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Operational Services

Identity Protection ¹

The collection, storage, use, and disclosure of social security numbers by the School District shall be consistent with State and federal laws. The goals for managing the District's collection, storage, use, and disclosure of social security numbers are to: ²

1. Limit all activities involving social security numbers to those circumstances that are authorized by State or federal law.
2. Protect each social security number collected or maintained by the District from unauthorized disclosure.

The Superintendent is responsible for ensuring that the District complies with the Identity Protection Act, 5 ILCS 179/. Compliance measures shall include each of the following: ^{3 4}

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

¹ **Consult the board attorney before adoption of this policy.** Districts may choose to provide or implement more protections than the statutory requirements outlined in this sample policy. While the laws that apply to this policy govern current management of sensitive information, best practices may outpace the law's ability to keep up. See also *f/n* 19 to sample policy 2:250, *Access to District Public Records*, detailing the preservation requirements of the Local Records Act (50 ILCS 205/3), the Family Educational Rights and Privacy Act (20 U.S.C. §1232g), and the Ill. School Student Records Act (105 ILCS 10/), and litigation holds or document preservation requirements pursuant to Federal Rules of Civil Procedure (Rules 16 and 26).

The Identity Protection Act (IPA) (5 ILCS 179/) requires that this subject matter be covered in policy and controls its content. 5 ILCS 179/35. The Act places greater limits on the use of social security numbers (SSNs) than federal law. The IPA defines *identity-protection policy* as "any policy created to protect social security numbers from unauthorized disclosure." *Social security number* is not capitalized in the IPA. 5 ILCS 179/5. Much of a district's collection, storage, use, and disclosure of SSNs applies to employee records only. But limited exceptions may exist where a school district may need to ask students or their parents/guardians to provide SSNs, and any collection and retention of students' SSNs must also be in accordance with this policy.

Another State law, the Personal Information Protection Act (PIPA) (815 ILCS 530/, amended by P.A. 101-343, eff. 1-1-20, amended by P.A. 99-503) requires *data collectors* of *personal information* to provide certain notice to Illinois residents, and in certain cases, the Ill. Attorney General, when the collector's system data is breached. 815 ILCS 530/10, amended by P.A. 101-343, eff. 1-1-20. Under PIPA, *data collector* is broadly defined to include *government agencies* and any entities that deal with nonpublic *personal information*. *Personal information* is defined as: (1) an individual's first name or first initial combined with a SSN, driver's license number or State identification card number, financial account information (including without limitation, credit or debit card numbers), medical or health insurance information or biometric data; or (2) a username or email address in combination with a password or security question and answer that would permit access to an online account. *Id.* at 530/5. Depending on whether the *data collector* owns or merely maintains or stores the information, additional notification requirements will also apply. Finally, PIPA requires *units of local governments* to dispose of *personal information* so that it may not be read or reconstructed. *Id.* at 530/40. Many lawyers disagree it is unclear whether Section 530/40 applies to school districts because PIPA does not specifically identify school districts as units of local governments (Ill. Constitution Article VII, Sec. 1). However, the Ill. State Board of Education (ISBE) considers PIPA to apply to the handling of personally identifiable information under grant awards. See the ISBE Checklist for Protection of Personally Identifiable Information Review, referenced in f/n 9, below. Consult the board attorney for advice on the applicability of PIPA's various mandates to your district. See *f/n* 4, below for more information about options to include PIPA requirements in this sample policy.

² The list of goals is optional; it may be deleted, augmented, or otherwise amended.

³ The IPA requires items #1-4 to be covered in a policy. 5 ILCS 179/35(a).

⁴ For boards that want to include PIPA mandates in this Policy, insert the following option after the IPA items #1-4, or if the board includes items #5 and #6 (discussed in *f/n* 6, below), after items #1-6, and add "815 ILCS 530/, Personal Information Protection Act" to the Legal References:

1. All employees having access to social security numbers in the course of performing their duties shall be trained to protect the confidentiality of social security numbers. Training should include instructions on the proper handling of information containing social security numbers from the time of collection through the destruction of the information.
2. Only employees who are required to use or handle information or documents that contain social security numbers shall have access to such information or documents.
3. Social security numbers requested from an individual shall be provided in a manner that makes the social security number easily redacted if the record is required to be released as part of a public records request.
4. When collecting a social security number or upon request by an individual, a statement of the purpose(s) for which the District is collecting and using the social security number shall be provided. The stated reason for collection of the social security number must be relevant to the documented purpose. ⁵
5. All employees must be advised of this policy's existence, and a copy of the policy must be made available to each employee. The policy must also be made available to any member of the public, upon request. ⁶
6. If this policy is amended, employees will be advised of the existence of the amended policy and a copy of the amended policy will be made available to each employee. ⁷

No District employee shall collect, store, use, or disclose an individual's social security number unless specifically authorized by the Superintendent.⁸ This policy shall not be interpreted as a

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The Superintendent is also responsible for ensuring the District complies with the Personal Information Protection Act, 815 ILCS 530/. Compliance measures shall include each of the following:

1. Written or electronic notification to an individual and, if applicable, the owner of the information, as required by 815 ILCS 530/10 whenever his or her personal information was acquired by an unauthorized person; *personal information* means either:
 - a. An individual's first name or first initial and last name in combination with any one or more of his or her (i) social security number, (ii) driver's license number or State identification card number, (iii) financial account information (with any required security codes or passwords), (iv) medical information, (v) health insurance information, and/or (vi) unique biometric data or other unique physical or digital representation of biometric data, when either the name or the data elements are not encrypted or redacted or are encrypted or redacted but the keys to unencrypt or unredact or otherwise read the name or data elements have been acquired through the breach of security; or
 - b. An individual's username or email address, in combination with a password or security question and answer that would permit access to an online account, when either the username or email address or password or security question and answer are not encrypted or redacted or are encrypted or redacted but the keys to unencrypt or unredact or otherwise read the data elements have been obtained through the breach of security.
2. Notification to the Ill. Attorney General as required by 815 ILCS 530/10, if a single breach of the security system requires the District to notify more than 500 Illinois residents.
- 2.3. Cooperation with the owner of the information in matters relating to the breach, if applicable, as required by 815 ILCS 530/10.
- 3.4. Disposal of materials containing personal information in a manner that renders the personal information unreadable, unusable, and undecipherable; personal information has the meaning stated in #1, above.

⁵ See 4:15-E2, *Statement of Purpose for Collection of Social Security Numbers*.

⁶ Items #5 and #6 are not required to be in policy but districts are required to perform the described action(s). ⁵ ILCS 179/35(b). These compliance measures are covered in 4:15-AP1, *Protecting the Privacy of Social Security Numbers*.

⁷ Optional. See f/n 6 above.

guarantee of the confidentiality of social security numbers and/or other personal information. The District will use best efforts to comply with this policy, but this policy should not be construed to convey any rights to protection of information not otherwise afforded by law.

Treatment of Personally Identifiable Information Under Grant Awards ⁹

The Superintendent ensures that the District takes reasonable measures to safeguard: (1) *protected personally identifiable information*,¹⁰ (2) other information that a federal awarding agency, pass-through agency or State awarding agency designates as sensitive, such as *personally identifiable information* (PII)¹¹ and (3) information that the District considers to be sensitive consistent with applicable laws regarding privacy and confidentiality (collectively, *sensitive information*), when administering federal grant awards and State grant awards governed by the Grant Accountability and Transparency Act (30 ILCS 708/).

The Superintendent shall establish procedures for the identification, handling, storage, access, disposal and overall confidentiality of sensitive information.¹² The Superintendent shall ensure that employees and contractors responsible for the administration of a federal or State award for the

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⁸ This sentence is optional. Its intent is to inform employees of the need to have proper authority before collecting, storing, using, or disclosing SSNs. A board may attach a sanction to the paragraph by adding the following option:

An employee who has substantially breached the confidentiality of social security numbers may be subject to disciplinary action or sanctions up to and including dismissal in accordance with District policy and procedures.

⁹ While the federal regulations on procurement standards in 2 C.F.R. Part 200 do not specifically require a written policy on the treatment of *personally identifiable information* (PII) under grant-funded programs, the Ill. State Board of Education's (ISBE's) *Checklist for Protection of Personally Identifiable Information Review* (ISBE Checklist), at www.isbe.net/Pages/Audit-and-Monitoring-Review-Requirements-and-Tools.aspx, requires an approved policy or policies related to the identification, handling, storage, access, disposal, and overall protection of PII as evidence of legal compliance with the Grant Accountability and Transparency Act (GATA) (30 ILCS 708/) and federal regulations. The ISBE Checklist is specific to PII handled by districts in connection with their administration of grants. The uniform federal rules on procurement standards in 2 C.F.R. Part 200 apply to eligible State grants through the Grant Accountability and Transparency Act (GATA) (30 ILCS 708/). This policy and accompanying administrative procedure 4:15-AP2, *Personally Identifiable Information Under Grant Awards*, are designed to help districts meet the standard set forth in 2 C.F.R. 200.303(e) and the documentation items on the ISBE Checklist.

¹⁰ *Protected personally identifiable information* (Protected PII) means an individual's first name or first initial and last name in combination with any one or more types of information, including, but not limited to, social security number, passport number, credit card numbers, clearances, bank numbers, biometrics, date and place of birth, mother's maiden name, criminal records, medical records, financial records, or educational transcripts. Protected PII does not include *personally identifiable information* (PII) that is required by law to be disclosed. 2 C.F.R. §200.82. See 4:15-AP2, *Personally Identifiable Information Under Grant Awards*. Protected PII is similar to, but broader than, the definition of *personal information* under PIPA.

¹¹ PII is a broader concept than Protected PII. Said another way, Protected PII is a subset of PII.

