

## School Board

### Ethics and Gift Ban <sup>1</sup>

#### Prohibited Political Activity

The following precepts govern political activities being conducted by District employees and School Board members:

1. No employee shall intentionally perform any *political activity* during any *compensated time*, as those terms are defined herein. <sup>2</sup>
2. No Board member or employee shall intentionally use any District property or resources in connection with any political activity. <sup>3</sup>
3. At no time shall any Board member or employee intentionally require any other Board member or employee to perform any political activity: (a) as part of that Board member's or employee's duties, (b) as a condition of employment, or (c) during any compensated time off, such as, holidays, vacation, or personal time off.
4. No Board member or employee shall be required at any time to participate in any political activity in consideration for that Board member or employee being awarded additional compensation or

---

<sup>1</sup> The State Officials and Employees Ethics Act (SOEEA) (5 ILCS 430/) requires a policy on this subject matter and controls its content. 5 ILCS 430/70-5. This policy contains items on which collective bargaining may be required. Any policy that impacts wages, hours, or terms and conditions of employment, is subject to collective bargaining upon request by the employee representative, even if the policy involves an inherent managerial right. This policy concerns an area in which the law is unsettled.

The Ill. Attorney General developed a model ethics ordinance to assist units of local government and school districts. See <https://illinoisattorneygeneral.gov/Open-and-Honest-Government/Ethics-in-the-OAG/Ethics-Ordinance>. The model ordinance provides that the local governmental entity will enforce the policy through quasi-criminal proceedings or through hiring an attorney to prosecute violators. These penal enforcement provisions present an obvious difficulty for school districts – the legislature has **not** granted school districts the power to adopt penal ordinances and penalties. This sample policy, while based on the Attorney General's model ordinance, does **not** contain penal provisions and penalties, and it does **not** contemplate the hiring of an attorney to prosecute violators.

<sup>2</sup> In addition to constitutional free speech rights, two State laws must be considered when enforcing the SOEEA. The first law, the Local Governmental Employees Political Rights Act (50 ILCS 135/), prohibits: (1) districts from inhibiting or prohibiting employees in the exercise of their political rights, and (2) employees from using their employment to coerce or inhibit others in the free exercise of their political rights and from engaging in political activities while at work. The other law, the Personnel Record Review Act (820 ILCS 40/9), prohibits districts from gathering records about an employee's political activities unless the activities interfere with the performance of work duties or could cause the district financial liability.

<sup>3</sup> The term *use* in Item #2 is based on the Ill. Attorney General's model ordinance; it is arguably broader than the SOEEA, which prohibits board members and district employees from intentionally *misappropriating* district property in connection with prohibited political activities. 5 ILCS 430/5-15(a)-(b). Some attorneys advise that a board member's mere presence on district property while engaging in a political activity on their own time (such as circulating an election petition at a school athletic event) is not a misappropriation of district property, and therefore does not violate the SOEEA. Consider that the term *use* may be easier to practically apply as a standard. Consult the board attorney for guidance on this issue. If the board wants Item #2 to match the SOEEA standard, substitute "misappropriate" in place of "use."

The Election Interference Prohibition Act prohibits the use of public funds to "urge any elector to vote for or against any candidate or proposition." 10 ILCS 5/9-25.1. Spending within the statutory definition of public funds to disseminate facts to the public is permitted under section 9-25.1 and is not *electioneering*. Consequently, a district should not become a political committee by spending funds to disseminate facts. 10 ILCS 5/9-1.14, legislatively overturning Citizens Organized to Save the Tax Cap v. State Bd. of Elections, Northfield Twp. High Sch. Dist., 392 Ill.App.3d 392 (1st Dist. 2009). Consult the board attorney for advice.

any benefit, whether in the form of a salary adjustment, bonus, compensatory time off, continued employment or otherwise; nor shall any Board member or employee be awarded additional compensation or any benefit in consideration for his or her participation in any political activity.

A Board member or employee may engage in any activity that: (1) is otherwise appropriate as part of his or her official duties, or (2) is undertaken by the individual on a voluntary basis that is not prohibited by this policy.

