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## **General Personnel**

### **Administrative Procedure - Investigations**

#### **Immigration Investigation**

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

If the Employment Eligibility Verification System (E-Verify) is used to complete Form I-9, the Superintendent or designee will review the Ill. Dept. of Labor's website and its E-Verify factsheet, available at: <https://labor.illinois.gov/content/dam/soi/en/web/idol/laws-rules/legal/documents/e-verification-facts-poster.pdf>. If the District contends that there is a discrepancy in an employee's employment verification information, follow the procedures required by the Privacy in the Workplace Act, 820 ILCS 55/12, amended by P.A. 103-879, and 820 ILCS 55/13, added by P.A. 103-879, eff. 1-1-25.

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

**Fingerprint-based Criminal History Records Information Check** (105 ILCS 5/10-21.9, amended by P.A. 102-702)

A fingerprint-based criminal history records information check must be initiated prior to employment, but the District may permit the individual to be hired and begin employment pending its outcome. See *Criminal History Records Information (CHRI) Checks for Certified and Non-certified School Personnel*, at: [www.isbe.net/Documents/guidance\\_chr.pdf](http://www.isbe.net/Documents/guidance_chr.pdf). See administrative procedure 5:30-AP4, *Fingerprint-Based Criminal History Record Information*, for procedures regarding the handling of sensitive CHRI provided through the Federal Bureau of Investigation's national databases.

A complete criminal history records check pursuant to 105 ILCS 5/10-21.9 consists of:

1. Fingerprint-based checks through (a) the Ill. State Police (ISP) for criminal history records information (CHRI) pursuant to the Ill. Uniform Conviction Information Act (20 ILCS 2635/), and (b) the Federal Bureau of Investigation (FBI) national crime information databases pursuant to the Adam Walsh Child Protection and Safety Act (Pub. L. 109-248),
2. \*A check of the Ill. Sex Offender Registry (see the Sex Offender Community Notification Law, 730 ILCS 152/ et seq.), and
3. \*A check of the Murderer and Violent Offender Against Youth Registry (see the Murderer and Violent Offender Against Youth Registration Act, 730 ILCS 154/75 - 154/105).

\*These checks must be conducted by the District or the Regional Superintendent once every five years that an individual remains employed by the District. 105 ILCS 5/10-21.9(a-5), (a-6), amended by P.A. 102-552.

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



See also Board policy 4:175, *Convicted Child Sex Offender; Screening; Notifications*, and administrative procedure 4:175-AP1, *Criminal Offender Notification Laws; Screening*. **Important:** 20 ILCS 2630/5.2 outlines how an individual may petition to have an arrest record expunged by the arresting authority and the records of the arrest sealed by the circuit court clerk. It also details offenses for which an individual cannot have his or her conviction sealed.

**Note:** The following criminal history records check guides are also available:

1. Guide to Understanding Criminal History Record Check Information is available at: <https://dph.illinois.gov/content/dam/soi/en/web/idph/files/forms/background-check-guide-071817.pdf>.
2. Ill. State Board of Education non-regulatory guidance document, Criminal History Records Information (CHRI) Checks for Certified and Non-certified School Personnel, at: [www.isbe.net/Documents/guidance\\_chr.pdf](http://www.isbe.net/Documents/guidance_chr.pdf).

The following individuals are responsible for the actions listed:

**Applicant** - Each applicant for employment in any position (except bus drivers employed by a private student transportation contractor) must provide a written authorization for a complete criminal history records check at the time he or she submits the application.

**Individual Student Teaching or beginning a required internship** - Each individual student teaching or beginning a required internship must provide written authorization for, and pay the costs of, his or her criminal history records check (including any applicable vendor's fees) prior to participating in any field experiences in the District. See 105 ILCS 5/10-21.9(g).

**Applicant for Bus Driver** - Each applicant for a bus driver position must complete the application required by the Secretary of State for a school bus driver permit (obtained from the District) and submit it to the District along with the necessary fingerprint submission as required by the ISP to conduct a fingerprint-based criminal history records check. The Superintendent or designee will conduct a pre-employment interview with prospective school bus driver candidates, distribute school bus driver applications and medical forms, and submit the applicant's fingerprint cards to the ISP. The Superintendent or designee will certify in writing to the Secretary of State that all pre-employment conditions have been successfully completed, including the successful completion of a criminal history records check as required by State law. The applicant must present the certification to the Secretary of State at the time of submitting the school bus driver permit application. See 625 ILCS 5/6-106.1, amended by P.A.s 102-168 and 102-299; 92 Ill.Admin.Code §1035.25.

**Superintendent or designee** - **Note:** *Add any additional steps to efficiently receive a complete criminal history records check.*

1. Fingerprint-Based Criminal History Records Check:
  - a. For all applicants, the Superintendent or designee completes the required forms to request the criminal history records checks from an appropriate ISP or LiveScan vendor. When the applicant is a successful superintendent candidate who has been offered employment by the Board, the School Board President shall ensure that these checks are completed. This may include submitting the applicant's name, sex, race, date of birth, social security number, fingerprint images, and other identifiers to the ISP and FBI on the forms prescribed by each agency.
  - b. The Superintendent or designee, or when the applicant is a successful superintendent candidate who has been offered employment by the Board, the Board President, will provide the applicant with a copy of the ISP and FBI reports. Required by 105 ILCS 5/10-21.9(b) and 20 ILCS 2635/7. The applicant has the obligation and responsibility

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Any employer that asks applicants to record video interviews and uses an artificial intelligence analysis of the applicant-submitted videos must comply with the Artificial Intelligence Video Interview Act, 820 ILCS 42/.



to notify the District within seven (7) working days if information in the report furnished by the ISP is inaccurate or incomplete. Id.