PII means information that can be used to distinguish or trace an individual's identity, either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual. Some information that is considered to be PII is available in public sources such as telephone books and public websites, and it is considered to be Public PII. Public PII includes, for example, first and last name, address, work telephone number, email address, home telephone number, and general educational credentials. The definition of PII is not anchored to any single category of information or technology. Rather, it requires a case-by-case assessment of the specific risk that an individual can be identified. Non-PII can become PII whenever additional information is made publicly available, in any medium and from any source, that, when combined with other available information, could be used to identify an individual. 2 C.F.R. §200.79.

In addition to 2 C.F.R. 200.303(e), depending upon the type of record being created or used in connection with a grant-funded program, multiple laws may govern the treatment of *personally identifiable information* (PII) under a grant, including the IPA (5 ILCS 179/), PIPA (815 ILCS 530/), Family Educational Rights and Privacy Act, (20 U.S.C. 1232g), Ill. School Student Records Act (105 ILCS 10/), Student Online Personal Protection Act, (105 ILCS 85/, amended by P.A. 101-516, eff. 7-1-21), Personnel Record Review Act (820 ILCS 40/), and Local Records Act (50 ILCS 205/3).

¹² See 4:15-AP2, *Personally Identifiable Information Under Grant Awards*.

District receive regular training in the safeguarding of sensitive information.¹³ Employees mishandling sensitive information are subject to discipline, up to and including dismissal.

LEGAL REF.: 2 C.F.R. §200.303(e).
5 ILCS 179/, Identity Protection Act.
30 ILCS 708/, Grant Accountability and Transparency Act
50 ILCS 205/3, Local Records Act.
105 ILCS 10/, Illinois School Student Records Act.

CROSS REF: 2:250 (Access to District Public Records), 5:150 (Personnel Records), 7:340 (Student Records)

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

¹³ The ISBE Checklist requires districts to maintain documentation of training of all employees/contractors on the handling of PII, including evidence of the date(s) of the training and attendance/completion of the training. See www.isbe.net/Pages/Audit-and-Monitoring-Review-Requirements-and-Tools.aspx. Because many individuals in a district can be involved in day-to-day administration of activities supported by a federal or State grant, best practice is to regularly train all employees on the safeguarding of such sensitive information, e.g., upon hire and then annually or semi-annually.

Operational Services

Administrative Procedure - Protecting the Privacy of Social Security Numbers

Much of the District’s collection, storage, use, and disclosure of social security numbers apply to employee records only. But limited exceptions may exist where a school district may need to ask students or their parents/guardians to provide social security numbers. When student social security numbers are involved, consult the Board attorney about the intersection of the Identity Protection Act (5 ILCS 179/), the Family Educational Rights and Privacy Act (20 U.S.C. §1232g), and the Ill. School Student Records Act (105 ILCS 10/).

Actor	Action
<p>Superintendent and business manager, and their designees</p>	<p>Identify the approved purposes for collecting SSNs, including:</p> <ol style="list-style-type: none"> 1. Employment matters, e.g., income reporting to IRS and the IL Dept. of Revenue, tax withholding, FICA, and Medicare. 2. Verifying enrollment in various benefit programs, e.g., medical benefits, health insurance claims, and veterans’ programs. 3. Filing insurance claims. 4. Internal verification or administrative purposes. 5. Other uses authorized and/or required by State law including, without limitation, in the following circumstances (5 ILCS 179/10(c)): <ol style="list-style-type: none"> a. Disclosing SSNs to another governmental entity if the disclosure is necessary for the entity to perform its duties and responsibilities; b. Disclosing SSNs pursuant to a court order, warrant, or subpoena; and c. Collecting or using SSNs to investigate or prevent fraud, to conduct background checks, to collect a debt, or to obtain a credit report from a consumer reporting agency under the federal Fair Credit Reporting Act. <p>Identify a method for documenting the need and purpose for the SSN before its collection. 5 ILCS 179/10(b)(1).</p> <p>Inform all employees of the District’s efforts to protect the privacy of SSNs. See Exhibit 4:15-E1, <i>Letter to Employees Regarding Protecting the Privacy of Social Security Numbers</i>.</p> <p style="padding-left: 40px;">While State law does not specifically require this step, the law contains mandates applicable to all employees that they need to know. Moreover, this letter provides an opportunity to increase awareness of the confidential nature of SSNs.</p> <p>Maintain a written list of each staff position that allows or requires access to SSNs.</p> <p style="padding-left: 40px;">The existence of a written list, even though not required, is important for recordkeeping and accountability purposes.</p> <p>Require that employees who have access to SSNs in the course of performing their duties be trained to protect the confidentiality of SSNs. 5 ILCS 179/35(a)(2).</p> <p>Direct that only employees who are required to use or handle information or documents that contain SSNs have access to such information or documents. 5 ILCS 179/35(a)(3).</p>

Actor	Action
	<p>Require that SSNs requested from an individual be provided in a manner that makes the SSN easily redacted if the record is otherwise required to be released as part of a public records request. 5 ILCS 179/35(a)(4).</p> <p>Require that, when collecting SSNs or upon request, a <i>statement of the purpose(s)</i> for which the District is collecting and using the SSNs be provided. 5 ILCS 179/35(a)(5). See Exhibit 4:15-E2, <i>Statement of Purpose for Collecting Social Security Numbers</i>.</p> <p>Require that, when employees who are required to use or handle information or documents that contain SSNs learn of a breach, they:</p> <ol style="list-style-type: none"> 1. Notify District administrators immediately, and 2. Ensure that notifications to the proper individuals occur, including the notifications listed within the Illinois Attorney General's guidance document on pages 7-11 at: 3. 2. www.illinoisattorneygeneral.gov/consumers/Security_Breach_Notification_Guidance.pdf. <p>Enforce the requirements in Board policy 4:15, <i>Identity Protection</i>, and this procedure.</p>
Records Custodian and Head of Information Technology (IT)	<p>Develop guidelines for handling social security numbers in electronic systems. These guidelines should address:</p> <ol style="list-style-type: none"> 1. The display of SSNs on computer terminals, screens, and reports; 2. The security protocol for storing SSNs on a device or system protected by a password or other security system and for accessing SSNs that are included in part of an electronic database; 3. The security protocol for deleting SSNs that are stored in electronic documents or databases; and 4. Alternate mechanisms for integrating data other than the use of SSNs.
Staff Development Head	<p>Design and execute a training program on protecting the confidentiality of SSNs for employees who have access to SSNs in the course of performing their duties.</p> <p>The training should include instructions on the proper handling of information that contains SSNs from the time of collection through the destruction of the information. 5 ILCS 179/35(a)(2).</p>
Assistant Superintendents, Directors, Building Principals, and/or Department Heads	<p>Require each staff member whose position allows or requires access to SSNs to attend training on protecting the confidentiality of SSNs.</p> <p>Instruct staff members whose positions allow or require access to SSNs to:</p> <ol style="list-style-type: none"> 1. Treat SSNs as confidential information. 2. Never publically post or display SSNs or require any individual to verbally disclose his or her SSN. 3. Dispose of documents containing SSNs in a secure fashion, such as, by shredding paper documents and by deleting electronic documents as instructed by the IT Department. 4. Use SSNs as needed during the execution of their job duties and in accordance with the training and instructions that they received. <p>Instruct staff members whose positions do <u>not</u> require access to SSNs to notify a</p>

Actor	Action
	supervisor and/or the IT Department whenever SSNs are found in a document or other material, whether in paper or electronic form.
Freedom of Information Officer	Redact every SSN before allowing public inspection or copying of records responsive to a FOIA request. 5 ILCS 179/15.
Employees	<p>Do not collect, use, or disclose another individual's SSN unless directed to do so by an administrator.</p> <p>If the employee is in a position that requires access to SSNs: Treat SSNs as confidential information and follow the instructions learned during training.</p> <p>If the employee is <u>not</u> in a position that requires access to SSNs: Notify his or her supervisor and/or the IT Department whenever the employee comes across a document or other material, whether in paper or electronic form, that contain SSNs.</p>

Operations

Administrative Procedure – Treatment of Personally Identifiable Information Under Grant Awards

This procedure implements identification, handling, storage, access, disposal, and the overall confidentiality of personally identifiable information under grant awards in the subhead **Treatment of Personally Identifiable Information Under Grant Awards** in Board policy 4:15, *Identity Protection*. Use it when the District is a recipient of a federal grant award or State grant award governed by the Grant Accountability and Transparency Act (GATA) (30 ILCS 708/) and, as a result, must handle personally identifiable information (defined below) in its administration of the award.

Definitions

Personally identifiable information (PII) means information that can be used to distinguish or trace an individual's identity, either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual. Some information that is considered to be PII is available in public sources such as telephone books and public Web sites. This type of information is considered to be Public PII and includes, for example, first and last name, address, work telephone number, email address, home telephone number, and general educational credentials. The definition of PII is not anchored to any single category of information or technology. Rather, it requires a case-by-case assessment of the specific risk that an individual can be identified. Non-PII can become PII (or *protected personally identifiable information*) whenever additional information is made publicly available, in any medium and from any source, that, when combined with other available information, could be used to identify an individual. 2 C.F.R. §200.79.

Protected personally identifiable information (Protected PII) is a subset of PII; it means an individual's first name or first initial and last name in combination with any one or more types of information, including, but not limited to, social security number, passport number, credit card numbers, clearances, bank numbers, biometrics, date and place of birth, mother's maiden name, criminal records, medical records, financial records, or educational transcripts. Protected PII does not include personally identifiable information that is required by law to be disclosed. 2 C.F.R. §200.82.

Safeguarding Requirement

GATA and 2 C.F.R. §200.303(e) require grant recipients to take reasonable measures to safeguard (1) *protected personally identifiable information*, (2) other information that the awarding or pass-through agency designates as sensitive, such as *personally identifiable information*, and (3) information that the District considers to be sensitive consistent with applicable laws regarding privacy and confidentiality (collectively referred to in this Procedure as *sensitive information*).

