equal Pay Act, 29 U.S.C. §206(d).  
~~Employee Credit Privacy Act, 820 ILCS 70/.~~  
 Genetic Information Nondiscrimination Act, 42 U.S.C. §2000ff et seq.  
 Immigration Reform and Control Act, 8 U.S.C. §1324a et seq.  
 Rehabilitation Act of 1973, 29 U.S.C. §791 et seq.  
 Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d et seq.  
 Pregnancy Discrimination Act, 42. U.S.C. §2000e(k).  
 Title IX of the Education Amendments, 20 U.S.C. §1681 et seq., 34 C.F.R. Part  
 106.  
 Uniformed Services Employment and Reemployment Rights Act (1994), 38  
 U.S.C. §§4301 et seq.  
Ill. Constitution, Art. I, §§17, 18, and 19.  
 105 ILCS 5/10-20.7, 5/10-20.7a, 5/10-21.1, 5/10-22.4, 5/10-23.5, 5/22-19, 5/24-4,  
 5/24-4.1, and 5/24-7.  
 Genetic Information Protection Act, 410 ILCS 513/25.  
 Ill. Whistleblower Act, 740 ILCS 174/.  
 Ill. Human Rights Act, 775 ILCS 5/1-103 and 5/2-102.  
 Religious Freedom Restoration Act, 775 ILCS 35/5.  
~~Employee Credit Privacy Act, 820 ILCS 70/.~~  
 Ill. Equal Pay Act of 2003, 820 ILCS 112/.  
 Victims' Economic Security and Safety Act, 820 ILCS 180/30.  
 23 Ill.Admin.Code §1.230.

CROSS REF.: 2:260 (Uniform Grievance Procedure), 5:20 (Workplace Harassment Prohibited),  
 5:30 (Hiring Process and Criteria, 5:40 (Communicable and Chronic Infectious  
 Disease), 5:70 (Religious Holidays), 5:180 (Temporary Illness or Temporary  
 Incapacity), 5:200 (Terms and Conditions of Employment and Dismissal), 5:250  
 (Leaves of Absence), 5:270 (Employment, At-Will, Compensation, and  
 Assignment), 5:300, (Schedules and Employment Year), 5:330 (Sick Days,  
 Vacation, Holidays, and Leaves), 7:10 (Equal Educational Opportunities), 7:180  
 (Preventing Bullying, Intimidation, and Harassment), 8:70 (Accommodating  
 Individuals with Disabilities)

## General Personnel

### Hiring Process and Criteria 1

The District hires the most qualified personnel consistent with budget and staffing requirements and in compliance with School Board policy on equal employment opportunity and minority recruitment. 2 The Superintendent is responsible for recruiting personnel and making hiring recommendations to the Board. 3 If the Superintendent's recommendation is rejected, the Superintendent must submit another. 4 No individual will be employed who has been convicted of a criminal offense listed in Section 5/~~21B-80 of the School Code. 5 21-23a of the School Code. No substitute teacher will be employed without first presenting his or her certificate of authorization from the Regional Superintendent.~~

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

### Job Descriptions

The Superintendent shall develop and maintain a current comprehensive job description for each position or job category; however, a provision in a collective bargaining agreement or individual contract will control in the event of a conflict. 7

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

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

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 this alternative sentence:

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

~~Subject to an applicable collective bargaining agreement in effect on June 13, 2011, a board that fills a "new or vacant teaching position" must select a candidate based on: (1) certifications, (2) qualifications, (3) merit and ability (including performance evaluation, if available), and (4) relevant experience (105 ILCS 5/24-1.5, amended by P.A. 97-8). The statute does not define "new or vacant teaching positions." This new requirement does not apply to filling vacant positions under 105 ILCS 5/24-12 (reduction in force). Consult the board attorney about how this section of P.A. 97-8 applies to the district's circumstances.~~

4 An additional optional sentence follows:

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

~~5 105 ILCS 5/10-21.9(c), amended by P.A. 97-607. Use this alternative for districts in suburban Cook County: replace "Regional Superintendent" with "appropriate Intermediate Service Center." P.A. 96-893 abolished the Regional Office of Education for Suburban Cook County and transferred its duties and powers to Intermediate Service Centers.~~

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

Each employment application for a certificated position must state the following (Id.):

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

## 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. <sup>8</sup> The Superintendent or designee shall notify an applicant if the applicant is identified in either database. <sup>9</sup> 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 ~~Teacher Certification~~ Educator Preparation and Licensure Board, any other person necessary to the hiring decision, or for purposes of clarifying the information, the Department of State Police and/or Statewide Sex Offender Database. <sup>10</sup>

~~7-Districts should have job descriptions for each position in order to establish the position's essential functions. 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), amended by P.A. 97-8). However, any collective bargaining agreements in effect on June 13, 2011 supersede this law until June 30, 2013 (Id.) A board should consult with its attorney to review its current list of job descriptions and discuss the district's specific responsibilities in light of P.A. 97-8.~~

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

~~In order~~ For a particular function to be essential: (1) the employer must actually require employees in the position to perform it, and (2) the position would be *fundamentally altered* if the function were removed (Id.). Whether a particular function is essential is a factual determination.

**Important:** The ADAAA makes significant changes to the ADA's definition of disability that broadens the scope of coverage and overturns a series of U.S. Supreme Court decisions that made it difficult to prove that an impairment was a disability. ~~On June 17, 2009, the Equal Employment Opportunity Commission (EEOC) voted to approve a proposed Notice of Proposed Rulemaking (NPRM) to conform its current ADA regulations to the ADAAA. The EEOC has stated that it may immediately begin using the positions set forth in its proposed regulations for its litigation were by a bipartisan vote and enforcement proceedings because it views ADAAA as restorative to ADA. The latest approved on March 25, 2011. There is information about the NPRM to the ADA regulations is available and a link to them at: [www.eeoc.gov/laws/regulations/adaaa\\_fact\\_sheet.cfm](http://www.eeoc.gov/laws/regulations/adaaa_fact_sheet.cfm). Consult the board attorney regarding how these amendment's amendments~~ impact ~~on~~ the district's hiring processes.

<sup>8</sup> The policy's requirements on criminal records checks are mandated by 105 ILCS 5/10-21.9, amended by P.A. ~~s~~ 96-1452, ~~96-1489~~, and ~~97-607~~. 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](http://www.isp.state.il.us/sor). The Statewide ~~Child~~ Murderer and Violent Offender Against Youth Database is available at: [www.isp.state.il.us/cmvo/](http://www.isp.state.il.us/cmvo/).

<sup>9</sup> Id.

<sup>10</sup> 105 ILCS 5/10-21.9(b), amended by P.A. 96-1452. 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 district contractors (105 ILCS 5/10-21.9, amended by P.A. 97-248). Many districts delegate this task in the hiring process to a human resources department.

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

The Superintendent or designee shall ensure that an applicant's credit history or report from a consumer reporting agency is used only when a satisfactory credit history is an established bona fide occupational requirement of a particular position. **11**

Each newly hired employee must complete an Immigration and Naturalization Service Form as required by federal law. **12**

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 ~~5/21-23a~~ 21B-80 of the School Code or who falsifies, or omits facts from, his or her employment application or other employment documents.

### Physical Examinations

New employees must furnish evidence of physical fitness to perform assigned duties and freedom from communicable disease, including tuberculosis. **13** All physical fitness examinations and tests for tuberculosis must be performed by a physician licensed in Illinois, or any other state, to practice medicine and surgery in any of its branches, or an advanced practice nurse who has a written collaborative agreement with a collaborating physician that authorizes the advanced practice nurse to perform health examinations, or a physician assistant who has been delegated the authority by his or her supervising physician to perform health examinations. The employee must have the physical examination and tuberculin test performed no more than 90 days before submitting evidence of it to the Board.

Any employee may be required to have an additional examination by a physician who is licensed in Illinois to practice medicine and surgery in all its branches, or an advanced practice nurse who has a written collaborative agreement with a collaborating physician that authorizes the advanced practice nurse to perform health examinations, or a physician assistant who has been delegated the authority

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**11** Employee Credit Privacy Act, 820 ILCS 70/, added by P.A. 96-1426. 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.

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

**13** Pre-employment medical inquiries must be limited to whether the applicant is able to perform job-related functions; required medical examinations of applicants is forbidden (American with Disabilities Act [ADA], 42 U.S.C. §12112(d)(2), as amended by the ADAAA, Pub. L. 110-325); see also footnote ~~7~~ 8 for an explanation regarding the ADAAA. Districts may condition an employment offer on taking and passing medical inquiries or physical exams, provided that all entering employees in the same classification receive the same conditional offer. Boards must require new employees to furnish evidence of a physical examination and a tuberculin skin test and, if appropriate, an X-ray (105 ILCS 5/24-5).

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.

by his or her supervising physician to perform health examinations, if the examination is job-related and consistent with business necessity. **14** 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.

- LEGAL REF.: Americans with Disabilities Act, 42 U.S.C. §12112, 29 C.F.R. Part 1630.  
Immigration Reform and Control Act, 8 U.S.C. §1324a et seq.  
105 ILCS 5/10-16.7, 5/10-20.7, 5/10-21.4, 5/10-21.9, 5/~~21-23a~~ 21B-10, 5/21B-80,  
5/10-22.34, 5/10-22.34b, 5/22-6.5, and 5/24-1 et seq.  
820 ILCS 55/ and 70/  
Duldulao v. St. Mary of Nazareth Hospital, 483 N.E.2d 956 (Ill.App.1, 1985), *aff'd*  
*in part and remanded* 505 N.E.2d 314 (Ill., 1987).  
Kaiser v. Dixon, 468 N.E.2d 822 (Ill.App.2, 1984).  
Molitor v. Chicago Title & Trust Co., 59 N.E.2d 695 (Ill.App.1, 1945).
- CROSS REF.: 3:50 (Administrative Personnel Other Than the Superintendent), 5:10 (Equal Employment Opportunity and Minority Recruitment), 5:40 (Communicable and Chronic Infectious Disease), 5:220 (Substitute Teachers), 5:280 (Educational Support Personnel - Duties and Qualifications)

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**14** The State law (105 ILCS 5/24-5) allowing boards to require physicals of current employees "from time to time," has been superseded by federal law (ADA, 42 U.S.C. §12112(d)(4), as amended by the ADAAA, Pub. L. 110-325). The ADA allows medical inquiries of current employees only when they are job-related and consistent with business necessity or part of a voluntary employee wellness program (Id.). Districts may deny jobs to individuals with disabilities who pose a direct threat to the health or safety of others in the workplace, provided that a reasonable accommodation would not either eliminate the risk or reduce it to an acceptable level (42 U.S.C. §12113; 29 C.F.R. Part 1630.2(r). See footnote 7 8 for an explanation regarding the ADAAA.

See the above footnote for a discussion of examinations by spiritual leaders/practitioners.

## General Personnel

### Administrative Procedure - Investigations

#### Immigration Investigation

All newly hired employees must complete section one of the Immigration and Naturalization Service Form I-9 no later than 3 business days following their first working day (Immigration Reform and Control Act, 8 U.S.C. §1324a, 8 C.F.R. §274a.2). If an individual is unable to provide the required documents to complete it, the individual may present a receipt for the application of the required documents within 3 days of the hire. The individual must then present the required documents within 90 days of the hire. The Superintendent or designee completes section two of the Form I-9 and confirms the employee's information.

If the Employment Eligibility Verification System (E-Verify) is used to complete Form I-9, the Superintendent or designee will review the Ill. Dept. of Labor's website and its E-Verify factsheet, available at: [www.state.il.us/Agency/idol/Forms/PDFs/everify.pdf](http://www.state.il.us/Agency/idol/Forms/PDFs/everify.pdf). See, the Ill. Dept. of Labor Right to Privacy in the Workplace Act, 820 ILCS 55/12, ~~amended by P.A. 96-623~~.

The completed Form I-9 shall be maintained in a file separate from other personnel records in order to prevent unauthorized review of personnel files. The Form I-9 shall be retained for a period of 3 years after the date of hire or one year after individual employment is terminated, whichever is later.

#### Criminal History Records Check

**Note:** These requirements are in 105 ILCS 5/10-21.9, ~~(amended by P.A.s 96-1452 and 97-607) and 105 ILCS 5/21-9, (amended by P.A.s 96-1489 and 97-607 and scheduled to repeal on June 30, 2013 by P.A. 97-607)~~. See also the Sex Offender Community Notification Law (730 ILCS 152/101 *et seq.*); ~~Child~~-Murderer and Violent Offender Against Youth Community Notification Law (730 ILCS 154/75-105, ~~amended by 97-154~~); policy 4:170, *Safety*; and administrative procedure 4:170-AP2, *Criminal Offender Notification Laws*. A detailed "Guide to Understanding Criminal Background Check Information" is available at: [www.isp.state.il.us/docs/5-727.pdf](http://www.isp.state.il.us/docs/5-727.pdf). **Important:** 20 ILCS 2630/5(h)(2)(A) outlines how an individual may petition to have an arrest record expunged by the arresting authority and the records of the arrest sealed by the circuit court clerk. It also details offenses for which an individual cannot have his or her conviction sealed.

The following individuals are responsible for the actions listed:

**Applicant** - Each applicant for employment in any position (except bus driver ~~and substitute teacher~~) must provide a written authorization for a fingerprint-based criminal history records check at the time he or she submits the application.

~~**Applicant for Substitute Teacher** - Each applicant for any substitute teacher position must provide his or her certificate of authorization from the Regional Superintendent of Schools or Suburban Cook County Intermediate Service Center (P.A. 96-893), whichever is appropriate. See 105 ILCS 5/21-9(e), amended by HB 5863, eff. 1-1-2011.~~

**Student Teacher** - Each student teacher must provide payment of the costs of and a written authorization for his or her higher educational institution to perform a fingerprint-based criminal history records check and checks of the Statewide Sex Offender Database and Statewide ~~Child~~ Murderer and Violent Offender Against Youth Database prior to participating in any field experiences in the District. See 105 ILCS 5/10-21.9(g), amended by P.A. 96-1452.

**Applicant for Bus Driver** - Each applicant for a bus driver position must complete the application required by the Secretary of State for a school bus driver permit (obtained from the District) and submit it to the District along with the necessary fingerprint submission as required by the Department of State Police to conduct a fingerprint-based criminal history records check. The Superintendent or designee will conduct a pre-employment interview with prospective school bus driver candidates, distribute school bus driver applications and medical forms, and submit the applicant's fingerprint cards to the Department of State Police. The Superintendent or designee will certify in writing to the Secretary of State that all pre-employment conditions have been successfully completed, including the successful completion of a criminal history records check as required by State law. The applicant must present the certification to the Secretary of State at the time of submitting the school bus driver permit application. See 625 ILCS 5/6-106.1, amended by P.A. 96-962 and P.A. 96-1182 and 105 ILCS 5/10-21.9(g), amended by P.A. 96-1452.

**Superintendent - Note:** *Add any additional steps to efficiently receive a fingerprint-based criminal history records check.*

1. Fingerprint-Based Criminal History Records Check:

For all applicants, the Superintendent or designee completes the required forms in order to request a fingerprint-based criminal history records check from an appropriate police or live scan agency. ~~For substitute teachers, the Superintendent ensures that the certificate of authorization from the Regional Superintendent of Schools or Suburban Cook County Intermediate Service Center, whichever is appropriate, is on file in the District (105 ILCS 5/21-9(c), amended by HB 5863, eff. 1-1-2011).~~ **Note:** Superintendents will need to ensure that their districts perform these checks again for substitute teachers. Contact the board attorney and/or ISBE regarding the validity of a certificate of authorization, if a substitute teacher presents one. From Jan. 1, 2011 through July 1, 2011, the Regional Superintendent of Schools or Suburban Cook County Intermediate Service Center, whichever is appropriate, was allowed to issue certificates of authorization to substitute teachers (105 ILCS 5/21-9(c), amended by P.A. 96-1489 and deleted by P.A. 97-607). Issuance of a certificate of authorization was proof that the substitute teacher applicant had met all of the requirements to substitute teach in the educational service region; i.e., a fingerprint-based criminal history records check, a physical examination, and a negative tuberculin test. Because P.A. 97-607 deleted certificates of authorization, substitute teachers will no longer receive them because they no longer exist. For those substitute teachers who did receive them, there is not an answer to the question of whether their certificates of authorization are still valid. Attorneys in the field suggest looking for an expiration date on the certificate of authorization. If the document has no expiration date, it is likely invalid because the document no longer exists. If there is an expiration date, then the document is likely valid until the date listed.

2. For student teachers, the Superintendent works with the higher education institution where the student teacher is enrolled to obtain or ensure that the student teacher completes the required forms to request a fingerprint-based criminal history records check (105 ILCS 5/10-21.9(g), amended by P.A. ~~s~~ 96-1452 and 97-154, see policy 5:260, *Student Teachers*).

3. This may include submitting the applicant's name, sex, race, date of birth, social security number, fingerprint images, and other identifiers to the Department of State Police on the forms prescribed by it.

4. The Superintendent or designee will provide the applicant with a copy of the conviction record obtained from the Department of State Police. Required by 105 ILCS 5/10-21.9(b).

5. Check of the statewide offender databases. The Superintendent or designee performs a check for each applicant of:
  - a. The Statewide Sex Offender Database (a/k/a Sex Offender Registry), [www.isp.state.il.us/sor](http://www.isp.state.il.us/sor), as authorized by the Sex Offender Community Notification Law (730 ILCS 152/101 et seq.), and
  - b. The Statewide ~~Child~~ Murderer and Violent Offender Against Youth Registry ([www.isp.state.il.us/cmvo/](http://www.isp.state.il.us/cmvo/)), as authorized by the Child Murderer and Violent Offender Against Youth Community Notification Law (730 ILCS 154/75-105, amended by P.A. 97-154).

The Superintendent or designee notifies an applicant if the applicant is identified in the database as a sex offender. Required by 105 ILCS 5/10-21.9 (a-5), (a-6) (amended by P.A. 97-154), and (b).

**State Police and FBI** - The Department of State Police and FBI furnish records of convictions (until expunged), pursuant to a fingerprint-based criminal history records check, to the School Board President or for a student teacher, the Superintendent and the higher education institution where the student teacher is enrolled. **Note:** The State Police and FBI must “furnish, pursuant to a fingerprint-based criminal history records check, records of convictions, until expunged, to the president of the school board...”. See 105 ILCS 5/10-21.9(a) and (g), amended by P.A.s 96-1452 and 97-154.

**Board President** - The School Code requires the Board President to keep a conviction record confidential. The information may only be shared between the Board President, the Superintendent or designee, Regional Superintendent (if the check was requested by the District), State Superintendent of Schools, State ~~Teacher Certification~~ Educator Preparation and Licensure Board, any other person necessary to the hiring decision, or for clarification purposes, the Department of State Police and/or Statewide Sex Offender Database. See 105 ILCS 5/10-21.9(b-~~g~~) (amended by P.A. 96-1452) and 105 ILCS 5/21B-10 (added by P.A. 97-607).

**Regional Superintendent/Suburban Cook County Intermediate Service Center** - Whenever an applicant is seeking employment in more than one District as either a substitute or part-time teacher or educational support personnel employee, the Superintendent or designee may require the applicant to authorize the Regional Superintendent or Suburban Cook County Intermediate Service Center, whichever is appropriate, to conduct the check. The Regional Superintendent or Suburban Cook County Intermediate Service Center, whichever is appropriate, also performs a check of the Statewide Sex Offender Database ([www.isp.state.il.us/sor](http://www.isp.state.il.us/sor)) as authorized by the Sex Offender Community Notification Law (730 ILCS 152/115) and the Violent Offender Against Youth Database ([www.isp.state.il.us/cmvo/](http://www.isp.state.il.us/cmvo/)) as authorized by the ~~Child~~ Murderer and Violent Offender Against Youth Community Notification Law (730 ILCS 154/75-105, amended by P.A. 97-154). See 105 ILCS 5/10-21.9 (a-5), (a-6) (amended by P.A. 97-154), and (b).

**Contractors** - The above requirements for fingerprint-based criminal history records check apply to every employee or agent of any contractor if the employee or agent has direct, daily contact with students. **Note:** The provisions in 105 ILCS 5/10-21.9(f) and (g) (amended by P.A.s 97-607 and 97-154) apply to employees of contractors who have “direct, daily contact with students.” Thus, districts must: (1) seek a fingerprint-based criminal history records check for all such employees, or (2) include a provision in the contract with the contractor that the contractor will obtain the fingerprint-based criminal history records check and submit it to the district. All contracts should require the contractor to purchase insurance to cover misconduct by their employees and/or an indemnification clause. Additionally, a district should check its own insurance coverage to determine whether employees of contractors are covered. See also policy 4:170, *Safety*, for the responsibilities of contractors. Last, if a district receives information that concerns the record of conviction and



identification as a sex offender of any contractors' employees, the district must provide the information to another school, school district, community college district, or private school that requests it (105 ILCS 5/10-21.9(h), amended by P.A. 97-248).

**District** - The School District complies with 105 ILCS 5/10-21.9 (amended by P.A.s 97-154, 97-248, and 97-607) and 5/21-23a 21B-80 (added by P.A. 97-607). It will not knowingly employ a person, or allow a person work or student teach on school grounds, who:

1. Has been convicted of committing or attempting to commit any one or more of the following offenses:
  - a. Attempted first-degree murder or Attempting to commit, conspiring to commit, soliciting, or committing first-degree murder or any Class X felony.
  - b. Sex offenses as defined in Sections 11-6 and 11-9 through 11-9.5, inclusive, Sections 11-14 through 11-21, inclusive, Sections 11-23 (if punished as a Class 3 felony), 11-24, 11-25, and 11-26, and Sections 12-4.9, 12-13, 12-14, 12-14.1, 12-15, 12-16, 12-32, and 12-33 of the Criminal Code of 1961.
  - c. Those defined in the Cannabis Control Act, 720 ILCS 550/, except 720 ILCS 550/4(a), 550/4(b), and 550/5(a).
  - d. Those defined in the Illinois Controlled Substances Act, 720 ILCS 570/100 et seq.
  - e. Those defined in the Methamphetamine Control and Community Protection Act, 720 ILCS 646/.
  - f. Any offense committed or attempted in any other state or against the laws of the United States, which if committed or attempted in Illinois, would have been punishable as one or more of the foregoing offenses.
2. Has been found to be the perpetrator of sexual or physical abuse of any minor less than 18 years of age pursuant to proceedings under Article II of the Juvenile Court Act of 1987.

### Reporting New Hires

The Superintendent or designee shall timely file an IRS Form W-4 or IDES New Hire Reporting Form for each newly hired employee with the Illinois Department of Employment Security. See 820 ILCS 405/1801.1.

## General Personnel

### Abused and Neglected Child Reporting <sup>1</sup>

Any District employee who suspects or receives knowledge that a student may be an abused or neglected child or, for a student aged 18 through 21, an abused or neglected individual with a disability<sup>2</sup>, shall immediately: (1) report or cause a report to be made to the Illinois Department of Children and Family Services on its Child Abuse Hotline 800/25-ABUSE or 217/524-2606, and (2) follow any additional directions given by the Illinois Department of Children and Family Services to complete a report. The employee shall also promptly notify the Superintendent or Building Principal that a report has been made. All District employees shall sign the *Acknowledgement of Mandated Reporter Status* form provided by the Illinois Department of Child and Family Services (DCFS) and the Superintendent or designee shall ensure that the signed forms are retained. <sup>3</sup>

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

<sup>1</sup> State or federal law controls this policy's content.

<sup>2</sup> P.A. 96-1446 amended two statutes and defines the same class of individuals differently throughout, but with the same goal: to protect disabled adult students who are still in school with Individual Education Plans (IEPs) that do not live in DCFS licensed facilities. The Ill. Dept. of Human Services Act, 20 ILCS 1305/1-17(b), amended by P.A. 96-1446 defines "adult student with a disability" as an adult student, age 18 through 21, inclusive (through the day before the student's 22<sup>nd</sup> birthday), with an IEP other than a resident of a facility licensed by DCFS. This statutory definition is the basis for this sample policy's language. For purposes of the following discussions in f/n 3 & 5 below, the term "adult student with a disability" is shortened to *disabled adult student*.

For elementary districts, delete the first sentence and insert the following sentence:

Any District employee who suspects or receives knowledge that a student may be an abused or neglected child shall immediately report or cause a report to be made to the Illinois Department of Children and Family Services on its Child Abuse Hotline 800/25-ABUSE or 217/524-2606.

<sup>3</sup> The Abused and Neglected Child Reporting Act requires school personnel to make an immediate report or cause a report to be made to DCFS; it states that they "may also notify the person in charge of [the] school," (325 ILCS 5/4). If the report involves a *disabled adult student*, employees should expect DCFS to instruct them to call the Ill. Dept. of Human Services Office (DHS) of the Inspector General's statewide 24 hour toll-free telephone number at 1-800-843-6154 (325 ILCS 5/4.4a and 20 ILCS 1305/1-17(b), both amended by P.A. 96-1446). Reports involving a disabled adult student may be made directly to DHS; however, for simplicity, and to preserve a superintendent's duty to disclose certain reports involving an employee or former district employee (see discussion in f/n 5 below) and the immunity for such disclosures, the sample policy directs the initial phone call involving a disabled adult student to DCFS. The sample policy makes the report to the superintendent or building principal mandatory in order to keep the administration informed. Of course, the administration may not force the staff member to change or modify his or her report (325 ILCS 5/4).

Abuse and neglect are defined in 325 ILCS 5/3 and, for disabled adult students in 20 ILCS 1305/1-17(b), amended by P.A. 96-1446 and 20 ILCS 2435/15. Abuse may be generally understood as any physical or mental injury or sexual abuse inflicted on a child or disabled adult student other than by accidental means or creation of a risk of such injury or abuse by a person who is responsible for the child's or disabled adult student's welfare. Neglect may be generally understood as abandoning a child or disabled adult student or failing to provide the proper support, education, medical, or remedial care required by law by one who is responsible for the child's or disabled adult student's welfare.

Reports should include, when known, the child's or disabled adult student's name and address, parents or other custodian, and condition including any evidence of previous injuries or disabilities, plus any other helpful information. Any person required by law to report abuse and neglect who willfully fails to report is guilty of a Class A misdemeanor. A teaching certificate may be suspended for willful failure to report suspected child abuse or neglect as required by law (105 ILCS 5/~~21-23, amended 21B-75, added~~ by P.A. ~~97-607~~, and 20 ILCS 1305/1-17(k)(1), amended by P.A. 96-1446).

School personnel are granted broad immunities against civil and criminal claims when they file a report of abuse or neglect in good faith, even if it proves groundless. Such immunities are not available, however, to the individual who knowingly files a false report. Knowingly transmitting a false report to DCFS is a Class 4 felony (325 ILCS 5/4, 7 and 7.6, amended by P.A. 97-189).

Any District employee who discovers child pornography on electronic and information technology equipment shall immediately report it to local law enforcement, the National Center for Missing and Exploited Children's CyberTipline 800/843-5678, or online at [www.cybertipline.com](http://www.cybertipline.com). The Superintendent or Building Principal shall also be promptly notified of the discovery and that a report has been made. <sup>4</sup>

The Superintendent shall execute the requirements in Board policy 5:150, *Personnel Records*, whenever another school district requests a reference concerning an applicant who is or was a District employee and was the subject of a report made by a District employee to DCFS. <sup>5</sup>

The Superintendent shall notify the State Superintendent and the Regional Superintendent in writing when he or she has reasonable cause to believe that a certificate holder was dismissed or resigned from the District as a result of an act that made a child an abused or neglected child. <sup>6</sup> The Superintendent must make the report within 30 days of the dismissal or resignation and mail a copy of the notification to the certificate holder. <sup>7</sup>

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

<sup>4</sup> The Reporting Act requires an electronic and information technology equipment worker or the worker's employer to report a discovery of child pornography depicted on an item of electronic and information technology equipment (325 ILCS 5/4.5). Consult the board attorney to determine whether any district employees fit the definition of an *electronic and information technology worker*, i.e., are "persons who in the scope and course of their employment or business install, repair, or otherwise service electronic and information technology equipment for a fee."

The paragraph exceeds the newly added requirements by requiring *all* district employees to report a discovery of child pornography on electronic and information technology equipment. This furthers the National Center for Missing and Exploited Children's public policy goal of "empowering the public to take immediate and direct action to enforce a zero tolerance policy regarding child sexual exploitation."

Similar to school personnel who are mandated reporters, electronic and information technology equipment workers and their employers have broad immunities from criminal, civil, or administrative liabilities when they report a discovery of child pornography as required under 325 ILCS 5/4.5, except for willful or wanton misconduct (e.g. knowingly filing a false report). Failure to report a discovery of child pornography is a business offense subject to a fine of \$1001.

District employees who are not information and technology equipment workers who, in good faith, make a report also receive immunity, except in cases of willful or wanton misconduct. See 325 ILCS 5/4 and 9. Further, for the purpose of any proceedings, civil or criminal, good faith of the person making the report is presumed. Id.