- c. The Superintendent or designee, or the Regional Superintendent, notifies the State Superintendent of Education in writing within 15 business days when a CHRI returns a conviction of a crime set forth in 105 ILCS 5/21B-80. 105 ILCS 5/21.9(e), and:

- i. Makes a preliminary determination that the applicant will be disqualified based on a conviction record when: (1) the District is prohibited by 105 ILCS 5/10-21.9 from employing the individual because the conviction is an offense listed in 105 ILCS 5/21B-80, amended by P.A. 102-552; (2) there is a *substantial relationship* between one or more of the previous criminal offenses and the employment sought or held; or (3) the employment would involve an *unreasonable risk* to property or to the safety or welfare of specific individuals or the general public.

*Conviction record* means information indicating that a person has been convicted of a felony, misdemeanor or other criminal offense, placed on probation, fined, imprisoned, or paroled pursuant to any law enforcement or military authority. 775 ILCS 5/1-103(G-5). It includes the results of a *complete criminal history records check* conducted pursuant to 105 ILCS 5/10-21.9.

*Substantial relationship* means a consideration of whether a job position offers the opportunity for the same or a similar offense to occur and whether the circumstances leading to the conduct for which the person was convicted will recur in the position. 775 ILCS 5/2-103.1(A).

To determine whether an applicant is disqualified based on a *substantial relationship* or *unreasonable risk*, considers the following factors: (1) length of time since the conviction; (2) number of convictions that appear on the conviction record; (3) nature and severity of the conviction and its relationship to the safety and security of others; (4) the facts or circumstances surrounding the conviction; (5) the age of the employee at the time of the conviction; and (6) evidence of rehabilitation efforts. 775 ILCS 5/2-103.1(B). See also Ill. Dept. of Human Rights (IDHR) *Conviction Record Protection – Frequently Asked Questions* (March 2021), at: <https://dhr.illinois.gov/conviction-record-protection-frequently-asked-questions.html>.

- ii. When the applicant's conviction record disqualifies him/her/them, notifies the applicant of the preliminary decision in writing. The written notice shall contain: (1) the disqualifying convictions that are the basis for the preliminary decision and the District's reasoning for the disqualification; (2) a copy of the *complete criminal history records check* conducted pursuant to 105 ILCS 5/10-21.9; and (3) an explanation of the applicant's right to submit evidence challenging the accuracy of the conviction record that is the basis for the disqualification within seven (7) working days of the applicant's



receipt of the copy of the conviction record if the applicant wishes to dispute the accuracy of the conviction record and/or submit evidence in mitigation, such as rehabilitation. 775 ILCS 5/2-103.1(C)(1) and (2). See exhibit 5:30-AP2, E1, *Notice of Preliminary Hiring Decision Based on Conviction Record*, for a sample letter template.

**Note:** Evidence of rehabilitation may include education, training, stable employment, family and community involvement, and recovery from substance abuse. For more information, see *EEOC Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decision under Title VII of the Civil Rights Act*, at: [www.eeoc.gov/laws/guidance/enforcement-guidance-consideration-arrest-and-conviction-records-employment-decisions](http://www.eeoc.gov/laws/guidance/enforcement-guidance-consideration-arrest-and-conviction-records-employment-decisions).

- iii. When the final decision disqualifies the applicant based on the conviction record, provides a second written notice to the applicant that contains: (1) notice of the disqualifying conviction(s) that are the basis for the final decision and the District's reasoning for the disqualification; (2) any existing procedure the employer has for the applicant to challenge the decision or request reconsideration (this is not required) ; and (3) the right to file a charge with the IDHR. 775 ILCS 5/2-103.1(C)(3). See exhibit 5:30-AP2, E2, *Notice of Final Hiring Decision Based on Conviction Record*, for a sample letter template.
- d. The Superintendent or designee, or the Regional Superintendent, or as applicable the entity that provides background checks for public schools, notifies the State Superintendent of education in writing within 10 business days after receiving information of a *pending* criminal charge for an offense set forth in 105 ILCS 5/21B-80. Required by 105 ILCS 5/10-21.9(e).
- Note:** For substitute teachers, the Superintendent will need to ensure that the District performs these checks. Contact the Board Attorney and/or ISBE regarding the validity of a *certificate of authorization*, if a substitute teacher presents one. From 1-1-11 through 7-1-11, the Regional Superintendent or Suburban Cook County Intermediate Service Center Executive Director, whichever was appropriate, was

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The IHRA requires at least five business days for the applicant to dispute the accuracy of the conviction record, but the Ill. Uniform Conviction Information Act (UCIA) provides the applicant seven working days from of receipt of the copy of the conviction information to notify the district if the information is inaccurate or incomplete. 20 ILCS 2635/7(A)(2). This procedure accommodates the longer timeline of the UCIA.

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Consult the board attorney for advice about whether policy 2:260, *Uniform Grievance Procedure*, should be included in the final decision letter for new applicants and/or existing employees. That policy is limited to students, parents/guardians, employees, or community members that want to file a complaint regarding the district's alleged violation of a constitutional right, statute, or board policy.