#### Limitations on Receiving Gifts <sup>4</sup>

Except as permitted by this policy, no Board member or employee, and no spouse of or immediate family member living with a Board member or employee,<sup>5</sup> shall intentionally solicit or accept any gift from any *prohibited source*, as those terms are defined herein, or that is otherwise prohibited by law or policy. No prohibited source shall intentionally offer or make a gift that violates this policy.

The following are exceptions to the ban on accepting gifts from a prohibited source:

1. Opportunities, benefits, and services that are available on the same conditions as for the general public.
2. Anything for which the Board member or employee, or his or her spouse or immediate family member, pays the fair market value.
3. Any: (a) contribution that is lawfully made under the Election Code, or (b) activities associated with a fundraising event in support of a political organization or candidate.
4. Educational materials and missions. <sup>6</sup>
5. Travel expenses for a meeting to discuss District business. <sup>7</sup>

---

<sup>4</sup> 5 ILCS 430/10-10 through 10-30 (Gift Ban); 30 ILCS 708/ (Grant Accountability Transparency Act) (GATA); and 2 C.F.R. §200.318(c)(1)(uniform federal procurement standards prohibit board members from soliciting or accepting gratuities, favors, or anything of monetary value from a contractor performing work under a contract supported by a federal grant award). GATA adopts the uniform federal rules for State agencies' administration of eligible State and federal grants.

Generally, 2 C.F.R. §200.318(c)(1) prohibits employees, officers, agents, and board members of a school district from participating in the selection, award, or administration of a contract supported by a federal award if they have a real or apparent *conflict of interest*. For more discussion on conflict of interest, see sample policy 2:100, *Board Member Conflict of Interest*. Specifically, 2 C.F.R. §200.318(c)(1) requires school districts to "set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value (*standards*)," along with "disciplinary actions to be applied for violations (*disciplinary actions*)" without defining *nominal value*.

To avoid confusion and because 2 C.F.R. §200.318(c)(1) provides flexibility to school boards regarding setting *standards* and *disciplinary actions*, sample policy 2:100, *Board Member Conflict of Interest*, refers to this sample policy's subheads: **Limitations on Receiving Gifts** in the SOEEA at 5 ILCS 430/10-10 – 10-30 (for the federal regulation's *standards*), and **Enforcement** at 5 ILCS 430/50-5 (discussing the specific penalties available under the SOEEA for the federal regulation's *disciplinary actions*).

If a board wishes to develop further *standards* and *disciplinary actions* than the Gift Ban section of the SOEEA requires, consult the board attorney.

For further discussion, see the *Grant Accountability and Conflicts of Interest* section in the Ill. Council of School Attorneys' publication, **Answers to FAQs, Conflict of Interest and Incompatible Offices** at: [www.iasb.com/law/COI\\_FAQ.pdf](http://www.iasb.com/law/COI_FAQ.pdf).

<sup>5</sup> 105 ILCS 5/22-93, added by P.A. 102-327 and renumbered by P.A. 102-813, and amended by P.A. 103-1020, bans high school counselors from intentionally soliciting or accepting gifts from a *prohibited source*, narrowly defined as "any person who is employed by an institution of higher education or is an agent or spouse of or an immediate family member living with a person employed by an institution of higher education." *Id.* Exceptions exist for certain circumstances, e.g., gifts from a relative or based on a personal friendship, and certain travel costs paid by an institution of higher education for a school counselor's attendance at an educational or military program at that institution of higher education. A school counselor does not violate this law if he or she promptly takes reasonable action to return the gift to the prohibited source or donates the gift or an amount equal to its value to a tax-exempt charity. *Id.*

<sup>6</sup> See 2 Ill.Admin.Code §1620.700(a) for an example of a definition of "educational materials and missions."

<sup>7</sup> See *Id.* at (b) for an example of a definition of "travel expenses to discuss State business."