<sup>5</sup> The Abused and Neglected Child Reporting Act, 325 ILCS 5/4, requires a superintendent, upon being requested for a reference concerning an employee or former employee, to disclose to the requesting school district the fact that a district employee has made a report involving the conduct of the applicant or caused a report to be made to DCFS. When a report involves a disabled adult student, DCFS must instruct mandated reporters making these reports to call the Ill. Dept. Human Services' Office of the Inspector General's statewide 24 hour toll-free telephone number: 1-800-368-1463 (325 ILCS 5/4.4a, amended by P.A. 96-1446) to make a report under the Ill. Dept. of Human Services (DHS) Act (20 ILCS 1305/).

The DHS Act, 20 ILCS 1305/1-17, amended by P.A. 96-1446, then requires a determination of whether a report involving a disabled adult student should be investigated under it or the Abuse of Adults with Disabilities Intervention Act, 20 ILCS 2435. Neither the DHS Act nor the Abuse of Adults with Disabilities Intervention Act outlines a duty for the superintendent, upon being requested for a reference concerning an employee or former employee, to disclose to the requesting school district the fact that a district employee has made a report involving the conduct of the applicant or caused a report to be made to DHS involving an adult student with a disability.

Given the public policy behind the recent amendments to 325 ILCS 5/4, a reasonable interpretation of P.A. 96-1446 is that the superintendent's duty to disclose now involves DHS reports concerning adult students with disabilities. However, with no mechanism requiring DHS to report back to the superintendent a *non-substantiated report* (DHS version of a DCFS *unfounded* report), a superintendent's duty to disclose cannot end. Consult the board attorney about managing the duty to disclose reports that involve disabled adult students when DCFS redirects the reporter to DHS. For more information, see policy 5:150, *Personnel Records*.

<sup>6</sup> Alternative for districts in suburban Cook County: replace "Regional Superintendent" with "appropriate Intermediate Educational Service Center." P.A. 96-893 abolished the Regional Office of Education for Suburban Cook County and transferred its duties and powers to Intermediate Service Centers.

<sup>7</sup> 105 ILCS 5/10-21.9(e-5 ~~amended by P.A. 96-431~~) requires these notifications and provides superintendents immunity from any liability, whether civil or criminal or that otherwise might result by complying with the statute.

The Superintendent or designee shall provide staff development opportunities for school personnel working with students in grades kindergarten through 8, in the detection, reporting, and prevention of child abuse and neglect. **8**

Each individual Board member must, if an allegation is raised to the member during an open or closed Board meeting that a student is an abused child as defined in the Act, direct or cause the Board to direct the Superintendent or other equivalent school administrator to comply with the Act's requirements concerning the reporting of child abuse. **9**

LEGAL REF.: 105 ILCS 5/10-21.9.  
20 ILCS 1305/1-1 et seq.  
20 ILCS 2435/.  
325 ILCS 5/.

CROSS REF.: 2:20 (Powers and Duties of the School Board), 5:20 (Workplace Harassment Prohibited), 5:100 (Staff Development Program), 5:150 (Personnel Records), 6:120 (Education of Children with Disabilities), 7:20 (Harassment of Students Prohibited), 7:150 (Agency and Police Interviews)

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**8** While it is unclear whether this is a duty or power, 105 ILCS 5/10-23.12 authorizes boards “[t]o provide staff development for local school site personnel who work with pupils in grades kindergarten through 8, in the detection, reporting and prevention of child abuse and neglect.” The drill during such training should be: “If in question, report.” Of course, a board could extend the training opportunity or make participation mandatory, depending on any applicable collective bargaining agreement, by replacing this sentence with:

Option 1: The Superintendent or designee shall provide staff development opportunities for all school personnel working with students, in the detection, reporting, and prevention of child abuse and neglect.

Option 2: All District employees working with students shall participate in a meeting that specifically addresses and reviews the reporting requirements of the Abused and Neglected Child Reporting Act.

**9** 325 ILCS 5/4. This statute makes board members mandatory child abuse reporters “to the extent required in accordance with other provisions of this section expressly concerning the duty of school board members to report suspected child abuse.” Thus, a board member’s duty is “to direct the superintendent or other equivalent school administrator to comply with the Act’s requirements concerning the reporting of child abuse” whenever an “allegation is raised to a school board member during the course of an open or closed school board meeting that a child who is enrolled in the school district of which he or she is a board member is an abused child.” Of course, any board member with reason to doubt that a report was or will be made should directly contact DCFS.

## General Personnel

### Personal Technology and Social Media; Usage and Conduct 1

#### Definitions

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

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

**Personal technology** - Any device that is not owned or leased by the District or otherwise authorized for District use and: (1) transmits sounds, images, text, messages, videos, or electronic information, (2) electronically records, plays, or stores information, or (3) accesses the Internet, or private communication or information networks. <sup>4</sup> This includes smartphones such as BlackBerry®, Android®, iPhone®, and other devices, such as, iPads® and iPods®. <sup>5</sup>

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

<sup>1</sup> This policy is optional. Consult the board attorney because personal technology and social media involve an unprecedented area of the law. Public employees’ First Amendment rights involve an unsettled area of the law. Personal technology and social media platforms change continually. Therefore, instead of prohibiting specific actions, this sample policy focuses on what will not change - maintaining appropriate behavior as outlined in 5:120, *Ethics and Conduct*, the Ill. Educators’ Code of Ethics at 23 Ill.Admin.Code §22.20, and 105 ILCS 5/21-23, amended by P.A. 97-8, repealed, added and renumbered at 105 ILCS 5/21B-75 by P.A. 97-607 (allows suspensions or revocations of certificates for *immorality* and *unprofessional conduct*, among other things). *Immoral* has been defined by one court to mean “shameless conduct showing moral indifference to the opinions of the good and respectable members of the community,” (see Ahmad v. Board of Education of City of Chicago, 847 N.E.2d 810, 819 (1<sup>st</sup> Dist. 2006)).

Consult the board attorney when a board wants to prohibit more specific actions and/or specific speech, e.g., *friending* students on Facebook or similar social media, *tweeting* or otherwise communicating with students on Twitter or similar social media sites, and text messaging or emailing students. See also the discussion in f/n 6 below.

This policy also contains an item on which collective bargaining may be required. Any policy that impacts upon wages, hours, and terms and conditions of employment, is subject to collective bargaining upon request by the employee representative, even if the policy involves an inherent managerial right. When a policy’s subject matter is superseded by a bargaining agreement, the board policy can state, “Please refer to the current [*insert name of CBA*].”

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

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

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

<sup>5</sup> Optional.

## Usage and Conduct

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

1. Adhere to the high standards for appropriate school relationships in policy 5:120, *Ethics and Conduct* at all times, regardless of the ever-changing social media and personal technology platforms available. This includes District employees posting images or private information about themselves or others in a manner readily accessible to students and other employees that is inappropriate as defined by policy 5:20, *Workplace Harassment Prohibited*; 5:120, *Ethics and Conduct*; 6:235, *Access to Electronic Networks*; 7:20, *Harassment of Students Prohibited*; and the Ill. Code of Educator Ethics, 23 Ill.Admin.Code §22.20.
2. Choose a District-provided or supported method whenever possible to communicate with students and their parents/guardians.
3. Not interfere with or disrupt the educational or working environment, or the delivery of education or educational support services.
4. Comply with policy 5:130, *Responsibilities Concerning Internal Information*. This means that personal technology and social media may not be used to share, publish, or transmit information about or images of students and/or District employees without proper approval. For District employees, proper approval may include implied consent under the circumstances. **7**
5. Refrain from using the District's logos without permission and follow Board policy 5:170, *Copyright*, and all District copyright compliance procedures. **8**
6. Use personal technology and social media for personal purposes only during non-work times or hours. Any duty-free use must occur during times and places that the use will not interfere with job duties or otherwise be disruptive to the school environment or its operation. **9**
7. Assume all risks associated with the use of personal technology and social media at school or school-sponsored activities, including students' viewing of inappropriate Internet materials through the District employee's personal technology or social media. The Board expressly

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

**6** The following list is optional and may contain items on which collective bargaining may be required (see f/n 1). To ensure that the listed expectations match local conditions, boards may want to initiate a conversation with the superintendent about these expectations. Expectations will be most effective when they reflect local conditions and circumstances. This conversation provides an additional opportunity for the board and superintendent to examine all current policies, collective bargaining agreements, and administrative procedures applicable to this subject (see f/n 2 of policy 5:120, *Ethics and Conduct*, for more discussion about how to initiate this conversation). Employee conduct issues may be subjects of mandatory collective bargaining, therefore consulting the board attorney should be a part of this process. After discussing these issues, the board may have further expectations and may choose to reflect those expectations here.

**7** Inherent dangers exist when district employees use personal technology and social media without understanding how the information is used within the chosen platform and what choices are available within the platform to control it. Some examples of laws that require the safekeeping of district and school records include: the Federal Educational Rights and Privacy Act, 20 U.S.C. §1232g and the Ill. School Student Records Act, 105 ILCS 10/ (both prohibit the unauthorized disclosure of student school records), 5 ILCS 140/7 (exempts personnel information and other items such as school security and response plans and maps from disclosure), 45 C.F.R. §164.502 (protects the employees' health information), and 820 ILCS 40/ (governs the release of an employee's disciplinary action). For district employees, implied consent may be sufficient in some circumstances, e.g., teachers taking pictures of each other at a birthday party in the teachers' lounge or at a social event off school grounds and later posting those pictures on Facebook.

**8** 17 U.S.C. §101 *et seq.*

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

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

8. Be subject to remedial and any other appropriate disciplinary action for violations of this policy ranging from prohibiting the employee from possessing or using any personal technology or social media at school to dismissal and/or indemnification of the District for any losses, costs, or damages, including reasonable attorney fees, incurred by the District relating to, or arising out of, any violation of this policy. **11**

The Superintendent shall: **12**

1. Inform District employees about this policy during the in-service on educator ethics, teacher-student conduct, and school employee-student conduct required by Board policy 5:120, *Ethics and Conduct*.
2. Direct Building Principals to annually:
  - a. Provide their building staff with a copy of this policy.
  - b. Inform their building staff about the importance of maintaining high standards in their school relationships.
  - c. Remind their building staff that those who violate this policy will be subject to remedial and any other appropriate disciplinary action up to and including dismissal.
3. Build awareness of this policy with students, parents, and the community.

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

**10** The Children's Internet Protection Act (CIPA), 47 U.S.C. §254, requires school districts to maintain a policy and provide Internet access that protects against access to websites containing material that is obscene, pornographic, or harmful to minors. See 6:235, *Access to Electronic Networks*. Because a district cannot subject its employees' usage of personal technology and social media to the same measures required under CIPA (i.e., content filters, blocking lists, or district monitoring of Internet website traffic for patterns of usage that could indicate inappropriate network usage), this statement seeks to balance the district's duty by shifting responsibility for inappropriate behavior to the individual employee.

**11** The Ill. Human Rights Act makes it a civil rights violation to fail to take remedial action, or to fail to take appropriate disciplinary action against any employee, when the district knows that the employee committed or engaged in sexual harassment of a student (775 ILCS 5/5A-102). Sexual harassment of a student is also prohibited by 7:20, *Harassment of Student Prohibited*, and of an employee by 5:20, *Workplace Harassment Prohibited*.

Whether to discipline an employee for his or her speech is always highly fact sensitive and should always occur after a consultation with the board attorney (see f/ns 1 and 6). The discipline will require careful balancing of the District's obligations to protect its students with employees' rights. Further, a board may not discipline its employees for discussing the terms and conditions of their employment with co-workers and others or otherwise interfere with their employees' efforts to work to improve the terms and conditions of their workplace (29 U.S.C. §151 *et seq.*).

**12** 105 ILCS 5/10-16.7. The school board directs, through policy, the superintendent in his or her charge of the district's administration. One logical method for a board to address the issue of district employees' use of personal technology and social media is to include its expectations during its in-service trainings required by 105 ILCS 5/10-22.39. Many experts in social media risk management advocate training employees about the expectations concerning social media usage. For boards that do not want to include this as a part of the in-service, delete the phrase "during the in-service on educator ethics, teacher-student conduct, and school employee-student conduct required by Board policy 5:120, *Ethics and Conduct*."

Public employee First Amendment issues involve the balance between the importance of the speech and the district's interest in maintaining order and effective school operations. The First Amendment "does not entitle primary and secondary teachers, when conducting the education of captive audiences, to cover topics, or advocate viewpoints, that depart from the curriculum adopted by the school system." See *Mayer v. Monroe County Community School Corp.*, 474 F.3d 477 (7<sup>th</sup> Cir. 2007). Nor is the First Amendment likely to entitle a teacher to protection for purely personal speech that does not touch on a matter of public concern. See *Pickering v. High School Dist. 205*, 391 U.S. 563 (1968). However, when public employees speak as private citizens on their own time about matters of public concern, they may face only those speech restrictions that are necessary for their employers to operate efficiently and effectively (*Garcetti v. Ceballos*, 547 U.S. 410 (2006)).

4. Periodically review this policy and any procedures with District employee representatives and electronic network system administrator(s) and present proposed changes to the Board.

LEGAL REF.: 105 ILCS 5/~~21-23~~ 21B-75 and 5/~~21-23a~~ 21B-80.  
Ill. Human Rights Act, 775 ILCS 5/5A-102.  
Code of Ethics for Ill. Educators, 23 Ill.Admin.Code §22.20.  
Garcetti v. Ceballos, 547 U.S. 410 (2006).  
Pickering v. High School Dist. 205, 391 U.S. 563 (1968).  
Mayer v. Monroe County Community School Corp., 474 F.3d 477 (7th Cir. 2007).

CROSS REF.: 5:20 (Workplace Harassment Prohibited), 5:30 (Hiring Process and Criteria),  
5:120 (Ethics and Conduct), 5:130 (Responsibilities Concerning Internal  
Information), 5:150 (Personnel Records), 5:170 (Copyright), 5:200 (Terms and  
Conditions of Employment and Dismissal), 6:235 (Access to Electronic  
Networks), 7:20 (Harassment of Students Prohibited), 7:340 (Student Records)



## **General Personnel**

### **Administrative Procedure - Resource Guide for Family and Medical Leave**

#### Web Resources

##### Revised FMLA Poster

[www.dol.gov/esa/whd/fmla/finalrule/FMLAPoster.pdf](http://www.dol.gov/esa/whd/fmla/finalrule/FMLAPoster.pdf)

[www.dol.gov/whd/regs/compliance/posters/fmlaen.pdf](http://www.dol.gov/whd/regs/compliance/posters/fmlaen.pdf)

##### Certification of Health Care Provider for Employee's Serious Health Condition (App. B)

[www.dol.gov/esa/whd/forms/WH-380-E.pdf](http://www.dol.gov/esa/whd/forms/WH-380-E.pdf)

[www.dol.gov/whd/forms/WH-380-E.pdf](http://www.dol.gov/whd/forms/WH-380-E.pdf)

##### Certification of Health Care Provider for Family Member's Serious Health Condition (App. B)

[www.dol.gov/esa/whd/forms/WH-380-F.pdf](http://www.dol.gov/esa/whd/forms/WH-380-F.pdf)

[www.dol.gov/whd/forms/WH-380-F.pdf](http://www.dol.gov/whd/forms/WH-380-F.pdf)

##### Notice of Eligibility and Rights & Responsibilities (App. C)

[www.dol.gov/esa/whd/fmla/finalrule/WH381.pdf](http://www.dol.gov/esa/whd/fmla/finalrule/WH381.pdf)

[www.dol.gov/whd/forms/WH-381.pdf](http://www.dol.gov/whd/forms/WH-381.pdf)

##### Designation Notice (App. E)

[www.dol.gov/esa/whd/forms/WH-382.pdf](http://www.dol.gov/esa/whd/forms/WH-382.pdf)

[www.dol.gov/whd/forms/WH-382.pdf](http://www.dol.gov/whd/forms/WH-382.pdf)

##### Certification of Qualifying Exigency For Military Family Leave (PDF) (App. G)

[www.dol.gov/esa/whd/forms/WH-384.pdf](http://www.dol.gov/esa/whd/forms/WH-384.pdf)

[www.dol.gov/whd/forms/WH-384.pdf](http://www.dol.gov/whd/forms/WH-384.pdf)

##### Certification for Serious Injury or Illness of Covered Servicemember -- for Military Family Leave (App. H)

[www.dol.gov/esa/whd/forms/WH-385.pdf](http://www.dol.gov/esa/whd/forms/WH-385.pdf)

[www.dol.gov/whd/forms/WH-385.pdf](http://www.dol.gov/whd/forms/WH-385.pdf)

##### Fact Sheet #28 (Non-Military) (PDF)

[www.dol.gov/esa/whd/fmla/finalrule/whdfs28.pdf](http://www.dol.gov/esa/whd/fmla/finalrule/whdfs28.pdf)

[www.dol.gov/whd/regs/compliance/whdfs28.htm](http://www.dol.gov/whd/regs/compliance/whdfs28.htm)

##### Fact Sheet #28A (Military) (PDF)

[www.dol.gov/esa/whd/regs/compliance/whdfs28a.pdf](http://www.dol.gov/esa/whd/regs/compliance/whdfs28a.pdf)

[www.dol.gov/whd/regs/compliance/whdfs28a.htm](http://www.dol.gov/whd/regs/compliance/whdfs28a.htm)

#### Department of Labor Rules

##### 29 C.F.R. Part 825,

[ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&tpl=/ecfrbrowse/Title29/29cfr825\\_main\\_02.tpl](http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&tpl=/ecfrbrowse/Title29/29cfr825_main_02.tpl)

[ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&tpl=/ecfrbrowse/Title29/29cfr825\\_main\\_02.tpl](http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&tpl=/ecfrbrowse/Title29/29cfr825_main_02.tpl)

##### Subpart A - Coverage Under the Family and Medical Leave Act

§825.100            101 General

§§825.110-111    Eligible employees

- §825.112 Qualifying reasons for leave, general rule
- §§825.113-115 Serious health condition, inpatient care, continuing treatment
- §825.119 Leave for treatment of substance abuse
- §825.120 Leave for pregnancy or birth
- §825.121 Leave for adoption or foster care
- §825.122 Definitions of spouse, parent, son or daughter, next of kin of a covered servicemember, adoption, foster care, son or daughter on active duty or call to active duty status, son or daughter of a covered servicemember, and parent of a covered servicemember
- §825.123 Unable to perform the functions of the position
- §825.124 Needed to care for a family member or covered servicemember
- §825.125 Definition of health care provider
- §825.126 Leave because of a qualifying exigency
- §825.127 Leave to care for a covered servicemember with a serious injury or illness

#### Subpart B - Employee Leave Entitlements Under the Family and Medical Leave Act

- §825.200 Amount of leave
- §825.201 Spouses employed by the same employer
- §§825.202-205 Intermittent leave or reduced leave schedule
- §825.206 Interaction with the FLSA
- §825.207 Substitution of paid leave
- §§825.209-211 Maintenance of employee benefits
- §§825.212-213 Employee failure to pay health plan premium payments
- §§825.214-216 Employee right to reinstatement
- §§825.217-219 Key employee, general rule
- §825.220 Protection for employees who request leave or otherwise assert FMLA rights

#### Subpart C - Employee and Employer Rights and Obligations Under the Act

- §§825.300-301 Employer notice requirements
- §§825.302-304 Employee notice requirements
- §§825.305-308 Certification
- §§825.309-310 Certification for leave taken because of a qualifying exigency or covered servicemember
- §§825.311-313 Return to work, fitness-for-duty certification

#### Subpart D - Enforcement Mechanisms

- §§825.400-404 Enforcement, filing a complaint, appealing the assessment of a penalty

#### Subpart E - Record-Keeping Requirements

- §825.500 Record-keeping requirements

#### Subpart F - Special Rules Applicable to Employees of Schools

- §825.600 Definitions
- §825.601 Limitations on intermittent leave
- §825.602 Limitations on leave near the end of an academic term
- §825.603 Duration of FMLA leave
- §825.604 Restoration to ‘an equivalent position’

#### Subpart G - Effect of Other Laws, Employer Practices, and Collective Bargaining Agreements on Employee Rights Under FMLA

- §825.700 Interaction with employer’s policies
- §825.701 Interaction with State laws
- §825.702 Interaction with Federal and State anti-discrimination laws

### Definitions for Implementing Board Policy (29 C.F.R. §825.800)

**Active duty or call to active duty status** means duty under a call or order to active duty (or notification of an impending call or order to active duty) in support of a contingency operation pursuant to Section 688 of Title 10 of the United States Code, which authorizes ordering to active duty retired members of the Regular Armed Forces and members of the retired Reserve who retired after completing at least 20 years of active service; Section 12301(a) of Title 10 of the United States Code, which authorizes ordering all reserve component members to active duty in the case of war or national emergency; Section 12302 of Title 10 of the United States Code, which authorizes ordering any unit or unassigned member of the Ready Reserve to active duty; Section 12304 of Title 10 of the United States Code, which authorizes ordering any unit or unassigned member of the Selected Reserve and certain members of the Individual Ready Reserve to active duty; Section 12305 of Title 10 of the United States Code, which authorizes the suspension of promotion, retirement or separation rules for certain Reserve components; Section 12406 of Title 10 of the United States Code, which authorizes calling the National Guard into federal service in certain circumstances; chapter 15 of Title 10 of the United States Code, which authorizes calling the National Guard and state military into federal service in the case of insurrections and national emergencies; or any other provision of law during a war or during a national emergency declared by the President or Congress so long as it is in support of a contingency operation. See also §825.126(b)(2).

**Commerce and industry or activity affecting commerce** mean any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce, and include “commerce” and any “industry affecting commerce” as defined in Sections 501(1) and 501(3) of the Labor Management Relations Act of 1947, 29 U.S.C. 142(1) and (3).

**Contingency operation** means a military operation that:

- (1) Is designated by the Secretary of Defense as an operation in which members of the armed forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force; or
- (2) Results in the call or order to, or retention on, active duty of members of the uniformed services under Section 688, 12301(a), 12302, 12304, 12305, or 12406 of Title 10 of the United States Code, chapter 15 of Title 10 of the United States Code, or any other provision of law during a war or during a national emergency declared by the President or Congress. See also §825.126(b)(3).

**Continuing treatment by a health care provider** means any one of the following:

- (1) **Incapacity and treatment.** A period of incapacity of more than three consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves:
  - (i) Treatment two or more times, within 30 days of the first day of incapacity, unless extenuating circumstances exist, by a health care provider, by a nurse under direct supervision of a health care provider, or by a provider of health care services (e.g., physical therapist) under orders of, or on referral by, a health care provider; or
  - (ii) Treatment by a health care provider on at least one occasion, which results in a regimen of continuing treatment under the supervision of the health care provider.
  - (iii) The requirement in paragraphs (1)(i) and (ii) of this definition for treatment by a health care provider means an in-person visit to a health care provider. The first in-person treatment visit must take place within seven days of the first day of incapacity.
  - (iv) Whether additional treatment visits or a regimen of continuing treatment is necessary within the 30-day period shall be determined by the health care provider.
  - (v) The term “extenuating circumstances” in paragraph (1)(i) of this definition means circumstances beyond the employee’s control that prevent the follow-up visit from occurring as planned by the health care provider. Whether a given set of circumstances are extenuating depends on the facts. See also §825.115(a)(5).
- (2) **Pregnancy or prenatal care.** Any period of incapacity due to pregnancy, or for prenatal care. See also §825.120.
- (3) **Chronic conditions.** Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which:
  - (i) Requires periodic visits (defined as at least twice a year) for treatment by a health care provider, or by a nurse under direct supervision of a health care provider;

- (ii) Continues over an extended period of time (including recurring episodes of a single underlying condition); and
  - (iii) May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.).
- (4) **Permanent or long-term conditions.** A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.
- (5) **Conditions requiring multiple treatments.** Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, for:
- (i) Restorative surgery after an accident or other injury; or
  - (ii) A condition that would likely result in a period of incapacity of more than three consecutive full calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), kidney disease (dialysis).
- (6) Absences attributable to incapacity under paragraphs (2) or (3) of this definition qualify for FMLA leave even though the employee or the covered family member does not receive treatment from a health care provider during the absence, and even if the absence does not last more than three consecutive full calendar days. For example, an employee with asthma may be unable to report for work due to the onset of an asthma attack or because the employee's health care provider has advised the employee to stay home when the pollen count exceeds a certain level. An employee who is pregnant may be unable to report to work because of severe morning sickness.

**Covered military member** means the employee's spouse, son, daughter, or parent on active duty or call to active duty status. See also §825.126(b).

**Covered service member** means a current member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness incurred in the line of duty on active duty. See also §825.127(a).

**Eligible employee** means:

- (1) An employee who has been employed for a total of at least 12 months by the employer on the date on which any FMLA leave is to commence, except that an employer need not consider any period of previous employment that occurred more than seven years before the date of the most recent hiring of the employee, unless:
  - (i) The break in service is occasioned by the fulfillment of the employee's National Guard or Reserve military service obligation (the time served performing the military service must be also counted in determining whether the employee has been employed for at least 12 months by the employer, but this section does not provide any greater entitlement to the employee than would be available under the Uniformed Services Employment and Reemployment Rights Act (USERRA)); or
  - (ii) A written agreement, including a collective bargaining agreement, exists concerning the employer's intention to rehire the employee after the break in service (e.g., for purposes of the employee furthering his or her education or for childrearing purposes); and
- (2) Who, on the date on which any FMLA leave is to commence, has been employed for at least 1,250-hours of service with such employer during the previous 12-month period, except that:
  - (i) An employee returning from fulfilling his or her National Guard or Reserve military obligation shall be credited with the hours-of-service that would have been performed but for the period of military service in determining whether the employee worked the 1,250 hours of service (accordingly, a person reemployed following military service has the hours that would have been worked for the employer added to any hours actually worked during the previous 12-month period to meet the 1,250-hour requirement);
  - (ii) To determine the hours that would have been worked during the period of military service, the employee's preservice work schedule can generally be used for calculations; and
- (3) Who is employed in any State of the United States, the District of Columbia or any Territories or possession of the United States.

- (4) Excludes any Federal officer or employee covered under subchapter V of chapter 63 of title 5, United States Code.
- (5) Excludes any employee of the United States House of Representatives or the United States Senate covered by the Congressional Accountability Act of 1995, 2 U.S.C. 1301.
- (6) Excludes any employee who is employed at a worksite at which the employer employs fewer than 50 employees if the total number of employees employed by that employer within 75 miles of that worksite is also fewer than 50.
- (7) Excludes any employee employed in any country other than the United States or any Territory or possession of the United States.

**Employ** means to suffer or permit to work.

**Employee** has the meaning given the same term as defined in section 3(e) of the Fair Labor Standards Act, 29 U.S.C. 203(e), as follows:

- (1) The term “employee” means any individual employed by an employer;
- (2) In the case of an individual employed by a public agency, “employee” means—

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- (iii) Any individual employed by a State, political subdivision of a State, or an interstate governmental agency, other than such an individual—
  - (A) Who is not subject to the civil service laws of the State, political subdivision, or agency which employs the employee; and
  - (B) Who—
    - (1) Holds a public elective office of that State, political subdivision, or agency,
    - (2) Is selected by the holder of such an office to be a member of his personal staff,
    - (3) Is appointed by such an officeholder to serve on a policymaking level,
    - (4) Is an immediate adviser to such an officeholder with respect to the constitutional or legal powers of the office of such officeholder, or
    - (5) Is an employee in the legislative branch or legislative body of that State, political subdivision, or agency and is not employed by the legislative library of such State, political subdivision, or agency.

**Employee employed in an instructional capacity.** See the definition of Teacher in this section.

**Employer** means any person engaged in commerce or in an industry or activity affecting commerce who employs 50 or more employees for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year, and includes—

- (1) Any person who acts, directly or indirectly, in the interest of an employer to any of the employees of such employer;
- (2) Any successor in interest of an employer; and
- (3) Any public agency.

**Employment benefits** means all benefits provided or made available to employees by an employer, including group life insurance, health insurance, disability insurance, sick leave, annual leave, educational benefits, and pensions, regardless of whether such benefits are provided by a practice or written policy of an employer or through an “employee benefit plan” as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1002(3). The term does not include non-employment related obligations paid by employees through voluntary deductions such as supplemental insurance coverage. (See §825.209(a).)

**FLSA** means the Fair Labor Standards Act (29 U.S.C. 201 *et seq.*).

**Group health plan** means any plan of, or contributed to by, an employer (including a self-insured plan) to provide health care (directly or otherwise) to the employer’s employees, former employees, or the families of such employees or former employees. For purposes of FMLA the term “group health plan” shall not include an insurance program providing health coverage under which employees purchase individual policies from insurers provided that:

- (1) No contributions are made by the employer;
- (2) Participation in the program is completely voluntary for employees;

- (3) The sole functions of the employer with respect to the program are, without endorsing the program, to permit the insurer to publicize the program to employees, to collect premiums through payroll deductions and to remit them to the insurer;
- (4) The employer receives no consideration in the form of cash or otherwise in connection with the program, other than reasonable compensation, excluding any profit, for administrative services actually rendered in connection with payroll deduction; and,
- (5) The premium charged with respect to such coverage does not increase in the event the employment relationship terminates.