The Superintendent or designee will ensure that the District:

1. Implements reasonable security measures, such as physical and technological safeguards, for the protection of sensitive information that meets or exceeds industry standards designed to protect such information from unauthorized access, destruction, use, modification, or disclosure. ¹

The footnotes should be removed before the material is used.

¹ This paragraph is an adaptation of the standard for the protection of *covered information* under the Student Online Personal Protection Act, 105 ILCS 85/, amended by P.A. 101-516, eff. 7-1-21. Districts should customize this procedure to align with local practices and conditions.

2. Complies with all applicable laws, such as the Identity Protection Act (5 ILCS 179/) (IPA), Personal Information Protection Act (815 ILCS 530/10) (PIPA) and Student Online Personal Protection Act (105 ILCS 85/27, added by P.A. 101-516, eff. 7-1-21) (SOPPA) in the event of a breach of sensitive information.
3. Notifies, if appropriate, members of the school community impacted by a breach when notification is not specifically required by law.
4. Educates staff members involved in the administration of grants that in addition to federal regulation 2 C.F.R. §200.303(e) and the terms of a specific award, multiple laws may apply to personally identifiable information, depending upon the type of information/record including: IPA (5 ILCS 179/), PIPA (815 ILCS 530/), Family Educational Rights and Privacy Act, (20 U.S.C. 1232g), Ill. School Student Records Act (105 ILCS 10/), SOPPA (105 ILCS 85/, amended by P.A. 101-516, eff. 7-1-21), Personnel Record Review Act (820 ILCS 40/), and Local Records Act (50 ILCS 205/3).
5. Consults with the Board Attorney as needed to ensure compliance.

Relevant Board Policies and Administrative Procedures for Handling of Sensitive Information

The following Board policies and procedures also address and govern the District's identification, handling, storage, access, disposal, and overall confidentiality of certain types of sensitive information:

1. 2:220, *School Board Meeting Procedure*, and Exhibit, 2:220-E8, *School Board Records Maintenance Requirements and FAQs*, address storage, access, and destruction of meeting minutes, including closed meeting minutes and verbatim recordings.
2. 2:250, *Access to District Public Records*, addresses providing access to public records in response to Freedom of Information Act requests and the preservation and destruction of public records under the Local Records Act. 2:250-AP2, *Protocols for Record Preservation and Development of Retention Schedules*, also addresses the preservation and destruction of public records under the Local Records Act.
3. 4:15, *Identity Protection*, specifically requires the District to safeguard sensitive information under grant awards.
4. 4:80-AP1, *Internal Controls Checklist*, requires the District to protect assets, including technology and electronic systems from loss or misuse.
5. 5:120-AP2, *Employee Conduct Standards*, requires all District staff members to respect the confidentiality of student and personal records and other information covered by confidentiality agreements.
6. 5:130, *Responsibilities Concerning Internal Information*, requires all District employees to maintain the integrity and security of all internal information and the privacy of confidential records.
7. 5:150, *Personnel Records*, and 5:150-AP, *Personnel Records*, address the identification, storage, and access to personnel records.
8. 6:235, *Access to Electronic Networks*, requires all users of the District's electronic networks to maintain the confidentiality of student information
9. 6:235-AP1, *Acceptable Use of District's Electronic Networks*, requires all users of the District's electronic networks to take steps to safeguard their integrity and security.
10. 7:340, *Student Records*, along with 7:340-AP1, *School Student Records*, and 7:340-AP2, *Storage and Destruction of School Student Records*, address the District's legal obligations regarding the identification, confidentiality, safeguarding, access, and disposal of school student records.

Disposal of Sensitive Information

When disposal of sensitive information is authorized by law and/or Board policy, the Superintendent or other administrator overseeing the administration of the grant award will ensure the District follows the disposal standard under the Personal Information Protection Act (815 ILCS 530/40) and renders the information unreadable, unusable, and undecipherable.

Training for Employees and Contractors

District employees and contractors responsible for the administration of a federal or State award for the District will receive training on the safeguarding of sensitive information.

The Superintendent or designee will ensure:

1. Employees receive training upon their assignment to perform work under the award and then on a bi-annual basis thereafter, until the award is concluded or an employee's involvement in the award is complete, whichever is earlier. The training shall include education on this procedure and the District's policies and procedures listed above that govern the District's handling of sensitive information for various types of information/records.
2. Documentation of employee training on the handing of personally identifiable information is maintained, including the dates(s) of the training and attendance/completion of the training.
3. District contractors performing work under the grant award regularly receive training from the District or other comparable training on the management of sensitive information.

Resources

Ill. State Board of Education –

Checklist for Protection of Personally Identifiable Information, available at www.isbe.net/Pages/Audit-and-Monitoring-Review-Requirements-and-Tools.aspx.

U.S. Dept. of Education –

Privacy Technical Assistance Center's Protecting Student Privacy Service, at www.studentprivacy.ed.gov.

Ill. Attorney General –

www.illinoisattorneygeneral.gov/consumers/hotline.html#dbreport.

Operational Services

Revenue and Investments ¹

Revenue

The Superintendent or designee is responsible for making all claims for property tax revenue, State Aid, special State funds for specific programs, federal funds, and categorical grants.

Investments

The Superintendent shall either appoint a Chief Investment Officer or serve as one.² The Chief Investment Officer shall invest money that is not required for current operations, in accordance with this policy and State law. ³

The Chief Investment Officer and Superintendent shall use the standard of prudence when making investment decisions. They shall use the judgment and care, under circumstances then prevailing, that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the safety of their capital as well as its probable income. ⁴

Investment Objectives ⁵

The objectives for the School District's investment activities are:

1. Safety of Principal - Every investment is made with safety as the primary and over-riding concern. Each investment transaction shall ensure that capital loss, whether from credit or market risk, is avoided.
2. Liquidity - The investment portfolio shall provide sufficient liquidity to pay District obligations as they become due. In this regard, the maturity and marketability of investments shall be considered.
3. Rate of Return - The highest return on investments is sought, consistent with the preservation of principal and prudent investment principles.
4. Diversification - The investment portfolio is diversified as to materials and investments, as appropriate to the nature, purpose, and amount of the funds.

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¹ Each district must have an investment policy; its detail and complexity must be appropriate to the nature of the funds, the funds' purpose, and the amount of the public funds within the investment portfolio. 30 ILCS 235/2.5(a).

² 30 ILCS 235/2.5(a)(7). Districts having a chief business official may use this alternative: "The Chief Business Official shall serve as the District's Chief Investment Officer." If a Township Treasurer manages the district funds, substitute this sentence:

The Township Treasurer shall serve as the Chief Investment Officer.

³ Township and school treasurers are authorized by 105 ILCS 5/8-7 to enter into agreements regarding the deposit, investment, and withdrawal of district funds.

⁴ The policy must include a standard of care. 30 ILCS 235/2.5(a)(2).

⁵ The policy must address safety, liquidity, return (30 ILCS 235/2.5(a)), as well as diversification (30 ILCS 235/2.5(a)(4)). These objectives also serve as investment guidelines. 30 ILCS 235/2.5(a)(3). How these are addressed is at the board's discretion.

Authorized Investments 6

The Chief Investment Officer may invest District funds in one or more of the following:

1. Bonds, notes, certificates of indebtedness, treasury bills, or other securities now or hereafter issued, that are guaranteed by the full faith and credit of the United States of America as to principal and interest.
2. Bonds, notes, debentures, or other similar obligations of the United States of America, its agencies, and its instrumentalities.

The term “agencies of the United States of America” includes: (a) the federal land banks, federal intermediate credit banks, banks for cooperative, federal farm credit banks, or any other entity authorized to issue debt obligations under the Farm Credit Act of 1971 and Acts amendatory thereto, (b) the federal home loan banks and the federal home loan mortgage corporation, and (c) any other agency created by Act of Congress.
3. Interest-bearing savings accounts, interest-bearing certificates of deposit or interest-bearing time deposits or any other investments constituting direct obligations of any bank as defined by the Illinois Banking Act.
4. Obligations of corporations organized in the United States with assets exceeding \$500,000,000 if: (a) such obligations are rated at the time of purchase at one of the three highest classifications established by at least two standard rating services and that mature not later than three years from the date of purchase, (b) such purchases do not exceed 10% of the corporation’s outstanding obligations, and (c) no more than one-third of the District’s funds may be invested in short term obligations of corporations.
5. Money market mutual funds registered under the Investment Company Act of 1940, provided that the portfolio of any such money market mutual fund is limited to obligations described in paragraph (1) or (2) and to agreements to repurchase such obligations.
6. Interest-bearing bonds of any county, township, city, village, incorporated town, municipal corporation, school district, the State of Illinois, any other state, or any political subdivision or agency of the State of Illinois or any other state, whether the interest earned is taxable or tax-exempt under federal law. The bonds shall be (a) registered in the name of the municipality, county, or other governmental unit, or held under a custodial agreement at a bank, and (b) rated at the time of purchase within the four highest general classifications

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⁶ The policy must contain a “listing of authorized investments.” 30 ILCS 235/2.5(a)(1). 30 ILCS 235/2(a-1) allows school districts to invest public funds in interest-bearing bonds of any local government (see paragraph 6). Investments from which a board may choose are listed in this policy. See 30 ILCS 235/2, amended by P.A. 100-752. Alternatively, a board may refer to that law by stating:

The Chief Investment Officer may invest any District funds in any investment as authorized in 30 ILCS 235/2, and Acts amendatory thereto.

Some attorneys are of the opinion that the Investment of Municipal Funds Act (IMFA) (50 ILCS 340/) authorizes school districts to invest funds in certain tax anticipation warrants. The IMFA applies to counties, park districts, sanitary districts, and other *municipal corporations*. *Id.* at 340/1. *Municipal corporation* is not specifically defined in the IMFA. Consult with the board attorney and/or bond counsel regarding the authority for such investments and the inclusion of the IMFA in this policy.

