

General Personnel

Equal Employment Opportunity and Minority Recruitment 1

The School District shall provide equal employment opportunities² to all persons regardless of their race; color; creed; religion;³ national origin; sex;⁴ sexual orientation;⁵ age;⁶ ancestry; marital status;⁷

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

¹ 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. **This is a complex, confusing, and highly litigated area of the law; consult the board attorney for advice on the application of these laws to specific fact situations.**

² *Equal employment opportunities* apply to virtually all terms and conditions of employment, e.g., discharge, hire, promotion, pay, demotion, and benefits (see the policy's Legal References). The Ill. Constitution protects the following categories from discrimination in employment: race, color, creed, national ancestry, sex, and handicap. Art. I, §§17, 18, and 19. The Ill. Human Rights Act (IHRA) protects the following categories from discrimination in employment, whether *actual* or *perceived*: race, color, religion, sex, national origin, ancestry, age, marital status, physical or mental disability, military status, order of protection status, sexual orientation, pregnancy, unfavorable discharge from military service, and citizenship status. 775 ILCS 5/1-102 and 5/1-103, amended by P.A. 101-221. Beginning 7-1-20, the IHRA requires employers to annually disclose to the Ill. Dept. of Human Rights (IDHR) certain information about adverse judgments and administrative rulings where there was a finding of sexual harassment or unlawful discrimination under any federal, State, or local law, as well as data regarding settlement agreements, if requested by an IDHR investigator. 775 ILCS 5/2-108, added by P.A. 101-221, scheduled to be repealed on 1-1-30.

The Equal Employment Opportunities Act (EEOA, a/k/a Title VII of the Civil Rights Act of 1964) prohibits discrimination because of an individual's race, color, religion, sex, or national origin. 42 U.S.C. §2000e *et seq.*, amended by The Lilly Ledbetter Fair Pay Act of 2009 (LLFPA), Pub.L. 111-2.

Under the Workplace Transparency Act (WTA) (820 ILCS 96/, added by P.A. 101-221), employers may not, as a condition of employment or continued employment, prevent prospective or current employees from making truthful statements or disclosures about alleged unlawful employment practices, including discrimination. *Id.* at 96/1-25.

The LLFPA 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.

The Ill. Equal Pay Act of 2003 (EPA) offers additional protection by prohibiting the payment of wages to one sex less than the opposite sex or to an African-American less than a non-African-American *for the same or substantially similar work*. 820 ILCS 112/, amended by P.A.s 100-1140 and 101-177. The Ill. Dept. of Labor (IDOL) enforces the EPA. The EPA also prohibits employers from requesting or requiring applicants to disclose wage or salary history as a condition of being considered for employment or as a condition of employment. *Id.* at 112/10(b-5), added by P.A. 101-177. If an applicant voluntarily offers such information without prompting, an employer still cannot use that information in making an offer or determining future pay. See sample administrative procedure 5:30-API, *Interview Questions*, for sample permissible inquiries on this topic. Employers may seek wage or salary history from an applicant's current or former employer if that information is a matter of public record under the Freedom of Information Act; however, districts that wish to undertake such searches should exercise caution; the fact a district seeks out publicly available wage information could still be used against it in a pay discrimination claim. *Id.* at 112/10(b-10), added by P.A. 101-177. Consult the board attorney for further guidance.

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

³ 775 ILCS 5/2-102 of the IHRA, amended by P.A. 100-100, contains a *religious discrimination* subsection. It expressly prohibits employers from requiring a person to violate a sincerely held religious belief to obtain or retain employment unless, after engaging in a bona fide effort, the employer demonstrates that it is unable to reasonably accommodate the employee's or prospective employee's sincerely held religious belief, practice, or observance without undue hardship on the conduct of the employer's business. Religious beliefs include, but are not limited to: the wearing of any attire, clothing, or facial hair in accordance with the requirements of his/her religion. 775 ILCS 5/2-102(E-5). Employers may, however, enact a dress code or grooming policy that restricts attire, clothing, or facial hair to maintain workplace safety or food sanitation. *Id.*

In addition to the IHRA and the federal EEOA (discussed in *f/n* 2), see 775 ILCS 35/, Religious Freedom Restoration Act.

arrest record;⁸ military status; order of protection status;⁹ unfavorable military discharge;¹⁰ citizenship status provided the individual is authorized to work in the United States;¹¹ use of lawful products while not at work;¹² being a victim of domestic violence, sexual violence, or gender violence;¹³ genetic information;¹⁴ physical or mental handicap or disability, if otherwise able to

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⁴ Discrimination on the basis of sex under the EEOA includes discrimination on the basis of sexual orientation or transgender status. Bostock v. Clayton County, 140 S.Ct. 1731 (2020); Hively v. Ivy Tech, 853 F.3d 339 (7th Cir. 2017). In addition to the IHRA and the federal EEOA (discussed in f/n 2), see Title IX of the Education Amendments of 1972 (Title IX). 20 U.S.C. §1681 *et seq.*; 34 C.F.R. Part 106. See sample policy 2:265, *Title IX Sexual Harassment Grievance Procedure*. The federal Equal Pay Act prohibits an employer from paying persons of one sex less than the wage paid to persons of the opposite sex for equal work. 29 U.S.C. §206(d). See f/n 2 above for more information on State equal pay protections, including on the basis of sex. The LLFPA 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 IDOL. 820 ILCS 112/15(b).

⁵ *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).

⁶ Age Discrimination in Employment Act (ADEA) (29 U.S.C. §621 *et seq.*), amended by LLFPA (see f/n 2). 29 C.F.R. Part 1625, amended the U.S. Equal Employment Opportunity Commission (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.

⁷ 105 ILCS 5/10-22.4 and 775 ILCS 5/1-103(Q), amended by P.A. 101-221. 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, 171 Ill.2d 230 (Ill. 1996).

⁸ Districts may not make employment decisions on the basis of arrest history, but may use job-disqualifying criminal convictions. 775 ILCS 5/2-103. The Job Opportunities for Qualified Applicants Act prohibits an employer from asking about a criminal record until the employer determines that the applicant is qualified for the position; however, this does not apply when employers are required to exclude applicants with certain criminal convictions from employment. School employers should limit their requests for criminal convictions to *job-disqualifying* convictions. 820 ILCS 75/15. See also the EEOC's guidance, *Consideration of Arrest and Conviction Records in Employment Decisions*, at: www.eeoc.gov/laws/guidance/arrest_conviction.cfm.

⁹ 775 ILCS 5/1-103(Q), amended by P.A. 101-221. The term *order of protection status* means a person protected under an order of protection issued pursuant to the Ill. Domestic Violence Act of 1986 or an order of protection issued by a court of another state. 775 ILCS 5/1-103(K-5).

¹⁰ *Military status* means a person's status on active duty or in status as a veteran in the U.S. Armed Forces, veteran of any reserve component of U.S. Armed Forces, or current member or veteran of the Ill. Army National Guard or Ill. Air National Guard. 775 ILCS 5/1-103(J-1). *Unfavorable military discharge* does not include those characterized as RE-4 or *dishonorable*. 775 ILCS 5/1-103(P). The Uniformed Services Employment and Reemployment Rights Act of 1994 prohibits employers from discriminating or retaliating against any person for reasons related to past, present, or future service in a *uniformed service*. 38 U.S.C. §4301 *et seq.*

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

¹² The Right to Privacy in the Workplace Act prohibits discrimination based on use of lawful products, e.g., alcohol, cannabis, and tobacco, off premises during non-working hours. 820 ILCS 55/5, amended by P.A. 101-27.

¹³ 820 ILCS 180/30, amended by P.A. 101-221, Victims' Economic Security and Safety Act. *Gender violence* means: (1) one or more acts of violence or aggression that are a criminal offense under State law committed, at least in part, on the basis of a person's actual or perceived sex or gender, (2) a physical intrusion or invasion of a sexual nature under coercive conditions that is a criminal offense under State law, or (3) a threat to commit one of these acts. 820 ILCS 180/10(12.5), added by P.A. 101-221. An employer is prohibited from discriminating against any individual, e.g. an applicant for employment, because he or she "is an employee whose employer is subject to Section 21 of the Workplace Violence Prevention Act." The Workplace Violence Prevention Act allows an employer to seek a *workplace protection restraining order* when there is a credible threat of violence at the workplace. 820 ILCS 275/. Section 21 requires the employer seeking a *workplace protection restraining order* to notify the employee who is a victim of unlawful violence. 820 ILCS 275/21.

perform the essential functions of the job with reasonable accommodation;¹⁵ pregnancy, childbirth, or related medical conditions;¹⁶ credit history, unless a satisfactory credit history is an established bona fide occupational requirement of a particular position;¹⁷ or other legally protected categories. **18 19 20**

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14 Illinois' Genetic Information Privacy 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. GIPA, amended by P.A. 100-396, prohibits employers from penalizing employees who do not disclose genetic information or do not choose to participate in a program requiring disclosure of the employee's genetic information. See ¶n 12 in sample policy 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, the EEOC published an informative guidance letter, *ADA & GINA: Incentives for Workplace Wellness Program* at: www.eeoc.gov/eeoc/foia/letters/2011/ada_gina_incentives.html. But the EEOC vacated certain 2016 ADA and GINA wellness program regulations following an adverse court ruling. 83 Fed. Reg. 65296. Those rules provided guidance to employers on the extent to which they could use incentives (such as discounted health plan costs) to encourage employees to participate in wellness programs that asked for employee and family health information. Consult the board attorney for guidance regarding specific application of ADA and GINA 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 of 1990 (ADA) (42 U.S.C. §12101 *et seq.*), amended by the Americans with Disabilities Act Amendments Act of 2008 (ADAAA) (Pub. L. 110-325) and modified by the LLFPA; Rehabilitation Act of 1973 (29 U.S.C. §701 *et seq.*).

16 775 ILCS 5/2-102(I). Employers must provide reasonable accommodations to employees with conditions related to pregnancy, childbirth, or related conditions. 775 ILCS 5/2-102(J). Employers are required to post a notice summarizing the right to be free from unlawful discrimination and the right to certain reasonable accommodations. 775 ILCS 5/2-102(K). The IDOL is required to prepare such a notice, retrievable from its website, which employers may use.

Federal law also prohibits employers from discriminating against employees and applicants on the basis of pregnancy, childbirth, or related medical conditions. 42 U.S.C. §2000e(k). State law also prohibits the State, which includes school districts, from interfering with or discriminating against an individual's fundamental right to continue a pregnancy or to have an abortion. 775 ILCS 55/, added by P.A. 101-13. Pregnant workers with pregnancy-related impairments may have disabilities for which they may be entitled to reasonable accommodation under the ADA. Guidance from the EEOC (7-14-14) is available at: www.eeoc.gov/laws/guidance/pregnancy_qa.cfm.

17 820 ILCS 70/, Employee Credit Privacy Act. 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 Insert the following optional sentence (775 ILCS 5/1-103(a) 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 Insert the following optional provision (29 U.S.C. §705(10)(A)-(B), (20)(C)(v), (20)(D) 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 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 *disabled*.

21 No one will be penalized solely for his or her status as a registered qualifying patient or a registered designated caregiver for purposes of the Compassionate Use of Medical Cannabis Program Act, 410 ILCS 130/. 22

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: (1) requested, attempted to request, used, or attempted to use a reasonable accommodation as allowed by the Illinois Human Rights Act, or (2) 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. 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, 5/10-23.5. This ban on residency requirements for teachers applies only to instructional personnel, and not, for example, to assistant principals. Owen v. Kankakee Sch. Dist., 261 Ill.App.3d 298 (3rd Dist. 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(a). Districts are also prohibited from requiring, requesting, or coercing an employee or potential employee to provide a user name and password or any password or other related account information to gain or demand access to his or her personal online account. 820 ILCS 55/10(b). While the law does not prohibit employers from viewing public information, consult the board attorney before engaging in this practice.

21 School districts must accommodate mothers who choose to continue breastfeeding after returning to work. See 740 ILCS 137/, Right to Breastfeed Act; 820 ILCS 260/, amended by P.A. 100-1003, Nursing Mothers in the Workplace Act (NMWA); and 29 U.S.C. §207(r), Fair Labor Standards Act. At least one court has ruled an implied private right of action may exist under the NMWA. Spriesch v. City of Chicago, 2017 WL 4864913 (N.D.Ill. 2017). See sample language for a personnel handbook in 5:10-AP, *Workplace Accommodations for Nursing Mothers*.