**Health care provider** means:

- (1) The Act defines “health care provider” as:
  - (i) A doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the State in which the doctor practices; or
  - (ii) Any other person determined by the Secretary to be capable of providing health care services.
- (2) Others “capable of providing health care services” include only:
  - (i) Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice in the State and performing within the scope of their practice as defined under State law;
  - (ii) Nurse practitioners, ~~nurse midwives~~ nurse midwives, clinical social workers and physician assistants who are authorized to practice under State law and who are performing within the scope of their practice as defined under State law;
  - (iii) Christian Science Practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts. Where an employee or family member is receiving treatment from a Christian Science practitioner, an employee may not object to any requirement from an employer that the employee or family member submit to examination (though not treatment) to obtain a second or third certification from a health care provider other than a Christian Science practitioner except as otherwise provided under applicable State or local law or collective bargaining agreement.
  - (iv) Any health care provider from whom an employer or the employer’s group health plan’s benefits manager will accept certification of the existence of a serious health condition to substantiate a claim for benefits; and
  - (v) A health care provider listed above who practices in a country other than the United States, who is authorized to practice in accordance with the law of that country, and who is performing within the scope of his or her practice as defined under such law.
- (3) The phrase “authorized to practice in the State” as used in this section means that the provider must be authorized to diagnose and treat physical or mental health conditions. Incapable of self-care means that the individual requires active assistance or supervision to provide daily self-care in several of the “activities of daily living” (ADLs) or “instrumental activities of daily living” (IADLs). Activities of daily living include adaptive activities such as caring appropriately for one’s grooming and hygiene, bathing, dressing and eating. Instrumental activities of daily living include cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, using a post office, etc.

**Instructional employee:** See the definition of Teacher in this section.

**Intermittent leave** means leave taken in separate periods of time due to a single illness or injury, rather than for one continuous period of time, and may include leave of periods from an hour or more to several weeks. Examples of intermittent leave would include leave taken on an occasional basis for medical appointments, or leave taken several days at a time spread over a period of six months, such as for chemotherapy.

**Mental disability:** See the definition of Physical or mental disability in this section.

**Next of kin of a covered servicemember** means the nearest blood relative other than the covered servicemember’s spouse, parent, son, or daughter, in the following order of priority: Blood relatives who have been granted legal custody of the covered servicemember by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered servicemember has specifically designated in writing another blood relative as his or her nearest blood relative for purposes of military caregiver leave under the FMLA. When no such designation is made, and there are multiple family members

with the same level of relationship to the covered servicemember, all such family members shall be considered the covered servicemember's next of kin and may take FMLA leave to provide care to the covered servicemember, either consecutively or simultaneously. When such designation has been made, the designated individual shall be deemed to be the covered servicemember's only next of kin. See also §825.127(b)(3).

**Outpatient status** means, with respect to a covered servicemember, the status of a member of the Armed Forces assigned to either a military medical treatment facility as an outpatient; or a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients. See also §825.127(a)(2).

**Parent** means a biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the employee when the employee was a son or daughter as defined below. This term does not include parents "in law."

**Parent of a covered servicemember** means a covered servicemember's biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the covered servicemember. This term does not include parents "in law." See also §825.127(b)(2).

**Physical or mental disability** means a physical or mental impairment that substantially limits one or more of the major life activities of an individual. Regulations at 29 CFR Part 1630, issued by the Equal Employment Opportunity Commission under the Americans with Disabilities Act (ADA), 42 U.S.C. 12101 et seq., as amended, define these terms.

**Reduced leave schedule** means a leave schedule that reduces the usual number of hours per workweek, or hours per workday, of an employee.

**Serious health condition** means an illness, injury, impairment or physical or mental condition that involves inpatient care as defined in §825.114 or continuing treatment by a health care provider as defined in §825.115. Conditions for which cosmetic treatments are administered (such as most treatments for acne or plastic surgery) are not "serious health conditions" unless inpatient hospital care is required or unless complications develop. Restorative dental or plastic surgery after an injury or removal of cancerous growths are serious health conditions provided all the other conditions of this regulation are met. Mental illness or allergies may be serious health conditions, but only if all the conditions of §825.113 are met.

**Serious injury or illness** means an injury or illness incurred by a covered servicemember in the line of duty on active duty that may render the servicemember medically unfit to perform the duties of the member's office, grade, rank, or rating. See also §825.127(a)(1).

**Son or daughter** means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is either under age 18, or age 18 or older and "incapable of self-care because of a mental or physical disability" at the time that FMLA leave is to commence.

**Son or daughter of a covered servicemember** means a covered servicemember's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the covered servicemember stood in loco parentis, and who is of any age. See also §825.127(b)(1).

**Son or daughter on active duty or call to active duty status** means the employee's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the employee stood in loco parentis, who is on active duty or call to active duty status, and who is of any age. See also §825.126(b)(1).

**Spouse** means a husband or wife as defined or recognized under State law for purposes of marriage in the State where the employee resides, including common law marriage in States where it is recognized. State means any State of the United States or the District of Columbia or any Territory or possession of the United States.

**Teacher** (or employee employed in an instructional capacity, or instructional employee) means an employee employed principally in an instructional capacity by an educational agency or school whose principal function is to teach and instruct students in a class, a small group, or an individual setting, and includes athletic coaches, driving instructors, and special education assistants such as signers for the hearing impaired. The term does not include teacher assistants or aides who do not have as their principal function actual teaching or instructing, nor auxiliary personnel such as counselors, psychologists, curriculum specialists, cafeteria workers, maintenance workers, bus drivers, or other primarily noninstructional employees.

LEGAL REF.: Family and Medical Leave Act, 29 U.S.C. §2601 et seq.; 29 C.F.R. Part 825.

## Professional Personnel

### Teacher Qualifications 1

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

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

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

<sup>2</sup> [P.A. 97-607 repealed](#) 105 ILCS 5/21-0.01 [et seq.](#); [and added Article 21B titled Educator Licensure to the School Code.](#) 23 Ill.Admin.Code §1.610 [et seq.](#), §1.705 [et seq.](#) and Part 25 [still refer to this repealed section of the School Code. Teacher certification will become educator licensure on or before July 1, 2013 \(P.A. 97-607\). Once the licensure system is operational, all certified employees will automatically be transitioned to having the corresponding applicable licensure.](#)

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

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

Subparagraph 1b and 1c are required of all teachers by 105 ILCS 5/24-23, amended by P.A. 96-998. Some boards add the word "official" to the phrase, "complete official transcript of credits."

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



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

The Superintendent or designee shall:

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

LEGAL REF.: 20 U.S.C. §6319.  
34 C.F.R §200.55, 56, 57, and 61.  
105 ILCS 5/10-20.15, ~~5/21-1~~, 5/21-10, 5/21-11.4, 5/21B-20, and 5/24-23.  
23 Ill.Admin.Code §1.610 et seq., §1.705 et seq., and Part 25.

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

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

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

<sup>6</sup> 34 C.F.R. §200.57(b)(2).

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

## Professional Personnel

### Resignations <sup>1</sup>

Tenured teachers may resign at any time with consent of the School Board or by written notice sent to the Board Secretary at least 30 days before the intended date of resignation. However, no teacher may resign during the school term in order to accept another teaching position without the consent of the Board. <sup>2</sup>

LEGAL REF.: 105 ILCS 5/24-14.  
Park Forest Heights School Dist. v. State Teacher Certification Bd., 842 N.E.2d 1230 (Ill.App.1, 2006).

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<sup>1</sup> State or federal law controls this policy's content.

<sup>2</sup> Districts may want to add a liquidated damages clause to individual teacher contracts in order to discourage teacher resignations in violation of this policy and law.

A teacher who resigns during the school term, without the board's permission, in order to accept another teaching assignment, is guilty of unprofessional conduct and liable to suspension of his or her certificate license for up to one year (105 ILCS 5/24-14, amended by P.A. 97-607). Park Forest Heights School Dist. v. State Teacher Certification Bd., 842 N.E.2d 1230 (Ill.App.1, 2006)(regional superintendent may suspend for one year the teaching certificate of a tenured or nontenured teacher who resigns to accept another position). P.A. 97-607 authorizes ISBE to move from a system of certification to one of educator licensure before July 1, 2013. All certified employees will automatically be transitioned to having the corresponding applicable licensure on or before July 1, 2013. While P.A. 97-607 now uses the term license in the statute that governs this policy, for practical purposes, license means certificate until ISBE implements the new licensure system.

## Professional Personnel

### Substitute Teachers 1

The Superintendent may employ substitute teachers as necessary to replace teachers who are temporarily absent.

A substitute teacher must hold either a valid teaching or substitute certificate and ~~present a certificate may teach in the place of authorization from the Regional Superintendent showing that he or she is approved to substitute teach. Substitute teachers with a substitute certificate may teach only when an appropriate, fully-certificated~~ a certified teacher who is under contract with the Board. <sup>2</sup> ~~There is unavailable~~ no limit on the number of days that a substitute teacher may teach only for a period not to exceed 90 paid in the District during the school days or 450 paid school hours in any one school district in any one school term year. However, ~~a teacher holding an~~ there is a limit on the number of days that a substitute teacher may teach for any one certified teacher under contract with the District in the same school year. The following limitations apply: <sup>3</sup>

1. A substitute teacher holding a substitute certificate may teach only for a period not to exceed 90 school days.
2. A teacher holding a valid early childhood, elementary, high school, or special certificate may substitute teach only for a period not to exceed 120 paid school days.

The Teachers' Retirement System (TRS) in Illinois limits a substitute teacher who is a TRS annuitant to substitute teaching for a period not to exceed 100 paid days or 500 paid hours in any school days or 600 paid school hours in any one school district in any one school term year, unless the subject area is one where the Regional Superintendent has certified that a personnel shortage exists. <sup>4</sup>

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

<sup>1</sup> State or federal law controls this policy's content. See policy 5:30, *Hiring Process and Criteria*. Each board must require new employees to furnish evidence of a physical examination and tuberculin skin test and, if appropriate, an X-ray (105 ILCS 5/24-5). The physical examination must be performed within 90 days before the time it is presented to the board, and the employee bears the cost of the physical examination.

<sup>2</sup> ~~Substitute teaching certificates are governed by 105 ILCS 5/21-9, amended by P.A. 97-607, but this section will be repealed on June 30, 2013 because ISBE plans to institute a system of educator licensure by July 1, 2013 (P.A. 07-607). All licensure requirements and qualifications are listed in Article 21B of the School Code. Once ISBE institutes the new licensure system, substitute teaching licenses and substitute teaching will be governed by 105 ILCS 5/21B-20(3), added by P.A. 97-607. 105 ILCS 5/21-9, amended by HB 5863, eff. 1-1-11. Alternative for districts in suburban Cook County: replace "Regional Superintendent" with "appropriate Intermediate Educational Service Center." P.A. 96-893 abolished the Regional Office of Education for Suburban Cook County and transferred its duties and powers to Intermediate Service Centers.~~

<sup>3</sup> Id. Required by 105 ILCS 5/21-9.

<sup>4</sup> ~~40 ILCS 5/16-118 and 40 ILCS 5/16-150.1. The limitation for TRS annuitants of 120 paid days or 600 hours expired on June 30, 2011. The limitations listed in the first clause of this sentence apply to all substitute teachers. See, 105 ILCS 5/21-9 and 40 ILCS 5/16-118(b). 40 ILCS 5/16-150.1, as amended by P.A. 95-910, addresses personnel shortages and extends to 2013 the allowance of some TRS annuitants to return to full-time TRS covered employment without loss of their pensions where the regional superintendent certifies that a personnel shortage exists in their subject areas. The program, started in 2003, was extended in 2008 and expires on June 30, 2013. 105 ILCS 5/10-21.9(b), amended by P.A. 96-1452.~~

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

The School Board establishes a daily rate of pay for substitute teachers. Substitute teachers receive only monetary compensation for time worked and no other benefits. <sup>5</sup>

Emergency Situations <sup>6</sup>

A substitute teacher may teach when no certified teacher is under contract with the Board if the District has an emergency situation as defined in State law. During an emergency situation, a substitute teacher is limited to 30 calendar days of employment per each vacant position. The Superintendent will notify the appropriate Regional Office of Education within 5 business days after the employment of a substitute teacher in an emergency situation.

LEGAL REF.: 105 ILCS 5/21-9~~;~~, 5/21B-20(3), and 24-5.  
23 Ill.Admin.Code §1.790.

CROSS REF.: 5:30 (Hiring Process and Criteria)

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<sup>5</sup> If a board provides substitute teachers other benefits, it may consider listing them here.

<sup>6</sup> 105 ILCS 5/21-9, amended by P.A. 97-607. An *emergency situation* is defined as one where an unforeseen vacancy has occurred and (i) a teacher is unable to fulfill his or her contractual duties, or (ii) the district's teacher capacity needs exceed previous indications and the district is actively engaged in advertising to hire a fully certified teacher for the vacant position.

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

## Professional Personnel

### Administrative Procedure - Substitute Teachers 1

#### Qualifications of the Substitute Teacher

1. Substitute teachers are required to have one of the following that is a valid in State of Illinois:
  - a. Teaching certificate in the field(s) in which they substitute or a substitute teacher certificate under Article 21 of the School Code until ISBE implements the new licensure system under Article 21B of the School Code.
  - b. Professional educator license, a professional educator license with stipulations, or a substitute teaching license under Article 21 B of the School Code after ISBE implements the new licensure system under Article 21 B of the School Code or before June 30, 2013 (P.A. 97-607).
2. Substitute teachers shall have each of the following credentials on file with the District Administrative Office.
  - a. Completed application for employment,
  - b. Teaching certificate or license registration (when the new ISBE licensure system is operational),
  - c. Evidence of freedom from tuberculosis,
  - d. State and federal tax forms,
  - e. Transcript of college credits,
  - f. Form I-9, and
  - g. If applicable, certificate of authorization from the Regional Superintendent (ROE) or Suburban Cook County Intermediate Service Center, whichever is appropriate (105 ILCS 5/21-9(c), amended by ~~HB 5863, eff. 1-1-2011~~), P.A. 96-1489 and deleted by P.A. 97-607. Note: P.A. 97-607 is silent about whether certificates of authorization issued under P.A. 96-1489 are still valid or expired. Contact ISBE, the ROE, or Intermediate Service Center with questions.
3. The District's equal employment opportunity policy applies to substitute teachers.

#### Superintendent's Responsibilities

1. The Superintendent or designee maintains a list of substitute teachers in the District Administrative Office.
2. The Superintendent or designee verifies:
  - a. Criminal background check results, and

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The footnotes should be removed before the material is used.

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These sample procedures must be amended to reflect actual practice. It should be clear who has responsibility for maintaining the substitute list, contacting them, recording work days, and evaluating them. A superintendent may also refer to a Substitute Handbook, if one exists, as well as additional pay provisions.

a-b. When applicable, the certificate of authorization with the list of registered substitute teachers maintained by the Regional Superintendent or Suburban Cook County Intermediate Service Center, whichever is applicable.

#### Duties of the Substitute Teacher

1. Keep and leave a status report of lesson plans completed and leave a report of the group's accomplishments.
2. Manage all recording of assignments and grading during the time worked as outlined in the applicable collective bargaining agreement or duties for long term substitute teachers.
3. Prepare plans for the following day's work.
4. Follow the regular teacher's lesson plans.
5. Leave the classroom and its equipment in order.
6. Leave a note reporting any unusual experience with a student during the day.
7. Hold as confidential any information concerning staff, parents, or students.
8. Be consistent in dealing with others; emphasize the positive, yet be firm and sympathetic.
9. When notified in time, arrive at least 20 minutes before the school period starts, and remain on duty at least 20 minutes after dismissal time.
10. Check with the office when reporting for substitute duty, and check with the office before leaving to see if you will be needed the next day.
11. If temporarily or permanently withdrawing from substitute work, so inform the central office.
12. Report any issues you encounter to the Building Principal.

#### Compensation

1. The rate of pay for substitute teachers is established from time-to-time by the School Board.
2. Substitute teachers are employed and paid for only days actually worked. Substitutes are not paid for holidays, vacation days, or days of illness.

#### Assignment Procedures

Substitute teachers will be called as needed from the office of the Building Principal. Only teachers who are on the substitute teacher list, as compiled by the Superintendent or designee, may be called for substitute work. Substitute teachers are given as much notice as possible; however emergency situations will be called the morning they are needed.

#### District Responsibilities

The person arranging for a substitute teacher's service shall provide each substitute with the following:

1. District map with locations of District schools indicated,
2. District and school building emergency procedures, location of emergency equipment, etc.,
3. School directory,
4. School calendar and handbook, and
5. District student discipline policy and procedures.

LEGAL REF.: 105 ILCS 5/21-9 and 5/21B-20(3).  
23 Ill.Admin.Code §1.790.

## Professional Personnel

### Student Teachers 1

The Superintendent is authorized to accept students from university-approved teacher-training programs to do student teaching in the District. The Superintendent or designee shall coordinate with each student teacher’s higher education institution a fingerprint-based criminal history records check and checks of the Statewide Sex Offender Database and Statewide ~~Child~~ Murderer and Violent Offender Against Youth Database prior to any participation in field experiences in a school. 2

### Assignment

The Superintendent or designee shall be responsible for coordinating placements of all student teachers within the District. Student teachers should be assigned to supervising teachers whose qualifications are acceptable to the District and the students’ respective colleges or universities. A teacher may be eligible for Continuing Professional Development Units (CPDU) for supervising a student teacher or teacher education candidate in clinical supervision. 3

LEGAL REF.: 105 ILCS 5/10-22.34.  
105 ILCS 5/21-14(e)(3)(E)(viii).  
23 Ill.Admin.Code § 25.875.

CROSS REF.: 5:190 (Teacher Qualifications)

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

2 105 ILCS 5/10-21.9, amended by P.A. 96-1452, ~~97-154~~, and ~~97-607~~, requires a person to authorize a fingerprint-based criminal history records check and checks of the Statewide Sex Offender Database and Statewide ~~Child~~ Murderer and Violent Offender Against Youth Database prior to participating in any field experiences in the school.

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



## Educational Support Personnel

### Drug and Alcohol Testing for School Bus and Commercial Vehicle Drivers 1

The District shall adhere to State and federal law and regulations requiring a drug and alcohol testing program for school bus and commercial vehicle drivers. The Superintendent or designee manage a program to implement federal and State law defining the circumstances and procedures for the testing. 2

~~This program shall comply with the requirements of federal law. The Superintendent or designee shall adopt and enact regulations consistent with the federal regulations, defining the circumstances and procedures for the testing.~~

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

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

State and federal law controls this policy's content. The federal Omnibus Transportation Testing Act of 1991 requires that all persons subject to commercial driver's license requirements be tested for alcohol, marijuana, cocaine, amphetamines, opiates (including heroin), and phencyclidine (PCP). State law also requires testing for bus driver permit applicants who are not subject to the federal Omnibus Transportation Testing Act of 1991 (625 ILCS 5/6-106.1).

625 ILCS 5/6-106.1c, added by P.A. 97-466, contains State law requirements for reasonable suspicion drug and alcohol testing of school bus driver permit holders. If an employer has reasonable suspicion to believe that a school bus driver permit holder is under the influence of alcohol, drugs, or intoxicating compounds, the employer must require the permit holder to undergo testing at a licensed testing facility before driving any vehicle for which a school bus driver permit is required. The employer's reasonable suspicion must be based on specific, contemporaneous observations of the appearance, behavior, speech, or body odors (49 CFR §382.307). State law makes employers of school bus driver permit holders who do not hold commercial driver's licenses subject to federal law regarding reasonable suspicion testing. The employer must report to the Ill. Secretary of State if the permit holder refuses testing or if the testing reveals the presence of alcohol, drugs, or intoxicating compounds. A school bus permit holder whose test discloses any amount of alcohol or drugs, or who refuses testing, will have his or her school bus permit suspended for 3 years.

State law also allows for drug and alcohol testing for any driver on a public roadway; i.e., *implied consent* (625 ILCS 5/11-501.1).

Drug testing by government entities constitutes a search of an individual, thereby invoking State and federal constitutional law. In determining whether post-employment testing of a school bus driver is permissible, a court will balance the privacy interests of the employee against the district's interest. International Brotherhood of Teamsters v. Department of Transportation, 932 F.2d 1292 (9th Cir. 1991). For districts that employ staff members in positions requiring a commercial driver's license, see the U.S. Dept. of Transportation - Office of the Secretary, Office of Drug and Alcohol Policy and Compliance's guidance and best practices document titled "What Employers Need to Know About DOT Drug and Alcohol Testing," available at: [www.dot.gov/ost/dapc/documents/EmployerGuidelinesOctober012010.pdf](http://www.dot.gov/ost/dapc/documents/EmployerGuidelinesOctober012010.pdf).

2 An optional provision for districts that contract-out their transportation services:

This policy shall not be implemented, and no administrative procedures will be needed, until it is reasonably foreseeable that the District will hire staff for a position(s) requiring a commercial driver's license.

LEGAL REF.: [625 ILCS 5/6-106.1 and 5/6-106.1c.](#)  
49 U.S.C. §31301 et seq., Alcohol and Controlled Substances Testing (Omnibus Transportation Employee Testing Act of 1991).  
49 C.F.R. Parts 40 (Procedures for Transportation Workplace Drug and Alcohol Testing Programs), 382 (Controlled Substance and Alcohol Use and Testing), and 395 (Hours of Service of Drivers).

CROSS REF.: 4:110 (Transportation), 5:30 (Hiring Process and Criteria), 5:280 (Duties and Qualifications)

## Educational Support Personnel

### Administrative Procedure - Drug and Alcohol Testing for School Bus and Commercial Vehicle Drivers <sup>1</sup>

The District's drug and alcohol testing program shall apply to all ~~employees who operate individuals in positions that require~~ a commercial ~~motor vehicle, including any vehicle designed to transport 16 or more passengers, driver's license 2 and those that require an Illinois school bus driver permit. 3~~ This includes casual, intermittent, or occasional drivers, ~~leased drivers and independent owner-operator contractors,~~ as well as full-time, regularly employed drivers. ~~4 The Superintendent or designee will identify which positions are covered by various provisions of this procedure. Drivers shall inform their supervisors if at any time they are using a controlled substance which their physician has prescribed for therapeutic purposes. Drivers using such a substance may continue to perform safety sensitive functions only if positions are covered by the physician has advised the driver that the substance will not adversely affect his/her ability to safely operate a commercial motor vehicle.~~

#### Pre-Employment Tests

A pre-employment drug test shall be required of an applicant only after he/she has been offered the position. <sup>5</sup>

Drug tests shall be conducted before the first time a driver performs any safety-sensitive function for the District. <sup>6</sup>

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The footnotes should be retained.

<sup>1</sup> ~~State and federal law control this procedure. Before using this procedure, a district should seek legal advice concerning the law's requirements, identifying which employees are covered, and determining any collective bargaining implications or bargaining agreement alignment issues. This procedure should not be used by the district to determine the type of licensure a specific position requires. A district that contracts-out the testing of employees subject to mandatory drug and alcohol testing should replace this sample procedure with the procedure supplied by its contractor, while retaining those portions that apply to the employer of a school bus driver permit holder, where the district is that employer. IASB sponsors a Drug and Alcohol Testing Consortium administered by the Mid-West Truckers Association. See [iasb.com/sponsored/datest.cfm](http://iasb.com/sponsored/datest.cfm) for more information. This sample procedure has not been reviewed since its initial publication in 2000. A district should seek legal review before using this procedure. State or federal law controls this policy's content. This policy contains an item on which collective bargaining may be required. Any policy that impacts upon wages, hours, and terms and conditions of employment, is subject to collective bargaining upon request by the employee representative, even if the policy involves an inherent managerial right. This policy concerns an area in which the law is unsettled. These sample procedures and reference notes are reprinted with the permission of the California School Boards Association, copyright 1996. Text in italic was added. Inapplicable text was removed.~~

<sup>2</sup> Commercial motor vehicle (CMV) means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle . . . (3) is designed to transport 16 or more passengers, including the driver. 49 C.F.R. §383.5. A commercial driver's license is required of the driver of any vehicle designed to transport 16 or more passengers, including the driver. 49 C.F.R. §383.91(a)(3); 625 ILCS 5/6-500(A)(ii).

<sup>3</sup> 625 ILCS 5/1-148.3a-5; 5/1-182; 5/1-217; 5/6-104; 5/11-1414(a). See [www.isbe.net/funding/html/transportaion.htm](http://www.isbe.net/funding/html/transportaion.htm) for helpful links to ISBE documents.

<sup>4</sup> 49 C.F.R. §382.107.

<sup>5</sup> ~~The following section reflects federal requirements for pre-employment drug testing. On May 10, 1995, the federal Department of Transportation (DOT) suspended indefinitely its requirement for pre-employment alcohol testing. If desired, however, the district can do a pre-employment alcohol test under its own authority. The following This optional paragraph defers drug testing until after a job offer is made in order to limit the number of applicants tested.~~

Safety-sensitive functions include all on-duty functions performed from the time a driver begins work or is required to be ready to work until he/she is relieved from work and all responsibility for performing work. ~~7 It includes driving; waiting to be dispatched; inspecting and servicing equipment; supervising, performing or assisting in loading and unloading; repairing or obtaining and waiting for help with a disabled vehicle; performing other requirements related to accidents; and performing any other work for the District or paid work for any other entity.~~

Exceptions may be made for drivers who have participated in the drug testing program required by law within the previous 30 days, provided that the District has been able to make all verifications required by law. ~~8~~

Pre-employment testing shall also be required of employees returning to work after a layoff period if the employee was removed from the random testing pool. If the employee remains in the random testing pool, additional testing shall not be necessary.

#### Controlled Substance Use ~~9~~

~~Drivers shall inform their supervisors if at any time they are using a drug which their physician has prescribed for therapeutic purposes. ~~10 Drivers using a controlled substance may continue to perform safety-sensitive functions only if a licensed medical practitioner has advised the driver that the substance will not adversely affect his/her ability to safely operate a commercial motor vehicle. ~~11 If the District has actual knowledge that a driver has used a controlled substance it shall not permit the driver to perform or continue to perform a safety-sensitive function. ~~12~~~~~~~~

#### Pre-Duty Use of Alcohol ~~13~~

~~No driver shall perform safety-sensitive functions within 4 hours after using alcohol. If the District has actual knowledge that a driver has used alcohol within 4 hours it shall not permit the driver to perform or continue to perform safety-sensitive functions.~~

#### On-Duty Use of Alcohol ~~14~~

~~No driver shall use alcohol while performing safety-sensitive functions. If the District has actual knowledge that a driver is using alcohol while performing safety-sensitive functions it shall not permit the driver to perform or continue to perform safety-sensitive functions.~~

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~~6 49 C.F.R. §382.301(a)-(c). If desired, the district may also do a pre-employment alcohol test as allowed by 49 C.F.R. 382.301(d).~~

~~7 49 C.F.R. §§382.107, 395.2. Safety-sensitive functions include driving; remaining in readiness to operate the vehicle; waiting to be dispatched; all time, other than driving time, in or upon a commercial motor vehicle; inspecting and servicing equipment; supervising, performing or assisting in loading and unloading; repairing or obtaining and waiting for help with a disabled vehicle; performing other requirements related to accidents; and performing any other work for the district or paid work for any other entity.~~

~~8 49 C.F.R. §382.301(b).~~

~~9 49 C.F.R. §382.213.~~

~~10 Pursuant to 49 C.F.R. §382.213(c), the district may require a driver to inform the district when using any therapeutic drug.~~

~~11 49 C.F.R. §382.213(a).~~

~~12 49 C.F.R. §382.213(b).~~

~~13 49 C.F.R. §382.207.~~

~~14 49 C.F.R. §382.205.~~

Post-Accident Tests 15

Alcohol and controlled substance tests shall be conducted as soon after an accident as practicable on any surviving driver:

- ~~1. Who was performing safety sensitive functions with respect to the vehicle, if the accident involved loss of human life;~~
- ~~2. Who receives a citation under State or local law for a moving traffic violation arising from the accident;~~
- ~~3. Who was performing safety sensitive functions with respect to the vehicle, if the accident involved a serious medical injury; or~~
- ~~4. Whose performance cannot be excluded as a contributing factor based on information available at the time of the accident~~

1. Who was performing safety-sensitive functions with respect to the vehicle, if the accident involved the loss of human life; or 16
2. Who receives a citation within 8 hours of the occurrence under State or local law for a moving traffic violation arising from the accident, if the accident involved: 17
  - a. Bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or
  - b. One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

Controlled substance tests shall be conducted as soon after an accident as practicable on any surviving driver:

1. Who was performing safety-sensitive functions with respect to the vehicle, if the accident involved the loss of human life; or 18
2. Who receives a citation within 32 hours of the occurrence under State or local law for a moving traffic violation arising from the accident, if the accident involved:
  - a. Bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or
  - b. One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle. 19

Drivers shall make themselves readily available for testing, absent the need for immediate medical attention. 20

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The footnotes should be retained.