As part of its mission to protect public entities, the Municipal Securities Rulemaking Board (MSRB) has resources available that school officials may find helpful at: www.msrb.org/EducationCenter/Issuers/Issuing.aspx. It provides information about bond issuance, required disclosures, and working with municipal advisors.

established by a rating service of nationally recognized expertise in rating bonds of states and their political subdivisions.

7. Short term discount obligations of the Federal National Mortgage Association or in shares or other forms of securities legally issuable by savings banks or savings and loan associations incorporated under the laws of this State or any other state or under the laws of the United States. Investments may be made only in those savings banks or savings and loan associations, the shares, or investment certificates that are insured by the Federal Deposit Insurance Corporation. Any such securities may be purchased at the offering or market price thereof at the time of such purchase. All such securities so purchased shall mature or be redeemable on a date or dates prior to the time when, in the judgment of the Chief Investment Officer, the public funds so invested will be required for expenditure by the District or its governing authority.
8. Dividend-bearing share accounts, share certificate accounts, or class of share accounts of a credit union chartered under the laws of this State or the laws of the United States; provided, however, the principle office of any such credit union must be located within the State of Illinois. Investments may be made only in those credit unions the accounts of which are insured by applicable law.
9. A Public Treasurers' Investment Pool created under Section 17 of the State Treasurer Act. The District may also invest any public funds in a fund managed, operated, and administered by a bank, subsidiary of a bank, or subsidiary of a bank holding company or use the services of such an entity to hold and invest or advise regarding the investment of any public funds.
10. The Illinois School District Liquid Asset Fund Plus. ⁷
11. Repurchase agreements of government securities having the meaning set out in the Government Securities Act of 1986, as now or hereafter amended or succeeded, subject to the provisions of said Act and the regulations issued there under. The government securities, unless registered or inscribed in the name of the District, shall be purchased through banks or trust companies authorized to do business in the State of Illinois.

Except for repurchase agreements of government securities that are subject to the Government Securities Act of 1986, as now or hereafter amended or succeeded, the District may not purchase or invest in instruments that constitute repurchase agreements, and no financial institution may enter into such an agreement with or on behalf of the District unless the instrument and the transaction meet all of the following requirements:

- a. The securities, unless registered or inscribed in the name of the District, are purchased through banks or trust companies authorized to do business in the State of Illinois.
- b. The Chief Investment Officer, after ascertaining which firm will give the most favorable rate of interest, directs the custodial bank to "purchase" specified securities from a designated institution. The "custodial bank" is the bank or trust company, or agency of government, that acts for the District in connection with repurchase agreements involving

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⁷ The Illinois School District Liquid Asset Fund Plus is an Illinois trust organized to permit Illinois school districts, community colleges, and educational service regions to pool their investment funds to obtain the highest possible investment yield consistent with maintaining liquidity and preserving capital, and to engage in cooperative cash management activities resulting in more efficient financial resource utilization. The program was developed in cooperation with the Ill. Association of School Boards, the Ill. Association of School Business Officials, and the Ill. Association of School Administrators. ~~To receive marketing information and the name of the marketing representative, contact: PMA Financial Network, Inc., Illinois School District Liquid Asset Fund Plus. For more information, including regional representative contact information, see www.isdlafplus.com.~~

- the investment of funds by the District. The State Treasurer may act as custodial bank for public agencies executing repurchase agreements.
- c. A custodial bank must be a member bank of the Federal Reserve System or maintain accounts with member banks. All transfers of book-entry securities must be accomplished on a Reserve Bank's computer records through a member bank of the Federal Reserve System. These securities must be credited to the District on the records of the custodial bank and the transaction must be confirmed in writing to the District by the custodial bank.
 - d. Trading partners shall be limited to banks or trust companies authorized to do business in the State of Illinois or to registered primary reporting dealers.
 - e. The security interest must be perfected.
 - f. The District enters into a written master repurchase agreement that outlines the basic responsibilities and liabilities of both buyer and seller.
 - g. Agreements shall be for periods of 330 days or less.
 - h. The Chief Investment Officer informs the custodial bank in writing of the maturity details of the repurchase agreement.
 - i. The custodial bank must take delivery of and maintain the securities in its custody for the account of the District and confirm the transaction in writing to the District. The custodial undertaking shall provide that the custodian takes possession of the securities exclusively for the District; that the securities are free of any claims against the trading partner; and that any claims by the custodian are subordinate to the District's claims to rights to those securities.
 - j. The obligations purchased by the District may only be sold or presented for redemption or payment by the fiscal agent bank or trust company holding the obligations upon the written instruction of the Chief Investment Officer.
 - k. The custodial bank shall be liable to the District for any monetary loss suffered by the District due to the failure of the custodial bank to take and maintain possession of such securities.
12. Any investment as authorized by the Public Funds Investment Act, and Acts amendatory thereto. Paragraph 11 supersedes paragraphs 1-10 and controls in the event of conflict.

Except as provided herein, investments may be made only in banks, savings banks, savings and loan associations, or credit unions that are insured by the Federal Deposit Insurance Corporation or other approved share insurer. ⁸

The Chief Investment Officer and Superintendent shall regularly consider material, relevant, and decision-useful sustainability factors in evaluating investment decisions, within the bounds of financial and fiduciary prudence. Such factors include, but are not limited to: (1) corporate governance and leadership factors, (2) environmental factors, (3) social capital factors, (4) human capital factors, and (5) business model and innovation factors, as provided under the Ill. Sustainable Investing Act, 30 ILCS 238/. ⁹

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⁸ 30 ILCS 235/2, amended by P.A. 100-752.

⁹ This statement is required by 30 ILCS 235/2.5(a-5), added by P.A. 101-473, eff. 1-1-20. See the Ill. Sustainable Investing Act (SIA) (30 ILCS 238/, added by P.A. 101-473, eff. 1-1-20) for examples of these five sustainability factors. Id. at 238/20. Under the SIA, school districts, must "prudently integrate sustainability factors into its investment decisions-making, investment analysis, portfolio construction, due diligence, and investment ownership in order to maximize anticipated financial returns, minimize projected risk, and more effectively execute its fiduciary duty." Id.

Selection of Depositories, Investment Managers, Dealers, and Brokers 10

The Chief Investment Officer shall establish a list of authorized depositories, investment managers, dealers and brokers based upon the creditworthiness, reputation, minimum capital requirements, qualifications under State law, as well as a long history of dealing with public fund entities. The Board will review and approve the list at least annually.

In order to be an authorized depository, each institution must submit copies of the last two sworn statements of resources and liabilities or reports of examination that the institution is required to furnish to the appropriate State or federal agency.¹¹ Each institution designated as a depository shall, while acting as such depository, furnish the District with a copy of all statements of resources and liabilities or all reports of examination that it is required to furnish to the appropriate State or federal agency. ¹²

The above eligibility requirements of a bank to receive or hold public deposits do not apply to investments in an interest-bearing savings account, interest-bearing certificate of deposit, or interest-bearing time deposit if: (1) the District initiates the investment at or through a bank located in Illinois, and (2) the invested public funds are at all times fully insured by an agency or instrumentality of the federal government. ¹³

The District may consider a financial institution's record and current level of financial commitment to its local community when deciding whether to deposit funds in that financial institution. The District may consider factors including: ¹⁴

1. For financial institutions subject to the federal Community Reinvestment Act of 1977, the current and historical ratings that the financial institution has received, to the extent that those ratings are publicly available, under the federal Community Reinvestment Act of 1977;
2. Any changes in ownership, management, policies, or practices of the financial institution that may affect the level of the financial institution's commitment to its community;
3. The financial impact that the withdrawal or denial of District deposits might have on the financial institution;
4. The financial impact to the District as a result of withdrawing public funds or refusing to deposit additional public funds in the financial institution; and
5. Any additional burden on the District's resources that might result from ceasing to maintain deposits of public funds at the financial institution under consideration.

Collateral Requirements 15

All amounts deposited or invested with financial institutions in excess of any insurance limit shall be collateralized in accordance with the Public Funds Investment Act, 30 ILCS 235/. The Superintendent or designee shall keep the Board informed of collateral agreements.

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¹⁰ The policy must address these topics. 30 ILCS 235/2.5(a)(11).

¹¹ 30 ILCS 235/6.

¹² *Id.*

¹³ 30 ILCS 235/6.5.

¹⁴ This paragraph is optional, but is authorized by 30 ILCS 235/8.

¹⁵ Collateral requirements are permissive; if used, guidelines regarding their use must be included in the policy. 30 ILCS 235/2.5(a)(5). The requirements for collateral agreements are in 30 ILCS 235/6(d). The sample policy contains one guideline, that is, that the board be kept informed of collateral agreements. An optional guideline follows:

In addition, the financial institution must provide the Board with a copy of its board of directors' meeting minutes evidencing that the board of directors approved the collateral agreement.

Safekeeping and Custody Arrangements 16

The preferred method for safekeeping is to have securities registered in the District's name and held by a third-party custodian. Safekeeping practices should qualify for the Governmental Accounting Standards Board Statement No. 3, Deposits with Financial Institutions, Investments (including Repurchase Agreements), and Reverse Repurchase Agreements, Category I, the highest recognized safekeeping procedures.

Controls and Report 17

The Chief Investment Officer shall establish a system of internal controls and written operational procedures to prevent losses arising from fraud, employee error, misrepresentation by third parties, or imprudent employee action.

