

General Personnel

Hiring Process and Criteria 1

The District hires the most qualified personnel consistent with budget and staffing requirements and in compliance with School Board policy on equal employment opportunity and minority recruitment.² The Superintendent is responsible for recruiting personnel and making hiring recommendations to the Board.³ If the Superintendent's recommendation is rejected, the Superintendent must submit another.⁴ No individual will be employed who has been convicted of a criminal offense listed in 105 ILCS 5/21B-80(c).⁵

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

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

² See policy 5:10, *Equal Employment Opportunity and Minority Recruitment*. Districts may not classify a job as either a *male* or *female* job. 29 C.F.R. §1604.5, 34 C.F.R. §106.55.

³ Boards must consider the superintendent's recommendations concerning, among other things, "the selection, retention, and dismissal of employees." 105 ILCS 5/10-16.7. The board may want to use this alternative sentence:

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

Subject to an applicable collective bargaining agreement in effect on 6-13-11, a board that fills a "new or vacant teaching position" must select a candidate based on: (1) certifications, (2) qualifications, (3) merit and ability (including performance evaluation, if available), and (4) relevant experience, provided that the length of continuing service with the district must not be considered a factor, unless all other factors are determined by the school district to be equal. 105 ILCS 5/24-1.5. The statute does not define "new or vacant teaching positions." The requirement does not apply to filling vacant positions under 105 ILCS 5/24-12 (reduction in force and recall). Consult the board attorney about these issues.

⁴ An additional optional sentence follows:

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

⁵ 775 ILCS 5/2-103.1, added by P.A. 101-656, prohibits employers from using conviction records as a basis to refuse to hire or to take any adverse action against an applicant or employee unless: (1) otherwise authorized by law; (2) there is a *substantial relationship* between the criminal offense and the employment sought; or (3) granting the employment would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public. For the disqualifying offenses listed in 105 ILCS 5/21B-80, a district does not have to show a *substantial relationship* between the offense and the position or that hiring or continuing to employ the person would involve an unreasonable risk. However, the Ill. Dept. of Human Rights (IDHR) interprets the Ill. Human Rights Act (IHRA) to still require the employer to notify the applicant of the disqualification pursuant to law and to afford the applicant at least five business days to respond in case the applicant wants to dispute the accuracy of the conviction record. *Id.* at 5/2-103.1(C). See IDHR's *Conviction Record Protection – Frequently Asked Questions* (March 2021), at:

www2.illinois.gov/dhr/Pages/Conviction_Record_Protection_Frequently_Asked_Questions.aspx. See administrative procedure 5:30-AP2, *Investigations*, and its footnotes for more detail regarding the IHRA notice requirements. **Note:** The protections of 775 ILCS 5/2-103.1 do not cover *unpaid interns*, which may include student teachers in the K-12 context. The definition of *employee* in the IHRA only extends to include unpaid interns for civil rights violations involving sexual harassment. 775 ILCS 5/2-101(A)(1)(c) and 5/2-102(D).

105 ILCS 5/10-21.9(c), amended by P.A. 101-531; 105 ILCS 5/21B-80, amended by P.A. 101-531, allows individuals with criminal histories involving certain drug convictions to apply for or to reinstate their educator licenses seven years after their sentence for the criminal offense is completed. Consult the board attorney about whether the board wants to continue prohibiting employment for any individual who has a criminal history involving these exempted drug offenses.

For more discussion regarding criminal history records checks and screenings required by 105 ILCS 5/10-21.9, amended by P.A.s 101-531 and 101-643, see f/ns 5 and 6 in policy 4:175, *Convicted Child Sex Offender; Screening; Notifications*.

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

Job Descriptions

The Board maintains the Superintendent's job description and directs, through policy, the Superintendent, in his or her charge of the District's administration. ⁷

The Superintendent shall develop and maintain a current comprehensive job description for each position or job category; however, a provision in a collective bargaining agreement or individual contract will control in the event of a conflict. ⁸

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

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

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

Many districts ask applicants about disqualifying criminal convictions on their employment applications or at another point before a job offer is made. State law does not expressly prohibit this practice; however, guidance issued by IDHR regarding implementation of 775 ILCS 5/1-103(G-5) and 5/2-103.1, added by P.A. 101-656, states "[u]nless authorized by law, an employer is prohibited from inquiring about an applicant's conviction record prior to making a job offer to the applicant." See IDHR's *Conviction Record Protection – Frequently Asked Questions* guidance issued by IDHR (March 2021), at:

www2.illinois.gov/dhr/Pages/Conviction_Record_Protection_Frequently_Asked_Questions.aspx. It is also unclear if an applicant's mere disclosure of a disqualifying conviction on an application, absent results of a fingerprint-based criminal history records check, Ill. Sex Offender Registry check, or Violent Offender Against Youth Registry check, triggers the district's obligation to provide notice to the applicant under 775 ILCS 5/2-103.1(C); see also *fn* 5, above. Consult the board attorney for advice on these issues and how they may affect application processes.