15 A school bus driver operating a school bus at the time of an accident is deemed by the IL implied consent law to have given consent to submit to tests to be administered at the direction of a law enforcement officer of the driver's breath, blood, or urine for the purpose of determining the presence of alcohol, or other drugs, in the person's system (625 ILCS 5/6-516).

16 49 C.F.R. §382.303(a)(1).

17 49 C.F.R. §382.303(a)(2).

18 49 C.F.R. §382.303(b)(1).

19 49 C.F.R. §382.303(b)(2).

No ~~such~~ driver required to take a post-accident alcohol test shall use alcohol for 8 hours ~~after~~ following the accident, or until ~~after~~ he/she undergoes a post-accident alcohol test, whichever occurs first. <sup>21</sup>

If an alcohol test is not administered within 2 hours of the accident or if a drug test is not administered within 32 hours, the District shall prepare and maintain records explaining why the test was not conducted. <sup>22</sup> Tests will not be given if not administered within 8 hours after the accident for alcohol or within 32 hours for drugs. <sup>23</sup>

Tests conducted by authorized federal, state, or local officials shall fulfill post-accident testing requirements provided they conform to applicable legal requirements and are obtained by the District. Breath and blood tests ~~will validate only~~ meet the requirements of alcohol testing. <sup>24</sup> A urine test and cannot be used to fulfill meets the requirements of a controlled ~~substance testing obligations~~ substances test. <sup>25</sup>

### Random Tests

Alcohol and drug tests shall be conducted on a random basis at unannounced times throughout the year. The number of random alcohol and drug tests shall be at least equal to those required by federal regulations. Drivers shall be selected by a scientifically valid random process, and each driver shall have an equal chance of being tested each time selections are made. Tests for alcohol shall be conducted just before, during, or just after the performance of safety-sensitive functions. ~~49 C.F.R. §382.305~~. <sup>26</sup>

Employees off work due to leaves, vacation, and layoffs shall be informed that they remain subject to random testing. Employees drawn for such testing shall be notified and tested as soon as practicable after they return to duty. <sup>27</sup>

### Probable Cause Tests (Applicable to School Bus Driver Permit Holders) <sup>28</sup>

A driver who has received a Uniform Traffic Ticket while in control of a school bus or any other vehicle owned or operated by or for the District, when the vehicle is being used over a regularly scheduled route for the transportation of persons enrolled as students in grade 12 or below, in connection with any activity of the District, may be tested for alcohol. To justify an alcohol test, a police officer must have probable cause to believe that the driver has consumed any amount of an alcoholic beverage based upon evidence of the driver's physical condition or other first hand knowledge of the police officer.

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<sup>20</sup> 49 C.F.R. §382.303(e).

<sup>21</sup> 49 C.F.R. §382.209.

<sup>22</sup> 49 C.F.R. §382.303(d)(1).

<sup>23</sup> 49 C.F.R. §382.303(d)(2).

<sup>24</sup> 49 C.F.R. §382.303(g)(1).

<sup>25</sup> 49 C.F.R. §382.303(g)(2).

<sup>26</sup> 49 C.F.R. §382.305. The random tests described above must be conducted throughout the calendar year, not just at one time. Further, they should not be conducted at the same time each calendar year, and employees should be tested the same day as the tests are announced. Pursuant to 49 C.F.R. §382.305, the number of random alcohol tests annually must equal 10 percent of the average number of driver positions and the number of random drug tests annually must equal 50 percent of the average number of driver positions; however, the Federal Highway Motor Carrier Safety Administration Administrator is authorized to modify these percentages annually based on reported industry violation rates.

<sup>27</sup> Optional.

<sup>28</sup> 625 ILCS 6-106.1a.

Upon receipt of a law enforcement officer's sworn report that the test result was positive or that the driver refused to be tested, the Secretary of State will notify both the permit holder and the District of the sanction (sanction is effective on the 46<sup>th</sup> day following the date notice was given).

#### Reasonable Suspicion Tests (Applicable to School Bus Driver Permit Holders) 29

An alcohol or drug test shall be conducted if a supervisor or District official trained in accordance with law has reasonable suspicion that a driver has violated the District's alcohol or drug prohibitions. This reasonable suspicion must be based on specific, contemporaneous, articulable observations concerning the driver's appearance, behavior, speech, or body odors. The observations may include indications of the chronic and withdrawal effects of controlled substances. 30

Alcohol tests are authorized for reasonable suspicion only if the required observations are made during, just before, or just after the period of the work day when the driver must comply with alcohol prohibitions. 31 An alcohol test may not be conducted by the ~~person~~ supervisor or District official who determines that reasonable suspicion exists to conduct such a test. 32 If an alcohol test is not administered within two hours of a determination of reasonable suspicion, the District shall prepare and maintain a record explaining why this was not done. Attempts to conduct alcohol tests shall terminate after 8 hours. 33

A supervisor or District official who makes observations leading to a controlled substance reasonable suspicion test shall make a written record of his/her observations within 24 hours of the observed behavior or before the results of the drug test are released, whichever is earlier. 34

The Superintendent or designee shall ensure that an employee under reasonable suspicion is transported to the designated collection or testing site. 35

The Superintendent or designee shall notify the Secretary of State, in a manner and form prescribed by the Secretary, of the result of a reasonable suspicion test when: (i) the test indicates an alcohol concentration greater than 0.00; (ii) the test indicates a positive result on a National Institute on Drug Abuse five-drug panel utilizing the federal standards set forth in 49 C.F.R. 40.87; or (iii) when a driver refuses testing. The notification to the Secretary must be submitted within 48 hours of the refusal of testing or the employer's receipt of the test results. 36

#### Enforcement for Non-School Bus Driver Permit Holders

No driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater. If the District has actual

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The footnotes should be retained.

29 5/6-106.1c. All applicants for a school bus driver permit must consent, in writing, to the release of results of reasonable suspicion drug and alcohol testing by the employer of the applicant to the Secretary of State. 625 ILCS 5/6-106.1(a).

30 Pursuant to 49 C.F.R. §382.603, persons designated to determine whether reasonable suspicion exists must receive at least 60 minutes of training that covers the physical, behavioral, speech, and performance indicators of alcohol misuse and an additional 60 minutes of training covers these indicators of controlled substance use.

31 49 C.F.R. §382.307(d).

32 49 C.F.R. §382.307(c).

33 49 C.F.R. §382.307(e)(1).

34 49 C.F.R. §382.307(f).

35 Optional.

36 All provisions in the paragraph are required by 625 ILCS 5/6-106.1c, added by P.A. 97-466. The Substance and Mental Health Services Administration may replace the National Institute on Drug Abuse.

knowledge that a driver has an alcohol concentration of 0.04 or greater it shall not permit the driver to perform or continue to perform safety-sensitive functions. 37

Federal laws require that any driver who refuses to submit to a post-accident, random, reasonable suspicion test, or follow-up test as described below, shall not perform or continue to perform safety-sensitive functions. ~~Therefore, any~~ The District shall not permit a driver who ~~so~~ refuses to submit to shall be immediately suspended and subject to additional disciplinary action, up to and including dismissal: such tests to perform or continue to perform safety-sensitive functions. 38

A driver who is tested and found to have an alcohol concentration of .02 or greater, but less than 0.0004, may not perform or continue to perform safety-sensitive functions, including driving a commercial motor vehicle, until the start of the driver's next regularly scheduled duty period, but not less than 24 hours after the test was administered. 39

A driver who tests positive for drugs or ~~is found to have~~ an alcohol concentration of 0.04 or greater than 0.04 shall be subject to District disciplinary action up to and including dismissal. 40

A driver who violates District prohibitions related to drugs and alcohol shall receive from the District the names, addresses, and telephone numbers of substance abuse professionals and counseling and treatment programs available to evaluate and resolve drug and alcohol-related problems. The employee shall be evaluated by a substance abuse professional who shall determine what help ~~, if any,~~ the driver needs in resolving such a problem. Any substance abuse professional who determines that a driver needs assistance shall not refer the driver to a private practice, person, or organization in which he/she has a financial interest, except under circumstances allowed by law. 41

An employee identified as needing help in resolving a drug or alcohol problem shall be evaluated by a substance abuse professional to determine that he/she has properly followed the prescribed rehabilitation program. 42

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The footnotes should be retained.

37 49 C.F.R. §382.201.

38 49 C.F.R. §382.211.

39 625 ILCS 5/6-106.1a and 5/6-106.1b. Illinois law (0.00) is more stringent than federal law (0.04) (49 C.F.R. §382.505). 49 C.F.R. §382.505. Federal law provides that no employer shall take any action under 49 C.F.R. 382, against a driver based solely on test results showing an alcohol concentration less than 0.04. This does not prohibit an employer with authority independent of this part from taking any action otherwise consistent with law.

40 State and federal codes are silent regarding employment sanctions. Federal law prohibits an employer from taking action against a driver based solely on test results showing an alcohol concentration less than .04. State law prohibits discrimination based on the use of lawful products during non-work hours (820 ILCS 55/5). Thus, it may be hard to defend discipline measures for alcohol concentration below 0.4. The sample procedure, therefore, states that drivers may not drive with a concentration above 0.00; however a driver will not be disciplined unless the concentration is 0.04 or greater. However, 820 ILCS 55/5 does not apply to the use of those lawful products which impair an employee's ability to perform the employee's assigned duties. In an attempt to find congruity between the state and federal standards this procedure uses an alcohol concentration of 0.04 or greater as the level at which a Non-School Bus Permit Holders duties would be impaired.

41 The choice of substance abuse professional and assignment of costs shall be made in accordance with employer/driver agreements and employer policies. The assignment of costs of the substance abuse professional may be a matter within the scope of negotiations. 49 C.F.R. §40.289(c). As an employer, the district is not required to provide a substance abuse professional's evaluation or any subsequent recommended education or treatment for an employee who has violated a DOT drug and alcohol regulation. 49 C.F.R. §289(a).

42 49 C.F.R. §382.605. 49 C.F.R. §§40.281-40.313; 49 C.F.R. §382.605. If the district offers an employee an opportunity to return to a DOT safety-sensitive duty following a violation, it must, before the employee again performs that duty, ensure that the employee receives an evaluation by a SAP meeting the requirements of §40.281 and that the employee successfully complies with the SAP's evaluation recommendations. 49 C.F.R. §40.289(b).



### Return-to-Duty Tests for Non-School Bus Driver Permit Holders

If a driver who has violated the District's drug or alcohol prohibition is returned to performing safety-sensitive duties, a drug or alcohol test shall be conducted. <sup>43</sup>

The District shall not allow employees whose conduct involved drugs ~~shall not to~~ return to duty in a safety-sensitive function until the return-to-duty drug test produces a verified negative result. The District shall not allow employees whose conduct involved alcohol ~~shall not to~~ return to duty in a safety-sensitive function until the return-to-duty alcohol test indicates an alcohol concentration of 0.0002 or less. <sup>44</sup>

### Follow-Up Tests for Non-School Bus Driver Permit Holders

A driver who violates the District's drug or alcohol prohibition and is subsequently identified by a substance abuse professional as needing assistance in resolving a drug or alcohol problem shall be subject to unannounced follow-up testing as directed by the substance abuse professional in accordance with the law. Follow-up alcohol testing shall be conducted just before, during, or just after the time when the driver is performing safety-sensitive functions. <sup>45</sup>

The District must carry out the substance abuse professional's follow-up testing requirements. <sup>46</sup>

Follow-up testing shall consist of at least 6 tests in the first 12 months following the driver's return to duty. 47 Testing shall not occur beyond 60 months from the date of the driver's return to duty. The substance abuse professional may terminate the follow-up testing ~~at any time after the first 6 tests~~ if he/she determines that ~~testing is no longer needed. Testing shall not occur beyond 60 months from the date of the driver's return to duty~~ the employee has successfully demonstrated compliance. <sup>48</sup>

### Maintenance of Records for Non-School Bus Driver Permit Holders

Employee drug and alcohol test results and records shall be maintained under strict confidentiality and released only in accordance with the law. Upon written request, a driver shall receive copies of any records pertaining to his/her use of drugs or alcohol, including any records pertaining to his/her drug or alcohol tests. Records shall be made available to a subsequent employer or other identified persons only as expressly requested in writing by the driver. <sup>49</sup>

### Enforcement for School Bus Driver Permit Holders

In Illinois, a person whose privilege to possess a school bus driver permit has been canceled under 625 ILCS 6-106.1a is not eligible for restoration of the privilege until the expiration of 3 years from the effective date of the cancellation if the person has refused or failed to complete a test or tests to

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The footnotes should be retained.

<sup>43</sup> ~~49 C.F.R. §40.305; 49 C.F.R. §382.309; 605.~~

<sup>44</sup> ~~49 C.F.R. §382.305(b), 605; 625 ILCS 5/6-106 and 5/6-106.1b.~~

<sup>45</sup> ~~49 C.F.R. §40.309; 49 C.F.R. §382.311.~~

<sup>46</sup> ~~49 C.F.R. §40.309; 49 C.F.R. §382.311.~~

<sup>47</sup> ~~49 C.F.R. §40.309; 49 C.F.R. §382.311.~~ The district may schedule follow-up test on dates of its choosing, but must ensure that the tests are unannounced with no discernible pattern as to their timing, and that the employee is given no advance notice.

<sup>48</sup> ~~49 C.F.R. §40.301(c)(2); 49 C.F.R. §382.605; 311.~~

<sup>49</sup> ~~49 C.F.R. §§382.401 and 382.403~~ identifieds records that the district must keep for varying periods of time- in connection with alcohol misuse and controlled substances use prevention programs. ~~49 C.F.R. §382.405 prohibits the release of this information~~ required to be maintained by 49 C.F.R. §382.401 except as required by law.

determine blood alcohol concentration, or has submitted to testing with a blood alcohol concentration of more than 0.00. 50

The Illinois Secretary of State must suspend a school bus driver permit for a period of 3 years upon receiving notice that the holder refused to submit to an alcohol or drug test as required by Section 6-106.1c or has submitted to a test required by that Section that disclosed an alcohol concentration of more than 0.00 or disclosed a positive result on a National Institute on Drug Abuse five-drug panel, utilizing federal standards set forth in 49 C.F.R. 40.87. 51

A driver who tests positive for drugs or is found to have an alcohol concentration of greater than 0.00 shall have their employment terminated. 52

### Notifications

Each driver shall receive educational materials that explain the requirements of the Code of Federal Regulations, Title 49, Part 382, together with a copy of the District's policy and regulations for meeting these requirements. Representatives of employee organizations shall be notified of the availability of this information. 53 The information shall identify all of the following: 54

1. The person designated by the District to answer drivers' questions about the materials;
2. The categories of drivers who are subject to the Code of Federal Regulations, Title 49, Part 382;
3. Sufficient information about the safety-sensitive functions performed by drivers to make clear what period of the work day the driver is required to comply with Part 382;
4. Specific information concerning driver conduct that is prohibited by Part 382;
5. The circumstances under which a driver will be tested for drugs and/or alcohol under Part 382, including post-accident testing under §382.303(d);
6. The procedures that will be used to test for the presence of drugs and alcohol, protect the driver and the integrity of the testing processes, safeguard the validity of test results, and ensure that test results are attributed to the correct driver, including post-accident information, procedures and instructions required by §382.303(d); 55
7. The requirement that a driver submit to drug and alcohol tests administered in accordance with Part 382;
8. An explanation of what constitutes a refusal to submit to a drug or alcohol test and the attendant consequences;

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The footnotes should be retained.

50 625 ILCS 5/6-106.1b.

51 625 ILCS 5/6-106.1(g)(7), added by P.A. 97-466; proposed Secretary of State rules are at 92 Ill.Admin.Code Part 1053.

52 If handled correctly by the district, the incongruity between State and federal law in this area is a non-issue given that a driver who has had his or her license suspended for a 3 year period is no longer able to fulfill the duties of the job for which he or she was hired. The district should consult with the board attorney in order to determine how best to move forward with the termination of the suspended driver.

53 Required by 49 C.F.R. §382.601.

54 49 C.F.R. §382.601.

55 49 C.F.R. §40 specifies detailed testing procedures that must be used to ensure accuracy, reliability, and confidentiality. These procedures include training and proficiency requirements and requirements for a suitable test location. Firms with which the district contracts for collection and laboratory services can be expected to provide information about the procedures they use; these procedures should be distributed to employees and included in the district's regulation.

9. The consequences for drivers found to have violated the drug and alcohol prohibitions of Part 382, including the requirement that the driver be removed immediately from safety-sensitive functions and the procedures for referral, evaluation, and treatment;
10. The consequences for drivers who do not hold a school bus driver permit found to have an alcohol concentration of 0.02 or greater but less than 0.0004;
11. The consequences for drivers who hold a school bus driver permit found to have an alcohol concentration over 0.00; 56
- ~~11.~~12.The effects of drugs and alcohol on an individual's health, work, and personal life; signs and symptoms of a drug or alcohol problem (the driver's or a coworker's); and available methods of intervening when a drug or alcohol problem is suspected, including confrontation, referral to an employee assistance program, and/or referral to management; and
- ~~12.~~13.Other legal requirements, District policies, and disciplinary consequences related to the use of alcohol and drugs. **57**

Each driver shall sign a statement certifying that he/she has received a copy of the above materials. **58**  
 Before any driver operates a commercial motor vehicle, the District shall provide him/her with post-accident procedures that will make it possible to comply with post-accident testing requirements. **59**

Before drug and alcohol tests are performed, pursuant to 49 C.F.R. §382, the District shall inform drivers that the tests are required by these regulations. **60**

The District shall notify a driver of the results of a pre-employment drug test if the driver requests such results within 60 calendar days of being notified of the disposition of his/her employment application. **61**

The District shall notify a driver of the results of random, reasonable suspicion, and post-accident drug tests if the test results are verified positive. The District shall also tell the driver which controlled substance(s) were verified as positive. **62**

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The footnotes should be retained.

56 While there is no requirement to notify the district and provide information to School Bus Driver Permit holders specifically addressing the legal requirements applicable to them under Illinois law. The district should also inform School Bus Driver Permit holders of the disciplinary consequences for violating any Illinois drug and alcohol laws specifically pertaining to school bus permit holders.

**57** Pursuant to 49 C.F.R. §382.601(b)(11), materials supplied to drivers may also include information about other policies and disciplinary consequences based on the district's authority independent of 49 C.F.R. §382 and described as such.

**58** 49 C.F.R. §382.601(d).

**59** 49 C.F.R. §382.303(f).

**60** 49 C.F.R. §382.113. ~~requires the district to inform the employee, before tests are performed, that the tests are required by 49 C.F.R. §382.~~ 49 C.F.R. §382.113 also states that employers shall not falsely represent that a test was administered under 49 C.F.R. §382, their own or other authority is being administered under the authority of the Federal Highway Administration.

**61** 49 C.F.R. §382.411.

**62** 49 C.F.R. §382.411.

## Instruction

### School Wellness <sup>1</sup>

Student wellness, including good nutrition and physical activity, shall be promoted in the District's educational program, school activities, and meal programs. This policy shall be interpreted consistently with Section 204 of the Child Nutrition and WIC Reauthorization Act of 2004.

#### Goals for Nutrition Education and Nutrition Promotion <sup>2</sup>

The goals for addressing nutrition education and nutrition promotion include the following:

- Schools will support and promote good nutrition for students.
- Schools will foster the positive relationship between good nutrition, physical activity, and the capacity of students to develop and learn.
- Nutrition education will be part of the District's comprehensive health education curriculum. See School Board policy 6:60, *Curriculum Content*. <sup>3</sup>

#### Goals for Physical Activity <sup>4</sup>

The goals for addressing physical activity include the following:

- Schools will support and promote an active lifestyle for students.
- Physical education will be taught in all grades and shall include a developmentally planned and sequential curriculum that fosters the development of movement skills, enhances health-related fitness, increases students' knowledge, offers direct opportunities to learn how to

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

<sup>1</sup> State or federal law requires this subject matter to be covered in policy and controls its content. The federal Child Nutrition and WIC Reauthorization Act of 2004 requires school districts participating in a program authorized by the National School Lunch Act or the Child Nutrition Act to have a school wellness policy (PL 108-265, Sec. 204). State law required ISBE to "establish a State goal that all school districts have a wellness policy," (105 ILCS 5/2-3.139). ISBE complied in October 2007 by "instruct[ing] all public school districts to establish a School Wellness Policy." The federal and State laws list mandatory topics for the policy. The second sentence of this policy should be deleted if the district does not participate in the National School Lunch Act or the Child Nutrition Act.

See ISBE's numerous resources at [www.isbe.net/nutrition/htmls/wellness\\_policy.htm](http://www.isbe.net/nutrition/htmls/wellness_policy.htm). Action for Healthy Kids is a national organization dedicated to overcoming the "epidemic of overweight, undernourished and sedentary youth by focusing on changes in schools;" see its resources at [www.actionforhealthykids.org/index.php](http://www.actionforhealthykids.org/index.php).

This sample policy seeks to be both legally compliant and consistent with good governance principles. Both federal and State laws allow each school district to determine how the required topics are addressed. Good governance principles suggest that the board should establish goals with community and stakeholder input. The administration should determine how to achieve the goals. The board should monitor this policy by requesting and reviewing periodic implementation data.

The Ill. Dept. of Agriculture and ISBE are directed to create the Farm Fresh Schools Program (30 ILCS 105/5.728, added by P.A. 96-153, recodified by P.A. 96-1000). They are also directed to administer a grant program to further the Program's intent of "reduc[ing] obesity and improve[ing] nutrition and public health, as well as strengthen[ing] local agricultural economies by increasing access to and promoting the consumption of locally grown fruits and vegetables in schools and increasing physical activities and programs that promote pupil wellness."

<sup>2</sup> This is a required topic, but the local board may determine what goals are appropriate (PL 108-265, Sec. 204(a)(1) and PL 111-296; 105 ILCS 5/2-3.139(a)(2). Nutrition promotion is now required by PL 111-296, but the concept is not described or defined. The Food Nutrition Service intends to describe nutrition promotion more clearly in its upcoming technical assistance materials and a proposed rule, which is expected in late 2012.

<sup>3</sup> 105 ILCS 110/3 and 23 Ill.Admin.Code §1.420(n). ISBE's rules for Comprehensive Health Education found at 23 Ill.Admin.Code Part 253 were repealed effective 10/3/05.

<sup>4</sup> This is a required topic, but the local board may determine what goals are appropriate (PL 108-265, Sec. 204(a)(1); 105 ILCS 5/2-3.139(a)(2).

work cooperatively in a group setting, and encourages healthy habits and attitudes for a healthy lifestyle. See Board policy 6:60, *Curriculum Content*. **5**

- During the school day, all students will be required to engage in a daily physical education course, unless otherwise exempted. See Board policy 6:60, *Curriculum Content*. **6**
- The curriculum will be consistent with and incorporate relevant Illinois Learning Standards for Physical Development and Health as established by the Illinois State Board of Education. **7**

#### Nutrition Guidelines for Foods Available in Schools During the School Day **8**

Students will be offered and schools will promote nutritious food and beverage choices consistent with the current Dietary Guidelines for Americans and Food Guidance System published jointly by the U.S. Department of Health and Human Services and the Department of Agriculture. In addition, in order to promote student health and reduce childhood obesity, the Superintendent or designee shall control food sales that compete with the District's non-profit food service in compliance with the Child Nutrition Act. Food service rules shall restrict the sale of foods of minimal nutritional value, as defined by the U.S. Department of Agriculture, in the food service areas during the meal periods and comply with all applicable rules of the Illinois State Board of Education. **9**

#### Guidelines for Reimbursable School Meals **10**

Reimbursable school meals served shall meet, at a minimum, the nutrition requirements and regulations for the National School Lunch Program and/or School Breakfast Program. **11**

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

**5** 105 ILCS 5/27-5 and 27-6.

**6** *Id.*

**7** Schools must "set student learning objectives which meet or exceed goals established by the State," (105 ILCS 5/2-3.63). The Learning Standards can be found on ISBE's website, [www.isbe.state.il.us/ils](http://www.isbe.state.il.us/ils).

**8** The policy must include the nutrition guidelines selected by the board for "all foods available during the school day with the objective of promoting student health and reducing childhood obesity," (PL 108-265, Sec. 204(a)(2); 105 ILCS 5/2-3.139(a)(1)).

**9** Districts must prohibit the sale of foods of minimal nutritional value, as defined by federal rule, in the food service areas during the lunch periods (42 U.S.C. §1779; 7 C.F.R. §210.11; 7 C.F.R. Part 210, App. B). The sale of other competitive foods is allowable in the food service area during the lunch period only if all income from the sale of such foods accrues to the benefit of the nonprofit school food service, the school, or student organizations approved by the school (*Id.*). ISBE's rule limits the types and amounts of food and beverages that may be sold to students in grades 8 or below before school or during the regular school day in any school that participates in the School Breakfast Program or the National School Lunch Program (23 Ill.Admin.Code §305.15). A board may place additional limitations on the sale of minimally nutritious or junk foods.

**10** Inclusion in the policy is required for only those districts that participate in a program authorized by the National School Lunch Act or the Child Nutrition Act (PL 108-265, Sec. 204(a)(3)).

**11** Child Nutrition Act of 1966 (42 U.S.C. §1771 *et seq.*) and National School Lunch Act (42 U.S.C. §1758).

## Monitoring 12

The Superintendent or designee shall provide periodic implementation data and/or reports to the Board concerning this policy's implementation sufficient to allow the Board to monitor and adjust the policy. This report must include without limitation each of the following:

- An assessment of the District's implementation of the policy
- The extent to which schools in the District are in compliance with the policy
- The extent to which the policy compares to model local school wellness policies
- A description of the progress made in attaining the goals of the policy

## Community Input 13

The Superintendent or designee will invite suggestions and comments concerning the development, implementation, and improvement of the school wellness policy from ~~community members, including~~ parents, students, ~~and~~ representatives of the school food authority, teachers of physical education, school health professionals, the school board, school administrators, and ~~the public~~ community.

LEGAL REF.: Child Nutrition and WIC Reauthorization Act of 2004, PL 108-265, Sec. 204.  
Child Nutrition Act of 1966, 42 U.S.C. §1771 et seq.  
National School Lunch Act, 42 U.S.C. §1758.  
Healthy, Hunger-Free Kids Act of 2010, 42 U.S.C. §1758b, PL 111-296.  
42 U.S.C. §1779, as implemented by 7 C.F.R. §210.11.  
105 ILCS 5/2-3.139.  
23 Ill.Admin.Code Part 305, Food Program.  
ISBE's "School Wellness Policy" Goal, adopted Oct. 2007.

CROSS REF.: 4:120 (Food Services)

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

**12** The policy must establish "a plan for measuring implementation of the local wellness policy, including designation of 1 or more persons within the local educational agency at each school, as appropriate, charged with operational responsibility for ensuring that the school meets the local wellness policy," (PL 108-265, Sec. 204(a)(4); 105 ILCS 5/2-3.139(a)(4).

PL 111-296 requires the public to receive periodic measures with the listed items. While there is no guidance yet to assist school districts in complying with this requirement, school districts are expected to be working toward developing a reasonable method to implement this requirement by the end of the 2011-2012 school year ([www.fns.usda.gov/tn/healthy/lwpooverview.pdf](http://www.fns.usda.gov/tn/healthy/lwpooverview.pdf)). Without guidance, superintendents should make a good faith effort to comply with this requirement. More guidance is expected and will be available at: [www.fns.usda.gov/tn/healthy/wellnesspolicy\\_tools.html](http://www.fns.usda.gov/tn/healthy/wellnesspolicy_tools.html).

**13** A board must establish a policy that "involves parents, students, and representatives of the school food authority, ~~the~~ teachers of physical education, school health professionals, the school board, school administrators, and the public in the development of the school wellness policy," (PL 108-265, Sec. 204(a)(5), amended by PL 111-296; 105 ILCS 5/2-3.139(a)(3). This requirement's awkward wording notwithstanding, a board may take compliance steps by seeking community input during this policy's adoption and monitoring phases. See 2:240, *Board Policy Development*.