22 410 ILCS 130/40, amended by P.A. 101-363, scheduled to be repealed on 7-1-20; 77 Ill.Admin.Code Part 946. To legally use medical cannabis, an individual must first become a *registered qualifying patient*. Their use of cannabis, e.g. permissible locations, is governed by the Compassionate Use of Medical Cannabis Program Act. 410 ILCS 130/, amended by P.A.s 100-660 and 101-363. There are many situations in which no one, even a registered qualifying patient, may possess or use cannabis except as provided under *Ashley's Law* (105 ILCS 5/22-33, added by P.A. 100-660), including in a school bus or on the grounds of any preschool, or primary or secondary school. 410 ILCS 130/30(a)(2)(3), amended by P.A. 100-660. See sample policy 5:50, *Drug- and Alcohol-Free Workplace; E-Cigarette, Tobacco, and Cannabis Prohibition*, at fn 9 for further discussion.

23 775 ILCS 5/6-101. Discrimination on the basis of a request for or use of a reasonable accommodation is a civil rights violation under the IHRA. *Id.* Most discrimination laws prohibit retaliation against employees who oppose practices made unlawful by those laws, including, for example, the EEOA, Title IX, ADA, ADEA, Victims' Economic Security and Safety Act, the EPA, and the Ill. Whistleblower Act (IWA).

The IWA specifically prohibits employers from retaliating against employees for: (1) disclosing information to a government or law enforcement agency, where the employee has reasonable cause to believe that the information discloses a violation of a State or federal law, rule, or regulation (740 ILCS 174/15(b)); (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(a)); (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, 20.2.

The Ill. False Claims Act defines *State* to include school districts. 740 ILCS 175/2(a). Thus, boards may seek a penalty from a person for making a false claim for money or property. 740 ILCS 175/4. For information regarding the IWA and the tort of retaliatory discharge. See Thomas v. Guardsmark, 487 F.3d 531 (7th Cir. 2007)(discussing the elements of retaliatory discharge and IWA); Sherman v. Kraft General Foods, Inc., 272 Ill.App.3d 833 (4th Dist. 1995)(finding employee who reported asbestos hazard had a cause of action for retaliatory discharge).

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 Nondiscrimination Coordinator also serves as the District’s Title IX Coordinator. 24

The Superintendent shall insert into this policy the names, office addresses, email addresses, and telephone numbers of the District’s current Nondiscrimination Coordinator and Complaint Managers. 25

Nondiscrimination Coordinator: 26

Name

Address

Email

Telephone

Complaint Managers:

Name

Name

Address

Address

Email

Email

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. 27

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24 The Nondiscrimination and Title IX Coordinator(s) need not be the same person. If the district uses a separate Title IX Coordinator who does not also serve as the Nondiscrimination Coordinator, delete “~~The Nondiscrimination Coordinator also serves as the District’s Title IX Coordinator.~~,” insert a hard return to create a new paragraph, and insert “The Superintendent shall appoint a Title IX Coordinator to coordinate the District’s efforts to comply with Title IX.” Then, list the Title IX and Nondiscrimination Coordinators’ names and contact information separately in this policy.

25 Title IX regulations require districts to designate and authorize at least one employee to coordinate their efforts to comply with Title IX and to refer to that employee as the *Title IX Coordinator*. 34 C.F.R. §106.8(a). Districts must identify the Title IX Coordinator by name, office address, email address, and telephone number. *Id.* See f/n 19 in sample policy 2:260, *Uniform Grievance Procedure*.

While the names and contact information are required by law to be listed, they are not part of the adopted policy and do not require board action. This allows for additions and amendments to the names and contact information when necessary. It is important for updated names and contact information to be inserted into this policy and regularly monitored.

26 Best practice is that throughout the district’s board policy manual, the same individual be named as Nondiscrimination Coordinator. In contrast, Complaint Managers identified in individual policies may vary depending upon local district needs.

Minority Recruitment 28

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.

LEGAL REF.: 8 U.S.C. §1324a et seq., Immigration Reform and Control Act.
20 U.S.C. §1681 et seq., Title IX of the Education Amendments of 1972; 34 C.F.R. Part 106.
29 U.S.C. §206(d), Equal Pay Act.
29 U.S.C. §621 et seq., Age Discrimination in Employment Act.
29 U.S.C. §701 et seq., Rehabilitation Act of 1973.
38 U.S.C. §4301 et seq., Uniformed Services Employment and Reemployment Rights Act (1994).
42 U.S.C. §1981 et seq., Civil Rights Act of 1991.
42 U.S.C. §2000e et seq., Title VII of the Civil Rights Act of 1964; 29 C.F.R. Part 1601.
42 U.S.C. §2000ff et seq., Genetic Information Nondiscrimination Act of 2008.
42 U.S.C. §2000d et seq., Title VI of the Civil Rights Act of 1964.
42 U.S.C. §2000e(k), Pregnancy Discrimination Act.
42 U.S.C. §12111 et seq., Americans with Disabilities Act, Title I.
Ill. Constitution, Art. I, §§17, 18, and 19.
105 ILCS 5/10-20.7, 5/20.7a, 5/21.1, 5/22.4, 5/23.5, 5/22-19, 5/24-4, 5/24-4.1, and 5/24-7.
410 ILCS 130/40, Compassionate Use of Medical Cannabis Program Act.
410 ILCS 513/25, Genetic Information Privacy Act.
740 ILCS 174/, III. Whistleblower Act.
775 ILCS 5/1-103, 5/2-102, 103, and 5/6-101, III. Human Rights Act.
775 ILCS 35/5, Religious Freedom Restoration Act.
820 ILCS 55/10, Right to Privacy in the Workplace Act.
820 ILCS 70/, Employee Credit Privacy Act.

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²⁷ 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), 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.

²⁸ 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. (EEOC's guidelines for affirmative action plans); *Wygant v. Jackson Bd. of Ed.*, 476 U.S. 267 (1986) (The goal of remedying societal discrimination does not justify race-based layoffs.); *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (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 IHRA 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. 775 ILCS 5/1-101.1.

820 ILCS 75/, Job Opportunities for Qualified Applicants Act.
820 ILCS 112/, Ill. Equal Pay Act of 2003.
820 ILCS 180/30, Victims' Economic Security and Safety Act.
820 ILCS 260/, Nursing Mothers in the Workplace Act.

CROSS REF.: 2:260 (Uniform Grievance Procedure), 2:265 (Title IX Sexual Harassment Grievance Procedure), 5:20 (Workplace Harassment Prohibited), 5:30 (Hiring Process and Criteria), 5:40 (Communicable and Chronic Infectious Disease), 5:50 (Drug- and Alcohol-Free Workplace; E-Cigarette, Tobacco, and Cannabis Prohibition), 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 (Prevention of and Response to Bullying, Intimidation, and Harassment), 8:70 (Accommodating Individuals with Disabilities)

General Personnel

Workplace Harassment Prohibited 1

The School District expects the workplace environment to be productive, respectful, and free of unlawful discrimination, including harassment. District employees shall not engage in harassment or abusive conduct on the basis of an individual's actual or perceived race, color, religion², national origin, ancestry, sex, sexual orientation, age, citizenship status, disability, pregnancy, marital status, order of protection status, military status, or unfavorable discharge from military service, nor shall they engage in harassment or abusive conduct on the basis of an individual's other protected status identified in Board policy 5:10, *Equal Employment Opportunity and Minority Recruitment*.

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¹ State or federal law controls this policy's content. Federal law requires districts to take action to prevent sexual harassment and to disseminate a policy regarding its prohibition of sex discrimination. 29 C.F.R. §1604.11(f); 34 C.F.R. §106.8(b). State law requires districts to establish a policy to prohibit sexual harassment. 5 ILCS 430/70-5(a), amended by P.A.s 100-554 and 101-221. See f/n 3 below. Harassment based on a protected status is a form of discrimination that violates many State and federal laws (see the policy's Legal References).

Workplace harassment policies have typically focused on *sexual* harassment since it receives the most attention. However, the broad prohibitions against discrimination in State and federal civil rights laws will cover harassing conduct that is motivated by animus against any protected status. See *Porter v. Erie Foods International, Inc.*, 576 F.3d 629 (7th Cir. 2009) (recognizing a cause of action for race harassment). For a list of protected statuses, see sample policy 5:10, *Equal Employment Opportunity and Minority Recruitment*. This policy prohibiting harassment has a separate section on sexual harassment because of the extensive statutory and case law regarding it.

Under the Ill. Human Rights Act (IHRA), harassment is unlawful if it has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment. 775 ILCS 5/2-101(E-1), added by P.A. 101-221. *Working environment* is not limited to a physical location to which an employee is assigned. *Id.* Harassment is unlawful on the basis of the specifically-listed categories in this policy whether that status is *actual* or *perceived*. *Id.*

An employer is liable under Title VII of the Civil Rights Act of 1964 (Title VII) for an employee's harassment of a co-worker if the employer was negligent with respect to the offensive behavior by, for example, failing to take remedial action when it knew or should have known about the harassment. 42 U.S.C. §2000e *et seq.* An employer is liable under the IHRA for harassment by its nonmanagerial and nonsupervisory employees if it becomes aware of the conduct and fails to take reasonable corrective measures. 775 ILCS 5/2-102(A), amended by P.A. 101-221. However, when the perpetrator is the victim's supervisor, the employer will be vicariously liable for the supervisor's actions. Lack of knowledge of a supervisor's misconduct is no defense. *Burlington Industries v. Ellerth*, 524 U.S. 742 (1998); *Faragher v. City of Boca Raton*, 524 U.S. 775 (1998). A *supervisor* is someone who has the authority to demote, discharge, or take other negative job action against the victim. *Vance v. Ball State University*, 133 S.Ct. 2434 (2013). Note that the IHRA, (775 ILCS 5/2-102(D)) imposes strict liability on the employer when an employee has been sexually harassed by supervisory personnel regardless of whether the harasser has any authority over the complainant. *Sangamon County Sheriff's Dept. v. Ill. Human Rights Com'n*, 233 Ill.2d 125 (Ill. 2009). Additionally, under the IHRA, an employer is liable for the harassment of *nonemployees* by nonmanagerial and nonsupervisory employees if it becomes aware of the conduct and fails to take reasonable corrective measures. 775 ILCS 5/2-102(A-10) and (D-5), added by P.A. 101-221. Nonemployees are those who are directly performing services for an employer pursuant to a contract, such as contractors or consultants. *Id.*

Not all harassing conduct is unlawful discrimination, even if it is disruptive and hurtful. If a board wants to include language in this policy prohibiting employees from engaging in intimidating or offensive conduct that is *not* a civil rights violation, it should consult the board attorney.

² Section 2-102 of the IHRA, amended by P.A. 100-100, contains a *religious discrimination* subsection. It expressly prohibits employers from requiring a person to violate a sincerely held religious belief to obtain or retain employment unless, after engaging in a bona fide effort, the employer demonstrates that it is unable to reasonably accommodate the employee's or prospective employee's sincerely held religious belief, practice, or observance without undue hardship on the conduct of the employer's business. Religious beliefs include, but are not limited to: the wearing of any attire, clothing, or facial hair in accordance with the requirements of his/her religion. 775 ILCS 5/2-102(E-5). Employers may, however, enact a dress code or grooming policy that restricts attire, clothing, or facial hair to maintain workplace safety or food sanitation. *Id.*

Harassment of students, including, but not limited to, sexual harassment, is prohibited by Board policies 2:260, *Uniform Grievance Procedure*; 2:265, *Title IX Sexual Harassment Grievance Procedure*; 7:20, *Harassment of Students Prohibited*; 7:180, *Prevention of and Response to Bullying, Intimidation, and Harassment*; and 7:185, *Teen Dating Violence Prohibited*.

The District will take remedial and corrective action to address unlawful workplace harassment, including sexual harassment.

Sexual Harassment Prohibited³

The District shall provide a workplace environment free of verbal, physical, or other conduct or communications constituting harassment on the basis of sex as defined and otherwise prohibited by State and federal law. The District provides annual sexual harassment prevention training in accordance with State law.⁴

District employees shall not make unwelcome sexual advances or request sexual favors or engage in any unwelcome conduct of a sexual nature when: (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; (2) submission to or

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³ The IHRA (775 ILCS 5/2-102(D)) provides that sexual harassment is a civil rights violation:

For any employer, employee, agent of any employer, employment agency or labor organization to engage in sexual harassment; provided, that an employer shall be responsible for sexual harassment of the employer's employees by non-employees or non-managerial and non-supervisory employees only if the employer becomes aware of the conduct and fails to take reasonable corrective measures.