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105 ILCS 5/10-21.9(e) requires written notice for *convictions*. While notice for *pending* criminal charges is not required to be "in writing," for ease of use, consistency in administration, alignment with the requirement to provide written notice for *convictions*, and best practices this sample text states the State Superintendent will also be notified of *pending* criminal charges in writing. Consult the board attorney for further guidance.

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105 ILCS 5/10-21.9(e) does not state whether the notice requirement is *calendar days* or *business days*. Support for it being *business days* is found later in 105 ILCS 5/10-21.9(e), which requires that notice for *convictions* be provided within 15 business days.



allowed to issue *certificates of authorization* to substitute teachers. Issuance of a *certificate of authorization* was proof that the substitute teacher applicant had met all of the requirements to substitute teach in the educational service region; i.e., a fingerprint-based criminal history records check, a physical examination, and a negative tuberculin test. Because P.A. 97-607 deleted *certificates of authorization*, substitute teachers no longer receive them because they no longer exist.

- e. For individuals student teaching or beginning a required internship, the Superintendent or designee ensures that the individual completes the required forms, authorizations, and provides payment to the District for the costs of completing a complete criminal history records check prior to student teaching or beginning a required internship (105 ILCS 5/10-21.9(g) and Board policy 5:260, *Student Teachers*). For more information, see also ISBE's non-regulatory guidance document, *Criminal History Records Information (CHRI) Checks for Certified and Non-certified School Personnel*, available at: [www.isbe.net/Documents/guidance\\_chr.pdf](http://www.isbe.net/Documents/guidance_chr.pdf).
2. Screen of the Statewide offender databases upon hire and every five years thereafter that an individual remains employed by the District. 105 ILCS 5/10-21.9(a-5), (a-6), amended by P.A. 102-552. The Superintendent or designee, or when the applicant is a successful superintendent candidate who has been offered employment by the Board, the Board President, performs a screen for each applicant of:
    - a. The Statewide Sex Offender Registry, <https://isp.illinois.gov/Sor/Disclaimer>, as authorized by the Sex Offender Community Notification Law (730 ILCS 152/ et seq.), and
    - b. The Statewide Murderer and Violent Offender Against Youth Registry <https://isp.illinois.gov/MVOAY/Disclaimer>, as authorized by the Murderer and Violent Offender Against Youth Registration Act (730 ILCS 154/75-154/105).

The Superintendent or designee, or when the applicant is a successful superintendent candidate who has been offered employment by the Board, the Board President, notifies the individual if he or she is identified in the database as a sex offender. Required by 105 ILCS 5/10-21.9(a-5), (a-6), and (b). The Superintendent or designee, or the Regional Superintendent, notifies the State Superintendent of Education in writing within 15 business days, when a database screen finds a *registration* for an individual licensed by ISBE. 105 ILCS 5/21.9(e).

**ISP and FBI** - The ISP and FBI furnish records of convictions (until expunged), pursuant to the District's request, to the Board President. **Note:** The ISP and FBI must "furnish, pursuant to a fingerprint-based criminal history records check, records of convictions, until expunged, to the president of the school board...". See 105 ILCS 5/10-21.9(a) and (g). 20 ILCS 2630/3.3 establishes authority for the ISP to collect fees from the District if the Board wishes to participate in a Federal *Rap Back Service*. Rap Back Service is a capability of the FBI's Next Generation Identification (NGI) system that provides authorized agencies notification of criminal activity and, in limited cases, of civil activity, that occurs after the initial processing and retention of criminal or civil transactions, e.g., an initial fingerprint-based criminal history records check. The Board may determine that it wants to participate. Participation includes ISP submitting fingerprints that the District orders to the FBI Rap Back Service to be retained for the purpose of being searched by future submissions to the FBI Rap Back Service. For a student teacher, the report shall be returned to the Superintendent or designee (see ISBE's non-regulatory guidance document, *Criminal History Records Information (CHRI) Checks for Certified and Non-certified School Personnel*, at: [www.isbe.net/Documents/guidance\\_chr.pdf](http://www.isbe.net/Documents/guidance_chr.pdf)).

**Board President** - The School Code requires the Board President to keep a conviction record confidential. The information may only be shared between the Board President, the Superintendent or designee, Regional Superintendent (if the check was requested by the District), State Superintendent of Education, State Educator Preparation and Licensure Board, any other person necessary to the hiring decision, the ISP and/or Statewide Sex Offender Registry for clarification purposes, or the



Teachers' Retirement System of the State of Illinois (TRS) when the board learns that a teacher has been convicted of a felony. See 105 ILCS 5/10-21.9(b), 105 ILCS 5/21B-10, and 105 ILCS 5/21B-85, amended by P.A. 102-552. For further discussion about the practical implementation issues for the Board President to ensure that a fingerprint-based criminal history records information check and other database screens are initiated and completed prior to employment, see f/n 11 in Board policy 5:30, *Hiring Process and Criteria*.