6. A gift from a relative, meaning those people related to the individual as father, mother, son, daughter, brother, sister, uncle, aunt, great aunt, great uncle, first cousin, nephew, niece, husband, wife, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister, and including the father, mother, grandfather, or grandmother of the individual's spouse and the individual's fiancé or fiancée.
7. Anything provided by an individual on the basis of a personal friendship unless the recipient has reason to believe that, under the circumstances, the gift was provided because of the official position or employment of the recipient or his or her spouse or immediate family member and not because of the personal friendship. In determining whether a gift is provided on the basis of personal friendship, the recipient shall consider the circumstances under which the gift was offered, such as: (a) the history of the relationship between the individual giving the gift and the recipient of the gift, including any previous exchange of gifts between those individuals; (b) whether to the actual knowledge of the recipient the individual who gave the gift personally paid for the gift or sought a tax deduction or business reimbursement for the gift; and (c) whether to the actual knowledge of the recipient the individual who gave the gift also at the same time gave the same or similar gifts to other Board members or employees, or their spouses or immediate family members.
8. Food or refreshments not exceeding \$75 per person in value on a single calendar day; provided that the food or refreshments are: (a) consumed on the premises from which they were purchased or prepared; or (b) catered. *Catered* means food or refreshments that are purchased ready to consume, which are delivered by any means.
9. Food, refreshments, lodging, transportation, and other benefits resulting from outside business or employment activities (or outside activities that are not connected to the official duties of a Board member or employee), if the benefits have not been offered or enhanced because of the official position or employment of the Board member or employee, and are customarily provided to others in similar circumstances.
10. Intra-governmental and inter-governmental gifts. *Intra-governmental gift* means any gift given to a Board member or employee from another Board member or employee, and *inter-governmental gift* means any gift given to a Board member or employee from an officer or employee of another governmental entity.
11. Bequests, inheritances, and other transfers at death.
12. Any item or items from any one prohibited source during any calendar year having a cumulative total value of less than \$100.

Each of the listed exceptions is mutually exclusive and independent of every other.

A Board member or employee, his or her spouse or an immediate family member living with the Board member or employee, does not violate this policy if the recipient promptly takes reasonable action to return a gift from a prohibited source to its source or gives the gift or an amount equal to its value to an appropriate charity that is exempt from income taxation under 26 U.S.C. §501(c)(3).

### Enforcement

The Board President and Superintendent shall seek guidance from the Board attorney concerning compliance with and enforcement of this policy and State ethics laws.<sup>8</sup> The Board may, as necessary or prudent, appoint an Ethics Advisor for this task.

Written complaints alleging a violation of this policy shall be filed with the Superintendent or Board President. If attempts to correct any misunderstanding or problem do not resolve the matter, the Superintendent or Board President shall, after consulting with the Board Attorney, either place the

---

<sup>8</sup> This provision is consistent with sample policy 2:160, *Board Attorney*.

alleged violation on a Board meeting agenda for the Board's disposition or refer the complainant to Board policy 2:260, *Uniform Grievance Procedure*. A Board member who is related, either by blood or by marriage, up to the degree of first cousin, to the person who is the subject of the complaint, shall not participate in any decision-making capacity for the Board. If the Board finds it more likely than not that the allegations in a complaint are true, it shall notify the State's Attorney and/or consider disciplinary action for the employee.<sup>9</sup>

#### Definitions<sup>10</sup>

Unless otherwise stated, all terms used in this policy have the definitions given in the State Officials and Employees Ethics Act, 5 ILCS 430/1-5.

*Political activity* means:

1. Preparing for, organizing, or participating in any political meeting, political rally, political demonstration, or other political event.
2. Soliciting contributions, including but not limited to the purchase of, selling, distributing, or receiving payment for tickets for any political fundraiser, political meeting, or other political event.
3. Soliciting, planning the solicitation of, or preparing any document or report regarding anything of value intended as a campaign contribution.
4. Planning, conducting, or participating in a public opinion poll in connection with a campaign for elective office or on behalf of a political organization for political purposes or for or against any referendum question.
5. Surveying or gathering information from potential or actual voters in an election to determine probable vote outcome in connection with a campaign for elective office or on behalf of a political organization for political purposes or for or against any referendum question.
6. Assisting at the polls on Election Day on behalf of any political organization or candidate for elective office or for or against any referendum question.
7. Soliciting votes on behalf of a candidate for elective office or a political organization or for or against any referendum question or helping in an effort to get voters to the polls.
8. Initiating for circulation, preparing, circulating, reviewing, or filing any petition on behalf of a candidate for elective office or for or against any referendum question.
9. Making contributions on behalf of any candidate for elective office in that capacity or in connection with a campaign for elective office.
10. Preparing or reviewing responses to candidate questionnaires.
11. Distributing, preparing for distribution, or mailing campaign literature, campaign signs, or other campaign material on behalf of any candidate for elective office or for or against any referendum question.