See sample policy 2:265, *Title IX Sexual Harassment Grievance Procedure*, for the definition of Title IX sexual harassment (20 U.S.C. §1681 *et seq.*), and see f/n 3 of it for examples of employee sexual harassment that may violate Title IX. Title IX's reach is broad because an alleged complainant or alleged respondent may be *anyone* in the district's educational program or activity. This includes applicants for employment, students, parents/guardians, any employee, and third parties. Districts are liable for Title IX sexual harassment when *any* district employee has *actual knowledge* of sexual harassment or allegations of sexual harassment against anyone in the district (except when the only employee with knowledge is the perpetrator of the alleged sexual harassment). 34 C.F.R. §106.30.

The State Officials and Employees Ethics Act (SOEEA) (5 ILCS 430/70-5(a), amended by P.A.s 100-554 and 101-221) requires governmental entities (including school districts) to adopt an ordinance or resolution establishing a policy to prohibit sexual harassment. Unlike the powers granted by the Ill. General Assembly to municipalities to pass ordinances, school boards govern by rules referred to as *policies*. 105 ILCS 5/10-20.5. Further, school boards may only exercise powers given to them that are consistent with the School Code that may be requisite or proper for the maintenance, operation, and development of any school or schools under the jurisdiction of the board. 105 ILCS 5/10-20.

The policy must include, at a minimum: (1) a prohibition on sexual harassment; (2) details on how an individual can report an allegation of sexual harassment, including options for making a confidential report to a supervisor, ethics officer, Inspector General, or the Ill. Dept. of Human Rights (IDHR); (3) a prohibition on retaliation for reporting sexual harassment allegations, including availability of whistleblower protections under the SOEEA, the Whistleblower Act (740 ILCS 174/), and the IHRA (775 ILCS 5/); (4) the consequences: (a) of a violation of the prohibition on sexual harassment and (b) for knowingly making a false report; and (5) a mechanism for reporting and independent review of allegations of sexual harassment made against an elected official of the governmental unit by another elected official of a governmental unit. 5 ILCS 430/70-5(a), amended by P.A.s 100-554 and 101-221. Sample policy 2:105, *Ethics and Gift Ban*, covers item (5) of this list.

⁴ 775 ILCS 5/2-109, added by P.A. 101-221. See sample policy 5:100, *Staff Development Program*, at f/n 4. Districts may use a free, online model program to be offered by the Ill. Dept. of Human Rights (IDHR), develop their own program, or utilize a combination of the two, as long as it includes the following, at a minimum: (1) an explanation of sexual harassment consistent with the IHRA, (2) examples of conduct that constitutes unlawful harassment, (3) a summary of relevant federal and State law concerning sexual harassment and remedies available to victims of sexual harassment, and (4) a summary of responsibilities of employers in the prevention, investigation, and corrective measures of sexual harassment. *Id.* at 5/2-109(B), added by P.A. 101-221. For IDHR's online model program, see its *Model Sexual Harassment Prevention Training Program* page at: <https://www2.illinois.gov/dhr/Training/Pages/State-of-Illinois-Sexual-Harassment-Prevention-Training-Model.aspx>. Employers that fail to comply with this training requirement may face financial penalties. *Id.* Training on other types of workplace harassment is not required by law; however it is best practice.

rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or (3) such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.⁵ Sexual harassment prohibited by this policy includes, but is not limited to, verbal, physical, or other conduct. The terms intimidating, hostile, or offensive include, but are not limited to, conduct that has the effect of humiliation, embarrassment, or discomfort. Sexual harassment will be evaluated in light of all the circumstances.

Making a Report or Complaint

Employees and *nonemployees*⁶ (persons who are not otherwise employees and are directly performing services for the District pursuant to a contract with the District, including contractors, and consultants) are encouraged to promptly report information regarding violations of this policy. Individuals may choose to report to a person of the individual's same gender. Every effort should be made to file such reports or complaints as soon as possible, while facts are known and potential witnesses are available.

Aggrieved individuals, if they feel comfortable doing so, should directly inform the person engaging in the harassing conduct or communication that such conduct or communication is offensive and must stop.

Whom to Contact with a Report or Complaint ⁷

An employee should report claims of harassment, including making a confidential report, to any of the following: his/her immediate supervisor, the Building Principal, an administrator, the Nondiscrimination Coordinator, and/or a Complaint Manager. ⁸

Employee may also report claims using Board policy 2:260, *Uniform Grievance Procedure*. If a claim is reported using Board policy 2:260, then the Complaint Manager shall process and review the claim according to that policy, in addition to any response required by this policy.

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⁵ This definition is from State and federal law. 775 ILCS 5/2-101(E) and 29 C.F.R. §1604.11. *Working environment* is not limited to a physical location to which an employee is assigned. 775 ILCS 5/2-101(E), amended by P.A. 101-221. The harassing conduct must be severe or pervasive so as to alter the conditions of the employee's work environment by creating a hostile or abusive situation. *Williams v. Waste Management*, 361 F.3d 1021 (7th Cir. 2004). The surrounding circumstances, expectations, and relationships will distinguish between teasing or rough-housing and conduct that a reasonable person would find severely hostile or abusive. In addition, while same-sex gender harassment claims are actionable, the victim must show that s/he suffered disadvantageous employment conditions to which members of the other sex were not exposed. *Oncala v. Sundowner Offshore Services*, 523 U.S. 75 (1998).

⁶ 775 ILCS 5/2-102(A-10) and (D-5), added by P.A. 101-221. See also f/n 1, above, for discussion regarding nonemployees.

⁷ While the names and contact information are required by law to be listed, they are not part of the adopted policy and do not require board action. This allows for additions and amendments to the names and contact information when necessary. It is important for updated names and contact information to be inserted into this policy and regularly monitored.

⁸ 5 ILCS 430/70-5(a), amended by P.A. 100-554, requires that a school board policy prohibiting sexual harassment include details for reporting an allegation of sexual harassment, including options for making a confidential report to a supervisor and an ethics officer. 5 ILCS 430/20-23 defines ethics officers as being designated by State agencies under the jurisdiction of the Executive Ethics Commission. School districts are not State agencies (5 ILCS 430/1-5) and do not have ethics officers; thus, this sample policy substitutes Complaint Manager for ethics officer. Note also that the IDHR has established a Sexual Harassment Hotline Call Center and website to help the public find resources and assistance for the filing of sexual harassment complaints. The hotline can be reached Monday through Friday with the exception of State holidays, between the hours of 8:30 a.m. and 5:00 p.m., at 1-877-236-7703. See www2.illinois.gov/sites/sexualharassment/Pages/default.aspx. All communications received by the IDHR are exempt from disclosure under the Freedom of Information Act (FOIA).

The Superintendent shall insert into this policy the names, office addresses, email addresses, and telephone numbers of the District's current Nondiscrimination Coordinator and Complaint Managers. The Nondiscrimination Coordinator also serves as the District's Title IX Coordinator.⁹

Nondiscrimination Coordinator:

Name

Address

Email

Telephone

Complaint Managers:

_____ Name	_____ Name
_____ Address	_____ Address
_____ Email	_____ Email
_____ Telephone	_____ Telephone

Investigation Process

Any District employee who receives a report or complaint of harassment must promptly forward the report or complaint to the Nondiscrimination Coordinator or a Complaint Manager.¹⁰ Any employee who fails to promptly forward a report or complaint may be disciplined, up to and including discharge.

Reports and complaints of harassment will be confidential to the greatest extent practicable, subject to the District's duty to investigate and maintain a workplace environment that is productive, respectful, and free of unlawful discrimination, including harassment.

For any report or complaint alleging sexual harassment that, if true, would implicate Title IX of the Education Amendments of 1972 (20 U.S.C. §1681 et seq.), the Nondiscrimination Coordinator or

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⁹ Title IX regulations require districts to identify the name, office address, email address, and telephone number of the person who is responsible for coordinating the district's compliance efforts. The Nondiscrimination and Title IX Coordinator(s) need not be the same person. If the district uses a separate Title IX Coordinator who does not also serve as the Nondiscrimination Coordinator, delete "~~The Nondiscrimination Coordinator also serves as the District's Title IX Coordinator.~~," and supplement the previous sentence to state "The Superintendent shall insert into this policy the names, office addresses, email addresses, and telephone numbers of the District's current Nondiscrimination Coordinator, Title IX Coordinator, and Complaint Managers." Then, list the Title IX and Nondiscrimination Coordinators' names and contact information separately in this policy.

¹⁰ If the district's Nondiscrimination Coordinator does not also serve as the Title IX Coordinator, supplement this sentence to state "Any District employee who receives a report or complaint of harassment must promptly forward the report or complaint to the Nondiscrimination Coordinator, Title IX Coordinator, or a Complaint Manager."

designee¹¹ shall consider whether action under policy 2:265, *Title IX Sexual Harassment Grievance Procedure*, should be initiated.

For any other alleged workplace harassment that does not require action under policy 2:265, *Title IX Sexual Harassment Grievance Procedure*, the Nondiscrimination Coordinator or a Complaint Manager or designee shall consider whether an investigation under policy 2:260, *Uniform Grievance Procedure*, and/or 5:120, *Employee Ethics; Conduct, and Conflict of Interest*,¹² should be initiated, regardless of whether a written report or complaint is filed.

Reports That Involve Alleged Incidents of Sexual Abuse of a Child by School Personnel ¹³

An *alleged incident of sexual abuse* is an incident of sexual abuse of a child, as defined in 720 ILCS 5/11-9.1A(b), that is alleged to have been perpetrated by school personnel, including a school vendor or volunteer, that occurred: on school grounds during a school activity; or outside of school grounds or not during a school activity.

Any complaint alleging an incident of sexual abuse shall be processed and reviewed according to policy 5:90, *Abused and Neglected Child Reporting*. In addition to reporting the suspected abuse, the complaint shall also be processed under policy 2:265, *Title IX Sexual Harassment Grievance Procedure*, or policy 2:260, *Uniform Grievance Procedure*.

Enforcement ¹⁴

A violation of this policy by an employee may result in discipline, up to and including discharge.¹⁵ A violation of this policy by a third party will be addressed in accordance with the authority of the

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¹¹ “Nondiscrimination Coordinator or designee” is used where Title IX is potentially implicated. In contrast, if Title IX is likely not implicated then “Nondiscrimination Coordinator or a Complaint Manager or designee” is used (see next paragraph in policy text). If the district’s Nondiscrimination Coordinator does not also serve as the Title IX Coordinator, delete “Nondiscrimination” and insert “Title IX” in its place.

¹² See administrative procedure 5:120-AP2, *Employee Conduct Standards*.

¹³ Required for districts located within a county served by an accredited Children’s Advocacy Center (CAC). Delete this subhead if your school district is within a county not served by an accredited CAC. 105 ILCS 5/22-85 (final citation pending), added by P.A. 101-531 (governing the investigation of an *alleged incident of sexual abuse* of any child within any Illinois counties served by a CAC). For further discussion see ¶n 14 in sample policy 5:90, *Abused and Neglected Child Reporting*.

¹⁴ See *Berry v. Delta Airlines*, 260 F.3d 803, 811 (7th Cir. 2001) (“If an employer takes reasonable steps to discover and rectify the harassment of its employees ... it has discharged its legal duty.”)

In addition to violating other civil rights laws, a school district violates the *public accommodations* article in the IHRA if it fails to take corrective action to stop severe or pervasive harassment. 775 ILCS 5/5-102 and 5/5-102.2.

¹⁵ 5 ILCS 430/70-5(a), amended by P.A. 100-554 (consequences of a violation of the prohibition on sexual harassment). When discharge is the penalty, examine 50 ILCS 205/3c, added by P.A. 100-1040. It requires a school district to post on its website and make available to news media specific information about severance agreements that it enters into because an employee or contractor was found to have engaged in sexual harassment or sexual discrimination, as defined by the IHRA or Title VII. *Id.* Additionally, under the Workplace Transparency Act (WTA), employers may not require confidentiality clauses in settlement or termination agreements involving alleged unlawful employment practices under federal or State civil rights laws, except under specific conditions. 820 ILCS 96/1-30, added by P.A. 101-221.