**Regional Superintendent/Suburban Cook County Intermediate Service Center Executive Director** - The Superintendent or designee may require the applicant to authorize the Regional Superintendent or Suburban Cook County Intermediate Service Center Executive Director, whichever is appropriate, to conduct the check when an applicant is (1) seeking employment in more than one District simultaneously as (a) a substitute teacher, (b) a concurrent part-time employee, and/or (c) educational support personnel, or (2) the employee works for a contractor holding contracts with more than one district. The Regional Superintendent or Suburban Cook County Intermediate Service Center Executive Director, whichever is appropriate, also performs a check of the Statewide Sex Offender Registry, <https://isp.illinois.gov/Sor/Disclaimer>, as authorized by the Sex Offender Community Notification Law (730 ILCS 152/115), and the Violent Offender Against Youth Registry, <https://isp.illinois.gov/MVOAY/Disclaimer>, as authorized by the Murderer and Violent Offender Against Youth Registration Act (730 ILCS 154/75-154/105). See 105 ILCS 5/10-21.9 (a-5), (a-6), and (b), amended by P.A. 102-552.

**Contractors** - The above requirements for a *complete criminal history records check* apply to all employees and agents of contractors who have direct, daily contact with students. 105 ILCS 5/10-21.9(f). Every contractor with the District shall: (1) make every employee or agent who will have direct, daily contact with students submit to a complete criminal history records check, (2) confirm that it will make those employees available to the District for the criminal history records check, and (3) submit payment for the costs of the check(s) to the District.

**Note:** The provisions in 105 ILCS 5/10-21.9(f) and (g) apply to employees of contractors who have "direct, daily contact" with students. To be comprehensive and to eliminate uncertainty, this procedure and Board policy 4:175, *Convicted Child Sex Offender; Screening; Notifications*, may require a criminal history records check on *all* employees of contractors who may work in any school building or on school property. Whether the District uses the comprehensive language or the direct language from the School Code, the District, not the contractor, must perform the background checks. Contractors are not authorized under any State or federal law to: (1) conduct the required criminal history background checks; or (2) see the employee's criminal history furnished by the ISP and the FBI. All contracts should also require the contractor to purchase insurance to cover misconduct by their employees and/or an indemnification clause. Additionally, the Superintendent or designee should check insurance coverage to determine whether employees of contractors are covered. See also Board policy 4:175, *Convicted Child Sex Offender; Screening; Notifications*, and administrative procedure 4:60-AP3, *Criminal History Records Check of Contractor Employees*, for the responsibilities of contractors. Last, if the District has received, within the last year, information that concerns the record of conviction and identification as a sex offender of any contractors' employees, the District must provide the information to another school or school district that requests it. 105 ILCS 5/10-21.9(f-5). For more information, see ISBE's non-regulatory guidance document, *Criminal History Records Information (CHRI) Checks for Certified and Non-certified School Personnel*, available at: [www.isbe.net/Documents/guidance\\_chr.pdf](http://www.isbe.net/Documents/guidance_chr.pdf). Unless notified by the individual named in a criminal history records information (CHRI) request or by the ISP that the information furnished in a CHRI report is inaccurate or incomplete, the District cannot be liable for damages to any person to whom



the CHRI pertains for actions it reasonably took in reliance on the accuracy and completeness of CHRI report. 20 ILCS 2635/7(A)(3).

**District** - The District complies with 105 ILCS 5/10-21.9, amended by P.A.s 102-552 and 102-702, and 5/21B-80, amended by P.A. 102-552. It will not knowingly employ a person, or allow a person to work or student teach/complete a required internship (105 ILCS 5/10-21.9(g)) on school grounds, who:

1. Has been convicted of any one or more of the following offenses, until seven years following the end of the sentence for the criminal offense:
  - a. Those defined in the Cannabis Control Act, 720 ILCS 550/, except: 720 ILCS 550/4(a), 550/4(b), 550/4(c), 550/5(a), 550/5(b), and any offense for which the holder of a license is placed on probation under the provisions of 550/10 provided that if the terms and conditions of probation required by the court are not fulfilled, the offense is not eligible for this exception.
  - b. Those defined in the Ill. Controlled Substances Act, 720 ILCS 570/100 *et seq.*, except: any offense for which the holder of a license is placed on probation under the provisions of 570/410 provided that if the terms and conditions of probation required by the court are not fulfilled, the offense is not eligible for this exception.
  - c. Those defined in the Methamphetamine Control and Community Protection Act, 720 ILCS 646/, except: any offense for which the holder of a license is placed on probation under the provisions of 646/70 provided that if the terms and conditions of probation required by the court are not fulfilled, the offense is not eligible for this exception.
  - d. Any attempt to commit any of the offenses listed in (a)-(c) of this section.
  - e. Any offense committed or attempted in any other state or against the laws of the United States that, if committed or attempted in Illinois, would have been punishable as one or more of the offenses listed in (a)-(d) of this section.
2. Has been convicted of committing or attempting to commit any one or more of the following offenses:
  - a. Attempting to commit, conspiring to commit, soliciting, or committing first-degree murder or any Class X felony.
  - b. Attempting to commit, conspiring to commit, soliciting, or committing any offense defined in Article 9 (Homicide) of the Criminal Code of 1961 or the Criminal Code of 2012.
  - c. Attempting to commit, conspiring to commit, soliciting, or committing any *sex offense*. Sex offense means any offense defined in:
    - i. Sections 11-6 and 11-9 through 11-9.5, inclusive, and 11-30 (if punished as a Class 4 felony) of the Criminal Code of 1961 or the Criminal Code of 2012;
    - ii. Sections 11-14.1 through 11-21, inclusive, of the Criminal Code of 1961 or the Criminal Code of 2012;
    - iii. Sections 11-23 (if punished as a Class 3 felony), 11-24, 11-25, and 11-26 of the Criminal Code of 1961 or the Criminal Code of 2012; and
    - iv. Sections 11-1.20, 11-1.30, 11-1.40, 11-1.50, 11-1.60, 12-4.9, 12-13, 12-14, 12-14.1, 12-15, 12-16, 12-32, 12-33, 12C-45, and 26-4 (if punished pursuant to 26-4(d)(4) or (5)) of the Criminal Code of 1961 or the Criminal Code of 2012.