---

<sup>9</sup> The Ill. Attorney General's model ethics ordinance includes the specific penalties from the SOEEA. 5 ILCS 430/50-5. Elsewhere the SOEEA states that a "governmental entity **may** provide in [its] ordinance or resolution ... for penalties similar to those provided in this Act for similar conduct." 5 ILCS 430/70-10. Thus, school boards do not need to enact policy containing criminal sanctions. Rather, as provided in this sample policy, violations can be referred to the State's Attorney.

The Ill. Attorney General's guidance document provides for the unit of local government to use an Ethics Commission to manage complaints. A board that wants to use an Ethics Commission should replace this paragraph, after the first sentence, with the following:

As soon as possible after a complaint is filed, the Superintendent shall appoint a 3-member Ethics Commission. If the Superintendent is the subject of the complaint, the Board President shall perform this duty. Commission members may be any District resident, except that no person shall be appointed who is related, either by blood or by marriage, up to the degree of first cousin, to the person who is the subject of the complaint. If the Commission finds it more likely than not that the allegations in a complaint are true, it shall notify the State's Attorney and/or recommend disciplinary action for the employee.

<sup>10</sup> The definitions contained in this policy are all from 5 ILCS 430/1-5 with minor adaptations.

12. Campaigning for any elective office or for or against any referendum question.
13. Managing or working on a campaign for elective office or for or against any referendum question.
14. Serving as a delegate, alternate, or proxy to a political party convention.
15. Participating in any recount or challenge to the outcome of any election.

With respect to an employee whose hours are not fixed, *compensated time* includes any period of time when the employee is on premises under the control of the District and any other time when the employee is executing his or her official duties, regardless of location. <sup>11</sup>

*Prohibited source* means any person or entity who:

1. Is seeking official action by: (a) a Board member, or (b) an employee, or by the Board member or another employee directing that employee;
2. Does business or seeks to do business with: (a) a Board member, or (b) an employee, or with the Board member or another employee directing that employee;
3. Conducts activities regulated by: (a) a Board member, or (b) an employee or by the Board member or another employee directing that employee;
4. Has an interest that may be substantially affected by the performance or non-performance of the official duties of the Board member or employee;
5. Is registered or required to be registered with the Secretary of State under the Lobbyist Registration Act, except that an entity does not become a prohibited source merely because a registered lobbyist is one of its members or serves on its board of directors; or
6. Is an agent of, a spouse of, or an immediate family member living with a prohibited source.

*Gift* means any gratuity, discount, entertainment, hospitality, loan, forbearance, or other tangible or intangible item having monetary value including but not limited to, cash, food and drink, and honoraria for speaking engagements related to or attributable to government employment or the official position of a Board member or employee.

### Complaints of Sexual Harassment Made Against Board Members by Elected Officials <sup>12</sup>

Pursuant to the State Officials and Employees Ethics Act (5 ILCS 430/70-5), members of the Board and other elected officials are encouraged to promptly report claims of sexual harassment by a Board member. Every effort should be made to file such complaints as soon as possible, while facts are known

---

<sup>11</sup> The SOEEA prohibits employees from engaging in political activities on *compensated time* but does not define the term. *Compensated time* is easy to determine for employees with fixed working hours. Determining *compensated time* for a salaried employee who does not have obligatory hours of attendance is more difficult. For this reason, the term *compensated time* should include both the time when the employee is physically present on district premises as well as any other time when the employee is engaged in official duties.