Board in the context of the relationship of the third party to the District, e.g., vendor, parent, invitee, etc. Any person making a knowingly false accusation regarding harassment will likewise be subject to disciplinary action, which for an employee that may be up to and including discharge. 16

Retaliation Prohibited

An employee's employment, compensation, or work assignment shall not be adversely affected by complaining or providing information about harassment. Retaliation against employees for bringing complaints or providing information about harassment is prohibited (see Board policy 2:260, *Uniform Grievance Procedure*), and depending upon the law governing the complaint, whistleblower protection may be available under the State Officials and Employees Ethics Act (5 ILCS 430/), the Whistleblower Act (740 ILCS 174/), and the Ill. Human Rights Act (775 ILCS 5/). 17

An employee should report allegations of retaliation to his/her immediate supervisor, the Building Principal, an administrator, the Nondiscrimination Coordinator, and/or a Complaint Manager.

Employees who retaliate against others for reporting or complaining of violations of this policy or for participating in the reporting or complaint process will be subject to disciplinary action, up to and including discharge.

Recourse to State and Federal Fair Employment Practice Agencies 18

The District encourages all employees who have information regarding violations of this policy to report the information pursuant to this policy. The following government agencies are available to assist employees: the Ill. Dept. of Human Rights and the U.S. Equal Employment Opportunity Commission.

The Superintendent shall also use reasonable measures to inform staff members, applicants, and nonemployees of this policy, which shall include posting on the District website and/or making this

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Prior to the passage of 50 ILCS 205/3c, added by P.A. 100-1040, and the WTA, members of the public could already access copies of severance agreements between school districts and their former employees under FOIA. The Ill. Atty. Gen. Public Access Counselor (PAC) directed a public body to release a settlement agreement that arose out of claims of sexual harassment. PAO 14-4. The PAC noted that the public body could not withhold the entire settlement agreement under 5 ILCS 140/7(1)(c), which exempts personal information that would constitute a clearly unwarranted invasion of privacy. Instead, it could redact personal information from the agreement, such as the complainants' names in order to protect their privacy. *Id.* However, data regarding settlement agreements involving allegations of sexual harassment or other unlawful discrimination that an employer must report to IDHR under 775 ILCS 5/2-108 is categorically exempt from FOIA. 5 ILCS 140/7.5(oo), added by P.A. 101-221. See f/n 6 in sample policy 2:260, *Uniform Grievance Procedure*, for more discussion about reconciling 50 ILCS 205/3c, added by P.A. 100-1040, with another new law, the Government Severance Pay Act (GSPA) (5 ILCS 415/10(a)(1), added by P.A. 100-895), which prohibits school district employees with contract provisions for severance pay to receive any severance pay if they are fired for *misconduct* by the board.

16 5 ILCS 430/70-5(a), amended by P.A. 100-554 (consequences for knowingly making a false report of sexual harassment).

17 *Id.* (prohibition on retaliation for reporting sexual harassment allegations, including availability of whistleblower protections under the SOEEA, the Whistleblower Act (740 ILCS 174/), and the IHRA (775 ILCS 5/)).

Crawford v. Metro. Gov't of Nashville & Davidson County, 555 U.S. 271 (2009) (holding the anti-retaliation provision in EEOA protects an employee who spoke out about harassment, not only on his or her own initiative, but also in answering questions during an employer's internal investigation).

18 5 ILCS 430/70-5(a), amended by P.A. 100-554, (how an individual can report an allegation of sexual harassment, including options for making a confidential report to the Inspector General or the IDHR). This sample policy does not reference the Inspector General because the Inspector General does not have jurisdiction over public school districts. 5 ILCS 430/1. School districts must also annually disclose to IDHR certain data about *adverse judgment or administrative rulings* made against them where there was a finding of sexual harassment or unlawful discrimination under federal, State, or local laws. 775 ILCS 5/2-108, added by P.A. 101-221.

policy available in the District's administrative office, and including this policy in the appropriate handbooks. ¹⁹

LEGAL REF.: Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e et seq.; 29 C.F.R. §1604.11.
Title IX of the Education Amendments of 1972, 20 U.S.C. §1681 et seq.; 34 C.F.R. Part 106.
State Officials and Employees Ethics Act, 5 ILCS 430/70-5(a).
Ill. Human Rights Act, 775 ILCS 5/2-101(E) and (E-1), 5/2-102(A), (A-10), (D-5), 5/2-102(E-5), 5/2-109, 5/5-102, and 5/5-102.2.
56 Ill. Admin.Code Parts 2500, 2510, 5210, and 5220.
Burlington Industries v. Ellerth, 524 U.S. 742 (1998).
Crawford v. Metro. Gov't of Nashville & Davidson County, 555 U.S. 271 (2009).
Faragher v. City of Boca Raton, 524 U.S. 775 (1998).
Franklin v. Gwinnett Co. Public Schools, 503 U.S. 60 (1992).
Harris v. Forklift Systems, 510 U.S. 17 (1993).
Jackson v. Birmingham Bd. of Educ., 544 U.S. 167 (2005).
Meritor Savings Bank v. Vinson, 477 U.S. 57 (1986).
Oncale v. Sundowner Offshore Services, 523 U.S. 75 (1998).
Porter v. Erie Foods International, Inc., 576 F.3d 629 (7th Cir. 2009).
Sangamon County Sheriff's Dept. v. Ill. Human Rights Com'n, 233 Ill.2d 125 (Ill. 2009).
Vance v. Ball State University, 133 S. Ct. 2434 (2013).

CROSS REF.: 2:260 (Uniform Grievance Procedure), 2:265 (Title IX Sexual Harassment Grievance Procedure), 4:60 (Purchases and Contracts), 5:10 (Equal Employment Opportunity and Minority Recruitment), 5:90 (Abused and Neglected Child Reporting), 5:120 (Employee Ethics; Conduct; and Conflict of Interest), 7:20 (Harassment of Students Prohibited), 8:30 (Visitors to and Conduct on School Property)

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¹⁹ A district must notify employees of the grievance procedure and the person(s) designated to coordinate the district's compliance with Title IX. 34 C.F.R. §106.8. The nondiscrimination coordinator can be the same individual for both this policy and policy 7:10, *Equal Educational Opportunities*, as well as the complaint manager in 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 board. Any *working conditions* contained in the handbook may be subject to mandatory collective bargaining.

Informing nonemployees is not required by law. However, given the potential for employer liability under the IHRA for harassment of nonemployees, best practice is to publicize this policy to those individuals as well.

General Personnel

Administrative Procedure - Coordination with Children's Advocacy Center 1

Children's Advocacy Centers (CACs) are child-focused, trauma-informed, facility-based programs that provide a multi-disciplinary, comprehensive response to child abuse. Illinois CACs are organized and operate under the Children's Advocacy Center Act. 55 ILCS 80/. CACs are accredited based on standards set by the National Children's Alliance. 55 ILCS 80/2.5. See www.nationalchildrensalliance.org/.

If the District is located within a county that is served by an accredited CAC, it must coordinate with the CAC to implement the **Alleged Incidents of Sexual Abuse; Investigations** subhead of Board policy 5:90, *Abused and Neglected Child Reporting*. 105 ILCS 5/22-85 (final citation pending), added by P.A. 101-531. For a map of accredited CACs, and to identify a CAC that may serve the District, see www.childrensadvocacycentersofillinois.org/about/map. Use this procedure to coordinate with the District's local CAC.

Glossary of Terms

Alleged incident of sexual abuse - An incident of sexual abuse of a child (as defined in the Ill. Criminal Code of 2012, 720 ILCS 5/11-9.1A) that is alleged to have been perpetrated by school personnel, including a school vendor or volunteer, that occurred either: on school grounds during a school activity, outside of school grounds, or not during a school activity. 105 ILCS 5/22-85(b) (final citation pending), added by P.A. 101-531. ²

Alleged victim - A student who is alleged to be the victim of an alleged incident of sexual abuse.

Appropriate law enforcement agency - A law enforcement agency whose employees have been involved, in some capacity, with an investigation of a particular alleged incident of sexual abuse. 105 ILCS 5/22-85(b) (final citation pending), added by P.A. 101-531.

Child advocate - May be a school social worker, a school or equally-qualified psychologist, or a person in a position the Ill. State Board of Education (ISBE) has identified as an appropriate advocate for a student during a school's investigation into an alleged incident of sexual abuse. 105 ILCS 5/22-85(i) (final citation pending), added by P.A. 101-531.

Forensic interview - An interview between a trained forensic interviewer, as defined by National Children's Alliance standards, and a child in which the interviewer obtains information from children in an unbiased and fact finding manner that is developmentally appropriate and culturally sensitive to support accurate and fair decision making by the multidisciplinary team in the criminal justice and child protection systems. 55 ILCS 80/2.5.

School personnel - School employees, vendors, and volunteers.

Sexual Abuse and Sexual Assault - See Ill. Criminal Code of 2012 definitions at:

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¹ This procedure cites the minimum requirements of State law. Modify this procedure based upon the District's specific implementation needs and any additional needs of the CAC that serves the District.

² Though 105 ILCS 5/22-85(b) (final citation pending), added by P.A. 101-531, defines *alleged incident of sexual abuse*, its definition is circular, using the term *sexual abuse* without defining what that means. To provide boards with clarity, this procedure uses the definition of *sexual abuse* from the Ill. Criminal Code of 2012.

- 720 ILCS 5/11-9.1A. Permitting sexual abuse of a child.
- 720 ILCS 5/11-1.20. Criminal sexual assault.
- 720 ILCS 5/11-1.30. Aggravated criminal sexual assault.
- 720 ILCS 5/11-1.40. Predatory criminal sexual assault of a child.
- 720 ILCS 5/11-1.50. Criminal sexual abuse.
- 720 ILCS 5/11-1.60. Aggravated criminal sexual abuse.

Coordination with CAC

Actor	Action
ISBE	Identifies persons in positions who may be appropriate child advocates for students during a school’s investigation into an alleged incident of sexual abuse. As of March 2020, ISBE has not identified any persons.
Superintendent or designee	<p>Establishes a CAC Communication Committee (Committee) to operate as a Superintendent committee. See 2:150-AP, <i>Superintendent Committees</i>. Consider including:</p> <ul style="list-style-type: none"> District Nondiscrimination Coordinator (see 2:260, <i>Uniform Grievance Procedure</i>; and 2:265, <i>Title IX Sexual Harassment Grievance Procedure</i>) District Safety Coordinator (see 4:170-AP1, <i>Comprehensive Safety and Security Plan, Part C, District Safety Coordinator and Safety Team; Responsibilities</i>) District-level administrators Building Principals (Building Principals are mandatory for successful implementation of the Alleged Incidents of Sexual Abuse; Investigations subhead of policy 5:90, <i>Abused and Neglected Child Reporting</i>) School personnel Employees from the accredited CAC that serves the District <p>Chairs and convenes Committee meetings for the purpose of implementing the Alleged Incidents of Sexual Abuse; Investigations subhead of policy 5:90, <i>Abused and Neglected Child Reporting</i>.</p> <p>Note: To achieve the minimum requirement of State law that the District coordinate with its local CAC, this procedure establishes an administrative committee. Establishing a committee provides a best practice for aligning with governance principles and examining implementation issues specific to each individual school district and the CACs that serve each district. While smaller school districts, e.g., one-building districts, may be able to implement a program through one meeting, larger school districts will likely require the uniform coordination this Committee provides.</p> <p>Informs the School Board of the Committee’s progress and needs by adding information items to the Board’s agendas as needed.</p> <p>Ensures that at least every two years, school personnel are trained to</p>