- d. Any offense committed or attempted in any other state or against the laws of the United States, which if committed or attempted in Illinois, would have been punishable as one or more of the foregoing offenses.
3. Has been found to be the perpetrator of sexual or physical abuse of any minor less than 18 years of age pursuant to proceedings under Article II of the Juvenile Court Act of 1987.

Reporting New Hires

The Superintendent or designee shall timely file an IRS Form W-4 or IDES *New Hire Reporting Form* for each newly hired employee with the Ill. Dept. of Employment Security. See 820 ILCS 405/1801.1. When the applicant is a successful superintendent candidate who has been offered employment by the Board, the Board President shall ensure either the retiring Superintendent or designee performs this task.



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Scott

## General Personnel

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### Administrative Procedure - Fair Labor Standards Act Exemptions

**Important** - School officials should contact the Board Attorney for application of the Fair Labor Standards Act to specific situations. The information contained in this procedure, and any information provided in the hyperlinks contained in it, should be confirmed with the Board Attorney before its application to a specific situation.

#### **Overview**

- An exempt employee in Illinois is “any employee employed in a bona fide executive, administrative or professional capacity, ... as defined by or covered by the Federal Fair Labor Standards Act of 1938 and the rules adopted under that Act, as both exist on March 30, 2003, but compensated at the amount of salary specified [current federal rules].” 820 ILCS 105/4a.
- U.S. Dept. of Labor (DOL) rules set the minimum salary threshold for an employee to qualify as an exempt executive, administrative or professional employee. 29 C.F.R. §541.600.
- Guidance on the DOL’s website includes:  
*Salary thresholds:* [www.dol.gov/agencies/whd/overtime/rulemaking](http://www.dol.gov/agencies/whd/overtime/rulemaking)  
*Exemptions from overtime pay provisions:* [www.dol.gov/agencies/whd/compliance-assistance/handy-reference-guide-flsa#8](http://www.dol.gov/agencies/whd/compliance-assistance/handy-reference-guide-flsa#8)  
*Exempt vs. non-exempt status of a particular job:* [www2.illinois.gov/idol/Laws-Rules/FLS/Pages/overtime-exemption.aspx](http://www2.illinois.gov/idol/Laws-Rules/FLS/Pages/overtime-exemption.aspx)

<b>FLSA Exemption Category</b>	<b>Staff Positions</b>
Non-covered persons	Independent contractors: <a href="http://www.dol.gov/agencies/whd/fact-sheets/13-flsa-employment-relationship">www.dol.gov/agencies/whd/fact-sheets/13-flsa-employment-relationship</a> Volunteers: <a href="http://www.dol.gov/sites/dolgov/files/WHD/legacy/files/FOH_Ch10.pdf">www.dol.gov/sites/dolgov/files/WHD/legacy/files/FOH_Ch10.pdf</a> Student teachers who: (1) receive academic credit for their work experience, (2) do not displace regular employees, (3) work under close supervision, and (4) are not entitled to a job at the end of their training ( <a href="http://www.dol.gov/sites/dolgov/files/WHD/legacy/files/2006_04_06_12_FLSA.pdf">www.dol.gov/sites/dolgov/files/WHD/legacy/files/2006_04_06_12_FLSA.pdf</a> )
Executive employees	Superintendent Associate/Assistant Superintendents Directors Supervisors Other department managers

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**This sample procedure must be customized to reflect the positions in the District and the actual duties performed.** The list should be reviewed by the board attorney. Problematic employment positions requiring careful analysis include: (1) cafeteria, transportation, maintenance, and janitorial supervisors who primarily perform manual or non-office work, and (2) executive assistants “e.g., the superintendent’s secretary” who primarily spend their time doing secretarial work, not managerial work.



<b>FLSA Exemption Category</b>	<b>Staff Positions</b>
Administrative employees	Building Principals Assistant Principals Data systems analysts or computer programmers involved in obtaining solutions to complex business problems: <a href="http://www.dol.gov/agencies/whd/fact-sheets/17e-overtime-computer">www.dol.gov/agencies/whd/fact-sheets/17e-overtime-computer</a> Other certificated administrative staff
Professional employees	Teachers Counselors Registered nurses Media coordinators Other non-supervising certificated staff
Non-exempt employees	Secretaries (includes administrative assistants) Receptionists Bookkeepers Cafeteria workers Crossing guards Before/after school program workers Bus drivers/transportation workers Computer lab managers Custodians Maintenance workers Pre-school workers (whose primary duty is to care for physical needs of children rather than teaching; does <i>not</i> include licensed special education early childhood teachers) Teacher aides, paraprofessionals, and assistants



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## General Personnel

### Administrative Procedure - Personnel Records

#### Applicant Records

Records for a successful employment applicant are maintained with the individual's employment records. Records for an unsuccessful employment applicant are maintained for no less than five years from the application date. Applicant records include the following if received by the District:

- Employment application forms
- Transcripts
- Previous work experience
- References
- Such other relevant information as the District desires of applicants for screening purposes

#### Personnel Records

Personnel records for all employees include:

- Job posting, pay scale, and benefits for the employee's position (beginning 1-1-25) 21
- Pre-employment records, including verification of past employment
- Dates of employment
- Valid certificate and/or evidence of required credentials for services being performed
- Criminal background investigation history and report 22
- Sexual Misconduct Related Employment History Review (EHR) records 23
- Form I-9 required under the Immigration Reform and Control Act
- Records maintained pursuant to Internal Revenue Service regulations

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Equal Employment Opportunity Commission regulations require employers to retain all personnel records, including applications, for at least one year from the date the record was made or any personnel action was taken, whichever is later. 29 C.F.R. §1602.14. A longer retention period allows the district to gather data that may be used to defend a discrimination complaint.