## Instruction

### Programs for Students At Risk of Academic Failure and/or Dropping Out of School and Graduation Incentives Program <sup>1</sup>

The Superintendent or designee shall develop, maintain, and supervise a program for students at risk of academic failure or dropping out of school. The program shall include education and support services addressing individual learning styles, career development, and social needs, and may include without limitation one or more of the following:

- Parent-teacher conferences
- Counseling services by social workers and/or guidance counselors
- Counseling services by psychologists
- Psychological testing
- Truants' alternative and optional education program <sup>2</sup>
- Alternative school placement
- Community agency services
- Alternative learning opportunities program, in conformity with the Alternative Learning Opportunities Law, as it may be amended from time to time <sup>3</sup>
- Graduation incentives program <sup>4</sup>
- Illinois Hope and Opportunity Pathways through Education (IHOPE) Program
- Remediation program <sup>5</sup>

Any student who is below the age of 20 years is eligible to enroll in a graduation incentives program if he or she: <sup>6</sup>

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

<sup>1</sup> State or federal law controls this policy's content.

<sup>2</sup> 105 ILCS 5/2-3.66 authorizes the ISBE to award grants to school districts, ROEs, and community college districts.

<sup>3</sup> 105 ILCS 5/13B-1 et seq. Districts are not required to establish an alternative learning opportunities program. However, if they do, State law requires that the program "provide a flexible standards-based learning environment, innovative and varied instructional strategies, a student-centered curriculum, social programs, and supplemental social, health, and support services to improve the educational achievement of students at risk of academic failure" (105 ILCS 5/13B-20). The program must also meet the requirements in 105 ILCS 5/13B-45. Alternative learning opportunities programs "may include without limitation evening high school, in-school tutoring and mentoring programs, in-school suspension programs, high school completion programs to assist high school dropouts in completing their education, support services, parental involvement programs, and programs to develop, enhance, or extend the transition for students transferring back into the regular school program, an adult education program, or a post-secondary education program" (105 ILCS 5/13B-20.5). See 105 ILCS 5/13B-25.10, as well as other requirements for general State aid, for additional requirements to receive State funds for creating this program.

<sup>4</sup> Required by 105 ILCS 5/26-16.

<sup>5</sup> 105 ILCS 5/2-3.64, amended by P.A. 97-86, provides that "[i]f, by performance on the State tests or local assessments or by teacher judgment, a student's performance is determined to be 2 or more grades below current placement, the student shall be provided a remediation program developed by the district in consultation with a parent or guardian. Such remediation programs may include, but shall not be limited to, increased or concentrated instructional time, a remedial summer school program of not less than 90 hours (with an emphasis on reading and mathematics if the student has performed below grade level for 2 consecutive school years), improved instructional approaches, tutorial sessions, retention in grade, and modifications to instructional materials." 105 ILCS 5/10-20.9a requires remedial assistance for students who are not promoted to the next higher grade.

1. Is considered a dropout according to State law;
2. Has been suspended or expelled;
3. Is pregnant or is a parent;
4. Has been assessed as chemically dependent; or
5. Is enrolled in a bilingual education or LEP program.

Illinois Hope and Opportunity Pathways through Education (IHOPE) Program <sup>7</sup>

The Superintendent or designee shall develop the required partnerships necessary to build a comprehensive plan to re-enroll high school dropouts in the District through the IHOPE Program. The IHOPE Program shall include all components required by State law and regulations. Any student who wishes to earn a high school diploma must meet the prerequisites to receiving a high school diploma in policy 6:300, *Graduation Requirements*.

LEGAL REF.: 105 ILCS 5/2-3.41, 5/2-3.64, 5/2-3.66, 5/2-3.66b, 5/13B-1 et seq., 5/26-2a, 5/26-13, 5/26-14, and 5/26-16.  
23 Ill.Admin.Code Part 210.

CROSS REF.: 6:280 (Grading and Promotion), 6:300 (Graduation Requirements), 7:70 (Attendance and Truancy)

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<sup>6</sup> Required by 105 ILCS 5/26-16. Graduation incentives programs are entitled to claim general State aid. A district must ensure that its graduation incentives program receives supplemental general State aid, transportation reimbursements, and special education resources, if appropriate, for students enrolled in the program. 105 ILCS 5/26-2a defines *dropout* as “any child enrolled in grades 9 through 12 whose name has been removed from the district enrollment roster for any reason other than the student’s death, extended illness, removal for medical non-compliance, expulsion, aging out, graduation, or completion of a program of studies and who has not transferred to another public or private school and is not known to be home-schooled by his or her parents or guardians or continuing school in another country.”

<sup>7</sup> Optional. 105 ILCS 5/2-3.66b and its implementing rules, 23 Ill.Admin.Code Part 210, authorize ISBE to award Illinois Hope and Opportunity Pathways through Education (IHOPE) Program grants to ROEs that partner with school districts, community colleges and other community programs that work with dropouts to re-enroll high school dropouts in programs that will enable them to earn their high school diploma. Alternatively, an ROE can contract with a school district (and create a sub-grant) to operate the IHOPE Program. An ROE or school district that enrolls students who receive qualifying services in a program funded by the IHOPE Program may claim general State aid.

Delete 23 Ill.Admin.Code Part 210 from the policy’s legal references if the board does not include this subhead.



## Instruction

### **Administrative Procedure - Service Animals Access Requests**

~~State and federal law allow a student with a disability to be accompanied by~~ a service animal that is individually trained to perform work or tasks for the benefit of a student ~~with a disability is permitted to~~. ~~The animal may~~ accompany ~~that the~~ student to all school functions, whether in or outside the classroom. ~~The student's right to have a service animal in the educational setting must be carefully balanced with the rights of other students who are equally entitled to receive educational benefits at the school.~~ Use this procedure to evaluate identify and manage legal and practical issues when ~~the District receives a request for a student with a disability uses~~ a service animal ~~to accompany a disabled student~~ at school.

#### Definitions

**Service Animal** - ~~An animal such as a guide dog or signal~~ any other animal that is individually trained to perform tasks for the benefit of a student with a disability. ~~105 ILCS 5/14-6.02. While the School Code and the Americans with Disabilities Act both use the word animal, research identifies that dogs are the most commonly used, according to State law (105 ILCS 5/14-6.02). Federal law defines as any dog that is individually trained to perform tasks or work for the benefit of a student with a disability (28 C.F.R. §§35.104 and 35.136). Federal law also explains that other species of animals, whether wild or domestic, trained or untrained, are not service animals.~~

~~Under federal law, disability includes a physical, sensory, psychiatric, intellectual, or other mental disability. The "work or tasks performed" must be directly related to the student's disability. Examples of work or tasks include, but are not limited to assisting a student who is blind or has low vision with navigation and other tasks; alerting a student who is deaf or hard of hearing to the presence of people or sounds; providing non-violent protection or rescue work; pulling a wheelchair; assisting a student during a seizure; alerting a student to the presence of allergens; retrieving items such as medicine or the telephone; providing physical support and assistance with balance and stability to a student with mobility disabilities; and helping a student with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors or performing other duties.~~

~~For more information about the definition of service animal, see the U.S. Dept. of Justice, Civil Rights Div., Disability Rights Section, document titled Service Animals at:~~

~~[www.ada.gov/service\\_animals\\_2010.htm](http://www.ada.gov/service_animals_2010.htm)~~

**Adult Handler** - ~~The adult~~ An individual who has and maintains control over the ~~been trained to handle a service animal and has agreed to handle the service animal in the educational setting. This individual may be the student using the service animal. Control of the service animal means using a harness, leash, or other tether, unless the handler is unable because of a disability to use one of these devices or their use would interfere with the service animal's safe, effective performance of work or tasks. If or when these devices are not used, control of the service animal must be accomplished through voice control, signals, or other effective means.~~

Actor	Action
Parent/Guardian	Informs the School District of the need for a service animal to accompany their disabled child to school.  <del>Completes 6:120-AP3, E1, Request for a Service Animal to Accompany a Student in School Facilities. Cooperates with the District</del>

Actor	Action
	<u>to successfully incorporate the service animal into the educational environment.</u>
Superintendent or designee	<p>Discusses this procedure with the Building Principal, other appropriate administrative and special education staff, and the Board Attorney.</p> <p>The Board Attorney will be a necessary participant in the District’s efforts to manage the issues presented by <del>a request for</del> service animals <u>being used in school facilities</u>. The Superintendent may want to authorize the Building Principal to consult with the Board Attorney as needed <u>for this issue</u>.</p> <p>Contacts the District’s insurance carrier(s) to assess appropriate coverage for issues involving service animals, including <del>the adult a</del> handler.</p> <p><del>Consults with the</del> <u>Informs all</u> Building Principals and Special Education Coordinators <del>to determine whether the</del> <u>that any disabled student</u> has the right to be accompanied by a service animal <u>“that is individually trained to perform tasks or work for the benefit of a student” at any school facility or function.</u></p> <p>105 ILCS 5/14-6.02 <del>only</del> grants students with a disability the right to bring a service animal to school. <u>Schools must modify their policies, practices, or procedures to permit the use of a service animal by a student with a disability (28 C.F.R. §35.136).</u></p> <p><u>Discusses 6:120-AP3, E1, Guidelines for Service Animals in School Facilities, with building principals and instructs them to: (1) inform their individual building staff of these guidelines when service animals are present in their individual buildings, and (2) use this exhibit as an internal District document to ensure legitimate safety interests of staff and students. It may not be used as an agreement between the District and its students and their parents/guardians as a condition of the student using a service animal.</u></p>
IEP and/or 504 Team	<p>For a student who is not already identified as disabled, follows the District’s evaluation procedures for determining whether a student is a student with a disability within the meaning of IDEA or Section 504. See Board policy 6:120, <i>Education of Children with Disabilities</i>.</p> <p>If a student does not qualify as a student with a disability, <del>denies</del> <u>consult the Board Attorney before excluding</u> the service animal <del>access request unless</del> <u>from the school. This will ensure that there are not</u> special circumstances <del>exist and the Board Attorney advises that the request be granted that require the school to allow access despite a student’s non-disabled status.</del></p> <p>For a student with an IEP or Section 504 plan, or who qualifies for one, determines:</p> <ol style="list-style-type: none"> <li>1. Whether the service animal is a required <i>related service</i> to ensure the provision of a “free appropriate public education” (FAPE), and/or</li> <li>2. Whether the service animal is an appropriate <i>reasonable</i></li> </ol>

Actor	Action
	<p><i>accommodation</i> for the student's disability.</p> <p><del>Conditionally approves</del> <u>Permits</u> the <del>request use of the service animal</del> if the answer to either of the above questions is positive (i.e., determines that the service animal will perform tasks for the benefit of a student with a disability). <del>The service animal will be allowed to accompany the student to school, provided the service animal meets the criteria in 6:120-AP3, E1, Request for a Service Animal to Accompany a Student in School Facilities.</del></p> <p><u>Informs the parent/guardian that the student's service animal may accompany the student to school, and explain that the service animal must be under the control of its handler at all times and housebroken (28 C.F.R. 35.136).</u></p> <p>If the <del>request is denied</del>, <u>school excludes the service animal:</u></p> <ol style="list-style-type: none"> <li><u>1. Notifies the parent/guardian in writing of the reasons for the <del>denial</del> exclusion and the right to appeal. Provides any required procedural safeguard notices. See 23 Ill.Admin.Code Part 226; Section 504 of the Rehabilitation Act of 1973 (34 C.F.R. Parts 104 and 300); and 6:120-AP1, E1, Notice to Parents/Guardians Regarding Section 504 Rights.</u></li> <li><del>1.</del> <u>2. Gives the student with a disability the opportunity to participate in all of the school's services, programs, or activities without having the service animal at the school facility.</u></li> </ol>
Building Principal	<p><b>When <u>notice of the need for a service animal access in a school facility is allowed provided:</u></b></p> <p><del>Permits</del> <u>Balances student's need for the service animal to accompany the student to school if: (1)and the IEP and/or 504 Team determined that legitimate safety interests of other students and staff by ensuring the service animal will perform tasks for meet the benefit of a student with a disability, and (2) all of the criteria are met guidelines listed in 6:120-AP3, E1, Request Guidelines for a Service Animals to Accompany a Student in School Facilities.</u> <del>Takes appropriate steps to inform the student's parent/guardian of any unmet guidelines and what actions must be taken to meet these guidelines and avoid exclusion of the service animal.</del></p> <p><u>Discusses 6:120-AP3, E1, Guidelines for Service Animals in School Facilities, with building staff. Requests to be immediately informed if the animal's behavior does not conform to these guidelines.</u></p> <p>Ensures that the District conducts a criminal background check on <del>the adult</del> <u>any handler(s) pursuant to policy 6:250, Community Resource Persons and Volunteers.</u> See 6:250-AP, Securing and Screening Resource Persons and Volunteers, and 6:250-E, Resource Person and Volunteer Information Form and Waiver of Liability.</p> <p>The ADA regulation, 28 C.F.R. §§§35.130(f) and 35.136(h), and the Illinois White Cane Act, 775 ILCS 30/, both prohibit charging</p>

Actor	Action
	<p>a disabled individual a deposit or a surcharge as a condition to allowing a service animal to accompany the disabled individual. Consult the Board Attorney about payment of any criminal background screening fees for an adult handler.</p> <p>Creates a plan with the student’s parent/guardian and the <del>adult</del> handler for:</p> <ol style="list-style-type: none"> <li>1. Integrating the animal into the classroom and school environment (assemblies, cafeteria, library, etc.), and</li> <li>2. Meeting the service animal’s basic needs during the school day.</li> </ol> <p>Any plan depends on the individual student’s service animal arrangement, any management issues, and the schedules within each individual building. The school staff is not required to provide care or assistance except in special circumstances (see 28 C.F.R. <del>Part § 35, App. A, 136(e)</del>). Consider addressing: where the animal will <del>urinate and defecate</del> <u>relieve itself</u>, who disposes of the waste, where the animal drinks water, and who provides it, etc.</p> <p><u>Note: While the school is not required to provide staff to take the animal outside, it may need to provide a staff member to accompany a student outside if the student is the animal’s handler (see 28 C.F.R. §35.130(b)(7).</u></p> <p>Checks with the school nurse regarding any known allergies among students attending the school.</p> <p>Manages identified students’ competing educational interests by:</p> <ol style="list-style-type: none"> <li>1. Consulting the Board Attorney.</li> <li>2. Minimizing contact between any allergic students and the service animal.</li> <li>3. Creating a method to monitor identified competing educational interests between students <u>based upon the individual facts of the situation</u>.</li> <li>4. Responding to future unidentified competing educational interests and managing them immediately.</li> <li>5. Modifying any other conditions as the <u>individual</u> facts of the situation require.</li> </ol> <p>See <u>Kalbfleisch ex rel. v. Columbia Community Unit School District</u>, Ill.App.3d 1105, for a discussion about the balancing of interests. Other helpful publications include:</p> <p>The U.S. Department of Education’s “Reasonable Accommodation Handbook,” Section C10, provides information about balancing competing interests in the context of a service animal’s presence in the work environment. It is available at: <a href="http://www2.ed.gov/policy/gen/leg/foia/acshbom3.pdf">www2.ed.gov/policy/gen/leg/foia/acshbom3.pdf</a>.</p> <p>The Ill. Attorney General Office’s “Disability Rights Service</p>

Actor	Action
	<p>Animals: A Guide for Illinois Businesses and Other Public Accommodations,” available at: <a href="http://www.illinoisattorneygeneral.gov/rights/servanimals.html">www.illinoisattorneygeneral.gov/rights/servanimals.html</a>.</p> <p>The U.S. Dept. of Justice’s “Commonly Asked Questions about Service Animals in Places of Business,” available at: <a href="http://www.ada.gov/qasrvc.htm">www.ada.gov/qasrvc.htm</a>.</p> <p>Facilitates the dissemination of accurate information about the presence of the service animal at school while respecting privacy rights.</p> <p><del>Creates</del> <u>Considers creating</u> a joint communication from the Building Principal and the parent/guardian of the student using a service animal. The communication should inform other students and their parents/guardians about the placement of a service animal in their educational setting.</p> <p>Providing a joint communication allows the school to exchange the information needed to balance competing educational interests without violating federal or State laws that govern student records. See Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. §1232g, and its implementing rules at 34 C.F.R. Part 99; Ill. School Student Records Act, 105 ILCS 10/, and its implementing rules at 23 Ill.Admin.Code Part 375. FERPA prohibits schools from disclosing personally identifiable information from students’ education records without the consent of a parent or eligible student, unless an exception applies. See policy 7:340, <i>Student Records</i>.</p> <p>Prepares a list of answers to anticipated questions.</p> <p>Educates students, staff, and the community about the rights of students to use service animals in the school and the consequences for mistreatment of animals. See Humane Care of Animals Act (510 ILCS 70/4.03, 70/4.04, and 70/7.15 make it unlawful to meddle or tamper with a service dog or to tease, strike or mistreat one); White Cane Law (775 ILCS 30/3 makes it unlawful to interfere with the rights of a disabled person); Guide Dog Access Act (720 ILCS 630/1 makes it unlawful to deny right of entry and use of facilities of any public place of accommodation).</p> <p><u>Contacts the student’s parent/guardian if at any time the animal fails to meet the guidelines listed in 6:120-AP3, E1, <i>Guidelines for Service Animals in School Facilities</i>.</u></p> <p><b>When a service animal arrives at school without notice:</b></p> <p><del>Requests the parent/guardian to retrieve the animal.</del> Keeps the animal with the student <del>until</del> <u>if the service animal is obviously:</u></p> <ol style="list-style-type: none"> <li><u>1. Able to perform tasks or work for the benefit of a student with a disability.</u></li> <li><u>2. Able to stay under the parent/guardian removes control of its handler and, if not, the animal from school property. handler</u></li> </ol>

Actor	Action
	<p><u>can take effective action to control it, and</u></p> <p><u>1.3. Housebroken.</u></p> <p>Informs <del>school personnel</del> <u>staff</u> that the animal may not be taken away from the student.</p> <p><u>Informs the parent/guardian of this procedure and requests their cooperation with the District to successfully incorporate the service animal into the educational environment.</u></p> <p><u>Excludes the animal and contacts the student's parent/guardian if the animal does not obviously meet the conditions in 6:120-AP3, E1, Guidelines for Service Animals in School Facilities.</u></p> <p>Contacts animal control if the Principal or designee believes the animal <u>is not properly vaccinated, licensed,</u> may be dangerous, or <u>is</u> sick.</p> <p><del>Informs the parent/guardian upon retrieval of the animal of the requirements in this procedure.</del></p>

LEGAL REF.: 105 ILCS 5/14-6.02.  
Humane Care for Animals Act, 510 ILCS 70/.  
Guide Dog Access Act, 720 ILCS 630/.  
Illinois White Cane Act, 775 ILCS 30/.  
28 C.F.R. Part 35.  
28 C.F.R. §36.104.  
34 C.F.R. Parts 100 and 300.

**Instruction**

**Exhibit - Guidelines for Service Animals in School Facilities 1**

*For use by Superintendent and Building Principal only*

This exhibit’s guidelines are not intended for use as an agreement between the District and its students and their parents/guardians as a condition of the student using a service animal. It is intended for use by the Building Principals to:

1. Ensure that the legitimate safety interests of staff and students are met,
2. Inform their individual building staff of these guidelines when service animals are present in their individual buildings, and
3. Request that staff members inform the Building Principal if they observe a service animal that is not meeting any of the listed guidelines.

These guidelines are not based on speculation, stereotypes, or generalizations about students with disabilities. Each guideline includes an explanation based upon State and federal law with legal citations and resources that provide further information.

**The animal is *individually trained* to perform tasks for the benefit of a student with a disability.**

Explanation	Legal Citation(s) and Resources
<p>A service animal must perform work or an individualized task(s) for the benefit of a student with a disability. When it is not obvious what service the service animal provides, only the following questions may be asked:</p> <ol style="list-style-type: none"> <li>1. Is the dog a service animal required because of a disability?</li> <li>2. What work or task has the dog been trained to perform?</li> </ol>	<p>105 ILCS 5/14-6.02 requires the service animal to be <i>individually trained</i> to perform tasks for the benefit of a student with a disability.</p> <p>28 C.F.R. §§35.104 and 35.136 mirror state law and require that the work or tasks performed by a service animal be directly related to the student's disability. Section 36.104 defines work or tasks, which include but are not limited to assisting a student who is blind or has low vision with navigation and other tasks; alerting a student who is deaf or hard of hearing to the presence of people or sounds; providing non-violent protection or rescue work; pulling a wheelchair; assisting a student during a seizure; alerting a student to the presence of allergens; retrieving items such as medicine or the telephone; providing physical support and assistance with balance and stability to a student with mobility disabilities; and helping a student with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors. <b>Note:</b> Providing</p>

**The footnotes should be removed before the material is used.**

**1** Managing service animals in the school setting presents many unsettled and complex legal issues. Consult the board attorney for advice before using this exhibit. Illinois law provides little guidance on the issue of service animals in the school setting. Recently amended federal rules now clarify and strengthen the rights of disabled individuals to use service animals in public places (28 C.F.R. Parts 35 and 35.136).

Explanation	Legal Citation(s) and Resources
	emotional support, well-being, comfort, companionship or being present to deter criminal behaviors does not satisfy the requirement to “perform work or tasks.”

**The animal has a current rabies vaccination tag.**

Explanation	Legal Citation(s) and Resources
<p>A service animal must have a current rabies vaccination and tag for the safety interests of all individuals in the school environment.</p> <p>School officials must always assume that the service animal is properly licensed.</p>	<p>510 ILCS 5/8 requires a current rabies vaccination, which is verified through a current rabies vaccination tag. Because State law requires animals to receive this vaccination, it is a legitimate safety requirement that is based upon an actual risk for the service animal to access school facilities (28 C.F.R. §35.130(h).</p> <p>Federal law does not allow the District to ask for proof of a license. This is true even when local municipalities, cities, or villages within the District’s boundaries have additional registration requirements. The Dept. of Justice opines that unlicensed animals do not pose the same safety concern as those that are not vaccinated, i.e., the fundamental nature of the school environment is not affected by failing to obtain a license. The District may call animal control if there is a legitimate suspicion that the animal is not licensed, and the animal’s owner may then be subject to a fine. However, the animal must still be allowed in the school.</p>

**The handler(s) may lawfully:**

- 1. Be on school property, and**
- 2. Have contact with children.**

Explanation	Legal Citation(s) and Resources
<p>The animal handler must not be a person who is a “sex offender,” as defined by the Sex Offender Registration Act, or a “violent offender against youth,” as defined in the Murderer and Violent Offender Against Youth Registration Act.</p>	<p>720 ILCS 5/11-9.3 prohibits a child sex offender from being present on school property when persons under the age of 18 are present. Because this requirement is State law, it is a legitimate safety requirement based upon an actual risk for the service animal’s handler to access school facilities (28 C.F.R. §35.130(h).</p> <p>The Dept. of Justice opines that a service animal’s handler should be treated the same as the District treats all other resource persons and volunteers. <b>Note:</b> Some school boards forbid the use of convicted felons as volunteers.</p> <p>Board policy 6:250, <i>Community Resource Persons and Volunteers</i>, requires the Superintendent to establish procedures for securing and screening resource persons and volunteers. 6:250-AP, <i>Securing</i></p>



Explanation	Legal Citation(s) and Resources
	<i>and Screening Resource Persons and Volunteers</i> , requires criminal history records checks for individuals who work in direct contact with students or where a check would be prudent.

**The animal is under the control of the handler and housebroken.**

Explanation	Legal Citation(s) and Resources
<p>A service animal must be under the control of its handler.</p> <p>A service animal must be housebroken.</p>	<p>Federal law allows exclusion of a service animal from the school environment when its handler is not able to take effective action to control it or it is not housebroken. The Dept. of Justice opines that one accident, however, will not be sufficient for exclusion of a service animal (28 C.F.R. §35.136).</p> <p>For more examples and explanation regarding effective action to control a service animal and whether an animal is housebroken, see Americans with Disabilities Act, Title II Regulations, Nondiscrimination on the Basis of Disability in State and Local Government Services, Section 3, Guidance and Section by Section Analysis, pg. 87 at: <a href="http://www.ada.gov/regs2010/titleII_2010/titleII_2010_regulations.pdf">www.ada.gov/regs2010/titleII_2010/titleII_2010_regulations.pdf</a>.</p>

## Instruction

### Home and Hospital Instruction 1

A student who is absent from school, or whose physician anticipates that the student will be absent from school, because of a medical condition may be eligible for instruction in the student's home or hospital. <sup>2</sup> Eligibility shall be determined by State law and the Illinois State Board of Education rule governing the continuum of placement options for home/hospital services. <sup>3</sup> Appropriate educational services from qualified staff will begin no later than 5 school days after receiving a physician's written statement. <sup>4</sup> Instructional or related services for a student receiving special education services will be determined by the student's individualized education program.

A student who is unable to attend school because of pregnancy will be provided home instruction, correspondence courses, or other courses of instruction (1) before the birth of the child when the student's physician indicates, in writing, that she is medically unable to attend regular classroom instruction, and (2) for up to 3 months after the child's birth or a miscarriage. <sup>5</sup>

Periodic conferences will be held between appropriate school personnel, parent(s)/guardian(s), and hospital staff to coordinate course work and facilitate a student's return to school.

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

<sup>1</sup> State or federal law controls this policy's content. The following State laws and ISBE rules govern homebound and hospital instruction: 105 ILCS 5/14-13.01, amended by P.A. 96-257 (reimbursement for home and hospital instruction along with factors to qualify for it); 105 ILCS 5/18-4.5 (governs reimbursement for home and hospital instruction); 105 ILCS 5/18-8.05 (an instructional session of one clock hour may be counted as ½ day of attendance, however, a student must receive 4 or more instructional clock hours to count as a full day of attendance); 23 Ill.Admin.Code §226.300 (home/hospital service for a special education student); ISBE General State Aid Claim form.

<sup>2</sup> 105 ILCS 5/14-13.01, amended by P.A. 97-123, redefines the standards for determining when a student is eligible to receive home or hospital instruction. A student now qualifies when a physician *anticipates* a student's absence due to a medical condition. The Act also defined "ongoing intermittent basis" to mean a medical condition of such a nature and severity that it is anticipated that the student will be absent from school due to the medical condition for periods of at least 2 days at a time multiple times during the school year totaling at least 10 days or more of absences.

<sup>3</sup> 105 ILCS 5/14-13.01(a), amended by P.A. 96-257 and 23 Ill.Admin.Code §226.300 require, at a minimum, all students to provide a written statement from a physician licensed to practice medicine in all of its branches stating the existence of a medical condition, the impact on the student's ability to participate in education, and the anticipated duration or nature of the child's absence from school. A student with health needs may be protected by the Individuals with Disabilities Education Act (20 U.S.C. §1401(3)) or Section 504 of the Rehabilitation Act (29 U.S.C. §794(a)).

<sup>4</sup> There is no longer a requirement that a student be absent from school for a minimum number of days before he or she qualifies for home or hospital instruction (105 ILCS 5/14-13.01(a), amended by P.A. 97-123). The Act now allows schools to begin home or hospital instruction upon receipt of a physician's written statement but requires it to begin no later than 5 school days after receipt of the physician's written statement.

<sup>23</sup> Ill.Admin.Code §226.300(g) also requires home or hospital instructors to meet the requirements listed in 23 Ill.Admin.Code §1.610, i.e., proper certification as required by ~~105 ILCS 5/21-1~~ [the amendments to the School Code in P.A. 97-607](#) and 23 Ill.Admin.Code §25.464.

<sup>5</sup> 105 ILCS 5/10-22.6a. Number (2) does not require a physician's written statement.

LEGAL REF.: 105 ILCS 5/10-22.6a, 5/14-13.01, 5/18-4.5, and 5/18-8.05.  
23 Ill.Admin.Code §§1.610 and 226.300.

CROSS REF.: 6:120 (Education of Children with Disabilities), 7:10 (Equal Educational Opportunity), 7:280 (Communicable and Chronic Infectious Disease)

## Instruction

### Remote Educational Program 1

The Superintendent shall develop, maintain, and supervise a remote educational program consistent with Section 10-29 of the School Code. The remote educational program shall provide an opportunity for qualifying students to participate in an educational program delivered by the District in a location outside of a school.

The remote educational program shall:

1. Align its curriculum with the Illinois State Learning Standards and Board policies 6:10, *Educational Philosophy and Objectives* and 6:15, *School Accountability*.
2. Offer instruction and educational experiences consistent with those given to students at the same grade level in the District through compliance with Board policies 6:30, *Organization of Instruction* and 6:300, *Graduation Requirements*. <sup>2</sup>
3. Provide instructors that meet the teacher qualifications in Board policy 5:190, *Teacher Qualifications*. Instructors are responsible for the following elements of the program: <sup>3</sup>
  - a. Planning instruction,
  - b. Diagnosing learning needs,
  - c. Prescribing content delivery through class activities,
  - d. Assessing learning,
  - e. Reporting outcomes to administrators and parents/guardians, and
  - f. Evaluating the effects of instruction.
4. ~~Follow the District's regular school term that~~ Provide a remote educational program anytime during the period of time from and including the opening date to the closing date of the District's regular school term. It may operate on any calendar day, notwithstanding whether it

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<sup>1</sup> This policy is optional, but school boards that wish to implement a remote educational program must adopt a policy with statutorily prescribed content. 105 ILCS 5/10-29. Before adopting this policy school officials should consider how a remote educational program fits into the district's mission statement for instruction. School officials should consult the board attorney and a representative from ISBE for advice when implementing this program. A remote educational program will be subject to ISBE rules once ISBE promulgates and adopts them.