Actor	Action
	<p>understand, provide information and referrals to, and address issues pertaining to students who are parents, expectant parents, or victims of domestic or sexual violence. Note: 105 ILCS 5/10-22.39(d) requires this training to be conducted by persons with expertise in domestic and sexual violence and the needs of expectant and parenting students and must include training concerning each of the following:</p> <ol style="list-style-type: none"> 1. Communicating with and listening to student victims of domestic or sexual violence and expectant and parenting students. 2. Connecting student victims of domestic or sexual violence and expectant and parenting students to appropriate in-school services and other agencies, programs, and services as needed. 3. Implementing the school district's policies, procedures, and protocols with regard to such students, including confidentiality.
School Personnel	<p>Upon suspecting or receiving knowledge of an alleged incident of sexual abuse, shall perform each of the following (105 ILCS 5/22-85(c) (final citation pending), added by P.A. 101-531):</p> <ol style="list-style-type: none"> 1. Immediately report to the Ill. Dept. of Children and Family Services (DCFS) on its Child Abuse Hotline 1-800-25-ABUSE (1-800-252-2873 (within Illinois); 1-217-524-2606 (outside Illinois); or 1-800-358-5117 (TTY). 2. Follow directions given by DCFS concerning filing a written report within 48 hours with the nearest DCFS field office. 25 ILCS 5/7, amended by P.A. 101-583. The written report shall include, if known, each of the following: <ol style="list-style-type: none"> 1. The name and address of the child, his or her parents/guardians, or other persons having custody; 2. The child's age; 3. The child's condition, including any evidence of previous injuries or disabilities; and 4. Any other information that the reporter believes may be helpful to DCFS for its investigation. 3. Promptly notify the Superintendent or Building Principal that a report has been made.
Superintendent or Building Principal	<p>Immediately coordinates any necessary notifications to the student's parents/guardians with DCFS, the applicable school resource officer (SRO), and/or local law enforcement.</p> <p>Notifies the District's Nondiscrimination Coordinator of the reported alleged incident of sexual abuse.</p>
DCFS and/or Appropriate Law Enforcement Agency	<p>Determines whether to accept a reported alleged incident of sexual abuse for investigation. If a reported alleged incident is accepted, refers the matter to the CAC serving the District. 105 ILCS 5/22-85(d) (final citation pending), added by P.A. 101-531.</p> <p>Note: If neither DCFS nor law enforcement investigate the alleged incident of sexual abuse, the District can move forward with its own investigation without CAC involvement.</p>

Actor	Action
CAC	<p>Coordinates the investigation of the alleged incident of sexual abuse in accordance with its existing multidisciplinary team protocol and National Children’s Alliance accreditation standards. 105 ILCS 5/22-85(e)(1) (final citation pending), added by P.A. 101-531.</p> <p>Facilitates communication between the DCFS/law enforcement multidisciplinary team investigating the alleged incident of sexual abuse and the District’s Nondiscrimination Coordinator.³ At a minimum:</p> <ol style="list-style-type: none"> 1. Ensures that all applicable parties have each other’s contact information; and 2. Shares the CAC’s protocol regarding the process of approving the viewing of a forensic interview by school personnel, and a contact person for questions regarding the protocol. 105 ILCS 5/22-85(e)(2) (final citation pending), added by P.A. 101-531.
Nondiscrimination Coordinator	<p>Upon being notified of the reported alleged incident of sexual abuse by the Superintendent or Building Principal, shall:</p> <p>Open and conduct the District’s investigation into the alleged incident of sexual abuse in accordance with policy 7:20, <i>Harassment of Students Prohibited</i>.</p> <p>Schedule regular follow-up calls to the CAC to inquire whether DCFS/law enforcement has opened an investigation into the alleged incident of sexual abuse.</p> <p>If DCFS/law enforcement investigation is not opened, stops using this procedure and continues the District’s investigation in accordance with policy 7:20, <i>Harassment of Students Prohibited</i>.</p> <p>If DCFS/law enforcement investigation is opened, continues with the following steps.</p> <p>Notes the date DCFS/law enforcement opened its investigation and sets a reminder for 15 calendar days after it.</p> <p>Note: This time period is important because the CAC has 15 calendar days to conduct a forensic interview of the alleged victim. During this time, the District is cannot interview the alleged victim regarding the alleged incident.</p> <p>While the child abuse and/or criminal investigations related to the alleged incident of sexual abuse are being conducted by DCFS/law enforcement, the Nondiscrimination Coordinator:</p> <p>Continues the District’s investigation, which may include interviewing the alleged witnesses and/or the alleged perpetrator.</p> <p>May request information from the alleged victim or his or her</p>

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³ Throughout this procedure “Nondiscrimination Coordinator” may be replaced with Title IX Coordinator or designee, Complaint Manager, School Resource Officer, or the title of any other school personnel leading the school’s investigation into the alleged incident of sexual abuse.

Actor	Action
	<p>parent/guardian to ensure his or her safety and well-being at school during the investigations. 105 ILCS 5/22-85(f) (final citation pending), added by P.A. 101-531.</p> <p>Refrains from interviewing the alleged victim until after the CAC completes its forensic interview. 105 ILCS 5/22-85(f) (final citation pending), added by P.A. 101-531. ⁴</p> <p>Upon request, must inform DCFS/law enforcement investigators of any evidence it has gathered, as permitted by federal or State law. 105 ILCS 5/22-85(f) (final citation pending), added by P.A. 101-531.</p> <p>Note: Evidence gathered by the Nondiscrimination Coordinator during the District’s investigation may be confidential under the Illinois School Student Records Act (105 ILCS 10/) and the Family Rights and Educational Privacy Act (20 U.S.C. §1232g). Consult the Board Attorney regarding what disclosures, if any, are allowed in response to a request from DCFS and/or law enforcement and conditions that must be met prior to disclosure.</p> <p>Schedule regular follow-up calls with the CAC to inquire about the status of the forensic interview of the alleged victim.</p>
CAC	<p>Informs the Nondiscrimination Coordinator that:</p> <ol style="list-style-type: none"> 1. The forensic interview of the alleged victim is complete, and the electronic recording of the forensic interview may be viewed; or 2. The CAC determined a forensic interview will not be conducted. 105 ILCS 5/22-85(g), (h) (final citation pending), added by P.A. 101-531.
Nondiscrimination Coordinator	<p>If the electronic recording of the forensic interview of the alleged victim is available for viewing:</p> <ol style="list-style-type: none"> 1. Verifies the CAC has obtained informed consent from an alleged victim over the age of 13 or the alleged victim’s parent/guardian for school personnel to view the forensic interview (105 ILCS 5/22-85(h) (final citation pending), added by P.A. 101-531); and <p>Note: Each CAC may have its own consent form. Contact your local CAC to confirm that it will obtain written consent from the alleged victim over the age of 13 or the alleged victim’s parent/guardian (if under the age of 13).</p> <ol style="list-style-type: none"> 2. Views the electronic recording of the forensic interview.

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1. ⁴ The purpose of waiting to interview and coordinating with CACs is to minimize trauma of an alleged victim by preventing multiple interviews of him/her regarding the alleged incident of sexual abuse. When a DCFS/law enforcement investigation is pending, then the CAC’s forensic interview serves as the interview that other entities, e.g., school districts, may use by viewing or listening to it for their investigations. If a DCFS/law enforcement investigation is pending but the CAC does not conduct a forensic interview, then the school may conduct its own interview of the alleged victim after following the procedures outlined in this procedure.

Actor	Action
	If the CAC has not performed a forensic interview of the alleged victim within 15 calendar days after DCFS/law enforcement opens an investigation, notifies the CAC that the District intends to interview the alleged victim.
CAC	After receiving notification that the District intends to interview the alleged victim, has 10 additional calendar days to conduct a forensic interview. 105 ILCS 5/22-85(g) (final citation pending), added by P.A. 101-531.
Nondiscrimination Coordinator	<p>If the CAC does not conduct a forensic interview of the alleged victim within the 10 additional calendar days, proceeds with the District's interview of the alleged victim. <u>Id.</u></p> <p>If the alleged victim is under 18 years old, makes a child advocate available to the alleged victim and allows the child advocate to be present during the interview. A child advocate may be a school social worker, a school or equally qualified psychologist, or a person in a position that ISBE has identified as an appropriate advocate for a student during a school's investigation into an alleged incident of sexual abuse. 105 ILCS 5/22-85(i) (final citation pending), added by P.A. 101-531.</p> <p>Schedules regular follow-up calls to DCFS/law enforcement to inquire if the investigation of an incident has been suspended and/or is complete, including the outcome of the investigation. 105 ILCS 5/22-85(j), (k) (final citation pending), added by P.A. 101-531.</p>

General Personnel

Staff Development Program 1

The Superintendent or designee shall implement a staff development program. The goal of such program shall be to update and improve the skills and knowledge of staff members in order to achieve and maintain a high level of job performance and satisfaction. Additionally, the development program for licensed staff members shall be designed to effectuate the District and School Improvement Plans so that student learning objectives meet or exceed goals established by the District and State.

The staff development program shall provide, at a minimum, at least once every two years, the in-service training of licensed school personnel and administrators on current best practices regarding the identification and treatment of attention deficit disorder and attention deficit hyperactivity disorder, the application of non-aversive behavioral interventions in the school environment, and the use of psychotropic or psychostimulant medication for school-age children. ²

The staff development program shall provide, at a minimum, once every two years, the in-service training of all District staff on educator ethics, teacher-student conduct, and school employee-student conduct. ^{3 4 5}

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¹ State law requires the subject matter in paragraph 2 to be covered by policy. State or federal law controls this policy's content. A school board may set and enforce professional growth requirements. 105 ILCS 5/24-5. Failure to meet professional growth requirements is considered remediable. *Morris v. Ill. State Bd. of Educ.*, 198 Ill.App.3d 51 (3rd Dist. 1990).

² 105 ILCS 5/2-3.62 requires the Ill. State Board of Education (ISBE) to establish a regional network of educational service centers to coordinate and combine existing services in a manner that is practical and efficient for schools. Their purposes are to provide, among other things, continuing education, in-service training, and staff development services to all local school districts in Illinois.

³ This paraphrases 105 ILCS 5/10-20.36(b). The topic covered in this paragraph must be in a board policy. *Id.* A school medical staff, an individualized educational program team, or a professional worker (as defined in Section 14-1.10) may recommend that a student be evaluated by an appropriate medical practitioner. School personnel may consult with the practitioner, with the consent of the student's parent/guardian.

⁴ 105 ILCS 5/10-22.39(f) requires boards to conduct this in-service. While the language of this paragraph is not required to be in board policy, including it provides a way for boards to monitor that it is being done. Including this language provides an opportunity for each board and the superintendent to examine all current policies, collective bargaining agreements, and administrative procedures on this subject. Each board may then want to have a conversation with the superintendent and direct him or her to develop a curriculum for the in-service that instructs all district staff to maintain boundaries and act appropriately, professionally, and ethically with students. See also sample policy 5:120, *Employee Ethics; Conduct; and Conflict of Interest*, and f/n 11 in sample policy 4:110, *Transportation*. These expectations will be most effective when they reflect local conditions and circumstances. Employee conduct issues may be subjects of mandatory collective bargaining, therefore consulting the board attorney should be a part of this process. A district would commit an unfair labor practice by implementing new employee conduct rules without first offering to negotiate them with the applicable exclusive bargaining representative.

⁵ Insert the following option if a board wants to list in-services and/or trainings that State and federal law require, but are not required to be specified in board policy. If the board does not choose this option, delete 325 ILCS 5/4 from the Legal References. The only non-School Code State and/or federal law training requirements listed are from the Abused and Neglected Child Reporting Act, Ill. Human Rights Act, the Seizure Smart School Act, and Title IX of the Education Amendments of 1972 (Title IX).

In addition, the staff development program shall include each of the following:

1. At least, once every two years, training of all District staff by a person with expertise on anaphylactic reactions and management.