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820 ILCS 112/20, amended by P.A. 103-539, eff. 1-1-25. These records are not specifically required to be kept in an employee's personnel file but are included in this sample procedure for ease of administration.

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105 ILCS 5/22-94(e), added by P.A. 102-702. See sample administrative procedure 5:30-AP3, *Sexual Misconduct Related Employment History Review (EHR)*.

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For information on Form I-9, see *Handbook for Employers, Instructions for Completing Form I-9, Form I-9 Resources* at: [www.uscis.gov/i-9-central/form-i-9-resources](http://www.uscis.gov/i-9-central/form-i-9-resources). The Ill. Right to Privacy in the Workplace Act (820 ILCS 55/) imposes requirements on employers who use the E-Verify Program, see: <https://labor.illinois.gov/laws-rules/conmed/privacy-workplace.html>. See also f/n 13 in sample policy 5:30, *Hiring Process and Criteria*.



Payroll information and deductions, including all records required to be kept by 5:35-AP2, *Employee Records Required by the Fair Labor Standards Act* (29 C.F.R. §§516.2 and 516.3) and the Equal Pay Act of 2003, 820 ILCS 112/20

Records maintained for the Ill. Teachers' Retirement System or the Ill. Municipal Retirement System

Credit release information

Sick leave, leaves of absence, personal leave, and vacation data (where appropriate)

Salary schedule data

Relevant health and medical records, including the<sup>25</sup> verification of freedom from tuberculosis required by the School Code (105 ILCS 5/24-5)

Supervisory evaluations

Promotions

Awards received

Personnel documents that have been or are intended to be used in determining an employee's qualification for promotion, transfer, compensation, benefits, discharge, or disciplinary action<sup>26</sup>

Any employment-related contracts or agreements that the District maintains are legally binding on the employee<sup>27</sup>

Any employee handbooks that the District made available to the employee or that the employee acknowledged receiving<sup>28</sup>

Any written District policies or procedures that the District contends the employee was subject to and that concern qualifications for employment, promotion, transfer, compensation, benefits, discharge, or other disciplinary action

Disciplinary actions and accompanying records

Notice of discharge and accompanying records

Letter of resignation or retirement

Notification that an employee is the subject of an Ill. Dept. of Children and Family Services (DCFS) investigation pursuant to the Abused and Neglected Child Reporting Act (ANCRA)

24

The payroll recordkeeping requirements of the Equal Pay Act of 2003 (EPA), 820 ILCS 112/20, amended by P.A. 103-539, eff. 1-1-25, overlap with the requirements of the FLSA and are not separately listed in this procedure. They include employee name, address, occupation, and wages. *Id.* However, the EPA requires these records be maintained for five years, compared to three years under the Fair Labor Standards Act. *Id.*; 29 C.F.R. §516.5. Certain payroll documents, e.g., *pay stub* and *payroll card*, are defined in the Ill. Wage Payment and Collection Act. 820 ILCS 115/2, amended by P.A. 103-953, eff. 1-1-25.

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The Americans with Disabilities Act requires that employment health and medical records be kept separately from the regular personnel file. 42 U.S.C. §12112(d)(3).

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820 ILCS 40/2(a), added by P.A. 103-727, eff. 1-1-25. The Personnel Record Review Act (PRRA) restricts an employer's ability to use record information during a proceeding in court or before a hearing officer that was not included in the personnel record. 820 ILCS 40/4. Thus, this item becomes a statement of what must be kept in an employee's personnel record.

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*Id.* at 40/2(a)(2), added by P.A. 103-727, eff. 1-1-25.

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*Id.* at 40/2(a)(3).

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*Id.* at 40/2(a)(4).



and any report to DCFS made or caused to be made by a District employee concerning another employee; this record will be deleted if DCFS informs the District that the allegations were unfounded

Any additional information the District deems to be relevant

In addition to the above, personnel records for all professional personnel include:

Valid certificate for services being performed

Copies of official transcripts required by the School Code (105 ILCS 5/24-23)

Transcripts of graduate work completed

Verification of past teaching experience, if any

Record of in-service work completed

Acknowledgement of mandated reporter status

Employment records will be maintained permanently for all District employees and former employees unless the Local Records Commission's approval is obtained to dispose of them.

#### Restrictions on Information that May Be Kept

The District will not gather or keep a record of an employee's associations, political activities, publications, communications, or non-employment activities, unless the employee submits the information in writing or gives the District express, written consent when the District keeps or gathers such records. However, the District may gather or keep records in an employee's personnel file concerning: (1) activities or associations with individuals or groups involved in the physical, sexual, or other exploitation of a minor, or (2) activities occurring on the District's premises or during the employee's working hours that interfere with the performance of the employee's duties or activities, or those of other employees, regardless of when and where occurring, that constitute criminal conduct or may reasonably be expected to harm the District's property, operations or educational process, or programs, or that could, by the employee's actions, cause the District financial liability. 820 ILCS 40/9, amended by P.A. 103-727, eff. 1-1-25.