The Chief Investment Officer shall provide a quarterly investment report to the Board. The report will: (1) assess whether the investment portfolio is meeting the District's investment objectives, (2) identify each security by class or type, book value, income earned, and market value, (3) identify those institutions providing investment services to the District, and (4) include any other relevant information. The investment portfolio's performance shall be measured by appropriate and creditable industry standards for the investment type. 18

The Board will determine, after receiving the Superintendent's recommendation, which fund is in most need of interest income and the Superintendent shall execute a transfer. This provision does not apply when the use of interest earned on a particular fund is restricted. 19

Ethics and Conflicts of Interest 20

The Board and District officials will avoid any investment transaction or practice that in appearance or fact might impair public confidence. Board members are bound by the Board policy 2:100, *Board Member Conflict of Interest*. No District employee having influence on the District's investment decisions shall:

1. Have any interest, directly or indirectly, in any investments in which the District is authorized to invest,
2. Have any interest, directly or indirectly, in the sellers, sponsors, or managers of those investments, or
3. Receive, in any manner, compensation of any kind from any investments in that the agency is authorized to invest.

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16 The policy must address safekeeping and custody arrangements. 30 ILCS 235/2.5(a)(5). Registration requirements are in 30 ILCS 235/3.

17 The policy must provide for internal controls, periodic review, and at least quarterly written investment reports. 30 ILCS 235/2.5(a)(6), (9), and (10). The operational procedures to prevent losses are best addressed by each district in consultation with its auditor and legal counsel. See policy 4:80, *Accounting and Audits*; 4:80-AP1, *Checklist for Internal Controls*; and 4:80-AP2, *Fraud, Waste, and Abuse Awareness Program*.

18 The policy must include performance measures. 30 ILCS 235/2.5(8).

19 105 ILCS 5/10-22.44. "Chief Business Official" may replace "Superintendent." Interest income earned on any funds for IMRF, Tort Immunity Act, Fire Prevention, Safety and Environmental Energy, and Capital Improvement Act are restricted to the respective fund. *Id.*

20 The policy must address these topics. 30 ILCS 235/2.5(a)(12). The conflict of interest prohibition is in 30 ILCS 235/2.

LEGAL REF.: 30 ILCS 235/, Public Funds Investment Act.
30 ILCS 238/, Ill. Sustainable Investing Act.
105 ILCS 5/8-7, 5/10-22.44, 5/17-1, and 5/17-11.

CROSS REF.: 2:100 (Board Member Conflict of Interest), 4:10 (Fiscal and Business Management), 4:80 (Accounting and Audits)

Operational Services

Incurring Debt ¹

The Superintendent shall provide early notice to the School Board of the District's need to borrow money. The Superintendent or designee² shall prepare all documents and notices necessary for the Board, at its discretion, to: (1) issue State Aid Anticipation Certificates,³ tax anticipation warrants,⁴ working cash fund bonds,⁵ bonds,⁶ notes,⁷ and other evidence of indebtedness,⁸ or (2) establish a line of credit with a bank or other financial institution.⁹ The Superintendent shall notify the State Board of Education before the District issues any form of long-term or short-term debt that will result in outstanding debt that exceeds 75% of the debt limit specified in State law. ¹⁰

Bond Issue Obligations ¹¹

In connection with the Board's issuance of bonds, the Superintendent shall be responsible for ensuring the District's compliance with federal securities laws, including the anti-fraud provisions of

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¹ State law controls this policy's content. School districts are subject to a statutory debt limitation (105 ILCS 5/19-1(a)); other provisions in 5/19-1 contain exceptions. Not all forms of indebtedness are subject to the statutory debt limitations. Before incurring any debt, the board must be certain that the debt will be within the district's debt limitation.

² Boards that employ business managers may want to substitute "Business Manager", "Chief School Business Official", or another locally-equivalent title for "Superintendent or designee" and "Superintendent" as they appear throughout this policy; the business manager most commonly performs the duties described in this policy.

³ 50 ILCS 420/1 et seq. and 105 ILCS 5/18-18.

⁴ 105 ILCS 5/17-16.

⁵ 105 ILCS 5/20-2, 5/20-4, and 5/20-5, amended by P.A. 101-416; 30 ILCS 305/2.

⁶ 105 ILCS 5/19-1 et seq.; 30 ILCS 350/.

⁷ 50 ILCS 420/0.01 et seq. A district may borrow money and issue bonds for the purposes stated in 105 ILCS 5/19-3, provided the board properly adopted an election referendum and subsequently the voters approved the proposition. ¹⁰ ILCS 5/28-2. Districts have the authority to issue bonds for certain purposes without a direct referendum, e.g., School Fire Prevention and Safety Bonds, Working Cash Fund Bonds, Funding Bonds, and Insurance Reserve Bonds. However, as is the case with Working Cash Fund Bonds, certain types of bonds still require boards to follow backdoor referendum procedures.

⁸ Other types of indebtedness include funding bonds and refunding bonds (105 ILCS 5/19-1 et seq.), as well as debt certificates and alternate bonds authorized by the Local Government Debt Reform Act (30 ILCS 350/).

⁹ 105 ILCS 5/17-17.

¹⁰ 105 ILCS 5/19-1.

¹¹ Optional. This subhead is offered for boards that want to: (1) expressly address their obligations to comply with federal securities laws; and (2) authorize the creation of written procedures to protect the status of tax-exempt (or otherwise tax-advantaged) bonds issued by the board. As a matter of best practice and to reduce potential future liabilities, many attorneys recommend that board policy address these obligations. Consult the board attorney and/or bond counsel for guidance.

The Internal Revenue Service strongly encourages, but does not currently require, issuers of tax-exempt bonds to establish written post-issuance compliance monitoring procedures. For guidance regarding the recommended content of such procedures, see *IRS Publication 4079, Tax-Exempt Governmental Bonds*, at: www.irs.gov/pub/irs-pdf/p4079.pdf. Such procedures may be included in a written bond resolution for a specific bond issue, and/or they may be established more generally. Consult the board attorney and/or bond counsel regarding the establishment of such procedures for tax-exempt bonds.

If a board does not accept this subhead, delete the Administrative Procedure Reference and the following Legal References: Securities Act of 1933, 15 U.S.C. §77a et seq.; Securities Exchange Act of 1934, 15 U.S.C. §78a et seq.; and 17 C.F.R. §240.15c2-12.

the Securities Act of 1933, as amended¹² and, if applicable, the continuing disclosure obligations under Rule 15c2-12 of the Securities Exchange Act of 1934, as amended. ¹³

Additionally, in connection with the Board's issuance of bonds, the interest on which is excludable from *gross income* for federal income tax purposes, or which enable the District or bond holder to receive other federal tax benefits, the Board authorizes the Superintendent to establish written procedures for post-issuance compliance monitoring for such bonds to protect their tax-exempt (or tax-advantaged) status.

The Board may contract with outside professionals, such as bond counsel and/or a qualified financial consulting firm, to assist it in meeting the requirements of this subsection. ¹⁴

LEGAL REF.: Securities Act of 1933, 15 U.S.C. §77a et seq.
Securities Exchange Act of 1934, 15 U.S.C. §78a et seq.
17 C.F.R. §240.15c2-12.
Bond Authorization Act, 30 ILCS 305/2.
Bond Issue Notification Act, 30 ILCS 352/.
Local Government Debt Reform Act, 30 ILCS 350/.
Tax Anticipation Note Act, 50 ILCS 420/.
105 ILCS 5/17-16, 5/17-17, 5/18-18, and 5/19-1 et seq.

CROSS REF.: 4:10 (Fiscal and Business Management)

ADMIN. PROC.: 4:40-AP (Preparing and Updating Disclosures)

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¹² 15 U.S.C. §77q.

¹³ 17 C.F.R. §240.15c2-12. See 4:40-AP, *Preparing and Updating Disclosures*, for a detailed set of sample procedures designed to facilitate a district's compliance with disclosure requirements of federal securities laws.

¹⁴ Delete the last paragraph of this subhead if the board does not want to include a sentence in this policy that addresses the use of outside professionals for assistance with compliance. Boards that regularly utilize outside professionals to assist them in meeting bond disclosure requirements may want to include this language to memorialize their current practice. Contracts for the services of individuals possessing a high degree of professional skill, such as attorneys and financial consultants, are exempt from competitive bidding requirements. 105 ILCS 5/10-20.21(a)(i).

Operational Services

Purchases and Contracts ¹

The Superintendent shall manage the District's purchases and contracts in accordance with State law, the standards set forth in this policy, and other applicable School Board policies.

Standards for Purchasing and Contracting

All purchases and contracts shall be entered into in accordance with State law. The Board Attorney shall be consulted as needed regarding the legal requirements for purchases or contracts. All contracts shall be approved or authorized by the Board.

All purchases and contracts should support a recognized District function or purpose as well as provide for good quality products and services at the lowest cost, with consideration for service, reliability, and delivery promptness, and in compliance with State law.² No purchase or contract shall be made or entered into as a result of favoritism, extravagance, fraud, or corruption.

Adoption of the annual budget authorizes the Superintendent or designee to purchase budgeted supplies, equipment, and services, provided that State law is followed. Purchases of items outside budget parameters require prior Board approval, except in an emergency.³

When presenting a contract or purchase for Board approval, the Superintendent or designee shall ensure that it complies with applicable State law, including but not limited to, those specified below:

1. Supplies, materials, or work involving an expenditure in excess of \$25,000 must comply with the State law bidding procedure, 105 ILCS 5/10-20.21, unless specifically exempted.⁴
2. Construction, lease, or purchase of school buildings must comply with State law and Board policy 4:150, *Facility Management and Building Programs*.
3. Guaranteed energy savings must comply with 105 ILCS 5/19b-1 *et seq.*
4. Third party non-instructional services must comply with 105 ILCS 5/10-22.34c.⁵

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¹ State law controls this policy's content. 105 ILCS 5/10-20.21, *amended by P.A. 101-570*, contains bidding plus other requirements. Other laws also govern district contracts. For example, the Prevailing Wage Act requires, among other things, that a district specify in all contracts for public works that the prevailing wage rate must be paid, (820 ILCS 130/). When a district awards work to a contractor without a public bid, contract, or project specification, the district must provide the contractor with written notice on the purchase order or a separate document indicating that not less than the prevailing rate of wages shall be paid to all laborers, workers, and mechanics performing work on the project. In addition, the district must notify all contractors of any rate changes by the Ill. Dept. of Labor (IDOL), 820 ILCS 130/4(a-2). The law allows a district to discharge this duty by including the following language in all contracts: "Any prevailing rate of wages as they are revised by the Ill. Dept. of Labor (IDOL) shall apply to this contract. You are notified that any rate changes to the prevailing wage rate are available on the Dept. IDOL's official website." (820 ILCS 130/4(1), ~~and s~~ See 4:60-E, *Notice to Contractors*, for sample language).