The Illinois Virtual School qualifies as an educational program delivered by the district in a location outside of a school because, as stated on ISBE's website,

[All students enroll in the Illinois Virtual School (IVS) through their regular school. The student's school (public or private) must first agree to participate in IVS.

See the IVS website, [www.ilvirtual.org/index.php?page=public-and-private-schools](http://www.ilvirtual.org/index.php?page=public-and-private-schools).

Homes or other locations outside of a school building for remote educational programs are not "public school facilities" (105 ILCS 5/10-29(e)).

Number one is a statutory remote educational program requirement; 105 ILCS 5/10-29(a)(2). The Illinois State Learning Standards may be found at: [www.isbe.state.il.us/ils/](http://www.isbe.state.il.us/ils/) and 23 Ill.Admin.Code §1, App. D. See also, 105 ILCS 5/2-3.25d and 5/27-1.

<sup>2</sup> Statutory remote educational program requirement; 105 ILCS 5/10-29(a)(2).

<sup>3</sup> Statutory remote educational program requirement; 105 ILCS 5/10-29(a)(3). Consult the board attorney for advice because the listed statutory responsibilities for instructors of remote educational programs may impact wages, hours, and terms and conditions of employment. In addition, 105 ILCS 5/10-29(d) requires these responsibilities to be subject to local collective bargaining agreements. When the district has an applicable collective bargaining agreement, replace number 3 with the following sentence:

Provide instructors that meet the teacher qualifications in Board policy 5:190, *Teacher Qualifications*. Instructors are responsible for the elements of the program consistent with the current [*insert name of professional CBA*].

is a student attendance day or institute day on the School District's calendar or any other provision of law restricting instruction on that day. The District's regular school term is established by Board policies 2:20, *Powers and Duties of the School Board* and 6:20, *School Year Calendar and Day*. <sup>4</sup> The remote educational program may be offered outside of the regular school term as part of any authorized summer school program.

5. Calculate the number of clock hours a student participates in instruction in alignment with Board policy 6:20, *School Year Calendar and Day*. <sup>5</sup>
6. Limit participation to students who are juniors or seniors or demonstrate individual educational need(s). Approval of students in the program will be on a space-available basis. <sup>6</sup>
7. Authorize the Superintendent or designee to approve students for participation in the program when the student shows evidence of: <sup>7</sup>
  - a. Enrollment in the District pursuant to Board policies 7:60, *Residence* and 7:30, *Student Assignment and Intra-District Transfer*.
  - b. Prior approval from their individualized educational program (IEP) team, if applicable.
  - c. How the remote educational program best serves the student's individual learning needs.
  - d. A consistent, appropriate attendance record, no disciplinary record, and a 2.5 minimum grade point average.

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<sup>4</sup> Statutory remote educational program requirement; 105 ILCS 5/10-29(a)(4), amended by P.A. 97-339, and 5/10-19. Delete the last sentence if the district will not offer the remote educational programs during summer. If the district holds year-round classes in some buildings, it must classify each student's participation in the remote educational program as either on a year-round or a non-year-round schedule for purposes of claiming general State aid. Districts that choose to offer remote educational programs during summer school should use the following alternative sentence:

Follow the District's regular school and summer terms that are established by Board policies 2:20, Powers and Duties of the School Board and 6:20, School Year Calendar and Day.

<sup>5</sup> Statutory remote educational program requirement that must be covered in policy; 105 ILCS 5/10-29(a)(1)(E). Days Clock hours of attendance instruction by students in a remote educational program meeting the requirements of 105 ILCS 5/10-29 may be claimed for general State aid purposes in accordance with and subject to the limitations of Section 18-8.05 of the School Code (105 ILCS 5/10-29(c). amended by P.A. 97-339. Alternatively, a remote educational program may also be used for instruction delivered to a student in the home or other location outside of a school building that is not claimed for general State aid purposes.

<sup>6</sup> Must be covered in policy if any limitations on participation are imposed; 105 ILCS 5/10-29(a)(1)(B). This language is a suggestion for limitation on participation. Replace this sentence with the district's specific limitations regarding the number of students or grade levels that may participate in a remote educational program. If a district has no limitations this sentence may be deleted.

<sup>7</sup> The introductory phrase must be covered in policy; 105 ILCS 5/10-29(a)(1)(C). If a district has its own description of the process it will use to approve participation in the remote educational program, replace this sentence with the district's language.

<sup>7a</sup> is a statutory remote educational program requirement; 105 ILCS 5/10-29(a)(6).

<sup>7b</sup> is a statutory remote educational program requirement that must be covered in policy; 105 ILCS 5/10-29(a)(1)(C). The district must ensure that the student receives all programming and related services required in his or her IEP (23 Ill.Admin.Code §226.360). The law is silent whether a student who has a plan under Section 504 of the federal Rehabilitation Act of 1973 (504 plan) needs prior approval, but the student's remote educational plan must deliver content in a manner consistent with the student's 504 plan.

<sup>7c</sup> is a statutory remote educational program requirement that must be covered in policy; 105 ILCS 5/10-29(a)(1)(A). A student and his or her parent/guardian will need to inform the district of how a remote educational program will best serve the student's individual learning needs.

<sup>7d</sup> must be covered in policy; 105 ILCS 5/10-29(a)(1)(A). It may be customized, but the language must address, at a minimum, consideration of a student's prior attendance, disciplinary record, and academic history. The board may want to require the same minimum GPA standards that it requires for eligibility to participate in interscholastic activities. See also, 6:270, *Guidance and Counseling Program*.

8. Include a process for developing and approving a written remote educational plan for each student participating in the program. **8**
9. Require students to complete their participation in the program within 12 months, unless the student's participation is extended by the District. **9**
10. Require students to participate in all assessments administered by the District pursuant to State and federal law and Board policy 6:340, *Student Testing and Assessment Program*. **10**
11. Align with the requirements of Board policy 7:340, *Student Records*. **11**
12. Comply with other State and federal laws and align with all applicable Board policies. This includes the Superintendent submitting a copy of this policy to the Illinois State Board of Education along with any amendments to it and any data on student participation. **12**
13. Be monitored by the Board pursuant to Board policy 2:240, *Board Policy Development* and included as an topic for discussion in the annual report required by Board policy 6:10, *Educational Philosophy and Objectives*. It shall include a discussion of the process for renewal of the program when applicable. **13**

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**8** Statutory remote educational program requirement that must be covered in policy; 105 ILCS 5/10-29(a)(1)(D). A written remote educational plan must meet the requirements of 105 ILCS 5/10-29(a)(5). It must be approved by the school district and a person authorized to enroll the student under 105 ILCS 5/10-20.12b. Any amendments to a student's written remote educational plan must also be approved in the same manner. See f/n 9 & 13 for a discussion of the length of a written remote educational plan.

**9** Statutory remote educational program requirement; 105 ILCS 5/10-29(a)(7). A district may extend participation longer than 12 months when it: (1) evaluates the student's progress in the program, (2) determines that the student's continuation in the program will serve the student's individual learning needs, and (3) amends the student's remote educational plan, addressing any changes for the upcoming term of the program.

**10** Statutory remote educational program requirement; *Id.* at 10-29(a)(6).

**11** Remote educational programs present specific student records and privacy issues that should be examined with the board attorney. Both federal (Family Educational Rights and Privacy Act (20 U.S.C. §1232g) and State (Illinois School Student Records Act, 105 ILCS 10/) laws govern student school records and these laws differ in many respects.

**12** The first sentence is a statutory remote educational program requirement that must be covered in policy; 105 ILCS 5/10-29(a)(1)(G). Consult the board attorney to discuss other issues that may pertain to the district's specific circumstances. The second sentence is a statutory remote educational program requirement; 105 ILCS 5/10-29(g). The law provides no guidance how to accomplish this requirement other than granting ISBE rulemaking authority (105 ILCS 5/10-29(h)).

**13** Must be covered in policy; 105 ILCS 5/10-29(a)(1)(F). A description of the process for renewing a remote educational program at the expiration of its *term* is required. Dual uses of the word *term* occur in this law. Depending upon the type of remote educational program, *term* suggests the district's entire remote educational program may need renewal from time to time. The Act provides little guidance other than that the district must describe the process in its policy. The annual report required by Board policy 6:10, *Educational Philosophy and Objectives*, is one option to describe the process. Replace this sentence with the district's language if a different process is developed.

105 ILCS 5/10-29(a)(7) also references *term*. There, *term* requires that a student's "written remote educational plan" not extend the student's participation in the remote educational program longer than 12 months, unless the district extends participation. See f/n 9 for further discussion.

LEGAL REF.: 105 ILCS 5/10-29.  
23 Ill.Admin.Code §226.360.

CROSS REF.: 2:20 (Powers and Duties of the School Board), 2:240 (Board Policy Development), 5:190 (Teacher Qualifications), 6:10 (Educational Philosophy and Objectives), 6:15 (School Accountability), 6:20 (School Year Calendar and Day), 6:30 (Organization of Instruction), 6:300 (Graduation Requirements), 6:340 (Student Testing and Assessment Program), 7:30 (Student Assignment and Intra-District Transfer), 7:60 (Residence), 7:340 (Student Records)

## Instruction

### Grading and Promotion 1

The Superintendent shall establish a system of grading and reporting academic achievement to students and their parents/guardians. <sup>2</sup> The system shall also determine when promotion and graduation requirements are met. The decision to promote a student to the next grade level shall be based on successful completion of the curriculum, attendance, performance based on the Illinois Standards Achievement Tests, or other testing. <sup>3</sup> A student shall not be promoted based upon age or any other social reason not related to academic performance. <sup>4</sup> The administration shall determine remedial assistance for a student who is not promoted. <sup>5</sup>

Every teacher shall maintain an evaluation record for each student in the teacher's classroom. A District administrator cannot change the final grade assigned by the teacher without notifying the teacher. <sup>6</sup> Reasons for changing a student's final grade include:

- A miscalculation of test scores,
- A technical error in assigning a particular grade or score,
- The teacher agrees to allow the student to do extra work that may impact the grade,
- An inappropriate grading system used to determine the grade, or
- An inappropriate grade based on an appropriate grading system.

Should a grade change be made, the administrator making the change must sign the changed record.

LEGAL REF.: 105 ILCS 5/[2-3.64](#), [5/10-20.9a](#), [5/10-21.8](#), and [5/27-27](#).

CROSS REF.: [6:110 \(Programs for Students At Risk of Academic Failure and/or Dropping Out of School and Graduation Incentives Program\)](#), [6:300 \(Graduation Requirements\)](#), [7:50 \(School Admissions and Student Transfers To and From Non-District Schools\)](#)

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

<sup>1</sup> State law requires districts to have a school board policy containing the reasons for which a grade may be changed and prohibiting social promotion (105 ILCS 5/10-20.9a). State or federal law controls this policy's content.

If a district uses weighted grades for classes by degree of difficulty, it must be reflected in the affected students' class ranking and permanent records (105 ILCS 5/27-27).

<sup>2</sup> Absent a court order to the contrary, upon the request of either parent of a student whose parents are divorced, copies of report cards, along with other notices and records, must be furnished to both parents by the district (105 ILCS 5/10-21.8).

<sup>3</sup> 105 ILCS 5/10-20.9a. Each board may determine its own promotion criteria and augment the statute's criteria.

<sup>4</sup> Id.

<sup>5</sup> ~~The remedial assistance may include "a summer bridge program of no less than 90 hours, tutorial sessions, increased or concentrated instructional time, modifications to instructional materials, and retention in grade," (105 ILCS 5/10-20.9a).~~ [105 ILCS 5/10-20.9a](#). [105 ILCS 5/2-3.64](#), amended by P.A. 97-86, addresses remedial assistance for students who are 2 or more grades below current placement

<sup>6</sup> The specific reasons and procedure for changing a grade are at the local board's discretion; however, State law provides that no grade may be changed without notification to the teacher concerning the nature and reason for the change (105 ILCS 5/10-20.9a). The person making the change must assume all responsibility and must initial the change (Id.).



## Students

### Harassment of Students Prohibited 1

#### Bullying, Intimidation, and Harassment Prohibited

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

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1 State or federal law requires this subject matter be covered by policy and controls this policy’s content. Each district must have a policy on bullying (105 ILCS 5/27-23.7, amended by P.A. 96-952); see 7:180, *Preventing Bullying, Intimidation, and Harassment*.

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

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

The Ill. Human Rights Act and an ISBE rule prohibit schools from discriminating against students on the basis of *sexual orientation* and *gender identity* (775 ILCS 5/5-101(11); 23 Ill.Admin.Code §1.240). *Sexual orientation* is defined as the “actual or perceived heterosexuality, homosexuality, bisexuality, or gender related identity, whether or not traditionally associated with the person’s designated sex at birth,” (775 ILCS 5/1-103(O-1)). *Gender identity* is included in the definition of sexual orientation in the Act. The Act permits schools to maintain single-sex facilities that are distinctly private in nature, e.g., restrooms and locker rooms (775 ILCS 5/5-103). 775 ILCS 5/1-102(A), amended by P.A. 96-447, added *order of protection status* to its list of protected categories. The Ill. Human Rights Act’s jurisdiction is specifically limited to: (1) failing to enroll an individual, (2) denying access to facilities, goods, or services, or (3) failing to take corrective action to stop severe or pervasive harassment of an individual (775 ILCS 5/5-102.2, added by P.A. 96-814).

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

### Sexual Harassment Prohibited

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

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

The terms "intimidating," "hostile," and "offensive" include conduct that has the effect of humiliation, embarrassment, or discomfort. Examples of sexual harassment include touching, crude jokes or pictures, discussions of sexual experiences, teasing related to sexual characteristics, and spreading rumors related to a person's alleged sexual activities.

### Making a Complaint; Enforcement

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

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

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<sup>3</sup> Title IX of the Education Amendments of 1972 prohibits discrimination on the basis of sex in any educational program or activity receiving federal financial assistance (20 U.S.C. §1681). The sample policy's definition of sexual harassment does not distinguish between welcome and unwelcome behaviors - each is prohibited if it has a result described in sub-paragraph 1 or 2. See Mary M. v. North Lawrence Community School Corp., 131 F.3d 1220 (7th Cir., 1997) (An eighth grade student did not need to show that a school employee's sexual advances were *unwelcome* in order to prove sexual harassment.).

[Consult the board attorney to ensure the non-discrimination coordinator and complaint managers are trained to appropriately respond to allegations of discrimination based upon sexual violence under Title IX's sexual harassment umbrella. The U.S. Dept. of Education has issued guidance indicating that while acts of sexual violence are crimes, they may also be discrimination under Title IX. Many attorneys agree these guidance documents are a "heads-up" to schools to ensure appropriate responses and training. The guidance documents highlight appropriate responses to sexual violence under Title IX. See f/n 3 in policy 2:260, Uniform Grievance Procedure for a listing and links to these documents.](#)

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

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

**Nondiscrimination Coordinator:**

\_\_\_\_\_  
Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone

**Complaint Managers:**

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone

\_\_\_\_\_  
Telephone

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

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

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

<sup>5</sup> In addition to notifying students of the Uniform Grievance Procedure, a district must notify them of the person(s) designated to coordinate the district's compliance with Title IX (34 C.F.R. Part 106.8(a)). A comprehensive student handbook can provide required notices, along with other important information to recipients. The handbook can be developed by the building principal, but should be reviewed and approved by the superintendent and school board.

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

CROSS REF.: 2:260 (Uniform Grievance Procedure), 5:20 (Workplace Harassment Prohibited),  
7:10 (Equal Educational Opportunities), 7:180 (Preventing Bullying,  
Intimidation, and Harassment), 7:190 (Student Discipline)

## Students

### Attendance and Truancy 1

#### Compulsory School Attendance 2

This policy applies to individuals who have custody or control of a child: (a) between the ages of 7 and 17 years of age (unless the child has graduated from high school), or (b) who is enrolled in any of grades, kindergarten through 12, in the public school regardless of age. These individuals must cause the child to attend the District school wherein the child is assigned, except as provided herein or by State law. Subject to specific requirements in State law, the following children are not required to attend public school: (1) any child attending a private school (including a home school) or parochial school, (2) any child who is physically or mentally unable to attend school (including a pregnant student suffering medical complications as certified by her physician), (3) any child lawfully and necessarily employed, (4) any child over 12 and under 14 years of age while in confirmation classes, (5) any child absent because his or her religion forbids secular activity on a particular day, and (6) any child 16 years of age or older who is employed and is enrolled in a graduation incentives program.

The parent/guardian of a student who is enrolled must authorize all absences from school and notify the school in advance or at the time of the student's absence. A valid cause for absence includes illness, observance of a religious holiday, death in the immediate family, family emergency, other situations beyond the control of the student, other circumstances that cause reasonable concern to the parent/guardian for the student's safety or health, or other reason as approved by the Superintendent or designee. 3

#### Absenteeism and Truancy Program

The Superintendent or designee shall manage an absenteeism and truancy program in accordance with the School Code and School Board policy. The program shall include but not be limited to:

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

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

<sup>2</sup> 105 ILCS 5/26-2 addresses enrolled students below age 7 or over age 17. The amendment requires any persons having custody or control of a child who is enrolled in grades kindergarten through 12 in the public school to cause the child to attend school.

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

<sup>3</sup> These reasons are in 105 ILCS 5/26-2a, amended by P.A. 97-218, except that "other reason as approved by the Superintendent" was added. ISBE rule requires that the absenteeism and truancy policy defines valid causes for absence (23 Ill.Admin.Code §1.290). P.A. 97-218 changed the definition of *chronic habitual truant*, which is now "a child who is subject to compulsory school attendance and who is absent without valid cause from such attendance for 5% (down from 10%) or more of the previous 180 regular attendance days."

1. A protocol for excusing a student from attendance who is necessarily and lawfully employed. The Superintendent or designee is authorized to determine when the student's absence is justified. **4**
2. A process to telephone, within 2 hours after the first class, the parents/guardians of students in grade 8 or below who are absent without prior parent/guardian notification. **5**
3. A process to identify and track students who are truants, chronic or habitual truants, or truant minors as defined in the School Code, Section 26-2a.
4. Methods for identifying the cause(s) of a student's unexcused absenteeism, including interviews with the student, his or her parent(s)/guardian(s), and staff members or other people who may have information. **6**
5. The identification of supportive services that may be offered to truant or chronically truant students, including parent-teacher conferences, student and/or family counseling, or information about community agency services. **7** See Board policy 6:110, *Programs for Students At Risk of Academic Failure and/or Dropping Out of School and Graduation Incentives Program*.
6. A process to request the assistance and resources of outside agencies, such as, the juvenile officer of the local police department or the truant office of the appropriate Regional Office of Education, if truancy continues after supportive services have been offered. **8**
7. A protocol for cooperating with non-District agencies including County or municipal authorities, the Regional Superintendent, truant officers, the Community Truancy Review Board, and a comprehensive community based youth service agency. Any disclosure of school student records must be consistent with Board policy 7:340, *Student Records*, as well as State and federal law concerning school student records. **9**

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**4** Any child "necessarily and lawfully employed" may be exempted from attendance by the superintendent "on certification of the facts by and the recommendation of the school board" (105 ILCS 5/26-1). The policy's language serves to delegate this "certification of the facts" to the superintendent or designee. The following option allows a board to consider and include specific criteria in the policy:

A student may be excused, at the Superintendent's discretion, when: (1) the student has a last period study hall, (2) the parent/guardian provides written permission, (3) the student's employer provides written verification of employment, (4) the student provides evidence of a valid work permit, or (5) other reason deemed justifiable by the Superintendent.

Child Labor laws include: 29 C.F.R. Part 570 (minimum age standards, occupations, conditions, etc.); 820 ILCS 205/ (child labor laws); 56 Ill.Admin.Code Part 250 (child labor regulations).

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

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

**7** 23 Ill.Admin.Code §1.290. The School Code references to dropout prevention include: 105 ILCS 5/26-3a (regional superintendent activities and annual report); 105 ILCS 5/10-20.25a (annual report by boards); and 105 ILCS 5/1A-4(E) (State Board of Education report).

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

**9** 105 ILCS 5/26-9 requires school officers and superintendents to assist truant officers. A minor who is reported by the regional superintendent as a chronic truant may be adjudicated a "truant minor in need of supervision" if the minor declines or refuses to fully participate in truancy intervention services (705 ILCS 405/3-33.5).

8. An acknowledgement that no punitive action, including out-of-school suspensions, expulsions, or court action, shall be taken against a chronic truant for his or her truancy unless available supportive services and other school resources have been provided to the student. **10**
9. The criteria to determine whether a student's non-attendance is due to extraordinary circumstances shall include economic or medical necessity or family hardship and such other criteria that the Superintendent believes qualifies. **11**
10. *[For high school and unit districts only]*
11. A process for a 17 year old resident to participate in the District's various programs and resources for truants. **12** The student must provide documentation of his/her dropout status for the previous 6 months. A request from an individual 19 years of age or older to re-enroll after having dropped out of school is handled according to provisions in 7:50, *Students School Admissions and Student Transfers To and From Non-District Schools*.
12. A process for the temporary exclusion of a student 17 years of age or older for failing to meet minimum academic or attendance standards according to provisions in State law. A parent/guardian has the right to appeal a decision to exclude a student. **13**

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

CROSS REF.: 6:110 (Programs for Students At Risk of Academic Failure and/or Dropping Out of School and Graduation Incentives Program), 6:150 (Home and Hospital

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Counties and municipalities may regulate truants by ordinance and impose fines and/or community services on truants or, if the truant is under 10 years of age, on the parent or custodian (55 ILCS 5/5-1078.2 and 65 ILCS 5/11-5-9). Such local officials or authorities that enforce, prosecute, or adjudicate municipal ordinances adopted under 55 ILCS 5/5-1078.2 and 65 ILCS 5/11-5-9, or that work with school districts to address truancy problems, are designated as (i) part of the juvenile justice system, established by the Juvenile Court Act of 1987, and (ii) *juvenile authorities* within the definition set forth in subsection (a)(6.5) of Section 10-6 of the Ill. School Student Records Act (~~Id., as amended by P.A. 95-1016~~). **A superintendent should consult with the board attorney before disclosing school student records to non-district entities.** See 7:340-AP, *Student Records* for a sample procedure for release of such records to juvenile authorities.

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

**11** 105 ILCS 5/26-3a requires the district to "establish, in writing, a set of criteria for use by the local superintendent of schools in determining whether a pupil's failure to attend school is the result of extraordinary circumstances, including but not limited to economic or medical necessity or family hardship."

This statute also requires the "clerk or secretary" of the board to quarterly report to the regional superintendent and Secretary of State the identity of students who were removed from the regular attendance roll, exclusive of transferees, because they were expelled; have withdrawn; left school; withdrew due to extraordinary circumstances; have re-enrolled in school since their names were removed from the attendance rolls; were certified to be chronic or habitual truants; or were previously certified as chronic or habitual truants who have resumed regular school attendance. The statute provides that the status of a driver's license or instructional permit will be jeopardized for a student who is the subject of this notification because of non-attendance unless the non-attendance is due to extraordinary circumstances as determined by the local district. State Superintendent Koch announced in his *Weekly Message*, 8-28-07, [www.isbe.net/board/archivemessages/message\\_082807.pdf](http://www.isbe.net/board/archivemessages/message_082807.pdf), p.2, that ISBE is delaying implementing this statute based upon legal guidance from the U.S. Department of Education's Family Policy Compliance Office that its implementation would violate the Federal Education Rights and Privacy Act.

**12** A district must allow this participation; the length of the drop-out period and the documentation requirement contained in the next sentence are permissive (105 ILCS 5/26-14).

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

Instruction), 7:10 (Equal Educational Opportunities), 7:50 (School Admissions and Student Transfers To and From Non-District Schools), 7:60 (Residence), 7:80 (Release Time for Religious Instruction/Observance), 7:190 (Student Discipline), 7:340 (Student Records)



## Students

### Health, Eye, and Dental Examinations; Immunizations; and Exclusion of Students <sup>1</sup>

#### Required Health Examinations and Immunizations

A student's parent(s)/guardian(s) shall present proof that the student received a health examination and the immunizations against, and screenings for, preventable communicable diseases, as required by the Illinois Department of Public Health, within one year prior to:

1. Entering kindergarten or the first grade;
2. Entering the sixth and ninth grades; and <sup>2</sup>
3. Enrolling in an Illinois school, regardless of the student's grade (including nursery school, special education, headstart programs operated by elementary or secondary schools, and students transferring into Illinois from out-of-state or out-of-country). <sup>3</sup>

As required by State law:

1. Health examinations must be performed by a physician licensed to practice medicine in all of its branches, an advanced practice nurse who has a written collaborative agreement with a collaborating physician authorizing the advanced practice nurse to perform health examinations, or a physician assistant who has been delegated the performance of health examinations by a supervising physician. <sup>4</sup>
2. A diabetes screening must be included as a required part of each health examination; diabetes testing is not required. <sup>5</sup>
3. Before admission and in conjunction with required physical examinations, parents/guardians of children between the ages of 6 months and 6 years must provide a statement from a physician that their child was "risk-assessed" or screened for lead poisoning. <sup>6</sup>
4. The Department of Public Health will provide all female students entering sixth grade and their parents/guardians information about the link between human papilloma virus (HPV) and cervical cancer and the availability of the HPV vaccine. <sup>7</sup>

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

<sup>1</sup> State or federal law controls this policy's content. The policy restates 105 ILCS 5/27-8.1. Immunization requirements are found in 77 Ill.Admin.Code §665.240. A Tuberculosis skin test is required if the student lives in an area designated by the Dept. of Public Health as having a high incidence of Tuberculosis. See also "Questions & Answers Regarding School Health Record Issues," revised 9/2011, 45/2009 and available at:

[www.dhs.state.il.us/page.aspx/%20/intranet.dhs/oneweb/page.aspx?item=32907](http://www.dhs.state.il.us/page.aspx/%20/intranet.dhs/oneweb/page.aspx?item=32907).

<sup>2</sup> 105 ILCS 5/27-8.1; 77 Ill.Admin.Code §665.140 *et seq.* For the 2008-2009 school year only, a health examination conducted from August 2006 through September 2007 (for a child who was entering fifth grade for the 2007-2008 school year) was deemed to meet the requirements of 105 ILCS 5/27-8.1.

<sup>3</sup> 77 Ill.Admin.Code §665.140. If grade levels are not assigned, examinations must be completed within one year prior to the school year in which the child reaches the ages of 5, 11, and 15 (*Id.*).

<sup>4</sup> 105 ILCS 5/27-8.1; 77 Ill.Admin.Code §665.130 *et seq.*

<sup>5</sup> 105 ILCS 5/27-8.1; 77 Ill.Admin.Code §665.700 *et seq.*

<sup>6</sup> Required by 410 ILCS 45/7.1. Physicians are required to screen children over 6 years of age for lead poisoning when, in the physician's judgment, a child is at risk (410 ILCS 45/6.2).

Unless ~~the student is homeless or transferring from out-of-state,~~ an exemption or extension applies, ~~the~~ failure to comply with the above requirements by October 15 of the current school year will result in the student's exclusion from school until the required health forms are presented to the District. <sup>8</sup> New students who register after October 15 of the current school year shall have 30 days following registration to comply with the health examination and immunization regulations. <sup>9</sup> If a medical reason prevents a student from receiving a required immunization by October 15, the student must present, by October 15, an immunization schedule and a statement of the medical reasons causing the delay. <sup>10</sup> The schedule and statement of medical reasons must be signed by the physician, advanced practice nurse, physician assistant, or local health department responsible for administering the immunizations.