#### Access to Employee Records and Correction Requests

Upon written request, which may include any electronic communications, e.g., email or text messages, an employee has the right to inspect, copy, or receive copies of his or her personnel records according to provisions in the Ill. Personnel Record Review Act (PRRA), 820 ILCS 40/, and any relevant provisions in an applicable collective bargaining agreement. Except for the documents described in 820 ILCS 40/10, an employee is granted access to his or her personnel records at least two times in a calendar year at reasonable intervals. Unless otherwise indicated in an applicable bargaining agreement, access to the employee's personnel records will be according to the following guidelines:

1. The employee must submit a written request to the Superintendent or the Superintendent's designee using exhibit 5:150-E, *Employee Request Form for Personnel Records*. The written request must (820 ILCS 40/2(c)):
  - a. Identify what personnel records the employee is requesting or if the employee is requesting all records allowed to be requested under 820 ILCS 40/2;
  - b. Specify if the employee is requesting to inspect, copy, or receive copies of the records;

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820 ILCS 40/13; 325 ILCS 5/4 and 5/7.4, amended by P.A. 103-460; see the last section of this procedure for additional requirements. According to ANCR: (1) DCFS must notify the employer of an individual who is the subject of a formal child abuse or neglect investigation if his or her employment results in frequent contact with children (325 ILCS 5/7.4(b)(4)); and (2) when a report is made by a school district employee involving the conduct of an individual employed by the district, the appropriate Child Protective Service Unit must send a copy of its final finding report to the district superintendent (325 ILCS 5/7.4(c-5)).

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- c. Specify whether records be provided in hardcopy or in a reasonable and commercially available electronic format;
  - d. Specify whether inspection, copying, or receipt of copies will be performed by that employee's representative, including family members, lawyers, union stewards, other union officials, or translators; and
  - e. If the requested records include medical information and medical records, include a signed waiver to release medical information and medical records to that employee's specific representative.
2. The Superintendent or designee will provide the employee the opportunity for inspection within seven working days after receipt of the request. If such deadline cannot reasonably be met, the District will have an additional seven calendar days to comply.
  - a. If the District does not maintain records in one or more of the categories requested, the District may respond by notifying the employee in writing that the District does not maintain records in that category, but the District must still permit inspection, copying, and receipt of copies of any other records category requested that the District does maintain.
  - b. If records are maintained in a manner and fashion that is already accessible by the employee, the District may instead provide the employee with instructions on how to access that information.
3. The employee will inspect, copy, or receive copies of the personnel record at the District's administrative office during normal working hours or at another time mutually convenient to the employee or the employee's representative and the Superintendent or designee.
4. Inspection of personnel records will be conducted under the supervision of an administrative staff member.
5. Neither an employee nor his or her representative will have access to records that are treated as exceptions in the PRRRA discussed below.
6. The employee may copy material maintained in his or her personnel record. Payment for record copying will be based on the District's actual costs of duplication and may not include: the imputed costs of time spent duplicating the information; the purchase or rental of copying machines; the purchase or rental of computer equipment; the purchase, rental, or licensing of software; or other similar expenses.
7. The employee may not remove any part of his or her personnel records from his or her file nor remove any part of his or her personnel records from the District's administrative office.
8. Upon the employee's request, the District will email or mail a copy of the specific record(s) to the email address or mailing address identified by the employee for the purpose of receiving the record(s). The District will charge a fee for providing a copy of the records not to exceed the actual cost of duplication.
9. Should the employee be involved in a current grievance against the District or involved in any other contemplated proceedings against the District, the employee may designate in writing a representative who has the authority to inspect the personnel records under the same rights as the employee.
10. If the employee disagrees with any information contained in the personnel record, a removal or correction of that information may be mutually agreed upon by the District and employee. If agreement cannot be reached, the employee may submit a written statement explaining his or her position. The District will attach the employee's statement to the disputed portion of the personnel record and the statement will be included whenever that disputed record is released to a third party as long as the disputed record is part of the employee's personnel file. Inclusion of any written statement attached to the disputed record in an employee's personnel



file without any further comment or action by the District will not imply or create any presumption that the District agrees with the statement's contents.

#### Requests by Third Parties

The Board Attorney shall be consulted whenever a subpoena or court order requests personnel record information. Any other request for personnel information by a third party will be treated as a FOIA request and immediately forwarded to the School District's Freedom of Information Officer (see administrative procedure 2:250-AP1, *Access to and Copying of District Public Records*). Concerning a request for a disciplinary report, letter of reprimand, or other disciplinary action:

1. If the responsive record is more than four years old and is not related to an incident or an attempted incident of sexual abuse, severe physical abuse, or sexual misconduct as defined in 105 ILCS 5/22-85.5(c), access will be denied unless the release is ordered in a legal action or arbitration. 5 ILCS 140/7.5(q); 820 ILCS 40/8, amended by P.A. 102-702.
2. If the responsive record is more than four years old and is related to an incident or an attempted incident of sexual abuse, severe physical abuse, or sexual misconduct as defined in 105 ILCS 5/22-85.5(c), the request cannot be denied. 820 ILCS 40/8, amended by P.A. 102-702.
3. If the responsive record is four years old or less, access will be granted (regardless of its nature). The District will provide the employee with written notice or through electronic mail, if available, on or before the day any such record is released, unless notice is not required under the Personnel Record Review Act. 5 ILCS 140/7.5(q); 820 ILCS 40/7 and 40/8, amended by P.A. 102-702.
4. The employee will not be informed if the employee has specifically waived written notice as part of a written, signed employment application with another employer; the disclosure is ordered to a party in a legal action or arbitration; or information is requested by a government agency as a result of a claim or complaint by an employee, or as a result of a criminal investigation by such agency.