Any employer that asks applicants to record video interviews and uses an artificial intelligence analysis of the applicant-submitted videos must comply with the Artificial Intelligence Video Interview Act, 820 ILCS 42/, added by P.A. 101-260.

⁷ 105 ILCS 5/10-16.7. The foundation for a productive employment relationship begins with a board's policy, a thoughtfully crafted employment contract and job description, and procedures for communications and ongoing assessment. See IASB's *Foundational Principles of Effective Governance*, **Principle 3. The board employs a superintendent**, at:

www.iasb.com/conference-training-and-events/training/training-resources/foundational-principles-of-effective-governance/.

See also 3:40-E, *Checklist for the Superintendent Employment Contract Negotiation Process*, for best practice discussions about establishing the board-superintendent employment relationship and contract.

⁸ Job descriptions will become the basis for categorizing a teacher into one or more positions that the teacher is qualified to hold for reduction in force (RIF) dismissal and recall purposes. 105 ILCS 5/24-12(b), amended by P.A. 101-643. A board should consult with its attorney to review its current list of job descriptions and discuss the district's specific responsibilities.

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

Important: The ADAAA made significant changes to the ADA's definition of disability that broadened the scope of coverage and overturned a series of U.S. Supreme Court decisions that made it difficult to prove that an impairment was a qualifying disability. There is information about the regulations and a link to them at: www.eeoc.gov/laws/regulations/adaaa_fact_sheet.cfm. Consult the board attorney regarding how these amendments impact the district's hiring processes.

Investigations

The Superintendent or designee shall ensure that a fingerprint-based criminal history records check and a check of the Statewide Sex Offender Database and Violent Offender Against Youth Database is performed on each applicant as required by State law.⁹ When the applicant is a successful superintendent candidate who has been offered employment by the Board, the Board President shall ensure that these checks are completed.¹⁰ The Superintendent or designee, or if the applicant is a successful superintendent candidate, then the Board President shall notify an applicant if the applicant is identified in either database.¹¹ The School Code requires the Board President to keep a conviction record confidential and share it only with the Superintendent, Regional Superintendent, State Superintendent, State Educator Preparation and Licensure Board, any other person necessary to the hiring decision, or for purposes of clarifying the information, the Ill. Dept. of State Police and/or Statewide Sex Offender Database.¹² The Board reserves its right to authorize additional background inquiries beyond a fingerprint-based criminal history records check when it deems it appropriate to do so, in accordance with applicable laws.

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

⁹ The policy's requirements on criminal records checks for applicants for employment are mandated by 105 ILCS 5/10-21.9, amended by P.A.s 101-72, 101-531, and 101-643. See administrative procedure 5:30-AP2, *Investigations*, for the process and positions requiring criminal background investigation and what steps a district must take if it wants to disqualify an applicant based on a conviction record. The Statewide Sex Offender Database (a/k/a Sex Offender Registry) is available at: www.isp.state.il.us/sor. The Statewide Murderer and Violent Offender Against Youth Database is available at: www.isp.state.il.us/cmvo/. For more discussion regarding criminal history records checks and screenings required by 105 ILCS 5/10-21.9, amended by P.A.s 101-531 and 101-643, see f/n 5 in policy 4:175, *Convicted Child Sex Offender; Screening; Notifications*. See policy 4:60, *Purchases and Contracts*, for requirements concerning criminal background checks of employees of contractors who have *direct, daily contact* with students.

¹⁰ *Id.* If a board wants to require additional background inquiries beyond the fingerprint-based criminal history records information check required by 105 ILCS 5/10-21.9, amended by P.A.s 101-72, 101-531, and 101-643, including the federal *Rap Back Service* (20 ILCS 2630/3.3, added by P.A. 100-718) and/or checks through consumer reporting agencies regulated by the Fair Credit Reporting Act (15 U.S.C. §1681 *et seq.*), consult the board attorney. For more detailed information, see the laws listed in sample exhibit 3:40-E, *Checklist for the Superintendent Employment Contract Negotiation Process*, under the checklist item entitled **Conditions of Employment**, in the **Other Background Check Laws** row.