Until June 30, 2015, a student transferring from out-of-state who does not have the required proof of immunizations by October 15 may attend classes only if he or she has proof that an appointment for the required vaccinations is scheduled with a party authorized to submit proof of the required vaccinations. <sup>11</sup> If the required proof of vaccination is not submitted within 30 days after the student is permitted to attend classes, the student may no longer attend classes until proof of the vaccinations is properly submitted. <sup>12</sup>

### Eye Examination <sup>13</sup>

Parents/guardians are encouraged to have their children undergo an eye examination whenever health examinations are required. <sup>14</sup>

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<sup>7</sup> This sentence restates the requirement in the Communicable Disease Prevention Act regarding cervical cancer prevention (410 ILCS 315/2e). ~~It requires IDPH to adopt emergency rules to the extent necessary to administer its responsibilities under this provision.~~

<sup>8</sup> 105 ILCS 5/27-8.1(5), amended by P.A. 97-216. ~~A student transferring from out-of-state who does not provide the required proof requires compliance by October 15 or the unless a district establishes an earlier date with 60 days notice. If an earlier date is established, (see f/n 10) may attend classes replace "October 15" in this paragraph with the earlier locally established date. During any student's exclusion from school for 30 days provided he or she shows proof that an appointment for the required vaccinations has been scheduled with a physician, advanced practice nurse, physician assistant, registered nurse, or local health department (Id.). If proof of vaccination required non-compliance with this policy, the student's parents/guardians shall be considered in violation of 105 ILCS 5/26-1 and subject to any penalty imposed by 105 ILCS 5/26-10, as provided in 105 ILCS 5/27-8.1, amended by P.A. 97-216. (5) is not submitted within those 30 days, the student may not attend classes until the proof is submitted~~

<sup>9</sup> This sentence is optional. ~~The term new students as used in this sentence includes out-of-state transfer students.~~ The timeframe of 30 days is a matter of local discretion except that out-of-state transfer students who fail to provide proof of the required vaccinations ~~within these~~ after 30 days must be excluded until such proof is properly submitted (105 ILCS 5/27-8.1(5), amended by P.A. 96-953). Consult the board attorney about establishing timeframes other than 30 days. ~~If a board sets a timeframe longer than 30 days, out-of-state transfer students would have less time than other new students to comply with 105 ILCS 5/27-8.1(5). While a student's out-of-state transfer status is not a protected category for purposes of policy 7-10, Equal Educational Opportunities, using a time frame other than 30 days could expose a district to equal educational opportunity challenges—especially considering this change to the School Code resulted from the enactment of the Educational Opportunity for Military Children Act, 105 ILCS 70/, added by P.A. 96-953.~~

<sup>10</sup> This sentence and the following sentence restate 105 ILCS 5/27-8.1(5), amended by P.A. 97-216.

<sup>11</sup> Id. P.A. 97-216 changed the expiration year for special treatment of out-of-state transfer students to June 30, 2015. The special treatment of out-of-state transfer students resulted from the enactment of the Educational Opportunity for Military Children Act, 105 ILCS 70/, added by P.A. 96-953.

<sup>12</sup> 105 ILCS 5/27-8.1, amended by P.A. 97-216.

<sup>13</sup> Required by 105 ILCS 5/27-8.1(1.10) and (2). The IDPH's rules are published at 77 Ill.Admin.Code §665.610 et seq. ~~77 Ill.Admin.Code §665.150 and 630 prescribe the statewide eye examination report form. It is available at:~~ [www.idph.state.il.us/HealthWellness/EyeExamReport.pdf](http://www.idph.state.il.us/HealthWellness/EyeExamReport.pdf) or 77 Ill.Admin.Code §665, Appendix A.

Parents/guardians of students entering kindergarten or an Illinois school for the first time shall present proof before October 15 of the current school year that the student received an eye examination within one year prior to entry of kindergarten or the school. A physician licensed to practice medicine in all of its branches or a licensed optometrist must perform the required eye examination.

If a student fails to present proof by October 15, the school may hold the student's report card until the student presents proof: (1) of a completed eye examination, or (2) that an eye examination will take place within 60 days after October 15. The Superintendent or designee shall ensure that parents/guardians are notified of this eye examination requirement in compliance with the rules of the Department of Public Health. Schools shall not exclude a student from attending school due to failure to obtain an eye examination.

#### Dental Examination 15

All children in kindergarten and the second and sixth grades must present proof of having been examined by a licensed dentist before May 15 of the current school year in accordance with rules adopted by the Illinois Department of Public Health.

If a child in the second or sixth grade fails to present proof by May 15, the school may hold the child's report card until the child presents proof: (1) of a completed dental examination, or (2) that a dental examination will take place within 60 days after May 15. The Superintendent or designee shall ensure that parents/guardians are notified of this dental examination requirement at least 60 days before May 15 of each school year.

#### Exemptions 16

In accordance with rules adopted by the Illinois Department of Public Health, a student will be exempted from this policy's requirements for:

1. Religious or medical grounds if the student's parents/guardians present to the Superintendent a signed statement explaining the objection;
2. Health examination or immunization requirements on medical grounds if a physician provides written verification;
3. Eye examination requirement if the student's parents/guardians show an undue burden or lack of access to a physician licensed to practice medicine in all of its branches who provides eye examinations or a licensed optometrist; or
4. Dental examination requirement if the student's parents/guardians show an undue burden or a lack of access to a dentist.

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**14** While 105 ILCS 5/27-8.1 requires eye examinations for students entering kindergarten or an Illinois school for the first time, it still encourages parent(s)/guardian(s) to have their children undergo eye examinations at the same points in time as their required health examinations. The IDPH must require that individuals conducting vision screenings give a child's parent/guardian a written notification stating:

Vision screening is not a substitute for a complete eye and vision evaluation by an eye doctor. Your child is not required to undergo this vision screening if an optometrist or ophthalmologist has completed and signed a report form indicating that an examination has been administered within the previous 12 months.

**15** Required by 105 ILCS 5/27-8.1(1.5). The IDPH's rules are published at 77 Ill.Admin.Code §665.410 et seq. ~~77 Ill.Admin.Code~~ §665.150 and 430 prescribe the statewide dental examination report form. It is available at: [www.idph.state.il.us/HealthWellness/oralhlth/DentalExamProof.pdf](http://www.idph.state.il.us/HealthWellness/oralhlth/DentalExamProof.pdf).

**16** Id. and 105 ILCS 5/27-8.1(1.10).

### Homeless Child

Any homeless child shall be immediately admitted, even if the child or child's parent/guardian is unable to produce immunization and health records normally required for enrollment. <sup>17</sup> School Board policy 6:140, *Education of Homeless Children*, governs the enrollment of homeless children.

LEGAL REF.: McKinney Homeless Assistance Act, 42 U.S.C. §11431 et seq.  
105 ILCS 5/27-8.1 and 45/1-20.  
410 ILCS 45/7.1 and 315/2e.  
23 Ill.Admin.Code §1.530.  
77 Ill.Admin.Code Part 665.

CROSS REF.: 6:30 (Organization of Instruction), 6:140 (Education of Homeless Children),  
6:180 (Extended Instructional Programs), 7:50 (School Admissions and Student  
Transfers To and From Non-District Schools)

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<sup>17</sup> Required by 105 ILCS 45/1-20 (Education for Homeless Children Act). Also required by the McKinney Homeless Assistance Act, 42 U.S.C. §1142(g)(3)(C)(i).

## Students

### Student Discipline <sup>1</sup>

#### Prohibited Student Conduct <sup>2</sup>

The school administration is authorized to discipline students for gross disobedience or misconduct, including but not limited to:

1. Using, possessing, distributing, purchasing, or selling tobacco materials. <sup>3</sup>
2. Using, possessing, distributing, purchasing, or selling alcoholic beverages. <sup>4</sup> Students who are under the influence of an alcoholic beverage are not permitted to attend school or school functions and are treated as though they had alcohol in their possession.
3. Using, possessing, distributing, purchasing, or selling:
  - a. Any illegal drug, controlled substance, or cannabis (including marijuana and hashish). <sup>5</sup>
  - b. Any anabolic steroid unless being administered in accordance with a physician's or licensed practitioner's prescription. <sup>6</sup>
  - c. Any performance-enhancing substance on the Illinois High School Association's most current banned substance list unless administered in accordance with a physician's or licensed practitioner's prescription. <sup>7</sup>
  - d. Any prescription drug when not prescribed for the student by a physician or licensed practitioner, or when used in a manner inconsistent with the prescription or prescribing physician's or licensed practitioner's instructions.
  - e. Any inhalant, regardless of whether it contains an illegal drug or controlled substance: (a) that a student believes is, or represents to be capable of, causing intoxication, hallucination, excitement, or dulling of the brain or nervous system; or (b) about which the student engaged in behavior that would lead a reasonable person to believe that the

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<sup>1</sup> All districts must have a policy on student discipline, including corporal punishment (105 ILCS 5/10-20.14; 23 Ill.Admin.Code §1.280). Teachers and other certificated employees must maintain discipline (105 ILCS 5/24-24). [Staff members may not use isolated time out or physical restraint unless authorized to do so by an administrative procedure or policy \(105 ILCS 5/2-3.130, 5/10-20.33, and 5/24-24; 23 Ill.Admin.Code §1.280\(c\) and 1.285\). See f/n 35 and 7:190-AP4, Use of Isolated Time Out and Physical Restraint.](#) Given the unique concerns facing school officials, school disciplinary codes are not required to be drafted as narrowly or with the same precisions as criminal statutes. [Bethel School Dist. v. Fraser](#), 106 S.Ct. 3159 (1986).

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

<sup>3</sup> Federal law prohibits smoking within schools by anyone (Pro-Children Act of 1994, 20 U.S.C. §6081). Districts that fail to comply risk a civil penalty of up to \$1,000 per violation per day. See policy 8:30, *Visitors to and Conduct on School Property*, for more information.

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

<sup>5</sup> Controlled substance is defined in 720 ILCS 570/102; cannabis is defined in 720 ILCS 550/3. Either spelling, "marihuana" or "marijuana," is correct; however, "marijuana" is more common.

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

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

student intended the inhalant to cause intoxication, hallucination, excitement, or dulling of the brain or nervous system. The prohibition in this section does not apply to a student's use of asthma or other legally prescribed inhalant medications.

- f. "Look-alike" or counterfeit drugs, including a substance not containing an illegal drug or controlled substance, but one: (a) that a student believes to be, or represents to be, an illegal drug or controlled substance; or (b) about which a student engaged in behavior that would lead a reasonable person to believe that the student expressly or impliedly represented to be an illegal drug or controlled substance. **8**
- g. Drug paraphernalia, including devices that are or can be used to: (a) ingest, inhale, or inject cannabis or controlled substances into the body; and (b) grow, process, store, or conceal cannabis or controlled substances. **9**

Students who are under the influence of any prohibited substance are not permitted to attend school or school functions and are treated as though they had the prohibited substance, as applicable, in their possession.

- 4. Using, possessing, controlling, or transferring a "weapon" as that term is defined in the *Weapons* section of this policy, or violating the *Weapons* section of this policy. **10**
- 5. Using or possessing an electronic paging device. Using a cellular telephone, video recording device, personal digital assistant (PDA), or other electronic device in any manner that disrupts the educational environment or violates the rights of others, including using the device to take photographs in locker rooms or bathrooms, cheat, or otherwise violate student conduct rules. Prohibited conduct specifically includes, without limitation, creating, sending, sharing, viewing, receiving, or possessing an indecent visual depiction of oneself or another person through the use of a computer, electronic communication device, or cellular phone. Unless otherwise banned under this policy or by the Building Principal, all electronic devices must be kept powered-off and out-of-sight during the regular school day unless: (a) the supervising teacher grants permission; (b) use of the device is provided in a student's individualized education program (IEP); or (c) it is needed in an emergency that threatens the safety of students, staff, or other individuals. **11**

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**8** "Look-alike" and counterfeit substances are defined in 720 ILCS 570/102. "Look-alike" drugs should be defined; an unpublished Ill. Court of Appeals decision in 2000 found a board policy prohibiting possession of "look-alikes" to have vagueness problems.

**9** Drug paraphernalia is defined in 720 ILCS 600/2.

**10** This language is broader than the *Weapons* section of this policy. The *Weapons* section contains the statutorily required punishment for "a student who is determined to have brought" a weapon to school along with the statutory definition of *weapon* (105 ILCS 5/10-22.6). The language in item #4 is broader because it prohibits "using, possessing, controlling, or transferring" a weapon in addition to violating the *Weapons* section.

**11** 105 ILCS 5/10-21.10 prohibits student possession of electronic paging devices, but State law leaves to local boards the discretion whether to prohibit student possession of cellular phones (105 ILCS 5/10-20.28). Camera phones are now common and their misuse could seriously invade a student's privacy. A board wanting a sweeping prohibition may use the following alternative for item 5:

Using or possessing a cellular telephone, electronic signaling device, two-way radio, video recording device, and/or other telecommunication device, unless authorized and approved by the Building Principal.

Operating transmitters designed to jam or block wireless communications violates the federal Communications Act of 1934 (47 U.S.C. §§301, 302a, and 333). Fines for a first offense can range as high as \$11,000 for each violation or imprisonment for up to one year, and the device may also be seized by the U.S. government. 47 U.S.C. §§501-510.

Making a video recording or live video transmission of another person without their consent in a restroom, locker room, or changing room is a felony (720 ILCS 5/26-4). A minor who distributes or disseminates an indecent visual depiction of another minor through the use of a computer or electronic communication device may be subject to adjudication as a minor in need of supervision (705 ILCS 405/3-40, added by P.A. 96-1087).

6. Using or possessing a laser pointer unless under a staff member's direct supervision and in the context of instruction.
7. Disobeying rules of student conduct or directives from staff members or school officials. Examples of disobeying staff directives include refusing a District staff member's request to stop, present school identification, or submit to a search.
8. Engaging in academic dishonesty, including cheating, intentionally plagiarizing, wrongfully giving or receiving help during an academic examination, and wrongfully obtaining test copies or scores.
9. Engaging in hazing or any kind of bullying or aggressive behavior that does physical or psychological harm to a staff person or another student, or urging other students to engage in such conduct. Prohibited conduct specifically includes, without limitation, any use of violence, intimidation, force, noise, coercion, threats, stalking, harassment, sexual harassment, public humiliation, theft or destruction of property, retaliation, hazing, bullying, bullying using a school computer or a school computer network, or other comparable conduct. **12**
10. Causing or attempting to cause damage to, or stealing or attempting to steal, school property or another person's personal property. **13**
11. Being absent without a recognized excuse; State law and School Board policy regarding truancy control will be used with chronic and habitual truants. **14**

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**12** All districts must have a policy on bullying (105 ILCS 5/27-23.7(d), amended by P.A. 96-952). Policy 7:180, *Preventing Bullying, Intimidation, and Harassment*, contains the statutory definition of *bullying*.

105 ILCS 5/10-20.14 requires boards, in consultation with their parent-teacher advisory committees and other community-based organizations, to include provisions in their student discipline policy to address aggressive behavior, including bullying. Implementing procedures must include a method for informing parents/guardians when their child or ward engaged in aggressive behavior as well as early intervention procedures based upon available community and district resources. See 7:190-E, *Aggressive Behavior Reporting Letter and Form*.

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

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

A person commits a felony hate crime when, by reason of the actual or perceived race, color, creed, religion, ancestry, sexual orientation, disability, or national origin of another person, he or she commits assault or battery (720 ILCS 5/12-7.1). The penalty is heightened when the offense is committed in a school or administrative facility.

720 ILCS 5/26-1 makes transmitting a threat of violence, death, or bodily harm directed against persons at a school, school function, or school event, whether or not school is in session, or causing such a threat to be transmitted, a Class 4 felony.

**13** 720 ILCS 5/26-1 makes threatening to destroy a school building or school property, whether or not school is in session, or causing such a threat to be transmitted, a Class 4 felony.

**14** 105 ILCS 5/26-2a, amended by P.A. 97-218, 5/26-9, and 5/26-12. See policy 6:110, *Programs for Students At Risk of Academic Failure and/or Dropping Out of School and Graduation Incentives Program*, and 7:70, *Attendance and Truancy*.

12. Being involved with any public school fraternity, sorority, or secret society, by: (a) being a member; (b) promising to join; (c) pledging to become a member; or (d) soliciting any other person to join, promise to join, or be pledged to become a member. **15**
13. Being involved in gangs or gang-related activities, including displaying gang symbols or paraphernalia. **16**
14. Violating any criminal law, including but not limited to, assault, battery, arson, theft, gambling, eavesdropping, and hazing.
15. Making an explicit threat on an Internet website against a school employee, a student, or any school-related personnel if the Internet website through which the threat was made is a site that was accessible within the school at the time the threat was made or was available to third parties who worked or studied within the school grounds at the time the threat was made, and the threat could be reasonably interpreted as threatening to the safety and security of the threatened individual because of his or her duties or employment status or status as a student inside the school. **17**
- ~~15-16.~~ Engaging in any activity, on or off campus, that interferes with, disrupts, or adversely affects the school environment, school operations, or an educational function, including but not limited to, conduct that may reasonably be considered to: (a) be a threat or an attempted intimidation of a staff member; or (b) endanger the health or safety of students, staff, or school property. **18**

For purposes of this policy, the term “possession” includes having control, custody, or care, currently or in the past, of an object or substance, including situations in which the item is: (a) on the student’s person; (b) contained in another item belonging to, or under the control of, the student, such as in the student’s clothing, backpack, or automobile; (c) in a school’s student locker, desk, or other school property; or (d) at any location on school property or at a school-sponsored event. **19**

Efforts, including the use of early intervention and progressive discipline, shall be made to deter students, while at school or a school-related event, from engaging in aggressive behavior that may reasonably produce physical or psychological harm to someone else. The Superintendent or designee shall ensure that the parent/guardian of a student who engages in aggressive behavior is notified of

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

**16** See Kelly v. Board of Educ. of McHenry Community High School Dist. 156, 2007 WL 114300 (N.D.Ill., 2007)(upheld student’s expulsion for drawing gang symbols while at school; testimony that the danger posed by gang signs and the presence of gangs at school supported the board’s insistence on strict enforcement of board policy prohibiting gang related behavior and made expulsion a proper remedy). Significantly, the General Assembly recognized in 105 ILCS 5/27-23.7(a), that “[g]iven the higher rates of criminal offending among gang members, as well as the availability of increasingly lethal weapons, the level of criminal activity by gang members has taken on new importance for law enforcement agencies, schools, the community, and prevention efforts.”

740 ILCS 147/15 et seq. allows a school district to bring a civil suit against a gang, gang officers, or gang members for losses it suffers due to their criminal activity.

**17** This statement of misconduct restates 105 ILCS 5/10-22.6(d-5), added by P.A. 97-340. The following alternative provides a shorter statement but will require the administrator to check the statute before imposing discipline based on it: Making an explicit threat on an Internet website against a school, employee, or any school-related personnel under circumstances described in Section 10-22.6(d-5) of the School Code.

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

If the board adopts a mandatory uniform policy (see 7:165, *School Uniforms*), add the following item to the list as number 16: “Failing to comply with the mandatory uniform policy, but only after repeated attempts to secure compliance, such as conferences with parents/guardians, have been unsuccessful.”

**19** “Possession” should be defined to avoid vagueness problems.



the incident. **20** The failure to provide such notification does not limit the Board's authority to impose discipline, including suspension or expulsion, for such behavior.

No disciplinary action shall be taken against any student that is based totally or in part on the refusal of the student's parent/guardian to administer or consent to the administration of psychotropic or psychostimulant medication to the student. **21**

The grounds for disciplinary action, including those described more thoroughly later in this policy, apply whenever the student's conduct is reasonably related to school or school activities, including, but not limited to: **22**

1. On, or within sight of, school grounds before, during, or after school hours or at any time;
2. Off school grounds at a school-sponsored activity or event, or any activity or event that bears a reasonable relationship to school;
3. Traveling to or from school or a school activity, function, or event; or
4. Anywhere, if the conduct interferes with, disrupts, or adversely affects the school environment, school operations, or an educational function, including, but not limited to,

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**20** See footnote 12.

**21** Mandated by 105 ILCS 5/10-20.36.

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

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

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

A judge may transfer a student to another school for committing stalking or non-consensual sexual contact against another student, or for aiding and abetting such an act; the parents/guardians are responsible for transportation and other costs associated with the transfer ([Stalking No Contact Order Act and the Civil No Contact Order Act](#), 740 ILCS 21/80 and 22/213, [amended](#) by P.A. [97-294](#)). The school district and will probably not be notified before a transfer order is issued. School officials should immediately seek the board attorney's advice concerning available options.

conduct that may reasonably be considered to: (a) be a threat or an attempted intimidation of a staff member; or (b) endanger the health or safety of students, staff, or school property. <sup>23</sup>

#### Disciplinary Measures <sup>24</sup>

Disciplinary measures may include: <sup>25</sup>

1. Disciplinary conference.
2. Withholding of privileges.
3. Seizure of contraband.
4. Suspension from school and all school activities for up to 10 days, provided that appropriate procedures are followed. <sup>26</sup> A suspended student is prohibited from being on school grounds.
5. Suspension of bus riding privileges, provided that appropriate procedures are followed. <sup>27</sup>
6. Expulsion from school and all school-sponsored activities and events for a definite time period not to exceed 2 calendar years, provided that the appropriate procedures are followed. <sup>28</sup> An expelled student is prohibited from being on school grounds. <sup>29</sup>
7. Notifying juvenile authorities or other law enforcement whenever the conduct involves illegal drugs (controlled substances), “look-alikes,” alcohol, or weapons.
8. Notifying parents/guardians.

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<sup>23</sup> Suspending or expelling a student for off-campus misconduct is problematic when the school’s jurisdiction is premised on nothing more than “the student’s presence at school may reasonably be considered to create an interference with school purposes or an educational function.” If possible, other grounds for jurisdiction should be added. The factual context will determine jurisdiction. Even when there is no other jurisdictional ground, if the nature of the conduct is particularly troublesome, a detrimental impact on the school can be inferred. See Doe v. Superintendent of Schools of Stoughton, 767 N.E.2d 1054 (Mass., 2002)(suspension for off-campus commission of a felony was upheld).

<sup>24</sup> Aside from procedural due process protection, students have a constitutional substantive due process right. This right protects them from an abuse of government power which “shocks the conscience.” While the scope of substantive due process is very limited, it is available to students who believe they were subject to arbitrary and excessive discipline. Generally, however, school officials need not fear being found guilty of a substantive due process violation. Federal courts are loath to second-guess school officials.

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

<sup>25</sup> Most school attorneys advise against using a grade reduction as a disciplinary measure. One case upheld the application of such a policy. Knight v. Board of Education, 348 N.E.2d 299 (Ill.App. 4, 1976). Another case, however, found unconstitutional, a grade reduction policy requiring 9-week grades to be reduced 4% for each day of a suspension. Smith v. School City of Hobart, 811 F.Supp. 391 (N.D.Ind., 1993).

<sup>26</sup> 105 ILCS 5/10-22.6. The next sentence is optional.

<sup>27</sup> Id.

<sup>28</sup> 105 ILCS 5/10-22.6. The Indiana Supreme Court upheld a policy to deny semester credit to a student expelled anytime during the semester. South Gibson School Board v. Sollman, 768 N.E.2d 437 (Ind. 2002). An optional provision, such as the following, should first be discussed with the board’s attorney before adoption:

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

<sup>29</sup> Optional (105 ILCS 5/10-22.6).

9. Temporary removal from the classroom.
10. In-school suspension for a period not to exceed 5 school days. The Building Principal or designee shall ensure that the student is properly supervised. <sup>30</sup>
11. After-school study or Saturday study <sup>31</sup> provided the student's parent/guardian has been notified. If transportation arrangements cannot be agreed upon, an alternative disciplinary measure must be used. The student must be supervised by the detaining teacher or the Building Principal or designee.
12. Community service with local public and nonprofit agencies that enhances community efforts to meet human, educational, environmental, or public safety needs. <sup>32</sup> The District will not provide transportation. School administration shall use this option only as an alternative to another disciplinary measure giving the student and/or parent/guardian the choice.

A student who is subject to a suspension in excess of 20 school days or an expulsion may be eligible for transfer immediately transferred to an alternative ~~school~~ program in the manner provided in Article 13A or 13B of the School Code. <sup>33</sup>

Corporal punishment is prohibited. Corporal punishment is defined as slapping, paddling, or prolonged maintenance of students in physically painful positions, or intentional infliction of bodily harm. Corporal punishment does not include reasonable force as needed to maintain safety for students, staff, or other persons, or for the purpose of self-defense or defense of property. <sup>34 35</sup>

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<sup>30</sup> State law does not cover in-school suspensions. Generally, an educational program must be included in an in-school suspension; otherwise, it may become a regular suspension with procedural requirements.

<sup>31</sup> Teachers may not be required to teach on Saturdays (105 ILCS 5/24-2).

<sup>32</sup> Optional. See Herndon v. Chapel Hill-Carrboro City Bd., 89 F.3d 174 (C.A. 4, 1996)(upheld policy requiring students to complete community service in order to graduate).

<sup>33-</sup> This restates 105 ILCS 5/10-22.6(a) and (b), amended by P.A. 97-495. Most school lawyers say that a suspension over 10 days is automatically an expulsion and must be treated as such as per Goss v. Lopez, 95 S.Ct. 729 (1975). Subsection 10-22(b) used the phrase "is suspended in excess of 20 school days" even though such a suspension should be treated as an expulsion. It is an open question whether an alternative program is available to a student who is suspended for 11 to 20 days because that student is technically expelled and, as such, qualifies under subsection (a) of Section 10-22.6 even though s/he would not qualify under subsection (b) of that statute. The alternative program may not deny the transfer on the basis of the suspension or expulsion, except in cases in which the transfer is deemed to cause a threat to the safety of students or staff in the alternative program.

<sup>34</sup> This paragraph paraphrases 105 ILCS 5/24-24.

<sup>35-</sup> School district staff may not use isolated time out or physical restraint unless the superintendent or board authorizes its use in a procedure or policy (105 ILCS 5/2-3.130, 5/10-20.33, and 5/24-24; 23 Ill.Admin.Code §1.280(c) and 1.285). See 7:190-AP4, Use of Isolated Time Out and Physical Restraint. An ISBE rule states that a district must have a policy on isolated time out and physical restraint in order to authorize their use. As the School Code does not contain such a requirement, ISBE has found that a district procedure will suffice to authorize the use of isolated time-out and restraint. A board may, but is not required to, include both or one of the following sentences:

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

The first sentence in the above optional paragraph will require the superintendent to develop administrative procedures; the second sentence is from ISBE rule 23 Ill.Admin.Code §1.285.

## Weapons 36

A student who is determined to have brought one of the following objects to school, any school-sponsored activity or event, or any activity or event that bears a reasonable relationship to school shall be expelled for a period of at least one calendar year but not more than 2 calendar years:

1. A firearm, meaning any gun, rifle, shotgun, or weapon as defined by Section 921 of Title 18 of the United States Code (18 U.S.C. § 921), firearm as defined in Section 1.1 of the Firearm Owners Identification Card Act (430 ILCS 65/), or firearm as defined in Section 24-1 of the Criminal Code of 1961 (720 ILCS 5/24-1).
2. A knife, brass knuckles, or other knuckle weapon regardless of its composition, a billy club, or any other object if used or attempted to be used to cause bodily harm, including “look alike” of any firearm as defined above.

The expulsion requirement under either paragraph 1 or 2 above may be modified by the Superintendent, and the Superintendent’s determination may be modified by the Board on a case-by-case basis. The Superintendent or designee may grant an exception to this policy, upon the prior request of an adult supervisor, for students in theatre, cooking, ROTC, martial arts, and similar programs, whether or not school-sponsored, provided the item is not equipped, nor intended, to do bodily harm. 37

## Required Notices

A school staff member shall immediately notify the office of the Building Principal in the event that he or she: (1) observes any person in possession of a firearm on or around school grounds; however, such action may be delayed if immediate notice would endanger students under his or her supervision, (2) observes or has reason to suspect that any person on school grounds is or was involved in a drug-related incident, or (3) observes a battery committed against any staff member. 38 Upon receiving such a report, the Building Principal or designee shall immediately notify the local law enforcement agency, State Police, and any involved student’s parent/guardian. 39 “School

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36 This section restates 105 ILCS 5/10-22.6. See also the Gun-Free Schools Act, 20 U.S.C. §7151 *et seq.* This section contains the statutorily required punishment for bringing a weapon to school along with the statutory definition of *weapon* (105 ILCS 5/10-22.6). Item #4 in the **Prohibited Student Conduct** section is broader because it prohibits “using, possessing, controlling, or transferring” a weapon in addition to violating the *Weapons* section.

When preparing for a due process hearing, a principal needs to use the applicable State and federal law definitions of “firearm”– not just the School Code. Analyzing the student’s circumstances on a case-by-case basis may avoid a judicial finding that an expulsion is too severe. See Washington v. Smith, 618 N.E.2d 561 (Ill.App., 1993).

37 Optional.

38 105 ILCS 5/10-27.1A, 5/10-27.1B, and 5/10-21.7. “School grounds” includes the real property comprising any school, any conveyance used to transport students to school or a school-related activity, and any public way within 1,000 feet of any school ground. To satisfy the reporting requirement, ISBE created the School Incident Reporting System (SIRS), a web-based application on IWAS for schools to report incidents electronically. Reporting on SIRS does not satisfy the requirement to report incidents to local law enforcement authorities.

39 *Id.* State law imposes this duty to report firearm possession only on school officials; this duty may be also imposed on volunteers and community members. Only staff members, however, are vulnerable to committing a petty offense for their failure to report, and only staff members are protected from civil or criminal liability that might arise as a result of making a report (although the liability potential for anyone making a report is remote).

The building principal must notify the student’s parents/guardians only when the alleged offense is firearm possession. The policy expands this notification duty; a board disinclined to do this should substitute the following sentence:

Upon receiving such a report, the Building Principal or designee shall immediately notify the applicable local law enforcement agency, State Police, and, if a student is reportedly in possession of a firearm, also the student’s parents/guardians.

grounds” includes modes of transportation to school activities and any public way within 1000 feet of the school, as well as school property itself.