A FOIA request for a performance evaluation will be denied. 820 ILCS 40/11, 5 ILCS 140/7.5(q).

Before replying to a request from a third party, the District will review the requested records and delete or redact material that is protected from disclosure. 820 ILCS 40/8, amended by P.A. 102-702.

#### Restriction on Employee Access

The PRRA, 820 ILCS 40/10, amended by P.A. 103-727, eff. 1-1-25, provides that the right of the employee or the employee's representative to inspect his or her personnel records does not extend to:

1. Letters of reference for that employee.
2. Any portion of a test document, except that the employee may see a cumulative total test score for either a section of or the entire test document.
3. Materials relating to the employer's staff planning, such as matters relating to the District's development, expansion, closing or operational goals, where the materials relate to or affect more than one employee, provided, however, that this exception does not apply if such materials are, have been or are intended to be used by the employer in determining an individual employee's qualifications for employment, promotion, transfer, compensation, or benefits, or in determining an individual employee's discharge or discipline.
4. Information of a personal nature about a person other than the employee if disclosure of the information would constitute a clearly unwarranted invasion of the other person's privacy.
5. Records relevant to any other pending claim between the District and employee that may be discovered in a judicial proceeding.
6. Investigatory or security records maintained by the District to investigate criminal conduct by an employee or other activity by the employee that could reasonably be expected to harm the District's property, operations, or education process or programs, or could be by the employee's



activity cause the District financial liability, unless and until the District takes adverse personnel action based on information in such records.

7. The District's trade secrets, client lists, sales projections, and financial data.

#### Complying with Requirements in the Abused and Neglected Child Reporting Act

The Superintendent will execute the requirements in ANCRA whenever a District employee makes a report to DCFS involving another District employee's conduct. This includes performing the following tasks (325 ILCS 5/4 and 820 ILCS 40/13):

1. Disclose to any school district requesting information concerning a current or former employee's job performance or qualifications the fact that he or she was the subject of another employee's report to DCFS. Only the fact that a District employee made a report may be disclosed.
2. Inform the District employee who is or has been the subject of such report that the Superintendent will make the disclosure as described above.
3. Delete the record of such a report if DCFS informs the District that the allegation was unfounded.

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#### Complying with Requirements of Faith's Law

The Superintendent or designee shall execute the recordkeeping requirements of *Faith's Law*. This includes performing the following tasks (105 ILCS 5/22-94(e)):

1. At the time of an employee's separation from employment, or upon request of any employee, ensures the completion of the *Authorization for Release of Sexual Misconduct Related Information and Current/Former Employer Response* form, using the Ill. State Board of Education *Authorization for Release of Sexual Misconduct Related Information and Current/Former Employer Response Template* at: [www.isbe.net/Documents/Temp2-Auth-Release-Sexual-Misconduct-Related-Info.pdf](http://www.isbe.net/Documents/Temp2-Auth-Release-Sexual-Misconduct-Related-Info.pdf).
2. If the District is still investigating an employee for *sexual misconduct* after the employee's separation from employment, updates the information in the *Authorization for Release of Sexual Misconduct Related Information and Current/Former Employer Response* form accordingly.
3. Maintains the completed *Authorization for Release of Sexual Misconduct Related Information and Current/Former Employer Response* form in the employee's personnel file.
4. Responds to employer requests for sexual misconduct related employment history information under *Faith's Law* by: (a) completing the *Authorization for Release of Sexual Misconduct-Related Information and Current/Former Employer Response* form provided by the employer within 20 calendar days of receipt, and (b) providing to the employer any relevant information, including copies of personnel records, regarding instances of sexual misconduct in accordance with the instructions on the form.

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105 ILCS 5/22-94(e), added by P.A. 102-702. The contents of this subhead implement: (1) the *Faith's Law* recordkeeping requirements contained in the **Special Superintendent Responsibilities** subhead in sample policy 5:90, *Abused and Neglected Child Reporting*, and (2) the obligation to respond to employer requests for information under *Faith's Law* contained in the **Prospective Employer Inquiries Concerning a Current of Former Employee's Job Performance** subhead in sample policy 5:150, *Personnel Records*.

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*Sexual misconduct* is defined in 105 ILCS 5/22-85.5(c), added by P.A. 102-676.

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105 ILCS 5/22-94(e), added by P.A. 102-702.



LEGAL REF.: 29 C.F.R. Part 516.  
5 ILCS 140/, Freedom of Information Act.  
105 ILCS 5/22-94.  
325 ILCS 5/4 and 5/7.4, Abused and Neglected Child Reporting Act.  
820 ILCS 40/, Personnel Record Review Act.  
820 ILCS 112/20, Equal Pay Act of 2003.  
23 Ill.Admin.Code §1.660.