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2. At least every two years, an in-service to train school personnel, at a minimum, to understand, provide information and referrals, and address issues pertaining to youth who are parents, expectant parents, or victims of domestic or sexual violence.
3. Training that, at a minimum, provides District staff with a basic knowledge of matters relating to acquired immunodeficiency syndrome (AIDS) and the availability of appropriate sources of counseling and referral.
4. Training for licensed school personnel and administrators who work with students in grades kindergarten through 12 to identify the warning signs of mental illness and suicidal behavior in youth along with appropriate intervention and referral techniques.
5. Abused and Neglected Child Reporting Act (ANCRA), School Code, and *Erin's Law* Training as follows:
 - a. Staff development for local school site personnel who work with students in grades kindergarten through 8, in the detection, reporting, and prevention of child abuse and neglect (see policy 5:90, *Abused and Neglected Child Reporting*).
 - b. Within three months of employment, each staff member must complete mandated reporter training from a provider or agency with expertise in recognizing and reporting child abuse. Mandated reporter training must be completed again at least every three years (see policy 5:90, *Abused and Neglected Child Reporting*).
 - c. Informing educators about the recommendation in the *Erin's Law* Taskforce Report requesting them to attend continuing professional development programs that address the prevention and identification of child sexual abuse (see policy 5:90, *Abused and Neglected Child Reporting*).
6. Education for staff instructing students in grades 7 through 12, concerning teen dating violence as recommended by the District's Nondiscrimination Coordinator, Building Principal, Assistant Building Principal, Dean of Students or Complaint Manager.
7. Ongoing professional development for teachers, administrators, school resource officers, and staff regarding the adverse consequences of school exclusion and justice-system involvement, effective classroom management strategies, culturally responsive discipline, the appropriate and available supportive services for the promotion of student attendance and engagement, and developmentally appropriate disciplinary methods that promote positive and healthy school climates.
8. Annual continuing education and/or training opportunities (*professional standards*) for school nutrition program directors, managers, and staff. Each school food authority's director shall document compliance with this requirement by the end of each school year and maintain documentation for a three year period.
9. All high school coaching personnel, including the head and assistant coaches, and athletic directors must obtain online concussion certification by completing online concussion awareness training in accordance with 105 ILCS 25/1.15. Coaching personnel and athletic directors hired on or after 8-19-14 must be certified before their position's start date.
10. The following individuals must complete concussion training as specified in the Youth Sports Concussion Safety Act: coaches and assistant coaches (whether volunteer or employee) of an interscholastic athletic activity; nurses, licensed and/or non-licensed healthcare professionals serving on the Concussion Oversight Team; athletic trainers; game officials of an interscholastic athletic activity; and physicians serving on the Concussion Oversight Team.
11. Every two years, school personnel who work with students must complete an in-person or online training program on the management of asthma, the prevention of asthma symptoms, and emergency response in the school setting.
12. Training for school personnel to develop cultural competency, including understanding and reducing implicit racial bias.
13. For school personnel who work with hazardous or toxic materials on a regular basis, training on the safe handling and use of such materials.
14. For nurses, administrators, guidance counselors, teachers, persons employed by a local health department and assigned to a school, and persons who contract with the District to perform services in connection with a student's seizure action plan, training in the basics of seizure recognition, first aid, and appropriate emergency protocols.
15. For all District staff, annual sexual harassment prevention training.
16. Title IX requirements for training as follows (see policy 2:265, *Title IX Sexual Harassment Grievance Procedure*):

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- a. For all District staff, training on the definition of sexual harassment, the scope of the District's education program or activity, all relevant District policies and procedures, and the necessity to promptly forward all reports of sexual harassment to the Title IX Coordinator.
- b. For school personnel designated as Title IX coordinators, investigators, decision-makers, or informal resolution facilitators, training on the definition of sexual harassment, the scope of the District's education program or activity, how to conduct an investigation and grievance process (including hearings, appeals, and informal resolution processes, as applicable), and how to serve impartially.
- c. For school personnel designated as Title IX investigators, training on issues of relevance to create an investigative report that fairly summarizes relevant evidence.
- d. For school personnel designated as Title IX decision-makers, training on issues of relevance of questions and evidence, including when questions and evidence about a complainant's sexual predisposition or prior sexual behavior are not relevant.

Alternative to paragraph number 2:

2. At least every two years, an in-service to train school personnel who work with students on how to: (a) communicate with and listen to youth victims of domestic or sexual violence and expectant and parenting youth, (b) connect youth victims of domestic or sexual violence and expectant and parenting youth to appropriate in-school services and other agencies, programs and services as needed, and (c) implement the School District's policies, procedures, and protocols with regard to such youth, including confidentiality. The in-service shall be conducted by persons with expertise in domestic and sexual violence and the needs of expectant and parenting youth.

Citations for this option follow:

1. 105 ILCS 5/10-22.39(e) (refers to anaphylactic reactions/management).
2. 105 ILCS 5/10-22.39(d).
3. 105 ILCS 5/10-22.39(c).
4. 105 ILCS 5/10-22.39(b), amended by P.A.s 100-903 and 101-350. The law allows districts to use the Ill. Mental Health First Aid training program to provide this training. If a licensed employee or an administrator obtains mental health first aid training outside of an in-service training program, he or she may present a certificate of successful completion of that training to the school district to satisfy the requirements of this law.
5. 105 ILCS 5/10-23.12, amended by P.A. 101-531; 325 ILCS 5/4(j), amended by P.A. 101-564; and *Erin's Law Taskforce Final Report*, authorized by 105 ILCS 5/22-65 and repealed by P.A. 99-30 because of submission of the Report at: www.isbe.net/Documents/erins-law-final0512.pdf and see also www.erinslawillinois.org/ for more resources based upon the report. Training may be in-person or web-based and must include, at a minimum, information on the following topics: (1) indicators for recognizing child abuse and child neglect; (2) the process for reporting suspected child abuse and child neglect and the required documentation; (3) responding to a child in a trauma-informed manner; and (4) understanding the response of child protective services and the role of the reporter after a call has been made. 325 ILCS 5/4(j), amended by P.A. 101-564. Districts must provide training through either DCFS, an entity authorized to provide continuing education through the Dept. of Financial and Professional Regulation, the Ill. State Board of Education, the Ill. Law Enforcement Training Standards Board, the Ill. Dept. of State Police, or an organization approved by DCFS to provide mandated reporter training. *Id.* *Child-serving organizations*, which are not defined in ANCRA, are "encouraged to provide in-person annual trainings." *Id.*
6. 105 ILCS 110/3.10(b)(2).
7. 105 ILCS 5/10-22.6(c-5), amended by P.A. 100-810. School board members are also included.
8. 7 C.F.R. Parts 210 and 235. Section 210.2 defines school nutrition program directors, managers and staff. 7 C.F.R. §§210.15(b)(8) (recordkeeping requirements) and 210.31(a), (c), (d), and (e) (professional standards requirements); 210.31(g)(requiring school food authority director to keep records), amended by Fed. Reg. Vol. 81, No. 146 at 50169 and finalized 7-29-16. Food service funds may be used for reasonable, allocable, and necessary training costs. 7 C.F.R. §210.31(f). The U.S. Dept. of Agriculture (USDA) has established implementation resources that contain training opportunities and resources covering the four core training areas: nutrition, operations, administration, and communications/marketing at: www.fns.usda.gov/school-meals/professional-standards.
9. 105 ILCS 25/1.15.
10. 105 ILCS 5/22-80(h), amended by P.A. 100-309.
11. 105 ILCS 5/22-30(j-15). Consult the board attorney about whether:

The Superintendent shall develop protocols for administering youth suicide awareness and prevention education to staff consistent with Board policy 7:290, *Suicide and Depression Awareness and Prevention*. 6

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- a. All asthma action plans should require immediate 911 calls based upon In re Estate of Stewart, 406 Ill.Dec. 345 (2nd Dist. 2016); In re Estate of Stewart, 412 Ill.Dec. 914 (Ill. 2017) (school district's appeal denied). The court held that a teacher's failure to dial 911 immediately upon a student's asthma attack was *willful and wanton* conduct, subjecting the school district to liability under the Local Governmental and Governmental Employees Tort Immunity Act.
 - b. The duties and responsibilities of the district when it asks for, but does not receive an asthma action plan from a parent/guardian and the logistics of distributing any received plans to those employees who need to know based upon Stewart, above.
12. 105 ILCS 5/10-20.61, added by P.A. 100-14.
 13. 105 ILCS 5/10-20.17a; 23 Ill.Admin.Code §1.330.
 14. 105 ILCS 150/25, added by P.A. 101-50.
 15. 775 ILCS 5/2-109, added by P.A. 101-221.
 16. 34 C.F.R. §106.45(b)(1)(iii).

Putting this optional list into the policy will help the board monitor that the required in-service and training topics are being covered. While it is possible to *pick and choose*, this practice is likely to add more confusion to an already confusing responsibility. Unless noted, the School Code does not mandate the frequency with which the training must occur. Several other trainings that are mentioned in laws other than the School Code are addressed in other policies. Many of those policies are listed in the cross-references to this policy, e.g., training requirements under the Care of Students with Diabetes Act. 105 ILCS 145/.

⁵ Different from the in-service training that school districts must provide to their staff, 105 ILCS 5/3-11, contains requirements that the regional superintendents must include during teachers institutes. Instruction on prevalent student chronic health conditions, as well as educator ethics and teacher-student conduct training is also required. See also f/n 3 above discussing the board's requirement in Section 10-22.39. Beginning with the 2016-17 school year, teachers' institutes must also include instruction on the Americans with Disabilities Act of 1990 (ADA) (42 U.S.C. §12101 *et seq.*) as it pertains to the school environment at least every two years. Contact the Regional Superintendent or the appropriate Intermediate Service Center with questions about online training for this component of a teachers' institute. Discuss with the board attorney the best practices of documenting trainings and evaluations of trainings; many attorneys in the field prefer documentation of ADA trainings to assist in their defense of any potential ADA claims against the district.

For districts that have a practice of providing instruction in life-saving techniques and first-aid in their staff development programs, insert the following optional paragraph that restates 105 ILCS 5/3-11, 105 ILCS 110/3, and 77 Ill.Admin.Code §527.800:

An opportunity shall be provided for all staff members to acquire, develop, and maintain the knowledge and skills necessary to properly administer life-saving techniques and first aid, including the Heimlich maneuver, cardiopulmonary resuscitation, and the use of an automated external defibrillator, in accordance with a nationally recognized certifying organization. Physical fitness facilities' staff must be trained in cardiopulmonary resuscitation and use of an automated external defibrillator.

Persons performing CPR are generally exempt from civil liability if they are trained in CPR (745 ILCS 49/10); persons performing automated external defibrillation are generally exempt from civil liability if they were trained and acted according to the standards of the American Heart Association (745 ILCS 49/12).

The board may also want to address other staff development opportunities. While not required to be policy, 105 ILCS 5/27-23.10 requires a school board to collaborate with State and local law enforcement agencies on gang resistance education and training. It also states that ISBE may assist in the development of instructional materials and teacher training for gang resistance education and training, which may be helpful to include in the staff development program. Other mandated and recommended staff development opportunities that are not located in the School Code or ISBE rules are found in the Ill. Administrative Code or federal regulations. Many of them are cross referenced in this policy.

⁶ Required by 105 ILCS 5/2-3.166(c)(2).

- LEGAL REF.: 20 U.S.C. §1681 et seq., Title IX of the Educational Amendments of 1972; 34 C.F.R. Part 106.
 42 U.S.C. §1758b, Pub. L. 111-296, Healthy, Hunger-Free Kids Act of 2010;7 C.F.R. Parts 210 and 235.
 105 ILCS 5/2-3.62, 5/10-20.17a, 5/10-20.61, 5/10-22.6(c-5), 5/10-22.39, 5/10-23.12, 5/22-80(h), and 5/24-5.
 105 ILCS 25/1.15, Interscholastic Athletic Organization Act.
 105 ILCS 150/25, Seizure Smart School Act.
 105 ILCS 110/3, Critical Health Problems and Comprehensive Health Education Act.
 325 ILCS 5/4, Abused and Neglected Child Reporting Act.
 745 ILCS 49/, Good Samaritan Act.
 775 ILCS 5/2-109, Ill. Human Rights Act.
 23 Ill.Admin.Code §§ 22.20, 226.800, and Part 525.
 77 Ill.Admin.Code §527.800.
- CROSS REF.: 2:265 (Title IX Sexual Harassment Grievance Procedure), 3:40 (Superintendent), 3:50 (Administrative Personnel Other Than the Superintendent), 4:160 (Environmental Quality of Buildings and Grounds), 5:20 (Workplace Harassment Prohibited), 5:90 (Abused and Neglected Child Reporting), 5:120 (Employee Ethics; Conduct; and Conflict of Interest), 5:250 (Leaves of Absence), 6:15 (School Accountability), 6:20 (School Year Calendar and Day), 6:50 (School Wellness), 6:160 (English Learners), 7:10 (Equal Educational Opportunities), 7:20 (Harassment of Students Prohibited), 7:180 (Prevention of and Response to Bullying, Intimidation, and Harassment), 7:185 (Teen Dating Violence Prohibited), 7:270 (Administering Medicines to Students), 7:285 (Food Allergy Management Program), 7:290 (Suicide and Depression Awareness and Prevention), 7:305 (Student Athlete Concussions and Head Injuries)
- ADMIN. PROC.: 2:265-API (Title IX Sexual Harassment Response), 2:265-AP2 (Formal Title IX Sexual Harassment Complaint Grievance Process), 4:160-AP (Environmental Quality of Buildings and Grounds), 4:170-AP6 (Plan for Responding to a Medical Emergency at an Indoor Physical Fitness Facility), 5:100-AP (Staff Development Program), 5:150-AP (Personnel Records), 6:120-AP4 (Care of Students with Diabetes), 7:250-API (Measures to Control the Spread of Head Lice at School)

Professional Personnel

Terms and Conditions of Employment and Dismissal 1

The School Board delegates authority and responsibility to the Superintendent to manage the terms and conditions for the employment of professional personnel. The Superintendent shall act reasonably and comply with State and federal law as well as any applicable collective bargaining agreement in effect. The Superintendent is responsible for making dismissal recommendations to the Board consistent with the Board's goal of having a highly qualified, high performing staff. ²

School Year

Teachers shall work according to the school calendar adopted by the Board, which shall have a minimum of 176 student attendance days and a minimum of 180 teacher work days, including teacher institute days.³ Teachers are not required to work on legal school holidays unless the District has followed applicable State law that allows it to hold school or schedule teachers' institutes, parent-teacher conferences, or staff development on the third Monday in January (the Birthday of Dr. Martin Luther King, Jr.); February 12 (the Birthday of President Abraham Lincoln); the first Monday in March (known as Casimir Pulaski's birthday); the second Monday in October (Columbus Day); and November 11 (Veterans' Day). ⁴

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¹ State or federal law controls this policy's content. This policy contains items 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. The local collective bargaining agreement may contain provisions that exceed these requirements. In such cases, the board policy should be amended to state, "Please refer to the applicable collective bargaining agreement."