² This end statement should be amended according to local board discretion.

³ An optional addition follows: "Notwithstanding the above, the Superintendent shall not commit to any single, non-customary purchase or expenditure, excluding personnel, of greater than \$ _____ without prior Board approval." This optional provision's intent is to provide an internal control as well as to keep the board involved when the district is making a large purchase or expenditure, e.g., copiers, computers, textbooks, or something that might not happen every year. It is intended to cover purchases/expenditures regardless of whether they were previously budgeted.

⁴ See 4:60-AP1, *Purchases*, for bidding exemptions and the requirements for electronic bid opening. A board may set a lower bidding threshold by policy but should first seek its attorney's advice because such action may expand a board's vulnerability to a bidding challenge.

5. Goods and services that are intended to generate revenue and other remunerations for the District in excess of \$1,000, including without limitation vending machine contracts, sports and other attire, class rings, and photographic services, must comply with 105 ILCS 5/10-20.21(b-5). The Superintendent or designee shall keep a record of: (1) each vendor, product, or service provided, (2) the actual net revenue and non-monetary remuneration from each contract or agreement, and (3) how the revenue was used and to whom the non-monetary remuneration was distributed. The Superintendent or designee shall report this information to the Board by completing the necessary forms that must be attached to the District's annual budget. ⁶
6. Any contract to purchase food with a bidder or offeror must comply with 105 ILCS 5/10-20.21(b-10). ⁷
7. The purchase of paper and paper products must comply with 105 ILCS 5/10-20.19c and Board policy 4:70, *Resource Conservation*. ⁸
8. Each contractor with the District is bound by each of the following:
 - a. In accordance with 105 ILCS 5/10-21.9(f): (1) prohibit any of its employees who is or was found guilty of a criminal offense listed in 105 ILCS 5/10-21.9(c) and 5/21B-80(c)⁹ to have direct, daily contact at a District school or school-related activity with one or more student(s); (2) prohibits any of the contractor's employees from having direct, daily contact with one or more students if the employee was found guilty of any offense in 5/21B-80(b) (certain drug offenses) until seven years following the end of the employee's sentence for the criminal offense;¹⁰ and (3) require each of its employees who will have direct, daily contact with student(s) to cooperate during the District's fingerprint-based criminal history records check on him or her. ¹¹
 - b. In accordance with 105 ILCS 5/24-5: (1) concerning each new employee of a contractor that provides services to students or in schools who begins providing services in the District after June 16, 2014, provide the District with evidence of physical fitness to perform the duties assigned and freedom from communicable disease if the employee will have direct, daily contact with one or more student(s); and (2) require any new or existing employee who has and will have direct, daily contact with one or more student(s) to complete additional health examinations as required by the District and be

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

⁵ Concerning collective bargaining requirements, see *McLean Co. Unit Dist. 5 v. AFSCME & IELRB*, 2014 Ill. App. (4th), No. 4-13-0294 (6-4-14) 12 N.E.2d 120 (4th Dist. 2014) (good faith bargaining on the decision to subcontract requires notice of the consideration of the subcontract before it is finalized; meeting with the union to provide an opportunity to discuss and explain the decision; providing information to the union; and giving consideration to any counterproposal the union makes).

⁶ 105 ILCS 5/10-20.21(b-5).

⁷ 105 ILCS 5/10-20.21(b-10), added by P.A. 99-552.

⁸ 105 ILCS 5/10-20.19c.

⁹ 105 ILCS 5/10-21.9(c), amended by P.A. 101-531; 105 ILCS 5/21B-80(c), amended by P.A. 99-667/101-531.

¹⁰ *Id.*

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

subject to additional health examinations, including tuberculosis screening, as required by the Illinois Department of Public Health rules or order of a local health official. ¹²

The Superintendent or designee shall: (1) execute the reporting and website posting mandates in State law concerning District contracts, and (2) monitor the discharge of contracts, contractors' performances, and the quality and value of services or products being provided. ¹³

LEGAL REF.: 105 ILCS 5/10-20.19c, 5/10-20.21, 5/10-21.9, 5/10-22.34c, 5/19b-1 et seq., and 5/24-5.
820 ILCS 130/.

CROSS REF.: 2:100 (Board Member Conflict of Interest), 4:70 (Resource Conservation), 4:150 (Facility Management and Building Programs), 4:175 (Convicted Child Sex Offender; Screening; Notifications)

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

¹² 105 ILCS 5/24-5, amended by P.A. 101-81, P.A. 98-716, effective 7-16-14, expanded the scope of 105 ILCS 5/24-5 by adding a definition of *employee* that includes contractors' employees for whom a criminal history records check is required. ~~As of~~ Since Aug. 2014, the Ill. Dept. of Public Health ~~does not require~~ school employees to be screened for tuberculosis other than workers in child day care and preschool settings, (77 Ill.Admin.Code §696.140(a)(3)). Before requesting a contractor's employee for a health examination, contact the board attorney concerning this action's legality under other personnel laws, including the Americans with Disabilities Act of 1990 (42 U.S.C. §12101 et seq.).

¹³ This is an optional provision. The numerous reporting and website posting mandates are in 2:250-E2, *Immediately Available District Public Records and Web-Posted Reports and Records*. As an alternative to the policy's default language, a board may insert the underscored:

The Superintendent or designee shall: (1) execute the reporting and website posting mandates in State law concerning District contracts and maintain a status report for monthly presentation to the Board, and (2) monitor the discharge of contracts, contractors' performances, and the quality and value of services or products being provided.

Operational Services

Administrative Procedure - Purchases

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

Requirements for Purchases and Contracts

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

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

¹ Many legal problems will be avoided by early and frequent consultation with the board attorney.

7. A list must be posted on the District's website, if any, of all contracts in excess of \$25,000 and any contract with an exclusive bargaining representative. 105 ILCS 5/10-20.44(b).
 8. Each contractor with the District must comply with 105 ILCS 5/10-21.9(f) and agree to: (a) not allow any of its employees to have direct, daily contact with one or more students if the employee was found guilty of any offense listed in 105 ILCS 5/10-21.9(c) or 5/21B-80(c)²; (b) prohibits any of its employees from having direct, daily contact with one or more students if the employee was found guilty of any offense in 5/21B-80(b) (certain drug offenses) until seven years following the end of the employee's sentence for the criminal offense-; (c) require each of its employees who will have direct, daily contact with one or more student(s) to cooperate during the District's fingerprint-based criminal history records check on him or her; and (d) reimburse the District for the cost of the fingerprint-based criminal history records check that the District obtains on each employee of a contractor who will have direct, daily contact with a student(s). See 4:60-AP3, *Criminal History Records Check of Contractor Employees*.
 9. Each contractor with the District must comply with 105 ILCS 5/24-5 and agree: (a) concerning each ~~new employee who begins providing services in the District after June 16, 2014~~ who will have direct, daily contact with one or more student(s), to provide the District with evidence of physical fitness to perform the duties assigned and freedom from communicable disease; and (b) to require any new or existing employee who has and will have direct, daily contact with one or more student(s) to complete additional health examinations as required by the District and be subject to additional health examinations, including tuberculosis screening, as required by the Ill.~~inois~~ Department of Public Health rules or order of a local health official. ³
 10. Any contract to purchase food with a bidder or offeror must comply with 105 ILCS 5/10-20.21(b-10) (food donations). ⁴
- B. To the extent feasible, the following govern all purchases and/or the award of contracts for supplies, materials, or work, and/or contracts with private carriers for transporting students, involving: (a) an expenditure of \$25,000 or less, or (b) in an emergency, an expenditure in excess of \$25,000, provided such expenditure is approved by three-quarters of the Board. See 105 ILCS 5/10-20.21(a)(xiv) (3/4s of the Board must approve an emergency expenditure in excess of \$25,000 when the bidding process is not used) and 5/29-6.1 (time limitations for transportation contracts).
1. Telephone quotations, verbal quotations, or catalog prices are used to purchase materials that are needed urgently, or small quantity orders.
 2. Written quotations are used to purchase materials or services when time requirements allow. Whenever possible, quotations should be received from at least two competitors. The Superintendent or designee may negotiate with vendors at any time, including after receiving quotations.

The footnotes should be removed before the material is used.

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

³ 105 ILCS 5/24-5, amended by P.A. 101-81. Since 2014, the Ill. Dept. of Public Health has only required school employees in daycare and preschool settings to be screened for tuberculosis. 77 Ill.Admin.Code §696.140(a)(3). Consult the board attorney before requesting a contractor's employee to complete a health examination, to ensure it is legal under other personnel laws, including the Americans with Disabilities Act of 1990 (42 U.S.C. §12101 et seq.).

⁴ 105 ILCS 5/10-20.21(b-10), added by P.A. 99-552.