### Delegation of Authority

Each teacher, and any other school personnel when students are under his or her charge, is authorized to impose any disciplinary measure, other than suspension, expulsion, corporal punishment, or in-school suspension, that is appropriate and in accordance with the policies and rules on student discipline. Teachers, other certificated educational employees, and other persons providing a related service for or with respect to a student, may use reasonable force as needed to maintain safety for other students, school personnel, or other persons, or for the purpose of self-defense or defense of property. **40** Teachers may temporarily remove students from a classroom for disruptive behavior. **41**

The Superintendent, Building Principal, Assistant Building Principal, or Dean of Students is authorized to impose the same disciplinary measures as teachers and may suspend students guilty of gross disobedience or misconduct from school (including all school functions) and from riding the school bus, up to 10 consecutive school days, provided the appropriate procedures are followed. **42** The Board may suspend a student from riding the bus in excess of 10 school days for safety reasons. **43**

### Student Handbook

The Superintendent, with input from the parent-teacher advisory committee, **44** shall prepare disciplinary rules implementing the District’s disciplinary policies. These disciplinary rules shall be presented annually to the Board for its review and approval.

A student handbook, including the District disciplinary policies and rules, shall be distributed to the students’ parents/guardians within 15 days of the beginning of the school year or a student’s enrollment.

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

**41** Id.

**42** Required by 105 ILCS 5/10-22.6, amended by P.A. 96-998.

**43** Id.

**44** The board must establish and maintain a parent-teacher advisory committee to develop guidelines on student discipline. See policy 2:150, *Committees*. This policy’s dissemination requirements are from 105 ILCS 5/10-20.14.

A comprehensive student handbook can provide notice of the school’s conduct rules, extracurricular and athletic participation requirements, and other important information. The handbook can be developed by the building principal, but should be reviewed and approved by the superintendent and board.

LEGAL REF.: Gun-Free Schools Act, 20 U.S.C. §7151 et seq.  
Pro-Children Act of 1994, 20 U.S.C. §6081.  
105 ILCS 5/10-20.5b, 5/10-20.14, 5/10-20.28, 5/10-20.36, 5/10-21.7, 5/10-21.10,  
5/10-22.6, 5/10-27.1A, 5/10-27.1B, 5/24-24, 5/26-12, 5/27-23.7, and 5/31-3.  
23 Ill.Admin.Code §1.280.

CROSS REF.: 2:240 (Board Policy Development), 5:230 (Maintaining Student Discipline),  
6:110 (Programs for Students At Risk of Academic Failure and/or Dropping Out  
of School and Graduation Incentives Program), 7:70 (Attendance and Truancy),  
7:130 (Student Rights and Responsibilities), 7:140 (Search and Seizure), 7:150  
(Agency and Police Interviews), 7:160 (Student Appearance), 7:170  
(Vandalism), 7:180 (Preventing Bullying, Intimidation, and Harassment ), 7:200  
(Suspension Procedures), 7:210 (Expulsion Procedures), 7:220 (Bus Conduct),  
7:230 (Misconduct by Students with Disabilities), 7:240 (Conduct Code for  
Participants in Extracurricular Activities), 7:270 (Administering Medicines to  
Students), 7:310 (Restrictions on Publications), 8:30 (Visitors to and Conduct on  
School Property)

## Students

### **Administrative Procedure - Guidelines for Investigating Sexting Allegations**

Establishing procedures with local law enforcement agencies and State’s attorneys to investigate allegations of sexting protects the District, its staff and its students from the broad legal implications that sexting allegations present. This administrative procedure contains three sections:

1. Glossary of Terms
2. Preparation of Guidelines for Investigating Sexting Allegations
3. Investigation and Management of Sexting Allegations

#### Glossary of Terms

**Electronic device:** any type of electronic communication device, defined at 705 ILCS 405/3-40(a), added by P.A. 96-1087. It includes, but is not limited to, a wireless telephone, personal digital assistant, or a portable or mobile computer, that is capable of transmitting images or pictures. This includes cellular telephones (see [www.thesaurus.com](http://www.thesaurus.com), listing cellular and wireless telephones as synonyms). For more discussion, see f/n 3 in 7:190 - AP5, *Electronic Devices - Student Handbook*.

**Sexting:** a portmanteau word of sex and texting with no clear definition. It is commonly explained as the act of sending sexually explicit photos, images, or messages electronically, primarily by mobile phone or the internet, that are taken with or without consent. It also includes *indecent visual depictions*, which means a depiction or portrayal in any pose, posture, or setting involving a lewd exhibition of the unclothed or transparently clothed genitals, pubic area, buttocks, or, if such person is female, a fully or partially developed breast of the person (705 ILCS 405/3-40(a), added by P.A. 96-1087, eff. 1-1-11).

#### Preparation of Guidelines for Investigating Sexting Allegations

This section identifies best practices for creating guidelines for investigating sexting allegations at the District-wide level. The Superintendent should discuss this procedure with local law enforcement agencies and State’s attorneys to minimize the potential legal implications for students and administrators that sexting presents. Customize the procedure to each District’s specific needs.

<b>Actor</b>	<b>Action</b>
<p>Superintendent or designee</p>	<p>Convene a meeting with Board attorney, local law enforcement agencies, and State’s attorney to determine best practices and procedures for investigating sexting. Use the <b>Investigation and Management of Sexting Allegations</b> section (see below) as a template for discussion at the meeting and customize it to meet local considerations as necessary.</p> <p>Ask the Board attorney to provide direction about searching student owned electronic devices in Step 2: Isolate Evidence / Confiscate Device in the <b>Investigation and Management of Sexting Allegations</b> section (see below).</p> <p style="padding-left: 40px;">Searching electronic devices involves Fourth Amendment search and seizure and the federal Stored Communication Act (SCA) (18 U.S.C. §2701) issues. Generally asking for permission, calling the parents to come and look through the phone, or getting a</p>

Actor	Action
	<p>warrant solves this issue. <b>Note:</b> See the Dept. of Justice’s, “The Stored Communication Act, in Searching and Seizing Computers and Obtaining Electronic Evidence Manual” (Sept. 2009), available at: <a href="http://www.justice.gov/criminal/cybercrime/ssmanual/03ssma.html">www.justice.gov/criminal/cybercrime/ssmanual/03ssma.html</a> and Orin S. Kerr, A User’s Guide to the Stored Communications Act, and a Legislator’s Guide to Amending It, George Washington Law Review (Aug. 2004).</p> <p>Identify and list all State’s attorneys and local law enforcement agencies with jurisdiction over the District’s boundaries. Provide this list to all Building Principals in the District.</p> <p>Provide the local State’s attorney offices and law enforcement agencies with an annual list of school buildings and the names of each building’s administrators that are located within their jurisdictions.</p> <p>Invite local State’s attorney offices and law enforcement agencies to meet with District school officials to provide input on how the District should manage identified indecent visual depictions.</p> <p>Add an agenda item about sexting to a Parent Teacher Advisory Committee meeting (see policy 2:150, <i>Committees</i>). Include information from discussions with State’s attorneys and local law enforcement about the issue. Discuss local considerations for:</p> <ol style="list-style-type: none"> <li>1. Disciplinary actions and consequences in response to sexting; and</li> <li>2. Sexting education and prevention efforts.</li> </ol> <p>Consider adding information about the negative consequences of sexting to the District’s sex education curriculum. See, U.S. Dept. of Justice Guide titled <i>Citizen's Guide to United States Federal Child Exploitation Laws</i>, available at: <a href="http://www.justice.gov/criminal/ceos/citizensguide_porn.html">www.justice.gov/criminal/ceos/citizensguide_porn.html</a>; MTV’s four-part series titled <i>Sexting in America: When Privates Go Public</i>, available at: <a href="http://www.mtv.com/videos/news/483801/sexting-in-america-when-privates-go-public-part-1.jhtml#id=1631892">www.mtv.com/videos/news/483801/sexting-in-america-when-privates-go-public-part-1.jhtml#id=1631892</a> and <a href="http://www.athinline.org">www.athinline.org</a>. Consider adding these to 7:190-AP6, <i>E1, Exhibit-Letter to Parents/Guardians About Preventing and Reducing Incidences of Sexting</i>.</p> <p>Convene a meeting with Building Principals to inform them of the District’s Investigation and Management of Sexting Allegations procedures (see below).</p> <p>Raise awareness of and increase educational opportunities about sexting as necessary. Follow the Parent Teacher Advisory Committee’s recommendations for providing sexting education and prevention efforts. Invite the local State’s attorney and local law enforcement to participate in the District’s education and prevention efforts.</p>
Building Principals	Educate building staff members about the procedures for <b>Investigation and Management of Sexting Allegations</b> (see below).



Actor	Action
	Follow the Investigation and Management of Sexting Allegations.

Investigation and Management of Sexting Allegations

This section relies upon the Building Principal or designee to manage several practical and legal implications when conducting sexting allegation investigations.

Actor	Action
Building Principal or designee	<p><b>Step 1: Investigate</b></p> <p>Determine where actions took place.</p> <p>Contact parents/guardians of all students involved.</p> <p>Contact the Superintendent and request permission to contact the Board Attorney.</p> <p><b>Step 2: Isolate Evidence / Confiscate Device</b></p> <p>NEVER transfer or store depictions on personal or school electronic devices to minimize accusations of possession of child pornography. (See 625 ILCS 5/11-20.1 <i>et seq.</i> and 18 U.S.C. §§2251, 2252, and 2252A). Also see the U.S. Dept. of Justice’s Child Exploitation and Obscenity Section discussing child pornography issues, available at: <a href="http://www.justice.gov/criminal/ceos/childporn.html">www.justice.gov/criminal/ceos/childporn.html</a>.</p> <p>Contact local law enforcement.</p> <p>See Joshua D. Herman, <i>Criminal Law. Sexting: It’s No Joke, It’s a Crime</i>. Illinois Bar Journal, Volume 98, No. 4, P. 192 at f/n 42 (published April 2010), online at: <a href="http://www.isba.org/ibj/2010/04/criminallaw">www.isba.org/ibj/2010/04/criminallaw</a>, (quoting an attorney in the Illinois Attorney General’s High Tech Crimes Bureau who advises school administrators to immediately confiscate devices with such material on them and report the incident to law enforcement immediately, stating that possession of a sext message that is child pornography is no different than possessing a “kilo of cocaine.”)</p> <p>Follow board policy 7:140, <i>Search and Seizure</i> and 7:150-AP, <i>Administrative Procedure, Agency and Police Interviews</i>.</p> <p>Follow the Board Attorney’s direction regarding searches of student owned technological devices. See Preparation of Guidelines for Investigating Sexting Allegations (above).</p> <p><b>Step 3: Follow the reporting requirements of Board policy 5:90, Abused and Neglected Child Reporting, when applicable</b></p> <p>A <i>sexted</i> image may constitute child abuse depending upon the visual depiction and the circumstances. See 325 ILCS 5/3 and 705 ILCS 405/2-3 (2) which includes sex offenses defined at 720 ILCS 5/1-1 <i>et seq.</i> School personnel are granted broad immunities against civil and criminal claims for filing reports in</p>

Actor	Action
	<p>good faith, even if the report is unfounded. In contrast, school personnel who willfully fail to report may be guilty of a Class A misdemeanor (325 ILCS 5/4) and face suspension of their teaching certificates (105 ILCS <del>5/21-23</del>, <del>amended by 10/21B-75</del>, <del>added</del> P.A. <del>96-431</del> <del>97-607</del>).</p> <p><b>Step 4: Determine appropriate disciplinary actions for all students involved in the incident</b></p> <p>Evaluate disciplinary options. Remember that a student who forwards sexts of himself or herself likely expected the depiction to remain private. As a result, consider the social stigma, bullying, harassment, and severe embarrassment issues involved in the issue.</p> <p>Provide an equivalent discipline to all students involved in the creation, dissemination and storage of the sexted image, whenever possible.</p> <p>See Sorenen, Vitale, and Haase, <i>Sexting at School: Lessons Learned the Hard Way</i>. National School Board Association, Council of School Attorney’s Inquiry &amp; Analysis, f/n 40 (published February 2010) discussing several sex equality claims against school districts for punishing students differently when they are involved in the same incident.</p> <p>For situations that may require unequal punishment, contact the Superintendent so that he or she may consult the Board Attorney.</p> <p><b>Step 5: Prepare a plan to prevent harassment and bullying of involved students</b></p> <p>Remind the students and their parents/guardians of the Board’s policy 7:180, <i>Preventing Bullying Intimidation and Harassment</i>.</p> <p>Instruct involved students not to harass anyone involved in the sexting incident and keep the issues confidential.</p> <p>Consider involving the social worker or guidance counselor, if available, in the process to assist students.</p> <p>Follow 7:180, <i>Preventing Bullying Intimidation and Harassment</i>, for students who violate the policy.</p>

## Students

### Administering Medicines to Students <sup>1</sup>

Students should not take medication during school hours or during school-related activities unless it is necessary for a student's health and well-being. When a student's licensed health care provider and parent/guardian believe that it is necessary for the student to take a medication during school hours or school-related activities, the parent/guardian must request that the school dispense the medication to the child and otherwise follow the District's procedures on dispensing medication.

No School District employee shall administer to any student, or supervise a student's self-administration of, any prescription or non-prescription medication until a completed and signed "School Medication Authorization Form" is submitted by the student's parent/guardian. No student shall possess or consume any prescription or non-prescription medication on school grounds or at a school-related function other than as provided for in this policy and its implementing procedures.

Nothing in this policy shall prohibit any school employee from providing emergency assistance to students, including administering medication.

The Building Principal shall include this policy in the Student Handbook and shall provide a copy to the parents/guardians of students. <sup>2</sup>

### Self-Administration of Medication <sup>3</sup>

A student may possess an epinephrine auto-injector (EpiPen®) and/or medication prescribed for asthma for immediate use at the student's discretion, provided the student's parent/guardian has completed and signed a "School Medication Authorization Form." The School District shall incur no liability, except for willful and wanton conduct, as a result of any injury arising from a student's self-administration of medication or epinephrine auto-injector or the storage of any medication by school personnel. <sup>4</sup> A student's parent/guardian must indemnify and hold harmless the School District and its employees and agents, against any claims, except a claim based on willful and wanton conduct,

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<sup>1</sup> All districts must have a policy for administering medication (105 ILCS 5/10-20.14b). State law prohibits school boards from requiring that teachers and other non-administrative school employees administer medication to students; exceptions are certificated school nurses and non-certificated registered professional nurses (105 ILCS 5/10-22.21b).

<sup>2</sup> Each district must inform students (e.g., through homeroom discussion or loudspeaker announcement) about, and distribute to their parents/guardians, the district's policy, guidelines, and forms on administering medicines within 15 days after the beginning of each school year, or within 15 days after starting classes for a student who transfers into the district (105 ILCS 5/10-20.14b). A comprehensive Student Handbook can provide notice to parents and students of the school's rules, extracurricular and athletic participation requirements, and other important information. The Handbook can be developed by the building principal, but should be reviewed and approved by the superintendent and board.

<sup>3</sup> 105 ILCS 5/22-30, as amended by P.A. 96-1460, requires school districts to allow students to *self-administer* their prescribed asthma medication and an epinephrine auto-injector as described. *Self-administer* and *self-administration* mean that a student may carry and use these two medications at his or her discretion: (1) while in school, (2) while at a school sponsored activity, (3) while under the supervision of school personnel, or (4) before or after normal school activities, such as while in before-school or after-school care on school-operated property.

<sup>4</sup> 105 ILCS 5/22-30(c) requires this information to be in a notification to parents.

arising out of a student's self-administration of an epinephrine auto-injector and/or medication, or the storage of any medication by school personnel. 5

School District Supply of Epinephrine Auto-Injectors 6

The Superintendent or designee shall implement Section 22-30(f) of the School Code and maintain a supply of epinephrine auto-injectors in the name of the District and provide or administer them as necessary according to State law. This section of the policy is void whenever the Superintendent or designee is, for whatever reason, unable to: (1) obtain for the District a prescription for school epinephrine auto-injectors and a standing protocol from a physician licensed to practice medicine in all its branches, or (2) fill the District's prescription for school epinephrine auto-injectors. 7

Upon implementation of this subsection and Section 22-30(f) of the School Code, the protections from liability and hold harmless provisions as explained in Section 22-30(c) of the School Code apply.

No one, including without limitation parents/guardians of students, should rely on the District for the availability of an epinephrine auto-injector. This policy does not guarantee the availability of an epinephrine auto-injector; students and their parents/guardians should consult their own physician regarding this medication.

LEGAL REF.: 105 ILCS 5/10-20.14b, 5/10-22.21b, and 5/22-30.

CROSS REF.: 7:285 (Food Allergy Management)

ADMIN. PROC.: 7:270-AP (Dispensing Medication), 7:270-AP2 (Checklist for District Supply of Epinephrine Auto-Injectors), 7:270-E (School Medication Authorization Form)

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5 105 ILCS 5/22-30(c) requires parents/guardians to sign a statement: (1) acknowledging the statement from f/n 4 above, and (2) that they must indemnify and hold harmless the school district and its employees and agents against any claims, except a claim based on willful and wanton conduct, arising out of the self-administration of medication by the student or the storage of the medication by school personnel. There are several methods to obtain a parent/guardian's signature for this purpose, e.g., receipt of handbook signature, or see 7:270 E, School Medication Authorization Form. Discuss with the board attorney the method that works best for the district.

6 Optional. A school board must ensure that it does not adopt this section into the policy unless it is prepared to implement 105 ILCS 5/22-30(f), amended by P.A. 97-361. The law permits a district to maintain a supply of epinephrine auto-injectors in a locked, secure location and use them when necessary. However, obtaining this prescription may be difficult or impossible. The consequences of informing the community that the district will obtain a prescription for a supply of epinephrine auto-injectors and implement a plan for their use, and then not doing it are fraught with legal liabilities and issues.

The superintendent is given broad authority to implement this section; however, several preliminary steps should occur with the assistance of the board attorney. They include, but are not limited to: (1) investigating the feasibility of obtaining a prescription for a supply of epinephrine auto-injectors in the name of the district, and (2) outlining the advantages and disadvantages of implementing this plan based upon each district's individual resources and circumstances, and student population's needs.

7 Discuss with the board attorney whether the board should remove this sentence when the district reaches full implementation of this section.

## Students

### **Administrative Procedure - Checklist for District Supply of Epinephrine Auto-Injectors**

- The Superintendent, school nurse, and/or other necessary school officials should consult the Board Attorney to develop a plan to implement Section 22-30)(f) of the School Code.
- Obtain a prescription in the District's name and a standing protocol for a supply of epinephrine auto-injectors pursuant to 105 ILCS 5/22-30(f).
- Designate a locked, secure location(s) for the supply of epinephrine auto-injectors ("supply") pursuant to 105 ILCS 5/22-30(f).
- Develop a method for maintaining an inventory of the supply.  
The inventory should list the expiration dates.
- Identify procedures for a log or other recordkeeping of the provision, or administration of epinephrine auto-injectors from the supply.
- Develop procedures to implement the prescribing physician's standing protocol for the provision, or administration of the supply, including calling 911 and noting any instructions given by Emergency Management Services.
- Determine how the District will identify the student populations whose parents/guardians:
  1. Have not completed and signed a "School Medication Authorization Form," or
  2. Have not provided an epinephrine auto-injector to a student for use at school, even though they have completed the School Medication Authorization Form.
- Determine when the school nurse will provide or administer the supply to students.  
The School Code allows the school nurse to:
  1. Provide an epinephrine auto-injector that meets the prescription on file in the "School Medication Authorization Form" to:
    - a. Any student whose parent/guardian has not provided an epinephrine auto-injector for him or her to use at school, or
    - b. Any personnel authorized under the student's Individual Health Care Action Plan, Food Allergy Emergency Action Plan and Treatment Authorization Form, or Section 504 Plan to administer an epinephrine auto-injector to the student (105 ILCS 5/22-30(b-5), amended by P.A. 97-361). *Any personnel authorized* under these plans is limited to a school nurse, registered nurse, or a properly trained administrator in accordance with Section 10-22.21b of the School Code.
  2. Administer an epinephrine auto-injector to any student that the school nurse in good faith believes is having an anaphylactic reaction even though the parent/guardian has not completed and signed a *School Medication Authorization Form* or otherwise granted permission to administer the epinephrine auto-injector (105 ILCS 5/22-30(b-10), amended by P.A. 97-361).
- Assess how to manage requests from parents/guardians who wish to *opt-out* of the supply being available to their child.

The School Code does not provide a mechanism for a student or his or her parent/guardian to “opt-out” of the administration of the District’s supply of epinephrine auto-injectors when a nurse in good faith professionally believes a student is having an anaphylactic reaction. While there may be religious, health, or other reasons that a student’s parent/guardian may wish to “opt-out” of the administration of an epinephrine auto-injector to their child, the law does not provide a way for parents/guardians to do so. Management of this issue should be discussed with the Board Attorney. For additional guidance on this issue, see policy 7:275, *Orders to Forego Life-Sustaining Treatment*.

- Determine how to notify all parents/guardians about how the supply may be provided or administered to students.

If the District maintains a supply, it must notify parents/guardians of the protections from liability granted to it and the prescribing physician by 105 ILCS 5/22-30(c). There are two groups of parents/guardians that the District must notify: (1) parents/guardians of students who have previously signed a *School Medication Authorization Form*, and (2) parents/guardians of all students.

For parents/guardians who have previously signed the *School Medication Authorization Form*, 105 ILCS 5/22-30(c) requires the District to provide additional notice that the physician providing the standing protocol and prescription for the District’s supply of epinephrine auto-injectors is protected from liability, except for willful or wanton conduct arising from the use of an epinephrine auto-injector regardless of whether authorization was given by the student, parent/guardian, or student’s physician. Discuss with the Board Attorney whether to amend the District’s form(s) to include this language.

For parents/guardians of all students, 105 ILCS 5/22-30(c) requires parents/guardians to be informed that: (1) the District maintains a supply of epinephrine, and (2) the District and the prescribing physician are protected from liability when the school nurse administers epinephrine from the supply to any student when the school nurse in good faith professionally believes the student is having an anaphylactic reaction. There are several methods to inform parent/guardians of this information, e.g., receipt of handbook signature, or see 7:270 E, *School Medication Authorization Form*. Discuss with the Board Attorney the method that works best for the District.

- Develop a system for notifying the parents/guardians of students who received an injection of epinephrine from the District’s supply, either through self-administration or from the school nurse.

105 ILCS 5/22-30 is silent regarding this notification to parents/guardians. However, other existing protocols will already require this important notification. Further, it is a best practice. Notification and proper documentation can provide useful information for examining and evaluating risks as well as defending a lawsuit. The standing protocol from the prescribing physician may require completion of his or her designated forms. Determine the best method for notification of parents/guardians with the Board Attorney.

## Community Relations

### Accommodating Individuals with Disabilities <sup>1</sup>

Individuals with disabilities shall be provided an opportunity to participate in all school-sponsored services, programs, or activities and will not be subject to illegal discrimination. <sup>2</sup> When appropriate, the District may provide to persons with disabilities aids, benefits, or services that are separate or different from, but as effective as, those provided to others. <sup>3</sup>

The District will provide auxiliary aids and services when necessary to afford individuals with disabilities equal opportunity to participate in or enjoy the benefits of a service, program, or activity. <sup>4</sup>

Each service, program, or activity operated in existing facilities shall be readily accessible to, and useable by, individuals with disabilities. New construction and alterations to facilities existing before January 26, 1992, will be accessible when viewed in their entirety. <sup>5</sup>

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<sup>1</sup> State or federal law controls this policy's content.

<sup>2</sup> The Americans with Disabilities Act (ADA) of 1990, 42 U.S.C. §§12101 *et seq.* The ADA covers all state and local governments, including those that receive no federal financial assistance. Title II of the ADA specifically contains accessibility requirements (42 U.S.C. §§12131 *et seq.*). Its nondiscrimination provision states: “[s]ubject to the provisions of this subchapter, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.”

The Department of Justice, through its Civil Rights Division, is the key agency responsible for enforcing Title II. The regulations implementing Title II are found at 28 C.F.R. Part 35. For a comprehensive compliance toolkit, see: [www.ada.gov/pcatoolkit/chap1toolkit.htm](http://www.ada.gov/pcatoolkit/chap1toolkit.htm). This policy contains only the basic elements of the ADA's requirements.

The ADA Amendments Act (ADAAA) significantly changed the ADA's definition of disability (42 U.S.C. §12102). It did not, however, amend any provision in Title II regarding accessibility requirements. Consult the board attorney regarding the ADAAA's impact, if any, on the district's Title II accessibility obligations.

The Ill. Environmental Barriers Act (410 ILCS 25/) and the Ill. Accessibility Code (71 Ill.Admin.Code Part 400) ensure that “all applicable buildings are designed, constructed, and/or altered to assure the safety and welfare of all members of society and to be readily accessible to, and useable by, environmentally limited persons,” (71 Ill.Admin.Code §400.110). Press boxes ~~constructed on school property before July 1, 2009 that “are in bleachers that have points of entry at only one level, and the aggregate area of the press box is no more than 500 square feet”~~ do not have to comply with the Accessibility Code (105 ILCS 5/10-20.46, amended by P.A. 97-355). The Ill. High School Assoc. refers to a *press box* as a “space ... set aside to provide for news media representatives covering the [event], whether they be from newspapers, radio stations, commercial television stations and/or cable television stations.” ~~P.A. 96-674 implies that press boxes constructed after July 1, 2009 must comply with the Accessibility Code.~~

<sup>3</sup> 28 C.F.R. §35.130(b). If separate services or programs are provided, a district may not deny the individual an opportunity to participate in the regular programming unless the accommodation would alter the fundamental nature of the program (28 C.F.R. §35.130(b)).

<sup>4</sup> Districts must provide auxiliary aids and services to ensure that no disabled individual is excluded or treated differently than other individuals, unless the district can show that taking such steps would fundamentally alter the nature of the function, program, or meeting or would be an undue burden (28 C.F.R. §§35.160 and 35.164). The term “auxiliary aids and services” includes qualified interpreters, assistive listening devices, notetakers, and written materials for individuals with hearing impairments; for individuals with vision impairments, the term includes qualified readers, taped texts, and Brailled or large print materials.

The Superintendent or designee is designated the Title II Coordinator and shall: **6**

1. Oversee the District's compliance efforts, recommend necessary modifications to the School Board, and maintain the District's final Title II self-evaluation document and keep it available for public inspection for at least 3 years after its completion date. **7**
2. Institute plans to make information regarding Title II's protection available to any interested party. **8**

Individuals with disabilities should notify the Superintendent or Building Principal if they have a disability that will require special assistance or services and, if so, what services are required. **9** This notification should occur as far in advance as possible of the school-sponsored function, program, or meeting.

Individuals with disabilities may allege a violation of this policy or federal law by reporting it to the Superintendent or designated Title II Coordinator, or by filing a grievance under the Uniform Grievance Procedure. **10**

LEGAL REF.: Americans with Disabilities Act, 42 U.S.C. §§12101 et seq. and 12131 et seq.; 28 C.F.R. Part 35.  
Rehabilitation Act of 1973 §104, 29 U.S.C. §794 (2006).  
105 ILCS 5/10-20.46.  
410 ILCS 25/, Environmental Barriers Act.  
71 Ill.Admin.Code Part 400, Illinois Accessibility Code.

CROSS REF.: 2:260 (Uniform Grievance Procedure), 4:150 (Facility Management and Expansion Programs)

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**5** This requirement applies to construction commenced after January 26, 1992 (28 C.F.R. §35.151). Compliance methods include: equipment redesign, reassignment of services to accessible buildings, assignment of aids to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities (a district is not required to make structural changes in existing facilities where other methods are effective in achieving compliance), and use of accessible rolling stock or other conveyances (28 C.F.R. §35.150).

**6** Each district having 50 or more full or part-time employees must designate at least one employee to coordinate its efforts to comply with Title II, including complaint investigations (28 C.F.R. §35.107).

**7** A written evaluation of district services, policies, and practices should have been completed by January 26, 1993. Interested people should have been allowed to submit comments during the evaluation process. The final self-evaluation document must be kept for at least 3 years, be available for public inspection, and include a list of individuals and organizations consulted, a description of areas examined and any problems identified, and a description of any modifications. The record retention requirement applies to only those districts having 50 or more full or part-time employees.

**8** Each district must make information regarding the ADA's protection available to any interested party (28 C.F.R. §35.106). For example, a simple notice can be included in school newspapers, program or performance announcements, and registration material.

**9** The superintendent decides the appropriate response on a case-by-case basis.

**10** Adoption of the Uniform Grievance Procedure fulfills the ADA's requirement that each district having 50 or more employees adopt and publish a grievance procedure providing for prompt and equitable resolution of any complaint.