Evaluation, tenure, and dismissals changed significantly from 2013 to 2016 as P.A.s 96-861, 97-8, and 98-513 were implemented. These public acts are referred to as *Education Reform* or *Education Reform Acts*.

² This paragraph is consistent with the IASB's *Foundational Principles of Effective Governance*. Boards have three options for using this paragraph: (1) use it as an introduction to the policy; (2) use it alone leaving the specific other topics for administrative implementation; or (3) do not use it.

³ 105 ILCS 5/10-19, amended by P.As. 101-12 and 101-643. See 6:20, *School Year Calendar and Day*.

⁴ 105 ILCS 5/24-2(b). See 5:330, *Sick Days, Vacation, Holidays, and Leaves*, for a holiday listing as well as a discussion of the case finding the State-mandated school holiday on Good Friday unconstitutional. 105 ILCS 5/24-2, amended by P.A. 101-642, prohibits districts from making a deduction "from the time or compensation of a school employee on account of any legal or special holiday."

10 ILCS 5/2B-10, added by P.A. 101-642 and 105 ILCS 5/24-2 (e), amended by P.A. 101-642, designates 2020 Election Day on 11-3-2020 as a legal school holiday for purposes of 105 ILCS 5/24. It requires all government offices, with the exception of election authorities, to be closed unless authorized to be used as a location for Election Day services or as a polling place. 10 ILCS 5/2B-10, added by P.A. 101-642, requires any school closed under it to make itself available to an election authority as a polling place for 2020 General Election Day and comply with all safety and health practices established by the Ill. Department of Public Health (IDPH).

No waiver exists for 2020 Election Day. 105 ILCS 5/24-24(b) and (e), amended by P.A. 101-642.

School Day

Teachers are required to work the school day adopted by the Board.⁵ Teachers employed for at least four hours per day shall receive a duty-free lunch equivalent to the student lunch period, or 30 minutes, whichever is longer. ⁶

The District accommodates employees who are nursing mothers according to provisions in State and federal law. ⁷

Salary

Teachers shall be paid according to the salaries fixed by the Board, but in no case less than the minimum salary provided by the School Code.⁸ Teachers shall be paid at least monthly on a 10- or 12-month basis. ⁹

Assignments and Transfers

The Superintendent is authorized to make teaching, study hall, extra class duty, and extracurricular assignments.¹⁰ In order of priority, assignments shall be made based on the District's needs and best interests, employee qualifications, and employee desires.

School Social Worker Services Outside of District Employment

School social workers may not provide services outside of their District employment to any student(s) attending school in the District. *School social worker* has the meaning stated in 105 ILCS 5/14-1.09a. ¹¹

Dismissal

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⁵ A school day is required to consist of a minimum of five clock hours under the direct supervision of a teacher or non-teaching personnel or volunteer personnel that provides non-teaching or supervisory duties as specified in 105 ILCS 5/10-22.34(a) in order to qualify as a full day of attendance. 105 ILCS 5/10-19.05(a) and (j-5), added by P.A. 101-12 and amended by P.A. 101-643. See www.isbe.net/school-calendar for ISBE's instructional day changes notice regarding this law. See 105 ILCS 5/10-19.05, added by P.A. 101-12 and amended by P.A. 101-643, for additional exceptions to the attendance calculation.

⁶ 105 ILCS 5/24-9.

⁷ 740 ILCS 137; 820 ILCS 260/, amended by P.A. 100-1003. Ill. law requires more of employers than federal law. Consult the board attorney to ensure the district is properly accommodating nursing mothers. See 5:10-AP, *Workplace Accommodations for Nursing Mothers*.

⁸ 105 ILCS 5/10-20.7, 5/10-21.1, 5/24-1, and 5/24-8, amended by P.A. 101-443 (minimum salary). Salaries are a mandatory subject of collective bargaining. 115 ILCS 5/10. Annually, by Oct. 1, each district must: (1) during an open school board meeting, report salary and benefits information for the superintendent, administrators, and teachers; (2) publish that information on the district's website, if any; and (3) provide this information to ISBE. 105 ILCS 5/10-20.47. According to a Public Access Counselor (PAC) *Informal Mediation* letter interpreting 5 ILCS 120/7.3, an IMRF employer must post on its website the names of employees having a total compensation package that exceeds \$75,000 per year. 2012 PAC 19808 (Informal Mediation by the Ill. Attorney General's Public Access Counselor (PAC); see PAC Annual Report for 2012 at www.foia.illattorneygeneral.net/pdf/Public_Access_Counselor_Annual_Report_2012.pdf).

⁹ 105 ILCS 5/24-21.

¹⁰ Districts are required to have a policy on the distribution of the listed assignments. 23 Ill.Admin.Code §1.420(d).

Absent an individual or collective bargaining agreement, the board has unilateral discretion to assign or retain a teacher to or in an extracurricular duty. *Betebenner v. Bd. of Educ.*, 336 Ill.App. 448 (4th Dist. 1949); *Dist. 300 Educ. Assoc. v. Bd. of Educ.*, 31 Ill.App.3d 550 (2nd Dist. 1975); *Lewis v. Bd. of Educ.*, 181 Ill.App. 3d 689 (5th Dist. 1989).

¹¹ Optional. This subhead provides information to district employees and the community that 105 ILCS 5/14-1.09a, amended by P.A. 100-356, prohibits school social workers from moonlighting by providing services to students attending the districts in which they are employed. Delete "5/10-20.65, 5/14-1.09a," from the Legal References if the board deletes this subhead.

The District will follow State law when dismissing a teacher. ¹²

Evaluation

The District’s teacher evaluation system will be conducted under the plan developed pursuant to State law. ¹³

On an annual basis, the Superintendent will provide the Board with a written report which outlines the results of the District’s teacher evaluation system.

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¹² All dismissal laws in the chart below were amended by the *Education Reform Acts*. 105 ILCS 5/24A-5.5, added by P.A. 101-591, requires districts to develop and implement a local appeals process for unsatisfactory ratings issued to teachers under 105 ILCS 5/24A-5, amended by P.A. 101-643. Districts must: (1) develop the process in cooperation with the bargaining unit or teachers, if applicable, and (2) include an assessment of the original rating by a panel of qualified evaluators agreed to by the PERA joint committee (105 ILCS 5/24A-4(b)).

Non-tenure Teacher Discharge	105 ILCS 5/24-11, amended by P.A. 101-643
Tenured and Non-tenure Teachers Reduction in Force	105 ILCS 5/24-12(b), amended by P.A. 101-643, and (c)
Tenured Teacher Discharge Where Cause Remediable	105 ILCS 5/24-12(d) (prior reasonable warning required) 105 ILCS 5/24-12(d) (procedural mandates) 105 ILCS 5/10-22.4 (general authority)
Tenured Teacher Discharge Where Cause Irremediable	105 ILCS 5/24-12(d) (no prior warning required) 105 ILCS 5/24-12(d) (procedural mandates) 105 ILCS 5/10-22.4 (general authority)
Tenured Teacher Discharge Failure to complete remediation plan with a rating of <i>Proficient</i>	105 ILCS 5/24A-5(m) (participation in remediation plan after unsatisfactory evaluation) 105 ILCS 5/24-12(d)(1), amended by P.A. 101-643 (no prior warning required if cause(s) were subject of remediation plan) 105 ILCS 5/24-12(d) (procedural mandates) 105 ILCS 5/10-22.4 (general authority)
Tenured Teacher Discharge - Optional Alternative Evaluative Dismissal Process for PERA Evaluation Failure to complete remediation plan with a <i>Proficient</i> or better rating 105 ILCS 5/24A-2.5	105 ILCS 5/24-16.5(d) (provide written notice) 105 ILCS 5/24-16.5 (pre-remediation and remediation procedural mandates) 105 ILCS 5/24-16.5(e) and (f) (school board makes final decision with only PERA-trained board members participating in vote)
Tenured Teacher Discharge <i>Unsatisfactory</i> PERA evaluation within 36 months of completing a remediation plan 105 ILCS 5/24A-2.5	105 ILCS 5/24A-5(n) (forego remediation and proceed to dismissal) 105 ILCS 5/24-12(d) (procedural mandates) 105 ILCS 5/10-22.4 (general authority)
Educational Support Personnel Employees (non- licensed)	105 ILCS 5/10-23.5, amended by PA. 101-46
Probationary Teacher (non-tenure teacher)	105 ILCS 5/24-11, amended by P.A. 101-643

Various components of a RIF (e.g., impact and decision to RIF) and an evaluation plan (e.g., development, implementation, and impact) may be subject to mandatory collective bargaining. *Central City Educ. Assoc. v. IELRB*, 149 Ill.2d 496 (Ill. 1992).

Teacher RIF procedures were changed by 105 ILCS 5/24-12, amended by P.A. 101-643. See *PERA Overview for School Board Members*, question 13, “What is the process for selecting teachers for a reduction in force/layoff (RIF)” at: www.iasb.com/law/PERAoverview.pdf.

According to a binding opinion from the Ill. Public Access Counselor, a board must identify an employee by name in a motion to dismiss him or her. PAO 13-16. As this may be a significant change in practice with possible other legal consequences, a board should consult with the board attorney on this issue before dismissing employee.

¹³ Teacher evaluation plans are covered in *PERA Overview for School Board Members* at: www.iasb.com/law/PERAoverview.pdf.

LEGAL REF.: 105 ILCS 5/10-19, 5/10-19.05, 5/10-20.65, 5/14-1.09a, 5/22.4, 5/24-16.5, 5/24-2, 5/24-8, 5/24-9, 5/24-11, 5/24-12, 5/24-21, 5/24A-1 through 24A-20.
820 ILCS 260/1 et seq.
23 Ill.Admin.Code Parts 50 (Evaluation of Educator Licensed Employees) and 51 (Dismissal of Tenured Teachers).
Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532(1985).

CROSS REF.: 5:290 (Employment Termination and Suspensions), 6:20 (School Year Calendar and Day)

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 license or short-term substitute license and may teach in the place of a licensed teacher who is under contract with the Board.² There is no limit on the number of days that a substitute teacher may teach in the District during the school year, except as follows:³

1. A substitute teacher holding a substitute license may teach for any one licensed teacher under contract with the District only for a period not to exceed 90 paid school days in any one school term.
2. A teacher holding a Professional Educator License⁴ or Educator License with Stipulations⁵ may teach for any one licensed teacher under contract with the District only for a period not to exceed 120 paid school days.
3. A short-term substitute teacher holding a short-term substitute teaching license may teach for any one licensed teacher under contract with the District only for a period not to exceed five consecutive school days.⁶

The Illinois Teachers' Retirement System (TRS) limits a substitute teacher who is a TRS annuitant to substitute teaching for a period not to exceed 120 paid days or 600 paid hours in each school year, but not more than 100 paid days in the same classroom. Beginning July 1, 2021, a substitute teacher who is a TRS annuitant may substitute teach for a period not to exceed 100 paid days or 500 paid hours in

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¹ State law controls this policy's content. Policy 5:30, *Hiring Process and Criteria*, contains the requirements for pre-employment investigations, e.g., a fingerprint based criminal history records check. See also 5:30-AP2, *Investigations*. Each board may require new substitute teacher employees to furnish evidence of physical fitness to perform duties assigned and must require new substitute teacher employees to furnish evidence of freedom from communicable disease. 105 ILCS 5/24-5(b-5), added by P.A. 100-855. Evidence may consist of a physical examination, which must be performed within 90 days before the time it is presented to the board, and the substitute teacher bears the cost of the physical examination. *Id.* A new or existing substitute teacher may also be subject to additional health examinations as required by the Ill. Dept. of Public Health or by order of a local public health official. *Id.*

² 23 Ill.Admin.Code §1.790(a)(2), requires that any individual who serves as a substitute teacher for driver's education be endorsed for driver's education pursuant to 23 Ill.Admin.Code §25.100(k).