<sup>12</sup> Required. Under SOEEA, school districts must, by resolution, amend their sexual harassment policies “to provide for a mechanism for reporting and independent review of allegations of sexual harassment made against an elected official of the governmental unit by another elected official of a governmental unit.” 5 ILCS 430/70-5. This policy includes both elected and appointed board members to effectuate the intent of the law, to comprehensively address sexual harassment in the workplace, and for consistent treatment. The statute does not address whether the *independent review* must or may be limited to a board member’s conduct in his or her official capacity, or if it can extend to a board member’s behavior in his or her individual capacity. Consult the board attorney for advice. See sample policy 5:20, *Workplace Harassment Prohibited*, and its f/ns for information about what types of conduct may rise to the level of unlawful sexual harassment under federal and State laws. This policy only addresses the requirements of the SOEEA; it does not address harassment complaints made by employees or other non-elected individuals against board members. Such complaints may be processed under sample policy 2:260, *Uniform Grievance Procedure*, or, if the allegations involve Title IX sexual harassment, sample policy 2:265, *Title IX Sexual Harassment Procedure*. See sample policy 2:260, *Uniform Grievance Procedure*, at f/ns 1 and 6.

Unlike employees, board members are not legally required to take sexual harassment prevention training; however, it is a best practice. The Ill. Dept. of Human Rights offers a free online training module. See sample policy 5:20, *Workplace Harassment Prohibited*, at f/n 4 for more information.

and potential witnesses are available. If the official feels comfortable doing so, he or she should directly inform the individual that the individual's conduct or communication is offensive and must stop.

Board members and elected officials should report claims of sexual harassment against a member of the Board to the Board President or Superintendent. If the report is made to the Superintendent, the Superintendent shall promptly notify the President, or if the President is the subject of the complaint, the Vice President. Reports of sexual harassment will be confidential to the greatest extent practicable.<sup>13</sup>

When a complaint of sexual harassment is made against a member of the Board by another Board member or other elected official, the Board President shall appoint a qualified outside investigator who is not a District employee or Board member to conduct an independent review of the allegations. If the allegations concern the President, or the President is a witness or otherwise conflicted, the Vice President shall make the appointment. If the allegations concern both the President and Vice President, and/or they are witnesses or otherwise conflicted, the Board Secretary shall make the appointment. The investigator shall prepare a written report and submit it to the Board.<sup>14</sup>

If a Board member has engaged in sexual harassment, the matter will be addressed in accordance with the authority of the Board.<sup>15</sup>

The Superintendent will post this policy on the District website and/or make this policy available in the District's administrative office.<sup>16</sup>

LEGAL REF.: 105 ILCS 5/22-93.  
5 ILCS 430/, State Officials and Employees Ethics Act.  
10 ILCS 5/9-25.1, Election Interference Prohibition Act.

CROSS REF.: 2:100 (Board Member Conflict of Interest), 2:110 (Qualifications, Term, and Duties of Board Officers), 2:260 (Uniform Grievance Procedure), 4:60 (Purchases and Contracts), 5:120 (Employee Ethics; Code of Professional Conduct; and Conflict of Interest)

#### APPROVED:

---

<sup>13</sup> The Open Meetings Act (OMA) does not provide a specific exemption for discussion of complaints against a member of a public body in closed session. 5 ILCS 120/2(c)(1).

<sup>14</sup> 5 ILCS 430/70-5(a). The law requires governmental units, including school districts, to conduct an *independent review* of allegations of sexual harassment made against an elected official by another elected official; however, that term is not defined. Consult the board attorney about how to investigate such complaints.

For boards that wish to authorize the superintendent to appoint the outside investigator in these cases, substitute "Superintendent" for "Board President" in the first sentence, delete the second and third sentences in the paragraph, and delete the Cross Reference to policy 2:110, *Qualifications, Term, and Duties of Board Officers*.

<sup>15</sup> A board's ability to address the harassing behavior of a board member is relatively limited because it does not have the legal authority to remove one of its members. See sample policy 2:60, *Board Member Removal from Office*, and its footnotes for more information about board member removal. Consult the board attorney when dealing with a claim of sexual harassment by a board member to discuss enforcement options, as well as the accused board member's participation in any decisions regarding the complaint.

<sup>16</sup> This paragraph is optional, but it aligns with the intent of P.A. 101-221. See f/n 12, above.