¹¹ 105 ILCS 5/10-21.9(b), amended by P.A.s 101-72 and 101-531, and 105 ILCS 5/21B-10. The School Code requires the board president to keep a conviction record confidential. It is impossible to know whether a fingerprint-based criminal history records check and a check of the Statewide Sex Offender and Violent Offender Against Youth Databases on a successful superintendent candidate will come back with a conviction record.

Therefore, in accordance with best practice (ensuring compliance and aligning with good governance principles), this policy does not assign a designee for the board president to complete this task. However, to balance the requirement to keep conviction records confidential with the practical implementation of ensuring a fingerprint-based criminal history records check and a check of the Statewide Sex Offender and Violent Offender Against Youth Databases are performed on each successful superintendent applicant, a board president may want to designate the duty to order these checks to the individuals otherwise listed in 105 ILCS 5/10-21.9(b), amended by P.A.s 101-72 and 101-531. Those individuals include the board president, the superintendent or designee, regional superintendent (if the check was requested by the district), state superintendent of education, state Educator Preparation and Licensure Board, any other person necessary to the hiring decision, or for clarification purposes, the Ill. Dept. of State Police and/or Statewide Sex Offender Registry.

¹² *Id.* at 5/10-21.9(b), amended by P.A.s 101-72 and 101-531. The School Code continues to define the board president's role in conducting criminal background investigations and receiving the results of these investigations, including the results for employees of district contractors. 105 ILCS 5/10-21.9. Many districts delegate this task in the hiring process to a human resources department.

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

For more discussion regarding responses to results obtained by criminal history records checks and screenings as required by 105 ILCS 5/10-21.9(e), amended by P.A.s 101-531 and 101-643, see f/n 6 in policy 4:175, *Convicted Child Sex Offender; Screening; Notifications*.

Each newly hired employee must complete a U.S. Citizenship and Immigration Services Form as required by federal law.¹³

The District retains the right to discharge any employee whose criminal background investigation reveals a conviction for committing or attempting to commit any of the offenses outlined in 105 ILCS 5/21B-80¹⁴ or who falsifies, or omits facts from, his or her employment application or other employment documents. If an indicated finding of abuse or neglect of a child has been issued by the Ill. Department of Children and Family Services or by a child welfare agency of another jurisdiction for any applicant for student teaching, applicant for employment, or any District employee, then the Board must consider that person's status as a condition of employment.¹⁵

The Superintendent shall ensure that the District does not engage in any investigation or inquiry prohibited by law and complies with each of the following:¹⁶

1. The District uses an applicant's credit history or report from a consumer reporting agency only when a satisfactory credit history is an established bona fide occupational requirement of a particular position.¹⁷
2. The District does not screen applicants based on their current or prior wages or salary histories, including benefits or other compensation, by requiring that the wage or salary history satisfy minimum or maximum criteria.¹⁸
3. The District does not request or require a wage or salary history as a condition of being considered for employment, being interviewed, continuing to be considered for an offer of employment, an offer of employment, or an offer of compensation.¹⁹

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

¹³ Immigration Reform and Control Act, 8 U.S.C. §1324a *et seq.* Consult with the board attorney regarding the district's rights and responsibilities under all Illinois laws if the district uses any electronic employment verification system, including *E-Verify* and/or the Basic Pilot Program. 820 ILCS 55/12. This statute urges employers who voluntarily use *E-Verify* (formerly known as the Basic Pilot/Employment Eligibility Verification Program) to consult the Ill. Dept. of Labor's website for current information on the accuracy of *E-Verify* and to review and understand their legal responsibilities relating to the use of any electronic employment verification systems. See *f/n 2* in 5:150-AP, *Personnel Records*, for a more detailed discussion of *E-Verify* issues.

¹⁴ See *f/n 5*, above.

¹⁵ 105 ILCS 5/10-21.9(c) and (g), amended by P.A. 101-531. See *f/n 6* in 4:175, *Convicted Child Sex Offender; Screening; Notifications*, for further discussion.