- C. The following govern all purchases and/or the award of contracts involving an expenditure in excess of \$25,000 for supplies and materials or work. 105 ILCS 5/10-20.21(a). 5
1. Contracts are awarded to the lowest responsible bidder, considering conformity with specifications, terms of delivery, quality and serviceability, except contracts or purchases for:
 - a. Services of individuals possessing a high degree of professional skill where the ability or fitness of the individual plays an important part;
 - b. Printing of finance committee reports and departmental reports;
 - c. Printing or engraving of bonds, tax warrants, and other evidences of indebtedness;
 - d. ~~Purchase of~~ perishable foods and perishable beverages;
 - e. Materials and work that have been awarded to the lowest responsible bidder after due advertisement, but due to unforeseen revisions, not the fault of the contractor for materials and work, must be revised causing expenditures not in excess of 10% of the contract price;
 - f. Maintenance or servicing of, or provision of repair parts for, equipment which are made with the manufacturer or authorized service agent of that equipment where the provision of parts, maintenance, or servicing can best be performed by the manufacturer or authorized service agent;
 - g. Use, purchase, delivery, movement, or installation of data processing equipment, software, or services and telecommunications and interconnect equipment, software, and services;
 - h. Duplicating machines and supplies;
 - i. ~~Fuel, including diesel, gasoline, oil, aviation, natural gas, or propane, lubricants, or other petroleum products~~ Natural gas when the cost is less than that offered by a public utility;
 - j. Equipment previously owned by some entity other than the District itself;
 - k. Repair, maintenance, remodeling, renovation, or construction, or a single project involving an expenditure not to exceed \$50,000 and not involving a change or increase in the size, type, or extent of an existing facility;
 - l. Goods or services procured from another governmental agency;
 - m. Goods or services that are economically procurable from only one source, such as for the purchase of magazines, books, periodicals, pamphlets and reports, and for utility services such as water, light, heat, telephone, or telegraph; 6
 - n. Emergency expenditures when such an emergency expenditure is approved by three-quarters of the members of the Board;
 - o. Goods procured through an education master contract, as defined in the Education Purchasing Program, ~~Article 105 ILCS 5/28A of the School Code;~~ and
 - p. Providing for the transportation of students, which contracts must be advertised in the same manner as competitive bids and awarded by first considering the bidder(s) most able to provide safety and comfort for the students, stability of service, and any other factors set forth in the request for proposal regarding quality of service, and then price.
 2. Competitive bidding process:
 - a. An invitation for bids is advertised, where possible, by public notice at least ten days before the bid date in a newspaper published in the District, or if no newspaper is

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5 105 ILCS 5/10-20.21(a), amended by P.A. 101-570.

6 See Tarsitano v. Tsp. H.S. Dist. No. 211, 896 N.E.2d 359 (Ill.App.1.,2008)385 Ill.App.3d 868 (1st Dist. 2008)(holding that school districts may enter into contracts for utility services, such as "water, light, heat, telephone or telegraph," without using the competitive bidding process).

published in the District, in a newspaper of general circulation in the area of the District. 105 ILCS 5/10-20.21(a).

- b. The following information should be included in the advertisement for bids:
 - 1) A description of the materials, supplies, or work involved;
 - 2) Completion or delivery date requirements;
 - 3) Requirements for bids, bonds, and/or deposits;
 - 4) Requirements for performance, labor, and material payment bonds;
 - 5) Date, time, and place of the bid opening;
 - 6) The approximate time period between the opening of bids and the award of the contract; and
 - 7) Any other useful information.
 - c. If specifications are available, the advertisement for bids describes where they may be obtained and/or inspected.
 - d. All bids must be sealed by the bidder. 105 ILCS 5/10-20.21(a).
 - e. A Board member or District employee opens the bids at a public bid opening at which time the contents are announced. 105 ILCS 5/10-20.21(a). With the exception of bids for construction purposes, bids may be communicated, accepted, and opened electronically. The following safeguards apply to an electronic bid opening (105 ILCS 5/10-20.21(a)):
 - 1) On the date and time of a bid opening, the primary person conducting the electronic bid process shall log onto a specified database using a unique username and password previously assigned to the bidder to allow access to the bidder's specific bid project number.
 - 2) The specified electronic database must be on a network that: (i) is in a secure environment behind a firewall; (ii) has specific encryption tools; (iii) maintains specific intrusion detection systems; (iv) has redundant systems architecture with data storage back-up, whether by compact disc or tape; and (v) maintains a disaster recovery plan.
 - f. Each bidder is given at least three days' notice of the time and place of the bid opening. 105 ILCS 5/10-20.21(a).
 - g. Conduct that promotes deception and collusion during the bidding process is prohibited and may violate the Ill. Criminal Code, 720 ILCS 5/33E-1 et seq. Examples include interference with public contracting, bid-rigging, and acquisition or disclosure of bidding information by a public official.
3. Following the opening of bids, the Superintendent (and Board Attorney, if needed) determines the lowest responsible bidder and verifies the bidders' qualifications. Contracts are awarded at a properly called open meeting of the Board. If the Superintendent recommends a bidder other than the lowest bidder, the Superintendent must provide the Board with the factual basis for the recommendation in writing. The Board, if it accepts a bid from a bidder other than the lowest, records the factual basis for its decision in its minutes. A contract arises only when the Board votes to accept a bid, although written notice of the award will later be given to the successful bidder.
 4. Notwithstanding the foregoing, the District is relieved from bidding when making joint purchases with other public entities in compliance with the Governmental Joint Purchasing Act. (30 ILCS 525/0-0+).

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

Operational Services

Administrative Procedure - Criminal History Records Check of Contractor Employees

Actor	Action
<p>Firm contracting with the District, referred to herein as “contractor”</p>	<p>Prohibits any of the contractor’s employees from having direct, daily contact with one or more students if the employee was found guilty of any offense in 105 ILCS 5/10-21.9(c) or 5/21B-80(c), both amended by P.A. 99-667101-531.</p> <p>Prohibits any of the contractor’s employees from having direct, daily contact with one or more students if the employee was found guilty of any offense in 5/21B-80(b) (certain drug offenses) until seven years following the end of the employee’s sentence for the criminal offense.</p> <p>Requires each employee who will have direct, daily contact with student(s) to cooperate during the District’s fingerprint-based criminal history records check on him or her. 105 ILCS 5/10-21.9(f).</p> <p>Reimburses the District for the cost of the fingerprint-based criminal history records check that the District obtains on each employee of a contractor who will have direct, daily contact with student(s).</p>
<p>Superintendent or designee</p>	<p>Requires that the following paragraph be included in each contract with any firm whenever any employee of the firm will have direct, daily contact with one or more students.</p> <p>The contractor shall not send to any school building or school property any employee or agent who has been convicted of a crime listed in 105 ILCS 5/10-21.9(c) and/or 5/21B-80(c), as amended from time to time, or who is listed in the Illinois Sex Offender Registry or the Illinois Murderer and Violent Offender Against Youth Registry. The contractor shall not send to any school building or school property any employee or agent who has been convicted of a crime listed in 105 ILCS 5/21B-80(b) (certain drug offenses) until seven years following the end of the employee’s sentence for the criminal offense. The contractor shall make every employee who will have direct, daily contact with one or more students available to the District for the purpose of submitting to a fingerprint-based criminal history records check. The check shall occur before any employee or agent is sent to any school building or school property. The contractor will reimburse the District for the cost of each check. The District must also provide a copy of the report to the individual employee of the contractor, but is not</p>

Actor	Action
<p><u>Superintendent or designee, cont'd</u></p>	<p>authorized to release it to the contractor. Additionally, at least quarterly, the contractor shall check if any of its employees or agents having direct, daily contact with one or more students is listed on the Ill.inois Sex Offender Registry or the Ill.inois Murderer and Violent Offender Against Youth Registry.</p> <p>Completes the required forms to request a fingerprint-based criminal history record check on each contractor's employee who will have direct, daily contact with one or more students. 105 ILCS 5/10-21.9(f). See 5:30-AP2, <i>Investigations</i>. Screens the individual's name and address against the: (1) Ill.inois Sex Offender Registry, www.isp.state.il.us/sor/, and (2) the Violent Offender Against Youth Registry maintained by the Ill. Dept. of State Police (ISP), www.isp.state.il.us/cmvo/.</p> <p>Whenever a contractor sends an employee who will have direct, daily contact with a student(s) to the District for the first time, ASKS the contractor:</p> <ol style="list-style-type: none"> 1. Will this employee be assigned to more than one school district? IF YES, may request the applicable Regional Superintendent to be responsible for obtaining a fingerprint-based criminal history records check and checking the Statewide Sex Offender Database for each such employee. The Regional Superintendent is required to promptly report to the District any information concerning the employee's record of conviction and identification as a sex offender. 105 ILCS 5/10-21.9(f). 2. Has another Illinois school district already conducted a fingerprint-based criminal history records check on the employee within the last year? IF YES, may request a copy of it for that contractor's employee from the school district where the contractor's employee worked or works. The District may rely on a check done by another district within the last year. 105 ILCS 5/10-21.9(h). <p>Note: State law does not define "within the last year."</p> <p>Upon a request from any school, school district, community college district, or private school for a copy of a fingerprint-based criminal history records check for an employee of a contractor, FIRST determines if the District conducted the check within the last year. IF YES, provides a copy of it to the requesting entity. 105 ILCS 5/10-21.9(h).</p> <p>Note: An immunity provision, contained in 20 ILCS 2635/7(A)(3), makes the District not liable to an individual for its reasonable actions taken in reliance on the individual's eCriminal hHistory rRecords information (CHRI) report. The District will</p>

Actor	Action
	lose the immunity if it was notified by the individual or by the ISP that the CHRI report is inaccurate or incomplete.

Cross Reference and Resource

1. 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.
2. **Fingerprint-based Criminal History Records Information Check** *subhead* in 5:30-AP2, *Investigations*.