³ Substitute teaching licenses are governed by 105 ILCS 5/21B-20(3), amended by P.A. 100-596; 23 Ill.Admin.Code §§1.790 and 25.520.

⁴ Professional educator licenses are governed by 105 ILCS 5/21B-20(1) and 23 Ill.Admin.Code Part 25.

⁵ Educator licenses with stipulations are governed by 105 ILCS 5/21B-20(2), amended by P.A. 100-596, and 23 Ill.Admin.Code Part 25. 105 ILCS 5/21B-20(2)(E), amended by P.A. 100-13, permits an individual who holds a valid career and technical educator endorsement on an Educator License with Stipulations but who does not hold a bachelor's degree to substitute teach in career and technical education classrooms. Similarly, 105 ILCS 5/21B-20(2)(F), amended by P.A. 100-13, permits an individual who holds a provisional or part-time provisional career and technical educator endorsement on an Educator License with Stipulations but who does not hold a bachelor's degree to substitute teach in career and technical education classrooms.

⁶ 105 ILCS 5/21B-20(4), added by P.A. 100-596. Districts may not hire a short-term substitute teacher for teacher absences lasting six or more days. *Id.*

any school year, unless the subject area is one where the Regional Superintendent has certified that a personnel shortage exists. ⁷

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. ⁸

Short-Term Substitute Teachers ⁹

A short-term substitute teacher must hold a valid short-term substitute teaching license and have completed the District's short-term substitute teacher training program.¹⁰ Short-term substitutes may teach no more than five consecutive school days for each licensed teacher who is under contract with the Board. ¹¹

Emergency Situations ¹²

A substitute teacher may teach when no licensed 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 shall notify the appropriate Regional Office of Education within five business days after the employment of a substitute teacher in an emergency situation.

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⁷ 40 ILCS 5/16-118, amended by P.A.s 100-596 and 101-645 (specifying permissible paid days and hours for TRS annuitants), and 16-150.1, amended by P.A. 101-49 (TRS annuitants may return to teaching in a subject shortage area until 6-30-21). Use this alternative for districts in suburban Cook County: replace "Regional Superintendent" with "appropriate Intermediate Service Center."

⁸ If a board provides substitute teachers other benefits, it may consider listing them here.

⁹ 105 ILCS 5/21B-20(4), added by P.A. 100-596, governs Short-Term Substitute Teaching Licenses, which may be issued from 7-1-18 until 6-30-23. Short-Term Substitute Teaching Licenses are not eligible for endorsements. *Id.* Applicants for a Short-Term Substitute Teaching License must hold an associate's degree or have completed at least 60 credit hours from a regionally accredited institution of higher education. Individuals who have had their Professional Educator License or Educator License with Stipulations suspended or revoked are not eligible to be short-term substitutes. *Id.* Short-term substitutes may not be hired for teacher absences lasting six or more days. *Id.* 105 ILCS 5/21B-20(4) repeals on 7-1-23.

¹⁰ 105 ILCS 5/10-20.68, added by P.A. 100-596, requires boards to conduct this training. This requirement provides an opportunity for each board and the superintendent to examine all current policies, collective bargaining agreements, and administrative procedures on this subject. Each board may then want to have a conversation with the superintendent and direct him or her to develop a curriculum for a short-term substitute teacher training program that provides individuals who hold a Short-Term Substitute Teaching License with information on curriculum, classroom management techniques, school safety, and district and building operations. See also 5:220-AP, *Substitute Teachers*, and f/n 3 in 5:220-AP. These expectations will be most effective when they reflect local conditions and circumstances. Training and curriculum for a short-term substitute teacher training program may be subjects of mandatory collective bargaining, therefore consulting with the board attorney should be a part of this process. A district would commit an unfair labor practice by implementing new programs for staff without first offering to negotiate them with the applicable exclusive bargaining representative.

School boards may choose to also offer this training program to individuals who hold a Substitute Teaching License and/or substitute teachers holding a Professional Educator License. This provision repeals on 7-1-23.

¹¹ See f/n 6.

¹² 105 ILCS 5/21B-20(3). 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 licensed teacher for the vacant position.

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

LEGAL REF.: 105 ILCS 5/10-20.68, 5/21B-20(2), 5/21B-20(3), and 5/21B-20(4).
23 Ill.Admin.Code §1.790 (Substitute Teacher) and §25.520 (Substitute Teaching License).

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

Educational Support Personnel

Sick Days, Vacation, Holidays, and Leaves 1

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

Sick and Bereavement Leave 2

Full or part-time educational support personnel who work at least 600 hours per year receive 10 paid sick leave days per year. Part-time employees will receive sick leave pay equivalent to their regular

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

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

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

Districts must coordinate leaves provided by State law and the local bargaining agreement with the leave granted by the Family and Medical Leave Act (FMLA) (29 U.S.C. §2612), amended by Sec. 565 of the National Defense Authorization Act for Fiscal Year 2010 (Pub. L. 111-84). The FMLA grants eligible employees 12 weeks unpaid leave each year for: (1) the birth and first-year care of a child; (2) the adoption or foster placement of a child; (3) the serious health condition of an employee's spouse, parent, or child; (4) the employee's own serious health condition; (5) the existence of any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is on (or has been notified of an impending call to) *covered active duty* in the Armed Forces; and (6) to care for the employee's spouse, child, parent, or next of kin who is a covered service member with a serious injury or illness. The definition of *covered servicemember* includes a veteran "who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness" if the veteran was a member of the Armed Forces "at any time during the period of 5 years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy." 29 U.S.C. §2611. Districts are permitted to count paid leave (granted by State law or board policy) taken for an FMLA purpose against an employee's FMLA entitlement. 29 C.F.R. §825.207. See policy 5:185, *Family and Medical Leave*.

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

² This section contains the minimum benefits provided by 105 ILCS 5/24-6. Each specified number of days in this section is the statutory minimum. The School Code does not address whether an employee's 10 paid sick leave days are available upon employment, accrued over months, or after working for a certain period of time, e.g., one year. Also be aware that the Employee Sick Leave Act (820 ILCS 191/) allows employees to use employer-provided sick leave to care for an ill or injured *family* member or to attend a medical appointment with a family member. The law defines family members as a child, stepchild, spouse, domestic partner, sibling, parent, mother- or father-in-law, grandchild, grandparent, or stepparent. *Id.* at 191/10(b). Leave may be taken under the same terms for which the employee would be permitted to take leave for his or her own illness or injury. Before adopting this policy or applying its provisions, the district should examine any applicable bargaining agreements. Strict accounting of unused sick days is important to avoid:

1. Employees accumulating sick time on a full-time basis when they are truly working part-time hours;
2. Inconsistent treatment; and
3. Inaccurate reporting to IMRF (credit is given for full day unused sick days upon retirement). 40 ILCS 5/7-139(a)(8).

workday. Unused sick leave shall accumulate to a maximum of 180 days, including the leave of the current year. ³

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

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

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

Vacation ⁵

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

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

The following optional provisions apply to boards that want to address the IMRF's requirement that public bodies must have a written plan allowing eligible employees to convert their eligible accumulated sick leave to service credit upon their retirement. See 40 ILCS 5/7-139(a)(8). See also IMRF General Memorandum #555 at:

www.imrf.org/en/publications-and-archive/general-memos/2007-general-memos/general-memo-555.

Option 1: No collective bargaining agreement applies and the board wants to publicize its written plan. Insert the following sentence: This policy is the District's written plan allowing eligible employees to convert eligible accumulated sick leave to service credit upon a District employee's retirement under the Ill. Municipal Retirement Fund.

Option 2: A local collective bargaining agreement contains the written plan and the board wants to publicize it. Insert the following sentence: Please refer to the applicable collective bargaining agreement(s) for the District's written plan allowing eligible employees to convert eligible accumulated sick leave to service credit upon an employee's retirement under the Ill. Municipal Retirement Fund.

Option 3: A district maintains two separate sick leave plans, one for employees under a collective bargaining agreement, and one for non-unionized employees. Insert the text for both Option 1 and Option 2.

Note: If Options 1, 2, or 3 are chosen, add 40 ILCS 5/7-139 to the Legal References. If the board does not have a written sick leave plan for purposes of IMRF sick leave to service credit conversion or does not wish to include it in the policy, do not include any of the options above or add the citation to the Legal References.

⁴ 105 ILCS 5/24-6, amended by P.A. 100-513.

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

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

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

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

Holidays ⁷

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

- | | |
|-----------------------------------|-------------------|
| New Year's Day | Labor Day |
| Martin Luther King Jr.'s Birthday | Columbus Day |
| Abraham Lincoln's Birthday | Veteran's Day |
| Casimir Pulaski's Birthday | 2020 Election Day |
| Memorial Day | Thanksgiving Day |
| Independence Day | Christmas Day |

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

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⁶ Required by 820 ILCS 115/5 and 56 Ill.Admin.Code §300.520 (Earned Vacations).

⁷ Holidays are listed in 105 ILCS 5/24-2(a), (e), amended by P.A. 101-642, and 10 ILCS 5/2B-10, added by P.A. 101-642. For information on the waiver process allowed by 105 ILCS 5/24-2(b), see 2:20-E, *Waiver and Modification Request Resource Guide*. Holidays not specified in the School or Election Codes may be added to the policy; however, boards adding additional holidays should monitor and review to ensure the list remains current.

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

For more information about 2020 Election Day, see the discussion in fn 4 in 5:200, *Terms and Conditions of Employment and Dismissal*.

Personal Leave 8

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

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

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

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

Other Leaves

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

1. Leaves for Service in the Military and General Assembly. **10**
2. School Visitation Leave. **11**
3. Leaves for Victims of Domestic Violence, Sexual Violence, or Gender Violence. **12**
4. Child Bereavement Leave. **13**
5. Leave to serve as an election judge. **14**

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⁸ State law does not address personal leave. It is not uncommon for boards to grant educational support personnel the same number of personal leave days as are granted to professional staff.

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

¹⁰ Military leave is governed by the School Code (105 ILCS 5/10-20.7b, 5/24-13, and 13.1); the Service Member Employment and Reemployment Rights Act (330 ILCS 61/, added by P.A. 100-1101, streamlining several job-related protection laws into one statute, mandating leave for *active service* and requiring the public employer to make up the difference between military pay and regular compensation); and the Uniformed Services Employment and Reemployment Rights Act (38 U.S.C. §4301 *et seq.*).

Granting General Assembly leave to ESPs is optional.

¹¹ 820 ILCS 147/, amended by P.A. 101-486. See policy 5:250, *Leaves of Absence*, and 5:250-AP, *School Visitation Leave*.

¹² Required by Victims' Economic Security and Safety Act (820 ILCS 180/, amended by P.A. 101-221) and 56 Ill.Admin.Code Part 280. Important information about this leave is discussed in f/n 20, 21, and 22 of 5:250, *Leaves of Absence*.

¹³ 820 ILCS 154/. Important information about this leave is discussed in f/n 5 of 5:250, *Leaves of Absence*.

¹⁴ 10 ILCS 5/13-2.5.

LEGAL REF.: 105 ILCS 5/10-20.7b, 5/24-2, and 5/24-6.
330 ILCS 61/, Service Member Employment and Reemployment Rights Act.
820 ILCS 147, School Visitation Rights Act.
820 ILCS 154/, Child Bereavement Leave Act.
820 ILCS 180/, Victims' Economic Security and Safety Act.
School Dist. 151 v. ISBE, 154 Ill.App.3d 375 (1st Dist. 1987); Elder v. Sch. Dist. No.127 1/2, 60 Ill.App.2d 56 (1st Dist. 1965).

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