¹⁶ As an alternative to describing the prohibited investigations, a board may substitute this sentence:

The Superintendent shall ensure that the District does not engage in any investigation or inquiry prohibited by law, including without limitation, investigation into or inquiry concerning: (1) credit history or report unless a satisfactory credit history is an established bona fide occupational requirement of a particular position; (2) claim(s) made or benefit(s) received under Workers' Compensation Act; and (3) access to an employee's or applicant's social networking website, including a request for passwords to such sites.

The default policy provision and the alternative stated above – whichever is selected – may be made a prohibition rather than a duty of the superintendent; to do this, delete the stricken text as follows: “~~The Superintendent shall ensure that the District does not engage . . .~~”

¹⁷ Employee Credit Privacy Act, 820 ILCS 70/10. This Act allows inquiries into an applicant's credit history or credit report or ordering or obtaining an applicant's credit report from a consumer reporting agency when a satisfactory credit history is an *established bona fide occupational requirement* of a particular position. The Act identifies circumstances that permit a satisfactory credit history to be a job requirement, such as, the position's duties include custody of or unsupervised access to cash or marketable assets valued at \$2,500 or more.

¹⁸ 820 ILCS 112/10(b-5), added by P.A. 101-177. If an employer violates this subsection, the employee may recover in a civil action any damages incurred, special damages up to \$10,000, injunctive relief, and costs and reasonable attorney's fees. 820 ILCS 112/30(a-5), added by P.A. 101-177.

¹⁹ *Id.*

4. The District does not request or require an applicant to disclose wage or salary history as a condition of employment. ²⁰
5. The District does not ask an applicant or applicant's current or previous employers about wage or salary history, including benefits or other compensation. ²¹
6. The District does not ask an applicant or applicant's previous employers about claim(s) made or benefit(s) received under the Workers' Compensation Act. ²²
7. The District does not request of an applicant or employee access in any manner to his or her personal online account, such as social networking websites, including a request for passwords to such accounts. ²³
8. The District provides equal employment opportunities to all persons. See policy 5:10, *Equal Employment Opportunity and Minority Recruitment*.

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

²⁰ *Id.*

²¹ 820 ILCS 112/10(b-10), added by P.A. 101-177. **Note:** Attorneys caution that using the exceptions in 820 ILCS 112/10(b-10)(1) and (2), added by P.A. 101-177, may trigger litigation. Violating this subsection entitles an employee to recover in a civil action any damages incurred, special damages up to \$10,000, injunctive relief, and costs and reasonable attorney's fees. 820 ILCS 112/30(a-5), added by P.A. 101-177.

A school board that wishes to preserve these exceptions should consult its board attorney; then they may supplement number 5 by adding the following after "compensation":

unless the applicant's wage or salary history is a matter of public record, or is contained in a document completed by the applicant's current or former employer and then made available to the public by the employer, or then submitted or posted by the employer to comply with State or federal law; or the applicant is a current employee applying for a position with the same current employer.

²² Right to Privacy in the Workplace Act, 820 ILCS 55/10(a).

²³ *Id.* at 55/10(b)(6)(B) (commonly known as the *Facebook Password Law*). A *personal online account* is defined as an online account used primarily by a person for personal purposes. *Personal online account* does not include an account created, maintained, used, or accessed for the business purpose of a person's employer or prospective employer. *Id.* at 55/10(b)(5). Bracketed explanations follow the statutory language:

"Nothing in this subsection shall prohibit or restrict an employer from complying with a duty to screen employees or applicants prior to hiring...provided that the password, account information, or access sought by the employer only relates to an online account that:

(A) an employer supplies or pays; or

(B) an employee creates or maintains on behalf of under the direction of an employer in connection with that employee's employment."

[Based on this explanation, it is implausible that an applicant would have an account, service, or profile for business purposes of a school employer.]

The statute specifically permits an employer to: (1) maintain workplace policies governing the use of the employer's electronic equipment, including policies regarding Internet use, social networking site use, and electronic mail use; and (2) monitor usage of the employer's (district's) electronic equipment and electronic mail. The statute also states that it does *not prohibit* an employer from obtaining information about an applicant or an employee that is in the public domain or that is otherwise obtained in compliance with the statute. Finally, the statute does not apply to all types of personal technology that employees may use to communicate with students or other individuals, such as text messages on a personal phone. Consult the board attorney about these issues.