Operational Services

Administrative Procedure - Federal and State Award Procurement Procedures

In addition to the State legal requirements for purchases and contracts set forth in Board policy 4:60, *Purchases and Contracts*, and 4:60-AP1, *Purchases*, the following procedures apply to District procurement under federal awards and State awards governed by the Grant Accountability and Transparency Act (GATA). ¹

Consult the Board Attorney regarding the legal requirements presented by this administrative procedure as well as before a contract is presented to the Board. ²

Code of Conduct ³

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

General Procurement Standards ⁴

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

The footnotes should be removed before the material is used.

¹ 2 C.F.R. §§200.318-200.326; [30 ILCS 708/](#), [Grant Accountability and Transparency Act \(GATA\)](#). GATA adopts the federal uniform guidance for all grants, unless the Office of the Governor grants an exception. [30 ILCS 708/55; 44 Ill.Admin.Code §7000.60](#). -For information about the scope of GATA as it pertains to grants administered by the Ill. State Board of Education, see www.isbc.net/gata.

² Many legal issues will be solved by early and frequent consultation with the board attorney.

³ 2 C.F.R. §200.318(c).

⁴ 2 C.F.R. §200.318(d)-(k).

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

Competition 5

- A. All procurement transactions shall be conducted in a manner providing full and open competition consistent with the standards of State law (105 ILCS 5/10-20.21) and policy 4:60, Purchases and Contracts, and this section. To ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements. Situations considered to be restrictive of competition include, but are not limited to:
 - 1. Placing unreasonable requirements on firms in order for them to qualify to do business;
 - 2. Requiring unnecessary experience and excessive bonding;
 - 3. Noncompetitive pricing practices between firms or between affiliated companies;
 - 4. Noncompetitive contracts to consultants that are on retainer contracts;
 - 5. Organizational conflicts of interest;
 - 6. Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement; and
 - 7. Any arbitrary action in the procurement process.
- B. The District shall conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable federal statutes expressly mandate or encourage geographic preference. **Note:** State law may also encourage or discourage these preferences. Discuss these with the Board Attorney. See also Doyle Plumbing and Heating Co. v. Bd. of Educ., Quincy Pub. Sch. Dist. No. 172, 291 Ill.App. 3d 221 (4th Dist. 1997); Cardinal Glass v. Bd. of Educ. of Mendota Comm. Consol. Sch. Dist. 289, 113 Ill.App. 3d 442 (3rd Dist.

The footnotes should be removed before the material is used.
5 2 C.F.R. §200.319.

1983). Nothing in this section preempts State licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract. **Note:** The Board must also follow the Local Government and Professional Services Selection Act (50 ILCS 510/).

C. Procurement Transactions. All solicitations will:

1. Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured.
 - a. Such description must not, in competitive procurements, contain features which unduly restrict competition.
 - b. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use.
 - c. Detailed product specifications should be avoided if at all possible.
 - d. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated.
2. Identify all requirements which offerors must fulfill and all other factors to be used in evaluating bids and proposals.

D. The District shall ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. **Note:** State laws may conflict with this provision. See 105 ILCS 5/10-20.21 and 50 ILCS 510/.

E. The District shall not preclude potential bidders from qualifying during the solicitation period.

Methods of Procurement ⁶

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

- A. Procurement by micro-purchases. Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold of \$10,000, as may be amended from time to time.⁷ To the extent practicable, the District shall distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the Board considers the price to be reasonable. **Note:** See 105 ILCS 5/10-20.21 and sample policy 4:60, *Purchases and Contracts*.
- B. Procurement by small purchase procedures. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the Simplified Acquisition Threshold of \$250,000, as may be amended from time

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⁶ 2 C.F.R. §200.320.

⁷ The *micro-purchase threshold* is set by the Federal Acquisition Regulation (FAR) at 48 C.F.R. Subpart 2.1 (Definitions). ~~It is \$3,000 except as otherwise discussed in Subpart 2.1 of that regulation, but this threshold and~~ is periodically adjusted for inflation. 2 C.F.R. §200.67. The federal government’s Office of Management and Budget issued a memo increasing the micro-purchase threshold to \$10,000, pursuant to the National Defense Authorization Act FY 2018 (Pub. L. No. 115-91), pending amendments to the FAR. OMB Memorandum 18-18 (6-20-18), at: www.whitehouse.gov/wp-content/uploads/2018/06/M-18-18.pdf.

[to time](#)⁸. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources.

- C. Procurement by sealed bids (formal advertising). Bids are publicly solicited and a firm fixed price contract⁹ (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. **Note:** 105 ILCS 5/10-20.21 requires “lowest responsible bidder.” The sealed bid method is the preferred method for procuring construction, if the conditions in 2 C.F.R. §200.320(c)(1) apply. If sealed bids are used, the requirements in 2 C.F.R. §200.320(c)(2) apply. **Note:** 105 ILCS 5/10-20.21 requires sealed bids.
- D. Procurement by competitive proposals. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the requirements in 2 C.F.R. §200.320(d) apply. **Note:** 105 ILCS 5/10-20.21 requires sealed bids.
- E. Procurement by noncompetitive proposals. Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used only when one or more of the circumstances in §200.320(f) apply. **Note:** 50 ILCS 510/ may conflict with this regulation.

Contracting with Small and Minority Businesses, Women’s Business Enterprises, and Labor Surplus Area Firms ¹⁰

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

- A. Placing qualified small and minority businesses and women’s business enterprises on solicitation lists;
- B. Assuring that small and minority businesses, and women’s business enterprises are solicited whenever they are potential sources;
- C. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women’s business enterprises;

The footnotes should be removed before the material is used.

⁸ *Simplified acquisition threshold* means the dollar amount below which a non-federal entity may purchase property or services using small purchase methods. Non-federal entities adopt small purchase procedures in order to expedite the purchase of items costing less than the simplified acquisition threshold. The simplified acquisition threshold is set by the Federal Acquisition Regulation ([FAR](#)) at 48 CFR Subpart 2.1 (Definitions) and in accordance with 41 U.S.C. §1908. ~~As of the publication of this part, the simplified acquisition threshold is \$150,000, but this threshold~~ and is periodically adjusted for inflation. (Also see definition of §200.67 Micro-purchase.) 2 C.F.R. §200.88. [The federal government’s Office of Management and Budget issued a memo increasing the simplified acquisition threshold to \\$250,000, pursuant to the National Defense Authorization Act FY 2018 \(Pub. L. No. 115-91\), pending amendments to the FAR. OMB Memorandum 18-18 \(6-20-18\), at: \[www.whitehouse.gov/wp-content/uploads/2018/06/M-18-18.pdf\]\(http://www.whitehouse.gov/wp-content/uploads/2018/06/M-18-18.pdf\).](#)

⁹ *Contract* means a legal instrument by which a non-federal entity purchases property or services needed to carry out the project or program under a federal award. The term as used in this part does not include a legal instrument, even if the non-federal entity considers it a contract, when the substance of the transaction meets the definition of a federal award or subaward (see §200.92 Subaward). 2 C.F.R. §200.22.

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

- D. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women’s business enterprises;
- E. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- F. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (A) through (E) of this section.

Contract Cost and Price 11

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

Federal Awarding Agency or Pass-Through Entity Review 12

The District shall make available, upon request of the federal awarding agency¹³ or pass-through entity¹⁴ (ISBE):

- A. Technical specifications on proposed procurements where the federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition; and
- B. Procurement documents (such as requests for proposals or invitations for bids, or independent cost estimates) for pre-procurement review when one or more of the circumstances in §200.324(b) apply.

The footnotes should be removed before the material is used.

¹¹ 2 C.F.R. §200.323.

¹² 2 C.F.R. §200.324.

¹³ *Federal awarding agency* means the federal agency that provides a federal award directly to a non-federal entity. 2 C.F.R. §200.37.

¹⁴ *Pass-through entity* means a non-federal entity that provides a subaward to a subrecipient to carry out part of a federal program. 2 C.F.R. §200.74.

Bonding Requirements 15

- A. For construction or facility improvement contracts or sub contracts exceeding the Simplified Acquisition Threshold¹⁶, the federal awarding agency or pass-through entity may accept the bonding policy and requirements of the District provided that the federal awarding agency or pass-through entity has made a determination that the federal interest is adequately protected.
- B. If such a determination has not been made, the minimum requirements shall be as follows:
1. A bid guarantee from each bidder equivalent to five percent of the bid price. The *bid guarantee* must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
 2. A performance bond on the part of the contractor¹⁷ for 100 percent of the contract¹⁸ price. A *performance bond* is one executed in connection with a contract to secure fulfillment of all the contractor's obligations¹⁹ under such contract.
 3. A payment bond on the part of the contractor for 100 percent of the contract price. A *payment bond* is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

Contract Provisions 20

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

The footnotes should be removed before the material is used.

¹⁵ 2 C.F.R. §200.325.

¹⁶ ~~See f/n 8. above. Simplified acquisition threshold means the dollar amount below which a non-federal entity may purchase property or services using small purchase methods. Non-federal entities adopt small purchase procedures in order to expedite the purchase of items costing less than the simplified acquisition threshold. The simplified acquisition threshold is set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1 (Definitions) and in accordance with 41 U.S.C. 1908. 2 C.F.R. §200.88.~~

¹⁷ *Contractor* means an entity that receives a contract as defined in §200.22 Contract. 2 C.F.R. §200.23.

¹⁸ *Contract* means a legal instrument by which a non-federal entity purchases property or services needed to carry out the project or program under a federal award. The term as used in this part does not include a legal instrument, even if the non-federal entity considers it a contract, when the substance of the transaction meets the definition of a federal award or subaward (see §200.92 Subaward). 2 C.F.R. §200.22.

¹⁹ When used in connection with a non-federal entity's utilization of funds under a federal award, *obligations* means orders placed for property and services, contracts and subawards made, and similar transactions during a given period that require payment by the non-federal entity during the same or a future period. 2 C.F.R. §200.71.

²⁰ 2 C.F.R. §200.326.