Physical Examinations²⁴

Each new employee must furnish evidence of physical fitness to perform assigned duties and freedom from communicable disease. The physical fitness examination must be performed by a physician licensed in Illinois, or any other state, to practice medicine and surgery in any of its branches, a licensed advanced practice registered nurse, or a licensed physician assistant who has been delegated the authority by his or her supervising physician to perform health examinations. The employee must have the physical examination performed no more than 90 days before submitting evidence of it to the District.

Any employee may be required to have an additional examination by a physician who is licensed in Illinois to practice medicine and surgery in all its branches, a licensed advanced practice registered nurse, or a licensed physician assistant who has been delegated the authority by his or her supervising physician to perform health examinations, if the examination is job-related and consistent with business necessity.²⁵ The Board will pay the expenses of any such examination.

Orientation Program

The District's staff will provide an orientation program for new employees to acquaint them with the District's policies and procedures, the school's rules and regulations, and the responsibilities of their position. Before beginning employment, each employee must sign the *Acknowledgement of Mandated Reporter Status* form as provided in policy 5:90, *Abused and Neglected Child Reporting*.

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

²⁴ 105 ILCS 5/24-5, amended by P.A.s 100-513, 100-855, and 101-81. According to this statute, a new or existing employee or substitute teacher employee may be subject to additional health examinations, including tuberculosis screening, as required by rules adopted by the Ill. Dept. of Public Health or by order of a local public health official. 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).

The last sentence of the first paragraph exceeds State law requirements and may be deleted.

Note that while examination by a spiritual leader/practitioner is sufficient for purposes of leaves, the statute does not permit an examination by a spiritual leader/practitioner for initial employment exams. This difference may present a constitutional issue; contact the board attorney for an opinion if an applicant wants to use an examination by a spiritual leader/practitioner.

Federal law limits pre-employment medical inquiries to whether the applicant is able to perform job-related functions; required medical examinations of applicants is forbidden. American with Disabilities Act (ADA), 42 U.S.C. §12112(d)(2); see also f/n 8 for an explanation regarding the ADA. Districts may condition an employment offer on taking and passing medical inquiries or physical exams, provided that all entering employees in the same classification receive the same conditional offer.

²⁵ The State law (105 ILCS 5/24-5, amended by P.A.s 100-513, 100-855, and 101-81) allowing boards to require physicals of current employees "from time to time," is superseded by the ADA. 42 U.S.C. §12112(d)(4). The ADA allows medical inquiries of current employees only when they are job-related and consistent with business necessity or part of a voluntary employee wellness program. *Id.* Districts may deny jobs to individuals with disabilities who pose a direct threat to the health or safety of others in the workplace, provided that a reasonable accommodation would not either eliminate the risk or reduce it to an acceptable level. 42 U.S.C. §12113; 29 C.F.R. §1630.2(r). See f/n 8 for an explanation regarding the ADA.

See f/n 24 for a discussion of examinations by spiritual leaders/practitioners.

- LEGAL REF.: 105 ILCS 5/10-16.7, 5/10-20.7, 5/10-21.4, 5/10-21.9, 5/21B-10, 5/21B-80, 5/10-22.34, 5/10-22.34b, 5/22-6.5, and 5/24-5.
20 ILCS 2630/3.3, Criminal Identification Act.
820 ILCS 55/, Right to Privacy in the Workplace Act.
820 ILCS 70/, Employee Credit Privacy Act.
Americans with Disabilities Act, 42 U.S.C. §12112, and 29 C.F.R. Part 1630.
Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq.*
Immigration Reform and Control Act, 8 U.S.C. §1324a *et seq.*
Duldulao v. St. Mary of Nazareth Hospital, 136 Ill. App. 3d 763 (1st Dist. 1985),
aff'd in part and remanded 115 Ill.2d 482(III. 1987).
Kaiser v. Dixon, 127 Ill. App. 3d 251 (2nd Dist. 1984).
Molitor v. Chicago Title & Trust Co., 325 Ill. App. 124 (1st Dist. 1945).
- CROSS REF.: 2:260 (Uniform Grievance Procedure), 3:50 (Administrative Personnel Other Than the Superintendent), 4:60 (Purchases and Contracts), 4:175 (Convicted Child Sex Offender; Screening; Notifications), 5:10 (Equal Employment Opportunity and Minority Recruitment), 5:40 (Communicable and Chronic Infectious Disease), 5:90 (Abused and Neglected Child Reporting), 5:125 (Personal Technology and Social Media; Usage and Conduct), 5:220 (Substitute Teachers), 5:280 (Duties and Qualifications)